

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."<sup>1</sup> 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."<sup>2</sup> Based

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<sup>1</sup> Goo Leong Shee v. Young Hung, 36 Haw. 132, 149-50 (1942).

<sup>2</sup> Adair v. Kona Corp., 51 Haw. 104, 114, 452 P.2d 449, 455 (1969).

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.

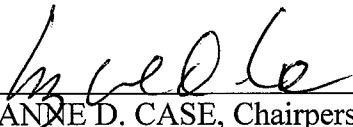
Respectfully Submitted,



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DAVID G. SMITH, Administrator

APPROVED FOR SUBMITTAL:



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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

THIS INSTRUMENT made this 30th day of August 1952 by and between FRANK LEICHTER, JAMES (whose wife is Margaret) and others on Map 41 as filed in the Office of the Registrar of Kula, County of Maui, Territory of Hawaii, hereinafter called the Grantor, and the TERRITORY OF HAWAII (acting by and through its Board of Commissioners of Agriculture and Forestry), hereinafter called the Grantee,

*C. M. ...*  
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TO HAVE AND TO HOLD the same together with all rights, easements, privileges and appurtenances thereto

**WITNESSETH:**

belonging WHEREAS, certain lands 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 is in fee simple, and that the same is unencumbered WHEREAS, the Grantor is willing to sell said land in fee simple absolute to the Grantee, and the will, Grantee is desirous of purchasing the same from the Grantor pursuant to the authority contained in Act 27 and Session Laws of Hawaii 1949, lawful claims and demands of all persons NOW THEREFORE, the Grantor, for and in consideration of the sum of \$1,668.10, does hereby bargain, sell, grant and convey to the Grantee, his successors and assigns, the following described premises to 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.

1935 before  
hereof.

Lot 144, area 16.091 acres, together with an easement for road purposes in common with others entitled thereto over and across Lot 145, area 0.107 acres, and Lot 146, area 0.560 acres, each of said lots being a portion of Section "B" of the "Woodlawn Tract" as shown on Map 85 on file in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 211 of Woodlawn Dairy and Stock Company, and a portion of the land described in Transfer Certificate of Title No. 41,329 issued to the Grantor; SUBJECT HOWEVER, to encumbrances Nos. 1, 2 and 3 as noted on said Transfer Certificate of Title No. 41,329 to which reference is hereby made.

WARRANT OF HAWAII

TO HAVE AND TO HOLD the same together with all rights, easements, privileges and appurtenances thereto

belonging unto said Grantor, its successors and assigns, the person described in and who executes the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

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 the lawful claims and demands of

all persons hereafter. AND Marie James, wife of the Grantor, for the consideration paid to her husband as aforesaid, does hereby remise, 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 acknowledgement hereof.

*[Signature]*  
Notary Public

*Frank Leicester James*  
Frank Leicester James

*Marie James*  
Marie James

TERRITORY OF HAWAII )  
CITY AND COUNTY OF HONOLULU ) SS.

On this 1st 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 W. Cockett*  
Notary Public, First Judicial Circuit, Territory of Hawaii

My commission expires: January 22, 1953

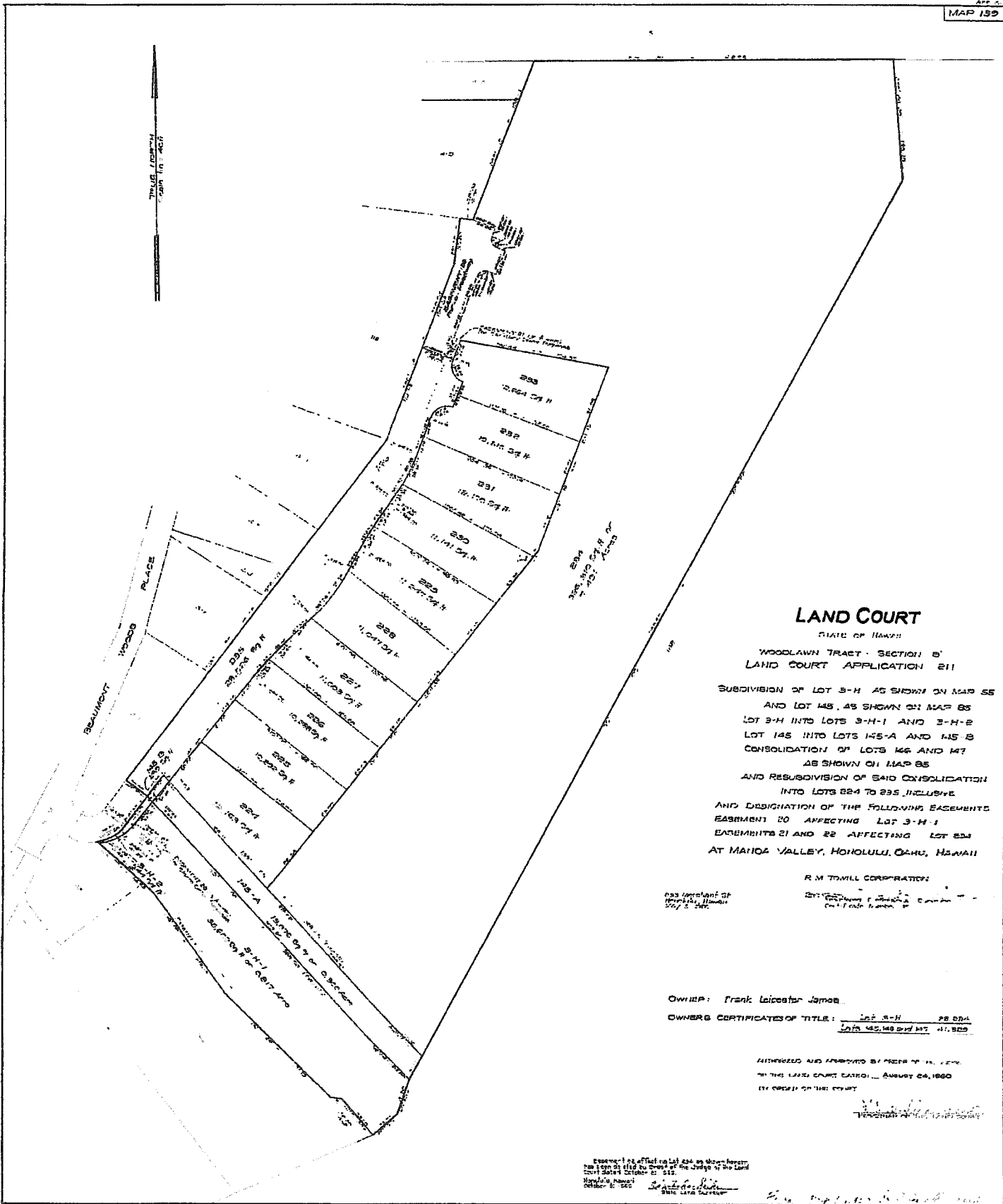
TERRITORY OF HAWAII )  
COUNTY OF MAUI ) SS.

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.

*[Signature]*  
Notary Public, Second Circuit, Territory of Hawaii

My commission expires: June 30 1953

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### LAND COURT

STATE OF HAWAII

WOODLAWN TRACT - SECTION 5  
LAND COURT APPLICATION 211

SUBDIVISION OF LOT 3-H AS SHOWN ON MAP 55  
AND LOT 46, AS SHOWN ON MAP 83  
LOT 3-H INTO LOTS 3-H-1 AND 3-H-2  
LOT 46 INTO LOTS 46-A AND 46-B  
CONSOLIDATION OF LOTS 46 AND 47  
AS SHOWN ON MAP 85  
AND RESUBDIVISION OF SAID CONSOLIDATION  
INTO LOTS 224 TO 235, INCLUSIVE  
AND DESIGNATION OF THE FOLLOWING EASEMENTS  
EASEMENT 20 AFFECTING LOT 3-H-1  
EASEMENTS 21 AND 22 AFFECTING LOT 224  
AT MAHOA VALLEY, HONOLULU, OAHU, HAWAII

R. M. TOWILL CORPORATION:

has represented that  
Woodlawn, Honolulu  
207 1/2 2nd

has represented that  
the following is a true and correct  
copy of the original

OWNER: Frank Leicester James

OWNER'S CERTIFICATE OF TITLE: Lot 3-H 28 224  
Lots 46, 46 and 47 41, 225

APPROVED AND FORWARDED BY ORDER OF THE COURT  
IN THE LAND COURT CASE NO. 1 AUGUST 26, 1960  
BY ORDER OF THE COURT

Engineering affecting Lot 224 as shown herein  
was filed on file by Order of the Judge of the Land  
Court dated October 2, 1955.  
Honolulu, Hawaii  
October 2, 1960  
B. H. ...  
B. H. ...

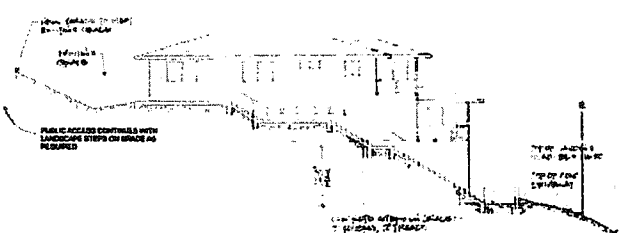




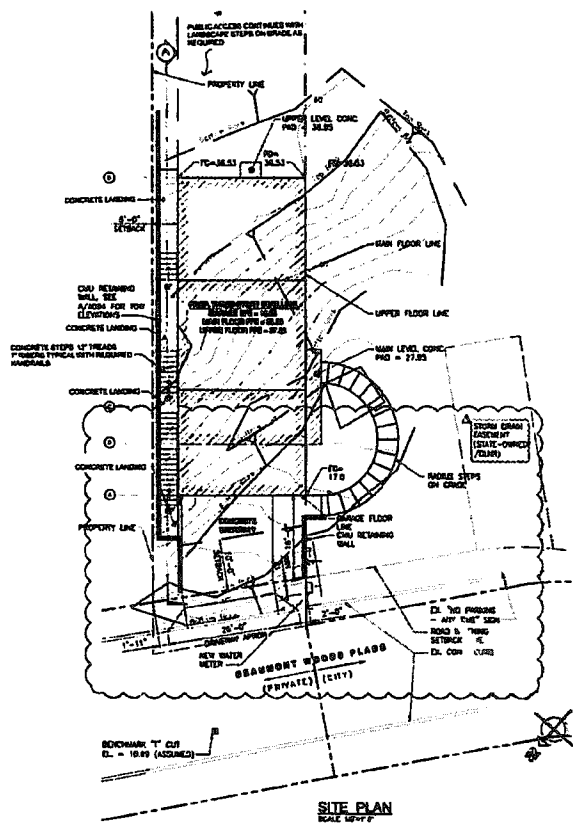
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**GENERAL NOTES**  
 THIS DOCUMENT IS INTENDED TO ILLUSTRATE A PUBLIC ACCESS RAMPMENT AS REQUIRED BY THE STATE OF HAWAII THAT ACCESS IS SHOWN TO BE PROVIDED HEREIN ON THE LEFT SIDE/FRONT SIDE OF THE PROPERTY BY AGRICULTURE CONCRETE STEPS ON GRADE THAT ARE PER CODE AND IS A PROVISION TO THE ORIGINAL PLANS BY "STRUCTURAL MASON" THAT HAVE BEEN PREVIOUSLY APPROVED FOR PERMIT AND CONSTRUCTION BY THE OFF COUNTY AND CITY OF HONOLULU.

ADDITIONAL ACCESS THAT MAY BE REQUIRED BEYOND THE GENERAL BUILDING AREA PROPOSED UP HERE IS FOR THE CONCRETE DECK. THIS IS A PROVISION AND WILL BE DECLARED IN ANY PERMITS TO THE ORIGINAL PERMIT SET BY "STRUCTURAL MASON" PREVIOUSLY APPROVED BY OFF COUNTY AND CITY OF HONOLULU FOR ANY FUTURE REQUIRED APPROVALS.



**(A) SECTION LEFT ELEVATION**  
 SCALE 1/8" = 1'-0"



**SITE PLAN**  
 SCALE 1/8" = 1'-0"

**JEFF LAND DESIGNS**  
 PLANNING, DESIGN & DRAFTING  
 1000 KALANIANA'OLEHI DRIVE, SUITE 100  
 HONOLULU, HAWAII 96813  
 TEL: 808-943-1111  
 FAX: 808-943-1112

PROPOSED ACCESS IS FOR THE STATE OF HAWAII TO THE RESIDENCE OF  
**SHARON JENSEN**  
 2222 BEAUMONT WOODS PLACE HONOLULU, HI 96822  
 T.M. & J. JENSEN

NO.	DATE	DESCRIPTION
1	10/15/11	ISSUED FOR PERMIT
2	11/15/11	ISSUED FOR PERMIT
3	12/15/11	ISSUED FOR PERMIT
4	01/15/12	ISSUED FOR PERMIT
5	02/15/12	ISSUED FOR PERMIT
6	03/15/12	ISSUED FOR PERMIT
7	04/15/12	ISSUED FOR PERMIT
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