

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

March 14, 2014

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

PSF No.: 14KD-034

Kauai

After-the-Fact Approval of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc. for Set up and Firing of Aerial Fireworks Display at Shipwreck Beach on March 14, 2014, Poipu, Kauai, Hawaii, Tax Map Key: (4) 2-9-01: seaward of 2.

APPLICANT:

Hawaii Explosives & Pyrotechnics, Inc., a domestic profit corporation, whose business and mailing address is P.O. Box 1244, Keaau, Hawaii 96749.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Poipu situated at Koloa, Kauai identified by Tax Map Key: (4) 2-9-01:portion seaward of 2, as shown on the attached map labeled Exhibit A.

AREA:

500 square feet, more or less – Set-up and firing area, plus a safety zone with a radius of approximately 350 feet around the firing site. The total area including the firing site and the safety zone is approximately 385,345 square feet.

ZONING:

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

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 25% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Requested area is vacant and unencumbered.

CHARACTER OF USE:

Set-up, firing and clean-up of aerial fireworks display purposes.

TERM:

From 12:00 noon to 11:45 p.m. on March 14, 2014.

RENTAL:

\$ 50.00 – set-up and firing site area

\$500.00 – safety zone area (flat fee when exceeds 5,000 sq. ft.)

\$250.00 – late request surcharge¹

Total: \$800.00

COLLATERAL SECURITY DEPOSIT:

None

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.", as included in Exhibit B.

¹ Land Board action of June 14, 2013 (agenda item D-11, as amended) regarding the delegation of authority to issue right-of-entry permits on unencumbered lands imposes a surcharge for requests not received in a timely manner.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>__</u>

REMARKS:

Hawaii Explosives & Pyrotechnics, Inc. is requesting a revocable permit for fireworks display services in conjunction with the Grand Hyatt Kauai Resort & Spa Event. The aerial fireworks display is scheduled for March 14, 2014 at Shipwreck Beach fronting the Ilima Gardens Restaurant as shown on the attached map labeled Exhibit 'A'. Set-up will start at 12:00 noon And breakdown by 11:45pm. Firing time will be approximately 9:45pm.

Applicant has not had a lease, permit easement or other disposition of State lands terminated within the past five years due to non-compliance with such terms and conditions. No comments were solicited from government or community agencies.

In the past, Hawaii Explosives & Pyrotechnics, Inc. was charged for the area of the firing site, which is 500 square feet (or a charge of \$50 for one day). But to conduct a display, Hawaii Explosives & Pyrotechnics, Inc. needs to exclude the public from an area extending for a radius of approximately 350 feet from the firing site. The size of the area circumscribed by the safety zone is approximately 358,345 square feet, of which about two-thirds, or 240,091 square feet are located on unencumbered State land. If the daily rent for commercial rights-of-entry were applied to the 240,091 square feet of the safety zone on State lands, the charge per event would be about \$24,009, which is likely cost prohibitive for fireworks displays. The exclusion of the public is necessary for their safety but also poses a substantial interference with public use of the beach and near-shore waters. Accordingly, as a compromise, staff is recommending that an additional charge of \$500 be imposed to cover Hawaii Explosives & Pyrotechnics, Inc. exclusive use of the safety zone around the firing site.

Additionally, staff received this request via email on February 19, 2014, after the deadline for the February 28, 2014 Board meeting. Consequently, this request is being presented as an after-the-fact approval for the use of unencumbered State lands. At its meeting of June 14, 2013, under agenda item D-11, as amended, the Board updated the right-of-entry procedures and included a provision to allow for a surcharge be added to the cost of the right-of-entry should the applicant submit their request in the fourth week prior to the event and is therefore being assessed a \$250.00 surcharge.

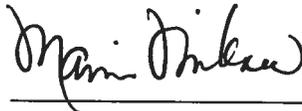
No comments were solicited from other government or community agencies.

There are no other pertinent issues or concerns. Staff has no objection to the request.

RECOMMENDATION: That the Board:

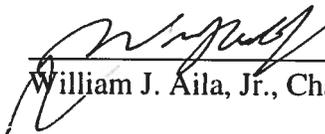
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environmental assessment.
2. Authorize the issuance of a right-of-entry permit to Hawaii Explosives Pyrotechnics, Inc. covering the subject area for set-up and firing of aerial fireworks display 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 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.

Respectfully Submitted,



Marvin Mikasa
Acting District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

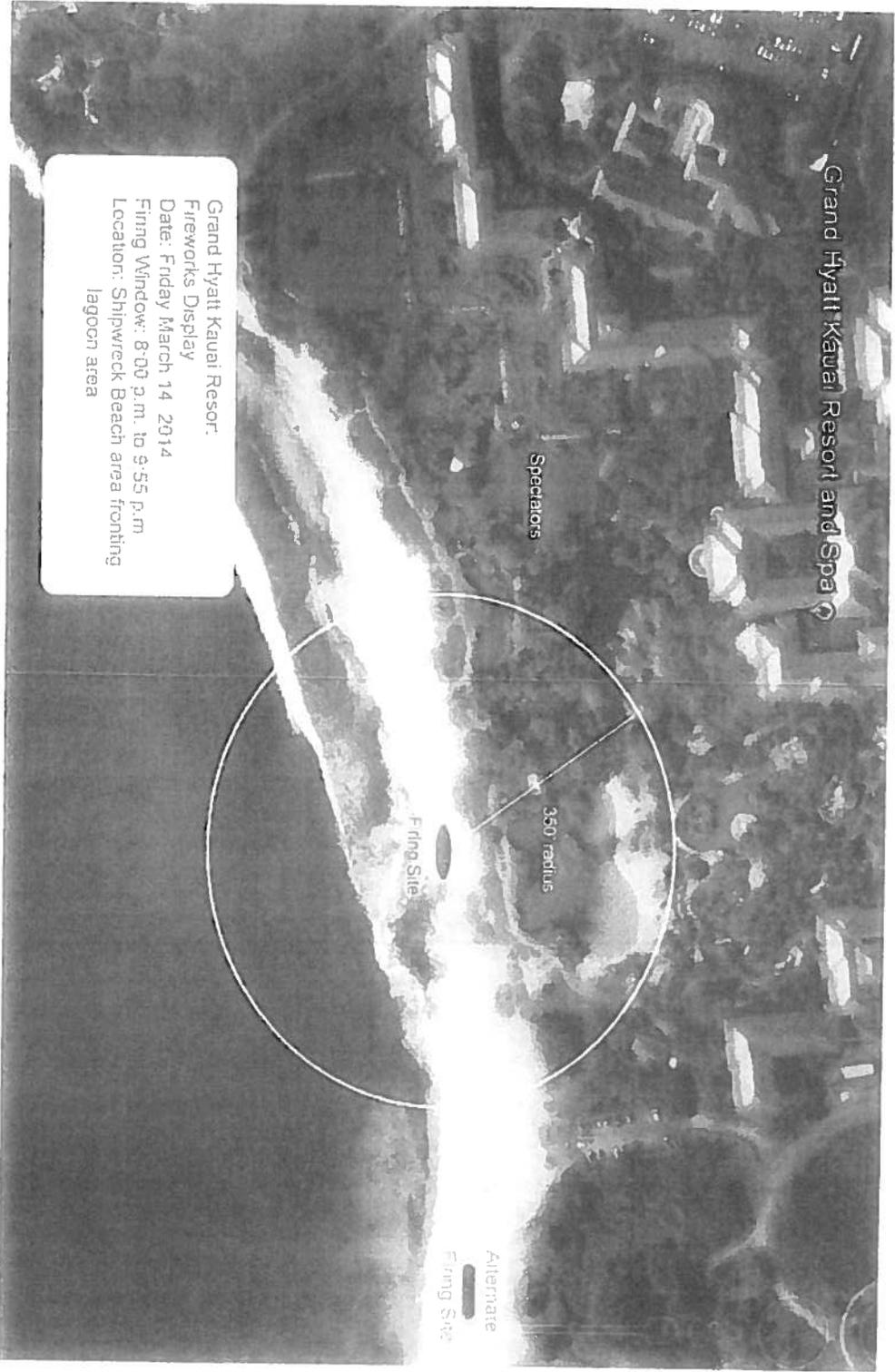


EXHIBIT "A"

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: After-the-Fact Issuance of Right-of-Entry Permit to Hawaii Explosives & Pyrotechnics, Inc.

Project Number: PSF No. 14KD-034

Project Location: Poipu, Kauai, TMK: (4) 2-9-01:seaward of 2.

Project Description: Aerial Fireworks Display at Shipwreck Beach

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

Consulted Parties: Office of Conservation and Coastal Lands

Exemption Class No.: In accordance with the "Exemption List for the State of Hawaii, Department of Land and Natural Resources, as Reviewed and Concurred Upon by the Environmental Council (Docket 91-EX-2, December 4, 1991), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, "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 [HAR § 11-200-8(a)(1)]."

Exemption Item No. And Description: Class No.1, "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."

EXHIBIT B

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This exemption is appropriate because the permittee, Hawaii Explosives & Pyrotechnics, Inc. has requested the use of a small area for a single aerial fireworks display. The location has been used periodically for such displays in recent years without significant impact on the environment.

The grant of a right-of-entry permit for the limited purpose will result in no material change or significant cumulative impact. If further actions are taken that result in a material change, Hawaii Explosives & Pyrotechnics, Inc. will be required to be in compliance with Chapter 343.

Recommendation:

It is recommended that the Board find that the issuance of a right-of-entry permit to Hawaii Explosives & Pyrotechnics, Inc. 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. Afa, Jr., Chairperson

Date

EXHIBIT B