

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

August 22, 2014

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

PSF No.: 13OD-203

OAHU

Issuance of Perpetual, Non-Exclusive Easements and an Immediate Management Right of Entry Permit for Utility Purposes to Hawaiian Electric Company, Inc.; Rescind Prior Board Action of June 2, 1967, F-11, Kalihi, Honolulu, Oahu; Tax Map Key: (1) 1-3-022:portions of 002 and 004, (1) 1-4-018:portion of 008; (1) 4-5-042:portion of 002

APPLICANT:

Hawaiian Electric Company, Inc. ("HECO")

LEGAL REFERENCE:

Section 171-6, 17, 55, and 95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kalihi, Honolulu, Oahu; Tax Map Key: (1) 1-3-022:002 004 portions, as shown on the maps attached as **Exhibit A-1 to A-4**.

AREA:

Easement 1: 7.202 acres,
Easement 2: 0.421 acres,
Total: 7.623 acres, more or less.

ZONING:

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

TRUST LAND STATUS:

Section 5 (b) lands of the Hawaiian Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Encumbered by Governor's Executive Order No. 673 to the Board of Water Supply for Kalihi Underground Water Development purposes.

Encumbered by Governor's Executive Order No. 2631 to the Department of Transportation for highway purposes. Staff notes this executive order is subject to the former GL 2720 Parcel 4 Part 2 easement.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove electrical transmission lines, poles, guy wires and anchors, including the right to trim and keep trimmed any trees in the way of its appliances and equipment.

COMMENCEMENT DATE:

Board date.

CONSIDERATION:

A one-time payment to be determined by an independent appraisal, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (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", as indicated in **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. Pay for an appraisal to determine a one-time payment; and

2. Process and obtain designation for easement approval from the City and County of Honolulu, at the Applicant's own cost.

Note: Applicant already provided the map and legal description.

REMARKS:

Prior Board approval on LOD 26150

At its meeting of November 18, 1966, item F-14, the Board authorized the issuance of a non-exclusive perpetual utility easement to HECO over a portion of the subject State parcel.

Subsequently, on October 27, 1967, item F-19, the Board amended its prior action by substituting a new alignment of the easement [HECO Map # 66-53A Revised]. An easement encumbering 41,989 square feet ("LOD 26150") was executed, with an appraisal determined the one-time payment of the easement was \$20 thereafter.

Prior Board approval on Easement 1

At its meeting of June 2, 1967, item F-11, the Board approved the issuance of another perpetual, non-exclusive easement encumbering approximately 7.078 acres ("Easement 1") over the subject parcel. To date, the June 1967 approval never resulted in any consummation of an easement. Recently, HECO intended to conduct repairs to Easement 1, and the lack of an executed document was discovered.

In short, there were actually two (2) easements approved by the Board between 1966 and 1967 over the same parcel, but only LOD 26150 was ever executed. Staff is not aware of any reason for the situation. Today's request is to seek the Board's approval of staff's proposed resolution of the outstanding issues.

Since June 1967, HECO has continued to use Easement 1 without paying compensation to the State. Staff recommends that the Board authorize the collection of a one-time payment of \$1,000 from HECO to represent the monetary compensation due to the State since the 1967 approval until the issuance of the easement under the subject request.¹

Further, HECO advised the staff that the latest survey indicates the area of Easement 1 is about 7.202 acres.

Former GL 2720 area

In addition, HECO requests that the Board issue a perpetual utility easement to include the area ("Easement 2") that was once encumbered under a license ("GL 2720"), prior to its

¹ Staff has considered other approaches, for example, interest payable, consumer price index, or appraisal, to determine the amount of back rent using the consideration paid on the original consideration of \$20 for LOD 26150, with the adjustment in easement area, as a base. Any option involves lot of research on the historic data required to determine the final figure. Therefore, staff recommends the collection of a one-time fee covering the period from either the previous or expiration date to today's Board date. HECO agrees with the collection of a flat rate as the back rent.

expiration in April 1960. It is not clear from the file why Easement 2 was not covered by an easement subsequent to the expiration of GL 2720 notwithstanding HECO has continued to use the same area. Today's request, if approved, will legitimize HECO's continuous operation of its utility line.

Staff also recommends that the Board authorize the collection of a one-time payment of \$1,000 to compensate the State for HECO's use of Easement 2 from its expiration in April 1960 up until the Board date.

Staff notes portions of the former GL 2720 area are currently owned by the City and County of Honolulu ("City"), and they are duly depicted on the exhibits. The proposed easement to be issued does not affect the portions owned by the City.

Comments from other Agencies

Board of Water Supply (BWS), by its letter attached as **Exhibit C**, requests HECO execute a maintenance agreement regarding the existing BWS' improvements on the property. **Exhibit D** is a sample of the maintenance agreement approved by the Board on April 25, 2014, item D-9. Staff has no objection to BWS' request.

The Division of State Parks, Department of Health, Department of Permitting and Planning, and the Department of Facility Maintenance have no objections to the subject request. Office of Conservation and Coastal Lands, Division of Forestry and Wildlife, State Historic Preservation Division, and the Office of Hawaiian Affairs have not provided any comment as of the suspense date.

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.

For housekeeping purposes, staff recommends the Board rescind its prior approval of June 2, 1967, Item F-11.


Staff is unaware of any further pertinent issues or concerns regarding the subject request and has no objections to it.

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. Rescind its prior action of June 2, 1967, item F-11.
3. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance of perpetual, non-exclusive easements to Hawaiian Electric

- Company, Inc. for 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 easement document form, as may be amended from time to time;
 - B. Payment of \$2,000 back rent as described above;
 - 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.
4. Issuance of a management right-of-entry permit to the Hawaiian Electric Company, Inc. covering the subject area for 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 right-of-entry document form, as may be amended from time to time; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Authorize the Chairperson to negotiate with BWS and execute, if appropriate, the maintenance agreement in the form of Exhibit D, further subject to the following conditions:
- A. Review and approval by the Department of the Attorney General; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

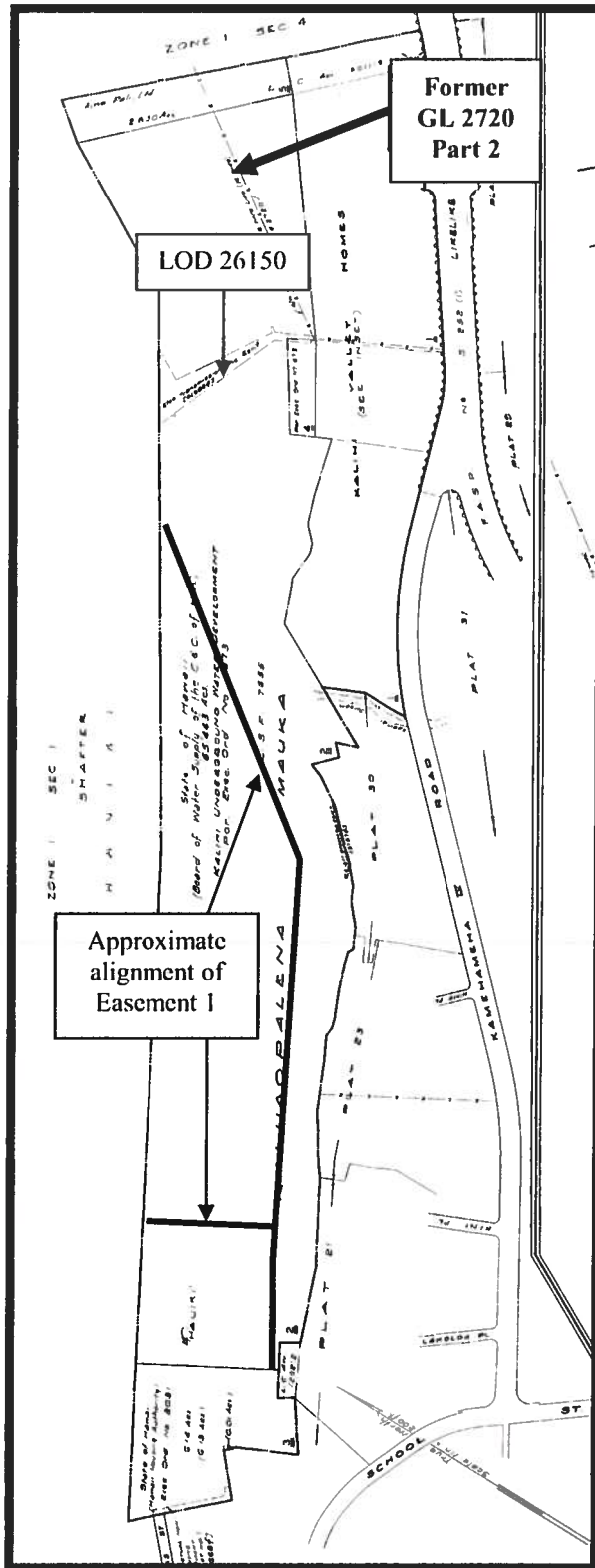


Timmy Chee
Land Agent

APPROVED FOR SUBMITTAL:

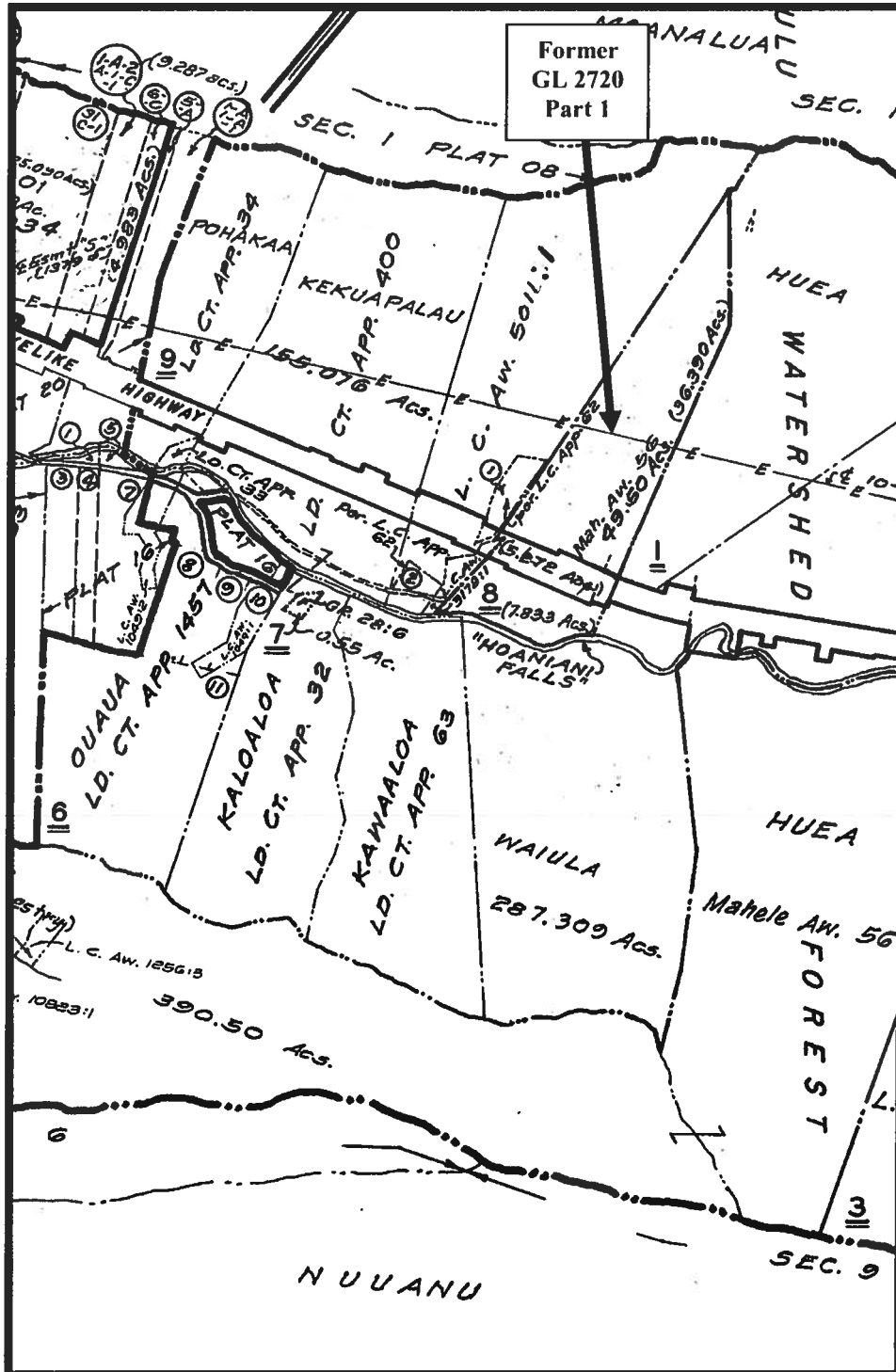


William J. Aila Jr., Chairperson



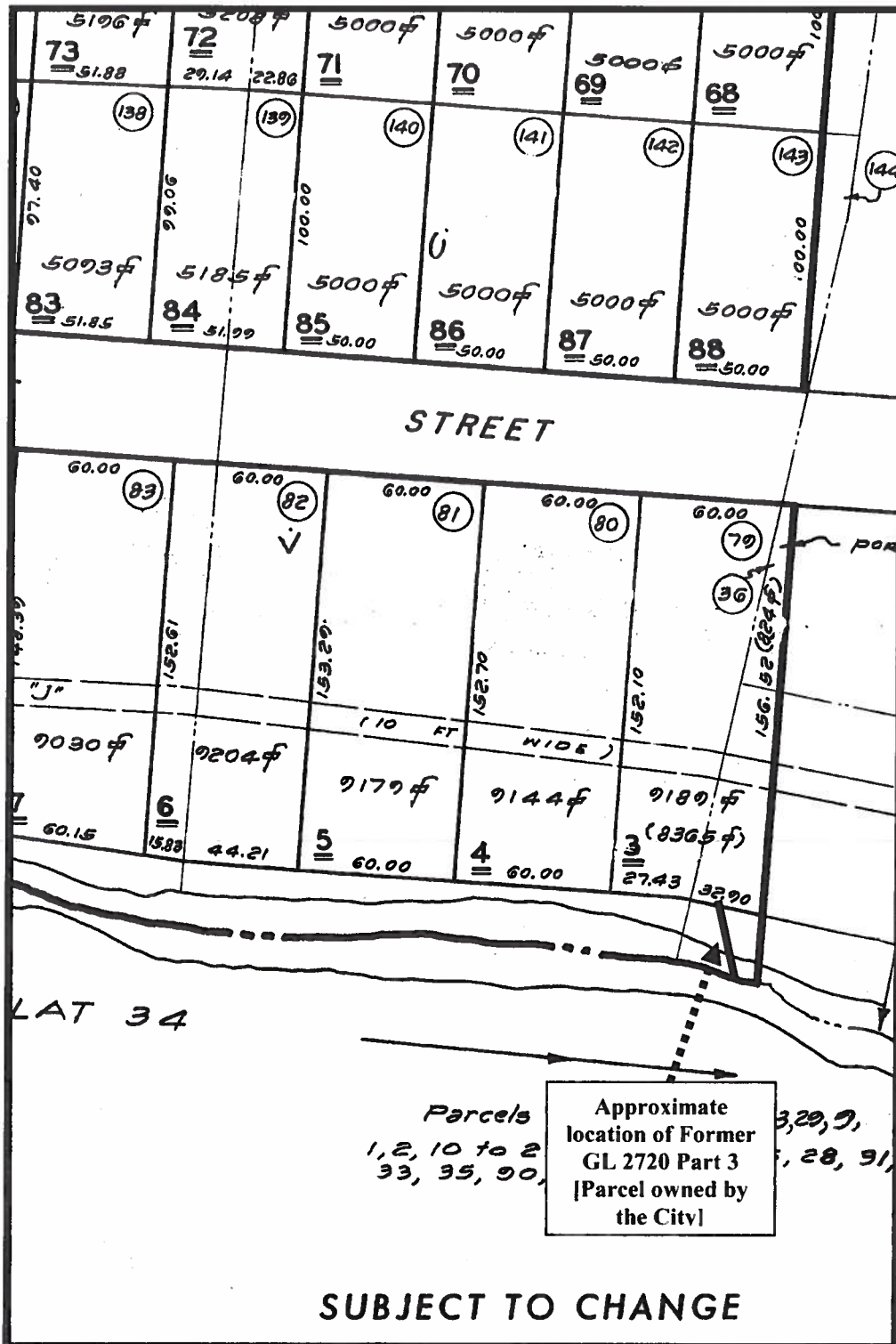
TAX MAP KEY: (1) 1-3-022:002 portion

EXHIBIT A-1



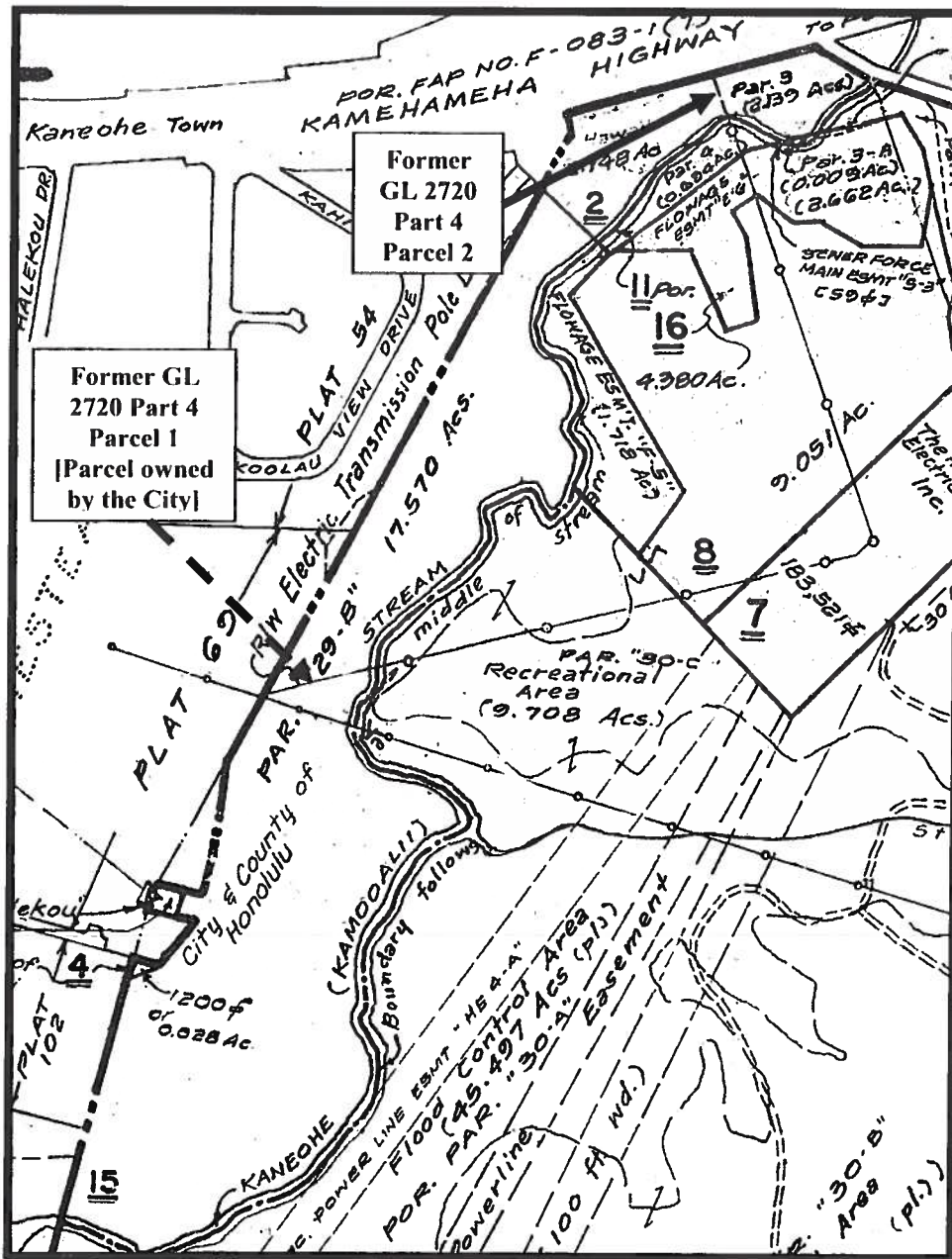
TAX MAP KEY: (1) 1-4-018:008 portion

EXHIBIT A-2



TAX MAP KEY: (1) 1-3-029:089 portion

EXHIBIT A-3



TAX MAP KEY: (1) 4-5-042:002 portion

EXHIBIT A-4

EXEMPTION NOTIFICATION

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

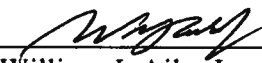
Project Title: Issuance of Perpetual, Non-Exclusive Easements to Hawaiian Electric Company, Inc. for Utility Purposes
Project / Reference No.: PSF 13OD-203
Project Location: Kalihi, Honolulu, Oahu
Project Description: Perpetual, Non-Exclusive Easements for Utility Purposes
Chapter 343 Trigger(s): Use of State Land

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

The subject request consists of utility easements for the purpose of serving HECO's electrical transmission lines and poles. HECO has existing electrical lines and poles located within specific portions of the subject parcel. In part, the subject easement request consists of an extension of easement rights for the placement of existing overhead electrical lines and poles that have since expired. As such, staff believes that the subject request would involve negligible or no expansion or change in use of the subject area beyond that previously existing. Based upon Exemption Class No. 1, staff believes the subject request should be exempt from the preparation of an environmental assessment.

Consulted Parties Agencies as noted in the submittal.

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., Chairperson
Date 7/21/14 

EXHIBIT B