

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

July 13, 2012

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

Ref: 11OD-104

OAHU

Denial of Request for Contested Case Hearing by Alethea Rebman;
Amend Prior Board Action of March 9, 2012, Item D-7 by Adding the
Completion of the Environmental Assessment regarding Quitclaim of
State's Interest, if any, in Kalia Road to the City and County of Honolulu,
Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-6-008:adjacent to 001

The petitioner, Ms. Alethea Rebman, requested a contested case hearing concerning the proposed quitclaim of State's interest, if any, over Kalia Road to the City and County of Honolulu. We recommend that the Board deny the petition for a contested case hearing filed by Ms. Alethea Rebman that was received by the Land Division on March 19, 2012.

BACKGROUND:

On March 9, 2012, under agenda item D-7, the Board authorized the quitclaim of interest, if any, over Kalia Road to the City and County of Honolulu. A copy of the approved submittal is attached as **Exhibit 1**.

By her letter dated March 19, 2012, Ms. Alethea Rebman filed a petition for contested case hearing regarding the above-referenced Board action. She supplemented her petition by a completed petition form dated March 20, 2012. Both documents are now attached as **Exhibit 2** and **3**. Ms. Rebman's disagreed with the staff recommendation asking the Board exempt the request from Chapter 343 Environmental Assessment pursuant to the exemption class provided in Hawaii Administrative Rules Section 11-200-8(a)(1) and (4).

Land Division, after consultation of the Department of the Attorney General, recommends denial of the request.

DISCUSSION:

Subsequent to receipt of the petition filed by Ms. Rebman, Land Division learned that an environmental impact statement ("EIS") process was actually completed by Hilton Hawaiian Village Beach Resort & Spa for its Hilton Hawaiian Village Master Plan. In the Final EIS, section 3.3.9, page 3-48, the remnant under the subject request is described as "... 8,200 SF of TMK 2-6-5:1 (portion), which is currently owned by the City and County of Honolulu ... [t]he parcel would be acquired to complete and anchor the

landscape and pedestrian walkway scheme ... [t]he process of acquisition is currently ongoing with the appropriate City agencies ..."

The acceptance of this Final EIS was published in the Environmental Notice of the Office of Environmental Quality Control on July 8, 2011. Pursuant to HRS §343-7(c), there was a sixty-day period from the date of publication of the acceptance in which judicial action could have been brought to challenge the acceptance. This period has past, precluding the initiation of court action.

For the Board's information, the map attached to the March 9, 2012 (item D-7) as Exhibit C thereof matches the remnant road parcels shown on the maps included within the Final EIS.

Based on the above-mentioned, Ms. Rebman's petition for contested case hearing was based on mistaken information. Under the March 9, 2012 Board action, no challenge could have been made to the Final EIS. Therefore, staff recommends the Board deny Ms. Rebman's petition due to the lack of a right to a contested case hearing.

AMENDMENT OF PRIOR ACTION

Due to the latest finding of the publication of the Final EIS involving the master development plan, which included the subject area, staff recommends the Board amend its prior action of March 9, 2012, item D-7, by replacing the entire "CHAPTER 343-ENVIRONEMTNAL" paragraph with "Final EIS including the subject area was published on July 9, 2011." Further, all references to the exemption from environmental assessment shall be removed accordingly.

RECOMMENDATION: That the Board

1. Deny the petition for a contested case hearing filed by Alethea Rebman due to lack of right to a contested case hearing.
2. Amend its prior action of March 9, 2012, item D-7 by replacing the paragraph regarding the environmental assessment as noted above, and removing all references regarding the exemption from environmental assessment in the entire Board submittal

Respectfully submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

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

March 9, 2012

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

PSF No.: 110d-104

OAHU

Quitclaim of State's Interests, if Any, in Kalia Road to the City and County of Honolulu, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-6-008:adjacent to 001

APPLICANT:

City and County of Honolulu.

LEGAL REFERENCE:

Sections 171-95(a)(5) and 264-2, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waikiki, Honolulu, Oahu, identified by Tax Map Key: (1) 2-6-008:adjacent to 001, as shown on the attached map labeled **Exhibit A**.

AREA:

8,272 square feet, more or less.

ZONING:

State Land Use District: Urban
City and County of Honolulu LUO: Resort Mixed Use Precinct

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:

Existing County road.

CONSIDERATION:

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

EXHIBIT " 1 "

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that 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 Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." (See **Exhibit B**)

APPLICANT REQUIREMENTS:

None. City and County of Honolulu has provided survey maps and descriptions for the subject area.

REMARKS:

The subject remnant was a portion of land acquired in 1895 filed in the department by Land Office Deed 431. Over the years, it was used as portion of Kalia Road until re-alignment of the road as shown on the map attached as **Exhibit C**. The State was not involved in the maintenance of the subject road.

The City is in the process of conveying the subject area to the abutting private owner, and requests the Board authorize the issuance of a quitclaim deed over the subject area to the City.

Pursuant to Section 264-2, HRS, the ownership of all "public highways" (roads, alleys, streets, ways, lanes, bikeways, and bridges in the State, opened, laid out, or built by the government) are owned either by the State for state highways under the jurisdiction of the Department of Transportation or the county for all other public highways. While ownership was transferred by operation of law pursuant to this statutory section, the counties have continued to dispute that they own the roads because they do not have paper title.

Act 288, SLH 1993, stated in its preamble "In consideration of the State waiving its right to have the proceeds from the sale of county public highways remitted to the State, the counties shall acknowledge ownership and jurisdiction of all disputed public highways within their respective counties, as defined in section 264-1, HRS, without the necessity of conveyancing documents transferring title from the State to the respective counties, except when required for the purpose of disposal." (Emphasis added.)

As a result, it is staff's practice that formal documentation (i.e., quitclaim deeds) be issued on roads owned by the counties under Section 264-2, HRS, only when the county is going


to subsequently dispose of any real property interests (fee conveyance or any interests less than fee) in at least a portion of the road to a third party. In all other cases, the State's position is that the fee simple interest in the road was passed to the counties by operation of law and documentation is unnecessary. This policy provides for the chain of title and enables subsequent real estate transactions to occur. This policy should not be misconstrued to mean or imply that the State does not assert that the roads being quitclaimed are already owned by the applicable county.

To enable the City to convey the subject area to the abutting owner, staff is recommending the issuance of a quitclaim deed. The form of the deed has been approved by the Department of the Attorney General and contains specific wording that the State is releasing and disclaiming any interest since it is our assertion that the County already owns the road.

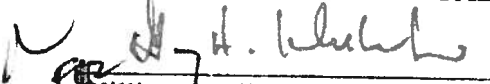
RECOMMENDATION: That the Board,

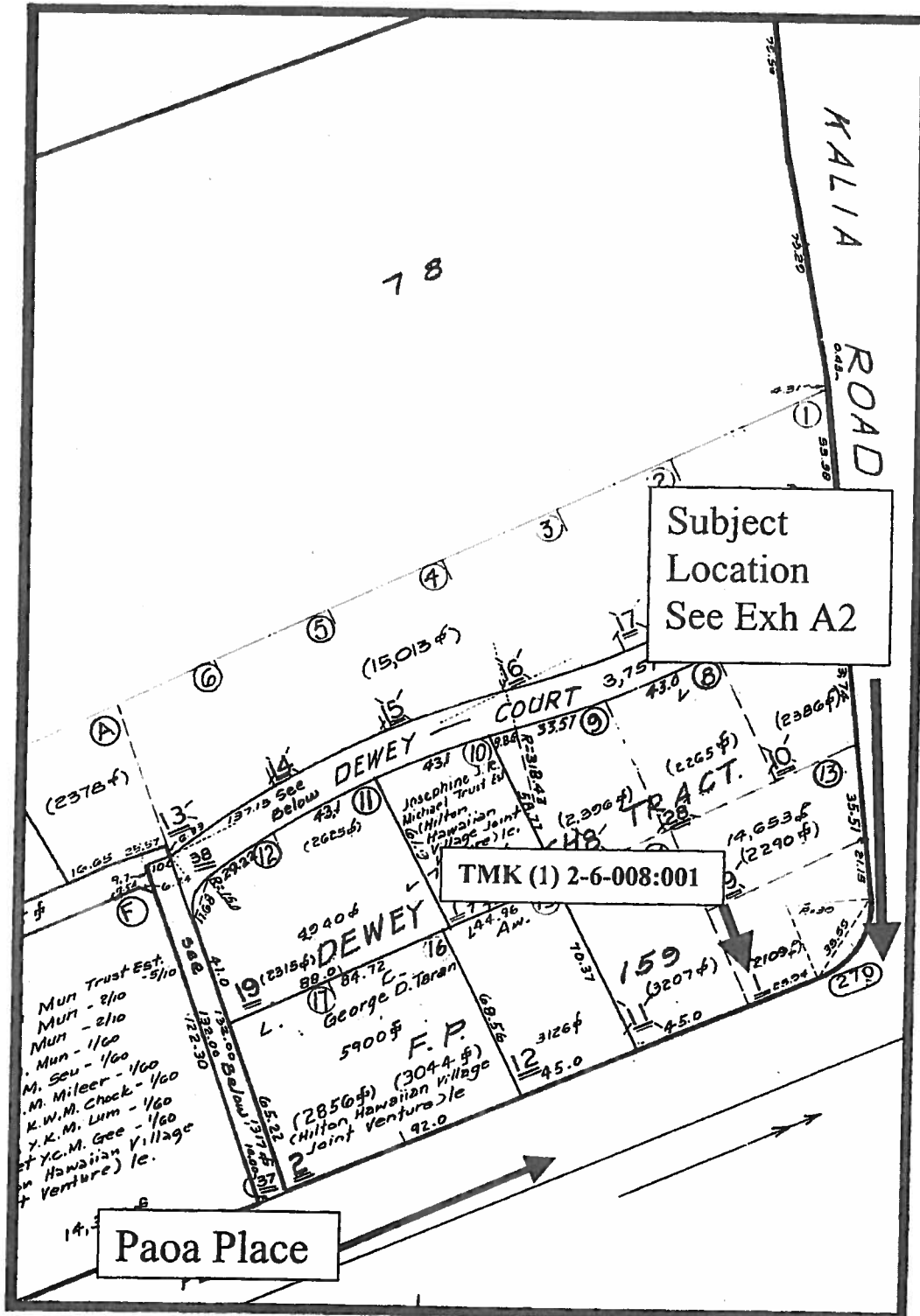
1. Subject to a determination by the Department of the Attorney General, find that the State does not own the subject property or any interest in it.
2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project 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 quitclaim of interests, if any, the State may have in the subject roadway parcel to the City and County of Honolulu 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 (roads) 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,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson



TMK (1) 2-6-008:portion of 001

EXHIBIT A

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Quitclaim of State Interest over Kalia Road

Project / Reference No.: PSF 110d-104

Project Location: Honolulu, Oahu, Tax Map Key: (1) 2-6-008:adjacent to 001

Project Description: Quitclaim of State Interest, if any.

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

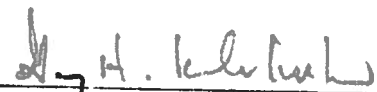
Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that 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".

Staff understands the subject remnant has been used as part of the roadway. The City and the abutting private owner are not planning to change the use of the subject remnant. Therefore it is recommended that the subject request be exempted from an environment assessment.

Consulted Parties Not applicable

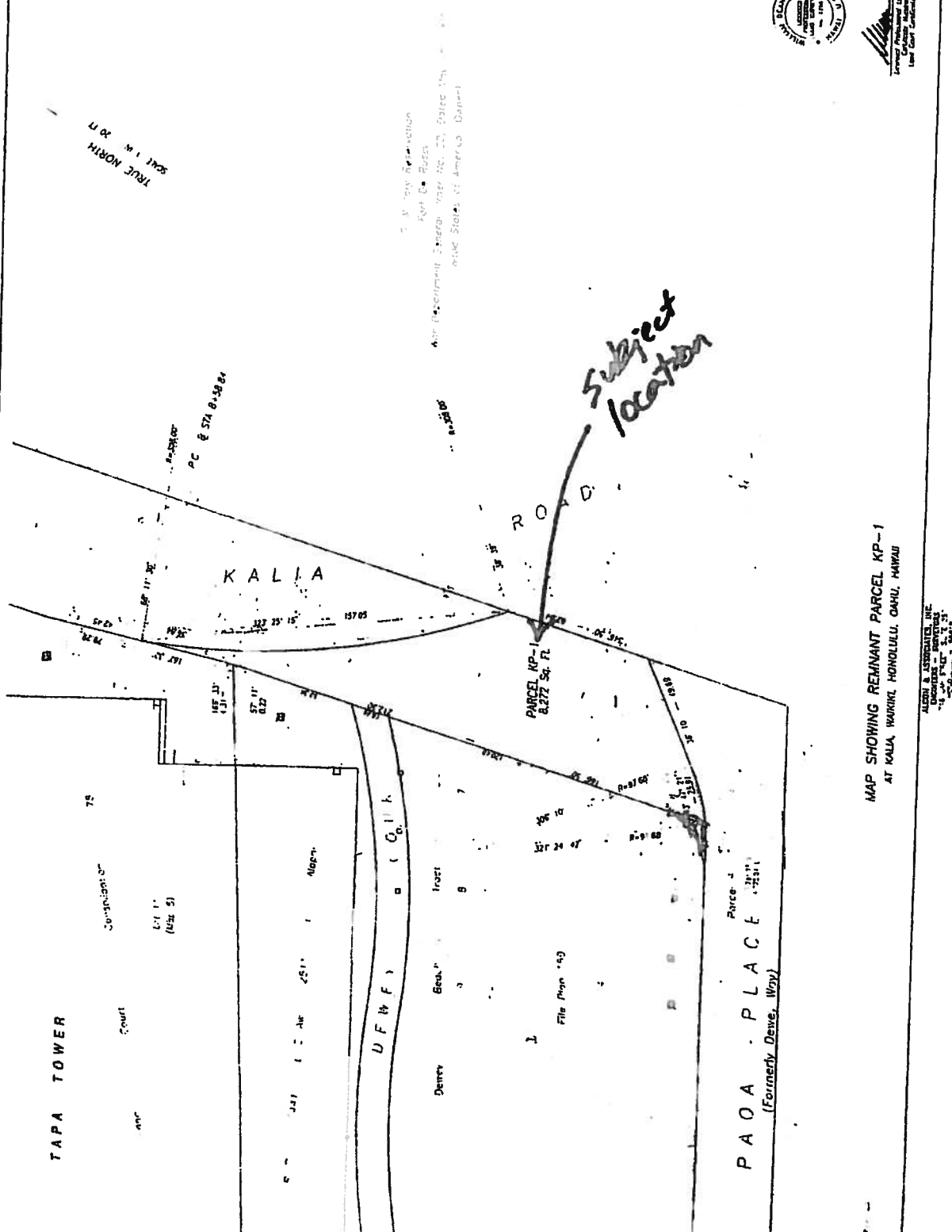
Exemption Item Description
from Agency Exemption List: Not applicable

Recommendation: It is recommended that the Board declare that 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

2.23.12
Date

EXHIBIT B



TRUE NORTH
Scale 1" = 20'

T. V. Perry Resolution
Right of Easement
Map (Resubmittal) General Order No. 20, Dated May 1, 1955
inside State of America (Japan)

Subject Location



ALON & ASSOCIATED, INC.
Professional Land Surveyors
1001 Kalia Road, Honolulu, Hawaii

MAP SHOWING REMNANT PARCEL KP-1
AT KALIA, WAIKIKI, HONOLULU, OAHU, HAWAII

ALON & ASSOCIATED, INC.
Professional Land Surveyors
1001 Kalia Road, Honolulu, Hawaii

PAOA PLACE
(Formerly Desue, Way)

PARCEL KP-1
8,272 Sq. Ft.

TAPA TOWER

KALIA

DUFFY COIL

DUFFY

Parcel 1

File Map 153

LAW OFFICE OF ALETHEA REBMAN

ALETHEA KYOKO REBMAN

RECEIVED
LAND DIVISION

1003 BISHOP STREET, STE. 1110
HONOLULU, HAWAII 96813

(808) 545-7035

alethea@rebmanlaw.com

2012 MAR 19 P 3 11

March 19, 2012

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

State of Hawaii
Board of Land and Natural Resources
1151 Punchbowl Street, Room 130
Honolulu, HI 96813

RE: Petition for Contested Case Hearing regarding Item D.7. to Quitclaim Property without an Environmental Assessment approved at the Board of Land and Natural Resources Meeting on March 9, 2012

Dear Board Members,

As discussed during the above-mentioned meeting, I am submitting an appeal to the decision by the Board of Land and Natural Resources (the Board) and requesting a contested case hearing regarding the quitclaim of property that will not be used for purposes of a road and therefore is not exempt from the requirements of an Environmental Assessment by the State.

As noted during the testimony, the subject property is being transferred from the City and County of Honolulu to the adjacent owner, for the proposed development of Hilton Hawaiian Time Share condominiums and not for purposes of a road as described in the justification of the quitclaim. The State of Hawaii is not exempt from Hawaii Administration Rules Section 11-2008(a)1 and (4) as stated in the recommendations, PSF No.: 11od-104, to the Board.

The proposed development by Blackstone Group, a New York private equity firm, will be a major impact to the community and affect me directly as an adjacent home owner. The inclusion of this property expands the footprint of the proposed development and developable floor area along with myriad of other environmental impacts to this area.

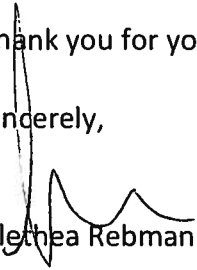
I am requesting the state to reconsider its approval of the quitclaim of this property to the City and County of Honolulu without proper environmental review by the State, and instead conduct the required Environmental Review. We believe this is especially important because the proposed development is in the Special Management Area and, in part, affects the Coastal Zone Management issues.

EXHIBIT "2"

In addition, this property is in the highest density area of the entire state of Hawaii. The increase of development will obviously impact the public infrastructure and the surrounding neighborhood. The neighbors have already expressed concern over this area and they deserve open discourse on the State transferring this land to be developed. To claim this property is to remain a road is a ruse to avoid the public review process. This property should not be transferred improperly.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alethea Rebman', written over the printed name.

Alethea Rebman

cc: Rep. Tom Brower
Sen. Brickwood Galuteria
Councilmember Stanley Chang, Esq.
Waikiki Neighborhood Board
Sierra Club
Jeffrey Smith, J3 Engineering



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

1. File (deliver, mail or fax) this form within ten (10) days of the Board action date to:

Department of Land and Natural Resources
Administrative Proceedings Office
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813
Phone: (808) 587-1496, Fax: (808) 587-0390

2. DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://hawaii.gov/dlnr/rules/Ch13-1-Official-Rules.pdf>). Please review these rules before filing a petition.
3. If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
4. Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Alethea Rebman	2. Contact Person	
3. Address	4. City Honolulu	5. State and ZIP HI, 96813
6. Email	7. Phone	8. Fax

B. ATTORNEY (if represented)		
9. Attorney Name	10. Firm Name	
11. Address	12. City	13. State and ZIP
14. Email	15. Phone	16. Fax

C. SUBJECT MATTER

17. Board Action Being Contested

Quitclaim of State's Interest in Kalia Road to the City and County of Honolulu, Waikiki,

Honolulu, Oahu, Tax Map Key: (1) 2-6-008: adjacent to 001

18. Board Action Date

March 9, 2012

19. Item No.

D.7.

20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action

The proposed disposition of land is prepared to transfer the property from the City and County of Honolulu to the adjacent owner in the development of a multi-story time-share development by the Blackstone Group, a New York private equity group. This development will be a major impact to the community and will affect me directly as an adjacent home owner.

21. Any Disagreement Petitioner May Have with an Application before the Board

Disagree with the Land Agent claim that the request is exempt from Chapter 343 Environmental Assessment in accordance with Hawaii Administrative Rules Section 11-200-8(a)(1) and (4) for land involving negligible or no expansion or change in use and the recommendation for approval of the proposed disposition because the project will have minimal or no significant effect on the environment.

22. Any Relief Petitioner Seeks or Deems Itself Entitled to

Request that the Board reconsider its approval of the quitclaim of this property to the City and

County of Honolulu and conduct the required Environmental Review.

23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest

This is the highest density area in the state of Hawaii and this transfer of land will directly affect the surrounding neighborhoods. Petitioner is representative of the neighborhood and specifically of full-time Hawaii residents who live and work here. Petitioner's participation would serve the public interest by providing proper process and transparency in this transfer of public land.

24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR

Petitioner's residence

Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.

Alethea Rebman

Petitioner or Representative (Print Name)

Signature

3/20/12

Date