

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

November 22, 2010

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

PSF No.: 09HD-080

Hawaii

Cancellation of Governor's Executive Order No. 3665 and Reset Aside to County of Hawaii for Kealakehe Wastewater Reclamation Field, North Kona Golf Course and/or Public Park, Kealakehe, North Kona, Hawaii, Tax Map Key: (3) 7-4-20:07.

CONTROLLING AGENCY:

County of Hawaii, Department of Public Works

APPLICANT:

County of Hawaii

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kealakehe situated at Kealakehe, North Kona, Hawaii, identified by Tax Map Key: (3) 7-4-20:07, as shown on the attached map labeled Exhibit A.

AREA:

193.547 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Open; General Plan: Urban Expansion

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Governor's Executive Order No. 3665 setting aside 193.547 acres to County of Hawaii, Department of Public Works, for Kealakehe Wastewater Reclamation Field and North Kona Golf Course purposes.

PURPOSE OF SET ASIDE:

Kealakehe Wastewater Reclamation Field, North Kona Golf Course and/or Public Park purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit B attached.

APPLICANT REQUIREMENTS:

None.

REMARKS:

On February 20, 1991, the County of Hawaii and Kealakehe Associates, Inc. (KAI) entered into a Development Agreement for Construction and Operation of a Golf Course in North Kona, Hawaii (Development Agreement) and Agreement for Lease of Real Property Set Aside to the County of Hawaii by the State of Hawaii (Lease) for the construction and operation of a golf course on the subject property. Shortly thereafter, the County sought approval of the Board of Land and Natural Resources for the set-aside of the subject lands to the County.

At its meeting of March 8, 1991, under agenda Item F-2, as amended, the Board approved the County's requested set-aside for purposes of the Kealakehe Wastewater Reclamation Field and North Kona Golf Course. The County planned to use treated gray water from the Kealakehe Sewage Treatment Plant to irrigate the fairways and greens of the proposed golf course. The Board's approval of the set-aside was made subject to a number of conditions that were later incorporated into Executive Order No. 3665 signed on July 18, 1995. A copy of Executive Order No. 3665 is attached as Exhibit C.

At its meeting of April 26, 1991, Item F-1-b, the Board approved the Lease between the County and KAI. The County issued KAI a notice to proceed with construction on June 10, 1991. The terms of the Lease and Development Agreement were both supposed to be 55 years commencing from the date of the notice to proceed.

One of the conditions of the Board's approval of the set-aside was that of the initial premium payable by KAI to the County in the amount of \$10,000,000, \$6,000,000 would be remitted to the DLNR. KAI paid this sum and the County remitted \$6,000,000 to DLNR on June 24, 1991 (and of the \$6,000,000, \$2,000,000 was in turn remitted to the Office of Hawaiian Affairs (OHA)). Additionally, the approval required KAI to pay rent to the County, and the County would in turn pay 20% of the rents collected to the DLNR who would remit the same to OHA. But KAI encountered financial problems and the golf course was not built.

By certified letter dated August 29, 2001, the County notified KAI that KAI was in default of the Development Agreement and that the agreement was canceled. The County explains that it subsequently went to mediation with KAI over KAI's inability to perform under the Development Agreement. The mediation terminated without resolution in 2002. The County states that it has had no communication with KAI since that time.

In 2004, the County issued a second request for proposal regarding the development of the golf course. Only one proposal was received, but the County deemed it non-responsive. According to the County, KAI did not respond to the second request for proposal in any manner, whether by objection, protest or lawsuit.

In 2009, Mayor William P. Kenoi requested that DLNR amend the executive order to allow for the development of a portion of the subject land as an active park that will provide a variety of recreational opportunities for the people of West Hawaii. However, the County would like to retain the right to develop a golf course on the site (perhaps on a smaller scale), and to use reclaimed water for irrigation purposes. Accordingly, the County seeks to add public park purposes to the wastewater reclamation and golf purposes already permitted under the executive order.

In a letter dated July 15, 2010 from the County's Office of the Corporation Counsel addressed to staff, the County provided some of the information above on the events that transpired after the Board's approval of the set-aside and sublease. Corporation Counsel notes that the Development Agreement provided that the \$10,000,000 "premium shall not be refundable and the County and the State of Hawaii may retain all amounts paid to them out of this premium after delivery and payment." Corporation Counsel's opinion is that KAI is barred from bringing any claims against the County or the State. A copy of the letter is attached as Exhibit D.

After assessing the options available, staff is recommending that Executive Order No.

3665 be cancelled and the same land be reset aside to the County under a new executive order to include the broader purposes. One reason a cancellation is recommended instead of an amendment is that Executive Order No. 3665 was issued specifically to "the Department of Public Works, County of Hawaii." However, staff understands that the County Department of Parks and Recreation would manage the public park. A reset-aside of the subject land simply to the "County of Hawaii" would give the County the flexibility to designate the portions to be managed by its applicable departments.

The County takes the position that item 6 of Executive Order No. 3665, which specified that the \$6,000,000 mentioned above was to be paid to DLNR, was satisfied. This is correct as to the KAI contract. However, if the County should enter into a new contract with a private golf course developer or operator and a new lease premium is paid, by law DLNR will need to collect at least 20% of any such payment for remittance to OHA. Under HRS Section 171-11, the County will be required to return to the Board for approval of the terms and conditions of the new development agreement, operating agreement, lease or sublease affecting the land. The State's share of any potential revenues to be generated from such activity can be taken up by the Board at that time.

As the County's Corporation Counsel explains, there appears to be little likelihood of KAI prevailing on any claim against the County or State based on the Development Agreement or the Lease. However, neither Corporation Counsel nor Land Division staff has been able to locate a document formally canceling the Lease itself. Accordingly, to ensure that the State is adequately protected, staff is including a recommendation below that the new executive order include an indemnity by the County in favor of the State against any claims arising out of the Development Agreement or the Lease.

Staff believes that the County's proposed uses are appropriate uses of the lands, and represent the highest and best use of the land under current zoning. The uses appear to be permitted under Open zoning, although the public park may require a use permit. The wastewater reclamation, golf course and/or public park, when in operation, will fully utilize the land.

Comments were solicited from the agencies listed below with the results indicated.

Agency	Response
DLNR-State Parks	No comments.
DLNR-Forestry and Wildlife – Na Ala Hele	No response.
DLNR-Historic Preservation	No response.
Department of Hawaiian Home Lands	No comments.
Department of Transportation – Highways	No response.
Department of Health – Clean Water Branch	No objections.
Department of Health – Environmental	No response.

Agency	Response
Division	
Office of Hawaiian Affairs	No response.
County of Hawaii Planning Department	No objections. Public park is a permitted use under existing zoning. Golf course requires use permit.
County of Hawaii Parks and Recreation	No response.
County of Hawaii Finance Department, Property Management	No comments.
County of Hawaii Environmental Management	Supports the proposed action.
County of Hawaii Public Works	No response.
Count of Hawaii Police Department	No objections and no comments.
La'i'opua 2020	Supports the proposed action.

RECOMMENDATION:

That the Board, subject to the Applicant fulfilling all of the Applicant Requirements above:

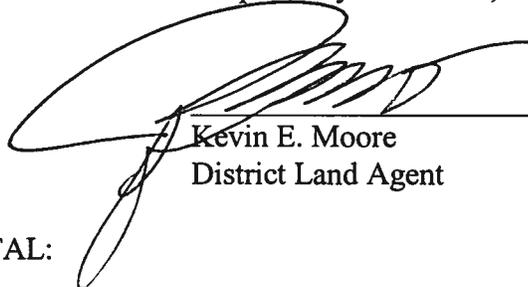
1. Approve of and recommend to the Governor issuance of an executive order canceling Governor's Executive Order No. 3665 and subject to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

2. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the County of Hawaii under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order

form, as may be amended from time to time;

- B. The County of Hawaii shall indemnify, defend, and hold the State of Hawaii, Department of Land and Natural Resources harmless from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of any non-observance or non-performance of any of the terms, covenants, and conditions of: (i) that certain Development Agreement for Construction and Operation of a Golf Course in North Kona, Hawaii dated February 20, 1991, made by and between the County of Hawaii and Kealakehe Associates, Inc.; and (ii) that certain Agreement for Lease of Real Property Set Aside to the County of Hawaii by the State of Hawaii dated February 20, 1991, made by and between the County of Hawaii and Kealakehe Associates, Inc. covering the subject land;
- C. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
- D. Review and approval by the Department of the Attorney General; and
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thiel, Chairperson

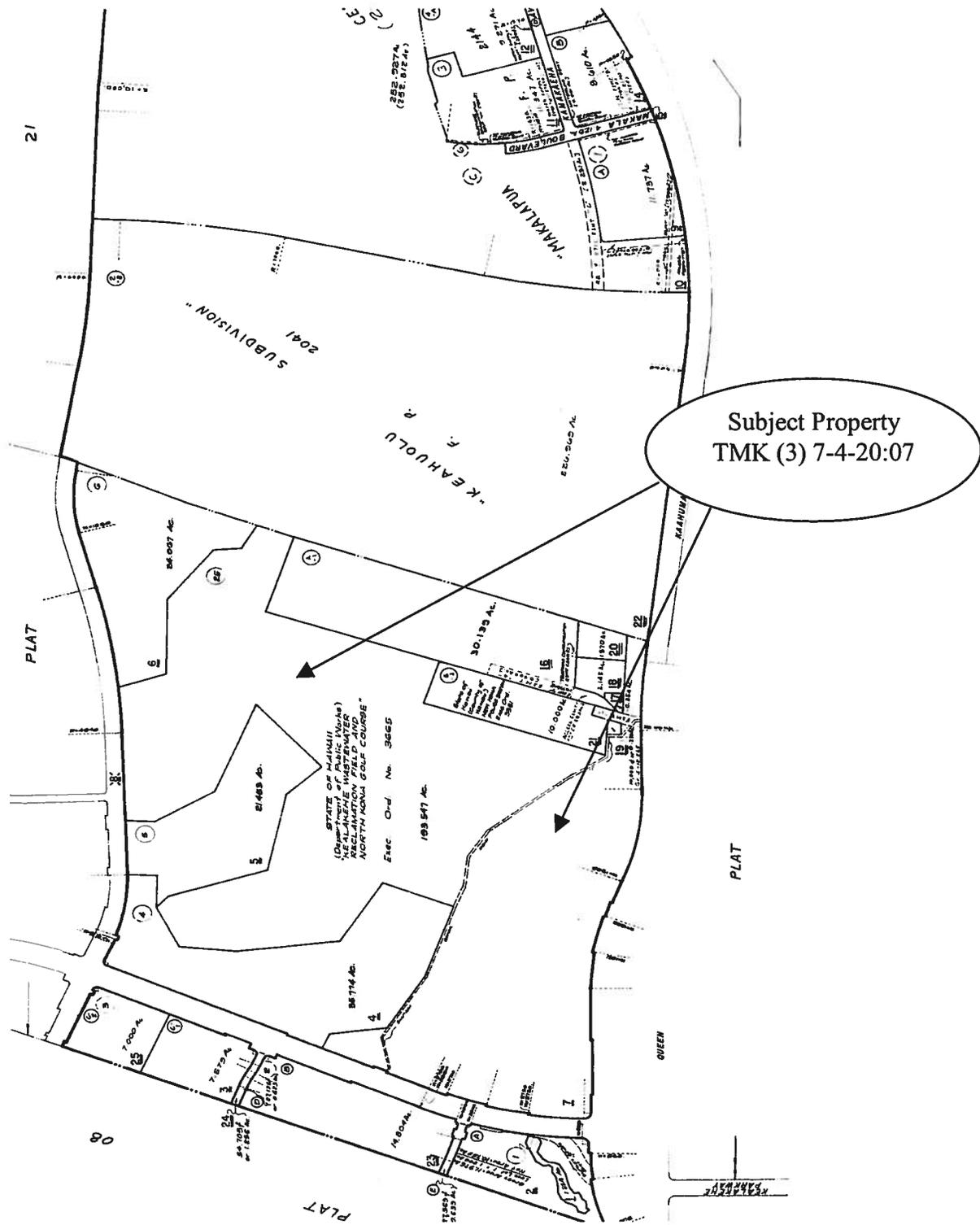


EXHIBIT A

LINDA LINGLE
GOVERNOR OF HAWAII



Laura H. Thielen
Chairperson
Board of Land and Natural Resources
Commission on Water Resource Management

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Cancellation of Governor's Executive Order No. 3665 and Reset Aside to County of Hawaii for Kealakehe Wastewater Reclamation Field, North Kona Golf Course and/or Public Park

Project Number: PSF No. 09HD-080

Project Location: Kealakehe, North Kona, Hawaii, Tax Map Key: (3) 7-4-20:07

Project Description: Reset-aside of State lands to the County of Hawaii for purposes of wastewater reclamation field, North Kona golf course and/or public park

Consulted Parties: County of Hawaii Planning Department; State Department of Transportation – Highways; and others

Exemption Class No.: In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment under the following:

Exemption Class No. 1, which states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

This action is merely a transfer of management jurisdiction and

EXHIBIT B

does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements.

Recommendation:

The subject land is currently set aside to the County of Hawaii, Department of Public Works, for the Kealakehe Wastewater Reclamation Field and North Kona Golf Course pursuant to Executive Order No. 3665. The purpose of the cancellation and reset-aside of the land to the County of Hawaii is to expand the permitted uses of the land to include a public park. The cancellation of the executive order and reset-aside to the County in itself will probably have minimal or no significant effect on the environment. It is recommended that the Board of Land and Natural Resources find that the proposed action is exempt from the preparation of an environmental assessment. Inasmuch as the Chapter 343 environmental requirements apply to the County of Hawaii's proposed use of the lands for park purposes, the County of Hawaii shall be responsible for compliance with Chapter 343, HRS, as amended.

Laura H. Thielen, Chairperson

Date

Setting Aside Land for Public Purposes

By this Executive Order, I, the undersigned, Governor of the State of Hawaii, by virtue of the authority in me vested by Section 171-11, Hawaii Revised Statutes, and every other authority me hereunto enabling, do hereby order that the public land hereinafter described be, and the same is, hereby set aside for the following public purposes:

FOR KEALAKEHE WASTEWATER RECLAMATION FIELD AND NORTH KONA GOLF COURSE, to be under the control and management of the Department of Public Works, County of Hawaii, a political subdivision of the State of Hawaii, situate at Kealakehe, North Kona, Island of Hawaii, Hawaii, and identified as follows:

Being a portion of the Government Land of Kealakehe, and being all of Lot 25 of the Villages of Laiohua, Phase I as shown on File Plan 2128 filed in the Office of the Bureau of Conveyances of the State of Hawaii and containing an area of 193.547 acres, more or less, Subject, However, to Easement 1 for Sanitary Sewer Purposes affecting Lot 25 as shown on File Plan 2128 and containing an area of 46,262 square feet, more or less;

Subject, also, to Easement 2 for All Purposes (80.00 feet wide) of Kealakehe Parkway, Phase I as shown on File Plan 2067 affecting Lot 25 as shown on File Plan 2128 and containing an area of 34,052 square feet, more or less.

All more particularly described on Exhibit "A" and delineated on Exhibit "B," both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated as C.S.F. No. 22,250 and dated February 9, 1995, and said map being File Plan 2128.

SUBJECT, HOWEVER, to the following conditions established by Board of Land and Natural Resources approval of March 8, 1991:

1. The County of Hawaii shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County of Hawaii governments; and
2. All building construction, grading and landscaping, shall be in full compliance with all statutes, ordinances, rules and regulations of the Federal, State and County of Hawaii governments applicable thereto and in accordance with plans and specifications submitted by the County of Hawaii and/or its contractor to and approved by the Chairperson of the Board of Land and Natural Resources (Chairperson) prior to construction; and

EXHIBIT C

3. The County of Hawaii and/or its contractor shall procure, at its own cost and expense, and maintain during the entire period of this executive order, from an insurance company or companies licensed to do business in the State of Hawaii, a policy or policies of comprehensive public liability insurance, in an amount acceptable to the Chairperson, insuring the State of Hawaii and the County of Hawaii against all claims for personal injury, death and property damage; that said policy shall cover the entire executive order area, including all improvements and grounds and all roadways or sidewalks on or adjacent to the executive order area in the control or use of the County of Hawaii and/or its contractor. The County of Hawaii and/or its contractor shall furnish a like certificate upon each renewal of such policy, each such certificate to contain or be accompanied by an assurance of the insurer to notify the State of Hawaii of any intention to cancel any such policy sixty (60) days prior to actual cancellation; and

4. The County of Hawaii and/or its contractor shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the County of Hawaii, its contractor, its successors, assigns, officers, employees, and/or agents under this executive order or relating to or connected with granting of this executive order; and

5. In the event that any unanticipated sites or remains, such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered during construction, the County of Hawaii and/or its contractor shall stop work immediately and contact the State Historic Preservation Program, Department of Land and Natural Resources in Honolulu at 548-0047; and

6. The County of Hawaii and/or its contractor shall deliver to the Chairperson of the Board of Land and Natural Resources, the premium sum of SIX MILLION DOLLARS (\$6,000,000), in legal tender of the United States of America, upon the contractor's receipt of the Notice to Proceed from the County of Hawaii; and

7. The County of Hawaii shall deliver to the Department of Land and Natural Resources an amount equal to twenty percent (20%) of the rent payable by the contractor to the County of Hawaii. The contractor's rental payment to the County of Hawaii is equal to three and six-tenths percent (3.6%) of the contractor's "total gross revenues." Payment shall be due from the County of Hawaii within thirty (30) days after receipt of rental payment from the contractor; and

8. The County of Hawaii shall submit to the Chairperson a copy of the report as detailed in Paragraph 11, Accounting found on pages 32 and 33 of the Development Agreement for Construction and Operation of a Golf Course in North Kona, Hawaii (Request for Proposal No. 1327); and

9. The County of Hawaii shall submit to the Chairperson or his designated representatives all minutes and reports of the review board, which shall be appointed by the Mayor, to assist the County of Hawaii in reviewing operation and maintenance of the golf course; and

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10. The County of Hawaii shall not rent or sublet the whole or any portion of the interest or rights granted by this executive order, except as provided herein upon the prior written approval of the Board of Land and Natural Resources; and

11. The County of Hawaii and/or its contractor shall not mortgage, hypothecate, or pledge any interest in this executive order without the prior written approval of the Chairperson and any mortgage, hypothecation or pledge without the Chairperson's approval shall be null and void; and

12. The County of Hawaii in coordination with the State Housing Finance and Development Corporation shall be responsible for the subdivision of the subject parcel; and

13. The County of Hawaii and/or its contractor shall at its own expense (and at no cost to the State), comply with the requirements of Chapter 343, Hawaii Revised Statutes, if required, prior to the subdivision of the area in question; and

14. Upon cancellation of this executive order, or in the event of non-use or abandonment of the premises or any portion thereof for a continuous period of one (1) year, or for any reason whatsoever, the County of Hawaii shall, within a reasonable time, restore the premises to a condition satisfactory and acceptable to the Department of Land and Natural Resources, State of Hawaii; and

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SUBJECT, FURTHER, to disapproval by the Legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of this Executive Order.

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of Hawaii to be affixed.

Done at the Capitol at Honolulu this 18th day of July, Nineteen Hundred and 95

14315

Approved as to form:

William M. Acorn
Deputy Attorney General

Benjamin J. Cayetano
Governor of the State of Hawaii

Dated: 6/16/95 -3-

State of Hawaii
Office of the Lieutenant Governor

3665

This is to Certify That the within is a true copy of Executive Order No.....
setting aside land for public purposes, the original of which is on file in this office.

In Testimony Whereof, the Lieutenant Governor of the
State of Hawaii, has hereunto subscribed his name
and caused the Great Seal of the State to be affixed.

Mazie Hironaka

DONE in Honolulu, this 1st day of
AUGUST, A.D. 1995

Executive Order No. 3665

Setting Aside Land for
Public Purposes

Land

Purpose

Date



STATE OF HAWAII

SURVEY DIVISION

**DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU**

C.S.F. No. 22,250

February 9, 1995

**KEALAKEHE WASTEWATER RECLAMATION FIELD
AND NORTH KONA GOLF COURSE**

Kealakehe, North Kona, Island of Hawaii, Hawaii

Being a portion of the Government Land of Kealakehe.

Being all of Lot 25 of the Villages of La'i'opua, Phase I as shown on File Plan 2128 filed in the Office of the Bureau of Conveyances of the State of Hawaii and containing an AREA OF 193.547 ACRES.

Subject, however, to Easement 1 for Sanitary Sewer Purposes affecting Lot 25 as shown on File Plan 2128 and containing an AREA OF 46,262 SQUARE FEET.

Subject, also, to Easement 2 for All Purposes (80.00 feet wide) of Kealakehe Parkway, Phase I as shown on File Plan 2067 affecting Lot 25 as shown on File Plan 2128 and containing an AREA OF 34,052 SQUARE FEET.

**SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII**

By: Joseph M. Matsuno
Joseph M. Matsuno
Land Surveyor

gm

Compiled from F.P. 2128 and
other Govt. Survey Records.
TMK: 7-4-08:17

EXHIBIT "A"

William P. Kenoi
Mayor



Lincoln S.T. Ashida
Corporation Counsel

Katherine A. Garson
Assistant Corporation
Counsel

COUNTY OF HAWAII
OFFICE OF THE CORPORATION COUNSEL

101 Aupuni Street, Suite 325 • Hilo, Hawaii 96720-4262 • (808) 961-8251 • Fax (808) 961-8622

Via email to Kevin.E.Moore@hawaii.gov

July 15, 2010

Kevin E. Moore
Hawaii'i District Land Agent
Department of Land and Natural Resources, Land Division
75 Aupuni Street, Room 204
Hilo, Hawaii'i 96720

RE: Executive Order No. 3665
Kealakehe/North Kona Golf Course

Dear Mr. Moore:

This will serve to respond to your request for information regarding the status of the contractor that the County of Hawaii'i ("County") contracted with in the early 1990s to construct the North Kona Community Golf Course. It is my understanding that the State of Hawaii'i ("State") is concerned about any claims that may be filed against it for monies paid to the County and to the State for development of the North Kona Golf Course. The following chronology may be of assistance.

On February 20, 1991, the County and Kealakehe Associates, Inc. ("Kealakehe") entered into a Development Agreement and Lease Agreement ("Development Agreement") for construction and operation of a golf course in North Kona. The Board of Land and Natural Resources ("Board") considered the County's request for set-aside of State Lands for Wastewater Reclamation Field/North Kona Golf Course on March 8, 1991. Part of the conditions considered by the Board, as derived from the Development Agreement, included a provision stating that Kealakehe would pay to the County the sum of Ten Million Dollars --- Four Million was to be disbursed to the County and Six Million was to be disbursed to the State. Part III, item 15 of the Development Agreement states that "[t]his premium shall not be refundable and the County and State of Hawaii'i may retain all amounts paid to them out of this premium after delivery and payment."

On May 7, 1991, the Department of Land and Natural Resources ("DLNR") approved the sub-lease to Kealakehe and a Notice to Proceed was issued to Kealakehe on June 10, 1991. The term of the Development Agreement was fifty-five (55) years commencing from the date of the Notice to Proceed.

Hawaii'i County is an Equal Opportunity Employer and Provider

EXHIBIT D

Kevin E. Moore
Hawai'i District Land Agent
Department of Land and Natural Resources, Land Division
July 15, 2010
Page 2

When it appeared as though Kealakehe could not successfully perform its obligations under the Development Agreement, the County and Kealakehe participated in mediation pursuant to the Development Agreement's mediation clause. Protracted negotiation and mediation continued over the course of several years. The County has had no contact with Kealakehe since 2002 when mediation efforts failed.

In 2004, the County sought DLNR approval to proceed with a new Request for Proposal to construct the golf course. On March 5, 2004, the County received assurances from then Director Peter T. Young, that DLNR would not exercise return of the property under item number "14" of the Executive Order, and its consent to the County's request to proceed with a new Request for Proposal. *See attached March 5, 2004 letter from Peter T. Young to Bobby Jean Leithead-Todd, Deputy Corporation Counsel, and letter dated February 20, 2004 from Harry M. Yada to Bobby Jean Leithead Todd.*

The notice for Request for Proposal No. 2134 was issued by the County on October 11, 2004. The deadline for responses was December 15, 2004. One proposal was received but that proposal was deemed non-responsive. Kealakehe never responded to RFP No. 2134 in any manner - via objection, protest or lawsuit.

We believe that the terms of the Development Agreement are clear: the premium paid to the County and the State is not refundable. Even if Kealakehe were to seek return of moneys paid or bring any action, we believe that Kealakehe is beyond the requisite time period to bring any claims against the County or the State at this point. The parties participated in mediation as required under the Development Agreement and those extensive mediation efforts failed. When mediation failed, Kealakehe was entitled to pursue remedies available under the Development Agreement, however it did not.

Based upon the above, it is this writer's opinion that Kealakehe is barred from bringing any claims against the County or the State. If you would like to discuss this matter further or should you have any questions or comments, please do not hesitate to contact me at 961-8251.

Sincerely,



Renee N.C. Schoen
Deputy Corporation Counsel

RNS:Imm
Attachments

cc: Robert A. Fitzgerald, Director, Department of Parks & Recreation
If: WRK 09-1053\Info\KevinMoore\RNSImm07-15-10

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

75 Aupuni Street, Room 204
Hilo, Hawaii 96720
PHONE: (808) 974-6203
FAX: (808) 974-6222

February 20, 2004

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
DEPUTY DIRECTOR - LAND

2004 FEB 23
ERNEST OWL GAIN
DEPUTY DIRECTOR - WATER

BY _____
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONSERVATION
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Ms. Bobby Jean Leithead Todd
Deputy Corporation Counsel
County of Hawaii
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720

Subject: Letter Dated February 12, 2004 Regarding Kealakehe Golf Course

Dear Ms. Leithead Todd:

I am responding to your letter dated February 12, 2004 regarding Governor's Executive Order No. 3665 setting aside lands at Kealakehe, North Kona, Hawaii to the County of Hawaii for the "Kealakehe Reclamation Field and North Kona Golf Course". In response to your concern over Condition Number 14 regarding "Non-Use or Abandonment", I would assure you that DLNR will not exercise a return of the property provided the process to issue a new RFP and secure a new contractor proceeds on a timely basis. Should the County fail to issue a RFP and secure a new contractor, or abandons efforts to construct the reclamation field and golf course, DLNR then reserves its right to consider the pursuit of such a return of the property.

Should you have any questions with regard to the foregoing response, please do not hesitate to contact myself at 974-6203.

Sincerely,

Harry M. Yada
District Land Agent

cc: Hawaii Land Board Member
District Files
Central Files

22110

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

2004 MAR 9 PM 12:04

COPIES
COPIES
BY

DLT

RECEIVED
PETER T. YOUNG
CHAIRPERSON
COMMISSION ON LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
DAN DAVIDSON
DEPUTY DIRECTOR - LAND
ROBERT Y.W. LAU
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

March 5, 2004

Ms. Bobby Jean Leithead-Todd
Deputy Corporation Counsel
County of Hawaii
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720-4262

Dear Ms. Leithead-Todd:

Subject: Kealakehe Golf Course
Corp. Counsel File Nos. WRK 04-6984 & 01-897

I am responding to your letter dated February 24, 2004 regarding Governor's Executive Order No. 3665 setting aside lands at Kealakehe, North Kona, Hawaii to the County of Hawaii for the "Kealakehe Reclamation Field and North Kona Golf Course". I have attached a letter sent to you in response to your earlier letter to our department regarding the same issue. The letter accurately describes this department's position on your concern and I would urge the County of Hawaii to continue its efforts towards a new RFP for the project as soon as possible.

Should you have any questions, please feel free to contact Harry Yada with the Land Division, Hawaii District Branch Office at 974-6203.

Sincerely,

Peter T. Young
CHAIRPERSON

22408