

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

January 10, 2020

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

Land board members:

O'AHU

SUBJECT: REQUEST APPROVAL OF SETTLEMENT BETWEEN
DEPARTMENT OF LAND AND NATURAL RESOURCES AND
DOLE FOOD COMPANY INC., REGARDING REAL PROPERTY
ACQUIRED FOR ADDITION TO THE 'EWA FOREST RESERVE,
PA'ALA'A-UKA AND WAHIAWA, O'AHU, TAX MAP KEY (1) 7-1-
002:011

SUMMARY

Last year, the Board of Land and Natural Resources (BLNR) approved the acquisition of 2,822 acres of real property, referred to as the Helemano Wilderness Area, for addition to the 'Ewa Forest Reserve, at its meeting September 14, 2018 under agenda item C-1. The State of Hawai'i ("State") purchased the property from Dole Food Company, Inc. ("Dole"), a North Carolina corporation by deed dated October 17, 2018 and recorded as Document No. A-68640629 (Land Office Deed S-29201). Following the acquisition, the Department of Accounting and General Services (DAGS) Land Survey Division determined that one of the four parcels purchased was owned by the State prior to the conveyance by Dole. The parcel ("Subject Parcel") is more specifically described as Parcel 11 of TMK 7-1-02 (totaling 58.540 acres, more or less) and is situate in Wahiawa, O'ahu.

The ownership of the Subject Parcel has continued to be a matter of dispute between the State, Dole, and Title Guarantee of Hawai'i Inc. ("TG"), who prepared the title report and provided title insurance for the acquisition. Following several months of discussions between the referenced parties, the Division of Forestry and Wildlife (DOFAW) recommends that the Board approve Dole's \$39,000 settlement offer.

BACKGROUND

The Helemano Wilderness Area was purchased from Dole for \$15,163,800 and included four parcels totaling approximately 2,822 acres, consisting of both agricultural and conservation zoned lands. The acquisition secured high priority watersheds, native forest, and habitat for the endangered state mammal - the Hawaiian Hoary bat - and many other native plants and animals.

It also added significant access and acreage for hunters, hikers, campers, and other outdoor recreationists to explore the Ko‘olau Mountains, and will create a hub for forest products to supply the community with locally sourced materials. The lands acquired are in the process of being added to the ‘Ewa Forest Reserve and being managed by DOFAW. The Division is currently working with a consultant to engage the community and stakeholders to develop a management vision that will inform the ultimate development of a multi-resource management plan for the property, which includes extensive public and stakeholder involvement.

Following the acquisition, DAGS Land Survey Division began to prepare the required survey descriptions and CSF map for processing the Executive Order designating the areas as a Forest Reserve. Research conducted via the preparation of these documents indicated that the Subject Parcel was owned by the State prior to the conveyance by Dole. A mis-interpretation of the northerly boundary of Grant 973 being along the South bank of Poamoho stream rather than the South bank of Poamoho gulch appears to have led to the confusion over the ownership of the Subject Property, and private entities misclaimed ownership of a portion of the strip of government land of Wahiawa for the past several decades. DAGS Land Survey Division summarized its findings indicating the Subject Parcel was always under ownership of the government of Hawai‘i, currently as the State of Hawai‘i in a memo dated June 21, 2019 (**EXHIBIT A**). The Subject Parcel consists of steep gulch within Poamoho Stream/Gulch zoned as Agriculture-1 by the County and State Agricultural District, but it appears to have never been farmed due to its steep terrain.

Following receipt of DAGS Land Survey Division findings, DOFAW contracted Dole and TG informing them of the State’s position on ownership of the Subject Parcel. The State also made a claim with First American Title Insurance Company under the title insurance policy obtained with the acquisition of the property. First American Title Insurance Company denied the State’s claim (**EXHIBIT B**).

The Division contracted a supplemental report appraising the Subject Parcel using the same methodology that was used in the acquisition appraisal (conducted by John Child & Company). The supplemental appraisal valued the Subject Parcel at \$661,200. The conveyance tax certificate for the acquisition had allocated \$570,000 of the total purchase price to the Subject Parcel. DOFAW subsequently sent a letter to Dole requesting a refund of \$570,000 for the value of the Subject Parcel.

Dole and Title Guarantee both disagreed with the State’s claim, asserting that the title search was correct and historical records supported tax office records assessing the parcel to Dole. Title Guarantee provided an email summarizing additional historical research on the Subject Parcel supporting their position (**EXHIBIT C**). DAGS Land Survey Division provided a memo in response to TG that clarified and reasserted the State’s position (**EXHIBIT D**).

Representatives for Dole, the State, The Trust for Public Land, and TG met on August 20, 2019 to discuss their respective positions on the matter. At the conclusion of the meeting, Dole agreed to engage an appraiser to perform an appraisal of the Subject Parcel to consider a fair market value that could aid in settlement discussions. The Benavente Group LLC performed an appraisal of the Subject Parcel indicating a fee simple market value of \$117,000 as of a retrospective date of June 13, 2017.

Dole offered a counterproposal of \$39,000 to fully settle all claims by the State with respect to this matter, which DOFAW accepted, subject to approval by the Department of the Attorney General (“Attorney General”) and the BLNR (**EXHIBIT E**).

DISCUSSION

The Division is supportive of accept Dole’s offer of \$39,000 to settle all claims in the ongoing dispute. While the State still holds that our position is correct and that we should prevail; however, the result of litigation is uncertain. A lawsuit would be based on interpretation of a relatively complex set of historical maps and documents and would rely on opposing experts who are all well-respected surveyors and abstractors.

Department of Land and Natural Resources (“Department”) staff followed all acquisition requirements including reviewing and approving a title report for the subject property. The Division was assisted in conducting the due diligence for this property by Department of Land and Natural Resources Land Division and the Department of the Attorney General. DAGS Land Survey Division did a preliminary review of the Helemano parcel boundaries prior to BLNR approval and did not note any issues with parcel boundaries. The issue concerning the title of the property was only discovered after the acquisition was complete and in-depth historical research was completed for the Subject Parcel.

All of the state and federal grants received for the acquisition require paying appraised fair market value for the property or the agreed upon purchase price, whichever is the lesser. John Child & Company’s appraisal, used for the acquisition, determined the total fair market value of the entire property (four parcels totaling 2,881.626 acres, more or less) to be \$16,560,000. The agreed upon purchase price for the property was \$15,163,800.00, which was \$1,396,200 below appraised fair market value. While the value of the Subject Parcel is disputed, the appraisals indicate the fair market value for the Subject Parcel is between \$117,000 - \$661,200. Even if the highest appraised value for the Subject Parcel is considered, the State still would have paid below the fair market value for the total acquisition.

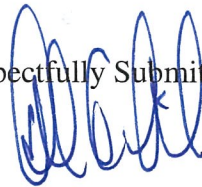
Funding for the acquisition came from a variety of federal, state and private funding sources. The Division has consulted with these funders regarding the parcel dispute and they are willing to accept a settlement to resolve the matter.

If Dole’s settlement offer is accepted, the acreage for the acquisition would remain the same as in the original board submittal, as the State would continue to own the Subject Parcel as a portion of the larger acquisition. The \$39,000 paid by Dole would be split between the federal, state and private entities that provided funding for the acquisition, who would be returned funding according to the percentage of funding provided for the original acquisition.

RECOMMENDATIONS: That the Board:

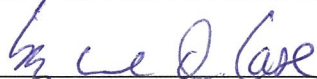
1. Approve a settlement with Dole Food Company, Inc. subject to the following terms:
 - A. Payment of \$39,000 from Dole to the Department of Land and Natural Resources to fully settle all claims by the State.
 - B. Review and approval of all settlement documents by the Department of the Attorney General;
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Further subject to the following:
 - A. Review and approval by the Department of the Attorney General;
 - B. To the extent reimbursement is required by our federal, state and private grant funders, the Board authorizes reimbursement in the following percentages: U.S. Forest Service 32.97%; U.S. Fish and Wildlife Service HCP 13.19%; U.S. Fish and Wildlife Service Pittman Robertson 2.64%; State Legacy Lands Program 9.98%; Trust for Public Land 18.14%, U.S. Navy REPI 23.08%;
 - C. Should any grant funders decline reimbursement, the Board authorizes payment of remaining settlement funds to the Forest Stewardship Fund, as authorized by §195F-4, to be used for the management of the Helemano Wilderness Area.

Respectfully Submitted,



David G. Smith
Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

EXHIBIT A
EXHIBIT B
EXHIBIT C
EXHIBIT D
EXHIBIT E

DAVID Y. IGE
GOVERNOR



CURT T. OTAGURO
COMPTROLLER

AUDREY HIDANO
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

Response refer to:
O-110(19)

June 21, 2019

TO: David G. Smith, Administrator
Division of Forestry and Wildlife
Department of Land and Natural Resources

FROM: Reid K. Siarot, State Land Surveyor *[Signature]*
DAGS, Land Survey Division

SUBJECT: Request for additional Survey Division Work for Helemano Wilderness Area
Acquisition – Tax Map Key No. (1) 7-1-02-011

This is in regard to your memorandum dated May 17, 2019 requesting Land Survey Division's assistance to report on its findings that the State of Hawaii ("State") actually owns a portion of the real property in the recent purchase from Dole Food Company, Inc., a North Carolina corporation ("Dole") by deed dated October 17, 2018 and recorded as Document No. A-68640629 (Land Office Deed S-29201).

INTRODUCTION

While preparing survey descriptions and maps of the recent purchase of lands from Dole Food Company, Inc. situate at Wahiawa, Oahu, it was discovered that a portion of land was actually owned by the State and never Dole's to sell. A mis-interpretation of the northerly boundary of Grant 973, being along the South bank of Poamoho stream rather than the South bank of Poamoho gulch, is the apparent cause for a misclaim of government land by private entities. This portion of land was always under ownership of the government of Hawaii, currently as the State of Hawaii.

The subject portion of land is within a strip of government land of Wahiawa. This strip of government land is bounded on the north by Royal Patent 4475, Land Commission Award 7713, Apana 34 to Victoria Kamamalu in Paalaa, Waialua and bounded on the south by Grant 973 to James Robinson, Robert Lawrence and Robert W. Holt dated December 24, 1852 in Wahiawa, Oahu. Exhibit 1 is a copy of Tax Map Key (TMK) 7-1-02 showing the strip of government land highlighted in yellow.

The subject real property parcel is more specifically described as Parcel 11 of TMK 7-1-02. It contains 58.540 Acres, More or Less and is situate in Wahiawa, Oahu. Parcel 11 is not a lot of record, but rather a remainder parcel created from the boundaries of surrounding parcels. Parcel 11 abuts Civil Nos. 433 and 473 on its south boundary; Civil No. 726 on its west

David G. Smith, Administrator
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boundary; the land of Paalaa, Waialua, being also the top of south bank of Poamoho Stream, along its north boundary; and the remainder of the government land of Wahiawa, being also Ewa Forest Reserve, along its east boundary. Exhibit 1 shows Parcel 11 highlighted in yellow.

GRANT 973

Grant 973 to James Robinson, Robert Lawrence and Robert W. Holt originated from a portion of the government land of Wahiawa, being sold by the Hawaiian Government on December 24, 1852.

The metes and bounds description of Grant 973 was reviewed to determine its boundaries. It is important to understand that in a metes and bounds description, the bounds, or calls for a natural monument (i.e. "South bank of Poamoho gulch" for Grant 973), carries greater weight in the rules of construction than the metes or measures, being the course bearing/direction and distance. In the case of Grant 973, the call "South bank of Poamoho gulch" is the feature, or natural monument, on the ground that is the property boundary, while the course distance and bearing represents the direct tie lines between points along the property boundary. The direct tie lines are not property lines, but straight lines that are used to help define the sinuosities of the gulch edge.

In Grant 973, the first six (6) courses, being the northerly courses, are called as "...running up the south bank of Poamoho gulch..." Note that the northerly boundary of Grant 973 calls for the gulch, and not the stream.

MAPS SHOWING POAMOHU GULCH

There are a number of maps which show the Poamoho Gulch and Stream. However, on some maps the gulch is graphical with the location roughly sketched in, while other maps show better detail of the gulch location likely due to a more detailed field survey.

Registered Map 2056 titled Map Showing Lands of the Waialua Agrl. Co. Ltd. by W.A. Wall dated March 1901 (see Exhibit 2) shows various government grants, including Grant 973. The northerly boundary of Grant 973 is demarked along the gulch as indicated by the grant title line, a line broken intermittently with two - dots (— · — · —). This map graphically shows Poamoho Gulch and Poamoho Stream with some detail.

Registered Map 2796 titled Portion of Paalaa, Waialua, Oahu, Portion of R.P. 4475, L.C.A. 7713, Ap. 34 surveyed by J.G. Duarte & S.W. Keys dated June 22, 1925 (see Exhibit 3) is the map which accompanies Certificate of Boundaries No. 201 approved on August 25, 1925. The Boundary Commission, First Judicial Circuit, Territory of Hawaii, adjudicated the boundaries of the makai portion of the ahupuaa of Paalaa; consequently, establishing the boundary for its adjoiner being the land of Wahiawa. This map shows Poamoho Stream and also the Poamoho Gulch edge with the symbol of clusters of short-tick marks. The gulch edge on this map was found to be consistent in location with maps for Civil No. 726 and C.S.F. 9729 based on an overlay for comparison.

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Oahu Radio Station Additional Area (Civil No. 726), Drawing No. OA-NI-669 prepared by Fred E. Harvey, Civil Engineer and Surveyor and produced for the 14th Naval District and approved by the Public Works Officer on July 9, 1943 (see Exhibit 4). This map delineates the land acquisition area by the federal government by Civil No. 726. The northerly boundary of this parcel goes to the south bank of Poamoho Stream, and includes a taking of a portion of the government land of Wahiawa. This map shows Poamoho Gulch and stream with some detail.

TMK 7-1-02 This real property tax map prepared by the City and County of Honolulu, Real Property Assessment Division (see Exhibit 1). The map show Poamoho Gulch and stream. The Poamoho Gulch, being the northerly boundary of Grant 973, is demarked on the TMK map with a grant title line (—— · · ——).

CONCLUSION

Parcel 11 is within the government land of Wahiawa, never sold, and thus remaining under ownership of the State of Hawaii. The mis-interpretation of the northerly boundary of Grant 973 as being along either Poamoho Stream or along direct tie lines between points along Poamoho Gulch has apparently caused confusion and private entities to misclaim a portion of the strip of government land of Wahiawa. In Grant 973, the call of the natural monument "Poamoho gulch" sets the location of the northerly boundary, and record survey maps identify the location of the "Poamoho gulch". Parcel 11, being within a strip of government land of Wahiawa, abuts Grant 973 on its south and the land of Paalaa, Waialua on its north.

Should you have any questions, please contact me at 586-0390.

Enclosures

cc: DLNR – Land Division

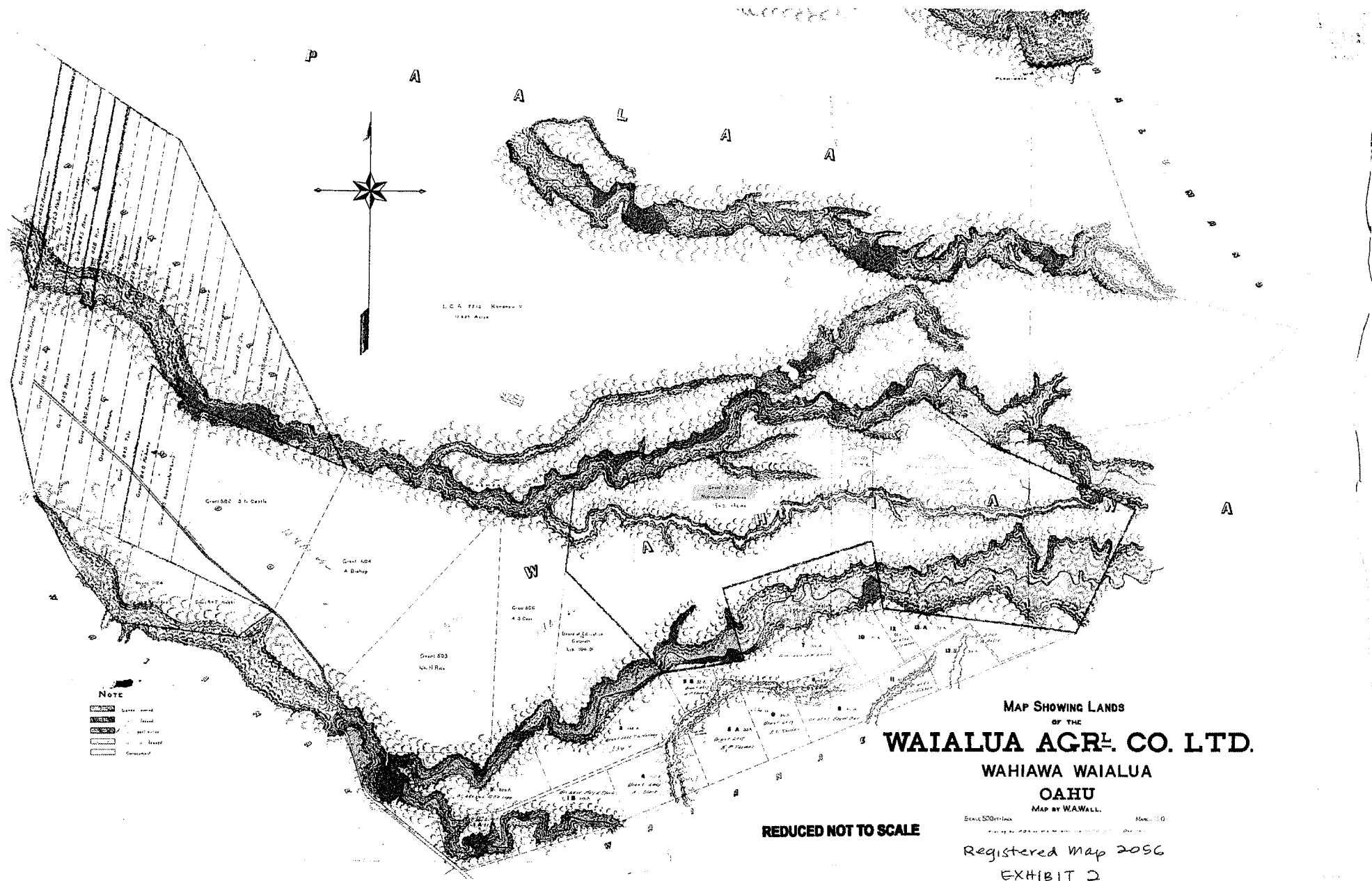
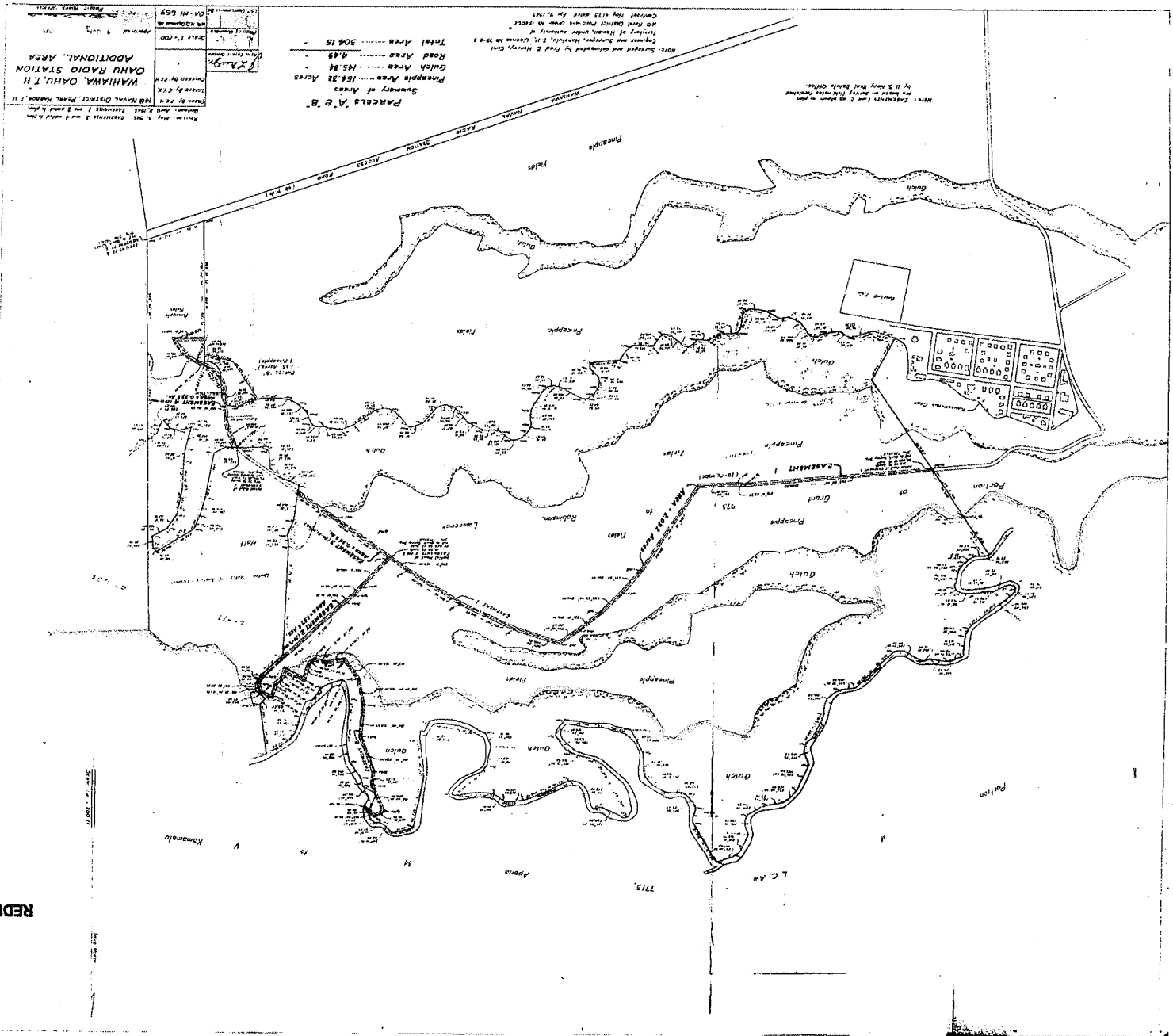


EXHIBIT 4



REDUCED NOT TO SCALE



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VIA U.S. MAIL & EMAIL JULIE.H.CHINA@HAWAII.GOV

July 19, 2019

Julie H. China, Esq.
State of Hawaii
Department of the Attorney General
425 Queen Street
Honolulu, Hawaii 96813

**RE: First American Title Insurance Company Claim 1909000491
State of Hawaii, Department of Land and Natural Resources
TMK (1) 7-1-002-011 (Item III) & (1) 7-2-001-003 (Item IV)
Our File 03.1084**

Dear Ms. China:

As you know, this firm represents First American Title Insurance Company ("First American"). We were asked by First American to provide legal counsel to it in connection with its investigation and analysis of the claim tendered by your client, the State of Hawaii, by its Board of Land and Natural Resources, under First American Policy No. 5021915-25088 ("Policy"). The Policy is a 2006 Form Hawaii Standard Owner's Policy dated October 17, 2018, in the amount of \$15,163,800, and names your client as Insured. The Policy describes the property located in the Districts of Waialua and Wahiawa, City and County of Honolulu, State of Hawaii, in Schedule C of the Policy as Items I through IV ("Property").

The claim initially involved Item III [TMK (1) 7-1-002-011] (58.540 acres) ("Parcel 11") and a 50-acre portion of Item IV [TMK (1) 7-2-001-003] ("Parcel 3"). On June 27, 2019, you advised that the Insured has decided to rescind its claim related to Parcel 3 and only pursue the claim as to Parcel 11,¹ which is described in Schedule C as follows:

-ITEM III:-

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 973 to James Robinson, Robert Lawrence and Robert W. Holt) situate, lying and being at Wahiawa, District of Wahiawa, City and County of Honolulu, State of Hawaii, bearing Tax Key designation (1) 7-1-002-011, and containing an area of 58.540 acres, more or less.

¹ References herein to correspondence prior to June 27, 2019 are limited to Parcel 11.

The claim involves the physical location of the northern boundary of Grant 973, which is allegedly described as "running up the south bank of Poamoho gulch..." and the extent to which Parcel 11 is within Grant 973.

By letter dated February 1, 2019, the Insured requested the "price paid" for Parcel 11, asserting that the seller, Dole Food Company, Inc. ("Dole"), did not actually hold title to Parcel 11 when Dole purportedly conveyed it to the Insured. The Insured claims that, while mapping the Property, it discovered that it already owned Parcel 11 as of the Policy Date and, therefore, should not have paid value for it.

By email dated May 22, 2019, Lorrin Hirano, Esq. of Title Guaranty of Hawaii ("TG"), provided TG's evaluation regarding the title to Grant 973 and the extent to which Parcel 11 is within Grant 973. TG concluded that the historical records describing the northern boundary of Grant 973 (where Parcel 11 is situated) supported the tax office records assessing Parcel 11 to Dole.

On June 27, 2019, you provided a letter dated June 21, 2019 from Reid K. Siarot, State Land Surveyor. Mr. Siarot concluded:

Parcel 11 is within the government land of Wahiawa, never sold, and thus remaining under ownership of the State of Hawaii. The mis-interpretation of the northerly boundary of Grant 973 as being along either Poamoho Stream or along direct tie lines between points along Poamoho Gulch has apparently caused confusion and private entities to misclaim a portion of the strip of government land of Wahiawa...

On July 8, 2019, you provided a letter dated July 3, 2019 from Mr. Siarot, in which he responded to Mr. Hirano's May 22, 2019 email. Mr. Siarot discussed the historical records and the northern boundary of Grant 973. With regards to one of those records, Mr. Siarot found:

...Due to the scale and a lack of clarity surrounding the northern boundary of Grant 973 it is not unusual that Plant 2142-A only shows the portions of the boundary of Grant 973 that would have been depicted on maps such as Registered Maps 80 and 399...

The Insured claims a loss of \$710,000 arising from its allegation that Dole did not hold title to Parcel 11, which it purported to sell to the Insured. The Insured claims that it already held title to Parcel 11 prior to the Policy Date.

Policy

A title insurance policy is a contract of indemnity. It does not guarantee or represent that the title to real property is in any particular state or condition. Rather, the policy indemnifies the insured for actual loss compensable under the policy which arises from a matter for which coverage is afforded, in accordance with, and subject to, the terms and conditions of the policy. Policy Condition 15(a) provides:

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

First American's liability is limited to the terms and conditions of the Policy. The Policy shall be construed as a whole. First American relies on the entirety of the Policy and by discussing only certain provisions herein does not waive other Policy provisions that may also be applicable to this matter.

The Policy Covered Risks include:

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, **FIRST AMERICAN TITLE INSURANCE COMPANY**, a Nebraska corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.

Schedule A provides:

1. Name of Insured:
STATE OF HAWAII, by its Board of Land and Natural Resources, as Fee Owner
2. Title to the estate of interest in the land is vested in:
THE NAMED INSURED
3. The estate or interest in the land which is covered by this policy is:
FEE SIMPLE
4. The Land referred to in this policy is described as follows:
See Schedule C.

Covered Risk 1 provides coverage for loss arising from "[t]itle being vested other than as stated in Schedule A." Schedule A provides that fee title to the Property, as of the Policy Date, was vested in the Insured. First American is without any information indicating that, as of the Policy Date, title to Parcel 11 was vested other than as stated in Schedule A, nor is First American

aware of any adverse claim to the Insured's title. First American has no evidence to suggest that the claim comes within any of the Policy's ten Covered Risks.

Any coverage afforded by the Covered Risks, of which we find none, would be subject to the Exclusions from Coverage, Exceptions from Coverage contained in Schedule B, and the Conditions. The Exclusions from Coverage include:

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

3. Defects, liens, encumbrances, adverse claims, or other matters
...(c) resulting in no loss or damage to the Insured Claimant;

First American has no evidence to suggest that there is any such defect, adverse claim or other matter affecting the title by reason of which the Insured has suffered a compensable loss under the Policy.

The Exceptions from Coverage include:

SCHEDULE B

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

...5. -AS TO ITEM III:-

...(D) Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other matters which a correct survey or archeological study would disclose.

Even if the claim came within one of the Covered Risks, it involves a discrepancy related to the physical location of the northern boundary of Grant 973, which is allegedly described as "running up the south bank of Poamoho gulch..." The location of this boundary affects the extent to which Parcel 11 is within Grant 973. It appears the tax office determined that the northern boundary of Grant 973 (south bank of the gulch) includes Parcel 11 and the Insured's surveyor believes that there has been a "mis-interpretation of the northerly boundary of Grant 973 as being along either Poamoho Stream or along direct tie lines between points along Poamoho Gulch." Loss sustained by reason of any discrepancy or conflict in a boundary line, which a correct survey or archeological study would disclose, would be specifically excepted from coverage under Exception 5.(D).

Dole contended that it possessed title to Parcel 11. Dole transferred and confirmed any such ownership to the Insured. There is no adverse claim to the Insured's title as insured by the Policy. Title is held as insured by the Policy. First American is not liable under the Policy for issues with the manner in which the purchase was achieved or how the price was negotiated.

The Policy provides insurance for loss arising from the title being vested other than as insured. That is not the case here.

Further, the Insured cannot maintain a claim of loss under the preliminary report issued by TG in contemplation of issuance of the Policy. HRS § 431:20-102 provides:

“Title insurance policy” or “policy” means a contract issuing or indemnifying against loss or damage arising from any or all of the following existing on or before the policy date:

...Title insurance policy does not include a preliminary report, binder, commitment, or abstract.

A preliminary report is an offer to issue a title policy; it is not a representation regarding the condition of title, it is not an abstract of title, and it cannot be relied upon as such. The preliminary report specifically states that it is “for the purpose of facilitating the issuance of a policy of title insurance” and “no liability will arise under this report.”

First American is without information to evidence that the Insured has sustained any compensable loss under the terms of the Policy and therefore denies coverage for the claim. If there is any additional information that you would like First American to consider, please feel free to submit such information directly to me.

The analysis provided is based on the information presently available to First American. Nothing herein constitutes a waiver of First American’s rights by law and pursuant to the terms and conditions of the Policy, including any grounds for denial not set forth above. Should a dispute arise regarding this matter, the Insured and First American must both agree in order to submit the dispute for arbitration under Section 14 of the Policy Conditions and Stipulations. Should you have any questions or concerns, please feel free to contact me.

Sincerely,



Aimee Hui

EXHIBIT C

From: Lorrin Hirano
To: China, Julie H; Starrett, Amy E.
Cc: Case, Suzanne D; Wynhoff, Bill J; Sprecher, Irene M; Rubenstein, Tanya; Hirokawa, Ian C; Joanna U. Kaalele; Helene Takushi; Leta H. Price
Subject: RE: Claim No. HI-1909000491_Policy No. 5021915-25088_State of Hawaii
Date: Wednesday, May 22, 2019 11:06:52 AM
Attachments: image004.png

This message was sent securely by Title Guaranty.

Hi Julie,

Your email appears to have been addressed primarily to Ms. Starrett, but since we have been working on a further review of Grant 973 as we told you at our meeting, let me take this opportunity to clarify some of your statements and send you the results of our research.

First, as we pointed out at the meeting, our role was not to interpret or evaluate coverage matters under the title policy. A coverage determination is the jurisdiction of the title insurance company. Everyone agreed that there is no dispute over the title to Grant 973. We requested the meeting in order for Ms. Kaalele, Ms. Takushi, Leta Price and I to hear the DLNR's information as to the ownership of TMK Parcels (1) 7-1-002-011 (Parcel 11) and (1) 7-2-001-003 (Parcel 3).

After further review of Ms. Kaalele's and Ms. Takushi's research, we disagree with your statement that "Dole never owned ANY PART of TMK No. (1) 7-1-002:011 and only part of TMK No. (1) 7-2-001:003". The government records support the tax assessment records, and the title search was correct. The attachments referenced in this email are in the dropbox link below.

<https://www.dropbox.com/sh/buro41hw0l7g9ry/AADmyywgB0pnEXyVwceL8Zf0a?dl=0>

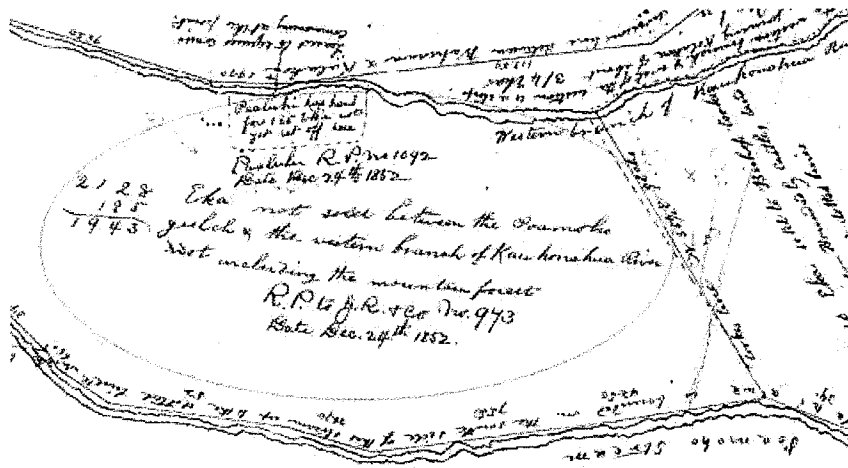
We direct your attention to the following:

- (1) Government Survey Registered Map No. 80 (Attachment 1) from Portfolio 3, Map 24 is attached. In the upper left corner, there is a notation on the map:

*Will his Highness, I. Young
please to have a patent made out
in favor of Lad Robinson, Robt
Lawrence, & Robt M. Holt for
1943 acres of land in Mahiaw, Oahu,
as described in this draught, note
including the 185 acres granted to
Dauluki; price one dollar per acre.
1943
Honolulu
Oct 2/1852.*

*A. Smith
Minr Pub Institution*

This notation is a reference to the land in Grant 973 to Messrs. Robinson, Lawrence, and Holt. In the center of the map, there is the following notation:



“Poamoho gulch” and the bank of “Poamoho Stream” depicted on the map are clearly the same boundary.

- (2) This is significant because of the reference to “gulch” in the English translation of Grant 973 (see Attachment 2) and also the fact that Government Survey Registered Map No. 1218 (Attachment 3), which is the 1852 survey of Grant 973, shows essentially the same as what is drawn in Map No. 80: the northern boundary of the Grant follows closely along the edge of the “Poamoho River.”

For the purpose of this exchange of information, we do not challenge the translation of the metes and bounds attached to Grant; however, the similarities between the description in Grant 973, the text on Map No. 80, the historical treatment of adjoining Grant 606 (see below), and the way in which the boundaries of both Grants have been interpreted for over 150 years are consistent with the tax assessment records showing the record ownership of Parcels 11 and 3 in Dole and its predecessors.

- (3) We overlaid the metes and bounds from the Grant onto the current tax maps (see Attachments 4 and 5), and note that the northern boundary of the Grant is mostly northward of what are now Parcels 11 and 3. We understand that the scale of the tax maps is not dispositive (and, as we pointed out at the meeting a survey would be necessary to insure the actual boundaries and area); however, we found nothing in the tax records dating back to the 1930s that would indicate that the northern boundary of Grant 973 is substantially to the south of what the current tax maps show.
- (4) Government Survey Registered Map No. 399, dated 1876 (Attachment 6) also shows that the northern boundary of Grant 973 follows fairly closely along the southern edge of Poamoho Stream. Further note the boundary between Grant 973 and the adjoining parcel to the west, Grant 606 to Amos Cooke dated May 14, 1851. The boundary between these two grants was adjusted from what was shown on Map No. 1218, but the resulting northwestern corner of Grant 973 is the same point as the northeastern corner of Grant 606 (Attachment 7).
- (5) This is significant because in 1912 Grant 606 and other lands were registered with the Land Court of the Territory of Hawaii under Land Court Application No. 262 (Attachment 8, Map 1 of that Application). Section 2414, 1905 Revised Laws of Hawaii, required all adjoining landowners to be named in the application, which would have included the Territory. Course 12 of the adjudicated boundary of the Application runs “. . . along [Grant 973] to south bank of Poamoho Stream.” The call does not reference any course south of this point along land owned by the Territory, and this is consistent with Maps 80, 1218, and 399. We found no modification to this course in any of the

subsequent maps approved in that Application.

- (6) The land that is presently Parcel 11 was originally part of TMK (1) 7-1-002:006 (Parcel 6), the entirety of which was assessed to the predecessor of Dole at the inception of the tax records created by the Territory. The tax history sheets (Attachment 9) shows that Parcel 11 was not created from features drawn on the tax map, but from condemnation actions in the 1940s by the United States: (a) the Final Decree in Civil No. 433 recorded at Liber 1657, Page 431 (Attachment 10); the Declaration of Taking in Civil No. 473 recorded at Liber 1973, Page 291 (Attachment 11), and the Order Confirming Possession in Civil No. 726 recorded at Liber 1973, Page 172 (Attachment 12).

These court decrees and judgments describe the northerly boundaries (and the easterly boundary in the case of Civil No. 762) of the taken parcels as running “along the remainder of Grant 973”. This also applies to Parcel 3. The dividing line between Tax Map Sections (1) 7-1 and (1) 7-2 is the boundary of the land taken in Civil 433, and the remainder of Grant 973 therefore overlaps into Section (1) 7-2 and Parcel 3. The Map of Lands To Be Acquired Near Wahiawa, Ref. OA-NI-259 Approved 16 Oct. 1940 (Attachment 13), a survey associated with Civil No. 433, shows Grant 973 to be the land which underlies what is designated as Parcel 3.

In none of these civil actions did the federal government identify the Territory of Hawaii as an affected landowner. In the case of Civil 726, in fact, the area taken out of Grant 973 expressly extended to the bank of Poamoho Stream.

- (7) Hawaii Territorial Survey Plat 2142-A by T. Lane, Jr., November 1950 (Attachment 14), shows no other northern boundary of Grant 973 except that running along the bank of Poamoho Stream, and, in the area of the eastern boundary of Parcel 3, the boundaries are straight lines and not a tie line that would indicate a meandering boundary. This configuration and area of Parcel 3 has apparently always been shown on the tax maps dating to the 1930s (Attachment 15). Even if the northern boundary of Parcel 3 was not intended to follow this line, consistent with the above surveys it would likely run along the Poamoho Stream north of what is depicted as the northern boundary of Parcel 3 on the tax map.

Although we do not assert that the tax maps are the equivalent of an on-the-ground survey and we do not in any way denigrate the professional work of Mr. Cummins, from the title-searching standpoint the Kingdom maps drawn at or near the time of Grants 973 and 606, and the later Territorial government surveys, and the maps approved and registered in Land Court Application No. 262, and the real property tax records and maps dating back to the 1930's, are all consistent, and assess Parcels 11 and 3 to Dole and its predecessors based on Grant 973. We found – and find -- no reason to change our conclusions that we reached as to the title search for Grant 973.

We would be happy to meet again at your convenience to discuss our findings. Thank you for your consideration.

Lorrin

Lorrin Hirano

Senior Vice President & Legal Counsel | Legal Department

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DAVID Y. IGE
GOVERNOR



CURT T. OTAGURO
COMPTROLLER

AUDREY HIDANO
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

July 3, 2019

MEMORANDUM

TO: Mr. David G. Smith, Administrator
DLNR, Division of Forestry and Wildlife

ATTN: Ms. Tanya Rubenstein
Cooperative Resource Management Forester

FROM: Reid Siarot, State Land Surveyor *[Signature]*
DAGS, Land Survey Division

SUBJECT: Claim No. HI-1909000491_Policy No. 5021915-25088_State of Hawaii
TMK: 7-1-02: 11 and 7-2-01: Por. 03
Wahiawa, Oahu, Hawaii

This is in regard to the email sent on May 22, 2019 by Lorrin Hirano, Senior Vice President and Legal Counsel for Title Guaranty to Julie H. China, Deputy Attorney General of Land/Transportation Division, State of Hawaii in response to the State's position of ownership to TMK (1) 7-1-02:11 (Parcel 11) as discussed in the meeting on April 18, 2019.

Below I have listed Mr. Hirano's comments as they are laid out in his email. Following each of his comments are my responses in red.

Mr. Hirano's comments are as follows:

"After further review of Ms. Kaalele's and Ms. Takushi's research, we disagree with your statement that "Dole never owned ANY PART of TMK No. (1) 7-1-002:011 and only part of TMK No. (1) 7-2-001:003". The government records support the tax assessment records, and the title search was correct.

We direct your attention to the following:

- (1) Government Survey Registered Map No. 80 (Attachment 1) from Portfolio 3, Map 24 is attached. In the upper left corner, there is a notation on the map:

Registered Map 399 shows the northern boundary of Grant 973 as being along the south bank of Poamoho gulch as signified by the short tick marks shown on the map. Registered Map 2056 shows a better representation of the sinuosities of the south bank of Poamoho Gulch.

“ (5) This is significant because in 1912 Grant 606 and other lands were registered with the Land Court of the Territory of Hawaii under Land Court Application No. 262 (Attachment 8, Map 1 of that Application). Section 2414, 1905 Revised Laws of Hawaii, required all adjoining landowners to be named in the application, which would have included the Territory. Course 12 of the adjudicated boundary of the Application runs “. . . along [Grant 973] to south bank of Poamoho Stream.” The call does not reference any course south of this point along land owned by the Territory, and this is consistent with Maps 80, 1218, and 399. We found no modification to this course in any of the subsequent maps approved in that Application.”

The boundaries of Land Court Application 262 was adjudicated in 1912, thirteen years prior to the boundary between the Government Land of Wahiawa and the private land of Paalaa being settled by the Boundary Commission in 1925. Prior to the final determination of the boundary between these two lands, it would have been extremely difficult for the Territorial Government to lay claim to the exact extent of what it believed it owned and act on its own behalf in the Application's review by the Land Court.

“ (6) The land that is presently Parcel 11 was originally part of TMK (1) 7-1-002:006 (Parcel 6), the entirety of which was assessed to the predecessor of Dole at the inception of the tax records created by the Territory. The tax history sheets (Attachment 9) shows that Parcel 11 was not created from features drawn on the tax map, but from condemnation actions in the 1940s by the United States: (a) the Final Decree in Civil No. 433 recorded at Liber 1657, Page 431 (Attachment 10); the Declaration of Taking in Civil No. 473 recorded at Liber 1973, Page 291 (Attachment 11), and the Order Confirming Possession in Civil No. 726 recorded at Liber 1973, Page 172 (Attachment 12).

These court decrees and judgments describe the northerly boundaries (and the easterly boundary in the case of Civil No. 762) of the taken parcels as running “along the remainder of Grant 973”. This also applies to Parcel 3. The dividing line between Tax Map Sections (1) 7-1 and (1) 7-2 is the boundary of the land taken in Civil 433, and the remainder of Grant 973 therefore overlaps into Section (1) 7-2 and Parcel 3. The Map of Lands To Be Acquired Near Wahiawa, Ref. OA-NI-259 Approved 16 Oct. 1940 (Attachment 13), a survey associated with Civil No. 433, shows Grant 973 to be the land which underlies what is designated as Parcel 3.

In none of these civil actions did the federal government identify the Territory of Hawaii as an affected landowner. In the case of Civil 726, in fact, the area taken out of Grant 973 expressly extended to the bank of Poamoho Stream.”

David G. Smith, Administrator
July 3, 2019
Page 5

As stated above, the tax assessment records cannot be used to correctly locate the limits of Grant 973. That being said, the erroneous belief that Grant 973 ran to the south bank of Poamoho stream that was based on the same tax assessment records being referred to in Mr. Hirano's comments likely predicted the conclusions of the Federal Government regarding the source titles to the lands that were taken in the Civil Actions described above. The Territory of Hawaii was not identified as an affected land owner because tax assessment records did not indicate that it was.

“ (7) Hawaii Territorial Survey Plat 2142-A by T. Lane, Jr., November 1950 (Attachment 14), shows no other northern boundary of Grant 973 except that running along the bank of Poamoho Stream, and, in the area of the eastern boundary of Parcel 3, the boundaries are straight lines and not a tie line that would indicate a meandering boundary. This configuration and area of Parcel 3 has apparently always been shown on the tax maps dating to the 1930s (Attachment 15). Even if the northern boundary of Parcel 3 was not intended to follow this line, consistent with the above surveys it would likely run along the Poamoho Stream north of what is depicted as the northern boundary of Parcel 3 on the tax map.”

Hawaii Territory Survey Plat Map 2142-A was prepared specifically to depict the limits of the Land of Wahiawa, not the limits of Grant 973. Due to scale and a lack of clarity surrounding the northern boundary of Grant 973 it is not unusual that Plat 2142-A only shows the portions of the boundary of Grant 973 that would have been depicted on maps such as Registered Maps 80 and 399. While there is room for a differing opinion about whether the northeast boundary of Grant 973 is a tie line or boundary line, there is no evidence that this boundary would have run along the south bank of the stream as Mr. Hirano asserts. Please note that we are no longer disputing the record boundaries of Parcel 3.

Meyer Cummins met with Lorrin Hirano on June 6, 2019 at the office of Title Guaranty to discuss the State's position which is documented in this memo.

Should you have any questions, please call me at 586-0390.

cc: Julie China, Department of Attorney General
Ian Hirokawa, Land Division, DLNR



October 17, 2019

David G. Smith, Administrator
State of Hawaii
Department of Land and Natural Resources
Division of Forestry and Wildlife
1151 Punchbowl Street, Room 325
Honolulu, Hawaii, 96813

Dear Mr. Smith:

This letter is made in response to your letter dated July 1, 2019 regarding property conveyed by deed dated October 17, 2018, recorded as Land Court Document No. A-68640629, including the parcel identified by Tax Map Key No. (1) 7-1-002-011 (the "Subject Parcel").

As you are aware, Dole Food Company, Inc. ("Dole") disagrees with your assertion that the Subject Parcel was already owned by the State of Hawaii (the "State") prior to conveyance by Dole.

Representatives for Dole, the Department of Land and Natural Resources on behalf of the State, The Trust for Public Land, and Title Guaranty of Hawaii, LLC met on August 20, 2019 to discuss their respective positions on the matter. Although the meeting concluded without a resolution, Dole and the State agreed to engage a mutually-approved appraiser to perform an appraisal of the Subject Property to consider a fair market value of the Subject Property that could aid in settlement discussions.

Brian Goto of The Benavente Group LLC performed an appraisal of the Subject Property indicating a fee simple market value of \$117,000 as of a retrospective date of June 13, 2017.

Given the parties' expressed desire to resolve this matter without resort to arbitration or litigation, Dole offers a counterproposal of \$39,000 to fully settle all claims by the State with respect to this matter. This counterproposal expires on October 31, 2019.

This letter and the offer set forth herein are made subject to and pursuant to Rule 408 of the Hawaii Rules of Evidence to settle and compromise the ongoing dispute as indicated above. Accordingly, if this matter is not resolved, this letter and the offer contained herein are not admissible in subsequent proceedings, if any, to prove liability or the validity of any claim. Nothing herein should be construed as an admission of any kind by Dole, and should the dispute not be resolved, Dole reserves any and all of its rights in this matter.

Sincerely,

Daniel X. Nellis
General Manager
Dole Food Co. Hawaii

