

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96819

April 12, 2019

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

Land Board Members:

SUBJECT: Authorize the deregistration of Manele Small Boat Harbor, Certificate of Title No. 89708, Lot 745-B, Map 54, Land Court Application No. 862, from Land Court

and

Amend Prior Board action of November 8, 2013, Agenda Item J-2, *Authorize the Termination of General Lease No. B-00-1 and Easement to Lana‘i Company, Inc., Castle & Cooke Resorts, LLC; and the Issuance of New Lease and Easement by way of Direct Negotiation to Lana‘i Resorts, LLC, DBA Pulama Lana‘i, Manele Small Boat Harbor, Manele, County of Maui, Island of Lana‘i, Tax Map Key (2) 4-9-17:06*

The purposes of the amendment are to modify the terms of the easement granted to Lana‘i Resorts, LLC

LEGAL AUTHORITY:

Sections 171-6, 171-13, 501-261.5, Hawaii Revised Statutes

BACKGROUND:

In 1929, the Hawaiian Pineapple Company, Ltd. registered virtually the entire island of Lana‘i in Land Court, pursuant to Land Court Application No. 862 (“LCA 862”).

On May 25, 1962, Hawaiian Pineapple Co.’s successor Dole Corporation obtained an Order of Subdivision from the Land Court, subdividing a portion of LCA 862 into Lot 745-B, a parcel of 8.525 acres, which is located at Manele Bay. A depiction of Lot 745-B is attached hereto as **Exhibit A**.

On October 26, 1962, Dole Corporation deeded Lot 745-B to the State. After that date, a harbor was constructed in and around Lot 745-B, which was operated by the Department of Transportation.

The state small boat harbors and their operation were transferred from the Department of Transportation to DLNR effective as of 1992 pursuant to Act 272 of 1991. On October 11, 1996, the Board authorized the issuance, by direct negotiation, of a submerged-land lease in Manele Small Boat Harbor totaling 28,625 square feet and a non-exclusive easement over 21,527 square feet of adjacent fast land, located immediately mauka of the lease area to Lanai Company, Inc. A map of the lease and easement areas is attached hereto as **Exhibit B**. As depicted on the map, the August 1960 highwater mark runs through both the lease and easement areas.

On March 10, 2006, the Board authorized the issuance of Conservation District Use Permit (CDUP) LA-3257 to DOBOR, pursuant to which Manele Small Boat Harbor was substantially renovated for purposes of the Manele Small Boat Harbor Ferry System Improvements.

On December 23, 2010, Lot 745-B was formally set aside to DOBOR for Manele Small Boat Harbor purposes pursuant to Executive Order No. 4348.

On November 8, 2013, the Board authorized the termination of the lease and easement to Lanai Company, Inc. (which had by then merged with Castle & Cooke Resorts, LLC) and authorized the issuance of a new 55-year lease and easement to Lana‘i Resorts, LLC (“Lana‘i Resorts”) for the same lease and easement areas depicted on **Exhibit B**, at an annual base rent to be determined by appraisal plus 10% of revenues derived from commercial activities. A copy of the November 8, 2013 submittal is attached hereto as **Exhibit C**.

During the review and processing of the lease document, questions were raised concerning the necessity of obtaining a lengthy and time consuming subdivision or other correction to Certificate of Title No. 89,708 for Lot 745-B for purposes of leasing a portion of the submerged land included in Lot 745-B, or to designate the fast land easement.

During the review process, it was also determined that the easement area depicted on **Exhibit B** reflected a different area than the one both DOBOR and Lana‘i Resorts had agreed upon. The original easement area is actually a portion of a paved canopied seating area makai of the parking lot, while the correct negotiated easement area is anticipated to be a grassy patch of land adjacent to the parking lot that Lana‘i Resorts seeks to landscape and maintain.<sup>1</sup> The new fast-land easement area of 7,279 square feet is depicted on **Exhibit D**, with a photograph of the general area attached as **Exhibit E**.

During the review process, Lana‘i Resorts has been issued a revocable permit for the area to be leased, as continued from year-to-year.

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<sup>1</sup> With respect to the lease area, during the review process, it was determined that Lana‘i Resorts required fewer square feet of submerged land: 22,949 square feet, all of which sits within the larger lease area of 28,625 square feet. Further, as a general matter, the November 8, 2013 submittal anticipated that Lana‘i Resorts would purchase the floating dock at the lease site from DOBOR; however, the Department of the Attorney General advised against this, and instead the lease of the floating dock was included in the submerged land lease rent appraisal.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with Hawai‘i Administrative Rules § 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred in 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.” Items 32 (“Maintenance of existing landscaping, including planting, trimming, mowing, and irrigation,” and 46 (“Creation or termination of easement, covenants, or other rights in structures or land”).

See Exemption Notification at **Exhibit F**.

REMARKS:

Deregistration of Manele Small Boat Harbor, Certificate of Title No. 89,708, Lot 745-B, Map 54, Land Court Application 862, from Land Court

Lot 745-B was registered in Land Court by the Hawaiian Pineapple Company, Ltd. The State of Hawaii acquired the fee interest from the successor landowner by deed in 1962. For purposes of HRS § 501-261.5, the State is a self-insured sovereign. There is no obvious downside to deregistering Lot 745-B from Land Court at this time.

The principle benefit of land registered with the Land Court versus the regular system is that a landowner cannot lose title via adverse possession. The State, however, by virtue of its sovereign character, already cannot lose title to land via adverse possession, irrespective of whether the land is registered in Land Court. *See In re Application of Kamakana*, 58 Haw. 632, 641, 574 P.2d 1346, 1351 (1978).

The obvious downside to keeping Lot 745-B in Land Court is the lengthy backlog at Land Court that frequently causes delays; the need to obtain additional surveys and documents that would not be required in the regular system; and the need to navigate Land Court procedures, which have been viewed by some as “a morass of confusion and frustration.” *See* Hon. Gary W.B. Chang, *Landcourt: Demystifying an Enigma*, 21 Haw. B.J. 4 (Sept. 2017).

Currently, DOBOR administers one fast lands boating lease within the metes and bounds of Lot 745-B, which was granted to Trilogy Corporation on October 1, 1993, as depicted on **Exhibit B**. The deregistration of Lot 745-B will not affect the administration of this existing lease.

In order to accelerate the process for the issuance of leases, easements, permits, and other processes as the Board has approved or will approve in the future, DOBOR requests that the Board authorize the deregistration of Certificate of Title No. 89,708, Lot 745-B, Map 54, Land Court Application 862 from Land Court.

Amendment of Fast Land Non-Exclusive Easement Terms

Pursuant to the November 8, 2013 staff submittal, the Board granted a 55-year non-exclusive easement for use of the 21,527 square feet of fast land depicted on **Exhibit B** for utilities, landscaping, and maintenance purposes. With this amendment, DOBOR requests that the Board grant a 55-year non-exclusive easement for the 7,279 square feet of fast land depicted on **Exhibit D** for landscaping and maintenance purposes.<sup>2</sup>

RECOMMENDATION:

That the Board of Land and Natural Resources:

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 deregistration of Manele Small Boat Harbor, Certificate of Title No. 89,708, Lot 745-B, Map 54, Land Court Application No. 862, from Land Court pursuant to applicable law and regulations.
3. Amend its prior Board action of November 8, 2013, under agenda item J-2, by authorizing the grant of a non-exclusive easement according to the terms herein, and subject to:
  - a. The standard terms and conditions of the most current non-exclusive easement form, as may be amended from time to time; and
  - b. Review and approval by the Department of the Attorney General.
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

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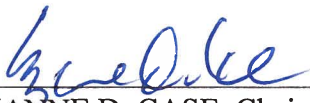
<sup>2</sup> The easement area in question is identified as a “mini-park” in documents submitted with CDUP LA-3257, and the grant of this easement for landscaping and maintenance purposes is fully consistent with the CDUP. Furthermore, the landscaping and maintenance activities permitted by the activities are not “land uses” as defined in Chapter 183C, HRS, and no additional conservation-district approval would be required in any event.

Respectfully Submitted,



EDWARD R. UNDERWOOD, Administrator  
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson  
Board of Land and Natural Resources

Attachments:

- A. Map of Manele Small Boat Harbor, Lot 745-B, Map 54, Land Court Application 862
- B. Survey map showing lease and easement areas that were granted to Lana'i Company, Inc.
- C. Staff submittal to the Board, Item J-2, November 8, 2013, pages 1 to 5, Exhibit A
- D. Survey map, C.S.F. No. 25,721, depicting the new easement area
- E. Photograph of the new easement area
- F. Chapter 343 Exemption Notification

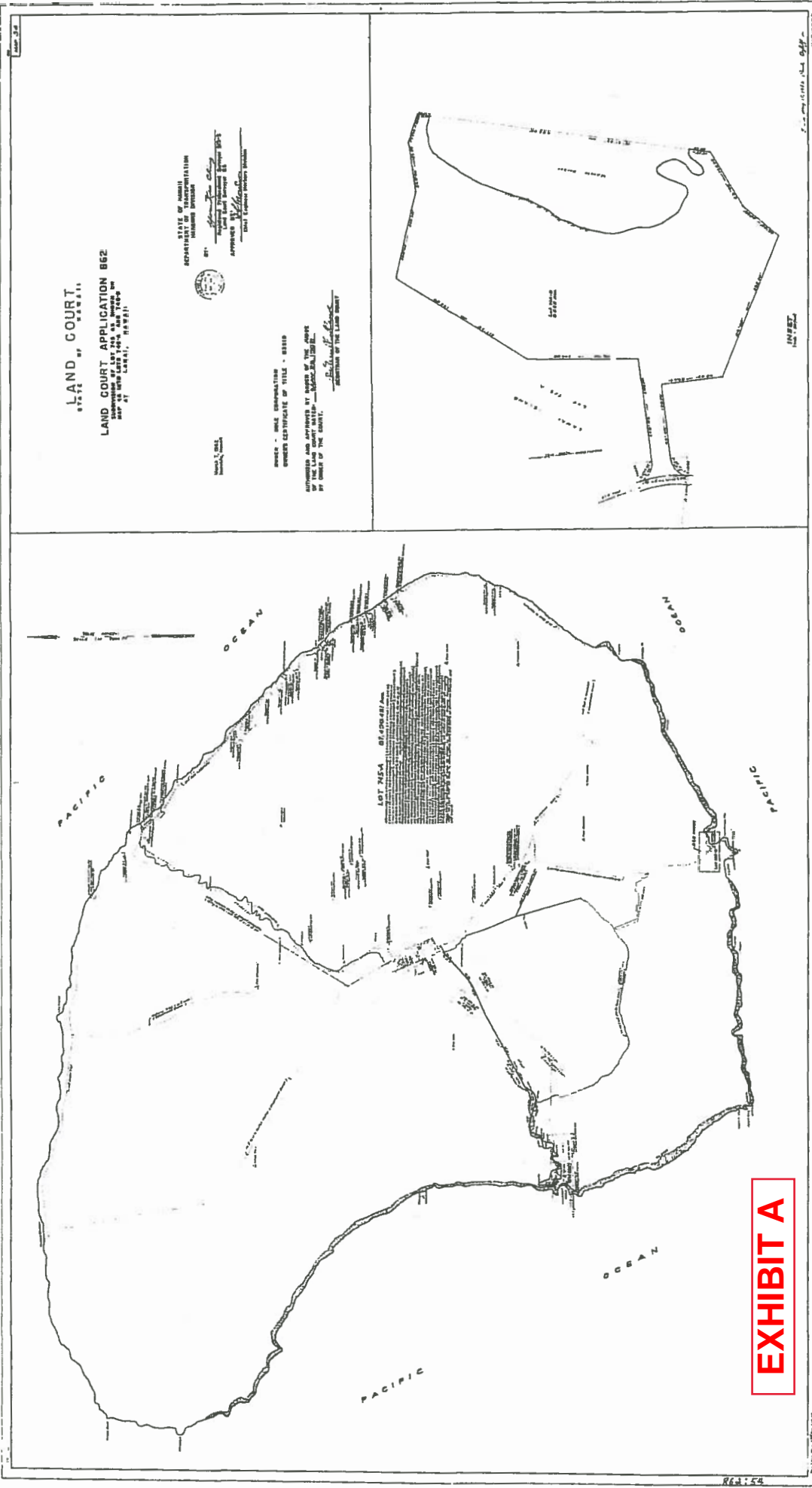
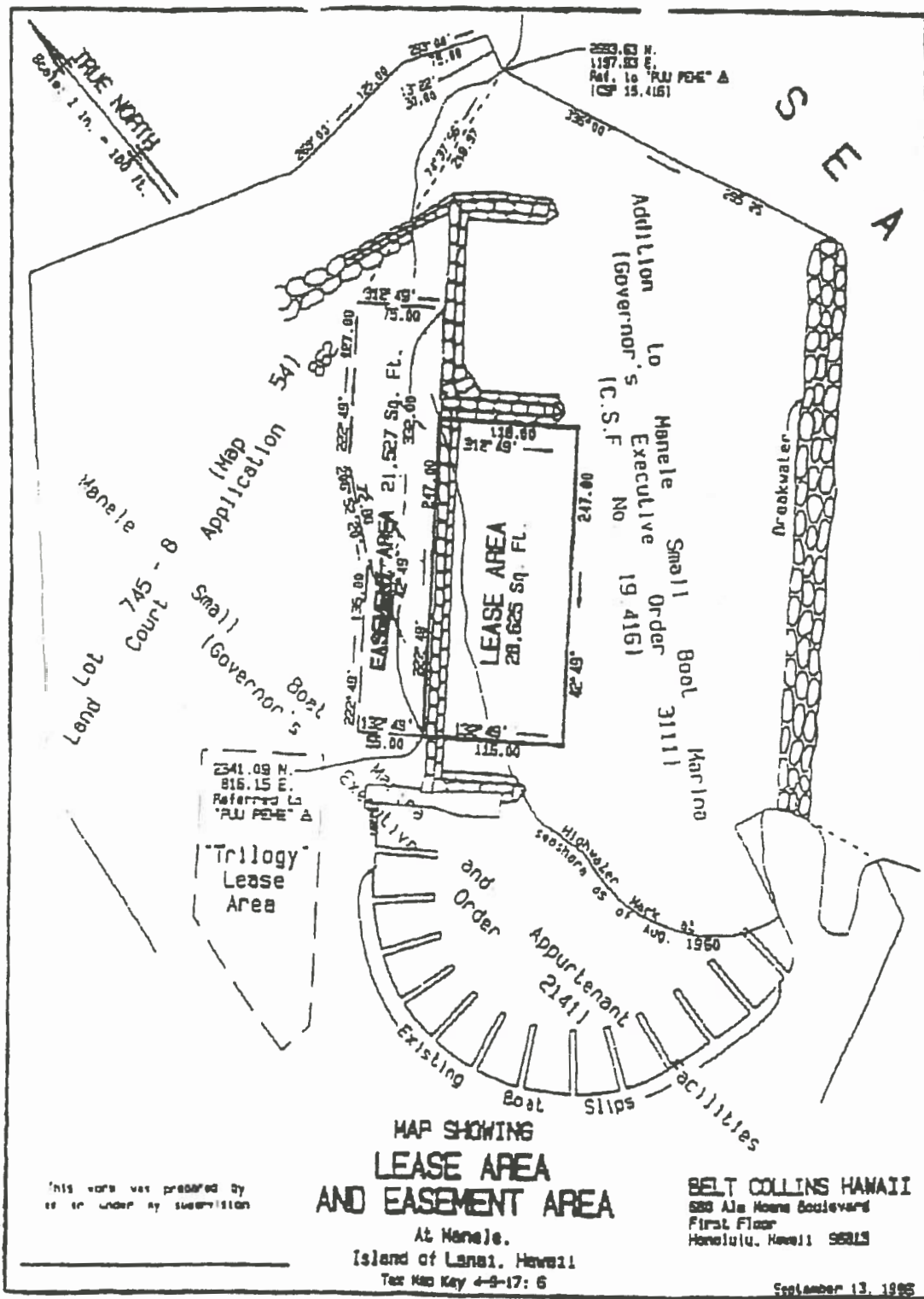


EXHIBIT A



**EXHIBIT B**

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii

November 8, 2013

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

Lana'i

Authorize the Termination of General Lease No. B-00-1 and Easement to Lana'i Company, Inc., Castle & Cooke Resorts, LLC; and the Issuance of New Lease and Easement by way of Direct Negotiation to Lana'i Resorts, LLC, DBA Pulama Lana'i, Manele Small Boat Harbor, Manele, County of Maui, Island of Lana'i, Tax Map Key (2) 4-9-17:06

APPLICANT:

Formerly:

Lana'i Company Inc. ("Lana'i Co.") was purchased and merged into Castle & Cooke Resorts, LLC ("CCR"), a Hawaii limited liability company, whose business and mailing address is 100 Kahelu Avenue, Floor 2, Mililani, Hawaii 96879.

Now:

Lana'i Resorts, LLC ("Lana'i Resorts"), a Hawaii limited liability company, doing business as Pulama Lana'i, whose business and mailing address is 733 Bishop St. Suite 2000, Honolulu, Hawaii 96813.

LEGAL REFERENCE:

Sections 171-59, 171-17 and 171-53(c), Hawaii Revised Statutes, as amended. Section 171-53(c) requires approval of the Governor and authorization of the Legislature by concurrent resolution for the leasing of state submerged land. Section 171-59(b) allows for the disposition of leases by negotiation for specific operations, including maritime and maritime-related operations.

LOCATION AND AREA:

Portion of Government owned lands situated at Manele Small Boat Harbor ("Harbor"), Island of Lana'i, identified by Tax Map Key: (2) 4-9-17:06, consisting of 28,625 sq. ft., more or less, of submerged lands and 21,527 sq. ft., more or less, of fast lands, being a portion of Governor's Executive Order Nos. 2422, 3111, and 4348, please see "EXHIBIT A."

TRUST STATUS:

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

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

NOV - 8 2013 amended

Item J-2

**EXHIBIT C**



Authorize the Termination of General Lease No. B-00-1 and Easement to Lana'i Company, Inc., Castle & Cooke Resorts, LLC; and the Issuance of New Lease and Easement by way of Direct Negotiation to Lana'i Resorts, LLC, DBA Pulama Lana'i, Manele Small Boat Harbor, Manele, County of Maui, Island of Lana'i, Tax Map Key (2) 4-9-17:06

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ZONING:

State Land Use District: Urban  
County of Maui CZO: Open, Lana'i Project District I (Manele)

CHARACTER OF USE:

Under General Lease No. B-00-1:

Development, construction use and maintenance of twenty four (24) boat slips within the lease area, and utilities, paving, landscaping other associated improvements within the non-exclusive easement area.

Under New Lease:

1. For construction, maintenance and use of submerged lands for a loading dock, and mooring as approved by the department.
2. Lessee agrees to pay all costs and expenses for the floating dock to be constructed and installed by the Department of Land and Natural Resources, Division of Boating and Ocean Recreation ("DOBOR"). The floating dock will be used during the period of tsunami restoration at the harbor.
3. Lessee agrees to complete at its sole cost and expense, a topographical map of the Harbor's submerged floor, with ocean species indicated.
4. Lessee agrees to complete at its sole cost and expense, a cultural resource survey of the surrounding land areas of the Harbor to determine possibility of Harbor expansion
5. A non-exclusive easement for use of portion of the adjacent fast lands for utilities, landscaping maintenance, as well as maintenance, and landscaping at specified portions within the harbor

LEASE TERM:

Under General Lease No. B-00-1

35 years, commencing on October 1, 2000, up to and including September 30, 2036

Under New Lease:

55 years, commencement date to be determined by the Chairperson.

Lana'i Resorts is a separate entity from CCR. It was formed to hold the assets and liabilities of what was formerly CCR and became Lana'i Resorts on September 14, 2012.

RENTAL:

Under General Lease No. B-00-1:

Minimum Annual Rental of \$4,140.00 or 15% of mooring fees, whichever is greater, payable quarterly

Under New Lease:

The Lessee shall pay the Annual Base Rent as well as pay ten percent (10%) of revenues derived from commercial activities. The Annual Base Rent and any percentage rents shall be paid quarterly. The Annual Base Rent will be determined by the Appraiser, pursuant to Section 171-17, Hawaii Revised Statutes, as amended, and approved by the Chairperson.

Authorize the Termination of General Lease No. B-00-1 and Easement to Lana'i Company, Inc., Castle & Cooke Resorts, LLC; and the Issuance of New Lease and Easement by way of Direct Negotiation to Lana'i Resorts, LLC, DBA Pulama Lana'i, Manele Small Boat Harbor, Manele, County of Maui, Island of Lana'i, Tax Map Key (2) 4-9-17:06

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#### RENT AND INSURANCE:

The Lessee, CCR is current with both obligations.

#### REMARKS

In 1996, Approval was provided by the Legislature in 1996 and with Senate Concurrent Resolution S.C.R. 16 S.D. ("S.C.R. 16 S.D.") which authorized the Board of Land and Natural Resources ("Board") to Lease certain fast lands and submerged lands at Manele Bay for marina purposes. S.C.R. 16 S.D. was very specific as to the design and allocation of slips in the marina. The Board at its regular meeting on October 11, 1996, under J-1, authorized the issuance of the lease and non-exclusive easement. General Lease No. B-00-1 ("Prior Lease") was entered into on October 1, 2000, by way of a direct negotiation, and between the Board and the Lana'i Co. and on December 31, 2000, Lana'i Co. and CCR merged with CCR becoming the successor entity, herein referred to as the Lessee.

The Prior Lease requires that the Lessee obtain permits and approvals for design and construction of certain improvements in the submerged and fast lands and that full utilization of the property occur within the first year of the lease term. CCR, the Lessee was still in non-compliance with this provision of the Prior Lease in 2007. At the time, CCR had not begun to obtain the necessary Federal, State or County permits and clearances for the proposed improvements of the marina, boat slips, and additional improvements that were to have been built within the time period specified. During this period, it was also discovered that although merged, consent was required by the Board for an assignment of lease from Lana'i Co. to CCR. Accordingly, the State issued a Notice of Default on December 12, 2007. Also during this point in time, the State was in the process of completing substantial improvements for the Maui-Lana'i ferry at Manele.

A settlement was finalized between the State and CCR, in which proposed amendments to the Prior Lease were discussed and agreed upon in principle at the time by Mr. Harry Saunders, President of CCR, and Laura Thielen, Chairperson of the Department of Land and Natural Resources.

The Board approved an extension of the cure period in the Notice of Default at its regular meeting on February 27, 2009, under Item J-1; in addition, the Board authorized the Amendment of the Lease on the agreed upon terms and approved the after-the-fact Consent of Assignment from Lana'i Co. to CCR. Within the remarks section of this submittal on pages 3-4, there are two tables and supporting information providing the additional requirements and improvements that CCR was to carry out as part of its agreement and lease. Please see EXHIBIT B.

The Lessee agreed to move ahead and secure the permits and construct the marina improvements of 24 slips as prescribed in the Prior Lease, as well as perform the repair and maintenance requirements as identified and described in the Settlement Agreement between the State and CCR. Shortly thereafter the Lessee, began maintenance of certain improvements constructed by the State and other improvements installed by the Lessee throughout the harbor. These maintenance activities continue today and are ongoing at this time. The Lessee agreed that they would continue to move ahead with the agreement and those requirements of the Prior Lease on the condition that its default of the lease obligations stated in this submittal were cured or resolved by way of the agreement settlement. At that point in time, it was believed that the proposed settlement which involved amendments to the CCR Lease was consistent with the original approval provided by the Legislature in S.C.R. 16 (S.D. 1). The Board approved the six (6) year

Authorize the Termination of General Lease No. B-00-1  
and Easement to Lana'i Company, Inc., Castle & Cooke  
Resorts, LLC; and the Issuance of New Lease and Easement  
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Pulama Lana'i, Manele Small Boat Harbor, Manele, County of  
Maui, Island of Lana'i, Tax Map Key (2) 4-9-17:06

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time extension to construct the marina of 24 boat slips and related improvements in both the submerged  
leased area and non-exclusive easement area.

Since the Board's approval, the State has experienced two Tsunami events, the first on February 27, 2010, and the second on March 11, 2011. During these events, certain locations throughout the State were impacted in varying degrees. Manele sustained substantial damage in the March 11, 2011 event. A contract of \$1,890,386.00 was recently awarded by DOBOR to repair damage of the existing loading docks and rock groins at the harbor as a result of this event. This contract will start shortly and take place over the next two years. With the help of FEMA funding, DOBOR's contractor will be rebuilding the ferry dock, a temporary loading dock and those preexisting portions of the harbor that were damaged. As space in this harbor is very limited, the temporary loading dock will need to be placed in the only available site directly adjacent the Ferry Terminal and within the vacant leased area. Temporary use of this site will allow for continuity and continued service by the Ferry to access Lana'i, and vessels needing access to transient mooring.

The Lana'i assets of CCR were purchased by Lana'i Resorts in 2012. After close review by DOBOR and discussion with Lana'i Resorts (the new owner/applicant), it was acknowledged and determined that as a result of the tsunami events, the originally planned marina design approved for the submerged land lease area was not practical, unfeasible and its design would most likely not withstand another future tsunami event. Consideration was also given to the fact that the submerged area of the lease often experiences heavy cross surge regularly throughout the year. The originally planned marina as designed and detailed in both the Prior Lease as well as S.C.R. 16 S.D. as previously approved would not hold up in the long run. Closer investigation found that had the marina been built as planned, may impede safe navigation within the channel.

Considering today's growth with Lana'i as a destination point, DOBOR feels a loading dock is much needed, and could be built to potentially withstand another tsunami of moderate impact. This could be accomplished with substantial redesign, the use of modern materials and a new plan for configuration of a narrow dock running along the shoreline. Lana'i Resorts would not build the project as originally designed, but purchase the fully constructed ferry pier from DOBOR with an estimated cost between \$500,000 to \$600,000, take responsibility for its maintenance, and it would be allowed to remain throughout the lease.

Recognizing the previous owners default, the complexity of the specifications and approvals of both the legislature and the Board of Land and Natural Resources, DOBOR recommends that the best course of action would be to terminate General Lease No. B-00-1 to CCR and issue a new lease by direct negotiation to the new owner Lana'i Resorts, LLC, incorporating the purchase of the new dock, and those items described and agreed upon between the State and Lana'i Resorts, as described in letter dated May 28, 2013, from Ms. Lynn P. McCrory, Senior Vice President, Government Affairs, of Lana'i Resorts, to Mr. Edward R. Underwood, Administrator, DOBOR, please see EXHIBIT C.

Should the Board concur, DOBOR would recommend that Lana'i Resorts seek legislative approval to authorize the Board to rescind the original authorization and specifications of S.C.R. 16 (S.D. 1) and request approval of the Board to authorize a lease of the submerged lands and an easement of the fast land under terms and conditions allowing for the loading dock and those items as identified in the Character of Use, under the new lease.

Authorize the Termination of General Lease No. B-00-1  
and Easement to Lana'i Company, Inc., Castle & Cooke  
Resorts, LLC; and the Issuance of New Lease and Easement  
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Maui, Island of Lana'i, Tax Map Key (2) 4-9-17:06

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DOBOR requests that the Board authorize the Chairperson to execute all documents, required professional service contracts and rights of entry which may be necessary.

RECOMMENDATION: That the Board authorize and approve:

1. The termination of General Lease No. B-00-1 and Easement to Lana'i Company, Inc., Castle & Cooke Resorts, LLC;
2. The Chairperson to execute a new Lease and Easement by way of direct negotiation to Lana'i Resorts, LLC, DBA Pulama Lana'i to be consistent with the new terms for the dock and those maintenance items of the harbor as described above;
3. As a condition to the above, the Lessee shall allow for the loading dock to be used by the Lahaina-Lana'i Ferry during the construction period and immediately commence repair and maintenance activity upon the pier's completion;
4. Such other terms and conditions as prescribed by the Chairperson to best serve the interests of the State; and;
5. Subject to review and approval by the Attorney General.

Respectfully submitted,

Edward R. Underwood  
Administrator

Attachments Exhibit A  
Exhibit B  
Exhibit C

APPROVED FOR SUBMITTAL:



William J. Aila, Jr.  
Chairperson



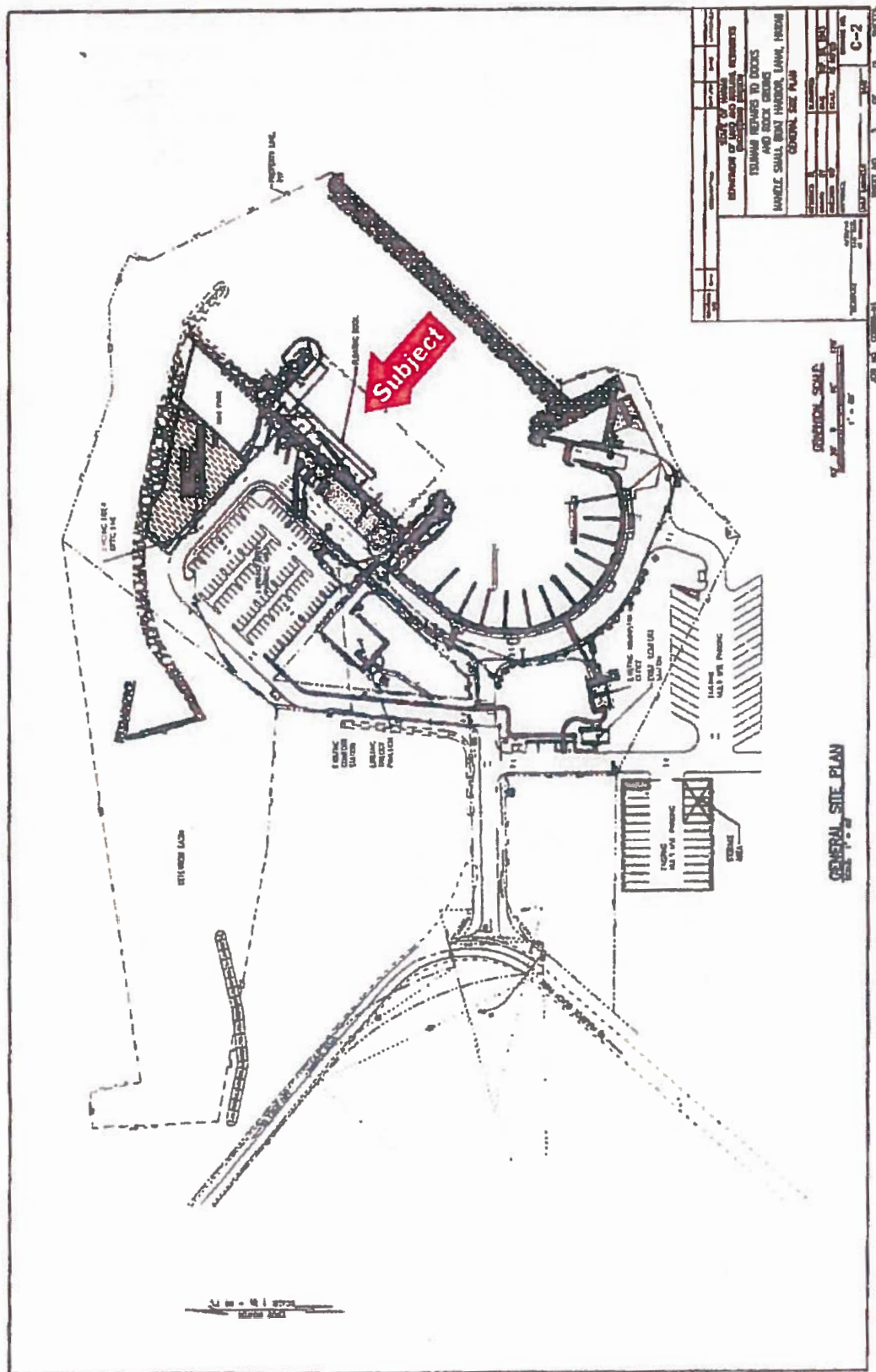


EXHIBIT A







**EXHIBIT E**



### EXEMPTION NOTIFICATION

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

Project Title:	Issuance of landscaping and maintenance easement to Lana'i Resorts, LLC, d/b/a Pulama Lana'i
Project / Reference No.:	
Project Location:	Manele Small Boat Harbor, Lana'i
Project Description:	Issuance of easement for landscaping and maintenance purposes
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No(s).:	In accordance with Hawai'i Administrative Rule § 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred in 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." Items 32 ("Maintenance of existing landscaping, including planting, trimming, mowing, and irrigation," and 46 ("Creation or termination of easement, covenants, or other rights in structures or land").
Cumulative Impact of Planned Successive Actions in Same Place Significant?	No. The issuance of this easement is merely to keep the area tidy and attractive and does not involve successive actions that would have a significant or cumulative impact.
Action May have Significant Impact on Particularly Sensitive Environment?	No. The easement area in question is a grassy area with some trees and rocks next to a parking lot within the Manele Small Boat Harbor grounds and is not a particularly sensitive environment.
Analysis:	The purpose of the grant of easement is solely to allow Pulama Lana'i to landscape and maintain an area of terrain adjacent to the parking lot. The easement does not authorize Pulama Lana'i to make substantial changes to the land beyond this.
Consulted Parties:	Land Division concurs in the analysis and exemption declaration.
Declaration	The Board finds that 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 F**