

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

April 26, 2013

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

PSF No.: 10MD-119

Maui

Amend Prior Board Action of February 11, 2011, Item D-10, Grant of Term, Non-Exclusive Easement to Douglas Lee Callahan and Madeline Cochrane Callahan for Access and Utility Purposes, Hanawana, Hamakualoa, Maui, TMK (2) 2-9-001:008 por. The Purpose of the Amendment is to Change the Previously Approved Term, Non-Exclusive Easement to a Perpetual Non-Exclusive Easement.

REMARKS:

At its meeting of February 11, 2011, Item D-10, the Board of Land and Natural Resources approved the grant of a term, non-exclusive, easement Douglas Lee Callahan and Madeline Cochrane Callahan (Applicants) for access and utility purposes. A copy of the Board action is attached as Exhibit 1. Staff made a written request to Applicants dated October 23, 2012 for payment of the appraisal fee necessary to determine one-time payment for the term easement as required by the Board approval.

The recommendation to issue a term easement, as opposed to a perpetual easement, was based on the opinion of the State Abstractor which stated, via a memorandum dated July 11, 2002, that the benefitted property was konohiki lands, and not kuleana lands. Kuleana lands are granted perpetual easements at gratis, and konohiki lands are usually issued term easements with payment of consideration in favor of the State of Hawaii.

Counsel for the Applicants vehemently disagrees with the State Abstractor's opinion that his clients' parcel is not a kuleana and was considering litigating the issue. However, in order to avoid the expense, cost and uncertainty of litigation, counsel and staff have arrived at a compromise position. If the Board is willing to issue a perpetual, instead of term, easement to the Applicants, then the Applicants will agree to pay the appraisal fee and fair market value of the access easement and forego litigating the issue of the kuleana status of the benefiting parcel. Staff has no objection to changing the easement to a perpetual grant to resolve this matter. Staff notes that an adjoining private property already has a perpetual easement over the subject land.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial one-time payment;
- 2) Obtain a title report to ascertain ownership and right-of-way, over private property identified as TMK (2) 2-9-011:009, from Hana Highway to the point of entry (i.e. Easement 1) onto government lands at Applicant's own cost and subject to review and approval by the Department.

RECOMMENDATION: That the Board:

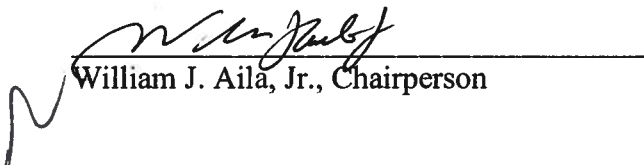
1. Subject to the Applicants fulfilling the Applicant requirements listed above, Amend its prior Board action of February 11, 2011, Item D-10, by changing the grant of term, non-exclusive, easement to grant of perpetual, non-exclusive, easement to Douglas Lee Callahan and Madeline Cochrane Callahan for access and utility purposes.
2. All other terms and conditions listed in its February 11, 2011, Item D-10 approval to remain the same.

Respectfully Submitted,



Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

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

February 11, 2011

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

PSF No.: 10MD-119

Maui

Grant of Term, Non-Exclusive Easements to Douglas Lee Callahan & Madeline Cochrane Callahan for Access & Utility Purposes, Por. of Hanawana, Hamakualoa, Makawao, Maui
Tax Map Key: (2) 2-9-011: Por. of 008.

APPLICANT:

Douglas Lee Callahan & Madeline Cochrane Callahan, Married, Tenants by Entirety.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Hanawana, Hamakualoa, Makawao, Maui, identified by Tax Map Key: (2) 2-9-011: Por. of 008, as shown on the attached map labeled Exhibit (A).

Exhibit (B)- Survey Map of easement area numbered CFS #21,171.
Exhibit (C)- GIS overview photo depicting easement area 1.

AREA:

Easement 1 – 12,892 Sq. Ft., more or less.

ZONING:

State Land Use District: Agriculture
County of Maui , CZO: Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON ⁷⁰¹⁴
February 11, 2011

EXHIBIT 1

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

CURRENT USE STATUS:

Easement 1 is encumbered by Land Office Deed No. S-28,000, Keith S. Douglas and Bonnie May Douglas, Grantee, for Access and Utility purposes.

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:

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.

Note: The subject private property is a Konohiki parcel not a Kuleana.

EASEMENT TERM:

55 - year Term Easement

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, Land Division approved by the Environmental Council and dated April 28, 1986, 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. See attached Exemption Notification form.

ENCUMBRANCES:

LOD S-28000 Keith Scott and Bonnie May Douglas
LOD S-28211 Jeffrey and Judi White
LOD S-28678 Jeffrey A. and Cynthia L. Guild
LOD S-28677 James Loomis and Cynthia L. Guild
GL-5176 Penelope Susan Lutz, Donald L. Roberts, and Arthur and Robin Jehle

REQUEST FOR COMMENT:

The following agencies were solicited for comments:

Agency	Comments
County of Maui, Planning	No response
County of Maui, Public Works	No objections
County of Maui, Department of Water	No comments or objections
Dept of Hawaiian Home Lands	No comments or objections
Office of Hawaiian Affairs	No response
Commission on Water Resource Management	No objections
DLNR Historic Preservation	No historic properties affected.
Office of Conservation & Coastal Lands	No comment or objection

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment.

REMARKS:

Douglas and Madeline Callahan are currently the owners of parcel (2) 2-9-011:017 located at Hanawana, Makawao, Maui. This parcel is currently land locked by surrounding state land identified as (2) 2-9-011:008. The Callahans are requesting an Access and Utility Easement over an existing Perpetual Non-Exclusive Easements currently identified by Land Office Deed S-28000 to Keith and Bonnie Douglas, adjacent property owners of parcel (2) 2-9-011:018. Easements one would provide access to their private property.

On June 23, 1989 under Agenda Item F-6, the Board approved the sale of a non-exclusive access and utility easement to Mr. and Mrs. Jeffrey White, which was recorded with the Bureau of Conveyances as Document Number 97-160945 on November 19, 1997. The easement served two (2) of the White's privately owned, non-contiguous parcels identified as tax map keys (2) 2-9-011:017 and 018. Both parcels were later sold separately to unrelated parties, parcel 018 to Keith and Bonnie Douglas and parcel 017 to Duncan and Crystal McDonald.

In 2004, when the Whites sold the subject parcel identified by (2) 2-9-011:017 to the McDonalds they failed to obtain the consent of the Board of Land & Natural Resources to

assign the Grant of Easement in favor of the subject parcel to the McDonalds. In 2006, when the McDonalds then sold the property to the Callahans, they likewise failed to obtain permission to assign the easement to the Callahans.

The Callahans are now requesting an access and utility easement over easement #1, which would allow for vehicular access to their private property.

The subject parcel is remotely located about three quarters of a mile below Hana Highway. Inaccessible by State and County roads, this easement provides the only means of access to the parcel. The easement consists of 12,892 square feet as identified on C.S.F. map number 21,171 attached as Exhibit (B). The easement crosses over portions of Government lands of Hanawana, situate at Hanawana West, Makawao, Maui, identified as portion of tax map key (2) 2-9-011:008 attached as Exhibit (A).

Memorandum dated July 11, 2002, from State Abstractor Mahoe Collins, attached as Exhibit (D), it was determined that parcel (2) 2-9-011:017 is a Konohiki parcel and not Kuleana. Therefore, this property is not entitled to the same type of access rights as that of a Kuleana parcel and therefore consideration shall be paid to the State of Hawaii.

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.

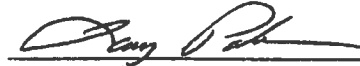
RECOMMENDATION: That the Board:

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: (2) 2-9-011:017, 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 term non-exclusive easement to Douglas and Madeline Callahan covering the subject area for access and utility 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 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: (2) 2-9-011:017, 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 Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;

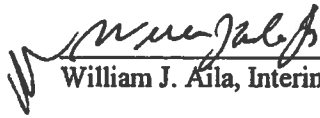
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

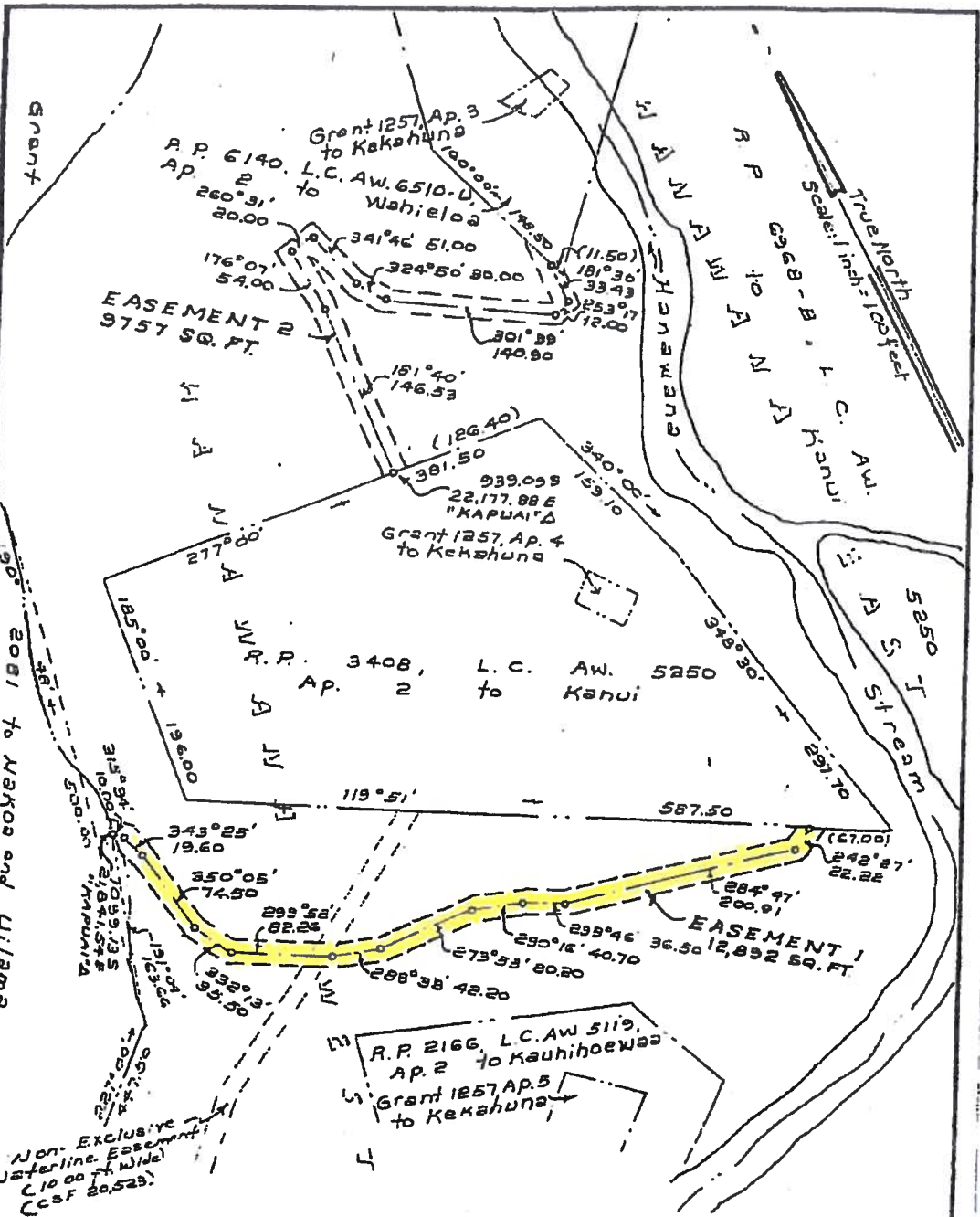


Larry Pacheco
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Interim Chairperson

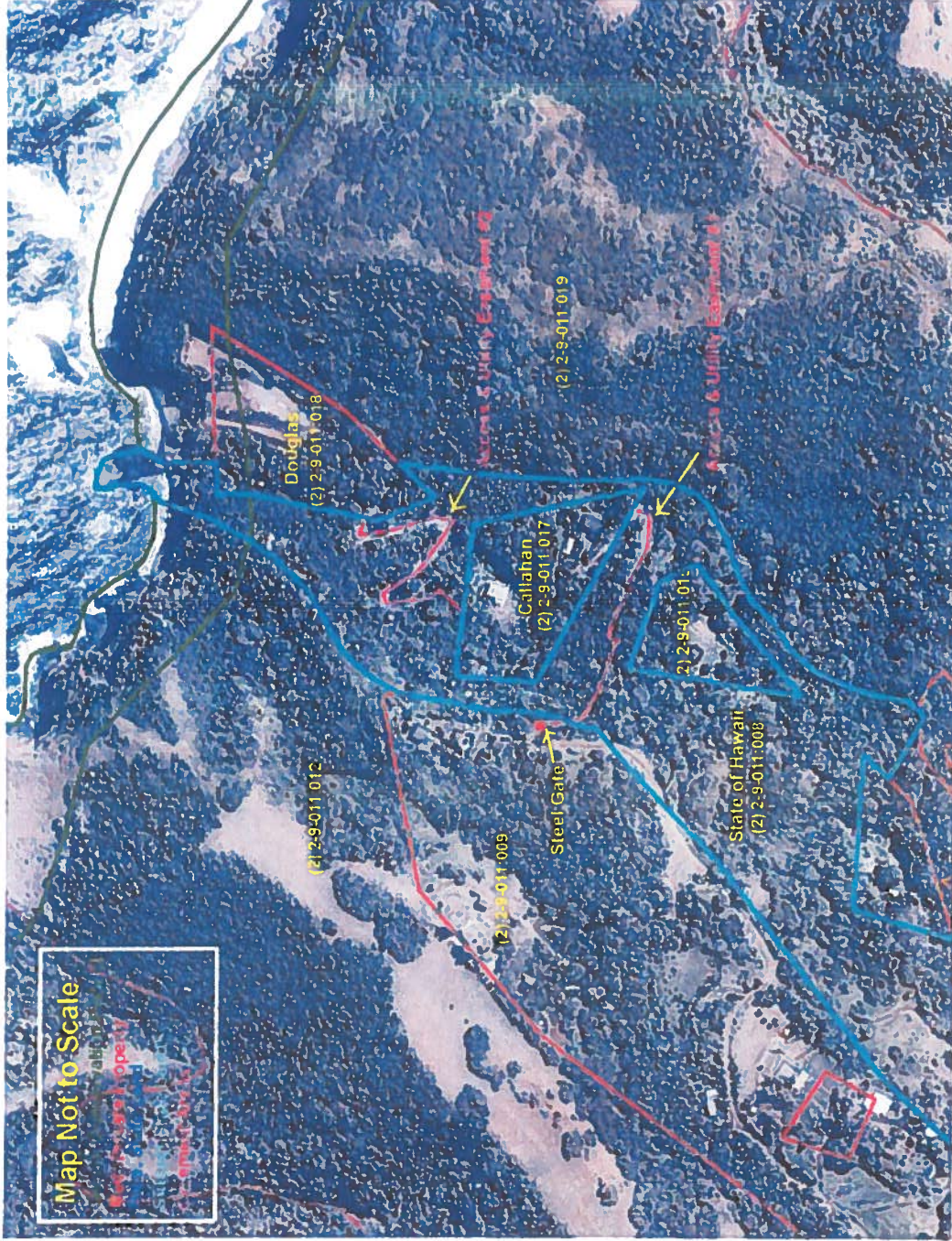


**PERPETUAL NON-EXCLUSIVE
 ACCESS AND UTILITY EASEMENTS
 EASEMENTS 1 AND 2**

Over Under and Across the Government Land of Hanalei
 Hanalei West, Makawao, Maui, Hawaii
 Scale: 1 inch = 100 feet

JOB 112-330(89)
 C. BK. 13, Pg. 40-3 Hanalei

Exhibit B



BENJAMIN J. GAYETANO
GOVERNOR



RECEIVED
DIVISION OF
LAND MANAGEMENT

2002 JUL 12 AM 9:46

GILBERT S. COLOMA-AGARAN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

ERIC T. HIRANO
DEPUTY DIRECTOR

LINNEL T. NISHIOKA
DEPUTY DIRECTOR FOR
THE COMMISSION ON WATER
RESOURCE MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. Box 621
HONOLULU, HAWAII 96809

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

July 11, 2002

9943(M)

MEMORANDUM

TO: Jason Koga, Maui Land Agent

THROUGH: ¹⁰² Dierdre S. Mamiya, Administrator

FROM: E. Mahoe Collins, Abstractor

subject: Determining the Kuleana Status of TMK parcels (2) 2-9-11: 6, 7, 15, 17 and 18 situate at Hanawana, District of Hamakualoa, Island and County of Maui, State of Hawaii.

We have been asked to determine the "kuleana status" of the following sources of titles to the subject tax key parcels, situate in the Ahupuaa of Hanawana, District of Hamakualoa, Island and County of Maui, State of Hawaii.

- Land Commission Award 6510-C: 2 and 3 to Kalama (2) 2-9-11: 6 & 7
- Land Commission Award 6510-U: 2 to Wahieloa (2) 2-9-11: 18
- Land Commission Award 5119: 2 to Kauhioewaa (2) 2-9-11: 15
- Land Commission Award 5250:2 to Kanui (2) 2-9-11: 17

The names of the awardees Kalama and Kanui appear on the list of Konohiki who participated in the 1848 Land Division with the king. The names of Wahieloa and Kauhioewaa are not on the said list.

As enumerated in the Mahele Book, ONLY Kanui received lands from the king in Hanawana. The lands of Kanui adjudicated under L. C. Award 5250 are konohiki lands.

The lands awarded under Land Commission Award Nos. 6510-C: 2 and 3, 6510-U: 2 and 3: 2 are kuleana lands.

EXHIBIT "D"

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 18, 2011

EXEMPTION NOTIFICATION

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

Project Title: Grant of Perpetual Non-Exclusive Easements to Douglas Lee Callahan and Madeline Cochrane Callahan for Access and Utility Purposes.

Project / Reference No.: PSF#10MD-119

Project Location: Hanehoi, Hoalua, Hanawana, Puuomaile, Hamakualoa, Makawao, Maui, Tax Map Key: (2) 2-9-011: Portion of 008.

Project Description: Grant of Perpetual Non-Exclusive Easement for Access and Utility Purposes.

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

Exemption Class No. and Description: Exemption Class Number 1
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, 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."

Recommendation: 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.

William J. Aila Jr.

Interim Chairperson

4/17/13
Date

EXHIBIT "E"