

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

April 27, 2012

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

PSF No.: 10HD-200

Hawaii

Re-Submittal: Rescind Prior Board Action of November 9, 1990, Item F-2, Directing Acquisition of Private Lands (Tax Map Key: (3) 7-6-16:32) by Negotiation or Eminent Domain; Quitclaim Conveyance of Road Remnants to County of Hawaii; Issuance of Immediate Management Right-of-Entry to the County of Hawaii, Holualoa 1st and 2nd Partition, North Kona, Hawaii, Tax Map Key: (3) 7-6-16:13 and Road Remnant A.

APPLICANT:

County of Hawaii

LEGAL REFERENCE:

Section 171-52, 171-95, and 264-2 Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Holualoa 1st and 2nd Partition situated at Holualoa, North Kona, Hawaii, identified by Tax Map Key: (3) 7-6-16:13 and Road Remnant A, as shown on the attached maps labeled Exhibits 1 and 2.

AREA:

Tax Map Key: (3) 7-6-16:13: 9,362 square feet, more or less
Road Remnant A: 2,914 square feet, more or less

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Resort, V-1.25

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:

Vacant (with exception of unpermitted encroachment on Tax Map Key: (3) 7-6-16:13),
and unencumbered.

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. Subject lands are to be conveyed to an abutting landowner, the County of Hawaii, and will become County land at that point.

DCCA VERIFICATION:

Not applicable. The County of Hawaii is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

BACKGROUND:

This matter was previously before the Board of Land and Natural Resources at its meeting of March 10, 2011, Item D-2, with a staff recommendation to convey the subject road remnants to the County of Hawaii. However, an abutting private landowner, George Sandusky, appeared at the meeting through counsel and objected to the conveyance, claiming that Mr. Sandusky was entitled to purchase a portion of the remnant under applicable law. Mr. Sandusky's counsel requested a contested case hearing in the event the Board approved the action. The Board deferred action on the matter for up to 90 days and encouraged Mr. Sandusky, the County and Land Division staff to discuss a possible resolution of the competing requests for the land.

On April 13, 2011, Land Division staff met with Mr. Sandusky's counsel and the Director of the County of Hawaii Planning Department. A consensus was reached at that time on a plan for the disposition of the land to be presented to the Board, but it took approximately ten months for Mr. Sandusky and the County to come to a written agreement on the terms. A copy of the agreement, executed by Mr. Sandusky, the County, and approved by the County's corporation counsel, is attached as Exhibit 3.

In short, the agreement provides that Mr. Sandusky will withdraw his request for a contested case hearing and his objection to the conveyance of the parcels to the County, provided that the County convey the southern portion of Tax Map Key: (3) 7-6-16:13 (Parcel 13) to Mr. Sandusky once Parcel 13 is acquired from the Board. The County would further be required to grant Mr. Sandusky an access easement over the southern portion of Road Remnant A. In return, Mr. Sandusky agrees to convey the northern portion of his property, Tax Map Key: (3) 7-6-16:32 (Parcel 32), to the County. See Exhibit C of Exhibit 3.

REMARKS:

Staff has no objection to the terms of the agreement between Mr. Sandusky and the County. At the March 10, 2011 Board meeting, staff presented the proposed disposition as a remnant conveyance under HRS Section 171-52. Pursuant to that section, 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 submittal stated that the subject parcels have been determined to be remnants by this definition because the parcels are abandoned road rights-of-way that are economically or physically unsuitable for development or utilization due to their elongated shape and small land area.

The remnants are designated as Parcel 13 and the adjacent Road Remnant A. See maps attached as Exhibits 1 and 2. On the makai side of Parcel 13, sandwiched between the remnant and the sea, is Mr. Sandusky's private Parcel 32. The tax map shows the parcel with a bowtie shape. However, the shoreline has advanced inland over time dividing the parcel in two at its narrowest point. See satellite map with TMK overlays attached as Exhibit 2.

Land Division files show that in approximately 1966, the former owner of Parcel 32 obtained a permit to build a beach cottage on the private land. As built, however, the structure encroached substantially onto Parcel 13. Some time before 1989, the Parcel 32 owner submitted a request to purchase portions of the remnants (totaling approximately 2,370 square feet) and consolidate them with Parcel 32. At its meeting of January 27, 1989, Item F-2, the Board approved the sale of the remnant portions to the Parcel 32

owner and imposed a \$1,000 fine against the owner for the encroachment.¹

Shortly thereafter, however, the County and the public asked the Board to reconsider the sale. The County advised that a flood control project was planned for the area and Parcel 13 may be needed for that project. The public urged the Board to retain Parcel 13 and even to acquire the private parcel for creation of a park. At its meeting of November 9, 1990, Item F-2, the Board approved a Land Division recommendation to rescind the January 27, 1989 approval of the sale and instead acquire Parcel 32 from its owner by negotiation or eminent domain for shoreline access and for use as a mini-park. See Exhibit 4 attached. However, funds were never secured for the acquisition of the land, and no action was taken in the ensuing years.

Applicant County of Hawaii is the owner of Alii Drive which abuts portions of the subject remnants. Both Parcel 13 and Road Remnant A are located on the makai side of Alii Drive. Other abutting properties to Parcel 13 include Parcel 32 as noted above, Tax Map Key: (3) 7-6-16:33 (Parcel 33), and Tax Map Key: (3) 7-6-15-23 (Parcel 23). Parcel 33 is owned by the State of Hawaii and is leased to the Hawaii Conference Foundation pursuant to General Lease No. S-5985 for youth athletic, education and religious purposes. It is the site of the old church known as Hale Halawai O Holualoa, which is designated on the State and National Registers of Historic Places. County Real Property Tax records show that Parcel 23 is the site of the Kona Bali Kai condominium with multiple owners.

According to Section 171-52, HRS, if there is more than one abutting owner who is interested in purchasing the remnant, it shall be sold to the one submitting the highest sealed bid or if the remnant abuts more than one parcel, the Board may subdivide the remnant so that a portion may be sold to each abutting owner. In this case, Mr. Sandusky has agreed to withdraw his request to purchase a portion of the remnants from the State on the terms and conditions set forth in his agreement with the County. The location and configuration of the remnants are such that it would be impractical to convey a portion to Kona Bali Kai.

Staff's submittal at the Board's March 10, 2011 meeting included an applicant requirement that the County provide title reports on the remnants so that Land Division could determine whether the Board had title to the parcels. An alternative to this approach is simply for the Board to quitclaim its interest, if any, in the parcels to the County. Quitclaim dispositions are normally used for conveyances of road remnants to the Counties under HRS Section 264-2 and Act 288 Session Laws of Hawaii 1993, where the counties intend to make a further disposition to a private landowner. Accordingly,

¹ Subsequent surveys revealed that the State had no ownership interest in the relevant portion of Road Remnant A. The only remnant that could have been sold to the Parcel 32 owner was a 1,968 square foot portion of Parcel 13. Based on the information available to staff at the present time, the State owns Parcel 13, but may not have an ownership interest in Road Remnant A.

staff is recommending that conveyance of the subject remnants be by quitclaim deed.

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.

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

Agency	Response
State:	
Historic Preservation	No response.
DOFAW-Na Ala Hele	No response.
State Parks	No comments.
Office of Conservation and Coastal Lands	No response.
Office of Hawaiian Affairs	No comments.
County of Hawaii:	
Planning Department	Reiterates the County's interest in obtaining the road remnants for County use.
Property Management	No comments.
Public Works	No response.
Parks and Recreation	No objection.
Police Department	No comments or objections.
Federal:	
Ala Kahakai National Historic Trail	No response.

The encroachment of the Parcel 32 beach cottage onto Parcel 13 remains. The County is agreeable to acquiring the lands subject to all existing encroachments, easements and other encumbrances that a title report or survey may show.

Finally, staff is recommending the issuance of an immediate management right-of-entry to the County to allow it to conduct surveys, studies and manage the remnants pending the finalization of the conveyance documents.

RECOMMENDATION:

That the Board:

1. 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 are remnants pursuant to Chapter 171, HRS.
2. 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.

3. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the quitclaim conveyance of the subject remnants to the County of Hawaii covering the subject area 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 quitclaim deed or grant (remnant) form, as may be amended from time to time;
 - b. The conveyance shall be subject to all encroachments, easements and other encumbrances that a current title report or survey may show;
 - 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.

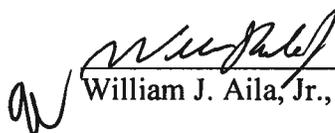
4. Authorize the issuance of a management right-of-entry permit to the County of Hawaii covering the subject land under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
 - b. 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
Assistant Administrator

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

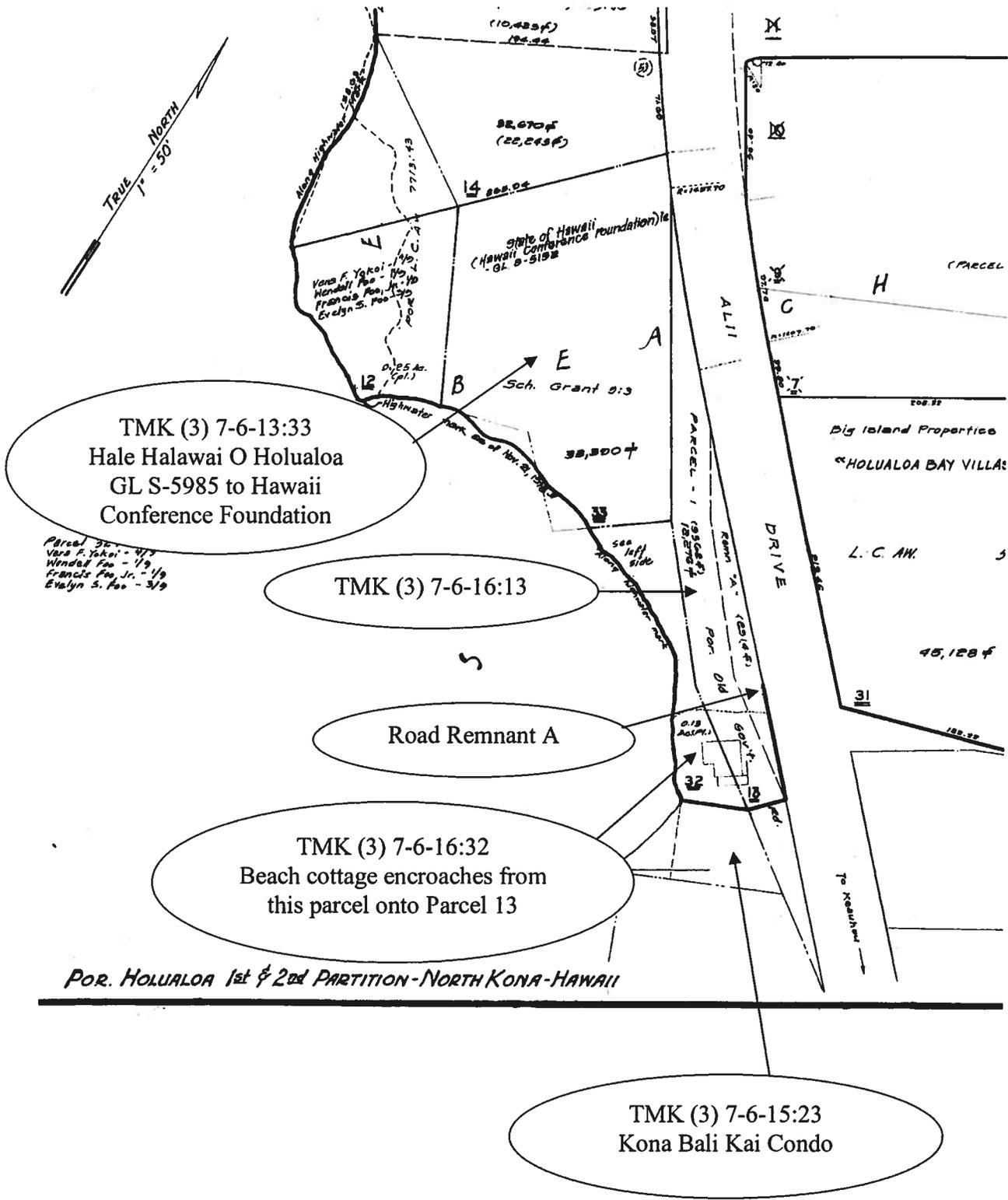


EXHIBIT 1

Alii Drive



EXHIBIT 2



AGREEMENT

This Agreement is made this 20th day of March, 2012, by and between GEORGE SANDUSKY ("Sandusky") and the COUNTY OF HAWAII (the "County") by its PLANNING DEPARTMENT.

RECITALS

- A. Sandusky is the owner of that certain parcel of real property located in Holualoa, North Kona, Hawaii, identified as TMK No. (3) 7-6-016-032 ("Parcel 32").
- B. Sometime before 1989, the previous owner of Parcel 32 applied to the DLNR to purchase portions of State-owned remnant parcels adjacent to Parcel 32 and to consolidate them with Parcel 32. The remnant parcels are identified as TMK No. (3) 7-6-16-13 ("Parcel 13") and Road Remnant A (collectively the "Remnant Parcels"), as shown on the map attached hereto as Exhibit A.
- C. During this process, it was discovered that the home located on Parcel 32 encroaches onto Parcel 13. At its January 27, 1989 meeting, the Board of Land and Natural Resources ("Board") approved the previous owner's request to purchase portions of the Remnant Parcels and imposed a \$1,000 fine on the previous owner of Parcel 32 for the encroachment. The previous owner paid the fine imposed by the Board. However, in response to opposition from the County and members of the public to the Board's action, the Board voted at its November 9, 1990 meeting to rescind its previous action approving the sale of portions of the Remnant Parcels and authorized the Department of Land and Natural Resources ("DLNR") to acquire Parcel 32 by negotiation or by eminent domain (the "1990 Decision").
- D. Neither the State nor the County took action to acquire Parcel 32 by eminent domain. In 2010 Sandusky, as the owner of Parcel 32, applied to the DLNR to purchase portions of the Remnant Parcels located between Parcel 32 and Ali'i Drive. The County expressed interest in acquiring the Remnant Parcels and on March 10, 2011, the DLNR went before the Board with a request for authorization to rescind the 1990 Decision and to transfer the Remnant Parcels to the County.
- E. Sandusky, through counsel, appeared at the March 10, 2011 Board meeting and opposed the DLNR's request to transfer the Remnant Parcels to the County. Sandusky requested a contested case hearing on the basis that Section 171-52(c) of the Hawaii Revised Statutes expressly provides that if the disposition of a remnant would result in depriving a landowner of access to a public road, then the remnant should be offered first to the abutting owner of the property that would lose access or the remnant should be subdivided to protect access for all abutting landowners.
- F. The Board voted to defer action on this agenda item and encouraged Sandusky, the County and the DLNR to discuss how best to address the issues presented by the competing requests to acquire the Remnant Parcels.

EXHIBIT 3

G. The parties met on April 13, 2011 and were successful in reaching an agreement the terms of which are set forth below.

NOW, THEREFORE, THE PARTIES AGREE THAT UPON EXECUTION OF THIS AGREEMENT:

1. Sandusky will withdraw his request for a contested case hearing, withdraw his opposition to the proposed conveyance of the Remnant Parcels to the County, and advise the Board that he supports the proposed conveyance based on a negotiated agreement among the parties.
2. Provided the application is approved and the Remnant Parcels are conveyed to the County, Sandusky will convey to the County the northern portion of Parcel 32 and in exchange the County will convey to Sandusky the southern portion of Parcel 13, as approximately shown on the map attached hereto as Exhibit B.
3. The County and Sandusky will cooperate in a consolidation and resubdivision of Parcels 13 and 32 to create lots of record approximately as shown on the map attached hereto as Exhibit C. The parcel consolidation and resubdivision application will be filed with the County's Planning Department within ten (10) days of the County's receipt of the Remnant Parcels from the State of Hawaii.
4. The County will grant a perpetual, transferable access easement over a portion of Road Remnant A in favor of Parcel 32, as approximately shown on Exhibit C.
5. The County confirms that upon completion of the consolidation and resubdivision as set out above, the single family dwelling located on Parcel 32, excluding any accessory uses, is legal in its present location.
6. This Agreement shall be governed by the laws of the State of Hawai'i.
7. The jurisdiction and venue for any and all arbitrations or lawsuits, if any, shall be the Island and County of Hawai'i, State of Hawai'i.
8. This document may be executed in counterparts. Each counterpart shall be executed by one or more of the parties to this document and the several counterparts shall constitute one document to the same effect as though the signature of all the parties were upon the same document.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the parties hereto have executed these presents on the day and year first above written.



GEORGE SANDUSKY

COUNTY OF HAWAI'I, PLANNING
DEPARTMENT

By _____
Name: Bobby Jean Leithead Todd
Title: Planning Director

APPROVED AS TO FORM
AND LEGALITY

By _____
Corporation Counsel
County of Hawaii

Date: _____

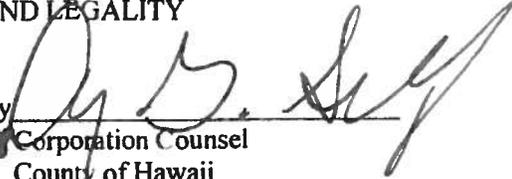
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GEORGE SANDUSKY

COUNTY OF HAWAI'I, PLANNING
DEPARTMENT

By 
Name: Bobby Jean Leithead Todd
Title: Planning Director

APPROVED AS TO FORM
AND LEGALITY

By 
DEPUTY Corporation Counsel
County of Hawaii

Date: _____

STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

On this 20th day of March, 2012, before me personally appeared **GEORGE SANDUSKY**, to me known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Signature: Barbara A. Huitt
Name: BARBARA A. HUITT
Notary Public, State of Hawaii
My commission expires: 3/30/12

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description: Agreement.	
<input type="checkbox"/> Doc. Date: <u>undated</u> or <input checked="" type="checkbox"/> Undated at time of notarization.	
No. of Pages: <u>8</u> Jurisdiction: Third Circuit (in which notarial act is performed)	
<u>Barbara A. Huitt</u> Signature of Notary	<u>3/20/12</u> Date of Notarization and Certification Statement
<u>BARBARA A. HUITT</u> Printed Name of Notary	(Official Stamp or Seal)

STATE OF HAWAII)
) SS:
COUNTY OF HAWAII)

On this 19th day of March, 2012, before me personally appeared **BOBBY JEAN LEITHEAD TODD**, to me known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



(Official Stamp or Seal)

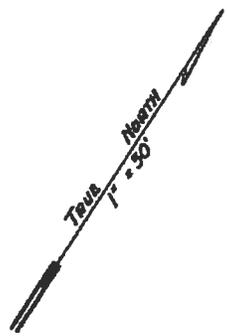
Signature: Rachelle Ley
Name: Rachelle Ley
Notary Public, State of Hawaii
My commission expires: 4/12/2015

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description: Agreement.	
✓ Doc. Date: _____ or ✓ Undated at time of notarization.	
No. of Pages: <u>8 (with Exhibits)</u> Jurisdiction: Third Circuit (in which notarial act is performed)	
<u>Rachelle Ley</u> Signature of Notary	<u>3/19/2012</u> Date of Notarization and Certification Statement
<u>Rachelle Ley</u> Printed Name of Notary	(Official Stamp or Seal)

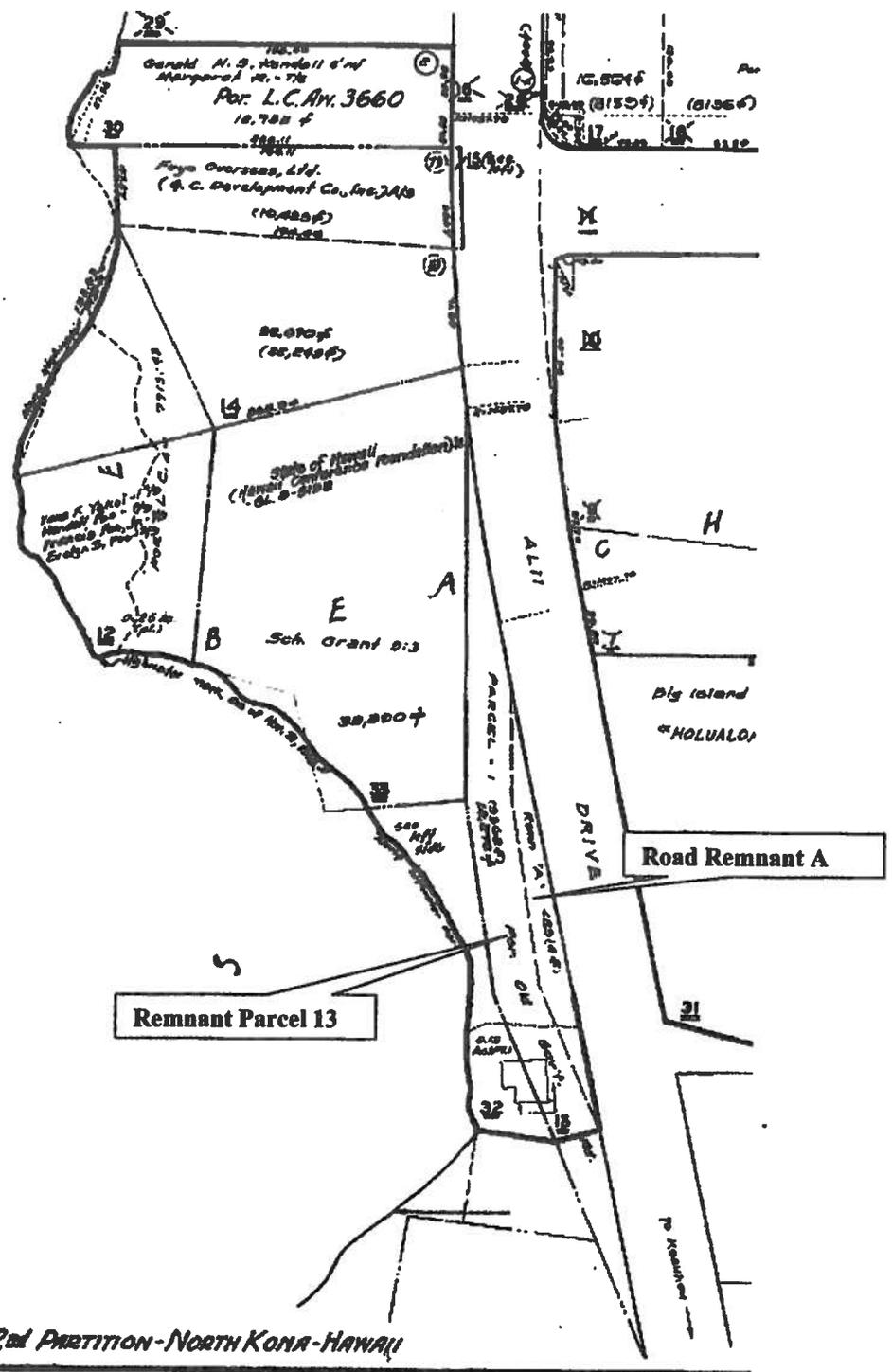


EXHIBIT "A"

LE Mikiko Kaungana
317 #



Parcel 32:
Vona S. Poo - 1/3
Wanda S. Poo - 1/3
Francis S. Poo, Jr. - 1/6
Evelyn S. Poo - 1/6



POR. HOLUALOA 1st & 2nd PARTITION - NORTH KONA - HAWAII

JOHN WAIHEE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF LAND MANAGEMENT
P. O. BOX 621
HONOLULU, HAWAII 96808

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT
DN 4756F
Refer to:
ACQ-90: .452

November 09, 1990

Board of Land and
Natural Resources
Honolulu, Hawaii

Hawaii

SUBJECT: Resubmittal
Request for Authorization to Acquire Lands
Having Resource Value to the State,
Holualoa 1st and 2nd, North Kona, Hawaii

STATUTE: Section 171-30 and Section 173A, HRS

AUTHORIZATION: ACT 316, SLH 1989, Item K-16 as amended by
ACT 299, SLH 1990, Item K-16

FOR: Parcel of land situate at Holualoa 1st and
2nd, North Kona, Hawaii being portion of
R. P. 4475, L. C. Aw 7713, Apana 43 to V.
Kamamalu identified as TMK: 7-6-16:32 as
shown outlined in red on map labeled Land
Board Exhibit "A" appended to the basic
file

AREA: 0.13 acres, more or less, subject to
confirmation by DAGS, Survey Division

LANDOWNERS: Wendell K. S. Foo, Sue L. Foo and Evelyn
S. Foo Trust, subject to verification by
title search

PURPOSE: To preserve lands having resource value to
the State and for providing shoreline
access, open coastal views and for mini
park purposes

ZONING: State Land Use Commission: Urban
County of Hawaii: Resort

ASSESSED VALUATION: Land \$74,500.00
Improvements 8,800.00

EXHIBIT 4

CONSIDERATION: To be determined by independent appraisal establishing fair market value, same subject to review and acceptance by the Chairperson

REMARKS: At its January 27, 1989 meeting, agenda Item F-2, the Board approved the sale of two government road remnants to the landowners for consolidation with the subject abutting property identified as TMK: 7-6-16.32.

After this action was taken by the Board, the County of Hawaii informed us of a future flood control project planned for this area and recommended that we not sell the remnants. They also advised that the County of Hawaii was the owner of one of the remnants. Subsequently we also received many objections from the public concerning the proposed sale and requesting instead that the State acquire the subject parcel for park use.

In view of the information received from the County of Hawaii and the many public opposition to the proposed sale, we have re-evaluated this matter and now believe that the earlier Land Board action authorizing the sale of the road remnants should be rescinded.

Furthermore, because of the limited public access from Alii Drive to the shoreline in this area, we feel that the State should now acquire the subject property to provide shoreline access and for use as a shoreline mini-park. Its acquisition will also insure that no additional improvements will be constructed on the property.

This property is improved with a single family dwelling portions of which are encroaching on the government road remnant proposed for sale to the landowners. The landowners had requested to purchase the remnant in order to remedy this encroachment problem.

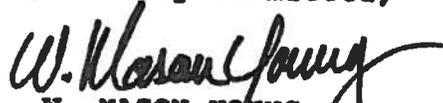
The tax map indicates this property to be a long and hourglass shaped parcel. However according to a shoreline survey made in March of 1989, the center portions of the property has eroded and the parcel is now effectively divided into two (2) separate land areas containing approximately 1995 sq. ft. and 2307 sq. ft.

Should we agree to sell the remnants, the landowners have indicated a willingness to convey to the State on a gratis basis, the 1995 sq. ft. area adjoining the State owned portion.

RECOMMENDATION: That the Board

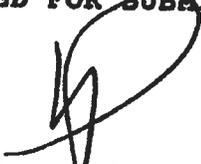
- A. Rescind its action taken at its January 27, 1989 meeting under agenda Item F-2 approving the direct sale of the two (2) government road remnants to the landowners
- B. Approve of and authorize the acquisition of the subject parcel either by negotiation or if necessary by eminent domain subject to the approval of the Governor
- C. Authorize the securing of a right-of-entry from the landowners for site inspection, survey and appraisal purposes
- D. Authorize the hiring of an independent appraiser and other consultant services necessary to process the acquisition of the parcel.

Respectfully submitted,



W. MASON YOUNG
Land Management Administrator

APPROVED FOR SUBMITTAL:



WILLIAM W. PATY, Chairperson