

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

September 25, 2015

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

PSF: 06OD-142

OAHU

Amend Prior Board Action of September 8, 2006, Item D-14 Regarding Issuance of Perpetual Non-Exclusive Easement for Access and Utility Purposes to Dillingham Ranch Aina LLC; Mokuleia, Waialua, Oahu, TMK (1) 6-8-003:041

The purpose of the amendment is to limit the approved easement to utility purposes only, and add another perpetual easement for access and utility purposes.

BACKGROUND:

On September 8, 2006, under agenda item D-14, the Board approved the issuance of a perpetual easement for access and utility purposes. The easement (Easement 1000) would serve the properties owned by the Dillingham Ranch Aina LLC ("Applicant") on both sides of the subject State land, which has been set aside to Division of Forestry and Wildlife pursuant to Governor's Executive Order No. 4402. A copy of the 2006 submittal is attached as **Exhibit 1**. The easement area is 1,585 square feet and the appraised one-time payment is \$1,000.

Since the approval in 2006, the ownership of the Applicant kept changing until 2012 when 100% ownership was consolidated in a single party. To date, the easement document has not been consummated.

Based on the current subdivision planned for the adjoining properties, the Applicant requests the Board to issue another easement (Easement 1001) for access and utility purposes. In addition, the purpose of Easement 1000 easement will be revised to utility only.

REMARKS:

The two easements are of the same size, i.e. 36 feet x 44 feet, more or less, and their respective locations are depicted on the maps attached as **Exhibits 2A to 2C**.

Division of Forestry and Wildlife ("DOFAW") requests all the utilities be laid underground and the Applicant shall be responsible for the installation of gates at Easement 1001. The design, make, model and installation of such gates shall be approved of by DOFAW before installation and the Applicant shall also be responsible for the electricity charges relating to the operation of the gates.

Regarding limiting the purpose of Easement 1000 to utility only, DOFAW has no objection.

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 46 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 **Exhibit 3**.

Applicant will be required to pay the appraisal fee to determine the one-time payment for the two (2) easements as described above. Staff does not have any objection to the subject request.

RECOMMENDATION: That the Board: Amend its prior Board action of September 8, 2006, under agenda item D-14 by replacing the entire Recommendation Section with the following:

- “ 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: (1) 6-8-003:005, 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 Dillingham Ranch Aina LLC covering the subject areas for utility purposes (Easement 1000) and access and utility purposes (Easement 1001) 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. Governor's concurrence for GEO 4402;
 - C. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 6-8-003:005, 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;

- D. The design, make, model and installation of the gates shall be approved of by DOFAW before installation;
- E. The Grantee shall be responsible for the electricity charges related to the operation of the gates.
- F. The Grantee shall at all times during the term of this easement keep trim all vegetation growing within, over or onto the easement area so that it does not present a threat to public safety by creating or contributing to roadway or pedestrian obstruction, visual obstruction to operators of vehicles, fire hazards, or interference with or downing of power lines;
- G. For the access purpose, this easement is limited to only pedestrian and bicycle access and no vehicular or commercial use is permitted;
- H. Review and approval by the Department of the Attorney General; and
- I. 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:


Suzanne D. Case, Chairperson

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

September 8, 2006

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

PSF No.: 06od-142

OAHU

Issuance of Perpetual Non-Exclusive Easement for Access and
Utility Purposes, Dillingham Ranch Aina LLC, Mokuleia,
Waialua, Oahu, TMK (1) 6-8-3:41.

APPLICANT:

Dillingham Ranch Aina LLC, a Delaware limited liability
corporation, c/o Avalon Development SMC, LLC, whose business and
mailing address is 841 Bishop Street, Suite 1601, Honolulu, Hawaii
96813

LEGAL REFERENCE:

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

LOCATION:

Portion of lands situated at Waialua, Oahu, identified by Tax Map
Key: (1) 6-8-3:41, as shown on the attached map labeled Exhibit A.

AREA:

36 feet x 44 feet (about 1,600 square feet), more or less, to be
determined by the Department of Accounting and General Services,
Survey Division.

ZONING:

State Land Use District: Agriculture
City & County of Honolulu: AG-2

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

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

September 8, 2006

D-14
EXHIBIT "1"

CURRENT USE STATUS:

Encumbered by Governor Executive Order (GEO) No. 3780 setting aside to Division of Forestry and Wildlife (DOFAW) for Mokuleia Forest Reserve Access Road 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 appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", 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 "Operation, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

DCCA VERIFICATION:

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

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) Provide title report verifying the lack of legal access;
- 4) Process and obtain subdivision at Applicant's own cost; and
- 5) Install three gates at Applicant's costs (see Remarks).

REMARKS:

In 1989, the State and Sankyo Tsusho (Sankyo) entered into an exchange deed (LOD 27896) in which Sankyo conveyed a 36-foot wide roadway parcel (6-8-3:41) to the State in exchange for a State parcel (6-8-3:21). The roadway parcel is known as "Mokuleia Forest Reserve Access Road" and is subsequently set aside to the Division of Forestry and Wildlife (DOFAW) for access to its forest

reserve.

In the exchange deed, Sankyo reserved easements for some existing waterlines and drainage facilities over 6-8-3:41 in favor of its property, including 6-8-3:5, but there was no reservation of any access rights. These reserved waterline and drainage easements area are physically different from the subject location in this request.

The applicant acquired the property identified by tax map key (1) 6-8-3:5 & 6 in May 2006. The lack of access for 6-8-3:5 creates a problem for the future development. The applicant also plans to lay waterlines in the subject request area. Therefore, the applicant requests the issuance of a perpetual access and utility easement over the subject State land in favor of 6-8-3:5. See Exhibit B for the location of the easement area.

Comments solicited from other government agencies on the subject request are summarized as follows:

Division of Forestry & Wildlife requires installation of three (3) gates at the cost of the applicant to control the traffic. Applicant is to coordinate with DOFAW regarding the installation of such gates.

The following agencies did not have any objections/comments on the request:

Commission of Water Resource Management, Department of Hawaiian Home Lands, State Historic Preservation Division, Office of Hawaiian Affairs, Board of Water Supply.

The following agencies did not respond to our request for comments:

Department of Health, Department of Planning and Permitting.

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 the access purpose of this easement, staff recommends adding a condition stipulating that the easement area is to be used for personal access and no commercial use is permitted. There are no other pertinent issues or concerns. Subject to the above comments, staff has no objection to the request.

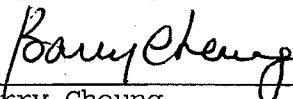
RECOMMENDATION: That the Board:

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: (1) 6-8-3:5, 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.

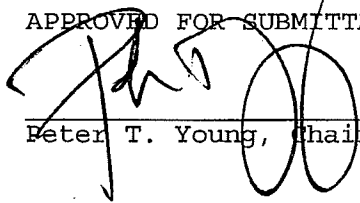
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to Dillingham Ranch Aina LLC covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - B. Governor's concurrence for GEO 3780;
 - C. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 6-8-3:5, provided that 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;
 - D. The Grantee shall at all times during the term of this easement keep trim all vegetation growing within, over or onto the easement area so that it does not present a threat to public safety by creating or contributing to roadway or pedestrian obstruction, visual obstruction to operators of vehicles, fire hazards, or interference with or downing of power lines.
 - E. For the access purpose, this easement is limited to only personal access and no commercial use is permitted.
 - F. Review and approval by the Department of the Attorney General; and
 - G. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Barry Cheung
Land Agent

APPROVED FOR SUBMITTAL:

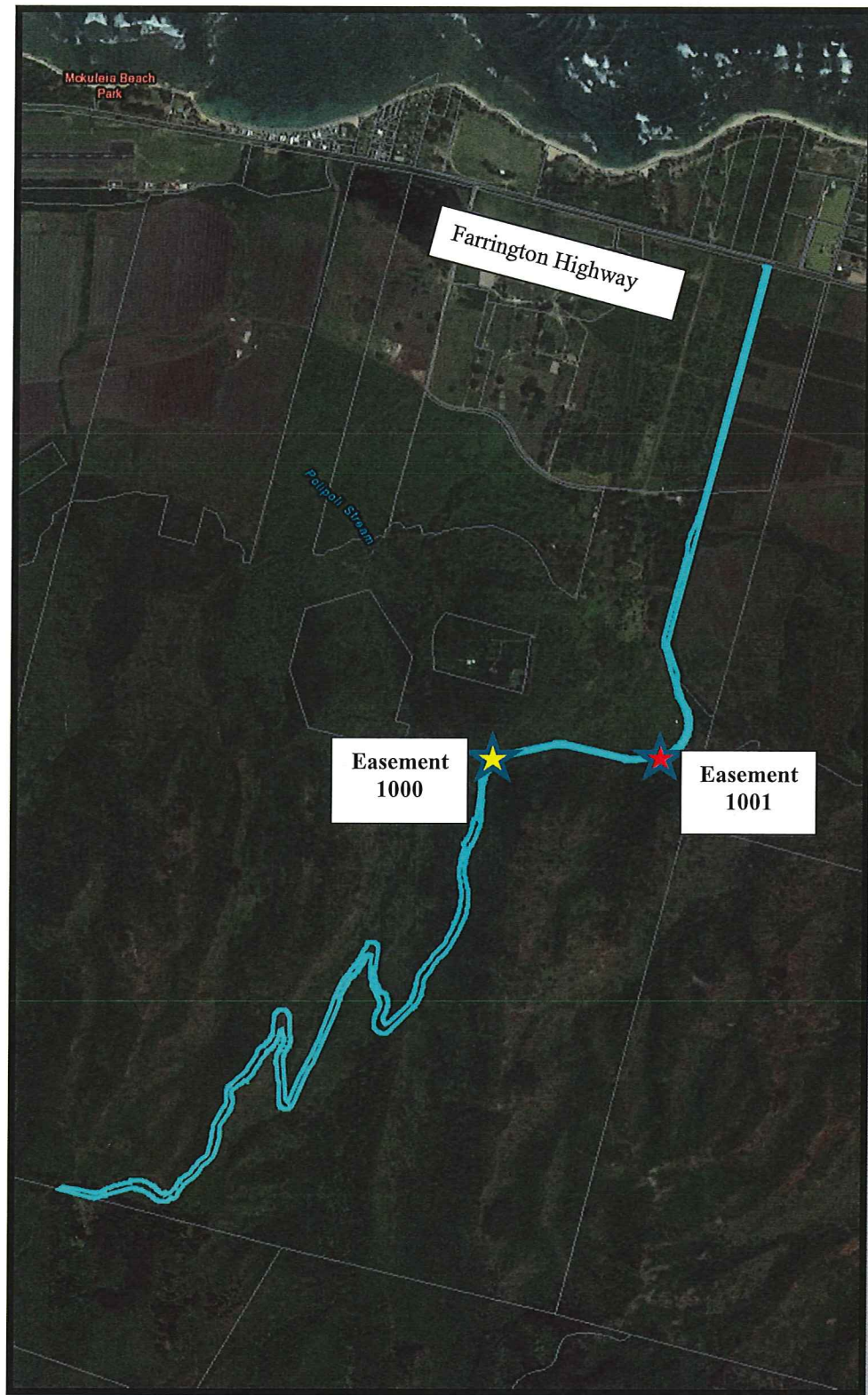


Peter T. Young, Chairperson

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EXHIBIT "B"



Approximate Location of Easements over (1) 6-8-003:041

EXHIBIT 2A

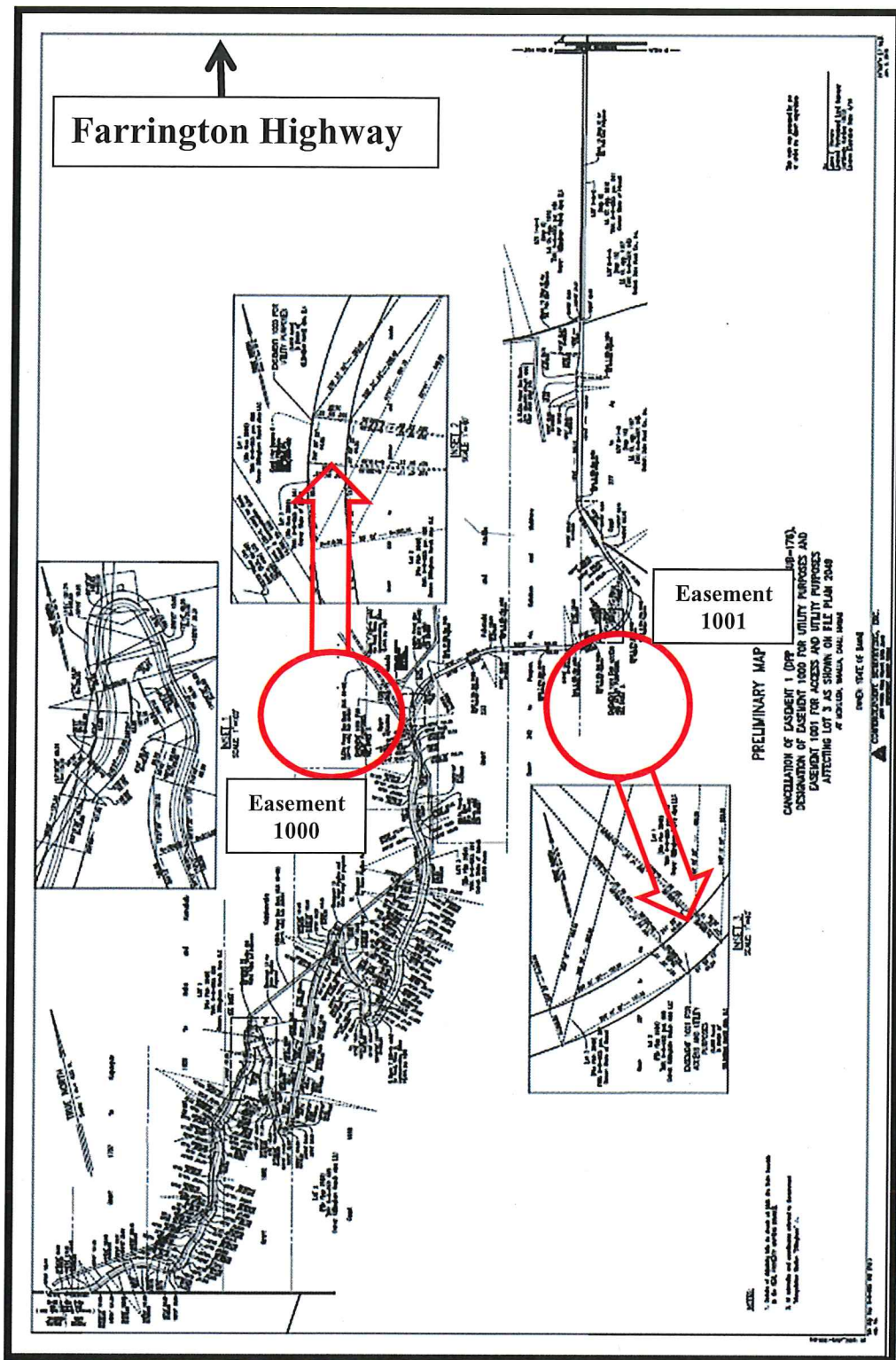


EXHIBIT 2B

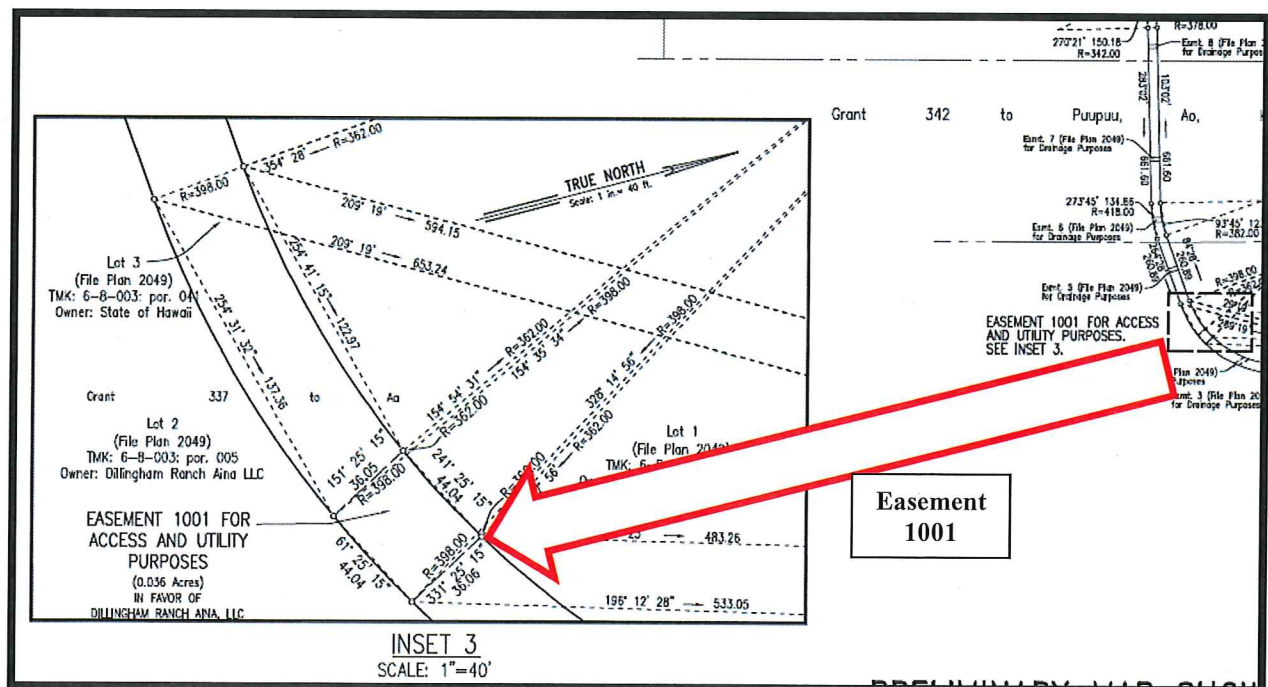
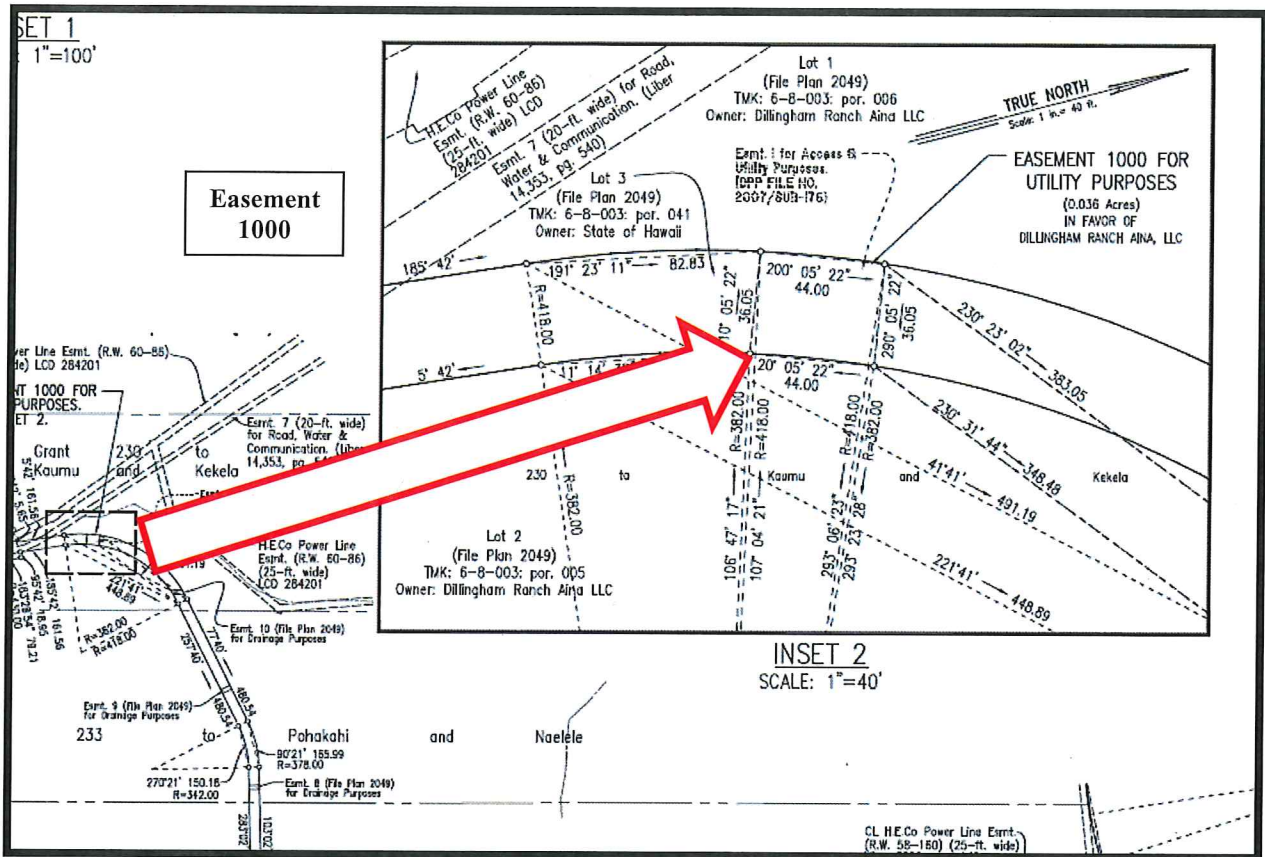


EXHIBIT 2C

EXEMPTION NOTIFICATION

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

Project Title: Issuance of Access and Utility Easements.

Project / Reference No.: PSF 06OD-142

Project Location: Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-8-003:041

Project Description: Issuance of access and utility easements to serve the proposed subdivided lots owned by the Applicant.

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

Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 46, 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" Item 46. "Creation or termination of easement, covenants, or other rights in structures or land."

The request pertains to the creation of easement on State lands. Therefore it is recommended that the subject request be exempted from the preparation of an environment assessment pursuant to the above mentioned exemption class.

Consulted Parties Division of Forestry and Wildlife

Recommendation: It is recommended that the Board declare 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.


Suzanne D. Case, Chairperson


Date 5/15/15

EXHIBIT 3