

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 11TH FLOOR
HONOLULU, HAWAII 96813
Phone: (808) 768-8480 • Fax: (808) 768-4567
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MUFI HANNEMANN
MAYOR

CRAIG I. NISHIMURA, P.E.
ACTING DIRECTOR

COLLINS D. LAM, P.E.
DEPUTY DIRECTOR



April 14, 2009

The Honorable Ken Ito, Chair
and Members of the Committee on Water
Land & Ocean Resources
State House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Ito and Members:

**Subject: House Resolution No. 116
House Concurrent Resolution No. 116**

We appreciate the Legislature's efforts to promote cooperation between the City & County of Honolulu (City) and State of Hawaii (State). Unfortunately, there remains a disagreement on which roads were intended to be conveyed by Act 288 and Resolution No. 93-287 CD1 FD1. We disagree with the Department of Land and Natural Resources (DLNR) abstractor's conclusion that the unpaved portion of Kaimakani Street extending mauka from Ulune Street to Halawa Heights Road belongs to the City. Said portions of Kaimakani Street are further identified on Tax Map Key Nos. 9-9-005, 028, 029 and 068. The disagreement arises because the subject portion of Kaimakani Street is considered a "paper road". "Paper roads" are roads that are illustrated on a map but that do not physically exist. A "paper road" is not paved and not used by normal vehicles. The State abstractor's findings fail to address this fundamental fact.

The City's opinion is that paper roads were not transferred to the City when ownership and jurisdiction of disputed "public highways" (as defined under HRS Section 264-1) were conveyed to the City through Act 288, Session Laws of Hawaii 1993, and accepted by Resolution No. 93-287 CD1 FD1. Indeed, the prevailing opinion of the State, through the Department of the Attorney General (AG), at that time was that a "public highway" did not refer to a mere 'paper' road. See AG Op. No. 63-54, copy of which is attached hereto. As paper roads were not even considered "public highways" when Act 288 was enacted and Resolution No. 93-287 CD1 FD1 adopted, they were not included, and were not intended to be included, among the "disputed public highways" transferred to and accepted by the City.

The Honorable Ken Ito, Chair
and Members
Committee on Water, Land & Ocean Resources
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Further, until recently, the DLNR apparently shared the view that it owned Kaimakani Street exclusively. It was maintaining the subject portion of Kaimakani to October 2005, almost 13 years after the passage of Act 288, without issue. The DLNR secured and continued to secure said property with bollards, chains, locks and a no-trespassing sign. Consequently, we believe ownership and maintenance jurisdiction over Kaimakani Street still rests with State.

If I can be of any further assistance, please contact me at 768-8480.

Very truly yours,


FOR Craig I. Nishimura, P.E.
Acting Director

Enclosures

c: Mayor Mufi Hannemann
Trudi Saito, Deputy Managing Director
Clarice Hashimoto, Mayor's Office
Jeoffrey Cudiamat, Director and Chief Engineer
Department of Facility Maintenance

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✓Op. 63-54

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL

HONOLULU, HAWAII

NOV 21 1963

JUL 15 10 58 AM 1961

REFERRED TO:

November 26, 1963

Mr. Yoshito Tanaka
County Attorney
County of Hawaii
Hilo, Hawaii

Dear Mr. Tanaka:

Re: Status of Road Reserve
Ahualoa Homesteads

You have raised a question by letter dated October 30, 1963 as to whether a parcel of State land reserved for a road by the State, over which no road was ever constructed, may be sold by the County of Hawaii under Act 190, Session Laws of Hawaii 1963.

We reply in the negative.

The parcel in question is located between Grant 4170 and Grant 3683, being Lots 38 and 37 of the Ahualoa Homesteads, Hamakua, Hawaii.

A search of the records in the Land Department reveals that this parcel has not been granted out by the State and is still owned by the State of Hawaii. The descriptions of Grant 4170 and Grant 3683 describe the lots as being along a 30-foot roadway.

Act 190 provides in Section 4 as follows:

"The ownership of all county highways heretofore acquired by the counties by eminent domain, purchase, dedication or surrender is hereby transferred to and vested in the respective counties in which such county highways lie."

OP. 63-54

November 26, 1963

Standing Committee Report No. 1056 of the House Committee on County and Municipal Affairs accompanying S. B. No. 535 states that "Section 4 of the bill has been amended to make it clear that the county highways involved are only such highways acquired by the counties by eminent domain, purchase, dedication or surrender." Since the County of Hawaii has not acquired said road reserve by any of the means enumerated in Section 4, it is our conclusion that Act 190 is not applicable to this road reserve.

In addition, it should be noted that in Section 142-1, Revised Laws of Hawaii 1955, as amended, "public highways" are defined as follows:

"all roads. . .opened, laid out or built by the State or any political subdivision thereof are declared to be public highways."

Within the meaning of said Section, a "public highway" is a road or street actually constructed and existing on the ground. It does not refer to a mere "paper" road or an unimproved way not open to the general public as a road.

Based on the foregoing, it is our conclusion that the County of Hawaii has not been vested with fee simple title to the abovementioned road reserve and it may not therefore sell said road reserve.

Very truly yours,

/s/ Alana W. Lau

Alana W. Lau
Deputy Attorney General

APPROVED:

/s/ Bert T. Kobayashi

Bert T. Kobayashi
Attorney General

OP. 63-54

INDEXING INSTRUCTIONS

OP. NO. 63-54

HIGHWAYS

Title to public lands reserved for a road remains in the State and have not been transferred to the respective counties by Act 190, S.L.H. 1963. Said Act 190 has transferred ownership of county highways to the respective counties only in cases where the lands thereto have been acquired by the counties by eminent domain, purchase, dedication or surrender.

COUNTIES

Same Syllabus.

PUBLIC LANDS

Same Syllabus.

SESSION LAWS OF HAWAII 1963

Act 190

Same Syllabus.

Testimony for HR116 on 4/15/2009 9:00:00 AM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Sunday, April 12, 2009 9:17 AM

To: WLOtestimony

Cc: [REDACTED]

Attachments: HR116_.pdf (2 MB)

Testimony for WLO 4/15/2009 9:00:00 AM HR116

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Brent Oto

Organization: Individual

Address: [REDACTED]

Phone: [REDACTED]

E-mail: [REDACTED]

Submitted on: 4/12/2009

Comments:

Kaimakani Street should be properly maintained for the safety of all residents living in the vicinity. During heavy rains Kaimakani funnels heavy water that flushes down hill towards Ulune Street thus, Kaimakani is unusable and potential harm or injury to residents may occur. There are sections of Kaimakani which is unpaved; have large cracks and uneven sufacing that vehicles may be damage when using the street.

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