

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

June 10, 2010

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

PSF No.: 04od-171

OAHU

Set Aside to City and County of Honolulu for Public Access Purposes; Amend  
Prior Action of October 8, 2004, Agenda Item D-13, Kaneohe, Koolaupoko,  
Oahu, Tax Map Key: (1) 4-4-021:portion of 054.

APPLICANT:

City and County of Honolulu

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Kaneohe, Koolaupoko, Oahu, identified by Tax  
Map Key: (1) 4-4-021:portion of 054, as shown on the attached map labeled Exhibit A.

AREA:

345 square feet, more or less.

ZONING:

State Land Use District: Urban  
City and County of Honolulu LUO: R-10

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Vacant and unencumbered.

PURPOSE:

Public Access Purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a change in the use of State lands or funds, and therefore, this action does not trigger any environment assessment.

APPLICANT REQUIREMENTS:

None

REMARKS:

The subject parcel used to be encumbered under Governor's Executive Order No. (EO) 3410 set aside to the City and County of Honolulu (City) for park site purposes.

On October 8, 2004, under agenda item D-13, the Board approved of and recommended to the Governor issuance of an EO canceling EO 3410 and conveyed respective portions of the parcel to the abutting private owners and the City. A copy of the approved submittal is attached as Exhibit B. Later, EO 4127 was issued canceling EO 3410.

The conveyances to the private owners were finalized in 2006, and staff received the signed deed document from the City around September 2009.

Meanwhile, pursuant to Act 176, SLH 2009, concurrent resolution from the legislature is required for the conveyance to the City. During the legislature compliance process, the department was advised by the Department of the Attorney General that the statutes cited in the 2004 approval (171-53 (b), HRS) does not authorize the Board give land to the City.

To allow the City continue to use the subject parcel, staff recommends the Board amend its action in October 8, 2004, item D-13 by removing any reference pertaining to the conveyance to the City, and approve a recommendation to the Governor issue an EO covering the subject area.

Agencies were solicited for comments in 2004, and today's request is not different from the 2004 approval, other than the manner of disposition. The City does not have any objection to the subject request. There are no other pertinent issues or concerns.

RECOMMENDATION: That the Board

1. Amend its prior action of October 8, 2004, under agenda item D-13 by removing any reference pertaining to the conveyance to the City and County of Honolulu.
2. Subject to Applicant fulfilling the Applicant Requirements above, approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to City and County of Honolulu under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
  - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. 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;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

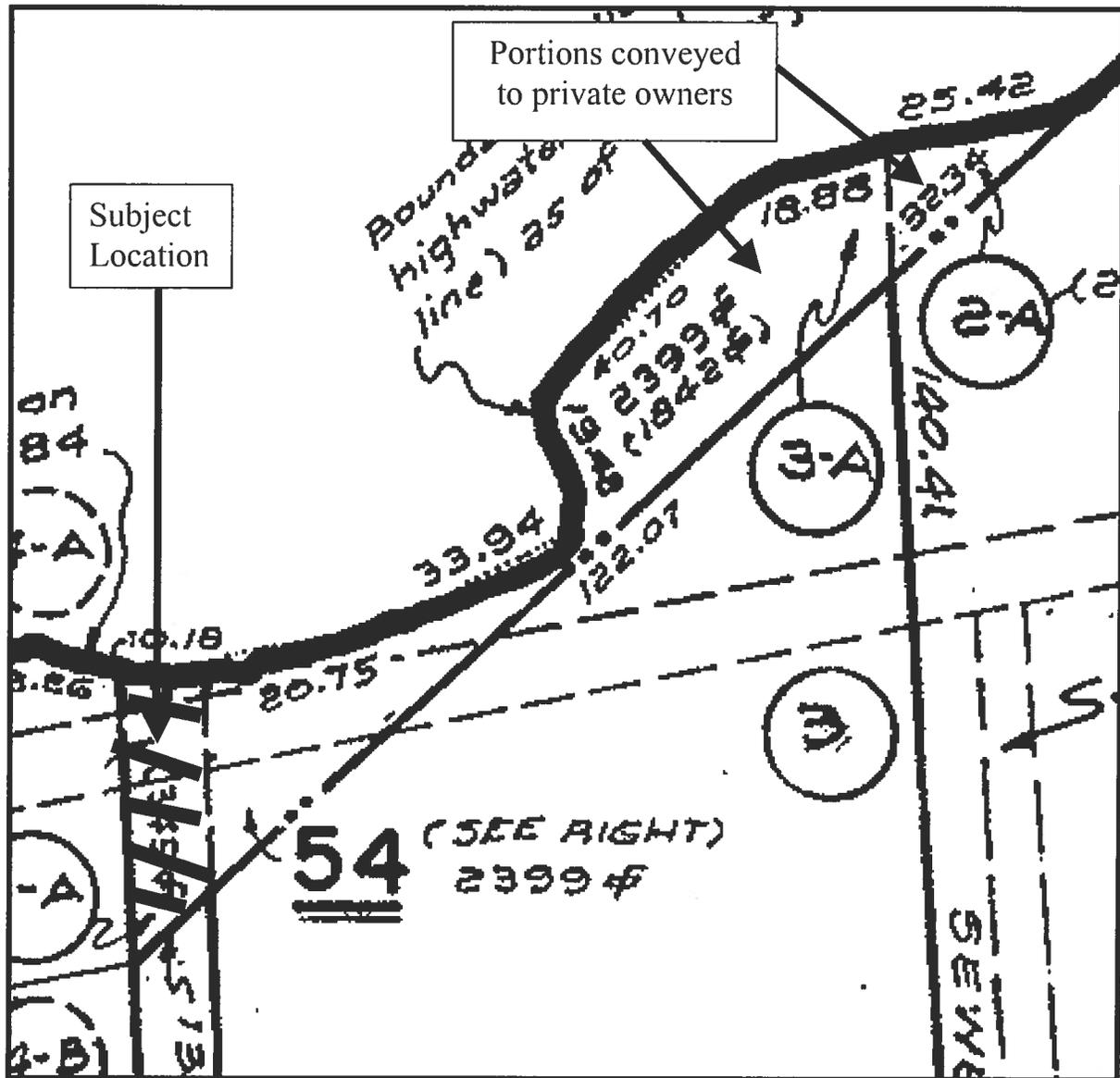
Respectfully Submitted,



Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
  
\_\_\_\_\_  
Laura H. Thielen, Chairperson



TMK (1) 4-4-021:portion of 054

# EXHIBIT A

040D-1716 9-17  
(Sale of Reclaimed  
Land)

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

October 8, 2004

040D-171

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

Oahu

Cancellation of Governor's Executive Order (GEO) No. 3410 issued to the City and County of Honolulu and Convey a Portion of a 10-Foot Right-Of-Way to the City and County of Honolulu, Department of Parks & Recreation and the Sale of Reclaimed (Filled) Land to Robert A. & Gretchen M. Gould at Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-21:25 seaward and Lewis L. Schreiner Trust & Mary Jane Schreiner Trust at Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-21:19 seaward.

APPLICANTS:

(1) City and County of Honolulu, whose mailing address is 650 South King Street, Honolulu, Hawaii 96813, (2) Robert A. & Gretchen M. Gould, whose mailing address is Kaneohe, Hawaii 96744, (3) Lewis & Mary Jane Schreiner, whose mailing address is Kaneohe, Hawaii 96744.

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.  
Section 171- 53(b), HRS, as amended.

LOCATION:

Portion of the reclaimed (filled) land of Kaneohe Bay, Kaneohe, Koolaupoko, Oahu identified by Tax Map Key: 4-4-21:54, as shown on the attached map labeled Exhibit A.

AREA:

345 sq. ft., more or less (parcel 1-A), 1,842 sq. ft., more or less (parcel (3-A), and 212 sq. ft., more or less (parcel 2-A).

ZONING:

State Land Use District: Urban  
City and County of Hon.: Residential (R-10)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
October 8, 2004 *kel*

ITEM D-13  
**EXHIBIT "B"**

Constitution: YES \_\_\_\_\_ NO  X

CURRENT USE STATUS:

GEO No. 3410 issued to the City and County of Honolulu,  
Department of Parks & Recreation for park site purposes.

CONSIDERATION:

City and County of Honolulu: Gratis  
Sale of reclaimed land: One-time lump sum payment of fair market value pursuant to Section 171-53(b) HRS to be determined by independent or staff appraiser, subject to review and approval by the Chairperson. Fair market value shall be based on the value of the submerged public land.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. Subject lands are to be conveyed to abutting landowner(s) and will become privately owned land at that point. Chapter 343, HRS, would not apply to any future development on the parcel, as no State lands would be involved.

DCCA VERIFICATION:

Not required of individuals

APPLICANTS REQUIREMENTS:

Applicants shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 2) Pay for an appraisal to determine the one-time payment for the reclaimed land at submerged land value and
- 3) Pay for the costs of a public notice pursuant to 171-16(d).

REMARKS:

The subject-reclaimed land is part of the channel-dredging project pursuant to a permit issued in 1939 by the Army Corps of Engineers in Kaneohe Bay. That reclaimed land became State land by the Land Office Deed No. 27,411 from the Castle Trust and Iolani School to the State and then offered to the abutting landowners in the 1980's. The Board approved at its March 24, 1983 under Agenda Item F-13 the sale in fee to many of these abutting landowners.

At its meeting on April 11, 1986 under agenda item F-11 the Land Board approved the issuance of a GEO to the City and County for park purposes. At its meeting on September 9, 1988 under agenda item F-15 the Land Board amended its April 11, 1986 action to sell a portion of the original area to the abutting landowners

(parcel 4-A) subject to the creation of a public right-of-way to access the beach area.

Both the Goulds and Schreiners wrote to us expressing their desire to purchase the reclaimed land abutting their properties. (The Goulds expressed an interest in purchasing both parcels if offered to them.)

The City and County of Honolulu, Department of Design and Construction Director wrote to our Chairperson on July 21, 2004 informing us that they had no objection to returning parcels 2-A and 3-A to the State but requested retention of parcel 1-A for public access purposes (see Exhibit B). Parcel 4-A to the left of the access walkway was sold to the abutting landowner. (There is no public beach area seaward of parcel 4-A.) Parcels 2-A and 3-A were never developed into a beach park because there is no sandy beach and the area is too narrow for City maintenance. If the public walks along parcels 2-A and 3-A, they are forced to cross over private land at the narrow portion.

The Office of Conservation and Coastal Lands wrote that they have no objections to the subject disposition to the abutting landowners. Further, the City and County, Parks and Recreation District supervisor explained that the access leads to the shoreline that is generally limited to activities such as recreational kayaking (see Exhibit C).

The Applicants have 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.

The City and County of Honolulu, Department of Parks and Recreation and the Department of Design and Construction provided comments of no objection. No other agencies' comments were requested.

RECOMMENDATION:

That the Board, subject to the Applicant fulfilling all of the Applicant requirements listed above:

1. Approve of and recommend to the Governor issuance of an executive order canceling Governor's Executive Order No. 3410, subject to:
  - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. 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;

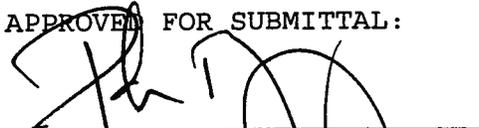
- C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Find that the sale of the subject-reclaimed land is not prejudicial to the best interest of the State, community or area in which the subject reclaimed land is located;
3. Authorize the conveyance or sale of the subject reclaimed lands to City and County of Honolulu (Gratis) (parcel 1-A), Robert A. & Gretchen M. Gould (parcel 2-A) and Lewis L. Schreiner Trust & Mary Jane Schreiner Trust (parcel 3-A) covering the subject areas under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- a. The applicants shall consolidate the reclaimed parcel with the applicant's abutting property through the County subdivision process;
  - b. The standard terms and conditions of the most current deed or grant (reclaimed land) form, as may be amended from time to time;
  - c. Review and approval by the Department of the Attorney General; and
  - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Al Jodar  
Land Agent

APPROVED FOR SUBMITTAL:

  
Peter T. Young, Chairperson



DEPARTMENT OF DESIGN AND CONSTRUCTION  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 11<sup>TH</sup> FLOOR  
HONOLULU, HAWAII 96813  
Phone: (808) 523-4564 • Fax: (808) 523-4567  
Web site: [www.co.honolulu.us](http://www.co.honolulu.us)

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TIMOTHY E. STEINBERGER, P.E.  
DIRECTOR

DEPT. OF DESIGN & NATURAL RESOURCES  
STATE OF HAWAII LA 04-452.JU

JEREMY HARRIS  
MAYOR



July 21, 2004

Mr. Peter Young, Chairperson  
Department of Land and Natural Resources  
State of Hawaii  
P. O. Box 621  
Honolulu, Hawaii 96809

Attention: Land Division

RECEIVED  
LAND DIVISION  
2004 JUL 22 P 3:41

Dear Mr. Young:

Subject: Kaneohe Bay Property  
Cancellation of Executive Order 3410

We have been informed that Mr. and Mrs. Robert A. Gould, owners of Tax Map Key: 4-4-21:25, are interested in purchasing Parcels 1-A, 2-A and 3-A, identified as Tax Map Key: 4-4-21:54, containing a land area of 2,399 square feet, as shown on the enclosed map. The land is under the City and County of Honolulu jurisdiction through Governor's Executive Order (E.O.) No. 3410.

The City's Department of Parks and Recreation has no objection to amending E. O. 3410 by returning Parcels 2-A and 3-A to the State of Hawaii. However, we wish to retain Parcel 1-A (colored yellow), which abuts City-owned property and is an integral piece of the City Beach Right of Way from Kaneohe Bay Drive. Therefore, we wish to inform you that we have no objection to the withdrawal of Parcels 2-A and 3-A from E.O. No. 3410.

Please call Manny Sales, Sr., of our Land Division at 527-5304 if you have any questions.

Very truly yours,

  
TIMOTHY E. STEINBERGER, P.E.  
Director

TES:ju  
Attach.

**EXHIBIT B**

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

Office of Conservation and Coastal Lands  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON  
DEPUTY DIRECTOR - LAND

YVONNE Y. IZU  
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

OCCL:DE

September 24, 2004

**MEMORANDUM**

TO: Al Jodar, Land Agent

FROM: Sam Lemmo , Administrator  
Office of Conservation and Coastal Lands (OCCL).

SUBJECT: Sale of reclaimed land to abutting landowner currently under Governor's Executive Order No. 3410 to the City and County of Honolulu for park purposes, Kaneohe, Oahu, TMK: 4-4-21:54.

We have reviewed the subject proposed sale. We don't view this as an encroachment since the city currently has legal control through an EO. Based on research of the resource and existing recreational use, we have no objections to the disposition of this coastal land to the abutting landowners. We have discussed this with Will Ho, Windward District supervisor of the City and County of Honolulu, Parks and Recreation and understand the City and County would like to keep an easement for the existing shoreline access in order to maintain access to the water for recreational use. We understand there is no beach resource in this area and maintenance of the parcel is difficult due to limited access.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Lemmo".

Sam Lemmo, Administrator  
Office of Conservation and Coastal Lands

cc: Chairperson's Office  
Oahu Board Member

**EXHIBIT C**