

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

February 26, 2016

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

PSF No.:13HD-169

Hawaii

Approval of the Acquisition of Private Lands at Keahuolu,
North Kona, island of Hawaii, identified as Tax Map Key No.
(3) 7-4-20:10 portion; and set aside to Hawaii State
Judiciary for the Kona Judiciary Complex Purposes

APPLICANT AGENCY:

Department of Accounting and Genera; Services ("DAGS") on behalf
of the Hawaii State Judiciary ("Judiciary")

PRIVATE LANDOWNER:

Thomas K. Kaulukukui, Jr., Patrick K.S.L. Yim and Claire L. Asam,
Trustees of the Queen Liliuokalani Trust Estate ("QLT"), whose
business and mailing address is
Honolulu , Hawaii 96813

LEGAL REFERENCE:

Sections 107-10, 171-11 and 171-30, Hawaii Revised Statutes, as
amended.

SUBJECT SITE:

Location: Privately-owned lands situated at Keahuolu, North
Kona, island of Hawaii, identified by Tax Map Key:
(3) 7-4-20:10 portion, as generally shown on the
attached tax map labeled **Exhibit A**, and more
specifically shown on the attached survey map labeled
Exhibit B.

Area: 10.001 acres

Zoning: State Land Use District: Urban District
County of Hawaii CZO: CG-10; General Commercial

Current Use: Vacant

CONSIDERATION:

Nominal

PURPOSE:

The Subject Site shall be improved with a new judiciary complex for judiciary and ancillary purposes

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final EIS for the Kona Judiciary Complex Site Selection was published in the Office of Environmental Quality Control's ("OEQC") Environmental Notice on December 23, 2011, and the Governor's Acceptance letter dated February 22, 2012, was published in OEQC's Environmental Notice on March 8, 2012.

APPLICANT REQUIREMENTS:

At its meeting on November 8, 2013, under agenda item D-6, the Board of Land and Natural Resources ("BLNR") required the Applicant to:

1. Provide survey maps and descriptions for the privately-owned property according to State DAGS standards and at Applicant's own cost;
2. Obtain a title report for the privately-owned property at Applicant's own cost and subject to review and approval by DLNR and the Department of the Attorney General;
3. Process and obtain subdivision approval at Applicant's own cost;
4. Pay for and conduct a Phase I environmental site assessment and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to and to the satisfaction of DLNR.

BACKGROUND:

Over the past two decades there has been a growing need to improve the Judiciary facilities in the West Hawaii area. Factors collectively contributing to that need generally include the poor quality and inadequate scale of existing facilities servicing West Hawaii's increasing population, the rise in case filings, and the associated staffing needs in the West Hawaii region.¹

¹ The Judiciary in West Hawaii currently operates out of the old Kona Hospital, which is managed by DAGS, and four other private facilities all under a lease agreements.

To help address these needs, at its meeting on November 8, 2013, under agenda item D-6, the BLNR approved in principle the acquisition of approximately 10 acres of private land situated in Keahuolu, North Kona, island of Hawaii, identified by Tax Map Key: (3) 7-4-20:10 portion ("Subject Site"). A total of \$90 Million has been appropriated for the design and construction planned for the Subject Site.²

Whereas BLNR's approval in principle required details of the proposed acquisition be submitted to the BLNR for review and final approval prior to documentation, presented herein for BLNR's review and consideration are the agreed upon details of the proposed land acquisition and results of all due diligence.

DUE DILIGENCE RESULTS:

Pursuant to the BLNR's approval in principle, the Applicant was required to take certain actions and provide due diligence for review, the results of which are required to be presented to the BLNR for their consideration of a final approval of the proposed acquisition. Provided herein are the results of the due diligence provided.

1. **Survey Maps and Descriptions:** A survey map submitted to and tentatively approved by County of Hawaii Planning Department was provided to DLNR and is attached as Exhibit B. The Subject Site is identified as Lot C-2-A and highlighted on the survey map. Based on a cursory review of the subdivision map DAGS Survey staff has confirmed that the attached map was prepared to their standards.
2. **Title Report:** A preliminary title report covering the all of the Private Landowner's property, including the unsubdivided proposed Subject Site, prepared by Title Guaranty of Hawaii, Inc. ("TG") and dated April 10, 2015 (the "PTR"), was provided to DLNR for review. Existing encumbrances of concern are cited in the PTR are cited below.
 - a. An unrecorded Grant of Easement dated December 16, 1955 to Hawaii Electric Light Company, Limited ("HELCO").
 - b. A Certificate dated October 25, 1991, referencing the State Land Use Commission's Finding of Facts,

² Act 133, Session Laws of Hawaii (SLH) 2013, as amended by Act 127, SLH 2014, appropriated \$35 Million for design and construction of the Kona Courthouse.

In addition, Act 138, SLH 2015 appropriated and additional \$55 Million for the construction of the Kona Courthouse, with the provisions that if the entire appropriation is not encumbered by June 30, 2016, the entire appropriation, including any previously encumbered amount, shall lapse on that date; and the judiciary was not to expend any appropriation for the Kona Courthouse until the entire appropriation is encumbered.

Conclusions of Law, and Decision and Order ("LUC D&O") regarding the reclassification of QLT lands, including the Subject Site, from the Agricultural and Conservation Districts to the Urban District.

- c. Declarations of Covenants, Conditions, and Restrictions for Makalapua Commercial Center, dated April 26, 1996 ("Makalapua Commercial DCCRs").
- d. Affidavits of Heirs & Assigns to Ku a Nuuanu and Ane Keohokalole, both of which were dated recorded in the Bureau of Conveyances on July 20, 2007.
- e. The terms and conditions of an unrecorded Letter Agreement between Hawaii Housing Finance and Development Corporation, Forest City Hawaii Kona, LLC, FHT Kamakana, LLC.

All unacceptable encumbrances, including the encumbrances cited above, will be adequately resolved either through the County subdivision process, the execution of subsequent releases or exemptions, the execution of an Agreement of Sale, or ultimately the mutually agreed upon Warranty Deed instrument.

3. **Subdivision Approval:** In cooperation with DAGS, QLT submitted an application for consolidation and resubdivision with the County of Hawaii ("County"), which received tentative approval by the County Planning Department on June 12, 2015. A copy of the tentatively approved consolidation and resubdivision map is attached as **Exhibit B**. As indicated on Exhibit B, ingress and egress to the Subject Site will not be permitted from the future Kamakaeha Avenue extension (Lot C-2-C) and a future mauka roadway (Lot C-2-B). No ingress or egress will be permitted along the Subject Site's frontage along the future Makala Boulevard extension (Lot C-2-D).

Pursuant to the County's tentative approval, before final subdivision approval can be granted, several conditions must be met including but not limited to water system improvements, drainage requirements, access and roadway improvements, and wastewater improvements. To address how all identified requirements for final approval of the proposed subdivision will be done and at whose responsibility, QLT and DAGS will execute a Subdivision Agreement. It is noted that BLNR is not a party to the Subdivision Agreement.

4. **Phase I Environmental Site Assessment:** A Phase I Environmental Site Assessment covering the Subject Site and dated May 19, 2015 ("Phase I ESA"), was prepared for the State of Hawaii Department of Accounting and General Services by Bureau Veritas North America, Inc. The Phase I ESA was purported to be done in conformance to applicable ASTM

standards. The Phase I ESA also conducted investigation of non-ASTM issues including inspections for evidence of asbestos-containing materials, radon, lead-based paint, etc. Based on the foregoing, the Phase I ESA reports that no evidence of recognized environmental conditions was found.

Notwithstanding the Phase I ESA findings above, the United States Environmental Protection Agency typically requires a Phase I ESA to be completed within 180 days prior to the conveyance of the land for a grantee to qualify for certain Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) liability defenses. Accordingly, it is recommended that the Applicant be required to provide an updated Phase I ESA within 180 days prior to either the effective date of any right-of-entry issued by QLT to DAGS for construction purposes, or the conveyance of land from QLT to the State, whichever is sooner. If said Phase I identifies the potential for hazardous materials release or the presence of hazardous materials on the Subject Site at that time, the Applicant shall be required to conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to and to the satisfaction of DLNR.

AGREEMENTS:

To help effectuate the State's proposed acquisition of the Subject Site for of a new judiciary complex, and in addition to the Subdivision Agreement, QLT and the State have mutually agreed to the terms and conditions for the proposed conveyance. At the time of the drafting of this submittal, however, the Purchase and Sale Agreement and the deed, together with the mutually agreed upon encumbrances and other covenants that shall be included therein in lieu of the Makalapua Commercial DCCRs, have not been finalized.

Accordingly, BLNR is being asked to delegate authority to the Chairperson to negotiate, approve, and execute any agreements that are in the best interest of the State and necessary to effectuate the proposed land acquisition, subject further to the Department of the Attorney General's prior review and approval of said agreements.

RECOMMENDATION: That the Board:

1. Delegate its authority to the Chairperson to negotiate, approve, and execute any agreements that are in the best interest of the State, subject to the review and approval by the Department of the Attorney General;
2. Authorize the acquisition of the subject private lands under the terms and conditions cited above which are by this reference incorporated herein and subject further to the

following:

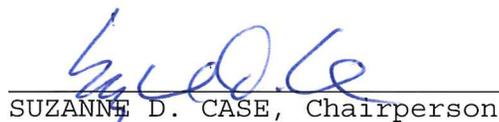
- A. Review and approval by the Department of the Attorney General;
and
 - B. Such other terms and conditions as may be prescribed by
the Chairperson to best serve the interests of the
State.
3. Approve the issuance of a right-of-entry permit to the
Department of Accounting and General Services for construction
and management purposes for the Subject Site under any terms
and conditions cited above which are by this reference
incorporated herein; and
4. Approve of and recommend to the Governor the issuance of an
executive order setting aside the Subject Site, currently
identified as TMK (3) 7-4-20:10 portion, to the Hawaii State
Judiciary for judiciary and 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.

Respectfully Submitted,



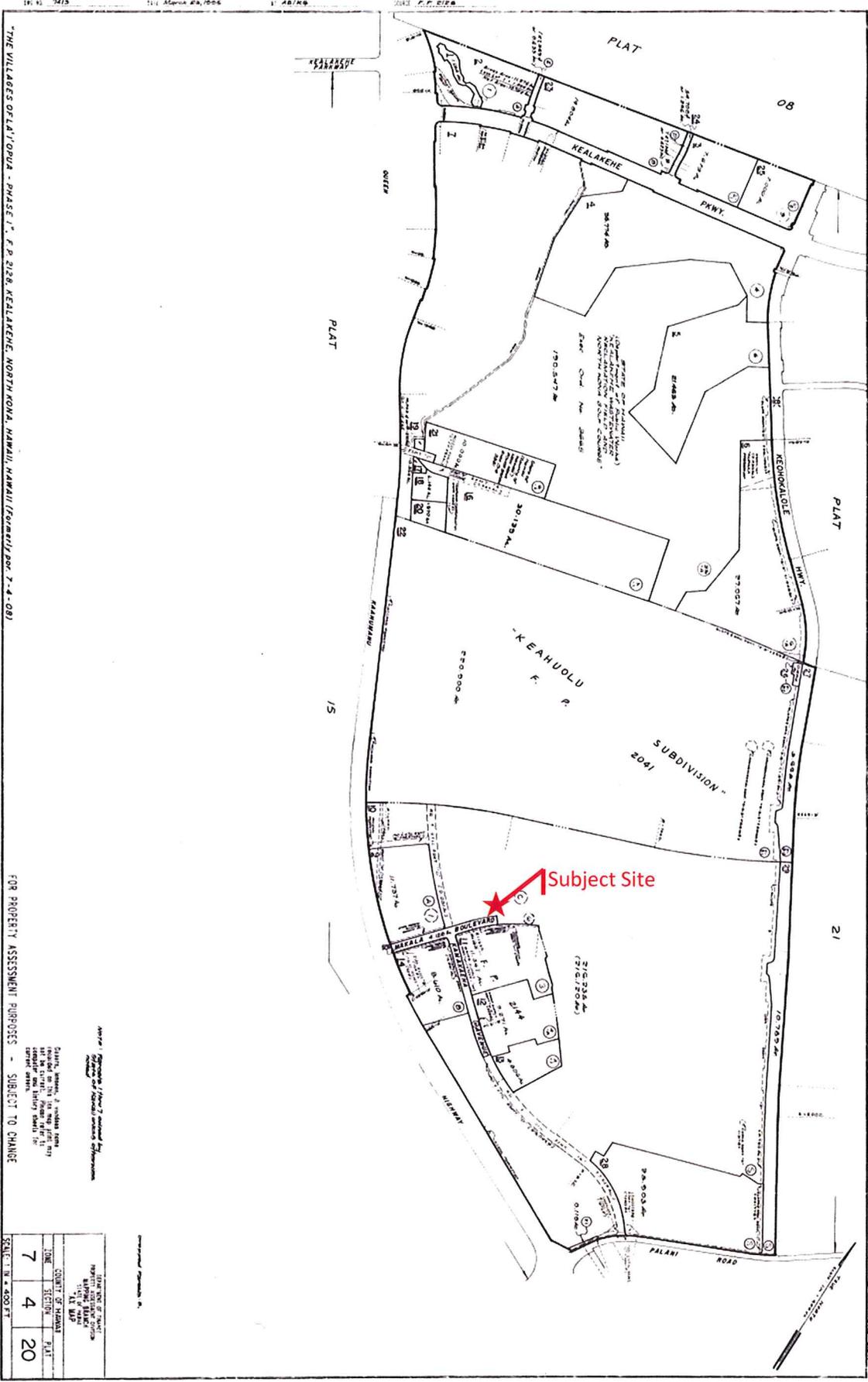
Gavin Chun
Project Development Specialist

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson



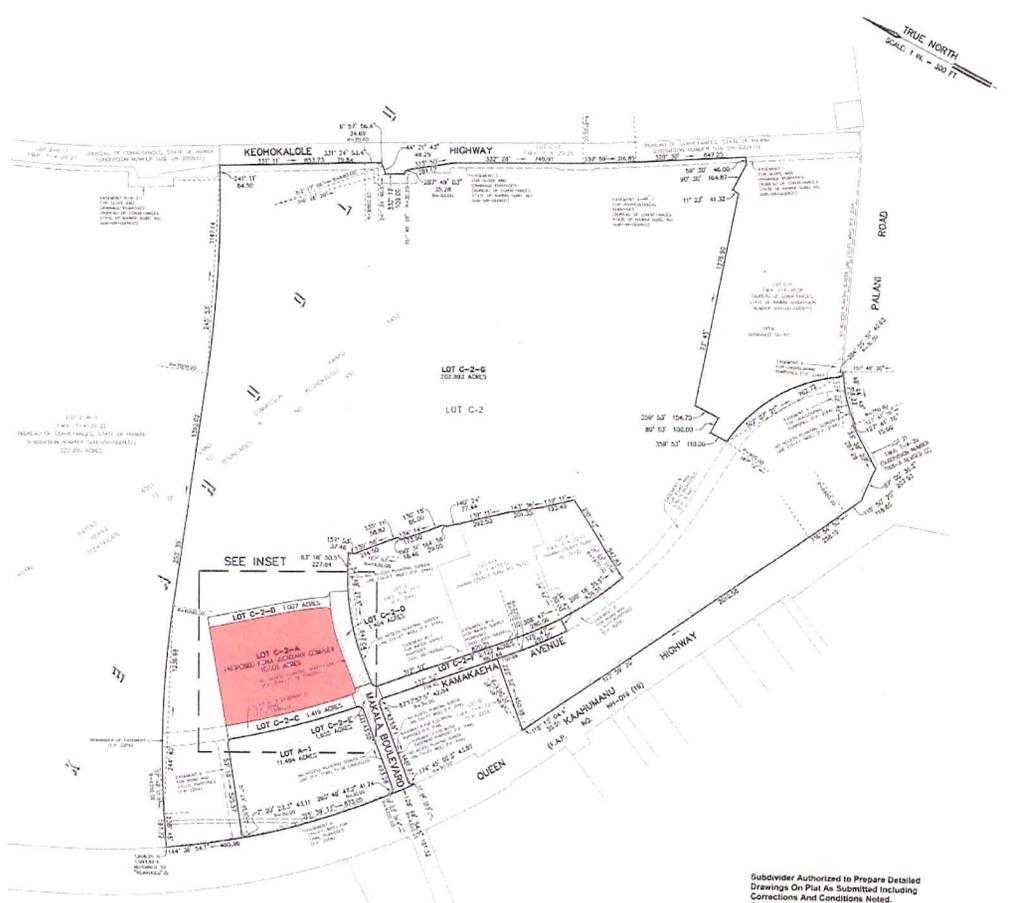
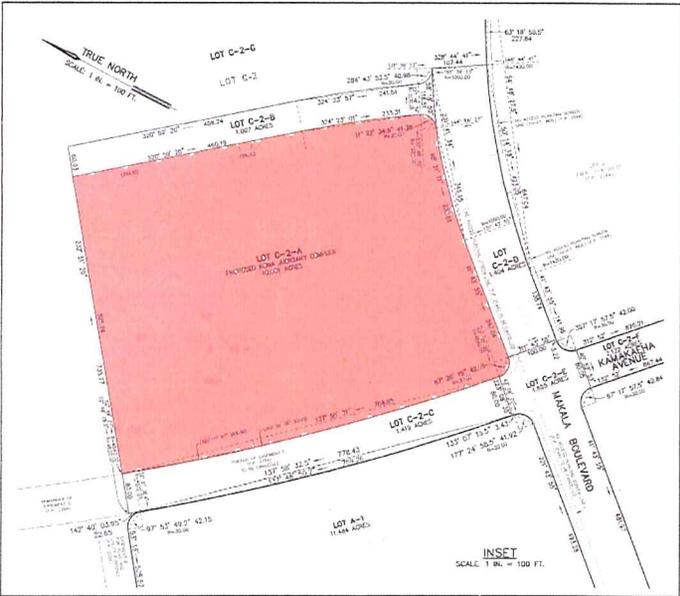


"THE VILLAGES OF LA'OPUA - PHASE I" - F.P. 2128, KEALAKEHE, NORTH KOHA, HAWAII (FORMERLY DCR 7-4-08)

FOR PROPERTY ASSESSMENT PURPOSES - SUBJECT TO CHANGE

7	4	20
ZONE	SECTION	PLAT
COUNTY OF HAWAII		
HAWAIIAN PLAT		
LA'OPUA		
SCALE: 1" = 400 FT.		
PRINTED:		

EXHIBIT A



CONSOLIDATION OF LOTS A AND D AS SHOWN ON FILE PLAN 2254
 AND LOT C-2 BEING A PORTION OF ROYAL PATENT 6851,
 LAND COMMISSION AWARD 8452, APANA 12 TO A, KEOHOKALOKE
 (CERTIFICATE OF BOUNDARIES NO. 45)
 AND RESUBDIVISION INTO LOTS A-1 AND C-2-A THROUGH C-2-G, INCLUSIVE;
 CANCELLATIONS OF NO ACCESS PLANTING SCREEN LINES AS SHOWN ON FILE PLAN 2144 AFFECTING LOTS A-1 AND C-2-D;
 CANCELLATION OF A PORTION OF EASEMENT C AS SHOWN ON FILE PLAN 2254 AFFECTING LOT C-2-C;
 AND DESIGNATION OF RESTRICTION OF VEHICULAR ACCESS RIGHTS AFFECTING LOT C-2-A
 AT KEAHUOLU, NORTH KONA, ISLAND OF HAWAII, HAWAII

Subdivider Authorized to Prepare Detailed
 Drawings On Plat As Submitted Including
 Corrections And Conditions Noted.
 Recordation With The Bureau of
 Conveyances, State of Hawaii, Not
 Authorized Until Approved For Record At A
 Later Date.
 TENTATIVE APPROVAL JUN 12 2015
 DATED:



THIS WORK WAS PREPARED BY
 ME OR UNDER MY SUPERVISION.
 DATE: 06/12/15
 M. Teruya
 LICENSED PROFESSIONAL ENGINEER
 LICENSE NO. 10000

NOTES:
 TOTAL AREA OF SUBDIVISION = 231.945 ACRES
 NUMBER OF LOTS = 8
 EXISTING ZONING = OS-10 AND OPEN
 STATE LAND USE = URBAN
 COORDINATES AND ADJUSTS REFERRED TO "KEAHUOLU" Δ
 DENOTES NO VEHICLE ACCESS PERMITTED
 DENOTES ACCESS PERMITTED

DATE: MARCH 3, 2015
 TAX MAP KEY: 7-4-20: 9, 10 & 13

OWNER: QUEEN LEUKOKAI TRUST ESTATE
 1100 ALAKA STREET, SUITE 1100, HONOLULU, HI 96813

Prepared by: [Faint text]