

7/16/12



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

June 21, 2012 9:00 AM
Doc No(s) A-45550731



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B-32081467

/s/ NICKI ANN THOMPSON
REGISTRAR

YK

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawai'i Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720

Total Pages: 12

TITLE OF DOCUMENT:

SHORELINE/COASTAL PUBLIC ACCESS AGREEMENT

PARTIES TO DOCUMENT:

OWNERS: SUZANNE A. FOTI, whose address is P.O. Box 144, Hōnaunau, Hawai'i 96726

KIOWAI HUI, LLC, whose address is 667 Rosita Avenue, Los Altos, CA 94024

COUNTY: COUNTY OF HAWAII, whose address is 25 Aupuni Street, Hilo, Hawai'i 96720

PROPERTY DESCRIPTION:

**TMK: (3) 8-7-005:001, 002 and 010 through 019
Alae 1st and 2nd, South Kona, Island and County of Hawai'i, State of Hawai'i**

SHORELINE/COASTAL PUBLIC ACCESS AGREEMENT

THIS SHORELINE/COASTAL PUBLIC ACCESS AGREEMENT (hereinafter "Agreement") is made this 31st day of May, 2012, by and between SUZANNE A. FOTI, whose mailing address is P.O. Box 144, Hōnaunau, Hawai'i 96726, and KIOWAI HUI, LLC, whose mailing address is 667 Rosita Avenue, Los Altos, CA 94024, hereinafter referred to as "Owners," and the County of Hawai'i, a political subdivision of the State of Hawai'i, whose mailing address is 25 Aupuni Street, Hilo, Hawai'i 96720, hereinafter referred to as "County".

BACKGROUND

1. Owners own the fee simple interest in those certain real properties designated as Tax Map Keys (3) 8-7-005:001, 002 and 010 through 019 inclusive containing a total of 123.65 acres, more or less, at Alae 1st and 2nd, South Kona, Island and County of Hawai'i, hereinafter called "the Property."
2. By letter dated October 16, 2006, the Planning Director acknowledged receipt of a preliminary plat map and application for the consolidation and resubdivision of twelve (12) lots into twelve (12) lots, being Subdivision No. 06-000435 (SUB 06-435) of the Property.
3. Owners were issued Special Management Area Minor Permit No. 07-000051 (SMM 07-51) on March 19, 2007 to allow for the consolidation and resubdivision of twelve (12) lots into twelve (12) lots.
4. Condition No. 3 of SMM 07-51, as amended by letter from the Planning Director dated January 10, 2008, required the Owners to provide shoreline public access as follows:

"3. A public access plan for the subject properties shall be submitted to the Planning Director for approval not more than two years after the granting of this permit. It shall include the following:

- a. *A continuously traversable minimum 10-foot wide mauka-makai pedestrian access easement along the existing jeep road or as otherwise mutually agreed upon.*
- b. *In conjunction with the Na Ala Hele Statewide Trail and Access System and the Ala Kahakai National Historic Trails, the applicant shall establish the alignment of the historical coastal trail and create a pedestrian easement of not less than 10 feet in width.*
- c. *Applicant shall comply with the decision and order of the Third Circuit Court of the State of Hawaii in Civil No. 5473 granting license to all of the identified Defendants access to the ocean over the existing mauka-makai access road that traverses the applicable properties from north to south approximately half way between Mamalahoa Highway and the shoreline.*

Approval of the public access plan shall be required prior to granting of final approval of the proposed consolidation and resubdivision.

5. On April 26, 2012 the Planning Director approved a Shoreline Public Access Plan submitted by the Owners for approval on April 23, 2012.

PURPOSE

The purpose of the Agreement is to create a public pedestrian access to and along the shoreline/coastal areas of the Property from Māmalahoa Highway.

NOW, THEREFORE, IT IS HEREBY AGREED, by and between Owners and County, that:

1. Owners agree to provide public pedestrian access in perpetuity over the easements described below and as depicted on Exhibit A, attached hereto and incorporated by reference herein:
 - a) Easement "PA-1" being a 10-foot wide public pedestrian access within the alignment of the state owned "King's Trail" along the coastal portion of the southwest corner of the Property;

- b) Easement "PA-2" being a 52-foot wide public pedestrian access along the Historic Trail traversing the Property from the north property line to the south property line approximately midway between Māmalahoa Highway and the shoreline;
 - c) Easements "PA-3", "PA-4" and "PA-5" comprising a 15-foot wide public pedestrian access within the existing meandering gravel road traversing Lots 6, 8 and 9 respectively, of the proposed SUB 06-435 from north to south;
 - d) "PA-6" being a 10-foot wide public pedestrian access within Access Easement "A-3" extending from Māmalahoa Highway to the intersection of "PA-3" and "PA-4;"
 - e) "PA-7" and "PA-8" being 10-foot wide public pedestrian accesses extending along the south property line of the Property from the south terminus of "PA-5" to the south terminus of "PA-1"; and
 - f) "PA-9" and "PA-10" being a 10-foot wide public pedestrian access extending laterally along the coast from the north portion of "PA-1" to the north property line of the Property.
2. At such time as the entire seaward portions of the existing mauka-makai access road (ranch road) referenced in *the decision and order of the Third Circuit Court of the State of Hawaii in Civil No. 5473* are encumbered for public pedestrian access purposes, the public pedestrian access (PA-7 and PA-8) shall be extinguished.
 3. Once the entire ranch road is encumbered as a public access easement over the other affected lands between the Property and the Māmalahoa Highway, the mauka-makai public pedestrian access easement (PA-6) shall be extinguished.
 4. The creation and use of the Trail shall be subject to the following conditions:
 - a) Owners are not required to construct or improve any of the public pedestrian access easements.

- b) Owners shall neither construct nor place any physical impediments that would inhibit safe pedestrian passage.
- c) Any improvements made by the Owners within or affecting any of the public pedestrian easements shall require the prior written approval of the Planning Director and shall be the responsibility of the Owners to maintain.
- d) Any signage or other improvements to the easements that the County of Hawai'i deems necessary and appropriate will, after consultation with the affected landowners, be installed and maintained by the County of Hawai'i or the parties to the Memorandum of Understanding ("MOU") Between the National Park Service, United States Department of the Interior, State of Hawai'i, and County of Hawai'i for the Implementation , Management, Protection and Public Use of Ala Kahakai National Historic Trail, dated February 21, 2010.
- e) Trail markers and signage, as approved by the Planning Director, may be installed by the Owners as necessary to clearly identify the easements, warn access users of hazardous conditions or educate the public on appropriate interaction with historic sites in the vicinity. Any markers or signage should be of materials that blend in well with the environment and located such that they do not create potential hazards.
- f) The public pedestrian easements shall be open to the public 24 hours a day or as otherwise may be restricted by future connecting public access easements with adjoining properties.
- g) Rules governing use of the public pedestrian access easements provided over the Property may be adjusted in collaboration with the Owners or the their subsequent heirs, successors or assigns and the parties to the above referenced MOU. The shoreline public access easements provided are for pedestrian use only with the following uses and activities prohibited:
 - i) Camping

- ii) Littering of any kind
 - iii) Use of any motorized vehicles
 - iv) Open fires
 - v) Destruction or removal of any natural resources from the land
 - vi) Trespassing mauka (inland) of the Trail corridor.
- h) With the written approval of the Planning Director, the Trail alignment may be reconfigured to meet specific needs of the Owners.
- i) Except as otherwise stated in this Agreement, the easements shall be subject to the provisions of Rule 21 of the County of Hawai'i Planning Department Rules of Practice and Procedure.
5. For the purposes of Chapter 520, Hawai'i Revised Statutes, the Owners shall be considered as an owner of land who is required or compelled to provide access through or across the owner's property because of state or county land use, zoning, or planning law, ordinance, rule, ruling, or order, to reach property used for recreation purposes, pursuant to Section 520-4(b), Hawai'i Revised Statutes, and as such shall be afforded the same protection as an owner of land who invites or permits any person to use that owner's property for recreational purposes under Section 520-4(a), Hawai'i Revised Statutes.
6. This Agreement shall be binding upon, and shall inure to the benefit of the parties and their respective heirs, devisees, personal representative, successors and assigns. The rights granted herein shall be deemed to run with the land; however, nothing herein shall be construed as a conveyance by Owners of their respective rights in fee simple.
7. The duration of the Agreement shall be perpetual; provided that this Agreement may be modified or terminated by written agreement of the parties and recorded with the Bureau of Conveyances of the State of Hawai'i.
8. Owners and County agree that this Agreement is in conformity with Sections 205A and 520-4 of the Hawai'i Revised Statutes, relating to shoreline public access within

private property.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

COUNTY OF HAWAI'I:



WILLIAM P. KENOI, Mayor

SUZANNE A. FOTI

"Owner"

RECOMMEND APPROVAL:



Planning Director

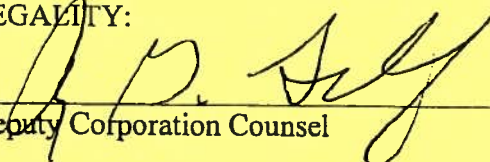
KIOWAI HUI, LLC,
a Hawai'i limited liability company

By  _____

DANIEL P. MCKINLEY
Its Manager

"Owner"

APPROVED AS TO FORM AND
LEGALITY:




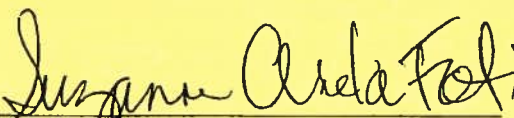
Deputy Corporation Counsel

private property.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

COUNTY OF HAWAII:


WILLIAM P. KENOI, Mayor


SUZANNE A. FOTI
"Owner"

RECOMMEND APPROVAL:

Planning Director

KIOWAI HUI, LLC,
a Hawai'i limited liability company

By _____
DANIEL P. MCKINLEY
Its Manager

"Owner"

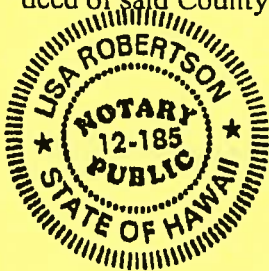
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LEGALITY:

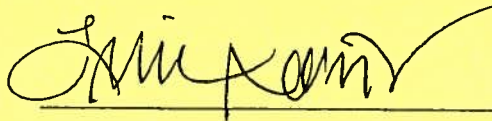
Deputy Corporation Counsel

STATE OF HAWAI'I)
)
COUNTY OF HAWAI'I)

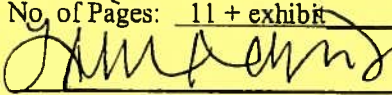
SS.

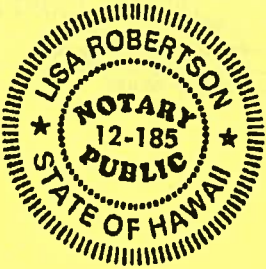
On May 31, 2012, before me personally appeared WILLIAM P. KENOI, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Hawai'i, a municipal corporation of the State of Hawai'i, that the seal affixed to the foregoing instrument is the corporate seal of said County of Hawai'i, the foregoing instrument was signed and sealed on behalf of the County of Hawai'i by authority given to said Mayor of the County of Hawai'i by Sections 5-1.3 and 13-13 of the County Charter, County of Hawai'i (2010), as amended, and said WILLIAM P. KENOI acknowledged said instrument to be the free act and deed of said County of Hawai'i.





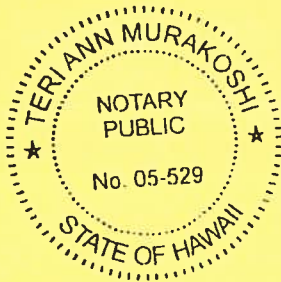
Notary Public, State of Hawai'i
Printed Name: Lisa Robertson
My commission expires: 05/20/2016

NOTARY CERTIFICATION STATEMENT	
Document Identification or Description: <u>Shoreline/Coastal Public Access Agreement</u>	
Doc. Date: <u>05/31/2012</u> <input type="checkbox"/> Undated at time of notarization.	
No. of Pages: <u>11 + exhibit</u> Jurisdiction: <u>Third Circuit</u>	
 _____ Signature of Notary	<u>5/31/12</u> Date of Notarization and Certification Statement
<u>Lisa Robertson</u> Printed Name of Notary	



STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

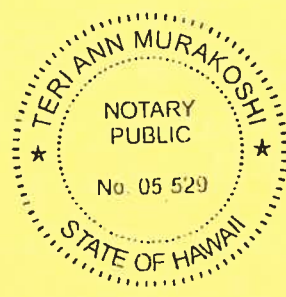
On this 11 day of May, 2012 before me personally appeared
SUZANNE A. FOTI to me known to be the persons described in and who executed the foregoing
instrument, and acknowledged that they executed the same as their free act and deed.



Teri Ann Murakoshi
TERI ANN MURAKOSHI
Notary Public, State of Hawaii

My commission expires: My commission expires: 8/28/2013

Doc. Date: Undated # Pages 10
Notary Name: Teri Ann Murakoshi First Circuit
Doc. Description Shoreline / Coastal
Public Access Agreement
Teri Ann Murakoshi 5/11/12
Notary Signature Date



STATE OF _____)

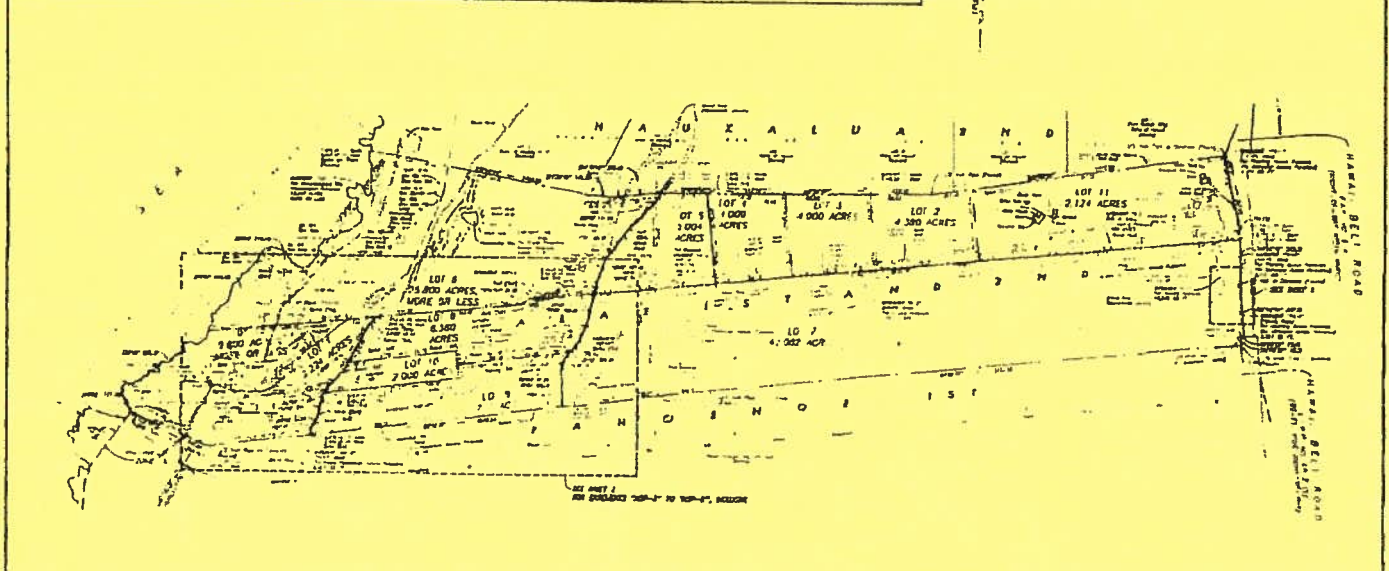
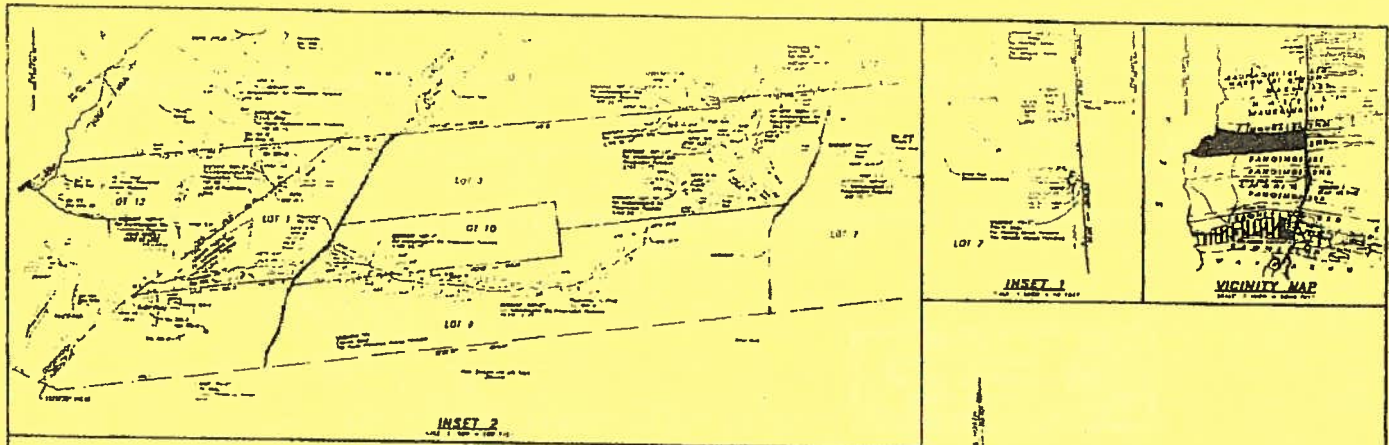
State of California)
COUNTY OF Santa Clara) SS.

On this 12th day of May, 2012 before me personally appeared DANIEL P. MCKINLEY to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that ^{He} ~~they~~ executed the same as ^{his} ~~their~~ free act and deed.



MAE R. CHOI
Notary Public, State of California

My commission expires: Jan-31-2014



MAP SHOWING
 CONSOLIDATION OF
 PORTION OF GRANT 2036 TO BENIAMINA
 AND THE WHOLE OF THE FOLLOWING:
 R.P. 5939, L.C. AW. 8158, AP. 2 TO HOLAU
 R.P. 8005, L.C. AW. 8776, AP. 2 TO KEAWEAMAHI
 R.P. 8014, L.C. AW. 9699 D TO KAHAMAOE
 R.P. 8015, L.C. AW. 10302, AP. 2 TO MAKAALE
 R.P. 8016, L.C. AW. 10818, AP. 2 TO BENIAMINA
 L.P. S. 8874, L.C. AW. 8873, AP. 2 TO KAOO
 AND GRANT S. 15664 TO MADDOON ESTATE, LIMITED
 AND RESUBMISSION INTO LOTS 1 THRU 12, INC. USIVE

At Na'e 1st and 2nd, South Kona
 Island and County of Hawaii, State of Hawaii

EXHIBIT
A