

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

October 25, 2013

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

PSF No.: 12OD-123

OAHU

Grant of Term, Non-Exclusive Easement to Mary Helen Lehmann, Robert Albert Pelletier, Kathleen Ann Mulliken, Annabelle Robin Mulliken, and Mary Helen Lehmann, Trustee of the Pelletier Property Revocable Trust dated March 2, 2012 for Driveway, Water Tank, Propane Gas Tank, Fencing, and Rock Walls Purposes, Tantalus, Honolulu, Oahu, Tax Map Key: (1) 2-5-019:portion of 009.

APPLICANT:

Mary Helen Lehmann, Robert Albert Pelletier, Kathleen Ann Mulliken, Annabelle Robin Mulliken, and Mary Helen Lehmann, Trustee of the Pelletier Property Revocable Trust dated March 2, 2012, as tenants in common.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Tantalus, Honolulu, Oahu, identified by Tax Map Key: (1) 2-5-019:portion of 009, as shown on the attached map labeled **Exhibit A**.

AREA:

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

ZONING:

State Land Use District: Conservation
City & County of Honolulu LUO: P-1

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:

Portion of Honolulu Watershed Forest Reserve.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove driveway, water tank, propane gas tank, fencing, and rock walls over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

CONSIDERATION:

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

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 attached as **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) Pay for an appraisal to determine one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
- 3) Process and obtain designation of easement from the Department of Planning and Permitting at Applicant's own cost.

REMARKS:

The applicants are the owners of the adjacent private property identified as tax map key (1) 2-5-016:023. During a recent field survey relating to listing of the property for sale, portions of the improvements, namely, water tank, driveway, propane gas tank, fencing and rock walls were found encroaching on the adjacent State lands. Latest perimeter survey map attached as **Exhibit C**. The applicants intend to resolve the encroachment to facilitate the sale of the property eventually.

The applicants indicate that the subject encroachments were already there in 1958 when their parents purchased the property who simply conducted the normal repairs to the encroachments over the years. The applicants' father replaced the water tank on the encroachment, believing that the location was part of his lot. That water tank was again replaced under the same circumstances.

State and County agencies were requested to comment on the proposed easement. Department of Planning and Permitting has no objection to the request but requires the designation of the easement. Office of Conservation and Coastal Lands has no objection but requests the insertion of a condition in the easement document requiring the compliance with Conservation District rules and regulations under Hawaii Administrative Rules §13-5.

Board of Water Supply, Department of Facility Maintenance, and Department of Health have no objection to the request. Office of Hawaiian Affairs and Commission on Water Resource Management have not responded to the solicitation for comment regarding the subject request.

Division of Forestry and Wildlife (DOFAW) met with the attorney representing the applicants and agreed that the requested easement area would only cover the "Encroachment Area" as noted on Exhibit C. In addition, DOFAW agreed other improvements shown on Exhibit C shall be considered abandoned at their present locations, i.e. within the forest reserve.¹ For the Board's information, a letter from the attorney addressed to DOFAW noting the above agreements is attached as **Exhibit D**.

¹ Portions of fence and hollow tile wall shown on Exhibit C are over Forest Ridge Way, which is considered a county road pursuant to Chapter 264, HRS.

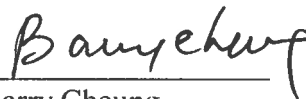
Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

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 request to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 2-5-016:023, 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 Applicants fulfilling all of the Applicant requirements listed above, authorize the issuance of a term non-exclusive easement to Mary Helen Lehmann, Robert Albert Pelletier, Kathleen Ann Mulliken, Annabelle Robin Mulliken, and Pelletier Property Trust, covering the subject area for driveway, water tank, propane gas tank, fencing and rock walls 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: (1) 2-5-016:023, 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;
 - C. Compliance with Conservation District rules and regulations under Hawaii Administrative Rules §13-5;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson

to best serve the interests of the State.

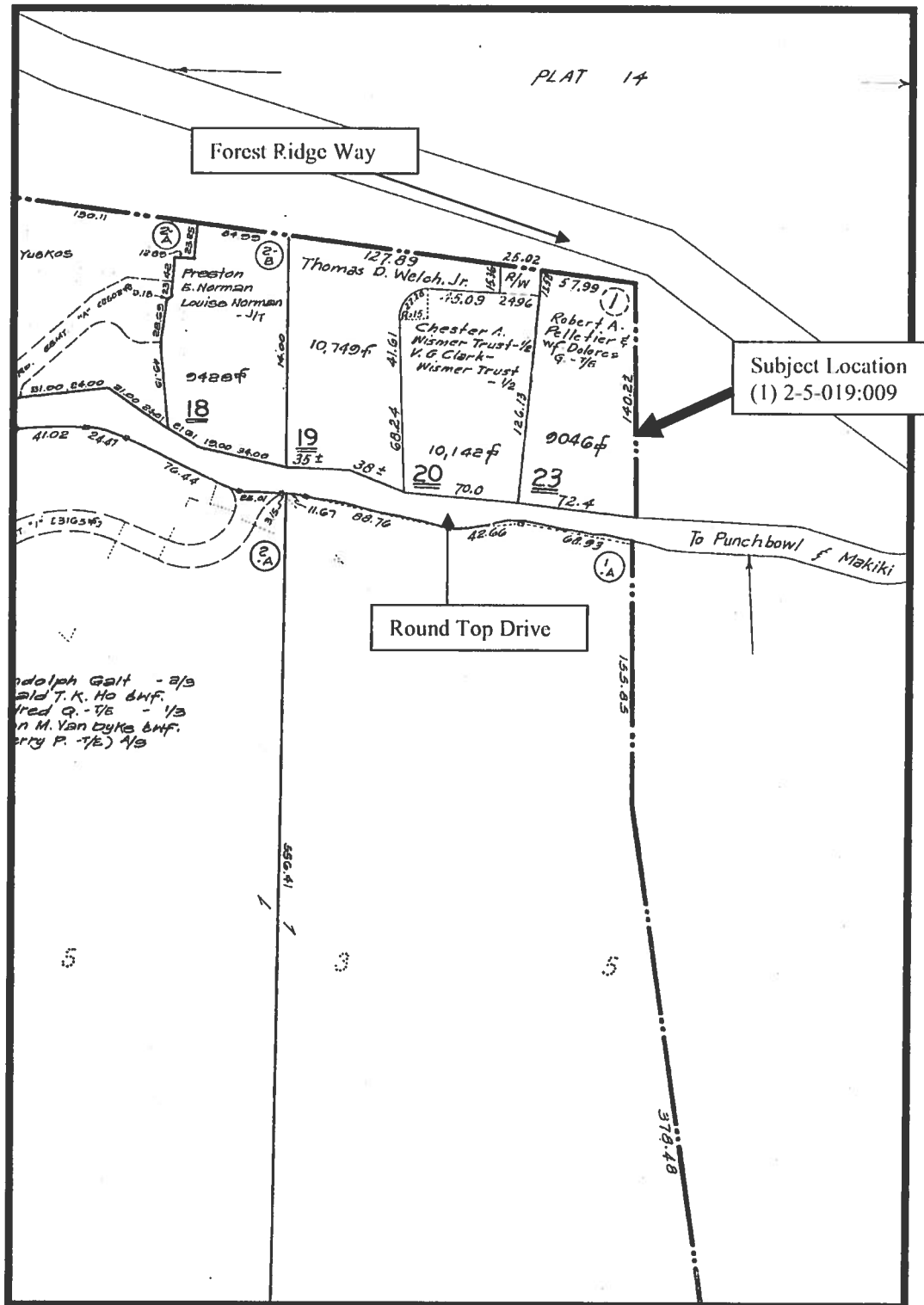
Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson



TMK (1) 2-5-019:portion of 009

EXHIBIT A

EXEMPTION NOTIFICATION


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

Project Title: Term Easement for Encroachments
Project / Reference No.: PSF 12OD-123
Project Location: Tantalus, Honolulu, Oahu, TMK (1) 2-5-019:portion of 009.
Project Description: To resolve the encroachment consisting of driveway, water tank, propane gas tank, fencing, and rock walls.
Chap. 343 Trigger(s): Use of State Land
Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1)(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."


According to the applicants, who are the owners of the adjacent private property identified as tax map key (1) 2-5-016:023, the subject encroachments were already there in 1958 when their parents purchased the property. The applicants do not intend to alter any current use on the subject State lands. Therefore, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing. In addition, there will be no major alteration in the conditions of land, water or vegetation.

Consulted Parties: Agencies as noted on the submittal

Recommendation: It is recommended that the Board find that 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


10/7/13

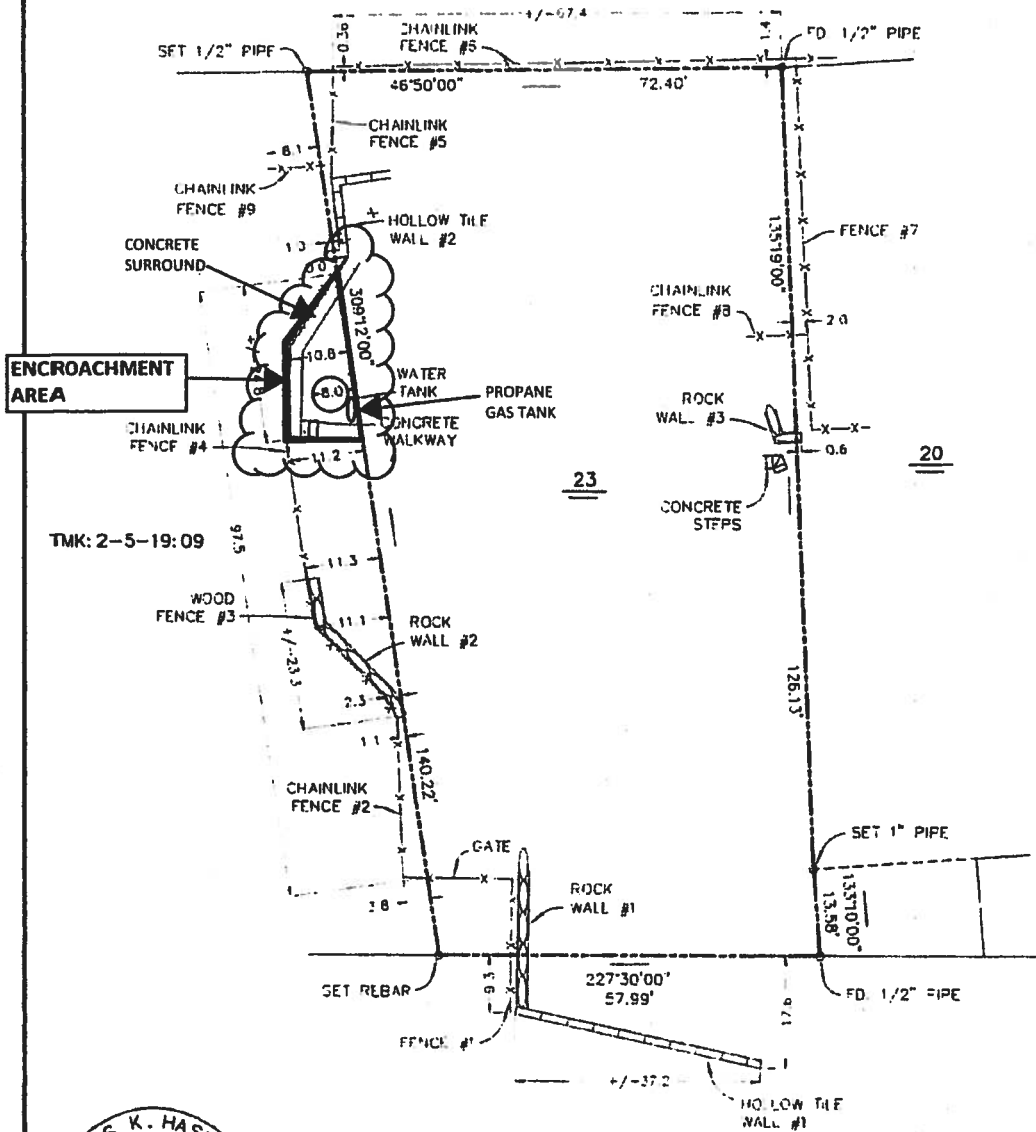
Date

EXHIBIT B

DJNS SURVEYING & MAPPING, INC.
 P.O. BOX 25836
 Honolulu, Hawaii 98825
 Phone: (808) 395-5476, Fax: (808) 395-5477
 e-mail: djns@hawaii.rr.com



PANTALUS DRIVE



TMK: 2-5-19:09

FOREST RIDGE WAY



THIS WORK WAS PREPARED BY
 ME OR UNDER MY SUPERVISION.

Dennis K. Hashimoto
 DENNIS K. HASHIMOTO

| | | |
|-------------------------|--------------------|-----------------|
| PERIMETER SURVEY SKETCH | | |
| TAX MAP KEY: 2-5-16:23 | | |
| SCALE: NOT TO SCALE | DATE: MAY 19, 2011 | PLANNED BY: NMH |
| HONOLULU, OAHU, HAWAII | | NO. 11219 |
| FIELD BOOK - 583.37 | | |

EXHIBIT 1

EXHIBIT "C"

CARLSMITH BALL LLP

A LIMITED LIABILITY LAW PARTNERSHIP

121 WAIANUENUE AVENUE
P.O. BOX 686

HILO, HAWAII 96721-0686

TELEPHONE 808.935.6644 FAX 808.935.7975

WWW.CARLSMITH.COM

SLIM@CARLSMITH.COM

September 24, 2013

RECEIVED
LAND DIVISION
2013 SEP 24 AM 10:59
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

David G. Smith
State of Hawaii
Department of Land and Natural Resources
Division of Forestry and Wildlife
Oahu Branch Manager

Honolulu, Hawaii 96822

Re: Applicant: Mary Helen Lehmann; TMK: (1) 2-5-016:023 ("Lehmann Property")
Request: Grant of Term, Non-Exclusive Easement for encroachment
Reference No.: 120D-423
Location: Tantalus, Honolulu, Oahu
TMK: (1) 2-5-019:009 portion ("State Property")

Dear Mr. Smith:

Thank you for meeting with me and my client Mary Lehmann and her son, Sam on July 3, 2013 to conduct a site visit of the Lehmann Property at TMK: (1) 2-5-016: 023 ("Lehmann Property"), view the encroachments¹ into the State Property and confirm the Department of Forestry and Wildlife's ("DOFAW") support of Ms. Lehman's request for a Grant of Term, Non-Exclusive Easement, subject to the following conditions.

This letter confirms DOFAW's amended position² and DOFAW's agreement as further discussed with DLNR's Barry Cheung as follows:

1. During the term of the subject 55-year Grant of Term, Non-Exclusive Easement, DOFAW shall allow the metal catchment water tank, propane gas tank and surrounding concrete wall (collectively the "encroachment"), to remain "as is" on the State Property as depicted on the attached survey map (Exhibit 1), provided however, that in the event the existing single-family residential dwelling on the Lehmann Property is entirely destroyed and rebuilt, the encroachment shall be removed and/or relocated entirely onto the Lehmann Property at which time, the subject 55-year Grant of Term, Non-Exclusive Easement shall automatically terminate.

¹ Metal catchment water tank, propane gas tank, macadam/concrete driveway and low retaining rock walls.

² As revised from DOFAW's memorandum dated August 27, 2012 to Barry Cheung, District Land Agent, DLNR.

David Smith
September 24, 2013
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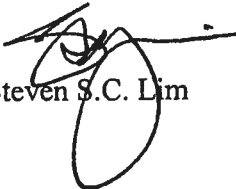
2. That the existing macadam/concrete driveway, low retaining rock and tile wall located outside of the encroachment and on the State Property at TMK: (1) 2-5-019:009 (portion) have been abandoned and shall remain in place ("abandoned elements"), as the Lehmann Property owners have quitclaimed any and all right, title and interest to the abandoned elements.

3. DOFAW and the Lehmann Property owners agree that ownership of the abandoned elements and/or any improvements outside of the Lehmann Property and on the State Property, except for the encroachment, are the sole property of the State of Hawaii, Department of Land and Natural Resources, DOFAW.

This will further confirm that, subject to the above conditions, DOFAW will submit an amended agency comment memorandum to DLNR outlining its support of Ms. Lehmann's request for a 55-year term on a grant of non-exclusive easement for the encroachment area described in Exhibit 1 attached hereto, with a one-time payment to be determined by independent or staff appraisal establishing the fair market rent, subject to the Chairperson's approval.

Please contact me should you have any questions on this matter. Thank you for your consideration.

Very truly yours,



Steven S.C. Lim

SSL:KYL
Enclosure
xc w/enclosure: Client
Barry Cheung, DLNR