

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

October 13, 2023

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

Ref: 23OD-084

OAHU

Quitclaim of State's Interests, if Any, in Portions of Forest Ridge Way as Remnants to the City and County of Honolulu; Makiki, Honolulu, Oahu; TMK: (1) 2-5-015:023 and portions of Forest Ridge Way

APPLICANT:

City and County of Honolulu (the "City").

LEGAL REFERENCE:

Sections 171-6, -13, -52, -95(a), and Section 264-2 Hawaii Revised Statutes ("HRS"), as amended.

LOCATION & AREA:

Portion of Forest Ridge Way located in Makiki, Honolulu, Oahu; TMK: (1) 2-5-015:023 and portions of Forest Ridge Way, as shown on **Exhibit 1A** and **1B**.

GL5107	268 square feet
Easement E-1	25 square feet
Easement E-2	85 square feet
Lot 2-B	209 square feet

See Remark section for details description of these areas.

ZONING:

State Land Use District: Conservation
City & County of Honolulu LUO: P-1

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:

Encumbered by Grant of Easement No. S-5107 and existing Forest Ridge Way, a county highway.

GRANT OF EASEMENT No. S-5107CHARACTER OF USE:

Right, privilege and authority to use, occupy, repair and maintain portions of a residential dwelling and carport presently constructed, placed and maintained.

TERM:

55 years commencing on June 28, 1985 and expiring on June 27, 2040.

CURRENT ANNUAL RENT:

\$276 due annually.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules ("HAR") § 11-200.1-15 and -16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 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 37 which states, "Transfer of title to land."

The subject request is a de minimis action that will probably have minimal or no significant effect on the environmental and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR, as a de minimis action.

DCCA VERIFICATION:

Not applicable, governmental agency.

APPLICANT REQUIREMENT:

None.

REMARKS:

When the existing house at 219 Forest Ridge Way, further identified as TMK (1) 2-5-015:013, was built in 1951, there was a gap between the finished improvement and the road due to an inclined retaining wall supporting the road. The owners apparently constructed the carport and other improvements to bridge the gap between their private property boundary and the top of the retaining wall, thereby establishing access to Forest Ridge Way. The improvements built in the gap are therefore outside the private boundary.

Around 1985, the previous owners decided to sell their private property. During the due diligence for the sale, the subject encroachments were discovered. At its meeting of June 28, 1985, under agenda item F-9, the Board approved the issuance of a term easement to the previous owners. Based on the map and legal description prepared by the land surveyor retained by the owners covering an area of 268 square feet, the easement's fair market rental value was appraised and paid, which was followed by the consummation of Grant of Easement No. S-5107 ("GL5107"). A recent photo of the subject easement area is attached as **Exhibit 2**.

In January 1986, Andrew Lewis Schwartz and Susan Hayes-Schwartz, husband and wife, became the grantees of GL5107 ("Grantees") pursuant to an assignment of the subject easement with Board consent.

In 2009, the Grantees were planning on improving their property. In addition to the subject encroachments covered in GL5107, portions of the carport wings and external staircase were also found to be built outside the private boundary.¹ Since then, Grantees have been working with the City and County of Honolulu trying to resolve the situation.

In August 2016, the City Council adopted City Resolution No. 16-210 (**Exhibit 3**) which authorized the sale of a remnant [Lot 2-B] and issuance of easements [E-1 and E-2] to the Grantees. The locations of the remnant and easements are shown on the map attached to resolution. Staff notes that the easements [E-1 and E-2] and the remnant are portions of Forest Ridge Way. Staff was not aware of the 2016 resolution and any reasons that the City was separating the areas into easement and remnant until advised by the Grantees subsequently. Nevertheless, the Grantees and the City are still working on the above-mentioned purchase.

During the review for rental reopening regarding GL5107 scheduled for 2020, staff noted that the easement area described on the legal description and easement map (**Exhibits 4A and 4B**) was shown as "portion of Forest Ridge Way", which is a county highway.

¹ Grantees believed that these additional encroachments should have been caught back in 1980s and included in GL5107. Nevertheless, staff reviewed the easement file and noted that the then land surveyor hired by the previous owner did not submit any map for additional encroachment.

Roads and highways are outside the definition of public lands as defined in Chapter 171, HRS. Further, pursuant to Section 264-2, HRS, the ownership of 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. For reasons unknown to the staff, GL5107 was issued in 1985 notwithstanding the statutory definition of public lands. It has been Land Division's position, which was supported by the Department of the Attorney General, that the Board does not have any jurisdiction over county highways as defined in Section 264-1, HRS.

All the subject areas mentioned above, including area under GL5107, Easements E-1 and E-2, and Remnant Lot 2-B are portions of the existing Forest Ridge Way, which is a county highway as defined in Section 264-1, HRS. The City has accepted ownership and jurisdiction of the subject area pursuant to Act 288, SLH 1993 and adoption of City Council Resolution 93-287, CD-1, FD-1.

Pursuant to the Resolution No. 16-210, the City Council approved of the granting of Easements E-1 and E-2, as well as the sale of Lot 2-B, to the Grantees, who own 219 Forest Ridge Way, further identified as TMK (1) 2-5-015:013. By a letter dated August 10, 2023, the City requests that the Board convey to the City the land under Easements E-1, E-2 and Lot 2-B by way of a quitclaim deed, with said quitclaim deed also assigning to the City by quitclaim all of the Board's right, title and interest, if any, to GL5107. See second paragraph on page 2 of the City's request attached as **Exhibit 5**.

"The City further requests that such quitclaim deed also quitclaims to the City all of BLNR's right, title and interest, if any, in and to the Grant of Easement."

The City will thereafter grant Easements E-1 and E-2 and convey Lot 2-B to Grantees. The City will also thereafter have all of the Board's rights, title, interest and obligations under GL5107.

Staff does not believe the requested assignment of Board's interest in GL5107 to the City is necessary. The proposed quitclaim deed will note GL5107 as an encumbrance. The City will have all the legal authority as an owner to dispose the GL5107 area. If the City ends up selling the fee interest of GL5107 area, the current easement interest will merge into the fee simple title.

The Grantees indicated no objection to the foregoing and advised that there is no mortgage encumbering the private property and/or GL5107. There are no compliance issues under the subject easement.

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 division's practice that formal documentation (i.e., 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.

The law on conveyances of public lands changed in 2009, requiring supermajority legislative approval under Section 171-64.7, HRS. Upon consultation with the Department of the Attorney General in similar cases, Section 171-95(a)(1), HRS, does allow the fee conveyance, by a quitclaim deed, of a remnant qualified under Section 171-52, HRS, to the City without legislative approval. Pursuant to Section 171-52, the term "remnant" means a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics.

The subject areas meet the criteria for remnants due to the size and shape as shown on Exhibit 4A and 4B. Apart from the fact that the areas are currently part of a county road, they are economically and physically unsuitable for development or utilization as anything other than a road.

Additionally, pursuant to Section 171-95(a)(5), HRS, the Board may:

Execute quitclaim deeds to the governments and agencies, with or without consideration, releasing any claim to the property involved made upon disputed legal or equitable grounds, whenever the board in its discretion deems it beneficial to the State

A quitclaim conveyance of the road remnants is appropriate in this case because, as noted above, pursuant to Sections 171-2 and 264-2, HRS, land being used and roads and streets are excluded from the definition of public lands under Chapter 171, HRS, and are deemed to be county or State highways instead. Here, it is not disputed that the road at issue is a City road. It is beneficial to the State to clear title to rights-of-way maintained by the City by quitclaiming interests, if any, in such rights-of-way to the County.

To enable the City to grant Easements E-1 and E-2 and convey the fee title to Lot 2-B to the abutting private owner mentioned above, staff is recommending the issuance of a quitclaim deed. The form of the deed has been approved by the Department of the Attorney General and contains specific wording that the State is releasing and disclaiming any interest since it is our assertion that the County already owns the road.

Staff did not solicit comments from other agencies, except the Department of Land Management of the City.

There are no other pertinent issues or concerns, and staff recommends the Board authorize the transfer of the land by the requested quitclaim deed as described above.

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, 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 as a de minimis action.
2. Determine the State does not own the subject property or any interest in it.
3. Determine that executing a quitclaim deed to the City and County of Honolulu is beneficial to the State and authorize the quitclaim of interests, if any, the State may have in the subject roadway parcel to the City covering the relevant 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 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

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

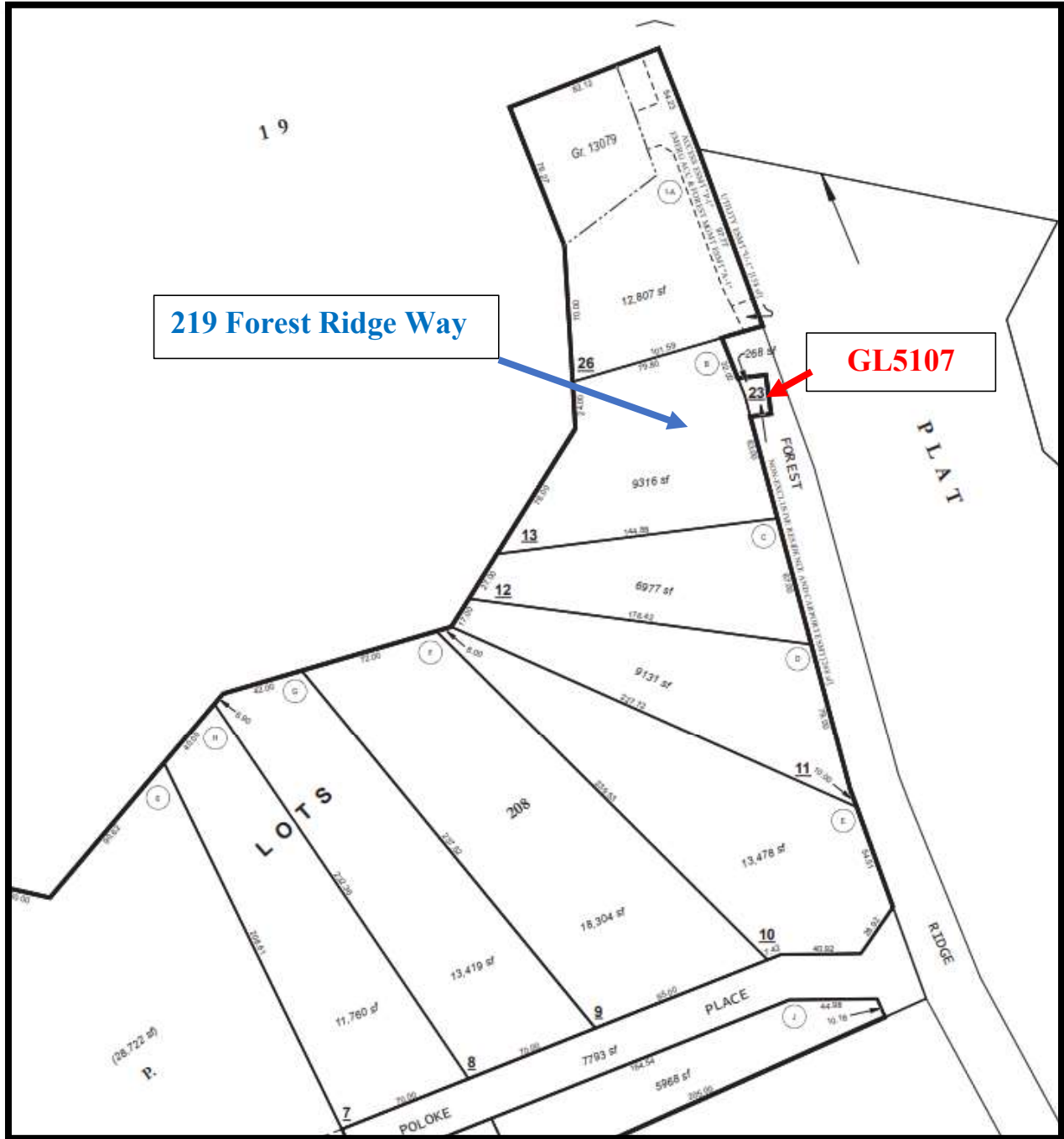


Dawn N. S. Chang, Chairperson *RT*



TMK (1) 2-5-015:023

EXHIBIT 1A



TMK (1) 2-5-015:023

EXHIBIT 1B



TMK (1) 2-5-015:023
Approximate Easement Area

EXHIBIT 2



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 16-210

RESOLUTION

APPROVING THE ABANDONMENT AND SALE OF LOT 2-B AND GRANTING OF EASEMENTS E-1 AND E-2 ABUTTING 219 FOREST RIDGE WAY (TMK: 2-5-015:013), HONOLULU, OAHU, HAWAII.

WHEREAS, Paragraph 16, Section 46-1.5, Hawaii Revised Statutes (HRS), as amended, authorizes the counties, under certain conditions, to dispose of real property as the interests of the inhabitants of the county may require; and

WHEREAS, Lot 2-B, with an area of 209 square feet, which is a portion of the roadway abutting 219 Forest Ridge Way (TMK: 2-5-015:013), is shown shaded in green on the map designated as Exhibit "A", attached hereto and by reference is made part of this resolution; and

WHEREAS, the City accepted ownership and jurisdiction of Lot 2-B pursuant to Act 288, SLH 1993 and adoption of the City Council Resolution 93-287, CD-1, FD-1; and

WHEREAS, Lot 2-B is a county highway as defined in Section 264-1 HRS; and

WHEREAS, said Section 264-1, HRS provides that all county highways once established shall continue until vacated, closed, abandoned, or discontinued by a resolution of the legislative body of the county wherein the county highway lies; and

WHEREAS, said Section 264-3 HRS provides that a county highway, before it is disposed of in any way, it shall be first offered to the abutters for a reasonable length of time and at a reasonable price; and

WHEREAS, a non-exclusive residence and carport easement with an area of 268 square feet was granted to the former owners, and assigned to the current owners, of 219 Forest Ridge Way (TMK: 2-5-015:013) by the State of Hawaii, as shown in yellow on the map designated as Exhibit "A"; and

WHEREAS, the non-exclusive residence and carport easement has a term of 55 years and will terminate on June 27, 2040; and

WHEREAS, Easements E-1 and E-2, with an area of 25 square feet and 85 square feet, respectively, will be granted to Andrew and Susan Schwartz, the current abutting property owners of 219 Forest Ridge Way (TMK: 2-5-015:013), and are shown colored in red on the attached Exhibit "A" and will end coterminous with the carport easement granted by the State; and

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EXHIBIT 3



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 16-210

RESOLUTION

WHEREAS, the various City agencies, including the Department of Facility Maintenance, have no objections to the sale of Lot 2-B and the granting of Easements E-1 and E-2; and

WHEREAS, the Director of Budget and Fiscal Services (hereinafter "Director"), with the concurrence of the Corporation Counsel, has recommended to the Council the sale of Lot 2-B, pursuant to Sections 37-1.2, 37-1.4 and 37-1.6, Revised Ordinances of Honolulu 1990, as amended; and

WHEREAS, the granting of Easements E-1 and E-2 will be in accordance with Section 46-66, HRS; and

WHEREAS, the sale price of Lot 2-B is \$16,300, based on an appraisal done by the Department of Design and Construction; and

WHEREAS, the fees to grant Easements E-1 and E-2, are \$1,950 and \$6,600, respectively, based on an appraisal done by the Department of Design and Construction; and

WHEREAS, the total proceeds of \$24,850 will be deposited into the reserve for the fiscal stability fund; now, therefore,

BE IT RESOLVED, by the Council of the City and County of Honolulu that Lot 2-B is hereby abandoned as a public roadway effective as of the date of recordation of the deed of conveyance; and

BE IT FURTHER RESOLVED by the Council of the City and County of Honolulu that it approves the sale of Lot 2-B, and the granting of Easements E-1 and E-2 to Andrew and Susan Schwartz; and

BE IT FURTHER RESOLVED that the sale be in accordance with the recommendations of the Director, and/or designee, and with all applicable laws; and

BE IT FURTHER RESOLVED by the Council of the City and County of Honolulu that it approves the total proceeds in the amount of \$24,850 be deposited into the reserve for fiscal stability fund; and

BE IT FURTHER RESOLVED that the Director, and/or designee, shall be authorized to sign the deed, easement grant, and other necessary documents; and

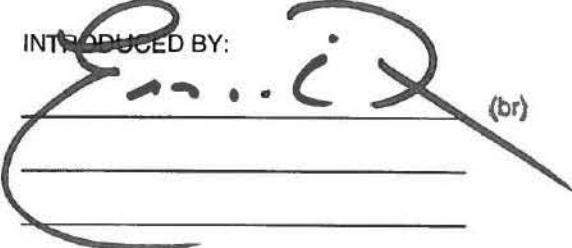


CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 16-210

RESOLUTION

BE IT FINALLY RESOLVED that the Clerk be directed to transmit a certified copy of this resolution to the Director.

INTRODUCED BY:  (br)

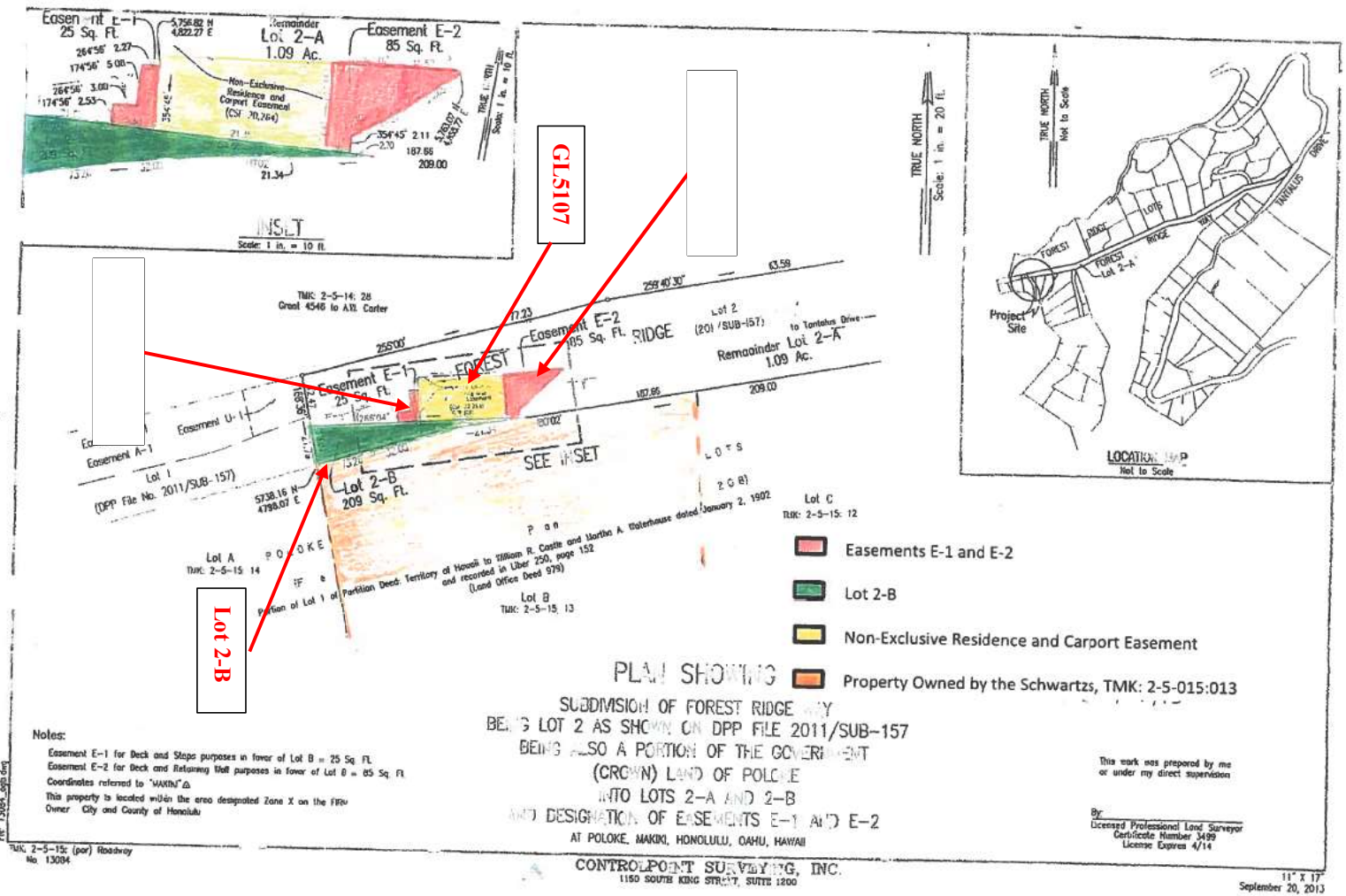
_____ Councilmembers

DATE OF INTRODUCTION:

AUG 16 2016
Honolulu, Hawaii

10/13/2023

EXHIBIT 'A'



4

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 16-210

Introduced: 08/16/16 By: ERNEST MARTIN – BY REQUEST Committee: BUDGET

Title: RESOLUTION APPROVING THE ABANDONMENT AND SALE OF LOT 2-B AND GRANTING OF EASEMENTS E-1 AND E-2 ABUTTING 219 FOREST RIDGE WAY (TMK: 2-5-015:013), HONOLULU, OAHU, HAWAII.

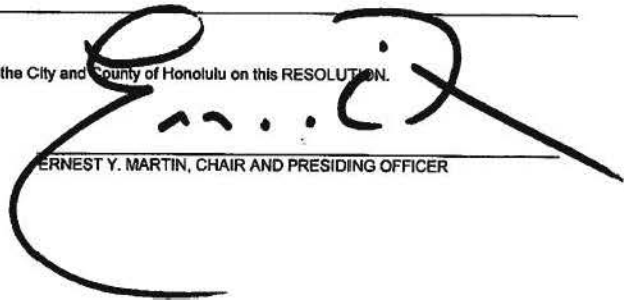
Voting Legend: * = Aye w/Reservations

08/24/16	BUDGET	CR-271 - RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.
09/07/16	COUNCIL	CR-271 AND RESOLUTION 16-210 WERE ADOPTED. 8 AYES: ANDERSON, ELEFANTE, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA. 1 ABSENT: PINE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.



GLEN I. TAKAHASHI, CITY CLERK



ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER



STATE OF HAWAII

SURVEY DIVISION

DEPT. OF ACCOUNTING AND GENERAL SERVICES

HONOLULU

C.S.F. No. 20,264

September 10, 1985

NON-EXCLUSIVE RESIDENCE AND CARPORT EASEMENT

Poloke, Makiki, Honolulu, Oahu, Hawaii

Being a portion of the Government (Crown) Land of Poloke.

Being also a portion of Forest Ridge Way.

Beginning at the southwest corner of this easement and on the north boundary of Lot B of the subdivision of Lots 1, 2, 3, 4 and portion of 5 of Poloke Lots, File Plan 208, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MAKIKI" being 5745.67 feet North and 4823.30 feet East, thence running running by azimuths measured clockwise from True South:-

- | | |
|-------------|--|
| 1. 174° 45' | 14.02 feet along the remainder of Forest Ridge Way; |
| 2. 264° 45' | 21.35 feet along the remainder of Forest Ridge Way; |
| 3. 354° 45' | 11.60 feet along the remainder of Forest Ridge Way; |
| 4. 80° 02' | 15.83 feet along Lot B of the subdivision of Lots 1, 2, 3, 4 and portion of 5 of Poloke Lots, File Plan 208; |
| 5. 73° 26' | 5.68 feet along Lot B of the subdivision of Lots 1, 2, 3, 4 and portion of 5 of Poloke Lots, File Plan 208 to the point beginning and containing an AREA OF 268 SQUARE FEET. |

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: Stanley T. Hasegawa
Stanley T. Hasegawa
Land Surveyor

pt

Compiled from map furn.
by W. P. Thompson, Inc.,
CSF 12,181 and other Govt.
Survey Records.

EXHIBIT 4A

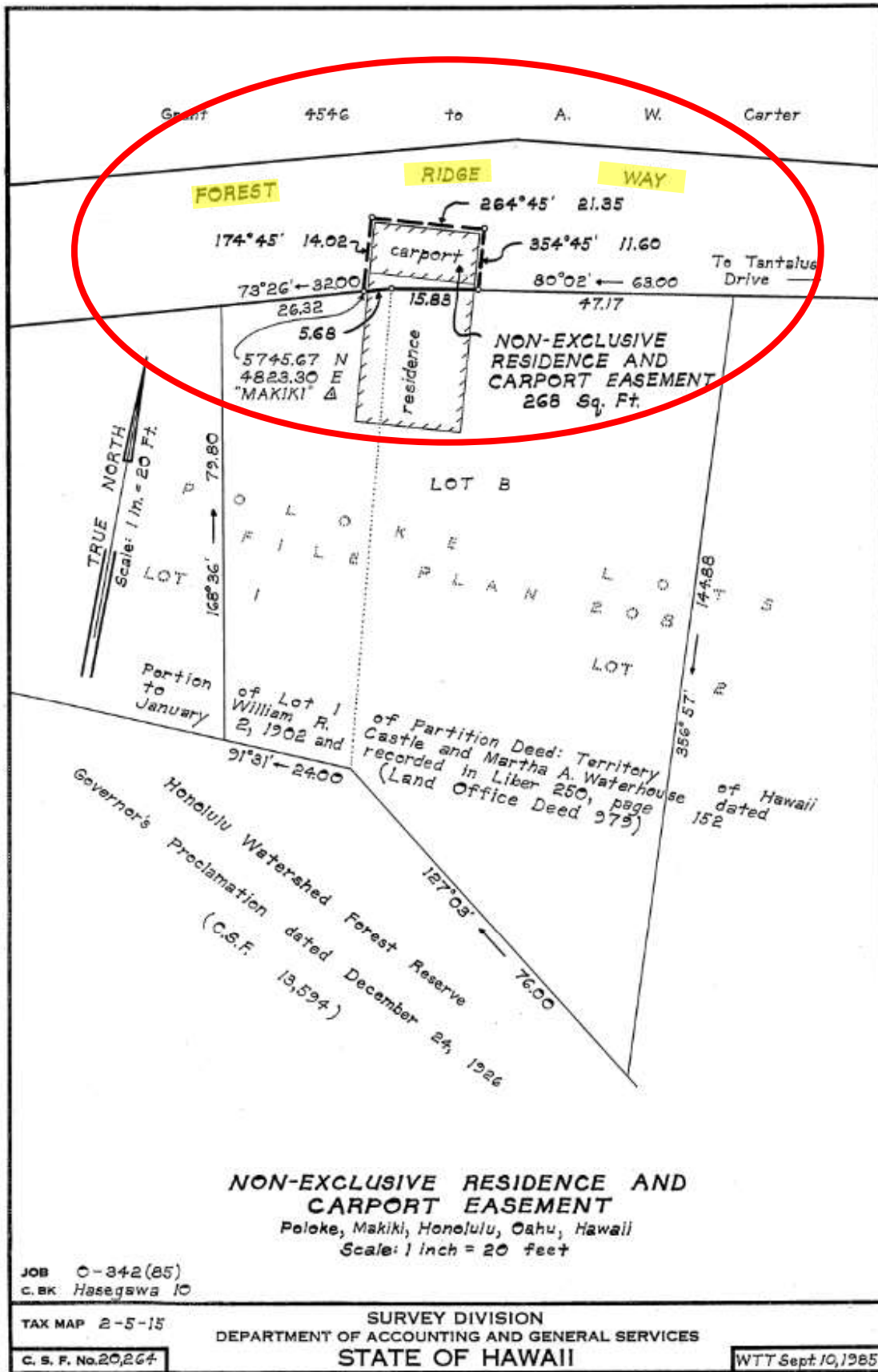


EXHIBIT 4B

**DEPARTMENT OF LAND MANAGEMENT
KA 'ŌHANA HO'ŌKELE 'ĀINA
CITY AND COUNTY OF HONOLULU**

150 SOUTH KING STREET, 3RD FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-4077 • FAX: (808) 768-4088 • WEBSITE: www.honolulu.gov/dlm

FROM: ELIZABETH
MAYERS
MEM



KATHERINE A. TASCHER
DIRECTOR
DFO

KATHY BUDNIK
DEPUTY DIRECTOR
HOPE AOD

August 10, 2023

Ms. Dawn N.S. Chang, Chairperson
Department of Land and Natural Resources
State of Hawaii
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813

Attention: Barry Cheung, District Land Agent

Dear Ms. Chang:

SUBJECT: Request for Transfer of Fee Title of Lot 2-B
and Easements E-1 and E-2
Maikiki, Honolulu, Hawaii
TMK: (1) 2-5-015, Portion of Forest Ridge Way

By Grant of Easement No. S-5107 dated December 31, 1985 ("Grant of Easement"), the State of Hawaii, by its Board of Land and Natural Resources ("BLNR"), granted to the then-owners of 219 Forest Ridge Way (TMK: 2-5-015:013) a non-exclusive residence and carport easement (the "Carport Easement") within a portion of Forest Ridge Way, as shown in yellow on Exhibit A attached hereto. The Carport Easement, with an area of 268 square feet, was granted for a term of 55-years commencing on June 28, 1985, and terminating on June 27, 2040. The Carport Easement is now held by the current owners of 219 Forest Ridge Way, Mr. and Mrs. Schwartz (the "Schwartzs").

Pursuant to Act 288, S.H.L. 1993 and the adoption of City Council Resolution No. 93-287, CD-1, FD-1, Forest Ridge Way is now under the jurisdiction of the City. Portions of the Schwartzs' residence and/or other improvements located at 219 Forest Ridge Way encroach onto Forest Ridge Way. To address the encroachment situation, the City and the Schwartzs have reached an agreement pursuant to which, for consideration to be paid by the Schwartzs to the City, (a) the City will (a) grant to the Schwartzs Easements E-1 and E-2, and (b) sell to the Schwartzs the fee simple title to

EXHIBIT 5

Ms. Dawn N.S. Chang, Chairperson
August 10, 2023
Page 2

Lot 2-B (the "Schwartzs Agreement"). Easements E-1 and E-2 are shown in red on the Exhibit A attached hereto, and Lot 2-B is shown in green on Exhibit A attached hereto. The Schwartzs Agreement was approved by the City Council pursuant to Resolution No. 16-210, a copy of which is attached hereto as Exhibit B.

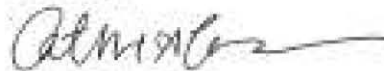
In order to effectuate the Schwartzs Agreement, the City requests that BLNR convey to the City fee title to the land underlying Easements E-1 and E-2, Lot 2-B and the Carport Easement. The City further requests that such conveyance be made by way of a quitclaim deed, which specifically provides that such quitclaim deed also quitclaims to the City all of BLNR's right, title and interest, if any, in and to the Grant of Easement.

Enclosed for your use in preparing the quitclaim deed are the legal descriptions of Easements E-1 and E-2 and Lot 2-B (See Exhibit C), and as well as Subdivision Approval (File Number: 2023/SUB-46) approved by the Department of Planning and Permitting of the City and County of Honolulu, dated April 28, 2023, together with the final survey map (see Exhibit D).

Please feel free to contact Keith Suzuki, Deputy Director at (808) 768-4291 or Trofe Long, Real Property Management Specialist at (808) 768-4284 of the City's Department of Land Management should you have any questions.

Thank you very much for your assistance with this matter.

Sincerely,



Catherine A. Taschner
Director

Enclosures

cc: Krishna F. Jayaram, Deputy Managing Director
Marilyn Ushijima, Deputy Corporation Counsel