

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

June 10, 2010

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

PSF No.: 09HD-016

Hawaii

Denial of Request for Contested Case by Ms. Margaret Wille; Denial of Request for Joinder in Requestor Margaret Wille's Formal Written Request for a Contested Case Hearing by the County of Hawaii

BACKGROUND:

On December 11, 2009, Item D-9, the Board of Land and Natural Resources approved the request of the owners of eight private lots in Lalamilo Farm Lots in Lalamilo, South Kohala, Hawaii for the release of a road reservation in favor of the State. See Exhibit AA attached. The road reservation is set forth in the land patent grants and deeds by which the State sold the lots to the owners or their predecessors-in-interest. The Board took this action over the objection of Waimea, Hawaii resident Margaret Wille, as well as the County of Hawaii Planning Department and the Department of Public Works.

Ms. Wille submitted written testimony in opposition to the requested action by email to the Board Secretary on December 8, 2009. See Exhibit BB attached. At the end of the testimony, she requested a contested case hearing in the event the Board approved the release of the road reservation.

The County of Hawaii Department of Public Works submitted letters in opposition to the proposed Board action. See Exhibit AA attached. The County's letters contained no request for a contested case hearing.

RECEIVED PETITIONS:

On December 21, 2009 at 9:46 a.m., Ms. Wille submitted a separate written request for a contested case hearing on this matter to the Land Division office in Honolulu. See Exhibit CC attached. Ms. Wille's request for contested case hearing indicates that she wants the road reservation in favor of the State to be used for a County road project

known as the Lalamilo Connector Road. This road would provide an alternate bypass around Waimea, connecting Kawaihae Road and Mamalahoa Highway south of the town. If this road is not constructed, Ms. Wille claims, it will prevent the relief of congestion in Waimea and specifically on Kawaihae Road near her house. Accordingly, she asserts both a public and private interest in the Board's action.

By transmittal dated February 3, 2010, the County of Hawaii, Department of Public Works and Planning Department, submitted a document entitled "Joinder in Requestor Margaret Wille's Formal Written Request for a Contested Case Hearing" dated February 2, 2010. See Exhibit DD attached.

The County's Joinder explains that the County had been planning to use the State's road reservation as a continuation of the Parker Ranch Connector Road to bypass the Lindsey Road intersection in Waimea. The County states that it expended significant sums on the environmental assessment of the impacts of this route. The County requests that the reservation area be conveyed to the County.

DISCUSSION:

Pursuant to Hawaii Revised Statutes §91-1(5), a contested case hearing is one where the "legal rights, duties, or privileges...are required by law to be determined after an opportunity for agency hearing." A contested case is "required by law" if the statute or rule governing the activity in question mandates a hearing prior to the administrative agency's decision-making, or if a hearing is mandated by due process.¹

There is no statute or rule requiring a contested in the context of the Board's approval of the release of a road reservation in favor of the State.

Nor do the due process clauses of the State and Federal constitutions provide a basis for a contested case hearing. Hawaii's courts have developed a two-step analysis to determine if a claimant is entitled to a due process hearing. First, the court looks at whether the particular interest is "property" within the meaning of the due process clauses. Second, the court determines what specific procedures are required to protect the interest asserted.²

¹ The Fourteenth Amendment to the United States Constitution provides, in part, "nor shall any state deprive any person of life, liberty, or property, without due process of law." Article I, Sec. 4 of the Hawaii Constitution provides in part, "[n]o person shall be deprived of life, liberty or property without due process of law."

² Alejado v. City & County of Honolulu, 89 Haw. 221, 226-27, 971 P.2d 310, 315-16 (Haw. App. 1999).

'To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it."³

In this instance, petitioners cannot show a property interest in the road reservation in the landowners' lots, or that the release of the road reservation will affect any property in which the petitioners have an interest.⁴ The road reservation at issue is specifically for the Waimea Bypass Highway. But as discussed in the Board submittal of December 11, 2009, Item D-9, the State Department of Transportation has decided to build the Waimea Bypass Highway in a different location, south of the area where the reservation is, and no longer requires the reservation area. The road reservation in the deeds conveying the Lalamilo Farm Lots must be strictly construed. It follows that the road reservation could not be used for a road other than the Waimea Bypass Highway, even if the State concurred that a County bypass road over the reservation area would be in the public interest. At the same time, staff notes that the Board's decision to release the reservation does not preclude the County from later acquiring the property directly from the landowners.

In summary, neither petitioner has a "right" to the road reservation. The State is the holder of the road reservation, and the property can only be used for the Waimea Bypass Highway. Petitioners are, therefore, not entitled to a contested case hearing.

RECOMMENDATION:

That the Board:

- A. Deny the petition for a contested case hearing filed by Ms. Margaret Wille, pursuant to HAR Section 13-1-29.1; and

³ Id., 89 Haw. At 227, 971 P.2d at 316, citing Board of Regents of State Colleges v. Roth, 408 U.S. 564, 577 (1972).

⁴ Additionally, the County of Hawaii did not request a contested case at the Board meeting of December 11, 2009, and its written petition was untimely. The County's request for contested case can be denied on that basis alone.

- B. Deny the County of Hawaii Department of Public Works and Planning Department's Request for Joinder in Requestor Margaret Wille's Formal Written Request for a Contested Case Hearing, pursuant to HAR Section 13-1-29.1.

Respectfully Submitted,



Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

**LAND BOARD ACTION OF
DECEMBER 11, 2009, ITEM D-9**

EXHIBIT AA

P-9

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

December 11, 2009

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

PSF No.: 09HD-016

Hawaii

Sale of Abandoned State Road Reservation to Owners of Lots 1, 2A, 2B, 4, 5B, 6, 7,
and 35, Lalamilo Farm Lots, Lalamilo and Waikoloa, South Kohala, Hawaii, Tax
Map Keys: 3rd/6-6-05:19, 20, 22, 24, 25, 27, 29 & 32.

APPLICANT(s):

- Lot 1 Royce Hirayama and Charlene Hirayama, husband and wife, as tenants by the entirety
Nathan Hirayama and Cheryl E. Hirayama, husband and wife, as tenants by the entirety
- Lot 2A Lalamilo Farm Partners, L.P. a Hawaii Partnership
- Lot 2B Leslie Kameki Imaoka, Glenn Takao Imaoka, Marion Sachie Imaoka, and Eunice Sanae Laybon as Tenants in Common
- Lot 4 Kawamata Farms, Inc.
- Lot 5B Earl T. Yamamoto
- Lot 6 Raleigh T. Sakato, Trustee
- Lot 7 Kiyosugu Hirako, Trustee
Shizuko Hirako, Trustee
- Lot 35 Roy S. Hori, Trustee
Nobuko Hori, Trustee

LEGAL REFERENCE:

Section 171-6(6), Hawaii Revised Statutes, as amended.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

DN

December 11, 2009

EXHIBIT AA

ITEM D-9

LOCATION:

Lands of Lalamilo Farm Lots situated at Lalamilo and Waikoloa, South Kohala, Hawaii, and identified by Tax Map Keys: 3rd/6-6-05:19, 20, 22, 24, 25, 27, 29 & 32, as shown on the attached map labeled Exhibit A.

AREA:

Approximate areas of road reservation within the subject lots:

Lot 1	60,400 square feet	(1.387 acres)
Lot 2A	2,344 square feet	(.052 acres)
Lot 2B	43,436 square feet.	(.997 acres)
Lot 4	71,200 square feet	(1.635 acres)
Lot 5B	64,800 square feet	(1.488 acres)
Lot 6	92,048 square feet	(2.113 acres)
Lot 7	77,208 square feet	(1.780 acres)
Lot 35	54,560 square feet	(1.253 acres)

ZONING:

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

TRUST LAND STATUS:

The Waimea Bypass Highway right-of-way reservation is considered Section 5(b) lands of the Hawaii Admission Act.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CONSIDERATION:

One-time lump sum payment of the difference in fair market value with and without the reservation, to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. The sale of the reservation affecting private lands would not involve the use of State lands or funds under Hawaii Revised Statutes, Chapter 343. To the extent the sale or release of the reservation relates to a property interest of the State in private lands, then the proposed disposition is exempt from the preparation of an environmental assessment under

the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, pursuant to Exemption Class No. 1 for "Operations, repairs or maintenance of existing structures, facilities, [or] equipment . . . involving negligible or no expansion or change of use beyond that previously existing".

DCCA VERIFICATION:

Kawamata Farms, Inc.:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

Lalamilo Farm Partners, L.P.:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

All other Applicants are natural persons or trusts and, as such, are not required to register with DCCA.

APPLICANTS REQUIREMENTS:

Applicants shall be required to:

- 1) Pay for an appraisal to determine the one-time payment of the difference in fair market value with and without the reservation;
- 2) Pay for the costs of public notice pursuant to section 171-16; and
- 3) Obtain title reports to ascertain ownership, where necessary, at Applicants' own cost and subject to review and approval by the Department.

REMARKS:

At its meeting of January 30, 1961, the Board of Land and Natural Resources approved the sale of Agricultural Farm Lots at Lalamilo, South Kohala, Hawaii, through a lottery process. The Lalamilo Farm Lots is an agricultural homestead subdivision with access to irrigation water through a State established Irrigation District. The lands within the project were partially acquired by land exchange with Parker Ranch and as a result many of the lots were conveyed from the State to the Applicants by Land Patent Grant and/or Deed. These conveyance documents included restrictions that limited uses to agriculture that was defined

as truck and orchard crops.

The Applicants own the properties north of the Lalamilo Farm Road. They are seeking to acquire a reservation in favor of the State of Hawaii to purchase an eighty (80) foot wide strip of land that was originally designated for a Waimea Bypass Highway when the State first created the Lalamilo Farm Lots Subdivision in the early 1960s. The State Department of Transportation has abandoned this route for its proposed bypass highway as indicated in a letter written by Brennon Morioka, Director of Transportation, to Roger Hirako of the Lalamilo Farmlots Association. See Exhibit B attached.

The deeds to all the lots contain reservation language providing substantially as follows:

“RESERVING ALSO to the State of Hawaii, its successors and assigns, the right to purchase the land required for the proposed Waimea Bypass Highway (80 feet wide), together with all rights of access to and from said highway, at the same unit price per acre as paid by the Grantees herein to the State of Hawaii. The location of said Waimea Bypass Highway is to be along the...[specific location] boundary of...[lot number] as shown of plan attached hereto and made a part hereof. The State shall not pay for any improvements within the 80-foot road strip and no structure of a permanent nature shall be placed thereon.”

Applicants are the owners of parcels 3rd/6-6-05:19, 20, 22, 24, 25, 27, 29 & 32 based upon staff's research of the County of Hawaii, Real Property Tax Office web site. Lot 3 (TMK: 3rd/6-6-05:21) is a State owned parcel currently encumbered under GL S-4548, recently transferred to the Department of Agriculture pursuant to Act 90, SLH 2003 and is not included in this disposition.

The Applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

By memorandum dated April 17, 2009, staff solicited comments from the agencies listed below with the following results:

Agency	Comments
State:	
Department of Health, Environmental Division	No response
Department of Hawaiian Home Lands	No comments
DLNR, DOFAW – Na Ala Hele	No response

DLNR, Historic Preservation	No historic properties will be affected by the proposed action
Department of Transportation, Highways Division	No comments
Office of Hawaiian Affairs	No response
County:	
Planning Department	Opposes the sale of the road reservation until such time as a route for the Lalamilo Connector Road between Kawaihae Road and Mamalahoa Highway is finalized and non-appealable. See Exhibit C attached.
Department of Public Works	Opposes the sale or extinguishment of the road reservation until the right-of-way for the Lalamilo Connector Road is identified and acquired. See Exhibit D attached.
Police Department	No objections
Fire Department	No comments
Federal:	
Army Corps of Engineers	No response

In addition, the Department of Agriculture submitted comments to the effect that any bypass road in the area should be separated from the Lalamilo Farm Lots by a buffer of 800-1,000 feet.

In light of the County's opposition to the sale of the road reservation, staff requested a legal opinion from the Department of the Attorney General on how to handle the situation. A deputy attorney general in the Land/Transportation Division issued a written opinion on September 16, 2009 finding that the road reservation covered the Waimea Bypass Highway project, which Brennon Morioka's letter of September 9, 2008 (Exhibit B) confirms is going forward at another location. The opinion concluded that the County cannot exercise the road reservation for its own roadway project, the Lalamilo Connector Road, because such use would be inconsistent with the specific reservation language of the Land Patent Grants and Deeds. The opinion added that the Board may negotiate a release of the reservation as requested by Applicants.

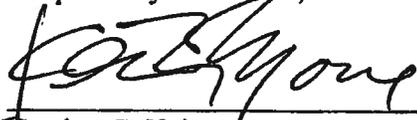
RECOMMENDATION:

That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Determine that the reservation for the Waimea Bypass Highway contained in the Land Patent Grants and Deeds for the subject properties is no longer needed since the Department of Transportation has relocated the Waimea Bypass Highway.
3. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the sale of the abandoned State road reservation to the Applicants to the extent their respective subject parcels are encumbered by the reservation, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current sale, release or waiver of reservation form, as may be amended from time to time;
 - 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,



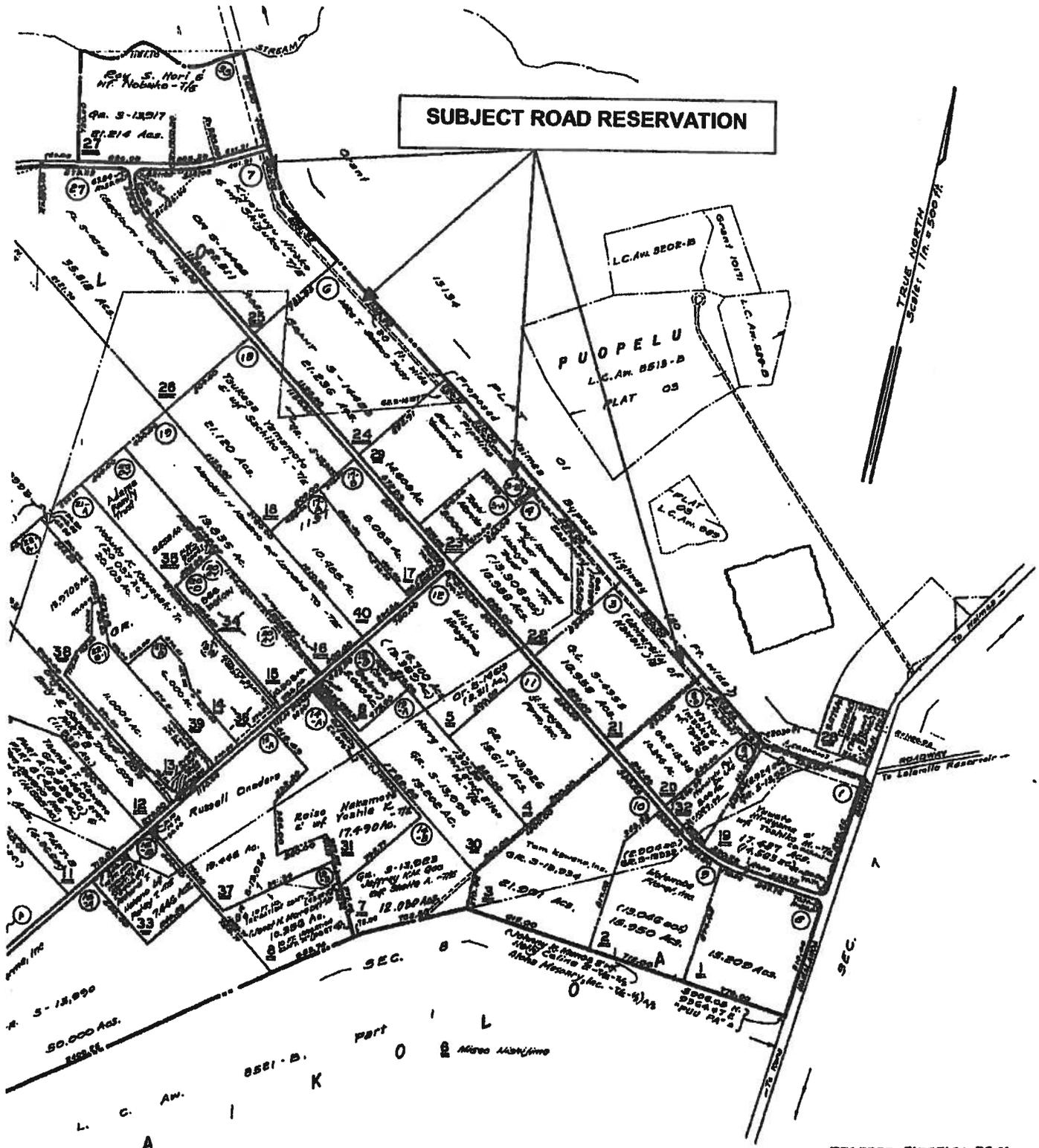
Gordon C. Heit
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson 

EXHIBIT A



28 (Dept. of Agriculture)
 Exec. Ord. 2013
 KAUAIWA VACUUM COOLING PLANT SITE
 (Kauaiwa Vacuum Cooling Cooperative, Ltd.)
 Rev. Ord. 0-28714 order (Chow) 1/4

15 George U. Nakagawa & wife
 Charles S. T. 2/8

Note: All parcels owned by the State of Hawaii unless otherwise noted.

FOR REAL PROPERTY TAXATION PURPOSES
 SUBJECT TO CHANGE

DEPARTMENT OF TAXATION		
TAXATION MAPS BUREAU		
STATE OF HAWAII		
TAX MAP		
THIRD TAXATION DIVISION		
ZONE	SEC.	PLAT
6	6	05
SCALE: 1 IN. = 200 FT.		

Lalamilo Road Reserve

EXHIBIT A

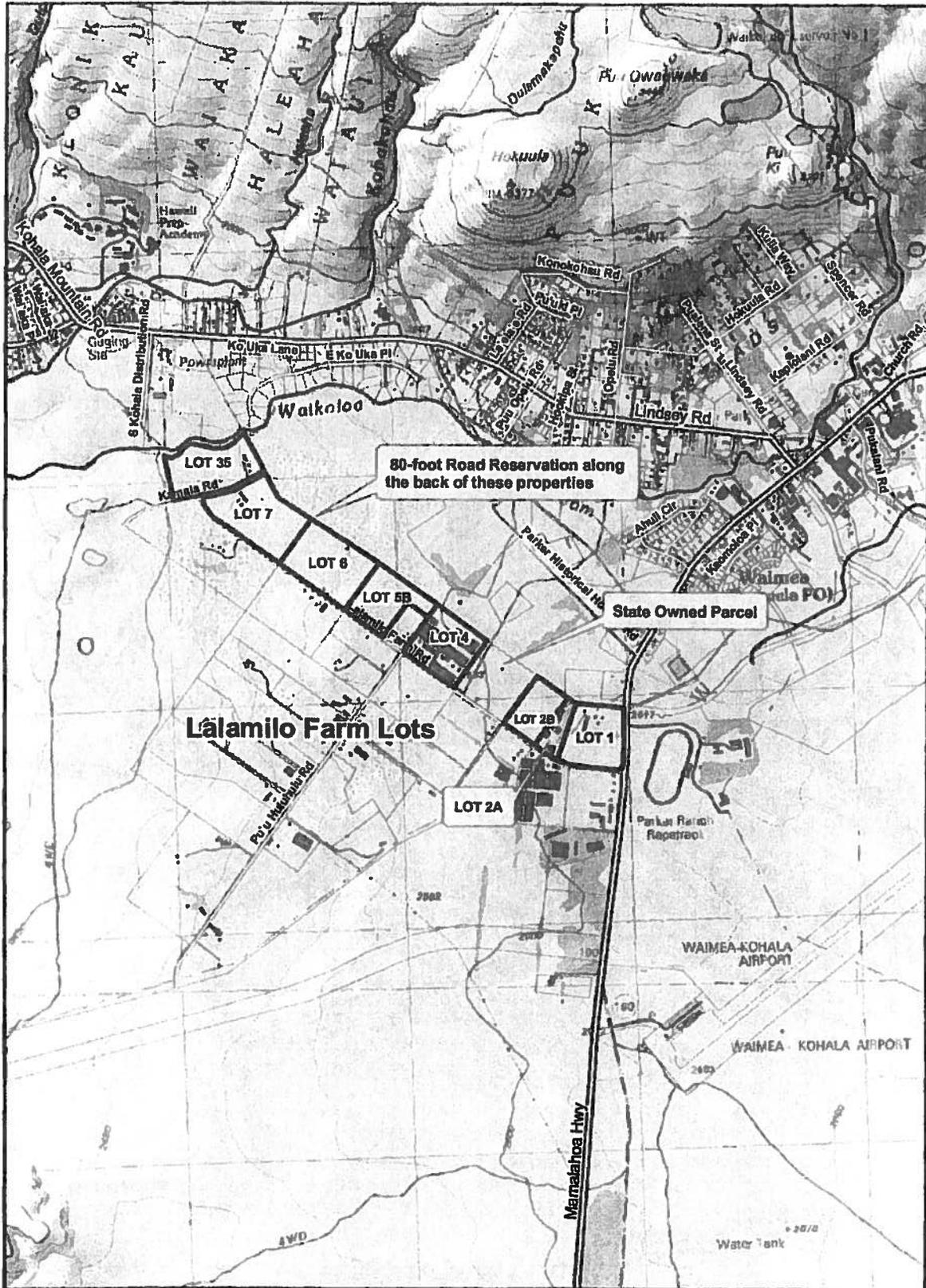


EXHIBIT B

LINDA LINGLE
GOVERNOR



BRENNON T. MORIOKA
DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SEIKIGUCHI
JIRO A. SUMADA

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:
HWY-R
3.86213

SEP - 9 2008

Mr. Roger Hirako
Co-Chairman, Lalamilo Farmlots Association
P. O. Box 1834
Kamuela, Hawaii 96743

Dear Mr. Hirako:

**SUBJECT: REQUEST TO DELETE STATE'S RIGHT TO PURCHASE LANDS
REQUIRED FOR THE WAIMEA BYPASS HIGHWAY AS FOUND IN
DEED RESERVATION IN LALAMILO FARMLOT LANDS**

Thank you for your letter dated August 6, 2008 regarding the subject matter.

The lands reserved in your Deeds are no longer required for the proposed Waimea Bypass Highway Project. You are welcome to approach the Department of Land and Natural Resources to officially request removing this reservation from the affected Deeds.

Additionally, the County of Hawaii is in the process of completing an environmental document for their Lalamilo Connector, which considers parcels at Mamalahoa Highway and the last farm lot. This proposed project has been identified in the County General Plan and in the County Waimea Traffic Circulation Plan.

Thank you for your patience in this matter. If you have any questions, please call Dean Yogi of my Right-of-Way staff at (808) 692-7325 or Ken Tatsuguchi of my Planning staff at (808) 587-1830.

Very truly yours,

A handwritten signature in black ink, appearing to read "BT", with a horizontal line extending to the right.

BRENNON T. MORIOKA, PH.D., P.E.
Director of Transportation

c: County of Hawaii, Department of Public Works

William P. Kenoi
Mayor



EXHIBIT C

BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

2009 MAY -8 P 1: 19

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Puunhi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

RECEIVED
PLANNING DEPARTMENT
HAWAII

May 4, 2009

Mr. Gordon Heit
Land Agent
Land Division
Department of Land and Natural Resources
State of Hawaii
75 Aupuni Street, Room 204
Hilo, HI 96720

Dear Mr. Heit:

SUBJECT: Acquisition of Abandoned State Road Reservation
TMK: (3) 6-6-005:0019, 20, 22, 24, 25, 27, 29 & 32; Portion of Lālāmilo Farm Lots, Lālāmilo and Waikoloa, Waimea, South Kohala, Hawai'i

We are in receipt of a request for comments regarding the acquisition of an abandoned state road reservation.

The subject eighty (80) foot wide road reservation easement was originally designated for a Waimea by-pass highway when the Lālāmilo Farm Lots Subdivision was created. This subdivision (SUB No. 1704) received final subdivision approval on September 6, 1961. The applicants are the various property owners of the properties north of the Lālāmilo Farm Road.

The Planning Department does have some concerns with the potential acquisition of the subject road reservation easement by the applicants. Although the State of Hawai'i Department of Transportation has abandoned this route for its proposed bypass highway, until such time as an actual route for the Lālāmilo Connector Road between the Kawaihae Road and the Māmalahoa Highway is finalized and non-appealable, the Planning Department opposes the sale of the road reservation. This position is also shared by the County of Hawai'i Department of Public Works. We have no further comments to offer at this time.

Mr. Gordon Heit
Land Agent
Land Division
Department of Land and Natural Resources
Page 2
May 4, 2009

If you have any questions, please feel free to contact Bethany Morrison of this office at 961-8288, extension 252.

Sincerely,

A handwritten signature in black ink that reads "BJ Leithead Todd". The signature is written in a cursive, flowing style.

BJ LEITHEAD TODD
Planning Director

BJM:cs

P:\wpwin60\Bethany\General Zoning Inquiries\DLNRacquisitionofabandonedstateroadreservation.doc

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO HAWAII

EXHIBIT D

Memorandum

Date : May 5, 2009

To : GORDON HEIT, Land Agent

From : WARREN H.W. LEE, Director



RECEIVED
LAND DIVISION
HILO, HAWAII

2009 MAY -6 P 2:40

**SUBJECT: ACQUISITION OF ABANDONED STATE ROAD RESERVATION
Lalamilo Farm Lots, Lalamilo, South Kohala, Hawai'i
Tmk: 3rd: 6-6-05: 19, 20, 22, 24, 25, 27, 29 & 32**

The Department of Public Works is conducting an Environmental Assessment/Impact Statement to establish a road between the Kawaihae Road and the Mamlahoa Highway, that we have identified as the Lalamilo Connector Road. The Lalamilo Connector Road would be located through, or in the vicinity of the subject road reservation and would be a continuation of the Parker Ranch Connector Road. When the Parker Ranch and Lalamilo Connector Roads are complete, there will be a new roadway from Kamamalu Road to Kawaihae Road that would bypass the congested Lindsey Road intersection.

The Waimea Traffic Circulation Study that was completed in December 2007 by PB Americas, Inc. for our Planning Department, identified the Parker Ranch and Lalamilo Connector Roads as a necessary element to improve traffic circulation in Waimea. Consequently, the Department of Public Works opposes the sale or the extinguishing of the subject 80 foot right of way until the right of way for Lalamilo Connector Road is identified and acquired.

Should you have any questions, please contact Galen Kuba, Engineering Division Chief at 961-8422 or at gkuba@co.hawaii.hi.us.

cc: Planning
Police
Fire

**PETITIONER MARGARET WILLE'S
WRITTEN TESTIMONY
IN OPPOSITION TO RELEASE OF LALAMILO FARM
LOT ROAD RESERVATION
BOARD MEETING OF DECEMBER 11, 2009, ITEM D-9**

EXHIBIT BB

To: Board of Land and Natural Resources

Fr: Margaret Wille, Waimea Resident

Date: December 9, 2009

Re: Item D-9 on BLNR December 11th, 2009 Board Hearing

PSD No. 09HD-016: "Sale of Abandoned State Road Reservation to Owners of Lots 1, 2A, 2B, 4, 5B, 6, 7, and 35, Lalamilo Farm Lots, Lalamilo and Waikoloa, South Kohala, Hawaii, Tax Map Keys: (3) 6-6-05:19, 20, 22, 24, 25, 27, 29 & 32".

I am writing **in OPPOSITION** to BLNR Petition PSF No. 09HD-016, which Petition was submitted on behalf of owners of parcels on which a State road reservation is located. The question before the Board is whether to approve removal of the State reserved road reservation subject to payment of a fee. In order to approve the Petition, the Board would have to find release of the road reservation **is in the public interest, that it "is not prejudicial to the best interest of the State, the community or area in which the land is situated"**. Based on this statutory criteria, for the following reasons, the Board should deny Petitioners' request to remove the subject road reservation in Petitioners' deeds.

A. CONTRARY TO THE PUBLIC INTEREST AND PREJUDICIAL TO THE INTERESTS OF THE WAIMEA COMMUNITY AND THE COUNTY GENERALLY. For State BLNR to approve this Petition would be very costly to the County of Hawaii and clearly contrary to the public interest and contrary to common sense.

1. The strip of land at issue here is a road corridor that the County plans to incorporate into the proposed Lalamilo Connector Road project. This road project would encompass a roadway, pedestrian and biking pathways, and a designated buffer area for protection of the adjacent agricultural production. The subject 80 foot wide road reservation, as described in Petitioners' deeds, extends from Kaiwaihae Road near the transfer station to Mamalahoa Highway in the vicinity of the under construction Parker Ranch Connector Road located near the Parker Ranch rodeo grounds. This roadway would provide an alternative way around Waimea's congested traffic choke point at Lindsey Road and Mamalahoa Highway. Together the Parker Ranch Connector Road and the proposed Lalamilo Connector Road would provide infrastructure for both vehicles and pedestrians needed in this general area. The actual roadway itself is anticipated to be located just north of these lots, on what is now Parker Ranch land, so there is available an adequate buffer for the agricultural use of the remainder of the affected farm lots. This 80

EXHIBIT BB

foot wide strip of land that the State reserved prior to sale of these 20 acre lots, would be part of the agricultural buffer area. If the BLNR releases the road reservation – as requested in this Board Petition, the County would likely be required to acquire an additional 80 foot strip of land from Parker Ranch to accommodate the agricultural buffer planned specifically for the benefit of the owners of the Petitioners in this case. Given the foreseeable cost of acquiring additional Parker Ranch property approval of this petition would put the construction of the Lalamilo Road further beyond the reach of the County – in terms of timing and in terms of costs for the road and would likely trigger the need for additional studies. Alternatively the cost would be so prohibitive that the road would not be built in the foreseeable future.

2. The existence of the subject road reservation is not something that was unknown to the original or subsequent purchasers of the affected lots. The road reservation was a condition of acquisition of the affected lots and is contained in each of Petitioners' deeds. Despite the previous designation of this corridor the County has been willing to consider moving the lot northward off of these parcels and for the most part only using this corridor as part of an agricultural buffer zone (despite the significant additional cost to the taxpayers).

3. The County has now spent over \$600,000 (perhaps closer to one million dollars) studying how to best accomplish this road project in this general location in a way that minimizes the adverse impact on adjacent residential and agricultural uses and on the environment. It is my understanding that the "buffer risk assessment" study was delayed because these same petitioning lot owners refused to participate in the consultant's study. Whereas the Waimea residents and County-wide residents have been supportive of the request by the owners of the Lalamilo lots for an agricultural buffer area for this needed roadway project amounts to an attempt to block this road project entirely – and is simply an unfair distribution of benefits and burdens. Owners of several of the Lalamilo farm lots have, or are in the process of, also requesting to remove the agricultural restriction on their lots. Those attempts are certainly contradictory to a request that the County taxpayers provide a significant buffer zone for protection of agricultural crop production.

4. The need for the Lalamilo Connector Road cannot be understated. Currently there is only way through Waimea and that is through the Lindsey Road-Mamalahoa Highway intersection. The County has spend considerable

time, energy, and funds to assess whether there is another location for the needed alternative route around the Lindsey Road – Mamalahoa Highway intersection. The answer is there is no other reasonable general location for this access route.

In 2005 the County hired a highly respected consultant, Parsons Brinckerhoff (PB America), to assess in-town options to address the worsening traffic congestion in Waimea. One of the key findings of Parsons Brinckerhoff was that both the Parker Ranch and the Lalamilo Connector Roads were essential to address Waimea's in-town traffic congestion. The consultant specifically concluded that even if the State regional bypass were to be built (from Waimea to the Kohala coast, the proposed connector road in this general location was still essential. As explained in a West Hawaii Today article dated June 8, 2006:

“The [Parsons Brinckerhoff] study showed that a bypass to the north of town would not be feasible but one to the south would be. They said the Waimea and Kawaihae bypasses are appropriate for regional traffic but a Lalamilo connector road and Parker Ranch connector road are more suitable to Waimea traffic.

North Hawaii News, June 8, 2006 “Packed House For Traffic Meeting”.

With regard to the need for this road including a buffer area, the Parsons Brinckerhoff “Waimea Circulation Study” concluded:

“The Kawaihae Road - Mamalahoa Highway Connector provides for the intra Waimea traffic and the internal-external Waimea traffic patterns. The regional traffic that passes through Waimea could also use it until the regional Kawaihae and Waimea Bypasses are constructed in the longer term future. The alignment of the Kawaihae Road - Mamalahoa Highway Connector is an issue with the Lalamilo Farm Lots development and the Sandalwood residential development. The farmers within the Lalamilo Farm Lots development are concerned about contamination of their crops due to the traffic that would use the proposed Connector Road. Sufficient buffer and/or separation needs to be provided to protect the farm lots from both contamination and crop pilferage. The County of Hawaii Department of Public Works currently has a consultant working on the Environmental Impact Statement (EIS) and conceptual design for the project. It is hoped that an acceptable method to buffer the farm lots and affected residential lots can be worked out through the EIS/Conceptual Design process.”

PB Americas Inc. “Waimea Circulation Study” December 2007, page 50.

To view this Report in its entirety go to

<http://www.waimeaplan.org/documents/Waimea-final-report-2Apr2008.pdf>

5. Traffic conditions from Kawaihae Road are already at very congested level. In 2007 the Planning Department reported as follows: "Mamalahoa through Waimea is probably at "E" (level of service). Based on the work of Parsons Brinckerhoff, it will probably be an "F" pretty soon unless the Parker and Lalamilo bypasses get built".

6. In a June 2008 Traffic study conducted by Parker Ranch for its proposed rezoning at the Lindsey Road Extension, the consultant's finding likewise indicated the importance of the related Parker Ranch Connector Road:

"The May 29, 2008 Traffic Assessment indicates that significant traffic is projected to use the Parker Ranch Connector Road.... The average weekday traffic for the section between Mamalahoa Highway and the future Lindsey Road Extension is projected to be 16, 256 vehicles per day in both directions".

Parker Ranch Rezoning Application #08-08 "Traffic Considerations", page 6.

7. There have been an increasingly high number of pedestrian-vehicle accidents in Waimea. I am knowledge of a number of a number of accidents near Parker School, which is proximately located to the choke point at the Lindsey Road intersection. An example of the serious traffic conditions in Waimea was when, during the Cherry Blossom festival a few years ago, five ambulances were blocked in traffic with dire results. Police and other emergency vehicles are also regularly prevented from being able to circumnavigate around the choke point at Lindsey Road. As was reported in West Hawaii Today:

When accidents do happen, getting to the site has become a challenge for first responders because of gridlocked traffic. The average response time for an ambulance in Waimea is more than 17 minutes and police report having some problems navigating the jammed roads during certain times of day.

"It can cause slow down for all emergency vehicles" [South Kohala Captain]Vieira said. "Officers have told me that over the years the volume of traffic is getting progressively worse." And because the main strip of road through the center of Waimea has become almost unpassable during the

morning and afternoon commutes, police are dealing with an increase of traffic on the side streets that were not designed to handle such an influx.

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8. The critical need for this Lalamilo Connector Road, and the need to expedite its construction, was also explained in the following excerpt from a West Hawaii Today article from February 14, 2008:

Failure by Hawaii County to begin building the highly touted Lalamilo connector road through Waimea has complicated the project, forced officials to alter its original location design plans, likely increased the projects cost to taxpayers, and placed its completion time frame in limbo. County Council Chairman Pete Hoffmann, Kohala, said the Lalamilo connector road project was expected to be under way at least three years ago after the Council approved \$10 million for traffic mitigation problems in Waimea. The project is needed he said, to alleviate the bumper to bumper traffic prevalent in Waimea, particularly at the Lindsey Road and Mamalahoa Highway intersection, which is a required route for any motorist attempting to drive through Waimea.

9. Under construction and proposed development also adds to the need for this essential Lalamilo Road project. The DHHL housing project is currently under construction proximate to where the Lalamilo Connector Road corridor would link to Kawaihae Road. This Connector Road will be important for access to and from that large residential project. Parker School is also proposing a major increase in its enrollment. The school is located in at the Lindsey Road and Kawaihae Road intersection. Absent construction of this Lalamilo Road, provision of safe access for the anticipated additional traffic will be very difficult. (The Parker School location is already at an “F” level at service during some peak traffic periods).

10. The absence of this second way through Waimea is also a civil defense issue. Waimea is an essential link for cross island traffic, both as a commuter route and in the event of any major disaster— regardless of the nature of the emergency – whether it be wildfires, a tsunami, hurricane, or earthquake. Several years ago when the Waimea reservoirs (located above town)

flooded, the single intersection in Waimea became a lake and traffic was blocked by the flood waters. It is also noteworthy that the bridge located on Lindsey Road adjacent to the Lindsey Road – Mamalahoa Highway intersection is being held up by “jacks” and is considered in severe need for repair. For these reasons completion of the Lalamilo Connector should be expedited – with all deliberate speed.

11. **INCREASED CONCERN FOR PEDESTRIAN WAYS:** Both locally and nationally there is increasing efforts to locate trailways for pedestrian use. The plan for the proposed Lalamilo Connector Road includes a pedestrian and bike trail. This plan is consistent with the South Kohala Community Development Plan, District Policy 2: “Provide for Transportation and Circulation Needs”, which includes the following requirements: “incorporates bike, pedestrian, and equestrian travel ways to link within the community and to other communities” and “incorporates safe roads”.

B. CONTRAY TO LEGISLATIVE POLICY DIRECTIVES Removal of the road reservation, as requested in the subject BLNR petition, is also contrary to and prejudicial to the interests of the County and community based on various legislative policies:

1. The County General Plan, Chapter 16, Hawaii County Code 1983 (2005 edition, as amended), with regard to South Kohala, specifically mandates the following “Course of Action”:

To relieve traffic congestion through Waimea town, implement construction of a.) Parker Ranch’s connector road from Kamamalu Street to Mamalahoa Highway; and b.) the County’s [Lalamilo] extension of this road, between Mamalahoa Highway and Kawaihae Road in the vicinity of the Waimea solid waste transfer station.

Hawaii County General Plan section 13.2.5.6.2(g),

2. In the South Kohala CDP (Community Development Plan) by far the top concern of South Kohala residents was the need to:

“Fix Traffic --Build Bypass, Connector and Alternate roads”

See South Kohala CDP December 2008 County Ordinance 08-159 Table 1.2, page 7

3. Specifically with respect to Waimea, one of the five policy directives for Waimea in the South Kohala CDP was “ Timely Implementation of Needed Circulation and Transportation Improvements”. [CDP at page 68], and pursuant thereto one of the specific strategies set forth in the CDP is:

“Design and construct the Lalamilo Connector Road”

South Kohala CDP “Waimea Town Plan”, at page 75 (underlining added).

4. Also, in the context of the South Kohala CDP Disaster Preparedness priorities, one of the key policies is:

“The County shall develop plans and programs for emergency routes so that people can safely move away from life-threatening natural hazards.

South Kohala CDP “District-wide Policies”, Policy 4.1, page 50.

Consistent with that district-wide policy for disaster preparedness is the need for more than one way to get through Waimea.

5. The South Kohala CDP allow requires provision for adequate buffering of land that is being used for agricultural production. Consistent with that policy, the County plans to incorporate an agricultural buffer in this road projects and plans to use this 80 strip of land in that buffer.

C. STATE AGENCIES AND THE COUNTY OF HAWAII

AGENCIES NEED TO COORDINATE AND COLLABORATE ON TRAFFIC PROJECTS.

The fact that this petition is coming before the BLNR is indicative of a lack of coordination and collaboration between the State and the County of Hawaii. Brennan Morioka, Director of the State of Hawaii Department of Transportation is fully aware of Hawaii Counties’ need for and planning for the Lalamilo Connector Road in the location of its road reservation. Sometimes it seems as if our government agencies work more in competition with each other, rather than in cooperation with each other. This “separate silo” manner of approaching critical infrastructure needs is prejudicial to and contrary to the public interest of us Big Island residents.

Director Brennan Morioka in his September 9, 2008 letter to the Lalamilo Farmlot Association wrote “You are welcome to approach the Department of Land and Natural Resources to officially request removing this

reservation from the affected deeds”. See said letter contained in the Petitioners’ DLNR Petition #09HD-016. In my opinion, what Director Morioka should instead have written to the Lalamilo Farmlot Association is as follows:

I am unable to support your request to remove the road reservation from the affected Lalamilo Farmlot deeds. Whereas at this time the State is not considering using this 80 wide strip of land for its regional state bypass route, this area is where the County of Hawaii is planning to locate the critically needed Lalamilo Connector Road. As you know the County’s consultant Belt Collins Inc is currently preparing an Environmental Assessment for this project, including an appropriate buffer strip to address the agricultural concerns of your Association’s membership. It is therefore inappropriate for me to support your request for a release of this road reservation.

It is difficult to imagine how, from an objective point of view, the Director of the State Department of Transportation would act in a manner – clearly contrary to implementation of a needed (albeit County) roadway. Justification for doing so, whether based on competition between state and county transportation agencies, or based on other political rationales, is in direct contradiction to the needs of the public, whose interests that Department is supposed to serve.

D. BASED ON RELEVANT CASE LAW, IT IS NOT LEGALLY SIGNIFICANT THAT THE LALAMILO ROAD CORRIDOR WAS ORIGINALLY CONSIDERED FOR A STATE ROAD, AS OPPOSED TO A COUNTY ROAD. The fact that the State, not the County, has the right to buy out this road reservation is not legally significant because the State has the right to convey this road reservation to “successors” and “assignees”.

E. WHAT THIS PETITION IS NOT ABOUT: The “Big Picture” question in this case is not whether you are pro-agriculture or pro-safe traffic circulation. Government decision-making is not about black and white choices. It is about balancing interests and providing reasonably for various objectives. For practical purposes the decision in this case will determine whether or not the County can include this 80 foot strip of land into its roadway “buffer zone” for the protection of Petitioners’ agricultural efforts.

F. CHANGE IN STATE’S INTEREST FROM ROADWAY USAGE:

Given the proposed change in the State’s interest from roadway usage to private residential usage – the release of this road reservation does not fall within the “operations, repairs, or maintenance of existing structures” exemption for an Environmental Assessment under HRS §343 and therefore an Environmental Assessment might be required for approval of this Petition.

G. REASONS FOR MY INDIVIDUAL INTEREST IN THIS

PETITION: I live just off the section of Kawaihae Road that would be circumscribed were the Lalamilo Road constructed. Living in this particular location, I am specifically and directly adversely affected by the absence of the Lalamilo Connector Road, beyond the impact to the general public.

As a concerned citizen of Waimea town, I am also interested in the welfare of my community – including infrastructure concerns, traffic safety concerns, and environmental concerns. I am a Board member of the Waimea Community Association and the co-chair of its Waimea Design Review Committee. For the past two years I was a member of the Steering Committee for the South Kohala Community Development Plan. I am a licensed attorney, knowledgeable in the area of land use laws. I represented members of the Waimea community in a successful effort to require that the County of Hawaii enforce the 1992 Parker Ranch Connector Road Rezoning Ordinance #92-65 and as amended thereafter. That legal action ended in a Settlement that requires Parker Ranch Trust to complete the Parker Ranch Connector Road Phase 1 and Phase 3, as well as the Pukalani Road extension, on or before May 8, 2010. I am however here submitting these comments as an affected and interested individual, and not on behalf of any client or community association.

H. CONTESTED CASE HEARING REQUESTED: In the event this Petition is approved by the BLNR, I hereby request a contested case hearing, on my own behalf and/or possibly on behalf of other Waimea residents who are adversely affected.



**PETITIONER MARGARET WILLE'S
FORMAL WRITTEN REQUEST FOR A CONTESTED
CASE HEARING**

EXHIBIT CC

Original 44207
Check \$600

BOARD OF LAND AND NATURAL RESOURCES

FORMAL WRITTEN REQUEST FOR A CONTESTED CASE HEARING

RECEIVED

09 DEC 21 09:46

Name of Requestor: Margaret Wille

Kamuela Hawaii 96743

Phone:

Fax: 808-887-1489

Cel:

Email:

DEPT OF LAND & NATURAL RESOURCES
STATE OF HAWAII

DEPT OF LAND & NATURAL RESOURCES
STATE OF HAWAII

2009 DEC 21 P 3:02

RECEIVED
LAND DIVISION

Date of BLNR Public Hearing: December 11, 2009

Subject Matter: Land Board Agenda Item D-9

Release of Road Reservation in Petitioners' Deeds

PSD No. 09HD-016: "Sale of Abandoned State Road Reservation to Owners of Lots 1, 2A, 2B, 4, 5B, 6, 7, and 35, Lalamilo Farm Lots, Lalamilo and Waikoloa, South Kohala, Hawaii, Tax Map Keys: (3) 6-6-05:19, 20, 22, 24, 25, 27, 29 & 32".

A. Legal Authority for Request: DLNR HAR §13-1-28 et seq (Contested Case Hearings) and HRS 91-9 (Contested cases, notice, hearing, records) and related sections of HRS 91.1 et. seq (Administrative Procedure); HRS 171 et seq (Public Lands, Management and Disposition thereof), HRS§ 343 et seq (Environmental Impact Statements); and such other statutory and regulatory authority as may be implemented; as well as the Hawaii State Constitution, United States Constitution, and administrative and case law related to this case, and such other appropriate legal authority that becomes apparent during the contested case proceedings.

B. Request for Hearing: The following is a statement demonstrating compliance with DLNR HAR §13-1-29(a): HAR §13-2-39(a) requires that a request for a contested case hearing be made orally or in writing before the close of the public hearing. In this case the public hearing was held on December 11, 2009. I submitted a request for a contested case hearing on December 8, 2009 as part of my submission to the Board (Section H: "Contested Case Hearing Requested"), which submission was sent to the Board by email on December 8, 2009 (HST). A copy of my email and the attached submission concerning this agenda item is here included as Exhibit 1 and Exhibit 2. (Note this email incorrectly refers to this hearing being held on December 9, rather than the actual date December 11, 2009.

C. Here is a concise statement of information requested in HAR§ 13-1-29(b):

1. Nature and extent of Requestor's specific legal interest in the above matter, including tax map key of property affected: My home and professional law office are located at Kamuela, Hawaii 96743. Lihipali Road is located directly off of Kawaihae Road via Opelo Road. This location off Kawaihae Road is

exactly the section of Kawaihae Road that would be circumvented by way of the proposed Lalamilo Connector Road. Access to my home and office is therefore from directly affected by whether the County is able to construct or is delayed in construction of the Lalamilo Connector Road. It is this section of Kawaihae Road that would be avoided by traffic using the proposed Lalamilo Connector Road. If the state releases the affected properties from this deeded road reservation, doing so will certainly delay if not prevent this proposed road from being constructed. (Whereas this strip of land may not be used for the actual roadbed, it would at least be used as part of the road buffer—a buffer requested by these same petitioners.) There is no other access to my (home and business) property other than from this one directly affected portion of Kawaihae Road. My property is TMK 3-6-5-007-034.

2. The disagreement the requestor has with the application:

The Board's decision to release the road reservation from the affected deeds is contrary to the public interest – by releasing this road reservation the Board is acting in a manner that is “prejudicial to the best interest of the State, the community [and] the area in which the land is situated”. The County has proposed to use this reserved 80 foot strip of land for its Lalamilo Connector Road project. Both the Director of Public Works and the Director of Planning have opposed this release. Pursuant to the terms of the road reservation, the State has the authority to assign its rights to the County. I disagree with any legal opinion to the contrary. See also, my attached submission to the Board of Land and Natural Resources.

3. The Relief the requestor seeks or to which the requestor deems itself entitled. The relief I request is to reverse the decision of the Board so that this road reservation is not removed from the affected deeds: I ask this Board to allow the right to this road reservation to be assigned from the State to the County for use in the County's Lalamilo Connector Road project.

4. How would the Requestor's participation serve the public interest: Allowing for the contested case hearing would provide the opportunity for a full hearing on this issue of importance to the Waimea community and the island community at large. Please refer further to the statement supporting the public interest in this determination as set forth stated in my attached written testimony (Exhibit 2) and in the letters from the County Public Works Department and the County Planning Department – which are attached to the Staff submittal (Exhibit 3).

5. Any other additional information that might assist the Board in determining whether the Requestor meets the criteria to be a party pursuant to the terms of HAR§13-1-31“Parties”: In light of current State and Federal case law, I have standing in this case by virtue of my affected property interest – as stated above. However, given the public interest significance in this case, in light of the potential that this decision would render the Lalamilo Connector Road project un-doable or subject to a prolonged delay in completion, this public interest is further reason for the Board to grant this request for a contested case hearing. Please make further reference to the public interest ramifications discussed in my written testimony

(Exhibit 2), including for example, that construction of this Lalamilo Connector Road is specifically mandated in the County of Hawaii General Plan in order to address the traffic problem in Waimea, to wit:

To relieve traffic congestion through Waimea town, implement construction of a.) Parker Ranch's connector road from Kamamalu Street to Mamalahoa Highway; and b.) the County's [Lalamilo] extension of this road, between Mamalahoa Highway and Kawaihae Road in the vicinity of the Waimea solid waste transfer station.

Hawaii County General Plan Chapter 16 Hawaii County Code (2005 edition as amended) Section 13.2.5.6.2(g).

[Note the above referenced Parker Ranch Connector Road, will connect to the proposed Lalamilo Connector Road. Parker Ranch Connector Road is now under construction and pursuant to a settlement agreement is required to be completed by May 8, 2010. In conjunction with the Parker Ranch Connector, these two roadways will form an essential alternative way through Waimea town.]

Pursuant to the Board's applicable rules and regulations, for the above reasons, I ask that the Board act favorably on this request for a contested case hearing in the above-referenced matter.

D. A check in the amount of \$600. is enclosed for the administrative filing fees. Please advise if that calculation is incorrect under HAR §13-1-30.

If you have any questions, do not hesitate to contact me.

Respectfully submitted,

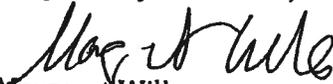

Margaret Wille

Exhibit 1

From: Margaret Wille
Subject: BLNR written testimony for 12/11 public hearing
Date: December 8, 2009 11:15:27 PM HST
To: adaline.f.cummings@hawaii.gov
Bcc: Margaret Wille
▶ 1 Attachment, 76.5 KB



I am here submitting testimony on item D-9 on the Board's December 9th Hearing relating to the proposed release of the

state's road reservation contained in Petitioners' deeds.  [Lalamilo By L...doc \(76.5 KB\)](#)

Please email me if you have any questions concerning this written testimony.

Margaret Wille

Kamuela, Hawaii 96743
Telephone
Email:

Exhibit 2

To: Board of Land and Natural Resources

Fr: Margaret Wille, Waimea Resident

Date: December 9, 2009

Re: Item D-9 on BLNR December 11th, 2009 Board Hearing

PSD No. 09HD-016: "Sale of Abandoned State Road Reservation to Owners of Lots 1, 2A, 2B, 4, 5B, 6, 7, and 35, Lalamilo Farm Lots, Lalamilo and Waikoloa, South Kohala, Hawaii, Tax Map Keys: (3) 6-6-05:19, 20, 22, 24, 25, 27, 29 & 32".

I am writing in **OPPOSITION** to BLNR Petition PSF No. 09HD-016, which Petition was submitted on behalf of owners of parcels on which a State road reservation is located. The question before the Board is whether to approve removal of the State reserved road reservation subject to payment of a fee. In order to approve the Petition, the Board would have to find release of the road reservation **is in the public interest, that it "is not prejudicial to the best interest of the State, the community or area in which the land is situated"**. Based on this statutory criteria, for the following reasons, the Board should deny Petitioners' request to remove the subject road reservation in Petitioners' deeds.

A. CONTRARY TO THE PUBLIC INTEREST AND PREJUDICIAL TO THE INTERESTS OF THE WAIMEA COMMUNITY AND THE COUNTY

GENERALLY. For State BLNR to approve this Petition would be very costly to the County of Hawaii and clearly contrary to the public interest and contrary to common sense.

1. The strip of land at issue here is a road corridor that the County plans to incorporate into the proposed Lalamilo Connector Road project. This road project would encompass a roadway, pedestrian and biking pathways, and a designated buffer area for protection of the adjacent agricultural production. The subject 80 foot wide road reservation, as described in Petitioners' deeds, extends from Kaiwaihae Road near the transfer station to Mamalahoa Highway in the vicinity of the under construction Parker Ranch Connector Road located near the Parker Ranch rodeo grounds. This roadway would provide an alternative way around Waimea's congested traffic choke point at Lindsey Road and Mamalahoa Highway. Together the Parker Ranch Connector Road and the proposed Lalamilo Connector Road would provide infrastructure for both vehicles and pedestrians needed in this general area. The actual roadway itself is anticipated to be located just north of these lots, on what is now Parker Ranch land, so there is available an adequate buffer for the agricultural use of the remainder of the affected farm lots. This 80 foot wide strip of land that the State reserved prior to sale of these 20 acre lots, would be part of the agricultural buffer area. If the BLNR releases the road reservation – as requested in this Board Petition, the County would likely be required to acquire an additional 80 foot strip of land from Parker Ranch to accommodate the agricultural buffer planned specifically for the benefit of the owners of the Petitioners in this case. Given the foreseeable cost of acquiring additional Parker Ranch property approval of this petition would put the construction of the Lalamilo Road further beyond the reach of the County – in terms of timing and in terms of costs for the road and would likely trigger the need

for additional studies. Alternatively the cost would be so prohibitive that the road would not be built in the foreseeable future.

2. The existence of the subject road reservation is not something that was unknown to the original or subsequent purchasers of the affected lots. The road reservation was a condition of acquisition of the affected lots and is contained in each of Petitioners' deeds. Despite the previous designation of this corridor the County has been willing to consider moving the lot northward off of these parcels and for the most part only using this corridor as part of an agricultural buffer zone (despite the significant additional cost to the taxpayers).

3. The County has now spent over \$600,000 (perhaps closer to one million dollars) studying how to best accomplish this road project in this general location in a way that minimizes the adverse impact on adjacent residential and agricultural uses and on the environment. It is my understanding that the "buffer risk assessment" study was delayed because these same petitioning lot owners refused to participate in the consultant's study. Whereas the Waimea residents and County-wide residents have been supportive of the request by the owners of the Lalamilo lots for an agricultural buffer area for this needed roadway project amounts to an attempt to block this road project entirely – and is simply an unfair distribution of benefits and burdens. Owners of several of the Lalamilo farm lots have, or are in the process of, also requesting to remove the agricultural restriction on their lots. Those attempts are certainly contradictory to a request that the County taxpayers provide a significant buffer zone for protection of agricultural crop production.

4. The need for the Lalamilo Connector Road cannot be understated. Currently there is only way through Waimea and that is through the Lindsey Road-Mamalahoa Highway intersection. The County has spend considerable time, energy, and funds to assess whether there is an another location for the needed alternative route around the Lindsey Road – Mamalahoa Highway intersection. The answer is there is no other reasonable general location for this access route.

In 2005 the County hired a highly respected consultant, Parsons Brinckerhoff (PB America), to assess in-town options to address the worsening traffic congestion in Waimea. One of the key findings of Parsons Brinckerhoff was that both the Parker Ranch and the Lalamilo Connector Roads were essential to address Waimea's in-town traffic congestion. The consultant specifically concluded that even if the State regional bypass were to be built (from Waimea to the Kohala coast, the proposed connector road in this general location was still essential. As explained in a West Hawaii Today article dated June 8, 2006:

"The [Parsons Brinckerhoff] study showed that a bypass to the north of town would not be feasible but one to the south would be. They said the Waimea and Kawaihae bypasses are appropriate for regional traffic but a Lalamilo connector road and Parker Ranch connector road are more suitable to Waimea traffic.

North Hawaii News, June 8, 2006 “Packed House For Traffic Meeting”.

With regard to the need for this road including a buffer area, the Parsons Brinckerhoff “Waimea Circulation Study” concluded:

“The Kawaihae Road - Mamalahoa Highway Connector provides for the intra Waimea traffic and the internal-external Waimea traffic patterns. The regional traffic that passes through Waimea could also use it until the regional Kawaihae and Waimea Bypasses are constructed in the longer term future. The alignment of the Kawaihae Road - Mamalahoa Highway Connector is an issue with the Lalamilo Farm Lots development and the Sandalwood residential development. The farmers within the Lalamilo Farm Lots development are concerned about contamination of their crops due to the traffic that would use the proposed Connector Road. Sufficient buffer and/or separation needs to be provided to protect the farm lots from both contamination and crop pilferage. The County of Hawaii Department of Public Works currently has a consultant working on the Environmental Impact Statement (EIS) and conceptual design for the project. It is hoped that an acceptable method to buffer the farm lots and affected residential lots can be worked out through the EIS/Conceptual Design process.”

PB Americas Inc. “Waimea Circulation Study” December 2007, page 50. To view this Report in its entirety go to <http://www.waimeaplan.org/documents/Waimea-final-report-2Apr2008.pdf>

5. Traffic conditions from Kawaihae Road are already at very congested level. In 2007 the Planning Department reported as follows: “Mamalahoa through Waimea is probably at “E” (level of service). Based on the work of Parsons Brinckerhoff, it will probably be an “F” pretty soon unless the Parker and Lalamilo bypasses get built”.

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9. Under construction and proposed development also adds to the need for this essential Lalamilo Road project. The DHHL housing project is currently under construction proximate to where the Lalamilo Connector Road corridor would link to Kawaihae Road. This Connector Road will be important for access to and from that large residential project. Parker School is also proposing a major increase in its enrollment. The school is located in at the Lindsey Road and Kawaihae Road intersection. Absent construction of this Lalamilo Road, provision of safe access for the anticipated additional traffic will be very difficult. (The Parker School location is already at an “F” level at service during some peak traffic periods).

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Hawaii County General Plan section 13.2.5.6.2(g),

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“Fix Traffic --Build Bypass, Connector and Alternate roads”
See South Kohala CDP December 2008 County Ordinance 08-159 Table 1.2, page 7

3. Specifically with respect to Waimea, one of the five policy directives for Waimea in the South Kohala CDP was “ Timely Implementation of Needed Circulation and Transportation Improvements”. [CDP at page 68], and pursuant thereto one of the specific strategies set forth in the CDP is:

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Consistent with that district-wide policy for disaster preparedness is the need for more than one way to get through Waimea.

5. The South Kohala CDP allow requires provision for adequate buffering of land that is being used for agricultural production. Consistent with that policy, the County plans to incorporate an agricultural buffer in this road projects and plans to use this 80 strip of land in that buffer.

C. STATE AGENCIES AND THE COUNTY OF HAWAII AGENCIES NEED TO COORDINATE AND COLLABORATE ON TRAFFIC PROJECTS. The fact that this petition is coming before the BLNR is indicative of a lack of coordination and collaboration between the State and the County of Hawaii. Brennan Morioka, Director of the State of Hawaii Department of Transportation is fully aware of Hawaii Counties’ need for and planning for the Lalamilo Connector Road in the location of its road reservation. Sometimes it seems as if our government agencies work more in competition with each other, rather than in cooperation with each other. This “separate silo” manner of approaching critical infrastructure needs is prejudicial to and contrary to the public interest of us Big Island residents.

Director Brennan Morioka in his September 9, 2008 letter to the Lalamilo Farmlot Association wrote “You are welcome to approach the Department of Land and Natural Resources to officially request removing this reservation from the affected deeds”. See said letter contained in the Petitioners’ DLNR Petition #09HD-016. In my opinion, what Director Morioka should instead have written to the Lalamilo Farmlot Association is as follows:

I am unable to support your request to remove the road reservation from the affected Lalamilo Farmlot deeds. Whereas at this time the State is not considering using this 80 wide strip of land for its regional state bypass route, this area is where the County of Hawaii is planning to locate the critically needed Lalamilo Connector Road. As you know the County’s consultant Belt Collins Inc is currently preparing an Environmental Assessment for this project, including an appropriate buffer strip to address the agricultural concerns of your Association’s membership. It is therefore inappropriate for me to support your request for a release of this road reservation.

It is difficult to imagine how, from an objective point of view, the Director of the State Department of Transportation would act in a manner – clearly contrary to implementation of a needed (albeit County) roadway. Justification for doing so, whether based on competition between state and county transportation agencies, or based on other political

rationales, is in direct contradiction to the needs of the public, whose interests that Department is supposed to serve.

D. BASED ON RELEVANT CASE LAW, IT IS NOT LEGALLY SIGNIFICANT THAT THE LALAMILO ROAD CORRIDOR WAS ORIGINALLY CONSIDERED FOR A STATE ROAD, AS OPPOSED TO A COUNTY ROAD. The fact that the State, not the County, has the right to buy out this road reservation is not legally significant because the State has the right to convey this road reservation to “successors” and “assignees”.

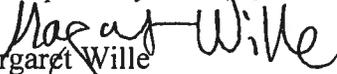
E. WHAT THIS PETITION IS NOT ABOUT: The “Big Picture” question in this case is not whether you are pro-agriculture or pro-safe traffic circulation. Government decision-making is not about black and white choices. It is about balancing interests and providing reasonably for various objectives. For practical purposes the decision in this case will determine whether or not the County can include this 80 foot strip of land into its roadway “buffer zone” for the protection of Petitioners’ agricultural efforts.

F. CHANGE IN STATE’S INTEREST FROM ROADWAY USAGE: Given the proposed change in the State’s interest from roadway usage to private residential usage – the release of this road reservation does not fall within the “operations, repairs, or maintenance of existing structures” exemption for an Environmental Assessment under HRS §343 and therefore an Environmental Assessment might be required for approval of this Petition.

G. REASONS FOR MY INDIVIDUAL INTEREST IN THIS PETITION: I live just off the section of Kawaihae Road that would be circumscribed were the Lalamilo Road constructed. Living in this particular location, I am specifically and directly adversely affected by the absence of the Lalamilo Connector Road, beyond the impact to the general public.

As a concerned citizen of Waimea town, I am also interested in the welfare of my community – including infrastructure concerns, traffic safety concerns, and environmental concerns. I am a Board member of the Waimea Community Association and the co-chair of its Waimea Design Review Committee. For the past two years I was a member of the Steering Committee for the South Kohala Community Development Plan. I am a licensed attorney, knowledgeable in the area of land use laws. I represented members of the Waimea community in a successful effort to require that the County of Hawaii enforce the 1992 Parker Ranch Connector Road Rezoning Ordinance #92-65 and as amended thereafter. That legal action ended in a Settlement that requires Parker Ranch Trust to complete the Parker Ranch Connector Road Phase 1 and Phase 3, as well as the Pukalani Road extension, on or before May 8, 2010. I am however here submitting these comments as an affected and interested individual, and not on behalf of any client or community association.

H. CONTESTED CASE HEARING REQUESTED: In the event this Petition is approved by the BLNR, I hereby request a contested case hearing, on my own behalf and/or possibly on behalf of other Waimea residents who are adversely affected.


Margaret Wille

Telephone
Email:

Exhibit 3

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

December 11, 2009

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

PSF No.: 09HD-016

Hawaii

Sale of Abandoned State Road Reservation to Owners of Lots 1, 2A, 2B, 4, 5B, 6, 7,
and 35, Lalamilo Farm Lots, Lalamilo and Waikoloa, South Kohala, Hawaii, Tax
Map Keys: 3rd/6-6-05:19, 20, 22, 24, 25, 27, 29 & 32.

APPLICANT(s):

Lot 1	Royce Hirayama and Charlene Hirayama, husband and wife, as tenants by the entirety Nathan Hirayama and Cheryl E. Hirayama, husband and wife, as tenants by the entirety
Lot 2A	Lalamilo Farm Partners, L.P. a Hawaii Partnership
Lot 2B	Leslie Kameki Imaoka, Glenn Takao Imaoka, Marion Sachie Imaoka, and Eunice Sanae Laybon as Tenants in Common
Lot 4	Kawamata Farms, Inc.
Lot 5B	Earl T. Yamamoto
Lot 6	Raleigh T. Sakato, Trustee
Lot 7	Kiyosugu Hirako, Trustee Shizuko Hirako, Trustee
Lot 35	Roy S. Hori, Trustee Nobuko Hori, Trustee

LEGAL REFERENCE:

Section 171-6(6), Hawaii Revised Statutes, as amended.

ITEM D-9

LOCATION:

Lands of Lalamilo Farm Lots situated at Lalamilo and Waikoloa, South Kohala, Hawaii, and identified by Tax Map Keys: 3rd/6-6-05:19, 20, 22, 24, 25, 27, 29 & 32, as shown on the attached map labeled Exhibit A.

AREA:

Approximate areas of road reservation within the subject lots:

Lot 1	60,400 square feet	(1.387 acres)
Lot 2A	2,344 square feet	(.052 acres)
Lot 2B	43,436 square feet.	(.997 acres)
Lot 4	71,200 square feet	(1.635 acres)
Lot 5B	64,800 square feet	(1.488 acres)
Lot 6	92,048 square feet	(2.113 acres)
Lot 7	77,208 square feet	(1.780 acres)
Lot 35	54,560 square feet	(1.253 acres)

ZONING:

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

TRUST LAND STATUS:

The Waimea Bypass Highway right-of-way reservation is considered Section 5(b) lands of the Hawaii Admission Act.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CONSIDERATION:

One-time lump sum payment of the difference in fair market value with and without the reservation, to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. The sale of the reservation affecting private lands would not involve the use of State lands or funds under Hawaii Revised Statutes, Chapter 343. To the extent the sale or release of the reservation relates to a property interest of the State in private lands, then the proposed disposition is exempt from the preparation of an environmental assessment under

the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, pursuant to Exemption Class No. 1 for "Operations, repairs or maintenance of existing structures, facilities, [or] equipment . . . involving negligible or no expansion or change of use beyond that previously existing".

DCCA VERIFICATION:

Kawamata Farms, Inc.:

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>__</u>

Lalamilo Farm Partners, L.P.:

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>__</u>

All other Applicants are natural persons or trusts and, as such, are not required to register with DCCA.

APPLICANTS REQUIREMENTS:

Applicants shall be required to:

- 1) Pay for an appraisal to determine the one-time payment of the difference in fair market value with and without the reservation;
- 2) Pay for the costs of public notice pursuant to section 171-16; and
- 3) Obtain title reports to ascertain ownership, where necessary, at Applicants' own cost and subject to review and approval by the Department.

REMARKS:

At its meeting of January 30, 1961, the Board of Land and Natural Resources approved the sale of Agricultural Farm Lots at Lalamilo, South Kohala, Hawaii, through a lottery process. The Lalamilo Farm Lots is an agricultural homestead subdivision with access to irrigation water through a State established Irrigation District. The lands within the project were partially acquired by land exchange with Parker Ranch and as a result many of the lots were conveyed from the State to the Applicants by Land Patent Grant and/or Deed. These conveyance documents included restrictions that limited uses to agriculture that was defined

as truck and orchard crops.

The Applicants own the properties north of the Lalamilo Farm Road. They are seeking to acquire a reservation in favor of the State of Hawaii to purchase an eighty (80) foot wide strip of land that was originally designated for a Waimea Bypass Highway when the State first created the Lalamilo Farm Lots Subdivision in the early 1960s. The State Department of Transportation has abandoned this route for its proposed bypass highway as indicated in a letter written by Brennon Morioka, Director of Transportation, to Roger Hirako of the Lalamilo Farmlots Association. See Exhibit B attached.

The deeds to all the lots contain reservation language providing substantially as follows:

“RESERVING ALSO to the State of Hawaii, its successors and assigns, the right to purchase the land required for the proposed Waimea Bypass Highway (80 feet wide), together with all rights of access to and from said highway, at the same unit price per acre as paid by the Grantees herein to the State of Hawaii. The location of said Waimea Bypass Highway is to be along the...[specific location] boundary of...[lot number] as shown of plan attached hereto and made a part hereof. The State shall not pay for any improvements within the 80-foot road strip and no structure of a permanent nature shall be placed thereon.”

Applicants are the owners of parcels 3rd/6-6-05:19, 20, 22, 24, 25, 27, 29 & 32 based upon staff's research of the County of Hawaii, Real Property Tax Office web site. Lot 3 (TMK: 3rd/6-6-05:21) is a State owned parcel currently encumbered under GL S-4548, recently transferred to the Department of Agriculture pursuant to Act 90, SLH 2003 and is not included in this disposition.

The Applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

By memorandum dated April 17, 2009, staff solicited comments from the agencies listed below with the following results:

Agency	Comments
State:	
Department of Health, Environmental Division	No response
Department of Hawaiian Home Lands	No comments
DLNR, DOFAW – Na Ala Hele	No response

DLNR, Historic Preservation	No historic properties will be affected by the proposed action
Department of Transportation, Highways Division	No comments
Office of Hawaiian Affairs	No response
County:	
Planning Department	Opposes the sale of the road reservation until such time as a route for the Lalamilo Connector Road between Kawaihae Road and Mamalahoa Highway is finalized and non-appealable. See Exhibit C attached.
Department of Public Works	Opposes the sale or extinguishment of the road reservation until the right-of-way for the Lalamilo Connector Road is identified and acquired. See Exhibit D attached.
Police Department	No objections
Fire Department	No comments
Federal:	
Army Corps of Engineers	No response

In addition, the Department of Agriculture submitted comments to the effect that any bypass road in the area should be separated from the Lalamilo Farm Lots by a buffer of 800-1,000 feet.

In light of the County's opposition to the sale of the road reservation, staff requested a legal opinion from the Department of the Attorney General on how to handle the situation. A deputy attorney general in the Land/Transportation Division issued a written opinion on September 16, 2009 finding that the road reservation covered the Waimea Bypass Highway project, which Brennon Morioka's letter of September 9, 2008 (Exhibit B) confirms is going forward at another location. The opinion concluded that the County cannot exercise the road reservation for its own roadway project, the Lalamilo Connector Road, because such use would be inconsistent with the specific reservation language of the Land Patent Grants and Deeds. The opinion added that the Board may negotiate a release of the reservation as requested by Applicants.

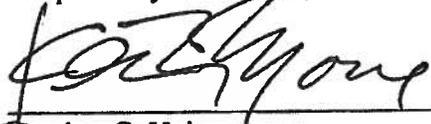
RECOMMENDATION:

That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Determine that the reservation for the Waimea Bypass Highway contained in the Land Patent Grants and Deeds for the subject properties is no longer needed since the Department of Transportation has relocated the Waimea Bypass Highway.
3. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the sale of the abandoned State road reservation to the Applicants to the extent their respective subject parcels are encumbered by the reservation, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current sale, release or waiver of reservation form, as may be amended from time to time;
 - 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,

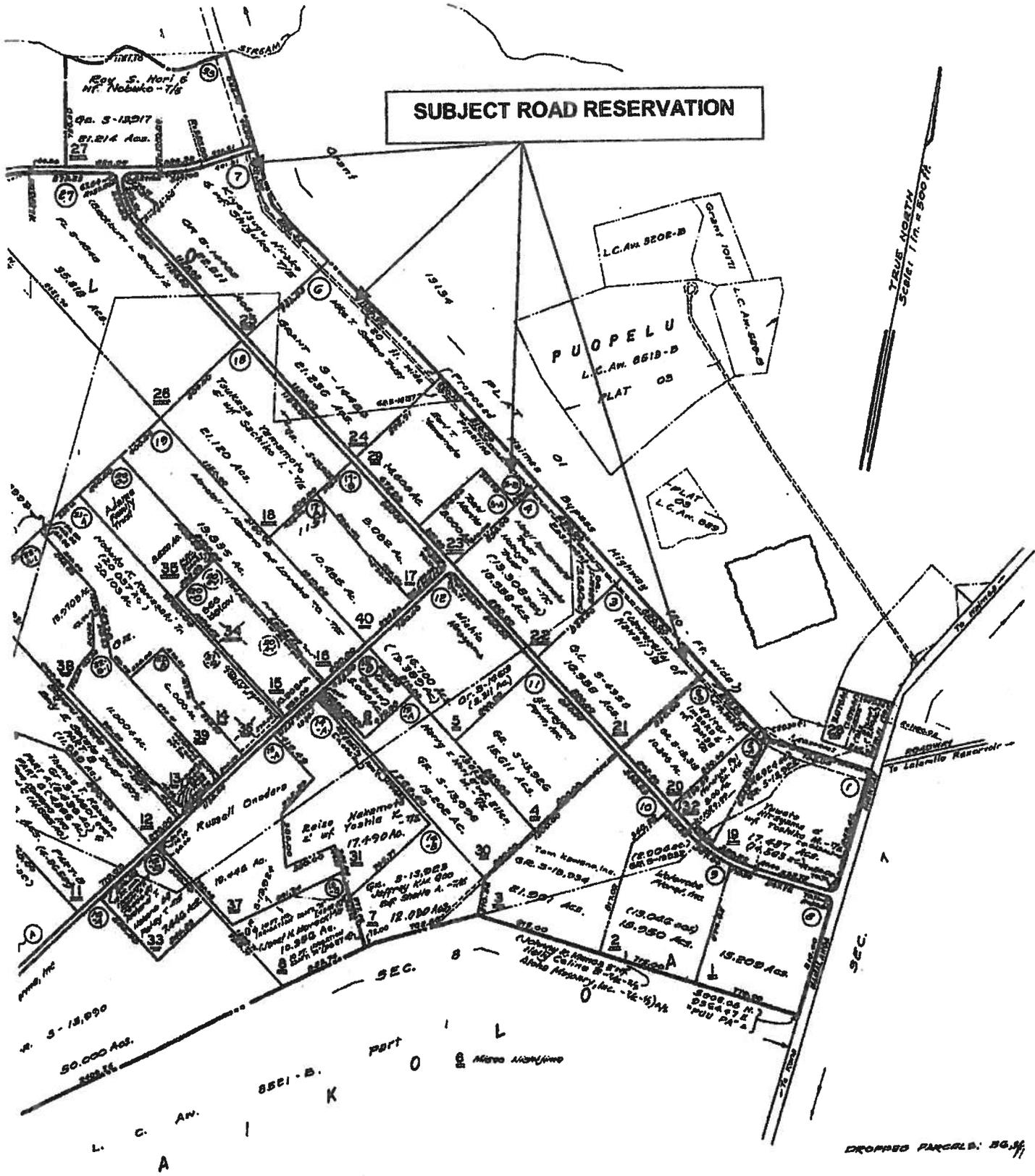


Gordon C. Heit
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



SUBJECT ROAD RESERVATION

PUOPELU
L.C. AN. 8619-B
PLAT 05

DROPPED PARCELS: 26, 31

28 (Dept. of Agriculture)
Spec. Ord. 2415
KAWAIA VACUUM COOLING PLANT SITE
(Kawala Vacuum Cooling Cooperative, Ltd.)
Rev. Ord. 5-5871-A order Chapman)

15 George J. Nakagawa & wife
Charles S. T/B

Note: All parcels owned by the State of Hawaii unless otherwise noted.

FOR REAL PROPERTY TAXATION PURPOSES
SUBJECT TO CHANGE

DEPARTMENT OF TAXATION		
TAXATION MAPS BUREAU		
STATE OF HAWAII		
TAX MAP		
THIRD TAXATION DIVISION		
ZONE	SEC	PLAT
6	6	05
SCALE: 1 IN. = 500 FT.		

LINDA LINGLE
GOVERNOR



BRENNON T. MORIOKA
DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SEKIGUCHI
JIRO A. SUMADA

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
889 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:
HWY-R
3.86213

SEP - 9 2008

Mr. Roger Hirako
Co-Chairman, Lalamilo Farmlots Association
P. O. Box 1834
Kamuela, Hawaii 96743

Dear Mr. Hirako:

**SUBJECT: REQUEST TO DELETE STATE'S RIGHT TO PURCHASE LANDS
REQUIRED FOR THE WAIMEA BYPASS HIGHWAY AS FOUND IN
DEED RESERVATION IN LALAMILO FARMLOT LANDS**

Thank you for your letter dated August 6, 2008 regarding the subject matter.

The lands reserved in your Deeds are no longer required for the proposed Waimea Bypass Highway Project. You are welcome to approach the Department of Land and Natural Resources to officially request removing this reservation from the affected Deeds.

Additionally, the County of Hawaii is in the process of completing an environmental document for their Lalamilo Connector, which considers parcels at Mamalahoa Highway and the last farm lot. This proposed project has been identified in the County General Plan and in the County Waimea Traffic Circulation Plan.

Thank you for your patience in this matter. If you have any questions, please call Dean Yogi of my Right-of-Way staff at (808) 692-7325 or Ken Tatsuguchi of my Planning staff at (808) 587-1830.

Very truly yours,

A handwritten signature in black ink, appearing to read "BT", with a horizontal line extending to the right.

BRENNON T. MORIOKA, PH.D., P.E.
Director of Transportation

c: County of Hawaii, Department of Public Works

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

2009 MAY -8 P 1:19

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

RECEIVED
PLANNING DEPARTMENT
COUNTY OF HAWAII

May 4, 2009

Mr. Gordon Heit
Land Agent
Land Division
Department of Land and Natural Resources
State of Hawaii
75 Aupuni Street, Room 204
Hilo, Hi 96720

Dear Mr. Heit:

SUBJECT: Acquisition of Abandoned State Road Reservation
TMK: (3) 6-6-005:0019, 20, 22, 24, 25, 27, 29 & 32; Portion of Lālāmilo Farm Lots, Lālāmilo and Waikoloa, Waimea, South Kohala, Hawai'i

We are in receipt of a request for comments regarding the acquisition of an abandoned state road reservation.

The subject eighty (80) foot wide road reservation easement was originally designated for a Waimea by-pass highway when the Lālāmilo Farm Lots Subdivision was created. This subdivision (SUB No. 1704) received final subdivision approval on September 6, 1961. The applicants are the various property owners of the properties north of the Lālāmilo Farm Road.

The Planning Department does have some concerns with the potential acquisition of the subject road reservation easement by the applicants. Although the State of Hawai'i Department of Transportation has abandoned this route for its proposed bypass highway, until such time as an actual route for the Lālāmilo Connector Road between the Kawaihae Road and the Māmalahoa Highway is finalized and non-appealable, the Planning Department opposes the sale of the road reservation. This position is also shared by the County of Hawai'i Department of Public Works. We have no further comments to offer at this time.

Mr. Gordon Heit
Land Agent
Land Division
Department of Land and Natural Resources
Page 2
May 4, 2009

If you have any questions, please feel free to contact Bethany Morrison of this office at 961-8288, extension 252.

Sincerely,



BJ LEITHEAD TODD
Planning Director

BJM:cs

P:\wpwin60\Bethany\General Zoning Inquiries\DLNRacquisitionofabandonedstateroadreservation.doc

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO HAWAII

EXHIBIT D

Memorandum

2009 MAY -6 P 2:40

RECEIVED
LAND DIVISION
HILO, HAWAII

Date : May 5, 2009

To : GORDON HEIT, Land Agent

From : WARREN H.W. LEE, Director



**SUBJECT: ACQUISITION OF ABANDONED STATE ROAD RESERVATION
Lalamilo Farm Lots, Lalamilo, South Kohala, Hawaii'i
Tmk: 3rd: 6-6-05: 19, 20, 22, 24, 25, 27, 29 & 32**

The Department of Public Works is conducting an Environmental Assessment/Impact Statement to establish a road between the Kawaihae Road and the Mamlahoa Highway, that we have identified as the Lalamilo Connector Road. The Lalamilo Connector Road would be located through, or in the vicinity of the subject road reservation and would be a continuation of the Parker Ranch Connector Road. When the Parker Ranch and Lalmilo Connector Roads are complete, there will be a new roadway from Kamamalu Road to Kawaihae Road that would bypass the congested Lindsey Road intersection.

The Waimea Traffic Circulation Study that was completed in December 2007 by PB Americas, Inc. for our Planning Department, identified the Parker Ranch and Lalamilo Connector Roads as a necessary element to improve traffic circulation in Waimea. Consequently, the Department of Public Works opposes the sale or the extinguishing of the subject 80 foot right of way until the right of way for Lalamilo Connector Road is identified and acquired.

Should you have any questions, please contact Galen Kuba, Engineering Division Chief at 961-8422 or at gkuba@co.hawaii.hi.us.

cc: Planning
Police
Fire

COUNTY OF HAWAII'S

**JOINDER IN REQUESTOR MARGARET WILLE'S
FORMAL WRITTEN REQUEST FOR A CONTESTED
CASE HEARING; MEMORANDUM IN SUPPORT OF
COUNTY'S REQUEST**

EXHIBIT DD

LINCOLN S.T. ASHIDA 4478
Corporation Counsel

GERALD TAKASE 3260
Deputy Corporation Counsel
County of Hawai'i
101 Aupuni Street, Suite 325
Hilo, Hawai'i 96720
Tel. No. 961-8251
Fax No. 961-8622
E-Mail: gtakase@co.hawaii.hi.us

Attorneys for County of Hawai'i

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES

In the Matter of the

Sale of Abandoned State Road Reservation to
Owners of Lots 1, 2A, 2B, 4, 5B, 6, 7, and 35,
Lālāmilo Farm Lots, Lālāmilo and Waikoloa,
South Kohala, Hawai'i, Tax Map
Keys: (3)6-6-005:019, 020, 022, 024, 025, 027,
029 and 032.

COUNTY OF HAWAI'I'S
JOINDER IN REQUESTOR MARGARET WILLE'S
FORMAL WRITTEN REQUEST FOR A CONTESTED CASE HEARING

The County of Hawai'i, Department of Public Works and Planning Department, by and through their undersigned counsel, do hereby submit their request for joinder in Requestor Margaret Wille's formal written request for a contested case hearing.

This request is made pursuant to Sections 13-1-28 and 29 of the Rules and Regulations of the Board of Land and Natural Resources, Hawai'i Revised Statutes Section 91-9.

DATED: Hilo, Hawai'i, FEB - 2 2010.

COUNTY OF HAWAI'I

By



GERALD TAKASE

Deputy Corporation Counsel

EXHIBIT DD

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES

In the Matter of the

Sale of Abandoned State Road Reservation to
Owners of Lots 1, 2A, 2B, 4, 5B, 6, 7, and 35,
Lālāmilo Farm Lots, Lālāmilo and Waikoloa,
South Kohala, Hawai'i, Tax Map
Keys: (3)6-6-005:019, 020, 022, 024, 025, 027,
029 and 032.

MEMORANDUM IN SUPPORT OF
COUNTY OF HAWAI'I'S REQUEST

In support of the County of Hawai'i's ("County") request, the following statements are submitted in accordance with Rule 13-1-29:

- (1) The nature and extent of the requestor's interest that may be affected by board action on the subject matter that entitles the requestor to participate in a contested case.

The abandonment of the State Road Reservation (portion of Lālāmilo Farm Lots) directly affects the County as the road has figured directly into the County's development of the Waimea area, and dealing with the traffic circulation problems that now plague Waimea. This State Road Reservation was being planned as the continuation of the Parker Ranch Connector Road which, when completed, would provide a new road to bypass the Lindsey Road intersection, now the only road through Waimea.

This alternative route was identified in the Waimea Traffic Circulation Study completed in December 2007 by PB America, Inc. In addition, acting upon the Waimea Traffic Circulation Study, the Department of Public Works has spent approximately \$500,000 on the Environmental Assessment to implement its recommendations and build this roadway.

Therefore, the County will be greatly impacted in a negative fashion by the Board's action and requests a contested case hearing.

- (2) The disagreement, if any, the requestor has with an application before the board.

The County disagrees with and objects to the request before the Board, which is to abandon the State Road Reservation that is serving as the alignment of the Lālāmilo Connector Road that the County is committed to completing, as stated above.

- (3) The relief the requestor seeks or to which the requestor deems itself entitled.

The County is requesting that the request to abandon the State Road Reservation be denied and the land in question be conveyed to the County so that it may complete construction of the Lālāmilo Connector Road.

- (4) How the requestor's participation would serve the public interest.

The County's position is all about public interest. The building of the Lālāmilo Connector Road will ease traffic congestion, not only for the Waimea residents, but for all drivers who must now use the Lindsey Road intersection, through which all traffic traveling along the Hāmākua corridor must pass to go from Kona to Hilo and vice versa.

- (5) Any other information that may assist the board in determining whether the requestor meets the criteria to be a party pursuant to section 13-1-31.

The County adopts and includes all of the facts, references, and arguments as set forth in Margaret Wille's formal request for a contested case filed December 9, 2009.

DATED: Hilo, Hawai'i, FEB - 2 2010.

COUNTY OF HAWAI'I

By 
GERALD TAKASE
Deputy Corporation Counsel