

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

July 24, 2015

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

Kauai

Authorize Negotiation and Execution of Memorandum of Agreement between the Board of Land and Natural Resources and the Department of Education for the Ko Road Rockfall Mitigation Project - Makai Section, Part One, Eleele, Koloa, Kauai, Tax Map Key No. (4) 2-1-001:006 (Parcel 6)

APPLICANT:

The Department of Land and Natural Resources (“Department”), Land Division

LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Eleele Elementary School located in Eleele, Koloa, County of Kauai, identified by TMK No.: (4) 2-1-001:006 (Parcel 6), as shown on the attached **Exhibit A**.

AREA:

8.50 acres, more or less

ZONING:

State Land Use District: Urban  
County of Kauai CZO: R-1/STP

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:

Encumbered by Governor's Executive Order No. 341 to the Department of Education for Eleele Elementary School purposes

CHARACTER OF USE:

Educational purposes

TERM OF RIGHT-OF-ENTRY:

Up to one (1) year

CONSIDERATION:

Gratis

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Refer to **Exhibit B** – Exemption Notification letter.

BACKGROUND:

The Department's Engineering Division is planning the Ko Road Rockfall Mitigation Project – Makai Section, Part One (the "project") identified along the cliff above Ko Road as a potential rockfall hazard concern for public health and safety. The project is an approximately 2,060-foot long section of Ko Road that consists of the installation of a rockfall drape and anchored wire netting which require ground anchors. For the Makai Section, Part One, some of the anchors may be placed in the site of the Eleele Elementary School campus. The Department of Education ("DOE") has control and management of Parcel 6 under Governor's Executive Order No. 341 dated June 12, 1928.

In addition to mitigating the rockfall hazard onto Ko Road, the project, when complete, will serve to stabilize the western boundary of Parcel 6 and protect the facilities on the property as well as the students, faculty and other persons using them. Eleele Elementary School ("School") has been identified as a preferable staging area for the project during construction and the Department's consultants and contractors will need access to the School from either Malemele Road or Uliuli Road. The contractor may temporarily store tools, medium-size equipment, and materials in the staging area. The staging area will also have a small field office and portable toilet facility. The Department's contractor will be required to install appropriate barriers for the public's and students' safety and to prevent trespassing into the construction area.

Staff will return to the Land Board at a later date for approval to acquire easements on private lands for the Ko Road Rockfall Mitigation Project - Makai Section, Part Two.

Attached is a “draft” copy of the Memorandum of Agreement (**Exhibit C**), which delineates the responsibilities of the Department and the DOE for this public health and safety project.

RECOMMENDATION:

That the Board authorize the Chairperson to negotiate terms and conditions, and sign on behalf of the Department and the Board of Land and Natural Resources a Memorandum of Agreement between the Board and the Department of Education under the terms and conditions cited above, and subject to review and approval as to form by the Department of the Attorney General.

Respectfully Submitted,



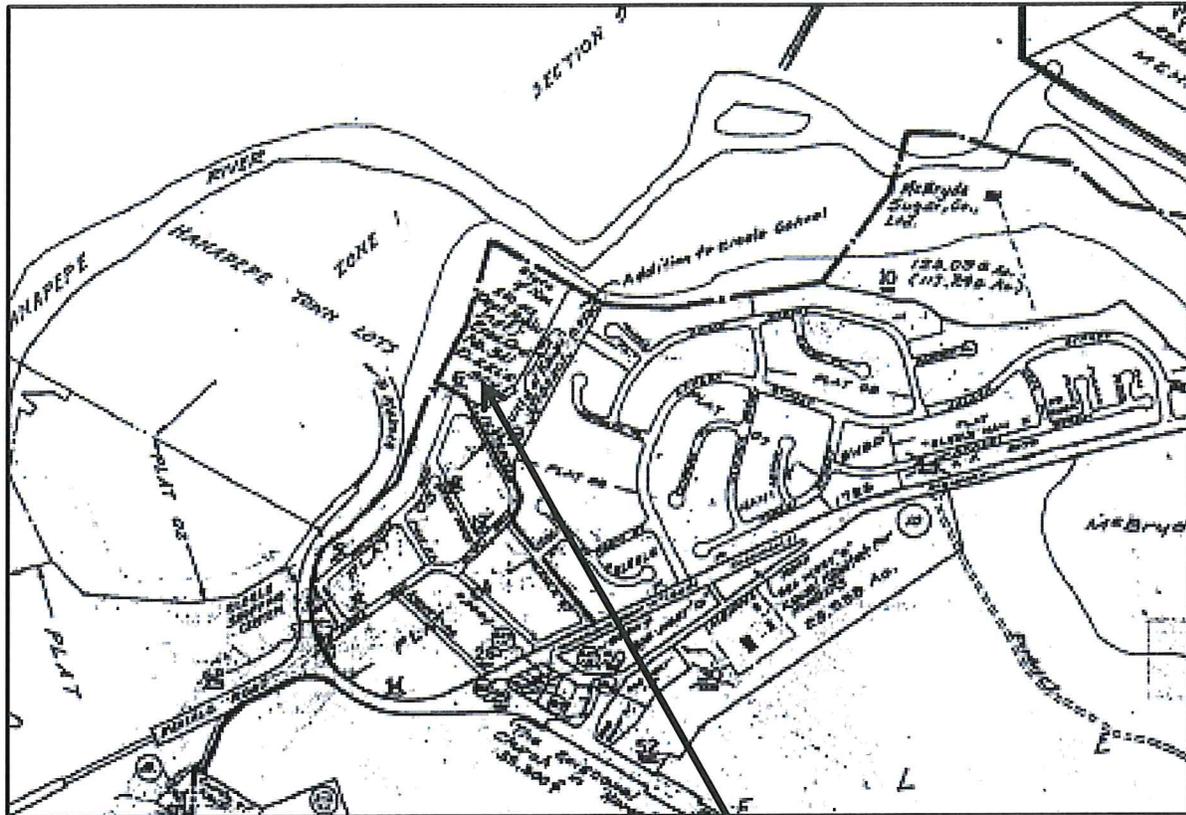
Kevin E. Moore  
Assistant Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

Attachments



TMK No. (4) 2-1-001:006

**Exhibit “A”**

**EXEMPTION NOTIFICATION**

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

Project Title: Authorize Negotiation and Execution of Memorandum of Agreement between the Board of Land and Natural Resources and the Department of Education for the Ko Road Rockfall Mitigation Project – Makai Section, Part One

Project / Reference No.: Ko Road Rockfall Mitigation Project

Project Location: Eleele Elementary School, located in Eleele, Koloa, Kauai, Tax Map Key: (4) 2-1-001:006 (Parcel 6)

Project Description: The Ko Road Rockfall Mitigation Project consists of the installation of a rockfall drape and anchored wire netting along the cliff above Ko Road.

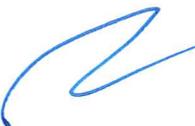
Chap. 343 Trigger(s): Use of State Funds

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated July 13, 2011, the subject request is exempt from the preparation of an environmental assessment pursuant to the Exemption Class No. 1, that states “Mitigation of any hazardous conditions that present imminent danger as determined by the Department Director and that are necessary to protect public health, safety, welfare or public trust resources.”

Consulted Parties: Department of Education and DLNR – Engineering Division

Recommendation: That the Board finds 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.

  
\_\_\_\_\_  
Suzanne B. Case, Chairperson

  
\_\_\_\_\_  
Date

7/15/15

**Exhibit “B”**

**MEMORANDUM OF AGREEMENT**  
**KO ROAD ROCKFALL MITIGATION PROJECT**  
**ELEELE, KOLOA, KAUAI**  
**TMK No. (4) 2-1-001:006 (Parcel 6)**  
**(“Agreement”)**

This Agreement is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES, by its Board of Land and Natural Resources (“DLNR”) and the STATE OF HAWAII, DEPARTMENT OF EDUCATION (“DOE”), collectively, the “Parties.”

**WITNESSETH THAT:**

WHEREAS, DLNR is planning the Ko Road Rockfall Mitigation Project (“project”) identified along the cliff above Ko Road in Eleele, Kauai as a potential rockfall hazard concern for public health and safety. The project is an approximately 2,060-foot long section of Ko Road that consists of the installation of a rockfall drape and anchored wire netting for which supporting ground anchors are required. Some of the anchors may be placed on the site of the Eleele Elementary School campus, located at TMK No. (4) 2-1-001:006 (Parcel 6), situated in Eleele, Koloa, County of Kauai. DOE has control and management of Parcel 6 under Governor’s Executive Order No. 341 dated June 12, 1928.

WHEREAS, in addition to mitigating the rockfall hazard onto Ko Road, the project, when completed, will serve to stabilize the western boundary of Parcel 6 and protect the facilities on the property, as well as the safety of the students, faculty and other persons using them.

WHEREAS, DOE’s Eleele Elementary School (“School”) has been identified as a preferable staging area for the project and during construction, DLNR’s consultants, contractors, and/or other persons acting for or on its behalf will need access to the School from either Melemele Road or Uliuli Road into the existing unpaved road behind the portable buildings, as shown in the satellite map as **Figure 1**. The contractor may store tools, medium-size equipment, and materials such as rockfall drapes and wire netting. The staging area will also have a small field office and portable toilet facility.

WHEREAS, DLNR is anticipating that the project contractor may deploy a helicopter to move heavy material within the staging area to the construction area. It is not yet determined how often and when the contractor may deploy a helicopter. The contractor is required by the Federal Aviation Administration to obtain a permit for use of the helicopter and to inform property owners and the School in advance.

**Exhibit “C”**

WHEREAS, DLNR's contractor will be required to install appropriate barriers for the public's and students' safety and to prevent trespassing into the construction area. DLNR, its consultants, contractors, and/or persons acting for and on its behalf will be responsible to restore disturbed areas back to a condition reasonably similar to that existing prior to use under this Agreement.

WHEREAS, DLNR requires DOE's cooperation and consent to all of the terms above,

NOW, THEREFORE, in consideration of the premises contained herein, the Parties agree as follows:

1. DOE hereby grants DLNR, its consultants, contractors and/or persons acting for and on its behalf (hereinafter "Agents") permission to enter the Eleele Elementary School property located on Parcel 6 (TMK No. (4) 2-1-001:006), situated in Eleele, Koloa, County of Kauai for the purpose of constructing and maintaining the rockfall drapes for the project. DLNR shall notify the School in writing at FAX No. (808) 335-2111 or by email at [Paul\\_Zina@notes.k12.hi.us](mailto:Paul_Zina@notes.k12.hi.us), at least forty-eight (48) hours prior to the initial entry onto Parcel 6. The temporary right-of-entry will be for approximately 6 – 12 months for construction and after the project is completed, one week for maintenance and repairs as necessary.
2. DOE hereby grants DLNR and its Agents permission to place ground anchors for the rockfall drape and wire netting on Parcel 6.
3. DOE hereby grants DLNR and its Agents, permission to use Parcel 6 as a staging area for the project. The contractor may store tools, medium-size equipment, and materials such as rockfall drapes and wire netting. The staging area will also have a small field office and portable toilet facility.
4. DLNR shall require its Agents to inform the public and the School in advance prior to deploying a helicopter to move heavy materials for the project.
5. DLNR shall require its Agents to install appropriate barriers for the public's and students' safety and to prevent trespassing into the construction area. The contractor will be responsible to restore disturbed areas back to a condition reasonably similar to that existing prior to use under this Agreement.
6. DLNR shall also be responsible for the maintenance and repair of the installation.
7. DLNR shall ensure that its Agents shall indemnify, defend, and hold DOE harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission on the part of the Agents relating for the Agents' use, occupancy, maintenance, or enjoyment of the right-of-entry area or premises; (2) any failure on the part of the Agents to maintain the right-of-entry area or premises and areas adjacent thereto in the Agents' use and control, and including any accident, fire, or

nuisance, growing out of or caused by any failure on the part of Agents to maintain the area or premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of Agents' non-observance or non-performance of any of the terms, covenants, and conditions of this right-of-entry or the rules, regulations, ordinances, and laws of the federal, state, municipal or country governments.

8. This Agreement is effective upon the date of the last approving signature and will remain in effect until terminated or modified by mutual written consent of the Parties.

9. This Agreement shall be binding upon the Parties hereto, their representatives, successors, and assigns.

IN WITNESS WHEREOF, the Parties execute this Agreement by their signatures on the dates below.

STATE OF HAWAII  
DEPARTMENT OF EDUCATION

By: \_\_\_\_\_  
Kathryn S. Matayoshi, Superintendent

Date: \_\_\_\_\_

APPROVED AS TO FORM:

STATE OF HAWAII  
DEPARTMENT OF LAND AND  
NATURAL RESOURCES

\_\_\_\_\_  
Deputy Attorney General

By: \_\_\_\_\_  
Suzanne D. Case, Chairperson  
Board of Land and Natural Resources

Date: \_\_\_\_\_

Attachment

Approved by the Board of Land and Natural Resources  
at its meeting held on \_\_\_\_\_.

