

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

May 22, 2020

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

PSF No.: 20OD-025

OAHU

Amend the Easement described in Governor's Executive Order No. 1592, Manoa, Honolulu, Oahu, Tax Map Key: (1) 2-9-072: Portion of 012.

The purpose of the amendment is to reduce the easement area pursuant to a recent agreement between the Division of Forestry and Wildlife and the owner of the private land the easement crosses.

APPLICANT:

Department of Land and Natural Resources, Division of Forestry and Wildlife.

LEGAL REFERENCE:

Sections 171-11, Hawaii Revised Statutes ("HRS"), as amended.

LOCATION:

Manoa, Honolulu, Oahu, identified by Tax Map Key Nos.: (1) 2-9-072: Portion of 012 as shown on **Exhibit A**.

AREA:

0.187 acre, more or less.

ZONING:

State Land Use District: Urban and Conservation
City and County of Honolulu LUO: R-10 and P-1

TRUST LAND STATUS:

Not applicable. The property over which the easement is located is privately owned.

CURRENT USE STATUS:

Encumbered by Governor's Executive Order ("EO") 1592 dated October 26, 1953 setting aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife ("DOFAW") for Addition to Honolulu Watershed Forest Reserve purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not Applicable.

APPLICANT REQUIREMENTS:

None.

BACKGROUND:

By Land Office Deed 10850 dated September 30, 1952, Frank Leicester James conveyed to the Territory of Hawaii 36.081 acres of land (Lot 148) together with easements for roadway purposes over Lots 145 and 146. Subsequently the land together with the easements was set aside by EO 1592 to the Board of Commissioners of Agriculture and Forestry, predecessor to DOFAW, for addition to the Honolulu Watershed Forest Reserve.

At its meeting held November 9, 2017, Agenda item C-2 (Attached as **Exhibit B**),¹ the Board of Land and Natural Resources ("Land Board") approved a settlement between the current owner of Lot 145, further identified as Tax Map Key: (1) 2-9-072:012 and DOFAW. The approval pertains to the reduction of the easement area over Lot 145 to allow the construction of a home on Lot 145 while still providing access to the Honolulu Watershed Forest Reserve (Lot 148). A fully executed easement was recorded on March 12, 2020 (LOD 29222).

The Division of Forestry and Wildlife, Office of Conservation and Coastal Lands and the City and County of Honolulu, Department of Planning and Permitting have no objections to this request.

Staff is recommending the issuance of an EO to amend the easement area for housekeeping purposes.

¹ The exhibits to the November 9, 2017 Board action are omitted from the document attached as Exhibit B.

RECOMMENDATION: That the Board approve of and recommend to the Governor the issuance of an executive order amending the easement area of Governor's Executive Order No. 1592 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.

Respectfully Submitted,

Patti E. Miyashiro

Patti E. Miyashiro
Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case

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Suzanne D. Case, Chairperson

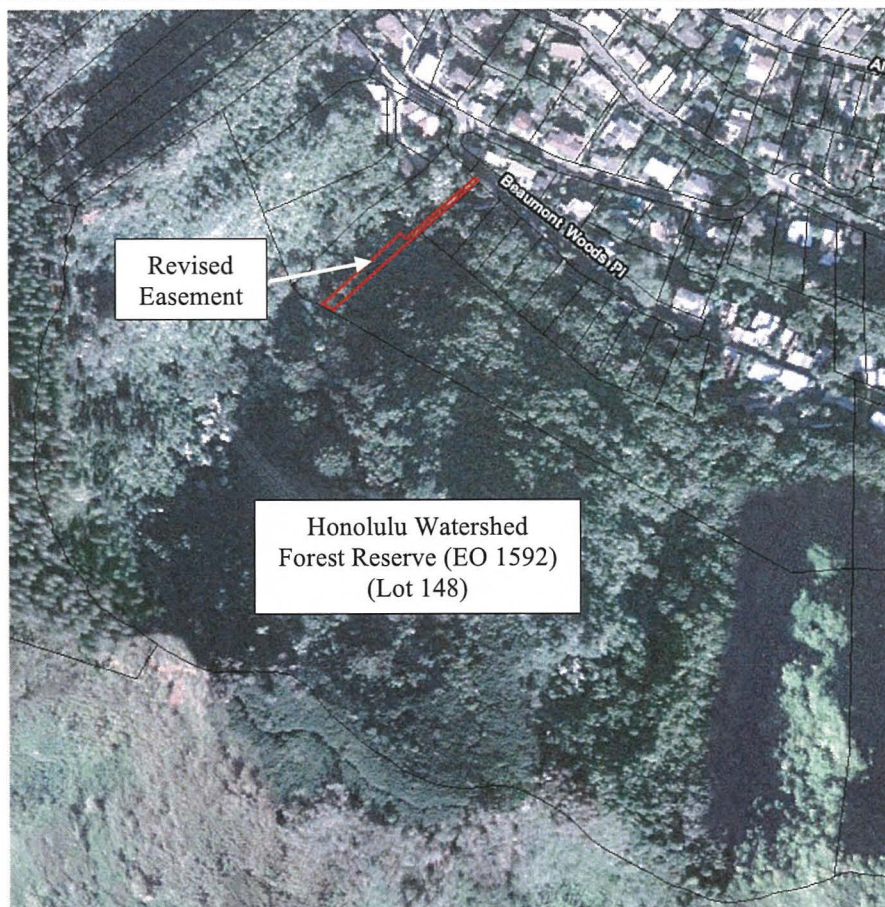


Exhibit A

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."¹ 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."² Based

¹ Gloo Leong Shee v. Young Hung, 36 Haw. 132, 149-50 (1942).

² 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,



DAVID G. SMITH, Administrator

APPROVED FOR SUBMITTAL:



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