

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

May 24, 2013

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

PSF No.: 12KD-020

Kauai

Request for Issuance of Right-of-Entry Permit to Gan Eden LLC on Vacant Unencumbered State Beach Lands for Beach Access and Clearing at Wainiha Hui, Wainiha, Hanalei, Kauai, Tax Map Key: (4) 5-8-009:047.

APPLICANT:

Gan Eden LLC, a California Limited Liability Company

LEGAL REFERENCE:

Sections 171-55, 115-10, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Wainiha Hui situated at Wainiha, Hanalei, Kauai identified by Tax Map Key: (4) 5-8-009:047, as shown on the attached map labeled Exhibit A.

AREA:

3,750 square feet, more or less.

ZONING:

State Land Use District: Conservation
County of Kauai CZO: Residential

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Vacant and Unencumbered

CHARACTER OF USE:

Clearing and maintenance of beach area purposes.

TERM OF RIGHT-OF-ENTRY:

One year.

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1)(4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, 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" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." See Exhibit C.

DCCA VERIFICATION:

Applicant is not operating a business and, as such, is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Comply with County of Kauai, Planning Department requirements.

REMARKS:

The applicant is the owner of Lot 8 of the Wainiha Subdivision II, Wainiha, Hanalei, Kauai, identified by Tax Map Key: (4) 5-9-009:047. The County of Kauai Planning Commission granted the applicant final design review approval for the construction of a single family dwelling on Lot 8. Pursuant to condition 4 of the final design approval, the applicant has agreed to clear and maintain vegetation in the portion of the beach area located adjacent to, and seaward of the shoreline fronting Lot 8. The beach area contains approximately 3,750 square feet. The purpose of the clearing and maintenance is to remove vegetation in order to expand the sandy portion of the beach area for the use by the public. See Exhibit B.

Comments were solicited from:

State Agencies:

DOH	No open burning, Noise control
DLNR – Historic Preserv.	No response by suspense date
DLNR - OCCL	No objections
OHA	No response by suspense date

County Agencies

County Planning	No response by suspense date
Public Works	No grubbing shall take place, maintain existing drainage

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 issuance of a right-of-entry permit to Gan Eden LLC covering the subject area 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 right-of-entry permit form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

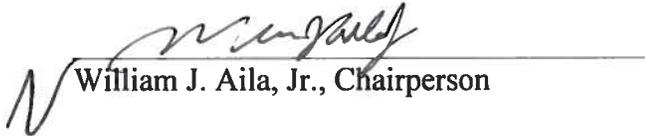
- C. Authorize the Chairperson to issue one-year extensions of this right-of-entry permit.

Respectfully Submitted,



Marvin Mikasa
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

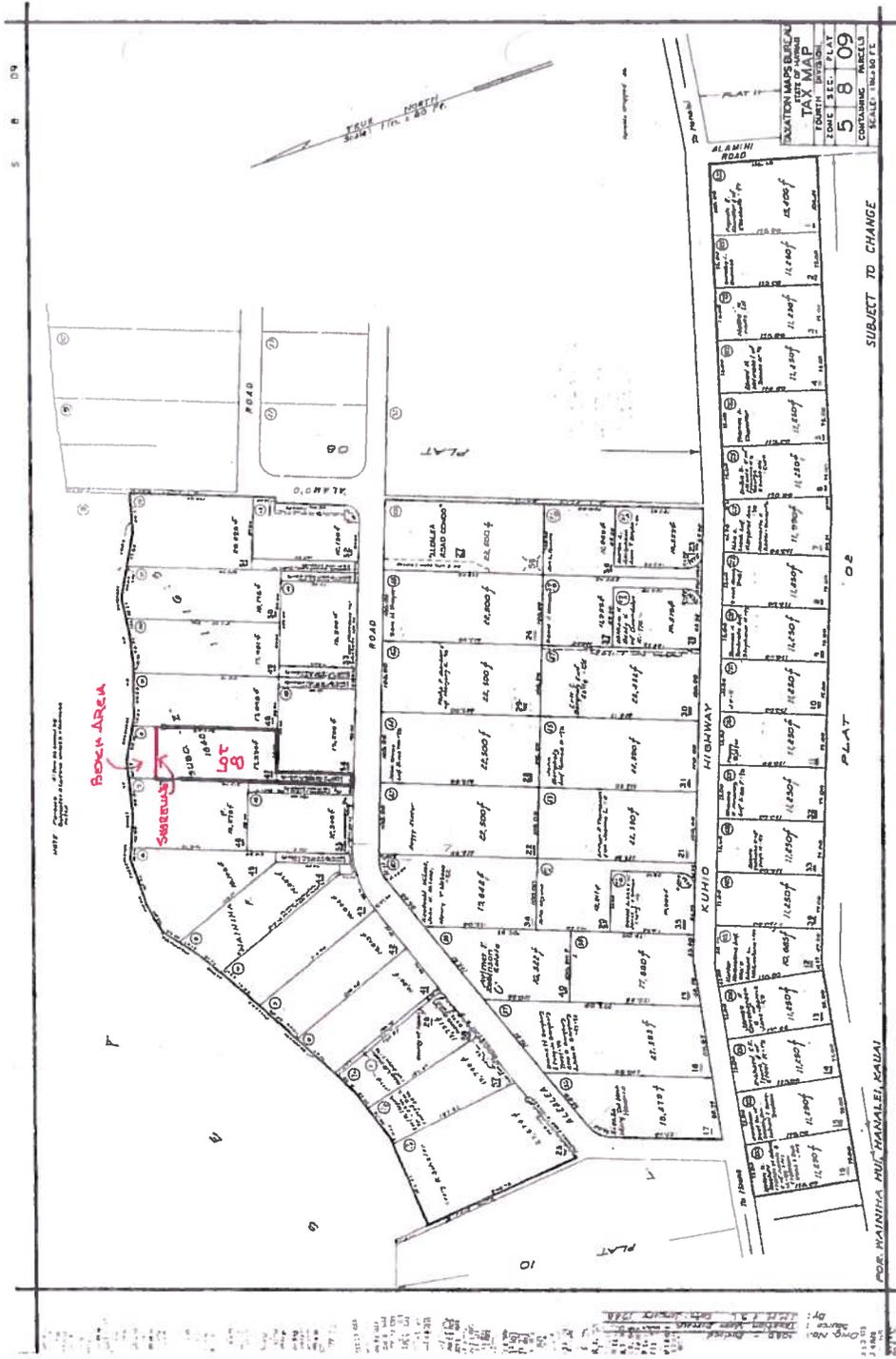


EXHIBIT A
Page 1 of 2

Bernard P. Carvalho, Jr.
Mayor

Gary K. Heu
Managing Director



Michael A. Dahilig
Director of Planning

Dee M. Crowell
Deputy Director of Planning

PLANNING DEPARTMENT
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite A-473, Lihue, Hawai'i 96766
TEL (808) 241-4050 FAX (808) 241-6699

JAN 31 2012

Mr. Max W. J. Graham, Jr., Authorized Agent
BELLES GRAHAM PROUDFOOT & WILSON

Lihue, Hawai'i 96766

Subject: FINAL Building Location, Material and Design Review for Lot 8
Proposed Single-Family Residence
Wainiha Subdivision, S-84-58
Applicant: GAN EDEN LLC.
Tax Map Key: (4) 5-8-09:47, Lot 8

Please be advised that the Final Design Review regarding the proposed residence has been **approved** by the Planning Commission at its meeting held on January 24, 2012. Final Approval is subject to the following conditions, as amended by the Planning Commission:

1. Notwithstanding any contrary provision contained in Condition 1 of the conditions of Preliminary Design Approval approved by the Planning Commission on June 9, 2009 ("Preliminary Design Approval"), the Applicant shall not install or plant any new vegetation makai (seaward) of the Shoreline Setback Line; provided that the Applicant may plant and maintain lawn grass within the Shoreline Setback Area.
2. Notwithstanding any contrary provision contained in Condition 1 of the conditions of Preliminary Design Approval, the Applicant will not install or plant any new vegetation with root-balls larger than twelve (12) inches in diameter within the position of the subject property located mauka (south_ of the Shoreline Setback Line.
3. Notwithstanding any contrary provision contained in Condition 3 of the conditions of Preliminary Design Approval, the Applicant will not construct or install any seawalls or revetment walls makai (seaward) of the Shoreline Setback Line.

EXHIBIT B

An Equal Opportunity Employer

Mr. Max W. J. Graham, Jr., Authorized Agent
BELLES GRAHAM PROUDFOOT & WILSON
Page | 2

4. Within sixty (60) days of the date of Final Design Approval by the Planning Commission, the Applicant will apply for a Right-of-Entry (ROE) from the Department of Land and Natural Resources (DLNR) allowing Applicant to clear vegetation from the beach area ("Beach Area") directly seaward of the shoreline which delineates the seaward boundary of the subject property. The Applicant will clear and maintain vegetation in the beach area pursuant to a maintenance plan ("Maintenance Plan") prepared by the Applicant in consultation with the North Shore 'Ohana, and approved by the Planning Department.

Archaeological Monitoring

5. The Applicant will perform further archaeological monitoring ("Further Monitoring") on the subject property as follows:
 - a. Further excavations will be made of sample (not to exceed 50%) of the 18-inch deep structural foundation frames, as shown colored in 'yellow' on the Excavation Depth Chart ("Frame Members").
 - b. Further excavations will be made beneath any other areas which are to be covered on the ground with concrete or other impervious material ("Impervious Improvements") with the exception of:
 - (i) The 36-inch deep main structural foundation columns, as shown colored in 'pink' on the Excavation Depth Chart ("Columns");
 - (ii) The area beneath the Septic Tank, as shown colored in 'orange' on the Excavation Depth Chart ("Septic Tank");
 - c. Further excavations will be made of the area beneath the Septic field, as shown colored in 'blue' on the Excavation Depth Chart ("Septic Field").
 - d. All excavations will be made to the sterile layer, but in no case exceeding six (6) feet in depth.
6. The further monitoring will be performed pursuant to an addendum to the Monitoring Plan ("Addendum") prepared by an archaeologist in consultation with Hui Mālama I Na Kupuna O Hawai'i Nei ("Hui Malama"). The Applicant will make its reasonable, best effort to prepare the addendum within fourteen (14) days of Final Design Approval and to complete the further monitoring within twenty-eight (28) days of Final Design Approval.
7. If any Native Hawaiian Burials are found during the further monitoring, the Applicant will prepare and submit a Burial Treatment Plan and submit it to the

Mr. Max W. J. Graham, Jr., Authorized Agent
BELLES GRAHAM PROUDFOOT & WILSON
Page | 3

Kaua'i-Ni'ihau Burial Council ("Council") for a determination, pursuant to Hawai'i Administration Rules Section 13-300-33 and 36, as to whether the Native Hawaiian Burial shall be preserved in place or relocated, submit to the following:

- a. No native Hawaiian burials which are allowed to remain in place shall be covered by impervious improvements or by the septic field.
 - b. If native Hawaiian burials are found beneath the frame members, and if the Council determines that such native Hawaiian burials should remain in place, then the Applicant will make reasonable efforts to relocate (to the extent reasonably possible) the portion of the frame member cover the native Hawaiian burial.
 - c. Nothing herein shall impede the Applicant's right and ability to construct the columns in the locations shown on the excavation depth chart or to construct the house pursuant to the provisions of final design approval.
8. The Applicant shall be allowed to apply for a zoning permit and building permit ("Permits") for the construction of the house upon final design approval, provided that the permits shall not be approved and issued until the Applicant has prepared the addendum and completed the further monitoring as provided herein. Upon issuance of the permits, the Applicant may proceed with the construction of the house with the exception of those impervious improvements, portions of the frame members, and portions of the septic field which are covering native Hawaiian burials which are the subject of a burial treatment plan that has not yet been approved by the Council



MICHAEL A. DAHILIG
Director of Planning



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

EXEMPTION NOTIFICATION

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

Project Title: Request for Issuance of Right-of-Entry Permit to Gan Eden LLC on Vacant Unencumbered State Beach Lands for Beach Access and Clearing

Project / Reference No.: PSF 12KD-020

Project Location: Wainiha, Hanalei, Kauai

Project Description: Clearing of Vegetation along Beach Fronting Lot 8.

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

Exemption Class No. and Description: In accordance with Hawaii Administrative Rules, Section 11-200-8(a)(1)(4), 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" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

The Division has granted similar permits on the past. The activity continues to occur on other areas across the state. Such activities have resulted in no know significant impacts, whether immediate or cumulative, to natural, environmental and/or cultural resources in the area. As such staff believes that the proposed permit would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

EXHIBIT 'C'

Consulted Parties:

OCCL was consulted as a source authority having jurisdiction or expertise in this matter, and concurs that the exemption identified above is applicable to and appropriate for the proposed project.

Recommendation:

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

5/6/13

Date