

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

February 24, 2017

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

PSF No: 14KD-169
Kauai

Resubmittal: Approval of January 13, 2017, Item D-2, Submission to Approve Mediated Settlement with Robinson Family Partners on Market Value of Old Government Road Remnant in Makaweli, Waimea, Kauai, adjoining Tax Map Key Nos. (4) 1-7-005:006 and (4) 1-7-005:001 Owned by Robinson Family Partners

BACKGROUND:

At its meeting on January 13, 2017, under Item D-2, the Board **deferred** the approval of the mediated settlement of **\$37,500.00** for the purchase of the discontinued remnant portion of an old government road in Makaweli, Waimea, Kauai. The subject remnant, situated makai of Kaumuali'i Highway, is approximately 1.258 acres and stretches one-half miles long and twenty-feet wide ("Remnant").

By oversight, the prospective purchaser of the Remnant, Robinson Family Partners ("Robinson" or "Robinsons"), was not notified of the January 13, 2017 meeting and was not in attendance. As a result, the Board voted to defer the matter so that certain issues could be further explored and to provide an opportunity for the Robinsons to testify.

REMARKS:

At the meeting, it was apparent that the Land Division's January 13th submission did not provide the specificity the Board sought. Accordingly, we expand on various points below and we attach in support Exhibit 1, Photo Maps and Aerial Photograph; Exhibit 2, the *Robinson Family Partners' Testimony in Support of Approval of Mediated Settlement Agreement on Market Value of Old Government Road Remnant in Makaweli, Waimea, Kauai*; Exhibit 3, the *Testimony Supporting the Purchase Price Established by Mediation 1.258-Acre Old Government Road Remnant, Makaweli, Waimea, Island of Kauai, Hawaii, Tax Map Key (4)1-7-05 (Portion)*; and Exhibit 4, January 13, 2017 Approve Mediated Settlement, inclusive of November 13, 2015 Submittal (Exhibit "1") and July 10, 2015 Submittal (Exhibit "A").

A. The Land Division's July 10, 2015 Submittal

1. The Remnant is Not Required for Accessibility to Parcel 1

The Land Division's July 10, 2015 submittal sought approval for the sale of the Remnant to the Robinsons. The Remnant is described as being flanked by Parcel 6, identified as TMK (4)1-7-005:006, and Parcel 1, identified as TMK (4)1-7-005:001. Parcel 1 is the planned site for Kapalawai Resort. Both Parcels 1 and 6 are owned by the Robinsons.

The July 10, 2015 submittal went on to imply that Parcel 1 was landlocked inasmuch as "[a]ccess to the planned Kapalawai Resort [Parcel 1] will need to cross the highway remnant." During the mediation, however, it was discovered that this was incorrect. Parcel 1 is not landlocked and will not require the Remnant for accessibility.

The current access point to Parcel 1 from Kaumuali'i Highway is located on the southeast tip of Parcel 1. The Remnant will allow the Robinsons to add an **additional** point of entry from Kaumuali'i Highway to Parcel 1. However, the Remnant is not required to establish access to a landlocked parcel, since Parcel 1 already has a legal access.

2. The Remnant will be Consolidated with Parcel 6 and not Parcel 1

The July 10, 2015 submittal further explained that the Robinsons' proposed disposition of the Remnant was to consolidate it with Parcel 6, an agricultural classified parcel. In light of the approval and anticipated consolidation, both the Land Division and Robinson appraisals considered the resulting enhancement by the Remnant to Parcel 6 and not to the resort-designated Parcel 1.

B. Comparable Easement Values

The Board's decision to defer the approval appeared to be, in part, due to the impression that the settlement amount of **\$37,500** was deficient when compared to other access dispositions such as easements.

Staff provides the following five recent easement transactions for comparison:

1. \$4,060 one-time payment for 55-year term, 11,799 square feet, non-exclusive easement for access and utility purposes, located at Waioli, Hanalei, Kauai, TMKs: (4)5-5-008:por 002 and (4) 5-6-002:por 001 (as of May 22, 2015);

2. \$3,360 one-time payment for 65-year term, 10,858 square feet, non-exclusive easement for access and utility purposes, located Kaumana, South Hilo, Island of Hawaii, TMK: (3) 2-5-003:21 (as of July 24, 2015);
3. \$1,200 perpetual, 8,030 square feet, non-exclusive easement for access and utility purposes, Olaa, Puna, Island of Hawaii, TMK: (3) 1-6-033:030-foot (as of July 24, 2015);
4. \$6,500 one-time payment for 55 year term, 6,200.337 acres, non-exclusive easement for access and utility purposes, located at Piihonua, South Hilo, Island of Hawaii, TMKs: (3)2-4-008:004, (3) 2-6-018:001, and (3) 2-6-018:013 (as of January 22, 2016);
5. \$60 per year for 1,605 square feet, non-exclusive access and utility easement, Lawai, Island of Kauai, TMK: (2) 5-2-034 (as of July 14, 2016).

Unlike remnants, easements convey only the right to use, and not own, the real property. The value of an easement would generally be more than 0 percent but less than 100 percent of the fee simple value. Valuations can be determined by estimating the value of the larger parcel before the taking and after the taking with the difference representing the value of the easement. Another method employed is the disutility factor. The disutility factor (represented by a percentage) considers the restrictions on the use of the easement by the fee simple owner. The fee simple land value is discounted by multiplying the disutility determined.

While not suggesting that the foregoing easements are suitable for use as comparables in an appraisal of the Remnant, the figures do provide a general idea of easement values on neighbor islands.

C. The Appraisal Reports

HRS §172-52 provides the authority and methodology for appraising remnant parcels of land. HRS §171-52(c) and (d) state:

- (c) Disposition. Remnants or portions thereof may be disposed of by the board of land and natural resources without recourse to public auction in the manner set forth herein. Any remnant or portion thereof to be disposed of shall be first offered for sale to the abutting owner for a reasonable period of time at a reasonable price based on appraised value. [...] If the remnant abuts more than one parcel, the board may subdivide the remnant so that a portion thereof may be sold to each abutting owner at the appraised value; provided that no remnant shall be sold to any abutting owner unless the remnant, when combined or consolidated with the abutting property, shall

abutting property, shall constitute a lot acceptable to the appropriate agency of the county in which the remnant lies; and provided further that appropriate language shall be included in any document of conveyance of such remnant to assure use of the remnant in accordance with the applicable ordinances, rules, and regulations of the county concerned.

(d) Appraisal. The value of the remnant or portion thereof shall be appraised by an independent appraiser, which appraisal shall take into consideration the limited market for the remnant and the resulting enhancement to an abutting owner's property by the addition of the remnant. (Emphasis added.)

In considering the “limited market for the remnant” the Land Division’s appraiser first weighed the effect, if any, to the Remnant’s fair market value. Because of the unique bilateral monopoly between the State and the only abutting land owner, it was explained, the fair market value would remain unaffected. In other words, the Remnant’s fair market value would neither increase nor decrease. As such, the Land Division’s appraiser concluded that an adjustment for the limited market was unwarranted.

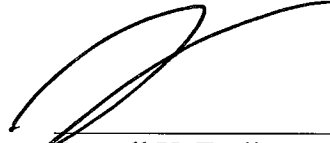
Robinsons’ appraiser, on the other hand, deducted 50% from its valuation based on an analysis of negotiated discounts for fractional ownerships of real property. While the Land Division maintained that the factual situation bears no resemblance to sales of fractional interest in land, a reasonable arbitrator could conclude that a discount for limited marketability applies.

In considering the resulting enhancement, Robinsons’ appraiser determined the contributory value of the Remnant to Parcel 6 by providing a before property value and after property value with the difference representing the contributory value of the Remnant. The Land Division’s appraiser determined first the unit value of the combination of the Remnant and Parcel 6, then afterwards applied the unit value to the Remnant land area.

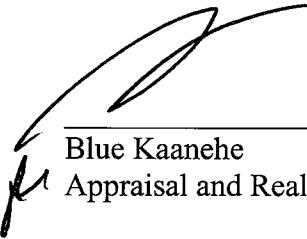
The wide disparity between the two appraisals, (the Land Division at \$80,300 and the Robinson at \$6,000) was based largely on the significance of the access the Remnant would provide to Parcel 1. The Robinsons maintained that while desirable, Parcel 6 could still be landscaped without acquiring the Remnant. The Land Division highlighted that the real practical value in Parcel 6 was only when it was combined with the Remnant as an extension of Parcel 1, otherwise it was merely a strip of land abutting the highway.

The mediator did an admirable job and parties were represented by counsel in this all-day mediation. In appreciation of the additional cost and time of acquiring additional appraisals, further mediation and potential arbitration the parties were able to reach an agreed upon settlement at **\$37,500.**

RECOMMENDATION: We recommend that the mediated market value of the subject old government road remnant of **\$37,500** be approved.

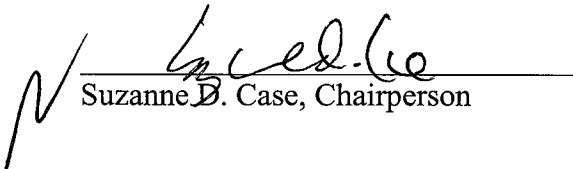


Russell Y. Tsuji
Land Division Administrator



Blue Kaanehe
Appraisal and Real Estate Specialist

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

EXHIBIT LIST

EXHIBIT NO.

DOCUMENT

- | | |
|---|---|
| 1 | Photo Maps and Aerial Photograph of Remnant Site |
| 2 | Robinson Family Partners' Testimony in Support of Approval of Mediated Settlement Agreement on Market Value of Old Government Road Remnant in Makaweli, Waimea, Kauai |
| 3 | Testimony Supporting the Purchase Price Established by Mediation 1.258-Acre Old Government Road Remnant, Makaweli, Waimea, Island of Kauai, Hawaii, Tax Map Key (4) 1-7-05 (Portion) |
| 4 | January 13, 2017 Approve Mediated Settlement with Robinson Family Partners on Market Value of Old Government Road Remnant in Makaweli, Waimea, Kauai, inclusive of November 13, 2015 Submittal marked as Exhibit "1" and July 10, 2015 Submittal marked as Exhibit "A" therein. |

EXHIBIT 1

Photo Maps and Aerial Photograph of Remnant Site

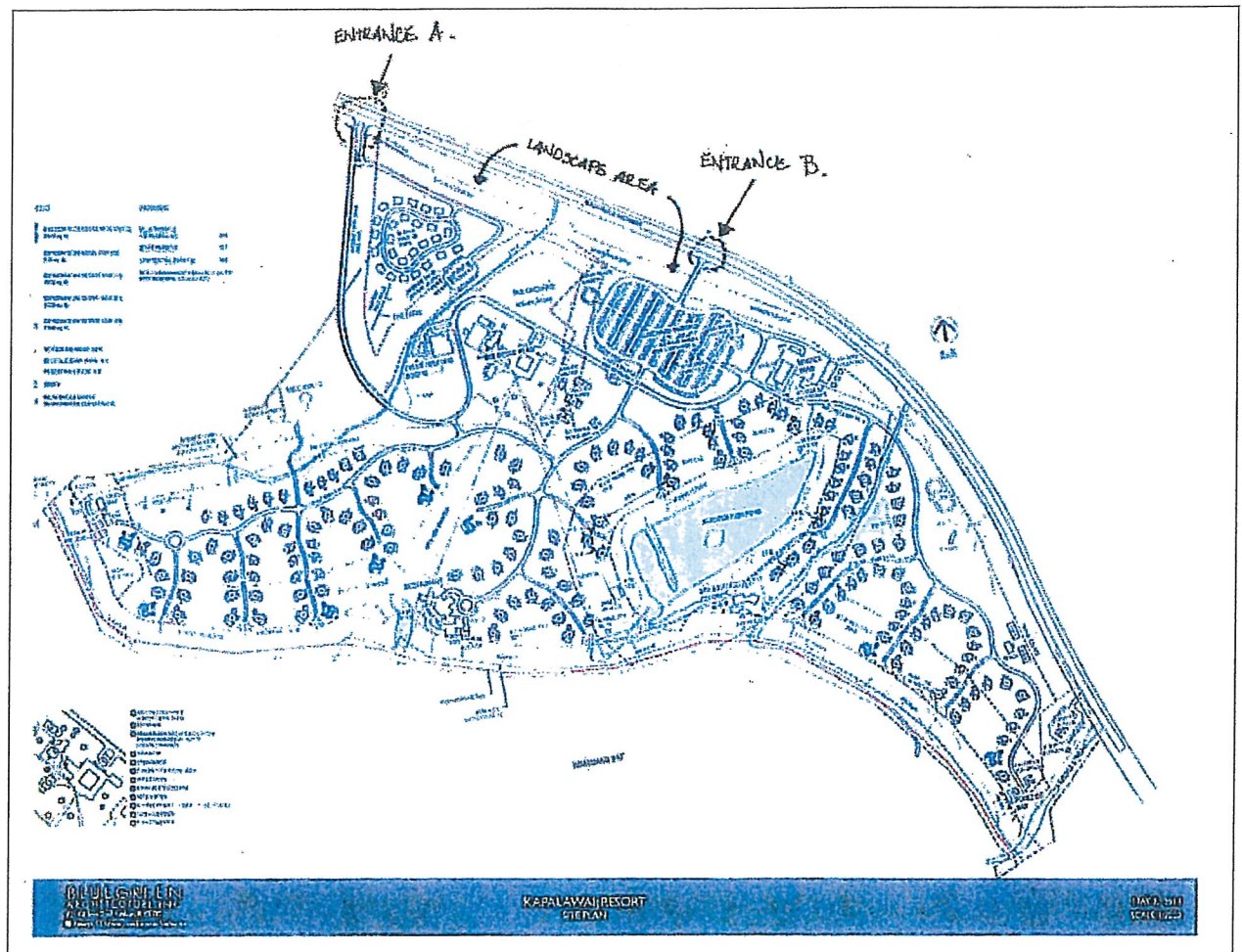
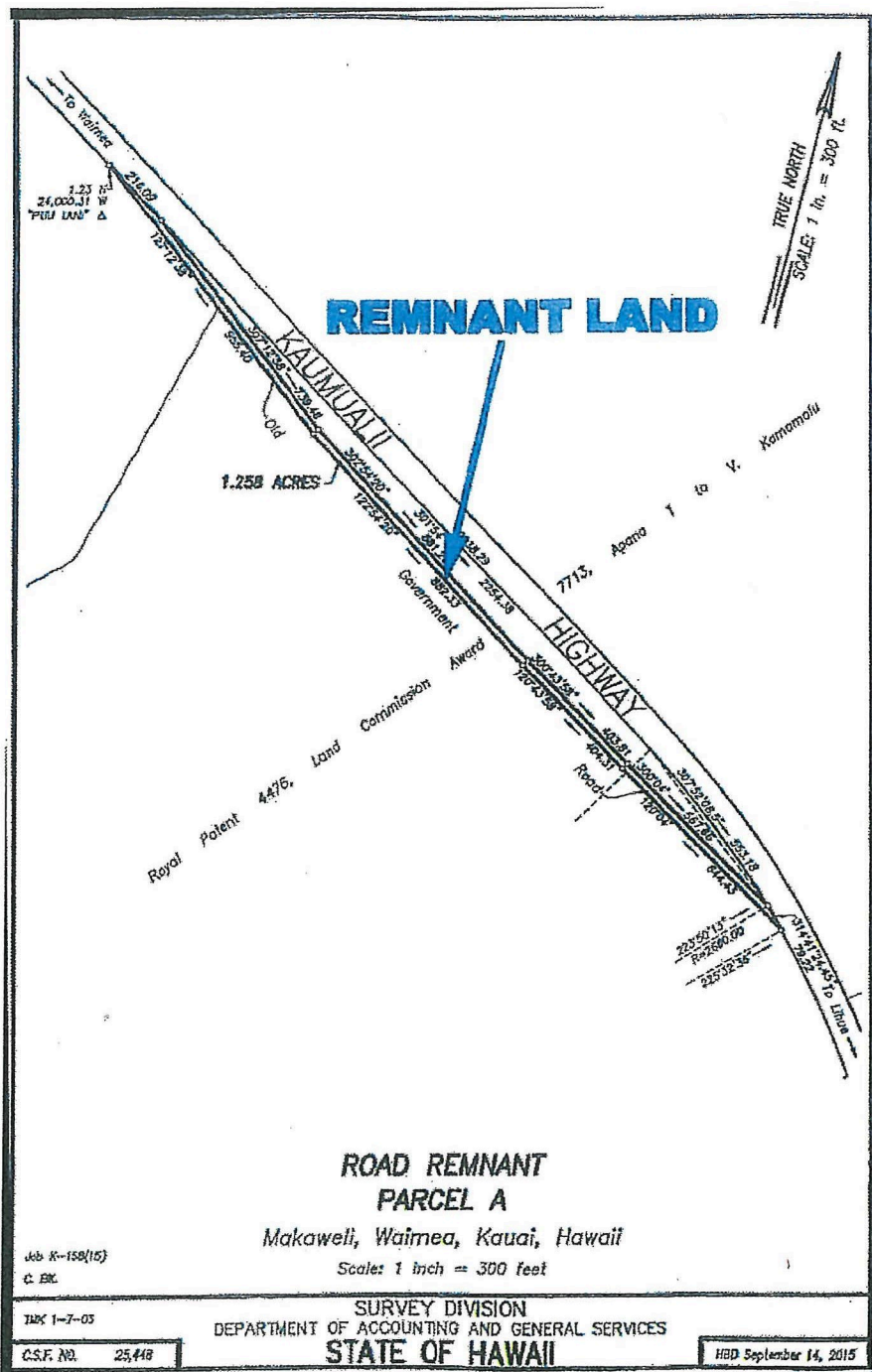


EXHIBIT " 1 "



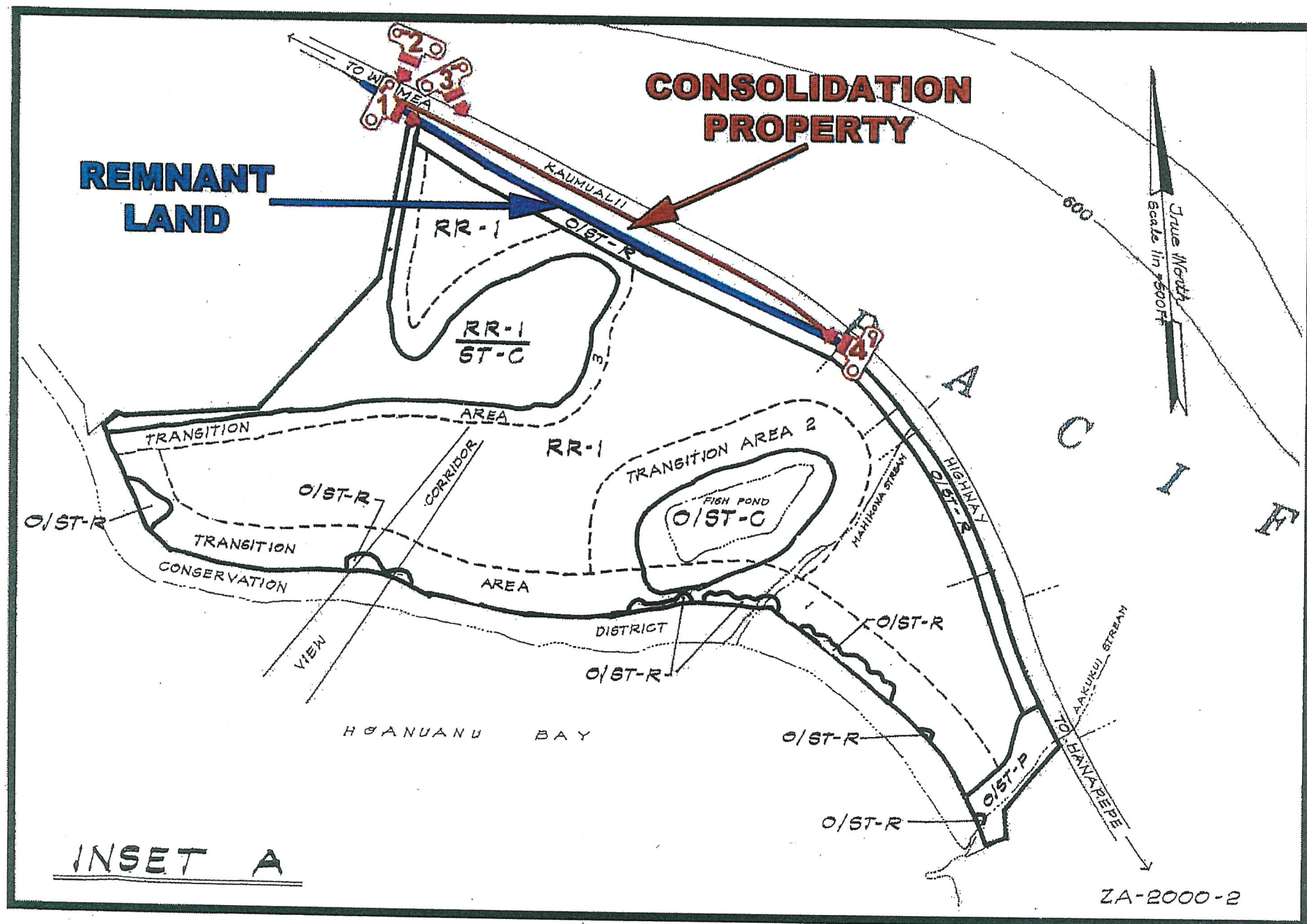


PHOTO MAP

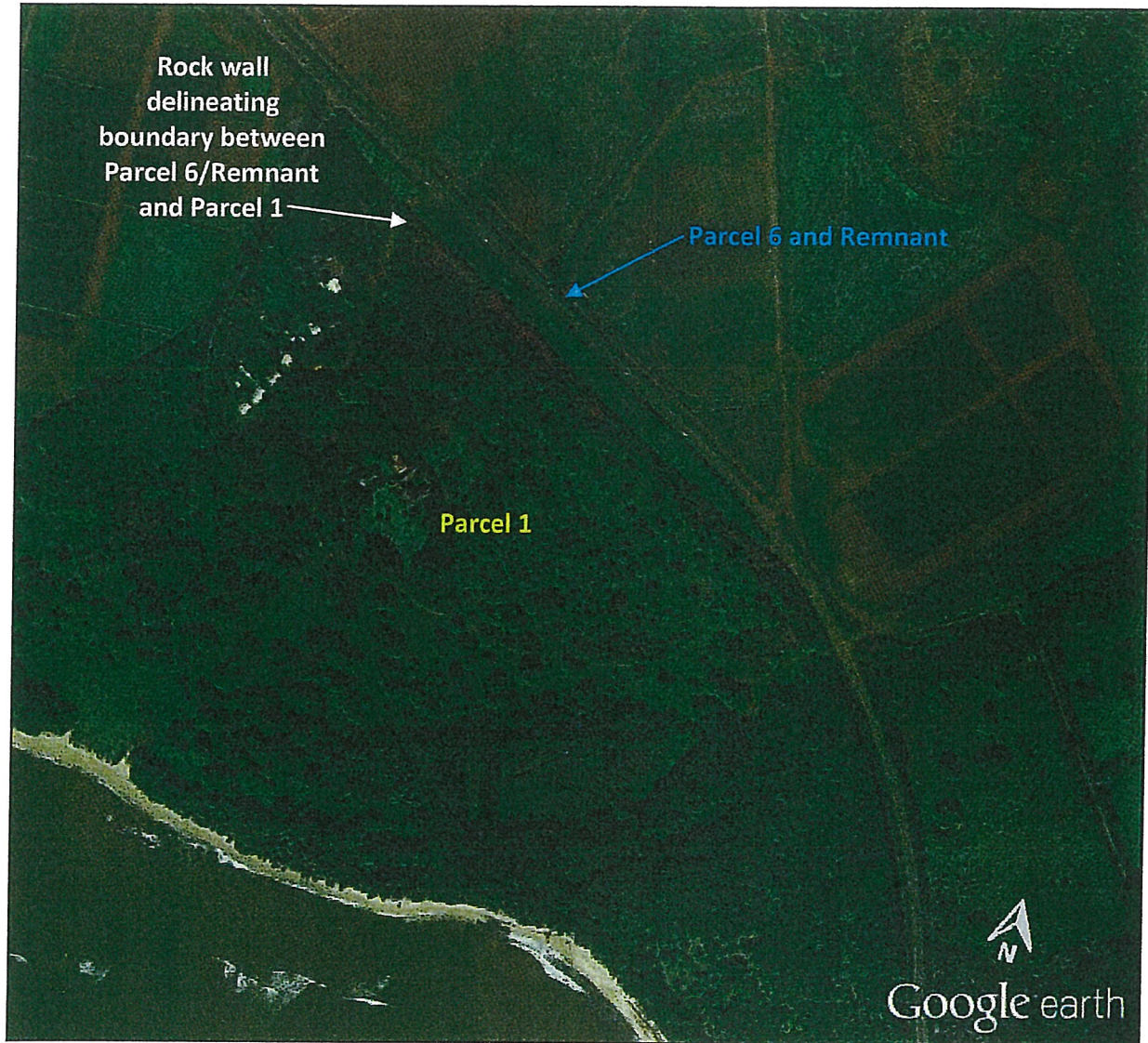


EXHIBIT 2

Robinson Family Partners' Testimony in Support of Approval of Mediated
Settlement Agreement on Market Value of Old Government Road Remnant in
Makaweli, Waimea, Kauai

**ROBINSON FAMILY PARTNERS' TESTIMONY IN SUPPORT OF APPROVAL OF
MEDIATED SETTLEMENT AGREEMENT ON MARKET VALUE OF OLD
GOVERNMENT ROAD REMNANT IN MAKAWELI, WAIMEA, KAUAI**

Robinson Family Partners ("*RFP*") offers this testimony in support of the Land Division of the Department of the Land and Natural Resources' ("*DLNR*") request that the Board of the Land and Natural Resources ("*BLNR*") approve the disposition of the Old Government Road Remnant in Makaweli, Waimea, Kauai ("*Remnant*") to RFP for \$37,500, the amount that both parties agreed to after an intense, day-long mediation. In addition to the reasons set forth in DLNR's submission dated January 13, 2017, RFP offers the following reasons in support of DLNR's request:

1. The appraisal obtained by DLNR ("*State Appraisal*"), which valued the Remnant at \$80,300, was flawed in the following respects:

a. The State Appraisal was based upon the incorrect assumption that RFP needed to obtain access over the Remnant to get to its adjoining resort-zoned parcel [TMK:(4)-1-7-005:001] (the "*Resort Parcel*"). RFP already has access to the Resort Parcel from Kaunualii Highway at the southern end of the Resort Parcel. In addition, RFP believes that it continues to have an existing right of access across the Remnant at the north end of the Resort Parcel since, under Hawaii law, when the State abandoned the Remnant as a public highway it did not extinguish RFP's right of access across the Remnant. See *Robello v. County of Maui*, 19 Hawaii 168, 169 [1908] [when a public highway is abandoned, any sale of the abandoned parcel cannot deprive adjacent land owners of access to their land]. Any other result would result in a "takings claim" under the State and Federal constitutions, since it would result in the State taking property right [access to the Resort Parcel across the Remnant] without just compensation.

b. The State Appraisal was also based on the incorrect assumption that the Remnant was adjacent to Kaunualii Highway and that RFP would need to obtain the Remnant so that the developer of the Resort Parcel could landscape the frontage of the Resort. The Remnant is not adjacent to Kaunualii Highway, but instead is adjacent to another parcel owned by RFP [TMK:(4)-1-7-005:006] ("*Parcel 6*"). In the event that the Resort Parcel is developed, the developer will have the right to landscape Parcel 6 fronting the Kaunualii Highway, and the portion of the Resort Parcel that is adjacent to Remnant. So while it would be preferable for RFP to acquire the Remnant so that it could allow the developer to landscape it as part of the development, the developer will be able to (i) landscape Parcel 6 fronting Kaunualii Highway anyway, and (ii) landscape the Resort Parcel where it is adjacent to the Remnant and screen it from view of the rest of the Resort.

c. The State Appraisal did not comply with the requirement of HRS § 171-52(d) which requires, in part, that remnant parcels be valued based upon "the resulting enhancement of the abutting owner's property by the addition of the remnant." The State Appraisal does not reflect any valuation of the enhancement of either the Resort Parcel or Parcel 6.

d. The State Appraisal did not comply with the requirement of HRS § 171-52(d) which requires, in part that the valuation of remnant parcels take into account "the limited market for the remnant". The State Appraisal does not reflect any discount for the limited marketability of the Remnant, when a discount of between minus 25% and minus 60% has been applied in other recent sales of other remnant parcels by DLNR.

e. The State Appraisal failed to adequately consider the irregular shape and marginal utility of the Remnant. The Remnant is only 20 feet wide and more than 2700 feet long, but the State Appraisal only made an adjustment of between 0% and minus 10% for shape when valuing the Remnant, when an adjustment of least minus 50% for the shape was appropriate.

2. In the July 10, 2015 presentation to BLNR, RFP stated that if it acquired the Remnant, it intended to consolidate it with its adjoining Parcel 6. In approving the disposition of the Remnant to RFP, BLNR "authorize[d] the subdivision and consolidation of the subject remnant by [RFP]."

a. Both the State Appraisal and the appraisal obtained by RFP ("*RFP Appraisal*") valued the Remnant on the assumption that it would be consolidated with Parcel 6, which is zoned for agricultural use.

b. However, in the mediation, DLNR took the position that because (i) HRS § 171-52(d) requires, in part, that remnant parcels be valued based upon "the resulting enhancement of the abutting owner's property by the addition of the remnant.", (ii) the Remnant abuts the Resort Parcel as well as Parcel 6, and (iii) the Resort Parcel is zoned for resort development, DLNR could not agree to any valuation of the Remnant based solely on its consolidation with agriculturally zoned Parcel 6.

c. Accordingly, both RFP and DLNR were faced with the realization that, unless they were able to reach agreement on value in the mediation, they would each have to have new appraisals prepared. Given the time and cost associated with having the Remnant reappraised, and the likelihood of having to incur the time and cost of another mediation and, if unsuccessful, arbitration, on value, RFP and DLNR agreed to a value of \$37,500 for the Remnant in the mediation, and included a provision in the mediation settlement agreement, expressly stating that the adjacency of the Remnant to the Resort Parcel was considered the determining value.

EXHIBIT 3

Testimony Supporting the Purchase Price Established by Mediation 1.258-Acre
Old Government Road Remnant, Makaweli, Waimea, Island of Kauai, Hawaii, Tax
Map Key (4) 1-7-05 (Portion)

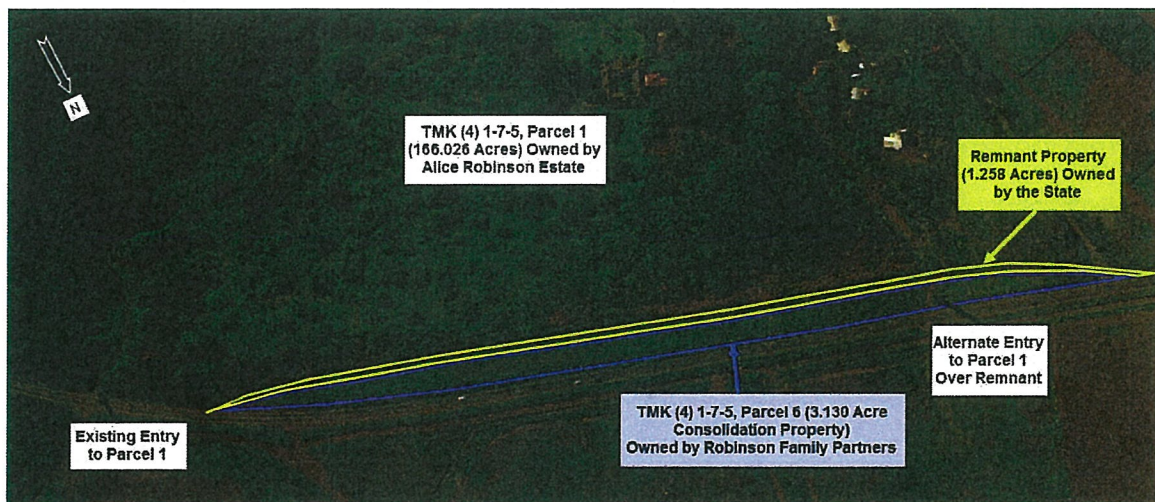
February 2, 2017

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

**Re: Testimony Supporting the Purchase Price
Established by Mediation
1.258-Acre Old Government Road Remnant
Makaweli, Waimea, Island of Kauai, Hawaii
Tax Map Key (4) 1-7-005 (Portion)**

I was asked to serve as the Mediator in the above referenced dispute which was held on November 22, 2016 at the CBRE office located at 1003 Bishop Street, Suite 1800, Honolulu, Hawaii 96813. The State of Hawaii ("State") was represented Russell Y. Tsuji, DLNR Land Division Administrator; Pamela K. Matsukawa, DLNR Appraisal and Real Estate Specialist; and David D. Day, Esq., Deputy Attorney General Land/Transportation Division. Robinson Family Partners ("RFP") was represented by Jennifer Whitmore, President of Gay & Robinson, Inc.; and RFP's legal counsel Eric A. James, Esq., Partner of Carlsmith Ball, LLP. Collectively the State and RFP are referred to herein as the ("Parties").

The subject of the dispute contains a total land area of 1.258 acres (54,798 square feet) and is part of TMK (4) 1-7, Plat 005 but has not been assigned a specific tax map key parcel number. It is approximately 20 feet wide, was previously used as a government road, and is estimated to be about one-half mile in length. The subject remnant, and abutting TMK (4) 1-7-5, Parcel 6 to the northeast containing 3.130 acres (commonly referred to as the "consolidation" property), are long narrow remnant properties that were created when the State constructed Kaumualii Highway. The subject remnant is also bordered to the southwest by TMK (4) 1-7-5, Parcel 1, a 166.026-acre oceanfront property owned by Alice Robinson Estate and planned for the Kapalawai Resort. Access to Parcel 1 is currently available from Kaumualii Highway at the east end of the property. Alternate access has historically been over the 3.130-acre remnant owned by RFP and the 1.258-acre remnant owned by the State. The following aerial photograph illustrates the locations of the subject remnant, consolidation property, Parcel 1 and access points to Parcel 1.



Prior to the Mediation I was provided with:

- an appraisal prepared for the State by Medusky & Company as of September 22, 2015 with a concluded market value of \$80,300,
- a review of the Medusky & Company appraisal prepared for RFP by John Child and Company dated May 20, 2016 with an adjusted value of \$12,500, and
- an appraisal prepared by John Child and Company for RFP as of June 29, 2016 with a concluded market value of \$6,000.

As the Mediator, my job is to facilitate understanding and communication between the parties. During the course of this mediation, it became clear there were several points of misunderstanding between the Parties and appraisers involved in the valuation assignments. Specific notable points included the following:

- The Medusky & Company appraisal analysis assumed: *"Use of the Remnant Land in conjunction with adjacent property is concluded to be the highest and best use. Such use is anticipated to include providing access to the proposed Kapalawai Resort on Parcel 1 and development as a landscaped area fronting Kaunualii Highway and the proposed resort"*.
- During the mediation, it became evident the highest and best use statement in the Medusky & Company appraisal was not accurate. If RFP does not acquire the remnant, the 3.130-acre Parcel 6 which is owned by RFP can still be landscaped to accommodate the proposed resort. The State owned 20-foot wide subject remnant will merely continue

to exist as an overgrown, abandoned road with no significant impact to the resort development.

- RFP also confirmed it has legal access from the east end of Parcel 1 and commonly uses this access (see "Existing Entry to Parcel 1 on the aerial). As such, acquisition of the 20-foot wide remnant is not required for "providing access to the proposed Kapalawai Resort on Parcel 1", as suggested in the Medusky & Company appraisal.
- As the Mediation progressed, it became evident that while RFP would like to acquire the subject remnant, ownership of this property was not a critical component for development of the planned resort or for access to the resort. As such, the highest and best use premise of the Medusky & Company report appeared potentially flawed which, in turn, could impact the concluded value.
- Similarly, logic would suggest that the initial market value estimate of \$6,000 opined by John Child and Company would not be an acceptable price for the State. Additionally, John Child and Company's analysis of the Medusky & Company report concluded a different value of \$12,500 which serves to underscore the complexities associated with valuation of a remnant abandoned road parcel.

After a full day of working toward a mutually agreeable settlement price, the State's and RFP's representatives arrived at what I believe to a carefully thought out resolution. As the day progressed Mr. Tsuji, Ms. Matsukawa and Mr. Day became aware that acquisition of the remnant was not critical to the entry to Parcel 1, as originally thought, or to the development of the Kapalawai Resort. It also became clear, that there are no higher order uses for the subject remnant and, if the acquisition does not occur, it will remain an overgrown abandoned State owned road.

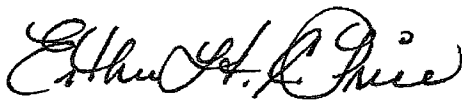
If the State of Hawaii opts not to sell the subject remnant property to RFP, there are likely no other buyers for the property since the property has no economic utility and it is bordered on both sides by properties owned by the Robinsons. By definition, "Market Value" assumes a "competitive and open market" but, in the case of a remnant parcel there is frequently only one seller and one buyer. As such, the seller and buyer, as the parties, determine the market value for a specific remnant.

Board of Land and Natural Resources
February 2, 2017
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The mediation process is a fair method of dispute resolution, particularly when there are wide disparities in market value estimates. I think both parties did an excellent job of arriving at a purchase price that was fair to both the State and RFP through thoughtful consideration of additional information that was clarified during the Mediation.

I am requesting the Board consider these facts and accept the \$37,500 Mediation Settlement price.

Sincerely,

A handwritten signature in cursive script, reading "Esther H.C. Price". The signature is written in dark ink and is positioned above a horizontal line.

Esther H.C. Price, MAI
Mediator

EXHIBIT 4

January 13, 2017 Approve Mediated Settlement with Robinson Family Partners on Market Value of Old Government Road Remnant in Makaweli, Waimea, Kauai, inclusive of November 13, 2015 Submittal marked as Exhibit “1” and July 10, 2015 Submittal marked as Exhibit “A” therein.

DEFERRED

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

January 13, 2017

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

PSF No. 14KD-169
Kauai

Approve Mediated Settlement with Robinson Family Partners on Market Value of
Old Government Road Remnant in Makaweli, Waimea, Kauai, adjoining Tax
Map Key Nos. (4) 1-7-005:006 and (4) 1-7-005:001 Owned by Robinson Family
Partners

APPLICANT:

Robinson Family Partners and Land Division

LEGAL REFERENCE:

Section 171-52, Hawaii Revised Statutes, as amended.

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.

DCCA VERIFICATION:

Place of business registration confirmed: Yes
Registered business name confirmed: Yes
Good standing confirmed: Yes

Deferred
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
January 13, 2017 *Up*

EXHIBIT "4"

BACKGROUND

At its meeting on July 10, 2015, under Item D-3, the Board approved the sale of an old government road remnant to Robinson Family Partners at Makaweli, Waimea, Kauai.

At its meeting on November 13, 2015, under Item D-1, the Board amended its prior board action to include the issuance of a right-of-entry permit to Robinson Family Partners for site visit and survey purposes. Please see Exhibit "1", which is the submittal for Item D-1 of the November 13, 2015 meeting. Attached to this submittal as Exhibit "A" is the submittal for Item D-3 of the July 10, 2015 meeting.

Attached as Exhibit "2" is a map showing the subject road remnant, which is adjoined by TMK no. (4) 1-7-005:006 (Parcel 6) on the northern side and TMK no. (4) 1-7-005:001 (Parcel 1) on the southern side. Both parcels are owned by Robinson Family Partners.

REMARKS

The consideration for the sale of the remnant to Robinson Family Partners is a one-time lump sum payment of fair market value to be determined by independent or staff appraiser, subject to review and approval by the Chairperson. Pursuant to section 171-52(d), HRS, staff procured the services of an independent appraiser. Section 171-52(d) states as follows:

d) Appraisal. The value of the remnant or portion thereof shall be appraised by an independent appraiser, which appraisal shall take into consideration the limited market for the remnant and the resulting enhancement to an abutting owner's property by the addition of the remnant. The value of a remnant or portion thereof which is surplus to state highway requirements and is in the inventory of such surplus remnants as of December 31, 1981, may be appraised by an employee of the State qualified to appraise lands.

The independent appraiser procured by the department concluded the one-time payment of fair market value to be \$80,300.

Robinson Family Partners disagreed with the department's fair market value and hired their own appraiser who concluded the fair market value to be \$6,000.

The wide discrepancy was due to the differences in the appraisal methodologies used by the appraisers.

The July 10, 2015 submittal said that the road remnant would be consolidated with Parcel 6. Parcel 6 is a long, narrow piece of land about 20 feet wide and consists of 3.130 acres. Parcel 1, on which the resort will be developed, consists

of 166.026 acres. Staff and the department's appraiser were under the impression that Parcel 6, after consolidation with the remnant road, would subsequently be consolidated with Parcel 1 to benefit the resort. The end result would give the planned resort at least two entrances from Kaumualii Highway to the resort as well as allow landscaping. Staff believes that this interpretation was reflected in the submittals to the Board.

Robinson Family Partners took the position that for the purposes of the remnant sale, the subject road remnant was to be consolidated with Parcel 6, so the appraisal should take into account only Parcel 6 and not Parcel 1.

Mediation occurred on November 22, 2016. Appraiser Esther Price, MAI, was the mediator. Robinson Family Partners was represented by Jennifer Whitmore, President of Gay & Robinson, Inc., and Eric A. James, Esq. The department was represented by Russell Tsuji, Land Division Administrator, Pamela Matsukawa, Appraisal and Real Estate Specialist, and David Day, Deputy Attorney General.

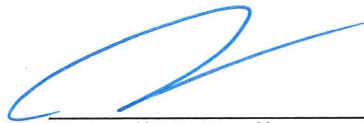
During the mediation it was brought to the department representatives' attention that prior to this remnant sale, there was a written agreement signed by the State Department of Transportation's (DOT) property management section head and the chairman of the management committee of Robinson Family Partners, which addressed the sale of the old government road at Makaweli, Waimea, Kauai, containing 8.44 acres (see attached Exhibit "3"), which is larger than the subject remnant of 3.130 acres. The agreement was apparently signed before the DOT ascertained that the Board had jurisdiction over the sale of the remnant road. The offer made by the DOT was \$12,500 for the value of the property plus the costs of services for a total of \$14,000 for the subject remnant parcel and various other remnants totaling 8.44 acres. It is unclear whether section head's offer was made after obtaining a valuation from a licensed appraiser authorized to practice in the State of Hawaii, but was apparently made without first obtaining Land Board approval to sell the remnant parcels. In any event, the Department of Transportation later took the position it had no authority to sell the subject remnant, and the Robinson Family Partners then approached the Department and inquired about purchasing the subject remnant that abuts Parcel 1 and Parcel 6.

The Robinson Family Partners' representatives also informed the department's representatives that Parcel 1 did in fact have access to Kaumualii Highway even without the remnant, so the remnant was not required for Parcel 1's access to the highway.

Mediation took the entire day. After some time, the parties discussed with the mediator the possibility of having both appraisers provide further appraisal services using agreed upon parameters. However, the revisions would likely have resulted in further mediation for the parties. Therefore, numbers were proposed to see if the parties could agree on a value that would avoid further appraisal and mediation costs and the costs of arbitration. Very late in the afternoon the parties

finally agreed upon \$37,500, subject to approval of the Board. Please see the mediated settlement agreement attached as Exhibit "4". This was a compromise that the department's representatives felt was reasonable given the representation that access to the highway for Parcel 1 (the resort parcel) was not dependent on the acquisition of the remnant by Robinson Family Partners; given the DOT's low value placed on the road remnant (although we have no idea what considerations led to this value); given the limited utility of the road remnant to anyone other than the adjoining landowner; and in consideration of avoiding further appraisal and mediation costs and the costs of arbitration.

RECOMMENDATION: Staff recommends that the mediated market value of the subject old government road remnant of **\$37,500** be approved.

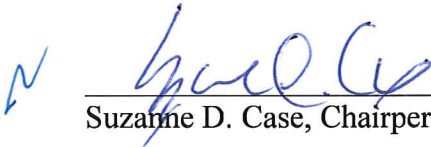


Russell Y. Tsuji
Land Division Administrator



Pamela K. Matsukawa
Appraisal and Real Estate Specialist

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

Land Board Meeting: January 13, 2017; D-2: Deferred.

Deferred.

D-1

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

November 13, 2015

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

PSF No: 14KD-169
Kauai

Amend Prior Board Action of July 10, 2015, Item D-3, Sale of Old Government Road Remnant to Robinson Family Partners, por. of Makaweli, Waimea, Kauai, Tax Map Key: (4) 1-7-005:por. 001. The purpose of the amendment is to include the issuance of a right-of-entry permit to Robinson Family Partners, its consultants, contractors, and persons acting on its behalf, for site visit and survey purposes.

BACKGROUND:

At its meeting on July 10, 2015, under Item D-3, the board approved the sale of old government road remnant to Robinson Family Partners, por. of Makaweli, Waimea, Kauai. See Exhibit A.

As part of the applicant requirements, an appraisal is required to determine the one-time fair market value for the remnant. Since this process is taking longer than anticipated, applicant is requesting an immediate right-of-entry permit to conduct surveys on the remnant.

Applicant, its consultants and contractors would like to conduct a preliminary site visit and survey of the remnant. This will assist them in drafting a landscaping plan for entry points and a buffer zone between the current Kaumualii Highway and the proposed Kapalawai Resort, which will ultimately incorporate this remnant parcel. The right-of-entry permit will not allow any construction or site work on the remnant.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit B.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
November 13, 2015

EXHIBIT " I "

D-1


REMARKS:

Prior Board approval did not include a right-of-entry permit. Staff recommends an immediate right-of-entry permit over subject parcel for site visit and survey purposes, which will expire upon execution of sale of remnant parcel to Robinson Family Partners. No construction or site work will be permitted under the right-of-entry.


RECOMMENDATION: That the Board:

- I. Amend its prior Board action of July 10, 2015, under agenda item D-3, by adding a new paragraph 5 at the end of the Recommendation section:
 5. Authorize the issuance of an immediate right-of-entry permit to the Robinson Family Partners, its consultants, contractors and persons acting on its behalf, covering the subject lands under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The Standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - b. Right-of-entry permit will expire upon execution of sale of remnant parcel to Robinson Family Partners; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- II. All terms and conditions listed in its July 10, 2015 approval to remain the same.

Respectfully Submitted,


Marvin Mikasa
District Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

Land Board Meeting: November 13,
2015; D-1: Approved as submitted.

Approved as submitted. See attached
page.

Land Board Meeting: November 13, 2015; D-1: Approved as submitted.

Approved as submitted.¹

¹ Board member Oi suggested going forward, all Board Submittals involving the sale of a remnant parcel should also include a Right of Entry to the applicants and its consultants to conduct surveys and other due diligence items.

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

July 10, 2015

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

PSF No.: 14KD-169

Kauai

Sale of Old Government Road Remnant to Robinson Family Partners, por. of Makaweli,
Waimea, Kauai, Tax Map Key: (4) 1-7-005:por. 001.

APPLICANT:

Robinson Family Partners, a Hawaii general partnership.

LEGAL REFERENCE:

Section 171-52, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at por. of Makaweli, Waimea, Kauai identified by Tax
Map Key: (4) 1-7-005, as shown on the attached map labeled Exhibit A.

AREA:

1.23 acres, more or less.

ZONING:

State Land Use District: Agriculture
County of Kauai CZO: Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

July 10, 2015 LD

D-3

EXHIBIT "A"

CURRENT USE STATUS:

Vacant and unencumbered.

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. Subject lands are to be conveyed to abutting landowner(s) and will become privately owned land at that point.

DCCA VERIFICATION:

Place of business registration confirmed: YES
Registered business name confirmed: YES
Applicant in good standing confirmed: YES

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine the one-time payment of fair market value for the remnant and;
- 2) Consolidate the remnant with the Applicant's abutting property through the County subdivision process; and
- 3) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

Pursuant to section 171-52, HRS, a remnant is defined as "a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics." The subject parcel has been determined to be a remnant by this definition for the following reasons:

- 1) The parcel is a discontinued portion of an old government road.

Applicant in late 2012 applied to Department of Transportation, Highways Division (DOT-Highways), to purchase the road remnant assuming it was part of the old Kaumualii Highway before the highway was realigned.

On March 15, 2013, DOT-Highways wrote to the applicant explaining that a certificate of search was completed by DOT-Highways showing that the old government road remnant was acquired for the State of Hawaii through the Admissions Act. DOT-Highways determined that the remnant belongs to Department of Land and Natural Resources.¹ See Exhibits B & C.

Applicant is the owner of parcel (4) 1-7-005:006 (Parcel 6) as staff has confirmed by County of Kauai Real Property Tax Assessment website. Other abutting property to the subject remnant parcel includes parcel (4) 1-7-005:001 (Parcel 1), which is also owned by the applicant and is the planned future site of the Kapalawai Resort.

When the Kauai Belt Road project was completed, a portion of the new Kaumualii Highway dissected applicant's property, Parcel 6, and the adjoining property, Tax Map Key: (4) 1-7-005:002. This created an access situation for Parcel 1, which is separated from Kaumualii Highway by the highway remnant. See Exhibit D. Access to the planned Kapalawai Resort will need to cross the highway remnant.

Applicant Robinson Family Partners proposes to purchase the old government highway remnant and consolidate it into Parcel 6. This area will have two entrances to the resort and will landscape the remaining area between the highway and resort. See Exhibit E.

Kapalawai Resort is a planned 160-acre eco-tourist resort in Makaweli. Robinson Family Partners is leasing the land to Kapalawai Resort.

Robinson Family Partners has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Comments were solicited from the agencies identified below with the results indicated.

State Agencies:

DOH	No environmental health concerns
DLNR - Historic Preserv.	No response by suspense date
OHA	Revenue reported in annual accounting of public land trust
DOT - Highways Div.	No objections

¹ At its meeting of March 23, 1984, Item D-4, the Board authorized DOT-Highways to sell a number of road remnants statewide. Although the subject remnant was not included on the approved list, Land Division staff believes the remnant is under the jurisdiction of DOT-Highways pursuant to applicable law. Nevertheless, in order to facilitate a resolution of this matter, Land Division staff will process this disposition, if approved.

County Agencies

County Planning	No objections
Public Works	No comments


Staff has no objections to the request.

RECOMMENDATION:

That the Board:


1. Find that the subject lands are economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics and, therefore, by definition is a remnant pursuant to Chapter 171, HRS.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 1-7-005:001, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Authorize the subdivision and consolidation of the subject remnant by the Applicant.
4. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the sale of the subject remnant to Robinson Family Partners covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current deed or grant (remnant) form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

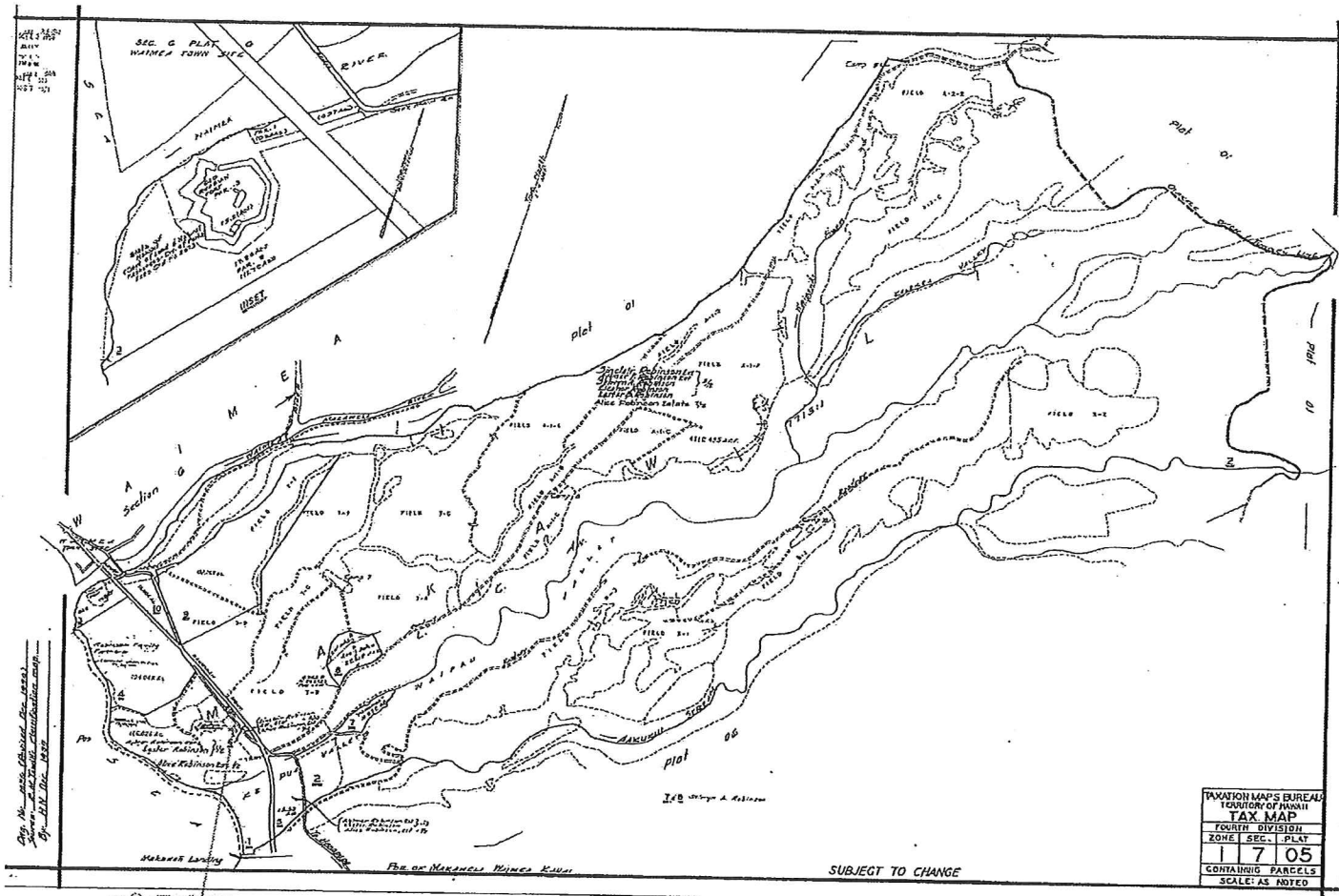


Marvin Mikasa
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



OLD CHURCH
ROAD REMAINS

SUBJECT TO CHANGE

TAXATION MAPS BUREAU			
TERRITORY OF HAWAII			
TAX MAP			
FOURTH DIVISION			
ZONE	SEC.	PLAT	
1	7	05	
CONTAINING PARCELS			
SCALE: AS NOTED			

EXHIBIT "A"



Kauai County makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified issue. All data is subject to change before the next certified issue.

EXHIBIT "A"

http://qpublic9.qpublic.net/qmap4/map.php?county=hi_kauai&layers=parcels+hybrid&mapmode

2/24/2015

NI H AHI HICHOMBI
(GOVERNOR)

HIGHWAY DESIGN SECTION, ROOM 600A
DESIGN DIVISION, ROOM 610
CIVIL ENGINEERING SECTION, ROOM 600
HIGHWAY DESIGN SECTION, ROOM 600
HYDRAULIC DESIGN SECTION, ROOM 600
TECHNICAL DESIGN SERVICE, ROOM 600
LANDSCAPE DESIGN SECTION, ROOM 600
RIGHT OF WAY BRANCH, ROOM 600
TRAFFIC BRANCH, ROOM 600
MOTOR VEHICLE SAFETY OFFICE, ROOM 600



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION AT KAPOLEI
801 KAMOKILA BOULEVARD
KAPOLEI, HAWAII 96707

March 15, 2013

CHIEF M. OKAMOTO
DIRECTOR

DEPUTY DIRECTORS
JANE T. BUTAY
TOMMY N. KUCHIGAMI
RANDY GRUNE
JADINE UHASAKI

IN REPLY REFER TO
HWY-RM
3.90057

Mr. Charles Okamoto
Robinson Family Partners

Kaumakani, Hawaii 96747

Dear Mr. Okamoto:

Subject: Kaumualii Highway, Old Government Road
At Makaweli, Waimea, Kauai, Hawaii
TMKs: (4) 1-7-05:01, 02, 05, 06, 09 and 10, (4) 1-7-06:04, 06, 09 and 10
Request to Purchase Old Government Road

We regret to inform you that the processing of the sale of a portion of Old Government Road is being deferred to the Department of Land and Natural Resources. It was determined that the land belongs to DLNR and therefore would be the appropriate agency to process the sale.

Please contact Milo Spindt, Kauai District Land Agent at (808) 274-3491 for further information.

If you have any questions, please call me at (808) 692-7331 or you can email me at Katja.M.Jordan-King@Hawaii.Gov.

Very truly yours,

KATJA M. JORDAN-KING
Right-of-Way Agent
Property Management

EXHIBIT "B"

265-B

CERTIFICATE OF SEARCH

Dated February 22, 2012

FAP F-29(4)
KAUAI BELT ROAD
(Makaweli Section)

TAX KEYS: 1-7-05-portion of
Old Government Road and
1-7-06-portion of
Old Government Road

PORTIONS OF OLD GOVERNMENT ROAD RUNNING THROUGH
ROYAL PATENT NO. 4476, LAND COMMISSION AWARD NO. 7713,
APANA 1 TO V. KAMANALU,
SITUATE AT MAKAWELI, DISTRICT OF WAIMEA,
ISLAND AND COUNTY OF KAUAI,
STATE OF HAWAII

STATE OF HAWAII

LIENS and/or ENCUMBRANCES: NONE

Request by K. Jordan-King dated 5/31/12 - Job No. 12-035-CS

EXHIBIT "C"

THIS IS TO CERTIFY that we have carefully examined the INDICES and RECORDS of the Public Lands Office and the Bureau of Conveyances of the Department of Land and Natural Resources, both at Honolulu, City and County of Honolulu, State of Hawaii, with reference to the title of

STATE OF HAWAII

All of that certain parcel of land situate at Makaweli, District of Waimea, Island and County of Kauai, State of Hawaii, described as follows:

PORTIONS OF AREA HIGHLIGHTED IN YELLOW AS SHOWN ON TAX MAPS 1-7-05 (Page 4) and 1-7-06 (Page 5)

(NOTE: As of July 5, 2012, no right-of-way map provided to HWY-RA. No area given for area highlighted in yellow. Search based on area highlighted in yellow as shown on pages 4-5, as provided by Katja Jordan-King, HWY-RA.)

Being portion of the government road running through Royal Patent Grant No. 4476, Land Commission Award No. 7713, Apana 1 to V, Kamamalu,

Being a portion of the land transferred to the STATE OF HAWAII by operation of Section 5(b) of the Admission Act (Act of March 18, 1959, Public Law 86-3, 73 Stat. 4).

NOTE: Registered Map 2246, dated 1891, "Map of Kauai Compiled from Government Surveys and Private Surveys of Lands belonging to Gay and Robinson", survey and map done by L. E. Imlay, shows said road in existence at that time.

No conveyance found of record to the City and County of Honolulu.

AND WE CERTIFY that there are no liens and/or encumbrances appearing of record of whatsoever kind or nature affecting the title at this time.

WE FURTHER CERTIFY that title to the premises herein described is in the said

STATE OF HAWAII

INDICES and RECORDS.

all as shown by said

DATED at Honolulu, City and County of Honolulu, State of Hawaii, this 22nd day of January

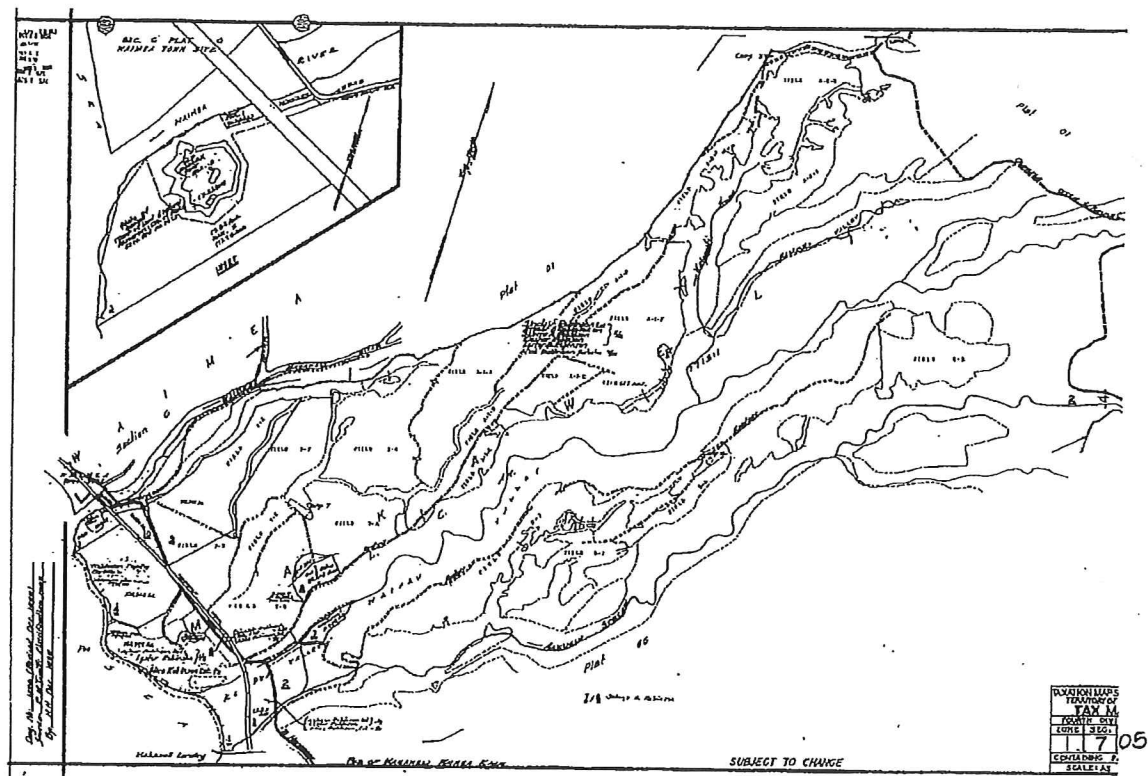
A.D. 2012, at 3:29 o'clock p.m.

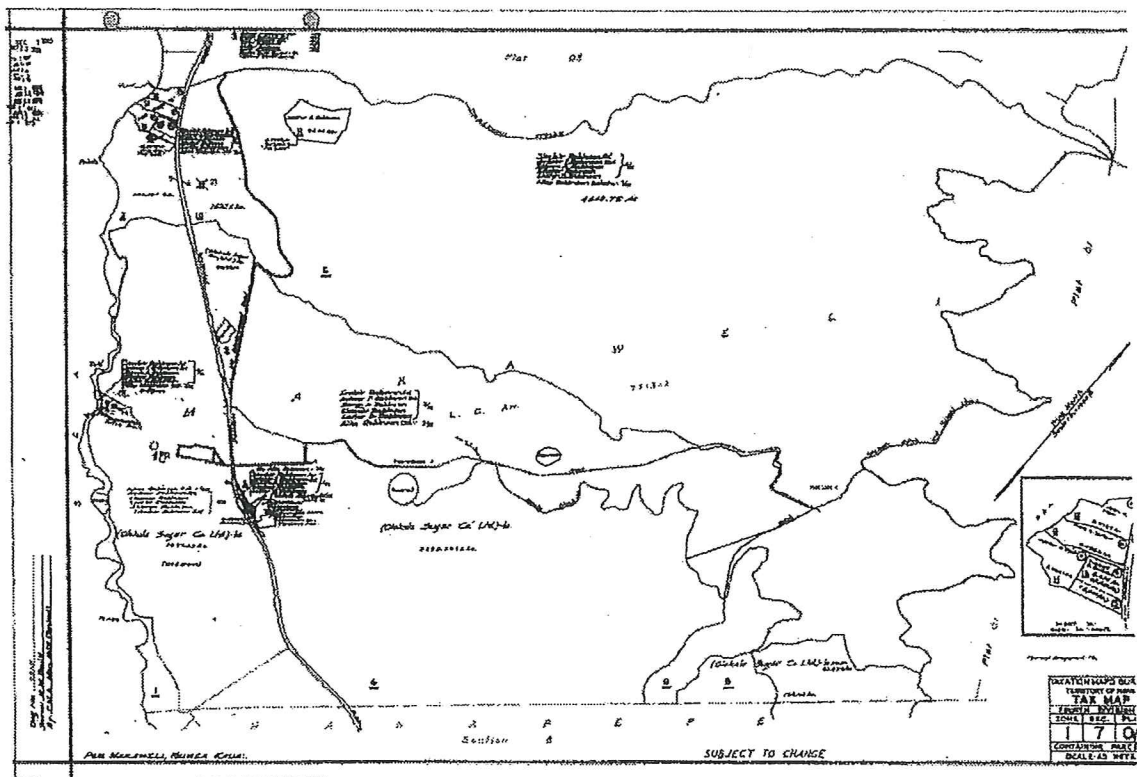
ABSTRACTING SECTION
STATE DEPARTMENT OF TRANSPORTATION

By Charles W. Sandberg

TK/k

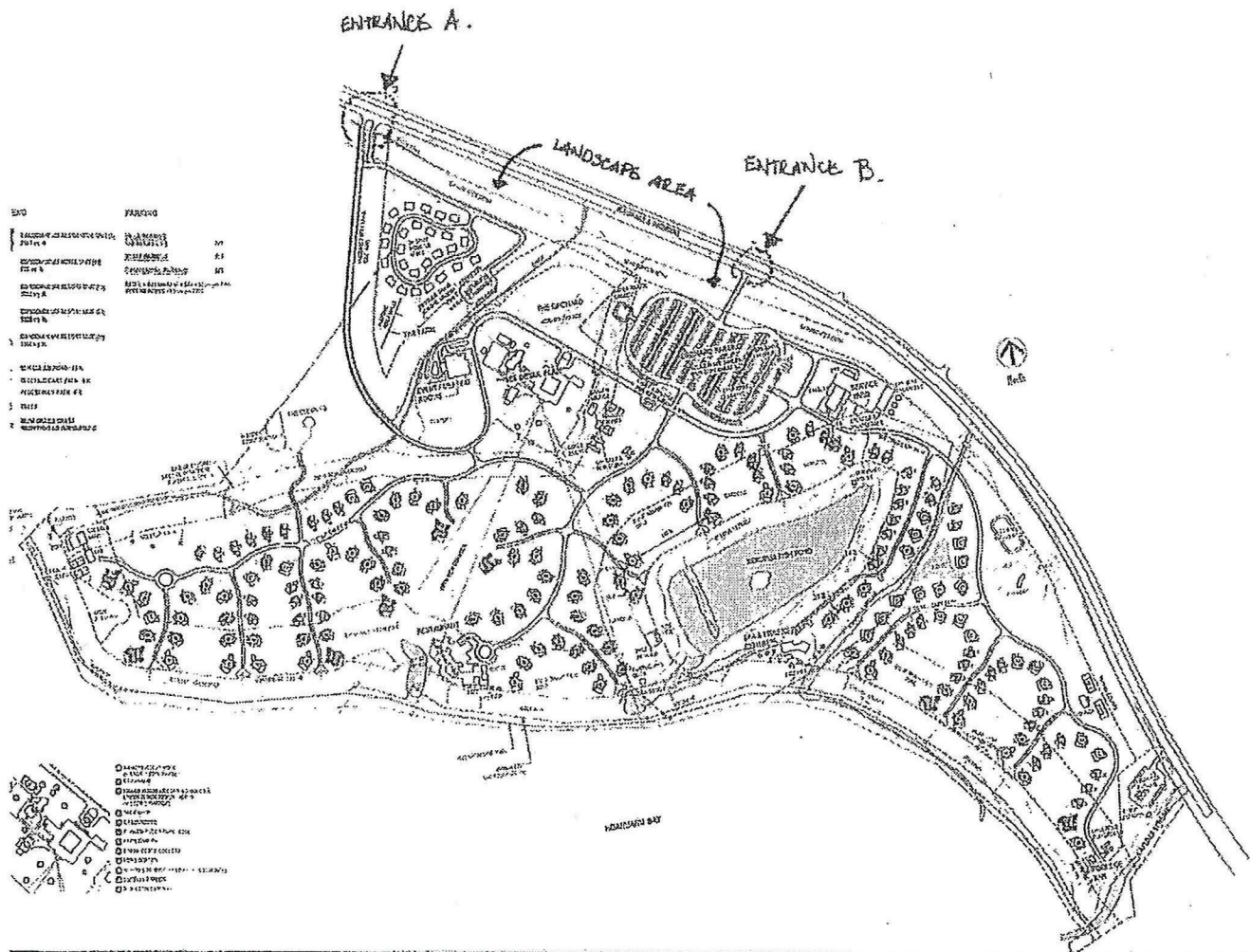
The foregoing Certificate of Search and any further Continuation(s) thereto, are for the exclusive use of the State of Hawaii, its Department of Transportation, and shall not be relied upon by any person or corporation, individually or collectively.

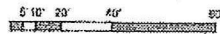
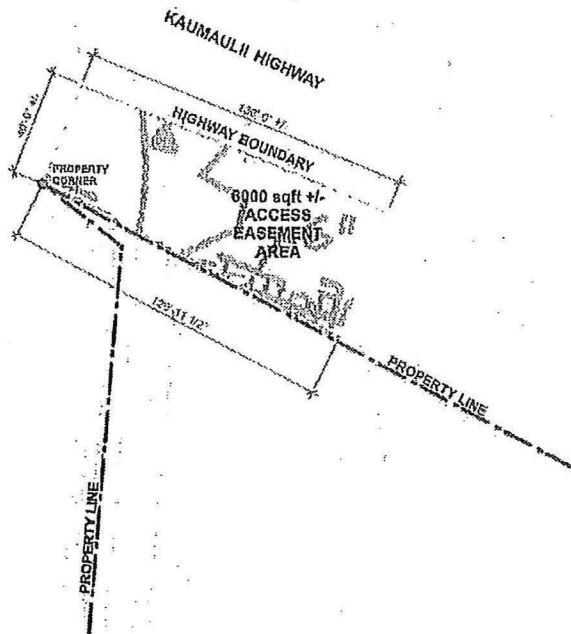




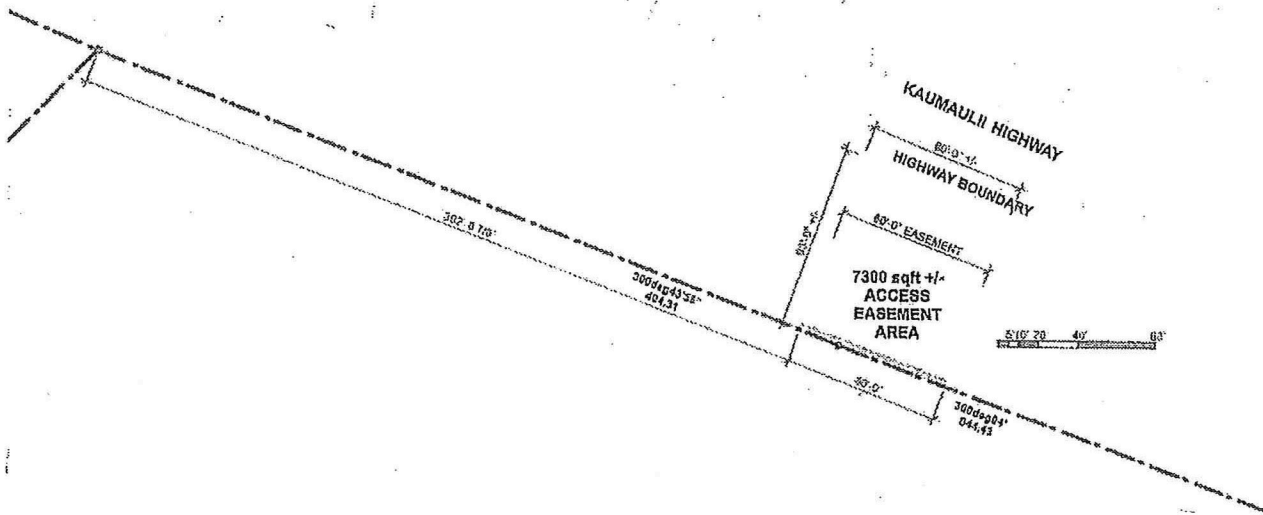
Map showing Robinson family land in the Makaweli area, Waimea, Hawaii. The map includes various fields (7-A through 7-G), roads, and specific land parcels with acreage. Key locations include Robinson Family Pastures, Robinson Family, Lester Robinson Est. 1/2, Alice Robinson Est. 1/2, and Makaweli Landing. The map is labeled "A section" and "EXHIBIT D".

POR. OF MAKANELI WASSIE.





ENTRANCE A.



ENTRANCE 'B'

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 13, 2015

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING

FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOLAWEE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DECLARATION OF EXEMPTION FROM THE PREPARATION OF AN ENVIRONMENTAL ASSESSMENT UNDER THE AUTHORITY OF CHAPTER 343, HRS AND CHAPTER 11-200 HAR, FOR RIGHT-OF-ENTRY PERMIT TO ROBINSON FAMILY PARTNERS FOR ACCESS PURPOSES UNDER PSF No. 14KD-169

The following permitted activities are found to be exempted from preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR:

Project Title:

Amend Prior Board Action of July 10, 2015, item D-3, Sale of Old Government Road Remnant to Robinson Family Partners. The purpose of the amendment is to include the issuance of a right-of-entry permit to Robinson Family Partners, its consultants, contractors, and persons acting on its behalf, for site visit and survey purposes.

PSF Number: 14KD-169

Project Description:

Applicant is the owner of parcel (4) 1-7-005:006 (Parcel 6) as staff has confirmed by County of Kauai Real Property Tax Assessment website. Other abutting property to the subject remnant parcel includes parcel (4) 1-7-005:001 (Parcel 1), which is also owned by the applicant and is the planned future site of the Kapalawai Resort.

When the Kauai Belt Road project was completed, a portion of the new Kaumualii Highway dissected applicant's property, Parcel 6, and the adjoining property, Tax Map Key: (4) 1-7-005:002. This created an access situation for Parcel 1, which is separated from Kaumualii Highway by the highway remnant. See Exhibit D. Access to the planned Kapalawai Resort will need to cross the highway remnant.

Applicant Robinson Family Partners proposes to purchase the old government highway remnant and consolidate it into Parcel 6. Applicant requests the issuance of a right-of-entry permit to Robinson Family Partners, its consultants, contractors, and persons acting on its behalf, for site visit and survey purposes. No construction or site work will be permitted under the right-of-entry.

The applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

EXHIBIT B


Exemption Determination:

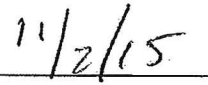
After reviewing HAR § 11-200-(8), DLNR has concluded that the activities under this permit would have minimal or no significant effect on the environment and that issuance of the permit is categorically exempt from the requirement to prepare an environmental assessment.

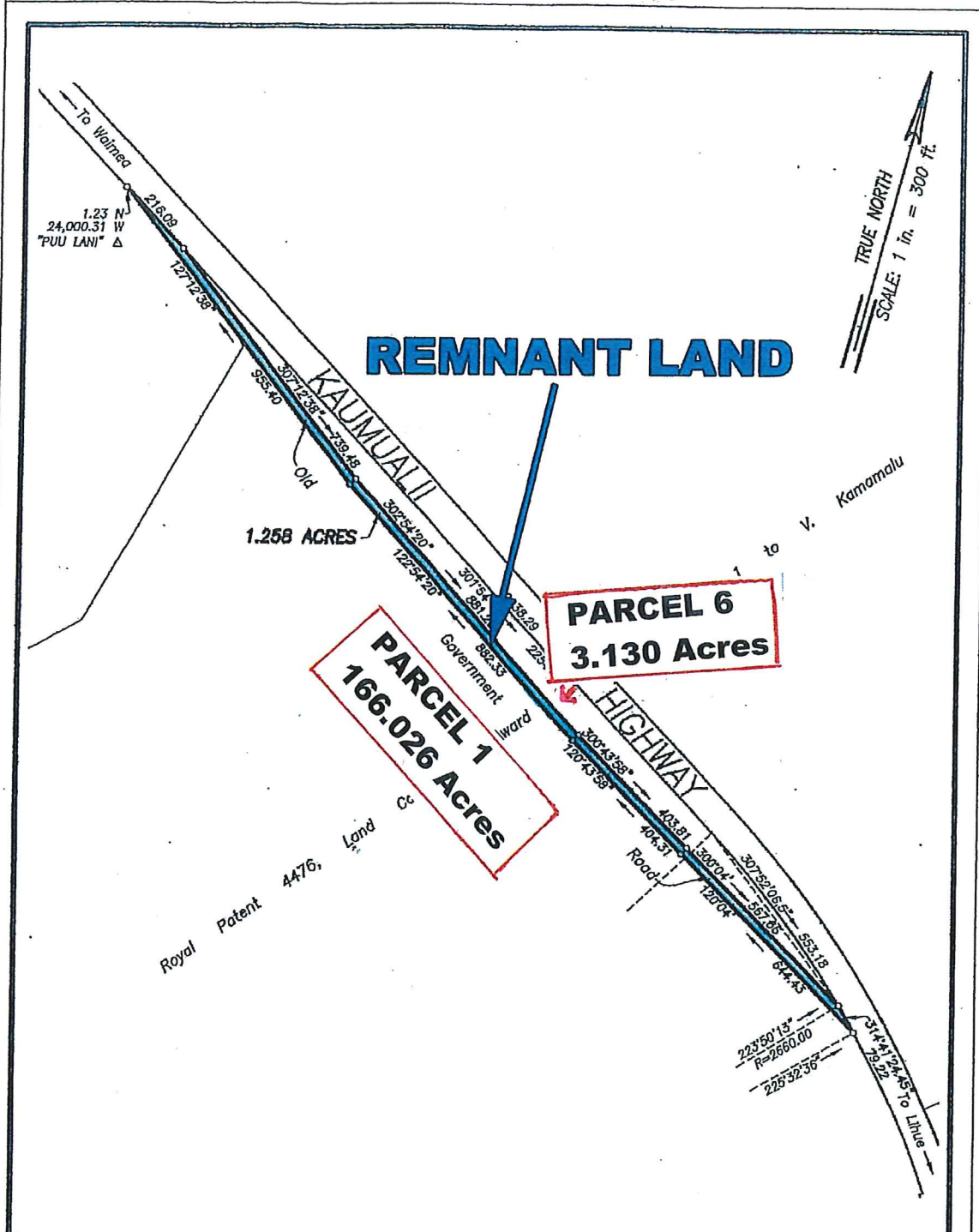
According to the Exemption List for the Department of Land and Natural Resources, as Reviewed approved by the Environmental Council on June 5, 2015, Exemption Class No.1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing [HAR § 11-200-8(a)(46)]".

Conclusion:

It is recommended that the Board declare that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.


Suzanne Case
Board of Land and Natural Resources


Date



ROAD REMNANT
PARCEL A

EXHIBIT "2"

Makaweli, Waimea, Kauai, Hawaii

Scale: 1 inch = 300 feet

Job K-158(15)
C. BK.

TMK 1-7-05

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

C.S.F. NO. 25,448

HBD September 14, 2015

NEIL ABERCROMBIE
GOVERNOR

HIGHWAY DESIGN BRANCH, ROOM 600A
BRIDGE DESIGN SECTION, ROOM 611
CADASTRAL DESIGN SECTION, ROOM 600
HIGHWAY DESIGN SECTION, ROOM 609
HYDRAULIC DESIGN SECTION, ROOM 638
TECHNICAL DESIGN SERVICE, ROOM 688
LANDSCAPE DESIGN SECTION, ROOM 609

RIGHT-OF-WAY BRANCH, ROOM 691

TRAFFIC BRANCH, ROOM 602

MOTOR VEHICLE SAFETY OFFICE, ROOM 611



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION AT KAPOLEI
801 KAMOKILA BOULEVARD
KAPOLEI, HAWAII 96707

OCT 15 2012

GLENN M. OKIMOTO
DIRECTOR

DEPUTY DIRECTORS
JADE T. BUTAY
FORD M. FUCHIGAMI
RANDY GRUNE
JADINE URASAKI

IN REPLY REFER TO
HWY-RM
3.89735

Mr. Charles Okamoto
Robinson Family Partners
P.O. Box 156
Kaunakani, Hawaii 96747

Dear Mr. Okamoto:

Subject: Kaunakani Highway, Old Government Road
At Makaweli, Waimea, Kauai, Hawaii
TMKs: (4) 1-7-05:01, 02, 05, 06, 09 and 10, (4) 1-7-06:04, 06, 09 and 10
Request to Purchase Old Government Road

The State of Hawaii offers for sale the subject old government road containing an area of 8.44 acres, delineated on the attached exhibit for the amount of \$12,500.00 with additional charges detailed as follows:

Value of Subject Property	\$12,500.00
Cadastral Services	\$ 500.00
Legal Services	\$ 500.00
Abstract Services	\$ 500.00
Total Cost	<u>\$14,000.00</u>

This offer is subject to consolidation of said portion of road with your abutting property in accordance with the Ordinance of the County of Kauai. An outside surveyor of your choice can provide consolidation services such as mapping and descriptions; however, such costs are your sole responsibility.

A check in the amount of \$42.50 made payable to the Bureau of Conveyances will be requested from you at the time of recording. This separate check includes a conveyance tax of \$12.50 and a recording fee of \$30.00.

The subject road is being offered "as is" and will be conveyed by Quitclaim Deed. The subject road will be sold subject to any encumbrances now of record. The State makes no warranty or representation about the suitability or marketability of the subject road for any particular use; the presence of any hazardous materials on, under, or about the same; and the physical condition of the subject road and any improvements thereon. Further, the State will not be responsible for clearing the land of vegetation and debris.

This offer is also contingent upon the successful recording of the Quitclaim Deed within one year from the date of this letter.

EXHIBIT "3"

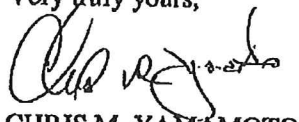
Mr. Charles Okamoto
Page 2
OCT 15 2012

HWY-RM
3.89735

Please have all owners of record sign the acceptance portion of this letter and return it to our office together with requested information for the deed. This offer to sell you the subject road is good for thirty (30) days from the date of this letter. If we do not receive your signed acceptance within the specified thirty (30) days time limit, then this offer will be null and void without any action on our part.

Please be reminded that terms and conditions as stated in our letter dated May 3, 2012 (ref. HWY-RM 3.89290) are still applicable. Should you have questions, please call Katja Jordan-King, Right-of-Way Agent, at (808) 692-7331, or you may e-mail her at Katja.M.Jordan-King@hawaii.gov.


Very truly yours,


CHRIS M. YAMAMOTO
Section Head
Property Management

Attachment: Parcel Map Exhibit

ACCEPTANCE

The undersigned hereby accepts the offer to purchase from the State of Hawaii the property identified as subject of old government road, containing 8.44 acres and delineated on attached exhibit, on the terms and conditions contained herein for \$14,000.00 in U.S. dollars. The check for \$14,000.00 shall be made payable to the State of Hawaii, Department of Transportation. Also, a separate check for \$42.50 made payable to the Bureau of Conveyances will be requested at the time of recording. It is agreed that the conveyance will be made by Quitclaim Deed.


Signature Bruce B. Robinson
Chairman of Management Committee

10/22/2012
Date

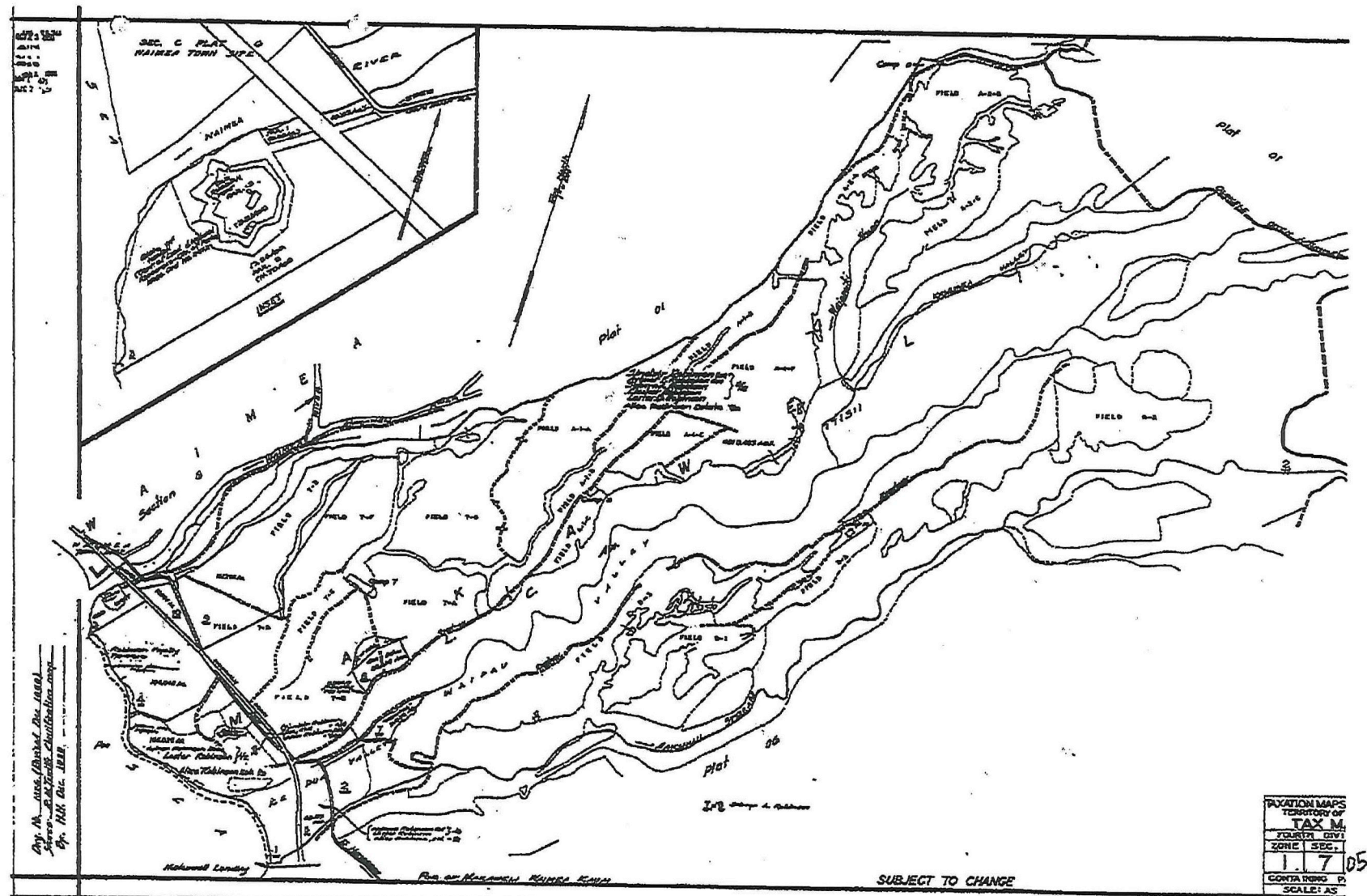
(PLEASE FILL IN DATA FOR THE QUITCLAIM DEED DOCUMENT)

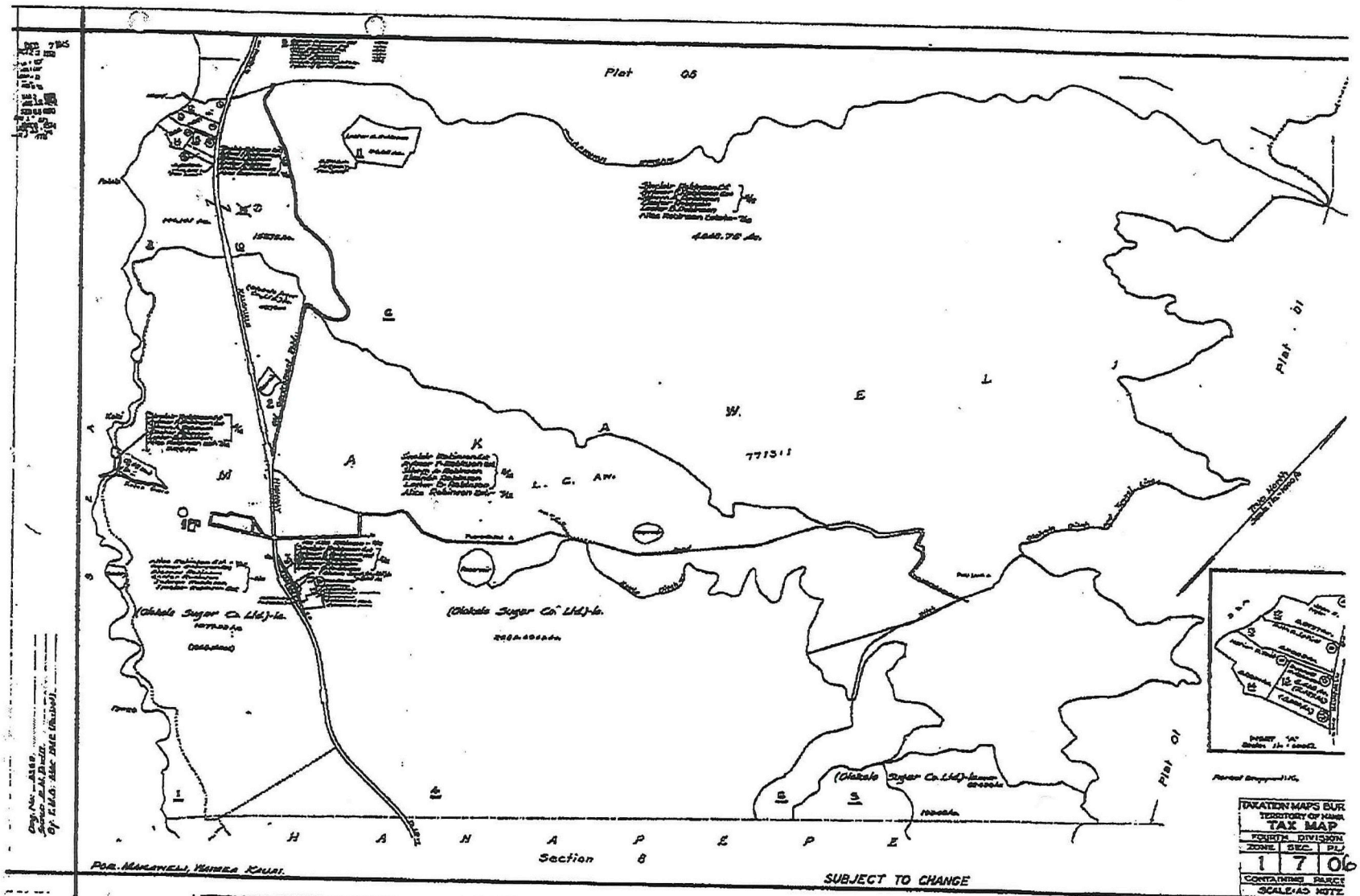
Robinson Family Partners
Print Grantee Legal Name

Robinson Family Partners
Print Grantee Legal Name

Mailing Address for Document:

Makaweli, HI 96769-0088







The Hallstrom Group Team
1003 Bishop Street, Suite 1800
Honolulu, HI 96813

T 808-521-1200
F 808-541-5155

www.cbre.com

MEDIATION SETTLEMENT AGREEMENT

November 29, 2016

Russell Y. Tsuji
Land Division Administrator
State of Hawaii
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Eric A. James, Esq.
Partner
Carlsmith Ball LLP
A Limited Liability Law Partnership
ASB Tower, Suite 2100
1001 Bishop Street
Honolulu, Hawaii 96813

**Re: 1.258-Acre Old Government Road Remnant
Makaweli, Waimea, Island of Kauai, Hawaii
Tax Map Key (4) 1-7-005 (Portion)**

PARTIES

The State of Hawaii ("State"), represented by the Department of Land and Natural Resources, is the current land owner. Robinson Family Partners ("RFP") is interested in acquiring the remnant property from the State, and owns TMK (4) 1-7-005, Parcel 006 agriculturally zoned property that abuts the remnant to the northeast, and TMK (4) 1-7-005, Parcel 001, resort zoned property that abuts the remnant to the southwest. The land owner and interested purchaser are collectively referred to as the "Parties", and individually as a "Party".

BACKGROUND INFORMATION

The remnant contains a total land area of 1.258 acres (54,798 square feet) and is part of TMK (4) 1-7, Plat 005 but has not been assigned a specific tax map key parcel number. It is approximately 20 feet wide and is estimated to be about one-half mile in length. The Parties

EXHIBIT "4"

independently commissioned appraisals of the remnant but, based on the market value estimates made by the appraisers, could not mutually agree on a purchase price for the subject property.

LEGAL REFERENCE

The parties agreed that the mediation would be conducted pursuant to Section §171-17, Hawaii Revised Statutes subsection (b)(2), which states, in part: "If, after the purchaser's appraisal, the board and the purchaser do not agree on the sale price or lease rental, the parties shall make a good faith effort to resolve the dispute through nonbinding mediation by a single mediator, appointed by mutual agreement of the parties".

MEDIATION SETTLEMENT

A mediation conference was held on November 22, 2016 at the CBRE office, located at 1003 Bishop Street, Suite 1800, Honolulu, Hawaii 96813. The State of Hawaii was represented Russell Y. Tsuji, DLNR Land Division Administrator; Pamela K. Matsukawa, DLNR Appraisal and Real Estate Specialist; and David D. Day, Esq., Deputy Attorney General Land/Transportation Division. Robinson Family Partners was represented by Jennifer Whitmore, President of Gay & Robinson, Inc.; and RFP's legal counsel Eric A. James, Esq., Partner of Carlsmith Ball, LLP.

The Parties conceptually but tentatively settled on the following purchase price for the subject property, subject only to the review and approval by the Board of Land and Natural Resources (BLNR) after a presentation by staff.

THIRTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS
(\$37,500)

ADDITIONAL AGREEMENTS

The Parties also mutually agree that subject to the BLNR review and approval of the purchase price, conceptually but tentatively agreed upon with DLNR staff:

This agreement constitutes the complete understanding between the State and RFP and is binding on the Parties, their successors, and their representatives. No other terms, promises, or agreements will have any force or effect unless reduced to writing and signed by the individuals signing this agreement.

All promises, conduct and statements made in the course of reaching this Mediation Settlement Agreement are confidential and are governed by HRS Chapter §626, Hawaii Rules of Evidence, Rule 408 Compromise, offers to compromise and mediation proceedings. The Parties acknowledge as a State agency, DLNR's files are public and that the final mediated purchase price agreement can be accessed by public request.

Russell Y. Tsuji
Eric A. James, Esq.
November 29, 2016
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This agreement is binding on the signatories upon their signature. Both parties acknowledge that the Mediated Settlement agreement will be presented to the State of Hawaii's Board of Land and Natural Resources.

By signing below, the Parties acknowledge they have read this agreement in its entirety, understand all the terms and conditions of the Agreement, and having done so, knowingly, voluntarily and freely enter into this Agreement without coercion or duress.

It is understood that this Agreement may be executed in counterparts but it will have no force or effect unless and until executed by the mediator and authorized representatives of the State and RFP. The Parties and mediator will have each executed at least one but not necessarily the same counterparts.



Esther H.C. Price, MAI
Mediator

APPROVED AND ACCEPTED:

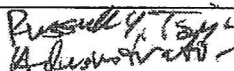
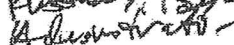
Land Owner:

STATE OF HAWAII
Department of Land & Natural Resources

By 

Name:

Title:

Interested Purchaser: ROBINSON FAMILY PARTNERS

By _____

Name:

Title:

Russell Y. Tsuji
Eric A. James, Esq.
November 29, 2016
Page 3

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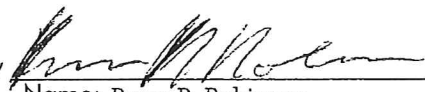
Esther H.C. Price, MAI
Mediator

APPROVED AND ACCEPTED:

Land Owner: STATE OF HAWAII
Department of Land & Natural Resources

By _____
Name:
Title:

Interested Purchaser: ROBINSON FAMILY PARTNERS

By 
Name: Bruce B. Robinson
Title: Chairman of Management Committee