

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

February 28, 2014

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

PSF No.: 13HD-199

HAWAII

Grant of Perpetual, Non-Exclusive Easement to Henry Joseph Silva Jr. and Frances Kamalapua Kama-Silva, for Access and Utility Purposes, Kaohe 2nd, Hamakua, Hawaii, Tax Map Key: (3) 4-3-010: portion of 002.

APPLICANT:

Henry Joseph Silva Jr. and Frances Kamalapua Kama-Silva, husband and wife, Tenants by the Entirety.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Kaohe 2nd, Hamakua, Hawaii, identified by Tax Map Key: (3) 4-3-010: portion of 002, as shown on the attached map labeled Exhibit A.

AREA:

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

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Encumbered by General Lease No. S-4478, Boteilho Hawaii Enterprises, Lessee, for pasture purposes. Lease to expire on February 28, 2031.

CHARACTER OF USE:

For access and utility:
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.

ANNUAL RENT:

Not applicable.

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exemption Notification attached below 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;
- 3) Obtain a title report to ascertain ownership, where necessary, at Applicant's own

cost and subject to review and approval by the Department.

REMARKS:

The subject parcel is currently encumbered under General Lease No. S-4478, a 55-year lease to Boteilho Hawaii Enterprises, for pasture purposes. The subject lease is scheduled to expire on February 28, 2031.

By letter dated, October 3, 2011, Mrs. Frances Kama-Silva contacted the Hawaii District Land Office to inquire about steps required to realign an existing road right-of-way leading to their private property, identified as Tax Map Key: (3) 4-3-010:005. Mrs. Kama-Silva explained that although a right-of-way was established to service their private property, the alignment as surveyed is not now feasible/usable in its current condition. It is suspected that over the years, out of necessity, the right-of-way was realigned outside of the survey descriptions on record, to avoid the unfavorable land conditions. Due to the irregular contour of the land and vegetation, the right-of-way traversed was adopted at its current location. The right-of-way as surveyed, finds large Eucalyptus Trees growing in the middle of, or within the right-of-way, and in certain sections, the grounds of the right-of-way have sunken to an unsafe level/condition. The alignment being proposed shall be over an existing ranch service roadway that has been in use since the early 1950's for cattle ranch operations.

Mr. Henry Joseph Silva Jr. and Frances Kamalapua Kama-Silva have 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.

Various governmental agencies and interest groups were solicited for comments. To date, all respondents indicated that they had no objections to the granting of the easement.

AGENCIES	COMMENTS
County of Hawaii:	
Planning Department	No comments
Public Works	No response
State of Hawaii:	
DLNR - DOFAW	No response
DLNR-Na Ala Hele	No objections
DLNR - Historic Preservation	No objections
DLNR - OCCL	No response
Other Agencies/ Interest Groups:	
Office of Hawaiian Affairs	No response
Boteilho Hawaii Enterprises, Inc.	No objections

Mr. Edward Boteilho of Boteilho Hawaii Enterprises, Lessee, General Lease No. S-4478, has been contacted and concurs to the realignment and use of existing ranch service roads. Mr. Boteilho confirms that the access being requested is over existing ranch roadway that has been in existence from when he acquired the lease in 1975.

Staff believes that the recommended action qualifies for an exemption from the preparation of an environmental assessment as the proposed easement alignment will be over existing ranch service roadways that have been in use since the 1950's. It is anticipated to result in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. The proposed use would have negligible of no expansion or change in use of the subject area beyond that previously existing.

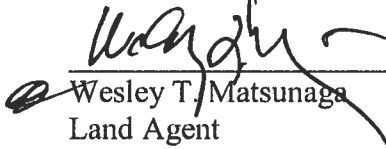
RECOMMENDATION: That the Board:

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: (3) 4-3-010:005, 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 Henry Joseph Silva Jr. and Frances Kamalapua Kama-Silva, 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 perpetual access and utility 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: (3) 4-3-010:005, 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 interests of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

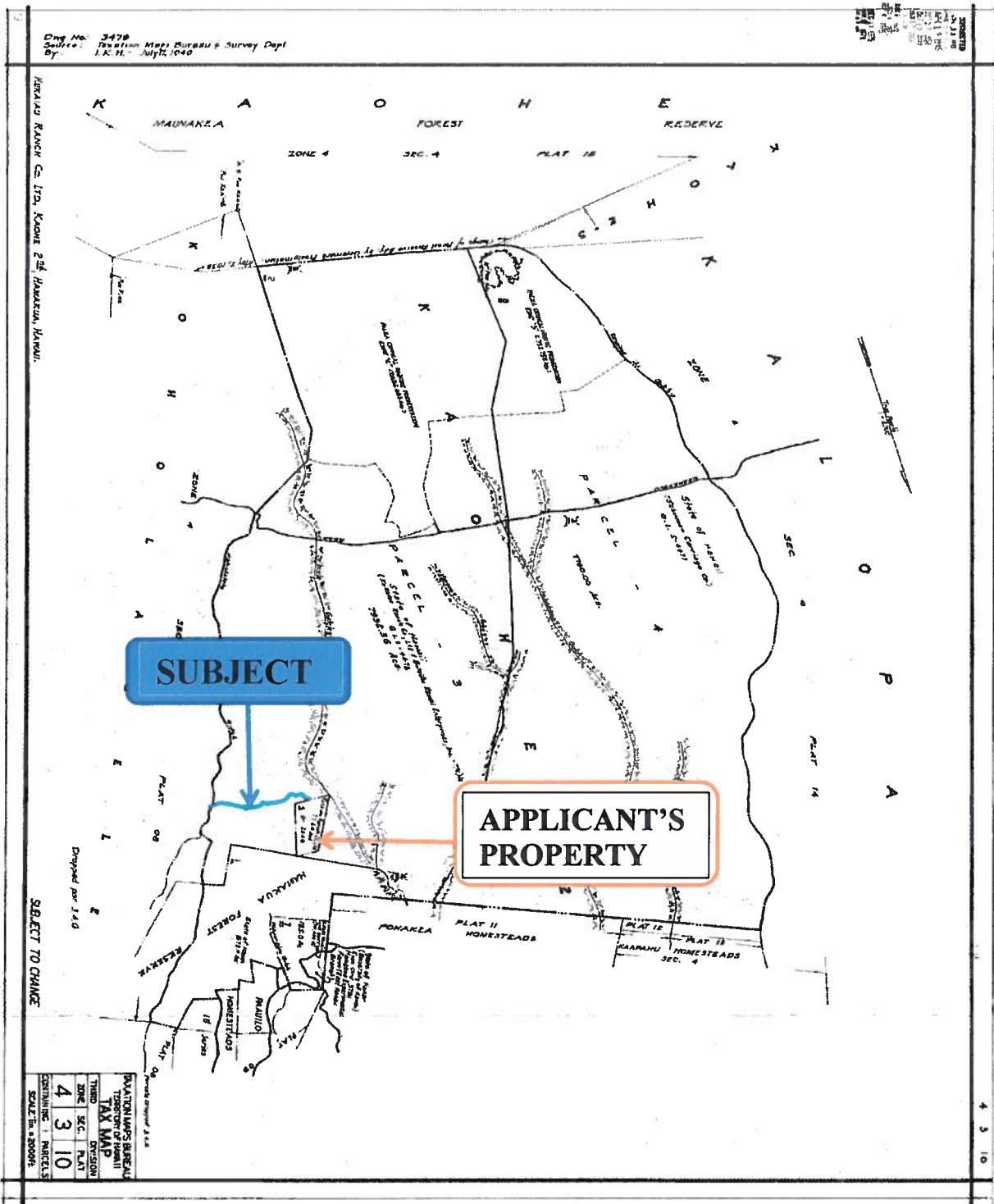


EXHIBIT A

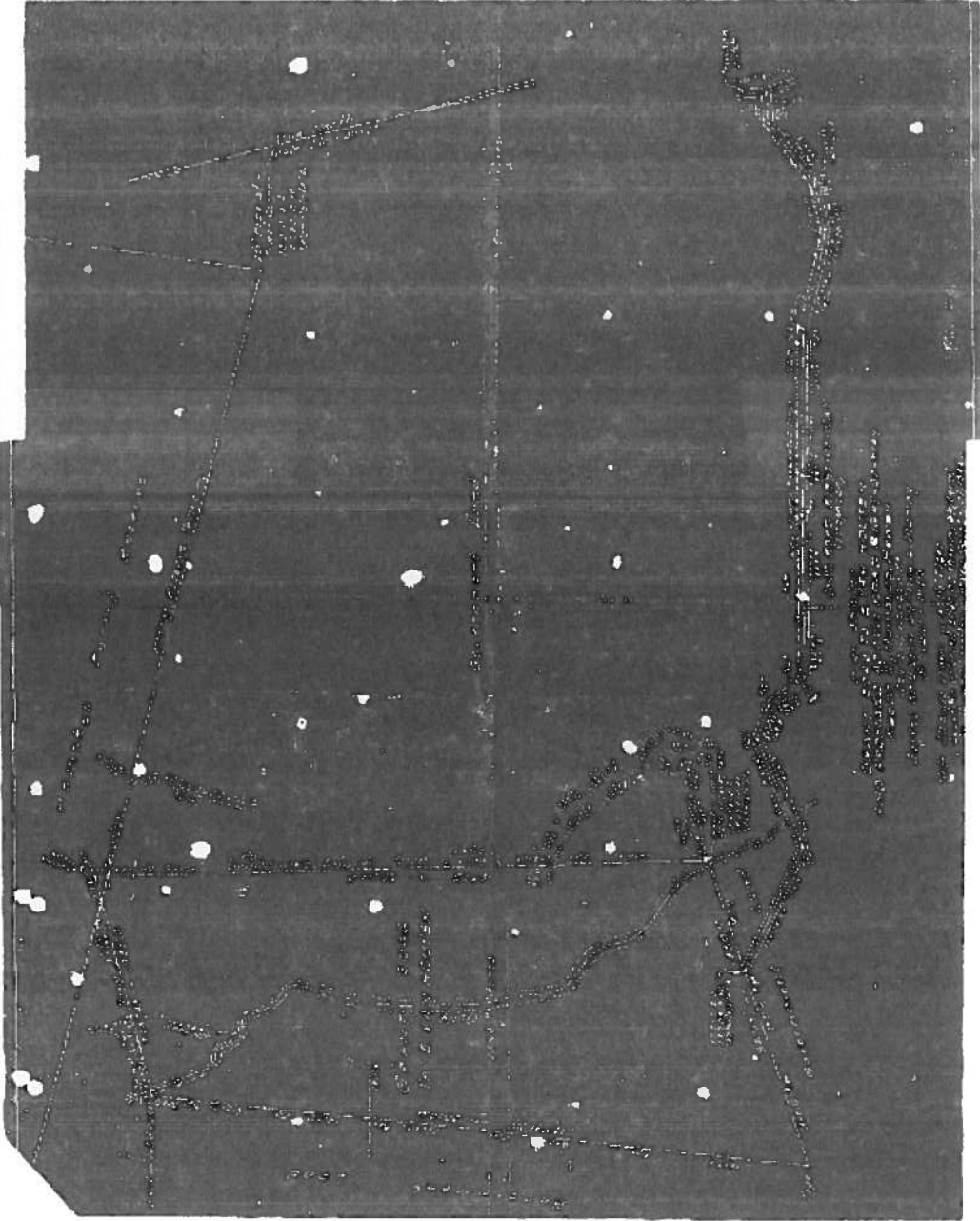


EXHIBIT A

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

75 Aupuni Street, Room 204
Hilo, Hawaii 96720
PHONE: (808) 961-9590
FAX: (808) 961-9599

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 Easement to Henry Joseph Silva Jr. and Frances Kamalapua Kama-Silva, for Access and Utility Purposes, Kaohe 2nd, Hamakua, Hawaii, Tax Map Key: (3) 4-3-010: portion of 002.

Project / Reference No.: PSF No.: 13HD-199

Project Location: Kaohe 2nd, Hamakua, Hawaii, Tax Map Key: (3) 4-3-010: portion of 002.

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

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

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." and
Exemption Class No. 4, which states, "Minor alterations in the conditions of land, water or vegetation."

Exemption Item Description Operations, repairs or maintenance of existing structures,

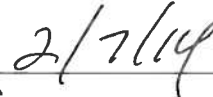
from Agency Exemption List: facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing.

Consulted Parties: Edward Boteilho of Boteilho Hawaii Enterprises, Inc., Lessee.

Recommendation: It is anticipated that this request 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

EXHIBIT B