

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.: 09HD-016

Hawaii

Amend Prior Board Action of December 11, 2009, Agenda Item D-9, Sale of Abandoned State Road Reservation to Owners of Lots 1, 2A, 2B, 4, 5B, 6, 7, and 35, Lalamilo Farm Lots, Lalamilo and Waikoloa, South Kohala, Hawaii, Tax Map Keys: 3rd/6-6-05:19, 20, 22, 24, 25, 27, 29 & 32.

BACKGROUND:

At its meeting of December 11, 2009, Agenda Item D-9 (Exhibit A), the Land Board approved the sale of an abandoned road reservation to eight lot owners in the Lalamilo Farm Lots and identified as Lalamilo and Waikoloa, South Kohala, Hawaii, Tax Map Keys: 3rd/6-6-05:19, 20, 22, 24, 25, 27, 29 & 32. The lot owners were identified as follows:

- Lot 1 Royce Hirayama and Charlene Hirayama, husband and wife, as tenants by the entirety.
Nathan Hirayama and Cheryl E. Hirayama, husband and wife, as tenants by the entirety.
- Lot 2A Lalamilo Farm Partners, L.P. a Hawaii Partnership
- Lot 2B Leslie Kameki Imaoka, Glenn Takao Imaoka, Marion Sachie Imaoka, and Eunice Sanae Laybon as Tenants in Common.
- Lot 4 Kawamata Farms, Inc.
- Lot 5B Earl T. Yamamoto
- Lot 6 Raleigh T. Sakato, Trustee
- Lot 7 Kiyosugu Hirako, Trustee
Shizuko Hirako, Trustee
- Lot 35 Roy S. Hori, Trustee
Nobuko Hori, Trustee

REMARKS:

Although the Board consented to the sale of the abandoned road reserve on December 11, 2009, the appraisal process was not completed until August 28, 2012. Subsequent to the Board approving the above action, ownership for the following three lots have changed. The new owners at the time the appraisals were conducted are:

- Lot 2B Amber Taeko Imaoka Duarte and Gabe Takao Imaoka (25% interest from the estate of Glenn Takao Imaoka) Tenants in Common
- Lot 6 Myles H. Tomiyama and Sandra S. Tomiyama, Thomas Jay Veriato, Trustee, Tenants in Common
- Lot 35 Roanne H. Yagi, Trustee

In addition to the changes in the owners of the above described lots, a correction to one of the names of lot 7 owner is required. The correct name is *Kiyotsugu* Hirako.

Staff is recommending that the Board amend its prior action of December 11, 2009, agenda item D-9 by changing the names of the applicants for Lot 2B to remove Glenn Takao Imaoka and include Amber Taeko Imaoka Duarte and Gabe Takao Imaoka (25% interest), Lot 6 to Myles H. Tomiyama and Sandra S. Tomiyama, Thomas Jay Veriato, Trustee and Lot 35 to Roanne H. Yagi, Trustee. Staff is also recommending the spelling of the name of the owner of Lot 7 be corrected to *Kiyotsugu* Hirako.

RECOMMENDATION: That the Board:

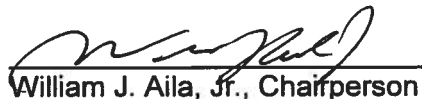
1. Amend its prior board action taken at its meeting of December 11, 2009, Agenda Item D-9 by changing the names of the applicants for Lot 2B to Amber Taeko Imaoka Duarte and Gabe Takao Imaoka (25% interest), Lot 6 to Myles H. Tomiyama and Sandra S. Tomiyama, Thomas Jay Veriato, Trustee and Lot 35 to Roanne H. Yagi, Trustee;
2. Correct the name of Lot 7 owner to Kiyotsugu Hirako;
3. Except as modified by the foregoing amendment, all terms and conditions listed in its action of December 11, 2009 shall remain the same.

Respectfully submitted,



Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

2

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

December 11, 2009

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

PSF No.: 09HD-016

Hawaii

Sale of Abandoned State Road Reservation to Owners of Lots 1, 2A, 2B, 4, 5B, 6, 7, and 35, Lalamilo Farm Lots, Lalamilo and Waikoloa, South Kohala, Hawaii, Tax Map Keys: 3rd/6-6-05:19, 20, 22, 24, 25, 27, 29 & 32.

APPLICANT(s):

- Lot 1 Royce Hirayama and Charlene Hirayama, husband and wife, as tenants by the entirety
Nathan Hirayama and Cheryl E. Hirayama, husband and wife, as tenants by the entirety
- Lot 2A Lalamilo Farm Partners, L.P. a Hawaii Partnership
- Lot 2B Leslie Kameki Imaoka, Glenn Takao Imaoka, Marion Sachie Imaoka, and Eunice Sanae Laybon as Tenants in Common
- Lot 4 Kawamata Farms, Inc.
- Lot 5B Earl T. Yamamoto
- Lot 6 Raleigh T. Sakato, Trustee
- Lot 7 Kiyosugu Hirako, Trustee
Shizuko Hirako, Trustee
- Lot 35 Roy S. Hori, Trustee
Nobuko Hori, Trustee

LEGAL REFERENCE:

Section 171-6(6), Hawaii Revised Statutes, as amended.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES *DN*
AT ITS MEETING HELD ON

December 11, 2009

ITEM D-9

LOCATION:

Lands of Lalamilo Farm Lots situated at Lalamilo and Waikoloa, South Kohala, Hawaii, and identified by Tax Map Keys: 3rd/6-6-05:19, 20, 22, 24, 25, 27, 29 & 32, as shown on the attached map labeled Exhibit A.

AREA:

Approximate areas of road reservation within the subject lots:

Lot 1	60,400 square feet	(1.387 acres)
Lot 2A	2,344 square feet	(.052 acres)
Lot 2B	43,436 square feet.	(.997 acres)
Lot 4	71,200 square feet	(1.635 acres)
Lot 5B	64,800 square feet	(1.488 acres)
Lot 6	92,048 square feet	(2.113 acres)
Lot 7	77,208 square feet	(1.780 acres)
Lot 35	54,560 square feet	(1.253 acres)

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: Agriculture-5 acre

TRUST LAND STATUS:

The Waimea Bypass Highway right-of-way reservation is considered Section 5(b) lands of the Hawaii Admission Act.

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

CONSIDERATION:

One-time lump sum payment of the difference in fair market value with and without the reservation, to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. The sale of the reservation affecting private lands would not involve the use of State lands or funds under Hawaii Revised Statutes, Chapter 343. To the extent the sale or release of the reservation relates to a property interest of the State in private lands, then the proposed disposition is exempt from the preparation of an environmental assessment under

the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, pursuant to Exemption Class No. 1 for "Operations, repairs or maintenance of existing structures, facilities, [or] equipment . . . involving negligible or no expansion or change of use beyond that previously existing".

DCCA VERIFICATION:

Kawamata Farms, Inc.:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

Lalamilo Farm Partners, L.P.:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

All other Applicants are natural persons or trusts and, as such, are not required to register with DCCA.

APPLICANTS 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 reservation;
- 2) Pay for the costs of public notice pursuant to section 171-16; and
- 3) Obtain title reports to ascertain ownership, where necessary, at Applicants' own cost and subject to review and approval by the Department.

REMARKS:

At its meeting of January 30, 1961, the Board of Land and Natural Resources approved the sale of Agricultural Farm Lots at Lalamilo, South Kohala, Hawaii, through a lottery process. The Lalamilo Farm Lots is an agricultural homestead subdivision with access to irrigation water through a State established Irrigation District. The lands within the project were partially acquired by land exchange with Parker Ranch and as a result many of the lots were conveyed from the State to the Applicants by Land Patent Grant and/or Deed. These conveyance documents included restrictions that limited uses to agriculture that was defined

as truck and orchard crops.

The Applicants own the properties north of the Lalamilo Farm Road. They are seeking to acquire a reservation in favor of the State of Hawaii to purchase an eighty (80) foot wide strip of land that was originally designated for a Waimea Bypass Highway when the State first created the Lalamilo Farm Lots Subdivision in the early 1960s. The State Department of Transportation has abandoned this route for its proposed bypass highway as indicated in a letter written by Brennon Morioka, Director of Transportation, to Roger Hirako of the Lalamilo Farmlots Association. See Exhibit B attached.

The deeds to all the lots contain reservation language providing substantially as follows:

“RESERVING ALSO to the State of Hawaii, its successors and assigns, the right to purchase the land required for the proposed Waimea Bypass Highway (80 feet wide), together with all rights of access to and from said highway, at the same unit price per acre as paid by the Grantees herein to the State of Hawaii. The location of said Waimea Bypass Highway is to be along the...[specific location] boundary of...[lot number] as shown of plan attached hereto and made a part hereof. The State shall not pay for any improvements within the 80-foot road strip and no structure of a permanent nature shall be placed thereon.”

Applicants are the owners of parcels 3rd/6-6-05:19, 20, 22, 24, 25, 27, 29 & 32 based upon staff's research of the County of Hawaii, Real Property Tax Office web site. Lot 3 (TMK: 3rd/6-6-05:21) is a State owned parcel currently encumbered under GL S-4548, recently transferred to the Department of Agriculture pursuant to Act 90, SLH 2003 and is not included in this disposition.

The 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.

By memorandum dated April 17, 2009, staff solicited comments from the agencies listed below with the following results:

Agency	Comments
State:	
Department of Health, Environmental Division	No response
Department of Hawaiian Home Lands	No comments
DLNR, DOFAW – Na Ala Hele	No response

DLNR, Historic Preservation	No historic properties will be affected by the proposed action
Department of Transportation, Highways Division	No comments
Office of Hawaiian Affairs	No response
County:	
Planning Department	Opposes the sale of the road reservation until such time as a route for the Lalamilo Connector Road between Kawaihae Road and Mamalahoa Highway is finalized and non-appealable. See Exhibit C attached.
Department of Public Works	Opposes the sale or extinguishment of the road reservation until the right-of-way for the Lalamilo Connector Road is identified and acquired. See Exhibit D attached.
Police Department	No objections
Fire Department	No comments
Federal:	
Army Corps of Engineers	No response

In addition, the Department of Agriculture submitted comments to the effect that any bypass road in the area should be separated from the Lalamilo Farm Lots by a buffer of 800-1,000 feet.

In light of the County's opposition to the sale of the road reservation, staff requested a legal opinion from the Department of the Attorney General on how to handle the situation. A deputy attorney general in the Land/Transportation Division issued a written opinion on September 16, 2009 finding that the road reservation covered the Waimea Bypass Highway project, which Brennon Morioka's letter of September 9, 2008 (Exhibit B) confirms is going forward at another location. The opinion concluded that the County cannot exercise the road reservation for its own roadway project, the Lalamilo Connector Road, because such use would be inconsistent with the specific reservation language of the Land Patent Grants and Deeds. The opinion added that the Board may negotiate a release of the reservation as requested by Applicants.

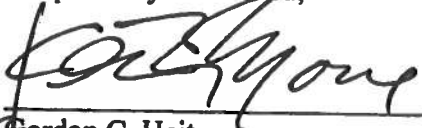
RECOMMENDATION:

That the Board:

1. 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.

2. Determine that the reservation for the Waimea Bypass Highway contained in the Land Patent Grants and Deeds for the subject properties is no longer needed since the Department of Transportation has relocated the Waimea Bypass Highway.
3. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the sale of the abandoned State road reservation to the Applicants to the extent their respective subject parcels are encumbered by the reservation, 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 sale, release or waiver of reservation 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,



Gordon C. Heit
Land Agent

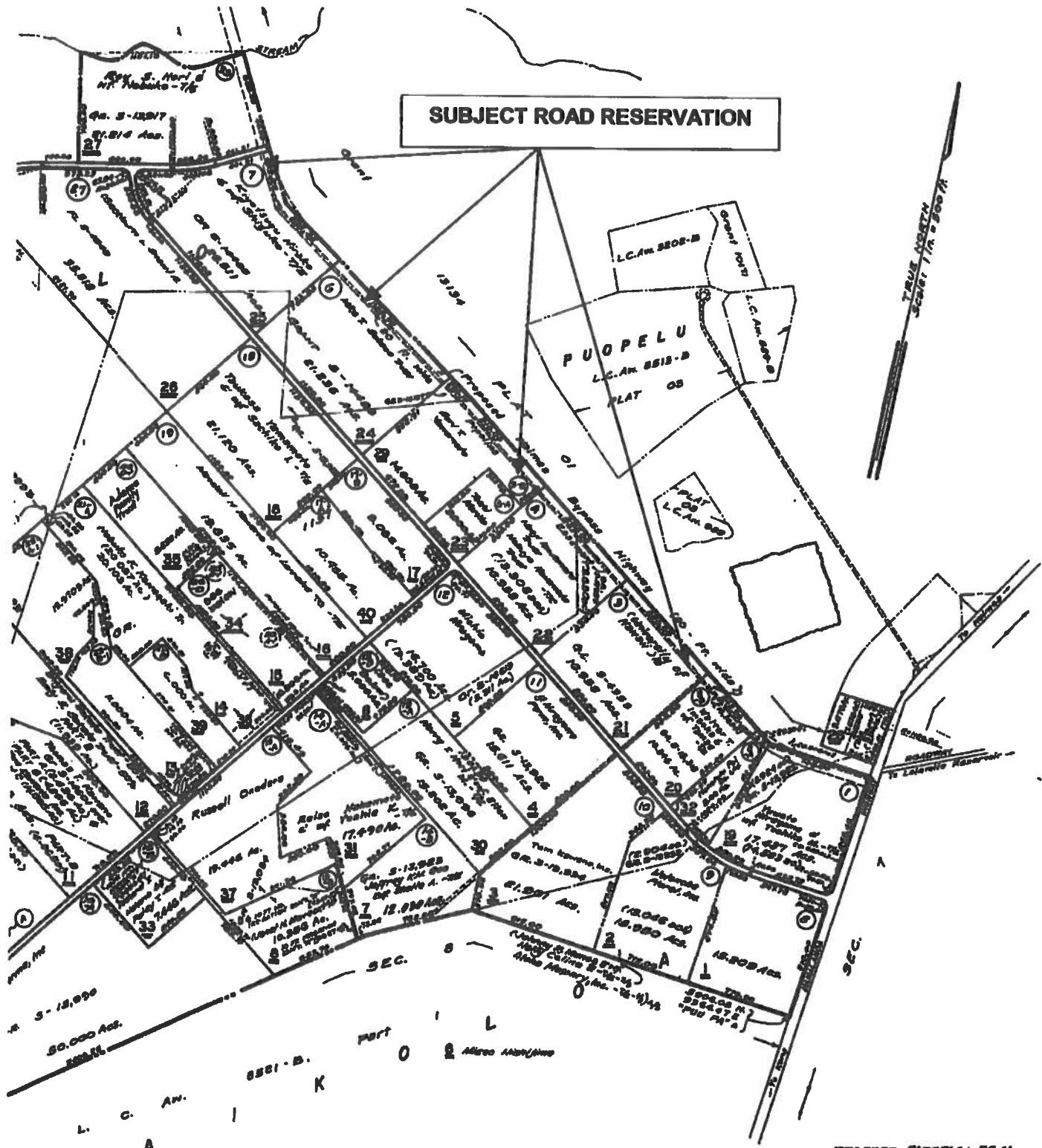
APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

EXHIBIT A

SUBJECT ROAD RESERVATION



20 (Dept. of Agriculture)
 SEC. CH. 2413
KAWAIAU VACUUM COOLING PLANT SITE
 (Kawailoa Vacuum Cooling Cooperative, Ltd.)
 Run and 2-2874 and 2-2875

15 George J. Mikkelsen & Co.
 Charles B. T. 2

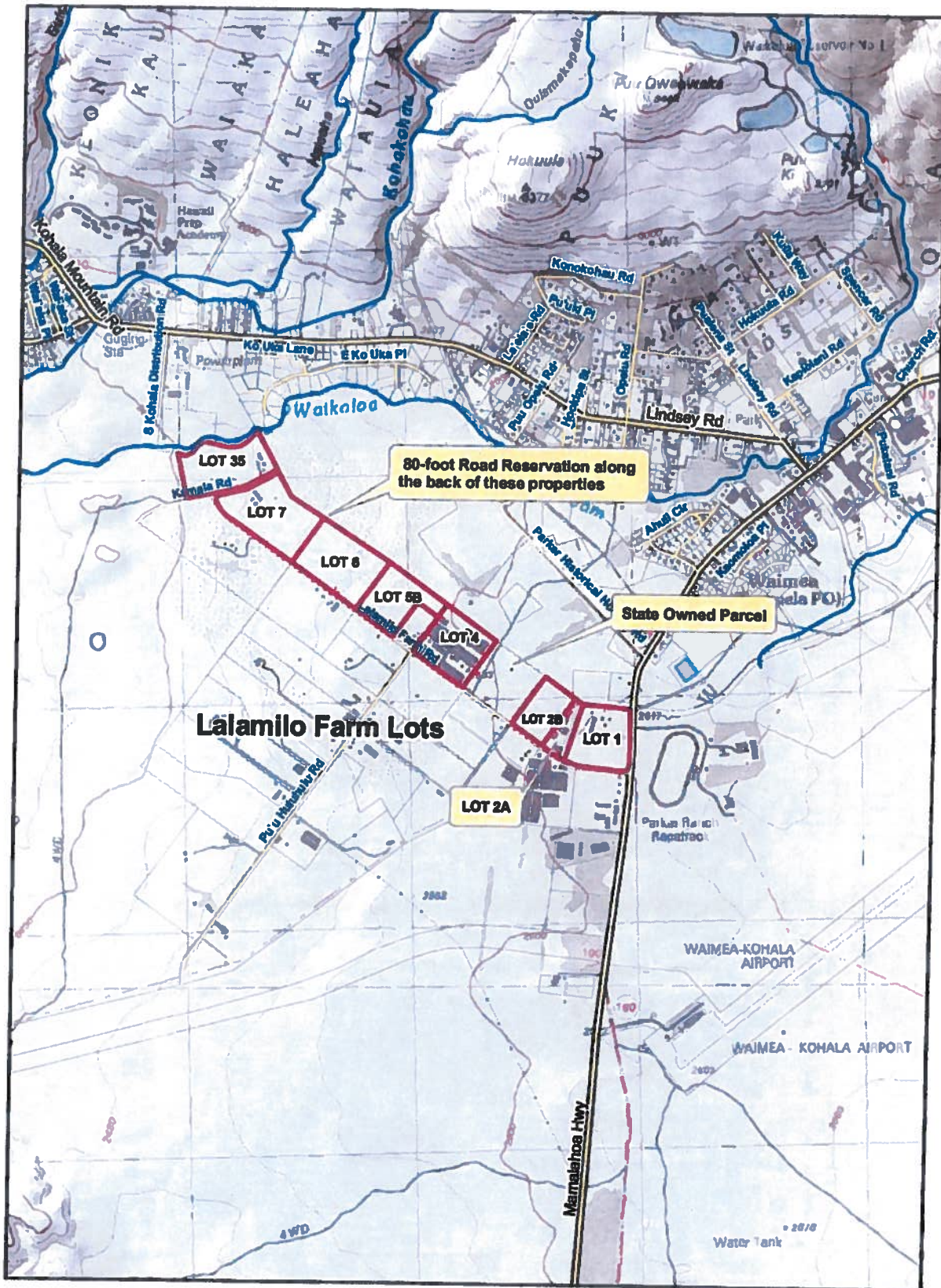
Note: All parcels owned by the State of Hawaii unless otherwise noted.

FOR REAL PROPERTY TAXATION PURPOSES
 SUBJECT TO CHANGE

DEPARTMENT OF TAXATION		
TAXATION MAPS BUREAU		
STATE OF HAWAII		
TAX MAP		
THIRD TAXATION DIVISION		
ZONE	SEC.	PLAT
6	6	05
SCALE: 1 IN. = 800 FT.		

Lalamilo Road Reserve

EXHIBIT A



LINDA LINGLE
GOVERNOR



BRENNON T. MORIOKA
DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SERIGUCHI
JIRO A. SUMADA

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
889 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5087

IN REPLY REFER TO:
HWY-R
3.86213

SEP - 9 2008

Mr. Roger Hirako
Co-Chairman, Lalamilo Farmlots Association

Kamuela, Hawaii 96743

Dear Mr. Hirako:

**SUBJECT: REQUEST TO DELETE STATE'S RIGHT TO PURCHASE LANDS
REQUIRED FOR THE WAIMEA BYPASS HIGHWAY AS FOUND IN
DEED RESERVATION IN LALAMILO FARMLOT LANDS**

Thank you for your letter dated August 6, 2008 regarding the subject matter.

The lands reserved in your Deeds are no longer required for the proposed Waimea Bypass Highway Project. You are welcome to approach the Department of Land and Natural Resources to officially request removing this reservation from the affected Deeds.

Additionally, the County of Hawaii is in the process of completing an environmental document for their Lalamilo Connector, which considers parcels at Mamalahoa Highway and the last farm lot. This proposed project has been identified in the County General Plan and in the County Waimea Traffic Circulation Plan.

Thank you for your patience in this matter. If you have any questions, please call Dean Yogi of my Right-of-Way staff at (808) 692-7325 or Ken Tatsuguchi of my Planning staff at (808) 587-1830.

Very truly yours,

A handwritten signature in black ink, appearing to be "BT", with a horizontal line extending to the right.

BRENNON T. MORIOKA, PH.D., P.E.
Director of Transportation

c: County of Hawaii, Department of Public Works

William P. Kenoi
Mayor



County of Hawai'i

PLANNING DEPARTMENT
Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720
Phone (808) 961-8288 • Fax (808) 961-8742

EXHIBIT C

BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

2009 MAY -8 P 1:19

RECEIVED
PLANNING DEPARTMENT
HAWAII

May 4, 2009

Mr. Gordon Heit
Land Agent
Land Division
Department of Land and Natural Resources
State of Hawaii
75 Aupuni Street, Room 204
Hilo, Hi 96720

Dear Mr. Heit:

SUBJECT: Acquisition of Abandoned State Road Reservation
TMK: (3) 6-6-005:0019, 20, 22, 24, 25, 27, 29 & 32; Portion of Lālāmilo Farm Lots, Lālāmilo and Waikoloa, Waimea, South Kohala, Hawai'i

We are in receipt of a request for comments regarding the acquisition of an abandoned state road reservation.

The subject eighty (80) foot wide road reservation easement was originally designated for a Waimea by-pass highway when the Lālāmilo Farm Lots Subdivision was created. This subdivision (SUB No. 1704) received final subdivision approval on September 6, 1961. The applicants are the various property owners of the properties north of the Lālāmilo Farm Road.

The Planning Department does have some concerns with the potential acquisition of the subject road reservation easement by the applicants. Although the State of Hawai'i Department of Transportation has abandoned this route for its proposed bypass highway, until such time as an actual route for the Lālāmilo Connector Road between the Kawaihae Road and the Māmalahoa Highway is finalized and non-appealable, the Planning Department opposes the sale of the road reservation. This position is also shared by the County of Hawai'i Department of Public Works. We have no further comments to offer at this time.

Mr. Gordon Heit
Land Agent
Land Division
Department of Land and Natural Resources
Page 2
May 4, 2009

If you have any questions, please feel free to contact Bethany Morrison of this office at 961-8288, extension 252.

Sincerely,

A handwritten signature in black ink that reads "BJ Leithead Todd". The signature is written in a cursive style with a large initial "BJ" and a long, sweeping underline.

BJ LEITHEAD TODD
Planning Director

BJM:cs

P:\wpwin60\Bethany\General Zoning Inquiries\DLNRacquisitionofabandonedstateroadreservation.doc

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO HAWAII

EXHIBIT D

Memorandum

Date : May 5, 2009
To : GORDON HEIT, Land Agent
From : WARREN H.W. LEE, Director



RECEIVED
LAND DIVISION
HILO, HAWAII
2009 MAY -6- P 2:40

**SUBJECT: ACQUISITION OF ABANDONED STATE ROAD RESERVATION
Lalamilo Farm Lots, Lalamilo, South Kohala, Hawai'i
Tmk: 3rd: 6-6-05: 19, 20, 22, 24, 25, 27, 29 & 32**

The Department of Public Works is conducting an Environmental Assessment/Impact Statement to establish a road between the Kawaihae Road and the Mamlahoa Highway, that we have identified as the Lalamilo Connector Road. The Lalamilo Connector Road would be located through, or in the vicinity of the subject road reservation and would be a continuation of the Parker Ranch Connector Road. When the Parker Ranch and Lalmilo Connector Roads are complete, there will be a new roadway from Kamamalu Road to Kawaihae Road that would bypass the congested Lindsey Road intersection.

The Waimea Traffic Circulation Study that was completed in December 2007 by PB Americas, Inc. for our Planning Department, identified the Parker Ranch and Lalamilo Connector Roads as a necessary element to improve traffic circulation in Waimea. Consequently, the Department of Public Works opposes the sale or the extinguishing of the subject 80 foot right of way until the right of way for Lalamilo Connector Road is identified and acquired.

Should you have any questions, please contact Galen Kuba, Engineering Division Chief at 961-8422 or at gkuba@co.hawaii.hi.us.

cc: Planning
Police
Fire