

FEB 18 2011

SENATE 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:

11
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
30 By Presidential Executive Order No. 2566, dated March 28,
31 1917 portions of the Aiea-Halawa Boundary Road as shown on
32 TMK: (1) 9-9-68, are set-aside for the Aiea Military
33 Reservation. The lands under PEO 2566, including portions



1 of the Aiea-Halawa Boundary Road as shown on TMK: (1) 9-9-
2 05 are later transferred to the Navy Department by letter
3 dated December 1924.

4
5 Excluded from PEO 2566 as a "right of way granted to the
6 Territory of Hawaii by right of continued occupancy", the
7 ownership to portions of the Aiea-Halawa Boundary Road as
8 shown on TMK: (1) 9-9-28 and 29, are transferred under
9 Section 5(b) of the Admission Act of March 18, 1959, from
10 the United States to the State of Hawaii.

11
12 In accordance with Section 5(e) of said Admission Act, the
13 United States conveyed all of its right, title and interest
14 in and to the Aiea-Halawa Boundary Road as shown on TMK:
15 (1) 9-9-05 and 68 to the State of Hawaii by the following
16 Quitclaim Deeds.

17
18 By Quitclaim Deed dated September 27, 1962, (LOD S-19998)
19 portions of the Aiea-Halawa Boundary Road as shown on TMK:
20 (1) 9-9-05 and described as "a portion of Tract 1 of former
21 Aiea Military Reservation as described in Presidential
22 Executive Order 2566", are conveyed to the State of Hawaii,
23 subject to the following:

24
25 "RESERVING there from, to the United States of
26 America, its successors and assigns an easement
27 for construction, operation, maintenance and
28 repair of utilities, storm drains, ditches, and a
29 roadway, with rights of access thereto, on, over,
30 under and across a right-of-way running along the
31 Southeast boundary of the aforesaid land."
32

33 By Executive Order No. 2121 dated November 21, 1963, the
34 land as conveyed to the State in LOD S-19998, was set aside
35 for school purposes and placed under the control and
36 management of the Department of Education, subject to the
37 easement reserved in favor of the United States. Said
38 easement affecting that portion of Kaimakani Street as
39 shown on TMK: (1) 9-9-05.

40
41 By Quitclaim Deed dated March 5, 1963 (LOD No. S-19999),
42 portions of the Aiea-Halawa Boundary Road as shown on TMK:
43 (1) 9-9-68 and described as a "connecting" right-of-way
44 between Tracts 1 and 2 in Presidential Executive Order No.



1 2566, are conveyed to the State of Hawaii, subject to the
2 following:

3
4 "RESERVING, HOWEVER, to the party of the first
5 part and its assigns, an easement together with
6 necessary rights of access for the operation,
7 repair and maintenance of an underground hut;
8 storm drains; water, sewer, electrical and
9 telephone lines and appurtenances; over, under
10 and across the lands hereinabove described."
11 Said easement affecting that portion of Kaimakani
12 Street as shown on TMK: (1) 9-9-68.["]
13

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

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

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

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

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

42 We find that the City and County of Honolulu owns the
43 subject Kaimakani Street as shown on Tax Maps (1) 9-9-05,
44 68, 28 and 29 attached as Exhibit A, subject to the



1 reservation of an easement in favor of the United States of
2 America, affecting portions of said Kaimakani Street shown
3 colored in green on TMK: (1) 9-9-68 and 05, ONLY."; and
4

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

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

15 WHEREAS, in a letter dated March 16, 2006, the Chief of the
16 Land Division in the City and County of Honolulu's Department of
17 Design and Construction, stated that Act 288, Session Laws of
18 Hawaii 1993, does not apply to Kaimakani Street, and thus does
19 not confer ownership or maintenance responsibilities to the City
20 and County of Honolulu; and
21

22 WHEREAS, in a letter dated June 27, 2006, the Chief of
23 Staff to the Governor attributed ownership of Kaimakani Street
24 to the City and County of Honolulu; and
25

26 WHEREAS, the dispute over the ownership of and jurisdiction
27 over Kaimakani Street must be resolved; now, therefore,
28

29 BE IT RESOLVED by the Senate of the Twenty-sixth
30 Legislature of the State of Hawaii, Regular Session of 2011,
31 that the Department of Land and Natural Resources and the City
32 and County of Honolulu are urged to agree to a final
33 determination regarding the ownership and jurisdiction of an
34 unimproved section of Kaimakani Street; and
35

36 BE IT FURTHER RESOLVED that Department of Land and Natural
37 Resources and the City and County of Honolulu are urged to take
38 into consideration the impact of:
39

40 (1) Act 288, Session Laws of Hawaii 1993; and
41

42 (2) Resolution No. 93-287 of the City and County of
43 Honolulu; and
44



1 BE IT FURTHER RESOLVED that the Department of Land and
 2 Natural Resources and the City and County of Honolulu are urged
 3 to come to an understanding or agreement, regardless of any
 4 final determination of ownership and jurisdiction, regarding
 5 ongoing and continuing maintenance of Kaimakani Street; and
 6

7 BE IT FURTHER RESOLVED that the Department of Land and
 8 Natural Resources is requested to report findings and
 9 recommendations regarding ownership of, jurisdiction over, and
 10 ongoing and continuing maintenance of Kaimakani Street to the
 11 Legislature no later than thirty days prior to the convening of
 12 the Regular Session of 2012; and
 13

14 BE IT FURTHER RESOLVED that certified copies of this
 15 Resolution be transmitted to the Chairperson of the Board of
 16 Land and Natural Resources and the Mayor and Chairperson of the
 17 Council of the City and County of Honolulu.
 18
 19
 20

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