State of Hawai‘i  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawai‘i 96813  

November 9, 2017

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawai‘i  
Honolulu, Hawai‘i

Board Members:

SUBJECT: REQUEST APPROVAL TO SETTLE CLAIM BETWEEN DIVISION OF FORESTRY AND WILDLIFE TO REDUCE EASEMENT WHILE STILL PROVIDING ACCESS TO HONOLULU WATERSHED FOREST RESERVE, MANOA VALLEY, HONOLULU, OAHU - TMK No. (1) 2-9-072-012.

SUMMARY

The Division of Forestry and Wildlife (DOFAW) recommends that the Board of Land and Natural Resources (BLNR) approve the reduction for a portion of the easement in gross held by DLNR over the real property located at 3209 Beaumont Woods Place, Honolulu, Hawaii and more particularly identified as Tax Map Key No. (1) 2-9-072-012 (“Property”) in lieu of a court action by the fee owner of the Property, Sharon Jensen, to require the reduction of the easement.

At issue here is an easement in favor of DOFAW that encumbers the entirety of the Property, which prevents Ms. Jensen from developing and building on any part of the lot. Ms. Jensen has proposed a reduction in the width of a portion of the easement to allow Ms. Jensen to build a residence on the lot while also maintaining access for DOFAW to the Honolulu Watershed Forest Reserve.

BACKGROUND

In 1952, Frank Leicester sold Lot 148 to the Board of Commissioners of Agriculture and Forestry together with easements for road purposes over and across lots 145 and 146 (Attachment 1). The land was sold in fee simple for $3,608.10. Lot 148 is a part of the Honolulu Watershed Forest Reserve. At issue is the easement over lot 145 that was granted together with the forest reserve parcel. The easement provides access from Beaumont Woods Place (lot 146) to the forest reserve. The access has never been used by DOFAW because the terrain of Lot 145-A is very steep and unusable as roadway access. Alternate access to the forest reserve is available through the Wa‘ahila Ridge State Park.
In 1960 Lot 145 was subdivided into Lots 145-A and 145-B. The State retains access over both lots (Attachment 2). The State’s easement covers the entirety of Lot 145-A, which measures approximately 30 feet wide and 388 feet long. Ms. Sharon Jensen is the current owner of TMK No. (1) 2-9-072-012 that consists of Lots 145-A, 3-H-1 and 3-H-2. This is where the current issue with the easement arises. There is a covenant that prohibits Ms. Jensen from developing or building on Lots 3-H-1 and 3-H-2. Ms. Jensen hopes to reduce a portion of the easement to allow her to develop Lot 145-A.

DISCUSSION

As the easement stands currently, Ms. Jensen cannot develop on Lot 145-A as the easement is assigned to the entire lot, and because of the size of the lot itself, it does not leave any room to construct a home without encroaching upon the easement. Ms. Jensen believes that reducing the size of the easement to 5ft along the side of her to-be-constructed home, and keeping the easement at 30ft once it passes her future home, is achievable. The lot has never been used or accessed by vehicle (or otherwise) by the State or DOFAW. The easement would not support any development of a road from the street to the top of the lot because of the steep terrain of the land. The only access to Lot 148 is by footpath, which is why Ms. Jensen believes that reducing the easement will not cause too much strain on the easement itself or the State’s access.

Ms. Jensen states her plan in an email as follows:

I would like to build my home on Lot 145-A. To enable me to build a home on Lot 145-A, I have attached the proposed form Relocation of Easement to Lots 3-H-1 and 3-H-2. The access rights to be granted permit the State to enter upon and cross these lots in connection with (i) the State’s forest management activities on Lot 148, and (ii) any emergency on, or in the vicinity of, Lot 148. These access rights are consistent with sound management practice for Lot 148 and appropriate under the circumstances, particularly because Lot 148 is watershed/reserve property and the terrain in this area is very steep. It is not possible to build on Lot 3-H-1 or 3-H-2 as they are to be left for private park purposes.

The Division would like to keep the access easement for emergencies and as potential access for other management actions. DOFAW finds the proposal to reduce the width of a portion of the easement to be acceptable. Attached is a map and site plan showing the proposed area of reduction and the proposed access way alongside the residence (Attachments 3 and 4).

Ms. Jensen’s attorney submitted a White Paper discussing the case law regarding the reduction or “clarification” of the easement (“White Paper”). The White Paper discusses that a court may define an otherwise undefined easement so that the servient estate holder can “make reasonable and beneficial use of the servient estate.”1 The White Paper states that it is well settled that “where an easement is not definitely located in a grant or reservation, and the dominant and servient owners fail to agree, a court may locate it in the exercise of its equity powers.”2 Based

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on case law, Ms. Jensen may seek a declaratory judgment to define the location and scope of the State’s easement that is based on the rights and reasonable interests of both parties.

The Board has the authority to carry out such a reduction or clarification of an easement under Hawaii Revised Statutes §171-3(a) which provides: The department shall manage, administer, and exercise control over public lands, the water resources, ocean waters, navigable streams, coastal areas (excluding commercial harbor areas), and minerals and all other interests therein and exercise such powers of disposition thereof as may be authorized by law.”

In settlement of Ms. Jensen’s claim for the reduction of the State’s easement, in lieu of a declaratory action, Ms. Jensen has offered to pay $25,000 to the Forest Stewardship Special Fund for the change in the easement and incurred costs. Ms. Jensen would also be responsible to build and maintain the necessary footpath (by stairs or other, to be determined) to maintain DOFAW’s access to the forest reserve on Lot 148.

RECOMMENDATIONS

That the Board:

1. Approve a settlement with Ms. Jensen subject to the following terms:
   a. Reduce the easement in part to 5 feet wide from 30 feet wide to allow Ms. Jensen to build her home;
   b. Specify that the easement will continue to be at 30 feet wide just past where Ms. Jensen’s home ends;
   c. Requiring the construction of a footpath with plans approved by DOFAW; and
   d. Assess Forest Stewardship processing fee of $25,000 to be deposited into the Forest Stewardship fund.
Respectfully Submitted,

DAVID G. SMITH, Administrator

APPROVED FOR SUBMITTAL:

SUZANNE D. CASE, Chairperson
BOARD OF LAND AND NATURAL RESOURCES

ATTACHMENTS:

1. Original 1952 Deed
2. LC App 211, Map 139
3. Map showing reduction in easement
4. Site plan
1952. Be it known that the Record of this document has been deposited with the HEIR-IN-THE-REMEMBRANCE OF KONSAKU and the TERRITORY OF the State of Hawaii with Land Court Application number 4844, and the LAND COURT OF THE TERRITORY OF HAWAII (by and through the Board of Commissioners of Agriculture and Forestry) has hereinafter called the "Grantee", TO HAVE AND TO HOLD the same together with all rights, easements, privileges and appurtenances thereunto belonging HEREIN, certain land hereinafter more particularly described, owned by the Grantor, has been officially determined by the Board of Commissioners of Agriculture and Forestry to be a watershed area of the City and County of Honolulu, and comprises in fee simple, and that the same is unaltered, the Grantee is willing herewith to transfer the said land, free and clear, absolute, without restriction, to the said Grantee, and does hereby convey the said premises from the said Grantor, pursuant to the authority contained in Act 274 of Session Laws of Hawaii 1949, lawful devise and descents of all persons, hereinbefore, the Grantor, for and in consideration of the sum of $1,000.00, does hereby, by himself and by his heirs, devise and convey to the Grantee, his successors, and assigns, the following described premises, to wit: The said premises, together with all right, title, and interest in and to said granted premises whether acquired by him by way of dower, community property or otherwise.
Lot 144, area 16.940 acres, together with an easement for road purposes in common with others entitled whereas over and across Lot 145, area 0.307 acres, and Lot 146, area 0.300 acres, each of said lots being a portion of Section 28 of the "Woodlawn Plant," as shown on Map 85, on file in the Office of the Register of Deeds within the County Appraiser's Office of Woodlawn Dairy and Stock Company, and a portion of the land described in Transfer Certificate of Title No. 41,329 issued to the Grantee, SUBJECT, HOWEVER, to encumbrances now existing, as stated on said Transfer Certificate of Title No. 41,329 to which reference is hereby made.

TO HAVE AND TO HOLD the same together with all rights, easements, privileges and appurtenances thereto belonging, save and except all taxes, its successors and assigns.

AND said Grantor for himself, his heirs, executors and administrators does hereby covenant that he is lawfully seized of the premises in fee simple, and that the same is unencumbered except as aforesaid, that he has good right to grant and sell the same as aforesaid, and that he will, and his heirs, executors and administrators shall, warrant and defend the same unto the Grantee, its successors and assigns forever against all lawful claims and demands of any kind or character.

Marie James, wife of the Grantor, for the consideration paid to her husband as aforesaid, does hereby release and forever quitclaim unto said Grantee all of her right, title and interest in and to said granted premises whether acquired by her by way of dower, community property or otherwise.
IN WITNESS WHEREOF the Grantor has executed these presents as of the day and year first above written.

Date of this document listed on line 1 page 1 of this instrument has been changed to "30th day of September 1952" before execution and acknowledgment hereof.

Frank Leicester James
Notary Public

Marie James

TERRITORY OF HAWAII
CITY AND COUNTY OF HONOLULU

On this 30th day of October 1952, before me personally appeared FRANK LEICESTER JAMES, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Louise D. Cockett
Notary Public, First Judicial Circuit, Territory of Hawaii
My commission expires: January 22, 1953

TERRITORY OF HAWAII
COUNTY OF MAUI

On this 30th day of September, 1952, before me personally appeared MARIE JAMES to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

Notary Public, Second Circuit, Territory of Hawaii
My commission expires: June 30 1953

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