

FEB 18 2011

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# SENATE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES AND THE CITY AND COUNTY OF HONOLULU TO AGREE TO A FINAL DETERMINATION REGARDING THE OWNERSHIP AND JURISDICTION OF AN UNIMPROVED SECTION OF KAIMAKANI STREET.

1           WHEREAS, in a memorandum dated March 24, 2005, an  
2 abstractor employed by the Department of Land and Natural  
3 Resources, Land Division, stated that ownership and jurisdiction  
4 over a certain section of Kaimakani Street (TMK: 1-9-9-05, 28,  
5 29, and 68) were transferred to and accepted by the City and  
6 County of Honolulu in compliance with Council Resolution No. 93-  
7 287 of the City and County of Honolulu, which was adopted on  
8 September 29, 1993; and

9  
10           WHEREAS, the abstractor's findings are as follows:

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12           "Said portion of Kaimakani Street formerly designated as  
13 the "Aiea-Halawa Boundary Road" situate lying along the  
14 Aiea-Halawa boundary between Ulune Street and Halawa  
15 Heights Road, is colored Green on the maps attached as  
16 Exhibit A.

17  
18           Pursuant to the 1892 Highway Act, said Aiea-Halawa Boundary  
19 Road was declared a "public highway" owned by the Hawaiian  
20 Government in fee simple.

21  
22           Under the "Organic Act" of April 30, 1900, the ownership to  
23 the Aiea-Halawa boundary road, and all public property of  
24 the Hawaiian Government, is ceded and transferred to the  
25 United States, providing that "unless otherwise provided  
26 for by Congress, or taken for the uses and purposes of the  
27 United States", it remain in the possession, use and  
28 control of the government of the Territory of Hawaii.  
29



1 By Presidential Executive Order No. 2566, dated March 28,  
2 1917 portions of the Aiea-Halawa Boundary Road as shown on  
3 TMK: (1) 9-9-68, are set-aside for the Aiea Military  
4 Reservation. The lands under PEO 2566, including portions  
5 of the Aiea-Halawa Boundary Road as shown on TMK: (1) 9-9-  
6 05 are later transferred to the Navy Department by letter  
7 dated December 1924.  
8

9 Excluded from PEO 2566 as a "right of way granted to the  
10 Territory of Hawaii by right of continued occupancy", the  
11 ownership to portions of the Aiea-Halawa Boundary Road as  
12 shown on TMK: (1) 9-9-28 and 29, are transferred under  
13 Section 5(b) of the Admission Act of March 18, 1959, from  
14 the United States to the State of Hawaii.  
15

16 In accordance with Section 5(e) of said Admission Act, the  
17 United States conveyed all of its right, title and interest  
18 in and to the Aiea-Halawa Boundary Road as shown on TMK:  
19 (1) 9-9-05 and 68 to the State of Hawaii by the following  
20 Quitclaim Deeds.  
21

22 By Quitclaim Deed dated September 27, 1962, (LOD S-19998)  
23 portions of the Aiea-Halawa Boundary Road as shown on TMK:  
24 (1) 9-9-05 and described as "a portion of Tract 1 of former  
25 Aiea Military Reservation as described in Presidential  
26 Executive Order 2566", are conveyed to the State of Hawaii,  
27 subject to the following:  
28

29 "RESERVING there from, to the United States of  
30 America, its successors and assigns an easement  
31 for construction, operation, maintenance and  
32 repair of utilities, storm drains, ditches, and a  
33 roadway, with rights of access thereto, on, over,  
34 under and across a right-of-way running along the  
35 Southeast boundary of the aforesaid land."  
36

37 By Executive Order No. 2121 dated November 21, 1963, the  
38 land as conveyed to the State in LOD S-19998, was set aside  
39 for school purposes and placed under the control and  
40 management of the Department of Education, subject to the  
41 easement reserved in favor of the United States. Said  
42 easement affecting that portion of Kaimakani Street as  
43 shown on TMK: (1) 9-9-05.  
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1 By Quitclaim Deed dated March 5, 1963 (LOD No. S-19999),  
 2 portions of the Aiea-Halawa Boundary Road as shown on TMK:  
 3 (1) 9-9-68 and described as a "connecting" right-of-way  
 4 between Tracts 1 and 2 in Presidential Executive Order No.  
 5 2566, are conveyed to the State of Hawaii, subject to the  
 6 following:

7  
 8 "RESERVING, HOWEVER, to the party of the first  
 9 part and its assigns, an easement together with  
 10 necessary rights of access for the operation,  
 11 repair and maintenance of an underground hut;  
 12 storm drains; water, sewer, electrical and  
 13 telephone lines and appurtenances; over, under  
 14 and across the lands hereinabove described."  
 15 Said easement affecting that portion of Kaimakani  
 16 Street as shown on TMK: (1) 9-9-68.[""]

17  
 18 The ownership to said portion of Kaimakani Street formerly  
 19 designated "Aiea-Halawa Boundary Road", as shown on Exhibit  
 20 A, is transferred to the City and County of Honolulu  
 21 through operation of laws, pursuant to Chapter 264 of the  
 22 Hawaii Revised Statutes.

23  
 24 As to Portion of Land Patent Grant No. 8945  
 25 Said portion of Kaimakani Street being a portion of Land  
 26 Patent Grant No. 8945 to B.P. Bishop, is colored Red on  
 27 TMK: (1) 9-9-68.

28  
 29 By Exchange Deed dated April 5, 1937, (LOD 5595) by and  
 30 between the Trustees under the Will and of the Estate of  
 31 Bernice Pauahi Bishop, deceased and the Territory of  
 32 Hawaii, said portion of Land Patent Grant 8945 and other  
 33 lands, were conveyed to the Territory of Hawaii.

34  
 35 The ownership of the Territory of Hawaii in and to said  
 36 portion of Kaimakani Street as shown on TMK: (1) 9-9-68, in  
 37 accordance with Section 5(a) of the Admission Act of March  
 38 18, 1959, succeeded to the State of Hawaii.

39  
 40 Pursuant to Chapter 264 of the Hawaii Revised Statutes and  
 41 in accordance with City Council Resolution No. 93-287  
 42 adopted September 29, 1993, the title and ownership to said  
 43 Kaimakani Street is transferred to and accepted by the City  
 44 and County of Honolulu.



1  
2 We find that the City and County of Honolulu owns the  
3 subject Kaimakani Street as shown on Tax Maps (1) 9-9-05,  
4 68, 28 and 29 attached as Exhibit A, subject to the  
5 reservation of an easement in favor of the United States of  
6 America, affecting portions of said Kaimakani Street shown  
7 colored in green on TMK: (1) 9-9-68 and 05, ONLY."; and  
8

9 WHEREAS, in a letter dated May 13, 2005, the Chairperson of  
10 the Board of Land and Natural Resources at the time stated that  
11 the City and County of Honolulu has jurisdiction of that section  
12 of Kaimakani Street; and  
13

14 WHEREAS, in a letter dated September 11, 2008, the  
15 Chairperson of the Board of Land and Natural Resources at the  
16 time stated that the section of Kaimakani Street in question is  
17 owned by the City and County of Honolulu; and  
18

19 WHEREAS, in a letter dated March 16, 2006, the Chief of the  
20 Land Division in the City and County of Honolulu's Department of  
21 Design and Construction, stated that Act 288, Session Laws of  
22 Hawaii 1993, does not apply to Kaimakani Street, and thus does  
23 not confer ownership or maintenance responsibilities to the City  
24 and County of Honolulu; and  
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26 WHEREAS, in a letter dated June 27, 2006, the Chief of  
27 Staff to the Governor attributed ownership of Kaimakani Street  
28 to the City and County of Honolulu; and  
29

30 WHEREAS, the dispute over the ownership of and jurisdiction  
31 over Kaimakani Street must be resolved; now, therefore,  
32

33 BE IT RESOLVED by the Senate of the Twenty-sixth  
34 Legislature of the State of Hawaii, Regular Session of 2011, the  
35 House of Representatives concurring, that the Department of Land  
36 and Natural Resources and the City and County of Honolulu are  
37 urged to agree to a final determination regarding the ownership  
38 and jurisdiction of an unimproved section of Kaimakani Street;  
39 and  
40

41 BE IT FURTHER RESOLVED that Department of Land and Natural  
42 Resources and the City and County of Honolulu are urged to take  
43 into consideration the impact of:  
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(1) Act 288, Session Laws of Hawaii 1993; and

(2) Resolution No. 93-287 of the City and County of Honolulu; and

BE IT FURTHER RESOLVED that the Department of Land and Natural Resources and the City and County of Honolulu are urged to come to an understanding or agreement, regardless of any final determination of ownership and jurisdiction, regarding ongoing and continuing maintenance of Kaimakani Street; and

BE IT FURTHER RESOLVED that the Department of Land and Natural Resources is requested to report findings and recommendations regarding ownership of, jurisdiction over, and ongoing and continuing maintenance of Kaimakani Street to the Legislature no later than thirty days prior to the convening of the Regular Session of 2012; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Chairperson of the Board of Land and Natural Resources and the Mayor and Chairperson of the Council of the City and County of Honolulu.

OFFERED BY:

Annex Mercado Ki

*[Handwritten signatures: M. Mercado, J. de la Cruz, J. de la Cruz]*

*Will Lye*  
*Randy de Bab*  
*Michelle Kukanui*  
*Sharonne Chun Caldwell*

*[Handwritten signature]*

*Jill*  
*Carol Johnson*  
*[Handwritten signature]*

