

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.: 13OD-057

OAHU

Sale of Remnant to Kathleen Y. Thomas, formerly known as Kathleen Yap Hise and Kathleen Y. Hise, Trustee of Kathleen Yap Thomas Declaration of Trust dated June 17, 1985, Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-043:portion of 003.

APPLICANT:

Kathleen Y. Thomas, formerly known as Kathleen Yap Hise and Kathleen Y. Hise, Trustee of Kathleen Yap Thomas Declaration of Trust dated June 17, 1985

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Kaneohe, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-5-043:portion of 003, shown on the attached map labeled **Exhibit A**.

AREA:

1,047 square feet, more or less.

ZONING:

State Land Use District: Urban
City and County of Honolulu CZO: R-10

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:

Vacant and unencumbered.

CONSIDERATION:

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

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 exemption notification attached as **Exhibit B**.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Provide survey maps and descriptions for both remnants according to DAGS standards and at the Applicants' own cost;
2. Pay for an appraisal to determine the one-time payment of fair market value for both remnants; and
3. Consolidate both remnants with the Applicants' abutting properties through the county subdivision process.

REMARKS:

Applicant, owner of the adjacent private property identified as tax map key (1) 4-5-043:074, requests to purchase the subject portion of the former irrigation ditch for an expansion of her house.

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 ditch was part of an irrigation system in Waikalua, Kaneohe. Waikalua consisted of lands once owned by the Territory of Hawaii that were conveyed by land patent grants reserving fee title to the ditch systems on the land to the government. The lands sold under said grants were then subdivided into lots along with their respective ditch segments. Over time, the ditch system was abandoned and the fee interest remained with the State. Site inspections on other portions of the ditch system indicate there is no visible ditch present.

Applicant is the owner of Tax Map Key: (1) 4-5-043:074 that contains a section of the subject ditch that runs through the property. The ditch area is limiting the development options on the property, including expanding the house to accommodate the medical needs of another family member. Therefore, the Applicant requests to purchase the remnant ditch area.

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.

Commission on Water Resource Management, Department of Planning and Permitting, Department of Agriculture, Department of Parks and Recreation, Department of Hawaiian Home Lands, and Board of Water Supply have no objection/comment to the subject request.


Department of Health, State Historic Preservation Division, and Department of Facility Maintenance have not responded to the solicitation of comments at the time of writing this submittal.

Office of Hawaiian Affairs requests that “Land Division staff investigate any past and potential future use of these ditches for traditional and customary practices. OHA asks that this information be provided to the BLNR so it may carry out its legal responsibilities to reasonably ensure any potential cultural practitioners safe and continued access to and through the subject area.” A copy of OHA’s letter is attached as **Exhibit C** for reference.

Staff notes other portions of the same former ditch have been sold as remnants to the abutting private owners, as shown on Exhibit A. A site visit confirmed that the requested area is filled up and is not serving any irrigation purposes any longer. As noted above, State Historic Preservation Division has not responded to our request for comment. Upon receipt of OHA’s comment, staff contacted the State Historic Preservation Division again. At the time of writing this submittal, staff has not received any response from State Historic Preservation Division. The general area has been developed into private residences, and staff is not aware of use of the ditches for customary and traditional practices. Therefore, staff recommends the Board authorize the sale of the subject portion of ditch as remnant.

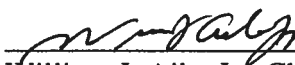
RECOMMENDATION: That the Board:


1. Find that the subject land is 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: (1) 4-5-043:074, 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. 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.
4. Authorize the subdivision and consolidation of the subject remnant by the Applicant.
5. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the sale of the subject remnant to Kathleen Y. Thomas, formerly known as Kathleen Yap Hise and Kathleen Y. Hise, Trustee of Kathleen Yap Thomas Declaration of Trust dated June 17, 1985 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.

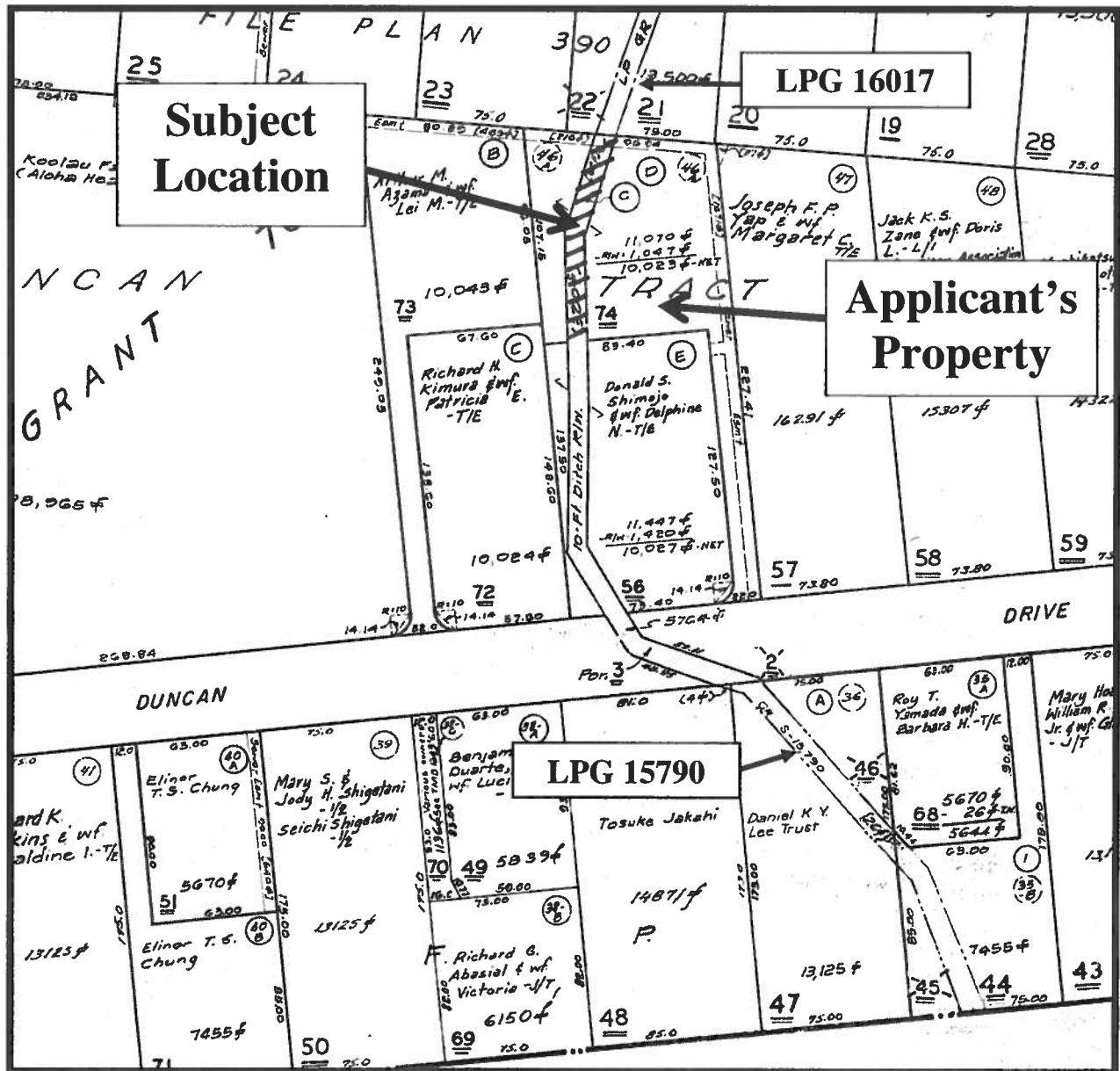
Respectfully Submitted,


 Barry Cheung
 District Land Agent

APPROVED FOR SUBMITTAL:



 William J. Aila, Jr., Chairperson




TMK (1) 4-5-043:portion of 003

EXHIBIT A

EXEMPTION NOTIFICATION

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

Project Title: Sale of Remnant

Project / Reference No.: PSF 13OD-057

Project Location: Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-043:por. 003

Project Description: Sale of Remnant

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


Exemption Class No.: 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."

The applicant does not have any long term plan for the subject remnant. There will be minimal to none alteration in the conditions of land, water, and vegetation of the subject remnant. Therefore it is recommended that the subject request be exempted from an environment assessment.

Consulted Parties Agencies noted in the submittal.

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 
 Date

EXHIBIT B



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

May 17, 2013

RECEIVED
LAND DIVISION
2013 MAY 24 AM 11:44
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Barry Cheung
District Land Agent
Department of Land and Natural Resources
1151 Kalanimoku Building
Honolulu, HI 96813

Re: Comments on draft Land Board submittals for Requests for Sale of Remnants at Waimānalo, Ko'olaupoko, O'ahu (TMK 1-4-1-024: portion of 066) and Kāne'ohē, Ko'olaupoko, O'ahu (TMK 1-4-5-043: portion of 003)

Aloha mai e Mr. Cheung:

Mahalo nui for your letters dated April 11, 2012 and April 15, 2012 transmitting the draft Land Board submittals for Requests for Sale of Remnants at Waimānalo, Ko'olaupoko, O'ahu (TMK 1-4-1-024: portion of 066) and Kāne'ohē, Ko'olaupoko, O'ahu (TMK 1-4-5-043: portion of 003), respectively, for our review. The Office of Hawaiian Affairs offers the following comments.

The Office of Hawaiian Affairs (OHA) is the constitutionally-established body responsible for protecting and promoting the rights of Native Hawaiians.¹ OHA has substantive obligations to protect the cultural and natural resources of Hawai'i for the agency's beneficiaries.² Accordingly, OHA is required to serve as the principal public agency in the State of Hawai'i responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; assess the policies and practices of other agencies impacting native Hawaiians and Hawaiians; and conduct advocacy efforts for native Hawaiians and Hawaiians.³

¹ HAW. CONST. ART. XII SEC. 5

² See HRS Chapter 10/

³ HRS § 10-3.

EXHIBIT "C"

The subject draft Land Board submittals indicate that the remnants proposed for sale are portions of abandoned irrigation ditches formerly used for the transmission of irrigation water. OHA respectfully requests that Land Division staff, in consultation with the State Historic Preservation Division, examine the potential historic significance of these irrigation ditches and report any findings in its final submittals to the Board of Land and Natural Resources (BLNR). The BLNR must be supplied appropriate information to consider whether these ditches may be considered part of historic properties eligible to be listed in the Hawai'i and/or National Historic Register and especially whether either was built upon a traditional 'auwai.

As recognized by long- and well-established case law, Hawai'i state agencies have an affirmative legal duty to reasonably protect and enforce the rights of Native Hawaiians, including access to less-than-fully developed lands for the practice of traditional and customary gathering rights.⁴ This duty includes the identification of traditional and customary practices and cultural resources that may be impacted by agency decisions affecting less-than-fully developed lands; the extent to which these practices and resources may be impacted; and any feasible actions which may be taken to reasonably protect any identified Native Hawaiian rights and cultural resources.⁵

Therefore, OHA respectfully requests that Land Division staff investigate any past and potential future use of these ditches for traditional and customary practices. OHA asks that this information be provided to the BLNR so it may carry out its legal responsibilities to reasonably ensure any potential cultural practitioners safe and continued access to and through the subject area. Given these areas' characters as ceded lands, to which Native Hawaiians never relinquished their claims; the historic and ongoing occurrence of traditional and customary practices that may occur in or adjacent to this area; and the affirmative obligations of the state to protect and enforce the rights of Native Hawaiians to engage in such practices; OHA believes providing this information to the BLNR as they consider approving these sales would be reasonable and consistent with state law and policy.

Thank you very much for your consideration of this matter.

Should you have any questions or concerns, please have your staff contact us via Kamaile Maldonado, Public Policy Advocate, by phone at (808) 594-1759 or by email at kamailem@oha.org.

'O wau iho nō me ka 'oia'i'o,



Kamana'opono M. Crabbe, Ph.D.
Ka Pouhana, Chief Executive Officer

KMC;km

⁴ See, e.g., HAW. CONST. ART. XII SEC. 7, Ka Pa'akai o ka 'Āina v. Land Use Comm'n, 94 Hawai'i 31 (2000); Pele Defense Fund v. Paty, 73 Haw. 578 (1992).

⁵ Ka Pa'akai o ka 'Āina, 94 Hawai'i at 47.