

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

October 13, 2003

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

PSF No.: 22OD-007

OAHU

Extinguishment of Portions of Drainage Easement Encumbering Lands Owned by: 1) Eddie Kenji Teruya and Kathleen Michiko Teruya, Trustees of the Teruya Family Trust, dated September 17, 2021 and 2) Phu-Thien Nguyen Tran and Thao Thuy Nguyen, over Private Properties located in Makiki, Honolulu, Oahu, Tax Map Key: (1) 2-4-023:Portions of 051 and 085

APPLICANT:

Owner of Parcel 51

1. Eddie Kenji Teruya and Kathleen Michiko Teruya, Trustees of the Teruya Family Trust, dated September 17, 2021. ("Teruya")

Owner of Parcel 85

2. Phu-Thien Nguyen. Tran and Thao Thuy Nguyen, husband and wife, as tenants by entirety. ("Tran")

LEGAL REFERENCE:

Section 171-57, Hawaii Revised Statutes, as amended. ("HRS")

LOCATION:

Portion of private property situated at Makiki, Honolulu, Oahu, identified by Tax Map Key: (1) 2-4-023:051 and 085, as shown on the maps attached as **Exhibit 1A, 1B and 1C.**

ZONING:

State Land Use District:	Urban
City and County of Honolulu LUO:	R-5, Residential District
Special District:	Punchbowl Special District

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 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 minor expansion or minor change of use beyond that previously existing” and Part 1, Item 39 that states, “Creation or termination of easement, covenants, or other rights in structures or land.” The proposed action is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17 HAR.

DCCA VERIFICATION:

Not applicable. The applicants as landowners are not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicants shall be required to pay for publication of a public notice pursuant to §171-16(d), HRS.

BACKGROUND

The subject Drainage Easement (approximately 14 ft wide and highlighted on Exhibit 1A) was a portion of the Makiki Ditch originally built as an open drainage channel with paved invert and cement rock masonry vertical walls constructed in the early 1900’s. The drainage easement alignment runs through the subject private properties between Nehoa and Dominis Streets and is noted in the descriptions of the properties as being an easement in favor of the State of Hawaii for drainage ditch.¹ A top slab was later constructed over the ditch; however, a portion had collapsed and portions of the slab were determined to have deteriorated upon subsequent inspections.

Apparently, the State decided to address the problem of the collapsed ditch. At the Board meeting held March 25, 1982, Item D-3, the Division of Water and Land Development (hereinafter referred to as “Engineering Division”) requested Permission to Advertise for Bids for a project that consisted of rerouting the existing Makiki Ditch along Makiki Street, between Nehoa and Dominis Streets. A copy of

¹ Checking the title deeds for all the private properties in the same block indicates similar language about the drainage easement in favor of the State.

the submittal and minutes is attached as **Exhibit 2**. The request was approved with an amendment to include authorization to execute a Memorandum of Agreement (“MOA”) with the affected property owners, with the proviso that the Board members would delve further into the conditions listed in the MOA. Staff was unable to find any additional information about the negotiations between the Engineering Division and the affected owners or any subsequent Board action regarding the language in the MOA, as noted in the 1982 approval.

Counsel for the Teruya reached out to both the Department of the Attorney General and Land Division inquiring, a copy of an unrecorded executed Agreement (**Exhibit 3**). As mentioned above, the relocation project and the subsequent negotiation(s) for the agreement were conducted by the Engineering Division. Land Division does not possess any information pertaining to the 1982 project.

The Agreement noted that upon relocation of the existing ditch, the State would quitclaim and extinguish its easement rights, petition the Land Court for extinguishment of the easement for free flowage of waters and the Owner would purchase the State’s easement interest and pay administrative costs for a total of \$1,100.00. The Engineering Staff researched their files but due to the age of the project was only able to produce copies of plans for the project no other documentation was retained.

Around the same time when Teruya’s counsel started contacting the Land Division, Tran, who acquired the adjacent parcel in 2021, also approached the Land Division about the same issue, i.e., to extinguish the State’s interest in the drainage easement.

REMARKS:

§171-57 Reserved Rights and Easements. *Notwithstanding any limitations to the contrary, where public land is disposed of with reservation in the State of quarry rights to rock, sand or gravel or an easement, and if the board of land and natural resources finds that a disposition of the reserved right or easement is not prejudicial to the best interest of the State, community or area in which the land is situated, it may, after giving public notice of the intended disposition as provided in section 171-16(d), dispose of the reserved right or easement to the owner of the land by direct sale or by lease without public auction.*

The Applicants who are the current owners of the subject private properties have requested for the State to release its interest in the drainage easement.

Based on the As-Built Drawings provided by the Engineering Division, it appears that the entire alignment was relocated outside of the private properties and onto a public right-of-way, identified as Makiki Street. Teruya provided copy of a letter dated February 14, 1984 (**Exhibit 4**) from Land Division addressed to his parents

requesting payment of \$1,100 to “purchase the State’s easement”. Teruya, via his email, mentioned that his parents had paid the required amount.

Staff could not locate any record of payment from any affected owners in the block due to the amount of time that has lapsed. Nevertheless, it was highly likely that payments were made and agreements were signed before the commencement of the relocation project and eventually completed. Since the project was completed, it is assumed that Agreements between the State and private property owners were executed. Similarly, the Trans do not have a copy of any agreement pertaining to their property, nor does the Engineering Division have copies of executed Agreements or any other documentation in their files as to how the fees were determined.

On July 11, 2003, agenda item D-5, the Board authorized the quitclaim of drainage easement over another private parcel in the same block, Parcel 80 (see Exhibit 1A). Copies of the Board submittal and adjudicated Land Court petition regarding that property are attached as **Exhibit 5A** and **5B**.

Based on the information gathered so far, staff recommends the Board authorize the quitclaim of the State’s interest in the subject easement by requesting the Department of the Attorney General to file an appropriate petition with the Land Court, subject to no further payment from Teruya and Tran, except the publication cost of the public notice required under 171-16(d), HRS

The subject request is for housekeeping purposes as the relocation work was completed a long time ago. Staff did not solicit any comments on the request, other than Engineering Division of the department.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, Hawaii Revised Statutes and Chapter 11-200.1-15, Hawaii Administrative Rules, 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 activity.
2. Declare that a disposition of the subject reserved easement is not prejudicial to the best interest of the State, community or area in which the land is situated.
3. Subject to the Applicants fulfilling the Applicant Requirements noted above, authorize the extinguishment of State’s interest in a portion of the drainage easement to (a) Eddie Kenji Teruya and Kathleen Michiko Teruya, Trustees of the Teruya Family Trust, dated September 17, 2021, and (b) Phu-Thien

N. Tran and Thao Thuy Nguyen, husband and wife, 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 extinguishment of easement form or such other appropriate disposition document as determined by the Department of the Attorney General, 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; and

Respectfully Submitted,



Patti E. Miyashiro
Land Agent

APPROVED FOR SUBMITTAL:



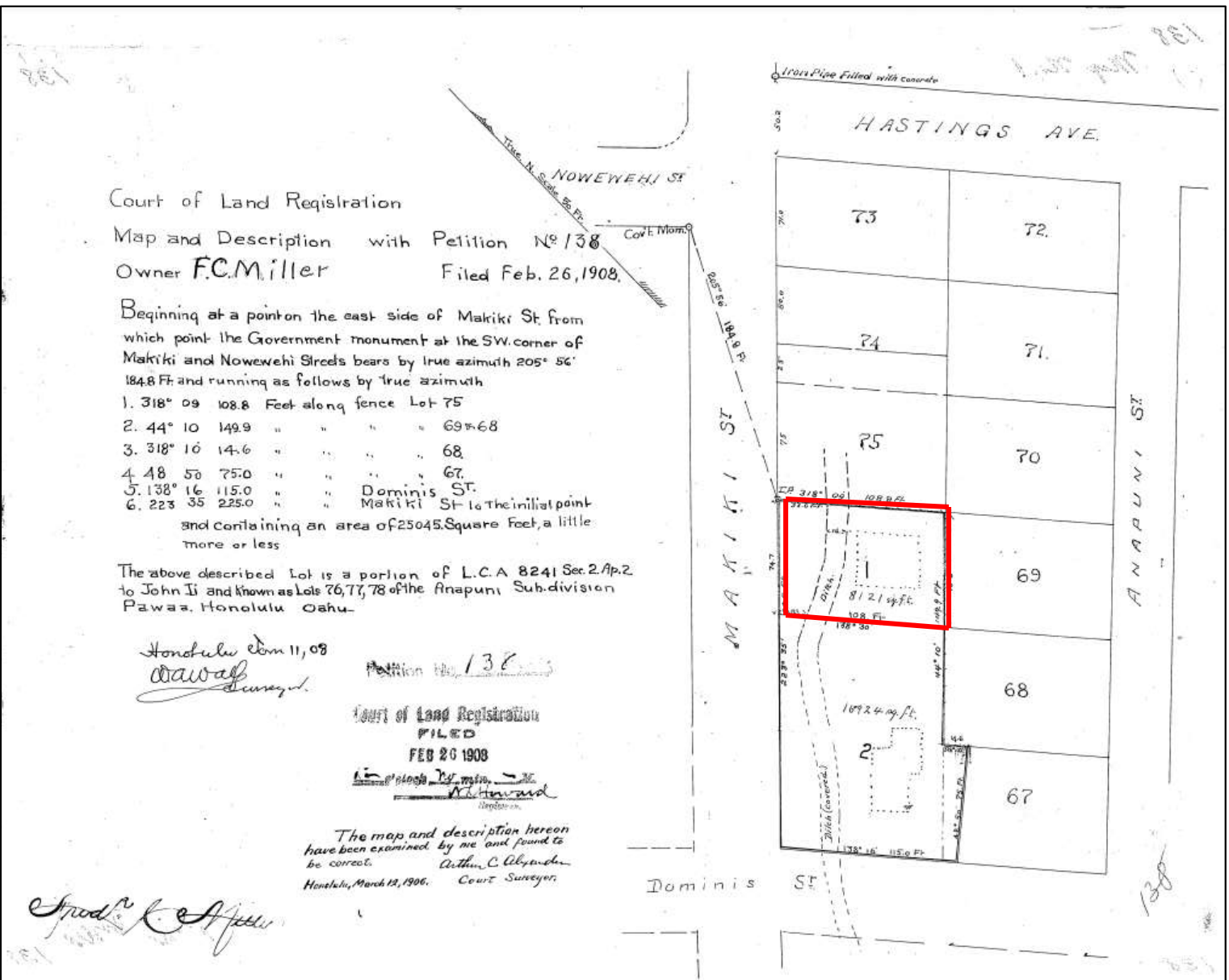
Dawn N. S. Chang, Chairperson





Tax Map Key (1) 2-4-023:051 and 085 (Private Property)

EXHIBIT 1A



Court of Land Registration

Map and Description with Petition No 138

Owner **F.C. Miller** Filed Feb. 26, 1908.

Beginning at a point on the east side of Makiki St from which point the Government monument at the SW. corner of Makiki and Nowewehi Streets bears by true azimuth $205^{\circ} 56'$ 184.8 Ft and running as follows by true azimuth

1. $318^{\circ} 09'$ 108.8 Feet along fence Lot 75
2. $44^{\circ} 10'$ 149.9 " " " " 69m68
3. $318^{\circ} 10'$ 14.6 " " " " 68
4. $48^{\circ} 50'$ 75.0 " " " " 67
5. $138^{\circ} 16'$ 115.0 " " Dominis St.
6. $223^{\circ} 35'$ 225.0 " " Makiki St to the initial point

and containing an area of 25045. Square Feet, a little more or less

The above described Lot is a portion of L.C.A 8241 Sec. 2 Ap. 2 to John Li and known as Lots 76, 77, 78 of the Anapuni Sub-division Pawaaw. Honolulu Oahu.

Honolulu Jan 11, 08
drawn by
Surveyor

Petition No. 138

Court of Land Registration
FILED

FEB 26 1908

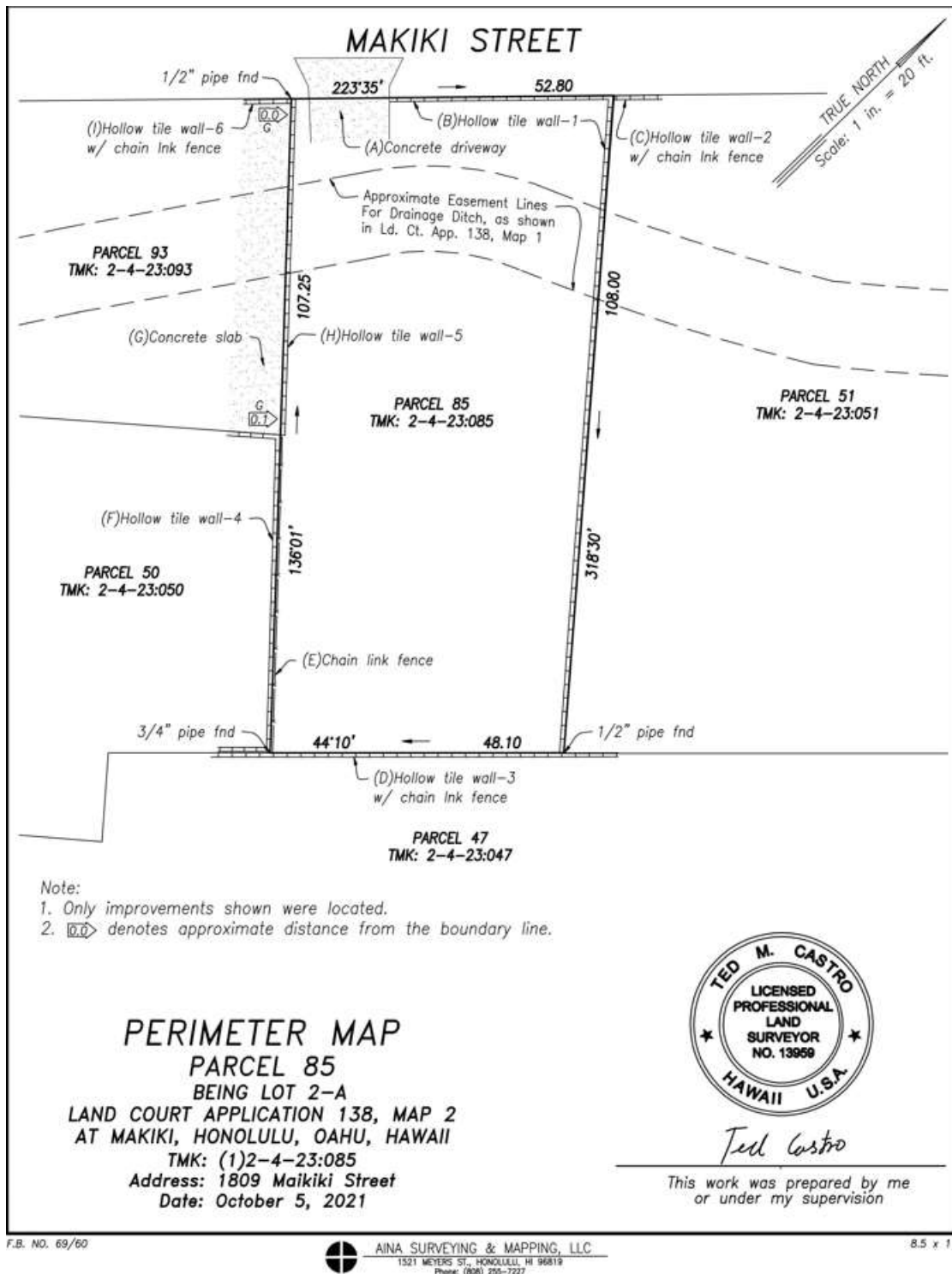
Arthur C. Alyson
Surveyor

The map and description hereon have been examined by me and found to be correct.
Arthur C. Alyson
Honolulu, March 12, 1906. Court Surveyor.

Fred C. Miller

Lot 1 of Land Court Application 138, Map 1
Indicating Drainage Esmt for TMK: (1) 2-4-023:051

EXHIBIT 1B



Survey Map Indicating Ditch Alignment on Tax Map Key: (1) 2-4-023:085

EXHIBIT 1C

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Water and Land Development
Honolulu, Hawaii

March 25, 1982

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

Gentlemen:

Permission to Advertise for Bids - Job No. 9-OF-9
Makiki Stream Alignment, Honolulu, Oahu, Hawaii

Plans and specifications for the subject project are completed. This project consists of rerouting the existing Makiki Ditch along Makiki Street between Nehoa and Dominis Streets with an underground reinforced concrete box drain. Also in conjunction with the project, an 8-inch sewer will be rerouted along Makiki Street.

The existing Makiki Ditch, a drainage easement in favor of the State, was originally an open drainage channel with paved invert and cement rock masonry vertical walls constructed in the early 1900's. The top slab was constructed at a later date over the existing paved channel. A portion of the top slab, approximately 40' x 15', has collapsed. A subsequent inspection indicates that other portions of the slab have deteriorated.

Funds for this project were appropriated by the State Legislature under Act 214, SLH 1979, Item K-4 and Act 300, SLH 1980, Item K-3B, Makiki Ditch, Oahu. Permission to advertise has been received from the Governor.

RECOMMENDATION

That the members of the Board approve the advertising for bids for this project.

Respectfully submitted,



ROBERT T. CHUCK
Manager-Chief Engineer

APPROVED FOR SUBMITTAL:



SUSUMU ONO, Chairman

ITEM D-3

EXHIBIT 2

ITEM D-3

PERMISSION TO ADVERTISE FOR BIDS - JOB NO. 9-OF-9, MAKIKI STREAM ALIGNMENT, HONOLULU, OAHU.

The existing Makiki Ditch was originally an open drainage channel with paved invert and cement rock masonry vertical walls constructed in the early 1900's. The top slab was constructed at a later date over the existing paved channel. A portion of the top slab has collapsed and other portions of the slab have deteriorated.

A draft of a Memorandum of Agreement was distributed to the board for their perusal. In this respect, Mr. Chuck asked that staff's recommendation be amended by requesting also that the board authorize the execution of said agreement. Bob Chuck pointed out some of the essentials of this agreement:

1. The state will relocate the existing ditch.
2. Upon relocation of the existing ditch, the State will backfill same.
3. Upon relocation of the existing ditch, the State will quitclaim and extinguish its easement rights in the existing ditch. The owner, however, consents to the extinguishment of the easment for free flowage of waters.
4. The owner will purchase the state's easement interest in Owner's property plus the State's administrative costs of extinguishing the easement. The amounts to be assessed each of the owners range from a low of \$850 and a high of \$1300.
5. Owner will release and hold the State, its successors and assigns, harmless from all suits and action of every kind.

The above conditions, explained Mr. Chuck, are the main thrust of this agreement and asked that staff's recommendation be amended to read as follows:

"That members of the board approve the advertisement for bids for this project and that the members also authorize the execution of the attached agreement with the land owners."

In answer to Mr. Ing's question, Mr. Chuck said that \$443,000 was appropriated by the legislature for this project and, as long as the funds are encumbered before June 30, 1982, it will not lapse.

ACTION

Mr. Ing moved for approval as amended, with a proviso that the board members delve further into the conditions listed in the Memorandum of Agreement. Mr. Hong seconded and motion carried unanimously.

RECORDATION REQUESTED BY:

AFTER RECORDATION, RETURN TO:

RETURN BY: MAIL { } PICKUP { }

AGREEMENT

THIS AGREEMENT, made this 26TH day of MAY, 19 82, by and between the STATE OF HAWAII, by its Board of Land and Natural Resources, hereinafter referred to as the "State," and KAMAZO TERUYA and HATSUYO TERUYA, husband and wife, as Tenants by the Entirety, whose residence address is 1819 Makiki Street, Honolulu, Hawaii 96822, hereinafter referred to as "Owner";

WITNESSETH:

WHEREAS, the State possesses a recorded easement for free flowage of waters along Makiki Stream (also known as "Makiki Ditch") between Nehoa and Dominis Streets, Honolulu, Hawaii (hereinafter referred to as "existing ditch") pursuant to Land Court Applications No. 46, No. 138 and No. 150; and

WHEREAS, Owner resides on that certain parcel of land identified as Tax Map Key No. 2-4-23:51 located within that certain block fronting Makiki Street between Nehoa and Dominis Streets wherein the existing ditch passes through; and

WHEREAS, at some point in time, the Makiki Stream was boxed in and covered over without the State's knowledge or approval; and

EXHIBIT 3

WHEREAS, the covering over of the existing ditch on Lot 51 has collapsed and the remaining covering over the existing ditch in this block may face a similar result; and

WHEREAS, the collapsing of the covers would obstruct the free flowage of water from the stream and the storm drainage from the lands mauka of this block and therefore create the danger of flooding which would affect the health and welfare of the surrounding neighborhood; and

WHEREAS, there exists a question as to who is ultimately responsible for maintenance and repair of the collapsing cover over the existing ditch; and

WHEREAS, for purposes of equitable settlement of conflicting claims, the parties herein enter into the following agreement.

NOW, THEREFORE, in consideration of the foregoing and of the covenants, terms and conditions contained herein, the parties herein agree as follows:

1. The State will relocate the existing ditch pursuant to that certain plan entitled Job No. 9-08-9 on file with the Department of Land and Natural Resources.

2. Upon relocation of the existing ditch, and for the convenience of the parties, the State will provide funding to backfill the existing ditch by a private contractor.

3. Upon relocation of the existing ditch, the State will quitclaim and extinguish its easement rights in the existing ditch. The Owner hereby consents to the State petitioning the Land Court for extinguishment of the easement for free flowage of waters as stated in Land Court Applications No. 46, No. 138 and No. 150.

4. The Owner will purchase the State's easement interest in Owner's property plus the State's administrative costs of extinguishing the easement, the sum being ONE THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$1,100.00).

5. Owner, its heirs and assigns, hereby releases, holds the State, its successors and assigns, including the City and County of Honolulu harmless, and agrees to indemnify and defend the State, its successors and assigns, including the City and County of Honolulu, from and against any and all liability or damage, including claims for property damage, personal injury or death, in connection with or arising from the existing ditch, the relocation of the existing ditch onto Makiki Street, the subsequent backfilling of the existing ditch, and the backfilled ditch, including, but not limited to, costs and attorneys' fees.

6. Owner hereby grants to the State, its successors and assigns, a temporary construction right-of-entry over Owner's property for purposes of relocating and backfilling the existing ditch.

7. Owner of TMK 2-4-23:93 hereby grants to the State, its successors and assigns, a right-of-entry onto Lot 93 for purposes of constructing a sewer line and a portion of the relocated ditch through the parcel. Further, the Owner and the State shall enter into negotiations for future purchase of a portion of Lot 93 required for the relocation of the existing ditch and further, for a grant of easement to the State, its successors and assigns, for the placement of a sewer line through the parcel, also necessitated by the relocation of the existing ditch.

It is understood and agreed that this Agreement is not an admission of any negligence, liability or fault of any kind whatsoever, but compromises and settles all disputes between the parties for the purpose of avoiding further controversy, litigation and expense and that no other consideration has been promised or will be made.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

STATE OF HAWAII

By *S. Oros*
Chairman and Member
Board of Land and
Natural Resources

And By *J. Douglas*
Member
Board of Land and
Natural Resources

OWNER

Kazuo Teruya
KAZUO TERUYA

Hatsuyo Teruya
HATSUYO TERUYA

APPROVED AS TO FORM:

Donna L. Annale
Deputy Attorney General
Dated: 5/27/82

GEORGE R. ARIYOSHI
GOVERNOR OF HAWAII



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

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

FEB 14 1984

CERTIFIED MAIL

Mr. and Mrs. Kamazo Teruya
1819 Makiki Street
Honolulu, HI 96822

Dear Mr. and Mrs. Teruya:

This is in reference to that certain Agreement dated May 26, 1982, between the State of Hawaii and yourselves covering among other things your purchase of the State's easement (Makiki Ditch) interest in your property (Paragraph 4. page 3) for the sum of \$1,100.00.

Accordingly, will you please remit a check in the amount of \$1,100.00 to cover the foregoing. Please make your check payable to the Department of Land and Natural Resources.

Should you have any questions, please contact our Oahu District Land Office at 548-3262.

Very truly yours,

A handwritten signature in black ink, appearing to read "James J. Detor".

JAMES J. DETOR
Land Management Administrator

cc: Mr. J. D. Ing
Mr. M. Kealoha
Fiscal
DOWALD

EXHIBIT 4

D-5

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

July 11, 2003

PSF No.: 02OD-463

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

OAHU

Quitclaim of State's Interests in a Portion of a Drainage Easement, Makiki,
Honolulu, Oahu, Tax Map Key: (1) 2-4-23: Portion of 08.

BACKGROUND:

The subject drainage easement alignment runs through and under Tax Map Key: (1) 2-4-23:08. This easement is noted in the description of the property as being an easement in favor of the State of Hawaii for the purposes of draining the lands and premises of the State of Hawaii and its predecessors mauka of the land described. Research of Land Court records, indicate that this easement has been noted since 1909. Current tax maps indicate that this easement passed under several privately owned properties along Makiki Street.

This property was recently conveyed from Mr. & Mrs. Alton Komori to Ms. Joni Tomihama. As part of the contract for the sale of the private property the Mr. & Mrs. Komori, through their realtor (Tom Mukai) has applied for the quitclaim of the State's interest in the subject drainage easement. The quitclaim deed will be issued to the current owner.

Engineering Division's records and as built plans indicate that in the 1980's, the Makiki Stream Realignment Project relocated the subject easement under Makiki Street. In addition, Mr. Mukai has provided information from the City and County indicating that the easement has been realigned under Makiki Street. Therefore, staff has no objections to the request.

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

July 11, 2003

ITEM D-5

EXHIBIT 5A

BLNR – Quitclaim – Por. of
Abandoned Drainage Esmt

Page 2

July 11, 2003

RECOMMENDATION:

That the Board, authorize the quitclaim of State's interest in a subject portion of the drainage easement subject to the following:

- a. Review and approval by the Department of the Attorney General; and
- b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

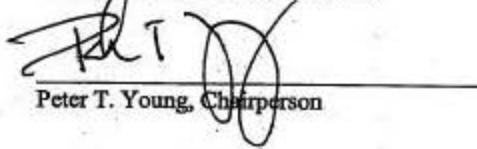
Respectfully Submitted,



Patti E. Miyashiro
Land Agent

nm

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

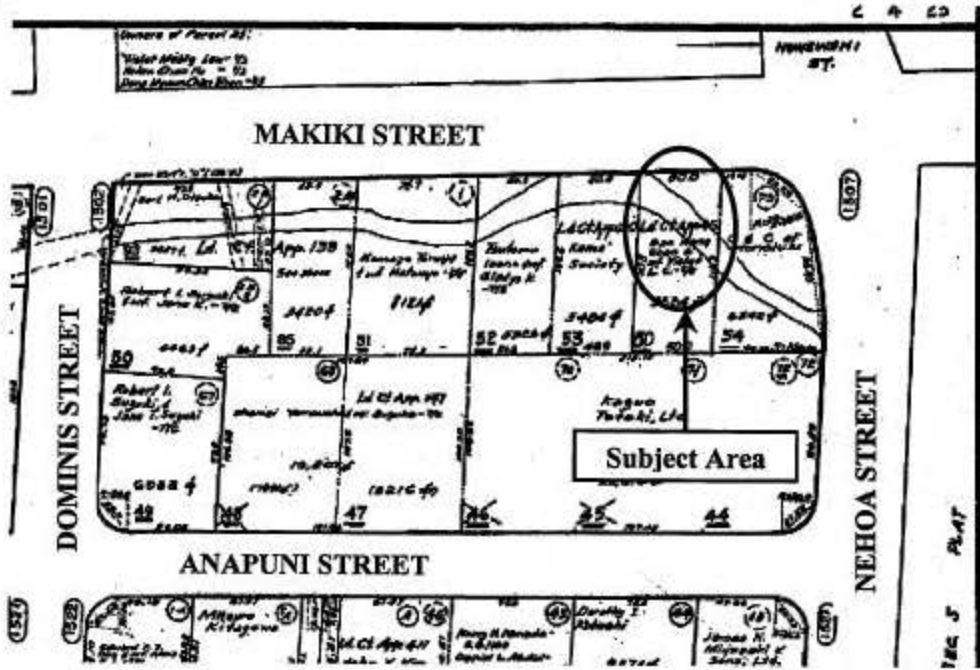


EXHIBIT A

IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application of)
E. A. ABLES AND L. C. ABLES,)
To register and confirm title to land situate)
on Makiki Street, Honolulu, City and)
County of Honolulu, State of Hawaii.)

LAND COURT APPLICATION NO. 46

PETITION FOR CANCELLATION
OF EASEMENT REGARDING
CERTIFICATE NO. 619,900; ORDER

PETITION FOR CANCELLATION OF EASEMENT
REGARDING CERTIFICATE NO. 619,900; ORDER

LAND COURT
STATE OF HAWAII
FILED
2004 APR 15 PM 12:54
HOWARD A. HONOSUIURA
REGISTRAR

2x10 = 20.00
12.00
2.00

24.00
6.00

40.00

DEREK K. TOMITA, #3039
Suite 950, Central Pacific Plaza
220 South King Street
Honolulu, Hawaii 96813
Telephone: (808) 521-8511
Facsimile: (808) 521-8516

Attorney for Petitioner
JONI SAKAMOTO TOMIHANA

A TRUE COPY, ATTEST WITH
THE SEAL OF SAID COURT.

JANISHE CHIDOLLA

Referred to the Surveyor of the
State of Hawaii for check and report
Map filed: APR 16 2004
prints desired
BY ORDER OF THE COURT
JANNIS SHIROMA
Registrar (Clerk)

EXHIBIT 5B

ST. ALEXANDER'S CHURCH
MAY 25 9 43 AM '04

IN THE LAND COURT OF THE STATE OF HAWAI'I

In the Matter of the Application)
of)
E. A. ABLES AND L. C. ABLES)
)
to register and confirm title to land)
situate on Makiki Street, Honolulu)
City and County of Honolulu, State of)
Hawai'i)

Application No.46

2004 MAY 21 10 01 49
KATHLEEN HANAWAHINE
REGISTRAR

ORDER OF CANCELLATION OF EASEMENT

Upon the record and evidence herein, this matter for cancellation of easement having been referred to the State Land Surveyor for examination and check and the State Land Surveyor having filed a report showing no objections the cancellation of the easement,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the cancellation of:
An easement in favor of the State of Hawaii, of a ditch ~~at least~~ ^{at least} 19 feet wide and crossing the premises from mauka to makai, as shown on Map 1 of Application No. 46, for the purpose of draining the lands and premises of the State of Hawaii and its predecessors mauka of the land described

in Land Court Certificate of Title No. 619,900 is hereby authorized and approved and the Assistant Registrar of this Court is hereby directed to note said cancellation of easement on Certificate of Title No. 619,900.

Dated, Honolulu, Hawaii

MAY 21 2004

KATHLEEN HANAWAHINE

For Judge of the Land Court



PETITION FOR CANCELLATION OF EASEMENT
REGARDING CERTIFICATE NO. 619,900

COMES NOW, Petitioners JONI SAKAMOTO TOMIHAMA, and STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES, LAND DIVISION, and hereby petition this Court as follows:

1. That Petitioner JONI SAKAMOTO TOMIHAMA is the owner in fee simple of the property set forth on Map 1, Land Court Application No. 46, described in Certificate of Title No. 619,900 and as follows:

That certain parcel of land situate on Makiki Street, Honolulu, City and County of Honolulu, State of Hawaii, containing an area of 5,524 square feet, ~~more or less~~, as shown on Map 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 46 of E. A. Ables and L. C. Ables;

Commencing at a point on the Southeast side of Makiki Street, bearing by true azimuth 43° 35' and distant 121.2 feet from a monument (a pipe filled with concrete) at the East corner of Hastings and Makiki Streets and 338° 30' 61.75 feet from a concrete monument at the West corner of Nowewehi and Makiki Streets and running by true azimuths:

1. 318° 16' 111.3 feet along Lot 73;
2. 44° 33' 50.0 feet along Lot 71;
3. 138° 16' 110.5 feet along remainder Lot 74;
4. 223° 35' 50.0 feet along Makiki Street to the point of commencement and containing an area of 5,524 square feet, ~~more or less~~.

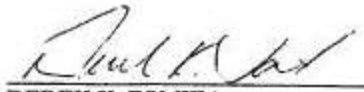
2. That there is an easement in favor of Petitioner STATE OF HAWAII,
DEPARTMENT OF LAND AND NATURAL RESOURCES, LAND DIVISION, in the above
described real property described as follows:

An easement in favor of the State of Hawaii, of a ditch ~~at~~ ^{of}
~~at~~ ^{of} least 19 feet wide and crossing the premises from mauka to
makai, as shown on Map 1 of Application No. 46, for the
purpose of draining the lands and premises of the State of
Hawaii and its predecessors mauka of the land described.

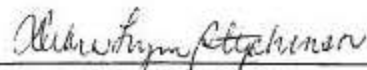
3. That Petitioners request to cancel the aforementioned easement and
declare that said easement is no longer needed.

4. That there are no other parties in interest with respect to the matters
contained in this petition.

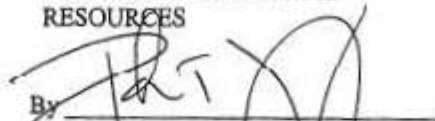
WHEREFORE, Petitioners pray that an order issue approving and authorizing the
cancellation of the easement as set forth above, as shown on the map filed herein, and direct the
Assistant Registrar of this Court to endorse on Certificate of Title No. 619,900 to the
cancellation of said easement and direct the State Land Surveyor to amend Map 1 of Application
No. 46 to delete such easement as it affects the property covered by Certificate of Title No.
619,900.


DEREK K. TOMITA
Attorney for Petitioner
JONI SAKAMOTO TOMIHAMA

Subscribed and sworn to before me
this 12th day of April, 2004.


DEBRA LYNN STEPHENS
Notary Public, State of Hawaii
My commission expires: 12-2-04

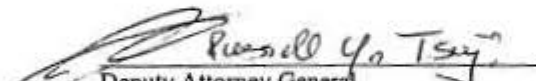
STATE OF HAWAII, DEPARTMENT
OF LAND AND NATURAL
RESOURCES

By 
Its Chairperson

Subscribed and sworn to before me
this _____ day of _____, 2004.

Notary Public, State of Hawaii
My commission expires: _____


APPROVED AS TO FORM:


Deputy Attorney General

ORDER

~~Upon the record and the evidence herein, the prayer of the petition is hereby granted and the Assistant Registrar of this Court is so ordered.~~

~~Dated: Honolulu, Hawaii, _____, 2004.~~

~~_____
Registrar
for Judge of the Land Court~~ 

Petition For Cancellation Of Easement Regarding Certificate No. 619,900; Order
Land Court Application No. 46