

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

March 28, 2014

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

PSF No.: 12HD-138

Hawaii

**Issuance of Right-of-Entry Permit to B T Kuwahara LLC for Road Construction
Purposes, Keonepoko Homesteads, Puna, Hawaii, Tax Map Key: (3)1-5-07:55.**

APPLICANT:

B T Kuwahara LLC, a domestic limited liability company

LEGAL REFERENCE:

Sections 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Keonepoko Homesteads situated at Puna, Hawaii,
identified by Tax Map Key: 3rd/1-5-07:55, as shown on the attached Exhibit A.

AREA:

0.937 acres, more or less.

ZONING:

State Land Use District: Agricultural
County of Hawaii CZO: A-1a (agricultural – 1 acre lots)

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:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on August 8, 2013 with a finding of no significant impact (FONSI).

DCCA VERIFICATION:

| | | |
|---|--------------|--------------|
| 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> |

REMARKS:

The subject parcel of land appears on Registered Map No. 2084, "Hawaii Territory Survey Plan of Keonepoko Homestead Lots Puna Hawaii" dated September 1903 as a 50 foot "Road Reserve". Additionally, the subject parcel is referenced as a "Road Reserve" on subsequent subdivision maps submitted to the County of Hawaii in 1955 and 1972.

The applicant, B T Kuwahara LLC (BTK), intends to establish a commercial retail center on the adjacent privately-owned land and desires to develop the subject property as the primary ingress/egress roadway for the commercial retail center (refer to Exhibit B). After development of the roadway, the County of Hawaii, Department of Public Works, will assume ownership and maintenance of the land for public roadway purposes. Staff has verified the Department of Public Works is amenable to this action (refer to Exhibit C).

At its meeting of November 9, 2012, agenda item D-2, the Board approved the issuance of a right-of-entry to BTK for the purpose of conducting an environmental assessment. The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on August 8, 2013 with a finding of no significant impact (FONSI). BTK has received a State Land Use District Boundary Amendment and Change of Zone for its private lands from the County of Hawaii, Planning Department.

The dimensions of the subject property, approximately 50 feet in width and 820 feet in length, are consistent with the proposed use as a public roadway. The historical maps indicate this property was originally conceived to be used as access through Keonepoko Homesteads.

There is a longstanding disagreement between the State and the counties regarding ownership of certain roads deemed "roads in limbo". The Public Lands statute excludes "land being used for roads and streets" from description of the types of lands over which the Board of Land and Natural Resource has jurisdiction. HRS Section 171-2. Other

statutes and acts provide that any public road that is not a State highway is a county highway. See HRS Sections 264-1, et seq.; Act 288 Session Laws of Hawaii 1993. While ownership has been transferred by operation of law pursuant to these statutory sections, the counties have continued to dispute that they own these roads because they do not have paper title.

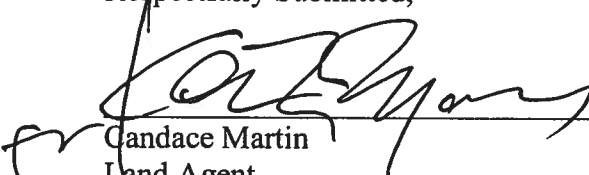
Accordingly, the subject land may not be under the Board's jurisdiction, even though it is not presently developed as a public road. However, to prevent this jurisdictional issue from being an impediment to the proposed project, staff is recommending below that the Board approve the issuance of the requested construction right-of-entry to the extent the Board has any right, title or interest in and to the land.

RECOMMENDATION:

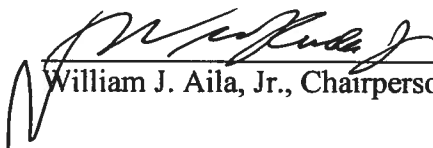
That the Board, to the extent it has any right, title or interest in and to the subject land:

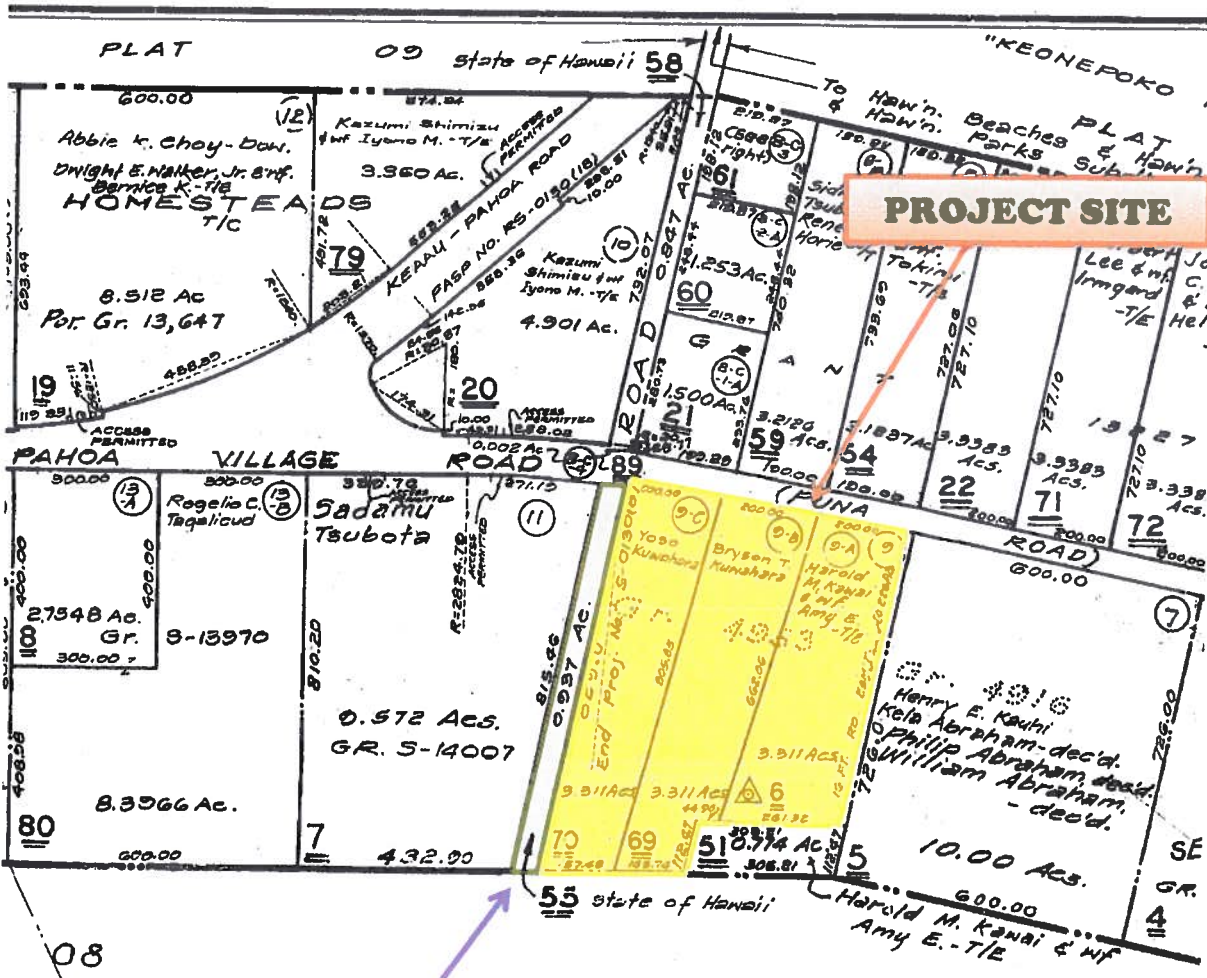
1. Issue a right-of-entry permit to BT Kuwahara LLC for road construction purposes under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - a. The terms and conditions of the most current right-of-entry permit, as may be amended from time to time; and
 - b. The road will be constructed to County of Hawaii dedicable standards; and
 - c. The road will not be open for public use until the County of Hawaii accepts the road into their inventory; and
 - d. 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



PROJECT SITE

SUBJECT PROPERTY

NOTE. Parcels 62, 63, 64, 65, 66 owned by state of Hawaii & leased to Haw'n Greenhouse, Inc., per G.L. 9-3940 and sub-leased as noted.

Hawaii

EXHIBIT C

PLANNING DEPARTMENT
COUNTY OF HAWAII

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII

JUL 12 PM 1:23

DATE: June 3, 2013

Memorandum

TO: Daryn S. Arai, Planning Department

FROM: *DK* Department of Public Works, Engineering Division

SUBJECT: **BT KUWAHARA EA - KAHAKAI BLVD EXTENSION**
State Land Use Boundary Amendment App. (SLU 12-000033)
Change of Zone Application (REZ 12-000155)
Applicant: B. T. Kuwahara, LLC
Request: Agricultural to Urban and A-1a to CV-10
Tax Map Keys: 1-5-07: 006, 069, & 070

In response to your email of May 30, 2013, we provide the following.

Regarding Department of Public Works, the process should be as determined by Office of the Corporation Counsel with the accepting authority being the Hawaii County Council. We'll recommend dedication provided it's constructed to dedicable standard as set by standard detail R-32. The non-standard aspect is that it'll be 55' wide instead of 60'. To accommodate the non-standard width, we propose a slight modification to the detail to extend the opposite side pavement from 21' to 25'. This would also allow for a smooth transition into the Pahoa Village Road that has a similar section without curb, gutter, & sidewalk. Refer to the enclosed sketch (enlarged to show detail).

Note: If constructed to dedicable standard the County of Hawaii must accept dedication [see HRS 264-1(c)(2) below]:

"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 resolution thereof having the effect of law, the legislative body of the county will accept the dedication or surrender of the same without exercise of discretion."

If the Extension is to be built to a lessor standard, then we believe the Hawaii County Council will have discretion.

Questions may be referred to Kelly Gomes at ext. 8327.

Enclosure