

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Engineering Division
Honolulu, Hawaii 96813

APR 20 2012

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

**Authorization to Enter Into an Agreement
With William Jacinto, Shirley Jacinto & the Church of Christ of
The Redeemed of The Lord for the Construction
and
Declare Project Exempt From Requirements of Hawaii Revised Statutes (HRS),
Chapter 343, and Hawaii Administrative Rules (HAR) Title 11, Chapter 200
for
Job No. J45CO41G, Kula Kolea Place Rockfall Mitigation, Honolulu, Oahu, Hawaii**

BACKGROUND:

On April 12, 2012, multiple boulders damaged private properties along Kula Kolea Place in Kalihi Valley. The source of these boulders was traced back to TMK: 1-4-007:005. The private property is owned by William & Shirley Jacinto and the Church of Christ of The Redeemed of The Lord. An inspection by specialists of AECOM Technical Services, Inc.(AECOM), discovered other boulders within the private property with the potential to fall in the near future. Due to the potential hazards that exist, these boulders need to be either stabilized or removed.

AECOM's findings are summarized in Exhibit A.

HRS CHAPTER 343 EXEMPTION:

In accordance with HAR Section 11-200-8(a) for the Department of Land and Natural Resources, as reviewed and concurred upon by the Environmental Council on July 13, 2011, the subject project is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repair or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing"

Refer to attached Exemption Notification labeled Exhibit B.

AGREEMENT:

The Engineering Division desires to enter into a Right-of-Entry Agreement with the private property owners of TMK: 1-4-007:005 for the construction of Job No. J45CO41G, Kula Kolea Place Rockfall Mitigation, Honolulu, Oahu. The project consists of the demolition and removal of boulders, and miscellaneous related work.

A copy of the Draft Agreement, which is subject to change, is attached as Exhibit C.

RECOMMENDATIONS:

1. That the Board authorize the Chairperson to sign the Agreement for Job No. J45CO41G, Kula Kolea Place Rockfall Mitigation, Honolulu, Oahu and other necessary documents pertaining to the project, subject to the approval to form by the Department of Attorney General and to take any other appropriate action needed to address the situation.
2. Declare that, after considering the potential effects of the proposed project as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

Respectfully submitted,



CARTY S. CHANG
Chief Engineer

Approved For Submittal:



WILLIAM J. AILA, JR, Chairperson

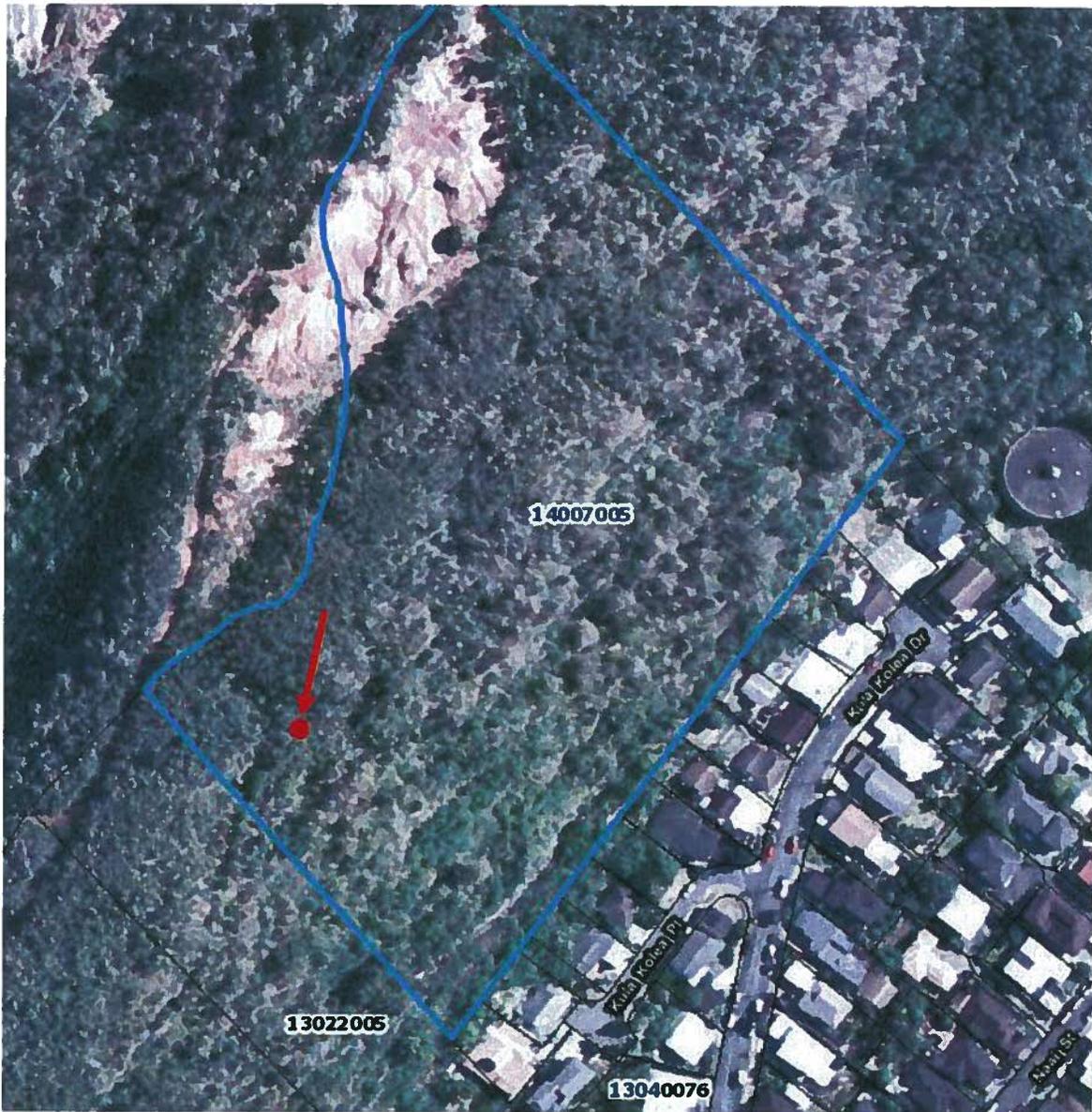


Figure 1. The dot pointed by the arrow is the rockfall source at Kula Kolea Place, Kalihi Valley. The rockfall occurred on April 12, 2012. The number "14007005" is TMK number. State land is the very top left parcel of this TMK map. The rockfall source is not in State land.



Figure 2. The rockfall source (point 227) and rockfall trail (from point 227 to 220) on Google Earth map. The black paint is the approximate location of State land boundary.



Figure 3. The rockfall source (pointed by the arrow). The boulder to the right of the arrow is shown in the next photo (Figure 4).



Figure 4. An unstable loose boulder at the rockfall source at 227 in Figure 2. This boulder, size 3' by 2.5' by 3.3', has the potential to fall in the near future and needs to be stabilized or removed.



Figure 5. A loose rockfall boulder stopped by tree branches at point 224 (the point between 225 and 223 in Figure 2). This boulder, size 3.5' by 1.8' by 3, has the potential to fall and needs to be stabilized or removed.



Figure 6. Loose rocks disturbed by falling rocks at point 226 in Figure 2. These rocks, average size 2' by 1' by 0.8', have the potential to fall in the near future and need to be stabilized or removed.

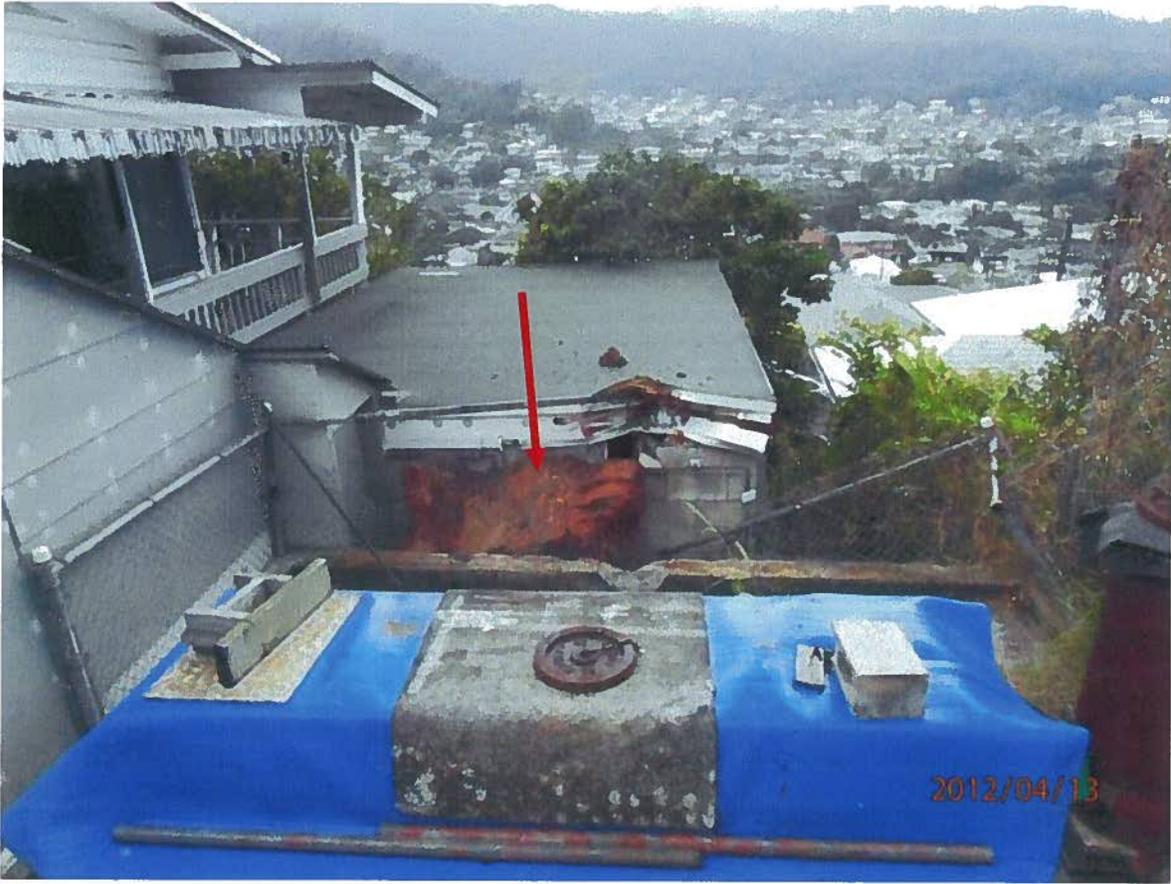


Figure 7. A rockfall boulder (pointed by the arrow).

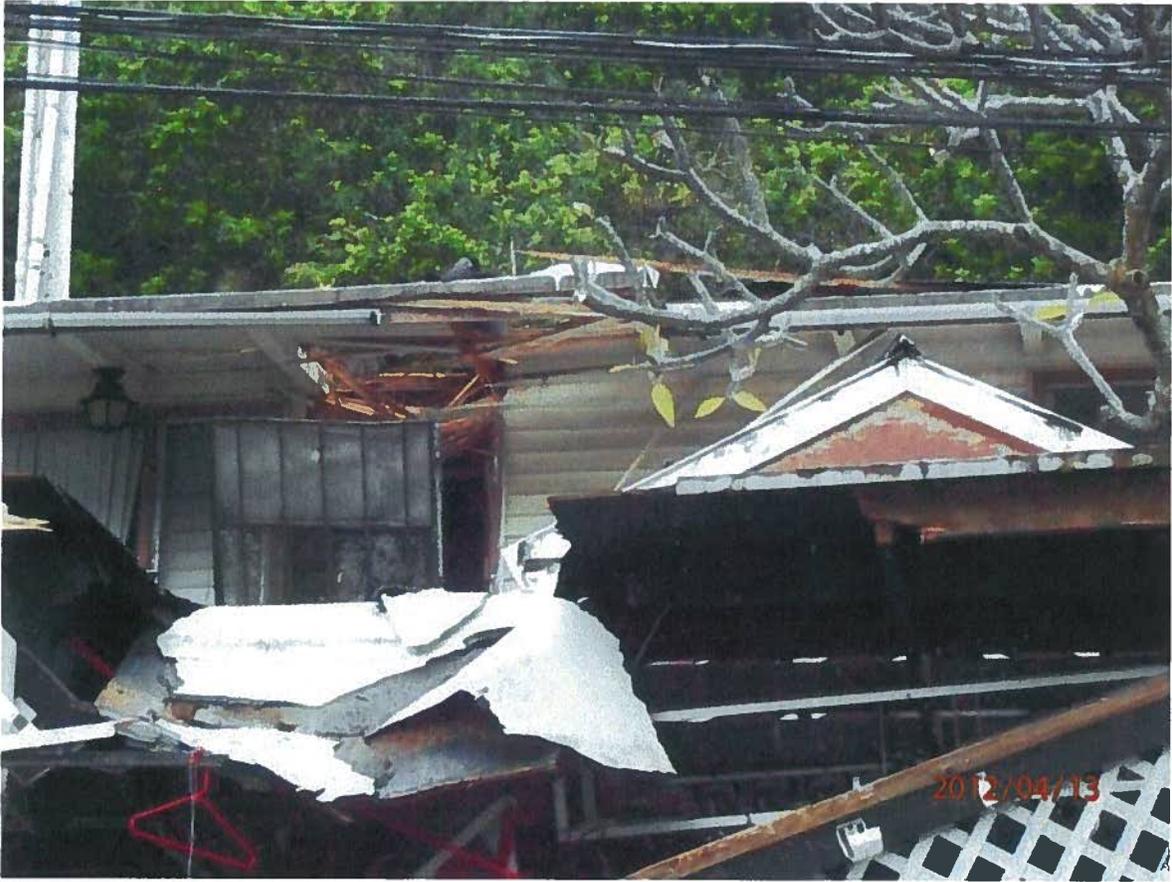


Figure 8. Damaged house.



Figure 9. A rockfall boulder.



Figure 10. Damaged house.



Figure 11. Rockfall trail.



Figure 12. Rockfall trail over a drainage ditch.



Figure 13. Rockfall trail.



Figure 14. Rockfall trail.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

ENGINEERING DIVISION
POST OFFICE BOX 373
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to HRS Chapter 343, and HAR Chapter 11-200.

| | |
|--|--|
| Project Title: | Kula Kolea Place Rockfall Mitigation, Honolulu, Oahu, Hawaii |
| Project Number: | Job No. J45CO41G |
| Project Description: | Scope of work consists of the demolition and removal of boulders and other miscellaneous related work. |
| Chapter 343 Trigger(s) | Use of State Funds |
| Exemption Class & Description: | Exemption Class No. 1 of the Department of Land and Natural Resources, for the "Operations, repair or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing". |
| Exemption Description: [reviewed and concurred by the Environmental Council on July 13, 2011] | Mitigation of any hazardous conditions that present imminent danger as determined by the Department Director and that are necessary to protect public health, safety, welfare, or public trust resources. |
| Recommendation: | It is anticipated 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 |

William J. Aila, Jr, Chairperson

Date

KULA KOLEA PLACE ROCKFALL REMEDIATION PROJECT AGREEMENT

This KULA KOLEA PLACE ROCKFALL REMEDIATION PROJECT AGREEMENT (hereafter called the "AGREEMENT") is made and entered into by and between the STATE OF HAWAI'I, DEPARTMENT OF LAND AND NATURAL RESOURCES, through its Board of Land and Natural Resources (the "STATE") and WILLIAM JACINTO and SHIRLEY B. JACINTO and the CHURCH OF CHRIST OF THE REDEEMED OF THE LORD (the "LANDOWNER.").

WHEREAS, the real property that is subject to this AGREEMENT consists of lands on the slopes of a hillside in Kalihi Valley, and further identified as TMK No. (1) 1-4-007:005, and owned by the LANDOWNER; and

WHEREAS, the STATE wishes to enter the PROPERTY for the purpose of remediating potential rockfall hazards on TMK No. (1) 1-4-007:005, all in accordance and pursuant to Haw. Rev. Stat. § 128-10.3 and other provisions of Haw. Rev. Stat. chapter 128; and

WHEREAS, the scope for work to be conducted on the LANDOWNER'S property is as follows: Demolition and removal of existing boulders, including hauling and disposal of debris material as identified in EXHIBIT "A" to this AGREEMENT and shall be hereafter called the "PROJECT"; and

WHEREAS, funding for the PROJECT has been authorized by Act 164, 2011 Haw. Sess. Laws 466, Item A-17 of the Capital Improvement Projects; and

WHEREAS, in accordance with Hawaii Administrative Rule Section 11-200-8(a) for the Department of Land and Natural Resources, as reviewed and concurred upon by the Environmental Council on July 13, 2011, the PROJECT is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repair or

EXHIBIT C

maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing”; and

WHEREAS, the PROJECT was approved by the Board of Land and Natural Resources at its _____, 20____, meeting;

NOW, THEREFORE, in consideration of the above and all promises, terms, and conditions contained herein, the parties hereto mutually agree as follows:

A. RIGHT OF ENTRY

A right of entry to the STATE is granted by LANDOWNER over the PROPERTY as follows:

1. Grant of Entry. LANDOWNER hereby grants to the STATE, its officers, employees, consultants, and contractors, permission to enter upon the PROPERTY for the PROJECT. The STATE will take reasonable steps to ensure that contractors the STATE selects will permit the LANDOWNER to exercise its existing rights in and to the PROPERTY, including, but not limited to, access over and through the PROPERTY, as long as said exercise of rights does not unreasonably delay or interfere with the PROJECT.

2. Utilization. This right of entry for the Project shall be utilized from Monday through Friday, between the hours of 8:30 a.m. and 4:00 p.m., for the duration of the PROJECT. This right of entry may be utilized on other days or at other times under urgent or emergency circumstances, in which case the STATE, its consultants, or its contractors will make all reasonable efforts to notify the LANDOWNER beforehand, giving the LANDOWNER as much notification time as possible.

3. STATE'S Responsibility. During the course of work on the PROJECT, the STATE shall be responsible, to the extent provided by law, for damage or injury caused by the STATE'S officers and employees in the scope of their employment provided that the STATE'S liability for such damage or injury has been determined by a court or agreed to by the STATE. The STATE shall pay for

such damage and injury, provided that funds are appropriated and allotted for that purpose.

4. Construction Contractor's Indemnity, Defense, and Insurance. The State will use its best efforts to cause the construction contractor for the PROJECT to defend, indemnify, hold harmless, and insure LANDOWNER to the same extent as the STATE.

5. No Unreasonable Interference. LANDOWNER agrees to not unreasonably interfere with the PROJECT.

6. Termination of Right of Entry. The right of entry shall terminate twelve (12) months after the execution of the AGREEMENT or upon completion of the Project, whichever occurs earlier.

7. Amendment. This AGREEMENT shall not be amended except in writing signed by the parties.

8. Singular, Plural. In this AGREEMENT, the singular shall include the plural, and the plural shall include the singular, as the case may be.

9. Counterparts. This AGREEMENT may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same AGREEMENT, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing, and delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

10. No party deemed drafter. All signatories to this AGREEMENT and their attorneys have had the opportunity to review, comment upon, and amend this AGREEMENT. All signatories agree that the language hereof is complete, integrated, and unambiguous. If there is ever a dispute as to the meaning of this AGREEMENT or any part thereof, no party shall be deemed the drafter of the AGREEMENT for purposes of the canon of construction that an

instrument is construed against its drafter.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT this

_____ day of _____, 2011.

LANDOWNER:
WILLIAM JACINTO

By _____

Print Name: _____

Title: _____

LANDOWNER:
SHIRLEY B. JACINTO

By _____

Print Name: _____

Title: _____

LANDOWNER:
CHURCH OF CHRIST OF THE REDEEMED
OF THE LORD
Through its Board of Directors

By _____

Print Name: _____

Title: _____

APPROVED AS TO FORM:

Deputy Attorney General

STATE:

By _____

WILLIAM J. AILA, JR.
Chairperson, Board of
Land and Natural Resources

STATE OF HAWAII)
) SS.
____ COUNTY OF _____)

On this _____ day of _____, 20____,
before me personally appeared _____ to me
personally known, who, being by me duly sworn or affirmed, did
say that such person executed the foregoing instrument as the
free act and deed of such person, and if applicable in the
capacity shown, having been duly authorized to execute such
instrument in such capacity.

Notary Public, State of _____

Print name: _____

My commission expires: _____

(Official Stamp or Seal)

Date of Document: _____ No. of Pages: _____

Description of Document:

Notary's Printed Name: _____ Circuit

Notary's Signature

Date