

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

June 27, 2014

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

PSF 13OD-063

Oahu

Amend Prior Board Action of April 12, 2013, Item D-12 by Authorizing the issuance of Immediate Right-of-Entry Permit for Access Purposes; Grant of Two (2) Perpetual, Non-Exclusive Easements to Clara Matthews, Sonny P. Lucas, and Debbie May Silva-Lucas for Access Purposes, Kunawai, Honolulu, Oahu, Tax Map Key: (1) 1-7-036:adjacent to 014 and 015.

BACKGROUND:

On April 12, 2013, under agenda item D-12, the Board authorized the issuance of two (2) perpetual easements for access purposes. A copy of the approved submittal is attached as **Exhibit 1**.

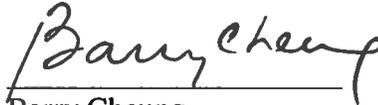
One of the proposed easement grantees, Sonny P. Lucas and Debbie May Silva-Lucas, through their attorney, requests the Board authorize the issuance of a right-of-entry while they are working with the land surveyor on the map and legal description and other authorization from the City’s Department of Planning and Permitting required for the easement document. Staff has no objection to the request.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of April 12, 2013, Item D-12 by authorizing the issuance of an immediate right-of-entry permit to Sonny P. Lucas and Debbie May Silva-Lucas for access purposes 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. The right-of-entry shall expire upon the issuance of the easement; and

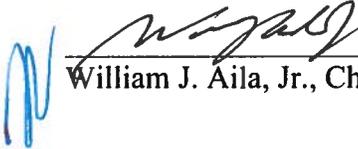
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 2. All terms and conditions listed in its April 12, 2013 approval to remain the same.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

AMENDED

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

April 12, 2013

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

PSF 13OD-063

Oahu

Grant of Two (2) Perpetual, Non-Exclusive Easements to Clara Matthews, Sonny P. Lucas, and Debbie May Silva-Lucas for Access Purposes, Kunawai, Honolulu, Oahu, Tax Map Key: (1) 1-7-036:adjacent to 014 and 015.

APPLICANT:

Clara Matthews, tenant in severalty; and

Sonny P. Lucas and Debbie May Silva-Lucas, husband and wife, tenants by the entirety.

LEGAL REFERENCE:

Sections 7-1 and 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of situated at Kunawai, Honolulu, Oahu, identified by Tax Map Key: (1) 1-7-036:adjacent to 014 and 015, as shown on the attached map labeled **Exhibit A.**

AREA:

To be determined, subject to approval by the Department of Accounting and General Services.

ZONING:

State Land Use District: Urban
City and County of Oahu LUO: R-3.5

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
April 12, 2013 90.

EXHIBIT " 1 "

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to use, maintain and repair a right-of-way over and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

None. Applicants have a right to access as discussed below.

EASEMENT TERM:

Perpetual

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 Exemption Notification at **Exhibit B**.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards and at Applicants' own cost; and
2. Obtain approval for the designation of the easement from the City and County of Honolulu at Applicants' own cost.

REMARKS:

The subject properties are located in the Liliha area. A kuleana parcel was originally conveyed in 1853. In 1921, the kuleana was subdivided into two lots. At the present time, Clara Matthews owns one of the two lots, Tax Map Key: 1-7-36:15. Sonny P. Lucas and Debbie May Silva-Lucas own the other lot, Tax Map Key: 1-7-36-14.

Historically the kuleana and the two lots derived from it have had pedestrian access from what is now Kunewai Lane over a relatively narrow strip of government owned land. This government land was originally an auwai or stream. It is now paved.

Applicants wish to obtain a defined and recorded right of access to their properties. They wish to confirm and record a right to access over the government land. Staff agrees they have such a right in this situation pursuant to Haw. Rev. Stat. § 7-1 as the owner of a kuleana parcel.¹

Staff requests the Board to authorize issuance of two access easements in standard form to Ms. Matthews, the Lucases and their successors in interest. We also request authority to issue the easements at no charge and without the standard term authorizing cancellation or revocation.

The easement will not change the use of government property because the property has been used for pedestrian access since the Mahele and probably before then. The kuleana owners are entitled to access by law. The use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. Staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

The Lucases, through their attorney, request some conditions in the easement document be revised. A copy of the letter from the attorney is attached as **Exhibit C** for the Board's information. The relevant conditions consist of provision of liability insurance, maintenance of the easement area, relocation cost of the easement. All of these obligations in the easement document are causing concerns for the Lucases. The attorney argues that the subject easement area is being used by other users, and such users are not subject to similar conditions.

Staff notes that the subject area is a portion of public land, where the general public can freely use the same area for all legal purposes and/or other applicable restrictions. There is no document consummated between the public and the State. In the subject request, as part of the settlement agreement of a lawsuit where the Lucases are involved, they ask for an easement on record. It is a standard condition for all users of State land to provide liability insurance, for which the required coverage is stipulated in the memorandum issued by the State Comptroller. Staff does not believe any deviation from the standard term and condition for an easement is appropriate.

¹ Staff will obtain written confirmation of the kuleana status of the lots concerned from the staff abstractor before requesting the Department of the Attorney General to prepare the easement documents.

Applicants have 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.

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. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of two (2) perpetual non-exclusive easements to Clara Matthews and Sonny P. Lucas and Debbie May Silva-Lucas covering the subject area for access purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. Except as stated above, 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: (1) 1-7-036:014 and (1) 1-7-036-015, provided however: 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,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aifa, Jr., Chairperson

Land Board Meeting: April 12, 2013;
D-12: Approved as amended. See
attached page.

Land Board Meeting: April 12, 2013; D-12: Approved as amended.

The Board having heard and considered the arguments of all parties and counsel, and based on the special facts and circumstances of this particular easement area where the public apparently regularly crosses-over often, albeit without any legal easement or authority, the Board approved amending the standard approved easement form of the document in the following manner for all easement holders, namely Clara Matthews, Sonny P. Lucas, and Debbie May Silva-Lucas and their respective successors and assigns:

- (a) Deletion of paragraph 7 which relates to the obligations of the easement holder if the easement area ever needed to be relocated. In this case, as a practical matter there really isn't a readily alternative site in which the easement could be relocated.**
- (b) Paragraph 12 relates to the easement holder's obligation to pay the State's attorneys fee and all other costs if the State and the easement holder are made parties to a lawsuit. The Board approved limiting this requirement to cases where the lawsuit arises out of the actions or inactions of the easement holder (or the easement holder's guests or invitees), or the easement holder's failure to comply with any term or condition of the easement document.**
- (c) Paragraph 5 relates to insurance covering the easement area. The Board approved limiting the insurance coverage for those cases or claims arising out of the actions or inactions of the easement holder (or the easement holder's guests or invitees), or the easement holder's failure to comply with any term or condition of the easement document.**
- (d) To the extent the amendments to paragraphs 7, 12, and 5 noted above does not cover an indemnity provision in the easement document, then the Board approved limiting the indemnity in favor of the State to those cases or claims arising out of the actions or inactions of the easement holder (or the easement holder's guests or invitees), or the easement holder's failure to comply with any term or condition of the easement document.**

EXEMPTION NOTIFICATION

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

Project Title: Perpetual Easement for Access Purposes

Project / Reference No.: PSF 13OD-063

Project Location: Kunawai, Honolulu, Oahu, Tax Map Key: (1) 1-7-036:adjacent to 014 and 015

Project Description: Easement for Access Purposes

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

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (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 applicant is not planning on conducting major change to the existing topographical and vegetation condition of the property. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties: Not applicable

Recommendation: That the Board find 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
Date

EXHIBIT B

Ashford & Wriston

A LIMITED LIABILITY LAW PARTNERSHIP LLP

MICHAEL W. GIBSON
Direct: (808) 539-0483
Facsimile: (808) 528-1282
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March 22, 2013

William J. Wynchhoff, Esq.
Department of the Attorney General
Kakua'nao'a Building
465 South King Street, Room 300
Honolulu, Hawaii 96813

Re: Clara Matthews vs. Gabino A. Lucas; et al.; Civil No. 10-1-2511-11 (RAT)

Dear Bill:

I am writing on behalf of Sonny P. Lucas and Debbie Silva-Lucas ("Lucases") who are my clients in the captioned matter. Pursuant to a settlement agreement, Plaintiff Clara Matthews and the Lucases will be getting a non-exclusive perpetual grant of easement in favor of their lots over government land between their lots and Kunawai Lane for pedestrian access.

The State has provided a draft Grant of Non-Exclusive Easement to document the settlement agreement. The Lucases have a few concerns about the draft Grant of Non-Exclusive Easement ("easement").

First, Paragraph 1 of the easement contains a description of obligations that the Lucases would have in favor of the State, but there are no similar obligations by the State in favor of the Lucases. There should be either mutual obligations or no obligations. Second, paragraph 6 of the easement requires the Lucases to keep the easement area in a safe and clean condition. As a practical matter, the easement has been and will continue to be used by the public on a daily basis to get from Kunawai Lane to Kuakini Street. The Lucases can agree not to use the easement in any unlawful or offensive manner. Third, paragraph 7 covers the obligations of the Lucases if the easement is relocated. It seems to require the Lucases to pay for the relocation. That does not seem fair because of the large number of other users of the easement. Fourth, paragraph 12 of the easement requires the Lucases to pay the State's attorneys fees and all other costs if the State and the Lucases are made parties to a lawsuit. That does not seem fair. Finally, paragraph 5 of the easement requires the Lucases to have a policy of liability insurance covering the easement even though the scores of other people using the easement on a daily in the same manner as the Lucases are not required to have liability insurance.

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EXHIBIT "C"

William J. Wynhoff, Esq.
March 22, 2013
Page 2 of 2

On behalf of the Lucases, we would ask that you consider changing the easement as we have suggested.

Very truly yours,
ASHFORD & WRISTON
A Limited Liability Law Partnership LLP
By


Michael W. Gibson

cc: Sonny Lucas and Debbie Silva-Lucas
Natalie Teramoto, Esq.
Camille K. Kalama, Esq. and Sharla A. Manley, Esq.