

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

October 23, 2015

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

PSF No.:11OD-042

Oahu

Amend prior Board of Land and Natural Resources action of January 27, 2012, under agenda item D-14: *Memorandums of Agreement Between the Department of Hawaiian Home Lands (DHHL) and the Department of Land and Natural Resources (DLNR) for Construction and Maintenance of Certain Roads by DHHL in East Kapolei, and Subsequent Dedication of the Roads to the City and County of Honolulu (CCH) by DLNR, Tax Map Keys: (1) 9-1-16: Por. of 141, and (1) 9-1-17: Por. of 110*. The purpose of the amendment is to (1) amend tax map key references from (1) 9-1-16: Por. of 141 to (1) 9-1-16:155; (2) amend Recommendation 3 to an approval of and recommendation to the Governor the issuance of an executive order setting aside the subject lands to the City and County of Honolulu for the construction, maintenance, repair, management and operation of public roadway improvements and ancillary purposes, and consent to the City's issuance of easements for utilities under, over and across the roadways so set aside, and (3) amend the terms of applicable Memorandums of Agreement between DHHL and DLNR

APPLICANT:

Department of Hawaiian Home Lands

BACKGROUND:

At its meeting on January 27, 2012, under agenda item D-14, the Board of Land and Natural Resources ("Land Board") approved two memorandums of agreement between the Department of Hawaiian Home Lands ("DHHL") and the Department of Land and Natural Resources ("DLNR"), and the subsequent dedication of roads to the City and County of Honolulu ("City"). A copy of the aforementioned Land Board action is attached as **Exhibit 1**. As part of this action the Land Board required DHHL to assume responsibility to ensure compliance with Section 171-64.7, Hawaii Revised Statutes ("HRS").¹

¹ In 2009, the legislature passed Act 176, codified as Section 171-64.7, HRS, requiring any sale or gift of State land be subject to prior legislative approval by concurrent resolution adopted by at least a two-thirds majority vote in each house. Before the submission of the concurrent resolution to the legislature, the proposing State agency, in this case DHHL, must have the land appraised and conduct an informational briefing on the proposed sale or gift in the community where the land is located.

Currently, lands described therein as the Kapolei Parkway Extension, East-West Road, and Road E have been improved as roads as shown in recent photos attached as **Exhibit 2**, while improvements to the site previously described as Road S are pending. Notwithstanding the above, DHHL has yet to submit the concurrent resolution to the legislature as is required by Section 171-64.7, HRS.

Considering the inherent difficulties in having any concurrent resolution passed by at least a two-thirds majority vote in each house, Land Division recently suggested to DHHL and the City that a Governor's executive order ("EO") be considered in lieu of the previously agreed to fee conveyance from DLNR to the City.

The City has confirmed an EO would be acceptable provided, however, the EO document contain language that would allow the City to further grant certain easements over the subject parcels, and allow the City to charge and receive fair and reasonable compensation for any such easements pursuant to any applicable County, State, and/or Federal regulations.

REQUESTED AMENDMENTS / REMARKS:

Based on the foregoing, discussions of recommended amendments to the Land Board's action of January 27, 2012, under agenda item D-14 are presented below:

1. **Amend tax map key references from TMK (1) 9-1-16: Por. of 141 to (1) 9-1-16:155.**

The land identified as the Kapolei Parkway Extension in the Land Board action cited above was identified therein as TMK (1) 9-1-16: Por. of 141. Prior to the Land Board action cited above, however, the subdivision of the Kapolei Parkway Extension was approved and the identifying tax map key was updated by the City to (1) 9-1-16:155. Accordingly, this proposed amendment corrects the aforementioned tax key references to the lands identified therein as Kapolei Parkway Extension.

2. **Amend Recommendation 3 to an approval of and recommendation to the Governor the issuance of an executive order setting aside the subject lands to the City and County of Honolulu for the construction, maintenance, repair, operation, and management of public roadway improvements and for ancillary purposes, and consent to the City's issuance of easements for utilities under, over and across the roadways so set aside.**

The requirements of Section 171-64.7, HRS, were summarized when the Land Board approved the conveyance of land to the City at its meeting on January 27, 2012, under agenda item D-14. Because of the difficulties in obtaining the required approvals of at least two-thirds majority vote in both legislative houses, the Land Board's approval of the conveyance was conditioned in part on DHHL's prior compliance with Section 171-64.7, HRS.

Considering the inherent risks in having any concurrent resolution passed by at least a two-thirds majority vote in each house, Land Division now recommends the Land Board approve and recommend to the Governor the issuance of an EO setting aside the subject lands to the City for the purposes stated above. Moreover, pursuant to the City's request, Land Division recommends the Board consent to the City further granting certain term easements of up to 65 years over the subject parcels and allow the City to charge and receive fair and reasonable compensation for any such easements, pursuant to any applicable County, State, and/or Federal laws, rules or regulations. The City operates under blanket approvals that allow the main utility providers to install utility lines and cables under, across and over City roads for their various services, including electricity, telephone, gas, cable and water. The parcels to be set-aside to the City by today's Board action would be subject to the same approvals.

The issuance of an EO remains subject to legislative review. However, unlike the minimum two-thirds approval by both legislative houses required for the previously approved conveyance of land, EOs are subject to legislative disapproval by a two-thirds vote in either house in any regular or special session next following the date of the EO.

Land Division generally recommends to the Land Board that quitclaim deeds be issued to dedicate lands to counties for public road purposes when the county intends to later convey the road to a third party, such as a developer. Whereas no such conveyance by the City is expected, Land Division considers setting aside these lands to the City by EO in this case to be a more viable option than the fee conveyance previously recommended and approved.

It is noted that Land Division's recommendation herein is not meant to establish any guidelines for similar requests in the future. Land Division prefers to consider similar requests in the future on a case-by-case basis.

3. Amend the terms of applicable Memorandums of Agreement ("MOA") between DHHL and DLNR to reflect the intent of the proposed amended disposition from a fee conveyance to an EO.

As part of the aforementioned action, the Land Board approved two MOAs. The first being dated December 31, 2007, covering the Kapolei Parkway Extension and the East-West Road; the second covering Roads E and S, being undated and unexecuted at the time.² Terms of both MOAs require DHHL to be responsible for land and the maintenance and repair of all road improvements constructed until such time as the fee simple interest in the land and improvements thereon are transferred to the City.

Subject to the Land Board's approval to set aside the subject lands to the City, Land Division recommends the Land Board also approve amendments to the respective

² The MOA covering Roads E and S has since been fully executed and dated May 1, 2012.

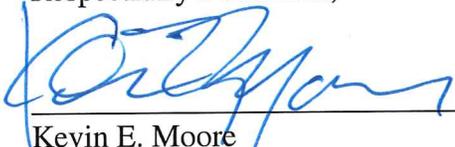
MOAs to reflect that an EO to the City will be recommended in lieu of transferring any fee interest in the subject lands. The MOAs should also be amended to reflect that the State of Hawaii through its Board of Land and Natural Resources (and not the Department of Land and Natural Resources) owns the fee simple title to the land. Staff also recommends that the MOAs be amended to contain clearer language regarding the assumption of all liability by DHHL as between DHHL and the State, which will survive the transfer of management jurisdiction through an EO to the City. That way, if the City or member of the public asserts any claim against the State based on road design, construction or maintenance, DHHL shall be responsible and pay for any liability. Proposed redlined revisions of the MOAs area attached hereto as **Exhibit 3**.

RECOMMENDATION: That the Land Board amend its prior action of January 27, 2012, under agenda item D-14, by:

- I. Amending tax map key references from TMK (1) 9-1-16: Por. of 141 to (1) 9-1-16:155.
- II. Replacing Recommendation 3 in its entirety with:
 3. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the City and County of Honolulu for the construction, maintenance, repair, operation, and management of public roadway improvements and for ancillary purposes, 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 Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- III. Consenting to the granting of term easements by the City and County of Honolulu for utility services including electricity, telephone, gas, cable and water; provided that the duration of any easement shall not exceed 65 years in one grant. The City may charge and receive fair and reasonable compensation for any such easements, pursuant to any applicable County, State, and/or Federal laws, rules or regulations.

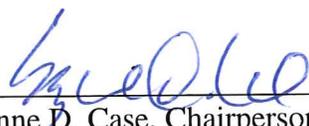
- IV. Amending the two Memorandums of Agreement cited therein under the terms and conditions described above, which are by this reference incorporated herein and subject to the review and approval by the Department of the Attorney General.

Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



D-14

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

January 27, 2012

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

PSF No. 11OD-042

OAHU

Memorandums of Agreement Between the Department of Hawaiian Home Lands (DHHL) and the Department of Land and Natural Resources (DLNR) for Construction and Maintenance of Certain Roads by DHHL in East Kapolei, and Subsequent Dedication of the Roads to the City and County of Honolulu (CCH) by DLNR, Tax Map Keys: (1) 9-1-16: Por. of 141, and (1) 9-1-17: Por. of 110

APPLICANT:

Department of Hawaiian Home Lands

LEGAL REFERENCE:

Chapter 264, and Sections 171-6(19), and 171-64.7, Hawaii Revised Statutes, as amended (HRS).

LOCATION AND AREA:

Kapolei Parkway Extension – an eastern extension to the section of the Kapolei Parkway previously completed by the Hawaii Housing Finance and Development Corporation, containing 5.023 acres, more or less, Honouliuli, Oahu, Tax Map Key: (1) 9-1-16: Por. of 141, as shown on the attached Exhibit A.

East-West Road – Section beginning at its intersection with the North-South Road to the eastern boundary of DHHL's East Kapolei II development, containing 13.458 acres, more or less, Honouliuli, Oahu, Tax Map Key: (1) 9-1-17: Por. 110, as shown on the attached Exhibit B.

Road E – Section beginning at its intersection with the East-West Road to the eastern boundary of DHHL's East Kapolei II development, containing 7.570 acres, more or less, Honouliuli, Oahu, (1) 9-1-17: Por. 110, as shown on the attached Exhibit B.

Road S – Section beginning at its intersection with the North-South Road to the eastern boundary of DHHL's East Kapolei II development, containing 2.430 acres, more or less, Honouliuli, Oahu, Tax Map Key: (1) 9-1-17: Por. 110, as shown on the attached Exhibit B.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON *1/27/12*
January 27, 2012

EXHIBIT 1

D-14

TRUST LAND STATUS:

Non-ceded, Government land acquired after statehood from the Estate of James Campbell.

CURRENT USE STATUS:

Kapolei Parkway Extension is completed.

East-West Road is under construction.

Roads E and S areas are currently vacant.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

The Final Environmental Impact Statement Notice for the East Kapolei Master Plan was published in the OEQC Environmental Notice in July 1998. All of the subject roads are located within the East Kapolei Master Plan area.

APPLICANT REQUIREMENTS:

1. Applicant shall obtain final subdivision approval from CCH and the State of Hawaii, Land Court, for the subject road lots.
2. Applicant shall provide DLNR with survey maps and descriptions of the subject road lots according to Department of Accounting and General Services, Survey Division standards.
3. DHHL shall be responsible for compliance with Section 171-64.7, HRS.

REMARKS:

This request involves two memorandums of agreement (MOAs) between DHHL and DLNR regarding the subject road sections. The first is an after-the-fact MOA, dated December 31, 2007 (Exhibit C), covering the conveyances to CCH of the Kapolei Parkway Extension and East-West Road. The second is a proposed MOA (Exhibit D) covering the conveyances to CCH of future Roads E and S.

The subject road sections are part of the master planned regional roadway system that will pass through DHHL's East Kapolei II development allowing arterial traffic to flow past private and public development.

DHHL will construct, to CCH standards, the arterial road sections that pass through its East Kapolei II development. Under Chapter 264, HRS, relating to roads, the subject road sections are considered "public highways" under the jurisdictional control of the county where they are located. When completed, such roads are typically conveyed, in fee simple and without

consideration, to the respective counties for the roads' on-going maintenance, repair, and replacement.

The problem for DHHL with the above process is the Hawaiian Homes Commission Act of 1920 prohibits the fee simple conveyance of Hawaiian home land. Because of the prohibition DHHL has requested the BLNR directly convey the land under the subject road sections to CCH.

If the Board approves DHHL's request then the fee simple interest of the land will remain with the State until the road improvements are completed by DHHL and accepted by CCH and the subject land is conveyed to CCH. Until then DHHL will maintain and repair the subject road sections as necessary.

In 2009 the legislature passed Act 176 (Section 171-64.7 HRS), which requires prior legislative approval, by concurrent resolution, of sales or gifts of State land. Before submission of the concurrent resolution to the legislature, the proposing State agency must have the land appraised to determine its value. It must also conduct an informational briefing on the proposed sale or gift in the community where the land is located.

The concurrent resolution must contain the location of the land, its appraised value, the purpose of the sale or gift of land and a detailed summary of any development plans for the land being sold or given.

The additional time and expense of complying with Act 176, passed by the legislature in 2009, was never anticipated by DLNR when the December 31, 2007, MOA was issued. Accordingly, compliance with Section 171-64.7, HRS, shall be the responsibility of DHHL.

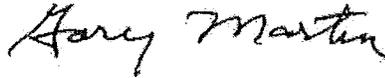
RECOMMENDATION:

That the Board, subject to the Applicant fulfilling all of the Applicant requirements listed above, approve the following:

1. The December 31, 2007, Memorandum of Agreement (Exhibit C), between DHHL and DLNR, subject to review and approval by the Department of the Attorney General.
2. The undated Memorandum of Agreement (Exhibit D) between DHHL and DLNR, subject to review and approval by the Department of the Attorney General.
3. The conveyance, in fee simple, at gratis, to the City and County of Honolulu, of the State-owned land underlying the Kapolei Parkway extension, East-West Road, Road E, and Road S, under 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 deed (roads) document form, as may be amended from time to time.

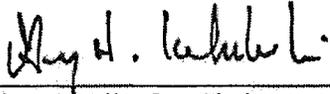
- B. Review and approval by the Department of the Attorney General.
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Gary Martin
Land Agent

APPROVED FOR SUBMITTAL:



 William J. Aila, Jr., Chairperson

MEMORANDUM OF AGREEMENT
THE CONSTRUCTION OF THE EAST-WEST ROAD,
KAPOLEI, EWA, OAHU,
TMK: (1) 9-1-16:portion of 141 (formerly portion of 108)
and (1) 9-1-17:portions of 71 and 88

THIS AGREEMENT, made this 31st day of December 2007,
by and between the DEPARTMENT OF HAWAIIAN HOME LANDS (hereinafter "DHHL") and
the DEPARTMENT OF LAND AND NATURAL RESOURCES (hereinafter "DLNR")

WITNESSETH THAT:

WHEREAS, DHHL is planning the construction of the following two (2) roads:

- 1) The Kapolei Parkway Extension, an eastward extension of Kapolei Parkway previously constructed by the Hawaii Community Development Corporation of Hawaii, now referred as the "Hawaii Housing Finance and Development Corporation (HHFDC)", being further described as a separate roadway lot by County Subdivision File number 2005/SUB-108, approved on June 17, 2005, and bearing Tax Map Key: (1) 9-1-16:portion of 141; and
- 2) A section of the East-West Road, situated in Kapolei, Ewa, Oahu, extending from the southern half of the North-South Road, traversing Tax Map Keys: (1) 9-1-17: 71 and 88, and heading east toward Fort Weaver Road.

WHEREAS, the Kapolei Parkway Extension and a portion of the East West Road will be constructed on DLNR lands reserved for DHHL by the Board of Land and Natural Resources, at its meeting on September 24, 2004, under item D-14, as part of a 16,518-acre settlement agreement between DLNR and DHHL.

WHEREAS, DHHL desires the turnover of the Kapolei Parkway Extension and the East-West Road to the City and County of Honolulu (hereinafter "City") following its construction for on-going maintenance and repair in accordance with the provisions of Chapter 264, Hawaii Revised Statutes, as amended.

WHEREAS, DHHL and DLNR acknowledge the Hawaiian Homes Commission Act which prohibits the disposition of Hawaiian home lands in fee simple, except as authorized by the Act.

WHEREAS, the Kapolei Parkway Extension and East-West Road are both part of the regional roadway system designed to accommodate arterial flow past public and private development. Therefore, they are both considered "public highways".

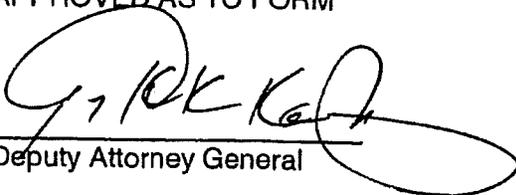
WHEREAS, DLNR has retained the fee simple interest in the land underlying the subject roads, and will convey the said land to the City upon the passing of a City Council Resolution to accept the roadway improvements, if necessary.

NOW, THEREFORE, in consideration of the premises contained in this Agreement, the parties agree as follows:

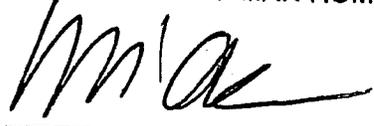
1. DHHL will construct the Kapolei Parkway Extension and its portion of the East-West Road in conformance with the City's standards for roadways.
2. DHHL will be responsible for the maintenance and repair of the Kapolei Parkway Extension and its East-West Road improvements until such time that the fee simple interest in the land and road improvements thereon are transferred to the City.
3. DHHL will be responsible for all liability the land, Kapolei Parkway Extension and East-West Road improvements thereon may pose until the fee simple interest and improvements on said land are transferred to the City.
4. DLNR will retain fee ownership in the land under the Kapolei Parkway Extension and East-West Road, and convey the same to the City following a City Council resolution approving the City's acceptance of the subject roadways.
5. This Agreement shall be binding upon the parties hereto, their representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officers as of the day and year first above written.

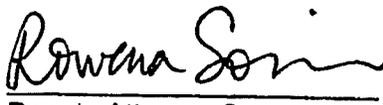
APPROVED AS TO FORM


Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

By 
Micah A. Kane, Chairman

APPROVED AS TO FORM


Deputy Attorney General

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL
RESOURCES

By 
Laura H. Thielen, Chairperson

MEMORANDUM OF AGREEMENT
CONSTRUCTION OF ROADS IN EAST KAPOLEI II
TMK: (1) 9-1-17: portions of 110

THIS AGREEMENT, made this ____ day of _____, 2012, by and between the DEPARTMENT OF HAWAIIAN HOME LANDS (hereinafter "DHHL") and the DEPARTMENT OF LAND AND NATURAL RESOURCES (hereinafter "DLNR").

WITNESSETH THAT:

WHEREAS, DHHL is planning the construction of two roads within the East Kapolei II subdivision, Road "E" and Road "S", as indicated on the attached Exhibit A (hereinafter "the Roads").

WHEREAS, the Roads will be constructed on DLNR lands reserved for DHHL by the Board of Land and Natural Resources, at its meeting on September 24, 2004, under agenda item D-14, as part of a 16,518-acre settlement agreement between DLNR and DHHL.

WHEREAS, DHHL desires the conveyance of the Roads to the City and County of Honolulu (hereinafter "City") following their construction, for on-going maintenance and repair in accordance with the provisions of Chapter 264, Hawaii Revised Statutes, as amended.

WHEREAS, DHHL and DLNR acknowledge the Hawaiian Homes Commission Act, which prohibits the disposition of Hawaiian home lands in fee simple, except as authorized by the Act.

WHEREAS, the Roads are part of the regional roadway system designed to accommodate arterial flow past public and private development. Therefore, they are both considered "public highways."

WHEREAS, DLNR has retained the fee simple interest in the land underlying the subject roads, and will convey the said land to the city upon the passing of a City Council Resolution to accept the roadway improvements, if necessary.

NOW, THEREFORE, in consideration of the premises contained in this Agreement, the parties agree as follows:

1. DHHL will construct the Roads in conformance with the City's standards for roadways.
2. DHHL will be responsible for the maintenance and repair of the Roads until such time the fee simple interest in the land and the Roads improvements thereon are transferred to the City.

- 3. DHHL will be responsible for all liability the land and the Roads improvements thereon may pose until the fee simple interest and improvements on said land are transferred to the City.
- 4. DLNR will retain the fee simple ownership in the land under the Roads and convey the same to the City following a City Council resolution approving the City's acceptance of the Roads.
- 5. This agreement shall be binding upon the parties hereto, their representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officers as of the day and year first above written.

APPROVED AS TO FORM

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

Deputy Attorney General

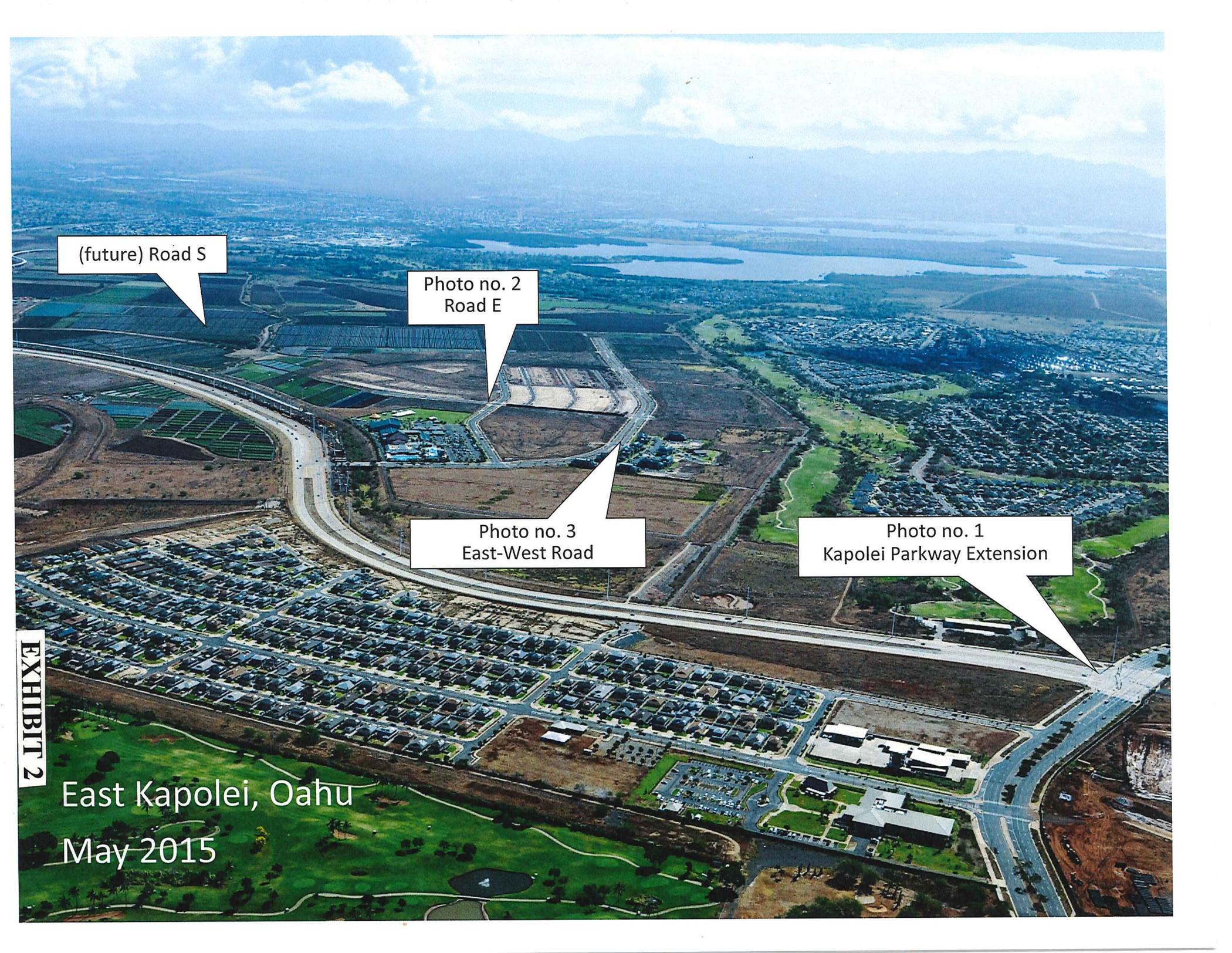
By _____
Albert "Alapaki" Nahale-a, Chairman
Hawaiian Homes Commission

APPROVED AS TO FORM

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL
RESOURCES

Deputy Attorney General

By _____
William J. Aila, Jr., Chairperson
Board of Land and Natural Resources



(future) Road S

Photo no. 2
Road E

Photo no. 3
East-West Road

Photo no. 1
Kapolei Parkway Extension

EXHIBIT 2

East Kapolei, Oahu

May 2015



Photo (dtd April 22, 2015) of Kapolei Parkway and Kualakai Parkway intersection from Kualakai Parkway looking south toward the DHHL shopping center site (Ka Makana Alii SC). TMK (1) 9-1-16:155 (Kapolei Parkway Extension) is to the right of the intersection.

Photo (dtd April 22, 2015) of Road E looking southwest. KROC Center is on the right.



Photo (dtd April 22, 2015) of Road E looking northeast.

FIRST AMENDED MEMORANDUM OF AGREEMENT
THE CONSTRUCTION OF THE EAST-WEST ROAD,
KAPOLEI, EWA, OAHU,
TMK: (1) 9-1-16:portion of 444155 (formerly portion of
108)
and (1) 9-1-17:portions of 71 and 88

Forma
Forma

THIS AGREEMENT, made this _____ day of _____
20072015, by and between the DEPARTMENT OF HAWAIIAN HOME LANDS (hereinafter
"DHHL") and the DEPARTMENT BOARD OF LAND AND NATURAL RESOURCES (hereinafter
"DLNRBLNR"), and supersedes the parties' prior Memorandum of Agreement on this matter
dated December 31, 2007.

Forma

WITNESSETH THAT:

WHEREAS, DHHL is planning ~~the construction of~~ and constructing the following two (2)
roads:

- 1) The Kapolei Parkway Extension, an eastward extension of Kapolei
Parkway previously constructed by the Hawaii Community Development
Corporation of Hawaii, now referred as the "Hawaii Housing Finance and
Development Corporation (HHFDC)", being further described as a
separate roadway lot by County Subdivision File number 2005/SUB-108,
approved on June 17, 2005, and bearing Tax Map Key: (1) 9-1-
16:portion of-444 155; and
- 2) A section of the East-West Road, situated in Kapolei, Ewa, Oahu,
extending from the southern half of the North-South Road, traversing Tax
Map Keys: (1) 9-1-17: 71 and 88, and heading east toward Fort Weaver
Road.

Forma
spacing

WHEREAS, the Kapolei Parkway Extension and a portion of the East West Road will be
constructed on ~~DLNR~~ BLNR lands reserved for DHHL by pursuant to the ~~Board of Land and~~
~~Natural Resources~~, at its BLNR's meeting ~~on~~ of September 24, 2004, under item D-14, as part
of a 16,518- acre settlement agreement between ~~DLNR~~ BLNR and DHHL.

Forma

WHEREAS, DHHL desires the ~~turnover~~ transfer of the Kapolei Parkway Extension
and the East-West Road to the City and County of Honolulu (hereinafter "City") following its
their construction for on-going maintenance and repair in accordance with the provisions of
Chapter 264, Hawaii Revised Statutes (HRS), as amended.

Forma

WHEREAS, DHHL and ~~DLNR~~ BLNR acknowledge the Hawaiian Homes Commission
Act which prohibits the disposition of Hawaiian home lands in fee simple, except as authorized
by the Act.

WHEREAS, DHHL and BLNR further acknowledge that HRS Section 171-64.7
requires a supermajority approval of both houses of the Legislature in order for the BLNR to

convey the fee simple interest in land to any person or entity other than a State agency.

WHEREAS, the Kapolei Parkway Extension and East-West Road are both part of the regional roadway system designed to accommodate arterial flow past public and private development. Therefore, they are both considered "public highways".

WHEREAS, ~~DLNR~~ in lieu of conveying the fee simple interest in the roads to the City, BLNR has retained the fee simple interest in the land underlying the subject roads, and ~~will convey the~~ request the Governor to issue an executive order setting aside said land ~~roads~~ to the City upon the passing of a City Council Resolution to accept the roadway improvements, if necessary.

NOW, THEREFORE, in consideration of the ~~premises contained in this~~ Agreement mutual covenants set forth herein, the parties hereby agree as follows:

1. DHHL will construct the Kapolei Parkway Extension and its portion of the East-West Road in conformance with the City's standards for roadways.
2. DHHL will be responsible for the maintenance and repair of the Kapolei Parkway Extension and its East-West Road improvements until such time that the Governor issues an executive order setting aside the roads ~~the fee simple interest in the land and road improvements thereon are transferred to the City,~~ which is not disapproved at the next session of the Legislature.
3. As between DHHL and BLNR, DHHL agrees to assume all liability for any claims regarding the design, construction, repair, maintenance, operation or management of the roads that may be asserted against BLNR, and this covenant shall survive the set-aside of the roads to the City by executive order. ~~DHHL will be responsible for all liability the land, Kapolei Parkway Extension and East-West Road improvements thereon may pose until the fee simple interest and improvements on said land are transferred to the City.~~
4. ~~DLNR~~ BLNR will retain fee ownership in the land under the Kapolei Parkway Extension and East-West Road, and ~~convey the same~~ subject to an executive order setting aside the lands to the City following a City Council resolution approving the City's acceptance of the subject roadways.
5. This Agreement shall be binding upon the parties hereto, their representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officers as of the day and year first above written.

APPROVED AS TO FORM

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

Deputy Attorney General

By _____
Micah A. Kane Jobie Masagatani,

Chairman Chairperson |

APPROVED AS TO FORM

STATE OF HAWAII
~~DEPARTMENT~~ BOARD OF LAND AND
NATURAL RESOURCES |

Deputy Attorney General

By _____
~~Laura H. Thiel~~ Suzanne D. Case, Chairperson |

MEMORANDUM OF AGREEMENT
CONSTRUCTION OF ROADS IN EAST KAPOLEI II
TMK: (1) 9-1-17: portions of 110

THIS AGREEMENT, made this ___ day of ___, 2012~~2015~~, by and between the DEPARTMENT OF HAWAIIAN HOME LANDS (hereinafter "DHHL") and the DEPARTMENT ~~BOARD~~ OF LAND AND NATURAL RESOURCES (hereinafter "DLNR~~BLNR~~"), and supersedes the parties' prior Memorandum of Agreement on this matter dated December ___, 2012.

WITNESSETH THAT:

WHEREAS, DHHL is planning ~~the construction of~~ and constructing two roads within the East Kapolei II subdivision, Road "E" and Road "S", as indicated on the attached Exhibit A (hereinafter "the Roads").

WHEREAS, the Roads will be constructed on ~~DLNR~~ BLNR lands reserved for DHHL by the ~~Board of Land and Natural Resources~~, BLNR at its meeting on September 24, 2004, under agenda item D-14, as part of a 16,518-acre settlement agreement between ~~DLNR~~ BLNR and DHHL.

WHEREAS, DHHL desires the ~~conveyance~~ transfer of the Roads to the City and County of Honolulu (hereinafter "City") following their construction, for on-going maintenance and repair in accordance with the provisions of Chapter 264, Hawaii Revised Statutes (HRS), as amended.

WHEREAS, DHHL and ~~DLNR~~ BLNR acknowledge the Hawaiian Homes Commission Act, which prohibits the disposition of Hawaiian home lands in fee simple, except as authorized by the Act.

WHEREAS, DHHL and BLNR further acknowledge that HRS Section 171-64.7 requires a supermajority approval of both houses of the Legislature in order for the BLNR to convey the fee simple interest in land to any person or entity other than a State agency.

WHEREAS, the Roads are part of the regional roadway system designed to accommodate arterial flow past public and private development. Therefore, they are both considered "public highways."

WHEREAS, in lieu of conveying the fee simple interest in the roads to the City, BLNR ~~DLNR has retained the fee simple interest in the land underlying the subject roads, and will convey the~~ will request the Governor to issue an executive order setting aside said the land Roads to the city City upon the passing of a City Council Resolution to accept the roadway improvements, if necessary.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein premises contained in this Agreement, the parties hereby agree as follows:

1. DHHL will construct the Roads in conformance with the City's standards for roadways.

- 2. DHHL will be responsible for the maintenance and repair of the Roads until such time the Governor issues an executive order setting aside the roads the fee simple interest in the land and the Roads improvements thereon are transferred to the City, which is not disapproved at the next session of the Legislature.
- 3. As between DHHL and BLNR, DHHL agrees to assume all liability for any claims regarding the design, construction, repair, maintenance, operation or management of the roads that may be asserted against BLNR, and this covenant shall survive the set-aside of the roads to the City by executive order. DHHL will be responsible for all liability the land and the Roads improvements thereon may pose until the fee simple interest and improvements on said land are transferred to the City.
- 4. DLNR BLNR will retain the fee simple ownership in the land under the Roads and subject to an executive order setting aside the Roads convey the same to the City following a City Council resolution approving the City's acceptance of the Roads.
- 5. This agreement shall be binding upon the parties hereto, their representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized officers as of the day and year first above written.

APPROVED AS TO FORM

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

Deputy Attorney General

By _____
Albert "Alapaki" Nahale-a Jobie Masagatani,
Chairperson

APPROVED AS TO FORM

STATE OF HAWAII
DEPARTMENT BOARD OF LAND AND
NATURAL RESOURCES

Deputy Attorney General

By _____
William J. Aila, Jr. Suzanne D. Case,
Chairperson