

The amendment is to correct the name of one of the trust applicants to Stephen P. Rapozo, Jr., Trustee of the Stephen P. Rapozo, Sr. Trust.

BACKGROUND:

At its meeting of July 8, 2016, Item D-1, the Board of Land and Natural Resources approved the sale of portions of the subject remnant State parcels to Stephen P. Rapozo, Sr., Trustee of the Stephen P. Rapozo, Sr. Trust, Mervin L. & Fay T. Rapozo, Trustees of the Mervin L. & Fay T. Rapozo Trust, Doreen A. Rita and Madeline M. Yamaguchi. The Board further authorized the issuance of an immediate right-of-entry permit to the applicants over the property. A copy of the prior Board action is attached as Exhibit 1.

REMARKS:

The prior Board action of July 8, 2016, under agenda item D-1, lists Stephen P. Rapozo, Sr., Trustee of the Stephen P. Rapozo, Sr. Trust, as one of the applicants. It was subsequently brought to staff’s attention by Fay T. Rapozo that Stephen P. Rapozo, Sr. is
deceased. Fay T. Rapozo provided satisfactory documentary evidence to staff establishing that the current successor trustee of the Stephen P. Rapozo, Sr. Trust is Stephen P. Rapozo, Jr. Accordingly, the prior Board action needs to be amended to identify Stephen P. Rapozo, Jr., as the Trustee of the Stephen P. Rapozo, Sr. Trust.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of July 8, 2016, under agenda item D-1 by changing applicant Stephen P. Rapozo, Sr. Trustee of the Stephen P. Rapozo, Sr. Trust to Stephen P. Rapozo, Jr., Trustee of the Stephen P. Rapozo, Sr. Trust. The names of the rest of the applicants will remain the same.

2. Except as amended hereby, all terms and conditions listed in the Board’s July 8, 2016 approval will remain the same.

Respectfully Submitted,

Audrey Bonilla
Acting Land Agent

APPROVED FOR SUBMITTAL:

Suzanne B. Case, Chairperson


APPLICANTS:

Stephen P. Rapozo, Sr. Trustee of the Stephen P. Rapozo, Sr. Trust.
Doreen A. Rita, single, tenant in severalty.
Madeline M. Yamaguchi, single, tenant in severalty.

LEGAL REFERENCE:

Section 171-52, Hawaii Revised Statutes, as amended.

LOCATION:

Portions of Government lands of Castro Tract, Kapaa Homesteads, 4th Series, Kawaihau, Kauai, situated at identified by Tax Map Keys: (4) 4-6-010:004 & 005, as shown on the attached map labeled Exhibit A.

AREA:

Tax Map Key: (4) 4-6-010:004 por. - 900 square feet, more or less.
Tax Map Key: (4) 4-6-010:005 por. - 900 square feet, more or less.

EXHIBIT 1
ZONING:

State Land Use District: Urban
County of Kauai  CZO: Residential

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:

Vacant and unencumbered.

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by independent or staff appraisal, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit B.

DCCA VERIFICATION:

Not Applicable. As trusts or natural persons, applicants not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1) Pay for an appraisal to determine one-time payment of fair market value for the remnants and;
2) Provide survey maps and descriptions according to State DAGS standards and at applicant’s own cost;
3) Consolidate the remnants with the Applicant’s abutting property through the County subdivision process.

REMARKS:

The Kapaa Irrigation System was built in the 1920s to provide water for approximately 6,000 acres of land for sugar cane cultivation. The system comprises 22.5 miles of ditch and tunnel, the Wailua Reservoir with 242 million gallon capacity, the Kapahi Reservoir with 30 million gallon capacity and three smaller reservoirs.
On November 17, 2000 the Amfac Company ceased farming operations on Kauai, resulting in the closing of the East Kauai Water Company and the abandonment of the irrigation system of reservoirs and ditches in the region. The subject ditch remnants were abandoned prior to Amfac’s termination of sugar cane cultivation and were last in use in the 1970s.

Pursuant to section 171-52, HRS, a remnant is defined as "a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics." The subject parcel has been determined to be a remnant by this definition for the following reasons:

1) The parcels are portions of an abandoned ditch.
2) There are no current plans for future State use of the subject property.
3) The irregular size, shape and location make the subject property economically and physically unsuitable for any alternate development or utilization.

The sale of such remnants to abutting private property owners relieves the State of maintenance costs and liability associated with them. The Applicants are co-owners of both TMKs: (4) 4-6-010:027 & 028, the abutting properties to the subject parcels. Applicants will purchase only the portion of the subject remnants that runs between their properties. See maps attached as Exhibit A.

A power line and access driveway servicing Applicants’ parcels have crossed the remnants for a number of years. Staff is recommending the issuance of an immediate right-of-entry to authorize this use pending the consummation of the sale of the remnants. Doing so will provide the department with liability insurance and indemnity for Applicants’ use of the remnants.

Applicants have 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.

Comments were solicited from:

State Agencies:

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<td>DOH</td>
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<tr>
<td>Historic Preservation</td>
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<td>OHA</td>
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County Agencies:

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<td>Public Works</td>
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Other Agencies:

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<td>East Kauai Water Co-op</td>
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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. Find that the subject lands are economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics and, therefore, by definition is a remnant pursuant to Chapter 171, HRS.

3. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcels described as Tax Map Key: (4) 4-6-010:027 and (4) 4-6-010:028, 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. Authorize the subdivision and consolidation of the subject remnant by the Applicants. Remnant parcel (4) 4-6-010:004 to consolidate into Tax Map Key: (4) 4-6-010:027. Remnant parcel (4) 4-6-010:005 to consolidate into Tax Map Key: (4) 4-6-010:028.

5. Authorize the Issuance of an Immediate Right-of-Entry Permit to the Applicants on to subject properties for access and utility purposes, which will expire upon execution of sale of portions of remnant parcels.
   a. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time.
   b. Right-of-Entry permit will expire upon execution of sale of remnant parcel to the Applicant.
   c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

6. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the sale of the subject remnants to Stephen P. Rapozo, Sr. Trustee of the Stephen P. Rapozo, Sr. Trust, Mervin L. & Fay T. Rapozo, Trustees of the Marvin L. & Fay T. Rapozo Trust, Doreen A. Rita and Madeline M. Yamaguchi 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 deed or grant (remnant) 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,

[Signature]

Marvin Mikasa
District Land Agent

APPROVED FOR SUBMITTAL:

[Signature]

Suzanne D. Case, Chairperson
TO: Land Division

THROUGH: Suzanne D. Case, Chairperson


The following permitted activities are found to be exempted from preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR:


PSF Number: 15KD-051

Project Description: The Kapaa irrigation system was built in the 1920s to provide water for approximately 6,000 acres of land for sugar cane cultivation. The system comprises 22.5 miles of ditch and tunnel, the Wailua Reservoir with 242 million gallon capacity, the Kapahi Reservoir with 30 million gallon capacity and three smaller reservoirs.
On November 17, 2000 the Amfac Company ceased farming operations on Kauai, resulting in the closing of the East Kauai Water Company and the abandonment of the irrigation system of reservoirs and ditches in the region. The subject ditch remnants were abandoned prior to Amfac’s termination of sugar cane cultivation and was last in use in the 1970s. Several similar segments of abandoned ditch throughout the area have been filled in and sold as remnants to abutting private property owners.

The Applicants intent to consolidate the subject parcels into their abutting private properties. Applicants have 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.

Consulted Parties:
The Sale of State Remnant Parcels and Immediate Right-of-Entry application was sent out for review and comments to the following agencies: Hawaii Department of Health (DOH), State of Hawaii Historic Preservation Division, Office of Hawaiian Affairs (OHA), Kauai County Planning Department, Kauai County Public Works Division, and East Kauai Water Users Cooperative (EKWUC).

Exemption Determination:
After reviewing HAR § 11-200-(8), DLNR has concluded that the activities under this permit would have minimal or no significant effect on the environment and that the sale of the remnants is exempt from the requirement to prepare an environmental assessment.

According to the Exemption List for the Department of Land and Natural Resources, as Reviewed approved by the Environmental Council on June 5, 2015, Exemption Class No.1, "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 44 “Transfer of title to land” and Item 51 “Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing.”

Conclusion:
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
Board of Land and Natural Resources

Date 6/21/15