

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

May 26, 2017

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

PSF No.: 15OD-207

OAHU

Amend Prior Board Action of May 13, 2016, Agenda Item D-8; *Sale of Remnant (Cancellation of Reserved Easement) to Yi-Sun Chiu, Christy Zeng Lei, Xiu Yun Xie, and Huiling He, Palolo Valley, Honolulu, Oahu, Tax Map Key: (1) 3-4-006:portion of 002*

The amendment is to change the method of disposition from sale of remnant to sale of reservation of easement.

BACKGROUND

At its meeting on May 13, 2016, under agenda item D-8, the Board approved the staff recommendation of selling the reservation of easement as a remnant pursuant to §171-52, Hawaii Revised Statutes (HRS). A copy of the submittal is attached as **Exhibit 1**.

An appraisal determined the lump sum payment of fair market value of the remnant is \$150,000, and the applicants, through its counsel, have accepted the appraised value.

During the documentation process, the Department of the Attorney General (AG) opined that an easement is not a *parcel* of land, as used in §171-52, HRS to describe a remnant. Meanwhile, AG suggests Section §171-57, HRS (languages shown below) is more appropriate in dealing with the subject disposition.

**Reserved rights and easements.** Notwithstanding any limitations to the contrary, where public land is disposed of with reservation in the State of quarry rights to rock, sand or gravel or an easement, and if the board of land and natural resources finds that a disposition of the reserved right or easement is not prejudicial to the best interest of the State, community or area in which the land is situated, it may, after giving public notice of the intended disposition as provided in section 171-16(d), dispose of the reserved right or easement to the owner of the land by direct sale or by lease without public auction.

Staff notes that in view of the latest development, the exemption notification declared by

the Board in the 2016 meeting (as marked as Exhibit C of the 2016 submittal) is still applicable.

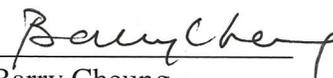
In view of the requested amendment, staff recommends the Board authorize a revised appraisal to determine the fair market value of the proposed sale of reservation of easement. Since the need for a revised appraisal is not triggered by the applicant, Land Division will be responsible for the fee of such revised appraisal.

Staff recommends the Board amend its prior action of May 13, 2016, Item D-8 by changing the method of disposition from sale of remnant under §171-52, HRS to sale of reservation of easement pursuant to §171-57, HRS. Upon approval of today's request, staff will follow-up with the publication of the public notice required under 171-16(d), HRS, and the applicant is required to pay for such publication.

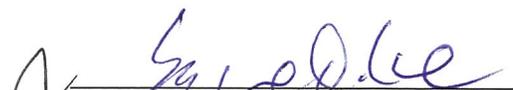
RECOMMENDATION: That the Board amend its prior action of May 13, 2016, Item D-8 by:

1. Changing the method of disposition from sale of remnant under §171-52, HRS to sale of reservation of easement pursuant to §171-57, HRS;
2. Changing all references to sale of remnant in the prior action to sale of reservation of easement;
3. Authorize the procurement of a revised appraisal to determine the fair market value of the sale of reservation of easement at the Land Division's cost;
4. Publication of a public notice pursuant to §171-16(d), HRS at applicant's cost; and
5. All other terms and conditions in May 13, 2016 approval shall remain in effect.

Respectfully Submitted,

  
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
Suzanne D. Case, Chairperson

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
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May 13, 2016

Board of Land and Natural Resources  
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PSF No.: 15OD-207

OAHU

Sale of Remnant (Cancellation of Reserved Easement) to Yi-Sun Chiu, Christy Zeng Lei, Xiu Yun Xie, and Huiling He, Palolo Valley, Honolulu, Oahu, Tax Map Key: (1) 3-4-006:portion of 002

APPLICANTS:

Yi-Sun Chiu and Christy Zeng Lei, husband and wife, as tenants by the entirety for an undivided fifty percent (50%) of interest;

Xiu Yun Xie, and Huiling He, husband and wife, as tenants by the entirety for the remaining undivided fifty percent (50%) of interest; and between the undivided interests, as tenants in common.

LEGAL REFERENCE:

Section 171-52, Hawaii Revised Statutes, as amended.

LOCATION:

Perpetual, exclusive right-of-way and easement for any and all purposes over and across the subject private property situated at Palolo Valley, Honolulu, Oahu, identified by Tax Map Key: (1) 3-4-006:002, as shown on the maps attached as **Exhibit A1** and **A2**.

EASEMENT AREA:

5,570 square feet, more or less.

ZONING:

State Land Use District: Urban  
City and County of Honolulu LUO: R-5

**EXHIBIT " 1 "**

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
May 13, 2016 UD

TRUST LAND STATUS FOR EASEMENT RESERVED:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Encumbered by a portion of the building built on the subject private property. See the land title survey map attached as **Exhibit B**.

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by independent appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 46, which reads “[c]reation or termination of easement, covenants, or other rights in structures or land”. See exemption notification attached as **Exhibit C**.

DCCA VERIFICATION:

Not applicable. The applicants as landowner are not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicants shall be required to pay for an appraisal to determine the one-time payment of fair market value for the reserved easement.

REMARKS:Background of the property

The subject property, identified as TMK (1) 3-4-006:002, was originally a portion of Land Patent Grant 12270 granted to the Hawaii Housing Authority (“HHA”) in 1952. Around 1955, Bishop Sweeney of the Catholic Diocese of Honolulu approached the Government to obtain a parcel of land for the construction of a church. Eventually, agreement was reached for HHA to transfer the subject property to the Territory of Hawaii by a quitclaim deed recorded as Liber 3022 page 288 [Land Office Deed 13052] dated September 28, 1955, reserving to HHA a perpetual and exclusive right of way and easement for any and all purposes (“Easement”).

At the public auction held on April 17, 1956, The Roman Catholic Bishop of Honolulu was the highest bidder and became the owner of the subject property.

By the Release of Easement recorded as Liber 3277 page 325 dated June 10, 1957 [Land Office Deed 14360], HHA released and relinquished to the Territory of Hawaii the Easement. There are communications in the file indicating the church was contemplating to purchase the easement from the Government. Nevertheless, nothing happened until the subject request on today's Board agenda.

The church sold the private property to the applicants in December 2015, who request the extinguishment of the Easement. The survey map at Exhibit B depicts the respective location of the Easement. The owners intend to maintain the status quo of the other reserved storm drain easement as shown on Exhibit B.

#### Cancellation of easement

Pursuant to section 171-52, HRS, a remnant is defined as "a parcel of land<sup>1</sup> economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics." Staff recommends the Board declare the Easement as remnant by this definition for the following reasons:

- The subject request pertains to a perpetual and exclusive easement for any and all purposes reserved in favor of the State. However, it is not any fee interest over the subject property.
- The Easement is roughly measured as 40 by 140 feet, with an area of 5,570 square feet and gently sloped. Photos taken during a recent site inspection are attached as **Exhibit D1 to D3** for the Board's reference. Due to its size and topography, in addition to the lack of fee title, development potential of the Easement is relatively restricted. On the other hand, the applicants are planning to improve their property with six (6) new residential units, upon approval of today's request. Staff believes such proposal serves a better use of the limited inventory of residential property.
- State and City do not have any plan to utilize the Easement. Hawaii Public Housing Authority owns the fee of the State parcel at the back of the subject private property, identified as TMK (1) 3-4-007:015, which is a fully developed public housing project, with its own access on Ahe Street, a public road.

The subject request is different from the other remnant sales, in which the Board would typically be asked to authorize the sale of fee title of the remnant, e.g. a portion of the abandoned irrigation ditch. This request relates to an easement reserved. There are no other owners, other than the applicant, whose properties are encumbered by the Easement. Therefore, there are no other adjacent owners qualified to purchase the Easement under Section 171-52, HRS.

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<sup>1</sup> Pursuant to Section 171-2, HRS, "Public lands" means all lands or interest therein in the State.

Staff and the representative of the applicants met with the district legislator, who indicated that the proposed residential units would be an improvement to the existing ground condition and the community.

Department of Health, Board of Water Supply, Department of Facility Maintenance, Department of Planning and Permitting, Department of Parks and Recreation, and Office of Hawaiian Affairs have no objections/comments to the subject request.

State Historic Preservation Division, Commission on Water Resource Management, and Hawaii Public Housing Authority have not responded before the deadline soliciting for comments.

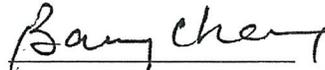
Applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. There are no other pertinent issues and concerns.

RECOMMENDATION: That the Board:

1. Find that the subject easement is economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics and, therefore, by definition is a remnant pursuant to Chapter 171, HRS.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 3-4-006:002, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, 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.
4. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the sale of remnant to Yi-Sun Chiu, Christy Zeng Lei, Xiu Yun Xie, and Huiling He under the 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 deed or grant (remnant) of easement form, as may be amended from time to time;
  - b. Obtain approval from the Department of Planning and Permitting regarding the cancellation of the subject easement;
  - c. Review and approval by the Department of the Attorney General; and

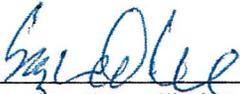
- d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Barry Cheung  
District Land Agent

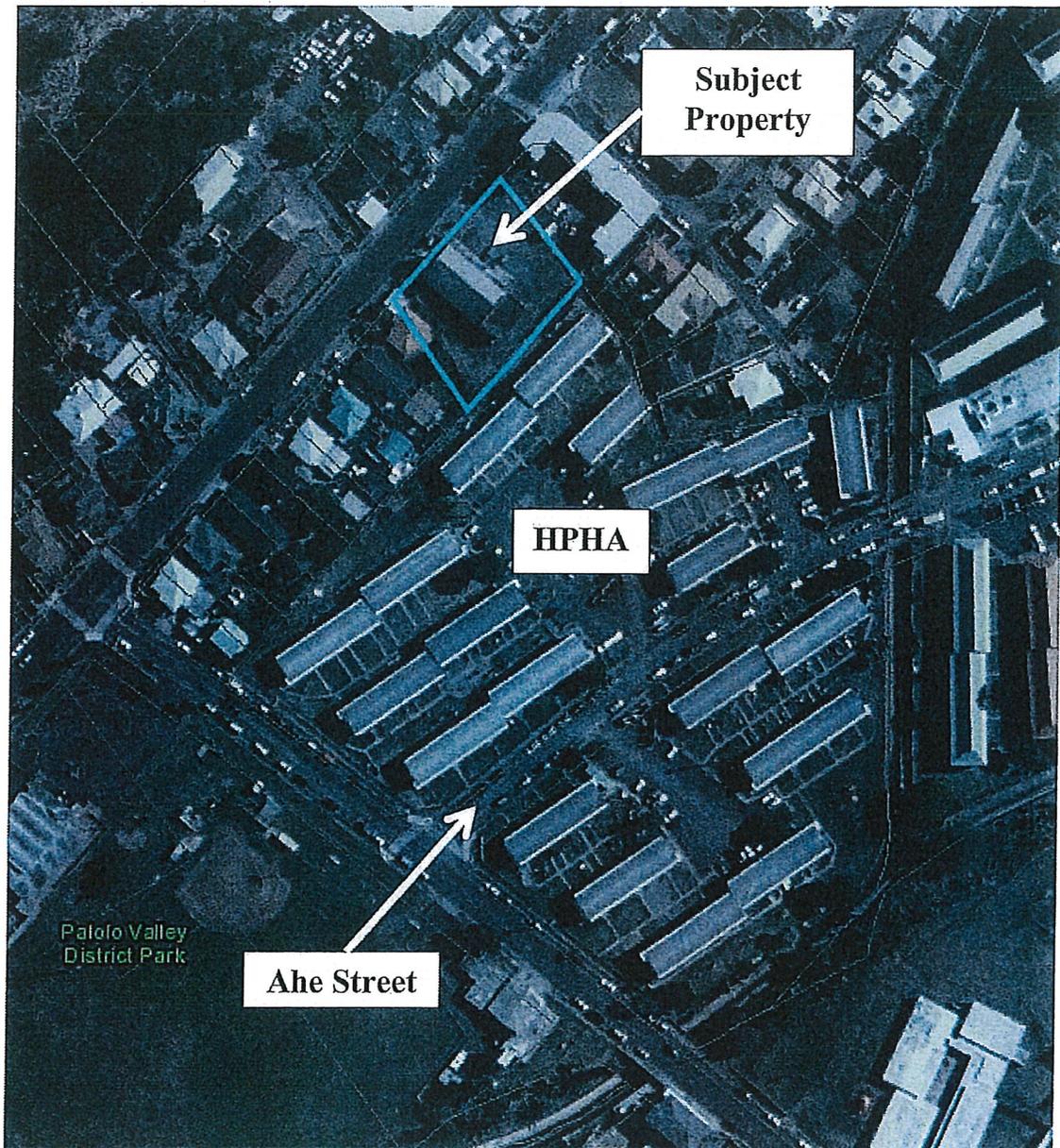
APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

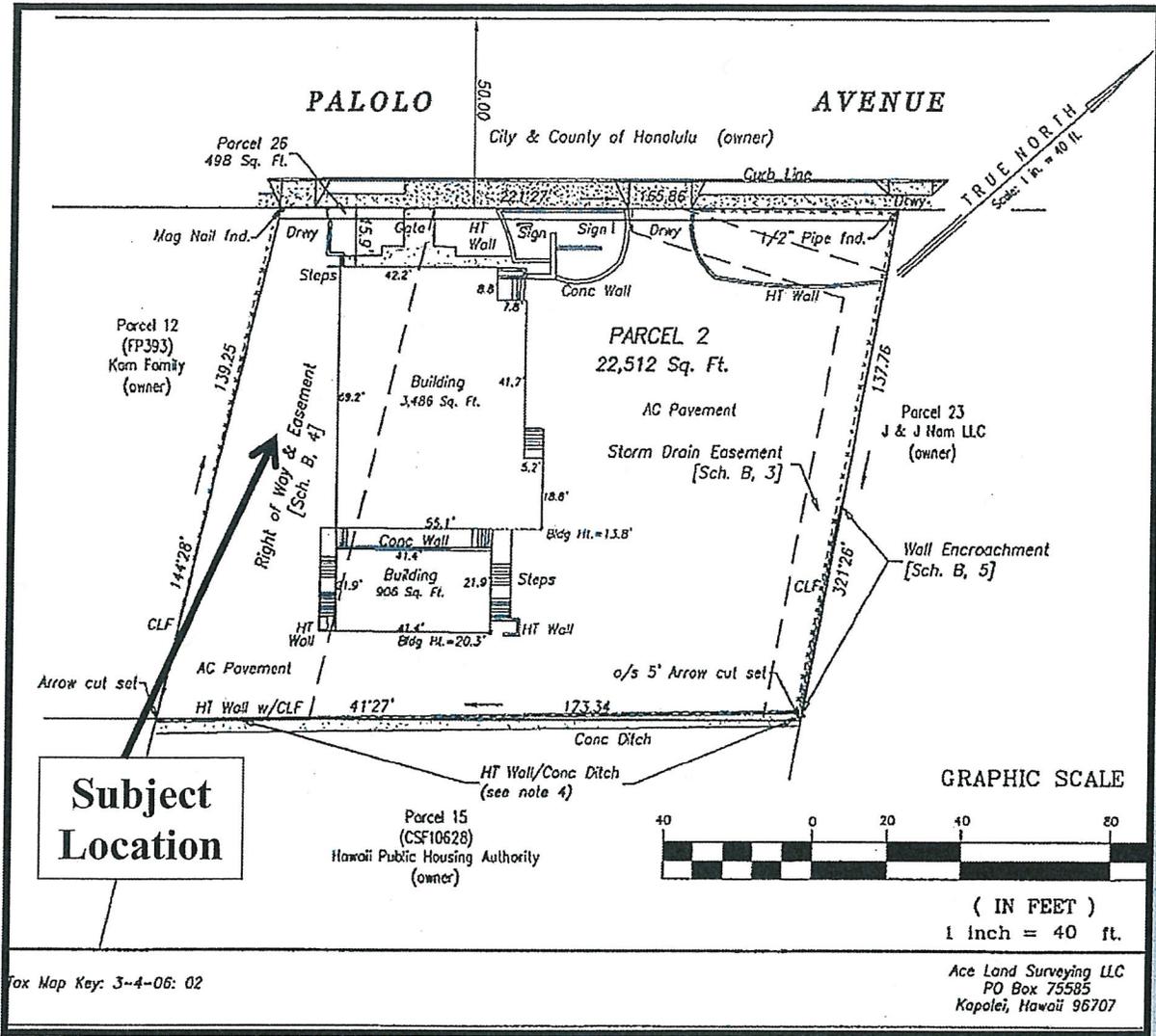
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**TMK (1) 3-4-006:002 and its vicinity**

**EXHIBIT A2**



Excerpt from Land Title Survey Map

EXHIBIT B

**EXEMPTION NOTIFICATION**

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Sale of Remnant (Cancellation of Easement)

Project / Reference No.: PSF 15OD-207

Project Location: Palolo Valley, Honolulu, Oahu, TMK: (1) 3-4-006;portion of 002

Project Description: Cancellation of easement reserved to the State.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 46, which reads “[c]reation or termination of easement, covenants, or other rights in structures or land”.

The request pertains to an easement right reserved to the State, which does not plan to utilize the easement. Any proposed development of the private property, including the replacement of the existing building with new residential units will follow the zoning and building codes. As such staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties: Agencies as noted in the submittal.

Recommendation: It is recommended that the Board find that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

  
Suzanne D. Case, Chairperson

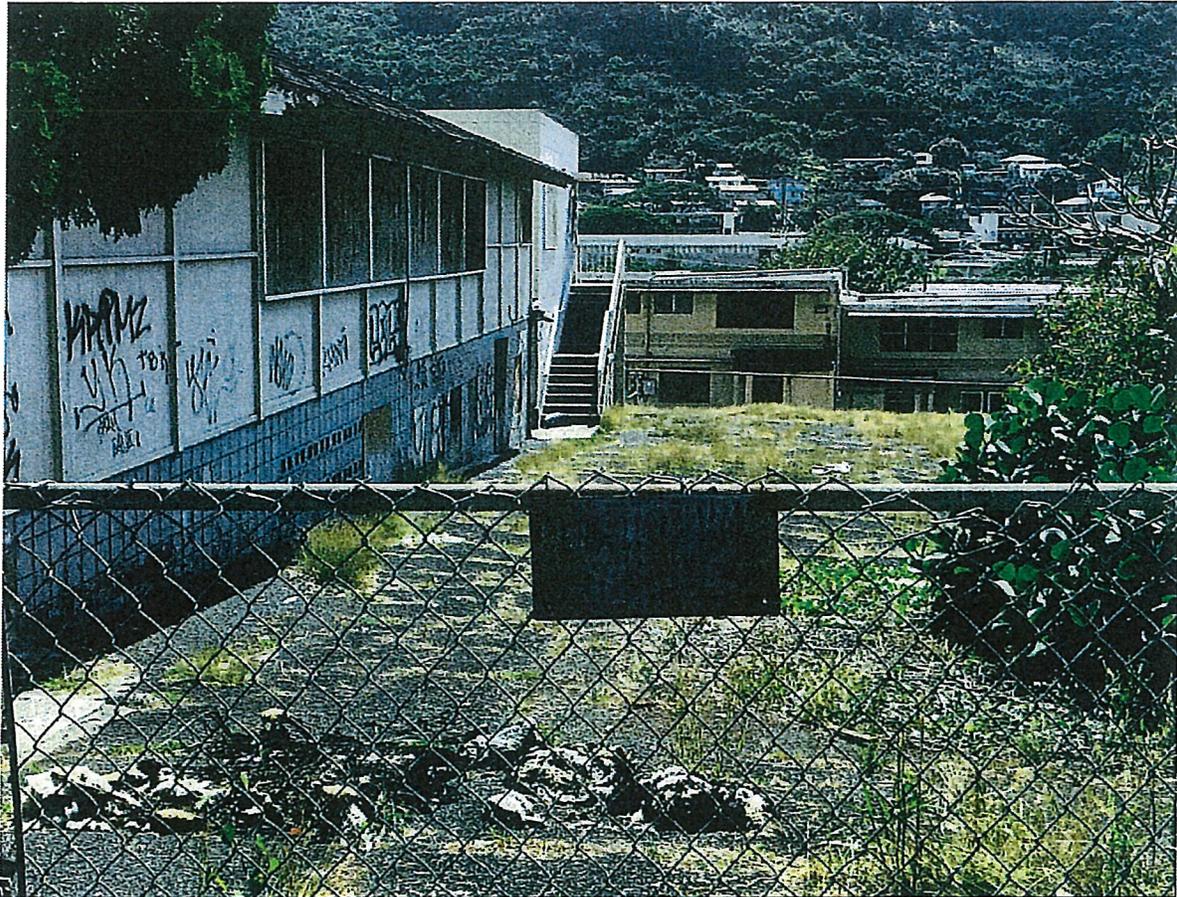
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Date 4/21/16

**EXHIBIT C**



**Across the subject easement on Palolo Avenue**

**EXHIBIT D1**



**Close-up of the subject easement**

**EXHIBIT D2**



**View of the subject easement inside the private property**

**EXHIBIT D3**