

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

October 26, 2018

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

PSF No.:18OD-074

Oahu

Grant of Perpetual, Non-Exclusive Easement to Haseko (Ewa), Inc. for Drainage Purposes and Issuance of Construction Right-of-Entry Permit, Ewa, Oahu, Tax Map Keys: (1) 9-1-011: seaward of 007 and (1) 9-1-134: seaward of 006.

APPLICANT:

Haseko (Ewa), Inc, a domestic profit corporation.

LEGAL REFERENCE:

Sections 171-13, -17, -53, and -55, Hawaii Revised Statutes ("HRS"), as amended.

LOCATION:

Portion of land located seaward of One'ula Beach Park, Ewa, Oahu, identified by Tax Map Key: (1) 9-1-011: seaward of 007 and (1) 9-1-134: seaward of 006, as shown on the attached maps labeled **Exhibit A**.

AREA:

21,700 square feet, more or less, to be reviewed and approved by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District:	Conservation
City & County of Honolulu LUO of the abutting parcels:	P-2

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admissions Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Unencumbered.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, and replace the outlet for drainage purposes.

TERM:

Perpetual.

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.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Impact Statement acceptance notice for the subject project was published in the OEQC's Environmental Notice on January 8, 2006.

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. 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. Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

REMARKS:

The Applicant proposes to construct and maintain an ocean outlet to complete the Kalo'i Gulch Drainageway Project ("Project") on State submerged land makai of the subject parcels. The Project will serve as an overflow outlet to the ocean that will address flood control and regional drainage for all communities within the approximately 7,488 acre Kalo'i Gulch Watershed in Central and Leeward Oahu. In addition, all the upland landowners whose future development plans are currently constrained by the need to retain surface flows will benefit as a result.

Work in the proposed easement area is makai of the certified shoreline and will consist of lowering a natural berm that varies between 6 - 8 feet above the mean sea level ("msl") by approximately 2 - 4 feet above the msl, across the 500-foot width of the drainageway channel. The approximately 2,100 cubic yards that will be excavated will be used to raise the 500-foot channel bed immediately mauka of the conservation district from 1.8 feet above msl to 4.5 feet above msl, and to raise the channel banks approximately 4 - 6 feet higher than the channel bed to an elevation of 10 feet above msl. A total of 7,110 cubic yards of sand and limestone material will be excavated and used, of which 2,100 cubic yards will come from lowering the berm.

Lowering the berm to 4 feet above msl and elevating the channel bed to 4.5 feet in Oneula Beach Park means that the retention function of the natural berm at 6 - 8 feet above msl will be replaced by a 500 x 100-foot grassy swale 4.5 feet above msl that will be overtopped when storm water levels exceed 4.5 feet above msl. The grassing will reduce the amount of sand that gets carried into the ocean during some storm water discharge events.

In 2011, the SSFM, agent for the Applicant, City and County of Honolulu, Department of Planning & Permitting, Department of Hawaiian Home Lands, and the University of Hawaii jointly applied for Conservation District Use Application (CDUA) OA-3604 to construct an ocean outlet for storm water discharge on State-owned land in the Conservation District as part of the Project located on submerged land makai of the subject parcels. At the March 23, 2012, Board of Land and Natural Resources (Board) meeting a request for contested case was orally requested and subsequently written petitions were submitted. On June 13, 2014, the Board issued its Findings of Fact, Conclusions of Law, and Decision and Order approving the CDUA with seventeen (17) conditions. **(Exhibit B)**¹

It is anticipated that the actual construction will take approximately one (1) month to complete. Prior to the start of construction, the Applicant will work with the City and County of Honolulu, Department of Parks and Recreation on the logistics.

Applicant comments that the appraisal for the easement should consider the benefits

¹ Only Section III Decision and Order and the signature pages are attached in this submittal.

brought by the proposed regional infrastructure to other lands owners in the vicinity, including the State. Staff notes that the consideration will be determined by the selected appraiser based on his/her professional opinion. Nevertheless, comment from the applicant will be brought to the attention of the selected appraiser.

It is staff's understanding that there is currently an appeal pending in the courts, however the Applicant is willing to restore the area if the appeal reverses the above CDUP.

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

Staff did not solicit comments for the subject easement request as comments were solicited during the environmental impact statement and CDUA process.

Upon approval of today's request, Applicant will be reminded of the requirement for concurrent resolution from both houses of the legislature under Sect.171-53(c), HRS prior to the issuance of the requested easement.

RECOMMENDATION: That the Board:

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to Haseko (Ewa), Inc. covering the subject area for drainage 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 perpetual easement document form, as may be amended from time to time;
 - B. The Applicant shall comply with CDUP OA-3604;
 - C. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
 - 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.
2. Authorize the issuance of a construction right-of-entry permit covering the subject lands to Haseko (Ewa), Inc. for construction purposes subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry form, as may be amended from time to time;

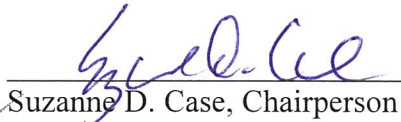
- B. The Applicant shall comply with CDUP OA-3604; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

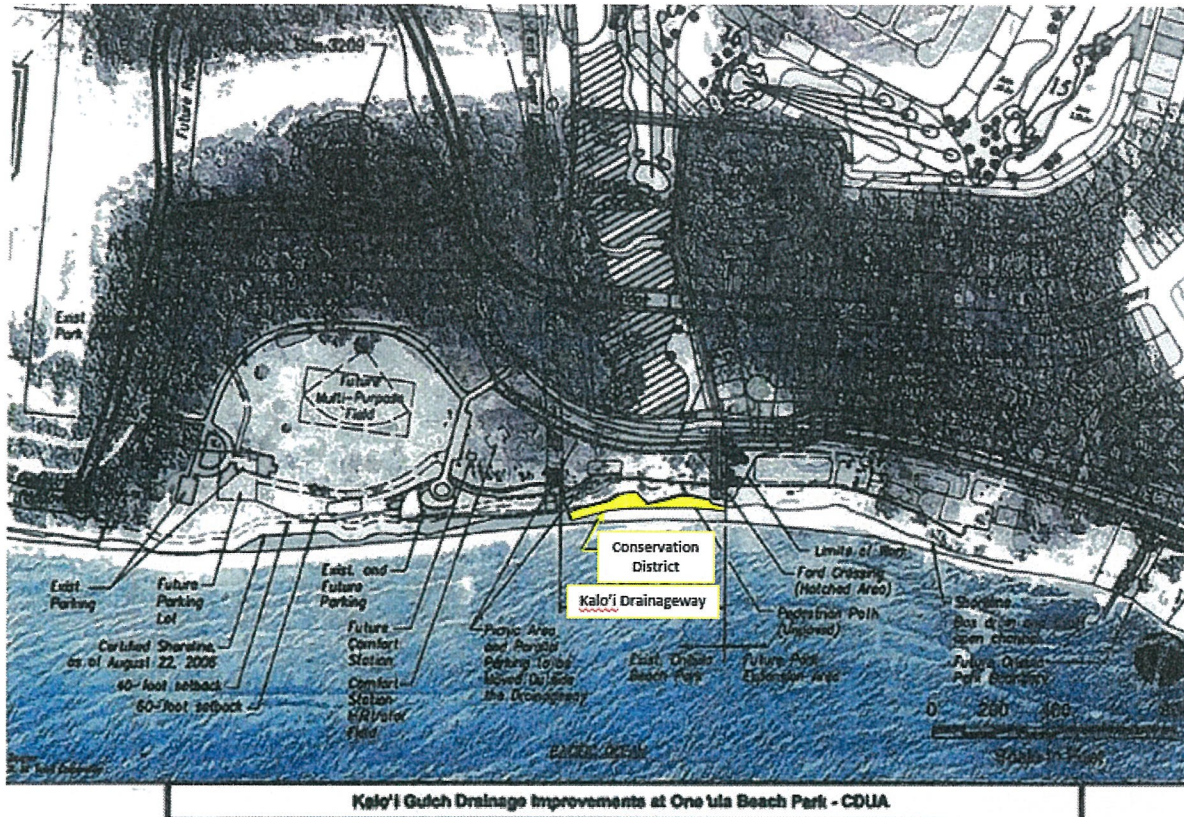
Respectfully Submitted,



Patti E. Miyashiro
Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



**CONSERVATION DISTRICT MAKAI OF
TAX MAP KEY: (1) 9-1-011:007 AND 9-1-134:006**

EXHIBIT A

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

RECEIVED
DEPT. OF LAND &
NATURAL RESOURCES
2014 JUN 13 P 5:36

In the matter of a Contested Case Petition)	DEPT. OF LAND & NATURAL RESOURCES STATE OF HAWAII
Regarding Conservation District Use Application)	
(CDUA) OA 3604 for a Portion of the Kalo'i Gulch)	Findings of Fact,
Drainage Improvements Located on State)	Conclusions of Law, and
Submerged Land Makai of TMKs: (1) 9-1-011:007)	Decision and Order
and (1) 9-1-134:006)	

Findings of Fact, Conclusions of Law, and
Decision and Order

EXHIBIT B

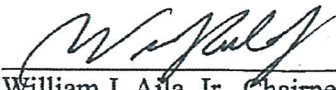
1 **III. DECISION AND ORDER**

2 The application for the Kalo'i Gulch Drainage Improvements located on submerged land
3 makai of TMKs: (1) 9-1-011:007 and (1) 9-1-134:006 is approved, subject to the following
4 conditions:

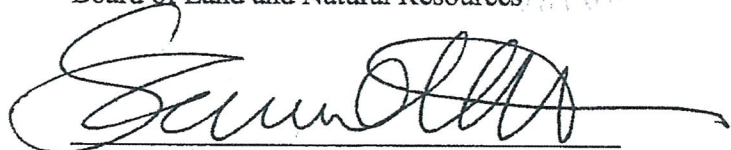
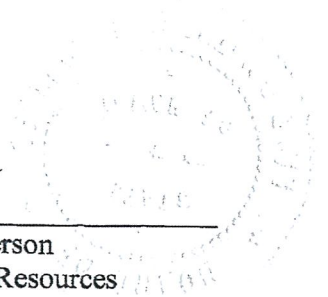
- 5 1. The permittees shall comply with all applicable statutes, ordinances, rules, and
6 regulations of the federal, state, and county governments, and applicable parts of Title 13-
7 5 of the Hawai'i Administrative Rules (HAR).
- 8 2. The permittees, their successors and assigns, shall indemnify and hold the State of
9 Hawai'i harmless from and against any loss, liability, claim, or demand for property
10 damage, personal injury, and death arising out of any act or omission of the applicant, its
11 successors, assigns, officers, employees, contractors, and agents under this permit or
12 relating to or connected with the granting of this permit. This condition shall not apply to
13 governmental departments or agencies.
- 14 3. The permittees shall obtain appropriate authorization from the Department for the
15 occupancy of state lands.
- 16 4. The permittees shall comply with applicable Department of Health administrative rules.
- 17 5. Before proceeding with any work authorized by the Department or the Board, the
18 permittees shall submit four copies of the construction plans and specifications to the
19 Chairperson or an authorized representative for approval for consistency with the
20 conditions of the permit and the declarations set forth in the permit application. Three of
21 the copies will be returned to the permittees. Plan approval by the Chairperson does not
22 constitute approval required from other agencies.
- 23 6. Unless otherwise authorized, any work or construction to be done on the land shall be
24 initiated within one year of the approval of such use, in accordance with construction
25 plans that have been signed by the Chairperson, and shall be completed within three years
26 of the approval of such use.
- 27 7. The permittees shall notify the Department in writing when construction activity is
28 initiated and when it is completed.
- 29 8. All mitigation measures that were recommended for implementation pursuant to the
30 accepted environmental impact statement for the proposed use are incorporated as
31 conditions of the permit.

- 1 9. The permittees understand and agree that the permit does not convey any vested right(s)
2 or exclusive privileges.
- 3 10. In issuing the permit, the Department and Board have relied on the information and data
4 that the permittees have provided in connection with the permit application. If,
5 subsequent to the issuance of the permit such information and data prove to be false,
6 incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole
7 or in part, and the Department may, in addition, institute appropriate legal proceedings.
- 8 11. Where any interference, nuisance, or harm may be caused, or hazard established by the
9 use, the permittees shall be required to take measures to minimize or eliminate the
10 interference, nuisance, harm, or hazard.
- 11 12. During construction, appropriate mitigation measures shall be implemented to minimize
12 impacts to off-site roadways, utilities, and public facilities.
- 13 13. The permittees acknowledge that the approved work shall not hamper, impede, or
14 otherwise limit the exercise of traditional, customary, or religious practices of native
15 Hawaiians in the immediate area, to the extent the practices are provided for by the
16 Constitution of the State of Hawai'i, and by Hawai'i statutory and case law.
- 17 14. Should historic remains such as artifacts, burials or concentration of charcoal be
18 encountered during construction activities, work shall cease immediately in the vicinity
19 of the find, and the find shall be protected from further damage. The contractor shall
20 immediately contact SHPD (808-692-8015), which will assess the significance of the find
21 and recommend an appropriate mitigation measure, if necessary.
- 22 15. The permittees shall plan to minimize the amount of dust-generating materials and
23 activities. Material transfer points and on-site vehicular traffic routes shall be centralized.
24 Dusty equipment shall be located in areas of least impact. Dust-control measures shall be
25 provided during weekends, after hours and prior to daily start-up of project activities.
26 Dust from debris being hauled away from the project site shall be controlled.
27 Landscaping and dust control of cleared areas will be initiated promptly.
- 28 16. Other terms and conditions as may be prescribed by the Chairperson.
- 29 17. Failure to comply with any of these conditions may constitute grounds for the
30 Department terminating this Conservation District Use Permit if such failure is not
31 corrected within thirty (30) days of written notice of such failure from the Department.


DATED: June 13, 2014, Honolulu, Hawai'i.



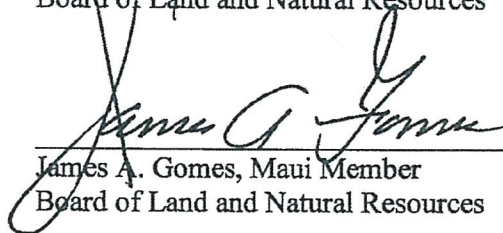
William J. Aila, Jr., Chairperson
Board of Land and Natural Resources



Samuel M. Gon, III, Member-at-Large
Board of Land and Natural Resources



David Goode, Member-at-Large
Board of Land and Natural Resources



James A. Gomes, Maui Member
Board of Land and Natural Resources

Reed Kishinami, Oahu Member
Board of Lands Natural Resources

Thomas Oi, Kauai Member
Board of Land and Natural Resources

Robert Pacheco, Hawaii Member
Board of Land Natural Resources

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

In The Matter of a Contested Case Regarding)
Conservation District Use Application (CDUA))
OA 3604 for the Kalo'i Gulch Drainage)
Improvements Located on State Submerged)
Land Makai of TMKs: (1) 9-1-011:007 and)
(1) 9-1-134:006)

DLNR File OA 12-01

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order was duly served upon the following parties as indicated, by means of State Messenger or U.S. Mail, postage prepaid on June 17, 2014, addressed as follows:

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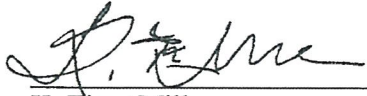
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Dated: Honolulu, Hawaii, June 17 2014


K. Tiger Mills
Department of Land & Natural Resources
State of Hawai'i