

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

December 13, 2013

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

PSF No.:10KD-108

Kauai

Sale of Remnant to Donald R. Leininger and Jennifer J. Leininger, Por. Kapaa
Town Lots, Kawaihau, Kauai, Tax Map Key: (4) 4-5-012: por. 3.

APPLICANT:

Donald R. Leininger and Jennifer J. Leininger, married, tenants by the entirety.

LEGAL REFERENCE:

Section 171-52, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kapaa Town Lots, situated at Kapaa, Kawaihau, Kauai,
identified by Tax Map Key: (4) 4-5-12: por. 3 (abutting parcel 11), as shown on the attached
map labeled Exhibit A.

AREA:

1,500 sq. ft., more or less.

ZONING:

State Land Use District: Urban
County of Kauai CZO: Open

TRUST LAND STATUS:

Acquired after Statehood (non-Trust lands)

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

CURRENT USE STATUS:

Vacant and unencumbered.

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. Subject lands are to be conveyed to abutting landowner(s) and will become privately owned land at that point.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine the one-time payment of fair market value for the remnant;
- 2) Consolidate the remnant with the Applicant's abutting property through the County subdivision process;
- 3) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

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."

Pursuant to Section 171-52 (a) (2), the Board of Land and Natural Resources previously determined the subject property, being a portion of an abandoned railway right-of-way, was a remnant. On May 23, 2003, the Board approved the sale of Remnant to Richard Scott and Aren Blake Scott under Item D-14, (See Exhibit 'B')

In a letter dated March 11, 2009, Mr. Richard Scott advised staff that he was not able to complete purchase of the subject remnant parcel. (See Exhibit 'C')

In a letter from the County of Kauai, Planning Department to Mr. Richard Scott dated June

19, 2009, the Subdivision Approval No. S-2007-05 was terminated as of June 18, 2009 undoing the consolidation of their land and the State owner remnant Lot 5-C, (See Exhibit 'D')

On August 28, 2009, under item D-5, as amended, the Board rescinded prior Board action of May 23, 2003 for the sale of remnant to Richard Scott and Aren Blake Scott.

Applicants Donald R. Leininger and Jennifer J. Leininger have since purchased the lot previously owned by Mr. Richard Scott and Aren Blake Scott.

Staff has confirmed that the applicants are the fee owners of parcel (4) 4-5-12:11 with the County of Kauai's Real Property Tax Assessment Division. In order to dispose of remnants, they must be first offered for sale to the abutting property owners. The only other property that abuts this remnant belongs to the County of Kauai (by Executive Order), who has declined the opportunity to obtain any portion of this railroad right of way remnant. As to the disposition of portions of this specific abandoned railroad right of way to abutting owners, the Board has already consented to the sale of portions of this railroad right of way remnant.

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.

Comments were solicited from:

State Agencies:

| | |
|------|--|
| DOH | Check for rodents before clearing area, noise control, pollution control – dust screen |
| OCCL | No response by suspense date |
| OHA | No response by suspense date |

County Agencies

| | |
|--------------------|---|
| Planning | Need planning consolidation plan approved |
| Parks & Recreation | No objections, can't access thru Kapaa Park |
| Public Works | No objections |
| Dept. of Water | No objections |

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 is a remnant pursuant to Chapter 171, HRS.

2. Authorize the subject request to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 4-5-012: 011, provided the succeeding owner has not had a lease, permit easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Authorize the subdivision and consolidation of the subject remnant by the Applicants.
4. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the sale of the subject remnant to Donald R. Leininger and Jennifer J. Leininger 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 deed or grant (remnant) 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,



Marvin Mikasa
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



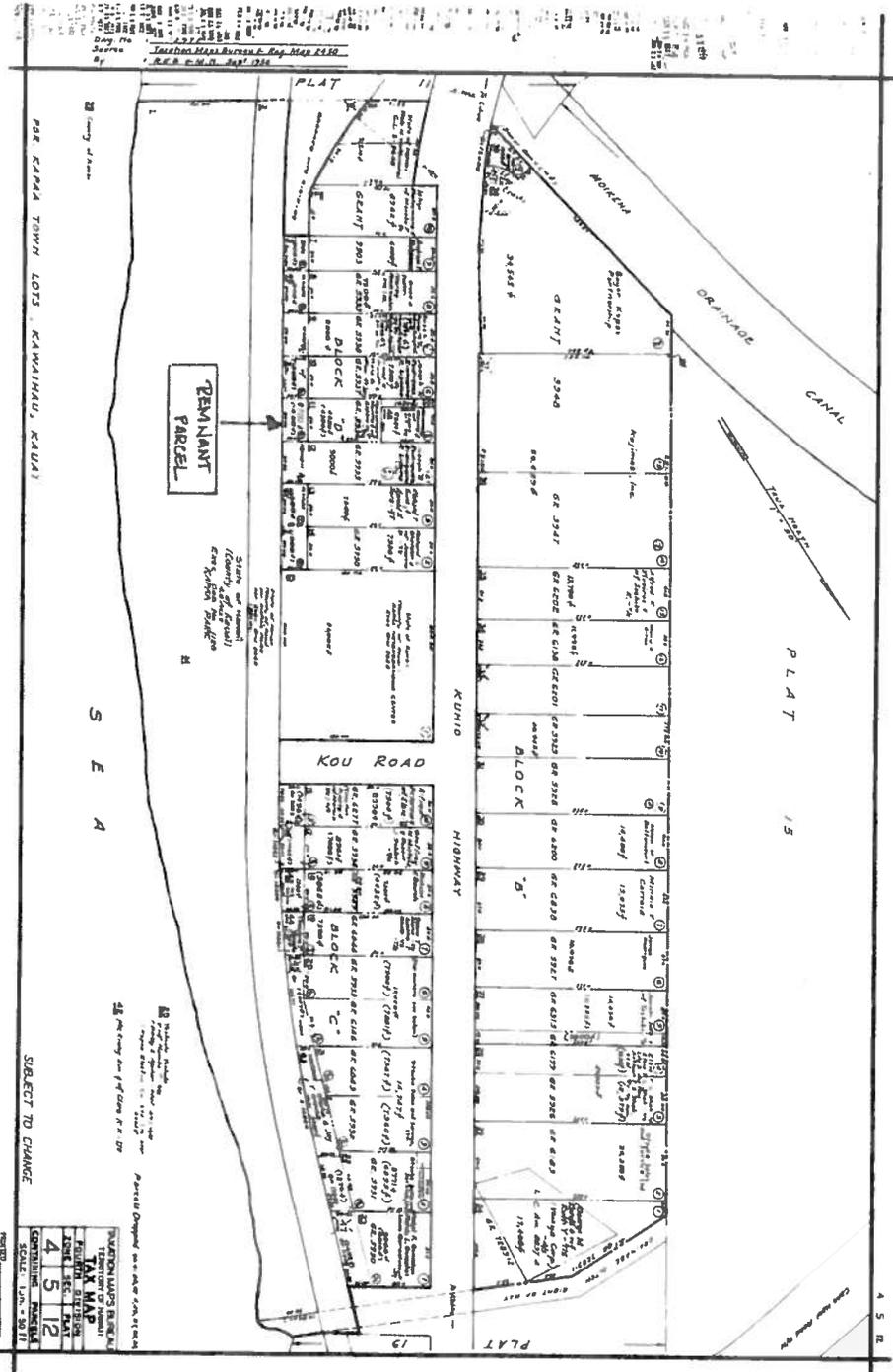


EXHIBIT "A"

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

May 23, 2003

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

PSF No.:02KD-422

KAUAI

Sale of Remnant to Richard Scott and Aren Blake Scott, Por.
Kapaa Town Lots, Kawaihau, Kauai, Tax Map Key:4-5-12: por.
3.

APPLICANT:

Richard and Aren Blake Scott, married, as tenants by the
entirety, whose mailing address is
Kapaa, Hawaii 96746.

LEGAL REFERENCE:

Section 171-52, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kapaa Town Lots, Kawaihau, Kauai
identified by Tax Map Key: 4-5-12: por. 3 (abutting parcel 11),
as shown on the attached map labeled Exhibit A.

AREA:

1,500 sq.ft., more or less.

ZONING:

State Land Use District: Urban
County of Kauai CZO: Open District "O"

TRUST LAND STATUS:

Acquired after Statehood (non-Trust lands)

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

CURRENT USE STATUS:

Vacant and unencumbered.

5/23/03

EXHIBIT "B"

ITEM D-14

BLNR - Sale of Remnant Page 2
to Richard & Aren Blake Scott

May 23, 2003

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

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 pursuant to Exemption Class No. 1, "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."

DCCA VERIFICATION:

Place of business registration confirmed: N/A
Registered business name confirmed: N/A
Applicant in good standing confirmed: N/A
Applicants applying as individuals

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine the one-time payment of fair market value for the remnant;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.
- 3) Consolidate the remnant with the Applicant's abutting property through the County subdivision process.

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 part of an abandoned railroad right-of-way abutting the applicant's property.

Applicant is the owner of parcel (4) 4-5-12:11 as staff has confirmed with the County of Kauai Real Property. In order to dispose of remnants, they must be first offered for sale to the abutting property owners. The only other property that abuts this remnant belongs to the County of Kauai (by Executive Order),

who has declined the opportunity to obtain any portion of this railroad right of way. The applicant's are the only abutting owners to this portion of the railroad right of way remnant. As to the disposition of portions of this specific abandoned railroad right of way to abutting owners, the Board has already consented to the sale of three portions of this railroad right of way remnant.

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.

Agency comments. Comments were solicited from OHA, however, no response was received. The County of Kauai Public Work's Department provided comments dated 10/8/01. They were not interested in acquiring the subject remnants, and had no objection to the sale provided the applicants understand that they cannot access their property through the Kapaa Park, and that the remnants be consolidated with their abutting private property.

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 is a remnant 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. Authorize the subdivision and consolidation of the subject remnant by the Applicant.
4. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the sale of the subject remnant to Richard and Aren Blake Scott 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 deed or grant (remnant) form, as may be amended from time to time;

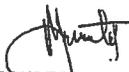
BLNR - Sale of Remnant
to Richard & Aren Blake Scott

Page 4

May 23, 2003

- 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.

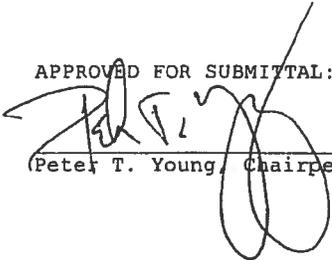
Respectfully Submitted,

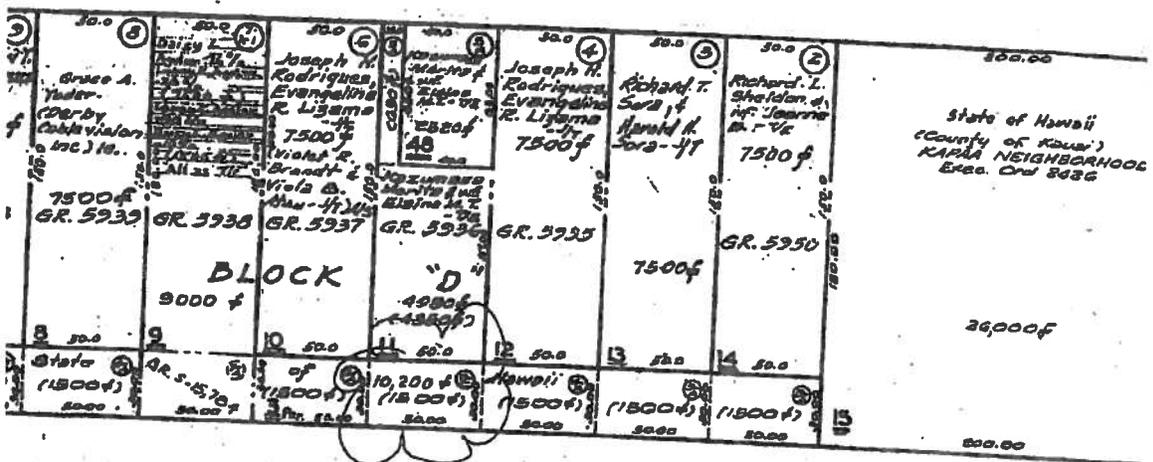
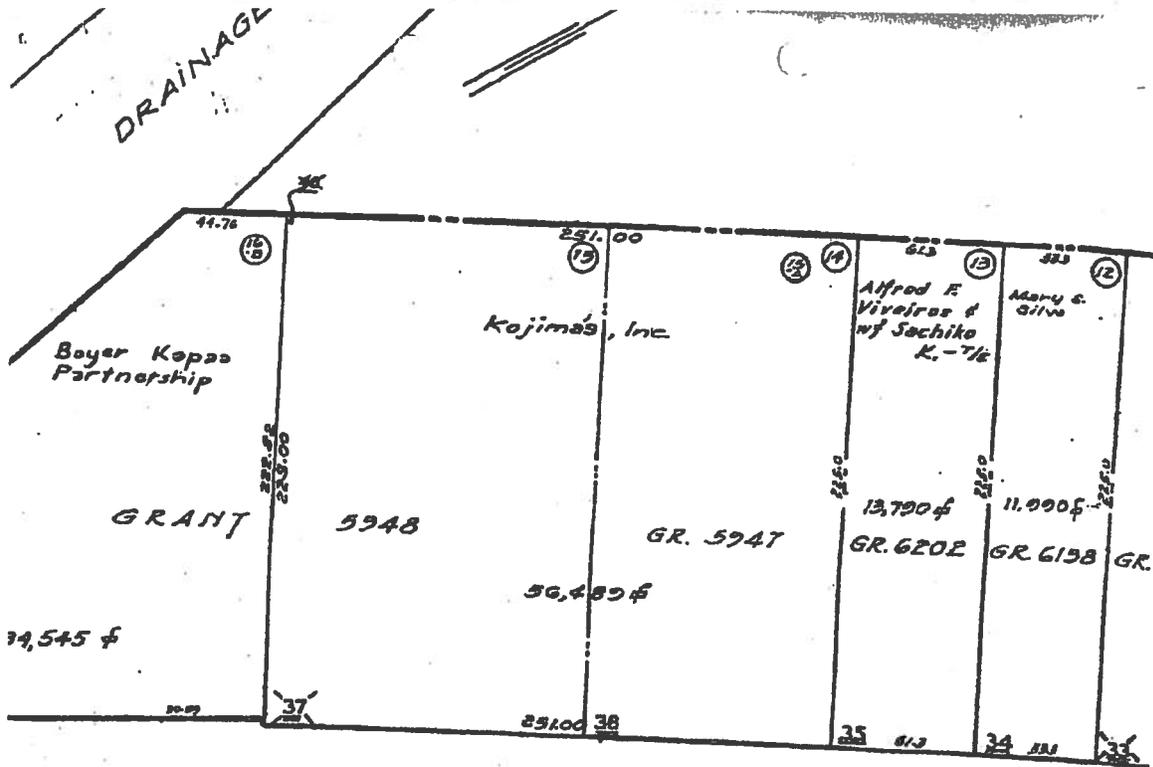

MICHAEL L. LAURETA
Kauai Land Agent

eli

slm

APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson



State of Hawaii
 (County of Kauai)
 4.0 ACRES
 EXEC. ORD. NO. 1128
 KAPAA PARK

March 11, 2009

To: Thomas Oi
District Land Agent
State of Hawaii, DNLR, Land Division
3060 Eiwa Street, Room 205A
Lihue, HI 96766

From: Richard Scott

Kapaa, HI 96746

Re: Ref. No.: LPGS -16,026
Letter dated: January 2, 2009

Thomas,

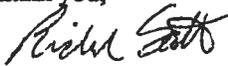
Do to a number of circumstances beyond my control, I'm not able to
purchase the State remnant land, por. Kapaa Town Lots, Kawaihau, Kauai,

Tax Map Key: 4/4-5-12: por 3

Other issues are that, I'm divorced from Aren Blake Scott and the State of
Hawaii selling "ceded lands".

Please refund the consideration price of \$42,755.00 and any other costs.

Thank you,


Richard Scott

PM2:12:53

EXHIBIT "B"

MAR 12 '09

DLNR KDLO RCU)

BERNARD P. CARVALHO, JR.
MAYOR

GARY K. HEU
ADMINISTRATIVE ASSISTANT



IAN K. COSTA
DIRECTOR OF PLANNING

IMAICALANI P. AIU
DEPUTY DIRECTOR OF PLANNING

**COUNTY OF KAUA'I
PLANNING DEPARTMENT**

4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHUE, KAUA'I, HAWA'I 96766-1326
TEL (808) 241-4050 FAX (808) 241-8699

June 19, 2009

Richard Scott

Kapa'a, Hawai'i 96746

**SUBJECT: TERMINATION OF SUBDIVISION APPROVAL
Subdivision No. S-2007-05**

Applicant: *Richard Scott*
Tax Map Key: (4) 4-5-012:003, 011

Pursuant to your request to void the subject application, the department is officially terminating the above referenced subdivision effective *June 18, 2009*.

Should you have further questions, please contact Dale A. Cua of my staff at (808) 241-4050.

Ian K. Costa
Planning Director

xc: COK - Public Works, Water
State - Health Dept.
R. Caires, CLS Hawai'i
File: S-2007-05

EXHIBIT "C"

March 11, 2009

To: Thomas Oi
District Land Agent
State of Hawaii, DNLR, Land Division
3060 Eiwa Street, Room 205A
Lihue, HI 96766

From: Richard Scott

Kapaa, HI 96746
808 635-4591

Re: Ref. No.: LPGS -16,026
Letter dated: January 2, 2009

Thomas,

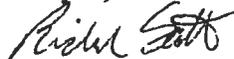
Do to a number of circumstances beyond my control, I'm not able to
purchase the State remnant land, por. Kapaa Town Lots, Kawaihau, Kauai,

Tax Map Key: 4/4-5-12: por 3

Other issues are that, I'm divorced from Aren Blake Scott and the State of
Hawaii selling "ceded lands".

Please refund the consideration price of \$42,755.00 and any other costs.

Thank you,


Richard Scott

PM2:12:58

EXHIBIT " C "

MAR 12 '09

DLNR KDLD RCVD

BERNARD P. CARVALHO, JR.
MAYOR

GARY K. HEU
ADMINISTRATIVE ASSISTANT



IAN K. COSTA
DIRECTOR OF PLANNING

IMAIKALANI P. AIU
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHUE, KAUAI, HAWAII 96768-1326
TEL (808) 241-4050 FAX (808) 241-6699

June 19, 2009

Richard Scott

Kapa'a, Hawai'i 96746

SUBJECT: TERMINATION OF SUBDIVISION APPROVAL
Subdivision No. S-2007-05
Applicant: Richard Scott
Tax Map Key: (4) 4-5-012:003, 011

Pursuant to your request to void the subject application, the department is officially terminating the above referenced subdivision effective *June 18, 2009*.

Should you have further questions, please contact Dale A. Cua of my staff at (808) 241-4050.


Ian K. Costa
Planning Director

xc: COK - Public Works, Water
State - Health Dept.
R. Caires; CLS Hawai'i
File: S-2007-05

EXHIBIT "D"