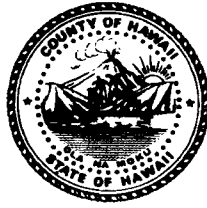


Harry Kim  
Mayor



Michael Yee  
Director

Daryn Arai  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

## County of Hawai'i

### PLANNING DEPARTMENT

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

June 19, 2017

Klaus Conventz  
Baumeister Consulting  
P. O. Box 2308  
Kailua-Kona, HI 96745

Dear Mr. Conventz:

**SUBJECT: Application: Variance - VAR 16-000401**  
**Applicant: KLAUS D. CONVENTZ/BAUMEISTER CONSULTING**  
**Owner: KAZ J. JACKOW AND DIANNE JACKOW**  
**Request: Variance from Chapter 25, Zoning, Article 5 Division 1, Section 25-5-7 Minimum Yards and Article 4, Division 4, Section 25-4-44(a) Permitted Projections into Yards and Open Space Requirements (Encroachment into North Front Yard Setback and West Side Yard Setback)**

**Tax Map Key: 7-6-020:056; Lot 60**

The Planning Director certifies the **approval** of Variance No. 16-000401, subject to variance conditions. The variance will allow portions of the two-story, single-family dwelling with attached garage to remain with a minimum 6.90-foot west side yard setback, in lieu of the required 8-foot side yard setback and minimum (north) front yard setback ranging from 12.60 feet to 13.40 feet and associated roof eave projection resulting with a minimum 8.50-foot north front yard open space in lieu of the minimum 15-foot front yard setback and 10-foot front yard open space requirement. These exceptions are in lieu of the required 15-foot front yard setback, 8-foot side yard setback and the 10-foot front yard open space requirement as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

The survey map also shows two (2) utility sheds along the southeast side yard boundary encroaching onto the common area access easement which is owned by the Kilohana Unit-1 Homeowners Association. The applicant has stated that the two (2) sheds will be completely removed. There is an additional utility shed along the south rear boundary that encroaches onto the common area access easement (Lot 84) and the subject property. This utility shed belongs to the owner of Lot 111, therefore these encroachment issues shall be dealt with individually by the owners of both parcels.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, consisting of approximately 8,033 sq. ft. of land, is located in the Kilohana Subdivision, Unit 1-A situated at Holualoa 1<sup>st</sup> and 2<sup>nd</sup>, district of North Kona, Hawai'i. The subject property's street address is 76-6286 Kupuna Street.
2. **Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10).
3. **State Land Use.** Urban.
4. **Required Setback.** 15-foot front and rear; 8-feet for sides.
5. **Variance.** Planning Department Variance 478 (PD VAR. NO. 478). Approved on December 23, 1992. The variance allowed for the single-family dwelling to remain as built in 1983 over the adjacent property line with no side yard setback in lieu of the minimum required 8-foot and 4-foot open clear space yard as required in Chapter 25 (Zoning Code), Article 4 (RS, Single-Family Residential Districts), Section 25-124 (a) (1) (A) (minimum yards) and Chapter 25, (Zoning Code), Article 1 (General Revisions), Division 10 (Supplementary Yard and Open Space Regulations, Section 25-66 (a) (1) (Projections into required yards and open spaces).
6. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on December 8, 2016, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale and prepared by Thomas G. Pattison, LPLS, (Pattison Land Surveying, Inc.), denotes the portions of the single-family dwelling built into the north front yard setback and side (west) yard setback. (See attached survey map – Exhibit A)

The survey map shows that the portion of the single-family dwelling with attached garage encroaches 1.10 feet into the 8-foot west side yard setback and the minimum front yard encroachment ranging from 1.60 feet to 2.40 feet into the 15-foot north front yard setback. Also, the associated roof eave encroaches 1.50 feet into the 10-foot north front yard open space requirement.

The encroachment leaves portion of the single-family dwelling with attached garage to remain with a minimum 6.90-foot west side yard setback, in lieu of the required 8-foot side yard setback and minimum north front yard setback ranging from 12.60 feet to 13.40 feet and associated roof eave projection resulting with a minimum 8.50-foot north front yard open space in lieu of the minimum 15-foot front yard setback and 10-foot front yard open space requirement.

7. **County Building Records.** Hawai'i County Real Property Tax Division records indicate

that a building permit (802931) was issued on November 26, 1980 for the construction of a 3-bedroom, and 2-bath, single-family dwelling.

**8. Agency Comments and Requirements.**

- a. State Department of Health (DOH) memorandum dated January 3, 2017: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
- b. No comments received from the Hawai'i County Public Works Department - Building Division (Kona).

9. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notices mailed to surrounding property owners (including affidavits) by USPS. According to these submittals, the first and second notices were mailed on December 8, 2016 and January 3, 2017, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on January 8, 2017.

10. **Time Extension.** The applicant's variance application was acknowledged by letter dated December 28, 2016 and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to June 19, 2017

11. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or general public were received by the Planning Department.

**ANALYSIS OF GROUNDS FOR VARIANCE**

**No variance will be granted unless it is found that:**

*(a) There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.*

**The variance application meets criteria (a) for the following reasons:**

The survey map shows that the portion of the single-family dwelling with attached garage encroaches 1.10 feet into the 8-foot west side yard setback and the minimum front yard encroachment ranging from 1.60 feet to 2.40 feet into the 15-foot north front yard setback. Also, the associated roof eave encroaches 1.50 feet into the 10-foot north front yard open space requirement.

The encroachment leaves portion of the single-family dwelling with attached garage to remain with a minimum 6.90-foot west side yard setback, in lieu of the required 8-foot side yard setback and minimum north front yard setback ranging from 12.60 feet to 13.40 feet and associated roof eave projection resulting with a minimum 8.50-foot north front yard open space in lieu of the minimum 15-foot front yard setback and 10-foot front yard open space requirement.

Condition 2 of Planning Department Variance 478 (PD VAR. NO. 478). Approved on December 23, 1992 states: *“That all future structural additions to the dwelling shall be in compliance with all zoning code requirements and no other setback variances shall be considered for any development of this property”*. To prepare the building permit applications and plans, the applicant has stated that the owner’s architect relied on the survey map from PD VAR. NO. 478 done by Donald C. McIntosh, Surveyor dated October 19, 1990, that was approved by the County of Hawai‘i, which had reflected all proposed additions to the west side and fronting Kupuna Street with proper setbacks and open spaces. **(See attached Exhibit B)**

The owners were unaware of any encroachment issues until a more recent “as built” survey was done by Pattison Land Surveying, Inc., dated November 24, 2016.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

It appears that the single-family dwelling with attached garage, constructed nearly 34 years ago, was constructed under valid building permits and other construction permits issued by the County. Also, it appears that past building permit inspections of the premises by the agencies during construction of the single-family dwelling did not disclose any building encroachment issues or building setback irregularities at that time.

The above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation, and requiring them to fix the encroachments would interfere with the best use and development of the property.

***(b) There are no other reasonable alternatives that would resolve the difficulty.***

**The variance application meets criteria (b) for the following reasons:**

Alternatives available to the current owners to correct and/or address the single-family dwelling encroachment constructed into the affected front yard setback and side yard setback and side yard open space of the subject property include the following actions:

Remove the building encroachments and/or redesign the proposed single-family dwelling upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the current owners were under the impression that the single-family dwelling was in compliance with all County requirements.

Because the encroachments are within the front and side yard setback, one alternative would be to consolidate the front yard of the subject property with the roadway and consolidate the subject property with the adjoining side property, which is owned by someone else, and resubdivide the property to modify property lines and adjust minimum front and side yard setbacks. Both of these alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the difficulty.

*(c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.*

**The variance application meets criteria (c) for the following reasons:**

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines. The encroachment of the single-family dwelling still allows for adequate air circulation, as the affected area is within the front and side yard setback.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code, and the County General Plan. Furthermore, the variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

**PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

Based on the variance application's survey map, the single-family dwelling with attached garage built upon Lot 60 will not meet the minimum front and side yard setback requirements pursuant to Hawai'i County Code, Chapter 25, Zoning.

This variance request is **approved** subject to the following conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai'i harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the

Klaus D. Conventz  
dba Baumeister Consulting  
Page 6  
June 19, 2017

applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.

3. Should the single-family dwelling built on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
4. The two utility sheds, built onto the common area access easement along the southeast side yard, shall be removed within six (6) months from the issuance of this variance.
5. The portion of the utility shed along the south rear property, encroaching onto the subject property shall be removed within six (6) months from the issuance of this variance.
6. An Ohana or Farm Dwelling permit shall not be granted upon the subject property, subject to provisions of the Hawai'i County Code, Chapter 25 (Zoning) or State Law, which may change from time to time.
7. Future or new building improvements and permitted uses shall be subject to State Law and County Ordinances and Regulations pertaining to building construction and occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-16-000401 null and void.

Sincerely,



MICHAEL YEE  
Planning Director

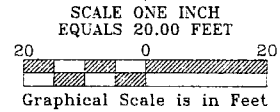
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cc: Planning Department-Kona  
Real Property Tax Division-Kona  
Gilbert Bailado, GIS (via email)

**MAP SHOWING EXISTING CONDITIONS UPON  
LOT NO. 60  
of "KILOHANA SUBDIVISION, UNIT 1-A" File Plan No. 1304  
At Holualoa 1st and 2nd,  
North Kona, County of Hawaii Island of Hawaii and State of Hawaii  
TMK No. (3) 7-6-020:056**

TRUE NORTH

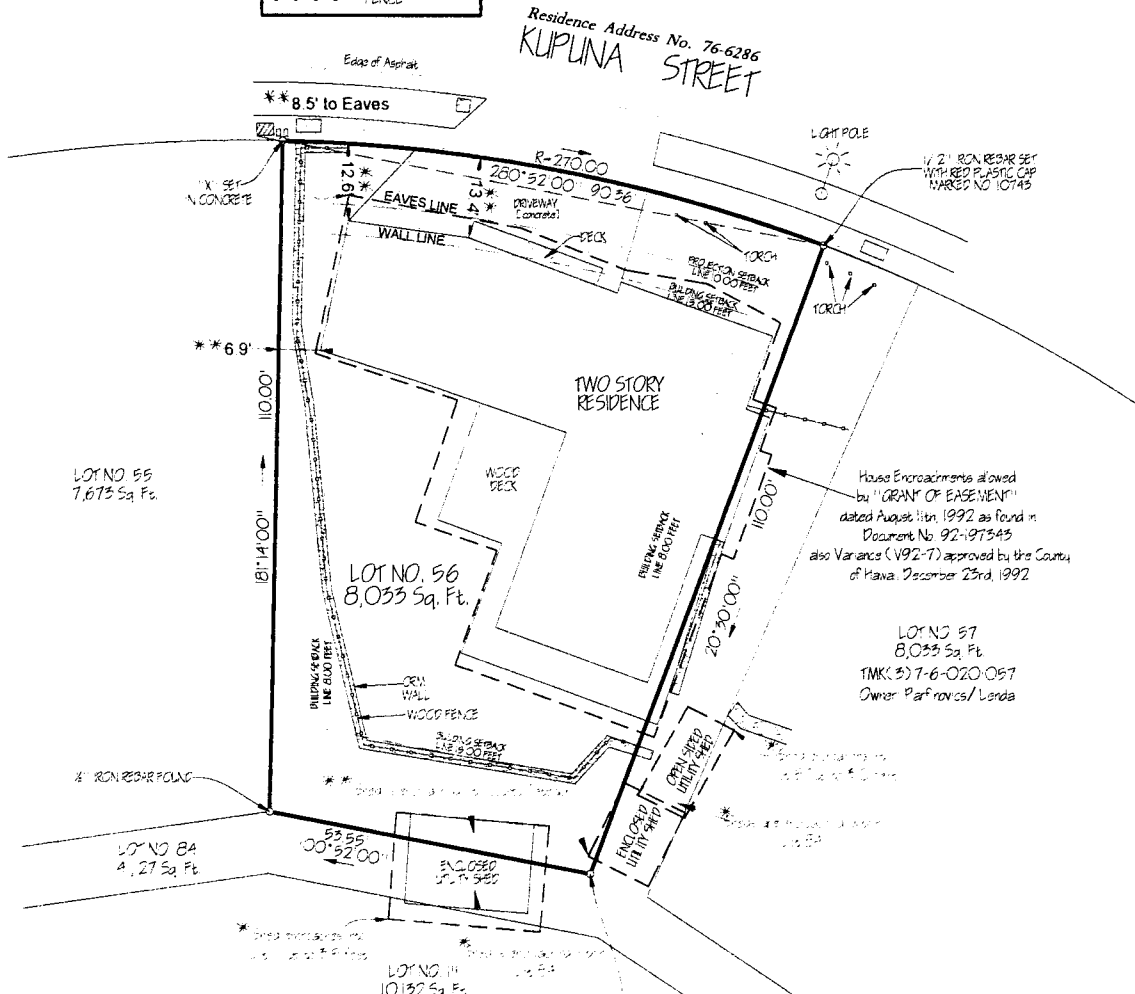


NOTE: BASIS OF AZIMUTH DERIVED  
LENG SOUKA GPS RMK SYSTEM

NOTE: ALL CORNERS ARE FOUND  
1/2" IRON REBAR SET  
IN CONCRETE  
UNLESS OTHERWISE NOTED

NOTE: ALL AZIMUTHS & DISTANCES  
ARE SHOWN & MAPPED HEREON  
IN A CLOCKWISE DIRECTION

LEGEND	
	CONCRETE
	CRM WALL
	HELCO
	WATER METER
	WT
	FENCE



**NOTES:**

- 1) Boundary encroachments were found as shown hereon.
- 2) Violations of County zoning set back codes were found.
- 3) The distances shown between the property lines & the features, shown hereon, are based on selected found boundary monuments & acceptable tolerances for properties of this type.
- 4) The features, shown hereon, were located by an actual survey performed on the ground on November 8th, 2016.
- 5) See accompanying report pertaining to setbacks and encroachments.
- 6) CRM = Concrete, Rock & Masonry Wall.

Setback Lines are shown from current data, but should be verified by builder. The description on this plat was provided to us by the client, and does not guarantee ownership, and should be compared to your Deed, Abstract or Certificate of Title. All building restrictions, building lines and easements may or may not be shown, check your Deed, Abstract, Title Report, and local ordinances, no responsibility is assumed by Surveyor. Compare all points before building by same and report any discrepancy at once. Dimensions are shown in feet and decimal parts thereof, no dimension is to be assumed by scaling.

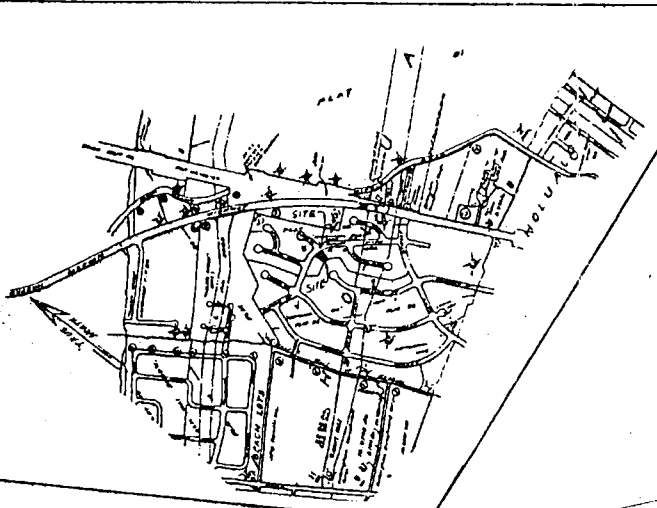
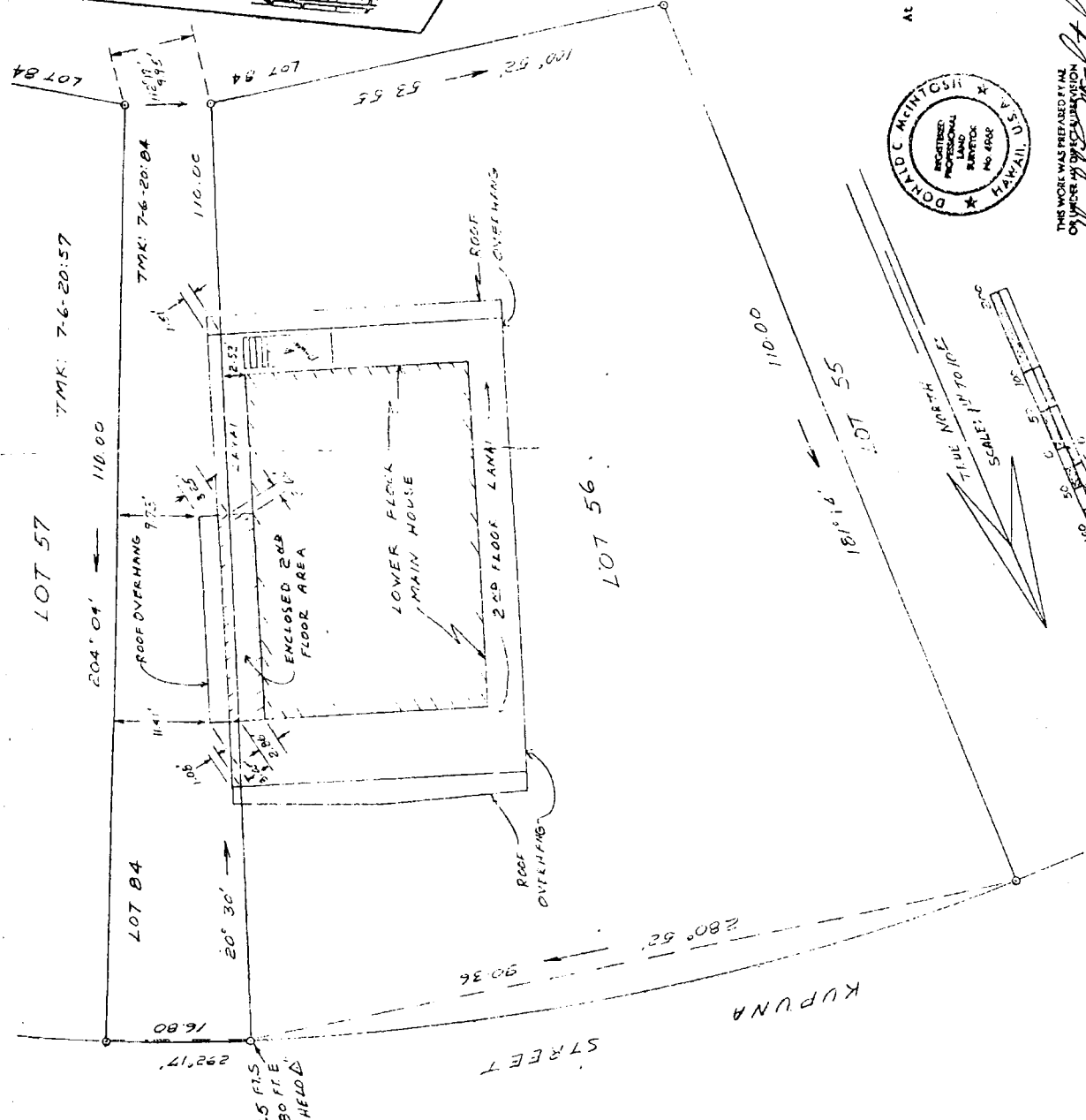
**EXHIBIT  
A**

I, Thomas G. Pattison, do hereby certify that this map is an accurate representation of a survey as made on the ground, by me, or under my direct supervision and that there are no apparent or visible encroachments or easements, known to me, except as shown and mapped hereon.



THOMAS G. PATTISON  
Hawaii License No. 10743

November 11th, 2016, Revised November 24th, 2016--Job 16439



MAP SHOWING  
Existing Conditions  
of

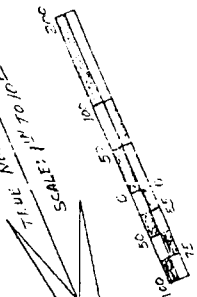
Lot 56, Kiihaha Subdivision  
FILE PLAN 1304

At Holuapua 1 & 2, North Kona, Hawaii, Hawaii

Job 90-457 & 902 //  
TRK: (3) 7-6-20:56  
October 19, 1990



THIS WORK WAS PREPARED BY ME  
OR UNDER MY DIRECT SUPERVISION  
BY  
DONALD C. MCINTOSH  
REGISTERED PROFESSIONAL LAND SURVEYOR  
STATE OF HAWAII, CERT. NO. 4936



**EXHIBIT**

B