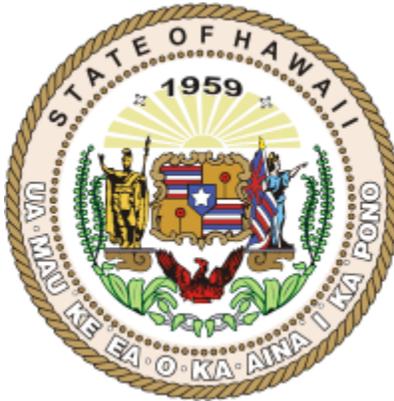


Report to the Twenty-Sixth Legislature
Regular Session of 2012

PROGRESS REPORT REGARDING THE FINAL DETERMINATION OF
OWNERSHIP AND JURISDICTION OF AN UNIMPROVED SECTION OF
KAIMAKANI STREET



Prepared by

THE STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

In response to House Concurrent Resolution No. 78, Twenty-Sixth Legislature,

2011 Regular Session

Honolulu, Hawaii

November 2011

PROGRESS REPORT REGARDING THE FINAL DETERMINATION OF OWNERSHIP AND JURISDICTION OF AN UNIMPROVED SECTION OF KAIMAKANI STREET

BACKGROUND

This report is prepared pursuant to House Concurrent Resolution No. 78 (HCR No. 78), Twenty-Sixth Legislature, State of Hawaii 2011, which urges the Department of Land and Natural Resources (DLNR) and the City and County of Honolulu (City) to agree to a final determination regarding the ownership and jurisdiction of an unimproved section of Kaimakani Street; consider the impact of Act 288, Session Laws of Hawaii 1993, and Resolution No. 93-287 of the City and County of Honolulu; reach an agreement on the ongoing and continuing maintenance of Kaimakani Street, regardless of ownership; and, report their findings and recommendations to the Legislature no later than thirty days prior to the convening of the Regular Session of 2012.

HCR No. 78, states in pertinent part:

"BE IT RESOLVED by the House of Representatives of the Twenty-sixth Legislature of the State of Hawaii, Regular Session of 2011, the Senate concurring, that the Department of Land and Natural Resources and the City and County of Honolulu are urged to agree to a final determination regarding the ownership and jurisdiction of an unimproved section of Kaimakani Street; and

BE IT FURTHER RESOLVED that Department of Land and Natural Resources and the City and County of Honolulu are urged to take into consideration the impact of:

- (1) Act 288, Session Laws of Hawaii 1993; and
- (2) Resolution No. 93-287 of the City and County of Honolulu; and

BE IT FURTHER RESOLVED that the Department of Land and Natural Resources and the City and County of Honolulu are urged to come to an understanding or agreement, regardless of any final determination of ownership and jurisdiction, regarding ongoing and continuing maintenance of Kaimakani Street; and

BE IT FURTHER RESOLVED that the Department of Land and Natural Resources is requested to report findings and recommendations regarding ownership of, jurisdiction over, and ongoing and continuing maintenance of Kaimakani Street to the Legislature no later than thirty days prior to the convening of the Regular Session of 2012 . . ."

SUMMARY OF STATUS

As background, as noted directly within the resolution, research conducted by the State Abstractor determined that the management jurisdiction of Kaimakani Street is the responsibility

of the City and County of Honolulu, pursuant to Chapter 264, Hawaii Revised Statutes. A copy of the State Abstractor's report including maps is included as Exhibit A.

Shortly after the adoption of HCR No. 78, a legislative town meeting in Aiea was held and the subject matter of the resolution was to be placed on the Agenda. The offices of State House Representative Blake Oshiro asked for the attendance of Chairperson William Aila, Jr. but unfortunately the Chairperson was not able to attend due to other conflicting appointments and departmental priorities. The Chairperson however but did advise the Representative's Office of DLNR's comments about the resolution. A copy of the Chairperson's letter dated July 7, 2011 is attached hereto as Exhibit B.

The Chairperson noted that DLNR and the City have met to resolve this matter on several previous occasions, however, the parties could only "agree to disagree." The parties seemed very firm on their positions as to which agency ought to be responsible for maintaining (or cutting) the grassy portion of Kamakani Street. The Chairperson informed the Representative's Office that DLNR has been maintaining the area on a temporary basis to address the health, safety and fire concerns of the neighborhood residents; however, DLNR has been doing so, without admitting any liability or responsibility, nor committing to continue such maintenance in the future. The Chairperson noted that DLNR cannot commit to continuing such maintenance efforts into the near or long term future at this time due to current fiscal constraints. DLNR's general fund appropriations and special fund revenues have dropped significantly over the last several years, and DLNR lost more than 10% of its positions over the past three years. The Chairperson noted it is becoming increasingly difficult for DLNR to voluntarily assume what it has always believed to be the City's management responsibility over this area. Notwithstanding the aforesaid, the periodic cutting of the grass that sits atop Kaimakani Street remains on the DLNR's current maintenance list.

The Chairperson had suggested that the area Representative may want to consider volunteering to act as a facilitator of a meeting where the Representative would invite the City and DLNR (DLNR committed to attend such a meeting if the Representative was interested) to sit down again and discuss how this matter may be resolved, specifically as to the maintenance issue or on-going cutting of the grass and brush on Kamakani Street.¹

¹Since the economic hardships being experienced by DLNR is likely having a similar impact on the City as well, some possible alternative courses of action is whether the City or the State would be willing to quitclaim the street to anyone interested in purchasing the area of Kamakani street in question, or revisiting the idea of a friendly declaratory action before a Court to decide the issue once and for all—the City was not interested in the friendly declaratory action idea when it was discussed in the past.

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

March 24, 2005

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
DEPUTY DIRECTOR - LAND

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AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

10081(O)

MEMORANDUM

TO: Warren F. Wegesend, Jr., Administrator

FROM: E. Mahoe Collins, Abstractor

SUBJECT: Kaimakani Street Ownership

We have been requested to determine the ownership to the subject Kaimakani Street, as shown on Tax Maps (1) 9-9-68, 05, 28 and 29 attached as Exhibit A. Being portions of the Government (Crown) Land of Aiea and a portion of Land Patent Grant No. 8945 to B. P. Bishop Estate, situated within said Land of Aiea, lying along the Aiea-Halawa boundary, District of Ewa, Island of Oahu.

We find that pursuant to Chapter 264 of the Hawaii Revised Statutes and in compliance with Council Resolution No. 93-287, adopted September 29, 1993, the ownership and jurisdiction of the subject Kaimakani Street was transferred to and accepted by the City and County of Honolulu.

That the ownership of the City and County of Honolulu in and to said Kaimakani Street, is subject to the following:

The reservation of an easement with rights of access thereto, on, over, under and across a right of way in favor of the United States of America, as to portions of Kaimakani Street shown colored green on TMK: (1) 9-9-68 and 05 ONLY.

See attached Memorandum as to the ownership of Kaimakani Street.

If you have any questions please feel free to call me at 587-0458.

Enclosure

EXHIBIT "A"

Memorandum As to the Ownership of Kaimakani Street

An examination of the records and files located in the State Survey Office, the Bureau of Conveyances and the Land Division of the Department of Land and Natural Resources reveal the following as to the ownership of the subject Kaimakani Street:

The subject Kaimakani Street as shown on Tax Maps (1) 9-9-68, 05, 28 and 29 attached as Exhibit A, being a portion of the Government (Crown) Land of Aiea and a portion of Land Patent Grant No. 8945 to B. P. Bishop Estate, lying situate within the said Government (Crown) Land of Aiea along the Aiea-Halawa boundary, District of Ewa, Island of Oahu.

As to Portions of the Government (Crown) Land of Aiea

Said portion of Kaimakani Street formerly designated as the "Aiea-Halawa Boundary Road" situate lying along the Aiea-Halawa boundary between Ulune Street and Halawa Heights Road, is colored Green on the maps attached as Exhibit A.

Pursuant to the 1892 Highway Act, said Aiea-Halawa Boundary Road was declared a "public highway" owned by the Hawaiian Government in fee simple.

Under the "Organic Act" of April 30, 1900, the ownership to the Aiea-Halawa boundary road, and all public property of the Hawaiian Government, is ceded and transferred to the United States, providing that "**unless otherwise provided for by Congress, or taken for the uses and purposes of the United States**", it remain in the possession, use and control of the government of the Territory of Hawaii.

By Presidential Executive Order No. 2566, dated March 28, 1917 portions of the Aiea-Halawa Boundary Road as shown on TMK: (1) 9-9-68, are set-aside for the Aiea Military Reservation. The lands under PEO 2566, including portions of the Aiea-Halawa Boundary Road as shown on TMK: (1) 9-9-05 are later transferred to the Navy Department by letter dated December 1924.

Excluded from PEO 2566 as a "right of way granted to the Territory of Hawaii by right of continued occupancy", the ownership to portions of the Aiea-Halawa Boundary Road as shown on TMK: (1) 9-9-28 and 29, are transferred under Section 5(b) of the Admission Act of March 18, 1959 from the United States to the State of Hawaii.

In accordance with Section 5(e) of said Admission Act, the United States conveyed all of its right, title and interest in and to the Aiea-Halawa Boundary Road as shown on TMK: (1) 9-9-05 and 68 to the State of Hawaii by the following Quitclaim Deeds.

By Quitclaim Deed dated September 27, 1962 (LOD S-19998) portions of the Aiea-Halawa Boundary Road as shown on TMK: (1) 9-9-05 and described as "a portion of Tract 1 of former Aiea Military Reservation as described in Presidential Executive Order 2566", are conveyed to the State of Hawaii, subject to the following:

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“RESERVING there from, to the United States of America, its successors and assigns an easement for construction, operation, maintenance and repair of utilities, storm drains, ditches, and a roadway, with rights of access thereto, on, over, under and across a right-of-way running along the Southeast boundary of the aforesaid land”.

By Executive Order No. 2121 dated November 21, 1963, the land as conveyed to the State in LOD S-19998, was set aside for school purposes and placed under the control and management of the Department of Education, subject to the easement reserved in favor of the United States. Said easement affecting that portion of Kaimakani Street as shown on TMK: (1) 9-9-05.

By Quitclaim Deed dated March 5, 1963 (LOD No. S-19999), portions of the Aiea-Halawa Boundary Road as shown on TMK: (1) 9-9-68 and described as a “connecting” right-of-way between Tracts 1 and 2 in Presidential Executive Order No. 2566”, are conveyed to the State of Hawaii, subject to the following:

“RESERVING, HOWEVER, to the party of the first part and its assigns, an easement together with necessary rights of access for the operation, repair and maintenance of an underground hut; storm drains; water, sewer, electrical and telephone lines and appurtenances; over, under and across the lands hereinabove described.” Said easement affecting that portion of Kaimakani Street as shown on TMK: (1) 9-9-68.

The ownership to said portion of Kaimakani Street formerly designated “Aiea-Halawa Boundary Road”, as shown on Exhibit A, is transferred to the City and County of Honolulu through operation of laws, pursuant to Chapter 264 of the Hawaii Revised Statutes.

As to Portion of Land Patent Grant No. 8945

Said portion of Kaimakani Street being a portion of Land Patent Grant No. 8945 to B.P. Bishop, is colored Red on TMK: (1) 9-9-68.

By Exchange Deed dated April 5, 1937 (LOD 5595) by and between the Trustees under the Will and of the Estate of Bernice Pauahi Bishop, deceased and the Territory of Hawaii, said portion of Land Patent Grant 8945 and other lands, were conveyed to the Territory of Hawaii.

The ownership of the Territory of Hawaii in and to said portion of Kaimakani Street as shown on TMK: (1) 9-9-68, in accordance with Section 5(a) of the Admission Act of March 18, 1959, succeeded to the State of Hawaii.

Pursuant to Chapter 264 of the Hawaii Revised Statutes and in accordance with City Council Resolution No. 93-287 adopted September 29, 1993, the title and ownership to said Kaimakani Street is transferred to and accepted by the City and County of Honolulu.

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We find that the City and County of Honolulu owns the subject Kaimakani Street as shown on Tax Maps (1) 9-9-05, 68, 28 and 29 attached as Exhibit A, subject to the reservation of an easement in favor of the United States of America, affecting portions of said Kaimakani Street shown colored in green on TMK: (1) 9-9-68 and 05, ONLY.

Day No. 189L
 Day 438
 Service: For Area Office
 Survey Dept.

APR 1905

117th Street
 Hillside, Ill.

Filed for Record in the
 Office of the
 City Clerk
 9 9 05
 CONTAINING PARCELS
 SECTION 9000



"Kamakani St."

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

July 7, 2011

WILLIAM J. AILA, JR.
CHAIRMAN
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT
GUY H. KAULUKUNIH
DIRECTOR
WILLIAM M. TAM
DEPUTY DIRECTOR
AQUATIC RESOURCES
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CONSERVATION AND RESOURCES PROJECT MANAGEMENT
HONOHONOHU
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHUAWEI ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Benjamin Park
Office of Representative Blake K. Oshiro
House Majority Leader
State Capitol, Room 439
415 South Beretania Street
Honolulu, Hawaii 96813

Re: Aiea/Pearl City Legislative Town Meeting – July 21, 2011

Dear Mr. Park:

Thank you for your invitation by electronic mail dated June 23, 2011 requesting my attendance at the upcoming Aiea/Pearl City Legislative Town Meeting on July 21, 2011. Unfortunately, I will not be able to attend due to other conflicting departmental priorities. I understand that the topic of discussion will be House Concurrent Resolution No. 78 (HCR 78), which was adopted by both the Senate and the House of Representatives on April 28, 2011. Among other things, HCR 78 urges both the Department of Land and Natural Resources ("Department") and the City and County of Honolulu ("City") to agree to a final determination regarding the ownership and jurisdiction of an unimproved section of Kaimakani Street, as well as to reach an agreement on the ongoing and continuing maintenance of those sections of the street, regardless of ownership.

The Department and the City have met to resolve this matter on several previous occasions, however, the parties could only "agree to disagree." As you may be aware, the Department has been maintaining the area on a temporary basis to address the health, safety and fire concerns of the neighborhood residents. We have been doing so, without admitting any liability or responsibility, nor committing to continue such maintenance in the future. However, due to the current fiscal constraints, the Department cannot commit to continuing such maintenance efforts into the mid- or long term future at this time. The Department continues to face severe budget cutbacks. The Department's general fund appropriations and special fund revenues have dropped significantly over the last several years, and the Department lost more than 10% of its positions over the past three years. As a result, it is becoming increasingly difficult for the Department to voluntarily assume what the Department has always believed to be the City's management responsibility over this area. Notwithstanding the aforesaid, the periodic cutting of the grass that sits atop Kamakani Street remains on our current maintenance list.

EXHIBIT "B"

Benjamin Park
Page 2 of 2
July 7, 2011

Despite these concerns, the Department is willing to sit down again with the City in the future to see how this matter may be resolved with the City, however, as the author of HCR 78, we believe your participation and perhaps lead in these meetings would be helpful in arriving at possible solutions that the City and the Department may find acceptable. Please let us know whether your office would kindly coordinate such a meeting or whether you want our Department to do so.

You may contact Mr. Russell Tsuji at (808) 587-0419 or Morris Atta (808) 587-0456 if you have any questions regarding this matter.

Very Truly Yours,



William J. Aila, Jr.
CHAIRPERSON

WJA

cc: Land Division
ODLO