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

APPLICANT:

Shirley Patricia Gulmon, Trustee of Shirley P. Gulmon Revocable Trust dated September 11, 2008

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located in Kailua, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-3-017: adjacent to 061, as shown on the attached maps labeled Exhibits A1 to A3.

AREA:

975 square feet, more or less, 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: R-10

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

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 purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

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

EASEMENT TERM:

Fifty-five (55) years

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:

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 the one-time payment;
2. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
3. Process and obtain designation of easement approval from the Department of
Planning and Permitting at Applicant's own cost; and

4. Upon request, obtain a title report to ascertain ownership and legal access at Applicant's own cost and subject to review and approval by the Department.

REMARKS:

Applicant is the owner of the property identified as tax map key (1) 4-3-017:061, or Lot 229 ("Lot 229") as shown on Map 102, dated September 13, 1955, Land Court Application 323 ("Map 102"). According to the title deed for Lot 229\(^1\), the subject lot has the access right "...over and across Lot 20-I as shown on Map 4 ...".

Below is the history of consolidation and subdivision that Lot 229 has gone through, noting that only the lots involved are referenced in the table below.

<table>
<thead>
<tr>
<th>Lot No.</th>
<th>Map</th>
<th>Map Dated</th>
<th>Process</th>
<th>Exhibit</th>
</tr>
</thead>
<tbody>
<tr>
<td>20-J</td>
<td>60</td>
<td>7/11/1950</td>
<td>1st accretion</td>
<td>C-2</td>
</tr>
<tr>
<td>155 &amp; 156</td>
<td>67</td>
<td>10/5/1951</td>
<td>Subdivision of Lot 20-K into Lots 155 and 156</td>
<td>C-3</td>
</tr>
<tr>
<td>155</td>
<td>97</td>
<td>7/26/1955</td>
<td>Accretion</td>
<td>C-4</td>
</tr>
<tr>
<td>20-J</td>
<td>98</td>
<td>7/26/1955</td>
<td>2nd accretion</td>
<td>C-5</td>
</tr>
<tr>
<td>229 (the subject)</td>
<td>102</td>
<td>9/13/1955</td>
<td>Consolidation of Lots 155 (Map 97), 156 (Map 67), and 20-J (Map 98) into Lots 221 to 232.</td>
<td>C-6</td>
</tr>
</tbody>
</table>

On Exhibit C-6, the makai boundary of Lot 20-I is incorrectly depicted at a location almost lining up with the makai boundary of Lot 229. Nevertheless, DAGS Survey Division confirmed that Lot 20-I was created in 1925 and has remained unchanged. Exhibit A-2, which is an excerpt of tax map, clearly shows that the original makai boundary of Lot 20-I does not even reach the mauka boundary of Lot 229. Staff also notes that Lot 20-I was never part of this consolidation/subdivision process.

Lot 229 is currently listed on the market for sale. As part of the due diligence, the lack of legal access explained above became an issue. Applicant indicated that Lot 229 has been using the access for over 60 years. Also, Applicant provides aerial photos at Exhibits D-1 and D-2 showing the requested location before and after the easement is developed, if approved.

Staff discussed the subject matter with the realtor representing the Applicant. Upon review of the situation, staff believes that a non-exclusive access easement would be the

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\(^1\) Quitclaim deed recorded as Land court document No. 3844467 recorded on April 2, 2009.

\(^2\) Title of Exhibit C mentions the consolidation of Lots 155, 156, 20-J, and subdivided into Lots 221 to 232, inclusive, Lot 20-I was never part of this consolidation/subdivision process.
resolution. Staff indicated that issuance of such easement would be subject to payment of fair market value as required by the statutes. In addition to the payment of consideration, other associated costs will also be required, e.g. appraisal cost, surveyor cost, and obtaining insurance to include the State as additionally insured regarding the requested easement area. All these means the Applicant need to pay for them.

For a land locked parcel, the Division would typically recommend the Board issue a perpetual, non-exclusive access easement, further subject to payment of consideration. However, for any disposition requests near the shoreline, staff would recommend a 55-year term, non-exclusive easement.

Further, the Applicant does not intend to improve the requested easement area, but instead will retain the current topographical condition. A photo taken during recent site inspection is shown on Exhibit E for Board’s information. Staff believes that the proposed improvement would not represent substantial change to the area. Therefore, staff recommends the Board declare the request exempt for the preparation of an environmental assessment pursuant to Chapter 343, HRS.

Comments from agencies
State Historic Preservation Division and Board of Water Supply have no objections or comments to the request.

Department of Planning and Permitting has no objections to the request and recommends the designation of the easement with the department.

DAGS Survey Division confirmed configuration and area of Lot 20-I had never been revised since its initial subdivision in 1925.

Division of Aquatic Resources has no objections to the request. However, it recommends that mitigation measures be taken during construction activities in order to prevent contaminants from possibly entering the aquatic environment. In addition, site work is suggested to be conducted during the period of minimal rainfall and lands denuded of vegetation be replanted or covered as quickly as possible to control erosion.

Department of Health, Office of Conservation and Coastal Lands, Department of Parks and Recreation, Department of Facility Maintenance, and Office of Hawaiian Affairs have not responded to the solicitation for comments before the suspense date.

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.

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) 4-3-017:061 when such change in ownership occurs prior to the execution of the requested easement, 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.

3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Shirley Patricia Gulmon, Trustee of Shirley P. Gulmon Revocable Trust dated September 11, 2008 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 perpetual/term access 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) 4-3-017:061, 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. 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,

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case, Chairperson
Toward MCBH

toward Kailua Town

Lot 229

Kalama Beach Park

TMK (1) 4-3-017:061

EXHIBIT A-1
EXHIBIT A-2

Makai boundary of Lot 20-1 as shown on Map 4

Original length of Lot 20-1 as shown on Map 4
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 Access Purposes

Project / Reference No.: PSF 17OD-163

Project Location: Kailua, Koolaupoko, Oahu, Tax Map Key: (1) 4-3-017: adjacent to 061.

Project Description: Term, non-exclusive easement for access purposes to serve a land locked private property.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: 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.”

The Applicant is not planning to conduct any major improvement other than paving into a driveway. Therefore, staff believes that the proposed project would involve negligible or no expansion or change in use beyond that previously existing.

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
LAND COURT
TERRITORY OF HAWAII

SUBDIVISION OF LOT 20 OF THE
SUBDIVISION OF LOT 11 OF THE
SUBDIVISION OF LAND COURT
APPLICATION NO. 323 INTO LOTS
20-A TO 20-X (INCLUSIVE)
Pueoahal, Kailua, Koolaupoko, Oahu, T.H.

Scale: 1 in. = 200 ft.

WRIGHT, HARVEY & WRIGHT
By Geo. T. Wright
Surveyor & Maker of Plan,
855 Kapiolani Boulevard,
Honolulu, T. H. Sept. 25, 1925.

Armstrong Limited
by J. T. K. Hale
President

and Astusa
Secy

I hereby certify that the map herewith
being a subdivision of Lot 20 of Lot 11 of L.C.
Application No. 323, has been examined and veri-
"C-1"
ified and found to be correct.
Honolulu, T.H. Surveyor, Territory of Hawaii.
Nov. 28 1925
Approved: November 28, 1925.
Judge of the Land Court,
LAND COURT
TERRITORY OF HAWAII

ARTHUR VAN HORN MOLYNEUX
JANE KLEBAHN MOLYNEUX - APPLICANTS

LAND COURT APPLICATION 323
KALAMA TRACT

LOT 20-J

(PROPERTY AS OF JUNE 27, 1950)
PUHEHALA, KAILUA KOLOAIPOKO, OAHU, T.H.

This map is from an actual survey made on the ground by
or under the direct supervision of the undersigned on June 27,
1950, and may be checked by the Territorial Surveyor with my
Field Book number 24, page 50, Calculation Book number 15
page 271, and Work sheet filed in my office.

DAVID H. McKEOWN
Registered Land Surveyor 232
Land Court Surveyor 43

EXHIBIT "G-2"

KALAHEO AVENUE

I hereby certify that the Decree establishing highwater
mark and amending boundaries as of June 27, 1950
of Lot 20-J of the herein application has been entered
on January 9, 1950 and that the same has been noted
on the Owners' Transfer Certificate of Title.
Honolulu, T.H.,
January 9, 1950.

Registrar of the Land Court.

NOTE: Figures shown thus indicate number of course in description.
Owners of adjoining land are from records of the Taxation Maps Bureau.
LAND COURT
TERRITORY OF HAWAII

LAND COURT APPLICATION 323

SUBDIVISION OF LOT 20-K
AS SHOWN ON MAP 4
INTO LOTS 155 AND 156
AND THE DESIGNATION OF EASEMENTS "E" AND "F"
OVER LOT 155
AT PUEOHALA, KAILUA, KOOLAUPOKO, OAHU, T.H.

October 5, 1951
338 Dillingham Bldg.
Honolulu, T. H.

James E. Mann
Registered Professional Surveyor
Certificate Number 76
Land Court Surveyor
Certificate Number 1

OWNERS: ROBERT WALDRON CAPPS AND
RUTH DAVIES CAPPS

OWNERS' CERTIFICATE OF TITLE: 46,880

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE
OF THE LAND COURT DATED October 23, 1951......
BY ORDER OF THE COURT

Registrar of the Land Court

Area of Easement "F" : 1,670 5/8 F.t.
LAND COURT

TERRITORY OF HAWAII

THURSTON TWIGG-SMITH AND BESSIE TWIGG-SMITH (Husband and Wife) — APPLICANTS

LAND COURT APPLICATION 323

KALAMA TRACT

LOT 155

Boundary as of June 8, 1955 and cancellation of Easements 'E' and 'F' as shown on map 57

AT PUEOHALA, KAILUA, Koolaupoko, OAHU, T.H.

This map is from an actual survey made on the ground by or under the direct supervision of the undersigned on June 8, 1955 and may be checked by the Territorial Surveyor with my Field Book number 103, page 29, Calculation Folder number 1-8735-0-6 and work sheet 1-8736-0-6.

R. M. TOWILL, CORPORATION, LIMITED
Registered Professional Surveyor
Certificate Number 151

Thurston Twigg-Smith and Bessie Twigg-Smith (Husband and Wife)

Owners' Certificate of Title: 30,720

I hereby certify that the description of survey and map herein designating the boundaries of Lot 155 as of June 8, 1955 have been checked on the ground and the same found to be in accord.


James M. ( firn
Surveyor Territory of Hawaii

I hereby certify that Decree establishing highwater mark and amending boundaries as of June 8, 1955 of Lot 155 of the herein application has been entered on September 12, 1955 and that the same has been noted on the Owners Transfer Certificate of Title.

HONOLULU, T.H. September 12, 1955
Registrar, of the Land Court

EXHIBIT "E-4"

NORTH KALAHEO AVENUE

Note: Figures shown thus ( ) indicate the number of course in Description. Owners of adjoining land as shown on plan are from records of the

Plotting: 8x11 - 0.5

冊作成日: 1955/08/01
LAND COURT
TERRITORY OF HAWAII

ARTHUR VAN HORN MOYNEUX (Unmarried) - APPLICANT

LAND COURT APPLICATION 323
KALAMA TRACT

LOT 20-J
Boundary 25 of June 8, 1955
AT PUEOHALA, KAILUA, Koolaupoko, OAHU, T.H.

This map is from an actual survey made on the ground
by or under the direct supervision of the undersigned on
June 8, 1955 and may be checked by the Territorial Survey
with my Field Book number 222, Page 88, Calculation Filler
number 1-4735-05 Field work sheet 1-4736-0-5.

R.M. Towill Corporation, Limited
Registered Professional Surveyor
Certificate Number 151

Owner: Arthur Van Horn Molyneux (Unmarried)

Owner's Certificate of Title: 30.081

I hereby certify that the description of survey and
map herein designating the boundaries of Lot 20-J
as of June 8, 1955 have been checked on the ground
and the same found to be in accord.
HONOLULU, T.H. James M. Glenn
Surveyor, Territory of Hawaii.
August 31, 1955

I hereby certify that Decree establishing highwater mark and
amending boundaries as of June 8, 1955 of Lot 20-J of the herein
application has been entered on September 13, 1955 and that the
same has been noted on the Owners Transfer Certificate of Title.
HONOLULU, T.H. September 13, 1955
Registrar, of the Land Court

Exhibit "G-5"

Note: Figures shown thus @ indicate the
number of courses in description.
Owners of adjoining land as shown
on plan are from records of the Taxation
Map Surveyor.
LAND COURT APPLICATION 323

CONSOLIDATION OF LOT 185 AS SHOWN ON MAP 97, LOT 186 AS SHOWN ON MAP 67 AND LOT 20-J AS SHOWN ON MAP 98 AND RESUBDIVISION OF SAID CONSOLIDATION INTO LOTS 221 TO 222, INCLUSIVE AND DESIGNATION OF EASEMENTS "H" AND "J" EASEMENT "H" OVER AND ACROSS LOT 223 EASEMENT "J" OVER AND ACROSS LOT 230

PUEBALA, KAILUA, Koolaupoko, OAHU, H.I.

R.M. TOWILL CORPORATION, LIMITED

REPRESENTATIVE SURVEYOR: J. P. Sheehan.

OWNERS OF LOTS 155 AND 156: Twigg-Smith, Ada and Twigg-Smith (Glandsted), Ada Robertson.


OWNER'S CERTIFICATE OF TITLE: 56-021.


REGISTRAR OF THE LAND COURT

EXHIBIT "G-6"