

STATE OF HAWAII
DEPARTMENT OF EDUCATION
OFFICE OF SCHOOL FACILITIES AND SUPPORT SERVICES
Honolulu, Hawaii 96813

December 12, 2014

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

HAWAII

This action before the Board of Land and Natural Resources (“Board”) involves acquisition of private land and set aside to the Department of Education for educational purposes; Issuance of Management Right of Entry; North Kona, County of Hawaii, TMK: (3) 7-5-020:079

APPLICANT AGENCY:

Department of Education (“DOE”)

PRIVATE LANDOWNER:

STANFORD CARR DEVELOPMENT, LLC (“SCD”), a Hawaii limited liability company whose business and mailing address is 1100 Alakea Street, 27th Floor, Honolulu, Hawaii 96813.

LEGAL REFERENCE:

Hawaii Revised Statutes (“HRS”) Sections 107-10, 171-11, and 171-30, as amended.

LOCATION:

Subject parcel is situated in North Kona, County of Hawaii, identified as Tax Map Key: (3) 7-5-020:079, adjacent to Kahakai Elementary School (“KES”), as shown on the attached map labeled Exhibit A.

AREA:

4.045 acres

ZONING:

State Land Use District: Urban
County of Hawaii: Residential (RS-10)

CURRENT USE:

Vacant and unimproved.

CONSIDERATION:

None. SCD is providing the subject land at no cost to the State.

to construct a pedestrian and bicycle pathway over and across the subject parcel to link the school and the Kahakai Estates subdivision which is adjacent to the campus. Parcel will also permit future expansion of KES facilities and serve as an emergency evacuation route.

HAWAII REVISED STATUTES CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This proposed land acquisition involves a gratis land dedication which does not require the use of State funds and is therefore exempt from the provisions of HRS Chapter 343, relating to environmental impact statements. To the extent that Chapter 343 requirements apply to DOE's use of the lands, DOE shall be responsible for compliance with said chapter, as amended.

APPLICANT REQUIREMENTS:

SCD has met the following requirements:

- 1) Processed and obtained subdivision approval at its own cost;
- 2) Provided survey maps and descriptions for the subject property in accordance with State Department of Accounting and General Services ("DAGS") standards and at its own cost;
- 3) Obtained a title report for the subject property at its own cost; and
- 4) Paid for and conducted a Phase I environmental site assessment.

REMARKS:

An Education Contribution Agreement ("Agreement") was executed on April 15, 1999 between SCD and DOE for a school expansion parcel in Kahakai Estates, a private residential development in Kailua-Kona on the Island of Hawaii.

The Agreement states that SCD would dedicate 4.045 acres of land, more or less, to the State as an educational contribution to satisfy the DOE's fair-share requirement for school development. The fair-share requirement was set by the County of Hawaii in its rezoning approval process, Ordinance No. 91-21, effective March 15, 1991 and Ordinance No. 00-1, effective January 20, 2000.

KES is a neighborhood school, where 90% of the approximately 600 students live within one mile of the campus. There are significant obstacles to safe pedestrian and bicycle routes to the campus from the area's residential subdivisions.

The BLNR provided its approval in principle of subject property at its January 13, 2012 meeting as item D-11.

DOE's due diligence findings are summarized below for your review and consideration.

Survey Maps and Descriptions: Subdivision of the subject site was approved and filed on January 20, 2000. Final subdivision approval was pursuant to Section 25-8-3, Article 8, Chapter 25 (Zoning Code) of the Hawaii County Code (Ordinance 00-1, Amending Ordinance 91-21). There is a restriction of vehicular access along one side of the subject property. This restriction

does not appear to impede development of the subject site for school use.

Title Report: SCD submitted a title report prepared by Title Guaranty of Hawaii, Inc., last revised June 19, 2014. Said report does not identify any breaks in title or claims against SCD's fee simple interest. Said report does, however, reflect the restriction of vehicle access discussed earlier in this submittal. Kahakai Estates is a private residential development and therefore, its roads will not be dedicated to the County of Hawaii.

Phase 1 Environmental Site Assessment: Bureau Veritas North America, Inc. ("BV") prepared an updated Phase I Environmental Site Assessment report dated September 5, 2014. Based on reviews of historic records, photographs, maps, and interviews with people familiar with the property, BV reported that no recognized environmental conditions ("RECs") were revealed on the subject property, as defined by the American Society for Testing and Materials ("ASTM"). A copy of the Executive Summary from the Phase I Environmental Site Assessment report is attached as Exhibit B.

Conveyance Document:

A copy of the proposed draft conveyance document is attached as Exhibit C. It should be noted that the attached document contain two material differences from the State's standard warranty deed.

1. Hazardous waste testing provision: SCD has requested that the term of for which it would be responsible for any testing related to the release of hazardous materials by Grantor on or adjacent to the Property be limited for a period of two (2) years after the recordation date of the conveyance document. The proposed language reads as follows:

“AND, the Grantor warrants that if any governmental agency shall 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, for a period of two (2) years after the recordation date of this Warranty Deed, 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.”

2. Additionally, the State's standard hazardous waste indemnity deed provision will not be omitted from the final deed document form, but has been revised to read as follows:

"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*; provided, however, that the foregoing indemnity shall not apply to the extent of any release of hazardous materials on or about the Property by Grantee or any persons acting through or under Grantee."

The Attorney General ("AG") has reviewed and accepted these revisions for purposes of this land acquisition.

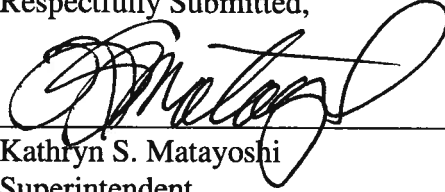
RECOMMENDATION: That the Board:

1. Provide final approval for the acquisition of the subject land under the terms and conditions cited and further subject to the following:
 - A. The standard terms and conditions of the State's most current warranty deed document form, as amended herein;
 - B. Review and approval by the AG;
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

2. Approve of and recommend to the Governor the issuance of an executive order setting aside subject land to DOE under the terms and conditions cited above, which are by this reference, incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. 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;
 - C. Review and approval by the AG; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

3. Issuance of a right-of-entry agreement (“ROE”) from DLNR which would allow DOE access to property for the purposes of site investigation and construction of a pedestrian and bicycle pathway over and across the subject parcel to and from KES and the Kahakai Estates subdivision. This ROE would become effective upon transfer of the property to the DLNR and terminate upon issuance of an executive order setting the subject lands to DOE.

Respectfully Submitted,



Kathryn S. Matayoshi
Superintendent
Department of Education

APPROVED FOR SUBMITTAL:



William J. Aila Jr., Chairperson

EXHIBIT A

View as: Google Earth | Bird's Eye | Google Maps A
Street View

Selected Parcel: 750220790000 (Click for Card)

| | |
|--------------------------------|------------|
| Property Class | 1 |
| Acreage | 4.045 |
| Physical Address | |
| Market Land Value | \$ 461,300 |
| Dedicated Use Value | \$ 0 |
| Land Exemption | \$ 0 |
| Net Taxable Land Value | \$ 461,300 |
| Assessed Building Value | \$ 0 |
| Building Exemption | \$ 0 |
| Net Taxable Building Value | \$ 0 |
| Total Taxable Value | \$ 461,300 |
| Improvements on Parcel | 0 |
| Total Improvement Area (sq ft) | 0 |

| Two most recent parcel sales | | | |
|------------------------------|------------|------|--------|
| Date | Price | Qual | Reason |
| 03/25/2008 | \$ 820,000 | U | 0 |

Website last updated October 10, 2014
GIS Maps last updated April 28, 2014

Parcel List
Legend
Measure

EXHIBIT B

Phase I Environmental Site Assessment

**4.045-Acre Kahakai Estates Property
(TMK Number: [3] 7-5-020: Parcel 079)
Kailua-Kona, Hawaii**

September 5, 2014
Project No. 17014-014121.00

Prepared for:

STANFORD CARR DEVELOPMENT, LLC
1100 Alakea Street, 27th Floor
Honolulu, Hawaii 96813



Move Forward with Confidence

Prepared by:

BUREAU VERITAS NORTH AMERICA, INC.
Health, Safety, and Environmental Services
841 Bishop Street, Suite 1100
Honolulu, Hawaii 96813
808.531.6708
www.us.bureauveritas.com



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List of Acronyms

| | |
|----------------|--|
| AAI | All Appropriate Inquiry |
| ACM | Asbestos-Containing Materials |
| AOC | Area of Concern |
| AST | Aboveground storage tanks |
| ASTM | ASTM International |
| AULs | Activity and Use Limitations |
| Bureau Veritas | Bureau Veritas North America, Inc. |
| CERCLA | Comprehensive Environmental Response, Compensation and Liability |
| CFR | Code of Federal Regulations |
| COC | Chemicals of Concern |
| DLNR | State of Hawaii, Department of Land and Natural Resources |
| DPP | Department of Planning and Permitting |
| EDR | Environmental Data Resources, Inc. |
| ESA | Environmental Site Assessment |
| FEMA | Federal Emergency Management Agency |
| FIRM | Flood Insurance Rate Map |
| HDOH | State of Hawaii Department of Health |
| HEER | Hazard Evaluation and Emergency Response |
| HFD | Hawaii Fire Department |
| HUD | Housing and Urban Development |
| INST Control | Institutional Control |
| LBP | Lead-Based Paint |
| LUST | Leaking underground storage tanks |
| NFA | No Further Action |
| OSHA | Occupational Safety and Health Administration |
| PACM | Presumed ACM |
| PCBs | Polychlorinated biphenyls |
| SHWB | Solid and Hazardous Waste Branch |
| SHWS | Solid Hazardous Waste Site |
| SPILLS | Release |
| TMK | Tax Map Key |
| UIC | Underground Injection Control |
| USDA | United States Department of Agriculture |
| USEPA | United States Environmental Protection Agency |
| USFWS | United States Fish and Wildlife Service |
| USGS | United States Geological Survey |
| UST | Underground storage tank |
| VEC | Vapor Encroachment Condition |
| VES | Vapor Encroachment Screen |



Executive Summary

Stanford Carr Development, LLC (Stanford Carr) retained Bureau Veritas North America, Inc. (Bureau Veritas) to conduct a Phase I Environmental Site Assessment (“ESA” or “Assessment”) of the 4.045-Acre Kahakai Estates property (Tax Map Key [TMK] Number: [3] 7-5-020: Parcel 079), located in Kailua-Kona, Hawaii (the “subject property”). The objective of the Assessment was to provide an independent, professional opinion regarding recognized environmental conditions, as defined by ASTM International (ASTM), associated with the subject property. This Assessment was requested in association with an acquisition.

This Assessment was performed under the conditions of, and in accordance with Bureau Veritas’ Proposal Number 1709.14.123, dated April 30, 2014, and ASTM International Practice E1527-13, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. Any exceptions to, additions to, or deletions from the ASTM Practice are described in the report. Details of the work performed, sources of information, and findings are presented in the report. Limitations of the Assessment are described in Sections 1.2 and 1.3.

The subject property is comprised of a single parcel encompassing approximately 4.045 acres of land area, located off of Nakukui Drive in the near-coastal area of Kailua-Kona, Hawaii. The Hawaii County Real Property Tax Office database lists the subject property as TMK Number: (3) 7-5-020: Parcel 079, and the class designation is listed as “Residential.” Access to the subject property is provided through the Kahakai Estates residential development.

A description of the current uses and improvements at the subject property is presented in the following tables:

| | |
|---|---|
| Parcel/Street Address (including known historic address[es]) | TMK: [3] 7-5-020: Parcel 079, Kailua-Kona, Hawaii |
| Owner: | Stanford Carr Development LLC |
| Number and Size of Buildings: | Not Applicable- Currently undeveloped, vegetated land |
| Construction Dates: | Not Applicable |
| Tenants: | Not Applicable |
| Current Usage: | Undeveloped, vegetated land |

The historical research presented in this Assessment has established the obvious use of the subject property since 1924. In addition, information on historic uses of adjoining properties was also obtained. A chronological summary of the historic uses of the subject and adjoining/nearby properties is presented below.

The earliest available topographic map, from 1924, showed the subject property as undeveloped land. In aerial photographs from 1954 to 2013, the subject property was observed as vegetated land. Increased development occurred in some of the surrounding areas, but the subject property remained undeveloped.

According to available records at the Hawaii County Real Property Tax Assessment Office, the subject parcel is designated as TMK Number: (3) 7-5-020: Parcel 079, which was owned by Kahakai-Kona, LLC and deeded to Stanford Carr in 2008. It was created as a subdivision of TMK: (3) 7-5-020: Parcel 001 in 2002. The earliest available records for this parcel indicate that it was owned by Frank and Virginia Gouveia in 1940. Between 1967 and 2001, the parcel was deeded to a variety of development entities including Hawaii Island Pacific Properties Investment Enterprises, Kobayashi Development and



Construction, Inc., Kahakai Associates, HI General Partnership, Evergreen Plaza LLC, SCD Kahakai LLC, and Kahakai-Kona LLC. In 2002, the subject property was created from a subdivision of this parcel.

This Assessment has revealed no evidence of recognized environmental conditions, as defined by ASTM, in connection with the subject property.

It should be noted that much of the subject property is currently covered with dense vegetation, which prevented a thorough inspection of the ground surface. Abandoned items/waste may be present but hidden from view. Bureau Veritas recommends that future grubbing and grading activities be monitored to assess the presence of soil staining and/or abandoned items such as drums or other chemical containers.

EXHIBIT C

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| LOD No. | Tax Map Key No. (3) 7-5-020:079 |

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

THAT, effective as of the _____ day of _____, 20____, **STANFORD CARR DEVELOPMENT, LLC**, a Hawaii limited liability company, whose address is 1100 Alakea Street, 27th Floor, Honolulu, Hawaii 96813, hereinafter referred to as the "Grantor," for good and valuable consideration paid by the STATE OF HAWAII, by its Board of Land and Natural Resources, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter referred to as the "Grantee", the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee, the Grantee's successors and assigns, that certain parcel of land situate at Puapuaa, North Kona, Island of Hawaii, designated as "Kahakai Elementary School Expansion Area", being all of Lot 101 of the "Kahakai Estates Subdivision", containing an area of 4.045 acres, more or less,

more particularly described in Exhibit "A" and delineated on Exhibit "B", both attached hereto and made parts hereof, said exhibits being, respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, designated as C.S.F. No. _____ and dated _____ (hereinafter, the "Property").

AND the reversions, remainders, rents, income and profits thereof, and all of the estate, right, title, and interest of the Grantor, both at law and in equity, therein and thereto.

TO HAVE AND TO HOLD the same, together with all improvements, rights, easements, privileges and appurtenances thereunto belonging or in anywise appertaining or held and enjoyed therewith in fee simple unto said Grantee, the Grantee's successors and assigns, forever, free and clear of all liens and encumbrances, except as noted herein.

The Grantor, for itself, its successors and assigns, does hereby covenant with the Grantee, its successors and assigns, that the Grantor is lawfully seised in fee simple and possessed of the above-described Property that it has a good and lawful right to convey the same as aforesaid, that the same is free and clear of all liens and encumbrances, except as noted herein, and that it will, and its successors and assigns shall WARRANT AND DEFEND the same unto the Grantee, its successors and assigns, forever, against the claims and demands of all persons whomsoever.

AND, the Grantor warrants that if any governmental agency shall 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, for a period of two (2) years after the recordation date of this Warranty Deed, 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.

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; provided, however, that the foregoing indemnity shall not apply to the extent of any release of hazardous materials on or about the Property by Grantee or any persons acting through or under Grantee.

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.

The Grantor shall be responsible for payment of all property taxes up to the effective date of this Warranty Deed.

This instrument may be executed in counterparts. Each counterpart shall be executed by one or more of the parties to this instrument and the several counterparts shall constitute one instrument to the same effect as though the signature of all the parties were upon the same instrument. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one instrument.

--The remainder of this page is intentionally left blank; the next page is the signature page --

IN WITNESS WHEREOF, STANFORD CARR DEVELOPMENT, LLC, the Grantor herein, has caused these presents to be executed this _____ day of _____, 20____, and the STATE OF HAWAII, by its Board of Land and Natural Resources, the Grantee herein, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be executed this _____ day of _____, 20____, both effective as of the day, month, and year first above written.

STANFORD CARR DEVELOPMENT, LLC

Approved by the Board of
Land and Natural Resources
at its meeting(s) held on
_____.

By _____
Stanford S. Carr
Its Manager

GRANTOR

APPROVED AS TO LEGALITY,
FORM, EXCEPTIONS, AND
RESERVATIONS:

STATE OF HAWAII

Deputy Attorney General

Dated: _____

By _____
WILLIAM J. AILA, JR.
Chairperson
Board of Land and
Natural Resources

GRANTEE

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 20 _____,
before me appeared STANFORD S. CARR, to me personally known,
who, being by me duly sworn, did say that he is the Manager of
Stanford Carr Development, LLC, a Hawaii limited liability
company, and that said instrument was signed on behalf of said
company and such person acknowledged said instrument to be the
free act and deed of said company.

Notary Public, State of Hawaii

My commission expires: _____

| | |
|--|--|
| <u>NOTARY CERTIFICATION STATEMENT</u> | |
| Document Identification or Description: Warranty Deed | |
| Doc. Date: _____ or <input type="checkbox"/> Undated at time of notarization. | |
| No. of Pages: _____ | |
| Circuit _____ | Jurisdiction: _____ |
| (in which notarial act is performed) | |
| _____ Signature of Notary | _____ Date of Notarization and Certification Statement |
| (Official Stamp or Seal) | |
| _____ Printed Name of Notary | |

STATE OF HAWAII)
) SS.
COUNTY OF)

On this _____ day of _____, 20____,
before me personally appeared _____
and _____, to me personally known,
who, being by me duly sworn or affirmed, did say that such
person(s) executed the foregoing instrument as the free act and
deed of such person(s), and if applicable in the capacity shown,
having been duly authorized to execute such instrument in such
capacity.

Notary Public, State of Hawaii

My commission expires: _____

NOTARY CERTIFICATION STATEMENT

Document Identification or Description:
Warranty Deed

Doc. Date: _____ or Undated at time
of notarization.

No. of Pages: _____ Jurisdiction: _____

Circuit _____
(in which notarial act is performed)

Signature of Notary Date of Notarization and
Certification Statement

Seal) (Official Stamp or
Printed Name of Notary

Exhibit "A"

All of that certain parcel of land situate at Puapuaa 1st and 2nd, District of North Kona, Island and County of Hawaii, State of Hawaii, being LOT 101 of the "KAHAKAI ESTATES SUBDIVISION", as shown on File Plan Number 2333, filed in the Bureau of Conveyances of the State of Hawaii, and containing an area of 4.045 acres, more or less.

Together also with non-exclusive easement for access and utility purposes over Roadway Lots 104 to 114, inclusive, as shown on File Plan No. 2333.

Being the premises acquired by Quitclaim Deed dated February 25, 2007, by and between KAHAKAI-KONA LLC, a Hawaii limited liability company, as grantor, and STANFORD CARR DEVELOPMENT LLC, a Hawaii limited liability company, as grantee, recorded in said Bureau as Document No. 2008-045747.

SUBJECT, HOWEVER, to mineral and water rights of any nature in favor of the State of Hawaii.

Exhibit "B"

[To be attached]