

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

December 7, 2023

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

PSF No.: 23MD-115

Maui

Issuance of Immediate Right-of-Entry Permit to PTSI Managed Services, Inc. for Staging Area Clean Up and Payment of Back Rent for After the Fact Use of Government Lands Related to Replacement of Antenna Platform, Site Plan Approval, MA-20-63, Papaanui, Haleakala, Maui, Tax Map Key: (2) 2-2-007:005 por.

APPLICANT:

PTSI Managed Services, Inc, a Hawaii Registered Foreign Profit Corporation
Agent: Brian Eisenrich, Responsible Engineer in Charge

LEGAL REFERENCE:

Sections 171-11 and -55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of Papaanui, Summit of Haleakala, Maui, identified by Tax Map Key: (2) 2-2-007:005 por., as shown on the attached map labeled Exhibit A and A-2

AREA:

2,500 sq. ft., (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 Governor's Executive Order No. 1808 and 4451 to the Federal Aviation Administration (FAA) for public purposes and Land Office Deed 24475 to the FAA for access purposes.

Encumbered by Land Office Deed 26914 to Maui Electric Company for utility purposes.

Note: Area of use is vacant and does not impact existing encumbrance areas.

CHARACTER OF USE:

Staging of Construction Debris, Placement of Storage Container and Clean-up purposes.

TERM OF RIGHT-OF-ENTRY:

May 15, 2023 to December 31, 2023.

CONSIDERATION:

\$500 consideration.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 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 Part 1, Item 34 that states, "Storage of construction equipment and materials for a limited period of time as necessary to support planned or existing construction or repair," and Item 44 that states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

The subject request is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR, as a de minimis action.

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 one-time \$500 consideration for use of government lands,
- 2) Clear and restore lands to an acceptable condition, , and
- 3) Conduct a Phase 1 environmental site assessment of the right-of-entry area for review and acceptance by DOFAW.

REMARKS:

The State Department of Land and Natural Resources (DLNR), Maui District Land Office (MDLO), received a complaint on Friday, July 7, 2023, at 11:00 am, regarding construction activity emanating from lands set aside to the Federal Aviation Administration (FAA) pursuant to Governor's Executive Order No. 1413 (EO 1413) at TMK (2) 2-2-007:007 for long-range communication purposes. See Exhibits B-1 and B-3.

The complaint alleged that a contractor was using a portion government lands, located at the summit of Haleakala, within the Conservation District, without implementing standard best management practices related to the staging and disposal of waste material from an ongoing construction operation. See Exhibit B-2. The matter was forwarded to the DLNR Division of Conservation and Resources Enforcement (DOCARE) for further investigation.

Pursuant to the DOCARE investigation, Mr. Hani Khalil, Civil Project Engineer for the FAA, based out of Los Angeles California, contacted MDLO and explained that due to the very limited space and steep topography of the FAA project site, their contractor requested the use of adjacent lands for staging area purposes. Khalil stated he coordinated use of the staging area with the DLNR Division of Forestry and Wildlife (DOFAW). Upon inquiry with Maui DOFAW, it was discovered that a Conservation and Access Permit for Wildlife Sanctuaries was issued to the FAA contractor. See Exhibit C. MDLO advised DOFAW that although the subject area has been approved by the Board at its meeting on February 26, 2016, under agenda item D-11, to be set aside to DOFAW for wildlife sanctuary purposes, the lands were still unencumbered because the set aside has not yet been fully completed, and therefore use of the land is subject to Hawaii Administrative Rules under Chapter 13 Section 221. Furthermore, because the area is situated within the Conservation District, uses are also subject to the rules and regulations administered by the DLNR Office of Conservation and Coastal Lands (OCCL). Upon review of this matter by OCCL, it was discovered that Site Plan Approval, MA-20-63, to replace an antenna platform did not include authorization to use the staging area. See Exhibit D.

MDLO advised Maui DLNR administrative staff that oversight and communication between the MDLO, DOFAW and OCCL needs to improve to prevent and mitigate complaints related to the alleged contamination of government lands. Because actions taken by the FAA contractor were not malicious, staff recommends to resolve this situation by imposing a one-time \$500

consideration¹ to be paid by PTSI Managed Services, Inc. to the State for use of land for staging purposes, and that the staging area be cleared and restored to a condition acceptable to the Maui DOFAW, along with the submission of a Phase 1 environmental site assessment of the right-of-entry area to Maui DOFAW, to ensure the highest standards applicable to maintenance of a Wildlife Sanctuary to protect endangered species are met and documented for future reference.

RECOMMENDATION: That the Board

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, 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 as a de minimis action.
2. Authorize the issuance of a right-of-entry permit to PTSI Managed Services, Inc covering the subject area 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 permit 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.

Respectfully Submitted,



Daniel Ornellas
District Land Agent

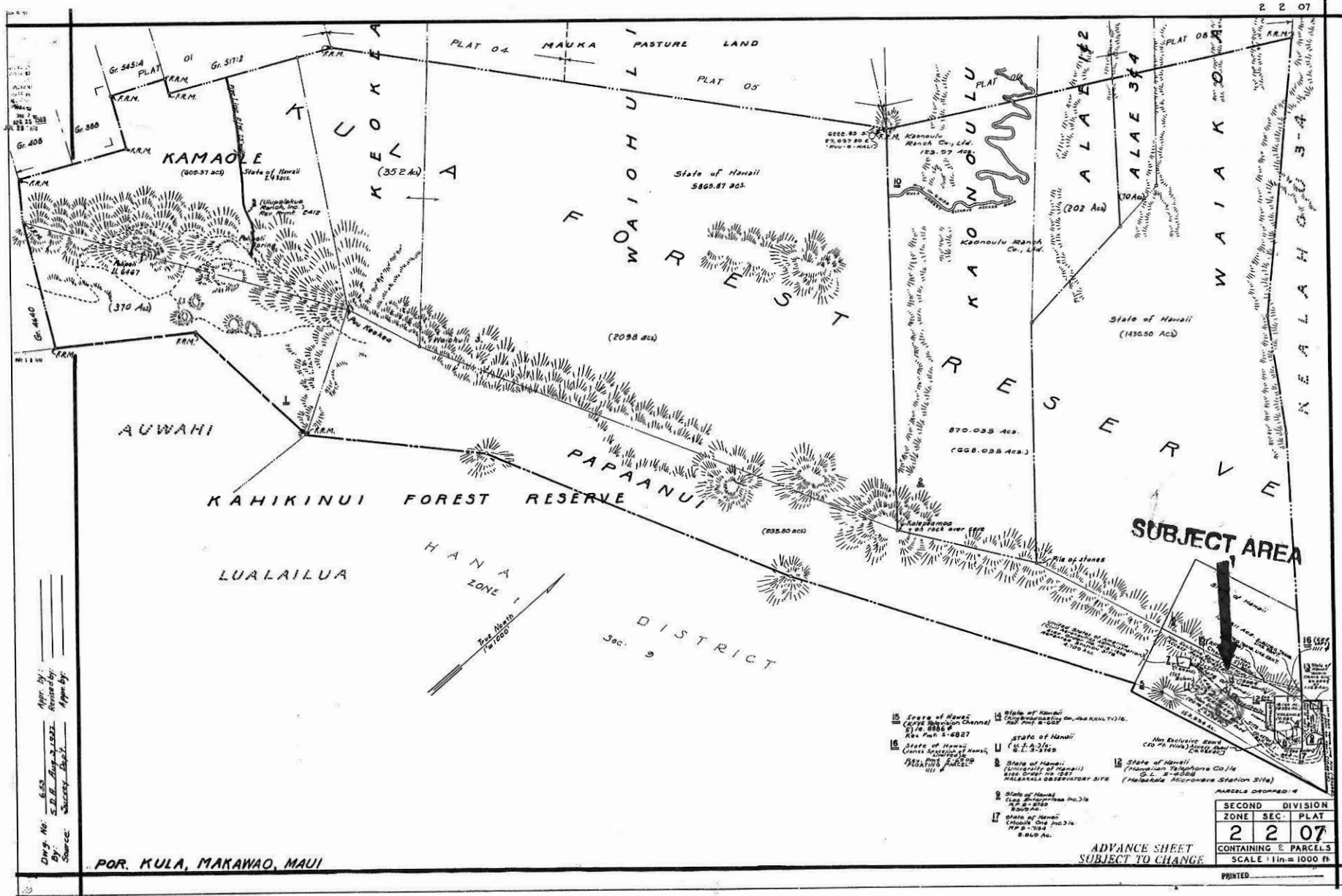
fom RT

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

¹ The Board Policy for Minimum Rent, dated May 13, 2005 Item D-19, provides a minimum one-time rent of \$500 for new dispositions such as easements. Although a right-of-entry is generally for a shorter term, staff believes the rationale for the \$500 minimum rent figure, which is intended to cover staff time, is applicable in this case. If the Board were to impose the standard right-of-entry rent of \$0.10 per square foot per day, the charge would be about \$57,750 for the period May 16 to December 31, 2023.



DWG. No. 653
 Date: 3-1-63
 S.D.E. No. 3-1-63
 Source: Survey Dept.
 Appr. By: _____
 Revised By: _____
 Drawn By: _____
 Checked By: _____

POR. KULA, MAKAWAO, MAUI

- 15 State of Hawaii (Kape Stream Channel) (1/4 Sec. 9) (Rev. Plat. 5-6927)
- 16 State of Hawaii (Kape Stream Channel) (1/4 Sec. 9) (Rev. Plat. 5-6927)
- 17 State of Hawaii (Kape Stream Channel) (1/4 Sec. 9) (Rev. Plat. 5-6927)
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- 50 State of Hawaii (Kape Stream Channel) (1/4 Sec. 9) (Rev. Plat. 5-6927)

| PARCELS DIVIDED: | | |
|----------------------|------|-----------|
| SECOND DIVISION | ZONE | SEC. PLAT |
| 2 | 2 | 07 |
| CONTAINING 2 PARCELS | | |
| SCALE 1 in = 1000 ft | | |

ADVANCE SHEET
SUBJECT TO CHANGE

PRINTED

EXHIBIT A

PTSI Managed Services, Inc. (FAA Contractor) Staging Area Circled in Red at TMK (2) 2-2-007:005 por. in Proximity to FAA Antenna Site Outlined in Blue, EO 1413, TMK (2) 2-2-007:007



Issuance of Immediate Right-of-Entry Permit to PTSI Managed Services, Inc. for Staging Area Clean Up and Payment of Back Rent for After the Fact Use of Government Lands Related to Replacement of Antenna Platform, Site Plan Approval, MA-20-63, Papaanui, Haleakala, Maui, Tax Map Key: (2) 2-2-007:005 por.



PTSI Managed Services, Inc. (FAA Contractor) Staging Area; TMK (2) 2-2-007:005 por.



EXHIBIT B-2

FAA Antenna Site Under Repair, SPA MA-20-63, TMK (2) 2-2-007:007, EO 1413



EXHIBIT B-3



CONSERVATION AND ACCESS PERMIT FOR WILDLIFE SANCTUARIES

Department of Land and Natural Resources
Division of Forestry & Wildlife
685 Haleakala Highway
Kahului, Maui, Hawaii 96732

EFFECTIVE: May 15, 2023 - December 31, 2023
FOR THE FOLLOWING WILDLIFE SANCTUARIES

Alpine Wildlife Sanctuary

The Board of Land and Natural Resources, or its authorized representative pursuant to its approved delegation of authorities of September 9, 2011, hereby issues this Conservation Permit in accordance with Chapter 13-126, Hawaii Administrative Rules, Rules Regulating Wildlife Sanctuaries to:

Darnell Wagstaffe, Parsons SVP Federal Aviation
Roderick Hudson, Parsons Project Manger
Trent Short, Copper Creek Superintendent
Kevin Ochs, Copper Creek

PURPOSE-To utilize a portion of wildlife sanctuary as a staging area for equipment and supplies while replacing FAA platform for transmitter and receiver.

STANDARD CONDITION

1. This permit shall become valid upon completing of the following:
 - a. All persons who are actively involved in activities authorized by this permit, have read this permit in total and acknowledge understanding and agreement to abide by its conditions by signing below.
 - b. The signed permit must be returned to the Division. Upon approval and signature by the authorized representative of the Board of Land and Natural Resources, a copy of the fully executed permit will be returned to the applicant.
2. This permit is valid only for State Wildlife Sanctuaries pursuant to chapter 13-126, HAR. The permittee must obtain approval from other landowners on lands where activities are planned,

including other Divisions of the DLNR, private landowners, tenants, and County, State, and Federal agencies prior to conducting activities on lands under their jurisdiction.

3. Besides conditions stipulated here, the permit holder will adhere to project specifications given in the permit application.
4. Disturbance of vegetation and wildlife will be avoided as much as possible.
5. Precaution will be taken to prevent introduction of plants or animals not naturally present in the area. Should an infestation develop, Permit Holder is responsible for eradication by methods to be specified by Division, whether it occurs during or after the permit period, and even though it may be only indirectly attributable to the project activities. Permit Holder is responsible for ensuring that all clothing and gear is cleaned before entering any Wildlife Sanctuary or Wetland area.
6. This permit is not transferable.
7. This permit does not exempt the permit holder from complying with any other applicable rule or statute.
8. The State of Hawaii shall be released and held harmless from any and all liability for injuries or death, or damage or loss of property however occurring during any activity related to this permit. Provision of Chapter 183D and 195D, Hawaii Revised Statutes, and any other laws applicable thereto, and all rules and regulations of the Department of Land and Natural Resources shall be strictly observed. Infractions or misconducts will constitute grounds for revocation of this permit and criminal prosecution. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of two years from the date of revocation.
9. The Permit Holder is responsible for notifying appropriate Division staff, prior to conducting fieldwork to inform them of exact dates of each site visit; this also allows time to make arrangements for gate keys or other logistical needs.
10. The Permit Holder is responsible for explaining permit terms to participants in the field at all times.

SPECIAL CONDITIONS:

1. Permittee and sub-permittees must avoid any disturbance of wildlife and vegetation as much as possible.
2. Container(s) and all other materials need to be inspected/ clean before transporting up to the summit to prevent invasive species in the area.

3. All equipment and materials will need to be secured/ weighed down to avoid blown away and impacting surrounding habitat.
4. Perimeter of the staging area needs to be coned off. All Cones should have reflectors and need to be secure down.
5. Avoid areas adjacent to the staging area to minimize impacts
6. No work during the hours of 5pm to 6am.

James Scott Fretz
District Manager, Maui Branch

The following permittees acknowledge receipt and agree to the terms of the permit:

Permittees:

Darnell Wagstaffe Digitally signed by Darnell Wagstaffe
Date: 2023.05.16 10:23:43 -04'00'

Darnell Wagstaffe, SVP Federal Aviation

Trent Short Digitally signed by Trent Short
DN: cn=US, E=trent@coppercreekco.com,
c=Copper Creek LLC, CN=Trent Short
Date: 2023.05.16 09:53:07 -08'00'

Trent Short, Copper Creek Superintendent

Roderick Hudson Digitally signed by Roderick Hudson
DN: cn=US, E=roderick.ctr.hudson@maui.gov,
cn=Roderick Hudson
Date: 2023.05.16 07:56:46 -07'00'

Roderick Hudson, Project Manager

Kevin Och ;:~:"•"---
Kevin Ochs, Copper Creek

OAVIDY, ICE
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

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALI W. MANUEL,
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND GLENN RECREATION
BUREAU OF CONSERVATION
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLA IWI ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:MC

Site Plan Approval MA-20-63

Hani Khalil
Federal Aviation Administration
15000 Aviation Blvd.
Lawndale, CA 90261

Dear Mr. Khalil,

SUBJECT: Replacement of Antenna Platform
Haleakala Remote Transmitter/ Receiver (RTR) Facility
Makawao District, Maui
TMK (2) 2-2-007:007

The Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Lands (OCCL) has reviewed the application you submitted to replace an antenna on the FAA's Remote Transmitter Receiver facility on the above subject parcel. This area is in the General Subzone of the State Land Use Conservation District.

The facility dates from the 1950s, qualifying it as a *non-conforming* use. It is used to communicate with aircraft approaching and departing from Maui. FAA is in the design phase of a project to replace a wooden antenna platform with a steel one, and to install a grounding and lightning protection system.

The current scope of work involves replacing a wooden antenna platform with a steel antenna platform. Additional work will include providing a grounding and lightning protection system in order for the new platform to meet current FAA standards.

The replacement platform will be the same height as the previous one, and will be installed at the same location.

The land survey and geotechnical investigation are identified land uses pursuant to Hawai'i Administrative Rules (HAR) §13-5-22, P-8 STRUCTURES AND LAND USES, EXISTING (A-1) *Minor alteration, maintenance, and operation to an existing structure, facility, land, and equipment, whether it is nonconforming or permitted, that involves mostly cosmetic work or like-to-like replacement of component parts, and that results in negligible change to or impact to land, or a natural and cultural resource.*

OCCL has no objections to the work as described provided that:

- 1 That in issuing this letter, the Department and Board has relied on the information and data that the correspondent has provided in connection with the letter. If, subsequent to this letter, such

EXHIBIT D

information and data prove to be false, incomplete or inaccurate, this letter may be modified, suspended or revoked;

2. The correspondent shall implement typical Best Management Practices (BMP) while conducting any land use in the conservation district;
3. The proposed project is minor in scope and may be considered an exempt action pursuant to Hawai'i Revised Statutes (HRS), §343, as amended, and Hawai'i Administrative Rules (HAR), §11-200-5, Environmental Impact Statement Rules and §11-200-8, Exempt Classes of Action; and
4. If the scope of the project changes or the cumulative natural resource impacts is perceived to be moderate or major, the department may require additional authorizations or approvals for the proposed land use.

If you have any questions, please feel free to contact Michael Cain of OCCL at 587-0048.

Sincerely,

JaMLeMMO

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