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

February 14, 2014  

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

PSF No: 12HD-006  

Hawaii  

Report to Board on Opinion from the Office of the Attorney General  
Regarding Previously Deferred Agenda Item D-6 of July 12, 2013 Land  
Board Meeting titled: “Rescind Prior Board Action of November 9, 2012,  
Item D-4, Sale of Storm Drainage Easement Reservations 1 and 2 in Favor of  
the State of Hawaii to Robert Glenn Bloom, Jr. and Bebi Latiefa Bloom,  
Paukaa, South Hilo, Hawaii, Tax Map Key:3rd/2-7-20:14”.  

BACKGROUND:  

At its meeting of November 9, 2012, agenda item D-4 (contained in attached Exhibit A), the  
Board of Land and Natural Resources approved the sale of two storm drainage easement  
reservations to Robert Glenn Bloom, Jr. and Bebi Latiefa Bloom (applicants). The two easement  
reservations were created during the subdivision of Honolii Pali Tract 2, File Plan 489. The  
easements were intended to allow for a future 10-foot wide storm drain and are entirely within  
the boundaries of the applicant’s private property. Physical inspection by staff found no  
indication the drainage system was ever built.  

Upon receiving Board approval of the sale, staff sent out a bid request for an independent  
appraisal to determine the purchase price for the easement reservations. The applicants objected  
to the appraisal fee of $3,277.49 for the two small easement reservations and notified the Hawaii  
District Land Office they were no longer interested in purchasing the storm drainage easement  
reservations and withdrew their request to do so.  

The applicants appeared at the Board meeting of July 12, 2013, regarding agenda item D-6  
(attached as Exhibit A), which sought to rescind the prior Board approval of the sale of the storm  
drainage easements. They proposed the State had abandoned the easements and should legally  
vacate the reservations without cost to the property owner (applicants) as is done in many other  
states.  

The Board deferred action on the agenda item and requested an opinion from the Office of the  
Attorney General (AG) regarding the Board’s ability to voluntarily abandon the easement  
reservations with no cost to the applicants.
REMARKS:

The AG has reviewed this proposed disposition and concluded that the State cannot abandon an easement reservation to the owner for free.

Nowhere in HRS Chapter 171 is the State allowed to give away public land to a private individual at no cost. However, HRS Section 171-57 does allow the Board to dispose of a reserved easement to the owner of the land by direct sale.

Further, the public trust doctrine weighs heavily against the State giving away an interest in public land. The State is judicially accountable to the beneficiaries (the public) for any and all dispositions of the public trust.

In light of the opinion from the AG and the applicant’s unwillingness to pay the costs associated with a lawful disposition, staff is recommending that the Board proceed with rescinding the prior action of November 9, 2012 agenda item D-4 authorizing the sale of storm drainage easements 1 and 2.

RECOMMENDATION: That the Board:


Respectfully Submitted,

[Signature]
Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:

[Signature]
William J. Aila, Jr., Chairperson
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

July 12, 2013

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

PSF No: 12HD-006

Rescind Prior Board Action of November 9, 2012, Item D-4, Sale of Storm Drainage Easement Reservations 1 and 2 in Favor of the State of Hawaii to Robert Glenn Bloom, Jr. and Bebi Latiefa Bloom, Paukan, South Hilo, Hawaii. Tax Map Key: (3) 2-7-20:14.

BACKGROUND:

At its meeting of November 9, 2012 agenda item D-4 (attached as Exhibit A), the Board of Land and Natural Resources approved the sale of two storm drainage easement reservations to Robert Glenn Bloom, Jr. and Bebi Latiefa Bloom (applicants). The two easement reservations were created during the subdivision of Honolii Pali Tract 2, File Plan 489. The easements were intended to allow for a 10-foot wide storm drain and are entirely within the boundaries of the applicant’s private property. Physical inspection by staff found no indication the drainage system was ever laid out.

REMARKS:

Upon receiving Board approval of the sale, staff sent out a bid request for an independent appraisal to determine the purchase price for the easement reservations. The applicants objected to the appraisal fee of $3,277.49 for the two small easement reservations and have notified the Hawaii District Land Office that they are no longer interested in purchasing the storm drainage easement reservations and withdraw their request to do so.

Staff is recommending that the Board rescind the prior action of November 9, 2012 agenda item D-4 authorizing the sale of storm drainage easements 1 and 2.

Deferred

Approved by the Board of Land and Natural Resources at its meeting held on

July 12, 2013
RECOMMENDATION: That the Board:


Respectfully Submitted,

[Signature]

Candace Murin
Land Agent

APPROVED FOR SUBMITTAL:

[Signature]

William J. Alia, Jr., Chairperson

Land Board Meeting: July 12, 2013; D-6: Deferred
HDLO to prepare a memo to the Department of the Attorney General asking whether the State is able to voluntarily abandon the easement at no cost to applicant, Mr. Bloom.
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

November 9, 2012

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

PSF No.: 12HD-006
Hawaii

Sale of Storm Drainage Easement Reservations 1 and 2 in Favor of the State of Hawaii to Robert Glenn Bloom, Jr. and Bebi Latiefa Bloom, Paukaa, South Hilo, Hawaii, Tax Map Key: 3rd/2-7-20:14.

APPLICANT:

Robert Glenn Bloom, Jr. and Bebi Latiefa Bloom. Husband and Wife, Tenants by the Entirety.

LEGAL REFERENCE:

Section 171-57, Hawaii Revised Statutes, as amended.
Section 171-16(d), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of lands of Honolii Pali Tract 2, situated at Pauka’a, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-7-20:14, as shown on the attached map labeled Exhibit A.

AREA:

Easement reservation 1 = 3,100 square feet, more or less.
Easement reservation 2 = 3,478 square feet, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: RS-10 residential

APPROVED BY THE BOARD OF LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
November 9, 2012

D-4
TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Reservation for Storm Drainage

CURRENT USE STATUS:

Vacant and unencumbered

CONSIDERATION:

A one-time lump sum payment of the difference in fair market value with and without the easement reservations (easement) 1 and 2, to be determined by independent appraiser contracted for by the State, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Refer to Exhibit B – Exemption Notification letter.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicants shall be required to:

1. Pay for an appraisal to determine the one-time payment of the difference in fair market value with and without the easement.
2. Pay for the costs of public notice pursuant to section 171-16(d).

REMARKS:

Easement 1 was created by Onomea Sugar Company on September 5, 1952 during the subdivision of Honolii Pali Tract 2, File Plan 489 as “Easement F”. The subject easement was carried forward as “Easement 1” in Land Court Application 1658. The 10 foot wide easement courses along the northern boundary, as indicated in yellow on the attached Exhibit A and was made in reservation to the State of Hawaii for the purpose of storm
drainage. Currently, the State has not made use of this easement and there are no indications of pending or planned future usage.

Easement 2 was created in conjunction with Easement 1 and traverses the property along the western border as indicated in blue on the attached Exhibit A. Easement 2 is also 10-feet wide and was reserved to the State of Hawaii and County of Hawaii for the purpose of storm drainage and water pipeline. Currently, the State has not made use of this easement and there are no indications of pending or planned future usage.

The Applicant is the owner of parcel (3) 2-7-20:14 as staff has confirmed by the County of Hawaii, Real Property Tax Office web site. A copy of the reservation wording attached to the Warranty Deed is attached as Exhibit C. The easements were intended to allow for a 10-foot wide storm drain and are entirely within the Applicant’s property. Physical inspection by staff revealed no indication the drainage system was ever laid out and existing contour of the land suggests a drainage system in this location would not be feasible.

The Applicant has a pending request with the County of Hawaii (COH) to abandon the COH’s interest in Easement 2 and has acquired letters from the County of Hawaii Department of Public Works, Planning Department, Department of Water Supply and Department of Environmental Management in support of the applicant’s request for the COH to abandon Easement 2 (attached as Exhibit D). The Applicant asks the State of Hawaii to dispose of the State’s interest in Easement 2.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Section 171-57, HRS allows the Board to authorize disposal of an easement reservation to the State by direct sale. Staff recommends an appraisal be conducted to determine the consideration payable to the State from the sale of Easement 1 and Easement 2.

Request for comments were sent to various interested agencies. Nine agencies were solicited for comments; two responses were received. Hawaii County Planning had no comments and Hawaii County Environmental Management had no objections.

The disposition of these easements does not involve any expansion or change of use beyond that previously existing. Therefore, staff believes this transaction to be exempt from the preparation of an environmental assessment.

**RECOMMENDATION:**

That the Board:
1. Find that the sale of Storm Drainage Easement Reservations 1 and 2 is not prejudicial to the best interest of the State, community or area in which the storm drainage easement reservations are located.

2. Declare that, after considering the potential effects of the proposed disposition 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.

3. Authorize the subject request to be applicable in the event of a change in the ownership of the private parcel described as Tax Map Key: (3) 2-7-20:14, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

4. Subject to the Applicant fulfilling the Applicant Requirements listed above, authorize the sale of Storm Drainage Easement Reservations 1 and 2 to Robert Glean Bloom, Jr. and Bebi Latiefia Bloom covering the subject area 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 waiver of easement form, 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.

Respectfully Submitted,

[Signature]
Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:

[Signature]
William J. Alla, Jr., Chairperson
EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Sale of Storm Drainage Easement Reservations 1 and 2 in Favor of the State of Hawaii to Robert Glenn Bloom, Jr. and Bebi Latiefa Bloom, Pauka’a, South Hilo, Hawai‘i, Tax Map Key: 3rd/2-7-20:14

Project / Reference No.: PSF 12HD-006

Project Location: Portion of lands of Honoli‘i Pali Tract 2, situated at Pauka’a, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-7-20:14

Project Description: Proposed sale of storm drainage easement reservations 1 and 2 through private property owned by the applicants. Said easement reservations were made in 1952 during subdivision development. There is no evidence the drainage system was ever constructed and existing contours of the land suggest a drainage system in this location would not be feasible.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with the “Division of Land Management’s Environmental Impact Statement Exemption List”, approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment under the following:

Exemption Class No. 1, which states “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” and;

Exemption Class No. 4, which states “Minor alteration in the conditions of land, water, or vegetation”
Consulted Parties:

State of Hawaii:

County of Hawaii:
Planning Department, Department of Public Works, Department of Water Supply and Department of Environmental Management.

Other agencies:
Office of Hawaiian Affairs.

Recommendation:
That the Board find 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.

[Signature]
William J. Aila, Jr., Chairperson

10/23/12
Date
EXHIBIT C

936.377 acres of land abutting the following:

LAND OF BERTIEL S. HOLSINGER, Surveyor, and STATE OF MONTANA,

in the office of the Register of Deeds at the Clerk of the District Court, of the State of Montana, to which reference is hereby made.
DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII

DATE: October 17, 2011

Memorandum

TO: Katherine A. Olson, Assistant Corporation Counsel
FROM: Department of Public Works
SUBJECT: REQUEST TO ABANDON DRAINAGE BASEMENTS J & K
Property Owner: Robert G. Bloom, Jr., and Beld L.E. Bloom
Location: TMK: 2-7-6600-014

We have reviewed the property owners' request and have no objection to abandoning the drainage easements referenced above.

Questions may be referred to Carter Romero at 961-8327.

WARREN H. W. LEE, P.E.
Director

CLR

ENG

[Signature]

County of Hawaii, Department of Public Works

Page 1 of 4
MEMORANDUM

TO: Katherine A. Grossen, Assistant Corporation Counsel

FROM: HJ Leilani Todd, Planning Director

DATE: October 13, 2011

SUBJECT: Robert O. Bloom, Jr., and Beld L.K. Bloom's Request to the County of Hawai‘i to Acquire Drainage Basements J and K TMR: (3) 2-7-620-014

We have reviewed the Bloom’s request to the County of Hawai‘i to acquire the above-reference easements.

We have no objection to the County of Hawai‘i abandoning the above-referenced easements.

DSAs: 

P:\asphalt\2011\asphalt-2011\SUBJ25\Basement.doc
October 21, 2011

TO: Katherine A. Garcia, Assistant Corporation Counsel
FROM: Milton Peveo, Manager-Chief Engineer – Department of Water Supply

SUBJECT: ROBERT G BLOOM, JR., AND HENI L. K. BLOOM'S REQUEST TO THE COUNTY OF HAWAII TO ACQUIRE DRAINAGE EASEMENTS J AND K TAX MAP KEY: 2-420-914

We have reviewed the Bloom's request to the County of Hawaii to acquire the above-referenced easements and we have no objections to the County of Hawaii abandoning the subject easements.

Should you have any questions, please contact Mr. Lawrence Beck of the Water Resources and Planning Branch at 961-8070, extension 269.

Sincerely yours,

Milton D. Peveo, P.E.
Manager-Chief Engineer

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Water, Our Most Precious Resource... By Wai A Kana...
MEMORANDUM

DATE: October 13, 2011

TO: Katherine Goren, Deputy Corporation Counsel

FROM: Dan Beck, P.E., Acting Director

SUBJECT: Sierra Blanca Erosion

We have reviewed the documents you have provided regarding the subject erosion and have no objection to abandonment of the easements as requested by the property owners.

Should there be any questions, please don’t hesitate to contact me.

County of Maricopa

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