

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

June 8, 2018

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

PSF: 11OD-141

OAHU

Acquisition of Private Lands and Set Aside to Division of Forestry and Wildlife for Natural Area Reserve Purposes, Ka'ena, Waialua, O'ahu, Tax Map Key: (1) 6-9-002:012.

APPLICANT AGENCY:

DLNR Division of Forestry and Wildlife (DOFAW).

PRIVATE LANDOWNER:

Gordon K.K. Tom and Judy P. Tom, as Trustees under that unrecorded Gordon K. K. Tom Revocable Living Trust dated April 22, 1994, as to an undivided 1/3 interest; Clayton K.O. Tom and Patricia C. Tom, as Trustees under that unrecorded Clayton K. O. Tom Revocable Living Trust dated May 30, 1995, as to an undivided 1/3 interest; and Randall K.M. Tom, husband of Sharon M. Tom as to an undivided 1/3 interest.

LEGAL REFERENCE:

Sections 107-10, 171-11, 171-30, and 195-4 Hawaii Revised Statutes, as amended.

LOCATION:

Privately-owned lands situated at Ka'ena, Waialua, O'ahu identified by Tax Map Key: (1) 6-9-002:012, as shown on the attached map labeled Exhibit A.

AREA:

0.75 acres, more or less.

ZONING:

State Land Use District:
City and County of Honolulu:

Conservation
Preservation

CURRENT USE:

Vacant and unencumbered.

CONSIDERATION:

None. Private landowners are donating the subject lands at no cost to the State.

PURPOSE:

Natural Area Reserve purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

No State or County funds are being used for this acquisition. However, to the extent they are, pursuant to Section 343-5(a)(1), HRS, an environmental assessment (EA) is not required where State or County funds are being used for the acquisition of unimproved real property. As the subject lands are unimproved, an EA is not required. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

None (please see Remarks section for discussion)

REMARKS:

DOFAW seeks approval to acquire a 0.75-acre parcel that is proposed to be added to the Ka'ena Point Natural Area Reserve (NAR). It is approximately 2 miles west from the end the paved road in Mokule'ia at the end of the State Highway 930 (Farrington Highway). The parcel is approximately 1,450 feet east of the boulder barricade that prevents vehicles from entering into the Ka'ena Point NAR. Designation of this area as a NAR is meant to protect and help restore a larger wilderness area. The area is currently private land. This parcel will need to be acquired before designating it an extension of the Ka'ena Point NAR.

In addition to being part of the culturally and historically significant landscape of Ka'ena, this parcel contains coves and tidal areas that may have been canoe landing and salt collecting sites. A small portion of this area also contains sand dunes and sandy soils in which subsurface cultural deposits and burials are a high probability. This parcel may also have been part of several small fishing villages are thought to have existed in the area during the 1860s and 70s. The parcel and vicinity also contain part of the original train track of the former O'ahu Railway and Land Company (OR&L) railway.

The inclusion of this area into the NARS is meant to expand protection to a coastal ecosystem. This type of ecosystem merits conservation and restoration effort because

coastal areas have been severely modified by invasive species and human activity and development in Hawai'i. Management and protection under NARS has resulted in widespread recovery of the coastal ecosystem nearby, which could occur in this parcel and surrounding areas if similarly protected.

The parcel contains shoreward basalt benches with numerous tidepools and a diverse intertidal flora and fauna, rare coastal sand dune communities. Offshore from this parcel is habitat for reef and pelagic fish, sea turtles, seabirds, and cetaceans. The parcel also contains a beach which is used as a resting area for the endangered Hawaiian monk seal or 'Īlio holoikaua (*Monachus schauinslandi*), and likely the honu or green sea turtle (*Chelonia mydas*). The rest of the parcel is predominantly fossilized coral reefs. The fossilized coral reef area grades into coastal sand dunes which contain the naupaka (*Scaevola sericea*) community. Reducing and/or eliminating invasive species and illegal human activities are the highest management priorities for this parcel. The Natural Area Reserves System Commission recommended this area to be added to the Ka'ena Point Natural Area Reserve on June 20, 2011.

The original intent was to compensate the landowner for the acquisition, to be funded by the Legacy Land Conservation Program. In conducting due diligence for this acquisition, the Department obtained a title report, appraisal and Phase I Environmental Site Assessment (ESA). Upon review of the title report, it was discovered that there was a significant cloud on the title of the property. Specifically the title report uncovered an undocumented transfer of the fee interest in the property purportedly made by the initial Royal Patent Grant recipient. Given the significant passage of time since the unrecorded conveyance, resolving the title issues would be prohibitive to both the landowner and the Department due to the significant costs incurred. At that point, the acquisition was suspended as the Department could not expend public funds to purchase the property subject to the current condition of the property.

The landowners then approached DOFAW about acquiring the property under the condition that all proceeds from the purchase be dedicated solely to the payment of outstanding property taxes incurred on the property, with no money going to the landowner. The landowners were informed that the title issues prohibited the State from providing any monetary compensation for the property even under those circumstances. In support of the preservation of the property, the North Shore Community Land Trust (NCSLT) has offered to pay the outstanding property taxes in full, allowing the State to acquire the property at no cost. Prior to closing, NCSLT will tender payment and provide written confirmation of payment of the outstanding taxes.

Given the title issues, the State will acquire the property through a quitclaim deed, a draft form of which is attached as Exhibit B. The quitclaim deed was drafted by the Attorney General. Although this is a deviation from the standard warranty deed required by the State, staff recommends that it is appropriate in this instance. Although the State will acquire the property without resolving the title issues, it will be at no cost. Additionally, as the property is located within the Ka'ena Point NAR, with the intent to integrate into the existing NAR, management of this property will not incur significant additional costs

and resources from DOFAW. Given the foregoing, acquiring the property under these circumstances will not likely pose a significant risk to the Department/DOFAW.

The Board is requested to waive all further due diligence requirements. A Phase I ESA conducted in 2015 did not find evidence of potential contamination and a site visit of the property on January 22, 2018 conducted by DOFAW, LD, Attorney General and NSCLT representatives did not raise any additional concerns. Therefore, the Department would prefer to avoid incurring any further additional costs for this acquisition. The only outstanding requirement is providing the Department written confirmation from the City and County of Honolulu Real Property Tax Office of payment of outstanding taxes in full, prior to closing. Finally in addition to the foregoing, the Board is requested to approve a management right of entry to DOFAW to allow immediate management of the property upon closing, to be in effect until the completion of the set aside, and a public hearing required pursuant to HRS Section 195-4 before setting aside land into the Natural Area Reserves System.

RECOMMENDATION: That the Board:

1. Authorize the acquisition of the subject private lands under the terms and conditions cited above which are by this reference incorporated herein and further subject to the following:
 - A. The attached quitclaim deed document form;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Pursuant to HRS Section 195-4, as amended, authorize the Division of Forestry and Wildlife to conduct a public hearing on the Island of Oahu regarding the proposed addition to the State Natural Area Reserves System on the Island of Oahu, and authorize the Chairperson to:
 - A. Set the date, location and time of the public hearing; and
 - B. Appoint a hearing master(s) for the public hearing.
3. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to 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:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;

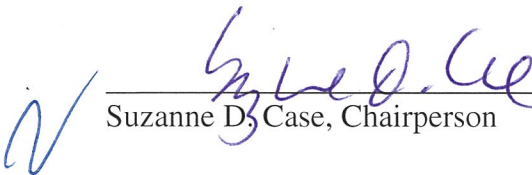
- B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the issuance of a management right of entry permit to DOFAW covering the subject area 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 most current right of entry permit form as may be amended from time to time; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



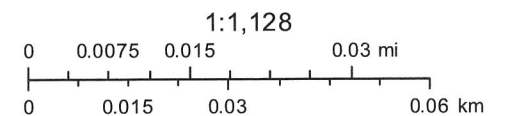
Suzanne D. Case, Chairperson

Public Land Trust Information System



May 8, 2018

EXHIBIT "A"



Esri, HERE, Garmin, © OpenStreetMap contributors, and the GIS user community

[illegible]

REGULAR SYSTEM

Total Number of Pages:

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

20 THAT, effective as of the _____ day of _____,
_____, _____, hereinafter referred to as the
"Grantor," for and in consideration of the sum of _____

_____ NO/100 DOLLARS (\$_____), paid to and at the
Department of Land and Natural Resources by the STATE OF HAWAII,
by its Board of Land and Natural Resources, whose address is _____

_____, acting pursuant to Section 171-30, Hawaii Revised Statutes, hereinafter referred to as the "Grantee," the receipt whereof is hereby acknowledged, does hereby remise, release and forever quitclaim unto the Grantee, the Grantee's heirs/successors and assigns, all of its right, title, interest, claim and demand in and to that certain parcel of land situate at _____, described as "_____, " containing an area of _____

_____, more particularly described in Exhibit "A" and delineated on Exhibit "B," both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map designated C.S.F. No. _____ and dated _____, prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii.

RESERVING TO THE STATE OF HAWAII, ITS SUCCESSORS AND ASSIGNS, THE FOLLOWING:

1. All minerals as hereinafter defined, in, on or under the land and the right, on its own behalf or through persons authorized by it, to prospect for, mine, and remove these minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of these minerals by any means whatsoever, including strip mining. "Minerals", as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous, or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock, or other material suitable for use and used in general construction in furtherance of the Grantee's permitted activities on the land and not for sale to others.

2. All surface and ground waters appurtenant to the land and the right on its own behalf or through persons authorized by it, to capture, divert, or impound the same and to occupy and use so much of the land as may be required in the exercise of this right reserved.

Provided, however, that as a condition precedent to the exercise of the rights reserved in Paragraphs 1 and 2, just compensation shall be paid to the Grantee for any of Grantee's improvements taken.

SUBJECT TO rights of native tenants and regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including Chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land.

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

belonging or in anywise appertaining or held and enjoyed
therewith unto said Grantee, the Grantee's heirs/successors and
assigns, forever*[, except as noted herein]. _____

IN WITNESS WHEREOF, the STATE OF HAWAII, the Grantor herein,
has caused the seal of the Department of Land and Natural
Resources to be hereunto affixed and these presents to be duly
executed this _____ day of _____, 20____, and
_____, the Grantee
herein, has caused these presents to be executed this _____ day
of _____, 20____, both effective as of the day, month,
and year first above written.

GRANTOR

STATE OF HAWAII

Approved by the Board
of Land and Natural
Resources at its
meetin held on

By _____
Chairperson
Board of Land and
Natural Resources

GRANTEE

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____

*Include only if there are encumbrances.

