

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

February 23, 2018

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

PSF No.: 15KD-212

KAUAI

Request to Extinguish a Twenty (20) Foot Wide Ditch Right-of-Way Easement Reserved to the State of Hawaii under Land Patent Grant No. 12,829, Traversing Private Property Owned By Michael Clark and Denise Addesso at Wailua Houselots, Wailua, Kauai, Tax Map Key: (4) 4-1-013: Portions of 046.

APPLICANT:

Michael Clark and Denise Addesso, husband and wife, Tenants by the Entirety.

LEGAL REFERENCE:

Sections 171-16(d) and 171-57, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of a ditch right-of-way reserved onto the State, Wailua Houselots, 4th Series, situated at Wailua, Puna (Kawaihau), Kauai, identified by Tax Map Key: (4) 4-1-013: Portions of 046, as shown on the attached map labeled Exhibit A.

AREA:

Ditch E (Part 1): 2,118 square feet, more or less.
Ditch E (Part 2): 2,214 square feet, more or less.

ZONING:

State Land Use District: Rural
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:
YES _____ NO x

CURRENT USE STATUS:

Vacant and unencumbered.

CONSIDERATION:

One-time lump sum payment representing the difference in the fair market value of the private property with and without the easement reservation, to be determined by an independent appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land and Natural Resources, concurred and reviewed 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, 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 44, which states, "Transfer of title to land." 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) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
- 2) Pay for an appraisal to determine the one-time payment for the difference in the fair market value of the private property with and without the easement reservation, at Applicant's own cost.

REMARKS:

Applicants Michael Clark and Denise Addesso (Applicants) request that the easement for a ditch right-of-way reserved in favor of the State on their private property designated as TMK: (4) 4-1-013:046 (Parcel 46) be extinguished so Applicants can remove the encumbrance from record. Applicants intend to construct two residential dwellings and a

shred treatment facility on the land. The improvements would overlay portions of the easement right-of-way.

Pursuant to section 171-16(d) and 171-57, HRS, as amended:

Notwithstanding any limitations to the contrary, where public land is disposed of with reservation in the State of quarry rights to rock, sand or gravel or an easement, and if the board of land and natural resources finds that a disposition of the reserved right or easement is not prejudicial to the best interest of the State, community or area in which the land is situated, it may, after giving public notice of the intended disposition as provided in section 171-16(d), dispose of the reserved right or easement to the owner of the land by direct sale or by lease without public auction.

The Territory of Hawaii conveyed Parcel 46 to Applicants' predecessors –in-interest on March 9, 1955 under Land Patent Grant No. 12,829, reserving to the Territory in perpetuity a 20-foot wide easement for a ditch right-of-way. Staff confirmed through the County of Kauai, Real Property Tax Office and by recorded Deed as evidenced through a title report prepared by Old Republic Title & Escrow of Hawaii, Order No. 6822000515-BJ, that Applicants are the current owners of Parcel 46. The title report indicated that the last recorded transfer or agreement to transfer of the subject property was dated January 24, 2007, recorded in the Bureau of Conveyances on January 31, 2007, under Document No. 207-018291.

Parcel 46 is currently undeveloped and no ditch is visible from aerial photographs or from onsite inspections. When Applicants' surveyor inspected Parcel 46, he noted that the ditch had been abandoned some time ago, as the upslope landowners had filled in the ditch right-of-way and constructed residential dwellings over the prior location of the ditch alignment. Staff has therefore determined that the subject area is an abandoned ditch right-of-way, identified as Portion of Ditch E, Parts 1 & 2. See Exhibit A.

On June 14, 2017 and again on December 11, 2017, various governmental agencies and interest groups were solicited for comments with the results indicated below:

AGENCIES	COMMENTS
County of Kauai:	
Planning	No comments/objections
Public Works	No comments
State of Hawaii:	
Agribusiness Development Corp	No comments/ objections
DLNR-Aquatic Resources	No response by suspense date
DLNR-CWRM	No response by suspense date
DLNR-Engineering	No comments/objections

DLNR-Historic Preservation	No response by suspense date
DOA	No comments/objections
Interest Groups:	
DHHL	No response by suspense date
East Kauai Water Users' Coop	No response by suspense date
OHA	No response by suspense date

The only respondents to our request for comments were the Kauai County Planning Department, DLNR-Engineering, the Department of Agriculture, and the Agribusiness Development Corporation. All had no comments to offer.

Staff made several attempts to contact the East Kauai Water User's Coop, by phone and by letter, but was unsuccessful to make contact on the two dates comments were solicited.

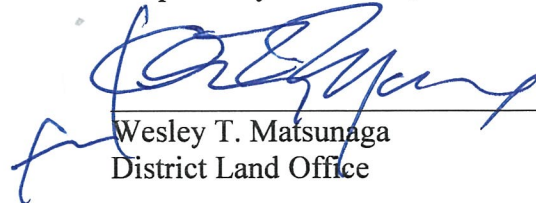
Applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

1. Find that the extinguishment of the reserved easement is not prejudicial to the best interests of the State.
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 extinguishment of the subject easement for a ditch right-of-way (portions of Ditch E, Parts 1 & 2) reserved on the private property belonging to Michael Clark and Denise Adesso, 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 extinguishment of a reserved easement document form, as may be amended from time to time;
 - B. The applicant shall pay for an appraisal to determine one-time payment;
 - 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.

Respectfully Submitted,



Wesley T. Matsunaga
District Land Office

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson





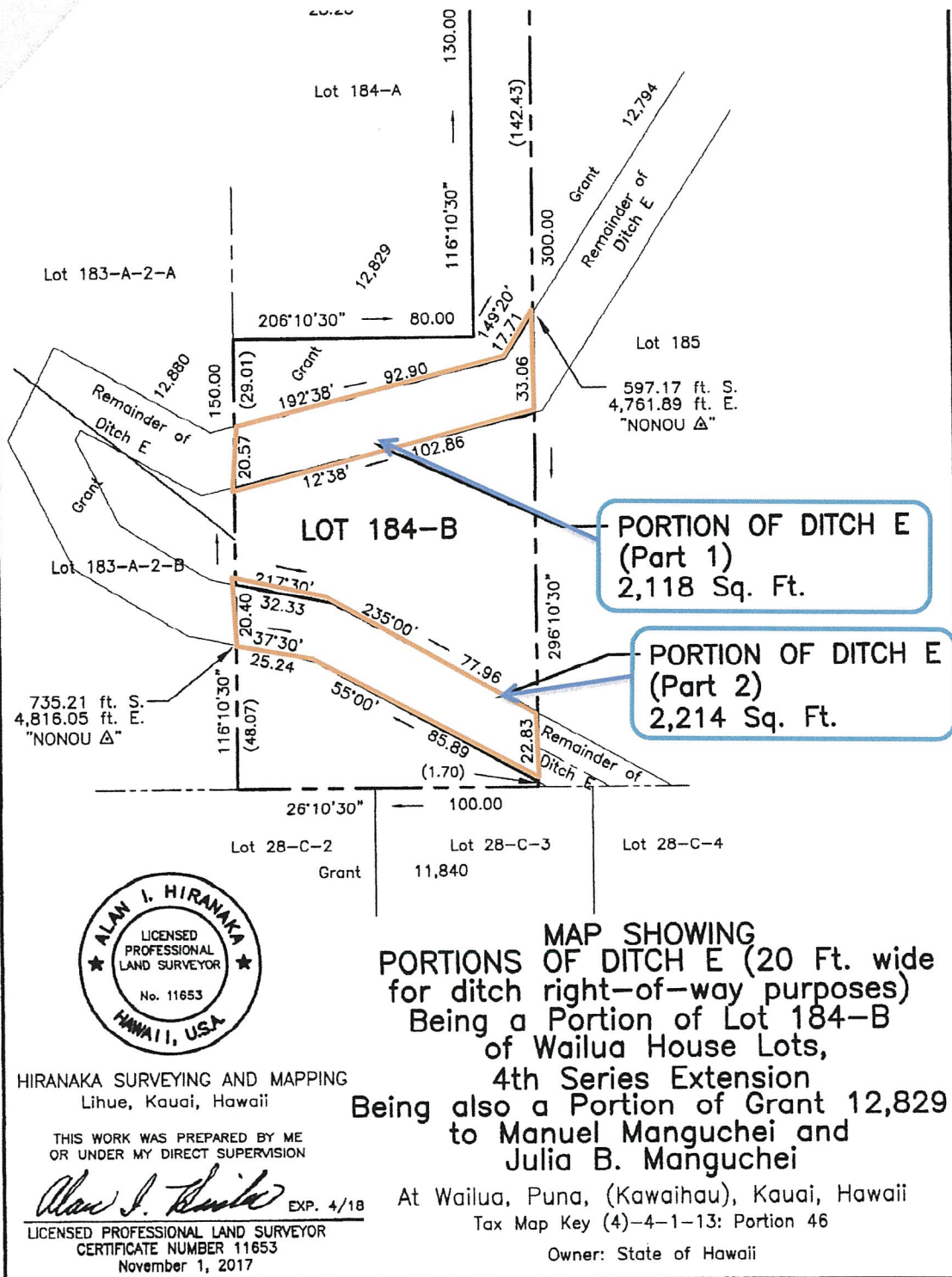
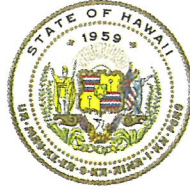


EXHIBIT A



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

February 23, 2018

Ref. No.: 15KD-212

EXEMPTION NOTIFICATION:

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

Project Title:	Extinguishment of easement (an abandoned ditch right-of-way) traversing a private property belonging to Michael Clark and Denise Addesso.
Project / Reference No.:	PSF No.: 15HD-212
Project Location:	Wailua Houselots, Wailua, Kauai, Tax Map Key: (4) 4-1-013: portions of 046.
Project Description:	Extinguishment of easement reserved to the State for a now-abandoned ditch right-of-way.
Chap. 343 Trigger(s):	Use of State land.
Exemption Class No. and Item 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, "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. 44, "Transfer of title to land."
Consulted Parties:	Agencies listed in submittal.
Recommendation:	The extinguishment of the easement in itself will probably have minimal or no significant effect on the 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.

EXHIBIT B