

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
KAKAAKO
Honolulu, Hawaii, 96813

November 7, 2018

Chairperson and Members
Hawaii Community Development Authority
State of Hawaii
Honolulu, Hawaii

HCDA Board Members:

SUBJECT: Shall the Authority Authorize the Executive Director to Execute a Month-to-Month Right of Entry with the State of Hawaii Department of Transportation for the use of the “Forrest Private Driveway” in Kakaako Makai?

SUMMARY:

The Department of Transportation (DOT) would like to extend its Right of Entry (ROE) for the “Forrest Private Driveway” on a month-to-month basis until the Hawaii Community Development Authority (HCDA) develops the area. This ROE is vital to DOT Harbor operations and will also help the HCDA secure the area.

AUTHORITIES:

The Board must approve all Right of Entry requests covering over a year in duration.

BACKGROUND:

On December 1, 2017, the HCDA and DOT executed a one-year ROE for the HCDA property known as “Forrest Private Driveway” in Kakaako Makai. This area is identified as Access and Utility Easements A-1 and A-3 and is located in between HCDA’s Lot C and DOT’s Pier One. This ROE is attached hereto as Exhibit A.

Under the current ROE, DOT Harbors uses the “Forrest Private Driveway” approximately three times a week to access a sliding gate that leads to DOT property. This gate allows oversized cargo to safely enter and exit DOT’s Pier One. DOT Harbors staff escorts the cargo through the “Forrest Private Driveway” and properly secures the area upon completion. DOT would maintain the same use under the proposed ROE.

Although DOT Harbors utilized the “Forrest Private Driveway” for years in the past, an ROE became necessary last year when the HCDA began having problems securing the area from trespassers. DOT agreed to secure the “Forrest Private Driveway” by installing a locked gate at Ilalo Street and controlling access. DOT also agreed to keep the area secured and clear of debris. Since the ROE was executed in December 2017, the HCDA has not had any problems with the area. The area is otherwise underutilized.

ANALYSIS:

The “Forrest Private Driveway” is vital to DOT Harbor operations. By allowing DOT Harbors to utilize the area for its needs, the HCDA benefits by having the area secured from trespassers.

A month-to-month ROE would be prudent, as DOT Harbors requires use of the “Forrest Private Driveway” for the foreseeable future. DOT Harbors understands that the ROE would be terminated when HCDA moves forward with plans to fully develop Lot C and the “Forrest Private Driveway” area.

The area is slated for development into an “Innovation Block” to attract new businesses and foster entrepreneurial activity. The first phase of construction started in April 2018 with the groundbreaking of the Entrepreneur’s Sandbox. Future phases include an “Innovation Hale” for commercial tech businesses, business incubator space, a parking structure, and a public plaza. However, these development plans are contingent on financing, and there is no current timeline on their completion.

A month-to-month lease with DOT would keep the area secure while allowing the HCDA to remain flexible with its plans for developing the lot as soon as financing is secured.

RECOMMENDATION

HCDA staff recommends that the Board:


Authorize the Executive Director to Execute a Month-to-Month Right of Entry with the State of Hawaii Department of Transportation for the use of the “Forrest Private Driveway” in Kakaako Makai.

Respectfully submitted,



Lindsey Doi
Asset Manager

APPROVED FOR SUBMITTAL:



Aedward Los Banos, Executive Director
Hawaii Community Development Authority

Attachments

Exhibit A – Current DOT Forrest Private Driveway ROE

does hereby grant to the DOT Harbors, its successors and assigns, a non-exclusive right-of-entry over a portion of that certain premises situate, lying and being at Honolulu, Oahu, Hawaii, Tax Map Key No. (1) 2-1-015:052, as depicted on Exhibit A, attached hereto and made a part hereof, which portion of the premises is hereinafter referred to as the "Premises," subject to the following terms and conditions:

1. The non-exclusive right-of-entry shall be for a term of one (1) year, from December 1, 2017, to November 30, 2018.

2. The non-exclusive right-of-entry shall be used by the DOT Harbors for the purpose of access to: Access and Utility Easement "A-3" and Access and Utility Easement "A-1" both as shown on File Plan 2335, and as described in that certain Description with File Plan 2335, Forrest Avenue Subdivision by owner Hawaii Community Development Authority, recorded in the State of Hawaii, Bureau of Conveyances as Document No. 2002-222254, hereinafter referred to as the "Access."

3. DOT Harbors shall be responsible for injury caused by the DOT Harbors' officers and employees in the course and scope of their employment to the extent that the DOT Harbors' liability for such cost, litigation, damage or injury has been determined by a court or otherwise agreed to by the DOT Harbors. DOT Harbors shall pay for such cost, litigation, damage and injury to the extent permitted by law provided that an appropriation is enacted for that purpose.

Grantor shall be responsible for injury caused by Grantor's officers and employees in the course and scope of their employment to the extent that Grantor's liability for such cost, litigation, damage or injury has been determined by a court or otherwise agreed to by Grantor. Grantor shall pay for such cost, litigation, damage and injury to the extent permitted by law provided that an appropriation is enacted for that purpose.

4. DOT Harbors, as a sovereignty is self-insured and therefore insurance, including but not limited to, public liability and property damage, is not required.

5. DOT Harbors shall observe and comply with all laws, ordinances, rules, and regulations of the federal, state, municipal, or county governments affecting the Premises or improvements.

6. Grantor reserves the right for itself, its agents, and/or representatives to enter or cross any portion of the Premises at any time in the performance of its duties.

7. It is understood that DOT Harbors has inspected the Premises and knows the conditions thereof and fully assumes all risks incident to its use. Prior to the term of the right of entry, the Grantor shall ensure and monitor that the Premises shall be clear and free to be used for the DOT Harbors' access and temporary parking purposes.

8. Failure of the Grantor to insist upon strict performance of any term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

9. The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, sex, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

10. DOT Harbors shall be responsible, as to DOT Harbors' use, for cleaning and restoring the Premises to its condition as of the effective date of this Agreement, reasonable wear and tear and unavoidable casualty excepted, upon expiration or termination of this Agreement.

DOT Harbors shall not be responsible, as to DOT Harbors' use, for the United States Customs and Border Protection's kiosk depicted on Exhibit A.

11. All tools, equipment, improvements and other property brought or placed upon the Premises by DOT Harbors during the term of this right of entry shall remain the property of same and be removed within a reasonable time upon expiration of the subject right of entry.

12. Upon expiration or termination of this Agreement, a representative of DOT Harbors shall provide the Grantor with a 24-hour notice to schedule a field inspection of the Premises.

13. The Premises shall not be used at any time by DOT Harbors, its guest(s) or invitee(s) for parking, storage and/or purposes other than described in paragraph 2, provided that Harbor Police or security guards on contract by the DOT Harbors and assigned to Pier 1, Pier 2, or to the Premises may

temporarily park in the Premises.

14. DOT Harbors shall not cause or permit the escape, disposal or release of any hazardous materials in or upon the Premises, except as permitted by law. DOT Harbors shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of the DOT Harbors' business, including but not limited to the movement of cargo.

For the purpose of this non-exclusive right-of-entry "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

15. This non-exclusive right-of-entry or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of without the prior written approval of the Grantor.

16. Time is of the essence in all provisions of this Agreement.

17. The Grantor acknowledges that the use of the Premises by DOT Harbors is non-exclusive.

18. DOT Harbors, at its cost and expense, has installed or will be installing a gate upon the Premises along Ilalo Street, upon the entrance to the Premises abutting tax map key no. (1) 2-1-15:52.

19. DOT Harbors will control its own access through the gate installed upon the entrance to the Premises along Ilalo Street. Any others having access will have their own means of access to the Premises subject to Grantor's control and authority.

20. The Grantor acknowledges that DOT Harbors is not the sole user of the Premises. Authorized other users of the Premises will coordinate access with the Grantor to obtain access

to the Premises. By Executive Order No. 4238 dated September 15, 2008, recorded aforesaid as Document No. 2008-150083, and in the Office of the Assistant Registrar, Land Court, State of Hawaii (Bureau of Conveyances) as Document No. 3792584, Certificate of Title No. 910,731 ("EO") land adjacent to the Premises was set aside to DOT Harbors for continued manifested cargo and passenger operation purposes. Currently, DOT Harbors' plan is to use the Premises approximately three (3) times a week for approximately one (1) hour each time to access the Premises from the sliding gate located on the Diamond Head boundary of the EO lands onto the Premises then directly access onto Access Easement A-3; however usage may change and/or increase.

21. DOT Harbor's financial obligation and commitment to make payments or reimbursements of any kind under this Agreement shall be contingent upon the availability and allotment by the Director of the Department of Budget and Finance of public funds to the State of Hawaii, Department of Transportation and the Department of Accounting and General Services to make such payment or reimbursement.

22. The Grantor acknowledges that DOT Harbors will not be responsible to pay for external security other than Harbor Police, nor shall the DOT Harbors be responsible to pay for signage, improvements, repairs, maintenance, janitorial services, utilities, and real property taxes and assessments affecting the Premises.

23. This Agreement contains all the agreements of the parties and cannot be amended or modified except by a written agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original regardless of the date of its execution and delivery. All of such counterparts together shall constitute one and the same Agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this Agreement, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the Grantor and the Department of Transportation of the State of Hawaii, causing the seal of the Department of Transportation to be hereunto affixed and the parties hereto have caused this Agreement to be executed as of the day, month, and year first above written.

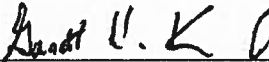
APPROVED AS TO FORM AND LEGALITY:



LORI ANN K.K. SUNAKODA
Deputy Attorney General

Dated: December 1, 2017

HAWAII COMMUNITY DEVELOPMENT AUTHORITY, a body corporate and a public instrumentality of the State of Hawaii

By 

GARETT H. KAMEMOTO
Its Interim Executive Director
and CEO

GRANTOR

APPROVED AS TO FORM AND LEGALITY:

Deputy Attorney General

Dated: December 1, 2017

DEPARTMENT OF TRANSPORTATION HARBORS DIVISION, of the State of Hawaii

By _____

JADE T. BUTAY
Its: Interim Director

GRANTEE

IN WITNESS WHEREOF, the Grantor and the STATE OF HAWAII, by its Department of Transportation, causing the seal of the Department of Transportation to be hereunto affixed and the parties hereto have caused this Agreement to be executed as of the day, month, and year first above written.

APPROVED AS TO FORM:

HAWAII COMMUNITY DEVELOPMENT AUTHORITY, a body corporate and a public instrumentality of the State of Hawaii

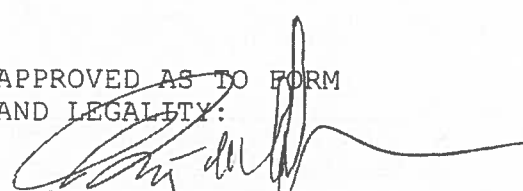
LORI ANN K.K. SUNAKODA
Deputy Attorney General

Dated: _____

By _____
GARETT H. KAMEMOTO
Its Interim Executive Director
and CEO

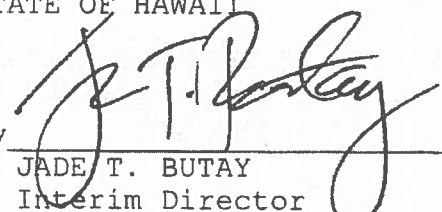
GRANTOR

APPROVED AS TO FORM
AND LEGALITY:


Patsy M. Takemura
Deputy Attorney General

Dated: DEC 01 2017
STATE OF HAWAII

STATE OF HAWAII

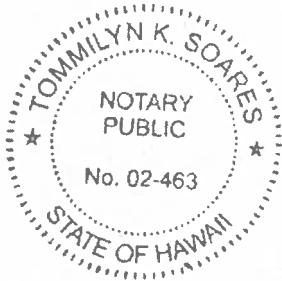
By 

JADE T. BUTAY
Interim Director
DEPARTMENT OF TRANSPORTATION

STATE

CITY AND COUNTY OF HONOLULU)
) SS.
)

On this 1 day of December, 20 17,
before me appeared GARETT H. KAMEMOTO, to me personally known,
who, being by me duly sworn, did say that he is the Interim
Executive Director and CEO of the HAWAII COMMUNITY DEVELOPMENT
AUTHORITY, a body corporate and a public instrumentality of the
State of Hawaii, and that said instrument was signed in behalf of
said HAWAII COMMUNITY DEVELOPMENT AUTHORITY by authority of its
Directors, and the said GARETT H. KAMEMOTO acknowledged said
instrument to be the free act and deed of said corporation.



Tommilyn K. Soares
Notary Public, State of Hawaii
Tommilyn K. SOARES

My commission expires: 9-22-2018

Date of the Notarized Document: 12-1-2017

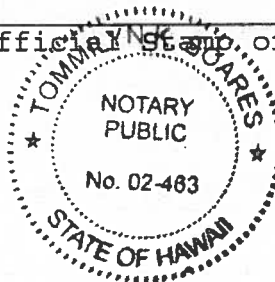
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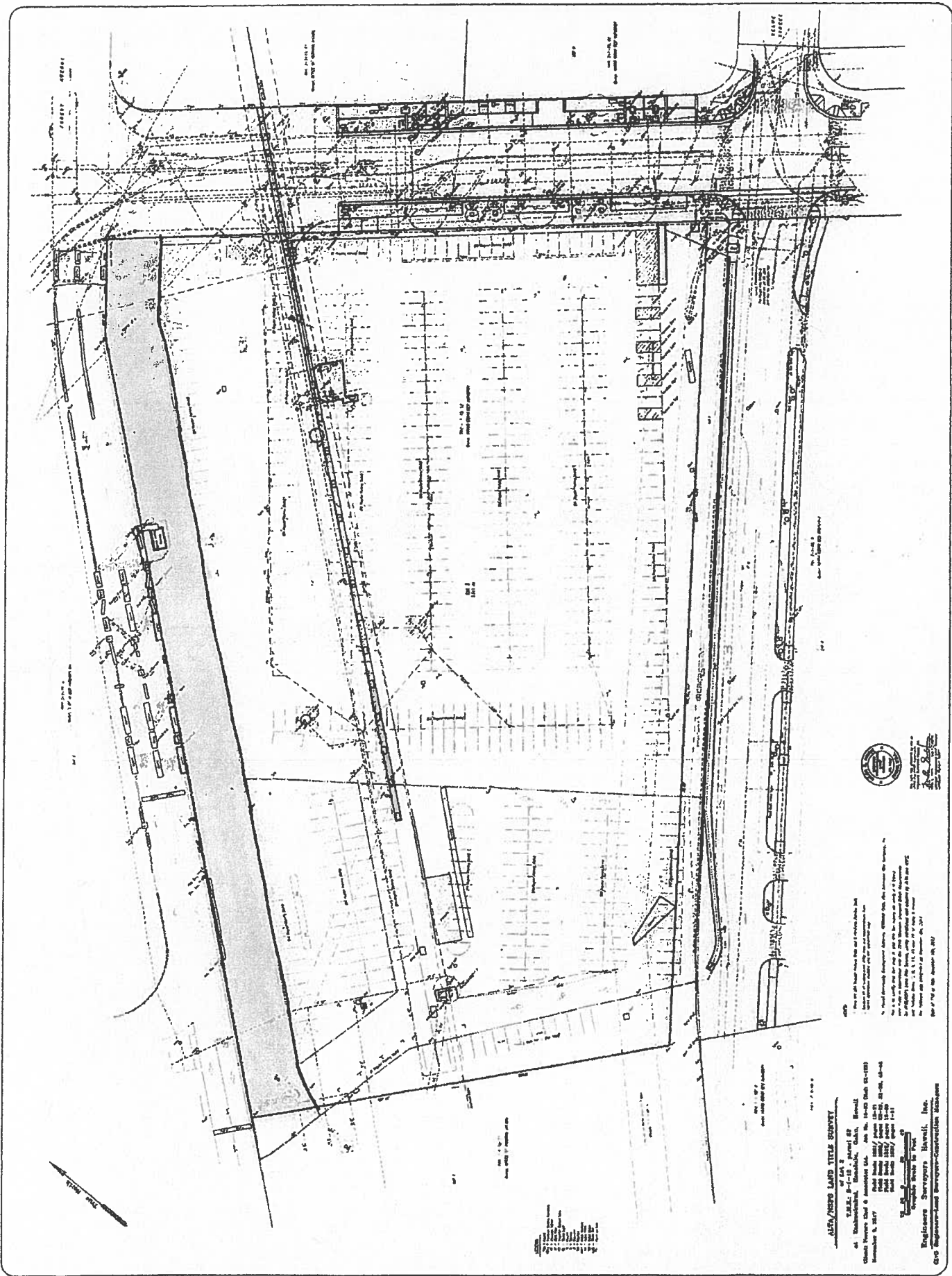
Identification or Description of the Document being Notarized:

Non-Exclusive Right of Entry

Printed Name of Notary: Tommilyn K. Soares 1st Circuit

Tommilyn K. Soares Notary's Signature and Notary's Official Seal, or Seal Date 12-1-2017





ALFA/ROSS LAND TITLE SURVEY
 of Lot 2
 of the
 of the
 at Honolulu, Territory of Hawaii
 Clerk of the Court of the Territory of Hawaii
 Honolulu, Hawaii



EXHIBIT 'A'

FOREST AVENUE SUBDIVISION

LAND SITUATED ON THE WEST SIDE OF ALA MOANA BOULEVARD, BETWEEN KEANE STREET AND HONOLULU HARBOR AT HONOLULU, HAWAII, U.S.A.

BEING A PORTION OF FILLED AND SUBMERGED LAND OF KAAHALAUKOHA SUBDIVIDED INTO LOTS 1 TO 5, INCLUSIVE DESIGNATION OF EASEMENTS A-1 TO A-3, INCLUSIVE, EASEMENTS S-1 AND S-2 AND CANCELLATION OF EASEMENT A

AREA = 70,005 Ac.

SUBJECT, HOWEVER, TO THE FOLLOWING EXISTING EASEMENTS:

1. EASEMENTS E, F, G, H AND K FOR DRAINAGE PURPOSES
2. PERPETUAL TELEPHONE EXCHANGE EASEMENT
3. PERPETUAL EASEMENT FOR THE EASEMENT
4. PROPOSED ALA MOANA FORCE MAIN PARCELS 7, 8, 9 AND 10 (COMBINED)
5. ALA MOANA SEWAGE PUMP STATION EXPANSION, PARCEL 3
6. SEWER EASEMENT D
7. ALA MOANA FORCE MAIN, PARCEL 1
8. PERPETUAL NON-EXCLUSIVE MONUMENT EXPOSURE

SUBJECT, ALSO TO RESTRICTION OF VEHICULAR ACCESS RIGHTS AFFECTING LOTS 2, 4 AND 5

OTHER: HAWAII COMMUNITY DEVELOPMENT AUTHORITY ADDRESS: 677 ALA MOANA BOULEVARD, SUITE 1001 HONOLULU, HAWAII 96813

THE MAP IS THE ACTUAL SURVEY OF THE SUBDIVISION UNDER THE DIRECT SUPERVISION OF THE UNDERSIGNED BETWEEN FEBRUARY 1, 1952 AND SEPTEMBER 22, 1952 AND IS NOT TO BE CONSIDERED VALID UNLESS IT IS FILED WITH MY FIELD BOOK NUMBER 2017 AND MY CALCULATION TABLE NUMBER 01108-2

I DO HEREBY CERTIFY THAT THIS MAP IS THE ACTUAL SURVEY OF THE SUBDIVISION UNDER THE DIRECT SUPERVISION OF THE UNDERSIGNED BETWEEN FEBRUARY 1, 1952 AND SEPTEMBER 22, 1952 AND IS NOT TO BE CONSIDERED VALID UNLESS IT IS FILED WITH MY FIELD BOOK NUMBER 2017 AND MY CALCULATION TABLE NUMBER 01108-2

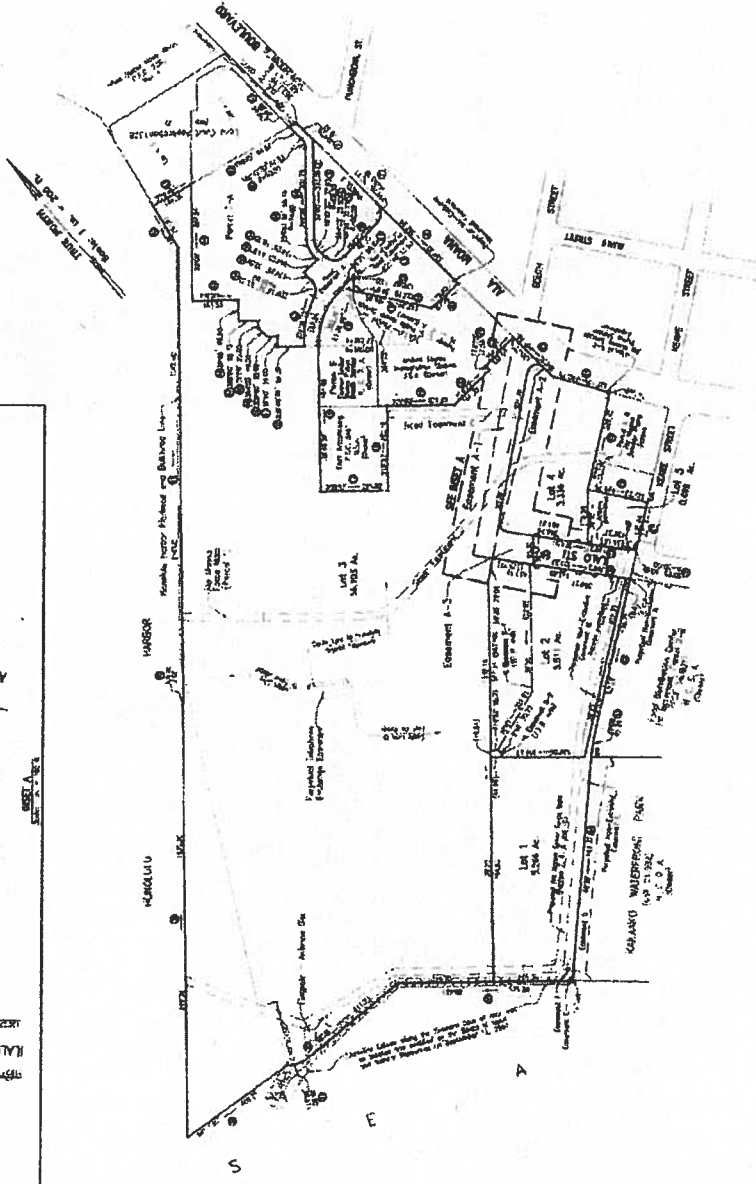
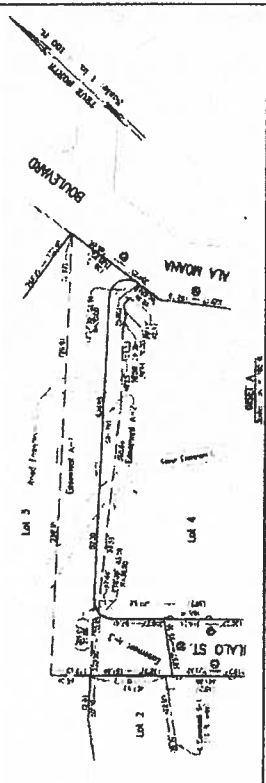


STATE LAND SURVEYOR, HAWAII
A.L.A. Powell
State Land Surveyor

I hereby certify that the description of survey and map herein has been examined and checked as to form and mathematical correctness but not on the ground and this examination was completed on the 15th day of December 1952 at the Honolulu, Hawaii office of the State Land Surveyor, Hawaii. December 15, 1952

State of Hawaii
Office of the
Surveyor General
Professional Registration No. 2201
December 15, 1952 at 3:00 P.M.
and filed in File No. 2335
A.L.A. Powell
Register of Conveyances

MEASUREMENTS AND BOUNDS DESCRIPTION RECORDED IN DOCUMENT NO. 8006 2222-54



- NOTICE:
1. Plans shown here are subject to the provisions of the Hawaiian Land Commission Act.
 2. All rights reserved by the Hawaiian Land Commission, Honolulu, Hawaii, are hereby acknowledged.
 3. Plans shown here are subject to the provisions of the Hawaiian Land Commission Act.
 4. All rights reserved by the Hawaiian Land Commission, Honolulu, Hawaii, are hereby acknowledged.
- Documents A-1, A-2, A-3, S-1, S-2, and H-1 are hereby acknowledged by the Hawaiian Land Commission, Honolulu, Hawaii, on the 15th day of December 1952 at 3:00 P.M. and filed in File No. 2335.
- Documents A-1, A-2, A-3, S-1, S-2, and H-1 are hereby acknowledged by the Hawaiian Land Commission, Honolulu, Hawaii, on the 15th day of December 1952 at 3:00 P.M. and filed in File No. 2335.
- Documents A-1, A-2, A-3, S-1, S-2, and H-1 are hereby acknowledged by the Hawaiian Land Commission, Honolulu, Hawaii, on the 15th day of December 1952 at 3:00 P.M. and filed in File No. 2335.

EXHIBIT "B"