

STATE OF HAWAII
DEPARTMENT OF EDUCATION
OFFICE OF SCHOOL FACILITIES AND SUPPORT SERVICES
Honolulu, Hawaii 96813

January 13, 2012

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

HAWAII

Approval in Principle of Acquisition of Privately Owned Lands
for Educational Purposes at North Kona, Island of Hawaii, County
of Hawaii, Tax Map Key: (3) 7-5-020:079.

APPLICANT AGENCY:

Department of Education (DOE)

PRIVATE LANDOWNER:

Stanford Carr Development, LLC, a Hawaii limited liability company
whose business and mailing address is 1100 Alakea Street, 27th Floor,
Honolulu, HI 96813. A copy of the current deed for the property is
attached and labeled Exhibit A.

LEGAL REFERENCE:

Sections 107-10, 171-11, 171-30, and 302A-1601, Hawaii Revised
Statutes, as amended.

LOCATION:

Privately-owned lands of Kahakai-Kona, LLC, situated at North Kona,
County of Hawaii, Island of Hawaii, identified by Tax Map Key: (3)
7-5-020:079, as shown on the attached map labeled Exhibit B.

AREA:

4.045 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii: Residential (RS-10)

CURRENT USE:

Vacant and unimproved.

CONSIDERATION:

None. Private Landowner is providing the subject lands at no cost to the State.

PURPOSE:

For educational purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Pursuant to Section 343-5, HRS, as the subject lands are being donated, an environmental assessment (EA) is not required.

The parcel will serve as an expansion area for Kahakai Elementary School.

Inasmuch as Chapter 343 environmental requirements apply to Applicant's use of the subject lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

To meet the Department's applicant requirements, the Private Land owner has agreed:

- 1) To process and obtain subdivision approval at private landowner's own cost;
- 2) To provide survey maps and descriptions for the privately-owned property according to State DAGS standards and at the private landowner's own cost;
- 3) To obtain a title report for the privately-owned property at the private landowner's own cost and subject to review and approval by the Department;
- 4) To pay for and conduct a Phase I environmental site assessment that meets statutory requirements of the Federal Environmental Protection Agency (EPA) All Appropriate Inquiries Final Rules as of November 1, 2006, and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the EPA and/or the State Department of Health, all at no cost to the State and to the satisfaction of

the Department.

REMARKS:

The Department of Education (DOE) is requesting that the Board of Land and Natural Resources (BLNR) approve in principle the acquisition of a 4.045 acre parcel located adjacent to Kahakai Elementary School, TMK: (3) 7-5-020:079, for educational purposes.

Upon the DOE's completion of all appropriate due diligence, the DOE shall report all findings to BLNR and request final BLNR approval.

An Education Contribution Agreement ("Agreement") was executed on April 15, 1999 between, SCD Kahakai, LLC (predecessor to Stanford Carr Development, LLC) and the Department of Education ("DOE"). A copy of the Agreement is attached and labeled Exhibit C. The chain of ownership of the property is established in the deed labeled Exhibit A.

The Agreement is for a school expansion parcel in Kahakai Estates, a private residential development in Kailua-Kona on the Island of Hawaii. The Department of Land and Natural Resources and the BLNR have not reviewed the Agreement, nor have they been party to the Agreement.

The Agreement states that SCD Kahakai, LLC would dedicate 3.8 acres of land, more or less, to the State of Hawaii as an educational payment to satisfy the DOE's fair-share requirement for school development. The Agreement refers to an attached drawing of the general area of the parcel as its "general configuration and location" as it had not been subdivided at the time. The parcel was subdivided in 2002 after being reconfigured to accommodate the future Alii Highway and being provided access to Nakukui Drive, the main access road in Kahakai Estates. The final acreage was determined to be 4.045 acres, as illustrated in Exhibit B.

The fair-share requirement was set by the County of Hawaii in its rezoning approval process, Ordinance No. 91-21, effective March 15, 1991 and Ordinance No. 00-1, effective January 20, 2000.

If the acquisition is completed and the land set aside to the DOE, the school plans to construct a pedestrian pathway through the expansion area. Kahakai Elementary is a neighborhood school, where 90% of its students live within 1 mile of the campus. However, there are significant obstacles to safe pedestrian and bicycle routes from the area's large number of residential subdivisions to the school.

The school's plans have been reviewed and commented on by members of the Kahakai Estates' community association and other school groups. The school's partners in the pedestrian pathway plan are Peoples

Advocacy for Trails Hawaii (Path), and the Hawaii County Council.

There are no other specific plans for the expansion area at the present time. If the initial development of a pedestrian pathway fails to develop, the land will be used according to future plans for campus expansion.

RECOMMENDATION: That the Board:

1. Approve in principle the acquisition of the subject private lands 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 State's most current deed document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General;
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Kathryn S. Matayoshi
Superintendent
Department of Education

APPROVED FOR SUBMITTAL:



William J. Aila Jr., Chairperson

EXHIBIT A

78



R-483 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
MAR 25, 2008 08:01 AM
Doc No(s) 2008-045747



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 1/1 29

CTax (20): \$1640.00

LAND COURT

REGULAR SYSTEM

Return By Mail Pick-Up To:

STANFORD CARR DEVELOPMENT LLC
ALAKEA CORPORATE TOWER
1100 Alakea Street, 27th Floor
Honolulu, HI 96813

T6 200812512-C
R/S

TOTAL NUMBER OF PAGES: 6

TITLE OF DOCUMENT:

QUITCLAIM DEED

PARTIES TO DOCUMENT:

GRANTOR: KAHAKAI-KONA, LLC, a Hawaii limited liability company, whose principal place of business and post office address is 745 Fort Street, Suite 2110, Honolulu, HI 96813

GRANTEE: STANFORD CARR DEVELOPMENT LLC, a Hawaii limited liability company, whose mailing address is 1100 Alakea Street, 27th Floor, Honolulu, HI 96813

TAX MAP KEYS (3) 7-5-020-079

4825-9872-4098/2007-176/12-21-07

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That **KAHAKAI-KONA, LLC, a Hawaii limited liability company**, whose principal place of business and post office address is **745 Fort Street, Suite 2110, Honolulu, HI 96813**, hereinafter called the "Grantor", for and in consideration of the sum of **TEN AND NO/100 DOLLARS (\$10.00)** and other good and valuable consideration to the Grantor paid by **STANFORD CARR DEVELOPMENT LLC, a Hawaii limited liability company**, whose mailing address is **1100 Alakea Street, 27th Floor, Honolulu, HI 96813**, hereinafter called the "Grantee", the receipt whereof is hereby acknowledged, does hereby remise, release and forever quitclaim, unto the Grantee all of that certain real property designated on the tax maps of the Third Taxation Division, State of Hawaii, as Tax Map Key **7-5-020-079**, more particularly described in Exhibit A attached hereto and made a part hereof, subject to the encumbrances noted therein.

TOGETHER WITH ALL and singular the buildings, improvements, rights, tenements, hereditaments, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed in connection therewith.

TO HAVE AND TO HOLD the same unto the Grantee, as its sole and separate property, its successors and assigns, in fee simple forever.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

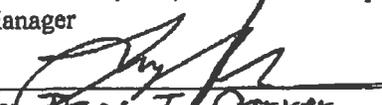
IT IS MUTUALLY AGREED that the terms "Grantor" and "Grantee", as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, corporations or partnerships, and their and each of their respective successors in interest, heirs, executors, personal representatives, administrators and permitted assigns, according to the context thereof, and that if these presents

shall be signed by two or more grantors, or by two or more grantees, all covenants of such parties shall be and for all purposes deemed to be their joint and several covenants.

IN WITNESS WHEREOF, the Grantor has executed these presents on this 25th day of FEBRUARY, 2007.

KAHAKAI-KONA, LLC, a Hawaii limited liability company

By Hearthstone, Inc., a California corporation
Its Manager

By: 

Name: Tracy T. Carver

Title: Executive Vice President

"Grantor"

APPROVED AS TO FORM
CARLSMITH BALL LLP

BY Robert D. Triantos
12-4-07

STATE OF CALIFORNIA)
) ss.
COUNTY OF MARIN)

On February 25, 2008, ~~2007~~, before me ANGIE WONG,
Notary Public, personally appeared TRAM T. CARVER,
personally known to me or proved to me on the basis of satisfactory evidence to be the person
whose name is subscribed to the within instrument and acknowledged to me that he executed the
same in his capacity, and that by his signature on the instrument, the person or the entity upon
behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



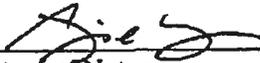

Signature of Notary

EXHIBIT "A"

All of that certain parcel of land situate at Puapuaa 1st and 2nd, District of North Kona, Island and County of Hawaii, State of Hawaii, being LOT 101 of the "KAHAKAI ESTATES SUBDIVISION", as shown on File Plan Number 2333, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 4.045 acres, more or less.

Together also with non-exclusive easement for access and utility purposes over Roadway Lots 104 to 114, inclusive, as shown on File Plan No. 2333; provided, however, that in the event said Roadway Lots, or any portion or portions thereof, are conveyed or dedicated to the County of Hawaii, State of Hawaii or other governmental authority for use as public roadway, then said easement over and across said Roadway Lots or any portion or portions thereof so conveyed or dedicated shall automatically terminate.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR: SCD KAHAKAI, LLC, a Hawaii limited liability company
GRANTEE: KAHAKAI-KONA, LLC, a Hawaii limited liability company
DATED: August 3, 2001
RECORDED: Document No. 2001-124381

SUBJECT, HOWEVER TO:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: AMENDED AND RESTATED KAHAKAI ESTATES
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS

DATED: ----- (acknowledged January 7, 2003)
RECORDED: Document No. 2003-010149

The foregoing includes, but is not limited to the matters relating to association liens which may be superior to certain mortgages.

The foregoing Amended and Restated Declaration restates the original Declaration dated September 17, 2002, recorded as Document No. 2002-191804.

Said above Amended and Restated Declaration was amended by instrument dated August 10, 2006, recorded as Document No. 2006-158626.

SUPPLEMENTAL DECLARATION REGARDING ANNEXATION dated June 4, 2007, recorded as Document No. 2007-116498.

3. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: AGREEMENT

DATED: May 6, 2003

RECORDED: Document No. 2003-095668

PARTIES: THE WATER BOARD OF THE COUNTY OF HAWAII, "Board", and KAHAKAI-KONA, LLC, a Hawaii limited liability company, "Owner"

RE: Master Landscape Water Meter and Irrigation System

4. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT: BY-LAWS OF KAHAKAI ESTATES HOMEOWNERS ASSOCIATION

DATED: October 11, 2005

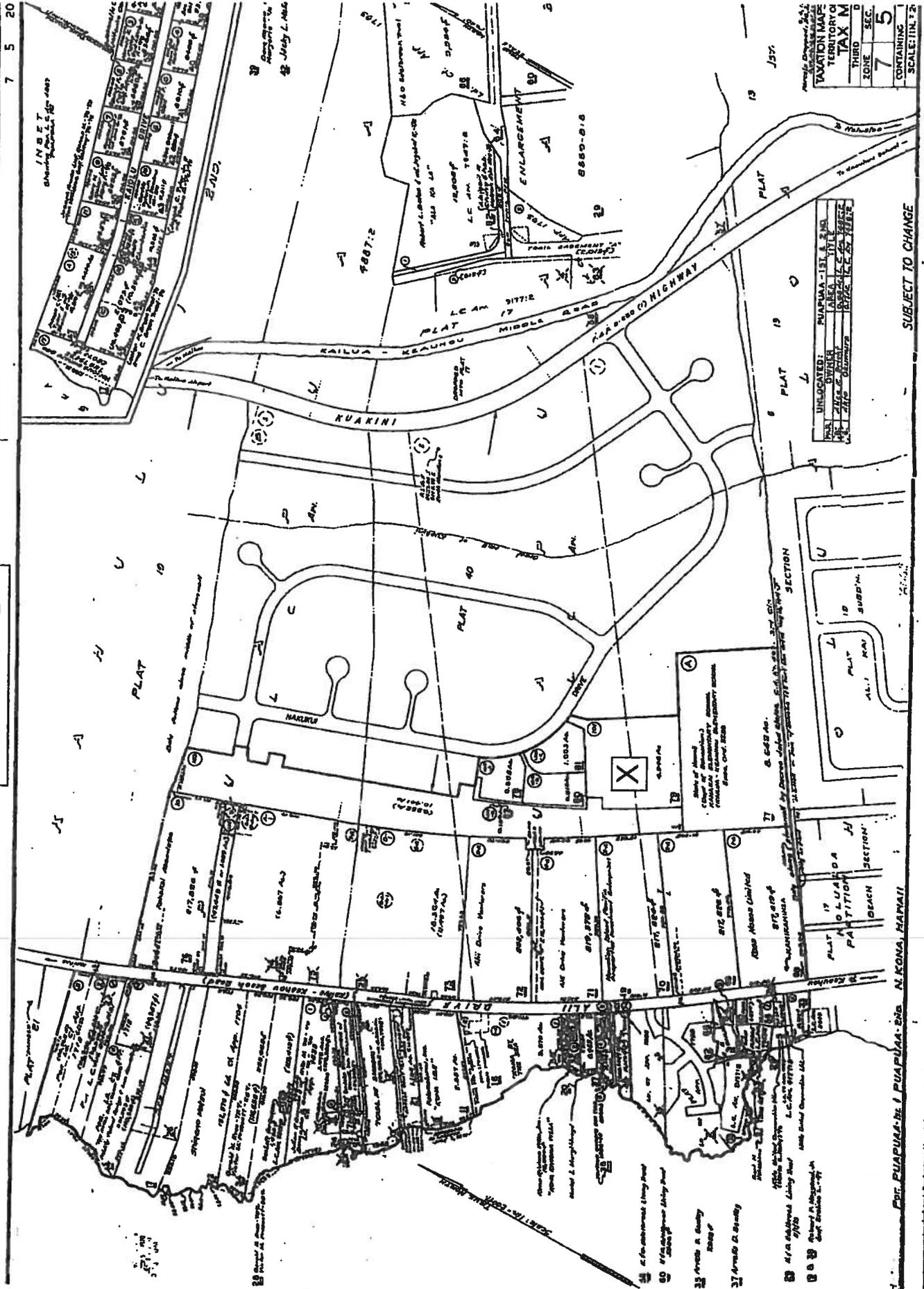
RECORDED: Document No. 2005-254062

Said By-Laws were amended by instrument dated October 10, 2007, recorded as Document No. 2007-188575.

5. RESTRICTION OF VEHICLE ACCESS RIGHTS

SHOWN: on File Plan 2333

EXHIBIT B



7 5 20

PLAT	7	5
SECTION	17	18
TERRITORY	HAWAII	
TAX MAP	1988	
DATE	10/10/88	
SCALE	1" = 100'	
CONTAINING	SECTION 17 & 18	

UNLOCATED:	MAPUA - 1ST & 2ND
PLAT	17 & 18
SECTION	17 & 18
TERRITORY	HAWAII
TAX MAP	1988
DATE	10/10/88

SUBJECT TO CHANGE

FOR PUAQUA-BE I PUAQUA-BE A KONA, HAWAII

EXHIBIT C

EDUCATIONAL CONTRIBUTION AGREEMENT FOR KAHAKAI RESIDENTIAL DEVELOPMENT

THIS INDENTURE, made this 15th day of April, 1997 by and between SCD KAHAKAI, LLC, whose principal place of business and post office address is 745 Fort Street, Suite 2110, Honolulu, Hawaii 96813, and the State of Hawaii DEPARTMENT OF EDUCATION, hereinafter referred to as the "DOE;"

WHEREAS SCD KAHAKAI, LLC is the developer of that certain parcel of land comprised of approximately 108.336 acres and identified as Tax Map Key parcels (3) 7-5-020:001, also known as "Kahakai;"

WHEREAS Kahakai is anticipated to contain a total of approximately 98 residential units in the entire project;

WHEREAS SCD KAHAKAI, LLC and the DOE have mutually agreed that the educational contribution set forth in this Agreement will satisfy any school fair-share condition imposed by the County of Hawaii for Kahakai based on a total count of 98 residential units maximum;

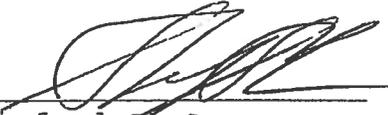
NOW THEREFORE, SCD KAHAKAI, LLC and the DOE agree as follows:

1. SCD KAHAKAI, LLC'S Land Contribution. SCD KAHAKAI, LLC shall dedicate at no cost to the State of Hawaii a total of 3.8 acres ("Dedication Area" or "site"), more or less, for the expansion of Kahakai Elementary School.
 - a. The Dedication Area shall be of the general configuration and location as shown on the attached "Exhibit A."
 - b. The Dedication Area shall satisfy the following criteria:

1. The site shall not contain any toxic or hazardous substances on the property or in the soil surface or subsurface.
 2. Burials contained within the site shall be moved prior to dedication to the State of Hawaii at no cost to the State of Hawaii.
 3. It shall be the responsibility of SCD KAHAKAI, LLC to ensure that the site is zoned appropriately for school use prior to dedication to the State of Hawaii.
 4. Processing of subdivision, zoning, variances, permits and related approvals for the site shall be the responsibility of SCD KAHAKAI, LLC.
 5. A Right-of-Entry to the site shall be provided to the State of Hawaii for state staff and consultants prior to the actual transfer of land for preliminary planning, design and construction work and surveys.
- c. The site shall be dedicated to the State of Hawaii within six (6) months of final subdivision approval for Kahakai.
- d. Should Kahakai's fair-share requirement be less than the acreage actually dedicated based on DOE's factor of \$1,125 per unit, any excess acreage may be applied toward a future residential project by Stanford Carr Development Corporation (with or without development partners) provided such future development is within the DOE's Kealakehe High School complex.
-

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement the day and year first above written.

SCD KAHAKAI, LLC

By 
Stanford B. Carr
Its President

Date: 2/9/99

DEPARTMENT OF EDUCATION

By 
Paul G. LeMahieu, Ph.D.
Its Superintendent

Date: 4/15/99

Approved as to form:

By 
Deputy Attorney General
State of Hawaii

Date: March 25, 1999

STATE OF HAWAII)
)
CITY AND COUNTY OF HONOLULU)

ss.

On this 15th day of April, 1999, before me personally appeared Paul G. LeMahieu, Ph.D., Superintendent of the State of Hawaii DEPARTMENT OF EDUCATION, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Walter K. Oquodornan
Notary Public, State of Hawaii

2.5

My commission expires: 7-6-2002

STATE OF HAWAII)
)
COUNTY OF HONOLULU)

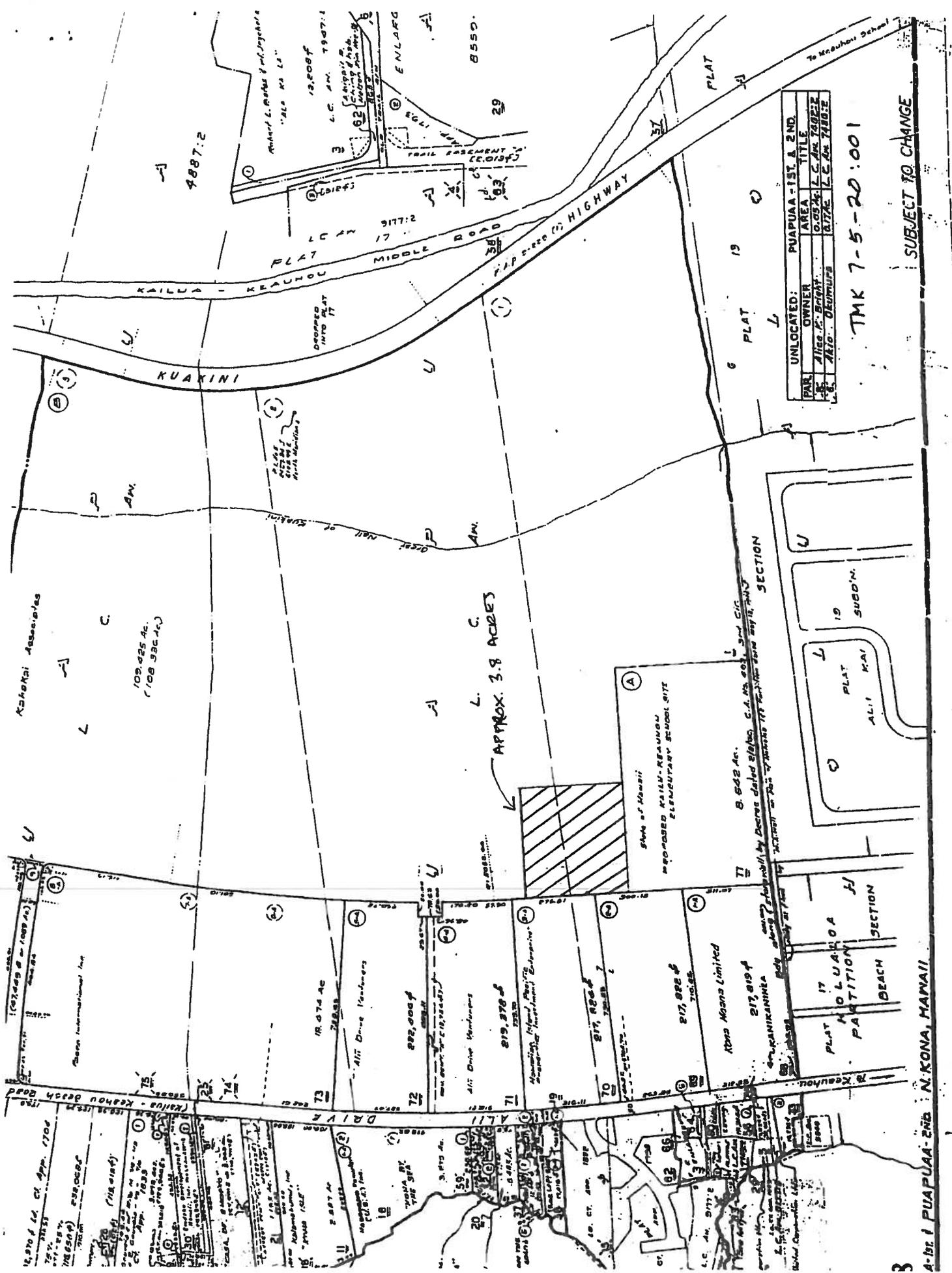
ss.

On this 9th day of February, 1999, before me personally appeared Stanford S. Carr, President of SCD KAHAKAI, LLC, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Anna P. Luke
Notary Public, State of Hawaii

2.5

My commission expires: 3-12-99



UNLOCATED: PUAPUAA - 1ST A 2ND			
PAR.	OWNER	AREA	TITLE
17	ALICE K. BERRY	0.0524	L.C. AN. 1982
19	ALICE K. BERRY	0.0524	L.C. AN. 1982
29	ALICE K. BERRY	0.0524	L.C. AN. 1982
37	ALICE K. BERRY	0.0524	L.C. AN. 1982
38	ALICE K. BERRY	0.0524	L.C. AN. 1982
39	ALICE K. BERRY	0.0524	L.C. AN. 1982

TMK 7-5-20:001

SUBJECT TO CHANGE

EXHIBIT A

3 A-B-1 PUAPUAA-2ND N. KONA, HAWAII