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

March 9, 2007

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

03HD-153
Hawaii

Amendment of the development agreement for master-planned project at Kealakehe, North Kona, Island of Hawaii, Hawaii. Tax Map Keys: (3) 7-4-08: 71, 999, and portion of 3.

APPLICANTS:

Department of Land and Natural Resources ("DLNR") and Jacoby Development, Inc. ("JDI")

DEVELOPMENT AGREEMENT:

On November 18, 2005, the Board of Land and Natural Resources ("Board") and JDI entered into a development agreement (the "Development Agreement") for the development of a master-planned project on approximately 300 acres of DLNR lands, more particularly described as the "Property" below, and generally shown on Exhibit 1, attached. In general, the Development Agreement allows JDI to conduct due diligence activities and seek all land use entitlements and government approvals/permits in pursuit of JDI's proposed development project. The Development Agreement sets forth various terms and conditions that JDI must satisfy before it is entitled to a lease for the Property.

PROPOSED AMENDMENTS TO DEVELOPMENT AGREEMENT:

1. Amend Exhibit A of the Development Agreement to include those lands that currently comprise the portion of Kealakehe Parkway located makai of Queen Kaahumanu Highway as a portion of the "Property" (as defined in the Development Agreement).

2. Extend the period provided to BLNR under the Development Agreement to initially review and approve or object to JDI's proposed development plans.

PROPERTY:

The Property, is situated at Kealakehe, North Kona, Island of Hawaii, identified by TMKs (3) 7-4-08:71, 999, and portion of 03.

BACKGROUND:

DLNR is the owner of approximately 300 acres in Kealakehe, North Kona, adjacent to the existing Honokohau Small Boat Harbor

On April 25, 2003, the Board approved the issuance of a Request for Qualifications/Request for Proposals ("RFQ/RFP") to solicit potential developers to lease and develop a master-planned, mixed-use project on the subject property.

On October 8, 2004, the Board approved the selection of JDI as the developer of the DLNR lands, and authorized DLNR to negotiate a Development Agreement with JDI for the proposed project. The development agreement was subsequently approved by the Board on September 23, 2005 and executed on November 18, 2005.

The Development Agreement allows JDI to perform necessary due diligence, submit required deliverables (as discussed below), and seek all land use entitlements and approvals necessary to develop a proposed master-planned project that JDI calls "Kona Kai Ola". If JDI is successful in satisfying all of the terms and conditions of the Development Agreement, DLNR will issue a 65-year lease to JDI for the subject property.

At the time the Development Agreement was entered, the parties understood that JDI's master plan would not be determined until after the Development Agreement was executed and JDI conducted additional studies. Consequently, the Development Agreement required JDI to submit the following for review and approval by the BLNR, which are collectively referred to as the "Deliverables". JDI submitted the Deliverables on November 17, 2006, as required by the Development Agreement.

1. Master Development Plan ("MDP"). The MDP includes JDI's proposed master plan for the Kona Kai Ola project, including the planned locations and estimated sizes of the development pods/components; proposed uses, zoning, and phasing of the project; and estimated timelines for each phase of the project and for each phase of the new marina. The MDP also includes a schedule and budget for the land use entitlements and estimated development and construction costs for each phase of the new marina and for the proposed first phase of the project.

2. Draft EIS. An EIS is required pursuant to HRS Chapter 343 (i.e., for the lease of public lands), as well as for various land use entitlements that will be required to develop JDI's proposed Kona Kai Ola project.

3. Core Infrastructure Plan ("CIP"). The CIP includes details of the major infrastructure that JDI agrees to construct once the ground lease is issued, which should include the

core infrastructure necessary to provide roadway access and master utility service to all of the development parcels. The intent of the CIP is to provide assurances to DLNR that the roadways and utility infrastructure necessary to service all of the development parcels will be built, even if JDI is unable to complete the entire Kona Kai Ola project. The CIP includes a schedule for the phasing and timing of the construction of the core infrastructure as well as a budget therefore.

4. Master Covenants, Conditions & Restrictions ("Master CCRs"). The Master CCRs are intended to provide controls over the use, development, and management of Kona Kai Ola.

The Development Agreement sets forth the process and time frames under which the Board may issue objections to the proposed Deliverables or portions thereof, and provides JDI with the opportunity to address any objections by resubmitting revised Deliverables for approval by the Board. Under the Development Agreement, the State initially had 90 days to review and approve or object to the proposed Deliverables. If no objections were received within the allotted time, the proposed Deliverables were to be deemed preliminarily approved.

Pursuant to the Board's action of September 23, 2005, the Chairperson is authorized to "modify or negotiate any additional terms and conditions to the Development Agreement, Master Ground Lease, and any related documents, easement, licenses, rights of entry thereunder, on behalf of the Board". Accordingly, the Board is being asked to ratify and confirm the following amendments to the Development Agreement, discussed below.

PROPOSED AMENDMENT TO ADD KEALAKEHE PARKWAY LANDS:

The Property (as defined in the Development Agreement) describes the DLNR lands that JDI proposes to develop. Exhibit A of the Development Agreement consists of maps and legal descriptions of the lands comprising the Property, but inadvertently did not include the lands consisting of the existing Kealakehe Parkway road makai of Queen Kaahumanu (which staff believes is identified as TMK (3) 7-4-08:999). The RFQ/RFP and JDI's proposals, however, have always contemplated that the current Kealakehe Parkway would be relocated or realigned by the developer (in part to conform with the Department of Transportation's desire to align the portion of Kealakehe Parkway makai of Queen Kaahumanu Highway with the portion of Kealakehe Parkway mauka of the highway). Ownership of Kealakehe Parkway remains with DLNR, and the parties are now requesting that Exhibit A of the Development Agreement be amended to add the maps and legal descriptions, attached as Exhibits 2 and 3 to confirm that lands within the portion of Kealakehe Parkway, makai of Queen Kaahumanu Highway, are included in the Property under the Development Agreement.

PROPOSED AMENDMENT TO EXTEND BLNR REVIEW PERIOD:

As required by the Development Agreement, JDI submitted the required Deliverables. The Development Agreement provides the State with 90 days to review and approve or object to the Deliverables. If the State does not object to the Deliverables within the 90 day period, the Deliverables are deemed approved by the State.

Because the Deliverables contain detailed plans and information, (e.g. design plans for the proposed marina, new roadways, and utility infrastructure, business and marketing plans, financial projections, and pro forma cash flow projections), DLNR staff requires additional time to properly evaluate the Deliverables.

Likewise, agency and public comments to JDI's draft EIS has resulted in JDI's need for additional time to properly address all comments, including possible modifications to JDI's proposed Deliverables.

Prior to the expiration of the initial 90-day review/approval period, JDI and the Chairperson agreed to extend the review/approval period to March 13, 2007. The Department subsequently requested an additional 90-day extension, but JDI was unwilling to commit to any further extension without assurances that the Department will be able to commence and complete a comprehensive review of the Deliverables in a timely manner.

RECOMMENDATION: That the Board:

1. Ratify and confirm amendments to the Development Agreement to: (1) amend Exhibit A of the Development Agreement to add the maps and legal descriptions of the portion of Kealakehe Parkway situated makai of Queen Kaahumanu; and (2) extend the time period provided to the BLNR for initial review/approval of JDI's proposed Deliverables. These amendments to be subject to the following:

   A. Review and approval by the Department of the Attorney General;

   B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

2. Authorize the Chairperson to execute the amendments to the Development Agreement approved by this action; and

3. Authorize the Chairperson to negotiate, approve and execute additional amendments to the Development Agreement with respect to additional time extensions to best serve the interest of the State.

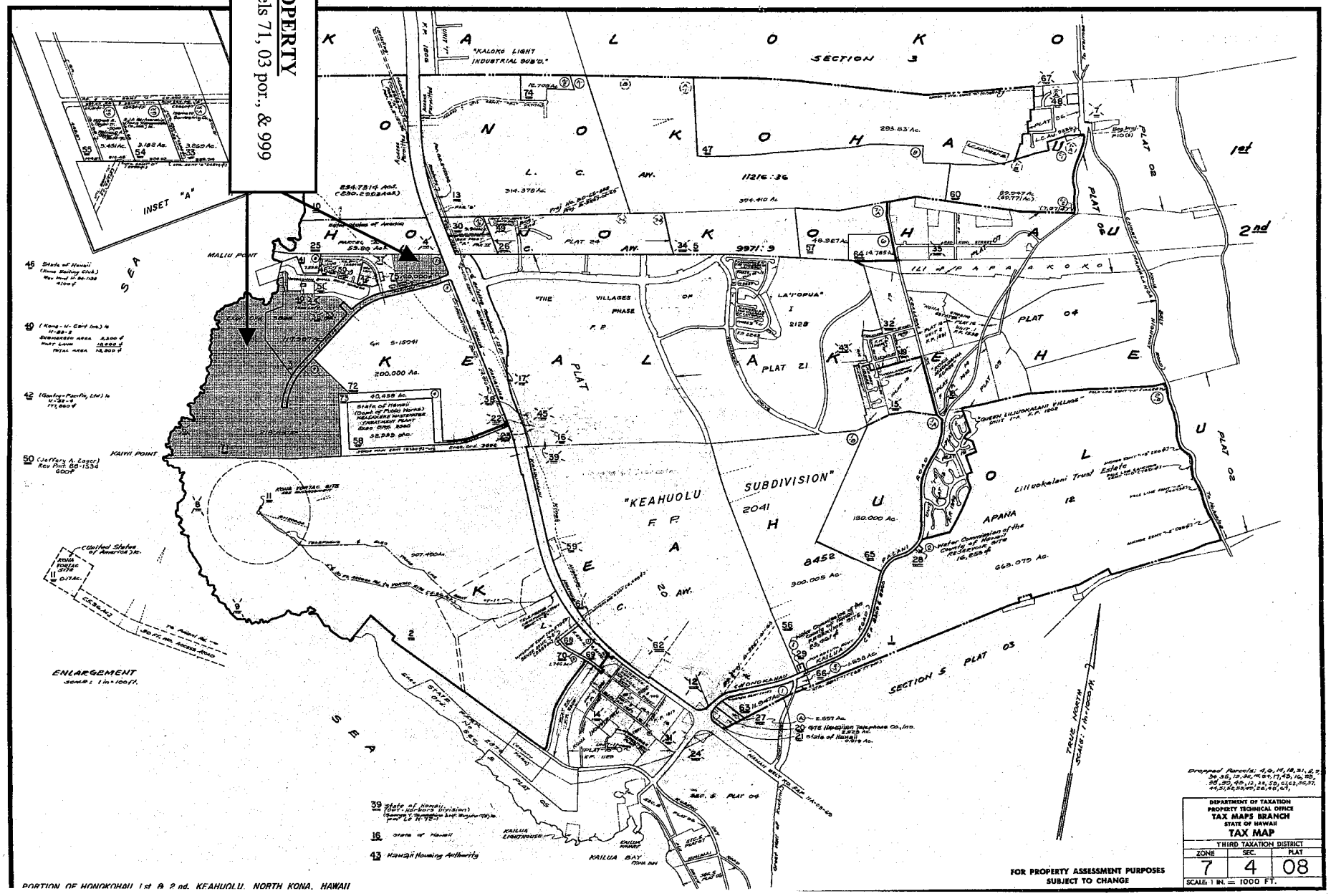
Respectfully Submitted,

Gavin Chun
Project Development Specialist

APPROVED FOR SUBMITTAL:

Peter T. Young, Chairperson

PROPERTY
Parcels 71, 03 por., & 999



DEPARTMENT OF TAXATION
PROPERTY TECHNICAL OFFICE
TAX MAPS BRANCH
STATE OF HAWAII
TAX MAP

THIRD TAXATION DISTRICT		
ZONE	SEC.	PLAT
7	4	08

SCALE 1 IN. = 1000 FT.

FOR PROPERTY ASSESSMENT PURPOSES
SUBJECT TO CHANGE

PORTION OF HONOKOHAU 1st & 2nd, KEAHUOLU, NORTH KONA, HAWAII

EXHIBIT "1"

STATE OF HAWAII
SURVEY DIVISION
DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 18,810

December 14, 1979

ROAD RIGHT-OF-WAY "B"
(120-FT. WIDE)

Kealakehe, North Kona, Island of Hawaii, Hawaii

Being portion of the Government Land of Kealakehe.

Beginning at the northeast corner of this parcel of land and at the southeast end of Kealakehe Parkway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KEAHUOLU R.M." being 6400.19 feet North and 1280.23 feet East, thence running by azimuths measured clockwise from True South:-

1. 33° 04' 20" 1650.47 feet along the remainder of the Government Land of Kealakehe;

2. Thence along the remainder of the Government Land of Kealakehe, on a curve to the left with a radius of 1440.00 feet, the chord azimuth and distance being:
13° 14' 50" 976.75 feet;

3. 83° 25' 20" 120.00 feet along the remainder of the Government Land of Kealakehe;

4. Thence along Parcel "A" on a curve to the right with a radius of 1560.00 feet, the chord azimuth and distance being:
186° 40' 15" 715.03 feet;

5. Thence along the remainder of the Government Land of Kealakehe, on a curve to the right with a radius of 1560.00 feet, the chord azimuth and distance being:
206° 29' 45" 357.33 feet;

6. 213° 04' 20" 1600.47 feet along the remainder of the Government Land of Kealakehe;

7. Thence along the remainder of the Government Land of Kealakehe, on a curve to the left with a radius of 50.00 feet, the chord azimuth and distance being:
168° 04' 20" 70.71 feet;

EXHIBIT "2"

C.S.F. No. 18,810

December 14, 1979

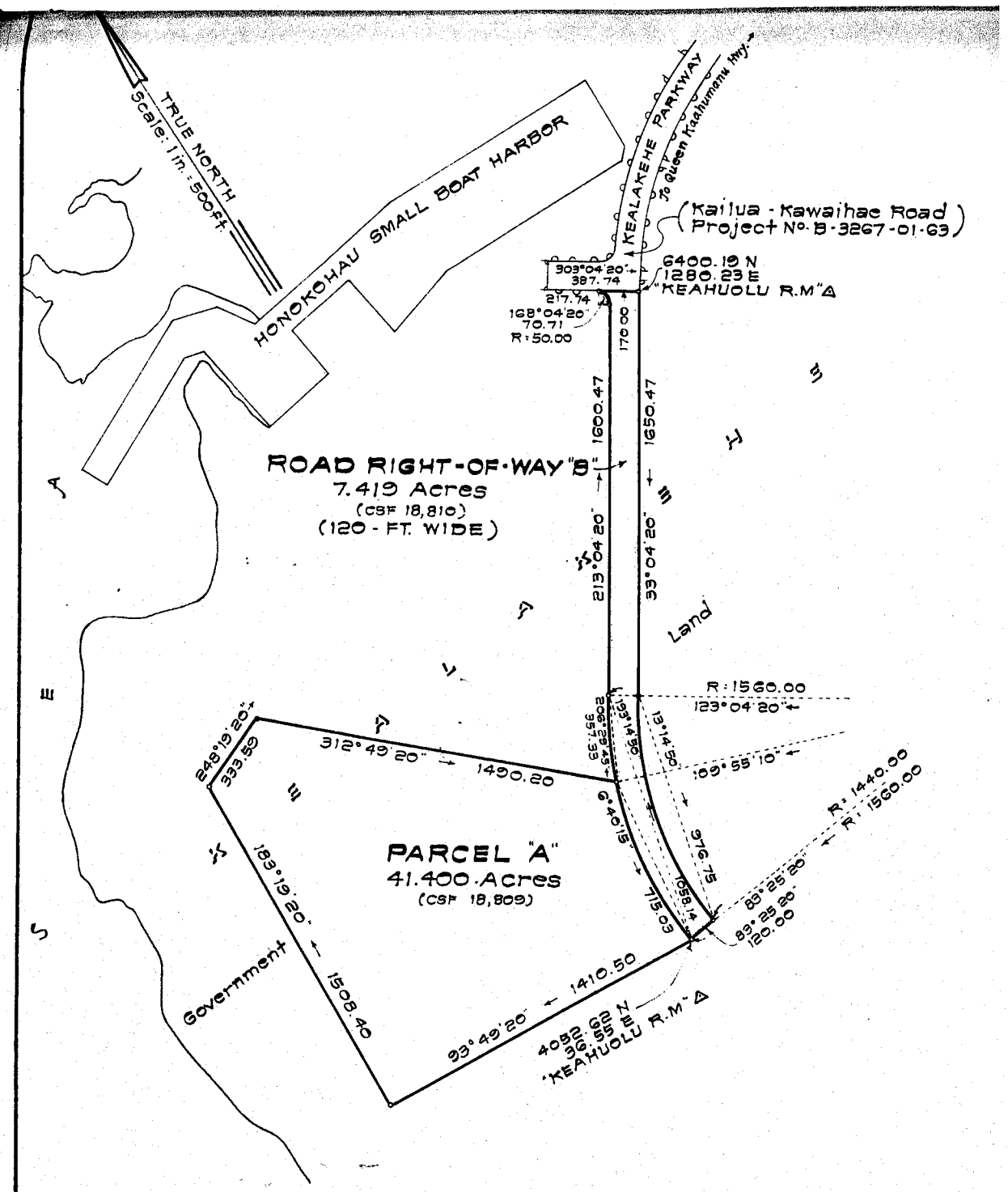
8. 303° 04' 20" 170.00 feet along the southwest side of Kealakehe Parkway to the point of beginning and containing an AREA OF 7.419 ACRES.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Robert T. Hashimoto
Robert T. Hashimoto
Land Surveyor

ac

Compiled from map and desc.
prepared by R. M. Towill Corp.,
and Govt. Survey Records.



PARCEL "A"
AND
ROAD RIGHT-OF-WAY "B" (120-FT. WIDE)

Kealakehe, North Kona, Island of Hawaii, Hawaii

Scale: 1 inch = 500 feet

Note: Origin of Azimuths: "KEAHUOLU R.M." to convert to Hawaii State Plane Coordinate Grid System, Zone 1: Add 0°10'40"

JOB H-479 (79)
C. BK 18, HASHIMOTO

TAX MAP 7-4-08: por. 3

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

C. S. F. No. 18,809 & 18,810

GNK Dec. 14, 1979

EXHIBIT "2"

STATE OF HAWAII
SURVEY DIVISION
DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 14,057

June 21, 1963

KAILUA-KAWAIHAE ROAD
Project B-3267-01-63
(Kealakehe Parkway and Honokohau Marina Approach Road Sections)

PARCEL 3

Kealakehe, North Kona, Hawaii

Being a portion of the Government Land of Kealakehe

Being also a portion of the land covered by General Lease 3432 to Frank ~~G.~~ R. Greenwell

Beginning at the northeasterly corner of this parcel of land, and on the southwest side of Parcel 2, Kailua-Kawaihae Road, Project B-3267-01-63 (Keahuolu to Honokohau), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KEAHUOLU" being 7907.92 feet North and 3469.18 feet East, thence running by azimuths measured clockwise from True South:-

1. 327° 59' 20" 220.00 feet along Parcel 2, Kailua-Kawaihae Road, Project B-3267-01-63 (Keahuolu to Honokohau);

2. Thence along the Government Land of Kealakehe, covered by General Lease 3432 to Frank ~~G.~~ R. Greenwell, on a curve to the left with a radius of 50.00 feet, the chord azimuth and distance being 102° 59' 20" 70.71 feet;

3. 57° 59' 20" 315.11 feet along the Government Land of Kealakehe, covered by General Lease 3432 to Frank ~~G.~~ R. Greenwell;

4. Thence along the Government Land of Kealakehe, covered by General Lease 3532 to Frank ~~G.~~ R. Greenwell, on a curve to the right with a radius of 1560.00 feet, the chord azimuth and distance being 59° 35' 05.5" 86.90 feet;

5. Thence along the Government Land of Kealakehe, covered by General Lease 3432 to Frank ~~G.~~ R. Greenwell, on a curve to the right with a radius of 1560.00 feet, the chord azimuth and distance being 61° 59' 20" 44.00 feet.

EXHIBIT "3"

6. Thence along the Government Land of Kealakehe, covered by General Lease 3432 to Frank R. Greenwell, on a curve to the right with a radius of 1560.00 feet, the chord azimuth and distance being 64° 23' 34.5" 86.90 feet;

7. 65° 59' 20" 1201.98 feet along the Government Land of Kealakehe, covered by General Lease 3432 to Frank R. Greenwell;

8. Thence along the Government Land of Kealakehe, covered by General Lease 3432 to Frank R. Greenwell, on a curve to the left with a radius of 1440.00 feet, the chord azimuth and distance being 59° 03' 47" 347.28 feet;

9. Thence along the Government Land of Kealakehe, covered by General Lease 3432 to Frank R. Greenwell, on a curve to the left with a radius of 1440.00 feet, the chord azimuth and distance being 51° 20' 29" 40.00 feet;

10. Thence along the Government Land of Kealakehe, covered by General Lease 3432 to Frank R. Greenwell, on a curve to the left with a radius of 1440.00 feet, the chord azimuth and distance being 42° 24' 21" 407.77 feet;

11. Thence along the Government Land of Kealakehe, covered by General Lease 3432 to Frank R. Greenwell, on a curve to the left with a radius of 1440.00 feet, the chord azimuth and distance being 33° 40' 09" 30.01 feet;

12. 33° 04' 20" 30.00 feet along the Government Land of Kealakehe, covered by General Lease 3432 to Frank R. Greenwell;

13. 33° 04' 20" 30.00 feet along the Government Land of Kealakehe, covered by General Lease 3432 to Frank R. Greenwell;

14. 123° 04' 20" 170.00 feet along the northeast end of the Future Kealakehe Parkway Extension, along the Government Land of Kealakehe covered by General Lease 3432 to Frank R. Greenwell;

15. 123° 04' 20" 217.74 feet along the Government Land of Kealakehe, covered by General Lease 3432 to Frank R. Greenwell;

16. 213° 04' 20" 120.00 feet along the southeast end of the Future Honokohau Marina Approach Road, along the Government Land of Kealakehe, covered by General Lease 3432 to Frank R. Greenwell;

17. 303° 04' 20" 221.50 feet along the Government Land of Kealakehe, covered by General Lease 3432 to Frank G. Greenwell;

18. Thence along the Government Land of Kealakehe, covered by General Lease 3432 to Frank G. Greenwell, on a curve to the left with a radius of 50.00 feet, the chord azimuth and distance being 260° 01' 52" 68.25 feet;

19. Thence along the Government Land of Kealakehe, covered by General Lease 3432 to Frank G. Greenwell, on a curve to the right with a radius of 1560.00 feet, the chord azimuth and distance being 230° 23' 14.5" 722.91 feet;

20. Thence along the Government Land of Kealakehe, covered by General Lease 3432 to Frank G. Greenwell, on a curve to the right with a radius of 1560.00 feet, the chord azimuth and distance being 244° 53' 12.5" 60.01 feet;

21. 245° 59' 20" 60.00 feet along the Government Land of Kealakehe, covered by General Lease 3432 to Frank G. Greenwell;

22. 245° 59' 20" 381.53 feet along the Government Land of Kealakehe, covered by General Lease 3432 to Frank G. Greenwell;

23. 245° 59' 20" 50.00 feet along the Government Land of Kealakehe, covered by General Lease 3432 to Frank G. Greenwell;

24. 245° 59' 20" 710.45 feet along the Government Land of Kealakehe, covered by General Lease 3432 to Frank G. Greenwell;

25. Thence along the Government Land of Kealakehe, covered by General Lease 3432 to Frank G. Greenwell, on a curve to the left with a radius of 1440.00 feet, the chord azimuth and distance being 244° 25' 36" 75.82 feet;

26. Thence along the Government Land of Kealakehe, covered by General Lease 3432 to Frank G. Greenwell, on a curve to the left with a radius of 1440.00 feet, the chord azimuth and distance being 241° 59' 20" 44.01 feet;

27. Thence along the Government Land of Kealakehe, covered by General Lease 3432 to Frank G. Greenwell, on a curve to the left with a radius of 1440.00 feet, the chord azimuth and distance being 239° 33' 04" 78.52 feet.

28. 237° 59' 20" 315.11 feet along the Government Land of Kealakehe, covered by General Lease 3432 to Frank ~~G.~~ R. Greenwell;

29. Thence along the Government Land of Kealakehe, covered by General Lease 3432 to Frank ~~G.~~ R. Greenwell, on a curve to the left with a radius of 50.00 feet, the chord azimuth and distance being 192° 59' 20" 70.71 feet to the point of beginning and containing an Area of 357,486 Square Feet or 8.207 Acres.

Together with any abutter's rights of vehicle access appurtenant to the remainder of the land of which Parcel 3 is a part, into and from Kailua-Kawaihae Road, Project B-3267-01-63, Kealakehe Parkway and Honokohau Marina Approach Road Sections, over and across Courses 2, 3, 4, 6, 7, 8, 10, 13, 15, 17, 18, 19, 22, 24, 25, 27, 28 and 29 of the above-described Parcel 3.

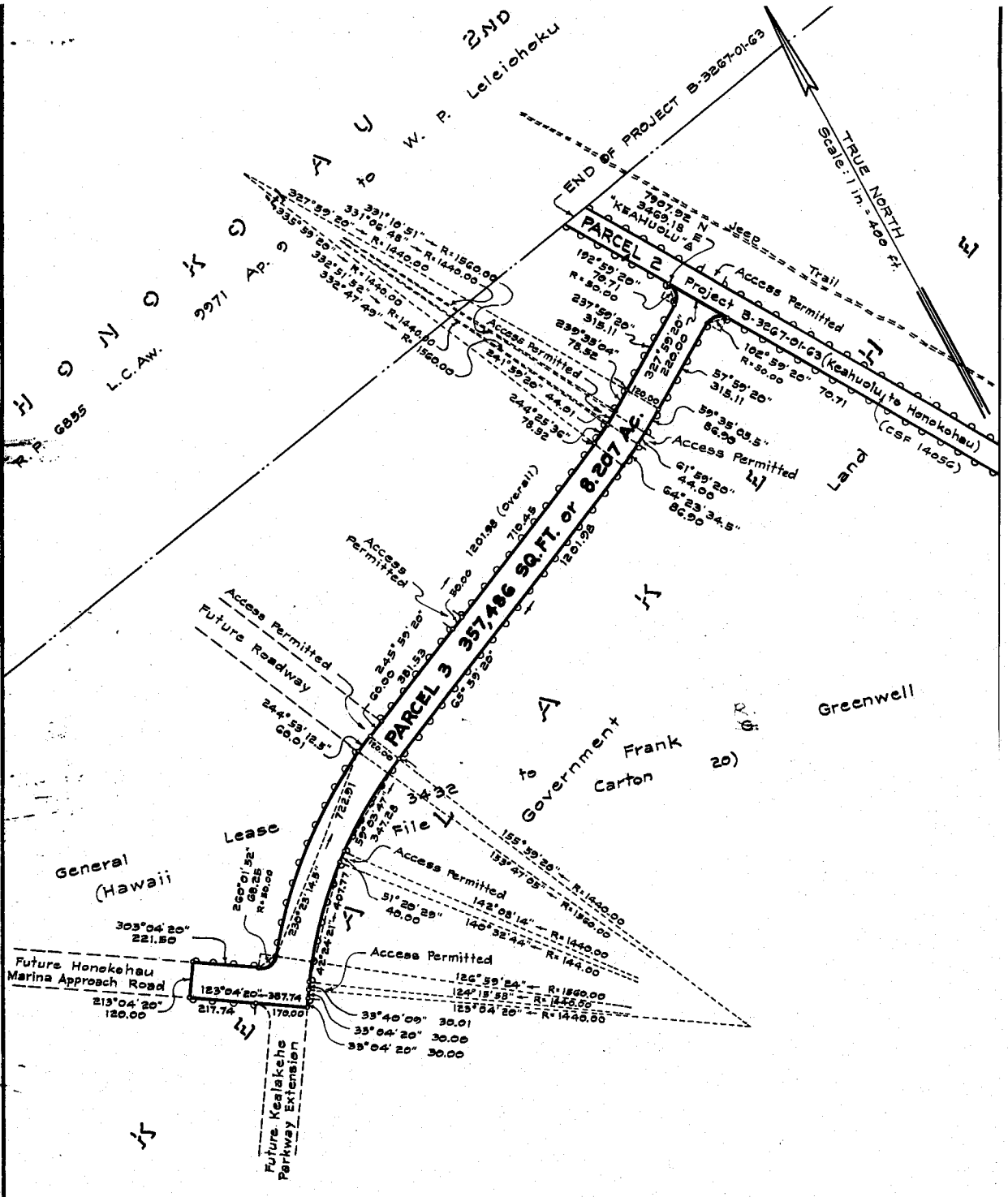
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Ichiro Sakamoto
Ichiro Sakamoto
Land Surveyor

Compiled from whiteprint
by Dept. of Trans.,
Highways Div. and
Govt. Survey Records.

ac

N 1645.62 E 2664.61 357,488 Sq. Ft. 7907.02 N June 28, 1963
S 1645.63 W 2664.62 8.207 Acres 3469.14 E Lums' Calc Bk. 12, Page 150



KAILUA - KAWAIHAE ROAD

Project B-3267-01-G3

(Kealakehe Parkway and Honokohau Marina Approach Road Sections)

PARCEL 3

Kealakehe, North Kona, Hawaii

Scale: 1 inch = 400 feet

JOB 1529 — denotes no vehicle access permitted

C. BK 12, Sakamoto — denotes vehicle access permitted

TAX MAP 7-4-08

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

C. S. F. No. 14057

I. Sakamoto June 21, 1963

EXHIBIT "3"