

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

August 28, 2020

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

PSF No.: LOD 27673

OAHU

Authorize the Cancellation of the Existing Quitclaim Deed to the City and County of Honolulu for Union Street Mall (formerly Union Street) and Issuance of a Disclaimer and/or Quitclaim Deed of State's Interests, if any, in Union Street Mall to the fee owner City and County of Honolulu, Honolulu, Oahu, Tax Map Key: (1) 2-1-010: portion of 047.

APPLICANT:

City and County of Honolulu ("City").

LEGAL REFERENCE:

Sections 171-95(a)(5), 264-2, Hawaii Revised Statutes, and Act 288, SLH 1993 as amended.

LOCATION:

Union Street Mall situated at Honolulu, Oahu, identified by Tax Map Key: (1) 2-1-010: portion 047 as shown on the maps attached as **Exhibit A1** and **A3**.¹

AREA:

15,705 square feet, more or less.²

ZONING:

State Land Use District:	Urban
City and County of Honolulu LUO:	BMX-4

¹ Exhibit A3 is a portion of the map revised in 1929 which is currently posted of DAGS Survey Division website at the following link. <http://ags.hawaii.gov/wp-content/uploads/2013/04/CityofHonolulu.pdf>

² 15,794 square feet is the current area of TMK (1) 2-1-010:047, of which 89 square feet was acquired by the City and County of Honolulu in 1941 directly from the private owner.

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:

Existing County road.

CONSIDERATION:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land and Natural Resources, reviewed and concurred upon by the Environmental Council on March 3, 2020, 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" and Part 1, item 38, which states, "Transfer of title to land." See **Exhibit B**.

APPLICANT REQUIREMENTS:

None.

REMARKS:1988 Conveyance

At its meeting on January 22, 1988, under agenda item F-5 (**Exhibit C**), the Board approved the conveyance of Union Street Mall ("Mall") in fee simple to the City.

The 1988 approval was to facilitate the City entering into a joint development agreement with the private owner of the adjoining parcel. Pursuant to the joint development agreement, the private owner was allowed to utilize the square footage of the Mall in calculating its open space bonus, thus increasing allowable densities on the proposed office building, now known as 1132 Bishop Street. The owner was also required to maintain the Mall at its own cost and keep the Mall open to the public. The 1988 Deed contained a reverter clause. The reverter clause would become effect if the Mall was used for other than road and mall purposes and/or proposed for sale to a private interest. Quitclaim deed [LOD 27673] was issued on May 9, 1988 (**Exhibit D**).

Current Development

The City's Department of Parks and Recreation requested, via its letter dated December 18, 2019 (**Exhibit E**), that the State release the use and sale restriction and reversionary

provisions in LOD 27673. Pursuant to the additional information (**Exhibit F**) obtained from the representative of the owner, Douglas Emmett (“DE”), staff understands the office building is undergoing conversion into 493 affordable rental apartments with amenity areas on the first and second floors. DE is also seeking approval to place the proposed project under the City’s 201H affordable housing program.

In addition, DE believes the present condition of the Mall (including associated crime, litter and loitering) would negatively impact the community. Therefore, DE plans to purchase the fee title of the Mall from the City and convert the Mall into a private park but open to the public. DE has a successful model of this private concept just located across the Mall, i.e. the Tamarind Park. The private security hired by DE at the Tamarind Park can engage people exhibiting dangerous and undesirable behavior and escort them off the premises, if necessary.

The proposal appears to trigger the reverter clause in the 1988 deed. By the letter at Exhibit E, the City requests the reverter clause be released to allow the City a broader range of opportunities for redevelopment and redesign of the Mall.³

Land Division’s response

The Mall was previously a county road called Union Street until 1963 when vehicular traffic was closed, and the Mall was established pursuant to Ordinance No. 2401 approved by the Acting Mayor of the City on September 20, 1963 (**Exhibit G**). The previous Union Street is shown on Exhibit A3 [dated 1929] connecting Hotel Street and Beretania Street.

Union Mall was clearly identified prior to the ordinance as a county road pursuant to Chapter 264, HRS. The reverter clause in the 1988 deed could arguably be characterized as the State’s retention of an interest in the subject county road, which is inconsistent with Chapter 171, HRS. Section 171-2, HRS, expressly excludes roads from the definition of public lands. There was nothing in the disposition file citing the reason(s) behind the need for the deed or the inclusion of the reverter clause in the deed. Nevertheless, the deed was signed and recorded in 1988.

In fact, the 1988 deed appears to be a nullity as it purported to transfer something less than an unconditional 100% fee simple interest because the County had already owned an unconditional 100% fee simple interest in the land. Pursuant to the abstract dated June 29, 2020 attached as **Exhibit H**, the State Abstractor determined that the City already owned the unconditional fee simple interest of the Mall through the operation of law. The reverter clause imposed a condition on the title during the 1988 transfer. Staff cannot locate any information in the records pointing to the rationale for the 1988 deed because the absolute fee title was already with the City, as described above.

Land Division has explained the situation to the City. The City did not indicate any

³ HRS § 171-63 does not allow the Board to simply waive the reverter clause. Specifically, HRS § 171-63(a) provides, in part, “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.”

objection to the position. However, it is suggested that a proper document should be entered and recorded to alleviate any issues regarding the State's interest during the future utilization of the Mall undertaken by the City.

Staff recommends using the same approach outlined in the following paragraphs when the Board is asked to issue a quitclaim deed over county highways as described by the laws. The actual format of the requested land disposition could be in the form of a disclaimer, a quitclaim deed or a combination of both documents. Upon approval of today's request, Land Division will work with the Department of the Attorney General for the most appropriate documentation format.

Disposition of roads to the County pursuant to Act 288, SLH 1993

Pursuant to Section 264-2, HRS, all "public highways" (roads, alleys, streets, ways, lanes, bikeways, and bridges in the State, opened, laid out, or built by the government) are owned either by the State for state highways under the jurisdiction of the Department of Transportation or the county for all other public highways. While ownership was transferred by operation of law pursuant to this statutory section, the counties have continued to dispute that they own the roads because they do not have paper title.

Act 288, SLH 1993, stated in its preamble "In consideration of the State waiving its right to have the proceeds from the sale of county public highways remitted to the State, the counties shall acknowledge ownership and jurisdiction of all disputed public highways within their respective counties, as defined in section 264-1, HRS, without the necessity of conveyancing documents transferring title from the State to the respective counties, except when required for the purpose of disposal." (Emphasis added.)

As a result, it is staff's practice that formal documentation (e.g., quitclaim deeds) be issued on roads owned by the counties under Section 264-2, HRS, only when the county is going to subsequently dispose of any real property interests (fee conveyance or any interests less than fee) in at least a portion of the road to a third party. In all other cases, the State's position is that the fee simple interest in the road was passed to the counties by operation of law and documentation is unnecessary. This policy provides for the chain of title and enables subsequent real estate transactions to occur. This policy should not be misconstrued to mean or imply that the State does not assert that the roads being quitclaimed are already owned by the applicable county.

To enable the City to pursue the future development of Union Mall as described in Exhibit F, staff is recommending that the 1988 deed to the City be cancelled and that a disclaimer and/or a quitclaim deed, pursuant to the process of disposing county road described above, be issued to the City.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1-15, 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.

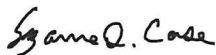
2. Authorize the cancellation of LOD 27673 to the City for the Union Street Mall.
3. Authorize the issuance of a disclaimer and/or a quitclaim deed of interests, if any, the State may have in the subject roadway parcel to the City and County of Honolulu covering the subject area under the terms and conditions 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 disclaimer and/or quitclaim deed (roads) form, as may be amended from time to time;
 - 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.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

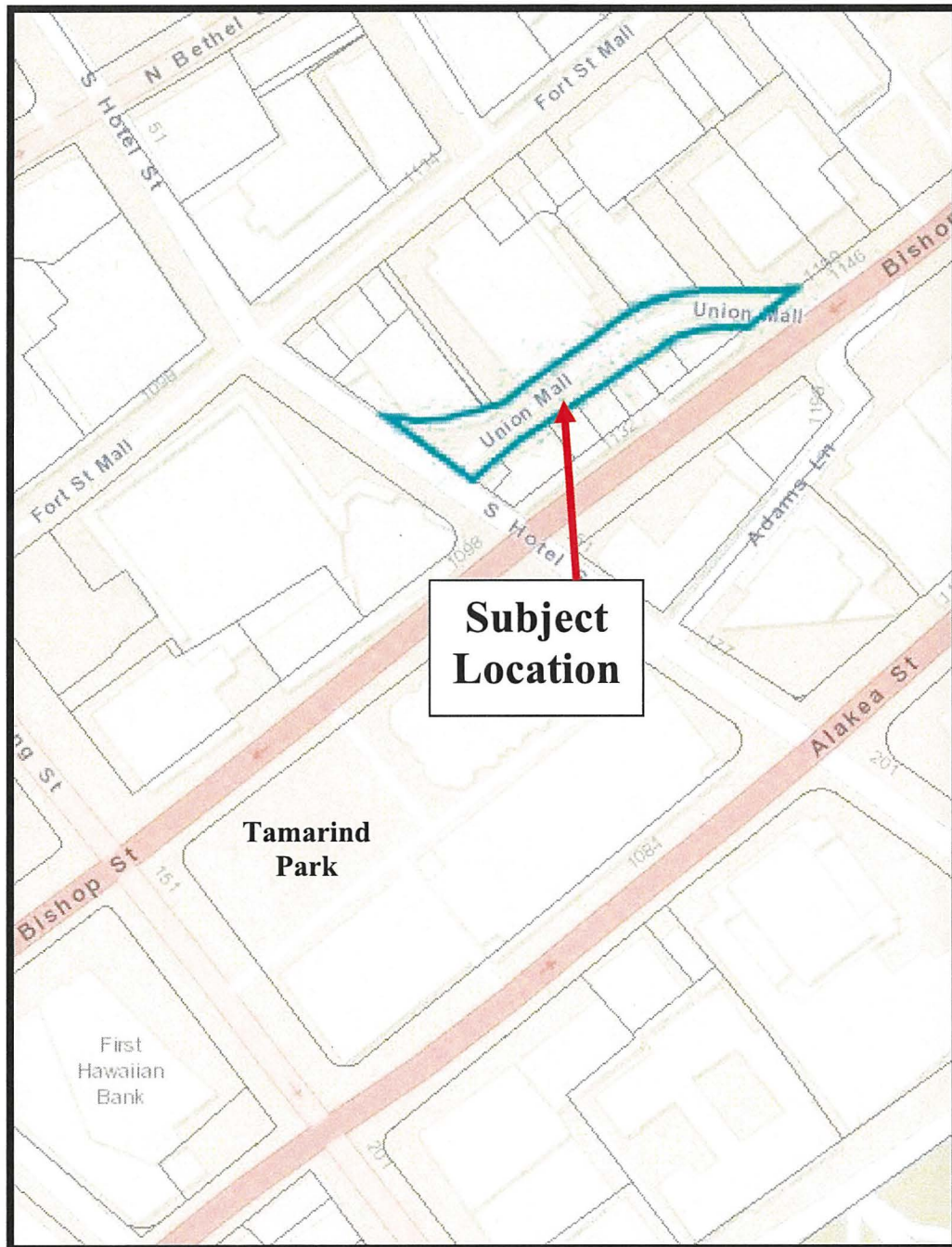


Suzanne D. Case, Chairperson

RT

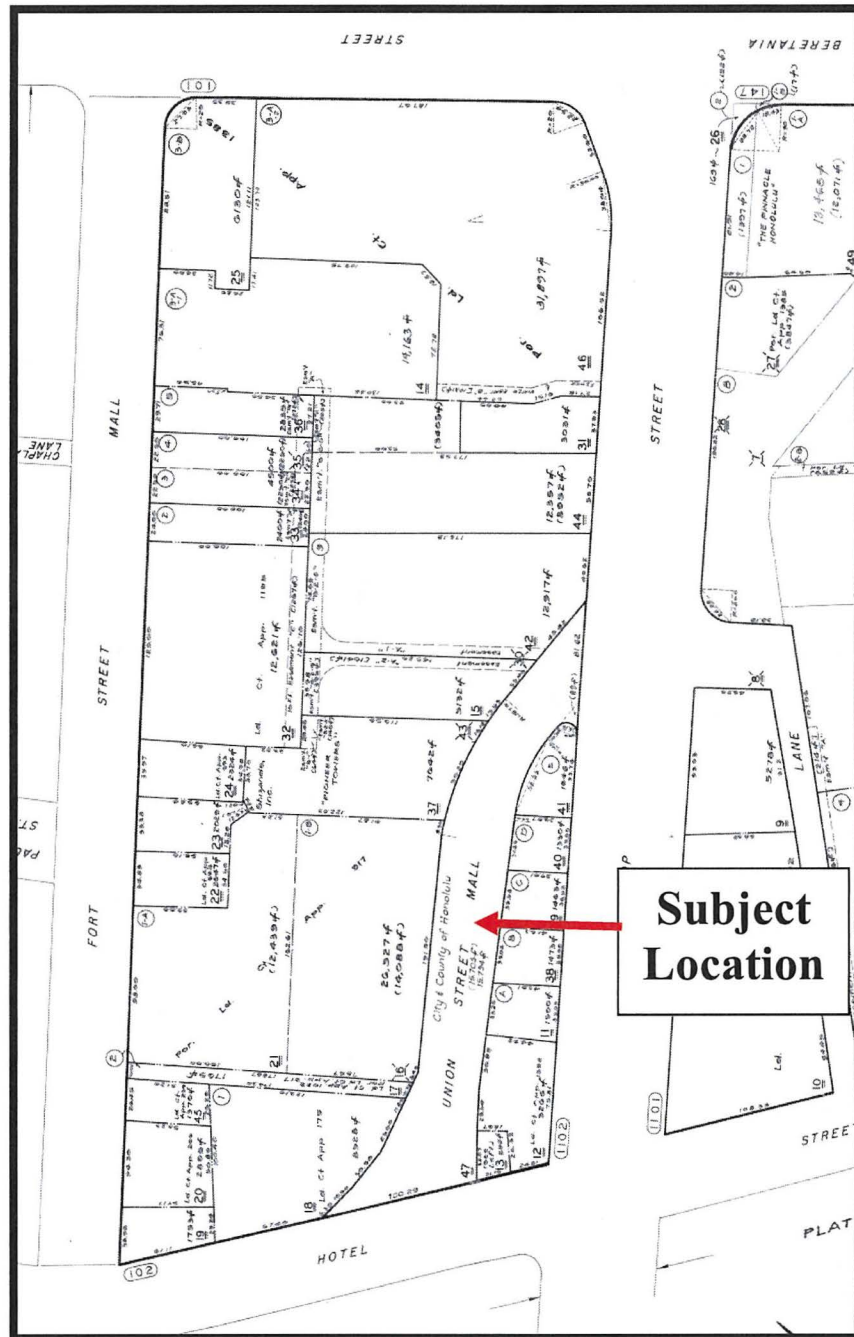
List of Exhibits:

- | | |
|----|--|
| A1 | Excerpt from Public Land Trust Information System |
| A2 | Excerpt from tax map |
| A3 | Excerpt from Honolulu, Territory of Hawaii dated 1929. |
| B | Environmental Assessment Exemption Notification. |
| C | Land Board approved submittal on January 22, 1988, Item F-5. |
| D | Quitclaim Deed dated May 9, 1988. |
| E | Letter dated December 18, 2019 from the City and County of Honolulu, Department of Parks and Recreation. |
| F | Additional information from Douglas Emmett |
| G | City and County of Honolulu Ordinance No. 2401 dated September 20, 1963. |
| H | Abstract dated June 29, 2020 prepared by the State Abstractor. |



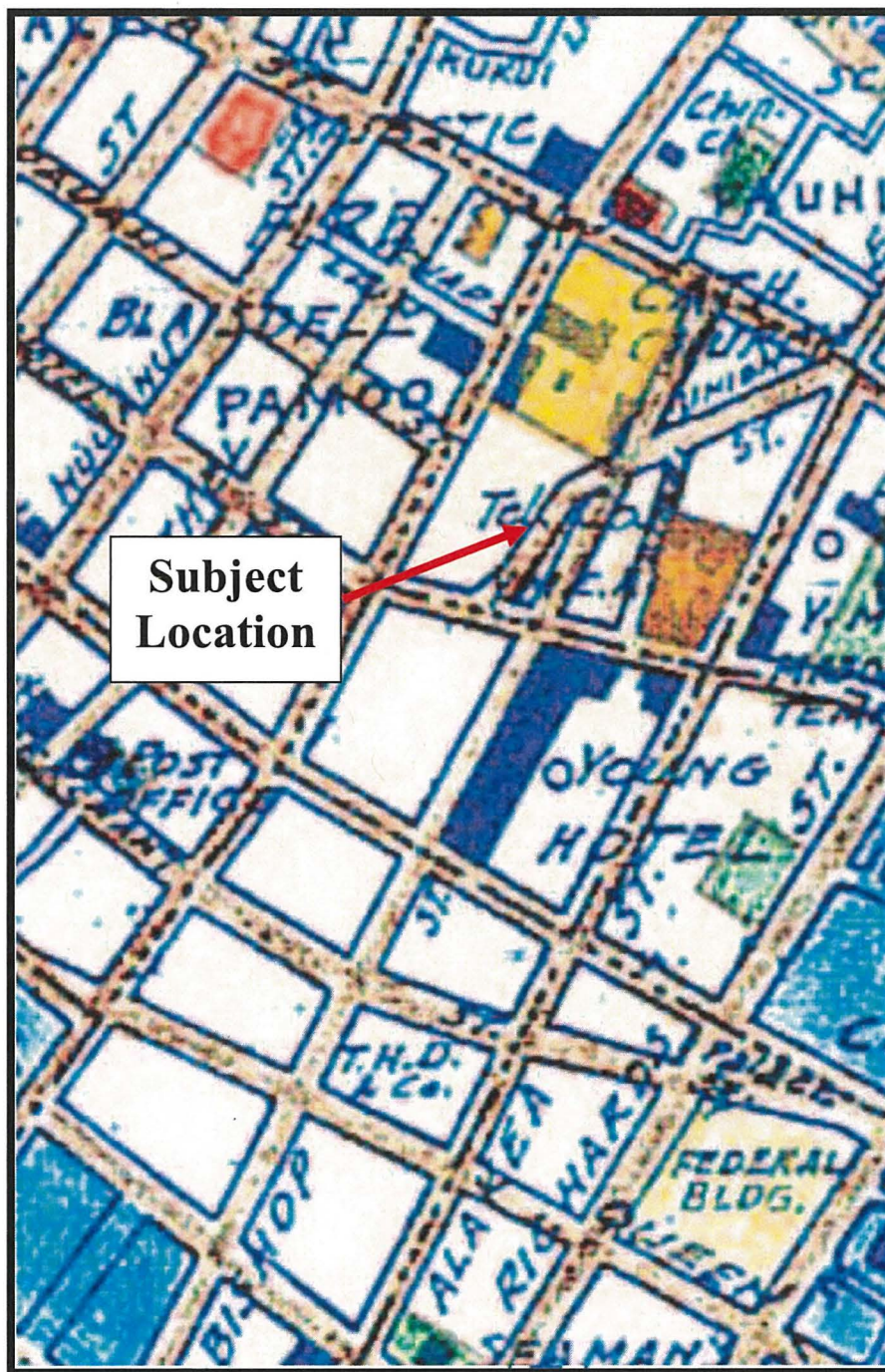
TMK (1) 2-1-010:047

EXHIBIT A1



TMK (1) 2-1-010:047

EXHIBIT A2



TMK (1) 2-1-010:047

EXHIBIT A3

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1-15, HAR

Project Title:	Authorize the Cancellation of the Existing Quitclaim Deed to the City and County of Honolulu and Issuance of a Disclaimer and/or Quitclaim Deed of State's Interests, if Any, in Union Street Mall to the City and County of Honolulu
Reference No.:	LOD 27673
Project Location:	Honolulu, Oahu, Tax Map Key: (1) 2-1-010: portion of 047.
Project Description:	Quitclaim of State Interest, if any, over Union Mall to the City and County of Honolulu.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	In accordance with HAR §11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred upon by the Environmental Council on March 3, 2020, 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" and Part 1, item 38, which states, "Transfer of title to land".
Cumulative Impact of Planned Successive Actions in Same Place Significant?	None, no change in use is being contemplated but public access to the park will still be maintained. As such, staff believes that there would be no significant cumulative impact.
Action May Have Significant Impact on Particularly Sensitive Environment?	No, the subject area is highly urbanized over the years. Based on the analysis below, staff believes there would be no significant impact to sensitive environmental or ecological receptors.
Consulted Parties:	City and County of Honolulu, Department of Parks and Recreation and Department of Land Management.
Analysis:	Staff understands there will be no substantial changes to the area and the park will still be open to the public after the improvement. Therefore, it is recommended that the subject

EXHIBIT B

request be exempted from an environment assessment.

Recommendation:

That the Board finds this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

JOHN WAIHEE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF LAND MANAGEMENT
P. O. BOX 621
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

January 22, 1988

Board of Land and
Natural Resources
Honolulu, Hawaii

Gentlemen:

OAHU

Subject: Conveyance of Union Street Mall in Fee Simple to
the City and County of Honolulu, Honolulu, Oahu

STATUTE: Section 171-95, Hawaii Revised Statutes

APPLICANT: CITY AND COUNTY OF HONOLULU

FOR: Conveyance in fee simple of all of the areas known
as the Union Street Mall, from Bishop Street to
Hotel Street, Honolulu, Oahu, as shown outlined in
red on tax map plat 2-1-10 appended to the basic
file.

AREA: 15,705 sq. ft., more or less; subject to
confirmation by Survey Division, Department of
Accounting and General Services.

PURPOSE: Roadway and mall uses

CONSIDERATION: To be determined by the Chairperson, but not to
exceed \$1.5 million dollars

REMARKS: The Union Street mall was a public roadway
converted into a mall years ago by the City and
County of Honolulu.

Although the underlying fee title of the area was
never conveyed by document by the State to the City
and County of Honolulu, title to it is considered
to be with the City pursuant to Chapter 264, Hawaii
Revised Statutes, as long as it is used for roadway
purposes since the City has and is maintaining the
area.

The above notwithstanding, the City and County of
Honolulu recently requested that fee title to the
Union Street mall area be transferred to the City
by way of an Executive Order from the Governor.

The City desires to obtain documented title to the
mall area in order that they may enter into a joint
development agreement with the developer of
adjacent private property whereby the developer
will be allowed to utilize the square footage of
Union Street Mall in calculating its open space
bonus, thus increasing allowable densities on the
private project site. The City will be given a
premium of \$1.5 million dollars in return for such
an agreement.

APPROVED BY THE CHAIRPERSON
OF THE BOARD OF LAND AND
NATURAL RESOURCES ON

1/22/88 as amended

ITEM F-5

EXHIBIT "C"

Board of Land and
Natural Resources

January 22, 1988

According to the City, in addition to the premium, the agreement would provide that the private developer be obligated to:

1. Keep the mall open to the public.
2. Retain the mall in open space.
3. Improve the mall at its own cost.
4. Provide maintenance and security of the mall;
and
5. Assume liability of the mall area.


Although the City requested the conveyance be by Executive Order, staff is recommending that the conveyance be made by Quitclaim Deed since all voluntary fee conveyances are by Deed and not by Executive Order.

RECOMMENDATION:


That the Board convey the subject Union Street Mall area in fee simple to the City and County of Honolulu for road and mall purposes under the terms and conditions above-mentioned which are by this reference incorporated herein, in addition to the following:

1. In determining the amount of the consideration, the following shall be considered:
 - a. Off-setting the City's real property tax charges levied or proposed to be levied against the State and/or Campbell Estate for the Kahuku Agricultural Park project commencing July 1, 1983 (date of lease by the State).
 - b. Any other real property tax charges levied or proposed to be levied against the State of Hawaii similar to the Kahuku Agricultural Park case.
2. Reservation of minerals, ground and surface waters.
3. Reverter clause, if used for other than road and mall purposes and/or proposed for sale to private interest.
4. Such other terms and conditions as may be prescribed by the Chairperson.

Respectfully submitted,


MIKE R. SHIMABUKURO
Land Management Administrator

APPROVED FOR SUBMITTAL:


WILLIAM W. PATY, Chairperson

Amendment: Delete Recommendation 1.b.

Add: Condition 5. That the City Council to take action to approve all permits required for the private development project within one year from January 22, 1988, otherwise the property to revert to the State.

RECORDATION REQUESTED BY:

DEPT OF LAND AND NATURAL RESOURCES
LAND MANAGEMENT DIVISION

AFTER RECORDATION, RETURN TO:

DEPT OF LAND AND NATURAL RESOURCES
LAND MANAGEMENT DIVISION

RETURN BY: MAIL () PICKUP (X)

THE ORIGINAL OF THE DOCUMENT

RECORDED AS FOLLOWS:

STATE OF HAWAII
OFFICE OF

30 U CONVEYANCES

Received for record this MAY 12 1988

day of _____, A.D., 19____

at 8:01 o'clock A.M. and

recorded in Liber 21917

on Pages 66

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

THAT, effective as of the 9th day of May, 1988, the STATE OF HAWAII, hereinafter referred to as the "GRANTOR," by its Board of Land and Natural Resources, acting pursuant to Section 171-95, Hawaii Revised Statutes, for and in consideration of the sum of FORTY-FOUR THOUSAND THREE HUNDRED SIXTY-SEVEN AND 92/100 DOLLARS (\$44,367.92), paid on behalf of the Department of Land and Natural Resources by PFK Development Group, Ltd., who seeks to build a private development project adjacent to the land which is the subject of this Quitclaim Deed, to the CITY AND COUNTY OF HONOLULU, a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is 650 South King Street, Honolulu, Hawaii 96813, hereinafter referred to as the "GRANTEE," the receipt whereof is hereby acknowledged, does hereby remise, release and forever quitclaim unto said GRANTEE, its successors and assigns, all of GRANTOR'S right, title, interest, claim and demand in and to that certain parcel of land known as Union Mall, situate at Honolulu, Oahu, Hawaii, more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B", hereto attached and made a part hereof (hereinafter "land").

DEPT-HAWAII CONVEYANCE TAX

CERTIFICATE NOT REQUIRED

EXHIBIT "D"

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 such 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 such 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 said 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 said 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, HOWEVER, TO THE FOLLOWING TERMS, CONDITIONS
AND COVENANTS:

1. That the use and enjoyment of the parcels of land herein conveyed shall not be in support of any policy which discriminates against anyone based upon race, creed, color, sex, national origin or a physical handicap.

2. That the use of the subject area, whether in combination, consolidation or otherwise with other land, shall be in accordance with the appropriate zoning and subdivision laws and ordinances of the City and County of Honolulu.

3. That should the land be used for other than road or mall purposes or if the land is proposed for sale to any private party, then ownership of the land shall revert to the GRANTOR.

4. That should the City Council of the City and County of Honolulu not approve all permits required for the aforementioned private development project within one year from January 22, 1988, then ownership of the land shall revert to the GRANTOR.

TO HAVE AND TO HOLD, the same, together with all the rights, improvements, easements, privileges and appurtenances thereunto belonging, or in anyway appertaining or held and enjoyed therewith, unto said GRANTEE, its successors and assigns, forever, except as aforesaid.

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 this 9th day of May, 1988, and the CITY AND COUNTY OF HONOLULU, the GRANTEE herein, has caused these presents to be

duly executed this 22nd day of March, 1988, both
effective as of the day and year first above written.

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

1-22-88

STATE OF HAWAII

By [Signature]
Chairperson and Member
Board of Land and
Natural Resources

And By [Signature]
Member, Board of Land
and Natural Resources

CITY AND COUNTY OF HONOLULU

By FRANK F. FASI
Its Mayor

APPROVED AS TO FORM:

[Signature]
Deputy Attorney General

Dated: March 8, 1988

APPROVED AS TO FORM:

DIANE T. KAWAUCHI

Deputy Corporation Counsel

Dated: 3-21-88

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 22nd day of March, 1988, before me appeared FRANK F. FASI, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the City and County of Honolulu, a Municipal corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said Municipal corporation, and that the foregoing instrument was signed and sealed in behalf of said Municipal corporation by authority of its City Council, and said FRANK F. FASI acknowledged said instrument to be the free act and deed of said Municipal corporation.

Diane Yuriko Murata
Notary Public, State of Hawaii

My commission expires: 7/21/88



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

C.S.F. No. 20,671

December 28, 1987

UNION MALL
(Formerly Union Street)

Honolulu, Oahu, Hawaii

Comprising the following:

- A. Portion of the old Government Road.
- B. Portion of Royal Patent 1769, Land Commission Award 631 to Stephen Reynolds conveyed to the Minister of Interior by Lady Superior, Gertrude Dominique George by deed dated May 11, 1864 and recorded in Liber 18, Pages 149-150.
- C. Portion of Royal Patent 653, Land Commission Award 924 to T. C. B. Rooke conveyed to the Minister of Interior by The Queen's Hospital, a Hawaii Corporation, by deed dated January 18, 1887 and recorded in Liber 101, Pages 432-435 (Land Office Deed 157).
- D. Portion of Royal Patent 1967, Land Commission Award 658 to Kekua conveyed to the Minister of Interior by Gilbert and Mary B. A. Waller by deed dated June 24, 1892 and recorded in Liber 136, Pages 249-250 (Land Office Deed 361).
- E. Portion of Royal Patent 26, Land Commission Award 1026 to Mary Dowsett conveyed to the Minister of Interior by Elizabeth J. Monsarrat, et al. by deed dated August 11, 1898 and recorded in Liber 183, Pages 433-435 (Land Office Deed 647).
- F. Portion of Royal Patent 417, Land Commission Award 18 to George Wood conveyed to the Minister of Interior by Marie Brossier (Judith), Superior of the Sisters of the Sacred Hearts by deed dated August 11, 1898 and recorded in Liber 183, Pages 451-453 (Land Office Deed 573).

Beginning at the west corner of this parcel of land, at the southwest corner of Lot 1 as shown on Map 1 of Land Court Application 175 and on the northeast side of Hotel Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUNCHBOWL" being 930.29 feet South and 3954.30 feet West, thence running by azimuths measured clockwise from True South:-

1. 275° 20' 6.30 feet along Lot 1 as shown on Map 1 of Land Court Application 175;
2. 272° 51' 19.50 feet along Lot 1 as shown on Map 1 of Land Court Application 175;
3. 267° 40' 30.90 feet along Lot 1 as shown on Map 1 of Land Court Application 175;
4. 254° 55' 25.00 feet along Lot 1 as shown on Map 1 of Land Court Application 175;
5. 254° 40' 28.94 feet along Lot 1 as shown on Map 1 of Land Court Application 175, along Lot 2 as shown on Map 1 of Land Court Application 917, being also Land Court Application 1022, and along Lot 1-B as shown on Map 2 of Land Court Application 917;
6. 234° 40' 151.00 feet along Lot 1-B as shown on Map 2 of Land Court Application 917;
7. Thence along Lot 1-B as shown on Map 2 of Land Court Application 917 on a curve to the right with a radius of 187.00 feet, the chord azimuth and distance being:
241° 52' 9.30 feet;
8. Thence along Deed: Minister of Interior to Marie Brossier (Judith), Superior of the Sisters of the Sacred Hearts dated August 11, 1898 and recorded in Liber 183, Pages 451-453 and the remainder of Royal Patent 417 Land Commission Award 18 to George Wood on a curve to the right with a radius of 187.00 feet, the chord azimuth and distance being:
255° 38' 35" 82.00 feet;
9. 268° 18' 30" 81.82 feet along Deed: Minister of Interior to Marie Brossier (Judith), Superior of the Sisters of Sacred Hearts dated August 11, 1898 and recorded in Liber 183, Pages 451-453 and the remainder of Royal Patent 1769, Land Commission Award 631 to Stephen Reynolds;
10. 52° 50' 59.92 feet along the northwest side of Bishop Street;
11. 88° 18' 30" 32.38 feet along the remainder of Royal Patent 26, Land Commission Award 1026 to Mary Dowsett;

December 28, 1987

12. Thence along the remainder of Royal Patent 26, Land Commission Award 1026 to Mary Dowsett on a curve to the left with a radius of 100.00 feet, the chord azimuth and distance being:
72° 11' 45" 55.50 feet;
13. 56° 05' 167.35 feet along Royal Patent 26, Land Commission Award 1026 to Mary Dowsett and Land Court Application 1592;
14. 51° 20' 29.34 feet along Land Court Application 1592;
15. 50° 25' 31.97 feet along the remainder of Royal Patent 1967, Land Commission Award 658 to Kekua;
16. 125° 14' 50" 100.29 feet along the northeast side of Hotel Street to the point of beginning and containing an AREA OF 15,705 SQUARE FEET.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Joseph M. Matsuno
Joseph M. Matsuno
Land Surveyor

pt

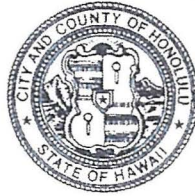
Compiled from map and
desc. furn. by Land Div.,
C&C of Honolulu and
Govt. Survey Records.

DEPARTMENT OF PARKS & RECREATION
CITY AND COUNTY OF HONOLULU

1000 Uluohia Street, Suite 309, Kapolei, Hawaii 96707
Phone: (808) 768-3003 • Fax: (808) 768-3053
Website: www.honolulu.gov

RECEIVED
LAND DIVISION
2019 DEC 27 AM 10:42

KIRK CALDWELL
MAYOR



DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

MICHELE K. NEKOTA
DIRECTOR

JEANNE C. ISHIKAWA
DEPUTY DIRECTOR

December 18, 2019

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

Dear Chair Case:

SUBJECT: Union Mall – Release of Quitclaim Deed Restrictions

RECEIVED
2019 DEC 23 AM 10:07
DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

In 1987, then Mayor Jeremy Harris wrote to Governor John Waihee requesting ownership of Union Street Mall ("Mall") be transferred from the State to the City. At that time, the City was in negotiations with Fort Street Associates to improve the Mall and provide new landscaping, maintenance and security, all at the developer's expense. In May, 1988, PFK Development Group paid the State \$44,368.92 and in return, the State transferred the Mall to the City by way of a Quitclaim Deed, attached hereto. The Quitclaim Deed contains two restrictions, one of which provides that the ownership of the Mall will revert back to the State if the land is used for other than road or mall purposes or if the land is proposed for sale to a third party.

Although various maintenance and landscaping improvements were made to the Mall, the City continues to face challenges with underutilization of the Mall as well as safety and security issues, including increased illegal activities occurring within the Mall. To address these issues, the City is working with the community to re-activate the Mall, including possible redevelopment and redesign of the entire Mall.

The City is requesting that the State release the use and sale restriction and reversionary provisions in the Quitclaim Deed so that the City may pursue possible redevelopment and redesign of the Mall. The City believes that release of these provisions will afford the City a broader range of opportunities for redevelopment and redesign of the Mall.

Should you have any questions or require additional information, please call me at 768-3001.

Sincerely,

A handwritten signature in black ink that reads "Michele K. Nekota".

Michele K. Nekota
Director

EXHIBIT "E"

Encl.

To: Barry Cheung

RE: Union Mall Purchase

Date: March 6, 2020

Introduction

Douglas Emmett (DE) is converting an approximately 475,000 square foot office building located at 1132 Bishop Street into 493 affordable rental apartment units with amenity areas on the first and second floors. We are currently applying to place the property into the City of Honolulu 201H affordable housing program. Work on the conversion has already commenced and we expect to deliver the first 98 units, leasing center and amenities in 2020. As part of our feasibility analysis, we identified the deteriorated condition of Union Mall and its associated crime, litter and loitering as factors that negatively impact 1132 Bishop Street, neighboring properties and the Honolulu Central Business District. DE would like to acquire title to Union Mall to be able to provide a cleaner, safer, and more beautiful mall for the Honolulu community.

History

On May 9, 1988, as part of the development of 1132 Bishop Street, the State of Hawaii issued a Quitclaim Deed (see attached) for Union Street Mall in favor of the City of Honolulu. The deed contained four covenants, including covenant 3, which stated that:

should the land be used for other than road or mall purposes or if the land is proposed for sale then ownership of the land will revert to the Grantor

The City then entered a Joint Development Agreement (JDA) with the developer, under which the developer agreed to develop and construct an open park area on Union Mall and pledged to provide security and maintenance at no cost to the city. Union Mall is overseen by the City of Honolulu Department of Parks and Recreation so it closes at 10:00 p.m. and opens again at 5:00 a.m.

Union Mall Today

Since purchasing 1132 Bishop in 2004, DE has fulfilled its obligations under the JDA and provides the following maintenance and security services:

- Power washing six times a week
- Trash removal four times per day
- Sweeping four times per day
- 24/7 security coverage
- Maintenance services
- Weekly, and as needed, landscape services.

EXHIBIT "F"

Despite efforts to maintain Union Mall in a clean and safe condition, the busy walkway has been plagued by chronic vagrancy, littering and crime. In addition, Union Mall itself is often used as a public restroom, resulting in our maintenance team cleaning up human waste. When we power wash in the early morning our maintenance team is accompanied by a security officer to ensure their safety.

Although we provide security, our officers have no legal authority to prevent loitering or to remove unsavory people from Union Mall. Depending on their availability, HPD provides assistance to our security team to remove people who loiter or sleep on Union Mall after 10:00 p.m. In recent years the situation has sharply deteriorated. Sadly, instead of being the Central Business District park amenity envisioned in the JDA, Union Mall has become an area of blight that most people choose to avoid.

Tamarind Park Model

In contrast, Tamarind Park, which is at the intersection of Bishop Street and King Street, provides the public with a clean and safe park amenity. The key difference being that unlike Union Mall, Tamarind Park is a private park that is open to the public. Because Tamarind Park is private property, we are able to provide a higher level of security. If our security officers see people exhibiting dangerous or undesirable behavior they can engage with them and, if necessary, escort them off the premises without burdening the HPD. Besides enhanced safety, the higher security standard reduces vandalism and littering which enhances Tamarind's Park's overall environment.

Union Mall Acquisition

DE is in active discussions with the City of Honolulu about purchasing Union Mall. The mall would still remain open to the public with the same access and hours as currently provided. All City of Honolulu easements, utilities and public access rights would remain intact. Upon acquisition, DE plans to significantly enhance landscaping and walkways so that visitors to Union Mall may enjoy a cleaner, safer and improved experience.

The City of Honolulu is supportive of DE purchasing the Union Mall. We have two paths to proceed toward a purchase, both of which involve the DLNR because of its remainder rights in the Quitclaim Deed.

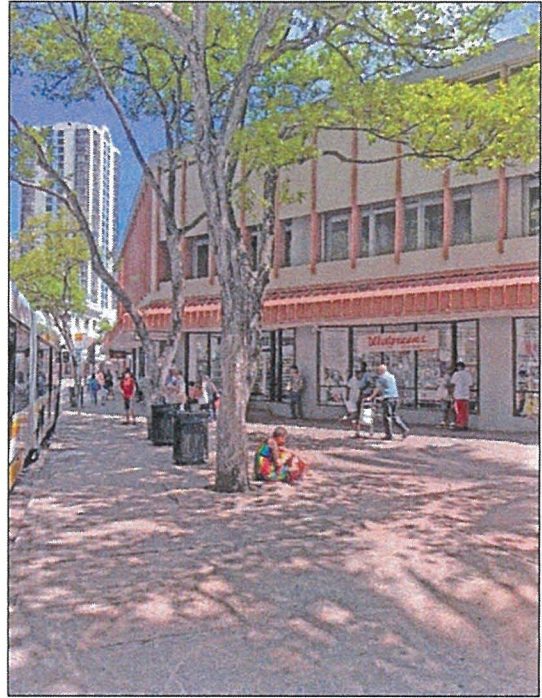
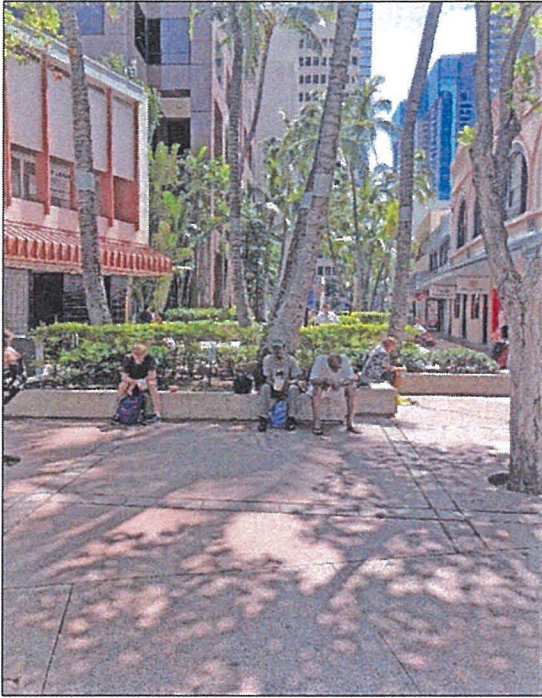
Option 1: Purchase the ground from the City of Honolulu and have the DLNR waive its remainder rights.

Option 2: Have the City of Honolulu deed the land back to the DLNR and then DE will purchase the land from the DLNR.

Based on our initial conversation it seems that Option 1 may be the easier option for the DLNR. If we pursue Option 1, we will still need the DLNR to approve the transaction and waive its remainder rights in the Quitclaim Deed.

We are very excited about the 1132 project and associated Union Mall upgrades because we believe these investments will not only provide working families with 500 new affordable rental units, but also increase the vibrancy of Downtown Honolulu. Below we've provided some renderings of the renovated mall to help you better understand the project.

Union Mall Today



Renovated Union Mall



ORDINANCE NO. 2401
(BILL NO. 134, 1963)

AN ORDINANCE TO ESTABLISH THAT PORTION OF UNION STREET LYING BETWEEN BISHOP AND HOTEL STREETS AS A PEDESTRIAN MALL, TO REGULATE TRAFFIC THEREON, AND TO IMPOSE PENALTIES.

WHEREAS, it has been found that to close a portion of Union Street between Hotel and Bishop Streets to vehicular traffic will have the effect of substantially reducing traffic hazards on Hotel and Bishop Streets; and

WHEREAS, the increase in traffic safety on Hotel and Bishop Streets combined with the convenience accorded to the shopping public by closing said portion of Union Street to vehicular traffic and establishing it as a pedestrian mall will be of great benefit to the public; and

WHEREAS, all of the shops and other business houses fronting on said portion of Union Street have acquiesced in the establishment of said mall; and

WHEREAS, the establishment of the mall is in conformity with the General Plan of the City and County of Honolulu; now, therefore,

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. That portion of Union Street extending from Bishop to Hotel Streets in downtown Honolulu is hereby closed to vehicular traffic and is established as a pedestrian mall.

SECTION 2. Except as hereinafter provided, it shall be unlawful for any person to park, or cause to be parked, or to operate or propel, or cause to be operated or propelled, any vehicle (as defined in the Traffic Code, as amended) upon the mall hereinabove established.

SECTION 3. Any person legally entitled as owner, lessee, invitee or licensee to either park a vehicle in the parking lot mauka of the Fronk-Wynn Building or to operate or propel a vehicle in the alley situated on the mauka end of the mall and running Ewa along a centerline commencing on the Ewa property line of Union Street at a distance of approximately fifty (50) feet from the intersection of the Ewa property lines of Bishop and Union Streets shall be permitted to operate or propel such vehicle, for purposes of ingress and egress, over the portion of the mall lying mauka of a straight line across the mall, parallel to and thirty (30) feet mauka of the makai boundary of the lot bearing the State Tax Map designation 2-1-10-37 (on which the Fronk-Wynn building is situated); provided that entry and exit to and from said parking lot and alley shall be from and to Bishop Street only.

SECTION 4. During the period from 5:30 P.M. until 7:30 A.M. of the following day (except on Thursdays and Fridays, and, during the period from Thanksgiving Day to Christmas each year, on Mondays through Fridays of each week, when the time shall be from 9:30 P.M. until 7:30 A.M. of the following day) and on Sundays, it shall be lawful to operate or propel a vehicle upon the mall for the purpose of delivering property to or receiving the same from a store, shop, office or other establishment in or upon any premises abutting on the mall or for the purpose of cleaning or otherwise maintaining the mall; and, during said periods and for such purposes, it shall be lawful to park a vehicle for so long as may be reasonably necessary.

SECTION 5. It shall be unlawful for any person to operate or propel or cause to be operated or propelled any vehicle at any time on said mall at a speed in excess of ten (10) miles per hour.

EXHIBIT "G"

SECTION 6. The prohibition against parking or operating a vehicle upon the mall shall not apply to the driver of any authorized emergency vehicle (as defined in the Traffic Code, as amended) responding to an emergency call originating from the mall area; provided that such exemption shall not relieve the driver of operating the vehicle with due regard for the safety of others.

SECTION 7. Any person convicted of violation of any provision of this Ordinance shall be punished by a fine not exceeding One Thousand Dollars or by imprisonment for not more than one year; or by both such fine and imprisonment.

SECTION 8. All Ordinances and resolutions heretofore adopted which are in conflict with any provision of this ordinance, to the extent of the conflict, are hereby superseded.

SECTION 9. This Ordinance shall take effect on approval by the Mayor.

INTRODUCED BY:

(S) RICHARD M. KAGEYAMA
(S) ERNEST N. HEEN
(S) H. G. P. LEMKE
(S) MATSUO TAKABUKI
(S) BEN F. KAITO
Councilmen

DATE OF INTRODUCTION:
AUGUST 13, 1963
Honolulu, Hawaii

Approved this 20th day of September, 1963

(S) B. M. HARLOE
BARTLEY M. HARLOE, Acting Mayor
City and County of Honolulu

(Honolulu Star Bulletin: September 26, 1963)

Council Services Division
Office of the City Clerk
City and County of Honolulu

FOR REFERENCE ONLY
DO NOT REMOVE



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 29, 2020

10707(O)

MEMORANDUM

TO: Barry W. Cheung, Oahu District Land Agent

THROUGH: Russell Y. Tsuji, Administrator *RT*

FROM: E. Mahoe Collins, State Abstractor *EMC*

SUBJECT: Ownership of Union Mall, Tax Map Key (1) 2-1-010:047

We have been requested to confirm the ownership interests of the State of Hawaii, if any, in and to the subject property identified as the "Union Street Mall" as shown on Exhibit A, bearing Tax Map Key (1) 2-1-010:047 containing an area of 15,705 sq. ft.

Said "Union Street Mall" is comprised of a portion of the Old (1847) Government Road and portions of the following five Land Commission Awards acquired by deeds to the government of Hawaii between 1864 and 1898, "for the use and benefit of the Hawaiian Government as a street":

1. Land Commission Award 631, Royal Patent 1769 to Stephen Reynolds;
2. Land Commission Award 924, Royal Patent 653 to TCB Rooke;
3. Land Commission Award 658, Royal Patent 1967 to Kekua;
4. Land Commission Award 1026, Royal Patent 26 to Mary Dowsett; and
5. Land Commission Award 18, Royal Patent 417 to George Wood.

Pursuant to the Highways Act, 1892 all roads, alleys, and streets, including the subject Union Street (Mall), in existence since 1847, were declared to be public highways owned by the Hawaiian Government and under the general supervision, charge and control of the Minister of the Interior.

Through operation of laws subsequent, the ownership of the Hawaiian government in and to the Union Street Mall and other public highways was transferred to the City and County of Honolulu whereby Act 190, SLH 1963, and Act 221, SLH 1965 "the ownership of all public highways and the land, real estate and property of the same shall be in the government in fee simple. The term 'government' as used herein shall mean the State with reference to state highways and shall mean the respective counties with reference to county highways".

EXHIBIT "H"

Notwithstanding the unconditional fee simple ownership of the subject Union Street Mall vesting in the City and County of Honolulu through operation of laws described above, the State of Hawaii by Quitclaim deed dated May 9, 1988, recorded in Liber 21917 at Page 66 (LOD S-27673), transferred the same land already owned by the City and County of Honolulu, but with conditions (i.e., adding a reversion of ownership to the land if it is not used as a road or mall).

Accordingly, this office finds that the effect of the subsequent 1988 Quitclaim deed by the State to the County purporting to transfer a conditional fee simple interest in the land already owned unconditionally in fee simple by the same City and County of Honolulu is unclear.

If you have any questions, please call me at 587-0458.

Enclosure

Union Street Mall
TMK: (1) 2-1-010:047

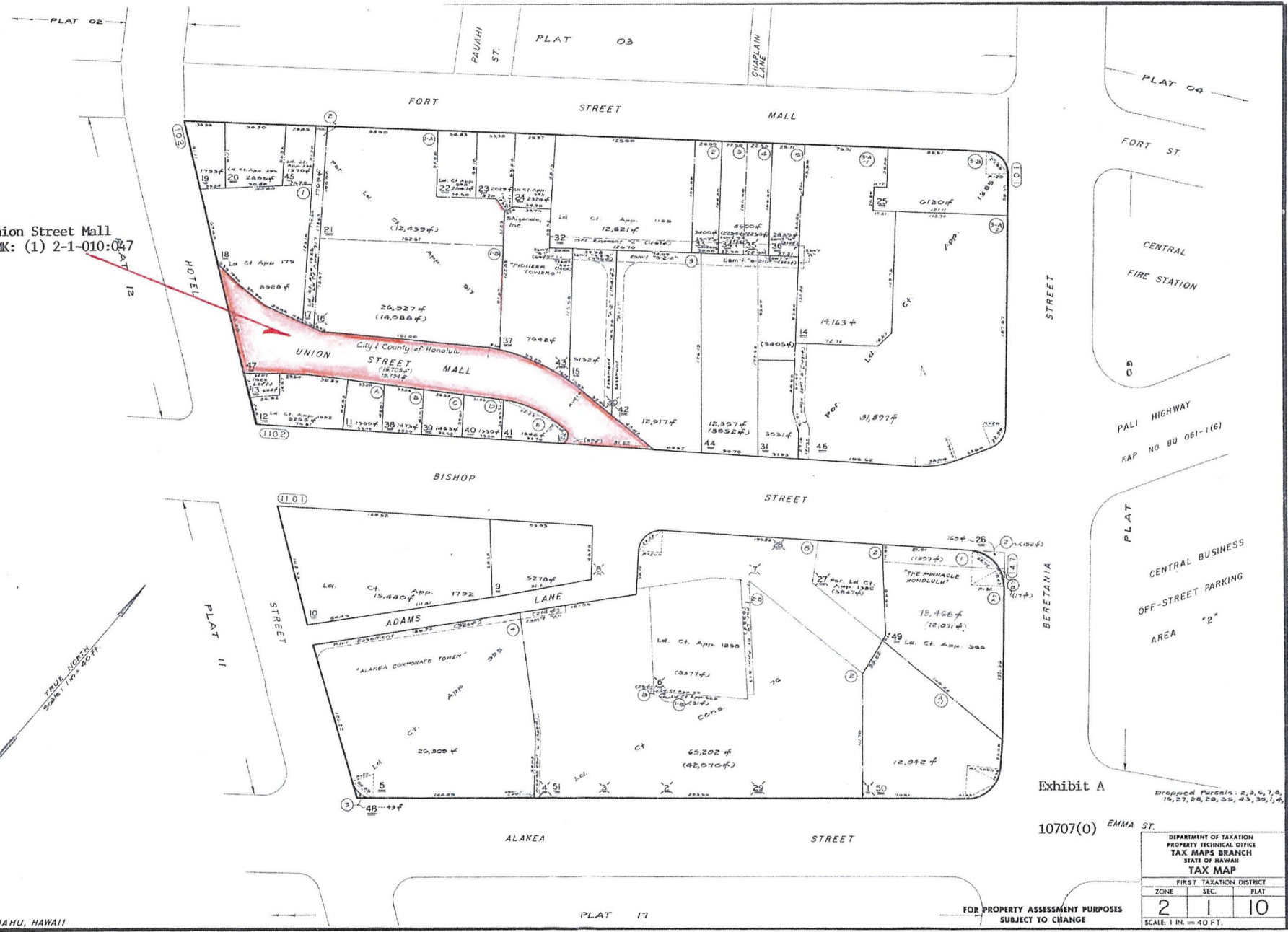


Exhibit A

10707(0) EMMA ST.

DEPARTMENT OF TAXATION PROPERTY TECHNICAL OFFICE TAX MAPS BRANCH STATE OF HAWAII TAX MAP		
FIRST TAXATION DISTRICT		
ZONE	SEC.	PLAT
2	1	10
SCALE 1 IN. = 40 FT.		

FOR PROPERTY ASSESSMENT PURPOSES
SUBJECT TO CHANGE

HONOLULU, OAHU, HAWAII

DATE: 10/15/2019 BY: KYLE M. LEE
 Dwg. No. 107 (0) (Exhibit A)
 SOURCE: TMS