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

October 27, 2017

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

KAUAI

Issuance of Right-of-Entry Permit to Kauai Island Utility Cooperative for the Puu  
Lua Reservoir for Engineering and Study Purposes, Waimea, Kauai, Tax Map  
Key: (4) 1-4-001:002 (por.).

APPLICANT:

Kauai Island Utility Cooperative ("KIUC")

LEGAL REFERENCE:

Section 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Puu Lua Reservoir situated at Waimea, Kauai, identified  
by Tax Map Key: (4) 1-4-001:002, as shown on the attached map labeled Exhibit A.

AREA:

100 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 Governor's Executive Order No. 1510 to Division of State Parks for Waimea Canyon Park purposes.

CHARACTER OF USE:

Engineering and study purposes.

TERM OF RIGHT-OF-ENTRY:

Three years.

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council on June 2, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class 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 51 "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing." An exemption notice is attached as Exhibit B.

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) Obtain written concurrence from all users of the subject land.

REMARKS:

At its meeting on November 14, 2014 under Agenda Item D-1, the Board originally approved the issuance of a right-of-entry ("ROE") to KIUC for site assessment purposes of the Puu Lua Reservoir for a period of two years. At the time, KIUC sought to utilize

the reservoir as a component of proposed West Kauai Pumped Storage Project. Upon issuance of the ROE, KIUC began conducting the various fieldwork and studies for the project. The fieldwork and studies were required in order to obtain the necessary regulatory approvals and comply with the environmental review process pursuant to Chapter 343, Hawaii Revised Statutes.

The pumped storage project was then halted due to conflicts regarding the use of water sourced from the Waimea Watershed. The issues were resolved via the approval of a Mediation Agreement by the Commission on Water Resource Management on April 18, 2017. KIUC was a party to the Mediation Agreement and now wishes to resume with the development of the renewable energy project. As the original ROE has since expired, KIUC requests the Board approve a new right of entry. The new ROE would be for a term of three years and allow KIUC to complete the outstanding work remaining.

Since the prior Board approval, KIUC has modified the proposed project in order to comply with the Mediation Agreement. The project is now designated as the Puu Opa Energy Project, and will encompass lands under the jurisdiction of DLNR, the Department of Hawaiian Homelands (“DHHL”) and the Agribusiness Development Corporation (“ADC”). KIUC has obtained conditional land agreements with both ADC for the Kokee Ditch System and Mana Reservoir, and DHHL for the Puu Opa reservoir. Although the project has been modified, the proposed use and project footprint of the Puu Lua reservoir remains the same. A map of the entire project area is attached as Exhibit C.

Upon completion of the fieldwork and studies, KIUC intends to pursue a long term disposition for the reservoir as part of their project. KIUC would be required to undertake the work necessary to bring the reservoir in compliance with current dam safety regulatory standards. DLNR’s Dam Safety program has raised concerns about the condition of the structure and the need for remediation. However, the initial cost estimate for the work is prohibitively costly and the Department does not have the available funds to undertake such a project. Aside from the benefit from a renewable energy project, the Department has a specific interest in having the reservoir repaired.

Additionally, the management jurisdiction of the Puu Lua Reservoir is unclear. The reservoir itself is a component in the Kokee Ditch System. The irrigation system was set aside to ADC on August 18, 2009 via Executive Order 4287. The intent of the set aside was to transfer the entire irrigation system, including the Puu Lau Reservoir and the Kokee Ditch System to ADC, but an error resulted in the reservoir being excluded from the metes and bounds description of the set aside. At its meeting on April 11, 2011, under Agenda Item D-8, the Board approved a request to authorize the Chairperson to enter into a Memorandum of Understanding (MOU) between DLNR and ADC to grant ADC the authority to control and manage the reservoir as originally intended. For various reasons beyond the scope of this submittal, the MOU with ADC was never executed. The reservoir is currently operated on a day to day basis by the Kekaha Agricultural Association, a cooperative consisting of ADC tenants. Therefore, the Department’s goal is to resolve the reservoir’s dam safety issues, and then eventually set

aside the reservoir to ADC, resolving the management jurisdiction issues.

The reservoir is located within a larger parcel that is part of the Waimea Canyon State Park, set aside to the Division of State Parks. Furthermore, the parcel is zoned conservation. Given the multiple agency jurisdictions in this area, KIUC is required to consult with and obtain concurrences from ADC, State Parks and the Office of Conservation and Coastal Lands. Given the non-commercial nature of this request, the Board is recommended to issue the ROE at gratis.

RECOMMENDATION: That the Board

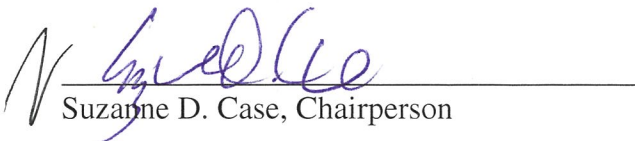
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a right-of-entry permit to Kauai Island Utility Cooperative 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;
  - B. 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



**EXHIBIT A**

Google Earth

Image © 2017 DigitalGlobe

Kokee Ditch Gage



Puu Lua Reservoir



Lua Reservoir



2000 ft



DAVID Y. IGE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

October 27, 2017

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

**ROBERT K. MASUDA**  
FIRST DEPUTY

**JEFFREY T. PEARSON, P.E.**  
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:	Right of Entry to Kauai Island Utility Cooperative
Project Location:	Waimea, Kauai; TMK: (4) 1-4-001:002 (por.)
Project Description:	Engineering and studies of the Puu Lua Reservoir
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No. and Description:	In accordance with Hawaii Administrative Rule Section 11-200-8 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 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" and Item No. 51, that states "Permits, licenses, registrations, and right-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."
Consulted Parties:	Office of Conservation and Coastal Lands
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.

**EXHIBIT "B"**



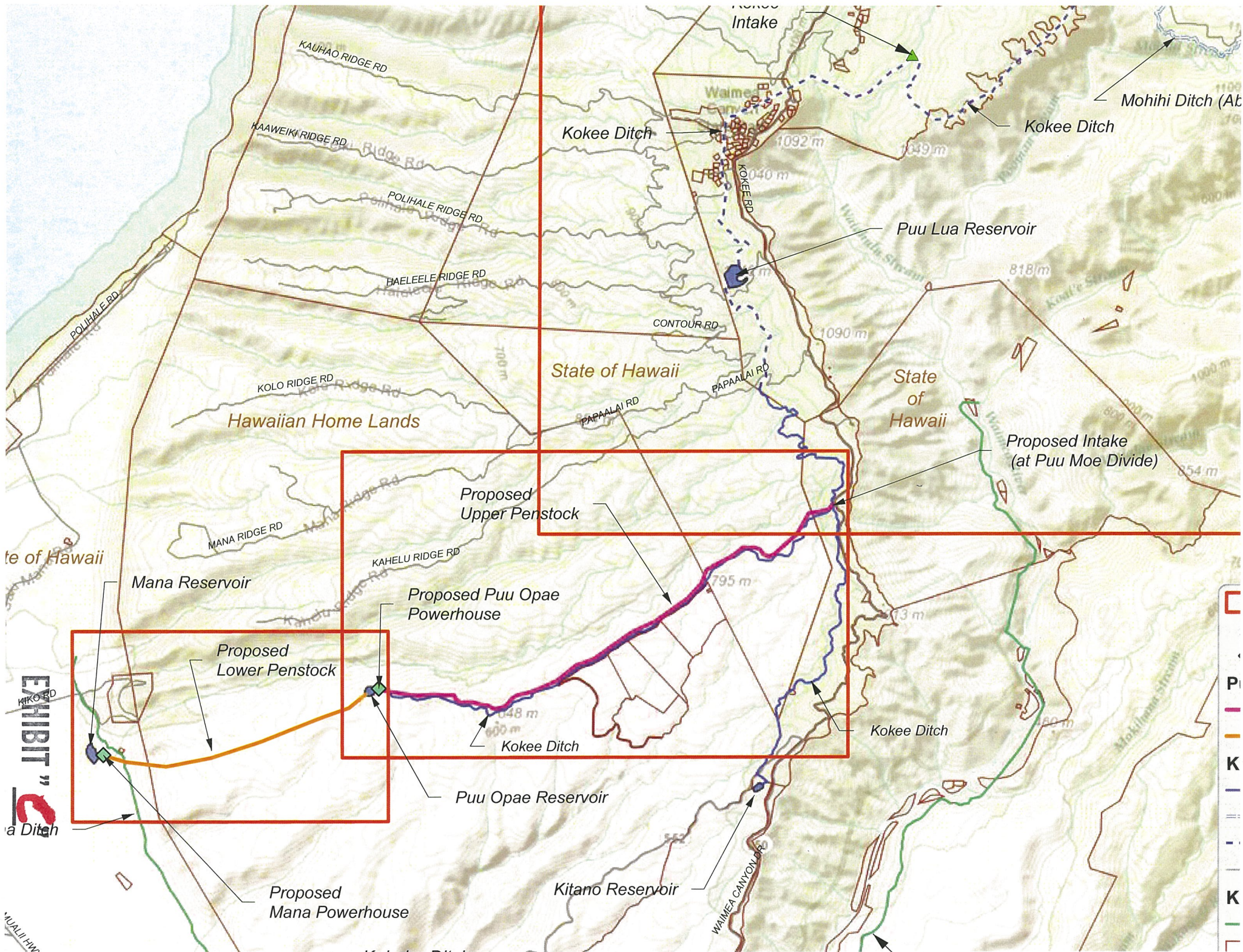


EXHIBIT "C"  
a Ditch  
QUALITY HW