

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

March 24, 2017

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

PSF No: 13HD-151
Hawaii

Rescind Prior Board Action of June 13, 2014, item D-7, Sale of Flume Right-of-Way Reservation to Charles K. NovoGradac and Deborah A. Milks, Papaaloa Homesteads, North Hilo, Hawaii, Tax Map Key: (3) 3-5-001:053.

BACKGROUND:

The State of Hawaii holds a reservation for a 10 foot wide flume right-of-way over the applicants' 15.54 acre private parcel. Since flumes are no longer used, the applicants requested that the State release the reservation. The Board approved the sale of the reservation to the applicants at its meeting of June 13, 2014, item D-7 (attached as Exhibit 1).

REMARKS:

By way of letter dated May 20, 2015 (attached as Exhibit 2), applicants declined to pay appraisal fee and staff cancelled the appraisal request.

After further review and discussion between the applicants and staff the applicants have decided not to pursue the purchase of the flume right-of-way at this time. Staff is returning to the Board for rescindment of the prior Board action.

RECOMMENDATION: That the Board:

1. Rescind the prior Board action of June 13, 2014, under agenda item D-7, Sale of Flume Right-of-Way Reservation to Charles K. NovoGradac and Deborah A. Milks, Papaaloa Homesteads, North Hilo, Hawaii, Tax Map Key: (3) 3-5-001:053.

Respectfully Submitted,


Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

EXHIBIT 1

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

June 13, 2014

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

13HD-151

Hawaii

**Sale of Flume Right-of-Way Reservation to Charles K. Novogradac and
Deborah A. Milks, Papaaloa Homesteads, North Hilo, Hawaii, Tax Map Key:
(3) 3-5-001:053.**

APPLICANT:

Charles K. Novogradac and Deborah A. Milks a married couple, Tenants by the Entirety

LEGAL REFERENCE:

Section 171-57 and 171-16(d), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Papaaloa Homesteads, North Hilo, Hawaii,
identified by Tax Map Key: (3) 3-5-001:053, as shown on the attached map labeled
Exhibit A.

AREA:

0.11 acres, more or less.

ZONING:

State Land Use District: Agricultural
County of Hawaii CZO: A-20a

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:

Reservation for Flume Right-of-Way.

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

June 13, 2014 10.

CONSIDERATION:

One-time lump sum payment of the difference in fair market value with and without the reservation, to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The reservation is an undesignated flume right-of-way within privately owned land. Chapter 343, HRS, would not apply to any future development on the parcel as no State lands would be involved. Refer to attached Exhibit B.

DCCA VERIFICATION:

Not applicable. The Applicants as individuals are not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine the one-time payment of the difference in fair market value with and without the reservation;
- 2) Pay for the costs of public notice pursuant to section 171-16(d).

REMARKS:

The servient parcel was granted to Emalia Hapenuia on April 6, 1926, via Land Patent No. 8987 by the Governor of the Territory of Hawaii. The Land Patent contains a reservation for a flume right-of-way 10 feet wide.

At the time the grant was written, the most effective means of transporting sugar from the fields to the mills was by water flumes. The reservation was intended to allow for a flume structure to transport sugar down slope to a processing mill. There is no indication that a flume structure was constructed on the applicant's property and advancements in sugar cane harvesting and machinery made the use of flumes obsolete. Accordingly, the applicant is requesting a release of the reservation.

No agency or community comments were solicited as this is a waiver of an undesignated flume reservation and has no impact beyond the limits of the boundaries of the privately owned property.

Pursuant to section 171-57, HRS, as provided, if the Board finds that a disposition of a reserved right or easement is not prejudicial to the best interest of the State, community or area in which the land is situated, it may, after giving public notice of the intended disposition as provided in section 171-16(d), dispose of the reserved right or easement to the owner of the land by direct sale or by lease without public auction.

Applicants are the owners of parcel (3) 3-5-001:053 which staff has confirmed through research of the County of Hawaii, Real Property Tax Office website and the Bureau of Conveyances, LandShark database.

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.


RECOMMENDATION:

That the Board:

1. Find that a disposition of a reserved right or easement is not prejudicial to the best interest of the State, Community or area in which the land is situated;
2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment;
3. Subject to the applicant fulfilling all of the Applicant Requirements listed above, authorize the sale of a waiver of the reservation for a flume right-of-way contained within Land Patent Grant No. 8987, 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 waiver of reservation 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,

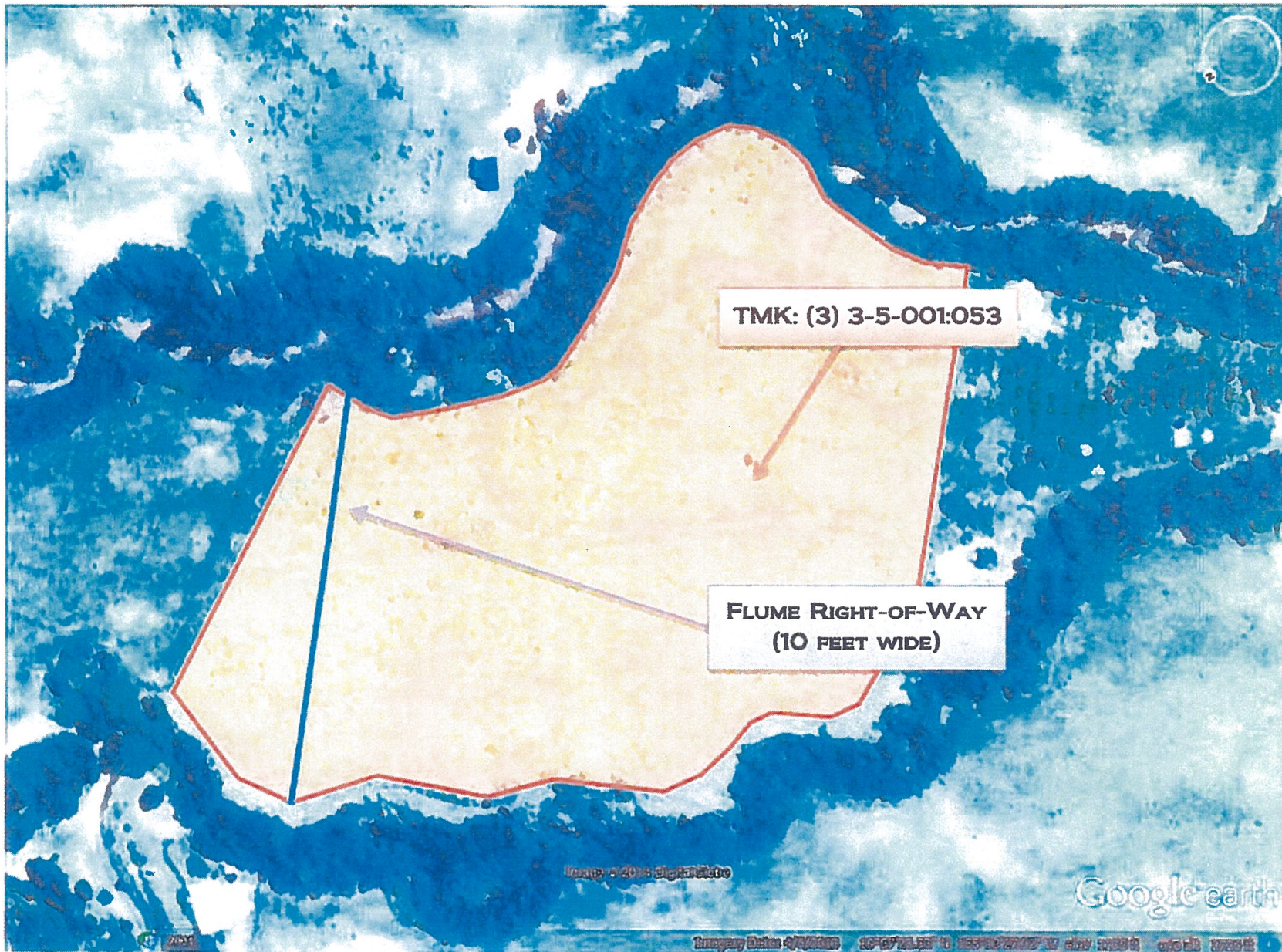


 Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

EXHIBIT A



NEIL ABERCROMBIE
GOVERNOR OF HAWAII



EXHIBIT B

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

PAUL J. CONRY
INTERIM DEPUTY

WILLIAM M. IANI
DEPUTY DIRECTOR, WATER

AQUATIC RESOURCES
REGULATION AND CONTROL DIVISION
BUREAU OF CONSERVATION
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RECREATION DIVISION

ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIKOLA AND LAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May 30, 2014

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Sale of Flume Right-of-Way Reservation to Charles K. Novogradac and Deborah A. Milks

Reference No.: PSF 13HD-151

Project Location: Portion of private lands of Papaaloa Homesteads, North Hilo, Hawaii, Tax Map Key: (3) 3-5-001:053

Project Description: Proposed sale of flume right-of-way reservation across private property owned by the applicants. At the time the reservation was written, the most effective means of transporting sugar from the fields to the mills was by water flumes. The flume reservation was intended to allow for a flume structure to transport sugar down slope to a processing mill. There is no indication that a flume structure was constructed on the applicant's property and advancements in sugar cane harvesting and machinery made the use of flumes obsolete

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment under the following:

Exemption Class No. 1, which states "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".

Recommendation: That the Board find 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.


William J. Aila, Jr., Chairperson


5/29/14
Date

EXHIBIT 2

May 20, 2015

2015 MAY 29 A 10:46

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

RECEIVED
LAND DIVISION
HILO, HAWAII

Candace Martin
Land Agent
75 Aupuni Street, Room 204
Hilo, Hawaii 96720

Re: 13HD-151
Sale of abandoned R/W, Tax Map Key (3) 3-5-001:053

Dear Mr. Tsuji and Ms. Martin:

The \$7,600 appraisal fee proposed by Mr. Tsuji's letter of January 14, 2015 is too high for appraisals of unimproved agricultural land. If payment of this amount is the only way, then we decline to proceed at this time.

The land market value of our TMK lot, per Hawaii County tax appraisals, is \$21,081 per acre. This is about average for the lots in our immediate area. The abandoned flume right of way, 0.11 acres in area, should at this rate be worth, at best, about \$2,300.

We would not close the door if the appraisal fee bid might be reconsidered. Also, we do not here intend to waive rights under Hawaii law as owner of adjacent land should the State of Hawaii in the future wish to sell the right-of-way.

We recognize that some considerable State and local staff time has been expended at our request on this issue; we thank all the people involved for their consideration and courtesy.

Yours truly,



Charles K. NovoGradac
Deborah A. Milks

Lawrence, Kansas 66044