

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

May 24, 2019

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

KAUAI

Grant of Term, Non-Exclusive Easement to Wai'oli Valley Taro Hui, Inc. for Surface Water Diversion and Irrigation System Purposes, Wai'oli, Hanalei, Kauai, Tax Map Key: (4) 5-6-002:001 (portion).

APPLICANT:

Wai'oli Valley Taro Hui, Inc., a 501(c)(3) domestic nonprofit corporation.

LEGAL REFERENCE:

Section 171-13 and 43.1, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government land located at Wai'oli, Hanalei, Kauai, identified by Tax Map Key: (4) 5-6-002:001, as shown on the attached map labeled Exhibit A.

AREA:

Approximately 1.15 acres, more or less.

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: YES ____ NO
 x

CURRENT USE STATUS:

Encumbered by LOD 28292 to Max W.J. Graham, Jr. and Karen L. Graham for access and utility purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove surface water diversion and irrigation system over, under and across State-owned land.

TERM:

55 years.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Gratis

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 on June 15, 2015, 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", Item No. 46, that states "Creation or termination of easement, covenants, or other rights in structures or land."

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.

REMARKS:

Applicant Wai'oli Valley Taro Hui, Inc. (the "Hui") is a 501(c)(3) domestic nonprofit corporation that represents a collective of taro farmers located on privately owned lands in Hanalei, Kauai. The various taro farms are irrigated via surface water from the Wai'oli stream via a diversion and ditch system located on State parcel (4) 5-6-002:001. This traditional lo'i kalo system in Wai'oli has been utilized since time immemorial. In recent memory, the use of Wai'oli's lo'i kalo for subsistence and cultural purposes is recorded in Land Commission Awards as early as 1850. The system's mānowai (traditional intake from the main stream channel), po'owai (secondary diversion to traditional irrigation ditches), and 'auwai (traditional kalo irrigation ditches) structures are now located on State Conservation lands. The Hui seeks a term, non-exclusive easement for these structures so that its members may continue to utilize them to perpetuate their cultural practice of wetland kalo cultivation, as their ancestors have for many, many generations.

The system was damaged during the heavy rains and flooding during April 2018. The County of Kauai is engaged in repairing the damage to the system caused by the severe weather. However, the Hui is requesting an easement from the Board in order for its members to conduct ongoing maintenance and repair as needed to ensure continued irrigation of the downstream taro farms. Such activities that are contemplated include cleaning the system of silt, rocks and other debris. Additionally, regular maintenance and repair must be conducted after periods of heavy rainfall. The primary intake diversion from the stream is an impermanent structure that has been engineered to break apart during times of heavy rains in order to prevent flooding of the irrigated taro farms. As the system provides water for the benefit of the taro farmers, staff is supportive of the Hui's request for the easement.

Although it is not clear who originally built the system, based on research conducted by the Hui, the system was likely constructed pre-contact. Additionally, the system has served the cultivation of wetland kalo long before statehood. Furthermore, the Hui has consulted with the Commission of Water Resource Management (CWRM) and the Office of Conservation and Coastal Lands (OCCL) on this matter. The diversion is registered with CWRM, and Land Division, Engineering Division, CWRM and Attorney General staff have conducted site inspections of the system. Furthermore, OCCL has determined that a conservation District Use Application was not required.

As the Hui is a 501(c)(3) domestic nonprofit corporation, they are requesting that the easement be granted at gratis pursuant to Section 171-43.1, HRS. Members of the Hui and their ancestors have been utilizing and caring for a traditional Native Hawaiian irrigation system for wetland kalo (taro) cultivation since time immemorial. The Hui is organized and operates for the purposes of education and charity. Specifically, pursuant to its articles of incorporation, the Hui supports and enhances mauka to makai biocultural resources in the Wai'oli Valley watershed, protects natural and cultural resources that enable traditional and customary Native Hawaiian practices, maintains habitat(s) for endangered Hawaiian

waterbirds, and engages the larger Kaua'i communities through educational outreach programs and initiatives related to kalo farming and community-based stewardship of water resources.

Staff clarifies that the Board is requested to approve the easement for the physical diversion and irrigation system structures only. In regards to the Hui's use of the water from Wai'oli stream, the Hui is working with the Department to apply for a water lease. As the statutory requirements for obtaining a water lease are much more complex, that request will be brought to the Board for approval at a later date. However, approval of the easement will allow the Hui to assume responsibility for the operation, repair and maintenance of the system in the interim. The Hui 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:

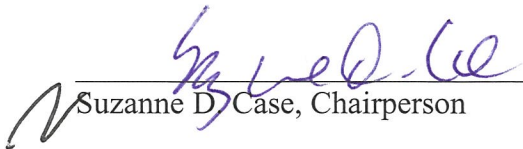
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to the Wai'oli Valley Taro Hui, Inc. covering the subject area for surface water diversion and irrigation system 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. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

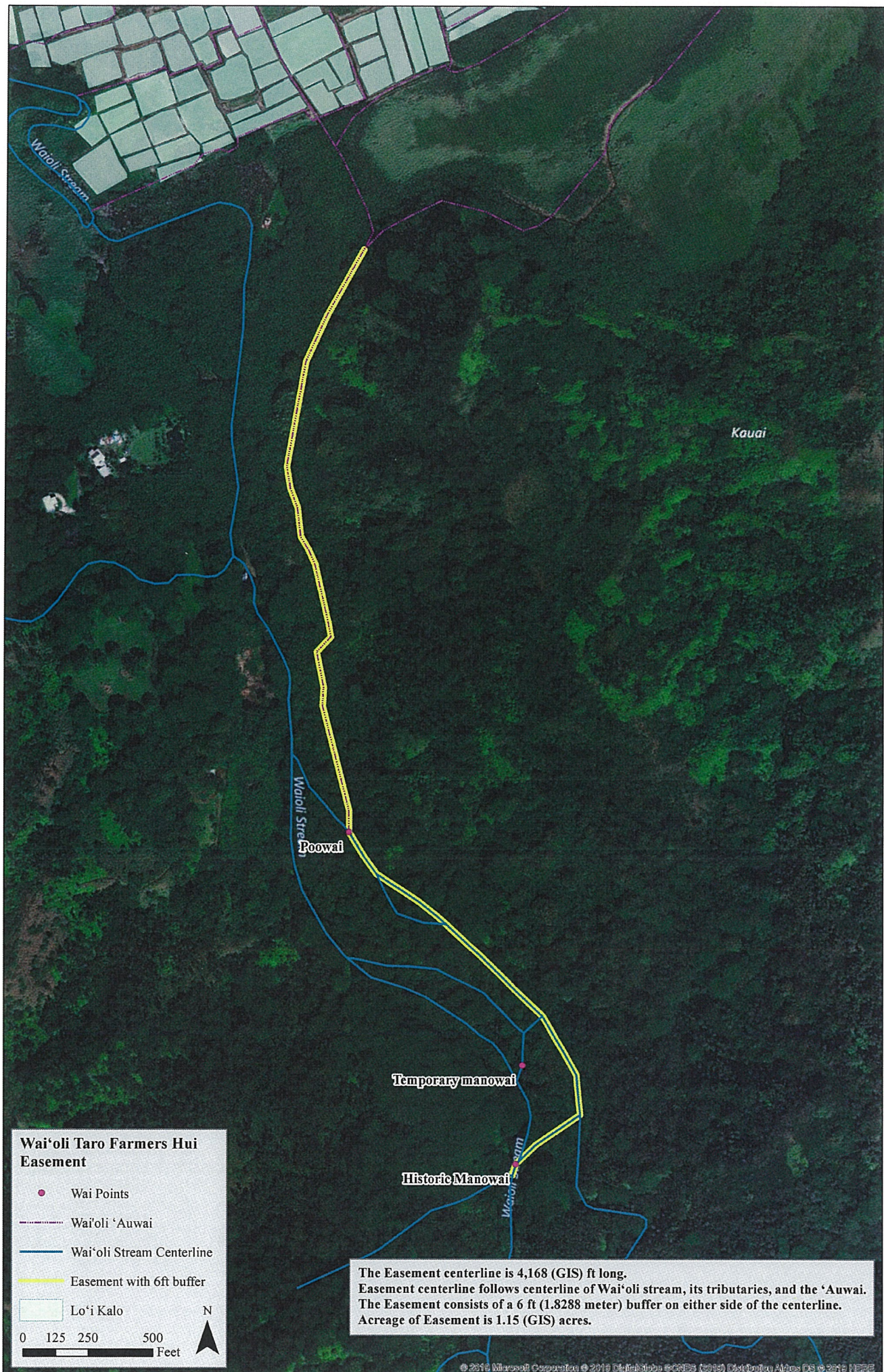


Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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May 24, 2019

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

EXEMPTION NOTIFICATION

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

Project Title:	Grant of Term, Non-Exclusive Easement to Wai'oli Valley Taro Hui, Inc. for Surface Water Diversion and Irrigation System Purposes, Wai'oli, Hanalei, Kauai, Tax Map Key: (4) 5-6-002:001 (portion).
Project Location:	Portion of Government land located at Wai'oli, Hanalei, Kauai, identified by Tax Map Key: (4) 5-6-002:001, as shown on the attached map labeled Exhibit A.
Project Description:	Term, non-exclusive easement for the right, privilege and authority to construct, use, maintain, repair, replace and remove surface water diversion and irrigation system over, under and across State-owned land
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No. and Description:	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 on June 15, 2015, 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", Item No. 46, that states "Creation or termination of easement, covenants, or other rights in structures or land."
Cumulative Impact of Planned Successive Actions in Same Place Significant:	No, this is not a recurring action.
Action May Have Significant Impact on	No evidence that action has resulted in any significant impact.

Particularly Sensitive
Environment:

Agencies Consulted:

Commission on Water Resource Management, Office of
Conservation and Coastal Lands

Analysis:

As the diversion and irrigation system was likely constructed pre-contact, its longstanding use for the purpose of traditional wetland taro cultivation has not resulted in any known significant impacts to the surrounding environment.

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.