

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

August 9, 2019

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

PSF No: 06OD-215

OAHU

Amend Prior Board Action of March 23, 2007, Item D-5, *Grant of Perpetual, Non-Exclusive Easement to the City and County of Honolulu for Drainage Purposes, Maunaloa, Honolulu, Oahu, TMK: (1) 3-9-027:007 seaward.*

The purpose of the amendment is to add Section 171-53(c), Hawaii Revised Statutes to the Legal Reference section.

BACKGROUND:

At its meeting of March 23, 2007, under agenda item D-5, the Board approved the issuance of a perpetual, non-exclusive easement for drainage purposes to the City and County of Honolulu. Section 171-95, Hawaii Revised Statutes ("HRS") was cited as the legal reference for the subject easement. A copy of the 2007 Board submittal is attached as **Exhibit 1** for reference.

REMARKS:

During the documentation process, the Department of the Attorney General rejected the document request by citing the requirement of the Governor's approval and Legislative concurrence pursuant to Section 171-53(c), HRS, which were missing from the 2007 action.


Upon approval of today's request, staff will proceed with the process of seeking the above-mentioned approval and concurrence. Staff recommends the Board amend its prior action on 2007 by adding Section 171-53(c), HRS as part of the legal reference pertaining to the subject request.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of March 23, 2007, under agenda item D-5 by adding Section 171-53(c), HRS into the legal reference section.

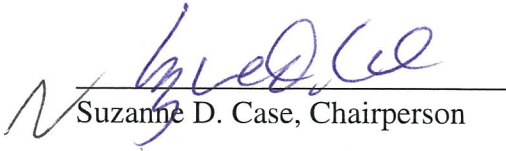
2. All terms and conditions listed in its March 23, 2007 approval to remain the same.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

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

March 23, 2007

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

PSF No.:06od-215

OAHU

Grant of Perpetual, Non-Exclusive Easement to the City and County of Honolulu
for Drainage Purposes, Maunalua, Honolulu, Oahu, Tax Map Key: (1) 3-9-
027:007 seaward.

APPLICANT:

City and County of Honolulu, whose mailing address is 650 South King Street, Honolulu,
Hawaii 96813.

LEGAL REFERENCE:

Section 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Maunalua, Honolulu, Oahu, identified by Tax
Map Key: (1) 3-9-027:007 seaward, as shown on the attached map labeled Exhibit A.

AREA:

174 square feet, more or less, to be determined by Department of Accounting and General
Services, Survey Division.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered.

EXHIBIT " 1 "

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

March 23, 2007

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for drainage purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Gratis

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

DCCA VERIFICATION:

Not applicable.

APPLICANT REQUIREMENTS:

Not applicable (Note: Applicant already provided survey maps and descriptions).

REMARKS:

The City and County of Honolulu (City) is completing plans for the repair of a drainage structure fronting the subject property. The parcel drawing attached as Exhibit B shows the location of the subject drainage facility. City requests that the Board grant an easement for drainage purposes.

The following agencies have no comments/no objections to the subject request, or have not responded as of the suspense date: Commission on Water Resource Management, Office of Conservation and Coastal Lands, Division of Aquatic Resources, Historic Preservation Division, Department of Facility Maintenance, Board of Water Supply, Office of Hawaiian Affairs.

In view of the Department of Health, Clean Water Branch's comment, the City agrees to respond to DOH's concerns during the design phase. The relevant correspondence is

attached as Exhibit C.

Staff understands that the City will remove the portions of concrete wall outside the requested area as shown on Exhibit B.

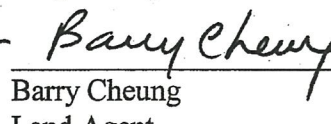
Further, staff recommends the Board add a special condition to clarify future maintenance responsibility by requiring the City to keep the easement area free and clear of all debris.

There are no other pertinent issues or concerns, and staff has no objection to the subject request.

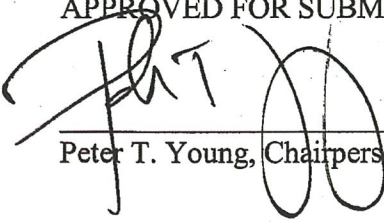
RECOMMENDATION: That the Board:

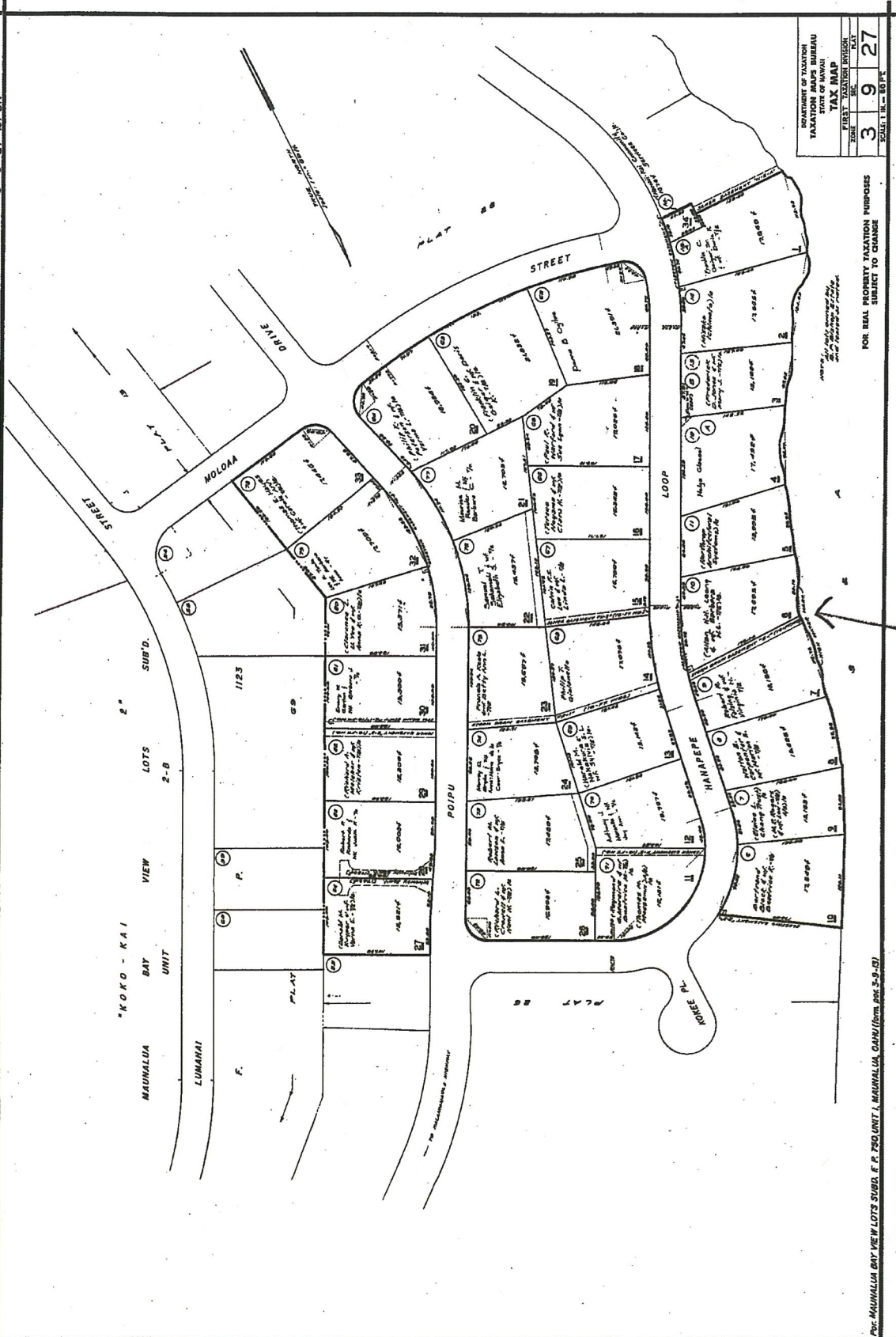
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a perpetual non-exclusive easement to the City and County of Honolulu covering the subject area for drainage purposes 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 perpetual easement document form, as may be amended from time to time;
 - B. The Grantee shall at all times during the term of this easement keep the easement area free and clear of all debris to the satisfaction of the Grantor;
 - 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.

Respectfully Submitted,


Barry Cheung
Land Agent

APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson



SUBJECT
LOCATION

EXHIBIT "A"

BAY

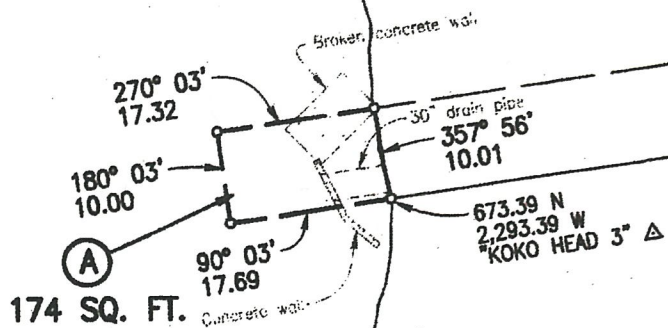
Maunaloa Bay

Boundary follows along highwater
mark as shown on File Plan 750

(1) 3-9-027:007

State of Hawaii
(Owner)

MAUNALUA



SUBJECT
LOCATION

(1) 3-9-027:006

Portion A

EXHIBIT "B"

LEGEND:

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 3378
HONOLULU, HAWAII 96801-3378

CHIYOME L. FUKINO, M.D.
DIRECTOR OF HEALTH

In reply, please refer to:
EMD / CWB

11070CEC.06

November 29, 2006

Mr. Barry Cheung
Land Agent - Land Division
Department of Land and
Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Cheung:

**Subject: Comments on Request for Drainage Easement
Hanapepe Loop, Honolulu, Island of Oahu,
TMK: (1) 3-9-027:006 and (1) 3-9-027:007 seaward
Ref. No. 06od-215**

RECEIVED
LAND DIVISION
2006 NOV 30 A 10:23
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Thank you for the opportunity to review and comment on a proposal from the Department of Facility Maintenance (DFM), City and County of Honolulu (CCH), involving the removal of the head wall from an existing drainage system.

The following are our general comments based on the limited information contained in your memorandum of November 15, 2006:

1. There is insufficient information submitted in order for the Department of Health, Clean Water Branch (CWB), to evaluate the potential adverse impact resulting from the project construction and operations related activities. Please provide detailed project scope for further evaluation.
2. The proposed drainage easement is located seaward of the boundary of the highwater mark. The Honolulu Engineer District (HED) of the U.S. Army Corps of Engineers (COE) should be consulted with respect to the Department of Army permitting requirements.

Pursuant to Federal Water Pollution Control Act [commonly known as the "Clean Water Act" (CWA)], Paragraph 401(a)(1), a Section 401 Water Quality Certification (WQC) is required for "[a]ny applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any

EXHIBIT "C"

discharge into the navigable waters..." (emphasis added). The term "discharge" is defined in CWA, Subsections 502(16), 502(12), and 502(6); Title 40, Code of Federal Regulations, Section 122.2; and Hawaii Administrative Rules (HAR), Chapter 11-54.

3. In accordance with HAR, Sections 11-55-04 and 11-55-34.05, the Director of Health may require the submittal of an individual permit application or a Notice of Intent (NOI) for general permit coverage authorized under the National Pollutant Discharge Elimination System (NPDES).
 - a. An application for an NPDES individual permit is to be submitted at least 180 days before the commencement of the respective activities. The NPDES application forms may be picked up at our office or downloaded from our website at:
<http://www.hawaii.gov/health/environmental/water/cleanwater/forms/indiv-index.html>.
 - b. An NOI to be covered by an NPDES general permit is to be submitted at least 30 days before the commencement of the respective activity. A separate NOI is needed for coverage under each of the potential NPDES general permits as listed below. The NOI forms may be picked up at our office or downloaded from our website at:
<http://www.hawaii.gov/health/environmental/water/cleanwater/forms/genl-index.html>.
 - i. Construction activities, including clearing, grading, and excavation, that result in the disturbance of equal to or greater than one (1) acre of total land area. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under a larger common plan of development or sale. **An NPDES permit is required before the commencement of the construction activities.** [HAR, Chapter 11-55, Appendix C]
 - ii. Discharges of construction dewatering effluent. [HAR, Chapter 11-55, Appendix G]
4. Any discharges related to project construction or operation activities, with or without a Section 401 WQC or NPDES permit coverage, shall comply with applicable State Water Quality Standards as specified in HAR, Chapter 11-54.

To comply with applicable HAR, Chapter 11-54 requirements, we recommend that:

- a. A Site-specific construction Best Management Practices (BMPs) and effluent treatment (as appropriate) Plan shall be established and properly implemented for the subject construction activity. The BMPs measures shall be designed, implemented, operated, and maintained by you in a manner to properly **isolate and confine** the construction activities and to contain and prevent any potential pollutant(s) discharges from adversely impacting

Mr. Barry Cheung
November 29, 2006
Page 3

the State waters. It is DFM/CCH's responsibility to ensure that the proposed construction work will not cause the applicable water quality criteria, as specified in HAR, Sections 11-54-4, 11-54-6, and 11-54-8, to be violated in the receiving State waters, including the Pacific Ocean.

- b. Applicable receiving water quality monitoring and assessment plan shall be properly designed and implemented to ensure the adequacy of the implemented BMPs measures and to demonstrate that the project construction related activities do not cause applicable water quality criteria to be violated in the receiving State waters, if any.
 - c. To comply with toxic material control requirements, the DFM/CCH's attention is specifically directed to the requirements contained in HAR, Subsection 11-54-4(a)(4), and Paragraph 11-54-4(b).
5. The DFM/CCH should be informed that Hawaii Revised Statutes, Subsection 342D-50(a), requires that "No person, including any public body, shall discharge any water pollutants into state waters, or cause or allow any water pollutant to enter state waters except in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director."

Should you have any questions, please contact Mr. Edward Chen of the Engineering Section, CWB, at 586-4309.

Sincerely,



DENIS R. LAU, P.E., CHIEF
Clean Water Branch

EC:np

- c: Regulatory Branch, HED, COE
CZM Program, Office of Planning, DBEDT
DFM, CCH

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 11TH FLOOR
HONOLULU, HAWAII 96813
Phone: (808) 523-4564 • Fax: (808) 523-4567
Web site: www.honolulu.gov

MUFI HANNEMANN
MAYOR



EUGENE C. LEE, P.E.
DIRECTOR

CRAIG I. NISHIMURA, P.E.
DEPUTY DIRECTOR

LA 07-072.JK

February 22, 2007

Mr. Barry Cheung, Land Agent
Land Division
Department of Land and Natural Resources
State of Hawaii
P. O. Box 621
Honolulu, Hawaii 96809

RECEIVED
LAND DIVISION
2007 FEB 26 A 9:51
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

Dear Mr. Cheung:

Subject: Hanapepe (142) Loop Drainage Easement
Tax Map Key Nos. 3-9-027-006 and 007

This is in reply to your request for comments regarding the subject project. The Civil Division of the Department of Design and Construction is currently working on funding for repairs to the drainage outlet and will address the Department of Health's concerns during the design phase (see enclosed memo dated February 8, 2007).

In the meantime, you can call Dodie Browne of the Land Division at 527-5068 if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas T. Miyata", is written over a horizontal line.

Thomas T. Miyata, Chief
Land Division

DB:jk

Enclosure

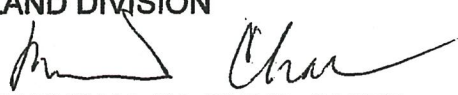
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FEB 13 4 27 PM '07

CONVEYANCE
AND ACQUISITION
CDD-BS 07-194477

February 8, 2007

MEMORANDUM

TO: THOMAS T. MIYATA, CHIEF
LAND DIVISION

FROM:  MARVIN M. W. CHAR, CHIEF
CIVIL DIVISION

SUBJECT: HANAPEPE (142) LOOP DRAINAGE EASEMENT
TMK: 3-9-027-006 AND 007

In response to your memorandum dated January 30, 2007, the design fund for subject wall is being requested in the FY08 CIP. We will respond to the State Department of Land and Natural Resources' comments listed in their letter of November 29, 2006, during the design.

Should you have any questions, please call Ken Lai at extension 5317.

KL:dk