

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

May 11, 2012

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

**Authorization to Enter Into Agreements
With the Private Property Owners of 2402 Kula Kolea Place;
2408 Kula Kolea Place & 2423 Kula Kolea Place
and
Declare Project Exempt From Requirements of Hawaii Revised Statutes (HRS),
Chapter 343, and Hawaii Administrative Rules (HAR) Title 11, Chapter 200
for
The Removal and Disposal of Boulders Within Their Private Property**

BACKGROUND:

On April 12, 2012, multiple boulders fell from the hillside and damaged private properties along Kula Kolea Place in Kalihi Valley. An inspection by specialists of AECOM Technical Services, Inc.(AECOM) on April 13, 2012, discovered the source of the boulders originated from private property. The inspection also 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 were recommended to be either stabilized or removed.

Through an emergency meeting, on April 20, 2012, the Board authorized the Chairperson to sign an agreement to enter onto private property and remove the boulders discovered by AECOM, on the hillside. This work is scheduled to be completed on April 28, 2012.

Three (3) boulders that fell during the April 12th event still remain on private properties along Kula Kolea Place. To complete the project, the Department of Land and Natural Resources, needs to execute Agreements with the three (3) landowners to remove and dispose of these boulders.

The Board of Land & Natural Resources approved the award of the construction contact for this project on July 8, 2011.

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 A.

ITEM L-2

AGREEMENT:

The Engineering Division desires to enter into a Right-of-Entry Agreement with the private property owners of 2402 Kula Kolea Place (TMK: 1-3-040:072), 2408 Kula Kolea Place (TMK: 1-3-040:070) & 2423 Kula Kolea Place (TMK: 1-3-040:074) for the demolition and removal of boulders.

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

RECOMMENDATIONS:

1. That the Board authorize the Chairperson to sign Agreements with the private property owners of 2402 Kula Kolea Place (TMK: 1-3-040:072), 2408 Kula Kolea Place (TMK: 1-3-040:070) & 2423 Kula Kolea Place (TMK: 1-3-040:074) 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.

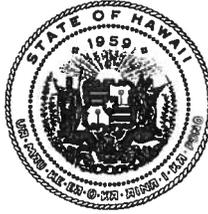
Respectfully submitted,


CARTY S. CHANG
Chief Engineer

Approved For Submittal:


WILLIAM J. AILA, JR., Chairperson

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

ENGINEERING DIVISION
POST OFFICE BOX 373
HONOLULU, HAWAII 96809

May 11, 2012

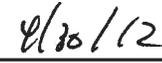
EXEMPTION NOTIFICATION

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

Project Title:	Kula Kolea Place Boulder Removal, Honolulu, Oahu, Hawaii
Project Number:	None.
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

EXHIBIT A

KULA KOLEA PLACE BOULDER REMOVAL PROJECT AGREEMENT

This KULA KOLEA PLACE BOULDER REMOVAL 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 ANTHONY LING FAMILY TRUST, fee owners of the property located at 2423 Kula Kolea Place, Honolulu, Hawaii 96819, hereafter called the "HOMEOWNER."

WHEREAS, the HOMEOWNER'S property located at 2423 Kula Kolea Place, Honolulu, Hawaii 96819 and is further identified as Tax Map Key No. (1) 1-3-040:074, situated in Honolulu, Island of Oahu, State of Hawaii, hereafter called the "PROPERTY".

WHEREAS, the scope for work to be conducted on the HOMEOWNER'S property is as follows: Demolition and removal of a boulder including hauling and disposal of debris material. This work is hereinafter called the "PROJECT"; and

WHEREAS, funding for the PROJECT has been authorized by Act 180, 2010 Haw. Sess. Laws 447, Item A-10 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, "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"; and

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

EXHIBIT B

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 HOMEOWNER over the PROPERTY as follows:

1. Grant of Entry. HOMEOWNER 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 HOMEOWNER 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., or other days and times as mutually agreed upon by all parties, 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 HOMEOWNER beforehand, giving the HOMEOWNER as much notification time as possible.

3. No Interference. HOMEOWNER agrees to not interfere with the PROJECT.

4. It is specifically understood and agreed by the parties that the STATE hereby assumes and undertakes no duty or responsibility, contractual or otherwise, to complete the PROJECT or to perform any other, additional, or future work on the PROPERTY.

5. HOMEOWNER waives and specifically disclaims all rights, claims, and causes of action for damages or loss to the PROPERTY against the STATE, or its employees, officials, or contractors resulting from or in any way related to the PROJECT.

6. Termination of Right of Entry. The right of entry shall terminate twelve (12) months after the execution of the AGREEMENT, upon completion of the PROJECT, or upon mailing of notice of termination by the STATE to HOMEOWNER, whichever occurs first.

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 _____, 2012.

HOMEOWNER:
ANTHONY LING FAMILY TRUST

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