

NEIL ABERCROMBIE  
GOVERNOR



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

GLENN M. OKIMOTO  
DIRECTOR

Deputy Directors  
JADE T. BUTAY  
FORD N. FUCHIGAMI  
RANDY GRUNE  
JADINE URASAKI

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: 3<sup>RD</sup> 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: 3<sup>rd</sup>/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.*”

**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 its 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: 3<sup>rd</sup>/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:



for WILLIAM AILA, JR  
Chairperson and Member

NEIL ABERCROMBIE  
GOVERNOR



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HAWAII

ACQUISITION OF PRIVATE LANDS AND SET ASIDE TO THE COUNTY  
OF HAWAII FOR ROADWAY PURPOSES, HILO, ISLAND OF HAWAII,  
TAX MAP KEY: 2<sup>ND</sup> 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: 3<sup>rd</sup> 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: 3<sup>rd</sup> Division, 2-1-07:Por 05: 263 square feet, more or less  
TMK: 3<sup>rd</sup> Division, 2-1-07:Por 07: 263 square feet, more or less

ZONING:

TMK: 3<sup>rd</sup> Division, 2-1-07:05:

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

TMK: 3<sup>rd</sup> Division, 2-1-07:07:

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

CURRENT USE:

TMK: 3<sup>rd</sup> 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: 3<sup>rd</sup> 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 I. 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:

BLNR – Acquisition of Private Lands  
Set Aside to Department of Transportation  
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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

