

State of Hawai'i  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawai'i 96813

December 11, 2020

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL TO APPLY AS A CO-APPLICANT TO THE COUNTY OF HAWAI'I PLANNING DEPARTMENT FOR PARCEL CONSOLIDATION AND RESUBDIVISION INVOLVING TAX MAP KEYS (3) 5-1-001:005 OWNED BY THE STATE OF HAWAI'I, (3) 5-1-002:017 OWNED BY SURETY KOHALA CORPORATION, AND (3) 5-2-005:012 AND 5-2-002:001 OWNED BY KP HOLDINGS LLC, POLOLŪ, NORTH KOHALA DISTRICT, HAWAI'I COUNTY

AND

REQUEST FOR APPROVAL TO ENTER INTO A LETTER OF INTENT WITH SURETY KOHALA CORPORATION AND KP HOLDINGS, LLC, FOR THE DONATION TO THE STATE OF HAWAI'I OF TMK (3) 5-1-002:017, FOR PURPOSES OF MANAGEMENT AS PART OF THE KOHALA FOREST RESERVE, AND TMK (3) 5-2-005: PORTION OF 012, FOR PURPOSES OF CONSTRUCTING AN OFF-SITE COMFORT STATION AND PARKING AREA NEAR THE POLOLŪ TRAIL, NORTH KOHALA DISTRICT, HAWAI'I COUNTY

SUMMARY

The Division of Forestry and Wildlife ("DOFAW") requests approval for the Department to apply as a co-applicant to the County of Hawai'i Planning Department in a Parcel Consolidation and Resubdivision ("PCRS") application, and any other permits that are necessary for that purpose, together with Surety Kohala Corporation ("Surety") and KP Holdings, LLC ("KPH"), for lands located in Pololū, North Kohala District, Hawai'i County, affecting Tax Map Key (TMK) (3) 5-1-001:005 in the Kohala Forest Reserve. The PCRS will create a 13-lot subdivision, and facilitate a donation to the State of Hawai'i, by its Board of Land and Natural Resources, two parcels, one of which is an in-holding in the Kohala Forest Reserve, TMK (3) 5-1-002:017, and the other a five-acre parcel, portion of (3) 5-2-005:012, intended for a comfort station and parking area for the Pololū Trail users. DOFAW's participation is essential because the PCRS application

Exhibit 2

cannot be made without the inclusion of DOFAW managed State-owned parcel, TMK (3) 5-1-001:005, that is contiguous to three parcels owned by Surety and KPH. Surety will be responsible for the PCRS application and all associated costs, as well as any other permits that are necessary for that purpose.

## BACKGROUND

DOFAW, Surety, KPH, County of Hawai‘i, State of Hawai‘i Department of Transportation Highways Division, and the North Kohala community have been working together to address concerns regarding the high level of use of the Pololū Trail and limited available parking. The PCRS action will address these concerns by creating a 5-acre parcel (“Lot B” in Exhibit 1) for a comfort station and parking area for trail users. Following the PCRS action, Surety and KPH have agreed to donate the 5-acre parcel (“Lot B” in Exhibit 1), and an in-holding parcel in the Kohala Forest Reserve to the State Hawai‘i.

The PCRS application with Surety and KPH would include two (2) parcels on the valley floor:

- TMK (3) 5-1-002:017 (“Lot A” in Exhibit 1), owned by Surety,
- TMK (3) 5-1-001:005 (“Parcel 5”), owned by the State and managed by DOFAW as part of the Kohala Forest Reserve

The PCRS action will consolidate the ten (10) pre-existing lots of record (“PELOR”) from Lot A and resubdivide those PELOR with TMKs (3) 5-2-002:001 (“Parcel 1”) and (3) 5-2-005:012 (“Parcel 12”) located along the ridgeline of the valley and owned by KPH (“Exhibit 2”), to create a 13-lot subdivision (“Exhibit 1”). After the PCRS action is approved by the County, Surety and KPH will donate to the State Lot A on the valley floor as an addition to the Kohala Forest Reserve, and Lot B, a 5-acre portion of Parcel 12 located near the Pololū trail head. The 5-acre lot would be donated to DLNR for the purpose of constructing an off-site comfort station and parking area to support public recreational activities along Pololū Trail and in Kohala Forest Reserve. The terms of this donation are described in the proposed Letter of Intent (“LOI”) (“Exhibit 3”). Lot A and Parcel 5 are located in a special management area designated by the County of Hawai‘i, and a Special Management Area Assessment (SMAA) application may be necessary for the PCRS action. DOFAW also requests approval to also apply for any other permit necessary for the PCRS action, subject to the Chairperson’s discretion.

DOFAW currently manages Parcel 5 located in Pololū valley on Hawai‘i Island as part of Kohala Forest Reserve.<sup>1</sup> Pololū Trail, managed by the Na Ala Hele Trails and Access Program, runs from Akoni Pule Highway, above the ridgeline, to the coastline makai of Lot A. Pololū Trail is a heavily used trail and the current parking area and lookout only holds space for twelve vehicles with no ADA parking, and is situated on a cliff with no guardrail. Once those parking spaces are full, visitors park along the edges of Akoni Pule Highway which can lead to dangerous situations for pedestrians walking down the highway to get to the trailhead. Lot B would offer relief for this situation by supplying a much larger designated parking area and comfort station for public recreational activities along Pololū Trail and in Kohala Forest Reserve. Lot A, an in-holding with

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<sup>1</sup> See GP1913

the forest reserve, is in the public interest as it consolidates DOFAW's management in the area by providing additional space for wildlife habitat management and public recreational opportunities.

## DISCUSSION

The Department as owner of Parcel 5, Surety as owner of Lot A, and KPH as owner of Parcels 1 and 12 would join as co-applicants in filing a PCRS application with the County of Hawai'i Planning Department. These four parcels are contiguous, thus allowing DLNR, Surety, and KPH to enter into a PCRS ("Exhibit 2"). The PCRS action would not be possible without Parcel 5 which sits between Lot A and Parcel 1.

Parcels 1 and 12 each contain one PELOR<sup>2</sup> lot. Lot A contains ten (10) PELOR lots that would be moved into the boundaries of Parcels 1 and 12 for the resubdivision.<sup>3</sup> The result of the proposed PCRS action of Parcels 1, 12 and 5 would create thirteen lots. The boundaries of Lot A would remain the same as prior to the PCRS action. The State-owned Parcel 5, including its boundaries, size, and PELOR, will remain the same as prior to the PCRS action. Surety and KPH would donate to DLNR Lot A on the valley floor. Additionally, Surety and KPH would donate Lot B, a 5-acre portion of Parcel 12 to DLNR for the purpose of developing a public parking and comfort station to support public recreational activities along Pololū Trail and in Kohala Forest Reserve.

The Hawai'i Legislature authorized capital improvement project (CIP) FY21 funding to DLNR for Pololū Trail for "plans and design for parking, restroom, and trail restoration" in the amount of \$500,000.<sup>4</sup> DOFAW is in discussion with the County of Hawai'i Parks and Recreation Department concerning management of the parking area and comfort station after its construction.

A binding LOI between DLNR, Surety, and KPH outlines the terms and conditions upon which Surety and KPH will donate Lot A and Lot B ("Exhibit 3"). Surety and KPH would be responsible for all costs related to the preparation and processing of the PCRS application and any other permits, if required. DOFAW will participate with Surety and KPH in support of the application for the PCRS.

The Division will conduct the necessary due diligence for the donation of Lot A and Lot B before returning to the Board for approval to accept the proposed donated property from KPH and Surety.

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<sup>2</sup> Pre-existing lots of record are determined by the County of Hawai'i according to Section 23-118 of Chapter 23 regulating subdivisions. See <https://www.hawaiicounty.gov/home/showdocument?id=50>.

<sup>3</sup> Hawai'i County Planning Department confirmed ten PELOR lots within Parcel 17 on March 12, 2019, and recorded with the Bureau of Conveyances on March 28, 2019.

<sup>4</sup> HB1259 CD1 at 31 (2019), LNR804.

RECOMMENDATION

That the Board

1. Approve the State of Hawai'i by its Board of Land and Natural Resources to apply as a co-applicant with Surety Kohala Corporation and KP Holdings, LLC to the County of Hawai'i Planning Department, for the Parcel Consolidation and Resubdivision (PCRS) application of Parcel 5 owned by the State of Hawai'i, Lot A owned by Surety Kohala Corporation, and Parcels 1 and 12 owned by KP Holdings, LLC, to create a 13-lot subdivision; and
2. Approve the State of Hawai'i by its Board of Land and Natural Resources to apply for any other permits necessary for the PCRS application, subject to the Chairperson's discretion; and
3. Approve the State of Hawai'i by its Board of Land and Natural Resources to enter into a Letter of Intent with Surety Kohala Corporation and KP Holdings for the donation of Parcel 17 for purposes of management by DOFAW as part of Kohala Forest Reserve, and for the donation of a five-acre portion of Parcel 12 for the purpose of constructing an off-site comfort station and parking area near Pololū Trail, subject to the following:
  - A. The terms and conditions of the attached draft letter of intent, as may be amended;
  - B. Review and approval by the Department of the Attorney General;
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

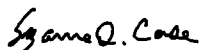
Respectfully submitted,



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David G. Smith, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL



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Suzanne Case, Chairperson  
Board of Land and Natural Resources

Exhibits:

1. Map of proposed consolidation and resubdivision (PCRS) of TMKs (3) 5-1-001:005, owned by the State of Hawai'i, (3) 5-1-002:017 (consisting of ten (10) pre-existing lots of record) owned by Surety Kohala Corporation, and TMKs (3) 5-2-002:001 and (3) 5-2-005:012, owned by KP Holdings, LLC.
2. Map of current TMK boundaries for TMKs (3) 5-1-001:005, owned by the State of Hawai'i, (3) 5-1-002:017, owned by Surety Kohala Corporation, and TMKs (3) 5-2-002:001 and (3) 5-2-005:012, owned by KP Holdings, LLC.
3. Proposed Letter of Intent for donating TMKs (3) 5-1-002:017 (Lot A) and (3) 5-2-005: portion of 012 (Lot B) to State of Hawai'i.

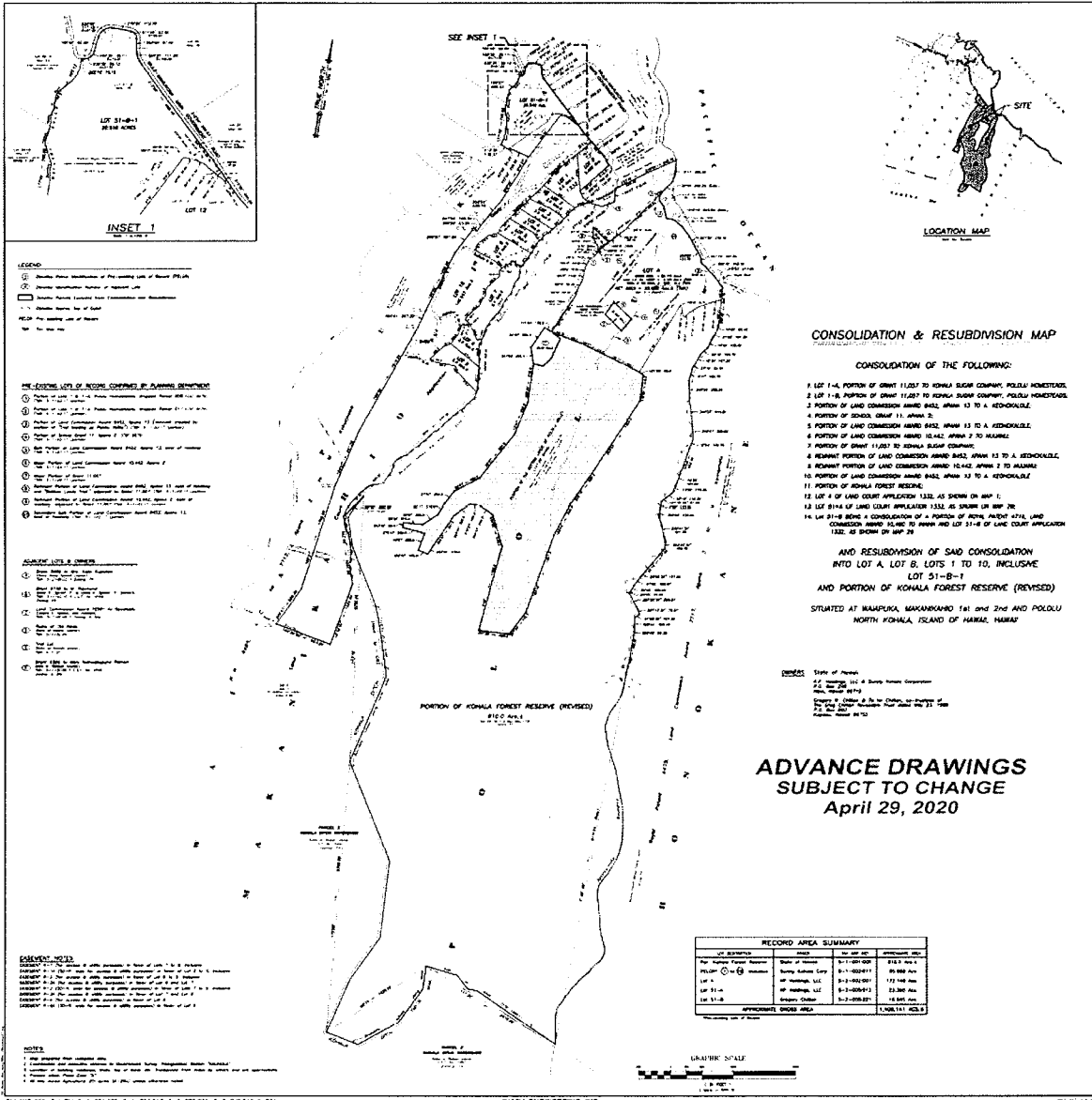


Exhibit 1

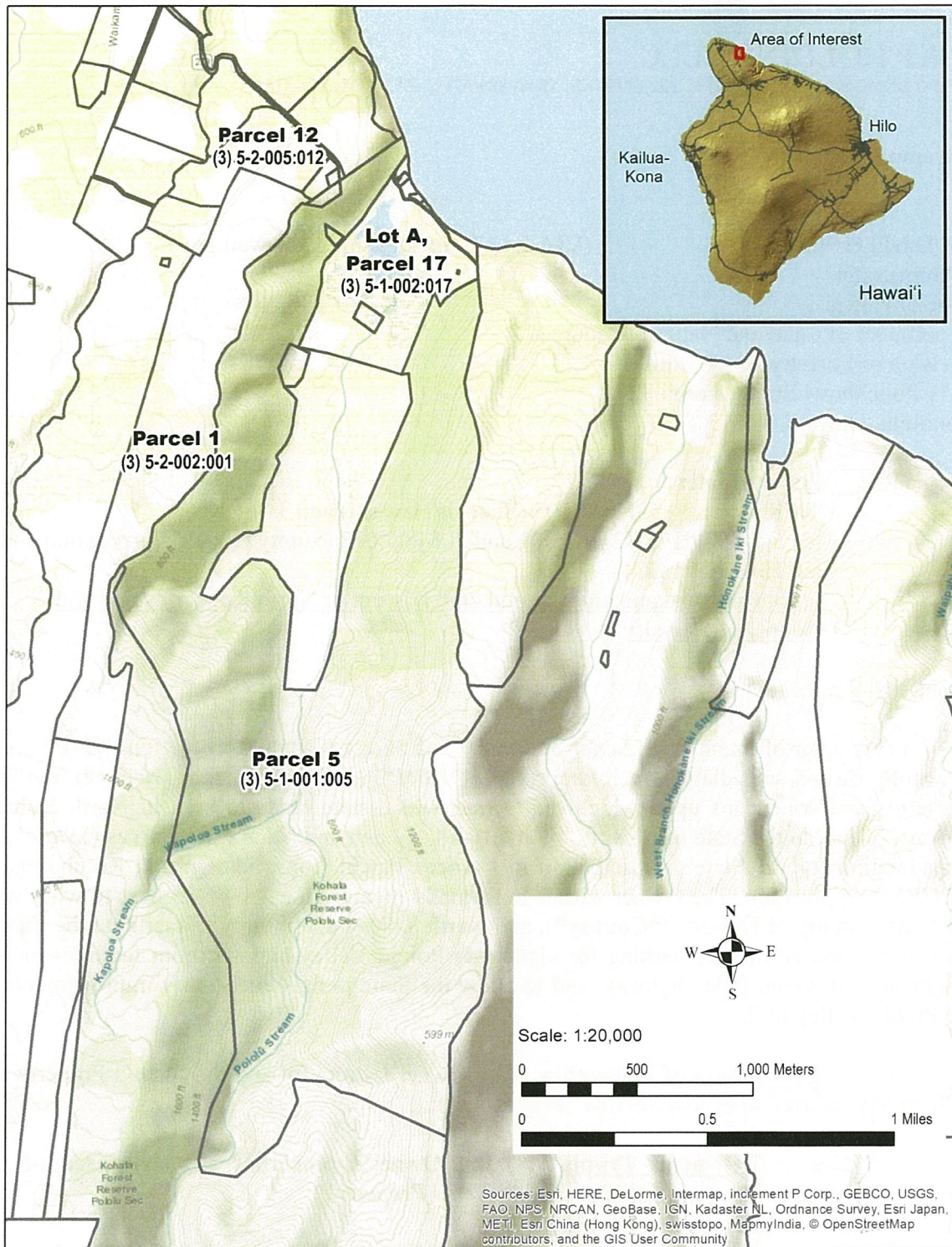


Exhibit 2



**KP HOLDINGS LLC**

PO BOX 249 HAWI, HI 96719 . TELEPHONE: (808) 889-6257 . FAX (808) 889-5252

November 13, 2020

Mr. David G. Smith (VIA Email: david.g.smith@hawaii.gov)  
Administrator  
State of Hawai'i  
Department of Land and Natural Resources  
Division of Forestry and Wildlife  
1151 Punchbowl Street, Room 325  
Honolulu, Hawai'i 96813

RE: Letter of Intent  
TMK Nos.: (3) 5-1-001:005 (State of Hawai'i) and TMK Nos.:  
(3) 5-1-002:017, 5-2-002:001 and 5-2-005:012 (Surety Kohala Corporation and  
KP Holdings LLC)  
Pololū and Makanikahio 1st and 2nd, District of North Kohala, Island and  
County of Hawai'i

Aloha Mr. Smith:

This letter of intent (the "**Letter of Intent**") of Surety Kohala Corporation ("**SKC**"), and its wholly owned subsidiary KP Holdings LLC ("**KPH**") (collectively, the "**Owner**"), outlines the terms and conditions upon which the Owner will donate lands located in North Kohala, Hawai'i Island, to the State of Hawai'i, by its Board of Land and Natural Resources ("**State**") in consideration for the State's participation in Owner's Parcel Consolidation and Resubdivision ("**PCRS**") Application. The Owner wishes to formally memorialize its willingness to work with the State, County of Hawai'i ("**County**"), and North Kohala community to facilitate the State's plan to develop an off-site parking for visitors to Pololū Valley and restroom facilities on the mauka side of Akoni Pule Highway, and to allow the State to make necessary improvements to the Pololū Valley trail.

1. **Description of Properties.** The Owner's Property and the State's Property are collectively referred to as follows (the "**Properties**"):

a. **Owner's Property.** The Owner's properties are comprised of the following real properties (collectively, the "**Owner's Property**"):



i. SKC is the fee simple owner of that certain real property designated as TMK No.: (3) 5-1-002:017 ("**Parcel 17**"), consisting of an area of 85.988 acres, more or less, and as depicted on Exhibit "A"; and

ii. KPH is the fee simple owner of that certain real properties designated as TMK Nos.: (3) 5-2-005:012, consisting of an area of 23.36 acres, more or less, ("**Parcel 12**") and 5-2-002:001, consisting of an area of 172.148 acres, more or less ("**Parcel 1**"), and as depicted on Exhibit "A".

b. **State's Property.** The State is the fee simple owner of that certain real property designated as TMK Nos.: (3) 5-1-001:005, consisting of an area of 810 acres, more or less (the "**State's Property**"), and as depicted on Exhibit "A".

2. **Property to Be Donated.** The Owner will donate by the State's form of warranty deed, the following portions of Owner's Property to the State (collectively, the "**Donated Lands**") for the following limited purposes and under the terms and conditions set forth herein:

a. **Public Parking Lands.** An approximately 5-acre portion of Parcel 12 for comfort station, parking and associated purposes, together with access to the portion of Parcel 12 from Akoni-Pule Highway for its intended purpose ("**Public Parking Lands**"); and

b. **Pololū Valley Lands.** Parcel 17, consisting of 85.988 acres, more or less, located on the Pololū Valley floor ("**Pololū Valley Lands**") for any public purpose.

3. **Permit Processing.** The Owner's donation of the Donated Lands to the State for the purposes described above in Paragraph 2 is contingent upon the Owner completing and obtaining approval of a PCRS Application for the Properties, which would include the creation of a new lot comprising the Public Parking Lands, in a size, location and configuration mutually agreed upon by the Owner and the State, not to exceed 5 acres.

a. **PCRS Application.** The Planning Department by letter dated March 12, 2019 determined that Parcel 17 consists of ten (10) pre-existing legal lots of record. The State understands that the Owner wishes to consolidate the Properties and resubdivide to create a 13-lot subdivision, to include the State Property, the Public Parking Lands and the Pololū Valley Lands. The State understands that the State's Property will remain unchanged by this PCRS action. The State agrees to join in the PCRS action, subject to Board of Land and Natural Resources ("**Board**") approval.

i. **Recordation.** Provided that the County issues Final Subdivision Approval of the PCRS action ("***Final Approval***"), the Owner and State shall execute and record all necessary reciprocal conveyance documents so that: (1) the State shall retain the State's Property, (2) the Owner shall convey by way of warranty deed the Public Parking Lands and Pololū Valley Lands to the State, and (3) the Owner shall retain all remaining lots of the reconfigured Owner's Property (collectively, "**Conveyance Documents**"). The Owner and the State (together the "**Parties**") agree and understand that the Owner shall not receive any lands or any other compensation from the State under this Letter of Intent. In the event that the Owner is unable to obtain Final Approval for any reason, this Letter of Intent shall automatically terminate and thereafter neither Party shall have any obligation to the other with respect to this transaction.

ii. **Costs of PCRS Action.** The Owner agrees to bear all costs for the preparation and processing of the PCRS action through Final Approval and Land Court Action, including without limitation, any and all survey and engineering fees and costs related to complying with or satisfying all conditions of approval required to obtain Final Approval and State Surveyor's Return. The Owner also agrees to bear all of Owner's attorney fees' and costs to prepare and record the Final Approval and record the Conveyance Documents. The State agrees to review, approve, and execute any Conveyance Documents prepared by the Owner.

b. **CDUA / EA and SMA Assessment Applications.** The State agrees to participate with the Owner in CDUA EA and SMA Assessment applications that are necessary to facilitate the PCRS Action, subject to the Chairperson's discretion. The Owner shall be solely responsible for all costs related to the preparation and processing of the CDUA / EA, if required, and SMA Assessment Application, if required, for all Properties, including the Donated Lands. However, the Owner and the State each reserves the right to terminate the processing of the CDUA/EA or the SMA Assessment if, in their sole discretion they determine that the State and/or County processing times and/or estimated attorney's fees and costs to secure the CDUA/EA and SMA Assessment are protracted and/or excessive. In the event of said termination of the processing of these permits, this Letter of Intent shall automatically terminate, and thereafter neither Party shall have any obligation to the other with respect to this transaction.

4. **Escrow.** Escrow shall be opened with Title Guaranty of Hawaii, Kamuela Office (Attention: Carol Mendes) ("Escrow"). Following recordation of the Final Approval, the Owner agrees to pay for the updated title reports for the Donated Lands, all escrow fees and costs for recordation of the Conveyance Documents, and the cost of a standard owner's title insurance policy for the Donated Lands. Any documentary tax or real property transfer tax arising after the recordation of reciprocal conveyance documents for the Donated Lands shall be borne by the Owner, if applicable.

5. **Land Donation.** The Owner agrees that the donation of the Donated Lands to the State is strictly voluntary and that there has been no threat of condemnation.

6. **Use of State Funds.** The Owner understands that the State's obligation to make payments of any kind under this Letter of Intent shall be contingent upon the availability and allotment by the Director of the Department of Budget and Finance of public funds to the Department of Land and Natural Resources to make such payment.

7. **Due Diligence.** The State agrees, at its own cost, to be responsible for conducting its own due diligence with respect to the Donated Lands, including a Phase I Environmental Assessment, if any. The Owner makes no representations or warranties regarding the use or appropriateness of the Donated Lands for the purposes intended herein by the State, or for any purposes. Owner shall provide map and description of the Donated Lands to the State after issuance of the Final Approval.

8. **Attorneys' Fees.** The State and the Owner each agree to pay their own attorneys' fees.

9. **Definitive Agreement.** This Letter of Intent will be subject to the preparation, execution and delivery of a Definitive Agreement (the "***Agreement***") to be approved by the Board in its sole discretion, and shall be based on the terms of this Letter of Intent, and shall include, without limitation, representations and warranties, conditions and covenants which are customary in a transaction of this nature and type. The Agreement will also be subject to such other terms and conditions as may be prescribed by the Chairperson of the Board to best serve the interests of the State. **Notwithstanding this paragraph, the Parties acknowledge that in consideration of the State's participation in the PCRS Application, if there is a Final Approval, Owner's donation of the Donated Lands to the State becomes binding on Owner regardless of an executed Agreement, unless the State declines to accept the Donated Lands within two (2) years following the Final Approval.**

10. **Assignment.** Neither the Owner's nor the State's interest under this Letter of Intent may be assigned, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of the other, which consent may be withheld for any reason or no reason.

11. **Authority.** The Parties hereto agree and warrant that SKC and KPH have the requisite authority to execute and deliver this Letter of Intent. The Owner understands that the State's acceptance of this Letter of Intent is subject to prior approval by the Board.

Mr. David G. Smith  
DLNR-DOFAW  
November 13, 2020  
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12. **Governing Law.** This Letter of Intent shall be governed by and construed in accordance with the laws of the State of Hawai'i.

13. **Binding Agreement.** Partial performance by either the Owner or the State of the terms of this Letter of Intent while the PCRS application is pending, or efforts by either party to perform acts contemplated herein shall not be deemed evidence of intent by either party to be bound by the terms of this Letter of Intent. This Letter of Intent shall be binding on the Parties upon Final Approval of the PCRS Application, unless the State declines to accept the Donated Lands within two (2) years following the Final Approval. Upon Final Approval, the Letter of Intent shall constitute a binding agreement for the donation of the Donated Lands by and between the Owner and the State. Subject to the responsibilities for payment of costs in Paragraphs 3 and 4 above, each Party will bear and pay all costs and expenses incurred by it in connection with the transactions contemplated by this Letter of Intent regardless of whether an Agreement is executed. The Agreement shall incorporate the provisions contained in this Letter of Intent, as agreed or modified by the Parties hereto and such other provisions upon which the Parties hereto may mutually agree.

14. **Acceptance.** If the contents of this Letter of Intent meet with your approval, please indicate the acceptance of the State to the foregoing by executing a copy of this Letter of Intent and returning it to the Owner at your earliest convenience, by facsimile or pdf copy via electronic mail. The Owner and the State agree that facsimile or pdf counterpart copies of the executed Letter of Intent shall be effective for all purposes. Facsimile or pdf counterpart signatures on this Letter of Intent will be treated the same as original signatures. However, each Party agrees to promptly forward an original executed copy of this Letter of Intent to the other Party.

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Mr. David G. Smith  
DLNR-DOFAW  
November 13, 2020  
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**SURETY KOHALA CORPORATION,**  
a Hawaii corporation

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By: Masahiro Kume  
Its President

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By: William M. Shontell, III  
Its Executive Vice-President

**KP Holdings LLC,**  
a Hawaii limited liability company

By Surety Kohala Corporation,  
a Hawaii corporation  
Its Member

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By: Masahiro Kume  
Its President

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By: William M. Shontell, III  
Its Executive Vice-President

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Letter of Intent  
TMK Nos.: (3) 5-1-001:005, 5-1-002:001 and 017, and 5-2-005:012  
Pololū and Makanikahio 1st and 2nd, District of North Kohala, Island and County of Hawai‘i

Mr. David G. Smith  
DLNR-DOFAW  
November 13, 2020  
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ACKNOWLEDGED AND ACCEPTED  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Approved by the Board of Land and Natural  
Resources at its meeting on \_\_\_\_\_.

STATE OF HAWAI'I  
BOARD OF LAND AND NATURAL RESOURCES

By \_\_\_\_\_  
Name: Suzanne D. Case  
Its: Chairperson

APPROVED AS TO FORM:

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Deputy Attorney General

cc: The Honorable Senator Lorraine R. Inouye  
The Honorable Representative David Tarnas  
Suzanne D. Case, DLNR Chairperson  
The Honorable Mayor Harry Kim  
The Honorable Councilman Tim Richards  
Mr. Steve Bergfeld, Hawai'i Island Manager, DLNR-DOFAW

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Letter of Intent  
TMK Nos.: (3) 5-1-001:005, 5-1-002:001 and 017, and 5-2-005:012  
Pololū and Mākanikahio 1st and 2nd, District of North Kohala, Island and County of Hawai'i

# Exhibit A

