

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

October 13, 2017

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

PSF No.00OD-635

Oahu

Amend Prior Board Action of November 17, 2000, item D-16, *Request for Authorization to Acquire one (1) Houselot, Together With Improvements Thereon, and Subsequent Set Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife, Waiomao, Palolo, Tax Map Key (1)-3-4-15:27* (after subdivision new *Tax Map Key (1)-3-4-15:34*).

The purpose of the amendment is to (1) seek Board approval for Department of Land and Natural Resources, Division of Forestry and Wildlife to conduct a public hearing in accordance with §183-11 to 13, HRS, on the Island of Oahu regarding the proposed addition of the parcel to the Honolulu Water Shed Forest Reserve, and (2) authorize the immediate issuance of management right-of entry permit to Division of Forestry and Wildlife pending the issuance of an Executive Order.

CONTROLLING AGENCY:

Department Land and Natural Resources- Land Division (Land)

APPLICANT:

Department Land and Natural Resources- Division of Forestry and Wildlife (DOFAW)

LEGAL REFERENCE:

Sections 171-11, 30, and 55 and Sections 183-11,12,13 (public hearing process), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Palolo Valley Homesteads, same being Lot 82-1, Waiomao, Palolo, Tax Map Key (1)-3-4-15:34, as depicted on the attached parcel map labeled **Exhibit A-1**, and shown further on the attached Tax Map Key parcel map labeled **Exhibit A-2**, and GIS parcel map labeled **Exhibit A-3**, and further depicted on Land Court Consolidation 50, Map 7, labeled herein as **Exhibit A-4**.

AREA:

25,730 square feet, more or less, together with an undivided one fourth ($\frac{1}{4}$) interest in Lot 80, containing an area of 2,232 square feet, more or less, and together with non-exclusive easements for surface access over and across Easement G, as shown on Map 4 and Easement H as shown on Map 7 of Land Court Consolidation 50, as more particularly delineated on **Exhibit A-4** (survey map).

A survey description of the parcel was prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, both being designated C.S.F. No. 25,606 and dated April 29, 2017, and described and set forth by Land Court Document No. 933 1233, recorded on July 20, 2015, and attached as **Exhibit B** (survey description).

ZONING:

State Land Use District:	Conservation, Urban
City & County of Honolulu:	P-1 Restricted Preservation, R-5 Residential District

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

The lands are unencumbered, but improved with a residential structure that has been damaged by rockfall. See Remarks section below.

CHARACTER OF USE:

Addition of the parcel to the Honolulu Water Shed Forest Reserve.

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) and (4) and the Exemption List for the Department of Land and Natural Resources approved 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, that states "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that

previously existing,” Item No. 43, that states “Transfer of management authority over state-owned lands, such as setting aside of state lands to or from other government agencies through Governor’s executive order,” and Item No. 51, that states “Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing.”

See attached Exemption Notification, **Exhibit C**.

DCCA VERIFICATION:

Not applicable. The Applicant is a state agency.

APPLICANT REQUIREMENTS:

Not applicable.

REMARKS:

Background

In May 1997, a rockfall incident on the subject property caused property damage, but fortunately no deaths or injuries. The subject parcel and other surrounding parcels were inspected and evaluated, and thereafter, the subject parcel was deemed unsafe. At its November 17, 2000 meeting, under agenda Item D-16, the Board of Land and Natural Resources (Board) approved an acquisition of the parcel, with improvements thereon, as well as the set aside of the subject parcel to DOFAW. **See Exhibit F.**

In 2005, the DLNR Engineering Division procured a contract to demolish and remove the damaged structure from the subject parcel, however, due to various Engineering Division changes concerning Division priorities and funding, no contract work commenced. The damaged structure remains on the subject property as of the present time.

Pursuant to Final Order of Condemnation recorded in the Land Court on July 20, 2015, title to Lot 82-A-2 was vested in the State of Hawaii in fee simple absolute, free and clear of all liens and encumbrances, and together with nonexclusive easements for surface across access purposes over and across Easements G and H. **See Exhibit D.** For map also see **Exhibit A-4.**

Purpose for Amendment

These are the reasons to seek Board approval to amend **Exhibit F**:

- I. §183-11 to 13, HRS, as amended, provides for a full public hearing process when property is set aside to DOFAW. Inadvertently, Land omitted from the prior Board action authorization for DOFAW to proceed with the public hearing process under §183-11 to 13, HRS, once the state acquired the parcel.

- II. §171-55, HRS, as amended, provides for the issuance of a permit for the temporary occupancy of state lands, or an interest therein. Land did not previously request Board approval for a Right of Entry Permit to DOFAW for land management and maintenance purposes.

Evaluation

An evaluation of the matters for this submittal follows.

I. Request for Public Hearing

In year 2000, Land inadvertently omitted from the prior Board action authorization for DOFAW to proceed with the public hearing process under §183-11 to 13, HRS, as amended, and pursuant to department rules. Land returns now to the Board to request approval for a full public hearing on the set aside to DOFAW. The hearing notice shall include fourteen (14) days of statewide public notice of the governor's intent to set apart the land. It shall also contain the name of the island of Oahu, within Kona district, at Waiomao, Palolo in which the parcel of land is located. Furthermore, the notice shall also appoint a time or times, place or places for a DOFAW appointed hearing master(s) to hear evidence and arguments either for or against the setting apart of the proposed parcel to the forest reserve pursuant to §183-11 to 13, HRS, as amended. As provided under the statute, the public hearing will be for all who desire to be heard upon the matter to set aside the subject parcel as an addition to the Honolulu Water Shed Forest Reserve.

II. Request for Right of Entry (ROE)

In year 2000, Land did not request Board approval for a Right of Entry. Since structures remain on the subject property, and since it may take some time to process the Executive Order to Set aside the parcel to DOFAW, Land returns now to the Board to request approval to provide a Right of Entry, in accordance with §171-55, HRS, as amended, for DOFAW to manage and maintain the parcel until the subject parcel is set aside to DOFAW.

REQUEST FOR COMMENTS:

A draft of this submittal was distributed to the agencies identified below, with the comment results indicated in Exhibit E and below:

Agency	Comment
DLNR- Division of Forestry and Wildlife (DOFAW)	DLNR- Division of Forestry and Wildlife (DOFAW) replied that it has no comments.
DLNR- Office of Conservation and Coastal Lands (OCCL)	See Exhibit E-1
DLNR- Division of Engineering	DLNR- Division of Engineering replied that it has no comments.
DLNR- Historic Preservation	DLNR- Historic Preservation did not submit comments by the requested comments due date.
Department of Hawaiian Home Lands (DHHL)	DHHL did not submit comments by the requested comments due date.
Office of Hawaiian Affairs (OHA)	OHA did not submit comments by the requested comments due date.
City and County of Honolulu Department of Planning and Permitting	See Exhibit E-2
City and County of Honolulu- Board of Water Supply (BWS)	City and County of Honolulu Board of Water Supply (BWS) replied that it has no comments and no objections.

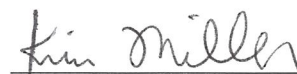
RECOMMENDATION:

That the Board:

- I. 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.
- II. Amend its prior action of November 17, 2000, item D-16, by revising paragraph C of the Recommendation and adding paragraphs D and E to read as follows:
 - C. Authorize the Division of Forestry and Wildlife to conduct a public hearing on the Island of Oahu regarding the proposed set aside to the proposed addition of the parcel to the Honolulu Water Shed Forest Reserve, and further, pursuant to Sections 183-11 to 13, HRS, as amended, authorize the Chairperson to:
 1. Set the date, location and time of the public hearing; and
 2. Appoint a hearing master(s) for the public hearing.

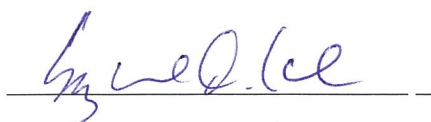
- D. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject land to the Division of Forestry and Wildlife, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
1. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 2. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 3. Review and approval by the Department of the Attorney General; and
 4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. Grant an immediate management right-of-entry to DOFAW, its consultants, contractors, and/or persons acting for or on its behalf, over the subject land, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
1. The standard terms and conditions of the most current management and construction right-of-entry form, as may be amended from time to time;
 2. This management right-of-entry is effective upon Land Board approval and shall continue until the executive order is issued; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

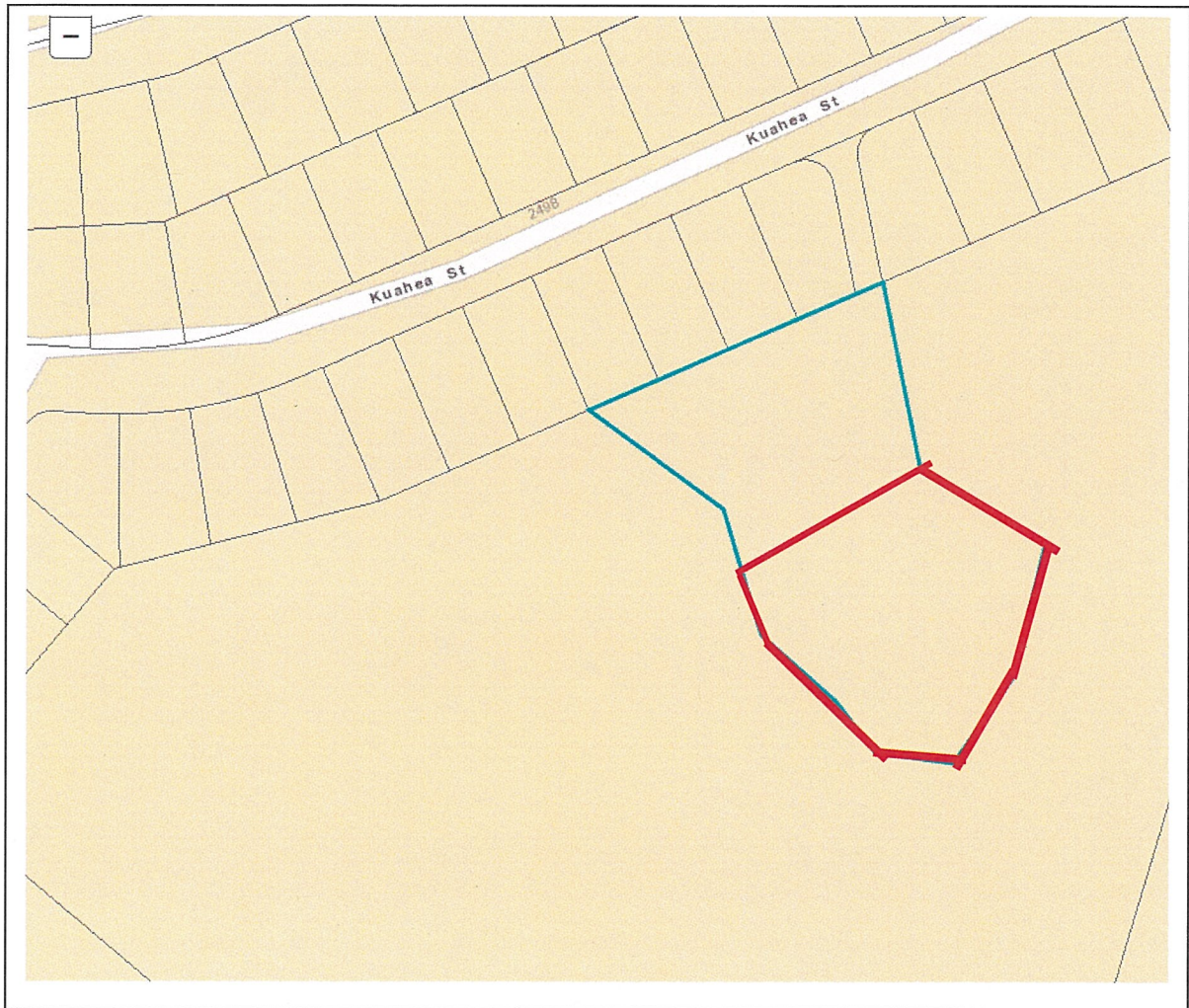


Kim E. Miller
Supervising Land Agent

APPROVED FOR SUBMITTAL:



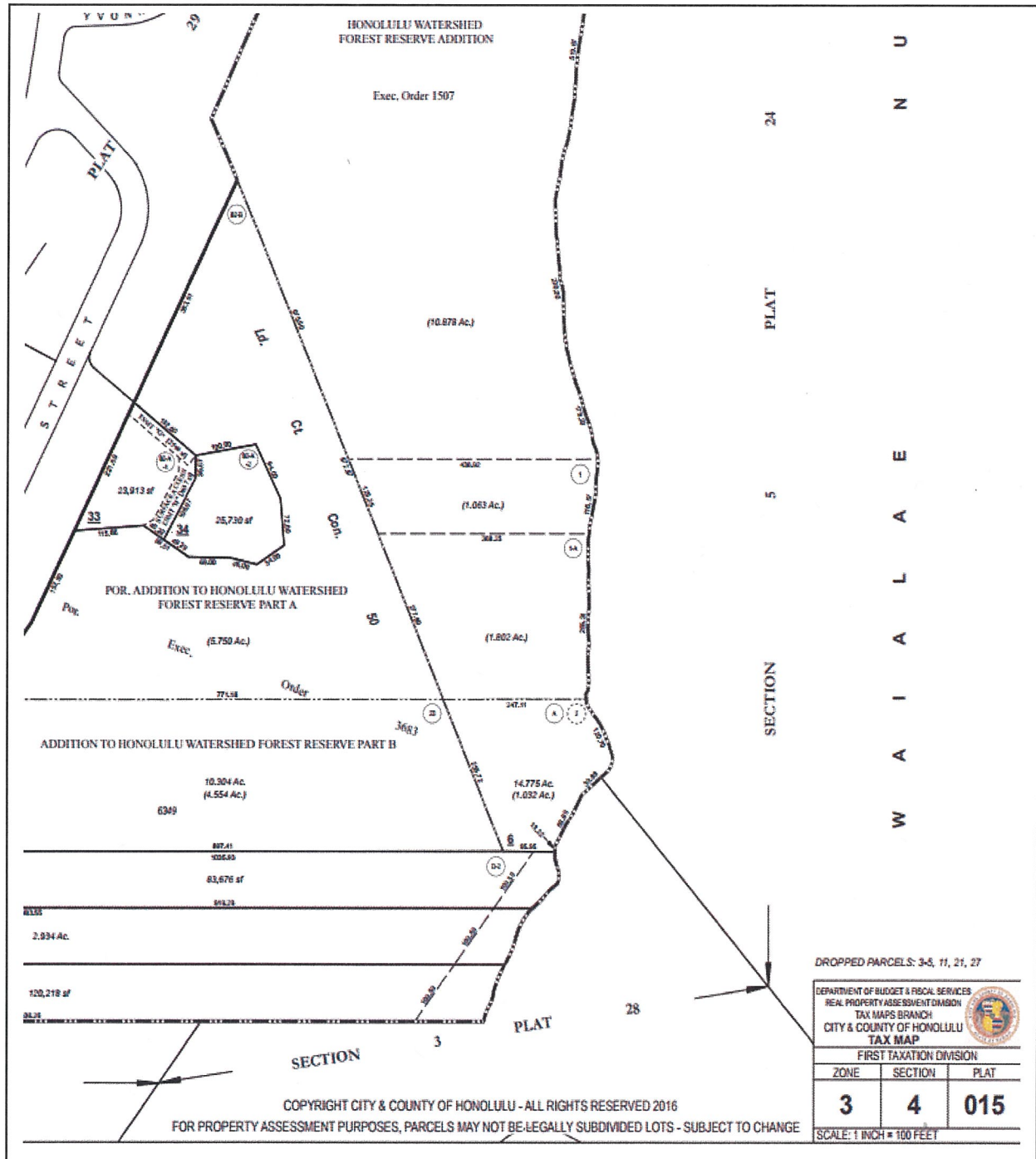
Suzanne D. Case, Chairperson



TMK (1) 3-4-015:034

2399 Kuahea Street 25.731 sqft / preservation land

EXHIBIT A-1



TMK (1) 3-4-015:034

EXHIBIT A-2

2399 Kuahea Street 25.731 sqft / preservation land



GIS TMK (1) 3-4-015:034

2399 Kuaheha Street 25.731 sqft / preservation land

EXHIBIT A-3

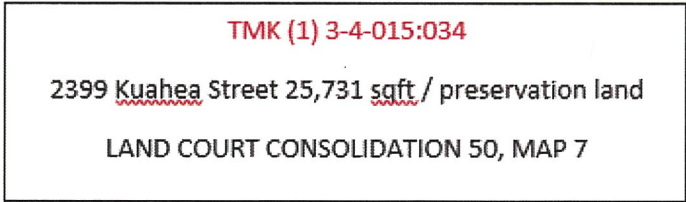


EXHIBIT A-4



**STATE OF HAWAII
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
HONOLULU**

C.S.F. No. 25,606

April 28, 2017

**ADDITION TO
HONOLULU WATERSHED FOREST RESERVE**

Waiomao, Palolo Valley, Honolulu, Oahu, Hawaii

Being all of Lot 82-A-2 as shown on Map 7 of Land Court Consolidation 50, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii, containing an AREA OF 25,730 SQUARE FEET covered by Transfer Certificate of Title 1,100,916 issued to the State of Hawaii.

TOGETHER WITH, an undivided one-fourth (1/4) interest in Lot 80 as shown on Map 3 of Land Court Consolidation 50 containing an AREA OF 2232 SQUARE FEET covered by Transfer Certificate of Title 58,709 issued to the State of Hawaii.

TOGETHER ALSO WITH non-exclusive easements for surface access purposes over and across Easement G as shown on Map 4 and Easement H as shown on Map 7 of Land Court Consolidation 50 as set forth by Land Court Document No. 9331233 recorded on July 20,

TMK (1) 3-4-015:034

2399 Kuaheha Street 25.731 sqft / preservation land

SURVEY DESCRIPTION

EXHIBIT B

C.S.F. No. 25,606

April 28, 2017

SUBJECT, HOWEVER, to any and all encumbrances that may be noted
on Transfer Certificate of Title 1,100,916 issued to the State of Hawaii.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: *Gerald Z. Yonashiro*
Gerald Z. Yonashiro
Land Surveyor rk

Compiled from Land
Court Records.

TMK (1) 3-4-015:034

2399 Kuahea Street 25.731 sqft / preservation land

CONTINUED SURVEY DESCRIPTION

Continued

EXHIBIT B

EXEMPTION NOTIFICATION

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

Project Title: Amend Prior Board Action of November 17, 2000, Item D-16, *Request for Authorization to Acquire One (1) Houselot, Together With Improvements Thereon, and Subsequent Set Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife, Waiomao, Palolo, Tax Map Key: (1) 3-4-15-34*

The purpose of the amendment is to (1) seek Board approval for Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) to conduct a public hearing in accordance with §183-11 to 13, HRS, on the Island of Oahu regarding the proposed addition of the parcel to the Honolulu Water Shed Forest Reserve, and (2) authorize the immediate issuance of management right-of entry permit to DOFAW pending the issuance of an Executive Order.

Project / Reference No.: PSF:00OD-635

Project Location: Island of Oahu, Waiomao, Palolo, Tax Map Key: (1) 3-4-15-34

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

Authorization: The Board, at its meeting of September 25, 2015, under agenda item D-17, delegated authority to the Chairperson to declare exempt those actions that are included in the Department-wide exemption list.

Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) and (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption

EXHIBIT C

Class No.1, that states “Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing,” Item No. 43, that states “Transfer of management authority over state-owned lands, such as setting aside of state lands to or from other government agencies through Governor’s executive order,” and Item No. 51, that states “Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing.”

Project Description:

Governor’s Executive Order to set aside the parcel to Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) and Immediate Management Right-of-Entry to DOFAW.

The use of the property will remain the same and no expansion of use is proposed or planned.

Consulted Parties:

As noted in the submittal.

Recommendation:

That the Board finds 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.

**Continued
EXHIBIT C**

Final Order of Condemnation recorded in the Land Court on July 20, 2015, title to Lot 82-A-2 was vested in the State of Hawaii in fee simple absolute, free and clear of all liens and encumbrances, and together with nonexclusive easements for surface across access purposes over and across Easements G and H concerning *Tax Map (1)-3-4-15:27 27* (after subdivision new Tax Map Key (1)-3-4-15:34).

EXHIBIT D

FO N/C
CT N/C
C



STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

July 20, 2015 8:02 AM

Doc No(s) T-9331233
on Cert(s) 604491
Issuance of Cert(s) 1100916



1 3/3 CHC
B-32662552

/s/ NICKI ANN THOMPSON
ASSISTANT REGISTRAR

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup (X)

To: Dept. of Land and Natural Resources
Land Division

Total Number of Pages: 4

Tax Map Key No. (1) 3-4-015:027

FINAL ORDER OF CONDEMNATION; EXHIBIT A

EXHIBIT D Continued

CADES SCHUTTE LLP
PHILIP J. LEAS 1467-0
KERI ANN K.S. KRZYKOWSKI 8851-0
1000 Bishop Street, 12th Floor
Honolulu, Hawai'i 96813
Telephone: (808) 521-9200

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2015 JUN 22 PM 2:08

H. CHING
CLERK

Attorneys for Defendants Earl Donovan
Pfeiffer, Trustee, and Pfeiffer Family
Partners, LP

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, by its Attorney
General,

Plaintiff,

v.

EARL DONOVAN PFEIFFER,
TRUSTEE OF THE EARL DONOVAN
PFEIFFER REVOCABLE TRUST
AGREEMENT dated February 8,
2001; PFEIFFER FAMILY PARTNERS,
LP, a Hawaii limited partnership;
JOHN DOES 1-100; JANE DOES 1-
100; DOE PARTNERSHIPS 1-100;
DOE TRUSTS 1-100; DOE ESTATES
1-100; DOE CORPORATIONS 1-100;
and DOE ENTITIES 1-100,

Defendants.

CIVIL NO. 04-1-0545-03 (JHC)
(Condemnation)

**FINAL ORDER OF
CONDEMNATION; EXHIBIT A**

FINAL ORDER OF CONDEMNATION

Pursuant to the Stipulated Final Judgment entered and filed
concurrently herewith,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I do hereby certify that this is a full, true, and
correct copy of the original on file in this office.

1. That Lot 82-A-2, area 25,730 square feet, as shown on Map 7 of Land Court Consolidation No. 50, with all improvements thereon and appurtenances thereunto belonging and together with nonexclusive easements for surface access purposes over and across Easement G, area 2,598 square feet, as shown on Map 4 of Land Court Consolidation No. 50, and Easement H, area 3,837 square feet, as shown on Map 7 of Land Court Consolidation No. 50, situate at Waiomao, Palolo Valley, Honolulu, City and County of Honolulu, State of Hawaii, and being a portion of the land covered by Transfer Certificate of Title No. 604,491, is hereby condemned to improve public safety by resolving the danger of falling rocks emanating from the adjoining Waiomao Ridgeline onto said land and to add the same to the Honolulu Watershed Forest Reserve; and title to said Lot 82-A-2 is hereby vested in the State of Hawaii in fee simple absolute, free and clear of all liens and encumbrances and together with nonexclusive easements for surface access purposes over and across said Easements G and H.

2. That the aforesaid Lot 82-A-2 and Easements G and H are shown on Exhibit A, which is attached hereto and made a part hereof.

3. The terms of that certain Settlement Agreement between Plaintiff and Defendants dated April 21, 2014, remain in effect and survive entry of this Final Order of Condemnation.

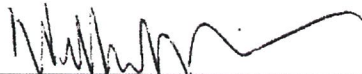
DATED: Honolulu, Hawai'i, JUN 19 2015.

JEANNETTE H. CASTAGNETTI
JUDGE OF THE ABOVE-ENTITLED COURT



**STATE OF HAWAII V. PFEIFFER, et al. – CIVIL NO. 04—1-0545-03 JHC -
FINAL ORDER OF CONDEMNATION; EXHIBIT A**

APPROVED AS TO FORM:



WILLIAM J. WYNHOFF
Deputy Attorney General
Attorney for Plaintiff STATE OF HAWAII

=====

STATE OF HAWAII V. PFEIFFER, et al. - CIVIL NO. 04—1-0545-03 JHC -
FINAL ORDER OF CONDEMNATION; EXHIBIT A

EXHIBIT D Continued

CONS 50

MAP 7

LAND COURT
STATE OF HAWAII
LAND COURT CONSOLIDATION 50
SUBDIVISION OF
LOT 82-A AS SHOWN ON MAP 4
INTO LOTS 82-A-1 AND 82-A-2 AND
DESIGNATION OF EASEMENT H
AT WAIOMAO, PALOLO VALLEY, HONOLULU, OAHU, HAWAII

2016 WATERHOUSE ST., STE. 101
HONOLULU, HAWAII 96819
DECEMBER 2, 2014



LEAPS & BOUNDARIES, INC.

Arden J. Torcuato
LICENSED PROFESSIONAL LAND SURVEYOR
CERTIFICATE NUMBER 10257
LAND COURT CERTIFICATE NUMBER 256
EXP. APRIL 30, 2016

OWNERS:
EARL DONOVAN PFEFFER, TRUSTEE
PFEFFER FAMILY PARTNERS, L.P.
TRANSFER CERTIFICATE OF TITLE: 604,491

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE
OF THE LAND COURT DATED MARCH 24, 2015
BY ORDER OF THE COURT:

Patricia Hanawalt
RECORDS OF THE LAND COURT

"reduced from original filed in court"

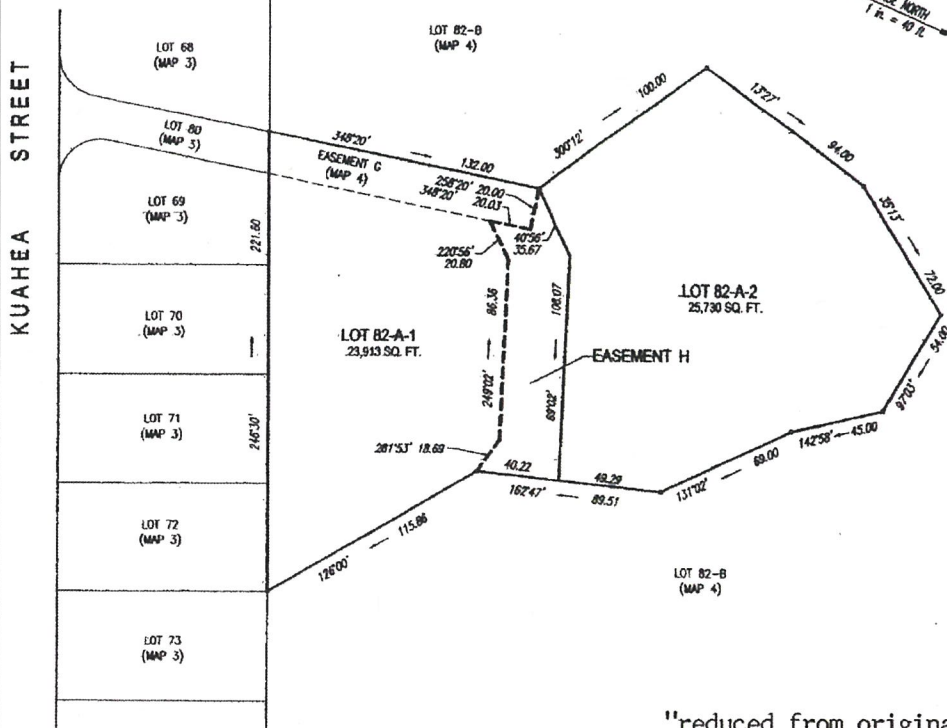
NOTE:

AREA OF EASEMENT H FOR SURFACE ACCESS EASEMENT PURPOSES AFFECTING LOT 82-A-1 = 3,837 SQ. FT.

EXHIBIT A

filed January 29, 2015
Janice D. Dimaio
clerk

EXHIBIT D Continued



KUAHEA STREET

DLNR- Office of Conservation and Coastal Lands (OCCL) 9/17/17 Comments to DLNR LAND regarding 10/13/17 Request for BLNR Approval to Amend Board Action of November 17, 2000, item D-16, *Request for Authorization to Acquire one (1) Houselot, Together With Improvements Thereon, and Subsequent Set Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife, Waiomao, Palolo, Tax Map (1)-3-4-15:27 27* (after subdivision new Tax Map Key (1)-3-4-15:34).

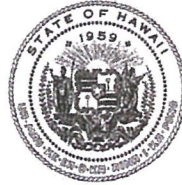
DAVID Y. IGE
GOVERNOR OF
HAWAII

RECEIVED
LAND DIVISION



SEP -8 AM 10:48

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF: OCCL: AJR

COR: OA-18-42

MEMORANDUM

SEP - 7 2017

TO: KIM MILLER, SUPERVISING LAND AGENT
DLNR – Land Division

FROM: SAMUEL J. LEMMO, ADMINISTRATOR
DLNR - Office of Conservation and Coastal Lands

SUBJECT: COMMENTS ON REQUEST FOR PROPOSED LAND LEASE
Honolulu District, Island of Oahu
TMK: (1) 3-4-015:027 (aka. 134015034)

Dear Ms. Miller,

The Office of Conservation and Coastal Lands (OCCL) is in receipt of your proposal to: *Request authorization to Acquire one (1) House lot, Together with Improvements Thereon, and Subsequent Set Aside to the Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (DOFAW), Waiomao, Palolo, Oahu.* For reference, this parcel and the surrounding parcels are located within the State Land Use (SLU) Conservation District, General Subzone.

According to the information provided (pg. 3), it appears that there is an existing structure that may require demolition, and/or removal:

In 2005, the DLNR Engineering Division procured a contract to demolish and remove the damaged structure from the subject parcel, however, due to various Engineering Division changes concerning Division priorities and funding, no contract work commenced. The damaged structure remains on the subject property as of the present time.

Please be aware that demolition of an existing structure is considered an identified land use to which you may apply pursuant to Hawaii Administrative Rules (HAR) §13-5-22, P-8 **STRUCTURES AND LAND USES, EXISTING (B-1) Demolition, removal, or minor alteration of existing structures, facilities, land, and equipment.** Any historic property shall be evaluated by the department for historical significance. In order to apply for this use, the applicant/landowner will be required to submit to this office a completed Site Plan Approval (SPA) application for review and processing.

Continued EXHIBIT E-1

REF: OCCL: AJR

COR: OA-18-42

Please note that it is the responsibility of the landowner/managing department to contact the OCCL for potential permitting and approval requirements. As this property is entirely within the Conservation District, it is the responsibility of this office to regulate land uses.

If you have any questions regarding this memo, please contact Alex J. Roy, M.Sc. of our Conservation and Coastal Lands staff at 808-587-0316 or via email at alex.j.roy@hawaii.gov

Thank you.

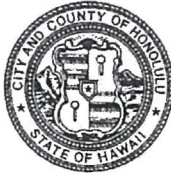
CC: Chairperson

City and County of Honolulu Department of Planning and Permitting 9/7/17
Comments to DLNR LAND regarding 10/13/17 Request for BLNR Approval to Amend Board Action of November 17, 2000, item D-16, *Request for Authorization to Acquire one (1) Houselot, Together With Improvements Thereon, and Subsequent Set Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife, Waiomao, Palolo, Tax Map (1)-3-4-15:27 27* (after subdivision new Tax Map Key (1)-3-4-15:34).

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.gov • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

September 7, 2017

2017/ELOG-1717(WA)

Ms. Kim Miller
State of Hawaii
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Dear Ms. Miller:

SUBJECT: Request for Comments
Proposed Addition to Honolulu Watershed Forest Reserve
2399 Kuahea Street - Palolo
Tax Map Key 3-4-015: 034

This responds to your request for comments received on August 23, 2017, regarding the proposed addition of the above listed parcel to the Honolulu Water Shed Forest Reserve, and authorize the immediate issuance of management right-of-entry permit to the Department of Forestry and Wildlife. We have reviewed the Project summary and have the following comments:

- A. Land Use Permits Division, Urban Design Branch:
1. The parcel is zoned P-1 Restricted Preservation District and is not located in the Special Management Area. Therefore, the Department of Planning and Permitting (DPP) has no jurisdiction over this parcel.
- B. Site Development Division, Subdivision Branch:
1. No objections to the proposed Department of Land and Natural Resources Board action. The DPP approved the subdivision of Lot 82-A-2 for State acquisition purposes under File No. 2013/SUB-173.

Should you have any questions, please contact William Ammons of our staff at 768-8025.

Very truly yours,

Kathy K. Sokugawa
FOR Kathy K. Sokugawa
Acting Director

Continued EXHIBIT E-2

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

2017/E 64-1717

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

August 22, 2017

Ref. Nos.: 170D-0635
Author: LD-KEM

MEMORANDUM

TO: **State Agencies:**
 ☒ DLNR-Historic Preservation ☒ **County Agencies:**
 ☒ DLNR-OCCL City and County of Honolulu –
 ☒ DLNR-DOFAW Department of Planning and
 ☒ DLNR- Engineering Permitting (DPP)
 ☒ Office of Hawaiian Affairs ☒ City and County of Honolulu –
 ☒ DHHL Board of Water Supply

FROM: Kim Miller, Supervising Land Agent

SUBJECT: Amend Prior Board Action of November 17, 2000, item D-16, *Request for Authorization to Acquire one (1) House lot, Together With Improvements Thereon, and Subsequent Set Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife, Waiomao, Palolo, Tax Map (1)-3-4-15:27 (after subdivision new TMK (1)-3-4-15:34).*

The purpose of the amendment is to (1) seek Board approval for Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) to conduct a public hearing in accordance with 183-11 to 13, HRS, on the Island of Oahu regarding the proposed addition of the parcel to the Honolulu Water Shed Forest Reserve, and (2) authorize the immediate issuance of management right-of entry permit to DOFAW pending the issuance of an Executive Order.

LOCATION: Waiomao, Palolo, Oahu, tax map key: (1)-3-4-15:34

APPLICANT: DLNR- DOFAW

RECEIVED
AUG 23 2017

Continued EXHIBIT E-2

August 22, 2017
Page 2

Re: Attachment- DRAFT
October 13, 2017 Board Action
Item D- (#pending)

Transmitted for your review and comment is a copy of the above-referenced request involving State lands. We would appreciate your comments on the proposed disposition. Please submit any comments by **September 19, 2017**. If no response is received by this date, we will assume your agency has no comments.

If you have any questions about this request, please contact Kim E. Miller at 587-0439, or by email at Kim.E.Miller@Hawaii.gov. Thank you.

- ☐ We have no objections.
- ☐ We have no comments.
- ☒ Comments are attached.

Signed: Anthony X. Chung

Print name: ANTHONY X. CHUNG

Date: 9/7/17

Continued EXHIBIT E-2

Board Action of November 17, 2000, item D-16, Request for Authorization to Acquire one (1) Houselot, Together With Improvements Thereon, and Subsequent Set Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife, Waiomao, Palolo, Tax Map (1)-3-4-15:27 27 (after subdivision new Tax Map Key (1)-3-4-15:34).

EXHIBIT F

D-16

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

November 17, 2000

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii 96813

OAHU

**REQUEST FOR AUTHORIZATION TO ACQUIRE ONE (1)
HOUSELOT, TOGETHER WITH IMPROVEMENTS THEREON,
AND SUBSEQUENT SET ASIDE TO THE DEPARTMENT OF
LAND AND NATURAL RESOURCES, DIVISION OF FORESTRY
AND WILDLIFE, WAIOMAO, PALOLO, TAX MAP KEY: 3-4-15:27**

LEGAL REFERENCE:

Sections 171-11 and 30, Hawaii Revised Statutes, as amended.

APPLICANT:

DEPARTMENT OF LAND AND NATURAL RESOURCES, DIVISION OF FORESTRY AND
WILDLIFE

FOR:

Portion of Palolo Valley Homesteads, same being Lot 82-A, Waiomao, Palolo Valley, Oahu, Tax Map
Key: 3-4-15:27 as shown on the attached map labeled Exhibit A.

AREA:

1.14 acres, more or less

PURPOSE:

Addition to the Honolulu Watershed Forest Reserve.

STATUS:

Occupied residential property.

ZONING:

State Land Use Commission: Conservation

City and County of Honolulu CZO: P-1, Restricted Preservation

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

Nov. 17, 2000. [Signature]

ITEM D-16

OWNERS:

Noel H. Pfeiffer; Noel Howard Pfeiffer Irrevocable Trust; Earl Pfeiffer as Trustee of the Noel Howard Pfeiffer Irrevocable Trust

CONSIDERATION:

To be determined by independent appraisal, subject to review and approval by the Chairperson.

1999-2000 C&C OF HONOLULU ASSESSED VALUATION:

Land:	\$ 250,400
Improvements:	\$ <u>129,900</u>
	\$ <u>380,300</u>

CHAPTER 343 – ENVIROMENTAL ASSESSMENT:

The acquisition of the subject property and its set aside is a transfer of the property's ownership and subsequent transfer of management jurisdiction and is exempt from the provisions of Chapter 343, Hawaii Revised Statutes, as amended, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to the Applicant's use of the subject land, the Applicant shall be responsible for compliance.

REMARKS:

The subject property adjoins a portion of the Waiomao Ridgeline at its base. This portion of the ridgeline was once part a quarrying facility operated by Honolulu Construction and Draying from 1905 to 1955. The subject site was one where rock was blasted from the hillside, collected and taken to a nearby rock crusher to be broken down. The use of explosives and heavy equipment over the years caused unstable conditions in the soil and rock of the hillside.

After quarrying operations ceased, houses were constructed below the main quarry face and below the contact zone where the quarry rock crusher was located, according to September 10, 1992 report by a staff geologist of the Water Commission. In his report the subject property and three (3) others were identified as most likely to be affected by falling rocks.

Those identified properties have experienced rocks falling from the ridgeline onto their residential properties over the years. The most recent incident of a rock falling from the hillside onto the subject property that resulted in substantial property damage occurred in May 1997 when a 3'X 5' boulder completely destroyed a portion of the residence on the property used as an office and storage area for construction equipment. Fortunately, nobody was in that area of the residence at that time.

In a July 6, 1992 opinion, the Department of the Attorney General indicated that "...a landowner can be liable to the adjoining property owner for harm resulting from an artificial condition on the land which the owner knew or should have known involved an unreasonable risk of harm. Thus, an uphill property owner can be held liable to the adjoining downhill property owner for damages caused by a landslide which was a result of an artificial condition on the uphill property owner's land. Therefore,

the uphill property owner owes a duty of reasonable care to the adjoining downhill property owner to maintain and inspect any artificial conditions. This duty is owed by the present uphill land owner even though the predecessor in title created the artificial condition".

Based on its inspection and review of the costs for the different options to resolve the dangerous situation caused by falling rocks for the properties identified as seriously threatened, engineers from the Department of Transportation, Highways Division, by letter dated August 24, 1992, recommended condemnation of the properties. Additionally, in a January 2, 1993 opinion, the Department of the Attorney General stated "...in the interests of eliminating the State's liability exposure in this matter, we advise that you immediately initiate steps to acquire the four individual lots by negotiation or, if necessary, condemnation".

Accordingly, at its April 8, 1994 meeting, under agenda item F-5, the Board approved staff's recommendation to acquire three (3) of the four (4) identified properties. The owners of the subject property at that time were leaning toward staying on their property, and therefore, were not included in the request.

Working through the Representative for the area to obtain appropriations to fund the acquisitions in the 1993 Legislature were not successful. However, the 1994 Legislature appropriated a total of \$1.255 million for the acquisition of the identified properties. This sum allowed the State to purchase three (3) of the four (4) properties at their appraised values. These acquisitions were completed in December 1994, February 1995 and March 1995, and subsequently, set aside on March 26, 1996 by Governor's Executive Order No. 3683 issued to the Division of Forestry and Wildlife as an addition to the Honolulu Watershed Forest Reserve.

At that time the owners of the subject property were still undecided about vacating. The May 1997 incident changed their minds and on January 25, 1999 they filed Civil No. 99-0321-01 against the State of Hawaii; John and Jane Does 1-10; Doe Corporations and Partnerships 1-10; and Doe Governmental Agencies 1-10 for injuries or damages to the Plaintiffs.

In this situation the owners of the subject property were allowed way too much time (over four (4) years) to ponder the issues in negotiating the sale of their property to the State. Once negotiations stalled this Division should have immediately begun a condemnation action in order to get the occupants of the property to vacate the premises, for their own safety, and to effectuate a quicker transfer to the State.

Besides Legislatively appropriated funds, Section 171-19, Hawaii Revised Statutes, as amended provides that the Land Department may use the special land and development fund created by that Section "for the maintenance of all lands under the control and management of the board, including repairs or improvements" without prior legislative authority. According to a February 25, 1994 opinion by the Department of the Attorney General "...there is support for the proposition that "maintenance" includes acquisition of property other than that already owned by government".

RECOMMENDATION: That the Board

- A. Find that, after considering the potential effects of the proposed acquisition, as provided by Chapter 343, Hawaii Revised Statutes, as amended, and Chapter 11 - 200, Hawaii

Administrative Rules, the proposed action will have no effect on the environment and is therefore exempt from the preparation of an environmental assessment.

- B. Authorize the acquisition of the subject property, together with improvements thereon, by negotiation or, if necessary, by condemnation, subject to all applicable terms and conditions cited above, which are by this reference incorporated herein, and subject further to the following:
1. Prior review and approval by the Department of the Attorney General as to form, exceptions and reservations, pursuant to Section 107-10, Hawaii Revised Statutes, as amended; and
 2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- C. Approve of and recommend to the Governor the set aside of the subject property to the Department of Land and Natural Resources, Division of Forestry and Wildlife as an addition to the Honolulu Watershed Forest Reserve, subject to the following:
1. 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 the set aside; and
 2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,

Gary Martin
GARY MARTIN
Land Agent

APPROVED FOR SUBMITTAL:

Timothy E. Johns
TIMOTHY E. JOHNS, Chairperson

