

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

April 28, 2017

Ref. No.: 15KD-052
EO-510

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

KAUAI

Rescind Prior Board Action of June 24, 2016, Item D-1, *Partial Withdrawal of Lands under Governor's Executive Order No. 510 for Reset Aside to Margaret A. Medeiros, Debra K. Titcomb, Randal K. Medeiros, and William Daryl Medeiros, for Grant of Easement at Kalaheo Homesteads, Series 2nd, Kalaheo, Koloa, Kauai, Tax Map Key: (4) 2-3-002:005.*

Grant of 65-Year Term, Non-Exclusive Easement to Margaret A. Medeiros, Successor Trustee of the William K. Medeiros Revocable Living Trust dated May 17, 1991, William Daryl Medeiros, Trustee of the William Daryl Medeiros Revocable Trust dated July 30, 2009, Debra K. Titcomb, and Randal K. Medeiros, for Access and Utility Purposes at Kalaheo Homesteads, Series 2nd, Kalaheo, Koloa, Kauai, Tax Map Key: (4) 2-3-002: Portion of 005.

APPLICANTS:

Margaret A. Medeiros, Successor Trustee of the William K. Medeiros Revocable Living Trust dated May 17, 1991, as to an undivided one-half (1/2) interest;
William Daryl Medeiros, Trustee of the William Daryl Medeiros Revocable Trust dated July 30, 2009, as to an undivided one-sixth (1/6) interest;
Debra K. Titcomb, as to an undivided one-sixth (1/6) interest; and
Randal K. Medeiros, as to an undivided one-sixth (1/6) interest;
the whole being held as tenants in common.

LEGAL REFERENCE:

Section 171-11, 13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kalaheo situated at Kalaheo, Koloa, Kauai, identified by Tax Map Key: (4) 2-3-002: Portion of 005, as shown on the attached map labeled Exhibit AA.

AREA:

5,149 square feet, more or less.

ZONING:

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

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. 510, Department of Education for Kalaheo School Site 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.

TERM:

Sixty-five (65) years.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit CC.

DCCA VERIFICATION:

Not applicable. The Applicants as trustees and/or natural persons are not required to

register with DCCA.

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. Process and obtain subdivision at Applicant's own cost;
4. Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

REMARKS:

Kalaheo Homesteads, 2nd Series was created in March of 1913. Land Patent Grant 7048 was issued to Albert Andrade in May 1918 for land that includes the parcel currently designated as TMK: (4) 2-3-002:115 (Parcel 115). The subject State parcel abutting Parcel 115 was an un-awarded portion of the Government (Crown) Lands of Kalaheo, currently under Executive Order No. 510, issued on October 10, 1931, setting aside government lands for public purposes for Kalaheo School Site.

The Andrade family has been traversing a portion of the school lot for several decades, under an agreement/understanding with the school to access Parcel 115. The school has no plans to utilize that portion of the property due to the sloping terrain of valleys and gulches. The area is currently overgrown with vegetation. The proposed easement alignment is the only available/feasible route for access due to the topography of the area, which consists of valleys and gulches.

Legal access to Parcel 115 was originally through Umi Umi Road, a county roadway. For reasons unknown, the County abandoned its maintenance of Umi Umi Road, physically land-locking the southern portion the Andrade property.

On September 22, 2014, a Quitclaim Deed covering Parcel 115 was executed by Margaret A. Medeiros, Successor Trustee of the William K. Medeiros Revocable Living Trust dated May 17, 1992, Debra K. Titcomb, Randall K. Medeiros, William Daryl Medeiros, Trustee of the William Daryl Medeiros Self-Trusteed Revocable Trust, dated July 30, 2009, Josette Caires, Michael H. Andrade, Manual H. Andrade, and Brian Martin Andrade, Grantors, to Margaret A. Medeiros, Successor Trustee of the William K. Medeiros Revocable Living Trust dated May 17, 1992, as to an undivided one-half (1/2) interest, Debra K. Titcomb, as to an undivided one-sixth (1/6) interest, Randall K. Medeiros, as to an undivided one-sixth (1/6) interest, and William Daryl Medeiros Self-Trusteed Revocable Trust, dated July 30, 2009, as to an undivided one-sixth (1/6) interest, Grantees, the whole being held as tenants in common.

At its meeting of June 24, 2016, item D-1, the Board of Land and Natural Resources approved a partial withdrawal of government lands from Governor's Executive Order No. 510 to the Department of Education (DOE). The original plan was to withdraw lands from Executive Order No. 510 for reset aside to Margaret A. Medeiros, Debra K. Titcomb, Randal K. Medeiros, and William Daryl Medeiros for a perpetual, non-exclusive access and utility easement, to provide a secondary access to Parcel 115. (Exhibit BB)

In the processing of the above request, staff realized that the proposed Board action to withdraw a portion of an existing Executive Order for reset aside to an abutting private landowner (Medeiros) for issuing an easement is not the proper action to resolve the situation. Staff now proposes to issue an access easement over the lands encumbered by Governor's Executive Order No. 510 upon obtaining concurrence from the managing agency of the executive order, and with Governor's approval.

As a result, staff is now recommending that the Board rescind its prior action of June 24, 2016, item D-1, and to instead issue a 65-year term, non-exclusive easement to the owners of Parcel 115 for access and utility purposes. A term easement is recommended instead of a perpetual easement due to the possibility of public roads being re-established in this area in the future.

Margaret A. Medeiros, Successor Trustee of the William K. Medeiros Revocable Living Trust dated May 17, 1991, William Daryl Medeiros, Trustee of the William Daryl Medeiros Self-Trusteed Revocable Trust dated July 30, 2009, Debra K. Titcomb, and Randal K. Medeiros 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.

On February 24, 2017, various governmental agencies and interest groups were solicited for comments. The only respondents were the County Fire Department and DOE. Neither had any objections to the request.

AGENCIES	COMMENTS
County of Hawaii:	
Board of Water Supply	No response
Fire Department	No objections
Planning Department	No response
Police Department	No response
Public Works	No response
State of Hawaii:	
DOE	No objections
Other Agencies/ Interest Groups:	
Office of Hawaiian Affairs	No response

By letter dated March 30, 2016, William N. Arakaki, Kauai Complex Area Superintendent, DOE, had no objections to the issuance of the proposed access and utility easement. DOE requested that the Applicant, 1) fence off and maintain the easement area, 2) erect proper signage along the fence line, and 3) conduct work activities during school intersession or summer break to minimize impacts to Kalaheo Elementary School activities.

This easement will be gated and fenced off from the school and maintained for dust, weed control, etc. Proper signs will be placed along fence line. The school will be provided a key to the gate. Applicants have the concurrence of the Department of Education. See Exhibit E.

Staff has no objections to the request.

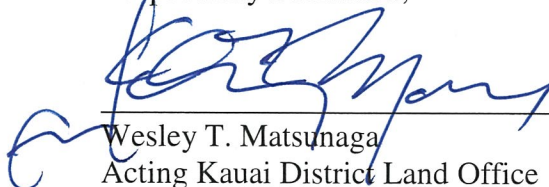
RECOMMENDATION: That the Board:

1. Rescind prior Board action of June 24, 2016, Item D-1.
2. 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.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a 65-year term, non-exclusive easement to Margaret A. Medeiros, Successor Trustee of the William K. Medeiros Revocable Living Trust dated May 17, 1991, as to an undivided one-half (1/2) interest, William Daryl Medeiros, Trustee of the William Daryl Medeiros Self-Trusteed Revocable Trust dated July 30, 2009, as to an undivided one-sixth (1/6) interest, Debra K. Titcomb, as to an undivided one-sixth (1/6) interest, and Randal K. Medeiros, as to an undivided one-sixth (1/6) interest, the whole being held as tenants in common, 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 term easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property, described as Lot 122-B, Tax Map Key: (4) 2-3-002:115, for the term of the easement, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the 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;

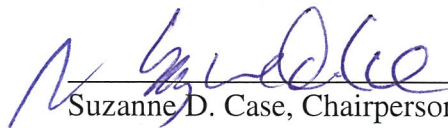
- C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the issuance of an immediate right-of-entry to Margaret A. Medeiros, Successor Trustee of the William K. Medeiros Revocable Living Trust dated May 17, 1991, William Daryl Medeiros, Trustee of the William Daryl Medeiros Self-Trusteed Revocable Trust dated July 30, 2009, Debra K. Titcomb, and Randal K. Medeiros, over portions of the State parcel, identified as TMK: (4) 2-3-002:005, under the terms and conditions cited above, which are by this reference incorporated herein and subject further 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;
 - B. This right-of-entry is effective upon Land Board approval and shall terminate upon issuance of the grant of easement document; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Acting Kauai District Land Office

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

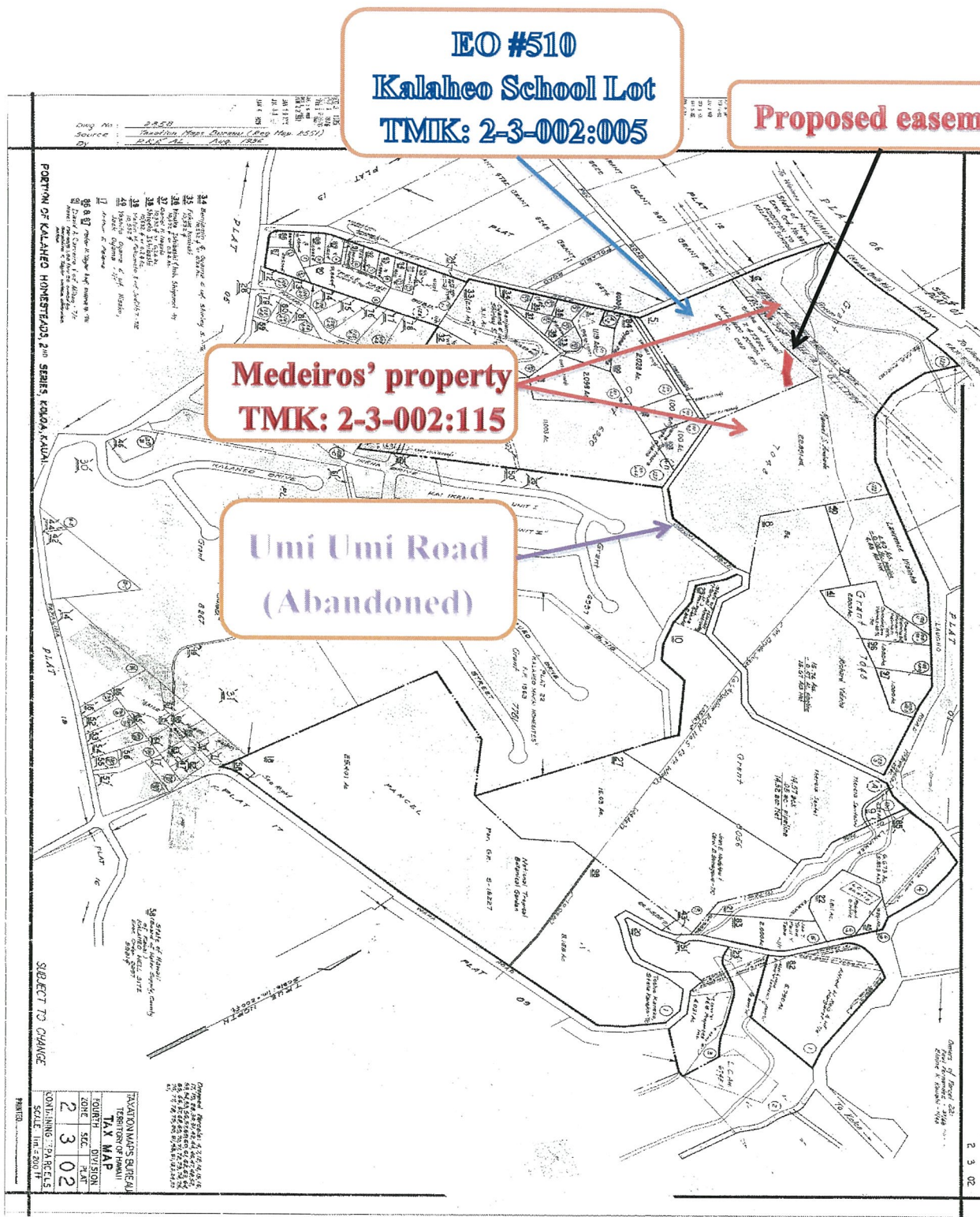


EXHIBIT AA

AMENDED

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

June 24, 2016

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

Ref. No.: EO 510
PSF No.: 15KD-052

Kauai

Partial Withdrawal of Lands Under Governor's Executive Order No. 510; Reset Aside to Margaret A. Medeiros, Debra K. Titcomb, Randal K. Medeiros and William Daryl Medeiros for Grant of Perpetual, Non-Exclusive Easement for Access and Utility Purposes; and Immediate Management and Construction Right-of-Entry Permit at por. of Kalaheo Homesteads, 2nd Series, Kalaheo, Koloa, Kauai, Tax Map Key: (4) 2-3-002:005.

CONTROLLING AGENCY (of subject executive order):

State of Hawaii, Department of Education (DOE)

APPLICANTS:

Margaret A. Medeiros, Successor Trustee of the William K. Medeiros Revocable Living Trust;
Debra K. Titcomb,
Randal K. Medeiros
William Daryl Medeiros, Trustee

LEGAL REFERENCE:

Section 171-11, 13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kalaheo situated at Kalaheo, Koloa, Kauai, identified by Tax Map Key: (4) 2-3-002:005, as shown on the attached map labeled Exhibit A.

AREA:

5,149 square feet, more or less.

as amended

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

June 24, 2016 *uo*

D-1

EXHIBIT BB

ZONING:

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

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:

Encumbered by Governors Executive Order No. S-510, Department of Education for Kalaheo School purposes.

PURPOSE OF SET-ASIDE:

Grant of Non-Exclusive Perpetual Easement for access and utility 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 appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit B.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

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) Process and obtain subdivision at Applicant's own cost;
- 4) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

REMARKS:

Kalaheo Homesteads, 2nd Series was created in March of 1913. A Land Patent Grant 7048 was issued to A. Andrade dated May 1918. The subject parcel which abuts the Land Patent Grant 7048 was an un-awarded portions of the Government (Crown) Land of Kalaheo. Executive Order 510, setting aside land for public purposes for Kalaheo School lot was issued on October 10, 1931.

Andrade family have an understanding with the school to access Tax Map Key: (4) 2-3-002:005 for decades at the same site being requested. This site is not used by the school. Currently, site is overgrown. This area is the most accessible to Lot 122B. They cannot go around the school property lot as it falls into a valley. See Exhibit C.

They also accessed the property thru Umi Umi Road which was the only other access used to the property. The County of Kauai has since abandoned maintenance of Umi Umi Road, preventing the Andrades access and creating a landlock situation. See Exhibit D.

They are now requesting a Grant of Perpetual, Non-Exclusive Easement to their property. This easement will be gated and fenced off from the school and maintained for dust, weed control, etc. Proper signs will be placed along fence line. The school will be provided a key to the gate. They have the concurrence of the Department of Education. See Exhibit E.

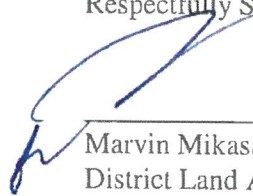
RECOMMENDATION: That the Board:

1. Subject to the Applicant fulfilling the Applicant Requirements above, Approve of and recommend to the Governor the issuance of an executive order for a partial withdrawal of 5,149 square feet, more or less from Governor's Executive Order No. 510, identified on Exhibit A, being a portion of Tax Map Key: (4) 2-3-002:005, which is presently under the control and management of the Department of Education as a elementary school site, subject to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;

- B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - 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.
2. Approve of and recommend the issuance of a Grant of Perpetual, Non-Exclusive Easement setting aside the subject area above withdrawn, consisting of 5,149 square feet, more or less, identified as Exhibit A, being a portion of Tax Map Key: (4) 2-3-002:005, to be under the control and management of Margaret A. Medeiros, Debra K. Titcomb, Randal K. Medeiros and William Daryl Medeiros for Access and Utility Purposes, under the terms and conditions cited above, which are by this reference incorporated herein and subject further 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. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (4) 2-3-002:115, Lot 122B, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the 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;
 - 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.
3. Grant an Immediate Management and Construction Right-of-Entry to Margaret A. Medeiros, Debra K. Titcomb, Randal K. Medeiros and William Daryl Medeiros for Grant of Perpetual, Non-Exclusive Easement for Access and Utility Purposes, its consultants, contractors and/or persons acting for or on its behalf, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

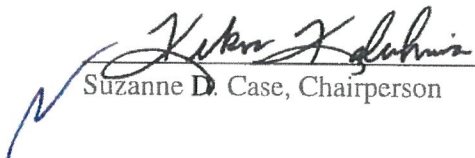
- A. The standard terms and conditions of the most current management right-of-entry form, as may be amended from time to time;
- B. The term of the right-of-entry shall commence upon date of that Margaret A. Medeiros, Debra K. Titcomb, Randal K. Medeiros and William Daryl Medeiros, returns a copy of the duly executed right-of-entry permit to the Kauai District Land Office and shall expire upon the issuance of the subject set aside document;
- C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Marvin Mikasa
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

Land Board Meeting: June 24, 2016; D-1: Approved as amended.

Approved as amended. See attached page.

Land Board Meeting: June 24, 2016; D-1: Approved as amended.

Approved as amended. The Board amended the submittal to delete the withdrawal requirement, and replaced recommendation number 1 with a 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.*



SUZANNE D. CASE
CHAMPLAIN
HONORARY LIAISON NATURAL RESOURCES
COMMISSIONER WATER RESOURCES MANAGEMENT
KEOKA KALUHIWA
TRUST OF FUD
JFFREY F. PEARSON, P.F.
DIRECTOR WATER
AQUARIUM RESOURCES
BOATING CENTER LAKE CHARLES VERN
JOURNAL OF CONSERVATION
COMMISSIONER OF THE RESOURCES MANAGEMENT
CONSERVATION AND RECREATION
CONSERVATION AND RECREATION
LANDS
HONORARY MEMBER
HONORARY MEMBER
MEMBER OF THE RESOURCES
ADMINISTRATIVE BOARD OF CONSERVATION
LAND
STATE PARKS

The Right-of-Entry application was sent out for review and comments to the following agencies: Hawaii Department of Health (DOH), State of Hawaii – Department of Education, State of

EXHIBIT "B"

Hawaii Historic Preservation Division, Office of Hawaiian Affairs (OHA), Kauai County Planning Department, Kauai County Public Works Division.


Exemption Determination:

After reviewing HAR § 11-200-(8), DLNR has concluded that the activities under this easement and right-of-entry permit would have minimal or no significant effect on the environment and that issuance of the permit is categorically 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 [HAR § 11-200-8(a)(46)]".

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

6/9/16
Date

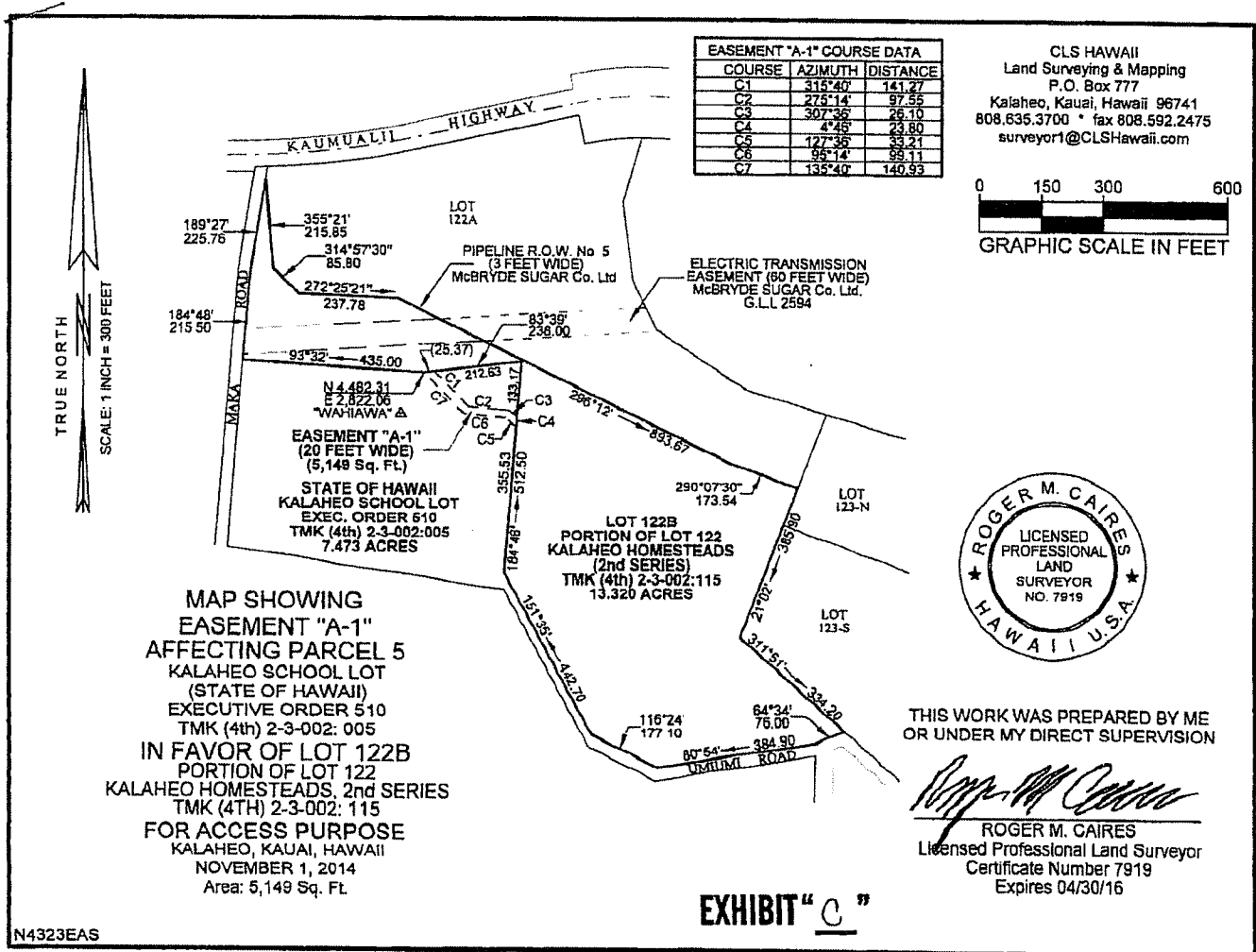




EXHIBIT "C"



STATE OF HAWAII
DEPARTMENT OF EDUCATION
OFFICE OF THE COMPLEX AREA SUPERINTENDENT
KAUAI SCHOOLS
3060 EIWA STREET, ROOM 305
LIHUE HAWAII 96766

March 30, 2016

Mr. Marvin Mikasa
Kauai District Land Agent
Department of Land and Natural Resources
Land Division
3060 Eiwa Street, Room 208
Lihue, Hawaii 96766

Dear Mr. Mikasa:

This letter concurs that the Department of Education Kauai District Office is willing to sign off on a Grant of Easement to Margaret A. Medeiros, Successor Trustee of the William K. Medeiros Revocable Living Trust, with the current address of 3407 Elima Street, Lihue, Hawaii 96766 for Access and Utility Purposes over Tax Map Key: (4) 2-3-002:005 as shown on the attached map labeled Exhibit A.

Applicant must fence and maintain the easement area. Proper signage should be placed along the fence line and work should be done during the school intersessions or summer school break to have a minimum impact on Kalaheo Elementary school activities.

Sincerely,

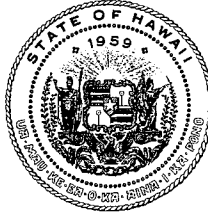
William N. Arakaki
Kauai Complex Area Superintendent

WA:ji

Attachment

cc: Gail Nakaahiki, Complex Area Business Manager

EXHIBIT "E"



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

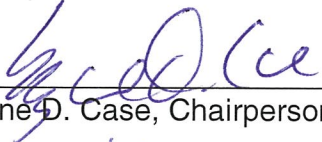
EXEMPTION NOTIFICATION

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

Project Title:	Grant of 65-Year Term, Non-Exclusive Easement to Margaret A. Medeiros, Successor Trustee of the William K. Medeiros Revocable Living Trust dated May 17, 1991, William Daryl Medeiros, Trustee of the William Daryl Medeiros Revocable Trust dated July 30, 2009, Debra K. Titcomb, and Randal K. Medeiros, for Access and Utility Purposes at Kalaheo Homesteads, Series 2nd, Kalaheo, Koloa, Kauai, Tax Map Key: (4) 2-3-002: Portion of 005.
Project / Reference No.:	PSF No.: 15HD-052
Project Location:	Kalaheo Homesteads, Series 2 nd , Kalaheo, Koloa, Kauai.
Project Description:	Grant of Perpetual, Non-Exclusive Access and Utility Easement.
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 and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to, Exemption Class 1, No. 46, which states, "Creation or termination of easement, covenants, or other rights in structures or land."
Exemption Item Description from Agency Exemption List:	Creation or termination of easement, covenants, or other rights in structures or land.
Consulted Parties:	The Department of Education and County Public Works.
Recommendation:	The issuance of a 65-year term non-exclusive easement for access and utility purposes over a portion of land in itself will probably have minimal or no significant effect on the

EXHIBIT CC

environment. It is recommended that the Board of Land and Natural Resources find that the action is exempt from the preparation of an environmental assessment.

N 
Suzanne D. Case, Chairperson

4/6/17
Date