

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

November 30, 2012

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

PSF No.: 11KD-115

Kauai

Issuance of Grant of Perpetual, Non-Exclusive Easement to Peter Sperry for Access and Utility Purposes, Por. Kapaa Rice and Kula Lots, Kawaihau, Kapaa, Kauai, Tax Map Key: (4) 4-5-005:por. of 012

APPLICANT:

Peter Sperry, a married man, Tenant in severalty

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Kapaa, situated at Por. of Kapaa Rice and Kula Lots, Kawaihau, Kapaa, Kauai, identified by Tax Map Key: (4) 4-5-005:por. 012, as shown on the attached map labeled Exhibit A.

AREA:

0.011 acre, more or less.

ZONING:

State Land Use District: Urban
County of Kauai CZO: General Commercial

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:

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:

The first day of the month 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:

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 under the following:

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."

The proposed exemption is appropriate because the Applicant is requesting an access easement over an existing driveway on State land to access his private land. No new driveway improvements are proposed. Land Division has determined that the granting of an access easement to the Applicant involves a negligible expansion of an existing use. The Applicant's use of an existing driveway will result in no material change or significant cumulative impact. If further actions are taken that result in a material change, Applicant will be required to be in compliance with Chapter 343

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.

Also see Exhibit B attached.

DCCA VERIFICATION:

Not applicable. Applicant is natural person and is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial 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, to verify Applicant's ownership of TMK: (4) 4-5-005:007.

REMARKS:

The subject State property identified as Tax Map Key: (4) 4-5-005:por.012 is described as a "Right-of-way 10.00 feet wide for drainage ditch" and is an un-awarded portion of the Government (Crown) Land of Kapaa. The drainage ditch is not currently maintained and its functionality as a drainage feature is questionable. There is a pipe or culvert under the portion of the land over which Applicant is requesting an easement.

The subject property separates the Applicant's property, identified as Tax Map Key: (4) 4-5-005:007, from access to Akia Road. The Applicant has indicated an interest in purchasing the easement corridor as a remnant at a future date, but would like to complete his application for non-exclusive easement so that he may begin development of his adjacent property.

Comments were solicited from:

State Agencies:

DNLR Archaeology/Historic Preservation	No response by suspense date
DOH	Temporary fugitive dust emissions could be emitted by vehicular traffic (HAR 11-60.1)
DOT	No response by suspense date
DHHL	No objections

County Agencies:

Public Works	See discussion below
Planning	No response by suspense date
Water	No objections

The County of Kauai Department of Public Works (DPW) commented: “Applicant shall not fill or block the existing drainage way to gain access across the State parcel. Existing drainage flow and runoff patterns shall be maintained at pre-development levels. Property is in the special flood hazard area designation Zone AE.” As noted above, there is a culvert under the requested easement corridor and Applicant’s use of the easement will not impact any existing drainage flow. In addition, the department’s standard easement document requires the grantee to comply with the requirements, rules, ordinances, and laws of the County of Kauai (as well as those of the State and Federal governments). Nevertheless, staff is including a recommendation below that the easement document be drafted to incorporate the comment above from the DPW.

The Applicant 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.

Staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

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: (4) 4-5-005:007, 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 Peter Sperry covering the subject area for Access and Utility Easement 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 term/perpetual easement document form, as may be amended from time to time, except that the easement document shall contain language providing substantially as follows:

Grantee shall not fill or block the existing drainage way on the easement area in its exercise of the rights granted herein. Existing drainage flow and runoff patterns in the easement area shall be maintained at pre-development levels;

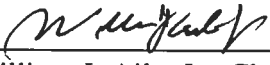
- b. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (4) 4-5-005:007, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the termination or abandonment of 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 interest of the State.

Respectfully Submitted,

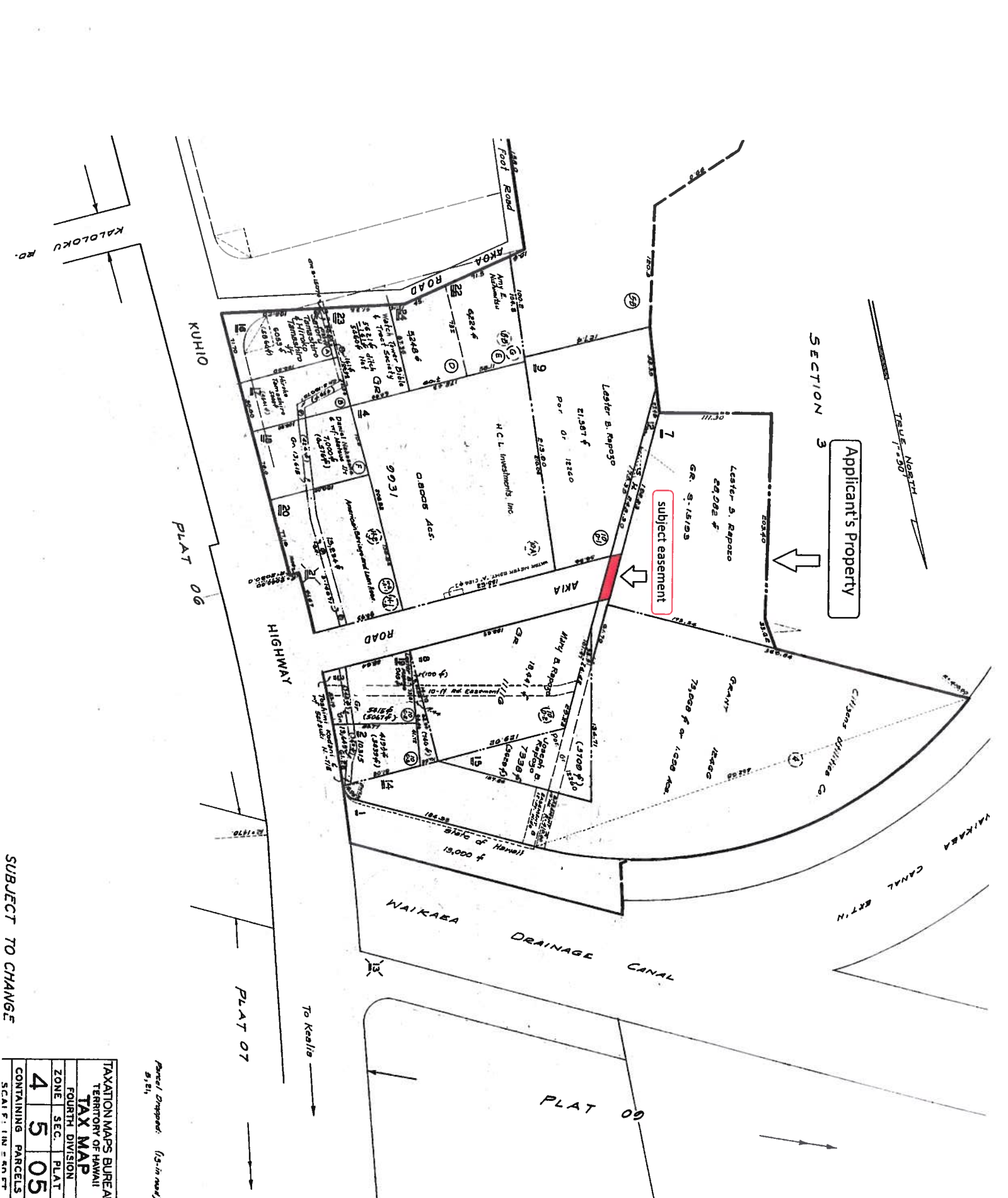


Milo Spindt
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



Applicant's Property

subject easement

SECTION 3

TRUE NORTH

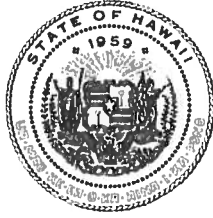
SUBJECT TO CHANGE

TAXATION MAPS BUREAU			
TERRITORY OF HAWAII			
TAX MAP			
FOURTH DIVISION			
ZONE	SEC.	PLAT	
4	5	05	
CONTAINING PARCELS			
SCALE: 1" = 60 FT			

Parcel Dependent: (1.5-in. max), 5.51.

EXHIBIT "A"

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 30th, 2012

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

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

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

Project Title: Issuance of Grant of Perpetual, Non-Exclusive Easement to Peter Sperry for Access and Utility Purposes

Project / Reference No.: PSF No. 11KD-115

Project Location: Por, Kapaa Rice and Kula Lots, Kawaihau. Kapaa, Kauai, Tax Map Key: (4) 4-5-005:por. of 012

Project Description: Issuance of Grant of Term, Non-exclusive Easement for Access and Utility Purposes

Consulted Parties: State Department of Transportation, County of Kauai Public Works

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: The proposed exemption is appropriate because the Applicant is requesting an access easement over an existing driveway on State land to access their private land. No new driveway improvements are proposed. Land Division has determined that the granting of an access easement to the Applicant

Exhibit B

involves and negligible expansion of an existing use. The Applicant's use of an existing driveway will result in no material change or significant cumulative impact. If further actions are taken that result in a material change, Applicant will be required to be in compliance with Chapter 343.

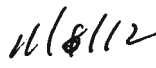
It is anticipated this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

Recommendation:

It is recommended that the Board find that the issuance of an access easement to Applicant 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