

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

June 23, 2023

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

PSF: 21HD-049

Hawaii

Amend Prior Board Action dated January 14, 2022, Item D-2, 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.

The purpose of the amendment is to include citations to Sections 171-52 and -95(a)(5), Hawaii Revised Statutes (HRS), as authority for the Board to quitclaim the referenced 56 foot Wide Government Homestead Road and a 30-foot Wide Right-of-Way to Forest Reserve to the County as remnants, delete the citation to Section 171-64.7, HRS, which relating to legislative approval for fee simple conveyance of public land, and request the Board to find that the 56 foot Wide Government Homestead Road and a 30-foot Wide Right-of-Way to Forest Reserve are remnants.

BACKGROUND:

At its meeting of January 14, 2022, under Agenda Item D-2, the Board of Land and Natural Resources (Board) approved a quitclaim of the State's interests, if any, in a 56-foot-wide Government Homestead Road (Paper Road) and a 30-foot-wide Right-of-Way to the Forest Reserve (ROW to Forest Reserve) in Honomu to the County of Hawaii. See EXHIBIT 1 attached.

Subsequently, staff discussed this matter with the AG's office. We understand that the Board cannot convey clear title to lands the State does not own. In this case, the State does not own the Paper Road and ROW to Forest Reserve. However, the Board can quitclaim its interest, if any, in the Paper Road and ROW to the Forest Reserve since the County requested a quitclaim deed to avoid any issues regarding title.

Pursuant to Section 171-52, HRS, a remnant is defined as "a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics." In the present case, the Paper

Road and ROW to Forest Reserve are long and narrow and not susceptible to development or utilization by the State even if the State had title to the lands (which it does not). Accordingly, the Paper Road and ROW to Forest Reserve may be disposed of by quitclaim as remnants under Section 171-52, HRS.

Additionally, pursuant to Section 171-95(a)(5), HRS, the Board may:

Execute quitclaim deeds to the governments and agencies, with or without consideration, releasing any claim to the property involved made upon disputed legal or equitable grounds, whenever the board in its discretion deems it beneficial to the State

In the present case, the County has an arrangement with the landowner abutting the remnants, Stella May Larsen, Trustee of the Stella May Swain Trust, Declaration of Trust dated December 20, 2012 (Trust), to enter into an exchange agreement under which the Trust would acquire the remnants from the County and grant non-exclusive easements to the County for public roads over portions of the Trust's private property. It is beneficial to the State to quitclaim the road remnants to the County so that public roads in the area can be realigned and public access to the forest reserve established.

Staff therefore recommends that the Board's prior action be amended to include Sections 171-52 and -95(a)(5), HRS, as authority for quitclaiming the remnants to the County. Additionally, since legislative approval will not be needed for the remnant conveyance, the existing citation in the submittal to Section 171-64.7, HRS, should be deleted. The specific amendments staff is proposing are described in the Recommendation section below.

RECOMMENDATION

That the Board:

- A. Amend its prior action of January 14, 2022, under Item D-2, as follows:¹
 1. Under the heading, "LEGAL REFERENCE," on page 1 of the prior action, revise the text as follows:

Sections 171-52, 95(a)(5), [~~171-64.7~~] and 264-2, Hawaii Revised Statutes, as amended, and Act 288, Sessions Laws of Hawaii (SLH) 1993.
 2. In the "RECOMMENDATIONS" section on page 6 of the prior action, revise recommendation 2 as follows:

¹ In the recommended amendments to the language of the prior Board action, insertions are indicated by underscoring and deletions are indicated by bracketed strikethrough.

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]~~ Find that the subject lands are economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics, including, without limitation, that by operation of law the lands are roads owned by the County of Hawaii, and therefore, by definition, are remnants pursuant to Chapter 171, HRS.
3. In the "RECOMMENDATIONS" section on page 6 of the prior action, revise recommendation 3 as follows:
 3. [~~Authorize]~~ Determine that executing a quitclaim deed to the County of Hawaii is beneficial to the State and authorize the quitclaim of interests, if any, the State may have in the subject Government Homestead Road remnant and Right-of-Way to the Forest Reserve remnant to the County of Hawaii covering the subject area, subject to the Applicant fulfilling all of the Applicant requirements listed above and further subject to 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 current quitclaim deed [~~(roads)~~] form, 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 prescribed by the Chairperson to best serve interests of the State.
- B. Affirm that, except as amended hereby, all terms and conditions listed in its January 14, 2022 approval shall remain the same.

Respectfully Submitted,



Timmy Chee
Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

et

km

—

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

January 14, 2022

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

PSF No.:21HD-049

Hawaii

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:

Sections 171-95(a)(5), 171-64.7, and 264-2, Hawaii Revised Statutes, as amended, and Act 288, Session Laws of Hawaii (SLH) 1993.

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.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
January 14, 2022 *so.*

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

public lands, if applicable.

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-footwide 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:

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

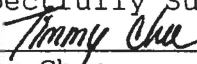
Based on consultations with the Department of the Attorney General, staff understands that the quitclaim conveyance of the subject real property interests may require legislative approval pursuant to Section 171-64.7, HRS. Accordingly, staff has included an applicant requirement above that the County 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

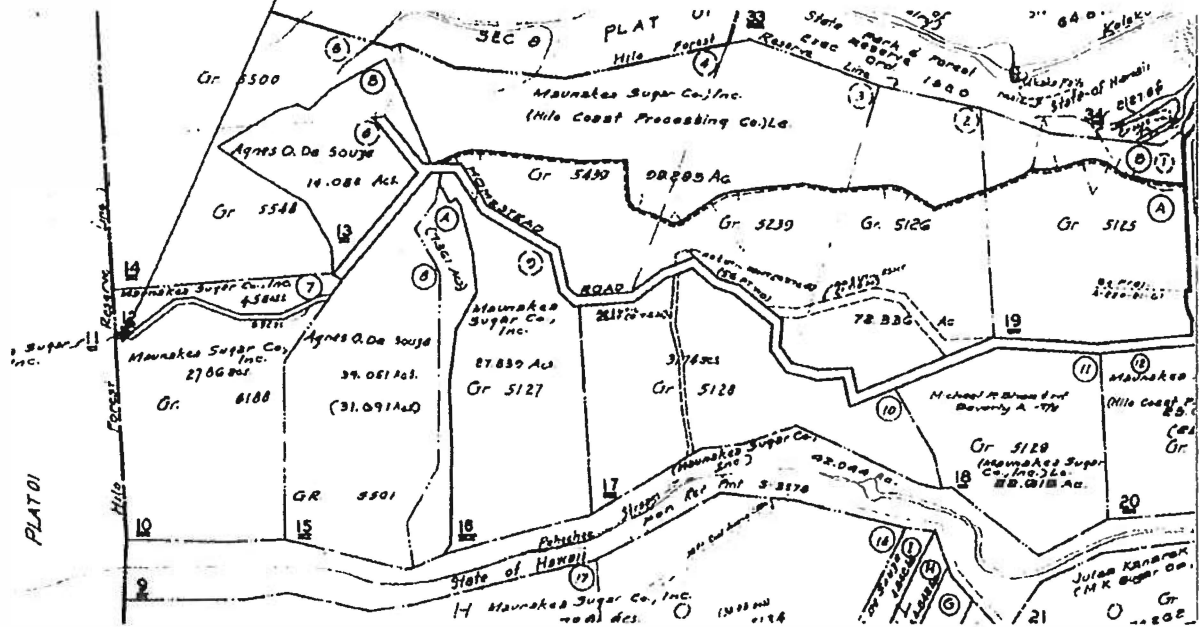
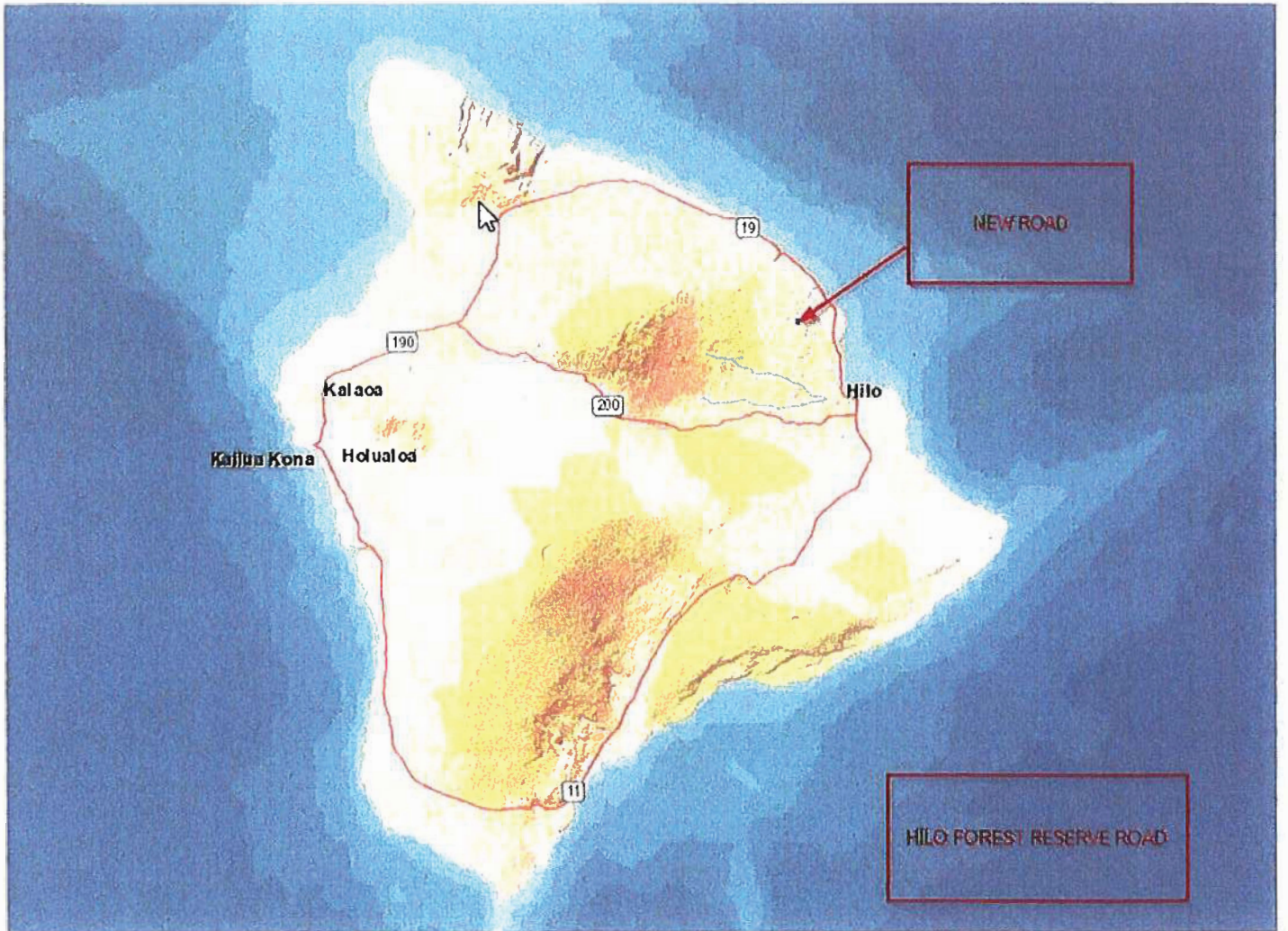


EXHIBIT A



TAX MAP KEY NO: (3) 2-8-010:011

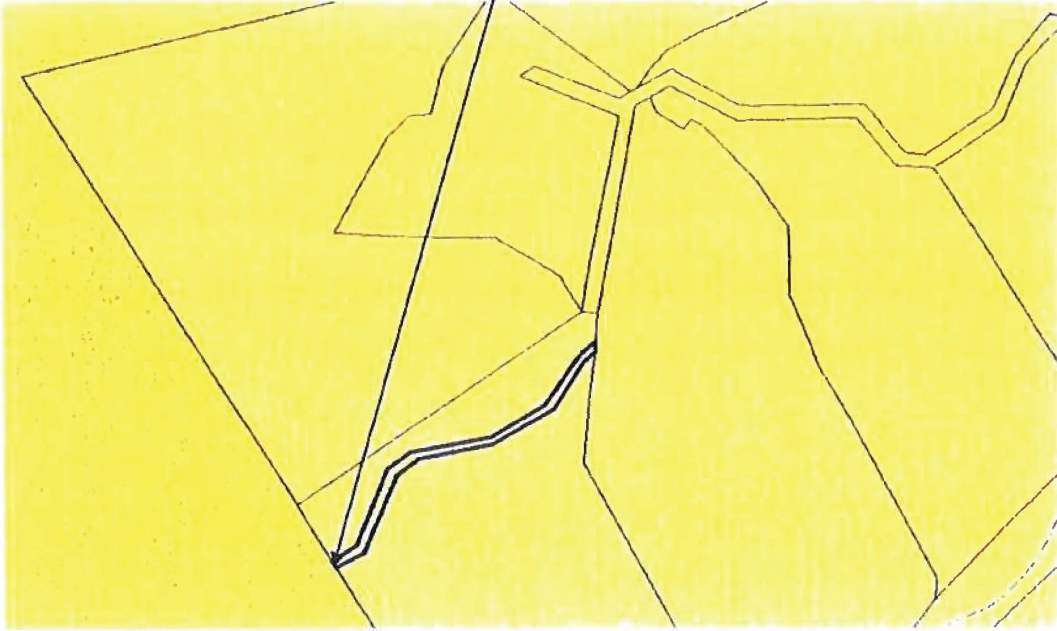
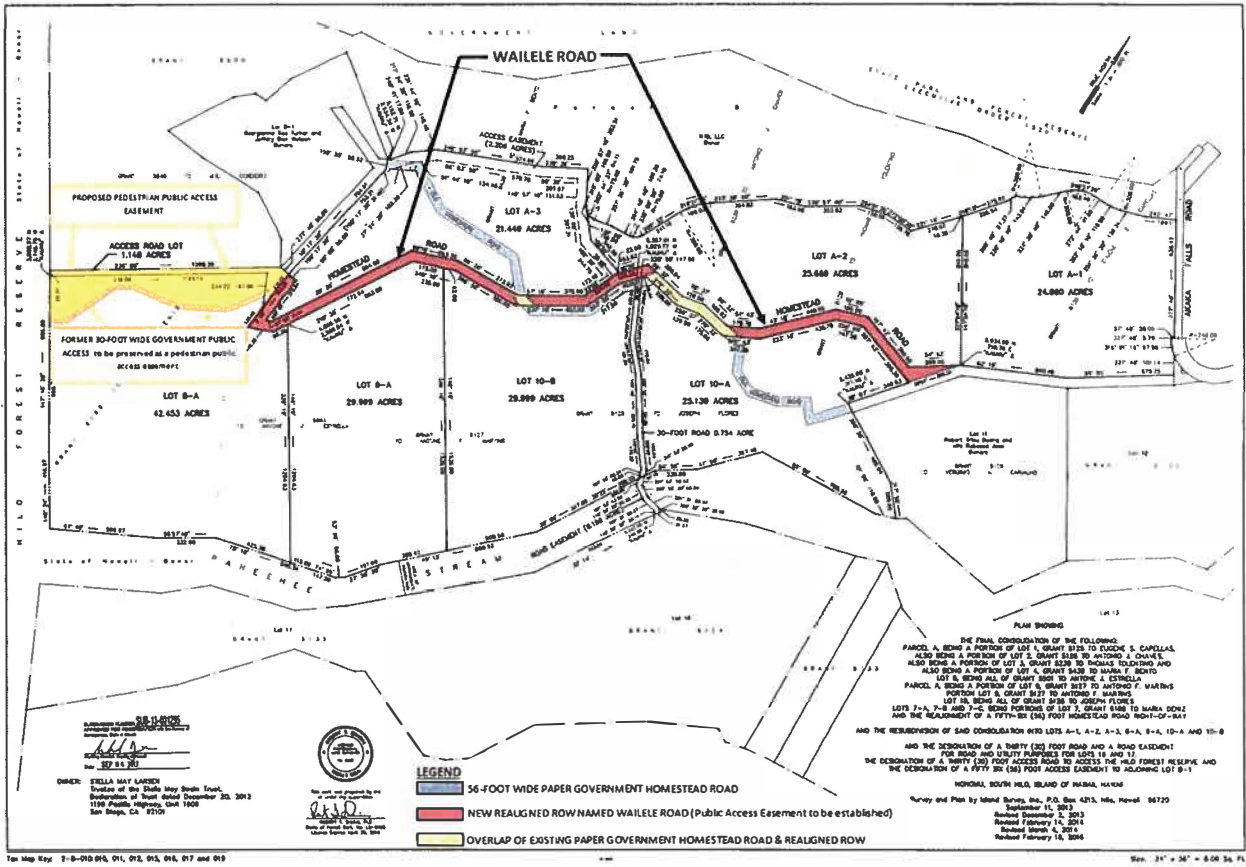


EXHIBIT B

EXHIBIT C



Map Key: 1-B-020 016, 017, 018, 019, 020, 021 and 022

Scale: 1" = 200' = 6.09 Sq. Ft.

JOHN WAIHEE
GOVERNOR



ROBERT A. MARKS
ATTORNEY GENERAL

RUTH I. TSUJIMURA
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 588-1500

August 19, 1993

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
Situatue 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 ahupuaa 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 ahupuaa of Honomu became government lands.

Thereafter, the Territorial Government surveyed and subdivided a portion on the ahupuaa 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

The Honorable Richard Wurdeman
August 19, 1993
Page 2

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.

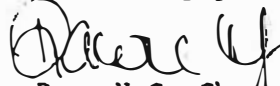
CONCLUSION

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.

The Honorable Richard Wurdeman
August 19, 1993
Page 3

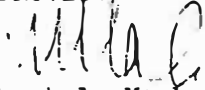
Should you have any questions, I may be contacted at
587-2988.

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



DAVID Y. ICE
GOVERNOR OF HAWAII



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

REC'D OCT 28 2019

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

75 Aupuni Street, Room 204
Hilo, Hawaii 98720
PHONE (808) 961-9590
FAX (808) 961-9599

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