

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

November 9, 2012

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

PSF No.: 12HD-119

HAWAII

Grant of Perpetual, Non-Exclusive Easement to Ernest J. Freitas, Jr., Trustee Under Revocable Trust Declaration dated December 20, 1990, for Access and Utility Purposes, Waimea, South Kohala, Hawaii, Tax Map Key: (3) 6-4-030: Portion of 014.

APPLICANT:

Ernest J. Freitas, Jr., Trustee Under Revocable Trust Declaration dated December 20, 1990.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Puukapu Homestead Tract, 2nd Series, Portions of Upper Hamakua Ditch, situated at Waimea, South Kohala, Hawaii, identified by Tax Map Key: (3) 6-4-030: Portion of 014, formerly (3) 6-4-003:038, as shown on the attached map labeled Exhibit A.

AREA:

1.12 acres, more or less.

ZONING:

State Land Use District: Agricultural
County of Hawaii CZO: Agricultural

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES ___ NO x

CURRENT USE STATUS:

Encumbered under Governor's Executive Order No. 1660 to the Department of Agriculture, (formerly the Hawaii Irrigation Authority) for Waimea, Hawaii Irrigation and Water Utilization Project purposes, pursuant to Act 306, 1987 Session Laws of Hawaii.

CHARACTER OF USE:

For access and utility:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exemption Notification attached below as **Exhibit B**.

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing"

DCCA VERIFICATION:

Not Applicable. As trustee of a trust, applicant is not required to register with the Department of Commerce and Consumer Affairs.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Pay for an appraisal to determine one-time payment;
2. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
3. Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

REMARKS:

By memorandum dated November 3, 2009, Mr. Randy Teruya, Agricultural Asset Manager, Department of Agriculture, on behalf of Ernest J. Freitas, Jr., Trustee under Revocable Trust Declaration dated December 20, 1990 (Freitas Trust), requested a perpetual, non-exclusive easement over State lands at Puukapu, Waimea, Hawaii, identified as Tax Map Key: (3) 6-4-030: portion of 014. The purpose of the easement is to establish a legal access for the Freitas Trust's landlocked private property identified as Tax Map Key: (3) 6-4-030:013.

The proposed easement is over an existing concrete bridge, which was constructed in the 1920s and has historically been used to access the landlocked parcel. The subject bridge crosses the Upper Hamakua Ditch, which is a portion of the Waimea, Hawaii Irrigation and Water Utilization project currently managed, operated and maintained by the Department of Agriculture. No easement document was prepared to legalize/ authorize the ditch crossing.

At its meeting of July 11, 2003, Item D-6, the Board of Land and Natural Resources authorized a consent to revocable permit and construction right-of-entry to fourteen (14) various landowners previously approved by the Board of Agriculture, for a bridge over and across a portion of the irrigation ditch under Governor's Executive Order No. 1660, Puukapu Homesteads, 2nd Series, Puukapu, South Kohala, Hawaii, Tax Map Key: (3) 6-4-017:006. The above approval did not include the Freitas Trust property as it only involved properties further mauka, depicted on Plat 17.

At its meeting of June 13, 2006, B-14, the Board of Agriculture, approved issuance of a temporary construction right-of-entry and a 35-year term easement to the Freitas Trust for the purpose of constructing and installing a vehicular/pedestrian bridge for ingress, egress and routing of utilities relating to the subdivision of lands owned by the Trust.

In 2008, Freitas Trust, by and through Puukapu Eco-Farm Estates, LLC, filed an action against the State, Department of Agriculture, asserting nine (9) claims, to wit: quiet title, injunction, easement by implication, water rights, detrimental reliance and promissory estoppel, state constitutional violations, U.S. constitutional violations of due process and equal protection, and for reformation of the 1928 deed in Puukapu Eco-Farm Estates vs. Department of Agriculture, Civil No. 07-1-177. As a result, a Non-Exclusive Term Easement and Mutual Settlement, Compromise and Release Agreement were executed.

The Freitas Trust has 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.

On September 20, 2012, various government agencies and interest groups were solicited for comments. The only respondents were the County of Hawaii Planning Department and the Department of Agriculture. Both agencies had no objections to the request.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (3) 6-4-030:013, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual, non-exclusive easement to Ernest J. Freitas, Jr., Trustee Under Revocable Trust Declaration dated December 20, 1990, covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (3) 6-4-030:013, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the

Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;

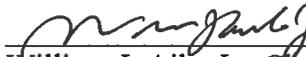
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

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EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR.

Project Title: Grant of Perpetual, Non-Exclusive Easement to Ernest J. Freitas, Jr., Trustee Under Revocable Trust Declaration dated December 20, 1990, for Access and Utility Purposes, Waimea, South Kohala, Hawaii, Tax Map Key: (3) 6-4-030: 014 (Por.)

Project / Reference No.: PSF No.: 12HD-089

Project Location: Waimea, South Kohala, Hawaii, Tax Map Key: (3) 6-4-030: Portion of 014.

Project Description: Grant of Perpetual, Non-Exclusive Access and Utility Easement.

Chap. 343 Trigger(s): Use of State land.

Exemption Class No. and Description: In accordance with the Division of Land Management Environmental Impact Statement Exemption List, approved by the Environmental Council and dated April 28, 1986, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to:
Exemption Class No. 1, which states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

Exemption Item Description from Agency Exemption List: Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving

EXHIBIT B

negligible or no expansion or change of use beyond that previously existing.

Recommendation:

The proposed easement traverses a bridge that was constructed in the 1920s, which crosses the Upper Hamakua Ditch. It is anticipated this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila, Jr., Chairperson



10/22/12
Date