



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

FORD N. FUCHIGAMI
INTERIM DIRECTOR

Deputy Directors
RANDY GRUNE
AUDREY HIDANO
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JADINE URASAKI

IN REPLY REFER TO:

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

HAWAII

CLARIFICATION OF PRIOR BOARD ACTION OF MAY 23, 2014, ITEM M-14, AMENDING THE PRIOR BOARD ACTION OF MARCH 8, 2013, ITEM M-3, ACQUISITION OF PRIVATE LANDS AND SET ASIDE TO THE COUNTY OF HAWAII FOR ROADWAY PURPOSES, HILO, ISLAND OF HAWAII, TAX MAP KEY: 3RD DIVISION/2-1-07:PORTIONS OF 05 AND 07

BACKGROUND:

At its meeting on May 23, 2014, Item M-14 (See attached Exhibit A) the Board of Land and Natural Resources amended its authorization for the acquisition of private lands situated in Hilo, Hawaii, further identified as Tax Map Key: 3rd/2-1-07:Portions of 05 and 07, and the set aside to the County of Hawaii for roadway purposes as approved at its meeting held on March 8, 2014, Item M-3.

The acquisition of the subject parcels is needed to comply with the County of Hawaii's requirement to increase the turning radius into Kumau Street from Kalaniana'ole Street as part of the Harbors' Kumau Street Entrance Improvements at Pier 4, Interisland Cargo Terminal Project.¹ As noted in the May 23, 2014 board submittal, Phase I and Phase II environmental studies were completed for this project. The Phase II soil sampling found Arsenic levels ranging from 18.2 to 23.9 mg/Kg at four locations within the project site. The corresponding Department of Health (DOH) Environmental Action Levels (EAL) for arsenic are 24 mg/Kg for residential areas and 95 mg/Kg for industrial areas.

¹ The Kumau Street Entrance Improvements Project involves widening of Kumau Street from two lanes to four lanes and modification of the intersection of Kumau Street and Kalaniana'ole Street to improve safety and relieve traffic. See attached Exhibit C (map).

DISCUSSION:

Accordingly, the site is designated for Unrestricted Commercial Use as the arsenic levels are below the applicable EALs. These levels are unlikely to impact construction activities during the project, and contractors informed of the findings and advised to take precaution during construction to prevent unnecessary exposure, and to characterize all excess materials in accordance with applicable State and Federal regulations. Paving the entire site with concrete and/or AC pavement, and the use of clean, uncontaminated soil cover will reduce the threat to human health and environment by eliminating the exposure pathway.

Additionally, apparent subsurface petroleum contamination was encountered at only one (1) of four (4) boring locations where subsurface soil samples were collected for geotechnical analysis. The boring location identified as B-1 on the attached map labeled Exhibit B is along Kalaniana'ole Avenue towards Hilo Harbor and parcels in the area have historically and are currently being used as petroleum storage facilities. The presence of subsurface petroleum was indicated by elevated photo ionization detector readings at the mouth of the bore hole where a strong petroleum odor was also noted. This result confirmed the conclusion from the Phase I Study that subsurface petroleum contamination may be present within localized areas. However, no subsurface petroleum was encountered in the borings taken along Kumau Street and in close proximity to the parcels being proposed for acquisition. It is expected that most of the excavated materials will be returned to trenches and safely covered on-site. Contaminated materials that cannot remain on-site will be sampled, analyzed, and appropriately disposed of.

In the prior submittal, the staff indicated that the Phase I and Phase II did not raise any issues. It was not the staff's intent to imply that no contamination was found within the project area. The Harbors' Engineering Environmental Section reviewed both the Phase I and II reports and have acknowledged its findings and have determined that all findings were within acceptable levels and the project should be allowed to proceed.

RECOMMENDATION:

That the Board accepts the above clarification of findings of the Phase I and II Environmental Studies conducted for the Kumau Street Entrance Improvement Project at Pier 4 relating to this acquisition of private lands and confirm that all other terms and conditions listed in its March 8, 2014, Item M-3 and May 23, 2014, Item M-14 approvals remain the same.

Respectfully submitted,



FORD N. FUCHIGAMI
Interim Director of Transportation

APPROVED FOR SUBMITTAL:



WILLIAM AILA, JR
Chairperson and Member

NEIL ABERCROMBIE
GOVERNOR



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IN REPLY REFER TO:

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

HAWAII

AMEND PRIOR BOARD ACTION OF MARCH 8, 2013, ITEM M-3,
ACQUISITION OF PRIVATE LANDS AND SET ASIDE TO THE COUNTY
OF HAWAII FOR ROADWAY PURPOSES, HILO, ISLAND OF HAWAII,
TAX MAP KEY: 3RD DIVISION/2-1-07:PORTIONS OF 05 AND 07

BACKGROUND:

At its meeting on March 8, 2013, Item M-3 (See attached Exhibit A), the Board of Land and Natural Resources authorized the acquisition of private lands situated in Hilo, Hawaii further identified as Tax Map Key: 3rd/2-1-07:Portions of 05 and 07 and the set aside to the County of Hawaii for roadway purposes.

While preparing the documents to acquire the subject parcels, the standard terms and conditions of the current deed document included Environmental language. Staff is requesting that following section of the standard deed document be removed since both a Phase I and Phase II Environmental Study were completed and did not raise any issues:

"AND, the Grantor warrants that if any lender or governmental agency shall ever require testing to ascertain whether there has been any release of hazardous materials by Grantor on or adjacent to the Property, as determined by Grantee in its sole discretion, then the Grantor shall be responsible for the reasonable costs thereof. In addition, Grantor shall execute affidavits, representations and the like from time to time at Grantee's request concerning Grantor's best knowledge and belief regarding the presence of hazardous materials on the Property placed or released by Grantor.

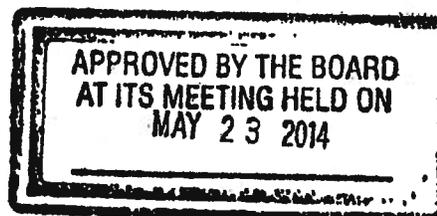


EXHIBIT A

ITEM M-14

The Grantor agrees to indemnify, defend, and hold Grantee harmless, from any damages and claims resulting from the release of hazardous materials on or about the Property occurring while Grantor was in possession of the Property, or elsewhere if caused by Grantor or persons acting through or under Grantor.

For the purpose of this deed "hazardous material" shall mean any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil, as all of the above are defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, Chapter 128D, Hawaii Revised Statutes, or any other federal, state, or local law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted."

During the construction period between the acquisition of the subject parcels and issuance of an executive order to the County of Hawaii, a management right-of-entry should be issued by the Department of Land and Natural Resources while Harbors completes the road improvements. The Management Right-of-Entry document to be issued by DLNR to the Department of Transportation, Harbors Division will be submitted to the Department of Attorney General for review and approval as to form.

In regards to the set aside to the County of Hawaii, since the County of Hawaii was not indicated in the previously approved Land Board submittal as an Applicant, Staff provides the following explanation to assure the County's acceptance of the parcels and improvements: 1) the County of Hawaii required an increased turning radius into Kumau Street from Kalaniana'ole Street and 2) the parcels to be acquired are not necessarily for road widening, but rather a correction to the antiquated way the street was created years ago without corner radii.

We have been informed by the landowners they will only convey the subject parcels by a Limited Warranty Deed. After discussions with the landowners, staff has no objections to the issuance of Limited Warranty Deeds to both parties.

In addition, Hawaii Revised Statutes §264-1(c) states All roads, alleys, streets, ways, lanes, trails, bikeways, and bridges in the State, opened, laid out, or built by private parties and dedicated or surrendered to the public use, are declared to be public highways or public trails. In every case where the road, alley street, bikeway, way, lane trail, bridge, or highway is constructed and completed as required by any ordinance of the county or any rule, regulation, or dedication or surrender of the same without exercise of discretion. Therefore, the County of Hawaii is required to accept the parcels.

RECOMMENDATION:

That the Board amends is prior board action of March 8, 2013, Item M-3, the Board of Land and Natural Resources authorized the acquisition of private lands situated in Hilo, Hawaii further identified as Tax Map Key: 3rd/2-1-07:Portions of 05 and 07 and the set aside to the County of Hawaii for roadway purposes by:

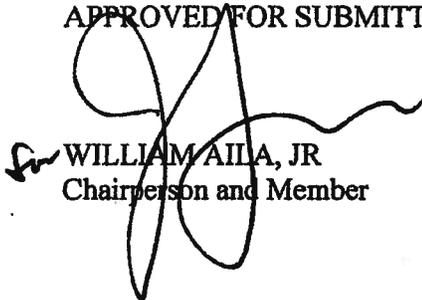
- A. Removing the Environmental Language from the standard terms and conditions of the most current deed document form; and
- B. Accept conveyance of the subject parcels by Limited Warranty Deeds.
- C. Issuance of a Management Right-of-Entry to the Department of Transportation, Harbors Division, subject to the terms and conditions as may be prescribed by the Director of Transportation, until such time that a governor's executive order is issued to set aside the subject parcels to the County of Hawaii.

Respectfully submitted,



GLENN M. OKIMOTO, Ph. D.
Director of Transportation

APPROVED FOR SUBMITTAL:



WILLIAM AILA, JR
Chairperson and Member

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
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IN REPLY REFER TO:

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State of Hawaii
Honolulu, Hawaii

HAWAII

ACQUISITION OF PRIVATE LANDS AND SET ASIDE TO THE COUNTY
OF HAWAII FOR ROADWAY PURPOSES, HILO, ISLAND OF HAWAII,
TAX MAP KEY: 2ND DIVISION, 3-7-10: 1 AND 36

APPLICANT AGENCY:

Department of Transportation, Harbors Division

PRIVATE LANDOWNER:

Airgas Gaspro, a Hawaii corporation and wholly owned subsidiary of Airgas USA, LLC,
a Delaware Corporation, whose business and post office address is 259 N. Radnor Chester
Road, Suite 100, Radnor, Pennsylvania 19087.

C. Kitagawa, Inc. a Domestic Profit Corporation, whose business address is 400 E.
Kawili Street, Hilo, Hawaii 96720.

LEGAL REFERENCE:

Sections 107-10, 171-11 and 171-30, and Chapter 101, Hawaii Revised Statutes, as
amended and as may be necessary.

LOCATION:

Privately-owned lands, situated at Waiakea, Hilo, Island of Hawaii, identified as Tax
Map Key: 3RD Division, 2-1-07: Portions of 05 and 07, as shown on the attached map
labeled "Exhibit A."

APPROVED BY THE BOARD OF LAND
OF LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
MARCH 8, 2013 - AGENDA ITEM M-3

EXHIBIT A
ITEM M-3

AREA OF ACQUISITION:

TMK: 3rd Division, 2-1-07:Por 05: 263 square feet, more or less
TMK: 3rd Division, 2-1-07:Por 07: 263 square feet, more or less

ZONING:

TMK: 3rd Division, 2-1-07:05:

State Land Use District: Urban District
County of Maui CZO: MG-1A, General Industrial

TMK: 3rd Division, 2-1-07:07:

State Land Use District: Urban District
County of Maui CZO: MG-20, General Industrial

CURRENT USE:

TMK: 3rd Division, 2-1-07: 05:

Parcel 5 of Tax Map Plat: (3) 2-1-07 consists of 44,780 square feet located on the corner of Kumau and Kalaniana'ole Streets. The parcel is currently owned by Airgas Gaspro and is occupied and utilized as a Gas Fill Plant, Medical Branch, and Retail Store. The corner portion of the lot to be acquired is unimproved land.

TMK: 3rd Division, 2-1-07: 07:

Parcel 7 of Tax Map Plat: (3) 2-1-07 consists of 67,170 square feet is located at the corner of Kumau and Kalaniana'ole Streets. The parcel is currently owned by C. Kitagawa, Inc. and leased to L. Kitagawa and Company, Ltd for use as an Auto Dealership and Repair & Service Center. The corner portion of the lot to be acquired is open landscaped land.

CONSIDERATION:

The State and the owners have mutually accepted the \$4,800 per parcel value established by Yamaguchi & Yamaguchi, Inc., an independent real estate appraisal firm, in its appraisal dated May 30, 2012, as required by Section 171-30, Hawaii Revised Statutes, relating to Acquisition of Real Property: General

PURPOSE:

Roadway

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Draft Environmental Assessment was published for public review in the February 8, 2012 issue of the State Office of Environmental Quality Control's (OEQC) Environmental Notice. The Final Environmental Assessment for the subject project was published in the State Office of Environmental Quality Control's (OEQC) Environmental Notice on February 8, 2012 with a finding of no significant impact (FONSI).

REMARKS:

The Department of Transportation, Harbors Division, desires to acquire fee simple interest and title to portions of two (2) parcels owned by Airgas Gaspro and C. Kitagawa, Inc. for roadway purposes. Both subject portions are located at the corners of Kumau Street and Kalaniana'ole Street, Hilo, Hawaii.

The fee simple acquisition of unimproved portions of privately owned parcels is part of a proposed Harbors project involving the construction of improvements to Kumau Street to provide an alternative entryway for commercial and other vehicles into Hilo Harbor.

During the design phase of the project, the County of Hawaii required an increased turning radius into Kumau Street from Kalaniana'ole Street, therefore necessitating the need to acquire the subject areas from the private landowners.

Upon completion of the Kumau Street improvements the acquired parcels together with the improvements will be set aside to County of Hawaii as part of the Kumau Street road right-of-way.

The acquisition of the subject unimproved land parcels was authorized by Act 164, Session Laws of Hawaii 2011, as amended by Act 106 SLH 2012, which appropriated \$10,000.00 for land acquisition purposes.

RECOMMENDATION: That the Board:

- A. Authorizes the acquisition of the subject private lands by the Department of Transportation, subject to the terms and conditions cited above which are by this reference incorporated herein, and further subject to the completion or issuance of the following items:

1. Standard terms and conditions of the most current deed document form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and,
3. Such other terms and conditions as may be prescribed by the Land Board Chairperson and Director of Transportation to best serve the interests of the State.

B. 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:

1. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
2. 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;
3. Review and approval by the Department of the Attorney General; and,
4. Such other terms and conditions as may be prescribed by the Land Board Chairperson to best serve the interests of the State.

Respectfully submitted,



**GLENN M. OKIMOTO, Ph. D.
Director of Transportation**

Attachment

APPROVED FOR SUBMITTAL:



**WILLIAM AILA, JR
Chairperson and Member**

Approximate Boring Locations = ⊗

KUHIO BAY

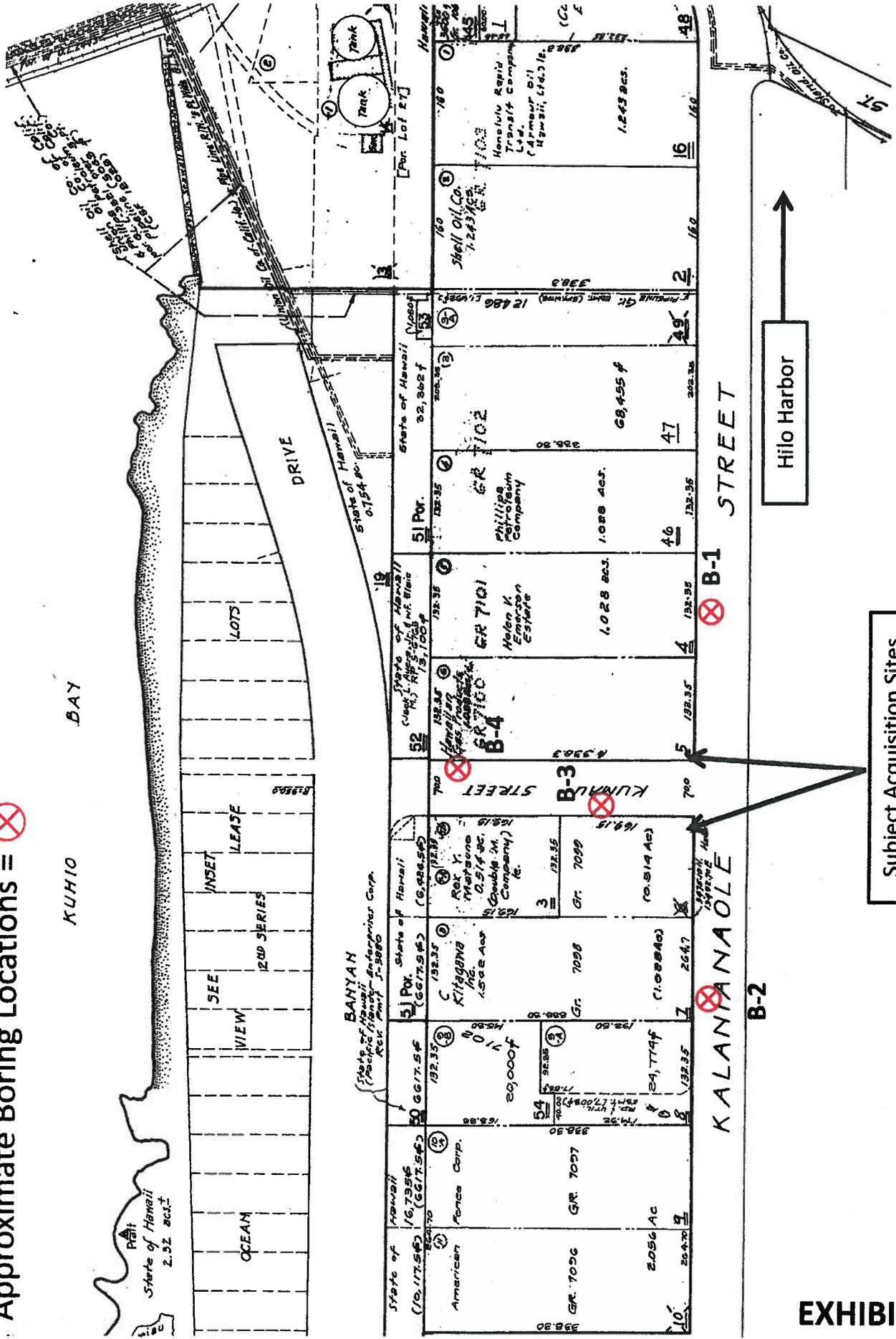


EXHIBIT B

*Kumau Street Entrance Improvements at Pier 4 Interisland Cargo Terminal Project
Hilo Harbor, Island of Hawai'i, Hawai'i*

