

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

June 13, 2014

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

PSF No: 98OD-168  
Oahu

Amend Prior Board Action of January 12, 2007, Item D-10, as Amended, Set Aside to the State Department of Transportation, Highways Division for Highway Right-of-Way and Highway Boundary Purposes, Cancellation of Revocable Permit Nos. S-7152, S-7329 and S-7402 and Re-issuance of New Revocable Permits Covering the Remaining Areas and Issuance of a Right-of-Entry for Construction and Construction Staging Area Purposes, Honouliuli, Ewa, East Kapolei, Oahu, Tax Map Keys: (1) 9-1-18: Portions of 3 and 5, and (1) 9-1-17: Portions of 86 and 88. The purpose of the amendment is to obtain Board approval for a Land Court petition regarding the subdivision of the land, and a memorandum of understanding between the Board and Department of Transportation, Highways Division, regarding access.

BACKGROUND:

At its meeting of January 12, 2007, Item D-10, the Board of Land and Natural Resources (Board) approved, as amended, the set-aside of the subject lands to the Department of Transportation, Highways Division (DOT), for the North-South Road in Kapolei. A copy of the prior Board action is attached hereto as Exhibit 1. The lands are registered in the Land Court. The road was subsequently constructed and DOT prepared a "Petition for Subdivision, Cancellation of Portion of Restriction of Access Rights and Designations of Restrictions of Access Rights and Vehicle Access Rights and Order" (Petition), to be submitted to the Land Court. A copy of the Petition is attached hereto as Exhibit 2.

The Petition needs to be filed and the order issued thereon before the State Surveyor can prepare the necessary maps for attachment to the executive order that will formally set the subject lands aside to DOT. However, Land Division staff had concerns about the Petition because it places restrictions on the abutting State land's access to North-South Road. Specifically, the State parcel designated as Lot 11994-A on the map attached to the Petition includes "no access" symbols all along the parcel's boundary with North-South Road. The Petition states at paragraph C that Lot 11994-A will instead have direct access to Farrington Highway.

Land Division was concerned that the access restrictions might impede future development of the State lands and therefore declined to process DOT's Petition through the Department of the Attorney General for review and approval.

REMARKS:

Land Division and DOT representatives met recently to determine how to resolve this situation. DOT explained that the restricted access symbols on the map do not mean that the Board will forever be barred from applying for and obtaining access along North-South Road. Rather, access may be granted if the Board or a future lessee/developer of the lands agrees to DOT's requirements for access, which may include a traffic study, signalized intersection, deceleration/acceleration lanes or similar right-of-way improvements to make access safe. The parties agreed in concept to a memorandum of understanding, a copy of which is attached hereto as Exhibit 3 for the Board's consideration.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of January 12, 2007, under agenda item D-10, as amended, by:
  - a. Approving the form of "Petition for Subdivision, Cancellation of Portion of Restriction of Access Rights and Designations of Restrictions of Access Rights and Vehicle Access Rights and Order" for the subject lands attached hereto as Exhibit 2, subject to the terms and conditions recited above, and further subject to:
    - i. Review and approval by the Department of the Attorney General;  
and
    - ii. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
  - b. Approving the form of the Memorandum of Understanding attached hereto as Exhibit 3, setting forth the Board's and DOT's understanding regarding future access onto North-South Road, subject to the terms and conditions recited above, and further subject to:
    - i. Review and approval by the Department of the Attorney General;  
and
    - ii. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

2. Except as otherwise amended hereby, all terms and conditions listed in the Board's January 12, 2007 approval to remain the same.

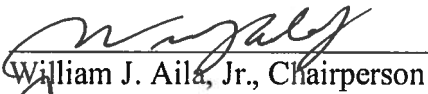
Respectfully Submitted,



---

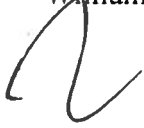
Kevin E. Moore  
Assistant Administrator

APPROVED FOR SUBMITTAL:



---

William J. Aila, Jr., Chairperson



**AMENDED**

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

January 12, 2007

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

PSF No.: OD98-168

OAHU

Set Aside to the State Department of Transportation, Highways Division for Highway Right-of-Way and Highway Boundary Purposes, Cancellation of Revocable Permit Nos. S-7152, S-7329 and S-7402 and Re-issuance of New Revocable Permits Covering the Remaining Areas and Issuance of a Right-of-Entry for Construction and Construction Staging Area Purposes, Honouliuli, Ewa, East Kapolei, Oahu, Tax Map Keys: (1) 9-1-18: Portions of 3 and 5, and (1) 9-1-17: Portions of 86 and 88

APPLICANT:

State of Hawaii, Department of Transportation, Highways Division (DOT)

LEGAL REFERENCE:

Sections 171-11, 13 and 55, Hawaii Revised Statutes, as amended.

LOCATION:

Portions of the acquired Government land situated at Honouliuli, Ewa, East Kapolei, Oahu, identified by Tax Map Keys: (1) 9-1-18: Portions of 3 and 5, and (1) 9-1-17: Portions of 86 and 88, as shown on the attached maps labeled Exhibit A.

AREA:

Right-of-Way Parcel 2:	6.911 acres, more or less (right-of-entry and set aside).
Boundary 1:	54.03 linear feet, more or less (right-of-entry and set aside).
Construction Parcel C-6:	0.322 acres, more or less (right-of-entry).
Construction Parcel C-8:	2.597 acres, more or less (right-of-entry).
Construction Parcel C-10 (Rev.):	1.311 acres, more or less (right-of-entry).
Construction Parcel C-11:	4.216 acres, more or less (right-of-entry).

ZONING:

State Land Use District:	Urban
City and County of Honolulu CZO:	Agriculture

TRUST LAND STATUS:

Acquired after statehood. Non-trust lands.  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

*and Amended*

**EXHIBIT 1**

*January 12, 2007*

D-10

CURRENT USE STATUS:

Revocable Permit No. S-7402 issued to Larry Jeffs dba Sugarland Farms, Inc. for agricultural purposes encumbers Right-of-Way Parcel 2 (TMK: (1) 9-1-18: Portion 5), Boundary 1 (TMK: (1) 9-1-18: Portion 3), Construction Parcel C-10 Rev. (TMK: (1) 9-1-18: Portion 3) and Construction Parcel C-11 (TMK: (1) 9-1-18: Portion 5).

Revocable Permit No. S-7329 issued to A.M. Enterprises, LLC for agricultural purposes encumbers Construction Parcel C-8 (TMK: (1) 9-1-17: Portion 86).

Revocable Permit No. S-7152 issued to Aloun Farms, Inc. for agricultural purposes encumbers Construction Parcel C-6 (TMK: (1) 9-1-17: Portion 88).

PURPOSE:

Highway right-of-way purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on October 8, 2004 with a finding of no significant impact (FONSI).

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Process and obtain subdivision at Applicant's own cost.
2. Provide survey maps and descriptions according to State DAGS standards and at the Applicant's own cost.

REMARKS:

The North-South Road (NS Road) is part of the East Kapolei Master Plan that was prepared by the Housing and Community Development Corporation of Hawaii, presently known as the Hawaii Housing Finance and Development Corporation.

The NS Road is a multiple phased project by DOT that when completed will extend from the Kapolei Parkway to the H-1 Interstate Freeway. Freeway access will be via a new interchange. The NS Road will help relieve traffic congestion on Fort Weaver Road and Barrette Road during peak traffic hours.

The first Phase 1A, which represents approximately 20% the NS Road, is nearing completion. The State lands comprising Phase 1A were approved for set aside to DOT by the Board at its September 24, 2004 meeting, under agenda item D-11.

DOT's subject request covers the State lands that comprise the next Phase 1C of the NS Road. Phase 1C consists of the NS Road right-of-way from Farrington Highway to the H-1 Interstate Freeway and a 54.03-foot boundary portion of TMK: (1) 9-1-18: Portion 3. A governor's executive order setting aside the NS Road right-of-way and boundary land areas under its management jurisdiction and control is being requested by DOT.

In addition to the highway right-of-way and boundary areas, DOT's current request includes four temporary construction staging areas. Initially, all would be covered under a temporary right-of-entry at gratis because it is for a government project.

Funding for the design, acquisition and construction of the NS Road is authorized by Act 328, SLH 1997.

The 15.357 total acres being requested by DOT under this request will affect an equal number of acres currently under the operation of Revocable Permit Nos. S-7152, S-7329 and S-7402 combined. The permittees have always been aware of the fact that their occupancy would be temporary and could continue until planned development of the permit areas was to commence. Since DOT's land needs will affect only portions of the subject revocable permit's premises, their cancellation and re-issuance of new revocable permits covering their respective remaining premises would be in order.

**RECOMMENDATION:**

That the Board, subject to Applicant fulfilling the Applicant Requirements above:

- A. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject highway right-of-way and highway boundary to the State Department of Transportation, Highways Division, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
  1. The standard terms and conditions of the most current executive order form, as may be amended from time to time.
  2. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside.
  3. Review and approval by the Department of the Attorney General.
  4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
  
- B. Approve the cancellation of Revocable Permit Nos. S-7152, S-7359 and S-7402 and re-issue new revocable permits to the permittees covering their respective remaining areas, subject to the following:
  1. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time.
  2. Review and approval by the Department of the Attorney General.
  3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.


- C. Approve the issuance of a right-of-entry at gratis to the State Department of Transportation, Highways Division, covering the subject highway right-of-way, highway boundary and the four construction parcels for construction and construction staging area purposes, subject to the following:
1. The standard terms and conditions of the most current applicable right-of-entry form, as may be amended from time to time.
  2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Gary Martin  
Land Agent

APPROVED FOR SUBMITTAL:

  
Peter T. Young, Chairperson

APPROVED AND AMENDED. The amendment is as follows:

Recommendation B, correct Revocable Permit No. 7359 and replace it with 7329.

Dwg No. 1, 2000  
 Source: L.C. App. 1998-2000  
 By: L.C. & H.C. App. 1998

CONTRACT NO.  
 SHEET NO.  
 DATE  
 DRAWN BY  
 CHECKED BY  
 APPROVED BY

705 HANOVERIAL LAW OFFICE

PLAT 16

Construction Parcel C-10 (Rev.)

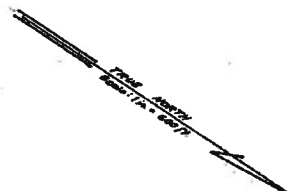
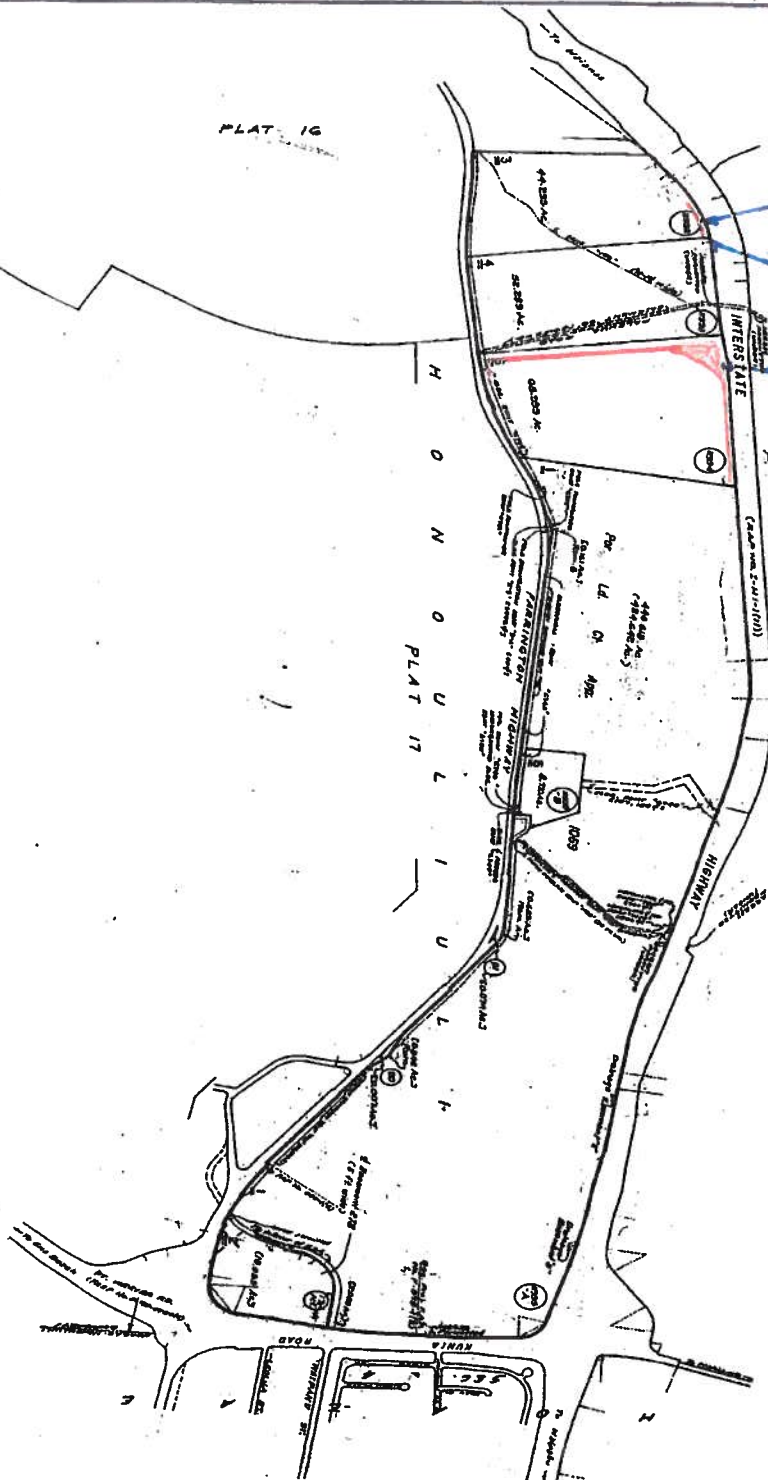
Boundary 1

Hwy. ROW: Parcel 2 and  
 Construction Parcel C-11

H O N O P L A T 1 7 U L I U

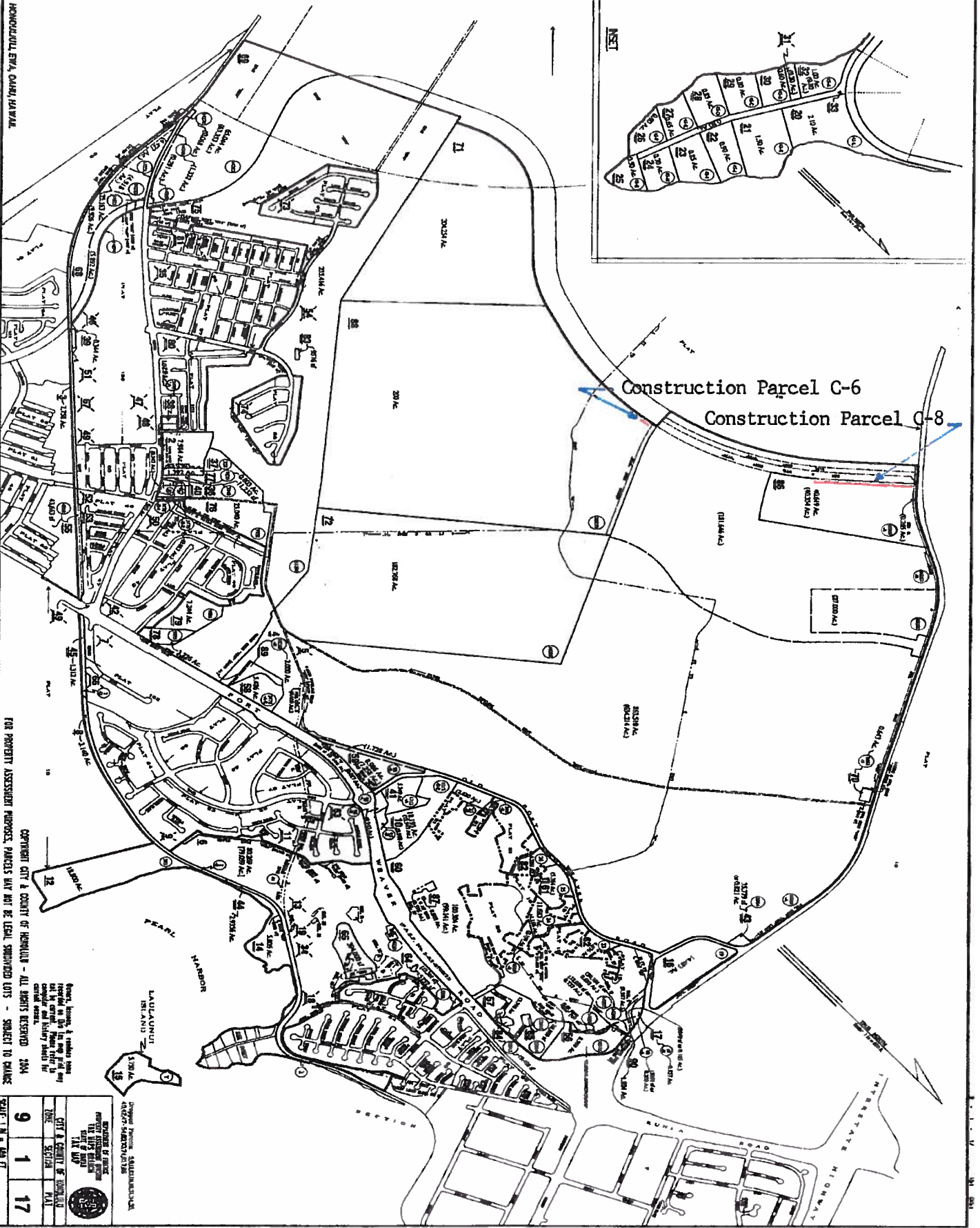
SECTION 2

SUBJECT TO CHANGE



Parcel depicted is:  
 TAXATION MAPS BUREAU  
 TREASURY OF MISSOURI  
 TAX MAP  
 FIRST DIVISION  
 ZONE SEC. PLAT  
 9 1 18  
 CONTAINING PARCELS  
 SCALE 1" = 400 FT.





HONOLULU, HAWAII

FOR PROPERTY ASSESSMENT PURPOSES, PARCELS MAY NOT BE LEGAL, SHOWN OR LOTS - SUBJECT TO CHANGE

COPYRIGHT CITY & COUNTY OF HONOLULU - ALL RIGHTS RESERVED 2014

Notes: 1. This map is for informational purposes only. It is not intended to be used for legal purposes. 2. The City & County of Honolulu is not responsible for any errors or omissions on this map. 3. The City & County of Honolulu is not responsible for any damages or losses resulting from the use of this map.

9	1	17
CITY & COUNTY OF HONOLULU	PLANNING DEPARTMENT	LAND USE DIVISION
DATE: 09/24/2013	SCALE: 1" = 100' FT	

EXHIBIT " A "

IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application of	)	Application No. 1069
	)	
	)	L.D. Case No. _____
THE TRUSTEES UNDER THE WILL	)	
AND OF THE ESTATE OF JAMES	)	
CAMPBELL, DECEASED	)	
	)	
to register title to land situate at	)	
Honouliuli, District of Ewa, City and	)	
County of Honolulu, State of Hawaii	)	
_____	)	

PETITION FOR SUBDIVISION, CANCELLATION OF PORTION OF  
RESTRICTION OF ACCESS RIGHTS AND DESIGNATIONS OF  
RESTRICTIONS OF ACCESS RIGHTS AND VEHICLE ACCESS RIGHTS  
AND ORDER

DAVID M. LOUIE 2162  
Attorney General  
State of Hawaii

Referred to the Surveyor of the State for check  
and report. Map filed herewith. Land Court  
Certificate of Title 490,888 is at the Bureau.

\_\_\_\_\_ white prints requested.

\_\_\_\_\_  
Deputy Attorney General  
Room 300, Kekuanao'a Bldg.  
465 South King Street  
Honolulu, Hawaii 96813  
Tel. No. 587-\_\_\_\_\_

Dated: \_\_\_\_\_

BY ORDER OF THE COURT

Attorneys for Petitioner  
STATE OF HAWAII

\_\_\_\_\_  
Registrar

IN THE LAND COURT OF THE STATE OF HAWAII

In the Matter of the Application of ) Application No. 1069  
)  
) L.D. Case No. \_\_\_\_\_  
THE TRUSTEES UNDER THE WILL )  
AND OF THE ESTATE OF JAMES )  
CAMPBELL, DECEASED )  
)  
to register title to land situate at )  
Honouliuli, District of Ewa, City and )  
County of Honolulu, State of Hawaii )  
\_\_\_\_\_ )

PETITION FOR SUBDIVISION, CANCELLATION OF PORTION OF  
RESTRICTION OF ACCESS RIGHTS AND DESIGNATIONS OF  
RESTRICTIONS OF ACCESS RIGHTS AND VEHICLE ACCESS RIGHTS

TO THE HONORABLE PRESIDING JUDGE OF THE LAND COURT OF THE STATE OF  
HAWAII:

Comes now Petitioner, the **STATE OF HAWAII**, by its Board of Land and Natural  
Resources, whose address is 1151 Punchbowl Street, Room 131, Honolulu, Hawaii 96813, and  
respectfully petitions this Court as follows:

**A. Petition Property and Ownership**

Petitioner is the owner of Lot 11994, as shown on Map 874 of Land Court  
Application 1069, being a portion of the land described in and covered by Transfer Certificate of  
Title No. 490,888.

**B. Land Court Map**

Petitioner files this Petition with a tracing (the "Map") that shows the following:

1. Subdivision of Lot 11994, as shown on Map 874, into Lots 11994-A and  
11994-B.

2. Cancellation of a portion of restriction of access rights affecting Lot 11994-B (formerly a portion of Lot 2496 as shown on Map 228 of Land Court Application 1069), as set forth by Land Court Order No. 37326; and

3. Designations of restrictions of access rights and vehicle access rights affecting Lot 11994-A.

**C. Access**

All previous provisions for access are superseded. The rights of access set forth in paragraph C below shall supersede all previous provisions for access with respect to the areas included within Lot 11994 and as may have been provided in any Land Court orders issued prior to the approval of this Petition.

1. Lot 11994-A will have direct access to Farrington Highway, a public road, subject to the restrictions of access shown on the Map. Lot 11994-B will also have direct access to Farrington Highway, a public road

2. Lot 11994-B will also have direct access over Lot 11993-B as shown on Map \_\_\_\_\_ to Farrington Highway, a public road, and to Interstate Highway (F.A.P. No. I-HI-1 (11)), a public road; Lot 11994-B will also have access to Interstate Highway (F.A.P. No. I-HI-1 (11)), a public road, over Lot B as shown on Map \_\_\_\_\_.

**D. Encumbrances**

See Exhibit "A" for Statement of Encumbrances.

**E. Approval**

Said map filed herewith was approved by the Department of Planning and Permitting of the City and County of Honolulu, as evidenced by the endorsement of said Office on the Map.

Lot 11994-B is required by the State of Hawaii for a public purpose, to wit: the construction, preservation and protection of North South Road, Kapolei Parkway to Farrington Highway, Project No. FAP STP-8930(3), Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii (hereafter referred to as the "Project").

EXHIBIT "A"

STATEMENT OF ENCUMBRANCES

1. Lot 11994-A only will be subject to the following encumbrances:
  - a. Easements "6746" and "6748" for electrical purposes as shown on Map 954, as set forth by Land Court Order No. 140159, filed November 21, 2000.
  - b. Final Judgment for Possession and Condemnation filed in Civil No. 94-0339-01, State of Hawaii, on March 28, 1996, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2313956, and dated December 31, 1996, filed as Document No. 2362801.
  - c. Declaration of Reservation of Rights Regarding Settlement Agreement dated January 2, 1997, made by the Trustees under the Will and of the Estate of James Campbell, Deceased, tiled in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 2359996.
  - d. Grant in favor of Hawaiian Electric Company, Inc. dated July 10, 2003 filed as Document No. 2963827; granting a perpetual right and easement for utility purposes over Easements 6746 and 6748.
2. Lot 11994-B only will be subject to the following encumbrances:
  - a. Easement "50" (30 feet wide) as shown on Maps 11, 12 and 22, as set forth by Land Court Order No. 4113, filed August 5, 1940, subject to right of way in favor of Lots 12006, 12007, and 12009 through 12013, as shown on Map 874, as set forth in Land Court Order No. 126922, filed February 14, 1997, as amended by Land Court Order No. 164360, filed December 20, 2005.
3. Lots 11994-A and 11994-B will be subject to the following encumbrances:
  - e. Easement "719" (area 316,105 square feet) for energy corridor purposes, as shown on Map 228, as set forth by Land Court Order No. 37326, filed April 24, 1973.
  - f. Easement Grant dated June 21, 1973, filed as Land Court Document No. 649192, in favor of the STATE OF HAWAII, by its Director of Transportation; granting an exclusive and perpetual easement and right-of-way for the construction, installation, maintenance, repair, operation and replacement of basically underground energy transmission system, etc.
  - g. Restrictions and perpetual covenants set forth in Declaration of Covenants, Conditions and Restrictions on Use (Makai Lands) dated April 29, 1997, filed as Document No. 2378007, as supplemented by instrument dated April 29, 1997, filed as Document No. 2378010.

h. Perpetual covenants in Exchange Deed dated April 29, 1997, filed as Document No. 2378009.

i. Certificate and Authorization dated December 4, 2000, made by Housing and Community Development Corporation of Hawaii, re: conditional use, filed as Document No. 2682016.

SUBJECT, also, to any other encumbrances that may be noted on Transfer Certificate of Title No. 490,888 issued to the State of Hawaii.

END OF EXHIBIT "A"

**ORDER**

Upon the record and the evidence herein, the prayer of the petition is hereby granted and the Registrar of this Court is so ordered.

Dated: Honolulu, Hawaii, \_\_\_\_\_.

\_\_\_\_\_  
Registrar for the Judge of the Land Court

LAND COURT  
STATE OF HAWAII  
LAND COURT APPLICATION 1069

SUBDIVISION OF LOT 11994  
AS SHOWN ON MAP 874  
INTO LOTS 11994-A AND 11994-B  
AND CANCELLATION OF A PORTION OF  
RESTRICTION OF VEHICLE ACCESS RIGHTS  
AFFECTING LOT 2496 AS SHOWN ON MAP 228  
AND DESIGNATION OF RESTRICTION OF  
VEHICLE ACCESS RIGHTS  
AFFECTING LOT 11994-A

AT HONOLULU, EWA, OAHU, HAWAII

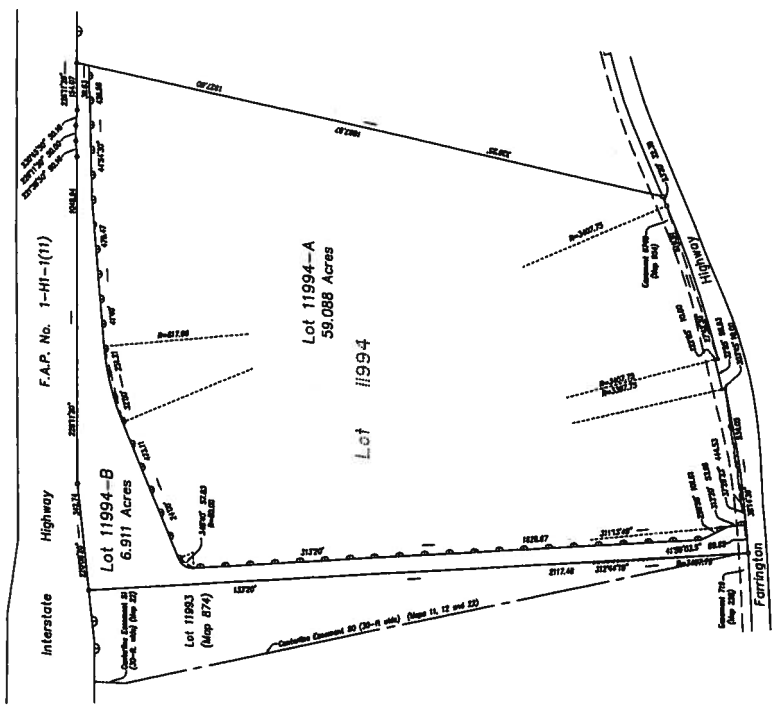
R.L. FOMEL CORPORATION  
1111 Kalia Road  
Honolulu, Hawaii 96813  
Land Court Certificate Number 201

2004 Kaula City Trust, Subd. 200  
Honolulu, Hawaii 96813  
March 11, 2007

OWNER: STATE OF HAWAII  
TRANSFER CERTIFICATE OF TITLE

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE  
OF THE LAND COURT DATED \_\_\_\_\_  
BY ORDER OF THE COURT.

REGISTER OF THE LAND COURT



- Notes:
- Denotes Access Permitted
  - Denotes No Access Permitted
  - Denotes No Vehicle Access Permitted



**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
BOARD OF LAND AND NATURAL RESOURCES  
AND  
DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION**

WHEREAS, the Board of Land and Natural Resources (Board) at its meeting of January 12, 2007, under agenda Item D-10, approved, as amended, the set-aside to the Department of Transportation, Highways Division (DOT), of portions of State lands located at Honouliuli, Ewa, East Kapolei, Oahu, and designated as Tax Map Keys: (1) 9-1-18: Portions of 3 and 5, and (1) 9-1-17: Portions of 86 and 88, for the construction of the North-South Road;

WHEREAS, DOT subsequently constructed the road and prepared a “Petition for Subdivision, Cancellation of Portion of Restriction of Access Rights and Designations of Restrictions of Access Rights and Vehicle Access Rights and Order” (Petition), to be submitted to the Land Court as a prerequisite to the preparation of the official State Survey map and executive order effecting the set aside;

WHEREAS, the Department of Land and Natural Resources (DLNR), Land Division (Land Division), had concerns about the Petition because it places restrictions on the abutting State land’s access to North-South Road and could impede future development plans for such land;

WHEREAS, Land Division and DOT representatives met to discuss Land Division’s concerns in February 2014 and agreed, in concept, to a memorandum of understanding (MOU) regarding access to North-South Road to present to the Board for review and approval,

NOW, THEREFORE, the Board and DOT hereby agree as follows:

1. DOT understands that the Board may want to develop Lot 11994-A shown on the map attached to the Petition at a future date, and that such development plans may include a request for access from the parcel onto North-South Road.
2. The restricted access symbols appearing on the boundary of Lot 11994-A on the map attached to the Petition do not signify that DOT will prohibit access from Lot 11994-A onto North-South Road. Rather, the symbols indicate that DOT controls access onto North-South Road from the parcel. DOT may allow access from Lot 11994-A onto North-South Road, provided that DLNR complies with the applicable laws, rules and established policies at the time application is made for access to the road. Conditions for granting access typically involve, but are not limited to, one or more of the following at the applicant’s expense: traffic study, installation of a signalized intersection, construction of deceleration and acceleration lanes, and other conditions to promote safe access to and egress from the right-of-way.
3. The parties agree to cooperate in good faith on any future access issues concerning Lot 11994-A.

4. Signatories.

- a. If a term of this MOU is inconsistent with governing law applicable to either party, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.
- b. This MOU is effective upon the date of the last approving signature and will remain in effect until terminated or modified by mutual written consent of the Board DOT.

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

BOARD OF LAND AND NATURAL RESOURCES

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_  
By: WILLIAM J. AILA, JR.  
Its: Chairperson

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

DEPARTMENT OF TRANSPORTATION,  
HIGHWAYS DIVISION

\_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_  
By:  
Its:

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_