

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

September 22, 2017

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

Ref: 17OD-072

OAHU

Grant of Term, Non-Exclusive Easement to ABP 2927 East Manoa Road LLC for Encroachment Purposes; Issuance of Right-of-Entry Permit, Manoa, Honolulu, Oahu, Tax Map Key: (1) 2-9-026: portion of 014.

APPLICANT:

ABP 2927 East Manoa Road LLC, a domestic limited liability company ("Applicant").

LEGAL REFERENCE:

Section 171-13, 17, and 55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located in Manoa, Honolulu, Oahu, identified by Tax Map Key: (1) 2-9-026: portion of 014, as shown on the attached map labeled **Exhibit A**.

AREA:

To be determined, subject to review and approval by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Urban

City & County of Honolulu LUO: B-1

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: Other portions of the subject tax map key are encumbered by the following:

Grant of Non-Exclusive Easement S-5593, Manoa Village Association, Grantee, for gabion erosion control structure and landscaping easement, commenced on July 28, 2001 and expire on July 27, 2056; and

Grant of Perpetual Easement recorded as Liber 18715, page 334; A&B Manoa LLC, Grantee, for roadway and drive-thru facility purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove asphalt pavement, wooden guardrail, wheel stop, vacuum, drain inlet, and portion of storage building's eave line over, under and across State-owned land, including the right to trim and keep trimmed any trees in the way of its improvements.

TERM:

Fifty-five (55) years.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

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

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred 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, "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 that states, "creation or termination of easement, covenants, or other rights in structures or land." See **Exhibit B**.

DCCA VERIFICATION:

Place of business registration confirmed: YES x NO

Registered business name confirmed: YES x NO     
Applicant in good standing confirmed: YES x 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; and
3. Process and obtain designation of easement from the City and County of Honolulu, Department of Planning and Permitting, at Applicant's own cost.

REMARKS:

Around November 2016, IES Retail, LLC (“IES”) acquired the leasehold interest of the gas station (“Station”) at the Manoa Shopping Center, further identified as tax map key (1) 2-9-022:028 (“Parcel 28”). In the meantime, the fee title interest of Parcel 28 was also acquired by the Applicant. As part of the due diligence, a land survey of the Station was conducted, which revealed that improvements extend onto the adjacent State land, identified as tax map key (1) 2-9-026:014. A street view showing the encroachment is attached as **Exhibit C** for Board’s reference.

On a drawing dated 1965 for the Station provided by IES’s counsel, a wooden fence is shown in a location similar to the current one. Other improvements, e.g. vacuum and drain inlet, were probably installed subsequently, which accounts for their absence on the 1965 map. Applicant, being the fee owner of Parcel 28, requests for an easement to resolve the encroachments as shown on the 1965 and current survey map (**Exhibit D-1** and **D-2** respectively).

Staff also recommends the Board authorize the issuance of an immediate management right-of-entry permit to the Applicant, which shall include the standard insurance and indemnification provisions and expire upon the consummation of the subject easement.

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.

Commission on Water Resource Management<sup>1</sup>, Board of Water Supply, Department of Facility Maintenance, and State Historic Preservation Division have no comments/objections to the request. Department of Planning and Permitting, Department of Health, and Office of Hawaiian Affairs have not responded to the solicitation for comments by the deadline.

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<sup>1</sup> Commission on Water Resource Management indicates that the subject encroachment is grandfathered in since it was constructed in 1965. The easement request does not require any stream channel alteration permit (SCAP). Any future construction which may impact the stream channel would require a SCAP.



Division of Aquatic Resources requires Best Management Practices be incorporated in the easement document to minimize the potential for pollution of the aquatic environment. Copy of its requirements is attached as **Exhibit E**.

There are no other pertinent issues or concerns. Staff recommends the Board authorize the issuance of the easement and right-of-entry pursuant to the terms and conditions described above.

RECOMMENDATION: That the Board:

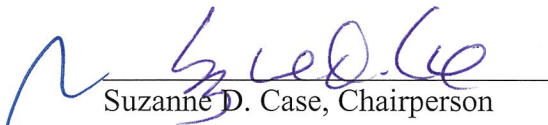
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
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) 2-9-022:028, provided the succeeding lessee 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 term non-exclusive easement to ABP 2927 East Manoa Road LLC covering the subject area for purposes described above 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 Tax Map Key: (1) 2-9-022:028, 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;
  - C. Requirements from the Division of Aquatic Resources shown on Exhibit E;
  - D. Review and approval by the Department of the Attorney General; and

- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- 4. Issuance of an immediate right-of-entry permit to ABP 2927 East Manoa Road LLC 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. The right-of-entry permit shall expire upon issuance of the easement; and
  - C. 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





**TMK (1) 2-9-026: portion of 014**

**EXHIBIT A**

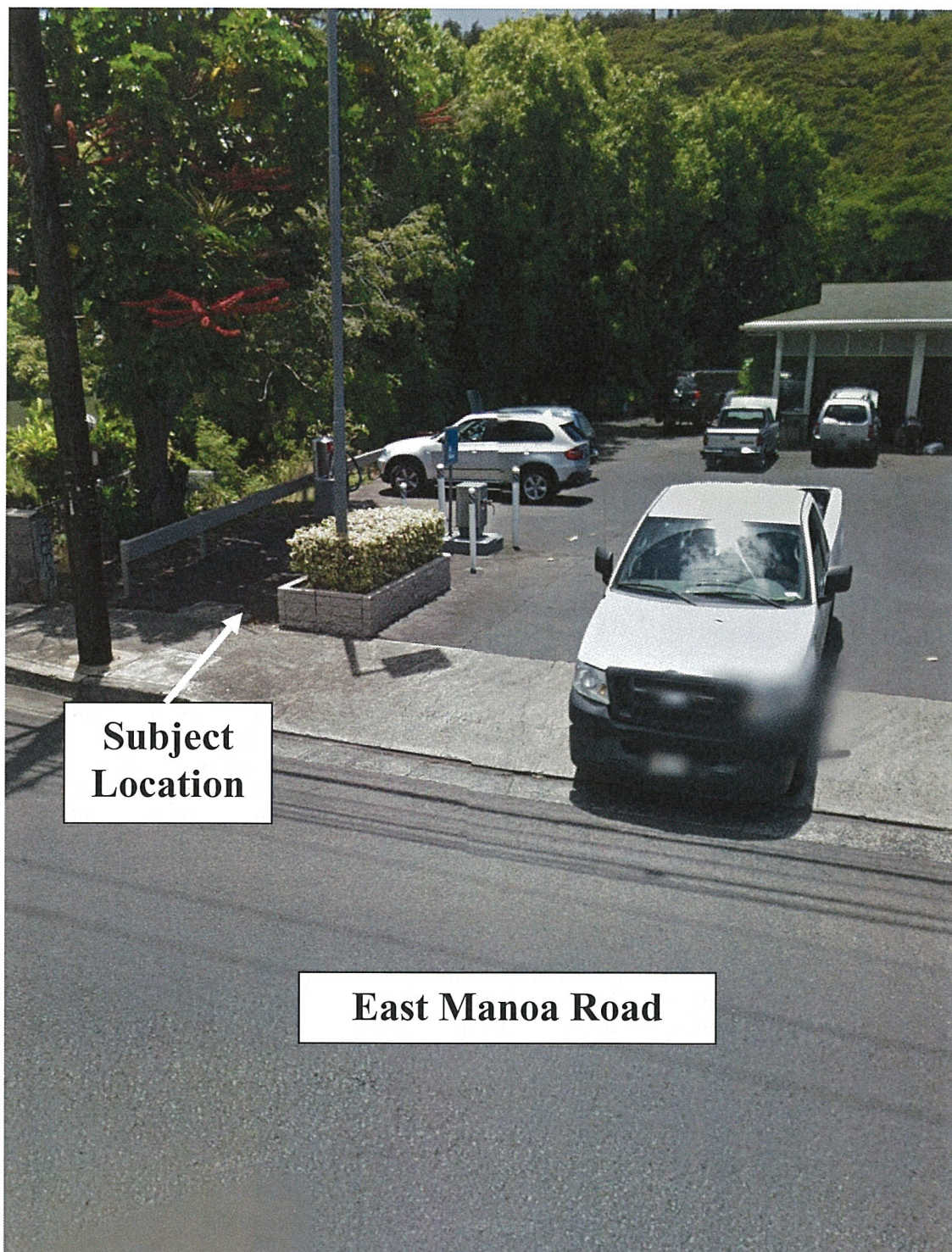
## EXEMPTION NOTIFICATION

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

Project Title:	Term, Non-Exclusive Easement for Encroachment Purposes
Project / Reference No.:	17OD-072
Project Location:	Manoa, Honolulu, Oahu, Tax Map Key: (1) 2-9-026: por. of 014.
Project Description:	The project is to document the existing encroachment on State lands.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	<p>In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred 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, "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 that states, "creation or termination of easement, covenants, or other rights in structures or land."</p> <p>The request pertains to the encroachment on State lands since 1965, and the Applicants are not planning to install any additional improvement on the State lands. Staff believes that the subject request would involve negligible or no expansion or change in use beyond that previously existing.</p>
Consulted Parties	Agencies as noted in the submittal.
Recommendation:	That the Board find 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.

**EXHIBIT B**





**EXHIBIT C**



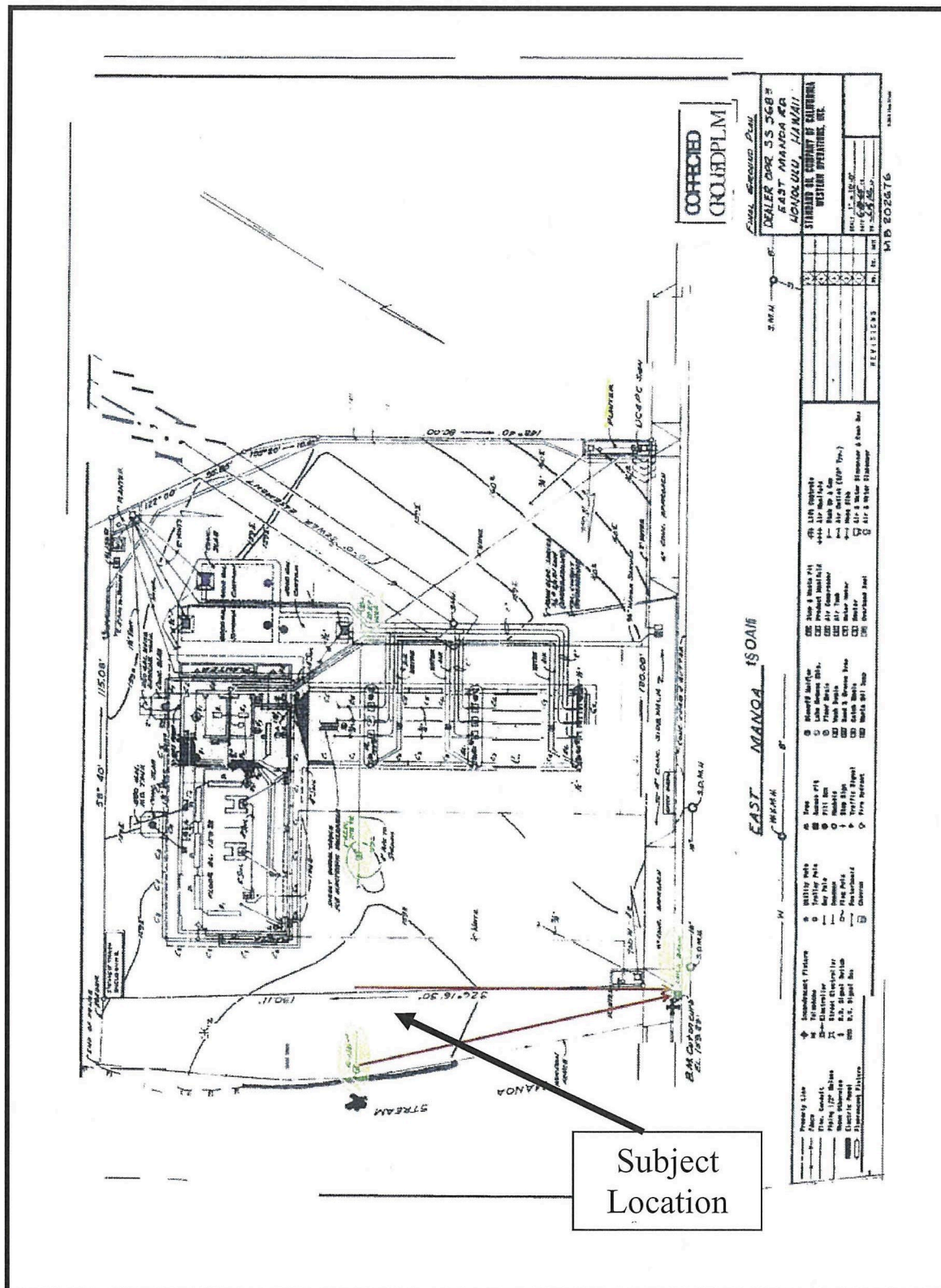


EXHIBIT D-1





DAVID V. IGE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF AQUATIC RESOURCES  
1151 PUNCHBOWL STREET, ROOM 330  
HONOLULU, HAWAII 96813

Date: July 12, 2017

DAR # 5556

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

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATWASH AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSIONER OF WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENFORCEMENT  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

MEMORANDUM

TO: Bruce S. Anderson, PhD  
DAR Administrator

FROM: Glenn Higashi *GRH*, Aquatic Biologist

SUBJECT: Request for Grant of Term, Non-Exclusive Easement to IES Retail, LLC for  
Encroachment Purposes; Issuance of Right-of-Entry Permit

Request Submitted by: Barry Cheung, District Land Agent

Location of Project: Manoa, Honolulu, Oahu; Tax Map Key: (1) 2-9-026: portion of 014

Brief Description of Project:

The applicant, IES Retail, LLC is requesting for review and comments on Grant of Term, Non-Exclusive Easement for Encroachment Purposes; Issuance of Right-of-Entry Permit. The portion of the government land located in Manoa, Honolulu, Oahu, is identified by Tax Map Key: (1) 2-9-026: portion of 014 and is adjacent to Manoa Stream. The character of use involves the right, privilege and authority to construct use, maintain, repair, replace and remove AC pavement, wooden guardrail, wheel stop, vacuum, drain inlet, and portion of storage building its eave line over, under and across State-owned land, including the right to trim trees and keep trimmed any trees in the way of its improvements.

Comments:

☐ No Comments ☒ Comments Attached

Thank you for providing DAR the opportunity to review and comment on the proposed project. Should there be any changes to the project plan, DAR requests the opportunity to review and comment on those changes.

Comments Approved: *Bruce S. Anderson* Date: *7/13/17*  
Bruce S. Anderson, PhD  
DAR Administrator

**EXHIBIT E**

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DAR # 5556

Comments

The Division of Aquatic Resources (DAR) has no objections to the issuance of Right-of-Entry Permit. This parcel however is adjacent to Manoa Stream and because of its character of uses Best Management Practices (BMPs) should be incorporated to minimize the potential for pollution of the aquatic environment:

- 1) prevent tree cuttings/vegetation from falling or blowing into the stream;
- 2) prevent rainfall runoff from the AC pavement surfaces from flowing directly into the stream,
- 3) insure the drain inlet does not flow into the stream, and;
- 4) prevent construction materials, petroleum products, debris and landscaping products from falling, blowing or leaching into the aquatic environment.