

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

October 15, 2008

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, HI 96813

LOG NO: 2008.4613
DOC NO: 0810KP03
Culture

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL TO CANCEL AN *IN SITU* BURIAL AGREEMENT WITH LARRY WAYNE LATHAM FOR UNMARKED BURIAL SITES LOCATED ON HIS PROPERTY IN KAUNALA AHUPUA 'A, KO'OLAULOA DISTRICT, ISLAND OF OAHU [TMK (1) 5-8-006:046]

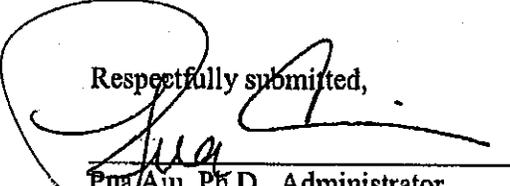
Submitted for your consideration is a request to cancel an *In Situ* burial agreement with Larry Wayne Latham to implement the conditions agreed upon by the landowner and accepted by the State Historic Preservation Division.

The cancellation is to correct the inadvertent inclusion of "Exhibit A" for parcel 5-8-006:033 Lot 3 as part of the *In Situ* Agreement recorded on September 26, 2007. The correct "Exhibit A" should have been for Lot 16 of the same subdivision. A new *In Situ* Agreement with the correct "Exhibit A" will be drafted for Board approval at a later date. Attached to the submittal is the recorded *In Situ* Agreement for the Board's reference.

RECOMMENDATION

That the Board authorize Chairperson Thielen to execute the attached Cancellation of *In Situ* Agreement with Larry Wayne Latham. Subject to review and approval by the Department of the Attorney General.

Respectfully submitted,


Pua Aiu, Ph.D., Administrator
Historic Preservation Division

APPROVED FOR SUBMITTAL:


LAURA THIELEN, Chairperson
Board of Land and Natural Resources

ITEM I-1

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL () PICK-UP ()

Return by Mail () Pickup (X)

To: Department of Land & Natural Resources
Historic Preservation Division
601 Kamokila Boulevard, Suite 555
Kapolei, HI 96707

Tax Map Key No. (1) 5-8-006-033
TCT No.: 666,923

Total Pages:

CANCELLATION OF *IN SITU* AGREEMENT

This Cancellation of *In Situ* Agreement is entered into this 14th day of October, 2008, by and between LARRY WAYNE LATHAM, whose address is 1190 Trophy Hills Drive, Las Vegas, NV 89134 (“Landowner”) and the STATE OF HAWAII (“State”) by its Board of Land and Natural Resources, whose address is Kalanimoku Building, 1151 Punchbowl Street, Honolulu, HI 96813, and cancels and fully releases Landowner from that certain *In Situ* Agreement dated August 30, 2006, and filed with the Office of the Assistant Registrar of the Land Court of the State of Hawaii on September 26, 2007, as Land Court Document No. 3660647 (the “Agreement”).

WITNESSETH

WHEREAS, Landowner owns the real property located at Tax Map Key No. (1) 5-8-006-033 in Kaunala Ahupua’a, Koolauloa District, Island of Oahu and identified as Lot 3 on Map 1 filed with Land Court Consolidation No. 211 (“Lot 3”);

WHEREAS, at the time of executing the Agreement, Landowner owned the real property located at Tax Map Key No. (1) 5-8-006-046 in Kaunala Ahupua’a, Koolauloa District, Island of Oahu and identified as Lot 16 on Map 1 filed with Land Court Consolidation No. 211 (“Lot 16”);

WHEREAS, the Agreement was intended to address the archeological site no. 5913, which included burial sites containing the identified skeletal remains of ancestral Native Hawaiians located on Lot 16, but through an inadvertent error, incorrectly identified Lot 3 in Exhibit A to the Agreement as the property to be encumbered by the Agreement;

WHEREAS, the State and Landowner wish to cancel the Agreement and fully release Landowner and Lot 3 from any and all of the covenants, conditions, and restrictions as set forth in the Agreement;

NOW THEREFORE, the State and Landowner agree that the Agreement is hereby cancelled and Landowner and Lot 3 are hereby fully and irrevocably released from the Agreement, including any and all covenants, conditions, and restrictions set forth therein.

This Cancellation of *In Situ* Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding upon the parties, and notwithstanding that each of the parties are not signatory to the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the STATE OF HAWAI'I, by and through its Board of Land and Natural Resources, has caused the Seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused this Cancellation of *In Situ* Agreement to be executed as of the day, month, and year first above written.

STATE OF HAWAI'I

By: _____
Chairperson, Board of Land and
Natural Resources

By: _____
Member, Board of Land and Natural
Resources

“State”

LARRY WAYNE LATHAM

“Landowner”

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____

STATE OF HAWAII)
)
CITY AND COUNTY OF HONOLULU) SS.

On this _____ day of _____, 2008, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Print Name: _____
Notary Public, State of Hawaii

My commission expires: _____

Notary Certification

Doc. Date: _____ # Pages: _____
[Name of Notary] _____ Circuit
Doc. Description: _____

Notary Signature _____ Date

STATE OF HAWAII)
)
CITY AND COUNTY OF HONOLULU) SS.

On this _____ day of _____, 2008, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Print Name:
Notary Public, State of Hawaii

My commission expires: _____

Notary Certification

Doc. Date: _____ # Pages: _____
[Name of Notary] _____ Circuit
Doc. Description: _____

Notary Signature _____ Date _____

STATE OF NEVADA)
)
COUNTY OF _____) SS.

On this _____ day of _____, 2008, before me personally appeared LARRY WAYNE LATHAM, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Print Name:
Notary Public, State of Nevada

My commission expires: _____

Notary Certification

Doc. Date: _____ # Pages: _____
[Name of Notary] _____ Circuit
Doc. Description: _____

Notary Signature Date

WHEREAS, the State, through its Department of Land and Natural Resources, pursuant to Chapter 6E, Hawaii Revised Statutes, is responsible for regulating the proper treatment of human skeletal remains over fifty years old, at any site other than a known, maintained, actively used cemetery; and

WHEREAS, the parties desire to make this Declaration and agree to leave *in situ*, the unmarked burial sites containing the skeletal remains of ancestral Native Hawaiians.

1. Landowner agrees to allow the skeletal remains of ancestral Native Hawaiians to be left *in situ* in the Landowner's property located at Tax Map Key No. (1) 5-8-006-046 in Kaunala Ahupua'a, Ko'olauloa District, Island of Oahu and designated State Site No. 5913 ("Site 5913"). A copy of a map with UTM/GPS coordinates of Site 5913 is attached hereto as **Exhibit A** and incorporated herein by reference.
2. Landowner, upon recommendation from the Department of Land and Natural Resources and the Oahu Island Burial Council, agrees to establish a minimum of 2.5 meter permanent buffer zone around Site 5913 at Tax Map Key No. (1) 5-8-006-046. The buffer zone will be landscaped with indigenous flora. Except for burial site maintenance activities and visitation by recognized lineal descendants, no other physical activities shall take place within the delineated permanent buffer zone.
3. Landowner agrees to provide identified descendants wishing to visit the site with a right of access at reasonable times and upon reasonable advanced notice, subject to the rules and policies of Landowner. The phrase "right of access" shall mean reasonable ingress and egress to and from Site 5913 on foot or in wheelchairs. The right of access extends only to visitation during reasonable hours between 8:00 a.m. and 6:00 p.m. for purposes usually associated with cemetery visits, upon providing a 48-hour advance notice to Landowner..
4. Landowner covenants and agrees not to willfully or intentionally disturb in any manner, or authorize the disturbance of in any manner, the repose of the human skeletal remains interred at Site 5913 on the property. The obligations imposed by these restrictive covenants shall be effective in perpetuity and shall be deemed to run as a binding servitude with the property, and shall extend to and be binding upon Landowner, its successors and assigns.
5. In the event Landowner learns that the human skeletal remains contained in Site 5913, or any part thereof, are unearthed by natural causes or otherwise, Landowner agrees to immediately notify the Department of Land and Natural Resources. Landowner agrees not to handle the remains in any manner. The Department of Land and Natural Resources, upon recommendation of the Oahu Island Burial Council, shall take proper action to secure the remains in place. Both Landowner and the Department of Land and Natural Resources shall comply with all local, state and federal laws concerning reinterment.

6. Any provision contained in this Declaration may be amended or changed, and additional provisions may be added hereto by the recording of a written instrument or instruments specifying the amendment or change, executed by the parties.

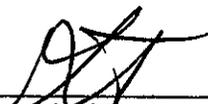
7. This Declaration may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding upon the parties, and notwithstanding that each of the parties are not signatory to the same counterparts. For all purposes, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

[THIS INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the Seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused this Declaration to be executed as of the day, month, and year first above written.

STATE OF HAWAII

By: 
Chairperson, Board of Land and Natural Resources

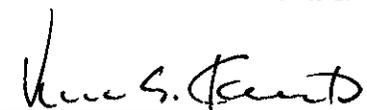
By: 
Member, Board of Land and Natural Resources

"State"


LARRY WAYNE LAYTHAM

"Landowner"

APPROVED AS TO FORM:


Deputy Attorney General

Dated: 7/19/07

STATE OF HAWAII)
)
CITY AND COUNTY OF HONOLULU)

SS.



On this 30 day of August 2006, before me appeared **LARRY WAYNE LAYTHAM**, to me personally known, who, being by me duly sworn or affirmed, did say that he executed the foregoing instrument as his free act and deed, and if applicable in the capacity shown, having been duly authorized to executed such instrument in such capacity.

A large, stylized handwritten signature in black ink, appearing to read "Danielle Jonas-Wolf".

Name: _____
Notary Public Danielle Jonas-Wolf

My commission expires: June 30, 2010

EXHIBIT "A"

All of that certain parcel of land situated at Kaunala and Kahuku, District of Koolauloa, City and County of Honolulu, State of Hawaii, described as follows:

LOT , area 23,694 square feet, as shown on Map No. 1, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Consolidation No. 211, as set forth by Land Court Order No. 152996 filed September 30, 2003.

Excepting any portion of the land below the line of shoreline vegetation where it was located prior to any avulsion or artificial changes

Note: said Lot shall have access over Lot 29, providing direct access to Kamehameha Highway, a public roadway, as set forth by said Land Court Order.

Being the premises described in and covered by TRANSFER CERTIFICATE OF TITLE NO. 666,923.

SUBJECT, HOWEVER, to the following:

1. Reservation by the State of Hawaii of all mineral and metallic rights.
2. Reservation by the State of Hawaii of all interest in the subject lot seaward of the upper reaches of the highest wash of the waves.
3. Terms, provisions, reservations, covenants, conditions and restrictions, as contained in the Declaration of Restrictive Covenants (Private Street), dated June 28, 2002, and filed in said Office of the Assistant Registrar as Document No. 2819101, as amended by Amendment to Declaration of Restrictive Covenants (Private Street), and dated September 30, 2003 and filed in said Office of the Assistant Registrar as Document No. 3002403.
4. Terms, provisions, reservations, covenants, conditions and restrictions, as contained in the Declaration of Restrictive Covenants, dated May 10, 2002, and filed in said Office of the Assistant Registrar as Document No. 2803969, as amended by Amendment to Declaration of Restrictive Covenants, dated September 30, 2003 and filed in said Office of the Assistant Registrar as Document No. 3002403 setting forth restriction to single family residence.
5. Terms, provisions, reservations, covenants, conditions and restrictions, as contained in the Declaration of Sunset Beach Colony Community Association, and Covenants, Conditions and Restrictions, dated September 30, 2003 and filed in the Office of said Assistant Registrar as Document No. 3002403.

6. Sixty foot (60-foot) shoreline setback line, shown of map 1, filed with Land Court Consolidation No. 211.

7. Grant of Easement (10 feet wide) for utility purposes, in favor of Hawaiian Electric Company, Inc., a Hawaii corporation, and GTE Hawaiian Telephone Company, a Hawaii corporation (now known as Hawaiian TelCom), dated December 24, 1957, filed March 6, 1959, as Land Court Document No. 232767.

8. Grant Easement for electrical purposes in favor of Hawaiian Electric Company, Inc., a Hawaii Corporation, dated June 14, 1977, filed August 15, 1977, as Land Court Document No. 830519.

9. Easement 5 (7,303 square feet) for drainage purposes, shown on said Map No.1, granted in favor of the Sunset beach Colony Community Association.

10. Easement 12 (11,064 square feet) for flowage purposes, as shown on said Map No. 1, granted in favor of the Sunset Beach Colony Community Association.

11. Terms and provisions contained in the Encroachment Agreement dated September 30, 2003, filed in said Office of the Assistant Registrar as Land Court Document No. 3002403.

END OF EXHIBIT "A"

EXHIBIT A

[Map with UTM/GPS coordinates of the burial]

