

ALAN M. ARAKAWA
Mayor

BRIAN T. MOTO
Acting Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740 FAX 270-7152

August 10, 2006

The Honorable Alan M. Arakawa
Mayor
County of Maui
200 South High Street
Wailuku, Hawai'i 96793

Re: Return of Kahului Harbor Park to the State of Hawaii

Dear Mayor Arakawa:

We have reviewed your memorandum, dated August 2, 2006, requesting legal advice on procedures relating to the proposed return of Kahului Harbor Park (also known as the west harbor area or west breakwater) to the State of Hawaii.

We reviewed Executive Order No. 3064, dated June 27, 1981 and signed by Governor George R. Ariyoshi, setting aside land to the County of Maui for the creation of Kahului Harbor Park. We note that Executive Order No. 3064 was issued pursuant to authority vested in the governor under Section 171-11, Hawaii Revised Statutes ("HRS").¹

¹ §171-11 Public purposes, lands set aside by the governor; management. The governor may, with the prior approval of the board of land and natural resources, set aside public lands to any department or agency of the State, the city and county, county, or other political subdivisions of the State for public use or purpose. All withdrawals of the lands or portions thereof so set aside shall be made by the governor.

Any public lands set aside by the governor prior to the enactment of this chapter, or any public lands set aside by the governor of the Territory of Hawaii, shall be subject to the provisions of this section.

Lands while so set aside for such use or purpose or when acquired for roads and streets shall be managed by the department, agency, city and county, county, or other political subdivisions of the State having jurisdiction thereof, unless otherwise provided by law. Such department, agency of the State, the city and

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Mayor, County of Maui

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county, county, or other political subdivisions of the State in managing such lands shall be authorized to exercise all of the powers vested in the board in regard to the issuance of leases, easements, licenses, revocable permits, concessions, or rights of entry covering such lands for such use as may be consistent with the purposes for which the lands were set aside on the same terms, conditions, and restrictions applicable to the disposition of public lands, as provided by this chapter all such dispositions being subject to the prior approval of the board; provided that any nonrenewable dispositions granting rights for a period not in excess of fourteen days shall not require (1) the approval of the board or (2) public auction or public advertisement for sealed tenders; and provided further that disposition of lands set aside for use as agricultural parks pursuant to chapter 166 shall not be subject to the prior approval of the board. If at the time of the disposition of any such leases the board shall have approved the same, any order withdrawing or setting aside any or all of such lands for any other public purpose shall be made subject to such leases. Subject to section 5(f) of the Act of March 18, 1959 (73 Stat. 6), all proceeds from such lands shall be deposited into the appropriate funds provided by law.

This section shall also apply where the purposes are the uses and purposes of the United States; provided that all revenues derived from the lands and improvements thereon shall be paid to the department of land and natural resources by the United States.

Whenever lands set aside for a public purpose to the various departments and agencies of the State, or to any city and county, county, or other political subdivisions of the State, or to the United States, are not being utilized or required for the public purpose stated, the order setting aside the lands shall be withdrawn and the lands shall be returned to the department. The governor may withdraw public lands and, with the prior approval of the board of land and natural resources, set aside the withdrawn lands to another department or agency of the State, the city and county, county, or political subdivision of the State, or to the United States for public use or purpose, provided that no structure on such lands shall be built, demolished or altered until after the legislative action or inaction as hereinbelow provided.

The power granted to the governor in this section to set aside or withdraw or withdraw and set aside public lands shall be exercised subject to disapproval by the legislature by two-thirds vote of either the senate or the house of representatives or by the majority vote of both, in any regular or special session next following the date of the setting aside or withdrawal, or withdrawal and setting aside.

Whenever portions of lands set aside for a public purpose to the various departments and agencies of the State, or to any city and county, county, or other political subdivision of the State are not presently utilized or required for the public purpose stated, the board shall have the power, without withdrawing the order setting aside the lands, to dispose of any and all real property interest less than the fee in the portions of such lands where the

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Mayor, County of Maui

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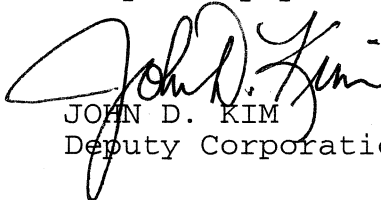
Page 3

Under Section 171-11, HRS, the governor may withdraw an executive order and provide for the return of public land (such as Kahului Harbor Park) to the Department of Land and Natural Resources. The land may then be set aside to another department or agency of the State for public use or purpose, subject to the prior approval of the Board of Land and Natural Resources and subject to the power of the State Legislature to disapprove a withdrawal and set aside by two-thirds vote of either the Senate or House of Representatives or by the majority vote of both.

We have informally discussed this procedure with Mr. Barry Fukunaga, Deputy Director of Harbors, Department of Transportation.

Please call me if you have any questions.

Very truly yours,



JOHN D. KIM
Deputy Corporation Counsel

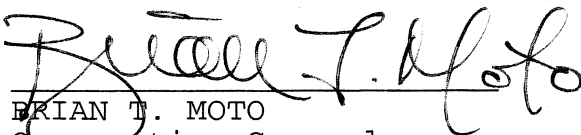
JDK:lk

Enclosure

cc: Michele White, Legal Assistant

S:\ALL\Advisory\JDK\Kahului Harbor Ltr.wpd

APPROVED FOR TRANSMITTAL:



BRIAN T. MOTO
Corporation Counsel

disposition is for a use which is consistent or inconsistent with the purpose for which the land was set aside. All funds derived from disposition by the board shall be deposited in the general fund of the State or be paid to the appropriate account; provided that all such dispositions shall be with the prior written approval of the department, agency, city and county, county, or other political subdivisions of the State and the governor, and shall be undertaken in compliance with all other applicable sections of this chapter. (Emphasis added.)

EXECUTIVE ORDER NO. 3064

PURPOSE: Setting aside land for park purposes (for Kahului Harbor Park)

Control of: County of Maui

Date: June 27, 1981

Location: Owa, Kahului, Wailuku, Maui, HI

Area: 20.983 acres

ATFER 10 DAYS, RETURN TO
DEPT. OF LAND AND NATURAL RESOURCES
DIVISION OF LAND MANAGEMENT
P. O. BOX 621
HONOLULU, HAWAII 96809

Executive Order No. 3064

Setting Aside Land for Public Purposes

By this Executive Order, I, the undersigned, Governor of the State of Hawaii, by virtue of the authority in me vested by Section 171-11, Hawaii Revised Statutes, and every other authority me hereunto enabling, do hereby order that the public land hereinafter described be, and the same is, hereby set aside for the following public purposes:

FOR PARK PURPOSES, to be under the control and management of the County of Maui for the Kahului Harbor Park, situate at Owa, Kahului, Wailuku, Maui, Hawaii, containing an area of 20.983 acres, said land being more particularly described in Exhibit "A" and delineated on Exhibit "B", both of which are attached hereto and made a part hereof, said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, both being designated C.S.F. No. 18,040 and dated May 9, 1977.

SUBJECT to disapproval by the legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of this Executive Order.

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of Hawaii to be affixed. Done at the Capitol at Honolulu this 27th day of June, Nineteen Hundred and 81

George Ariyoshi

Governor of the State of Hawaii

Approved as to form:

Melvin Huang
Deputy Attorney General



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

C.S.F. No. 18,040

May 9, 1977

KAHULUI HARBOR PARK

Owa, Kahului, Wailuku, Maui, Hawaii

Comprising the following lands:

- (a) Portion of the filled area of Kahului Harbor.
- (b) Portion of Royal Patent 1996, Land Commission Award 420 to Kuihelani, conveyed to the State of Hawaii by Hawaiian Commercial Sugar Company, Limited by deed dated May 17, 1961 and recorded in Liber 4108, Page 1 (Land Office Deed S-18145).

Beginning at a pipe at the west corner of this parcel of land and on the east side of Kahului Beach Road (Federal Aid Secondary Project No. 8-0340(1)), the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 6358.41 feet North and 5492.68 feet East, thence running by azimuths measured clockwise from True South:-

1. 247° 00' 138.02 feet along the remainder of R.P. 1996, L.C.Aw. 420 to Kuihelani to a pipe;
2. 157° 00' 30.00 feet along R.P. 1996, L.C.Aw. 420 to Kuihelani to a pipe;
3. 247° 00' 1460.13 feet along top of edge of revetment to a "+" on rock;
4. 337° 00' 112.67 feet along the remainder of the filled area to a "+" on rock;
5. 26° 36' 927.69 feet along top edge of revetment to a "+" on rock;
6. Thence along top edge of revetment on a curve to the right with a radius of 500.00 feet, the chord azimuth and distance being:
45° 35' 325.29 feet to a pipe in concrete;
7. 64° 34' 194.29 feet along top edge of revetment to a "+" on rock;

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8. 156° 57' 160.00 feet along Boat Launching Site;
9. 106° 03' 30" 145.76 feet along Boat Launching Site;
10. 66° 57' 300.00 feet along Boat Launching Site;
11. Thence along the east side of Kahului Beach Road, on a curve to the right with a radius of 5669.58 feet, the chord azimuth and distance being:
152° 05' 04" 20.01 feet;
12. Thence along the east side of Kahului Beach Road still on a curve to the right with a radius of 5669.58 feet, the chord azimuth and distance being:
152° 29' 20" 60.03 feet;
13. Thence along the east side of Kahului Beach Road still on a curve to the right with a radius of 5669.58 feet, the chord azimuth and distance being:
155° 12' 32" 478.13 feet to the point of beginning and containing an AREA OF 20.983 ACRES.

Access shall not be permitted into and from Kahului Beach Road, Federal Aid Secondary Project No. S-0340(1), over and across Courses 11 and 13 of the above-described Kahului Harbor Park.

Subject, however, to the following:

(a) An easement (30 feet wide) for ingress, egress and maintenance purposes, said easement being more particularly described as follows:

Beginning at a pipe at the northwest corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 6439.95 feet North and 5608.00 feet East, thence running by azimuths measured clockwise from True South:-

1. 277° 00' 50.00 feet;
2. 247° 00' 1416.83 feet;
3. 337° 00' 30.00 feet along filled land;
4. 67° 00' 1424.87 feet;
5. 97° 00' 50.00 feet;
6. 247° 00' 8.04 feet along the remainder of R.P. 1996, L.C.Aw. 420 to Kuihalani to a pipe;

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7. 157° 00' 30.00 feet along R.P. 1996, L.C.Aw. 420 to Kuihelani to the point of beginning and containing an AREA OF 44,009 SQUARE FEET.

(b) A work and storage area described as follows:

Beginning at a "+" on rock at the northeast corner of this easement, being also the northeast corner of Kahului Harbor Park, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 7010.47 feet North and 6952.06 feet East, thence running by azimuths measured clockwise from True South:-

1. 337° 00' 112.67 feet along the remainder of filled area to "+" on rock;
2. 26° 36' 656.57 feet along top edge of revetment;
3. 157° 00' 538.23 feet;
4. 247° 00' 500.00 feet along top edge of revetment to the point of beginning and containing an AREA OF 3.736 ACRES.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

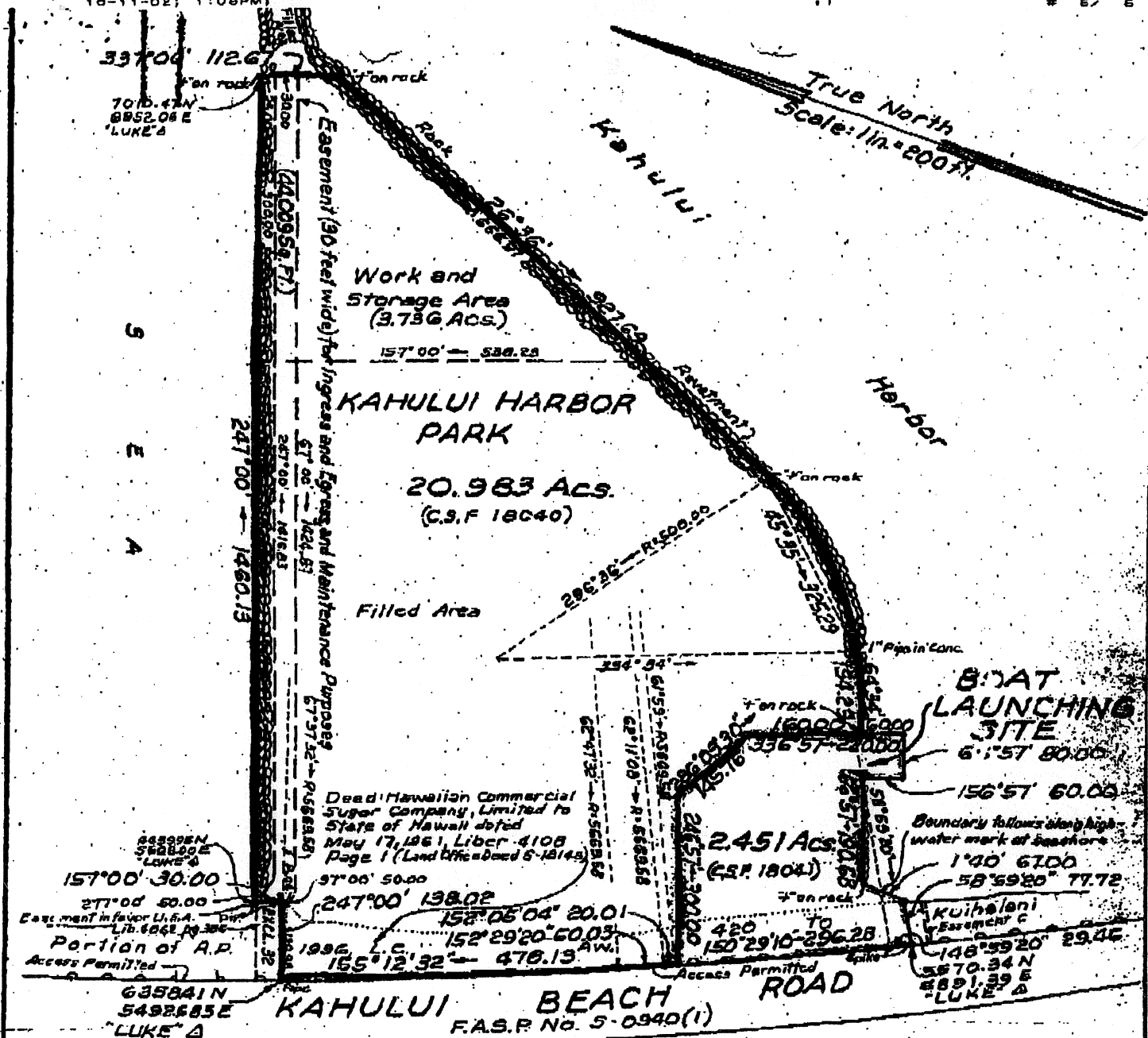
By: James Chrystal, Jr.
James Chrystal, Jr.
Land Surveyor fb

Compiled from Kahului Harbor Park map by Dept. Public Works, County of Maui and Govt. Survey Records.

10-11-02; 1:06PM

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5/ 6



KAHULUI HARBOR PARK
AND
BOAT LAUNCHING SITE
Owa, Kahului, Waituku, Maui, Hawaii

Scale: 1 inch = 200 feet

JOB NO. M8-8403
C.B.K. CRYSTALS, PG.134

--- denotes vehicle access permitted
--- denotes no vehicle access permitted

TAX MAP 3-7-01 SURVEY DIVISION DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES EXHIBIT 4182
C.S.F. No. 18040 and 18041 STATE OF HAWAII MAP 9, 1977 J.C.