

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

June 14, 2019

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

Land Board Members:

SUBJECT: APPROVE ISSUANCE OF LONG-TERM RIGHT OF ENTRY TO
KAUAI ISLAND UTILITY COOPERATIVE FOR ELECTRICAL
SERVICE FOR JOB NO. B94DK71A PORT ALLEN SMALL BOAT
HARBOR FLOATING DOCK IMPROVEMENTS, ELEELE, ISLAND
OF KAUAI, HAWAII, TAX MAP KEY (4) 2-1-003:010 (PORTION)

APPLICANT:

Kauai Island Utility Cooperative, a domestic profit corporation (Applicant).

BACKGROUND:

The Division of Boating and Ocean Recreation (“DOBOR”) has constructed two (2) new floating docks (Piers A and B) for Job No. B94DK71A Port Allen Small Boat Harbor Floating Dock Improvements located in Eleele on the Island of Kauai. As part of the project, an improved electrical service is required to provide power to the new floating docks. The existing electrical service to Piers A and B has insufficient capacity to service the needs of the new floating docks and is in an advanced state of corrosion and deterioration.

As such, new electrical service equipment must be installed by the Kauai Island Utility Cooperative (KIUC) on DOBOR property to provide power to the new floating docks. The KIUC requires Right-of Entry (ROE) in order to construct, maintain, and access the electrical service equipment needed, which includes a new power pole, underground electrical wiring and conduits, electrical transformers, and meters.

REQUEST:

DOBOR is requesting that the Board of Land and Natural Resources (“Board”) approve issuance of a long-term ROE to KIUC to allow for construction, maintenance, and access to the electrical service equipment required.

A draft of the ROE document map showing the location and size of the proposed ROE area is shown in Exhibit “A”.

LEGAL REFERENCE:

Section 171-13 and 95, Hawaii Revised Statutes.

LOCATION:

Portion of Government land at Port Allen Small Boat Harbor (PASBH), situated at Eleele, Island of Kauai, Identified by Tax Map Key: (4) 2-1-003:010, as shown on the attached map in Exhibit "A".

AREA:

1,741 square feet.

ZONING:

State Land Use District: Industrial.

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES__ NO X

CURRENT USE STATUS:

The proposed Right-of-Entry area is currently a grassed area between the PASBH access road and parking lot for the harbor.

CHARACTER OF USE:

For construction, maintenance, and access to electrical service equipment for the PASBH floating docks (Piers A and B).

COMMENCEMENT DATE:

The ROE commencement date shall be effective upon acceptance of the terms and conditions of the ROE by KIUC. KIUC will coordinate the installation of their facilities with DOBOR.

TERM OF RIGHT-OF-ENTRY PERMIT:

The term of the proposed ROE shall be 50 years, or when the electrical facilities are removed, whichever is sooner.

RENTAL:

Gratis. The ROE is necessary to provide electrical service that was requested by DOBOR in order to provide power to the floating docks at Piers A and B.

COLLATERAL SECURITY DEPOSIT:

None.

DCCA VERIFICATION:

Place of business registration confirmed:	Yes
Registered business name confirmed:	Yes
Applicant in good standing confirmed:	Yes

CHAPTER 343 AND HAR 11-200 ENVIRONMENTAL ASSESSMENT COMPLIANCE:

This project was declared exempt from the requirements of HRS Chapter 343 and HAR Chapter 11-200 at the September 14, 2018 Board meeting. See attached Board approval as Exhibit "B".

RECOMMENDATION:

That the Board of Land and Natural Resources:


1. That the Board authorize a long term Right-of-Entry to Kauai Island Utility Cooperative for construction, maintenance, and access for electrical service equipment and delegate authority to execute a Right-of-Entry and any amendments thereto to the Chairperson, subject to approval of the Right-of-Entry (and amendment(s), if any) by the Attorney General's Office as to form,, and any other terms and conditions that the Chairperson determines are in the best interest of the State.

Respectfully Submitted,



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

APPROVED FOR SUBMITTAL:



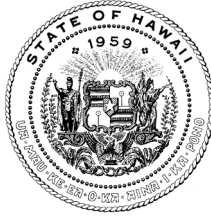
SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

Attachments:

- Exhibit A. Draft ROE Permit and map of proposed ROE Area
- Exhibit B. Board approval of EA Exemption, dated September 14, 2018.

EXHIBIT A

DAVID Y. IGE
GOVERNOR OF HAWAII



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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

EDWARD R. UNDERWOOD
ADMINISTRATOR
DIVISION OF BOATING AND OCEAN RECREATION

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION
4 Sand Island Access Road
Honolulu, Hawaii 96819

DRAFT

Mr. Ferdinand Pascual
Kauai Island Utility Cooperative
4463 Pahee Street, Suite 1
Lihua, Hawaii 96766

Dear Sir,

SUBJECT: Right-of-Entry to Kauai Island Utility Corporation, for the non-exclusive right, privilege and authority to enter in and occupy, construct, use, maintain, operate, and repair electrical utility poles, underground conduits, wiring, transformers, meters, and other electrical appurtenances at Port Allen Small Boat Harbor, Eleele, Kauai, Tax Map Key: (4) 2-1-003:010

The purpose of this Right-of-Entry ("ROE") is to allow Kauai Island Utility Cooperative ("KIUC") to provide electrical service for the Division of Boating and Ocean Recreation ("DOBOR") Job No. B94DK71A Port Allen Small Boat Harbor Floating Dock Improvements project. The improvements to be provided by KIUC including installation of electrical utility poles, overhead electrical lines, underground electrical lines, electrical meters, transformers, and appurtenant connecting wiring. DOBOR has completed its portion of the work including installation of underground conduits, concrete pads and enclosures for the meter and transformer, and electrical pull boxes.

The ROE shall be for KIUC, its consultants, crew and/or persons acting for or on its behalf, for the privilege and authority to enter in and occupy, construct, use, maintain, and operate within an area of 1,741 square feet, shown on the attached Exhibit "A".

The ROE is subject to the terms and conditions stated below:

1. This ROE shall be effective upon the date of acceptance of terms and conditions herein, and shall be for a term of 50 years, or when the electrical facilities are removed, whichever is sooner.
2. This ROE may be extended upon mutual agreement in writing by KIUC and DOBOR, subject to approval by the Board of Land and Natural Resources ("Board").
3. KIUC shall ensure its consultants, crew and/or persons acting for or on its behalf shall procure, at their own cost and expense, and maintain during the entire period of this ROE, from an insurance company or companies licensed or authorized to do business in the State of Hawaii ("State") with an AM Best rating of not less than "A-VIII" or other comparable and equivalent industry rating, a policy or policies of comprehensive public liability insurance or its equivalent, in an amount of

at least \$1,000,000 per incident, and \$2,000,000, aggregate, and with coverage terms acceptable to the Board. The policy or policies of insurance shall name the State as an additional insured and a copy shall be filed with DOBOR. The insurance shall cover the Premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the use or control of KIUC and its consultants, crew and/or persons acting for or on its behalf.

KIUC shall ensure that its consultants, crew and/or persons acting for or on its behalf shall furnish DOBOR with a certificate(s) showing the policy(s) to be initially in force, keep certificate(s) on deposit during the entire period and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited to scope of coverage, or nonrenewal until written notice has been given to the DOBOR. DOBOR shall retain the right at any time to review the coverage, form, and amount of the insurance required.

If, in the opinion of DOBOR, the insurance provisions in this ROE do not provide adequate protection for DOBOR, DOBOR may require KIUC, its consultants, crew and/or persons acting for or on its behalf to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. DOBOR requirements shall be reasonable but be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. DOBOR shall notify KIUC in writing of changes in the insurance requirements and KIUC, its consultants, crew and/or persons acting for or on its behalf shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with DOBOR incorporating the changes within receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit KIUC, its consultants, crew and/or persons acting for or on its behalf, liability under this ROE nor to release or relieve KIUC, its consultants, crew and/or persons acting for or on its behalf of the indemnification provisions and requirements of this ROE. Notwithstanding the policy(s) of insurance, KIUC, its consultants, crew and/or persons acting for or on its behalf shall be obligated for the full and total amount of any damage, injury, or loss caused by KIUC, its consultants, crew and/or persons acting for or on its behalf negligence or neglect connected with this ROE.

4. KIUC shall provide DOBOR with the name and local phone number of KIUC's primary point of contact that may be reached at any time prior, during and after the ROE period.
5. KIUC, its consultants, crew and/or persons acting for or on its behalf shall keep the ROE Premises in a strictly clean, sanitary and orderly condition when entering, occupying, maintaining, and operating their facilities within the ROE Premises.
6. DOBOR shall maintain all landscaping within the easement area, with the exception of trees affecting the overhead poles and utility lines.
7. KIUC shall be responsible for providing adequate safety and security measures for crowd control, preserving the peace and to ensure the safety and protection of the public when entering, occupying, maintaining, and operating their facilities within the ROE Premises.
8. KIUC, its consultants, crew and/or persons acting for or on its behalf shall be responsible for cleaning and restoring the ROE Premises to its original condition or a condition satisfactory to DOBOR upon termination of the ROE. All trash and equipment shall be removed from the Premises.

9. KIUC, its consultants, crew and/or persons acting for or on its behalf will comply with all the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the ROE area or premises, now in force or which may be in force.
10. KIUC shall ensure its consultants, crew and/or persons acting for or on its behalf, indemnify, defend, and hold the State, its officers, employees and agents, harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of, or resulting from: (1) any act or omission on the part of KIUC, its consultants, crew and/or persons acting for or on its behalf relating to KIUC, its consultants, crew and/or persons acting for or on its behalf use, occupancy, maintenance, or operation of the ROE Premises; (2) any failure on the part of KIUC, its consultants, crew and/or persons acting for or on its behalf to maintain and operate the facilities within ROE Premises and areas adjacent thereto including any accident, fire or nuisance, growing out of or caused by any failure on the part of KIUC, its consultants, crew and/or persons acting for or on its behalf to maintain and operation the facilities within the ROE Premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of KIUC, its consultants, crew and/or persons acting for or on its behalf for non-observance or non-performance of any of the terms, covenants, and conditions of this ROE or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.
11. KIUC, its consultants, crew and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law.
12. KIUC, its consultants, crew and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the ROE Premises any such materials except as needed for use in the ordinary course of KIUC, its consultants, crew and/or persons acting for or on its behalf business, and then only after written notice is given to DOBOR of the identity of such materials and upon the Department's consent, which consent may be withheld at DOBOR's sole and absolute discretion.
13. If any lender or governmental agency shall ever require testing to ascertain whether there has been any release of hazardous materials by KIUC, its consultants, crew and/or persons acting for or on its behalf, then KIUC, its consultants, crew and/or persons acting for or on its behalf shall be responsible for the cost thereof.
14. In addition, KIUC, its consultants, crew and/or persons acting for or on its behalf shall execute affidavits, representations and the like from time to time at DOBOR's request concerning KIUC, its consultants, crew and/or persons acting for or on its behalf best knowledge and belief regarding the presence of hazardous materials on the ROE Premises placed or released by KIUC, its consultants, crew and/or persons acting for or on its behalf
15. KIUC shall ensure its consultants, crew and/or persons acting for or on its behalf agree to indemnify, defend and hold the Department harmless, from any damages and claims resulting from the release of hazardous materials on the ROE Premises occurring while KIUC, its consultants, crew and/or persons acting for or on its behalf is/are in possession, or elsewhere if caused by KIUC, its consultants, crew and/or persons acting for or on its behalf. These covenants shall survive the expiration or earlier termination of this ROE.

16. For purposes of this ROE, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.
17. KIUC, its consultants, crew and/or persons acting for or on its behalf in the exercise of this ROE shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general.
18. All facilities and improvements placed by KIUC shall be within the ROE Premises shown on the attached map in Exhibit "A".
19. All costs associated with KIUC's use of the ROE Premises shall be the sole responsibility of KIUC, its consultants, crew and/or persons acting for or on its behalf.
20. KIUC, its consultants, crew and/or persons acting for or on its behalf shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from KIUC, its consultants, crew and/or persons acting for or on its behalf use, maintenance, repair and operation of the ROE Premises, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the ROE Premises and its surrounding waters of such pollutant or contaminant and restore to DOBOR's satisfaction the areas affected by such pollution or contamination, all at KIUC's, its consultants, crew and/or persons acting for or on its behalf own cost and expense.
21. Best management practices shall be employed by KIUC, its consultant, crew and/or persons acting for or on its behalf to avoid having silt, dirt, or other contaminants enter the ocean when entering, occupying, maintaining, and operating their facilities within the ROE Premises..
22. All disputes or questions arising under this ROE permit shall be referred to the Chairperson of the Department of Land and Natural Resources ("Chairperson") for a determination and resolution of the dispute or question. The Chairperson's decision shall be final and binding on the parties herein.
23. Rental fee for the ROE shall be waived as the applicant is a not for profit and will not be charging for any parking.
24. In the event, any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, paving or walls are encountered, KIUC, its consultants, crew, and/or persons acting for or on its behalf shall stop work immediately and contact the State of Hawaii, Historic Preservation Division in Kapolei, at (808) 692-8015.
25. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, KIUC, its consultants, crew and/or persons acting for or on its behalf shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in compliance with chapter 6E, Hawaii Revised Statutes.

26. This ROE or any rights hereunder shall not be sold, assigned, conveyed, leased, let, mortgaged or otherwise transferred or disposed.
27. This ROE is revocable and terminable at any time for any reason in the sole and absolute discretion of the Chairperson.
28. The parties acknowledge that reference made to persons acting for or on DOBOR's behalf does not include public officers and employees.
29. The Department reserves the right to impose additional responsible terms and conditions as it deems necessary while this ROE is in force.

Pursuant to the Land Board's delegation of authority to me to issue rights-of-entry, I am authorized to waive rent for rights-of-entry where no entity involved intends to profit monetarily from its use. As your project meets this requirement, I hereby waive the rent.

Should KIUC have no objections to the above terms and conditions, please sign below and submit this original executed document.

Sincerely,

Suzanne D. Case
DLNR Chairperson

Enclosures

ACCEPT:

Kauai Island Utility Cooperative ("KIUC") Concurs and Agrees to the Terms and Conditions in this Right-of-Entry Permit.

By:

Signature

Date

Printed Name

Its: _____

PRELIMINARY

Easement A

(For Electric Purposes)

Eleele, Koloa, Kauai, Hawaii

Being a portion of R.P. 4485, L.C. Aw. 7712, Apana 5 to M. Kekuanaoa conveyed to the State of Hawaii by Kauai Commercial Company, Limited by deed dated June 9, 1961 and recorded in Book 4090, page 16 (Land Office Deed S-18086).

Being also portion of Port Allen Small Boat Harbor (Governor's Executive Order 2039) and the addition to Port Allen Small Boat Harbor (Governor's Executive Order 3010).

Beginning at the Northwest corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUOLO" being 3,470.93 feet North and 5,271.77 feet East and running by azimuths measured clockwise from True South:

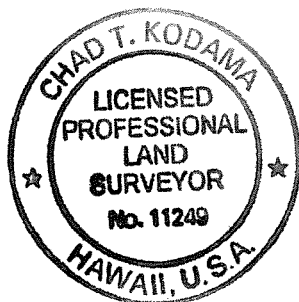
- | | | |
|----|--------------|---|
| 1. | 290° 35' 56" | 16.65 feet along the centerline of the Perpetual Non-Exclusive Easement for Electrical Transmission Line (25.00 feet wide), being also the remainder of R.P. 4485, L. C. Aw. 7712, Apana 5 to M. Kekuanaoa; |
| 2. | 354° 55' | 86.80 feet along the remainder of R.P. 4485, L. C. Aw. 7712, Apana 5 to M. Kekuanaoa, being also the Port Allen Small Boat Harbor (Governor's Executive Order 2039) and the addition to Port Allen Small Boat Harbor (Governor's Executive Order 3010); |
| 3. | 316° 18' | 20.37 feet along the addition to Port Allen Small Boat Harbor (Governor's Executive Order 3010); |
| 4. | 46° 18' | 15.00 feet along same; |

5. 136° 18'

25.63 feet along same;

6. 174° 55'

99.27 feet along the remainder of the addition to Port Allen Small Boat Harbor (Governor's Executive Order 3010), also along the remainder of R.P. 4485, L.C. Aw. 7712, Apana 5 to M. Kekuanaoa, being also the Port Allen Small Boat Harbor (Governor's Executive Order 2039) to the point of beginning and containing an area of 1,741 square feet.

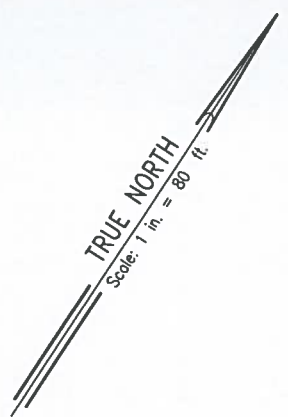


July 13, 2018
Honolulu, Hawaii

T.M.K.: (4) 2-1-03: 10

A handwritten signature in cursive script that reads "Chad T. Kodama".

Chad T. Kodama
Licensed Professional Land Surveyor
Certificate Number LS-11249
License Expires April 30, 2020



Perpetual Non-Exclusive Easement
For Electrical Transmission Line
(25.00 feet wide)
(C.S.F. 17950)

EASEMENT A
AREA = 1,741 Sq. Ft.

ADDITION TO PORT ALLEN SMALL BOAT HARBOR
(Gov. Exec. Ord. 3010) (CSF 18852)

3470.93 N
5271.77 E
"PUOLO"

PORT ALLEN SMALL BOAT HARBOR
(Gov. Exec. Ord. 2039) (CSF 13630)

M. Kekuanaoa

Highwater Mark

Easement (32.00 ft wide)
for access and utility purposes

Note:
Owner: State of Hawaii
Easement A for Electric purposes in favor of
Kauai Island Utility Cooperative,
Area = 1,741 Sq. Ft.

PRELIMINARY

DESIGNATION OF EASEMENT A
AFFECTING PORT ALLEN SMALL BOAT HARBOR
BEING A PORTION OF R.P. 4485,
L.C. AW. 7712, AP. 5
TO M. KEKUANAOKA AS SHOWN ON
GOVERNOR'S EXECUTIVE ORDER
2039 & 3010
AT ELEELE, KOLOA, KAUAI, HAWAII

This work was prepared
by me or under my supervision.

Chad T. Kodama
Chad T. Kodama
Licensed Professional Land Surveyor
Certificate No. LS-11249
Exp. 4/30/20



T.M.K.: (4) 2-1-03: 10

 **CONTROLPOINT SURVEYING, INC.**
615 Piikoi Street, Suite 700
Honolulu, Hawaii 96814

July 13, 2018
8.5" X 14"

Job No.: 18002-06



EXHIBIT B

Approved by the
Board of Land and Natural Resources
September 14, 2018

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

September 14, 2018

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

Land Board Members:

SUBJECT: DECLARE PROJECT EXEMPT FROM REQUIREMENTS OF CHAPTER 343, HAWAII REVISED STATUTES, AND TITLE 11, CHAPTER 200, HAWAII ADMINISTRATIVE RULES AND APPROVE ISSUANCE OF PERPETUAL, NON-EXCLUSIVE EASEMENT TO KAUAI ISLAND UTILITY COOPERATIVE FOR ELECTRICAL SERVICE FOR JOB NO. B94DK71A PORT ALLEN SMALL BOAT HARBOR FLOATING DOCK IMPROVEMENTS, ELEELE, ISLAND OF KAUAI, HAWAII, TAX MAP KEY (4) 2-1-003:010 (PORTION)

APPLICANT:

Kauai Island Utility Cooperative, a domestic profit corporation (Applicant).

BACKGROUND:

The Division of Boating and Ocean Recreation (“DOBOR”) is currently constructing two (2) new floating docks (Piers A and B) for Job No. B94DK71A Port Allen Small Boat Harbor Floating Dock Improvements located in Eleele on the Island of Kauai. As part of the project, a new electrical service is required to provide power to the new floating docks. The existing electrical service to Piers A and B has insufficient capacity to service the needs of the new floating docks and is in an advanced state of corrosion and deterioration.

As such, a new electrical service must be installed by the Kauai Island Utility Cooperative (KIUC) on DOBOR property to provide power to the new floating docks. The KIUC requires an easement in order to construct, maintain, and access the electrical service equipment needed, which includes a new power pole, underground electrical wiring and conduits, electrical transformers, and meters.

REQUEST:

DOBOR is requesting that the Board of Land and Natural Resources (“Board”) declare installation of the electrical service equipment exempt from the requirements of Chapter 343, Hawaii Revised Statutes, and Title 11, Chapter 200, Hawaii Administrative Rules to prepare an Environmental Assessment (“EA”), due to the use of State lands. DOBOR is also requesting that the Board approve issuance of an Easement to Kauai Island Utility to allow for construction, maintenance, and access to the electrical service equipment required.

Item J-2

A map showing the location and size of the proposed Easement is shown in Exhibit "A".

LEGAL REFERENCE:

Section 171-13 and 95, Hawaii Revised Statutes.

LOCATION:

Portion of Government land at Port Allen Small Boat Harbor (PASBH), situated at Eleele, Island of Kauai, Identified by Tax Map Key: (4) 2-1-003:010, as shown on the attached map in Exhibit "A".

AREA:

1,741 square feet.

ZONING:

State Land Use District: Industrial.

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES__ NO X

CURRENT USE STATUS:

The proposed Easement area is currently a grassed area between the PASBH access road and parking lot for the harbor.

CHARACTER OF USE:

For construction, maintenance, and access to electrical service equipment for the PASBH floating docks (Piers A and B).

COMMENCEMENT DATE:

The commencement date shall be determined by the Chairperson. The construction start date will be scheduled after the appropriate Easement documents have been executed and accepted by DLNR, subject to approval by the Attorney General's Office as to form and legality. KIUC will coordinate the actual commencement date with DOBOR.

TERM OF EASEMENT:

The term of the proposed non-exclusive easement shall be perpetual.

RENTAL:

Gratis. The easement is necessary to provide electrical service being requested by DOBOR to provide power to the floating docks at Piers A and B.

COLLATERAL SECURITY DEPOSIT:

None.

DCCA VERIFICATION:

Place of business registration confirmed:	Yes
Registered business name confirmed:	Yes
Applicant in good standing confirmed:	Yes

CHAPTER 343 ENVIRONMENTAL ASSESSMENT:

In accordance with Administrative Rule Section 11-200-8(A) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council on June 5, 2015, the installation of electrical service equipment was determined to have minimal or no significant effect on the environment and is exempt from the preparation of an environmental assessment pursuant to Exemption Class 3, Item No. 15 "Utility service connection and installation." See attached Exemption Notification as Exhibit "B".

RECOMMENDATION:

That the Board of Land and Natural Resources:


1. Declare that, after considering the potential effects of the proposed project 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 exempt from the requirement to prepare an Environmental Assessment.
2. That the Board approve the issuance of a non-exclusive, perpetual Easement to Kauai Island Utility Cooperative for construction, maintenance, and access for electrical service equipment and delegate authority to execute the Easement documents to the Chairperson, subject to approval of the Easement documents by the Attorney General's Office as to form and legality, and any other terms and conditions that the Attorney General's Office or Chairperson determines are in the best interest of the State.

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 proposed Easement Area
- B. Exemption Notification

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 16, 2018

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

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENVIRONMENT
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIROKAWA ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes (HRS), and Chapter 11-200, Hawaii Administrative Rules (HAR).

Project Title:	Port Allen Small Boat Harbor Floating Dock Improvements – Electrical Service Easement
Project Number:	Job No. B94DK71A
Project Description:	This project consists of providing an easement to Kauai Island Utility Cooperative to install, maintain, and access electrical service equipment for the new Pier A and B floating docks at Port Allen Small Boat Harbor, Eleele, Island of Kauai.
Chapter 343 Trigger(s)	Use of State Lands
Exemption Class & Description:	Exemption Authority: Hawaii Administrative Rule, Chapter 11-200-8 Exemption Class No. 3: Construction and location of single new, small facilities or structures and the alteration and modification of same and installation or new, small, equipment and facilities and the alteration and modification of same including, but not limited to: (A) Single family residences not in conjunction with the building of two or more such units; (B) Multi-unit structures designed for more than four dwelling units if not in conjunction with the building of two or more such structures; (C) Stores, offices and restaurants designed for total occupant load of twenty persons or less, if not in conjunction with the building of two or more such structures; and (D) Water, sewage, electrical, gas, telephone, and other essential public utility service extensions to serve such structures or facilities; and (E) accessory or appurtenant structures including garages, carports, patios, swimming pools, and fences.
Exemption Item Number and Description:	Item No. 15: Utility service connection and installation.
Consultation:	The following agencies were consulted, see attached record of consultation: <ul style="list-style-type: none">- State Office of Planning, Coastal Zone Management Program- State Department of Land and Natural Resources, Office of Conservation and Coastal Lands
Recommendation:	It is anticipated that this project will have minimal or no significant effect on the environment and is determined to be exempt from preparation of an Environmental Assessment.

Suzanne D. Case

Suzanne D. Case, Chairperson

Aug 16, 2018

Date

PRELIMINARY

Easement A

(For Electric Purposes)

Eleele, Koloa, Kauai, Hawaii

Being a portion of R.P. 4485, L.C. Aw. 7712, Apana 5 to M. Kekuanaoa conveyed to the State of Hawaii by Kauai Commercial Company, Limited by deed dated June 9, 1961 and recorded in Book 4090, page 16 (Land Office Deed S-18086).

Being also portion of Port Allen Small Boat Harbor (Governor's Executive Order 2039) and the addition to Port Allen Small Boat Harbor (Governor's Executive Order 3010).

Beginning at the Northwest corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUOLO" being 3,470.93 feet North and 5,271.77 feet East and running by azimuths measured clockwise from True South:

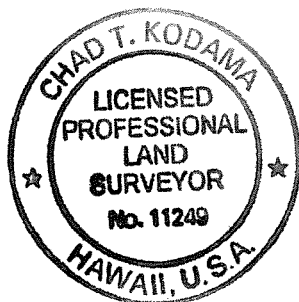
- | | | | | |
|----|------|-----|-----|---|
| 1. | 290° | 35' | 56" | 16.65 feet along the centerline of the Perpetual Non-Exclusive Easement for Electrical Transmission Line (25.00 feet wide), being also the remainder of R.P. 4485, L. C. Aw. 7712, Apana 5 to M. Kekuanaoa; |
| 2. | 354° | 55' | | 86.80 feet along the remainder of R.P. 4485, L. C. Aw. 7712, Apana 5 to M. Kekuanaoa, being also the Port Allen Small Boat Harbor (Governor's Executive Order 2039) and the addition to Port Allen Small Boat Harbor (Governor's Executive Order 3010); |
| 3. | 316° | 18' | | 20.37 feet along the addition to Port Allen Small Boat Harbor (Governor's Executive Order 3010); |
| 4. | 46° | 18' | | 15.00 feet along same; |

5. 136° 18'

25.63 feet along same;

6. 174° 55'

99.27 feet along the remainder of the addition to Port Allen Small Boat Harbor (Governor's Executive Order 3010), also along the remainder of R.P. 4485, L.C. Aw. 7712, Apana 5 to M. Kekuanaoa, being also the Port Allen Small Boat Harbor (Governor's Executive Order 2039) to the point of beginning and containing an area of 1,741 square feet.

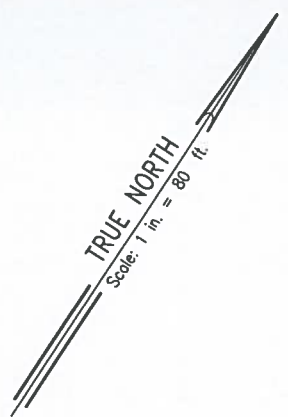


July 13, 2018
Honolulu, Hawaii

T.M.K.: (4) 2-1-03: 10

A handwritten signature in cursive script that reads "Chad T. Kodama".

Chad T. Kodama
Licensed Professional Land Surveyor
Certificate Number LS-11249
License Expires April 30, 2020



Perpetual Non-Exclusive Easement
For Electrical Transmission Line
(25.00 feet wide)
(C.S.F. 17950)

EASEMENT A
AREA = 1,741 Sq. Ft.

ADDITION TO PORT ALLEN SMALL BOAT HARBOR
(Gov. Exec. Ord. 3010) (CSF 18852)

3470.93 N
5271.77 E
"PUOLO"

PORT ALLEN SMALL BOAT HARBOR
(Gov. Exec. Ord. 2039) (CSF 13630)

M. Kekuanaoa

Highwater Mark

Easement (32.00 ft wide)
for access and utility purposes

Note:
Owner: State of Hawaii
Easement A for Electric purposes in favor of
Kauai Island Utility Cooperative,
Area = 1,741 Sq. Ft.

PRELIMINARY

DESIGNATION OF EASEMENT A
AFFECTING PORT ALLEN SMALL BOAT HARBOR
BEING A PORTION OF R.P. 4485,
L.C. AW. 7712, AP. 5
TO M. KEKUANAOKA AS SHOWN ON
GOVERNOR'S EXECUTIVE ORDER
2039 & 3010
AT ELEELE, KOLOA, KAUAI, HAWAII

This work was prepared
by me or under my supervision.

Chad T. Kodama
Chad T. Kodama
Licensed Professional Land Surveyor
Certificate No. LS-11249
Exp. 4/30/20



T.M.K.: (4) 2-1-03: 10

 **CONTROLPOINT SURVEYING, INC.**
615 Piikoi Street, Suite 700
Honolulu, Hawaii 96814

July 13, 2018
8.5" X 14"

Job No.: 18002-06

DAVID Y. IGE
GOVERNOR OF HAWAII



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

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON
DEPUTY DIRECTOR - WATER

EDWARD R. UNDERWOOD
ADMINISTRATOR
DIVISION OF BOATING AND OCEAN RECREATION

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION
4 SAND ISLAND ACCESS ROAD
HONOLULU, HAWAII 96819

BOR-E-016.19

July 31, 2018

Mr. Samuel J. Lemmo, Administrator
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
1151 Punchbowl Street, Room 131
Honolulu, HI 96813

**Request for Consultation and Exemption from HRS Chapter 343 and HAR Chapter 11-200
Port Allen Small Boat Harbor Floating Dock Improvements – Electrical Service Easement
Eleele, Kauai, Hawaii**

The Division of Boating and Ocean Recreation (DOBOR) is currently constructing new floating docks for Piers A and B at Port Allen Small Boat Harbor, located in Eleele on the island of Kauai. In order to provide electrical service for the project, the Kauai Island Utility Cooperative requires that an easement be provided for installation of the necessary service equipment. Attached is map showing the location of the proposed easement.

Due to the use of State lands, HRS Chapter 343 and HAR Chapter 11-200 must be complied with in order to approve the easement. DOBOR has determined that the proposed improvements are exempt from the requirements of HRS Chapter 343 and HAR Chapter 11-200 to prepare an Environmental Assessment under the following exemption from the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council on June 5, 2015:

Exemption Class 3, Item 15: Utility service connection and installation.

Prior to approval by the Board of Land and Natural Resources of the easement and an exemption from HRS Chapter 343 and HAR Chapter 11-200, we are required to consult with various agencies for comments on the proposed project. Therefore, we would appreciate your comments on this project as it relates to any applicable programs or requirements of the Office of Planning, Coastal Zone Management Program. In particular, we would like your determination of the following:

1. Any permits or approvals required by your office for the proposed project; and

EXHIBIT B

2. Concurrence with our determination that the project is exempt from requirements of HRS Chapter 343 and HAR Chapter 11-200.

Should you have any questions, please call Mr. Finn McCall of the Engineering Branch in Honolulu at (808) 587-3250.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. R. Underwood", is positioned above the printed name.

Edward R. Underwood
Administrator

enc.

From: [Mills, Kimberly T](#)
To: [McCall, Finn D](#); [Lemmo, Sam J](#)
Subject: RE: Consultation for EA Exemption - Port Allen Small Boat Harbor Easement for Electrical Service
Date: Tuesday, July 31, 2018 1:32:44 PM

We have no objections to the proposed easement and concur with the exemption.
Per our November 6, 2015 correspondence KA 16-86 the pier replacement was previously reviewed and it was determined the project did not require further authorization in regards to the Conservation District.

~Tiger
K. Tiger Mills, Staff Planner
State of Hawai'i
Department of Land and Natural Resources
Office of Conservation And Coastal Lands
P.O. Box 621
Honolulu, Hawai'i 96809
www.dlnr.hawaii.gov/occl



From: McCall, Finn D
Sent: Tuesday, July 31, 2018 10:39 AM
To: Lemmo, Sam J <sam.j.lemmo@hawaii.gov>; Mills, Kimberly T <kimberly.mills@hawaii.gov>
Subject: Consultation for EA Exemption - Port Allen Small Boat Harbor Easement for Electrical Service

Hi Sam/Tiger,

Please see attached request for consultation letter. This is a request to consult for an EA exemption for an electrical easement needed to provide service to new floating docks being constructed for Piers A and B. This project has already been approved by the DLNR and the Chairperson has declared the project exempt from HRS 343; however, our AG's have informed us we need to do a separate EA exemption for the easement since it wasn't included in the original project scope of work and involves the use of State lands.

Please feel free to contact me if you have any questions.

Thanks,

Finn McCall
Engineering Branch
DLNR – Division of Boating and Ocean Recreation
4 Sand Island Access Road

Honolulu, HI 96819

Phone: (808) 587-3250

DAVID Y. IGE
GOVERNOR OF HAWAII



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

ROBERT K. MASUDA
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DIVISION OF BOATING AND OCEAN RECREATION

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION
4 SAND ISLAND ACCESS ROAD
HONOLULU, HAWAII 96819

BOR-E-015.19

July 31, 2018

Mr. Leo Asuncion, Director
State Office of Planning – Coastal Zone Management Program
235 South Beretania Street, 6th Floor
Honolulu, HI 96813

**Request for Consultation and Exemption from HRS Chapter 343 and HAR Chapter 11-200
Port Allen Small Boat Harbor Floating Dock Improvements – Electrical Service Easement
Eleele, Kauai, Hawaii**

The Division of Boating and Ocean Recreation (DOBOR) is currently constructing new floating docks for Piers A and B at Port Allen Small Boat Harbor, located in Eleele on the island of Kauai. In order to provide electrical service for the project, the Kauai Island Utility Cooperative requires that an easement be provided for installation of the necessary service equipment. Attached is map showing the location of the proposed easement.

Due to the use of State lands, HRS Chapter 343 and HAR Chapter 11-200 must be complied with in order to approve the easement. DOBOR has determined that the proposed improvements are exempt from the requirements of HRS Chapter 343 and HAR Chapter 11-200 to prepare an Environmental Assessment under the following exemption from the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council on June 5, 2015:

Exemption Class 3, Item 15: Utility service connection and installation.

Prior to approval by the Board of Land and Natural Resources of the easement and an exemption from HRS Chapter 343 and HAR Chapter 11-200, we are required to consult with various agencies for comments on the proposed project. Therefore, we would appreciate your comments on this project as it relates to any applicable programs or requirements of the Office of Planning, Coastal Zone Management Program. In particular, we would like your determination of the following:

1. Any permits or approvals required by your office for the proposed project; and

2. Concurrence with our determination that the project is exempt from requirements of HRS Chapter 343 and HAR Chapter 11-200.

Should you have any questions, please call Mr. Finn McCall of the Engineering Branch in Honolulu at (808) 587-3250.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. R. Underwood", is positioned above the printed name.

Edward R. Underwood
Administrator

enc.



OFFICE OF PLANNING STATE OF HAWAII

DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
DIRECTOR
OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <http://planning.hawaii.gov/>

DTS201808090907NA

August 9, 2018

To: Suzanne Case, Chairperson
Department of Land and Natural Resources

From: Leo R. Asuncion, Director

Attention: Finn McCall
Division of Boating and Ocean Recreation

Subject: Request for Consultation and Exemption from HRS Chapter 343 and HAR Chapter 11-200, Port Allen Small Boat Harbor Floating Dock Improvements - Electrical Service Easement, Eleele, Kauai, Hawaii

RECEIVED
2018 AUG 10 AM 10:18
DEPT OF LAND & NATURAL RESOURCES
STATE OF HAWAII

Thank you for the opportunity to provide comments on the Port Allen Small Boat Harbor floating dock improvements/electrical service easement project proposed by the Department of Land and Natural Resources, Division of Boating and Ocean Recreation (DOBOR). The request for agency comments was transmitted to our office in letter form on July 31, 2018.

According to the information provided in the agency review request, DOBOR has determined that the project is exempt from the requirements of Hawaii Revised Statutes (HRS) Chapter 343 and Hawaii Administrative Rules (HAR), Title 11, Chapter 200, based on Exemption Class 3, Item 17, Utility service connection and installation. DOBOR is required to consult various agencies for comments on the proposed action by the Board of Land and Natural Resources before receiving approval of this exemption.

The Office of Planning (OP) has reviewed the transmitted material and offers the following comments:

1. Coastal Zone Management Act Federal Consistency. The review material does not provide information on any determination by the U.S. Army Corps Engineers on any possible permits or approvals. If the proposed utility installation work requires a federal permit, such as the Department of the Army permit, then this project may be subject to a Coastal Zone Management Act (CZMA) federal consistency review.

The national CZMA requires that federal actions be consistent with approved state coastal programs enforceable policies. Federal actions include activities performed by a federal agency; activities that require federal permits or approvals; or state and local government projects that receive federal financial assistance.

AUG13'18PM 3:32BOR ADM

Ms. Suzanne Case, Chairperson
August 9, 2018
Page 2

OP is the lead state agency with the authority to conduct CZMA federal consistency reviews. If a federal permit is required, please contact our office regarding the policies and procedures for a federal consistency review.

2. Hawaii Coastal Zone Management Program. Hawaii Revised Statutes (HRS) § 205A-5(b) requires all State and County agencies to enforce the CZM objectives and policies. DOBOR should ensure that the proposed action be consistent with the CZM objectives and policies as listed in HRS § 205A-2.

OP recommends that DOBOR incorporate mitigative measures to protect nearshore waters from potential damage caused by the installation of service equipment.

3. Shoreline Setbacks. Based on the review material, the project may involve construction and installation activity within the shoreline area as defined in HRS § 205A-41. Please consult the County of Kauai, Department of Planning on shoreline setback requirements.
4. HRS Chapter 343 Exemption. OP has no position on DOBOR's determination on HRS 343 exemption for the proposed action.

We have no further comments at this time. If you have any questions regarding this comment letter, please contact Joshua Hekeia of our office at (808) 587-2845.