

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

January 11, 2019

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

PSF No. 18OD-046

Oahu

Waive Restrictive Covenant Prohibiting Fence, Screen, Hedge, or Wall Within Building Set-Back, Lot 41, Fort Ruger Lots, Kapahulu, Honolulu, Oahu, Tax Map Key (1) 3-1-044:012.

APPLICANT:

Jay Takashi Suemori and Allene Kaleimomi Richardson Suemori, husband and wife, Tenants by the Entirety.

LEGAL REFERENCE:

Sections 171-17, -63(a), Hawaii Revised Statutes, as amended.

LOCATION:

Lot 41, Fort Ruger Lots situated at Kapahulu, Honolulu, Oahu, Tax Map Key: (1) 3-1-044:012, as shown on maps attached as **Exhibit A1** and **A2**.

AREA:

7,600 square feet.

ZONING:

State Land Use District: Urban  
City & County of Honolulu LUO: R-7.5

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Pay for an appraisal to determine the fair market value difference between the current subject area with restriction and area with restriction amended or waived;
2. Obtain a title report to ascertain any security interest holder at Applicant's own cost and subject to review and approval by the Department; and
3. Obtain consent from each security interest holder.

BACKGROUND:

In the 1960s, the Board of Land and Natural Resources (Board) approved the sale of four (4) residential lots at Kapahulu, Honolulu designated as Fort Ruger Lots. The deeds by which the State conveyed the lots contained certain restrictive covenants regarding setbacks and building height restrictions.

The subject area, Lot 41, was sold through public auction in 1961. The current owners of Lot 41 are Jay and Allene Suemori as recorded at the Bureau of Conveyances ("BOC"), document A-44540130. The current owners are seeking to terminate and remove restrictive covenant #4 as stipulated in the original deed, recorded as Liber 4585, page 209, see **Exhibit B**, yellow shaded area on page 3.

REMARKS:

***§171-63 Waiver of restrictions.** (a) Use. Upon application by the owner and consent therefor having been given by each holder of record having a security interest, and after a finding that the public interest will be served thereby, the board of land and natural resources may amend or waive the conditions restricting the use of land contained in any agreement of sale, deed, or patent upon the condition that the grantee or patentee pay to the board the difference between the fair market value of the land based upon its restricted use and the fair market value with the restrictive condition amended or waived. The foregoing authority granted to the board shall not be construed to authorize the board to waive the condition contained in any agreement of sale, deed, or patent which provides that upon change in use or breach of a condition, the title automatically reverts back to the State, or the State shall have power of termination.*

The current owners have submitted a petition (**Exhibit C-1**)<sup>1</sup> in which they are seeking from the Board termination of only restrictive covenant number 4, which states:

- "4. No fence, screen, hedge or wall shall be erected or placed within the building set-back line of said Lot 41. However, enclosures for garbage cans may be erected within the building set-back line."

Staff notes that Lot #41 was the only deed with the restrictive clause detailed above and that the deeds for the remaining three subdivision lots contain the previous restrictive clause but with a height allowance as not to exceed three (3) feet.

The applicants' petition contains the consent from each current land owner of the four-lot subdivision. The applicants also provide consent (**Exhibit C-2**) from their mortgagee required by the statute on the subject request. Staff notes that a mortgage document for the subject area was recorded at the BOC on March 12, 2012 as document A-44540131.

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<sup>1</sup> Exhibits attached to the applicants' letter are kept in files.

The applicants are required to pay to the Board the difference between the fair market value of the land based upon its restricted use and the fair market value with the restrictive condition amended or waived. Staff has made the applicants aware of this condition and the applicants are in agreement to move forward with their request.

The latest memorandum from the City and County of Honolulu Department of Transportation Services dated November 8, 2018 (**Exhibit D1**) states there is no objection for the removal of restrictive covenant number 4 and to rescind its prior requirement of retention and enhancement of restrictive covenant in its letter dated May 21, 2018 (**Exhibit D2**).

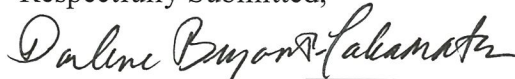
Department of Planning and Permitting and the Board of Water Supply have no comments/objections. The Office of Hawaiian Affairs have not responded to the request for comment.

Staff recommends the Board require an indemnity clause from the applicants pertaining to the requested waiver, and such indemnity shall extend to the successor owners of the subject private property. Upon approval of today's request, staff will request the proper indemnity clause language from the Department of the Attorney General.

**RECOMMENDATION:** That the Board subject to the Applicants fulfilling all of the Applicant Requirements listed above, approve the waiver of conditions restricting the use of the subject land under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

1. The standard terms and conditions of the most current deed amendment form, as may be amended from time to time;
2. Applicants and their successors in title of the subject private property shall indemnify the State of Hawaii;
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.

Respectfully Submitted,

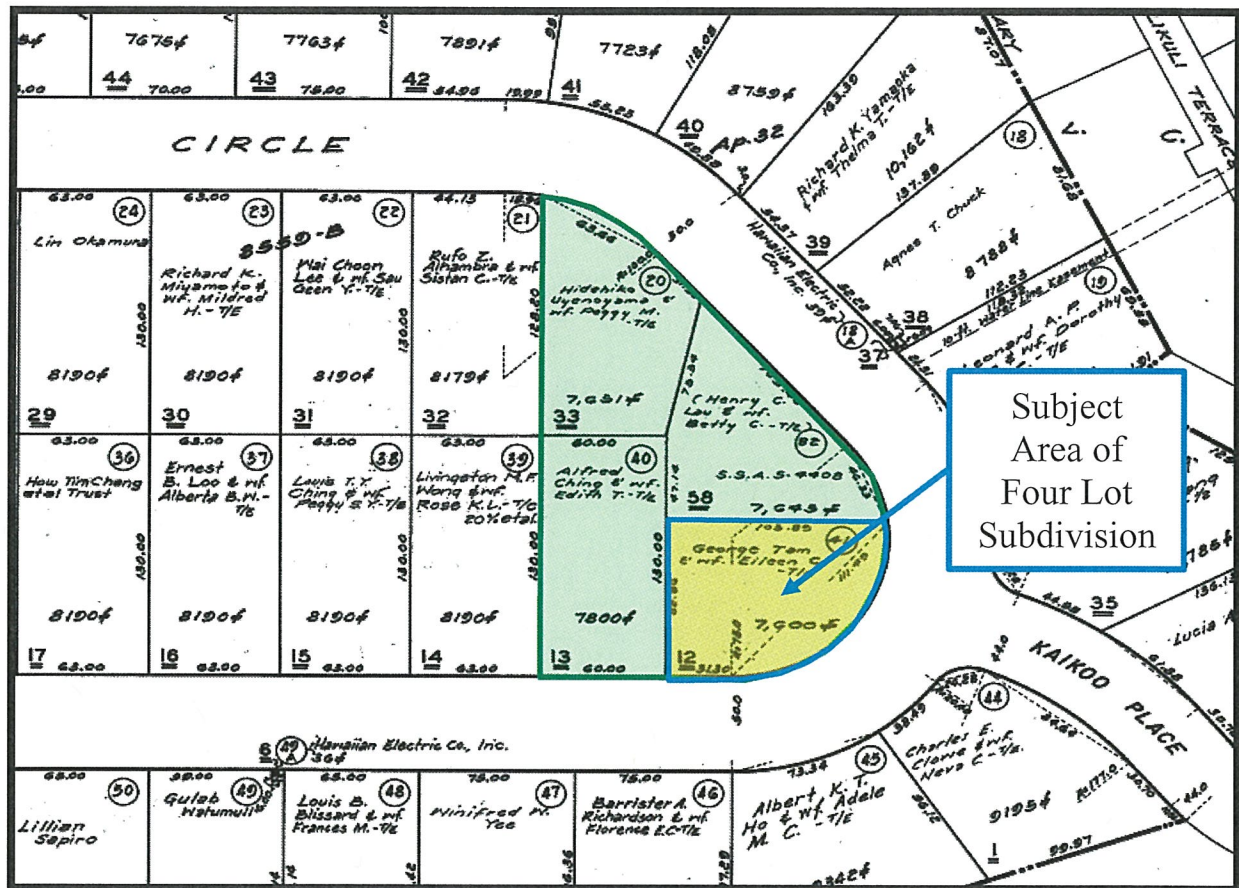


Darlene Bryant-Takamatsu  
Land Agent

APPROVED FOR SUBMITTAL:

  
Suzanne D. Case, Chairperson





TMK: (1) 3-1-044:012

Exhibit A1





**TMK: (1) 3-1-044:012**

**Exhibit A2**

**D E E D**

**144585 219**

**KNOW ALL MEN BY THESE PRESENTS:**

**WHEREAS, the STATE OF HAWAII, hereinafter referred to as the "GRANTOR", by its Board of Land and Natural Resources, acting under authority in it vested by the laws of the State of Hawaii relating to public lands and all other laws applicable hereto, by and with said Board's approval given at its meeting held on May 12, 1961, did advertise and offer for sale at public auction on August 17, 1961, at the Front Door of the State Office Building, City and County of Honolulu, Island of Oahu, State of Hawaii, that certain parcel of land situate at Kapa-hulu, Honolulu, Oahu, State of Hawaii, and hereinafter more particularly described; and**

**WHEREAS, at said auction sale, GEORGE TAM and EILEEN CHUN TAM, husband and wife, whose post office address is**

**Kihai, Maui, Hawaii, hereinafter referred to as the "GRANTEES", were the highest qualified bidders therefor;**

**NOW, THEREFORE, in consideration of the sum of TWENTY SIX THOUSAND AND NO/100 DOLLARS (\$26,000.00), paid at the Office of the Department of Land and Natural Resources by said Grantees, the receipt whereof is hereby acknowledged, and for the further consideration of the Grantees complying with the terms, covenants and conditions of Special Sale Agreement No. S-4407, the Grantor hereby remises, releases and forever quitclaims unto said Grantees, as Tenants by the Entirety, their assigns and the heirs, administrators, executors and assigns of the survivor of them, subject to the conditions hereinafter set forth, all of its right, title, interest, claim and demand in and to the parcel of land, described as follows:**

**DEPARTMENT OF LAND AND NATURAL RESOURCES  
HONOLULU HAWAII**

**Exhibit B**

PORT RUGER LOTS

4585 10230

(Revised December 1960)

Kapahulu, Honolulu, Oahu, Hawaii

Being a portion of L.P. 8165, Part B on a portion  
of L.C. Av. 8559-B Apana 32 to William C. Lunaliilo

Being also a portion of the land conveyed to the  
Minister of Interior by the Trustees of William C.  
Lunalilo Estate by Deed dated June 17, 1884, and  
recorded in Liber 88 on Pages 223 and 224 (Land  
Office Deed 136) and set aside as Fort Ruger Mili-  
tary Reservation, Tract 4, by Presidential Executive  
Order 6408, dated November 7, 1933 and subsequently  
restored to the jurisdiction of the Territory of  
Hawaii by Presidential Executive Order 10268 (Tract  
4) dated July 5, 1961

Beginning at a 3/4-inch pipe at the west corner of  
this lot, the south corner of Lot 40, Fort Ruger Lots, and on  
the northeast side of Papu Circle, the coordinates of said point  
of beginning referred to Government Survey Triangulation Station  
"LEAHI" being 949.53 feet South and 6268.14 feet East, as shown  
on Government Survey Registered Map H.T.S. Plat 2145-F, thence  
running by azimuths measured clockwise from True South:-

1. 217° 07' 82.86 feet along Lot 40, Fort Ruger Lots  
to a 3/4-inch pipe;
2. 307° 07' 105.89 feet along Lot 82, Fort Ruger Lots  
to a 3/4-inch pipe;
3. Thence along the north side of Papu Circle on a curve to the  
right with a radius of 75.00 feet,  
the chord azimuth and distance  
being: 79° 06' 30" 111.49  
feet to a 3/4-inch pipe;
4. 127° 07' 31.30 feet along the northeast side of  
Papu Circle to the point of be-  
ginning and containing an AREA  
OF 7,600 SQUARE FEET.

RESERVING to the State of Hawaii, its successors and  
assigns, in perpetuity, all rights to ground but not to surface  
waters which are or may be appertaining to the above described  
land or the ownership thereof.



4585 pg 211

TO HAVE AND TO HOLD the same, together with all the rights, easements, privileges and appurtenances thereunto belonging, or in anywise appertaining or held and enjoyed therewith unto said Grantees, as Tenants by the Entirety, their assigns and the heirs, administrators, executors and assigns of the survivor of them, forever, SUBJECT, HOWEVER, to the following:

1. The land herein described shall be used for residence purposes only for a period of ten (10) years from the date of issuance of this deed. In the event of violation of the foregoing condition, said land shall forthwith be forfeited and resume the status of government land and may be recovered by the State or its successors in an appropriate action or proceeding.
2. That there be a building height limitation of twenty-five (25) feet for said Lot 41.
3. That there will be a building set-back line of twenty (20) feet from Papu Circle.
4. No fence, screen, hedge or wall shall be erected or placed within the building set-back line of said Lot 41. However, enclosures for garbage cans may be erected within the building set-back line.

IN WITNESS WHEREOF, the State of Hawaii, the Grantor herein, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and these presents to be duly executed by its Director of Land and Natural Resources and countersigned by a

LIBER 4585 PAGE 212

member of the Board of Land and Natural Resources, this 29<sup>th</sup>  
day of *August*, 1963.

STATE OF HAWAII  
*GT Lin*  
By: \_\_\_\_\_  
Director  
Department of Land and Natural  
Resources

COUNTERSIGNED:

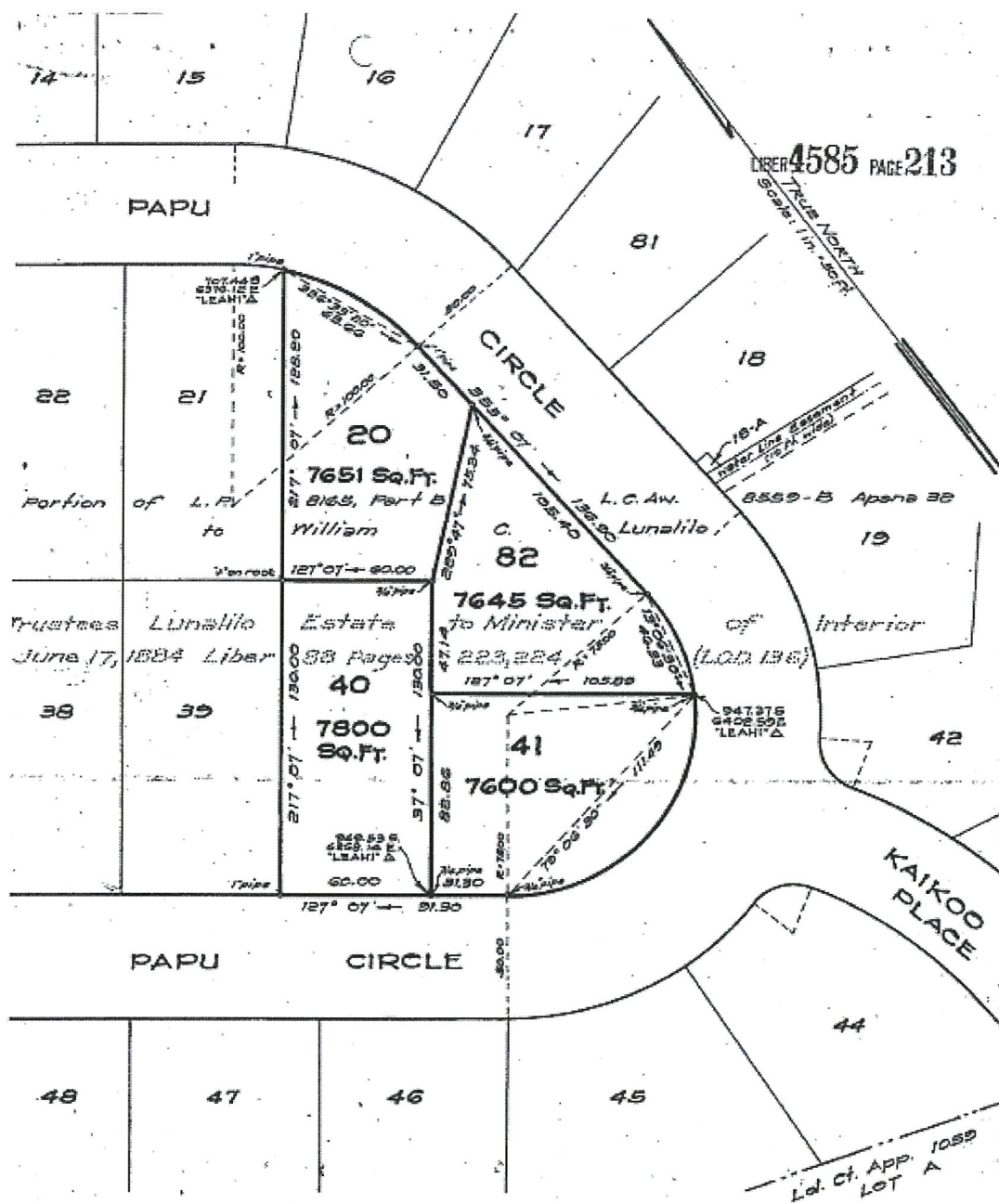
By: *L. L. Summers*  
\_\_\_\_\_  
Member  
Board of Land and Natural  
Resources



APPROVED AS TO FORM:

*Kenneth Lani*  
\_\_\_\_\_  
Deputy Attorney General

mm  
Checked by: mm



**FORT RUGER LOTS**  
**LOTS 20 AND 41 (Revised December 1960)**  
**AND LOTS 40 AND 82**  
**Kapahulu, Honolulu, Oahu, Hawaii**  
Scale: 1 inch = 50 feet

Entered of Record SEP 3 1963 at 2:36 o'clock P. M.  
and compared Michiki Adachi Acting Registrar of Conveyances  
By Clerk

JOB 628  
C. BK 5, Page

TAX MAP: B-1-44

DAHU FILE: CARTON 53

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

CSO Dec. 21, 1960



JAY & ALLENE SUEMORI

HONOLULU, HAWAII 96813

TELEPHONE:

FACSIMILE:

February 25, 2018

Suzanne D. Case  
Chairperson, Board of Land and Natural Resources  
Members of Board of Land and Natural Resources  
Department of Land of Natural Resources  
Punchbowl Street  
Honolulu, HI 96813

RECEIVED  
LAND DIVISION  
2018 APR -3 PM 3:15  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Subject: **Petition to Terminate and Remove specific Restrictive Covenant re: hedges and walls;**

Honolulu, Hawaii 96816

TMK: (1) 3-1-044-012: Subdivision Lot 41

Dear Chairperson Case and Board Members:

Thank you for allowing us to submit this petition to DLNR to terminate and remove from an original deed, a specific restrictive covenant re: hedges and walls, prohibiting hedges and walls to our family house lot.

**Introduction:** We own the property located at Honolulu, TMK: (1) 3-1-044-012: Subdivision Lot 41. Allene's family home has been across the street for the last 62 years at where her 98 year old mother continues to reside.

We bought this property from Leslie Tam, the son of George and Eileen Tam who were the original owners of this property when the State of Hawaii DLNR sold it to them.

The August 29, 1963 Deed *[attached Deed as Exhibit A]* from State of Hawaii to Tam contained a number of restrictive covenants including this one which relates to hedges and walls. Interestingly, 54 years ago, the municipal Honolulu codes and regulations which now exist for the public safety, such as zoning and use, were not nearly as detailed and specific as they are now which results in the City's provisions governing nearly all the public purposes for city and county land use.

The Tam lot, Lot 41, was part of a 4 lot subdivision approved on December 1, 1960 by the Board of Land and Natural Resources of DLNR. The 4 lot subdivision consists of Lots 20, 40, 41 and 82. *[attached Subdivision Map as Exhibit B]* The 4 lot subdivision had also been approved and confirmed by the City and County of Honolulu in 1960 and 1961. *[attached two letters from DLNR 2/7/60 & C&County 3/21/61 as Exhibit C]* We have

Exhibit C-1

obtained the signed written consents of the other owners of this subdivision four other lots 40, 82, 20, for the removal of this restriction. *[attached signed consents Exhibit D]*

We are seeking DLNR's termination of only restrictive covenant number 4, which states:

4. No fence, screen, hedge or wall shall be erected or placed within the building set-back line of said Lot 41. However, enclosures for garbage cans may be erected within the building set-back line.

Interestingly, no such restrictions exist for the other three house lots in the subdivision.

**Rationale:** Papu Circle is located at the top of the "T" intersection of Kaiko'o Place and Papu Circle which ingress and egress for Kaiko'o Place is through that T intersection. Kaiko'o Place prohibits all on street parking, and, therefore, there is no street parking throughout Kaiko'o Place. At the same time, Kaiko'o Place provides three beach accesses to the ocean and has 24 homes on that street. Because of the house lot and designs of the Kaiko'o homes, there is minimal provision for additional driveway parking for construction workers or visitors.

The only closest available parking for Kaikoo Place is in front of Papu Circle. As such, all manner of cars are parked on that curb. The parking is used by surfers, night and day fisherman, construction workers, and generally all visitors. While we, of course, do not object to the parking, the occupants many times, use the front yard for off-loading and on loading of ladders, surf boards, fishing tents and equipment. Many times one truck will carry all the workers down or up to or from the site while they leave their cars on Papu Circle. The same applies to the numerous visitors who will leave their cars for the weekend at the curb. Because the walk up the hill from Kaikoo to the car is long and steep, people rest at the top of the street on our front yard, refreshing themselves and many times leaving their liquid and food containers on the lawn. We have even found condoms scattered in our yard which we have had to carefully remove and discard.

Sometimes their behavior is not so benign. Parkers regularly tear down coconut fronds from our trees and have broken off both the plumeria and naupaka branches deep within the yard. Without anything hampering them, they have walked up to the windows and peered in the windows. They walk around the yard looking for the fresh water hose. On more than a few occasions, they have relieved themselves in the yard just below the kitchen and living room windows.

**Public Purpose and Public Safety assured:** Public Safety will continue to be protected if the termination of this restriction is granted. The City and County of Honolulu's Rules and Regulations will govern any use within this area.

**Request:** Since this provision applies only to our lot out of the four subdivision lots, we would appreciate a respite from this restriction. We agree and acknowledge that all considerations and restrictions and provisions from the City and County of Honolulu will continue to apply and govern. We ask that we not be singled out; we petition the DLNR to

terminate and lift the Deed provision that prohibits a hedge or a wall. We are therefore asking and petitioning the DLNR to terminate or revoke the specific restriction re: hedges and walls within the set back. We can work with the Department's deputy attorney general to draft a suitable document .

**Other Consents:** We have received the written signed consent of our three [3] subdivision landowner neighbors. We will comply with any and all restrictions and comment from the City and County of Honolulu for the attached plans.

Thank you again for your very kind consideration to this request. Should you have any questions, please do not hesitate to contact us [Jay].

Sincerely yours,

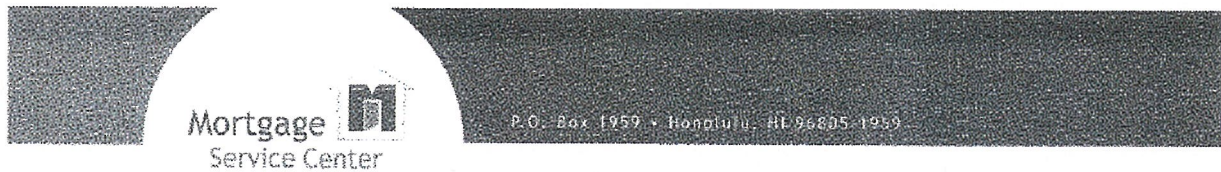


JAY T. SUEMORI



ALLENE R. SUEMORI





November 21, 2018

Suzanne D. Case, Chairperson  
Members of the Board of Land and Natural Resources  
Department of Land and Natural Resources  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Subject: Petition to Terminate and Remove Restrictive Covenant #4.  
Property: Honolulu, Hawaii 96816  
TMK No.: (1) 3-1-044:012

First Hawaiian Bank Loan No.:  
Mortgagor: Jay Takashi Suemori and Allene Kaleimomi Richardson Suemori  
Mortgagee: First Hawaiian Bank

**Consent of First Hawaiian Bank to Terminate and Remove Restrictive  
Covenant #4**

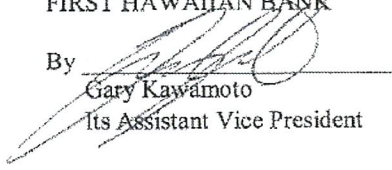
Dear Chairperson Case and Members of the Board:

Please be advised that First Hawaiian Bank is the Lender/Mortgagee of the above-referenced mortgage loan no.: and, pursuant to said mortgage loan, holds a security interest in the above-referenced Property. The mortgage document secured by the above-referenced Property was recorded at the Bureau of Conveyances on March 12, 2012, as Document A-44540131.

This letter will confirm that First Hawaiian Bank consents to the termination and removal of Restrictive Covenant #4 from the above-referenced Property, as contained in the original Deed, recorded as Liber 4585, page 209.

Very truly yours,

FIRST HAWAIIAN BANK

By   
Gary Kawamoto  
Its Assistant Vice President

**Exhibit C-2**

DEPARTMENT OF TRANSPORTATION SERVICES  
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 3RD FLOOR  
HONOLULU, HAWAII 96813  
Phone: (808) 768-8305 • Fax: (808) 768-4730 • Internet: www.honolulu.gov

KIRK CALDWELL  
MAYOR



WES FRYSZTACKI  
DIRECTOR

JON Y. NOUCHI  
DEPUTY DIRECTOR

November 8, 2018

Ms. Darlene Bryant-Takamatsu  
Land Agent  
Department of Land and Natural Resources  
State of Hawaii  
Post Office Box 621  
Honolulu, Hawaii 96809

RECEIVED  
LAND DIVISION  
2018 NOV 13 AM 11:19  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Dear Ms. Bryant-Takamatsu:

SUBJECT: Waive Restrictive Covenant for

Kapahulu, Oahu, Hawaii

In response to your memorandum dated April 25, 2018 (attached), and our response of May 21, 2018 (attached), the Department of Transportation Services of the City and County of Honolulu would like to rescind the recommendation provided in our May 21, 2018 letter and provide the following specific comment.

We have no objection to the removal of restrictive covenant number 4, considering that the other properties as part of that subdivision are not beholden to the same covenants and restrictions. To provide a consistent and equitable environment, please disregard our previous letter's recommendation to retain and enhance restrictive covenant number 4 and accept our comments supporting the removal of said covenant.

I apologize for the delay and confusion in this matter. Should you have any questions, please contact Jon Nouchi, Deputy Director, at 768-8304.

Very truly yours,

A handwritten signature in black ink, appearing to read "Wes Frysztacki", with the word "(for)" written below it.

Wes Frysztacki  
Director

Attachment

Exhibit D1

DEPARTMENT OF TRANSPORTATION SERVICES  
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 3RD FLOOR  
HONOLULU, HAWAII 96813  
Phone: (808) 768-8305 • Fax: (808) 768-4730 • Internet: www.honolulu.gov

KIRK CALDWELL  
MAYOR



WES FRYSZTACKI  
DIRECTOR

JON Y. NOUCHI  
DEPUTY DIRECTOR

TP4/18-727723R

May 21, 2018

Ms. Darlene Bryant-Takamatsu  
Land Agent  
Department of Land and Natural Resources  
State of Hawaii  
Post Office Box 621  
Honolulu, Hawaii 96809

RECEIVED  
LAND DIVISION  
2018 MAY 24 AM 10:44  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Dear Ms. Bryant-Takamatsu:

SUBJECT: Waive Restrictive Covenant for  
Kapahulu, Oahu, Hawaii

This is in response to your memorandum dated April 25, 2018, requesting our review and comments on the subject documents.

Restrictive covenant number 4 should remain, but be modified to allow hardscape structure (wall, fence, screen, etc.) no higher than 30 inches. Landscape hedges or shrubbery shall not be allowed as it will grow and cause site obstruction issues from vehicles exiting the driveways.

Thank you for the opportunity to review this matter. Should you have any questions, please contact Renee Yamasaki of my staff at 768-8383.

Very truly yours,

A handwritten signature in black ink, appearing to read "W. Frysztaeki".  
Wes Frysztaeki  
Director

**Exhibit D2**