Quitclaim of State's Interests, if Any, in a 56-foot Wide Government Homestead Road and a 30-foot Wide Right-of-Way to Forest Reserve to the County of Hawaii, Honomu, South Hilo, Hawaii, Tax Map Key Nos.: (3) 2-8:010: Government Homestead Road and (3) 2-8:010: 011.

APPLICANTS:

County of Hawaii.

LEGAL REFERENCE:


LOCATION:

Portion of Government lands of Honomu Homestead situated at Honomu, South Hilo, Hawaii, identified by Tax Map Keys: (3) 2-8:010: Government Homestead Road and (3) 2-8:010: 011, as shown on the attached maps labeled Exhibits A and B.

AREA:

Paper Government Homestead Road: 5.894 acres, more or less.

30-foot Wide Right-of-Way to the Forest Reserve: 1.148 acres, more or less.

See Exhibit C following within this report.
ZONING:

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

TRUST LAND STATUS:

Not applicable

CURRENT USE STATUS:

Government Homestead Road, portions of which exist on paper only, and 30-foot-wide right-of-way to the forest reserve.

CONSIDERATION:

Not applicable. Act 288 SLH 1993 provides for the gratis conveyance of roads to the respective counties.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of title to lands and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended. See the "EXEMPTION NOTIFICATION" following within this report.

APPLICANT REQUIREMENTS:

Applicant shall:

1) Provide survey maps and descriptions for the government homestead road and right-of-way to the forest reserve according to State DAGS standards and at Applicant's own cost;

2) Require that the grants of easement for the realignments of both the government homestead road and right-of-way to the forest reserve allow for vehicular access; and

3) Cooperate with the State in fulfilling the requirements of Section 171-64.7, HRS, regarding the conveyance of
REMARKS:

By letter dated October 19, 2020, the County of Hawaii (County) requested the State of Hawaii (State) to quitclaim its interests, if any, in a 56-foot-wide government homestead road and a 30-foot-wide right-of-way to the forest reserve (ROW to Forest Reserve) in Honomu, South Hilo, to the County. The purpose of the quitclaim is to establish clear title in the County to the government homestead road and the ROW to the Forest Reserve. The layout of the government homestead road as mapped (Paper Road) does not align with the physical location the road on the ground (Physical Road), with the exception of a few short segments. Portions of the Physical Road cross private property owned by Stella May Larsen, Trustee of Stella May Swain Trust, Declaration of Trust dated December 20, 2012 (Trust). The County intends to convey portions of the Paper Road to the Trust, who, in return, will grant a non-exclusive easement to the County over a realigned road on the Trust’s private property for public use.

The ROW to Forest Reserve is labeled “ACCESS ROAD LOT 1.148-ACRES” on the attached maps and is designated as Tax Map Key: (3) 2-8:010:011. County tax records show this parcel is owned by the Trust. The Trust will grant a non-exclusive easement to the County over a realigned public access way leading to the Hilo Forest Reserve over the Trust’s private property. The map indicates that the easement for access to the forest reserve will be limited to pedestrian access only. However, staff has confirmed that the Division of Forestry and Wildlife requires vehicular access for itself and the public. Accordingly, staff has included an applicant requirement above that the County secure easements from the Trust for vehicular access over both the realigned government homestead road and realigned ROW to Forest Reserve.

Pursuant to Section 264-2, HRS, all "public highways" (roads, alleys, streets, ways, lanes, bikeways, and bridges in the State, opened, laid out, or built by the government) are owned either by the State for state highways under the jurisdiction of the Department of Transportation or the counties for all other public highways. While ownership was transferred by operation of law pursuant to this statutory section, the counties have continued to dispute that they own the roads because they do not have paper title. A memorandum issued by
the Department of the Attorney General on August 19, 1993
determined that both the Paper Road and the ROW to Forest
Reserve are County public highways. See Exhibit D attached.

Act 288, SLH 1993, states in its preamble, "In consideration
of the State waiving its right to have the proceeds from the
sale of county public highways remitted to the State, the
counties shall acknowledge ownership and jurisdiction of all
disputed public highways within their respective counties, as
defined in section 264-1, HRS, without the necessity of
conveyancing documents transferring title from the State to
the respective counties, except when required for the purpose
of disposal." (Emphasis added.)

As a result, it is staff's practice that formal documentation
(i.e., quitclaim deeds) be issued on roads owned by the
counties under Section 264-2, HRS, only when the county is
going to subsequently dispose of any real property interests
(fee conveyance or any interests less than fee) in at least
a portion of the road to a third party. In all other cases,
the State's position is that the fee simple interest in the
road was passed to the counties by operation of law and
further documentation is unnecessary. This policy provides
for the chain of title and enables subsequent real estate
transactions to occur. This policy should not be misconstrued
to mean or imply that the State does not assert that the roads
being quitclaimed are already owned by the applicable county.

The County issued Final Subdivision Approval in 2017 to
document the reconfiguration of seven subdivided parcels that
include the present location of the 56-foot-wide Paper Road
and the relocation of the 30-foot wide Public Access. However,
a title company will not insure clear title to the
realignment of the Paper Road and to the ROW to the Forest
Reserve until such time as the State provides documentation
to evidence that it has no underlying interests in them. The
State has continued to maintain that it has no claims in the
Paper Road or the ROW to the Forest Reserve, but has also
indicated that the County may still make a request to the
State to quitclaim any of its interests to the County, if
necessary. For purposes of obtaining clear title, the County
requests that the State quitclaim any interests that it may
have within the subject lands to the County. See Exhibit E.

To enable the County to convey the Paper Road and the ROW to
the Forest Reserve to the Trust, who will then grant non-
exclusive easements over physical roads and for the ROW to
The Forest Reserve, staff is recommending the issuance of a quitclaim deed. The form of the quitclaim deed approved by the Department of the Attorney General for roads contain specific wording that the State is releasing and disclaiming any interest since it is our assertion that the County already owns the road.

The following State and County of Hawaii agencies were consulted on this action with the results indicated below:

<table>
<thead>
<tr>
<th>Agency:</th>
<th>Comments:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Division of Forestry and Wildlife</td>
<td>Requires applicant to clear the road leading to the forest reserve, as included within the county's subdivision plan.</td>
</tr>
<tr>
<td>Engineering</td>
<td>No response received to date.</td>
</tr>
<tr>
<td>State Historic Preservation Division</td>
<td>No response received to date.</td>
</tr>
<tr>
<td>Department of Transportation, Highways</td>
<td>No response received to date.</td>
</tr>
<tr>
<td>Office of Hawaiian Affairs</td>
<td>No response received to date.</td>
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<tr>
<td>County of Hawaii Planning Department</td>
<td>No Response received to date.</td>
</tr>
<tr>
<td>County of Hawaii Department of Water Supply</td>
<td>No Response received to date.</td>
</tr>
<tr>
<td>County of Hawaii Department of Public Works</td>
<td>No Response received to date.</td>
</tr>
<tr>
<td>County of Hawaii- Environmental Management</td>
<td>No Response received to date.</td>
</tr>
</tbody>
</table>

Based on consultations with the Department of the Attorney General, staff understands that the quitclaim conveyance of the subject real property interests may require legislative approval pursuant to Section 171-64.7, HRS. Accordingly, staff has included an applicant requirement above that the County cooperate with the State in fulfilling the requirements of this section, if applicable. Staff is including a recommendation below that the Board authorize the Department to “hold an informational briefing on the proposed sale or gift in the community where the land to be sold or given is located,” and to submit a concurrent resolution to the Legislature authorizing the conveyance, all as required by Section 171-64.7, if applicable.
RECOMMENDATION:

That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, 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.

2. Authorize the Department to comply with the requirements of Section 171-64.7, HRS, if applicable, including, without limitation, holding an informational briefing on the proposed conveyance in the community where the land to be sold or given is located, and submitting a concurrent resolution to the Legislature authorizing the conveyance.

3. Authorize the quitclaim of interests, if any, the State may have in the subject Government Homestead Road and Right-of-Way to the Forest Reserve to the County of Hawaii covering the subject area, subject to the Applicant fulfilling all of the Applicant requirements listed above and further subject 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 quitclaim deed (roads) 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,

Timmy Chee
Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case, Chairperson
EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, HAR

Project Title: Quitclaim of State's Interests, if Any, in a 56-foot Wide Government Homestead Road and a 30-foot Wide Right-of-Way to Forest Reserve to the County of Hawaii, Honomu.

Project / Reference No.: PSF 21HD-049

Project Location: Honomu, South Hilo, Hawaii, Tax Map Key Nos.: (3) 2-8:010: Government Homestead Road and (3) 2-8:010: 011.

Project Description: Quitclaim of State's Interests, if Any, in a Government Homestead Road and a Right-of-Way to Forest Reserve to the County of Hawaii.

Chap. 343 Trigger(s): Transfer of Title to Land

Exemption Class No.: In accordance with the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Type 1, Part 1, Item 37, that states "Transfer of title to land."

Cumulative Impact of Planned Successive Action in Same Place Significant?: No, there is no cumulative impact for which there would be any significance.

Action May Have Significant Impact on Particularly Sensitive Environment?: No, a particularly sensitive environment does not exist whereby it could be significantly impacted.
Analysis:  
No plans for the project are known that will have a significant effect on the environment.

Consulted Parties:  
Agencies as noted in the submittal.

Recommendation:  
It is recommended that the Board find 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.
TAX MAP KEY NO.: 
(3) 2-8:010:011

EXHIBIT A
PROPOSED PEDESTRIAN PUBLIC ACCESS EASEMENT

FORMER 30-FOOT WIDE GOVERNMENT PUBLIC ACCESS to be preserved as pedestrian public access easement.

LOT 110-A 25.856 ACRES

LOT 10-B 29.999 ACRES

LOT 9-A 29.999 ACRES

LOT 8-A 42.453 ACRES

LOT 10-A 21.108 ACRES

LOT 10-A 21.108 ACRES

30-FOOT ROAD 0.754 ACRE

WAILELE ROAD

NEW REALIGNMENT ROW NAMED WAILELE ROAD (Public Access Easement to be established)

OVERLAP OF EXISTING PAPER GOVERNMENT HOMESTEAD ROAD & REALIGNMENT ROW
The Honorable Richard Wurdeman  
Corporation Counsel  
County of Hawaii  
Office of the Corporation Counsel  
101 Aupuni Street, Suite 325  
Hilo, Hawaii 96720-4262  

Dear Mr. Wurdeman:

Re: Ownership of Certain Road at Honomu, TMK:2-8-10  
Situate at Honomu, District of South Hilo, Island  
and County of Hawaii  

This is in response to your July 16, 1993 letter regarding  
the above-referenced matter. In brief, we conclude that the  
fifty-six (56) foot road reserve located within the Honomu  
Homestead lots is a public road, owned by the government.

FACTUAL SUMMARY

A title search of the subject property and discussions  
with appropriate State agencies revealed the following:

In 1848, pursuant to the Great Mahele, the Chiefess  
Keohokalole surrendered all of her interest in and to the  
ahupuāa of Honomu to Kamehameha III. He subsequently  
relinquished his entitlement in and to the same to the Hawaiian  
Government on March 8, 1848. Hence, the ahupuāa of Honomu  
became government lands.

Thereafter, the Territorial Government surveyed and  
subdivided a portion on the ahupuāa of Honomu and created the  
Honomu Homestead. Subsequently, the government conveyed title  
to the homestead lots to various owners. However, the  
boundaries of said lots ran "along the edge of 56 foot  

EXHIBIT D
roadway," as delineated on the map of the Honomu Homestead lots and the metes and bounds description of said lots. The map and property descriptions also excluded the "30-foot right-of-way through this lot to Forest Reserve."

Moreover, in the recent deeds to Mr. Jules Kanarek, the property descriptions specifically reference that the boundary of the property runs "along [the] 56 foot road reserve". The deeds also reserved a 30-foot right-of-way to the Forest Reserve. These reservations were in favor of the government for public access to the Forest Reserve.

The 56-foot road reserve and 30-foot right-of-way were laid out by the government pursuant to the creation of the homestead lots and are currently being used as a roadway to access the forest reserve. The roadways are not under the jurisdiction of the Department of Transportation.

DISCUSSION

Section 264-1, Hawaii Revised Statutes, provides the following:

(a) All roads, alleys, streets, ways, lanes, bikeways, and bridges in the State, opened, laid out, or built by the government are declared to be public highways. Public highways are of two types:
(1) State highways, which are all those under the jurisdiction of the department of transportation; and
(2) County highways, which are all other public highways.

We find that the subject roadways are public highways by virtue of being laid out by the government. Furthermore, we find that the roadways are county public highways inasmuch as they are public highways not under the jurisdiction of the Department of Transportation, pursuant to § 264-1, HRS.

CONCLUSION

We conclude that the subject roadways are county public highways which have been specifically reserved out of the deeds conveying title to the lots. Accordingly, the county has the legal authority to ensure that the subject roadways remain open and accessible to the public.
Should you have any questions, I may be contacted at 587-2988.

Very truly yours,

Dawn N.S. Chang
Deputy Attorney General

APPROVED:

Robert A. Marks
Attorney General

DNSC:cfk
Enc.
3173

c:  Hon. Dwight Takamine
    Hon. Takashi Domingo
    Mr. Isaac Fiesta
    Ms. Donna Fay Kiyosaki
    Mr. Glenn Taguchi
    Mr. Michael Buck
    Mr. Mason Young
October 24, 2019

Katherine A. Garson
Carlsmith Ball LLP
PO Box 686
Hilo, HI 96721-0686

Dear Ms. Garson:

Subject: Request for Quitclaim of Old Homestead Road to Clear Title to Private Lands identified as TMK Nos. (3) 2-8-010; portions of 015, 016, 017 and 019.

Upon review and investigation of the above referenced request, staff has determined that the State of Hawaii has no claim to the "Old Homestead" road that traverses the subject lands. The County of Hawaii is the fee owner of the road by operation of law.

The State cannot quitclaim its interest in a road owned by the County of Hawaii to a third party. If it is determined necessary by the County of Hawaii to obtain a quitclaim from the State, then the County of Hawaii needs to make the request to the State.

If you have any questions, please contact me at (808) 961-9590. Thank you.

Sincerely,

Candace Martin
Land Agent

EXHIBIT E