

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

July 28, 2023

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

PSF No.: 22KD-025

KAUAI

Sale of Remnant (abandoned ditch) and Immediate Right-of-Entry Permit for Survey Purposes to Joseph Wallace Morgan, Trustee of the Joseph W. Morgan Revocable Living Trust, and Muriel Ann Morgan, Trustee of the Muriel Morgan Revocable Living Trust, Kapaa, Kawaihau, Kauai, Tax Map Key: (4) 4-6-030: portion of 010.

APPLICANT:

Joseph Wallace Morgan, Trustee of the Joseph W. Morgan Revocable Living Trust, and Muriel Ann Morgan, Trustee of the Muriel Morgan Revocable Living Trust.

LEGAL REFERENCE:

Section 171-52 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands at Kapaa, Kawaihau, Kauai, identified by Tax Map Key: (4) 4-6-030: por. of 010, as shown on the attached maps labeled **Exhibit A**.

AREA:

Total parcel area is 0.21 acre, more or less.
Estimated remnant purchase area is 0.025 acre, more or less.

ZONING:

State Land Use District: Urban
County of Kauai CZO: R6 Residential

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered

CONSIDERATION:

For Sale of Remnant: One-time lump sum payment of fair market value to be determined by an independent appraiser, subject to review and approval by the Chairperson.

For Right of Entry Permit (ROE): Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, that states “Operation, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing” and Part 1, Item No. 37, “Transfer of title to land.” See **Exhibit B**.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 2) Pay for an appraisal to determine the one-time payment of fair market value for the remnant; and
- 3) Subdivide the remnant ditch into two separate remnant parcels to be consolidated with the Applicants' two abutting properties through the County subdivision process.

REMARKS:

Joseph Wallace Morgan, Trustee of the Joseph W. Morgan Revocable Living Trust, and Muriel Ann Morgan, Trustee of the Muriel Morgan Revocable Living Trust (Applicants), are the owners of the adjacent private parcels identified by Tax Map Keys: (4) 4-6-026:030 & 007, as confirmed with the County of Kauai, Real Property Tax Office. The Applicants are requesting to purchase a portion of the subject remnant identified as Tax Map Key: (4) 4-6-030: por. of 010 and consolidate it with their fee simple parcels but have no plans to conduct significant improvements to the land at this time. As a routine part of the application process, Land Division reaches out to all landowners abutting the intended remnant purchase to assess additional interest. At present, Land Division has received no expression of interest from any of the other abutting owners.

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." The subject parcel has been determined to be a remnant by this definition for the following reasons:

- 1) The parcel is a discontinued abandoned ditch.

The State parcel identified by TMK: (4) 4-6-030:010 is an abandoned ditch. Applicant is requesting to purchase the portion of the State parcel that abuts the Applicants' fee simple properties.

Various neighboring private landowners have made similar requests to purchase portions of the same ditch parcels that abut their respective private properties. Most recently, the Land Board approved the sale of a remnant (abandoned ditch) to Gregory L. Tacbian and Cosie M. Tacbian, Kapaa, Kawaihau, Kauai, Tax Map Key: (4) 4-6-026: portion of 001 on July 24, 2020, under agenda item D-1.

Staff is further recommending the issuance of an ROE permit to Applicants to allow them and their consultants to enter the remnant areas for surveying purposes so that maps and descriptions of the areas to be conveyed to Applicants can be prepared.

The Applicants have not had a lease, permit, easement, or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Various government agencies and interest groups were solicited for comments.

AGENCIES	COMMENTS
County of Kauai:	
Planning Department	No Response by Suspense Date
Public Works	No Response by Suspense Date

State of Hawaii:	
Commission on Water Resource Management	No Response by Suspense Date
Historic Preservation Division	No Response by Suspense Date
Department of Health	No Objection
Office of Hawaiian Affairs	No Response by Suspense Date

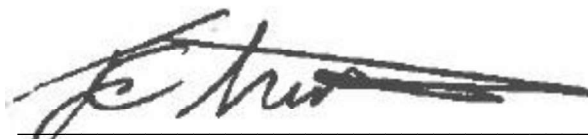
RECOMMENDATION:

That the Board:

1. 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 and, therefore, by definition, is a remnant pursuant to Chapter 171, HRS.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 4-6-026:030, and (4) 4-6-026:007, provided the succeeding owner has not had a lease, permit, easement, or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. 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.
4. Authorize the subdivision of the subject remnant into two separate remnants to be consolidated with Applicants' fee simple properties, and at Applicants' own expense, as follows;
 - A. Tax Map Key: (4) 4-6-030: portion of 010 (ditch) to be consolidated with Tax Map Key: (4) 4-6-026:007; and
 - B. Tax Map Key: (4) 4-6-030: portion of 010 (ditch) to be consolidated with Tax Map Key: (4) 4-6-026:030.
5. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the sale of the subject remnant to Joseph Wallace Morgan, Trustee of the Joseph W. Morgan Revocable Living Trust, and Muriel Ann Morgan, Trustee of the Muriel Morgan Revocable Living Trust, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current deed or grant (remnant) 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.
6. Grant an immediate ROE permit for surveying purposes to Joseph Wallace Morgan, Trustee of the Joseph W. Morgan Revocable Living Trust, and Muriel Ann Morgan, Trustee of the Muriel Morgan Revocable Living Trust, their consultants, contractors, and/or persons acting for or on their behalf, onto the subject property to survey the property, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current ROE form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State;
 - C. This management ROE is authorized to continue for one year or until the survey is completed, whichever shall first occur; provided, however, that the Chairperson is authorized to continue the ROE for additional one-year periods for good cause shown; and
 - D. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this ROE is in force.

Respectfully Submitted,

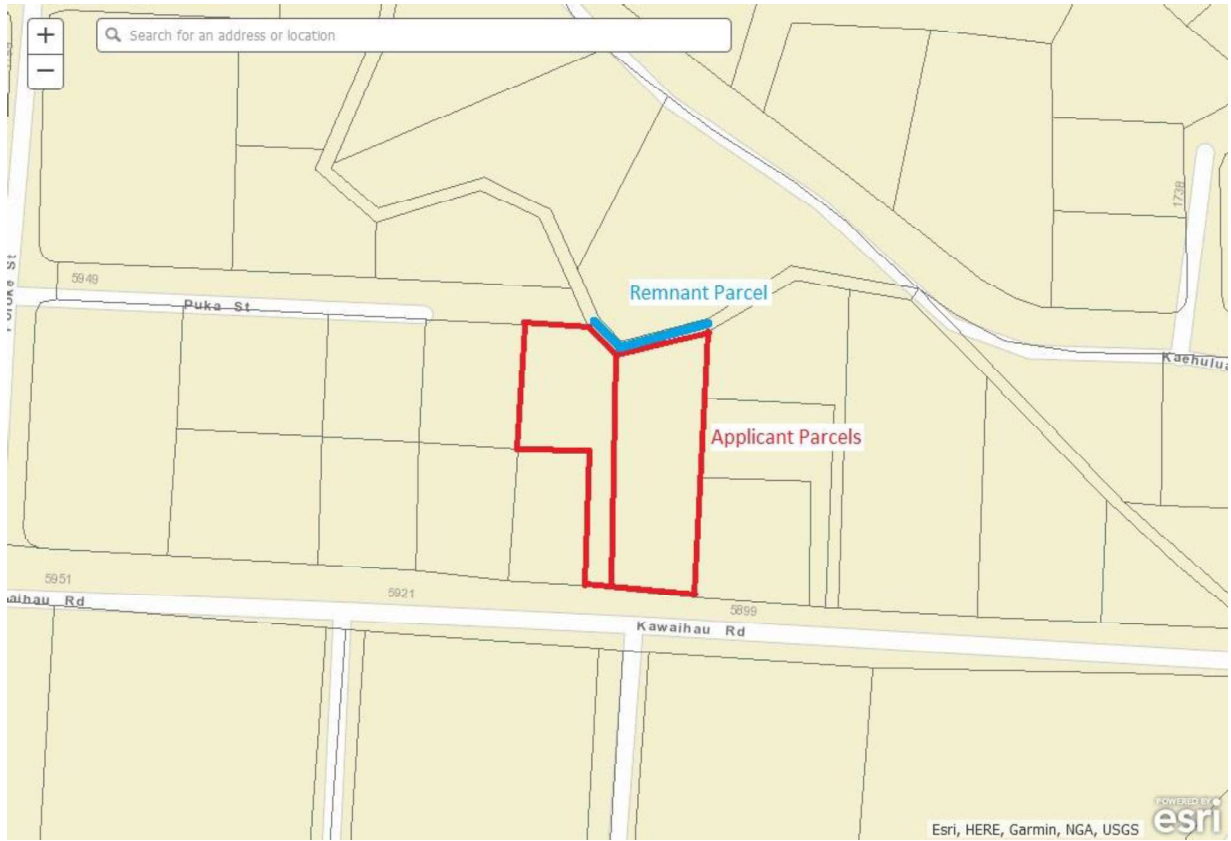


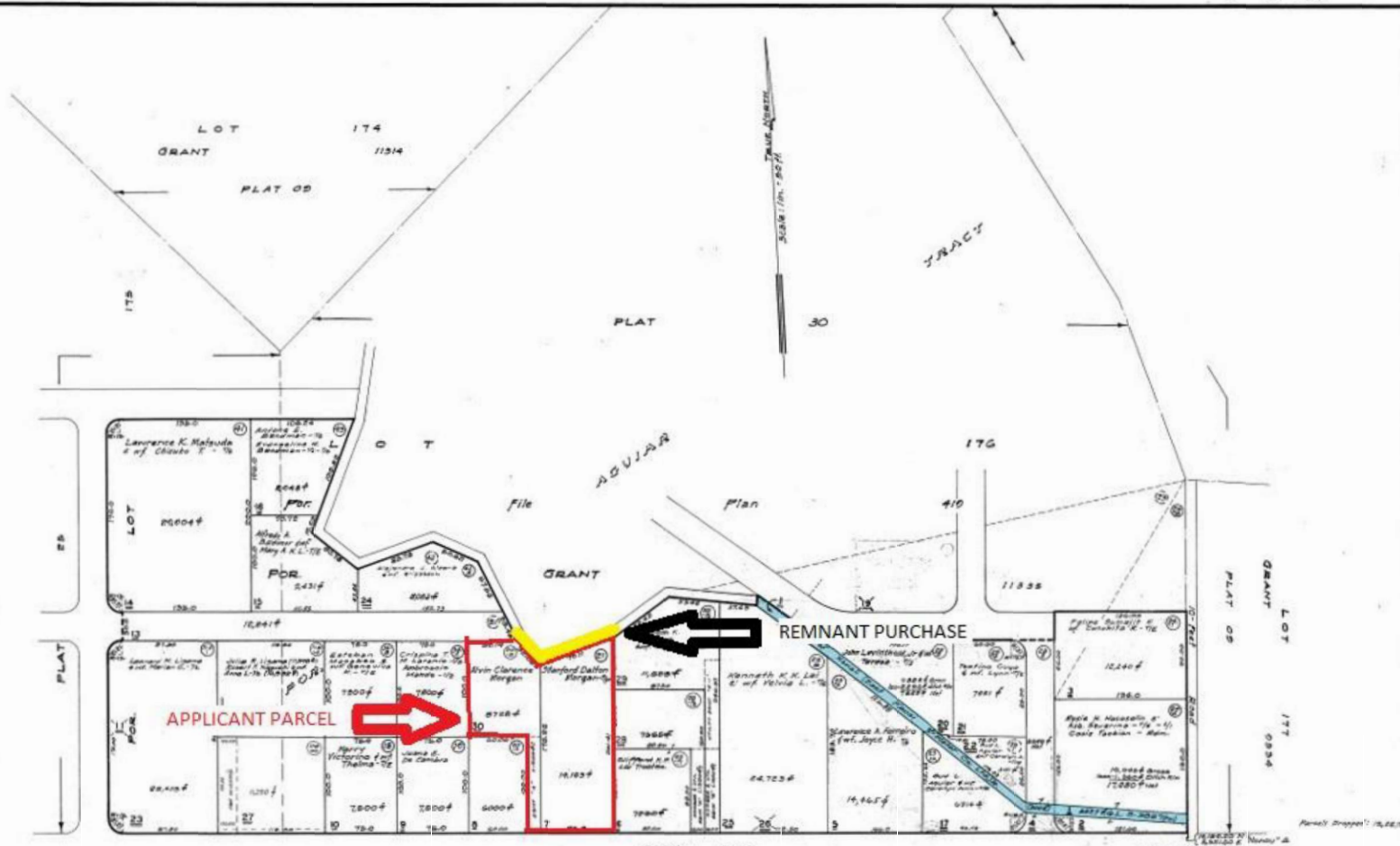
James C. Turner
Land Agent

APPROVED FOR SUBMITTAL:



Dawn N.S. Chang, Chairperson *et*





POB KAPPA HOMESTEADS, KAPPA KAHALI, I.I.

Note: All lots owned by Edwin M. Aguilar unless otherwise noted.

SUBJECT TO CHANGE

TAXATION MAPS BUREAU		
TERRITORY OF HAWAII		
TAX MAP		
FOURTH DIVISION		
ZONE	SEC.	PLAT
4	6	26
CONTAINING PARCELS		
SCALE: 1 IN = 50 FT		

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



Dawn N.S. Chang
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

3060 Eiwa Street, Room 208
Lihue, Hawaii 96766
PHONE: (808) 274-3491
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EXEMPTION NOTIFICATION

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

Project Title:	Sale of Remnant (abandoned ditch) and Immediate Right-of-Entry Permit for Survey Purposes to Joseph Wallace Morgan, Trustee of the Joseph W. Morgan Revocable Living Trust, and Muriel Ann Morgan, Trustee of the Muriel Morgan Revocable Living Trust
Project / Reference No.:	22KD-025
Project Location:	Kapaa, Kawaihau, Kauai, Tax Map Key: (4) 4-6-030: portion of 010
Project Description:	The applicants are requesting the sale of a remnant State parcel (abandoned ditch) to maintain and clear the land.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No. and Description:	In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," and Part 1, Item 37 that states "Transfer of title to land".

EXHIBIT B

**Cumulative Impact of
Planned Successive Actions
in Same Place Significant?:**

No. Staff believes there are no cumulative impacts involved with the sale of the remnant.

**Action May Have Significant
Impact on Particularly
Sensitive Environment?:**

No. There are no sensitive environmental issues involved with the sale of the remnant.

Analysis:

The proposed action is the transfer of title in a State-owned remnant to a private owner. In the past, several similar segments of the subject remnants were sold to abutting owners. The dispositions have not resulted in known significant impacts to the natural and environmental resources in the area. As such staff believes that the proposed disposition would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties:

County of Kauai (COK) Planning Department, COK Public Works Department, State Historic Preservation Division, Commission on Water Resource Management, Department of Health, and Office of Hawaiian Affairs.

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.