

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

October 14, 2010

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

PSF No.: 09HD-084

Hawai'i

Sale of Flume Right-of-way Reservation to Michael Palmer, Kaiaaakea, North Hilo,  
Hawai'i, Tax Map Key: 3<sup>rd</sup>/3-4-03:17.

APPLICANT:

Michael Palmer single, Tenant in Severalty.

LEGAL REFERENCE:

Section 171-52, Hawaii Revised Statutes, as amended, and/or  
Section 171-57, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands Kaiaaakea, North Hilo, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/3-4-03:17, as shown on the attached map labeled Exhibit A.

AREA:

10/100 acres, more or less.

ZONING:

State Land Use District: Agriculture  
County of Hawaii CZO: Agriculture-20 acre

TRUST LAND STATUS:

The Flume Right-of-way Reservation would be Considered Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Vacant and unencumbered.

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 reservation is an undesignated flume right-of-way within privately owned land. Chapter 343, HRS, would not apply to any future development on the parcel, as no State lands would be involved.

DCCA VERIFICATION:

Applicant is an individual and, as such, is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pursuant to section 171-52, pay for an appraisal to determine the one-time payment of the difference in fair market value with and without the reservation; and
- 2) Pursuant to section 171-57 pay for the costs of public notice as provided in section 171-16, if applicable.

REMARKS:

Pursuant to section 171-52, HRS, a remnant is defined as "a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics." The subject parcel has been determined to be a remnant by this definition for the following reasons:

*The parcel is an abandoned flume right-of-way easement.*

In addition:

Pursuant to section 171-57, HRS, as amended, if the Board finds that a disposition of a reserved right or easement is not prejudicial to the best interest of the State, community or area in which the land is situated, it may, after giving public notice of the intended disposition as provided in section 171-16(d), dispose of the reserved right or easement to the owner of the land by direct sale or by lease without public auction.

According to research conducted by the Land Division Abstractor:

The Applicant is the owner of parcel (3) 3-4-03:17 as confirmed by researching the County of Hawaii, Real Property Tax Office web site. An examination of the records and files located in the State Survey Office, the Bureau of Conveyances and the Land Division of the Department of Land and Natural Resources reveals that by Land Patent Grant No. 7016 to Marie S. Costa, dated February 28, 1918 (Exhibit B), the Territory of Hawaii granted and confirmed the title to a 2.6 acre portion of Government land in Kaiaakea while excepting and reserving the subject flume premises as follows:

*"Excepting and reserving a right-of-way for the flume across this lot, as shown on the map hereto attached and made a part hereof."*

Note: By letter dated March 25, 1918, the Commissioner of Public Lands relates with reference to said Land Patent Grant No. 7016 that, "there is no reservation of land and there is no reversionary interest connected therewith".

By subsequent Land Patent Grant No. 8033 dated March 23, 1922, the Territory of Hawaii granted "a permanent easement to the flume right-of-way reserved by the Territory in Grant 7016 to the Laupahoehoe Sugar Company". By survey and map attached thereto, said easement to the flume right-of-way is described as being 15 feet wide and containing an area of 10/100 Acre.

Under date of January 7, 1953, the Laupahoehoe Sugar Company, as successor to the title and interest of Marie S. Costa in and to Land Patent Grant No. 7016, conveyed a 0.006 acre portion of the said easement and flume right-of-way to the Territory of Hawaii by Deed and Agreement for Exchange recorded in Liber 2656 at Page 426 (Land Office Deed 10803).

By CSF 11,513 dated September 22, 1952, said portion of said easement and flume right-of-way conveyed is identified as "PARCEL 8" of the Hawaii Belt Road Seismic Wave Damage Rehabilitation Project No. SDR 3 (15), and described as being a portion of Grant 7016 to Marie S. Costa and being also a portion of a 15,000 foot flume right-of-way.

Records show no transfer, conveyance and or release of the subject reservation and or permanent easement made, by the Territory of Hawaii or the State of Hawaii affecting the subject flume right-of-way.

The Land Division Abstractor therefore finds that while it has no claim of title in and to the subject land, the State of Hawaii continues to hold a non-possessory interest in and to the subject reservation of a flume right-of-way over and across said TMK: 3<sup>rd</sup>/3-4-03:17.

The reservation was intended to allow for a flume structure to transport sugar down slope to a processing mill. There is no indication that a flume structure was constructed on the applicant's property. Post war advancements in sugar cane harvesting and machinery made the use of these flumes obsolete. In addition, sugar production was discontinued almost 25 years ago. Accordingly, the applicant has requested a release of the reservation.

The applicant has 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.

No agency or community comments were solicited as this is a sale of an undesignated flume reservation and has no impact beyond the limits of the boundaries of the privately owned property.

Staff will be requesting the services of the Office of the Attorney General in determining which Hawaii Revised Statutes section cited above is applicable.

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.

Based on the determination from the Office of the Attorney General as to the most appropriate section of the Hawaii Revised Statute to use:

2. Find that the subject lands are economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics and, therefore, by definition is a remnant pursuant to Chapter 171, HRS.
3. Find that a disposition of a reserved right or easement is not prejudicial to the best interest of the State, Community or area in which the land is situated;
4. Subject to the applicant fulfilling all of the Applicant Requirements listed above, authorize the sale of the reservation for a flume right-of-way contained within Land Patent Grant No. 7016, 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 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

KEH

APPROVED FOR SUBMITTAL:

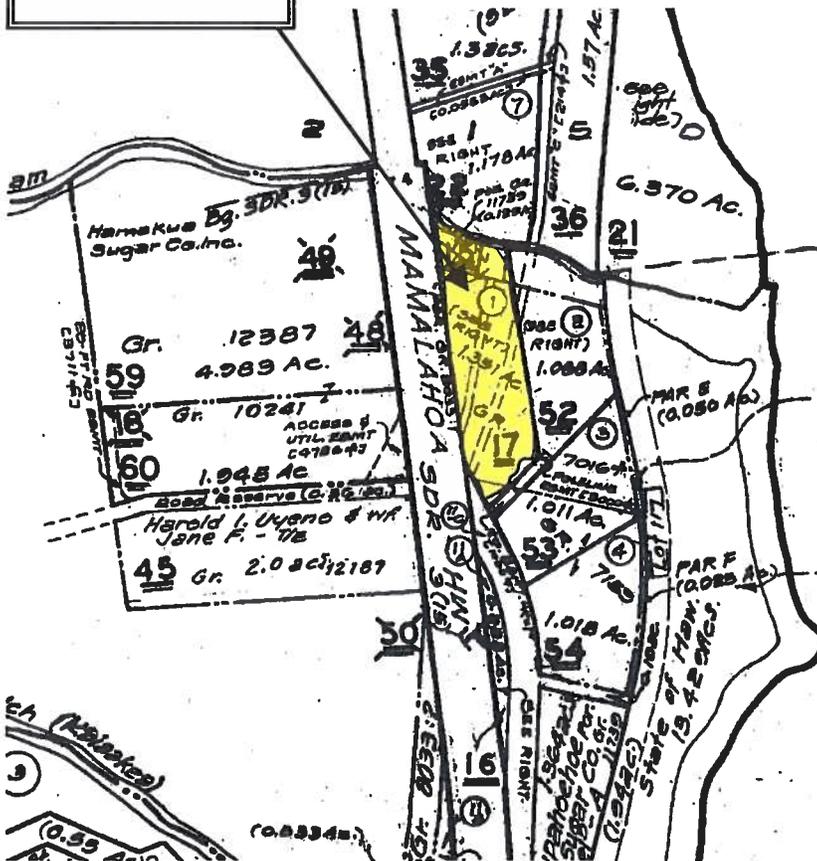


Laura H. Thielen, Chairperson



TMK: 3<sup>RD</sup>/3-4-03:17

SUBJECT PARCEL



17 33 & 34  
 Masashi Yamagata,  
 Yamanaka Enterprises, Inc. - 71  
 (Farms & Ranches, Inc. - 8096,  
 Siegfried S. Kagawa - 50%)

Parcel-D Per. Gr. 11739

44

- 13 State of Hawaii  
 0.079 Ac.  
 (Laupahoehoe Sugar Co.)  
 GL-S-3646
- 52 Harry T. Kami  
 & wf. Jean A. - 712  
 (Laupahoehoe Sugar Co.)  
 GL-S-3616
- 12 State of Hawaii  
 (Laupahoehoe Sugar Co.)  
 GL-S-3616
- 16 State of Hawaii  
 (Laupahoehoe Sugar Co.)  
 GL-S-3616

*Land Patent No. 7016*  
(Grant)

On \_\_\_\_\_ CASH PURCHASE \_\_\_\_\_

*By this Patent the Governor of the Territory of Hawaii, in conformity with the laws of the United States of America and of the Territory of Hawaii, with the approval of two-thirds of the members of the Board of Public Lands of the Territory of Hawaii makes known to all men that he has this day granted and confirmed unto*

— MARIE S. COSTA —

*for the consideration of — THREE HUNDRED FIVE — Dollars, \$305.00 , paid into the Treasury,*

And in conformity with Section 17, Part IV. of the Land Act of 1895, and Section 342 of the Revised Laws of 1915,

*all of the land situate at — KATAAKEA —  
in the District of — NORTH HILO — Island of — HAWAII — bounded and described as follows:*

— Sold at Public Auction January 31, 1918. —  
— Portion of the Government land of Kaisakea. —

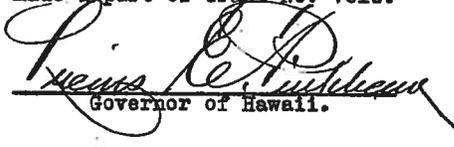
Beginning at a concrete filled pipe set on the North side of the Public Road, about 55 feet east of where the cane flume crosses the road, the coordinates of this point referred to the "Puu Chai" Trig. Station being North 1952.68 feet, and East 3177.59 feet; thence running by true azimuths as follows:

1. 106° 16' 125.0 feet along makai side of Road, 25 feet from center line;
2. 124° 34' 269.6 feet along makai side of Road, 25 feet from center line;
3. 234° 45' 317.1 feet along side of gulch, to Railway right-of-way;
4. Thence along Hawaii Consolidated Railway's right-of-way to a concrete filled pipe, the direct azimuth and distance being: 301° 02' 384.0 feet;
5. 54° 50' 301.0 feet to initial point.

— AREA 2.6 ACRES. —

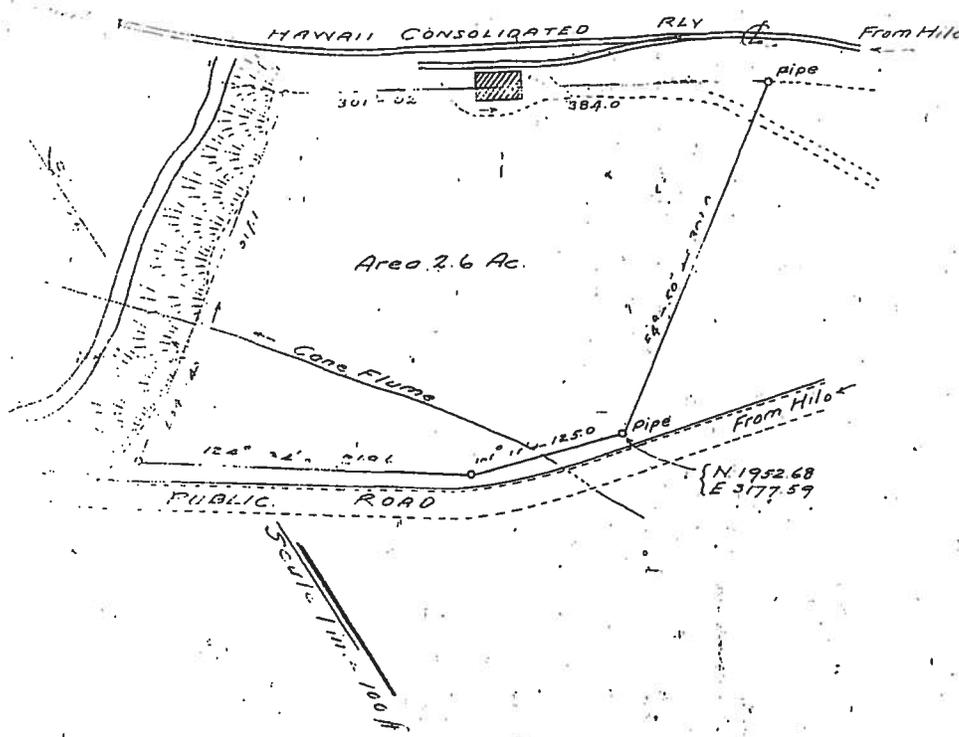
Excepting and reserving a right-of-way for the flume across this lot, as shown on the map hereto attached and made a part hereof.

Attached hereto and made a part of Grant No. 7016.

  
Lewis E. Fishburne  
Governor of Hawaii.

  
William E. Loveburg  
Commissioner of Public Lands.

# EXHIBIT B



Laupahoehoe Sugar Co. Application  
Portion of the Government Land of  
Aiaiakea, North Hilo, Hawaii.

Containing ——— 2.6 ——— Acres, more or less.

To Have and to Hold the above granted Land unto the said

————— MARIE S. COSTA —————

and her heirs and assigns forever.

In Witness Whereof, The Governor of the Territory of Hawaii has  
hereto set his hand and caused the Great Seal of the Territory to  
be hereunto affixed, this 18<sup>th</sup> day of February  
A. D. 1918

*Lucius R. Eastman*

By the Governor:

*William S. Lawrence*  
Commissioner of Public Lands.

The above sale was approved by the  
Board of Public Lands, Territory of Hawaii,  
the 18th day of December, 1917.

APPROVED AS TO FORM

*W. H. ...*  
Deputy Attorney General

Secretary, Board of Public Lands,  
Territory of Hawaii.

*S. D. ...*

*W. H. ...*  
Secretary