

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

June 27, 2014

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

PSF No.: 14OD-091

OAHU

Grant of Term, Non-Exclusive Easement to Makai Ranch, LLC for Encroachment  
Structure Purposes; Assess Administrative Cost of \$500, Kahuku, Koolauloa, Oahu,  
Tax Map Key: (1) 5-6-003: Seaward of 010

APPLICANT:

Makai Ranch, LLC

LEGAL REFERENCE:

Section 171-6, 13, 17, and 53(c) Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Kahuku, Koolauloa, Oahu, identified by Tax  
Map Key: (1) 4-3-003: seaward of 065, as shown on the attached map labeled **Exhibit A**.

AREA:

To be determined.

ZONING:

State Land Use District:                      Conservation

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:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing encroachment structure over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

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

EASEMENT TERM:

Fifty-five (55) years.

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 declaration attached as **Exhibit B**)

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>  </u>

APPLICANT REQUIREMENTS: Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 2) Pay for an appraisal to determine one-time payment; and
- 3) Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

REMARKS:

Applicant, who is the owner of the abutting property identified as tax map key (1) 5-6-

003:010 (“Parcel 10”), has been in the process of obtaining a shoreline certification. Parcel 65 is described as Lot 160-B of Land Court Application 1095, Map 66 dated August 25, 1970. The original seaward boundary of Lot 160-B was sited along “highwater mark at seashore” as shown on the Land Court map. During a recent survey process, remains of a former drainage structure was found to be makai of the shoreline.

The Office of Conservation and Coastal Lands (“OCCL”) determines that the structure was in place prior to the adoption of Conservation District rules on October 1, 1964, and is therefore non-conforming. A copy of OCCL’s letter is attached as **Exhibit C**. Nevertheless, the applicant needs to resolve the encroachment issue.

Department of Facility Maintenance, Board of Water Supply, and Division of Aquatic Resources have no comments/objections to the request. State Historic Preservation Division, Commission on Water Resource Management, Department of Planning and Permitting, and Office of Hawaiian Affairs have not responded to the solicitation for comments before the deadline.

Department of Health, Clean Water Branch provides rules and other permits requirements. However, staff notes that the subject encroachment is the remains of a former drainage structure. In the event the structure is activated to serve as a drainage structure, the grantee will have to comply with the all applicable laws and rules, which will be required as part of the standard conditions of the easement. Therefore, staff does not believe any additional conditions are required at this moment.

Pursuant to the Board’s action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, a fine of \$500 is to be imposed if the encroachment is over 100 square feet. Nevertheless, staff does not recommend any fine for the subject encroachment based on the fact that it was once within the recorded boundary of the private property.

Upon approval of today’s request, Applicant will be reminded of the requirement for concurrent resolution from both houses of the legislature, while staff will pursue the Governor’s concurrence pursuant to Section 171-53(c), HRS prior to the issuance of the requested easement.

**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. Assess a non-refundable administrative cost of \$500, under Section 171-6, HRS.
3. 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: (1) 5-6-003:010, 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.

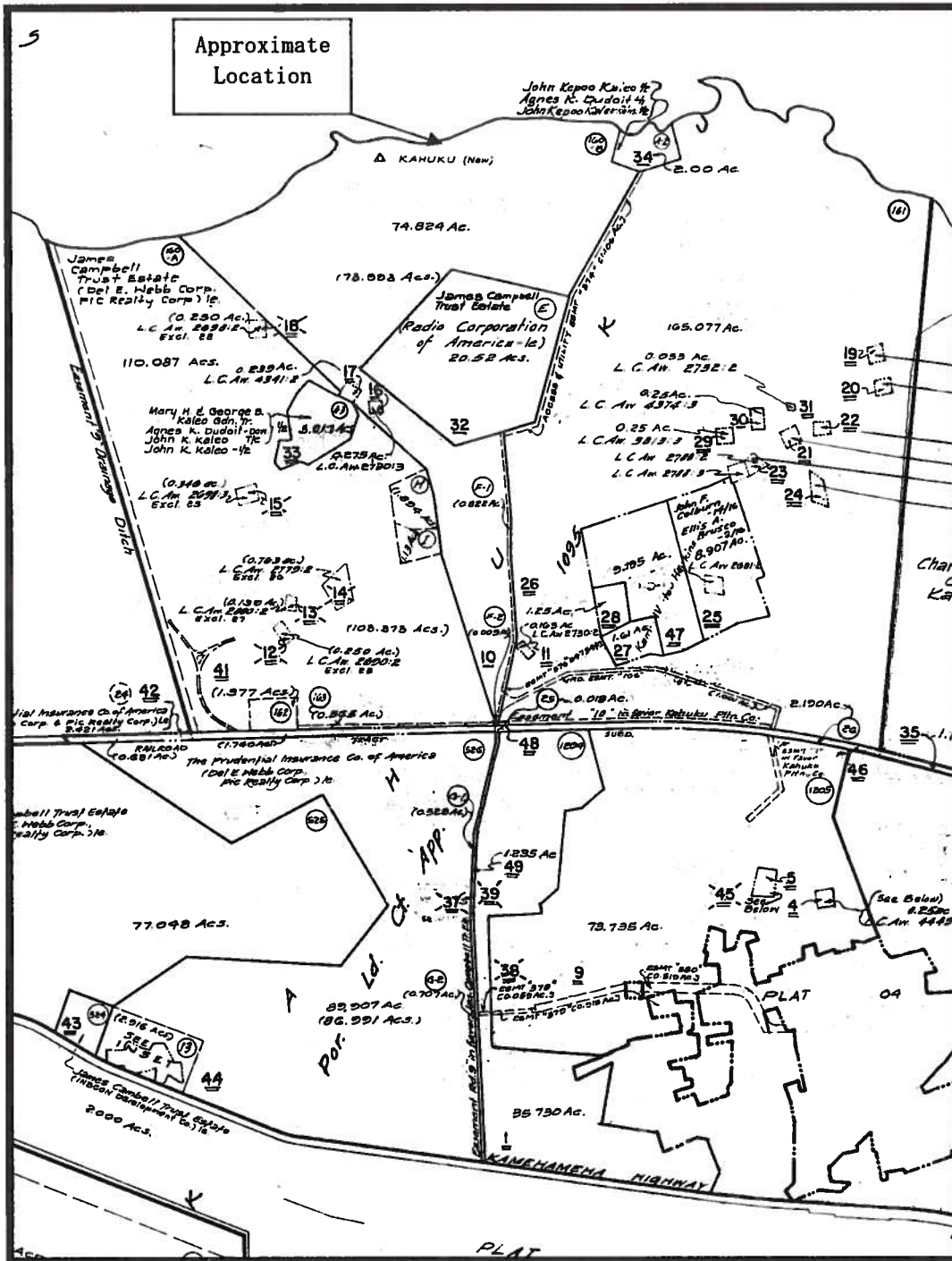
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Makai Ranch, LLC covering the subject area for encroachment structure purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current term shoreline encroachment 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) 5-6-003:010, 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. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
  - D. Review and approval by the Department of the Attorney General;
  - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
  - F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,

  
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
William J. Aila, Jr., Chairperson



**TMK (1) 5-6-003:seaward of 010**

**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 Encroachment Structure Purposes

Project / Reference No.: PSF 14OD-091

Project Location: Kahuku, Koolauloa, Oahu, Tax Map Key: (1) 5-6-03:seaward of 10.

Project Description: Easement to legalize the encroachment on State lands.

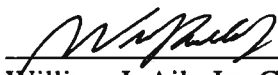
Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (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."

The existing drainage structure, which was in place prior to 1964, is makai of the shoreline falling within the conservation district. Applicant is not planning on conducting major change to the existing topographical and/or vegetation condition of the drainage structure. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties As noted in the submittal.

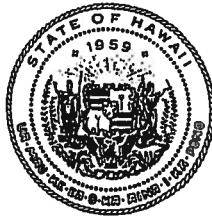
Recommendation: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

  
\_\_\_\_\_  
William J. Aila Jr., Chairperson  
Date 6/16/14

**EXHIBIT B**



NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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

NOV - 1 2013

REF:DLNR:AB

File Number Encroachment: OA-14-26

Thomas T. Reynolds  
Executive Vice President  
Makai Ranch, LLC  
56-1095 Kamehameha Highway  
Kahuku, HI 96731

RECEIVED  
LAND DIVISION  
2013 NOV - 1 AM 9:28  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Dear Mr. Reynolds,

SUBJECT: Response to Application for Determination of Non-conforming Status of Shoreline Structures at 56-1095 Kamehameha Highway Kahuku, HI 96731. Tax Map Key (1) 5-6-003:010. Owner Makai Ranch, LLC

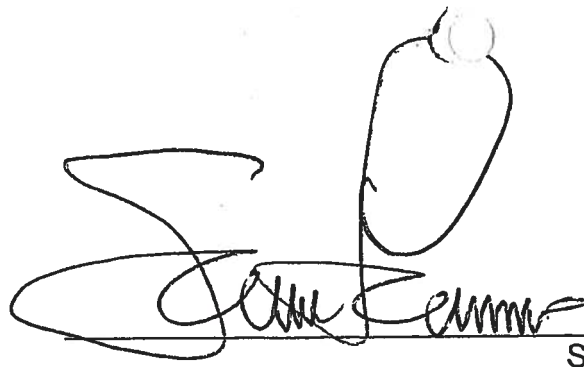
This is in response to your August 2013 request to resolve the shoreline encroachment (CRM drainage structure) at Tax Map Key (1) 5-6-003:010, 56-1095 Kamehameha Highway Kahuku, HI 96731.

OCCL staff has reviewed the documentation you submitted, including aerial photos, ground photos, and the Archaeological Inventory Survey. Based on the information you provided, we have determined that the structure was in place prior to the adoption of the Conservation District rules on October 1, 1964 and is therefore non-conforming. Furthermore, the Archaeological Inventory Survey establishes the historical significance of the structure.

Although the structure has been determined to be both non-conforming and historically significant, the State may still consider it an encroachment pursuant to Hawaii Revised Statutes §13-222-19. We recommend that you contact DLNR Oahu Land Agent Barry Cheung at the DLNR Land Division Office to determine if any additional action is needed to resolve the potential encroachment. Mr. Cheung can be reached at 808-587-0433 or [Barry.W.Cheung@hawaii.gov](mailto:Barry.W.Cheung@hawaii.gov).

EXHIBIT C

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel J. Lemmo". The signature is written in a cursive style with a large, looping initial "S".

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Samuel J. Lemmo,  
ADMINISTRATOR  
Office of Conservation and Coastal Lands

cc: DLNR Land Division  
DAGS Land Survey Division