

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

November 9, 2018

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

PSF No.: 18KD-124

**KAUAI**

Grant of Perpetual, Non-Exclusive Easement to Jerry Albarado and Ellen Y. Albarado, Trustees of the Jerry and Ellen Albarado Revocable Living Trust dated November 28, 2017, for Access Purposes, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-8-003: Portions of 002 & 004.

**APPLICANT:**

Jerry Albarado and Ellen Y. Albarado, Trustees of the Jerry and Ellen Albarado Revocable Living Trust dated November 28, 2017.

**LEGAL REFERENCE:**

Sections 7-1 and 171-13, Hawaii Revised Statutes, as amended.

**LOCATION:**

Portion of Government lands located off the east bank of the Hanapepe River, Kaawanu, Waimea, Kauai, identified by Tax Map Key: (4) 1-8-003: portions of 002 & 004, as shown on the attached map labeled Exhibit A.

**AREA:**

To be determined by an independent surveyor, subject to review and verification by the Department of Accounting and General Services, Survey Division.

**ZONING:**

State Land Use District:	Agriculture
County of Kauai CZO:	Agriculture

**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 Revocable Permit No. S-3827, Gay & Robinson, Inc., permittee, for pasture purposes.

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.

TERM:

Perpetual. Subject property is a landlocked kuleana, identified as L. C. Award No. 7923.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Gratis. The access easement will be issued at gratis as the parcel it will serve has been confirmed to be a landlocked kuleana.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 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 1, Item 31, that states "repair and maintenance of existing roadways, roadway shoulders, road structures and signage, parking areas, walkways, bikeways, multi-use paths, driveways, and boat launch ramps (includes grading, resurfacing, infilling, sealing, grooving, cleaning, chipping, painting and patching)." and Item 46, that states "Creation or termination of easement, covenants, or rights in structures or land."

See Exhibit B attached.

DCCA VERIFICATION:

Not applicable. The Applicant as a natural person 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. Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

REMARKS:

By letter dated July 2, 2018, Jerry Albarado and Ellen Y. Albarado, as Trustees of the Jerry and Ellen Albarado Revocable Living Trust dated November 28, 2017, requested a perpetual easement to establish their legal accesses to their private property, which is a landlocked kuleana.

The Albarado property, under Land Commission Award 7923, is identified as Tax Map Key: (4) 1-8-003:007. Mr. Albarado mentioned that the property has been in his family for generations, dating back to the 1920s. In 1928, the property was first conveyed to his grandfather, Delbert E. Horner. In 1952, upon the death of Delbert Horner, the property was passed on to his grandmother, Ida K. Horner. Ida Horner passed away in 1972, and the land was then passed to Mr. Albarado's mother, Ida N. Albarado. Mr. Albarado inherited the land from his mother when she passed away in 1991. Mr. Albarado mentioned that for generations, the Albarado family has many fond childhood memories of the place. As far as he can remember, and through stories told, the existing roadway used to access the property was the only access to and from their property. There were times when the road was damaged and/or washed out during torrential rain storms. Due to a need to rebuild the roadway, over the years, the alignment has changed from its original location.

Ernest Mahoe Collins, State Abstractor, was contacted and was able to confirm that Land Commission Award 7923 to Kekeko is a kuleana. The Department of the Attorney General has interpreted Section 7-1, HRS, to preclude the State from charging fair market value for a kuleana access easement over State land. As a result, the access easement should be granted to Jerry and Ellen Albarado at gratis pursuant to Section 7-1, HRS.

The subject State parcel is currently encumbered under Revocable Permit No. S-3827, to Gay & Robinson, Inc. for pasture.

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.

There are other landlocked private properties in the general vicinity, but those landowners have not yet contacted the Kauai District Land Office to establish their



respective legal accesses to their properties, from the Board of Land and Natural Resources.

On September 27, 2018, comments were solicited from various government agencies and interest groups. The County Public Works had no comments to offer. Gay & Robinson, Inc. and the State Historic Preservation Division had no objections to the issuance of an easement.

AGENCIES	COMMENTS
<b>County of Kauai:</b>	
Planning	No response
Public Works	No comments
<b>State of Hawaii:</b>	
DLNR – Historic Preservation	No objections
DOT – Highways	No response
<b>Interest Groups:</b>	
OHA	No response
Gay & Robinson	No objections

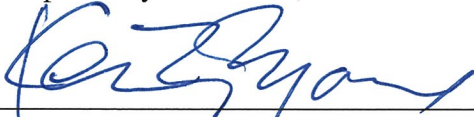
Staff has no objections to the request.

RECOMMENDATION: That the Board:

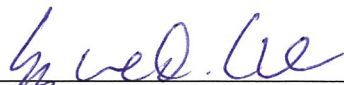
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
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: (4) 1-8-003:007, 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 perpetual non-exclusive easement for access purposes to Jerry Albarado and Ellen Y. Albarado, Trustees of the Jerry and Ellen Albarado Revocable Living Trust dated November 28, 2017, covering the subject area for access 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 easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (4) 1-8-003:007, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the 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,

  
\_\_\_\_\_  
Wesley T. Matsunaga  
District Land Agent

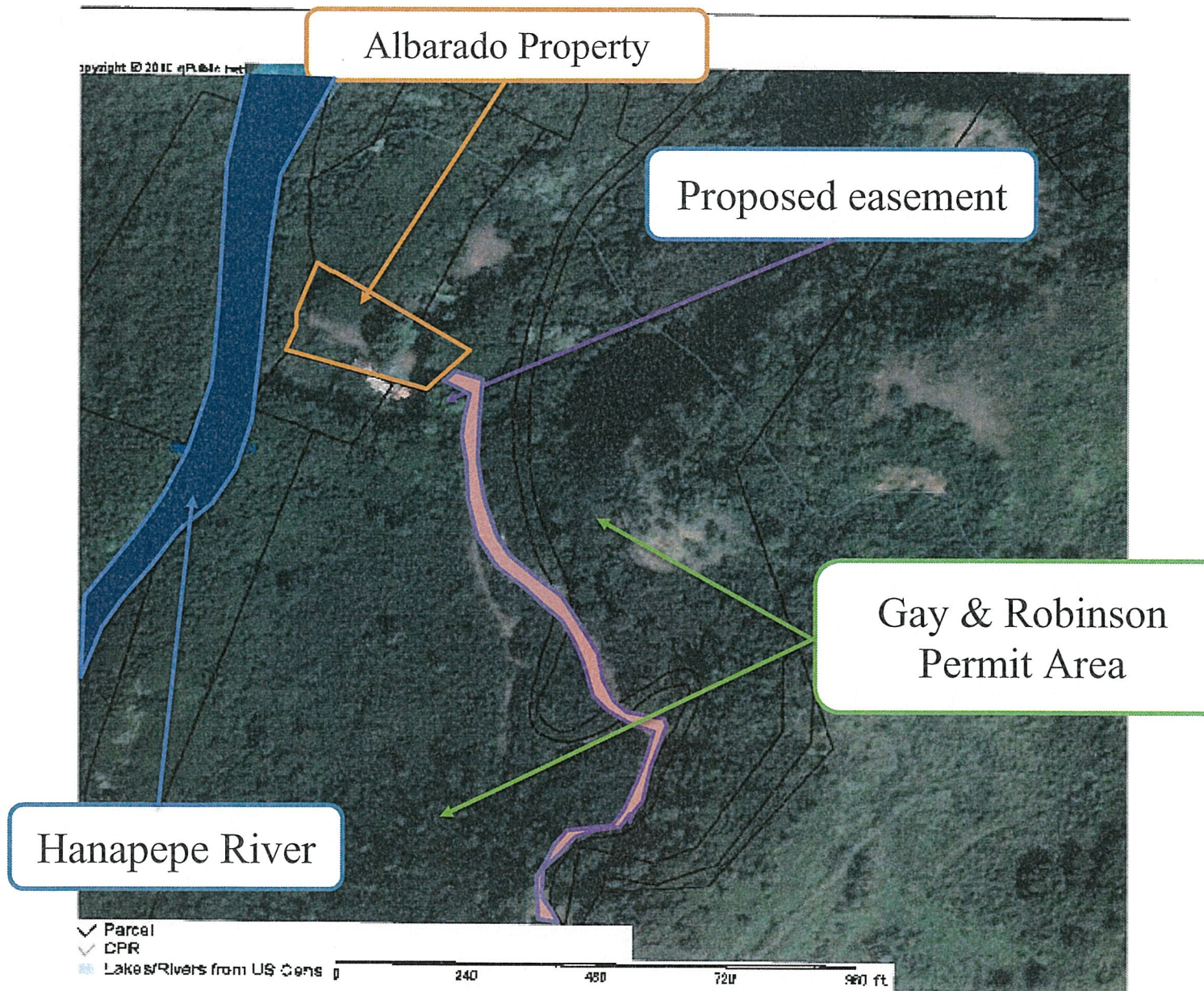
APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Suzanne D. Case, Chairperson



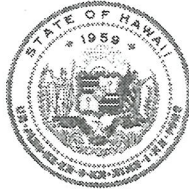






## EXHIBIT A

DAVID Y. IGE  
GOVERNOR OF HAWAII



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

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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**EXEMPTION NOTIFICATION**

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

Project Title: Grant of Perpetual, Non-Exclusive Easement to Jerry Albarado and Ellen Y. Albarado, Trustees of the Jerry and Ellen Albarado Revocable Living Trust dated November 28, 2017, for Access Purposes

Project / Reference No.: 15KD-124

Project Location: Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-8-003: Portions of 002 & 004

Project Description: Grant of perpetual, non-exclusive easement to Jerry Albarado and Ellen Y. Albarado, Trustees of the Jerry and Ellen Albarado Revocable Living Trust dated November 28, 2017, for Access Purposes

Chap. 343 Trigger(s) Use of State lands.

Exemption Class No(s).: 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 46, which states, "Creation or termination of easement, covenants, or rights in structure or land."

**EXHIBIT B**



Cumulative Impact of  
Planned Successive  
Actions in Same  
Place Significant?

No significance or cumulative impacts of planned successive actions. The proposed easement corridor has been used for many decades as an access route to the private kuleana designated as Tax Map Key: (4) 1-8-003:007.

Action May Have  
Significant Impact on  
Particularly Sensitive  
Environment?

There are no particularly sensitive environments involved with this request. The proposed easement corridor has been in use for vehicular access for many decades.

Analysis:

The granting of the easement will probably have minimal or no significant effect on the environment as the access corridor has existed and has been in use for over the past fifty years.

Consulted Parties:

County Planning Department, County Public Works, DLNR-Historic Preservation, OHA, Gay & Robinson, Inc. DLNR-Historic Preservation and Gay & Robinson, Inc. had no objections, while the County Public Works had no comments.

Declaration:

That the Board find that this request will probably have minimal or no significant effect on the environment and declares that this project is exempt from the preparation of an environmental assessment.

**EXHIBIT B**