

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

December 12, 2025

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

PSF No.: 25HD-098

Hawaii

Quitclaim of State's Interests, if Any, in Proposed Portion of Wailoa Collector Street Right-Of-Way, Including Grant of Easement No. S-4206 to 1055 Kinoole, LLC, as Grantee, to the County of Hawaii, Department of Public Works, Waiakea House Lots, South Hilo, Hawaii, Tax Map Key: (3) 2-2-020:016.

APPLICANT:

County of Hawaii, Department of Public Works whose business and mailing address is 101 Pauahi St., Suite 7, Hilo, Hawaii 96720.

LEGAL REFERENCE:

Sections 171-95(a)(5), 264-1, 264-2.1, and 264-3 Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of Waiakea House Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-020:016, as shown on the attached map labeled Exhibit A.

AREA:

39,900 square feet, more or less, to be determined by survey.

ZONING:

State Land Use District: Urban
County of Hawaii; CZO: Road (not zoned)

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; paper road (laid out).

CONSIDERATION:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

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 Exemption Class No. 1 that states, "Operations, 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 Item 37 that states, "Transfer of title to land."

This quitclaim action is for housekeeping purposes only and does not constitute a use of public lands. Any future use of the property would require the County of Hawaii to comply with the environmental laws and rules in place at that time. Therefore, this is a de minimis action that will have minimal or no significant impact on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of §11-200.1-17, HAR, as a de minimis action.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

BACKGROUND:

At its meeting of April 14, 1967, under agenda item F-10, as amended by action taken at its meeting of June 16, 1967, item F-2, the Board approved the sale of a lease at public auction for the sewer easement across the subject parcel. The proponent and successful bidder of this auction, Sun Sun Lau, Ltd. (SSL) owned the adjacent parcel identified by TMK: (3) 2-2-020:014 (Parcel 14) and needed

the easement to connect its restaurant to the County sewer system. Grant of Easement No. S-4206 (GLS-4206) was executed as of September 26, 1968.

SSL operated its restaurant on Parcel 14 for several decades and shutdown mid-1997. According to a deed recorded at the Bureau of Conveyances as Document No. 2007-015611, 1055 Kinoole, LLC (1055 Kinoole) acquired Parcel 14 in 2007. Currently, the facility on Parcel 14 is utilized by the County of Hawaii, Office of Aging.

At the time that GLS-4206 was issued, the standard lease terms did not require the Board's approval prior to assignment. There were at least two mesne conveyances between SSL's ownership of the property benefited by the subject easement (GLS-4206) and its acquisition by 1055 Kinoole. However, 1055 Kinoole is the first owner after SSL to request the consent to assignment of GLS-4206 since the standard requirement of Board approval prior to any assignment was implemented.

On December 11, 2009, under agenda item D-2, the Board approved the consent to assignment of GLS-4206, from Sun Sun Lau, Ltd, as Assignor, to 1055 Kinoole, LLC, as Assignee.

REMARKS:

Although the State has exercised jurisdiction over the subject parcel in the past by granting a sewer easement to a private entity, HDLO staff has since maintained the stance that it is considered a "public highway." An AG opinion from July 21, 1999, has concluded that "a paper road¹ which has been delineated or laid out on a subdivision map and originally created by either the State or County, is a public highway, and in general², is owned by the county in which the highway lies." The subject parcel is not a State highway under the jurisdiction of the Department of Transportation and is considered a "street" that has been "laid out" but not yet built.

The subject parcel was originally part of the proposed Wailoa right-of-way collector street. Then, effective July 11, 1995, the Hawaii County Council passed an ordinance (Ordinance 95-85, Bill No. 94) amending Hawaii County Code Article 3, Chapter 25: Zoning Code, Section 25-114 (City of Hilo Zone Map) by deleting a portion of the Wailoa Right-Of-Way collector street between Kinoole Street and Kilauea Avenue. This amendment impacted fifteen parcels including the subject parcel, identified by TMK: (3) 2-2-020:016.

1 For purposes of this opinion, the term "paper road" means a road which has been planned by the government for the purpose of providing access to a government created homestead lot but does not actually exist on the ground. Often paper roads are shown on subdivision maps.

2 We say "in general" because although the specific determination of whether a paper road is owned by the State or county will be factually based in each instance, almost all if not all homestead paper roads will be county public highways.

Pursuant to Section 264-1, HRS, the ownership of 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 county 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.

Act 288, SLH 1993, stated 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 264-2.1, 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 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.

Pursuant to Section 264-2, HRS, conveyance documents in the form of a quitclaim deed shall be warranted in this case as the County of Hawaii, Department of Public Works will subsequently dispose of the associated sewer easement to 1055 Kinoole LLC, transferring interest and jurisdiction over the management of the said sewer easement.

Via letter dated October 23, 2025, The County of Hawaii, Department of Public Works requested a quitclaim deed from the State of Hawaii for the subject parcel for access to the Wailoa Stream. The Wailoa Stream is part of the Wailoa Stream and Tributaries Flood Control Project which is under the jurisdiction of the County of Hawaii. This acquisition shall provide continued access to the drainage stream for flood mitigation and maintenance purposes.

To enable the County to have continued access to the Wailoa Stream, staff is recommending the issuance of a quitclaim deed. The form of the deed has been approved by the Department of the Attorney General and contains specific

wording that the State is releasing and disclaiming any interest³ since it is our assertion that the County already owns the road.

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 as a de minimis action.
2. Authorize the quitclaim of interests, if any, the State may have in the subject roadway parcel, including Grant of Easement No. S-4206 to 1055 Kinoole LLC, as the Grantee, to the County of Hawaii, Department of Public Works 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,

Dan Gushiken

CMM

Dan K. Gushiken
Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

³ Includes the transfer of interest and jurisdiction over the management of GLS-4206 to 1055 Kinoole LLC, as Grantee, to the County of Hawaii, Department of Public Works.

TMK: (3) 2-2-020:016

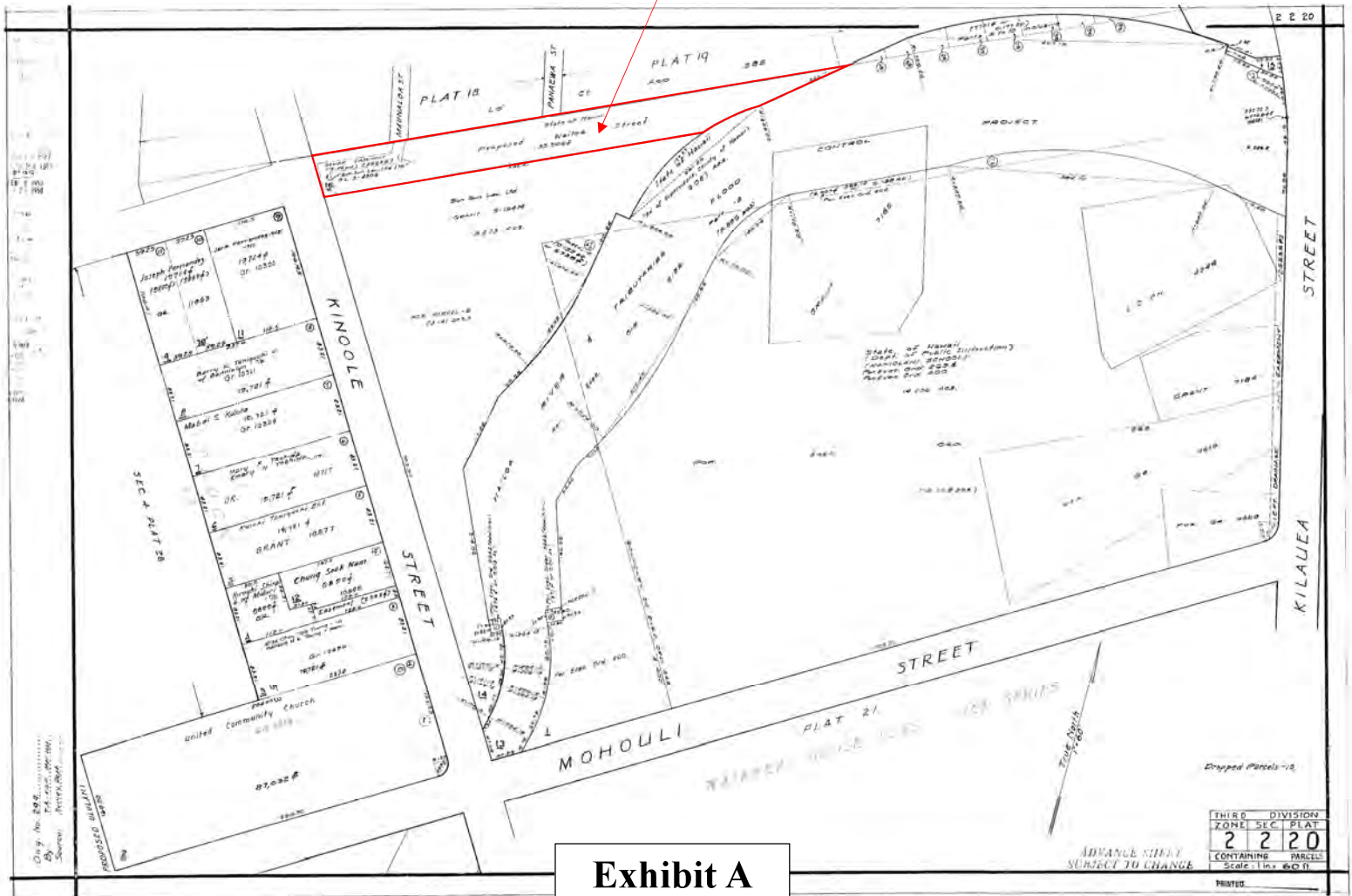


Exhibit A
Page 1 of 2

TMK: (3) 2-2-020:016



Exhibit A
Page 2 of 2