

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of State Parks  
Honolulu, Hawaii 96813

August 23, 2013

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawai'i

O'ahu

Denial of Request for Contested Case Hearing by Martin E. Hsia Regarding BLNR Agenda Item E-1, June 14, 2013, Regarding the Request for Approval to Remove Various Improvements Located Within Easements Within Diamond Head State Monument and Appurtenant to Diamond Head View Lots, Unit 1, Lots 1 and 1A, Kapahulu, Honolulu, O'ahu, Tax Map Key: (1) 3-1-047:048 and 049

BACKGROUND

Martin Hsia (Petitioner) is the fee owner of Lot 1 within the Diamond Head View Lots located along the Black Point side of Diamond Head. In the 1960's, the Board sold the lot to his predecessors in interest, George and Madeline Winters, together with an easement for road purposes. The easement area is adjacent to his lot and continues further toward Lot 1A which is owned by Poka Place LLC (hereinafter "Poka Place") who was also granted an identical easement. In a May 14, 1965 meeting, the Board approved a request for the owners of Lot 1A, i.e., Poka Place's predecessor, to install a gate. In addition, in 1991, again, the owner of Lot 1A sought approval to construct a gate and other improvements from a Department Land Agent which was granted. Petitioner objects to the installation of the gate and other improvements primarily because they restrict his access to the easement.

On June 14, 2013, under Agenda Item E-1 (attached as Exhibit A), the Board considered a request to authorize Mr. Hsia and Poka Place to remove certain improvements within their respective and identical easements. The Board denied the request.

Petitioner requested a contested case prior to the end of the meeting. Petitioner's oral request was followed by a written request filed with DLNR on June 21, 2013 and is attached as Exhibit B. After consultation with the Department of the Attorney General (AG), the Division of State Parks (State Parks) recommends the Board deny the request for contested case as the Petitioner is not entitled to a contested case as a matter of law.

DISCUSSION

This matter involves a dispute about the road easement. Petitioner asked the Board to give him permission to remove improvements in the easement. Petitioner has no right to receive the Board's permission and no property interest in receiving the

ITEM E-1

Board's permission. The Board's denial of his request did not decrease or take away any of petitioner's rights or property interests. Petitioner is in exactly the same position he was before the Board's action. His ability to ask a court for permission is unaffected. (When and if petitioner receives permission from a court, he can seek any required permits from the Board.)

For these reasons and after consultation with the AG regarding the legal framework to determine whether or not Petitioner is entitled to a contested case, State Parks recommends that Petitioner's request for a contested case be denied.

RECOMMENDATION: That the Board:

1. Deny the request for contested case on the basis that Petitioner is not entitled to a contested case hearing as a matter of law as discussed above.

Respectfully Submitted,

  
\_\_\_\_\_  
Daniel S. Quinn, Administrator

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
William J. Aila, Jr., Chairperson

Exhibit "A" June 14, 2013 Board Submittal

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of State Parks  
Honolulu, Hawaii 96813

June 14, 2013

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

O'ahu

Approval to Remove Various Improvements Located within Easements within Diamond Head State Monument and Appurtenant to Diamond Head View Lots, Unit 1, Lots 1 and 1A, Kapahulu, Honolulu, O'ahu, Tax Map Key: (1) 3-1-047: 048, and 049

APPLICANT:

Martin Hsia, fee owner of Lot 1 (TMK: (1) 3-1-047:048)

LEGAL REFERENCE:

Section 171-57, and other relevant provisions of Section 171, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kapahulu situated at Honolulu, O'ahu, located within Diamond Head State Monument, identified by Tax Map Key: (1) 3-1-047: 048, and 049, as shown on the attached map labeled Exhibit A.

AREA:

2,327 square feet, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_\_ NO x

CHARACTER OF USE:

Road access purposes.

CURRENT USE STATUS:

Encumbered by Governor's Executive Order No. 3642 setting aside land for addition to the Diamond Head State Monument and by road easement in favor of Jack Cione and Maydelle Nevans Cione (owners of TMK: (1) 3-1-047:049), and by road easement in favor of George Winters and Madeline T. Winters (owners of TMK: (1) 3-1-047:048), adjacent fee owners.

ITEM E-1

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exemption Notification attached hereto as Exhibit F.

APPLICANT REQUIREMENTS:

See remarks and recommendations sections.

REMARKS:

Mr. Hsia is the current fee owner and a successor in interest to George Winters and Madeline T. Winters, the initial fee owners of Lot 1 (hereinafter "Hsia Lot"). Poka Place LLC, is the current fee owner and a successor in interest to Jack Cione and Maydelle Nevans Cione, the initial owners of Lot 1-A (hereinafter "Poka Place Lot"). Map descriptions of these parcels are attached as Exhibit B. Both owners share a common road easement granted with the original conveyance of the properties which was part of an auction conducted by the Department in the 1960's.

On or about January 28, 1966, the Poka Place Lot was conveyed to the Ciones together with a Road Easement as depicted in Exhibit B. On or about March 20, 1967, the Hsia Lot was conveyed to the Winters together with the identical easement. The only distinction between the two easements was the Poka Place Lot easement provided that, "should the State extend Poka Place so as to afford suitable access to the above described lot or should the State provide for another means of access to said lot, the aforesaid appurtenant roadway easement shall terminate and end."

On May 14, 1965 (in other words before either lot was conveyed) (under Agenda Item F-18), the Board approved a request by the Ciones to construct a gate over the road right-of-way at its intersection with the northeasterly boundary of Lot 1-A.<sup>1</sup> There is no record of approval or objection by the Winters at the time and there are no records indicating when or if the approved gate was constructed. The approved plans indicated a gate height of 6 feet, 3 inches.

In an October 10, 1991 letter from counsel for the Paul Mitchel Trust (the then current owner of the Poka Place Lot), a request was made to install a 'driveway gate' across the easement in an area only affecting ingress and egress to said lot<sup>2</sup>. The then O'ahu District Land Agent advised the Poka Place Lot owners in writing that their request was approved and subsequently signed a building permit application with the City and County of Honolulu. There is no record of approval or objection by the owner of the Hsia Lot. However, in a July 16, 2012 letter (attached as Exhibit E), Mr. Hsia advises counsel for the Poka Place Lot that the prior owner of his lot "had permitted the construction of the gate and landscaping on the roadway easement" and that he, Mr. Hsia, permitted the gate and landscaping to remain because "... it enhances my security by preventing traffic in front of my house and people from parking directly in front of my house."

On February 19, 2013, the City and County of Honolulu, Department of Planning and Permitting (DPP), issued a Notice of Violation (NOV) for construction work done without first obtaining a building permit and noted the height of the gate was above the limits per DPP's building code. In addition, the NOV included a violation for a fence at the rear of the easement area which was constructed without a building permit. As landowner, the Department was named as a party. On

<sup>1</sup> Attached as Exhibit D is a copy of the plans for the location of the gate as approved by the Department. The plans show a gate with associated walls.

<sup>2</sup> See Exhibit C – Map Depicting Gate. This drawing was attached to the building permit application and shows the approximate location of the existing gate. Staff has inspected the original 1965 plans for the Poka Place Lot as approved by the Department and determined the location of the gate in both plans is essentially the same.

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June 14, 2013

May 3<sup>rd</sup>, 2013, however, DPP notified State Parks by telephone indicating the NOV was being withdrawn because it is viewed as a State matter.

Recently, staff from Land Division, State Parks and the Department of the Attorney General met with both Mr. Hsia and representatives of Poka Place LLC to discuss the matter. Mr. Hsia advised he did not consent to the construction of the gate and that the gate infringes on his access to the easement granted in his deed. In addition, he objected to the installation of trees and other improvements along the easement as they restrict vehicle movement and pose safety and liability risks. Poka Place LLC representatives advised they were in the process of curing the NOV and would work with DPP to achieve compliance and that the installation of the trees was made by the previous owner of their lot.

DISCUSSION:

Files do not indicate whether or not approval was obtained from the Hsia Lot owner for the installation of the gate on the Poka Place Lot side of the easement. Given the fact this condition has existed for many years and because there have been no other reported objections, this may indicate that the intent of the Hsia Lot easement was to serve the length of his property and not the entire length of the easement. However, the language of the easement specifies it is a road easement, and as such, no improvements infringing the easement were referenced when the easement language was placed in the deed. In addition, other improvements have been made to the easement area including the installation of an intercom and a mailbox as well as the planting of trees and other landscaping, none of which were approved by the Department. Although it isn't clear which owner planted the trees and landscaping, irrigation lines appear to be fed from the Poka Place Lot.

Staff recommends that the road easement should be restored by authorizing Mr. Hsia to remove improvements not essential to the road easement. This includes the gate improvements previously authorized by the Board in 1965, the landscaping, intercom and mailbox. The Poka Place Lot owner should be likewise afforded the right to remove any improvements in case they wish to salvage any of the improvements before Mr. Hsia removes and (presumably) discards any of the improvements.

In short, staff's recommendation – based on the language of both deeds – is that the easement area be used as an road easement and for no other purpose.

Staff further recommends that the Board make any removal or restoration subject to review and approval of the Chairperson upon presentation of plans and that all work be completed within one year unless the matter is brought back to the Board for additional time. In addition, the party or parties removing the improvements shall obtain all necessary permits and other approvals necessary. This may include site plan approval from the DLNR Office of Conservation and Coastal Lands.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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**RECOMMENDATION:**

That, subject to staff's recommendations, and the terms and conditions noted above, the Board authorize Martin Hsia and/or Poka Place LLC, at his/their sole cost and expense, to remove improvements not essential to the road easement as described herein including the removal of the gate and associated rock walls, coconut trees and other landscaping along the easement which block vehicular access, the intercom devices and structures provided that any removal or restoration is subject to review and approval of the Chairperson upon presentation of plans and that all work be completed within one year unless the matter is brought back to the Board for additional time. In addition, the parties removing and/or restoring said improvements shall be responsible for obtaining all necessary permits and approvals.

Respectfully Submitted,

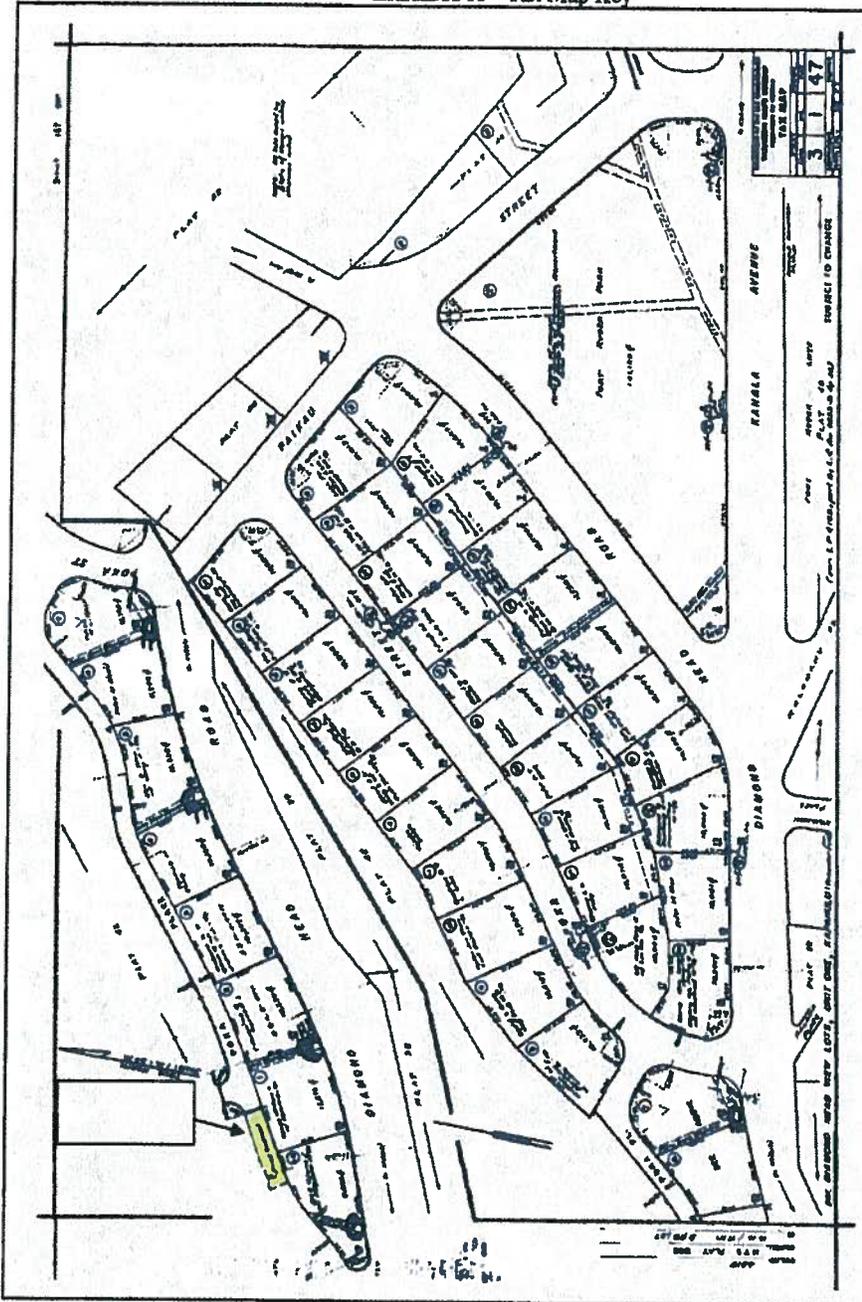


\_\_\_\_\_  
Daniel S. Quinn  
Administrator

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
William J. Aila, Jr., Chairperson

EXHIBIT A – Tax Map Key



**EXHIBIT B – Lot Map Description**

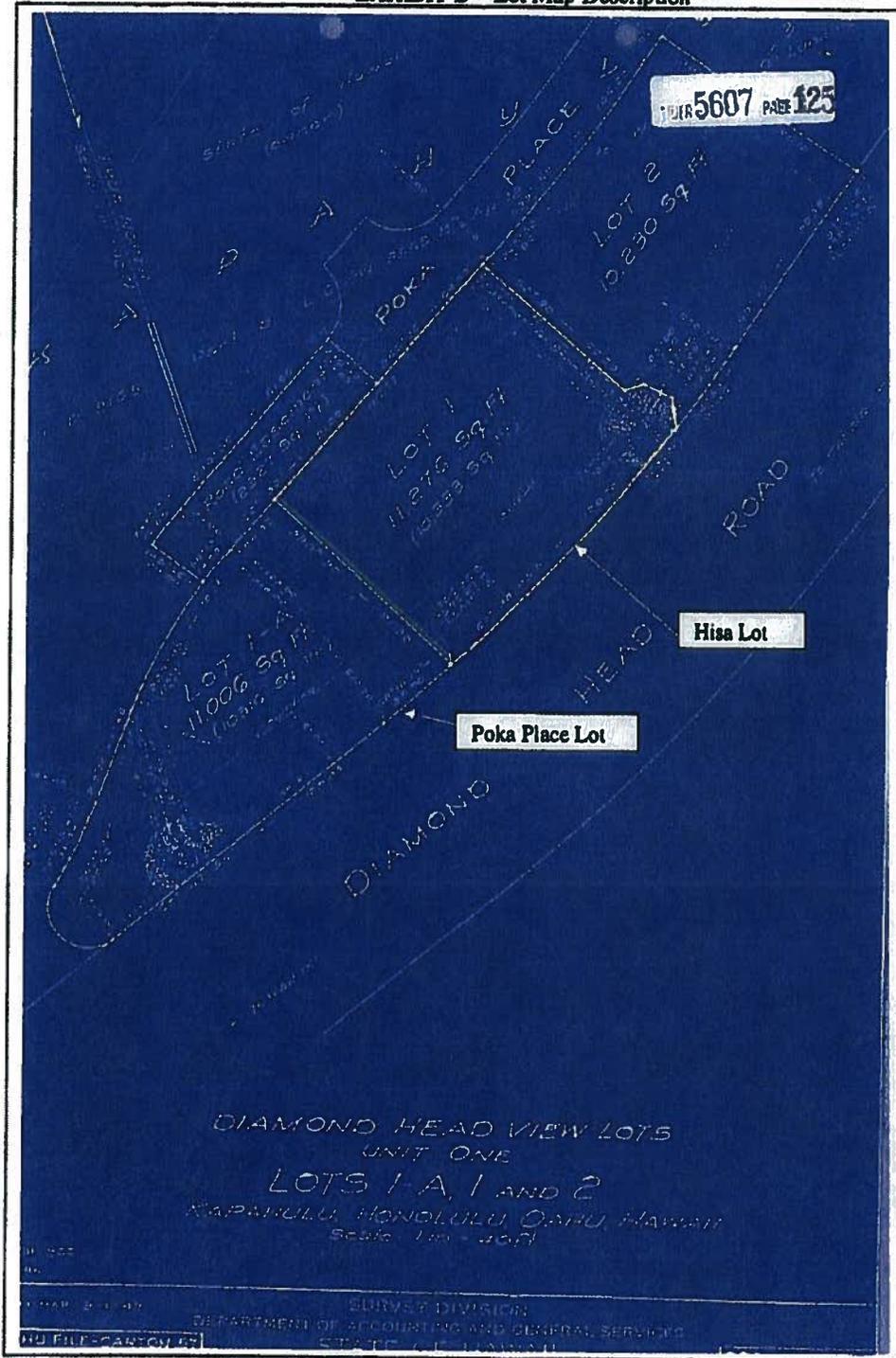


EXHIBIT C - Map Depicting Gate

LIST OF WORK  
fabricate/furnish and install the following:

- Item A: ITEMS TO BE SUPPLIED (Refer to attached drawing for details).  
One pair of double wing driveway gates for an opening approx. 12'-10" x 6'-6" high.  
All to be hot dip galvanized, primed and painted black.
- Item B: OPERATOR AND ACCESSORIES  
Two each FAAC Model 400 CHAC hydraulic actuator spec. 220 Volts, single phase.  
One each control panel.  
One each radio receiver installed in a weatherproof enclosure.  
Four each single button transmitters.  
Installation and hook-up for the above.

BUILDING DEPT. FILE COPY

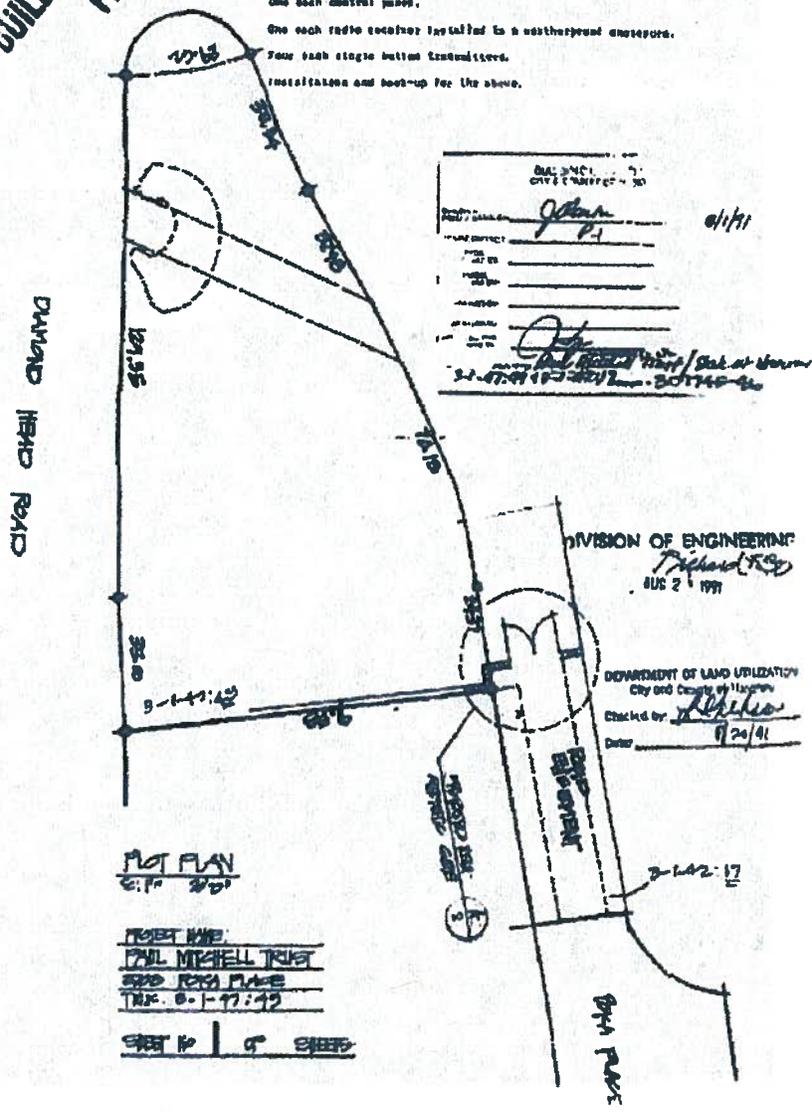
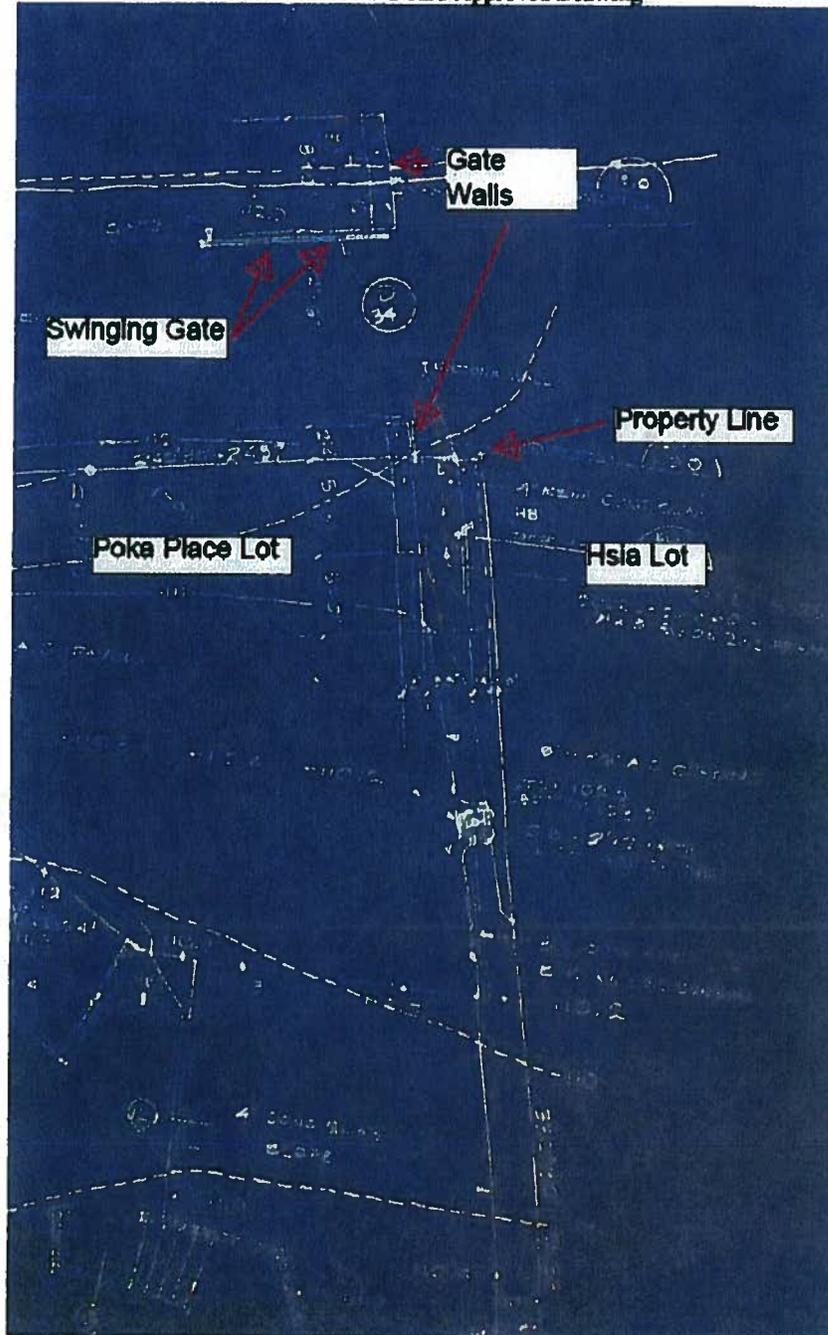


Exhibit D – 1965 Board Approved Drawing



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EXHIBIT E – Hsia June 16, 2002 Letter

MARTIN E. HSIA  
[REDACTED]  
HONOLULU, HAWAII [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

July 16, 2012

Via e-mail: [REDACTED]  
[REDACTED]

Re: 3711 Poka Place

Hi Paul:

Thank you for your June 23, 2012, e-mail, responding to my June 22, 2012, voice mail status inquiry about our June 7, 2012, telephone conference. I have not yet been contacted by counsel for the Paul Mitchell Trust, so I thought I would send this follow up letter.

As I informed you in my voice mail, there was a burglary at Angus' house on June 30, 2012, in which the burglars cut the insect screens in a door and stole the caretaker [REDACTED] wallet and two of his wife's handbags between midnight and 5:00 am, while they were sleeping in the next room. The police asked whether we had any video that showed the burglars. Our preliminary review of our video camera footage did not disclose any suspicious activity. Thus, it appears that the burglars may have climbed up from the lower street, Diamond Head Road, or entered Angus' lot from the State of Hawaii's land on the opposite side of Angus' lot from my lot. However, that burglary incident shows that good neighborly relations are more important now than ever.

As we originally discussed on June 7, 2012, Angus and I have had very good neighborly relations for many years. Indeed, I was the one who found and reported the very dangerous major gas line rupture on May 12, 2012, at Angus' house at [REDACTED]. There had been periodic earlier reports of a gas leak, but neither the Fire Department nor The Gas Company was able to find that leak, most recently a few months ago (fire engine standing by, etc.).

Earlier, on April 2, 2012, we provided Honolulu Police Officer W. Scott (Badge 1503) with the video and photos used to identify the girls who vandalized the gate in front of Angus' house (Police Report 12-120826 CPD4). The video camera at Angus' house apparently had not been functioning for some time. Our identification ultimately resulted in the girls' parents paying to repair that gate.

Angus told me on August 17, 2008, while visiting his house with his property manager [REDACTED], that if I ever wanted to sell my house, he would want the chance to buy it, because he wants to maintain the character of the neighborhood to "keep it in the family", because he grew up in the house at [REDACTED]. I said that I would notify him if I ever wanted to sell

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June 14, 2013

my house at [REDACTED]. My children also grew up on the street, at [REDACTED], and I am sure they also would want to preserve the character of the neighborhood.

Also, on July 1, 2009, I saw Angus and [REDACTED] as they were driving by, and Angus again said I should contact his property manager if I ever want to sell my house.

After so many years of good relations, I was therefore dismayed to find that, on June 1, 2012, Angus' property manager, [REDACTED], someone under his direction, had placed a note on my IT contractor's truck stating "PLEASE DONT [sic] PARK IN FRONT OF MY DRIVEWAY 3703 POKA PL". We discussed the details of the incident in our telephone conference with Ricky, so I won't repeat them here. However, your apology on behalf of Angus was appreciated.

As we discussed, my lot at 3711 Poka Place also has the right to use the road easement in front of my lot, so the terminology "my driveway" on the note is not correct. Indeed, as I explained in our June 7, 2012, telephone conference, the road easement is on land owned by the State of Hawaii, and my deed grants me the right to use it. Of course, Angus' lot, 3703 Poka Place, also has the right to use that road easement.

While we were discussing the note described above, I also informed you that the roots from Angus' octopus tree near the border between our lots are damaging my wall and pavement adjacent to Angus' garage. I would like to discuss removal of that tree to prevent further damage.

The prior owner of my lot, the late Herbert Cornuelle, had permitted the construction of the gate and landscaping on the roadway easement, and I permitted the gate and landscaping to remain, because it enhances my security by preventing traffic in front of my house and people from parking directly in front of my house, and Angus is maintaining the road easement and landscaping. This permission is evidenced by my assistance in providing videos and photos of the girls who vandalized the gate, and the repair of my sprinkler system when it was damaged when the roadway was resurfaced. However, this permission does not mean that I am giving up my rights to use that road easement. If I ever renovate my house to place my garage at the end of my lot next to 3703 Poka Place, I will need to use that road easement to drive in and out (including backing up when exiting). Also, soon I will be having work done on the retaining wall for my house, and my contractors will use the roadway easement to gain access to my back yard through the gate bordering 3703 Poka Place. Accordingly, I need to write this letter to respond to the wording "my driveway" to set the record straight (and avoid any misunderstanding) that I also have the right to use the road easement.

I trust that this letter will resolve the issue of use of the road easement, so that we can agree that the wording "my driveway" was an unintentional and unfortunate choice of words, that my right to use the road easement remains unaffected, and that Angus and I can continue to be good neighbors.

Finally, as a good neighbor, please let me take this opportunity to inform Angus that, because it is very easy for a burglar to access my back yard from Angus' lot over the wall between the back portions of our lots (there is no wall between the front portions of our lots, near Poka Place), I

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June 14, 2013

am installing another video camera visible from the street below (Diamond Head Road) pointing at that wall. I have already installed 2 very prominent and obvious video cameras on the front of my house: one pointing down the only access to both our houses, Poka Place, and the other pointing at the dead end turnaround near both our houses. We have seen quite a decrease in strangers parking or loitering in the dead end turnaround, or driving up the street, presumably because they are deterred by my highly visible video cameras. I hope that adding another very prominent and obvious video camera pointing at the wall between our houses, visible from Diamond Head Road, will deter burglars from climbing over that wall from Angus' lot and entering my back yard.

If I do not receive a response by August 17, 2012, I will consider this matter closed, and I will assume that Angus and I will continue to have good neighborly relations, which is especially necessary now, in view of the recent burglary.

Very truly yours,



Martin E. Hsia

**EXHIBIT F-- Exemption Notification**

NEIL ABER CROSBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
DIVISION OF STATE PARKS  
POST OFFICE BOX 621  
HONOLULU HAWAII 96809

WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
FOURTH FLOOR, STATE RESOURCE MANAGEMENT CENTER

ESTHER P. KLANA  
FULL-TIME DIRECTOR

WILLIAM H. TAN  
DEPUTY DIRECTOR

AGRICULTURE  
BUREAU OF CONSERVATION  
CONSERVATION AND COASTAL LANDS  
DIVISION OF STATE PARKS  
HONOLULU HAWAII 96809

**EXEMPTION NOTIFICATION**

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

- Project Title:** Approval to Remove Various Improvements Located within Easements within Diamond Head State Monument and Appurtenant to Diamond Head View Lots, Unit 1, Lots 1 and 1A, Kapahuhi, Honolulu, O'ahu
- Project / Reference No.:** N/A
- Project Location:** O'ahu
- Project Description:** Approval to remove easement improvements (DHSM)
- Chap. 343 Trigger(s):** Use of State Land
- Exemption Class No.:** In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 which exempts, "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". The request involves removing existing improvements only.
- Consulted Parties:** DLNR – Land Division, Office of Conservation and Coastal Lands
- Recommendation:** It is recommended that the Board find that this action 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

Exhibit "B" Contested Case Petition



STATE OF HAWAII  
BOARD OF LAND AND NATURAL RESOURCES  
PETITION FOR A CONTESTED CASE HEARING

RECEIVED

2013 JUN 21 AM 11:46

OFFICIAL USE ONLY

Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

- File (deliver, mail or fax) this form within ten (10) days of the Board action date to:

Department of Land and Natural Resources  
Administrative Proceedings Office  
1151 Punchbowl Street, Room 130  
Honolulu, Hawaii 96813  
Phone: (808) 587-1496, Fax: (808) 587-0390

- DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://hawaii.gov/dlnr/rules/Ch13-1-Official-Rules.pdf>). Please review these rules before filing a petition.
- If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
- Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Martin Hsia	2. Contact Person Martin Hsia	
3. Address 1000 Bishop Street, 12 <sup>th</sup> Floor	4. City Honolulu	5. State and ZIP HI 96813
6. Email mhsia@caedes.com	7. Phone 544-3835	8. Fax 540-5049

B. ATTORNEY (If represented)		
9. Attorney Name	10. Firm Name	
11. Address	12. City	13. State and ZIP
14. Email	15. Phone	16. Fax

<b>C. SUBJECT MATTER</b>	
<b>17. Board Action Being Contested</b> Rejection of DLNR staff's Approval to Remove Various Improvements Located Within Easements within Diamond Head State Monument and Appurtenant to Diamond Head View Lots, Unit 1, Lots 1 and 1A, Kapahulu, Honolulu, O'ahu, TMK (1) 3-1-047:048 and 049	
<b>18. Board Action Date</b> June 14, 2013	<b>19. Item No.</b> E-1
<b>20. Nature and Extent of Petitioner's Interest That May Be Affected by the Board Action</b> My interest is in restoring the road easement of 2327 square feet across Diamond Head State Monument (TMK (1) 3-1-42: 17) originally granted by DLNR to my lot and the Poka Place Lot (capitalized terms herein have the same meaning as in DLNR's staff submittal). Poka Place, LLC or its predecessors converted the road easement to a private driveway for the Poka Place Lot by installing or maintaining coconut trees, an existing gate (which the Declaration of James Tanaka - in Poka Place, LLC's written testimony - admitted was only installed in 2008), an intercom pedestal, an existing fence, a mailbox, irrigation and other improvements, as can be seen by the attached photograph, which includes survey stakes to show the width of the easement. As can be seen, these improvements completely block the view of Diamond Head State Monument from the public street, Poka Place. A survey from Poka Place, LLC showing these improvements is also attached.	
<b>21. Any Disagreement Petitioner May Have with an Application before the Board</b> Petitioner respectfully submits that the Board should have either accepted DLNR staff's recommendation to allow Petitioner to remove the improvements on Diamond Head State Monument, or ordered the removal of the improvements because they violate DLNR's own regulations and pose safety and liability risks. Although the Board ordered an investigation and recommendation as to whether a fine, permit or removal would be appropriate, Petitioner respectfully submits that DLNR cannot merely fine Poka Place, LLC, or grant a permit to maintain the coconut trees, existing gate, pedestal, existing fence, mailbox or other improvements on Diamond Head State Monument.  Board member Samuel Gon stated at the hearing for this matter that the Board takes Conservation District management very seriously. This is an opportunity for the Board to prove that this is true.  If the Board allows these improvements to remain, it would be allowing a rich company, Poka Place, LLC, to take and improve part of Diamond Head State Monument, in the Conservation District, for its own use as its own private landscaped driveway and exclusive gated parking.  Poka Place, LLC's written testimony said "unknown persons" planted the coconut trees. Because the coconut trees are on Diamond Head Monument Land and were not planted by Poka Place, LLC, DLNR has the sole right to approve their removal. Poka Place, LLC does not have any legal right to object to their removal, because it does not own the land in which they are planted.  Poka Place, LLC does not have any legal right to maintain, light and irrigate the coconut trees and other non-native landscaping on Diamond Head State Monument in front of my house. DLNR does not have the legal right to derogate from my road easement rights by granting a permit for Poka Place, LLC to maintain, light and irrigate those trees and landscaping, and thereby block my use of over half of the road easement in front of my house. Accordingly, approval must be granted to remove the coconut trees, lighting, irrigation and landscaping in front of my house.  Further, the existing gate violates DLNR's own regulations for lack of a building permit (required by 13-5-42(21), Hawaii Administrative Rules) and other reasons set forth in my written and oral testimony (which are hereby incorporated herein by reference), and therefore DLNR cannot grant a	

permit for the existing gate. Further, DLNR's permit for the previous gate in 1991 was issued by a land agent, WITHOUT approval of the Board, or consent of the previous owner of my lot, and therefore was not properly authorized. DLNR must do the right thing and correct this error, instead of compounding and perpetuating this error.

Granting of a permit to Poka Place, LLC to maintain trees, the existing gate, pedestal, existing fence, mailbox, irrigation and other improvements on Diamond Head State Monument in violation of DLNR's own regulations would be arbitrary and capricious and would constitute a government taking for which I would be entitled to compensation.

Put simply, the improvements are on Diamond Head State Monument. The road easement does not grant Poka Place, LLC the right to install or maintain trees, the existing gate, pedestal, existing fence, mailbox and other improvements. DLNR must order the removal of all these improvements, or must grant approval for me to remove the improvements, both to restore the road easement, and also to restore the view of Diamond Head State Monument from the public street.

This is not merely a dispute between neighbors, because the improvements are on Diamond Head State Monument, not just on land owned by one or the other neighbor.

As stated by Board member Samuel Gon at the Board's hearing on this matter, the Board should not let cloudiness of historical land use be a free license to use the land.

**22. Any Relief Petitioner Seeks or Deems Itself Entitled to**

Petitioner seeks an order by DLNR to remove all the improvements from Diamond Head State Monument on this road easement, or permission from DLNR for Petitioner to remove all the improvements, to restore the ability to use the entire road easement, as set forth in the original deed from DLNR to Petitioner's predecessor, and also to restore the view of Diamond Head State Monument.

It would be an egregious violation of DLNR's public trust to allow Poka Place, LLC to take this Diamond Head State Monument land for use as its own private driveway and gated parking.

**23. How Petitioner's Participation in the Proceeding Would Serve the Public Interest**

If Petitioner's requested relief is granted, the public interest in preserving Diamond Head State Monument will be served by preventing Poka Place, LLC from gating off and otherwise improving part of Diamond Head State Monument for its own private driveway and exclusive gated parking, and blocking views of Diamond Head State Monument from the public road of Poka Place.

**24. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR**

I am also an adjacent property owner, and I am directly and immediately affected by the Board's action because Diamond Head State Monument land abuts half of the front of my lot.

Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.

Martin E. Hsia

Petitioner or Representative (Print Name)



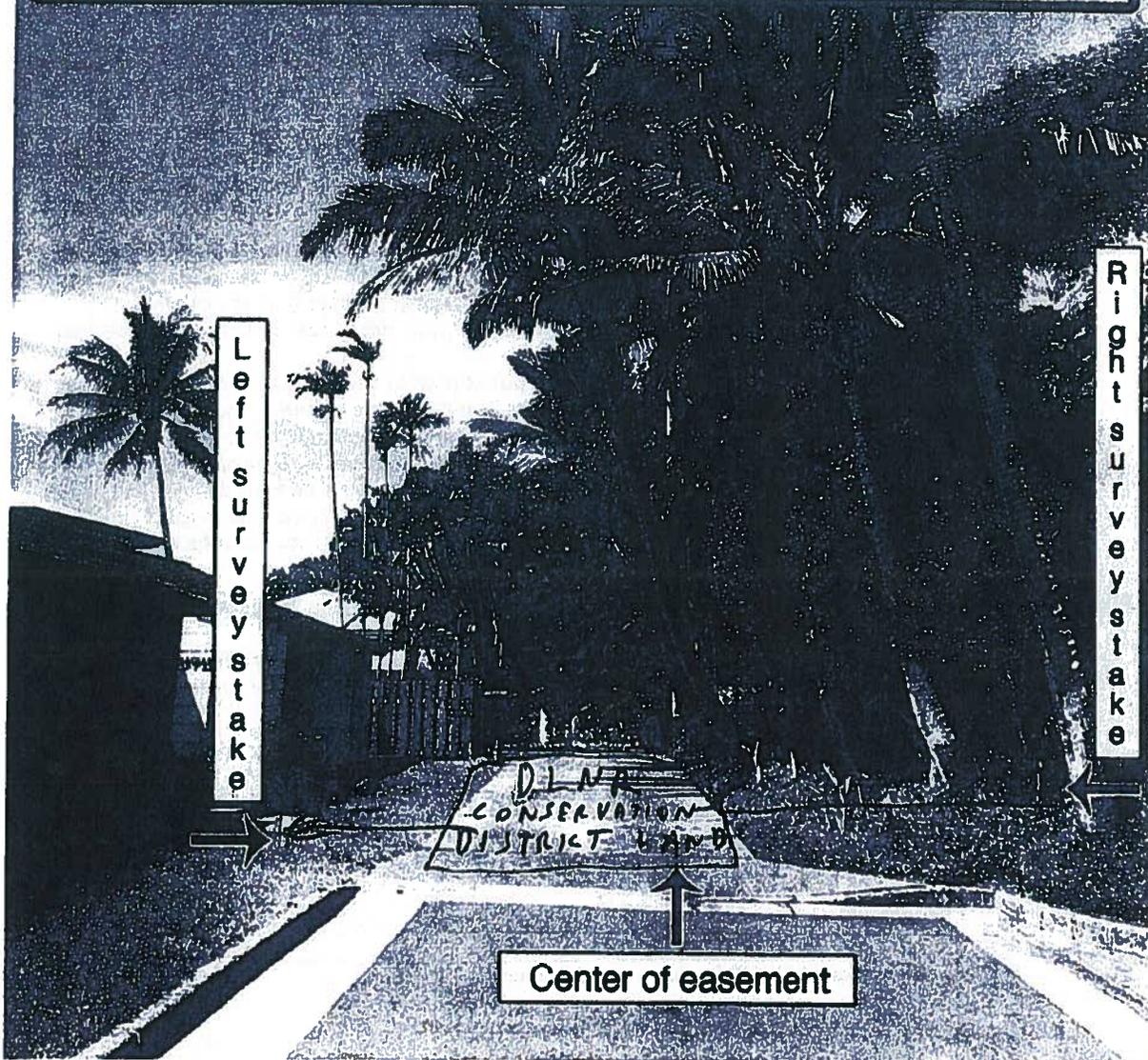
Signature

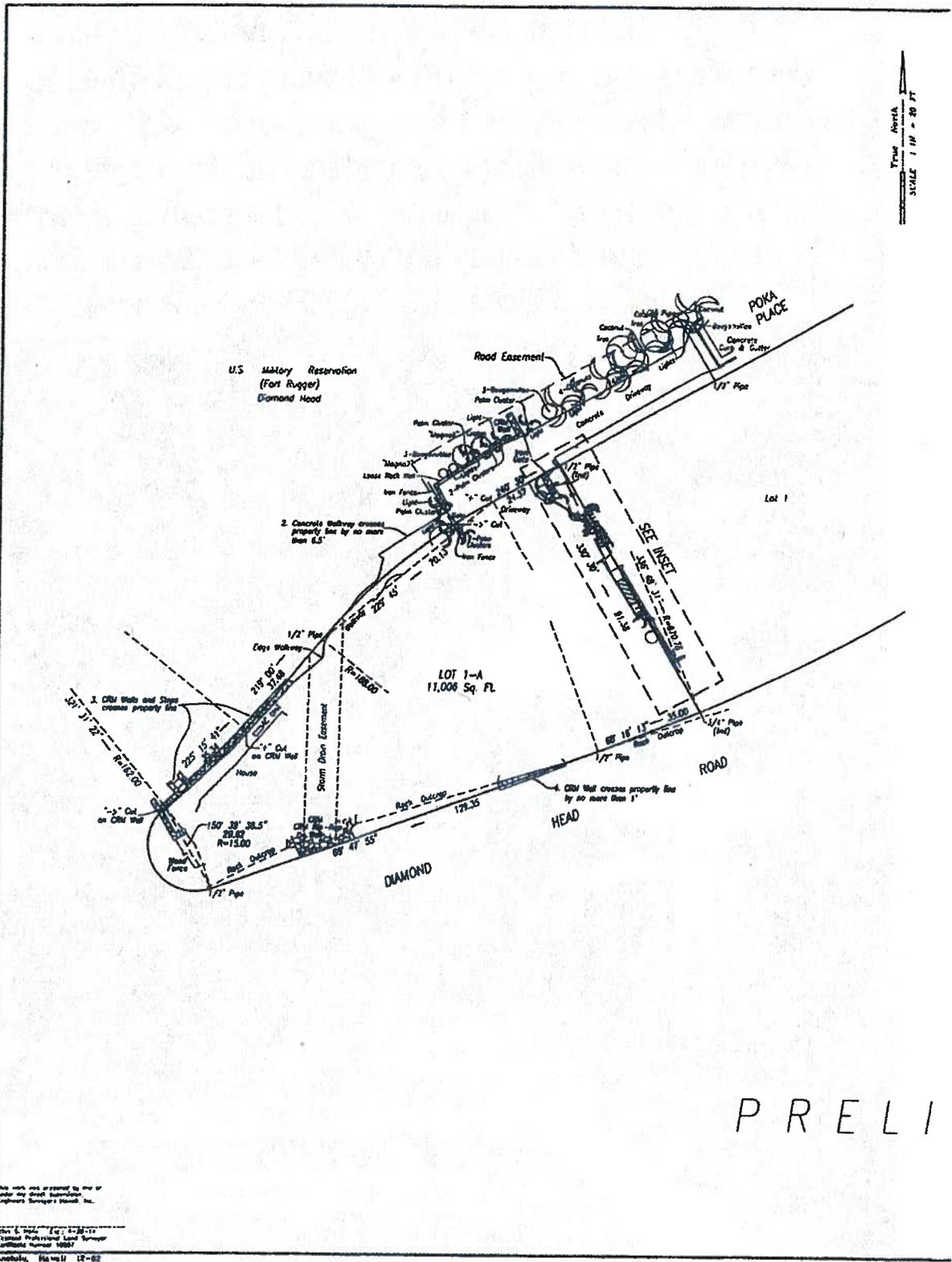
June 21, 2013

Date

## Diamond Head State Monument

View from public street (Poka Place) completely blocked by unpermitted coconut trees, gate, fence, and landscaping (with non-native plants, sprinklers, artificial lighting, and other unpermitted structures). Road easement converted into private driveway and gated, exclusive parking for Poka Place, LLC (3703 Poka Place).





True North  
SCALE 1" = 20 FT

PRELIMINARY

This work was prepared by me or under my direct supervision.  
Engineers Surveyors & Planners, Inc.

CHEN, E. HSIANG, E.C. 4-38-11  
Licensed Professional Land Surveyor  
License Number 10027

Shonohaka, File No. 11-12-02  
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ENGINEERS S  
CIVIL ENGINEERS - LAND S

**Diamond Head State Monument**  
**View from public street (Poka Place) completely blocked**  
**by unpermitted coconut trees, gate, fence, and landscaping**  
**(with non-native plants, sprinklers, artificial lighting, and**  
**other unpermitted structures). Road easement converted**  
**into private driveway and gated, exclusive parking**  
**for Poka Place, LLC (3703 Poka Place).**

