

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

February 28, 2020

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

PSF No.:19KD-124

**KAUAI**

Grant of Perpetual Non-Exclusive Easement to Kauai Island Utility Cooperative for Utility Purposes; Immediate Construction and Management Right-of-Entry Permit to Kauai Island Utility Cooperative, Mana, Waimea, Kauai, Tax Map Key: (4) 1-2-002: portion of 001.

**APPLICANT:**

Kauai Island Utility Cooperative (KIUC), a consumer cooperative formed pursuant to the provisions of Chapter 421C.

**LEGAL REFERENCE:**

Sections 171-13, -55 and -95, Hawaii Revised Statutes, as amended.

**LOCATION:**

Portion of Government lands located at Mana, Waimea, Kauai, identified by Tax Map Key: (4) 1-2-002: portion of 001, as shown on the attached map labeled EXHIBIT A.

**AREA:**

1.632 acres, more or less

**ZONING:**

State Land Use District:	Agriculture, Conservation, Urban
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: NO

CURRENT USE STATUS:

See EXHIBIT B.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove electrical transmission lines, poles, guy wires and anchors over, under and across State-owned land, including the right to trim and keep trimmed any trees in the way of its appliances and equipment.

TERM:

Perpetual.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

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

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Pursuant to the National Environmental Policy Act (NEPA), the Navy processed a Final Environmental Assessment (FEA) for the its Photovoltaic and Battery Energy Storage Systems at the Pacific Missile Range, which included assessment of the utility connection over the subject area, and the finding of no significant impact (FONSI). Notice of the NEPA FEA and FONSI was published in the Office of Environmental Quality Control's The Environmental Notice on July 8, 2017.

In light of the NEPA FEA and FONSI and in accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on 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. 3, "Construction and location of single new, small, equipment and facilities and the alteration and modification of same including but not limited to: (D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures and facilities". Also, Exemption Class No. 6, which states "Construction or placement of minor structures accessory to existing facilities". See

EXHIBIT F.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

Kauai Island Utility Cooperative (KIUC) is requesting a construction and management right-of-entry permit and a perpetual non-exclusive easement to build a new electrical transmission line on State land located in Mana, Waimea, Kauai, Tax Map Key: (4) 1-2-002:001 (Parcel 1). The subject parcel contains a total of 12,998.086 acres. See Exhibit A.

KIUC is planning on constructing a new electrical substation situated at the Pacific Missile Range Facility (PMRF) at Barking Sands, Tax Map Key: (4) 1-2-002:013 (Parcel 13). The new substation will interconnect to the AES Distributed Energy, Inc. 14-megawatt solar-battery storage facility at PMRF. This solar-battery storage project is currently under construction and scheduled to be completed by early 2020. A new 57kV transmission line is required to connect the existing transmission lines along Kaumualii Highway to the new substation. The new transmission line will be constructed on wood poles. The line will run parallel approximately 20-25 feet to the east of the existing 12.47kV distribution line along Tartar Drive.

KIUC and Hawaiian Telcom, Inc. have an existing perpetual easement, Land Office Deed (LOD) No. 27102, for utility purposes on Parcel 001. The proposed electrical transmission lines will run parallel to the existing electrical transmission lines under LOD No. 27102. See EXHIBIT C.

The Department of Agriculture (DOA) was solicited for comments and they responded that they thought the proposed easement and electrical transmission line were within the boundaries of Tax Map Key: (4) 1-2-016:011 (Parcel 11), which is under the control and management of the DOA under Executive Order No. 3633. DOA was concerned that the area of the proposed electrical transmission line would limit their tenant's (Sunrise



Capital, Inc.) use of the parcel.

Staff identified a fence line on Parcel 1 during an inspection. The fence line appeared to be encroaching on the existing perpetual easement LOD No. 27102 area, as the fence line was located under the electrical pole's guy line. See EXHIBIT D. Staff believes that the misplaced fence line may have contributed to the misconception that the proposed easement area would be on Parcel 11.

Staff later discovered that the fence line was constructed by Sunrise Capital, Inc. According to Sunrise Capital, Inc. they removed an old fence line, from a prior tenant, years ago and replaced it with the existing fence line in the same location.

After discussing the above-mentioned issues with KIUC, they provided staff with a survey map of the requested area between Parcel 1 and Parcel 11. See EXHIBIT E. KIUC also told staff that they would have their surveyor place a pin on the boundary between Parcel 1 and Parcel 11.<sup>1</sup> Sunrise Capital, Inc. verbally agreed to move the fence line once the survey pin is in place.

Applicants have 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.

Staff solicited comments from various agencies with the following results:

AGENCIES	COMMENTS
<b>County of Kauai:</b>	
Planning Department	No response by suspense date.
Public Works Department	"We have no objections."
Water Department	No response by suspense date.
<b>State of Hawaii:</b>	
Historic Preservation	No response by suspense date.
Department of Agriculture	<u>11/11/19:</u> "The proposed easement and powerline appear to be within the boundaries of Lot 11 of the Kekaha Agricultural Park. Placing the powerline within Lot 11 will limit farmers use of the entire lot." <u>12/23/19:</u> Notified DOA of findings and sent a copy of KIUC provided survey map. EXHIBIT E. Did not received a response to this date.
Division of Forestry and Wildlife	No response by suspense date.

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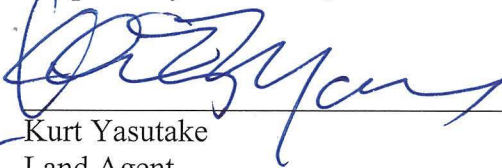
<sup>1</sup> Staff is currently waiting on confirmation from KIUC that the survey pin is in place.

<b>Other Agencies/ Interest Groups:</b>	
Agribusiness Development Corporation	No response by suspense date.
Office of Hawaiian Affairs	No response by suspense date.
Hawaiian Telcom, Inc.	No response by suspense date.

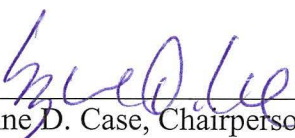
RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, 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. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to Kauai Island Utility Cooperative covering the subject area for utility 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. Review and approval by the Department of the Attorney General; and
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Grant an immediate right-of-entry to Kauai Island Utility Cooperative, its consultants, contractors and/or persons acting for or on their behalf, subject to the following 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 right-of-entry document form, as may be amended from time to time;
  - B. The rights-of-entry will be effective upon the full execution of the right-of-entry permit and Applicant's submission of required insurance, and shall continue until the grant of easement document is issued; and
  - C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.

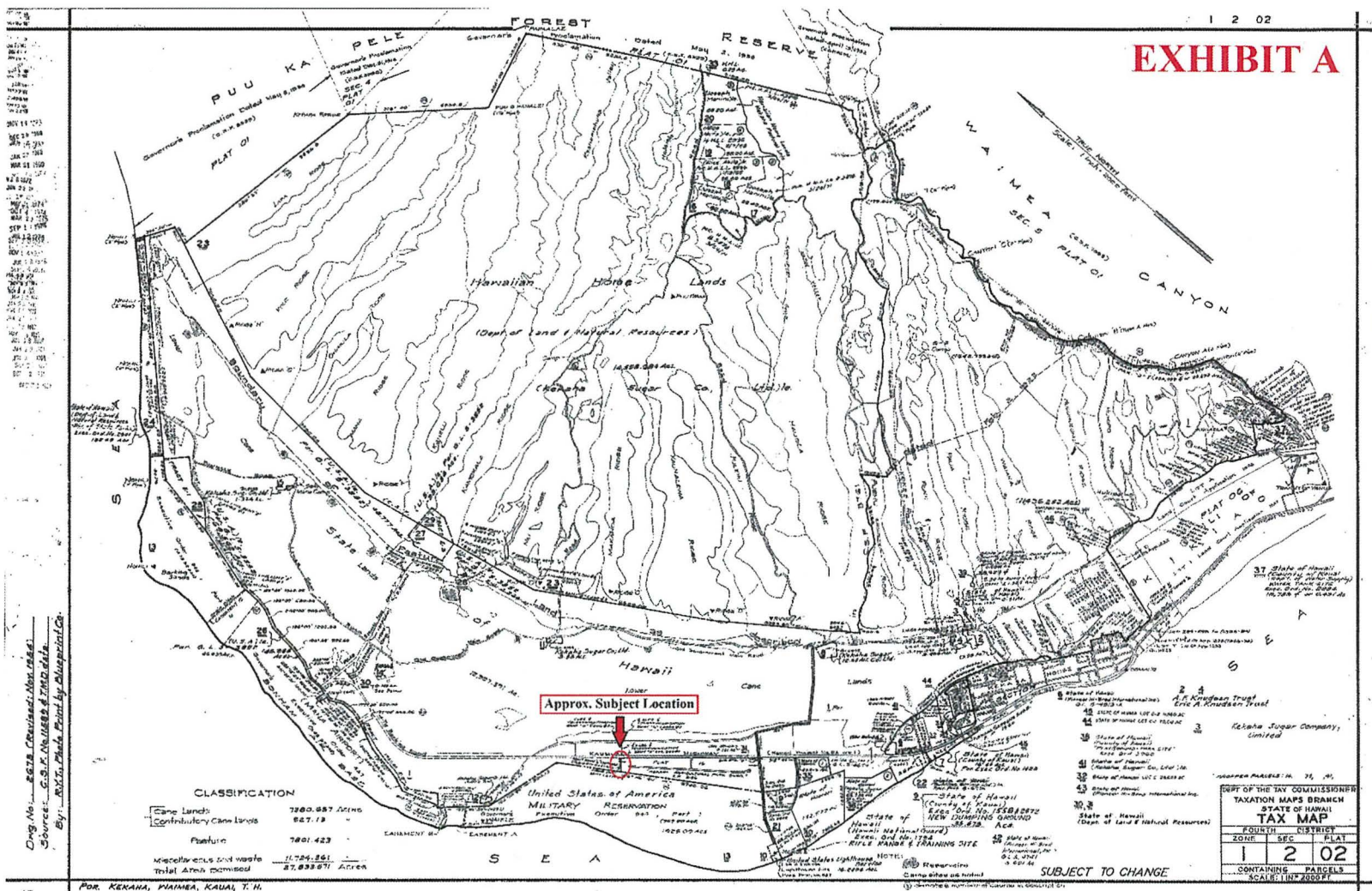
Respectfully Submitted,

  
Kurt Yasutake  
Land Agent

APPROVED FOR SUBMITTAL:

  
Suzanne D. Case, Chairperson



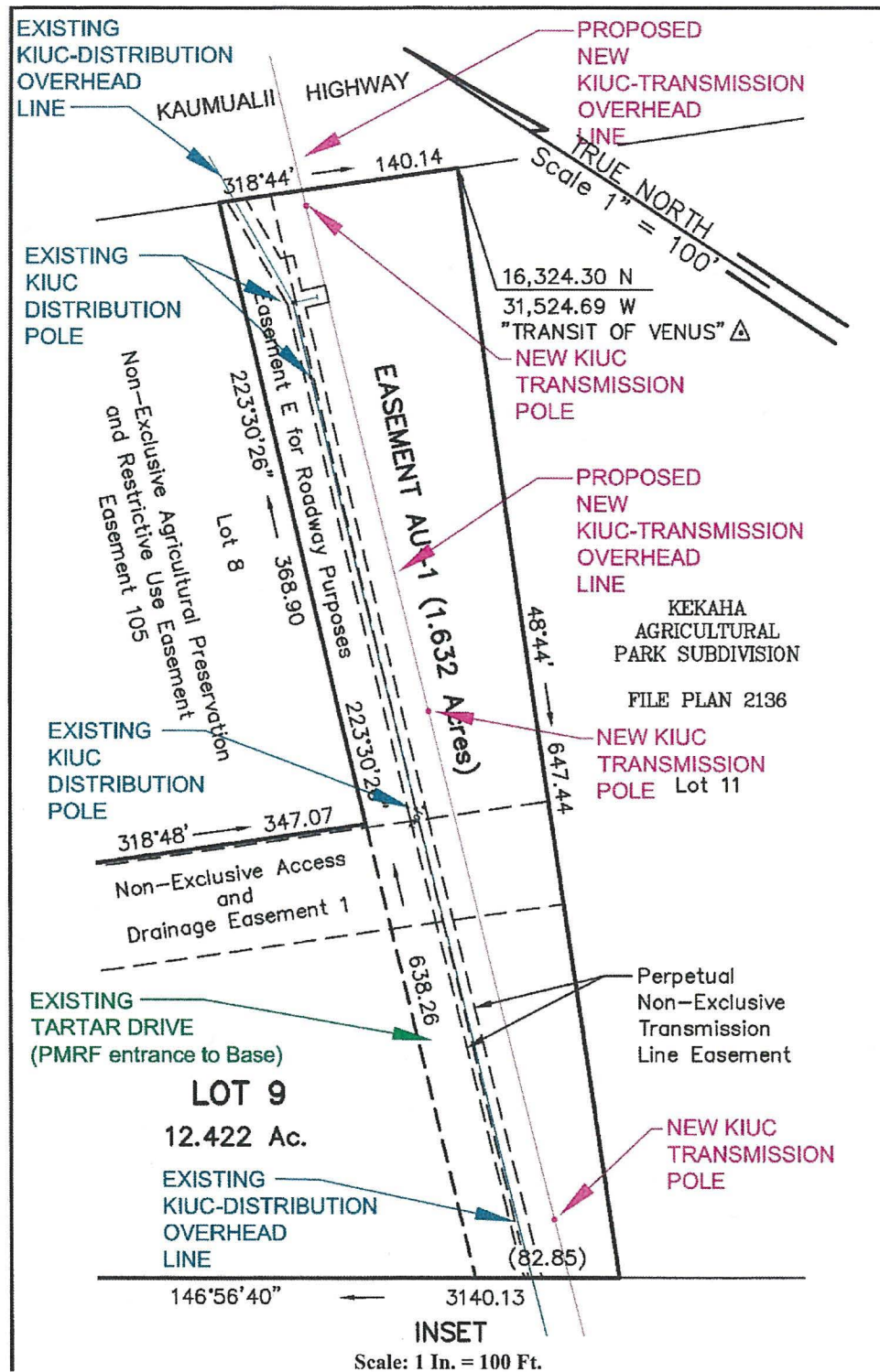


## EXHIBIT B

ENCUMBRANCE	AGENCY OR INDIVIDUAL(S)	CHARACTER OF USE
Executive Order No. 0736	County of Kauai	Refuse dumping ground purposes.
Executive Order No. 3004	County of Kauai – Department of Water	Well and water tank site and non-exclusive pipeline and roadway easement purposes.
Executive Order No. 3377	County of Kauai – Department of Water	Well and pump site and access road purposes.
Executive Order No. 3437	Department of Land and Natural Resources – Division of Forestry and Wildlife	Wild bird sanctuary purposes.
Executive Order No. 3633	Department of Agriculture	Kekaha agricultural park purposes.
Executive Order No. 4007	Agribusiness Development Corporation	Agricultural and related purposes.
Executive Order No. 4035	County of Kauai – Department of Water	Well site purposes.
Executive Order No. 4209	Department of Land and Natural Resources – Division of Forestry and Wildlife	Mana Plains Forest Reserve purposes.
Grant of Easement No. S-4596	United States of America – Department of the Navy	Bridge construction and access road purposes.
Grant of Easement No. S-4597	United States of America – Department of the Navy	Drainage purposes.
Grant of Easement No. S-5469	Gasco, Inc. (The Gas Company, LLC)	The right, privilege, and authority to install, maintain and repair underground magnesium anodes.
Grant of Easement No. S-5604	United States of America – Department of the Navy	A restrictive use easement in support of high explosive storage magazines and the explosive safety quantity distance arcs that emanate therefrom.
Grant of Easement No. S-5804	United States of America – Department of the Navy	Agricultural preservation purposes.
Grant of Easement bearing Land Office Deed No. S-26908	United States of America – Department of the Navy	Waterline booster pump purposes.
Grant of Easement bearing Land Office Deed No. S-27071	Kauai Electric Company (KIUC)	Electric transmission line, guy line and anchor purposes.



Grant of Easement bearing Land Office Deed No. S- 27079	United States of America – Department of the Navy	Construction, installation, operation, maintenance repair and replacement of a roadway.
Grant of Easement bearing Land Office Deed No. S- 27101	Kauai Electric Company (KIUC) and Hawaiian Telephone Company (Hawaiian Telcom, Inc.)	To construct, use and maintain electric transmission lines and related facilities.
Grant of Easement bearing Land Office Deed No. S- 27102	Kauai Electric Company (KIUC) and Hawaiian Telephone (Hawaiian Telcom, Inc.)	To construct, use and maintain electric transmission lines and related facilities.
Grant of Easement bearing Land Office Deed No. S- 27645	Citizens Utilities Company (KIUC)	Construction, reconstruction, use and maintenance of electric transmission lines, guy wires, poles and anchors.
Grant of Easement bearing Land Office Deed No. S- 27663	County of Kauai	Drainage purposes.
Grant of Easement bearing Land Office Deed No. S- 28157	Citizens Utilities Company (KIUC) and GTE Hawaiian Tel (Hawaiian Telcom, Inc.)	Construct, reconstruct, use, maintain and repair electric transmission and distribute lines and poles including the right to trim and keep trimmed any trees in the way of their appliances and equipment.
Grant of Easement bearing Land Office Deed No. S- 28939	John William Kainoa Driver and Teresa Suzanne Driver	The right, privilege and authority to construct, use, maintain and repair a right-of-way for access and utility purposes.
Grant of Easement bearing Land Office Deed No. S- 28958	Kauai Island Utility Cooperative	The right, privilege and authority to construct, use, maintain, repair, replace and remove electrical transmission lines, cables, poles, guy wires and anchors, including the right to trim and keep trimmed ay trees in the way of its appliances and equipment.







**EXHIBIT D**



**Exsiting Easement  
LOD No. 27102**

K A U M U A L I I

H I G H W A Y

( H o w a i i

P r o j

pp (shrimp)

gw (2)

pp #90

pp #1561

TARTER DRIVE

pp #1402

pp #1404

pp #563

pp (shrimp)

t-post 24" pipe so

24" pipe so

gw pp #2500

pp #2461

**Fence Line**

**Parcel Boundary**

**Parcel 001**

**Parcel 011**

24" pipe so

24" pipe so

24" pipe so (6)

24" pipe so

**EXHIBIT E**

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

February 28, 2020

## EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, HAR

**Project Title:** Grant of Perpetual Non-Exclusive Easement to Kauai Island Utility Cooperative for Utility Purposes; Immediate Construction and Management Right-of-Entry Permit to Kauai Island Utility Cooperative.

**Project / Reference No.:** 19KD-124

**Project Location:** Mana, Waimea, Kauai, Tax Map Key: (4) 1-2-002: portion of 001.

**Project Description:** The applicant is requesting a perpetual non-exclusive easement and a construction and management right-of-entry permit to build a new electrical transmission line on State land.

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

**Exemption Class No. and Description:** In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on 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. 3, "Construction and location of single new, small, equipment and facilities and the alteration and modification of same including but not limited to: (D) Water, sewage, electrical, gas, telephone, and other essential public utility services extensions to serve such structures and facilities".

Also, Exemption Class No. 6, which states "Construction or placement of minor structures accessory to existing

**EXHIBIT F**

facilities”.

**Cumulative Impact of  
Planned Successive Actions  
in Same Place Significant?**

No. Staff believes there are no cumulative impacts involved with the grant of perpetual easement and issuance of right-of-entry permit.

**Action May Have Significant  
Impact on Particularly  
Sensitive Environment?**

No. There are no sensitive environmental issues involved with the grant of perpetual easement and issuance of right-of-entry permit.

**Analysis:**

Pursuant to the National Environmental Policy Act (NEPA), the Navy processed a Final Environmental Assessment (FEA) for the its Photovoltaic and Battery Energy Storage Systems at the Pacific Missile Range, which included assessment of the utility connection over the subject area, and the finding of no significant impact (FONSI). Notice of the NEPA FEA and FONSI was published in the Office of Environmental Quality Control's The Environmental Notice on July 8, 2017.

In the past, perpetual non-exclusive easements and construction and management right-of-entry permits were issued for similar purposes.

The dispositions have resulted in no known significant impacts to the natural and environmental resources in the area. As such staff believes that the proposed disposition would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

**Consulted Parties:**

County of Kauai – Planning Department, County of Kauai – Public Works, County of Kauai – Water Department, DLNR – Historic Preservation, Department of Agriculture, DLNR – Division of Forestry and Wildlife, Agribusiness Development Corporation, Office of Hawaiian Affairs and Hawaiian Telcom, Inc.

**Recommendation:**

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