

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

February 14, 2014

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

PSF No: 12HD-006

Hawaii

**Report to Board on Opinion from the Office of the Attorney General
Regarding Previously Deferred Agenda Item D-6 of July 12, 2013 Land
Board Meeting titled: “Rescind Prior Board Action of November 9, 2012,
Item D-4, Sale of Storm Drainage Easement Reservations 1 and 2 in Favor of
the State of Hawaii to Robert Glenn Bloom, Jr. and Bebi Latiefa Bloom,
Paukaa, South Hilo, Hawaii, Tax Map Key:3rd/2-7-20:14”.**

BACKGROUND:

At its meeting of November 9, 2012, agenda item D-4 (contained in attached Exhibit A), the Board of Land and Natural Resources approved the sale of two storm drainage easement reservations to Robert Glenn Bloom, Jr. and Bebi Latiefa Bloom (applicants). The two easement reservations were created during the subdivision of Honolii Pali Tract 2, File Plan 489. The easements were intended to allow for a future 10-foot wide storm drain and are entirely within the boundaries of the applicant’s private property. Physical inspection by staff found no indication the drainage system was ever built.

Upon receiving Board approval of the sale, staff sent out a bid request for an independent appraisal to determine the purchase price for the easement reservations. The applicants objected to the appraisal fee of \$3,277.49 for the two small easement reservations and notified the Hawaii District Land Office they were no longer interested in purchasing the storm drainage easement reservations and withdrew their request to do so.

The applicants appeared at the Board meeting of July 12, 2013, regarding agenda item D-6 (attached as Exhibit A), which sought to rescind the prior Board approval of the sale of the storm drainage easements. They proposed the State had abandoned the easements and should legally vacate the reservations without cost to the property owner (applicants) as is done in many other states.

The Board deferred action on the agenda item and requested an opinion from the Office of the Attorney General (AG) regarding the Board’s ability to voluntarily abandon the easement reservations with no cost to the applicants.

REMARKS:

The AG has reviewed this proposed disposition and concluded that the State cannot abandon an easement reservation to the owner for free.

Nowhere in HRS Chapter 171 is the State allowed to give away public land to a private individual at no cost. However, HRS Section 171-57 does allow the Board to dispose of a reserved easement to the owner of the land by direct sale.

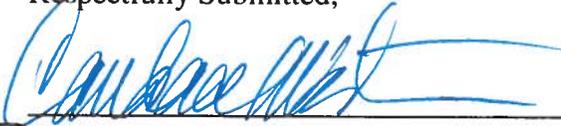
Further, the public trust doctrine weighs heavily against the State giving away an interest in public land. The State is judicially accountable to the beneficiaries (the public) for any and all dispositions of the public trust.

In light of the opinion from the AG and the applicant's unwillingness to pay the costs associated with a lawful disposition, staff is recommending that the Board proceed with rescinding the prior action of November 9, 2012 agenda item D-4 authorizing the sale of storm drainage easements 1 and 2.

RECOMMENDATION: That the Board:

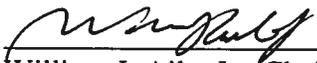
1. Rescind Prior Board Action of November 9, 2012, Item D-4, Sale of Storm Drainage Easement Reservations 1 and 2 in Favor of the State of Hawaii to Robert Glenn Bloom, Jr. and Bebi Latiefa Bloom, Paukaa, South Hilo, Hawaii, Tax Map Key:3rd/2-7-20:14.

Respectfully Submitted,



Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

EXHIBIT A

DEFERRED

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

July 12, 2013

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

PSF No: 12HD-006

Hawaii

Rescind Prior Board Action of November 9, 2012, Item D-4, Sale of Storm Drainage Easement Reservations 1 and 2 in Favor of the State of Hawaii to Robert Glenn Bloom, Jr. and Bebi Latiefa Bloom, Paukaa, South Hilo, Hawaii, Tax Map Key: (3) 2-7-20:14.

BACKGROUND:

At its meeting of November 9, 2012 agenda item D-4 (attached as Exhibit A), the Board of Land and Natural Resources approved the sale of two storm drainage easement reservations to Robert Glenn Bloom, Jr. and Bebi Latiefa Bloom (applicants). The two easement reservations were created during the subdivision of Honolii Pali Tract 2, File Plan 489. The easements were intended to allow for a 10-foot wide storm drain and are entirely within the boundaries of the applicant's private property. Physical inspection by staff found no indication the drainage system was ever laid out.

REMARKS:

Upon receiving Board approval of the sale, staff sent out a bid request for an independent appraisal to determine the purchase price for the easement reservations. The applicants objected to the appraisal fee of \$3,277.49 for the two small easement reservations and have notified the Hawaii District Land Office that they are no longer interested in purchasing the storm drainage easement reservations and withdraw their request to do so.

Staff is recommending that the Board rescind the prior action of November 9, 2012 agenda item D-4 authorizing the sale of storm drainage easements 1 and 2.

~~APPROVED~~ BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
July 12, 2013 *yo*

D-6

RECOMMENDATION: That the Board:

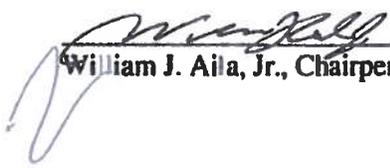
1. Rescind Prior Board Action of November 9, 2012, Item D-4, Sale of Storm Drainage Easement Reservations 1 and 2 in Favor of the State of Hawaii to Robert Glenn Bloom, Jr. and Bebi Latiefa Bloom, Paukaa, South Hilo, Hawaii, Tax Map Key:(3)2-7-20:14.

Respectfully Submitted,



Candace
Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

**Land Board Meeting: July 12, 2013; D-6: Deferred
HDLO to prepare a memo to the Department of the Attorney General asking whether
the State is able to voluntarily abandon the easement at no cost to applicant
Mr. Bloom.**

EXHIBIT A

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

November 9, 2012

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

PSF No.: 12HD-006

Hawaii

Sale of Storm Drainage Easement Reservations 1 and 2 in Favor of the State of Hawaii to Robert Glenn Bloom, Jr. and Bebi Latiefa Bloom, Paukaa, South Hilo, Hawaii, Tax Map Key: 3rd/2-7-20:14.

APPLICANT:

Robert Glenn Bloom, Jr. and Bebi Latiefa Bloom, Husband and Wife, Tenants by the Entirety.

LEGAL REFERENCE:

Section 171-57, Hawaii Revised Statutes, as amended.
Section 171-16(d), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of lands of Honolii Pali Tract 2, situated at Pauka'a, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-7-20:14, as shown on the attached map labeled Exhibit A.

AREA:

Easement reservation 1 = 3,100 square feet, more or less.
Easement reservation 2 = 3,478 square feet, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: RS-10 residential

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES *W*
AT ITS MEETING HELD ON
November 9, 2012

D-4

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CHARACTER OF USE:

Reservation for Storm Drainage

CURRENT USE STATUS:

Vacant and unencumbered

CONSIDERATION:

A one-time lump sum payment of the difference in fair market value with and without the easement reservations (easement) 1 and 2, to be determined by independent appraiser contracted for by the State, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Refer to Exhibit B – Exemption Notification letter.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicants shall be required to:

1. Pay for an appraisal to determine the one-time payment of the difference in fair market value with and without the easement.
2. Pay for the costs of public notice pursuant to section 171-16(d).

REMARKS:

Easement 1 was created by Onomea Sugar Company on September 5, 1952 during the subdivision of Honolulu Pali Tract 2, File Plan 489 as "Easement J". The subject easement was carried forward as "Easement 1" in Land Court Application 1658. The 10 foot wide easement courses along the northern boundary, as indicated in yellow on the attached Exhibit A and was made in reservation to the State of Hawaii for the purpose of storm

drainage. Currently, the State has not made use of this easement and there are no indications of pending or planned future usage.

Easement 2 was created in conjunction with Easement 1 and traverses the property along the western border as indicated in blue on the attached Exhibit A. Easement 2 is also 10-foot wide and was reserved to the State of Hawaii and County of Hawaii for the purpose of storm drainage and water pipeline. Currently, the State has not made use of this easement and there are no indications of pending or planned future usage.

The Applicant is the owner of parcel (3) 2-7-20:14 as staff has confirmed by the County of Hawaii, Real Property Tax Office web site. A copy of the reservation wording attached to the Warranty Deed is attached as Exhibit C. The easements were intended to allow for a 10-foot wide storm drain and are entirely within the Applicant's property. Physical inspection by staff revealed no indication the drainage system was ever laid out and existing contour of the land suggests a drainage system in this location would not be feasible.

The Applicant has a pending request with the County of Hawaii (COH) to abandon the COH's interest in Easement 2 and has acquired letters from the County of Hawaii Department of Public Works, Planning Department, Department of Water Supply and Department of Environmental Management in support of the applicant's request for the COH to abandon Easement 2 (attached as Exhibit D). The Applicant asks the State of Hawaii to dispose of the State's interest in Easement 2.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Section 171-57, HRS allows the Board to authorize disposal of an easement reservation to the State by direct sale. Staff recommends an appraisal be conducted to determine the consideration payable to the State from the sale of Easement 1 and Easement 2.

Request for comments were sent to various interested agencies. Nine agencies were solicited for comments; two responses were received. Hawaii County Planning had no comments and Hawaii County Environmental Management had no objections.

The disposition of these easements does not involve any expansion or change of use beyond that previously existing. Therefore, staff believes this transaction to be exempt from the preparation of an environmental assessment.

RECOMMENDATION:

That the Board:

1. Find that the sale of Storm Drainage Easement Reservations 1 and 2 is not prejudicial to the best interest of the State, community or area in which the storm drainage easement reservations are located.
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 subject request to be applicable in the event of a change in the ownership of the private parcel described as Tax Map Key: (3) 2-7-20:14, 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.
4. Subject to the Applicant fulfilling the Applicant Requirements listed above, authorize the sale of Storm Drainage Easement Reservations 1 and 2 to Robert Glenn Bloom, Jr. and Bebi Latiefa Bloom 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 waiver of easement 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,

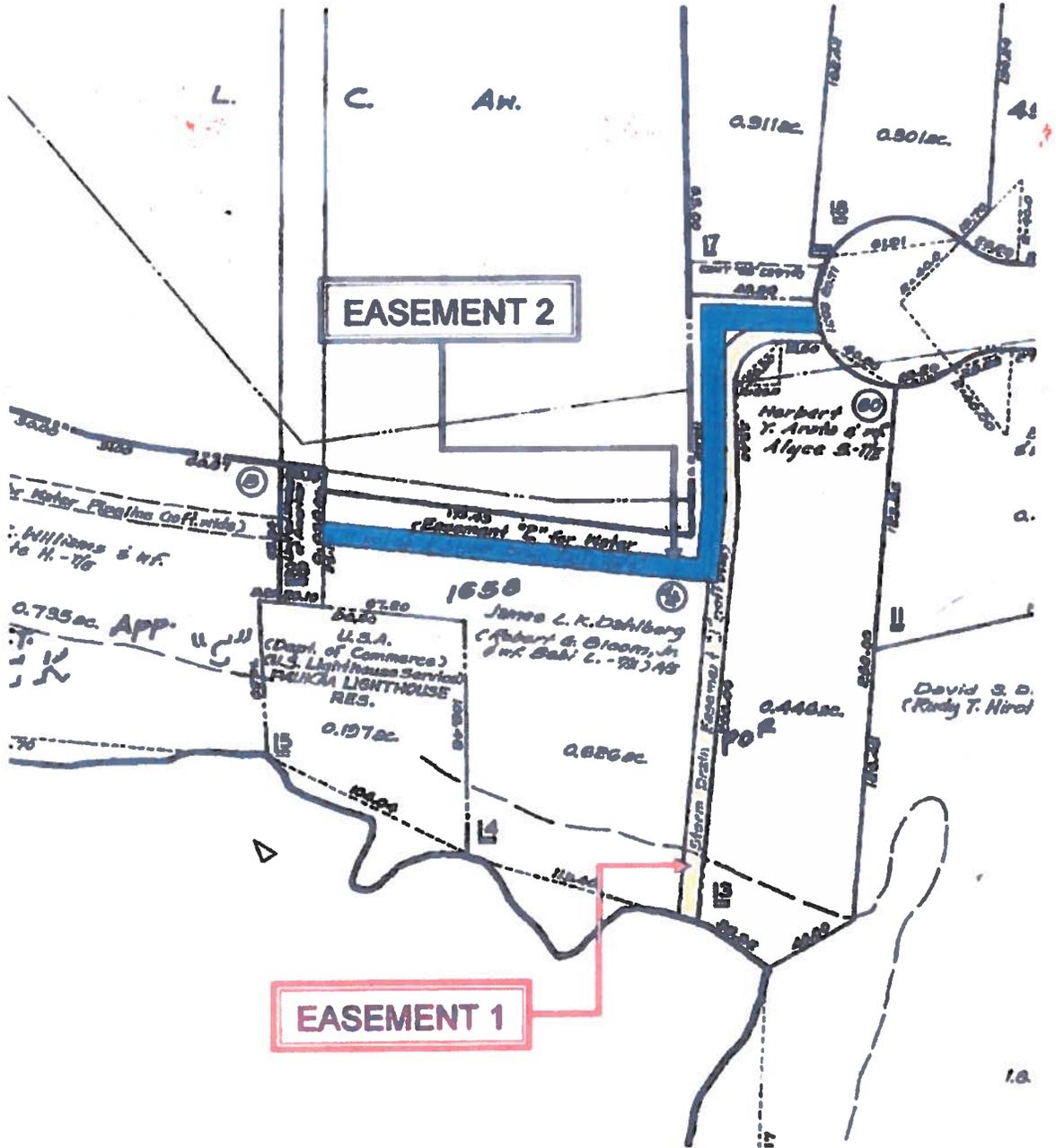

Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

EXHIBIT A

TMK: 3rd/ 2-7-20:14



NEIL ABERCROMBIE
GOVERNOR OF HAWAII



EXHIBIT B

WILLIAM J. AILA, JR.
COMMISSIONER OF LAND AND NATURAL RESOURCES

PAUL J. CONROY
DEPUTY COMMISSIONER

WILLIAM M. TANI
DEPUTY COMMISSIONER

ADVISORY BOARD
MEMBERS: LARRY AND MAITHEA BLOOM, JR. &
BEBI LATIEFA BLOOM, JR. (Pauka'a, South Hilo, Hawaii)
ROBERT GLENN BLOOM, JR. (Pauka'a, South Hilo, Hawaii)
LARRY AND MAITHEA BLOOM, JR. (Pauka'a, South Hilo, Hawaii)
BEBI LATIEFA BLOOM, JR. (Pauka'a, South Hilo, Hawaii)
LARRY AND MAITHEA BLOOM, JR. (Pauka'a, South Hilo, Hawaii)
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LARRY AND MAITHEA BLOOM, JR. (Pauka'a, South Hilo, Hawaii)
BEBI LATIEFA BLOOM, JR. (Pauka'a, South Hilo, Hawaii)

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

October 15, 2012

EXEMPTION NOTIFICATION

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

Project Title: Sale of Storm Drainage Easement Reservations 1 and 2 in Favor of the State of Hawaii to Robert Glenn Bloom, Jr. and Bebi Latiefa Bloom, Pauka'a, South Hilo, Hawaii'i, Tax Map Key: 3rd/2-7-20:14

Project / Reference No.: PSF 12HD-006

Project Location: Portion of lands of Honoli'i Pali Tract 2, situated at Pauka'a, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-7-20:14

Project Description: Proposed sale of storm drainage easement reservations 1 and 2 through private property owned by the applicants. Said easement reservations were made in 1952 during subdivision development. There is no evidence the drainage system was ever constructed and existing contours of the land suggest a drainage system in this location would not be feasible.

Chap. 343 Trigger(s): Use of State Land

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" and;

Exemption Class No. 4, which states "Minor alteration in the conditions of land, water, or vegetation "

Consulted Parties:

State of Hawaii:

DOH – Environmental Health, Department of Hawaiian Home Lands, DLNR – Conservation District Planning and DLNR Water Resource Management.

County of Hawaii:

Planning Department, Department of Public Works, Department of Water Supply and Department of Environmental Management.

Other agencies:

Office of Hawaiian Affairs.

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila, Jr., Chairperson

10/23/12

Date

EXHIBIT C

EXHIBIT A

All of the certain parcel of land situate on the
Islands of Kure, Midway, Laysan, French Frigate Shoals,
and other islands, in the State of Hawaii,

as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court
of the State of Hawaii with Land Court Application No. 1689
of the said parcel of land.

Being all of the land described in Transfer Certificate
of Title No. 167,188.

Having and excepting that portion of the land last
hereinafter described, lying seaward of the line of vegetation,

except, however, to the following:

1. As to that portion of the land herein described
bordering on the Ocean:

The effect of Sections 208-31 to 208-37, inclusive,
Hawaii Revised Statutes, as now or hereafter amended,
pertaining to Shoreline Setbacks.

2. Any adverse claim of State of Hawaii based upon the
construction that some portion of the land hereinabove described
lies seaward of the line of vegetation, pursuant to the
ruling in County of Hawaii v. Seemann (1978) 68 H. 176,
817 P. 2d 57.

3. Easement 1 in favor of the State of Hawaii, being an
easement 10 feet wide for storm drainage, and Easement
2 in favor of the State of Hawaii and County of Hawaii, being an
easement 10 feet wide for water pipe line and storm drain,
as shown on Map 1 of Land Court Application No. 1689.

4. The easements in deed dated July 8, 1938, filed as
Land Court Surrogate No. 282371, to which Surrogate is hereby
made.

EXHIBIT D

**DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII**

DATE: October 17, 2011

Memorandum

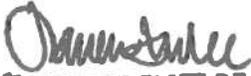
TO: Katherine A. O'Connell, Assistant Corporation Counsel

FROM: Department of Public Works

SUBJECT: REQUEST TO ABANDON DRAINAGE EASEMENTS J & K
Property Owner: Robert G. Bloom, Jr., and Bobi L.K. Bloom
Location.
TMK: 2-7-020-014

We have reviewed the property owners' request and have no objection to abandoning the drainage easements referenced above.

Questions may be referred to Carter Romero at 961-8327.


WARREN H. W. LEE, P.E.
Director

CLR

c: ENG

County of Hawaii is an Equal Opportunity Employer and Contractor

William P. Kanae
Mayor



West Hawaii Office
74-0260 Aiea Kauhalele Hwy
Kalaheo, Hawaii 96740
Phone (808) 333-4770
Fax (808) 333-3363

County of Hawai'i
PLANNING DEPARTMENT

BJ Leiford Todd
Deputy

Margaret K. Mienemage
Deputy

East Hawaii Office
101 Puuiki Street, Suite 3
Hilo, Hawaii 96720
Phone (808) 943-4888
Fax (808) 943-4792

MEMORANDUM

TO: Katherine A. Gerson, Assistant Corporation Counsel
FROM: *[Signature]* BJ Leiford Todd, Planning Director
DATE: October 13, 2011
SUBJECT: Robert G. Bloom, Jr., and Beth L.K. Bloom's
Request to the County of Hawai'i to Acquire Drainage Easements J and K
TMK: (3) 2-7-020-014

We have reviewed the Bloom's request to the County of Hawai'i to acquire the above-referenced easements.

We have no objection to the County of Hawai'i abandoning the above-referenced easements.

DSA:mmm

F:\p\p\03\04\2011\1\SUB725\document.doc

www.co.hawaii.gov

Hawai'i County is an Equal Opportunity Provider and Employer

planning@co.hawaii.gov



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII
848 KUKUNAOKA STREET, SUITE 20 • HILO, HAWAII 96720
TELEPHONE (808) 961-8888 • FAX (808) 961-8887

October 21, 2011

TO: Katherine A. Garson, Assistant Corporation Counsel
FROM: Milton Pavao, Manager-Chief Engineer - Department of Water Supply
SUBJECT: ROBERT G BLOOM, JR., AND BEBI L. K. BLOOM'S REQUEST TO THE
COUNTY OF HAWAII TO ACQUIRE DRAINAGE EASEMENTS J AND K
TAX MAP KEY 2-7-020-014

We have reviewed the Bloom's request to the County of Hawaii to acquire the above-referenced easements and we have no objections to the County of Hawaii abandoning the subject easements.

Should you have any questions, please contact Mr. Lawrence Beck of our Water Resources and Planning Branch at 961-8070, extension 260.

Sincerely yours,



Milton D. Pavao, P.E.
Manager-Chief Engineer

LEB:dfj

...Water, Our Most Precious Resource... To We A Ika...

William A. Havel
Mayor



Dora Beck, P.E.
Acting Director
Deputy Director
Deputy Director

County of Nassau
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
28 August Street • Hills, Nassau 196700
Phone: 910-420-4200 • Fax: (910) 420-4200
http://www.nassaufl.gov/department/department.htm

MEMORANDUM

DATE : October 13, 2011
TO : Katherine Garson, Deputy Corporation Counsel
FROM : Dora Beck, P. E., Acting Director *DB*
SUBJECT: Storm Drainage Agreement
TWO (2) 5-420-414
Robert G. & Helen L. K. Kline

We have reviewed the documents you have provided regarding the subject encumbrance and have no objection to abandonment of the encumbrance as requested by the property owner.

Should there be any questions, please don't hesitate to contact me.

County of Nassau is an Equal Opportunity Provider and Employer.