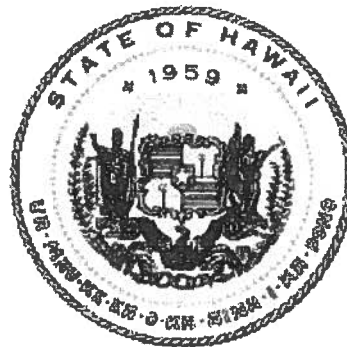


Report to the Twenty-Seventh Legislature
2013 Regular Session

ESTABLISHING A MANOA ROAD TASK FORCE



Prepared by
The Manoa Road Task Force

In response to
House Concurrent Resolution No. 153, Twenty-Sixth Legislature,
2012 Regular Session

December 2012

Report to the Twenty-Seventh Legislature
2013 Regular Session

ESTABLISHING A MANOA ROAD TASK FORCE

BACKGROUND:

House Concurrent Resolution No. 153 was adopted by the 2012 Legislature. The concurrent resolution requested the Chair of the Board of Land and Natural Resources to convene and chair a task force for the purpose of examining and making a recommendation to resolve the ownership, maintenance, and repair responsibility of the portion of Manoa Road leading up to the Lyon Arboretum.

Other members of the task force included elected-officials from the area; the President of the University of Hawaii; the Director of Transportation; the Director of Transportation Services of the City and County of Honolulu (City); the chair of the board of Paradise Park, Inc.; and a resident from that area.

Prior to convening of the task force, information was provided from the Department of the Attorney General (ATG) and the Department of Land and Natural Resources (DLNR).

DISCUSSION:

The area in question was identified to the task force as that portion of Manoa Road beginning from approximately 3610 Manoa Road northeast up to the private road signs placed by Paradise Parks, Inc. Hereinafter, "Manoa Road" shall reference only that portion.

MEETING 1 – OCTOBER 22, 2012

Presented to the task force were the two documents containing information from the ATG and DLNR.

An Attorney General's letter to Representative Isaac Choy dated September 26, 2012 (EXHIBIT 1), provided a brief summary of the Highways Act of 1892, which provides that all public thoroughfares in Hawaii shall be owned by the government. The letter provided additional information that the State Abstractor may be able to determine ownership, if ownership cannot be determined. Another remedy is to have the State go to court to quiet title.

Representative Isaac Choy made a request to the DLNR requesting the State Abstractor to see if ownership of Manoa Road can be determined. The State

Abstractor issued a memorandum from the DLNR to Representative Choy dated October 12, 2012 (EXHIBIT 2.)

The memorandum from the State Abstractor indicated that Manoa Road was a government road, and through the Highways Act, the City owned Manoa Road. The abstractor presented further documentation that the City through a City Council Resolution No. 93-287 (EXHIBIT 3), the City and County of Honolulu has accepted Manoa Road.

The immediate concern for Manoa Road is a strip of brush and trees that is obstructing the view of drivers, approximately sixty-feet in length which is endangering pedestrians, drivers and other users of the road. Many people who walk on Manoa Road do not use the sidewalk and tend to walk in the road itself. Member Wong expressed concern that it is only a matter of time before a pedestrian will be hit by a vehicle on Manoa Road. A vehicular accident has already been reported.

The task force members indicated that they would like to see the brush and trees trimmed and signs placed to warn pedestrians not to walk on the road. Due to perceived liability concerns, ownership needs to be determined before anything can be done. Apparently there is a belief that if you do any type of improvement, repair, maintenance, etc., you will claim ownership of the road and also exposed to liability.

The City, through Wayne Yoshioka, reviewed the reports before the initial meeting, and at the meeting, indicated that the City needs additional time to have its counsel review the abstractor's report. The task force agreed to allow the City to review the documents with its counsel.

MEETING 2 – NOVEMBER 8, 2012

The City reported back to the task force that even though the State Abstractor determined that the City owns Manoa Road, the City's Counsel advised that ownership cannot be determined. More specifically, although the State Abstractor's memorandum states that Manoa Road appears to be a government road, and therefore belongs to the City, the City is asserting that the phrase from the State Abstractor's memorandum, "The subject Manoa Road was opened, laid out, and built by the Territory of Hawaii circa 1905, replacing sections of an older government road into Manoa Valley that appears to have been in existence as early as 1848.", is not definitive enough to determine that Manoa Road falls under the Highways Act. Member Choy expressed concern that the City, from its legal counsel, did not

provide a written opinion which would collaborate Mr. Yoshioka's testimony. The task force needs a written opinion from its legal counsel.

Member Wong indicated that his past conversations with one possible owner, Kamehameha Schools/Bishop Estate (KSBE), sold the land to a developer but it is unclear whether the property underlying Manoa Road was transferred. The City also indicated that there is no clear definitive proof that there was any conveyance of that property and therefore ownership is not known, and possibly owned by KSBE.

Member Choy asked the City what it will take to determine ownership. The City indicated a deed indicating conveyance was made or other proof that clearly indicates that Manoa Road is an old government road. The City further recognized that the road is used as a general public thoroughfare, but it cannot accept the road primarily because it does not meet city ordinance requirements for a city road. More specifically, the road is approximately ten feet narrower than what is required by city ordinance.

The City went further that if there is a legal action to quiet title, it will not dispute ownership during such action. Other members also indicated that they will not dispute an action to quiet title.

RECOMMENDATION:

The task force cannot determine ownership because the City is disputing ownership and the opinion of the State Attorney General and State Abstractor. The recommendation of the task force is to introduce legislation in the 2013 Regular Session that will designate title of Manoa Road to the State and then transfer title of Manoa Road to the City.

As for the immediate concern of trimming the bushes and trees, the task force recognizes the hazards of the overgrowth, and as a temporary measure, Chair Aila will request the Governor to invoke Haw. Rev. Stat. sec. 128-10.3 to remove the hazardous condition.

As a final note, the City never rendered a legal opinion of its position and the City has not presented any credible testimony or evidence to back up its position.

MEMBERS OF THE MANOA ROAD TASK FORCE:

William J. Aila, Jr., Chair, Manoa Road Task Force, Board of Land and Natural Resources

Senator Brian T. Taniguchi, Senate District 10

Representative Isaac W. Choy, House District 24

Councilmember Ann Kobayashi, Council District 5

Paul Conry (Department of Land and Natural Resources)

David Smith (Department of Land and Natural Resources)

Dr. Vassilis Syrmos (University of Hawaii)

Christopher Dunn (Lyon Arboretum)

David Rodrigues (State Department of Transportation)

Wayne Yoshioka (City Department of Transportation Services)

Westley Chun (City Department of Facilities Maintenance)

Paul Wallrabenstein (Resident on Manoa Road)

NEIL ABERCROMBIE
GOVERNOR



received
9/26/12

DAVID M. LOUIE
ATTORNEY GENERAL

RUSSELL A. SUZUKI
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
LAND/TRANSPORTATION DIVISION
Room 300, 465 South King Street
Honolulu, Hawaii 96813
Telephone No. (808) 587-2992
Fax No. (808) 587-2999

September 26, 2012

The Honorable Isaac W. Choy
House of Representatives
State of Hawaii
State Capitol
Honolulu, Hawaii 96813

Re: Request for Legal Advice Regarding Ownership of Portion of Manoa Road
Leading to Lyon Arboretum
TRN IWC 2012-4129

Dear Representative Choy:

I. Introduction

This letter responds to your request for legal advice dated September 13, 2012, regarding the ownership of a portion of Manoa Road leading to the Lyon Arboretum.

II. Who Owns The Portion of Manoa Road?

Possible owners of the portion of Manoa Road include the State of Hawaii, the City and County of Honolulu, and a private party. The Declaration of Patrick M. Cummins Regarding Ownership of a Portion of Manoa Road, recorded in the Bureau of Conveyances as Document No. A-45491191 on June 15, 2012, attached as Exhibit 3 to your letter, appears to set forth the relevant facts. However, in order to fulfill our public trust duty to protect lands which may belong to the State¹, a title search must be done by the State Abstractor to determine who owns the road. In order to facilitate your request, we have forwarded your inquiry to the State Abstractor for his opinion.

¹ "All public natural resources are held in trust by the State for the benefit of the people." Hawaii Const. Art. XI, § 1.

III. The Highways Act

Several of your questions are about whether the portion of Manoa Road is a public highway by implied dedication or operation of law. Here, a brief summary of the “The Highways Act, 1892” (Highways Act) may be useful to understanding how a road becomes a public highway. The Highways Act was enacted as Act 47 by Queen Liliuokalani and the Legislature of the Hawaiian Kingdom.² It established “public highways” as follows:

Section 2. All roads, alleys, streets, ways, lanes, courts, places, trails and bridges in the Hawaiian Islands, whether now or hereafter opened, laid out or built by the Government, or by private parties, and dedicated or abandoned to the public as a highway, are hereby declared to be public highways.

All public highways once established shall continue until abandoned by due process of law.

The Highways Act further provided as follows:

Section 3. Any road, alley, street, way, lane, court, place, trail or bridge laid out, constructed, opened or maintained by individuals or corporations as a highway, may become a public highway by dedication or abandonment, or surrender thereof to general use by such individual or corporation; provided that the same shall be accepted or adopted by the Minister of Interior.

Section 4. Dedication or abandonment of any highway, mentioned in Section 2 of this Act, may be by deed or by a surrender or abandonment; such surrender or abandonment shall be taken to be when no act of ownership by the owner thereof has been exercised within five years.

Section 5. The ownership of all public highways and the land, real estate and property of the same shall be in the Hawaiian Government in fee simple.

² The 1905 Revised Laws of Hawaii, § 48-586 through § 48-588, which Mr. Cummins cites as the applicable version of the Highways Act to answer your question, is substantially similar to the 1892 law.

Despite the statutory language in the Highways Act placing fee ownership of public highways in the government, the Supreme Court of the Territory of Hawaii, in *In Re Hawaiian Trust Co.*, 17 Haw. 523 (1906), held that the Territory did not acquire the fee in a public highway by mere enactment of the Highways Act. The court held that the public had a public easement in the land. The court found that the landowner's non-interference with the public's use of the highway was not evidence that the owner did not exercise ownership over his land and had dedicated the fee to the Territory. While the landowner owned the fee in the strip of land, he had long before lost his right to interfere in the public's easement over the land.

The Highways Act, as amended, is now codified at chapter 264, Hawaii Revised Statutes (HRS). Under the present law:

A public highway is not a state highway unless it is designated for inclusion in the State Highway System under HRS § 264-41 (1976). All public highways which are not state highways are county highways or they are not public highways. See HRS § 264-1 (1976). A highway is not a county highway unless it is accepted or adopted as such by the county council.

Santos v. Perreira, 2 Haw. App. 387, 390, 633 P.2d 1118, 1122 (1981). The findings of the State Abstractor can be analyzed under this law to determine whether the portion of Manoa Road is a public highway by implied dedication or operation of law.

IV. Acquisition of the Portion of Manoa Road

You also ask what actions the State, through the Legislature or this Department, can pursue to acquire the portion of Manoa Road. If the State Abstractor determines that a private party owns the portion of Manoa Road, then the State can negotiate to purchase the property from the private party pursuant to HRS § 171-30.

Alternatively, if the acquisition will serve a "public purpose" as required by Article I, § 20 of the Hawaii Constitution, the State can exercise the power of eminent domain by instituting proceedings for condemnation of private property as set forth in HRS chapter 101. In either instance, funds will have to be appropriated by the Legislature to pay the landowner.

Finally, you ask whether an action for a declaratory ruling to confirm the State's ownership is appropriate if we cannot determine who owns the road. The answer is no. If the State Abstractor cannot determine who owns the portion of Manoa Road and there are others

The Honorable Isaac W. Choy
September 26, 2012
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claiming to own the road, the State can bring an action to quiet title pursuant to HRS chapter 669, provided that the State has evidence to support its claim.

Very truly yours,



Julie H. China
Deputy Attorney General

Approved:



David M. Louie
Attorney General

cc: Senator Brian T. Taniguchi
Councilmember Ann H. Kobayashi



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

October 17, 2012

Manoa Road Ownership

MEMORANDUM

TO: Julie H. China, Deputy Attorney General

THROUGH: Russell Y. Tsuji, Administrator

FROM: E. Mahoe Collins, State Abstractor

SUBJECT: Ownership Determination to Portion of Manoa Road Leading to the Lyon Arboretum, situated at Pukaomaomao, Kamoawaa, and Haukulu, Manoa, Honolulu, Oahu, TMK: (1) 2-9-53, 54 and 55.

We have been requested to determine the ownership to the subject portion of Manoa Road lying situated between Waakaua St. and the Lyon Arboretum, as shown on the map attached hereto as Exhibit A. Said portion of Manoa Road, designated thereon as Parcels I, II and III, being more particularly described as follows:

PARCEL I: Being that portion of the subject Manoa Road situated lying over, through and across portions of Royal Patent Grant No. 110 to M. Kekuanaoa at Pukaomaomao, from Waakaua St. to the northern boundary of Tax Plat Map (1) 2-9-53, same also being portion of Royal Patent Grant No. 110.

PARCEL II: Being that portion of the subject Manoa Road situated lying over, through and across portions of Royal Patent Grant No. 204 to P. Kanoa & Kahiwalani at Kamoawaa, adjoining TMK Parcels: (1) 2-9-54: 18, 33 & 07, same also being portion of Royal Patent Grant No. 204.

PARCEL III: Being that portion of the subject Manoa Road situated lying over, through and across portions of Royal Patent Grant No. 200 to Charles Kanaina at Haukulu, adjoining TMK: (1) 2-9-54:10, 29 & 2-9-55:06, same also being portion of Royal Patent Grant No. 200.

Records and files located in the State Archives, the State Survey Office and the Land Division of the Department of Land and Natural Resources reveal that through operation of laws, the subject portion of Manoa Road is owned by the City and County of Honolulu.

Exhibit 2

Manoa Road Ownership
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The subject Manoa Road was opened, laid out and built by the Territory of Hawaii circa 1905, replacing sections of the older government road into Manoa Valley that appears to have been in existence as early as 1848.

In 1848 and 1850, Royal Patent Grant Nos. 110, 200 and 204 were sold by the Hawaiian Government to Mataio Kekuanaoa, Charles Kanaina and Kahiwalani & P. Kanoa, respectively.

While Royal Patent Grant No. 110, dated October 12, 1848 to M. Kekuanaoa, identifies an "alanui" (road) in its survey description, Royal Patent Grants 200 and 204 are silent as to the existence of any road.

By the 1882 survey of E.D. Baldwin, Government Survey Registered Map 1068 (Exhibit B), "Manoa Valley", delineates a road over, through and across the said Grants, and the lands of Pukaomaomao, Kamoawaa and Haukulu into Manoa Valley.

Pursuant to the Highways Act, 1892 said road, and "all roads, streets, ways, lanes and trails in the Hawaiian Islands, whether now or hereafter opened, laid out or built by the Government" were "declared to be public highways", and provided that the "ownership of all public highways, and the land, real estate and property of the same shall be in the Hawaiian Government".

In 1904, under the supervision of the Superintendent of Public Works Department, the territorial government designed, located and laid out a "new road in Manoa Valley" that replaced sections of the old government road. Subsequently built and constructed, the alignment of the "new road in Manoa Valley" includes the entire subject portion of Manoa Road herein identified as Parcels I, II and III.

In accordance with Chapter 48, Sections 586 and 593 of the Revised Laws of Hawaii, 1905, all roads, including the subject Manoa Road that were laid out or built by the Territory were declared to be public highways, owned by the Territory of Hawaii.

Through subsequent operation of laws, the ownership of the Territory of Hawaii in and to the subject portion of Manoa Road, and other public highways, was transferred to and vested in the City and County of Honolulu as provided in §264-1 and §264-2 of the Hawaii Revised Statutes.

By City Council Resolution No. 93-287, adopted September 29, 1993, the County Council of the City and County of Honolulu accepted the ownership and jurisdiction of the subject portion of Manoa Road and other public highways within the county limits, as follows:

"WHEREAS the City and County of Honolulu feels that by accepting the ownership and jurisdiction of all disputed public highways within its county limits, the City will finally put to rest the long-standing dispute with the State over such public highways and may now begin its earnest efforts to improve these highways, subject to availability of funds, for the benefit of the residents of the City and County of Honolulu; and

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“WHEREAS, in order to facilitate improvements and maintenance of these highways, the City Administration is directed to accept funding from the State; now, therefore,

“BE IT RESOLVED, that the City and County of Honolulu implement the intent of Act 288 and accept all county highways as defined in Section 264-1, Hawaii Revised Statutes, as public highways under its ownership and jurisdiction.”

In conclusion we find that the City and County of Honolulu owns the subject portion of Manoa Road.

If you have any questions please feel free to call me at 587-0458.

Enclosures

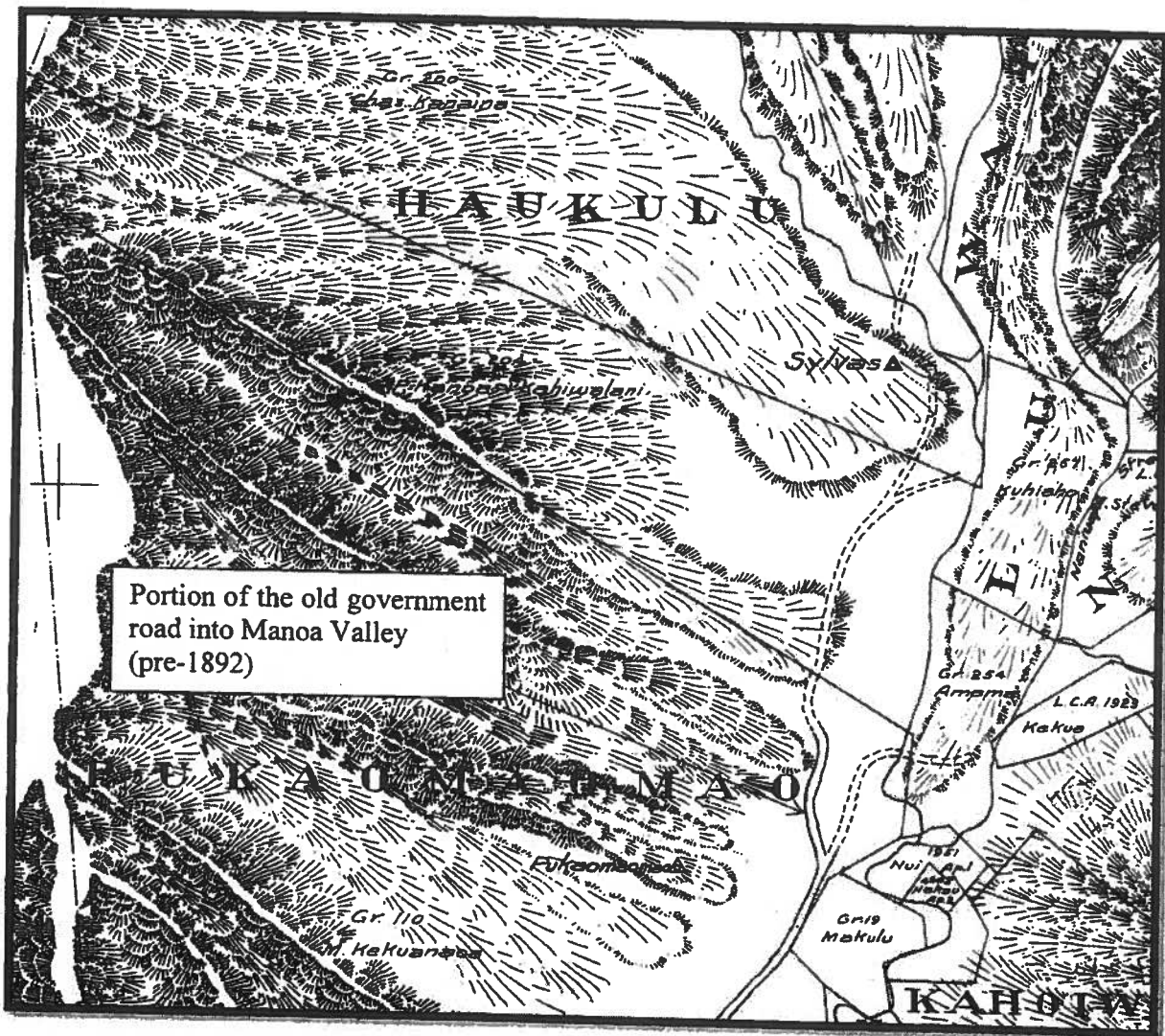
**Cc: Honorable Representative Isaac Choy
William J. Aila, Chairperson DLNR
David Smith, DOFAW**

Manoa Road (Parcels I, II, and III)



EXHIBIT A

Manoa Road Ownership
Exhibit B



Portion of Government Survey Registered Map No. 1068, "Manoa Valley" by 1882 Survey of E. D. Baldwin, delineating the alignment of the old government road over, through and across the lands of Pukaomaomao, Kamoawaa and Haukulu.



RESOLUTION

ESTABLISHING A NEW POLICY FOR DISPUTED PUBLIC HIGHWAYS IN THE CITY AND COUNTY OF HONOLULU

WHEREAS the State of Hawaii has enacted Act 288, Session Laws of Hawaii, Regular Session of 1993, the intent of which is to resolve the jurisdictional dispute between the State and the counties over ownership of certain disputed public highways; and

WHEREAS said Act 288 provides that, for counties having population in excess of 500,000 persons, the provision of Section 264-3, Hawaii Revised Statutes, which requires that a county remit to the State the proceeds from the sale of any county public highway that was formerly a state public highway, is abrogated; and

WHEREAS in consideration of the State waiving its right to have the proceeds from the sale of county public highways remitted to the State, the City and County of Honolulu is willing to acknowledge ownership and jurisdiction of all disputed public highways within its county limits; and

WHEREAS the City and County of Honolulu feels that by accepting the ownership and jurisdiction of all disputed public highways within its county limits, the City will finally put to rest the long-standing dispute with the State over such public highways and may now begin its earnest efforts to improve these highways, subject to availability of funds, for the benefit of the residents of the City and County of Honolulu; and

WHEREAS in order to facilitate improvements and maintenance of these highways, the City Administration is directed to accept funding from the State; now, therefore,

BE IT RESOLVED that the City and County of Honolulu implement the intent of Act 288 and accept all county highways as defined in Section 264-1, Hawaii Revised Statutes, as public highways under its ownership and jurisdiction.

BE IT FURTHER RESOLVED that, when transferring title for the purpose disposal of such county highways, the City and County of Honolulu shall be responsible for the preparation of the conveyancing documents which shall include, but not be limited to, a metes and bounds survey of the abandoned public highways, if necessary.

Exhibit 3

RESOLUTION

BE IT FURTHER RESOLVED that former policies of the City and County of Honolulu with respect to disputed public highways as set forth in Resolution Nos. 90-32, 88-426 and 88-425, CD-1, are hereby repealed.

BE IT FINALLY RESOLVED that upon its adoption, the City Clerk shall transmit a copy of this resolution to the Mayor and the Governor and to all appropriate agencies.

INTRODUCED BY:

Gary Gill (BR)

Councilmembers

DATE OF INTRODUCTION:

September 1, 1993

Honolulu, Hawaii

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

I hereby certify that the foregoing RESOLUTION was adopted by the COUNCIL OF THE CITY AND COUNTY OF HONOLULU on the date and by the vote indicated to the right.

ATTEST:


RAYMOND K. PUA
CITY CLERK


GARY GILL
CHAIR AND PRESIDING OFFICER

Dated SEP 29 1993

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Reference:

Report No.

Resolution No.

93-287, CD-1, FD-1