

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

March 8, 2013

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

12KD-062

Kauai

After-the-Fact Consent to Assign Grant of Easement No. S-4414, Rose Marie Kuntz, Donald Thomas Kuntz, Barbara Ann Kuntz, Donna Marie Kuntz, James Stephen Kuntz and Michael John Kuntz, Assignor, via Mesne Assignments, to John M. Mehan and Tina Mehan, Trustees of the John M. and Tina Mehan Revocable Living Trust, Assignee, and Amendment of Grant of Easement No. S-4414 to Allow the Easement to "Run With the Land" and be Assignable Without the Prior Written Consent of the Board of Land and Natural Resources, Waioli, Hanalei (Halelea), Kauai, Hawaii, Tax Map Key: (4) 5-5-006:020.

APPLICANT:

John M. Mehan and Tina Mehan, Trustees of the John M. and Tina Mehan Revocable Living Trust, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waioli, situated at Hanalei (Halelea), Kauai, identified by Tax Map Key: (4) 5-5-006:020, as shown on the attached maps labeled Exhibits A & B.

AREA:

0.212 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CHARACTER OF USE:

Access and utility purposes.

TERM OF LEASE:

65 years, commencing on August 8, 1974 and expiring on August 7, 2039.

ANNUAL RENTAL:

N/A

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

DCCA VERIFICATION:

ASSIGNOR:

Place of business registration confirmed: N/A
Registered business name confirmed: N/A
Good standing confirmed: N/A

ASSIGNEE:

Place of business registration confirmed: N/A
Registered business name confirmed: N/A
Good standing confirmed: N/A

Assignors/Assignees are natural persons or trusts and, as such, are not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall provide staff with two hard copies of each conveyance document in the chain of title to the private property designated as Tax Map Key: (4) 5-5-006:021 since the date of the issuance of Grant of Easement No. S-4414 on August 8, 1974 to the present, and shall provide any title reports or abstracts that may be required by the Department of the Attorney General in the preparation of the consent to assignment.

REMARKS:

The Land Board at its September 14, 1973 meeting, under agenda item F-27, authorized the Grant of Easement to Rose Marie Kuntz, Donald Thomas Kuntz, Barbara Ann Kuntz,

Donna Marie Kuntz, James Stephen Kuntz and Michael John Kuntz (Grantees) for a non-exclusive easement for access and utility purposes. See Exhibit C. Grant of Easement No. S-4414 thereafter issued to Grantees as of August 8, 1974.

Grant of Easement No. S-4414 is an older form easement document that requires the written approval of the Board of Land and Natural Resources prior to the assignment of the easement. Also, the easement does not identify the private property it benefits, and does not "run with the land." However, staff has determined that the benefitted private property is the parcel designated as Tax Map Key: (4) 5-5-006:021 (Parcel 21). Grantees were the owners of Parcel 21 at the time the easement was issued to them. But there have since been numerous conveyances of Grantees' interests in Parcel 21, summarized as follows:

James Stephen Kuntz quitclaimed his interest in Parcel 21 to Michael J. Kuntz by Quitclaim Deed dated February 21, 1989, Bureau of Conveyances Document No. 89 49365.

Rose Marie Kuntz quitclaimed her interest in Parcel 21 to Michael J. Kuntz by Quitclaim Deed dated February 23, 1989, Bureau of Conveyances Document No. 89 49361.

Donna Marie Kuntz quitclaimed her interest in Parcel 21 to Michael J. Kuntz by Quitclaim Deed dated February 23, 1989, Bureau of Conveyances Document No. 89 49364.

Donald Thomas Kuntz quitclaimed his interest in Parcel 21 to Michael J. Kuntz by Quitclaim Deed dated February 24, 1989, Bureau of Conveyances Document No. 89 49362.

Barbara Ann Kuntz quitclaimed her interest in Parcel 21 to Michael J. Kuntz by Quitclaim Deed dated February 24, 1989, Bureau of Conveyances Document No. 89 49363.

Michael J. Kuntz conveyed Parcel 21 to John Martin Hanson, as Trustee of the John Martin Hanson 1978 Trust, by Warranty Deed on April 3, 1989.

Robert E. Gipson and Joan Marie Hanson, as successor Co-Trustees of the John Martin Hanson 1978 Trust dated August 23, 1978, conveyed Parcel 21 to Robert E. Gipson and Joan Marie Hanson as successor Co-Trustees of Terry's Exempt Trust created under the terms of the John Martin Hanson 1978 Trust dated August 23, 1978, by Warranty Deed dated May 26, 1995, Bureau of Conveyances Document No. 95-150824.

Michele Hanson and Cindi Fritz, as the successor Co-Trustees of Terry's Exempt Trust created under the terms of the John Martin Hanson 1978 Trust dated August 23, 1978, as amended and restated, conveyed Parcel 21 to Michele Hanson and Cindi Fritz, as the Co-Trustees of the Terry Hanson 1995 Exempt Trust created under the terms of the John Martin Hanson Trust dated August 23, 1978, as amended and restated, as to an undivided

fifty-six percent (56%) interest, and Michele Hanson and Cindi Fritz, Co-Trustees of the Chase and Chelsea Hanson 1995 Exempt Trust dated August 23, 1978, as amended and restated, as to and undivided forty-four percent (44%) interest, by Warranty Deed dated June 1, 1995, Bureau of Conveyances Document No. 95-166783.

Michele Hanson and Cindi Fritz, as Co-Trustees of the Terry Hanson 1995 Exempt Trust created under the terms of the John Martin Hanson 1978 Trust dated August 23, 1978, as amended and restated, as to an undivided fifty-six percent (56%) interest, and Michele Hanson and Cindi Fritz, Co-Trustees of the Chase and Chelsea Hanson 1995 Exempt Trust dated August 23, 1978, as amended and restated, as to an undivided forty-four percent (44%) interest, conveyed Parcel 21 to Michele Hanson and Cindi Fritz, successor Co-Trustees of Terry's Non-Exempt Trust created under the terms of the John Martin Hanson 1978 Trust, by Warranty Deed dated June 1, 1995, Bureau of Conveyances Document No. 96-004249.

Michele Hanson and Cindi Fritz, successor Co-Trustees of Terry's Non-Exempt Trust created under the terms of the John Martin Hanson 1978 Trust, quitclaimed Parcel 21 to Terry M. Hanson and Michele R. Hanson, husband and wife, by Quitclaim Deed dated January 2, 2002, Bureau of Conveyances Document No. 2002-016126.

Terry M. Hanson and Michele R. Hanson, husband and wife, quitclaimed Parcel 21 to Michele Hanson and Cindi Fritz, successor Co-Trustees of Terry's Non-Exempt Trust created under the terms of the John Martin Hanson 1978 Trust, by Quitclaim Deed dated February 15, 2002, Bureau of Conveyances Document No. 2002-030985.

Michele Hanson and Cindi Fritz, Successor Co-Trustees of Terry's Non-Exempt Trust created under the terms of the John Martin Hanson 1978 Trust, conveyed Parcel 21 to John M. Hanson and Tina Mehan, Trustees of the John M. and Tina Mehan Revocable Living Trust under unrecorded Trust Agreement dated June 30, 1993, by Warranty Deed dated October 11, 2002, Bureau of Conveyances Document No. 2002-186421.

John M. Mehan and Tina Mehan learned that any rights granted by Grantees for the State easement required prior written consent of the Board of Land and Natural Resources. Since they are the current owners of Parcel 21, Mr. and Mrs. Mehan are now requesting the Board's consent after the fact.

Assignee 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 is recommending the easement document be amended to allow it to "run with the land", so that future conveyances of Parcel 21 and the easement rights will not require the prior written approval of the Board. Easements currently issued by the State have such a provision. All that is required is that the grantor/assignor inform his successor of the liability insurance requirement and notify the Board of the assignment in writing.

The standard consent to assignment used by the Department of the Attorney General includes a signature block for the party assigning the easement, who makes the following acknowledgment in the consent:

FURTHERMORE, Assignor hereby acknowledges that the Grantor's consent to assignment of this grant of non-exclusive easement, does not release the Assignor of any and all responsibilities, obligations, liabilities, and claims respecting or arising under or out of said grant of non-exclusive easement.

In this case, staff understands that some of the original Grantees are now deceased or their whereabouts are unknown. Accordingly, staff is including a recommendation below that the consent to assignment instrument be prepared without requiring the signatures of the Grantees or any other of the Applicant's predecessors-in-interest and without the standard assignor acknowledgment quoted above.

RECOMMENDATION:

That the Board, subject to the Applicant fulfilling all of the Applicant requirements listed above:

- A. Consent to the assignment of General Lease No. S-4414 from Rose Marie Kuntz, Donald Thomas Kuntz, Barbara Ann Kuntz, Donna Marie Kuntz, James Stephen Kuntz and Michael John Kuntz, as Assignor, via mesne assignments, to John M. Mehan and Tina Mehan, Trustees of the John M. and Tina Mehan Revocable Living Trust, as Assignee, subject to the following:
 1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time; provided, however, that the consent shall not require the signature of any predecessors-in-interest of John M. Mehan and Tina Mehan, Trustees of the John M. and Tina Mehan Revocable Living Trust, and the standard assignor acknowledgment identified above shall not be included in the consent;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.
- B. Authorize the amendment of Grant of Easement No. S-4414, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 1. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (4) 5-5-006:021, provided

however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other 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;

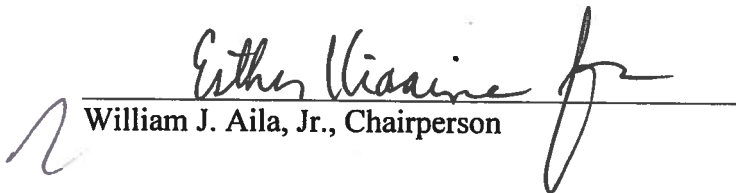
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

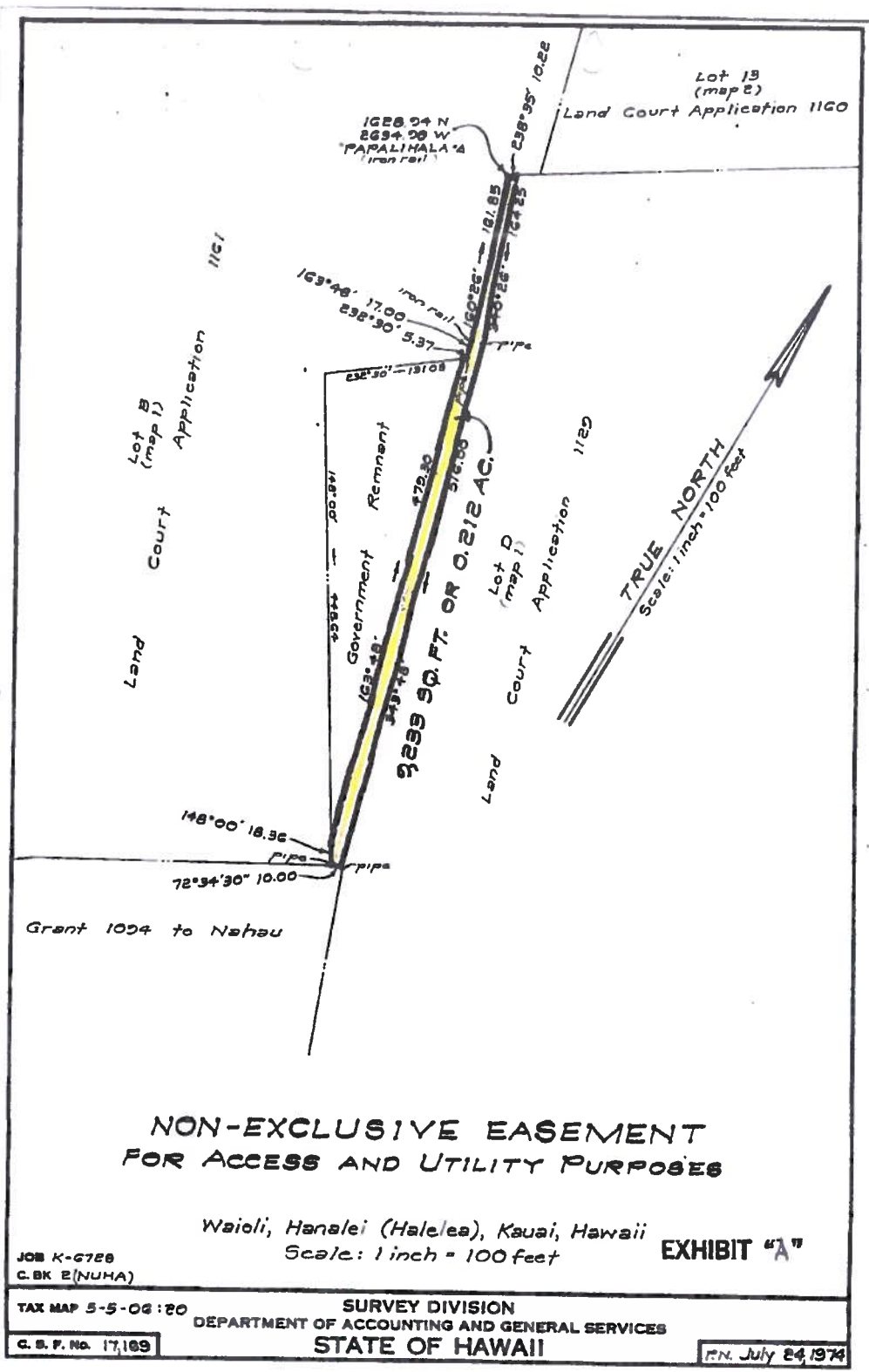


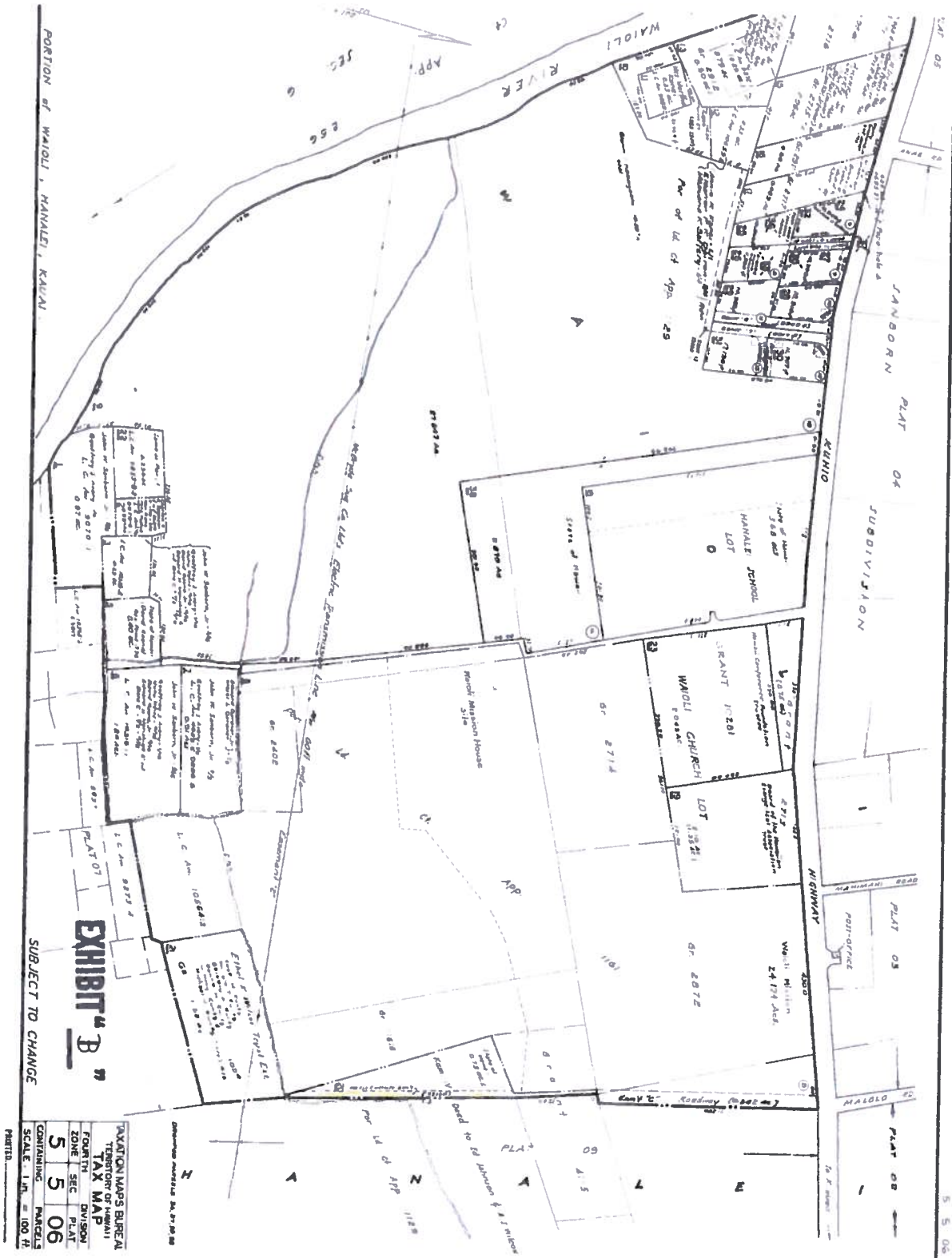
Marvin Mikasa
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson





PORTION of WAIOLI, HANAIELEI, KAUAI

SUBJECT TO CHANGE

EXHIBIT "B"

TAXATION MAPS BUREAU			
TERRITORY OF HAWAII			
TAX MAP			
FOURTH	SECTION	DIVISION	PLAT
5	5	06	06
CONTAINING PARCELS			
SCALE 1 IN = 100 FT			
PART 10			

JOHN A. BURNS
GOVERNOR OF HAWAII



DIVISIONS:
CONVEYANCES
FISH AND GAME
FORESTRY
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF LAND MANAGEMENT
P. O. BOX 621
HONOLULU, HAWAII 96809

September 14, 1973

Board of Land and
Natural Resources
Honolulu, Hawaii

Gentlemen: MICHAEL KUNTZ, ET AL, REQUEST FOR KAUAI
DIRECT AWARD OF NON-EXCLUSIVE
EASEMENT FOR ACCESS AND UTILITY
PURPOSES, HANAIEI, KAUAI

STATUTE: Chapter 171, Hawaii Revised Statutes.

FOR: Non-exclusive easement for access and utility
purposes, of a width to be prescribed by the
County of Kauai, running over, under and across
portions of Parcel 20 of Tax Map Key 5-5-06
owned by the State of Hawaii at Hanalei, Kauai.

AREA: To be determined by the Survey Division, Depart-
ment of Accounting and General Services.

RENTAL: To be determined by independent appraisal, same
subject to review and approval by the Chairman.

TERM: Sixty-five (65) years to commence as of the date
of sale.

REMARKS: Counsel for Michael Kuntz and family have advised
us of the fact that their clients recently pur-
chased Parcel 21 of Tax Map Key 5-5-06 at Hanalei
from the Ethel K. Wilcox Trust Estate.

Although there is an unimproved roadway which
provides access to the Kuntz property from Kuhio
Highway (a portion of which crosses State land),
the applicants' property can be said to be
technically landlocked inasmuch as the accessway
does not exist in the formal sense.

In order to make desired improvements to the
property, legal access and utility services are
necessary, thus, prompting this request.

RECOMMENDATION: That the Board:

- A. Find that the subject area is of minimum size
relative to the intended use and constitutes
an economic unit.

EXHIBIT "C"

ITEM F-27

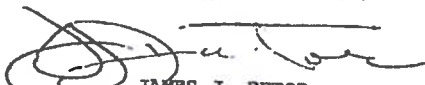
Board of Land and
Natural Resources

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September 14, 1973

- B. Authorize the direct award of a non-exclusive easement for access and utility purposes covering the area in question, subject to the above-listed terms and conditions, which are by reference incorporated herein, in addition to the following terms and conditions:
1. Standard abandonment clause.
 2. Standard relocation clause.
 3. Standard indemnity and hold-harmless clause.
 4. The applicants shall be responsible for securing all necessary permits and approvals to do work within the easement area from County, State and Federal agencies, if such approvals are necessary.
 5. Any work done within the easement area shall be at the sole cost and expense of the applicants.
 6. Other terms required by the Chairman.

Respectfully submitted,


JAMES J. DETOR
Program Administrator
SL/ah

RECOMMENDED FOR APPROVAL:


SUNAO KIDO, Chairman