

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

November 19, 2009

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

PSF No.: 99OD-254

OAHU

Amend Prior Board Action of May 13, 1994, Item F-12; Direct Award to City and County of Honolulu, Department of Public Works, Perpetual, Non-Exclusive Easements for Sewer Line Purposes at Halekou-Waikaluakai Homesteads, Kaneohe, Oahu, Tax Map Key: (1) 4-5-077:059.

**BACKGROUND:**

On May 13, 1994, under agenda item F-12, the Board authorized the direct issuance of a perpetual, non- exclusive easements to the City and County of Honolulu (City) for sewer line purposes at Halekou-Waikaluakai Homesteads, Kaneohe, Oahu. A copy of the 1994 submittal is attached as Exhibit A.

The easement documents were sent to the City for its signature in 1995. Our records indicate that the easement documents were never returned to our office for further processing.

Upon checking with the City, staff was informed that the documents were misplaced. Further, the Attorney General advises the staff to update the 1994 submittal's recommendations. For example, such easement does not require two-thirds vote of the Legislature. Instead of doing the update piecemeal, staff recommends the Board amend its prior action of May 13, 1994, item F-12, by replacing the previous approval to the current version for recommendation of an easement.

**RECOMMENDATION:** That the Board amend its prior Board action of May 13, 1994, agenda item F-12, by replacing Recommendation A with the following:

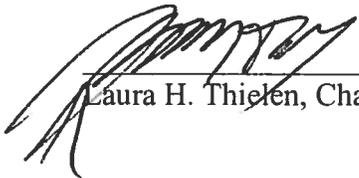
- "A. Authorize the issuance of a perpetual, non-exclusive easement to the City and County of Honolulu covering the subject areas for sewer line purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

1. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State."

Respectfully Submitted,

  
Steve Lau  
Land Agent

APPROVED FOR SUBMITTAL:

  
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Laura H. Thielen, Chairperson 

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

May 13, 1994

Board of Land and  
Natural Resources  
Honolulu, Hawaii

OAHU

Subject: Direct Award to City & County of Honolulu, Department of Public Works, of Perpetual, Non-Exclusive Easements for Sewer Line Purposes at Halekou-Waikaluakai Homesteads, Kaneohe, Oahu, TMK: 4-5-77:59

STATUTE: Chapter 171, Section 95, Hawaii Revised Statutes

APPLICANT: CITY & COUNTY OF HONOLULU, DEPARTMENT OF PUBLIC WORKS

FOR: Perpetual, non-exclusive easements for sewer line purposes over a portion of State-owned property at Halekou-Waikaluakai Homesteads, Kaneohe, Oahu, as shown on the map labeled Land Board Exhibit "A" on Tax Map Key: 4-5-77:59, appended to the basic file.

STATUS: Unencumbered

AREA: Kaneohe Sewers Section 9  
I.D. No. 270

| <u>Parcel No.</u> | <u>TMK:</u> | <u>Area</u> |
|-------------------|-------------|-------------|
| 18                | 4-5-77:59   | 449 sq. ft. |
| 23                | 4-5-77:59   | 344 sq. ft. |
| 25                | 4-5-77:59   | 389 sq. ft. |
| 34                | 4-5-77:59   | 108 sq. ft. |
| 37                | 4-5-77:59   | 99 sq. ft.  |

TOTAL: 1,389 sq. ft.

LAND TITLE STATUS: Ceded land, Sub-section 5(b) of the State Admissions Act

ZONING: State Land Use Commission: Urban  
City & County of Honolulu: R-5

PURPOSE: Right, privilege and authority to construct, use, maintain and repair sewer line system.

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON <sup>MP</sup>  
May 13, 1994

ITEM F-12

**EXHIBIT "A"**

RENTAL:                   Gratis

REMARKS:                The City and County of Honolulu is requesting easements for the Kaneohe Sewers System, Section 9, Improvement District No. 270.

Currently, there is no sewer system in this area and the residents are currently using septic tanks or cesspools; and the City needs these easements to complete the forthcoming sewer system.

The following Government Agencies have been contacted and all responded with either approved as submitted, or no objections. State's Department of Land and Natural Resources, Divisions of Aquatic Resources, Water and Land Development, Forestry and Wildlife, Historic Sites, the Office of Hawaiian Affairs, the City and County of Honolulu's Departments of General Planning, Public Works, Parks and Recreation, Land Utilization, and the Kaneohe Neighborhood Board No. 30.

These easements are required on the subject State parcel identified by TMK: 4-5-77:59, which is an ancient ditch that tapped into Kaneohe Stream and irrigated taro patches and other wetlands in the area. The ditch has long since been abandoned and title remains with the State.

The two streets, Kuuipo Place and Huawaina Place, are privately owned and are not being considered for dedication by the City and County of Honolulu.

RECOMMENDATION:      That the Board:

- A. Authorize to the direct issuance of non-exclusive perpetual, easements to the City and County of Honolulu under the following terms and conditions:
  - 1. The City and County of Honolulu shall use the easement for a sewer line system only.
  - 2. That the City and County of Honolulu shall at all times with respect to said premises use due care for public safety.

3. The City and County of Honolulu shall indemnify, defend, and hold harmless the State and its political affiliate from loss, liability, claims or demand for damages or injury or death arising out of any injury or damage on or about the premises under the control and/or use of the City and County of Honolulu or caused by a failure on the part of the City and County of Honolulu to use or maintain the premises in accordance with the terms and conditions of the easement grant or caused by or resulting from any of the activities or operation of the City and County of Honolulu in connection with the premises.
4. In the event the future development of the land necessitates the reasonable removal of the sewer system for relocation purposes, the City and County of Honolulu shall affect such relocation and at its sole cost and expense to an alternate reasonable easement provided by the Department of Land and Natural Resources.
5. In the event that the easement becomes abandoned or remain unused for a period of one (1) year, the easement shall automatically terminate and the premises revert to the State of Hawaii.
6. Upon termination of the easement and upon reasonable determination the Department of Land and Natural Resources, State of Hawaii, the City and County of Honolulu shall at its own cost and expense remove any and all improvement installed or constructed by them and restore the area to a condition satisfactory to the State of Hawaii, Department of Land Natural Resources, Land Management Division.
7. Such other terms and conditions as may be imposed by the Chairperson.
8. Subject to the disapproval by the Legislature by two-thirds vote of either the Senate or the House of Representative or by majority vote of both in any regular or special session next following the date of withdrawal.
9. Review and approval of the easement documentation by the Attorney General's Office.

May 13, 1994

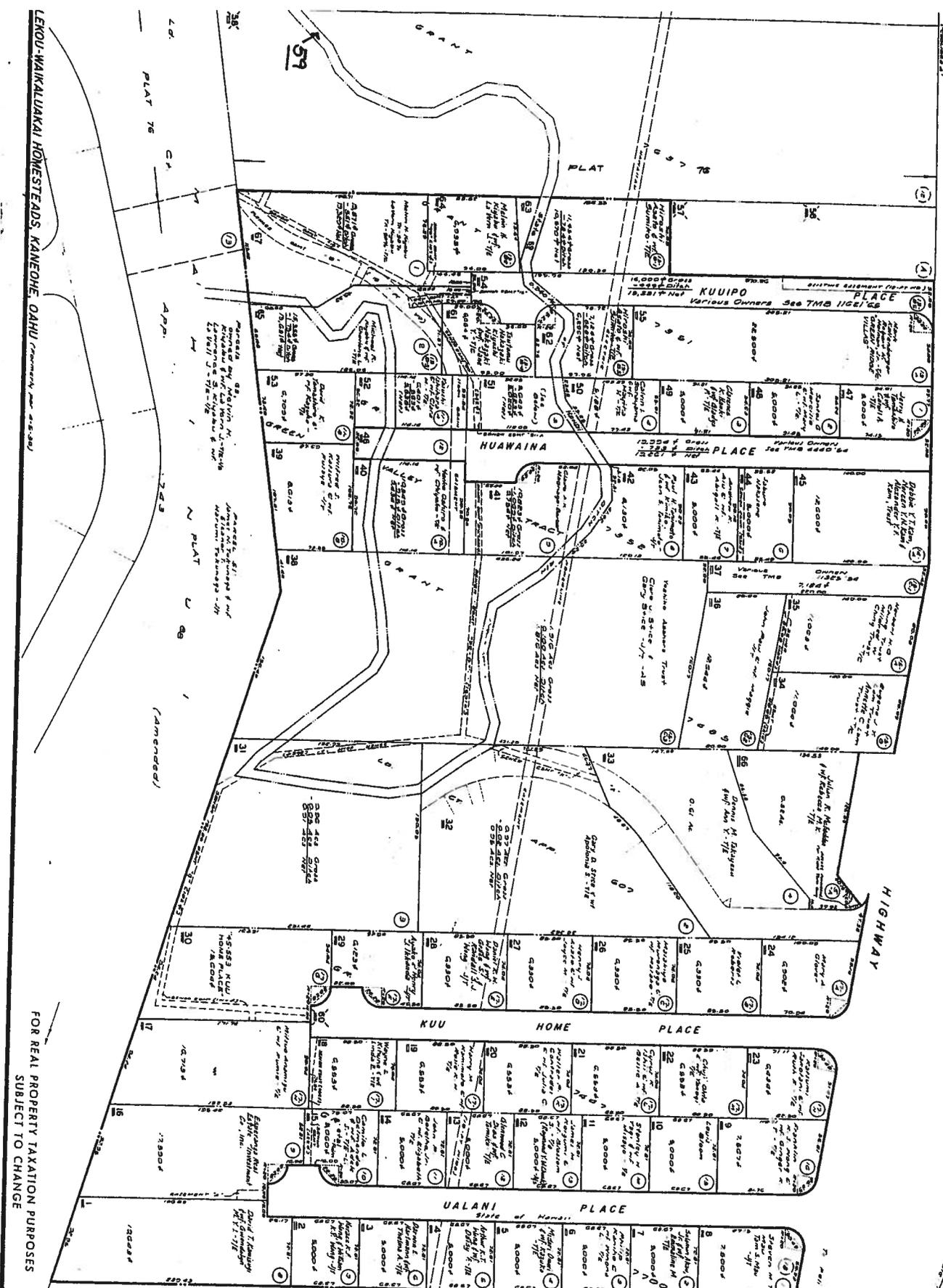
- B. Approve granting the City and County of Honolulu a construction right of entry to the subject easement areas for installation of sewer lines, subject to the following terms and conditions:
1. The City and County of Honolulu and its representative, contractors and other affiliates shall indemnify, defend and hold harmless the State of Hawaii, its officers, employees, and agents against all claims for personal injury, death or property damages caused by or in any way connected with the permission granted herein.
  2. Commencement date of this right of entry to be determined by the Chairperson, and will terminate upon the grant of easement by the State of Hawaii.
  3. Compliance with applicable governmental statutes, ordinances, rules and regulations.
  4. Other terms and conditions as may be prescribed by the Chairperson.

Respectfully submitted,

  
W. MASON YOUNG  
Land Management Administrator *WMS*

APPROVED FOR SUBMITTAL:

  
KEITH W. AHUE, Chairperson



LEKOU-WAIKALUAKAI HOMESTEADS, KANEHE OAHU (Amended)

FOR REAL PROPERTY TAXATION PURPOSES  
SUBJECT TO CHANGE

APPROVED PARCELS: 60,554,31

|                        |                      |                 |
|------------------------|----------------------|-----------------|
| DEPARTMENT OF TAXATION | TAXATION MAPS BUREAU | STATE OF HAWAII |
| TAX MAP                | TAX MAP              | TAX MAP         |
| 4                      | 5                    | 77              |

SCALE: 1 IN. = 30 FT.