

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

KAUAI

Amend Prior Approval as Amended of Item D-1, May 24, 2019, *Grant of Term, Non-Exclusive Easement to Wai'oli Valley Taro Hui, Inc. for Surface Water Diversion and Irrigation Purposes, Wai'oli, Hanalei, Kauai, Tax Map Key: (4) 5-6-002:001 (portion).*

The Purpose of the Amendments is to:

- 1) Change the Term of the Approved Easement from 55 years to Perpetual;
- 2) Increase the Area of the Approved Easement from Approximately 1.15 Acres, More or Less to Approximately 6.627 Acres, More or Less; and
- 3) Add Tax Map Key: (4) 5-5-008:018 to the Approved Easement.

Issuance of Revocable Permit to Wai'oli Valley Taro Hui, Inc. for Use of State Water from Wai'oli Stream for Taro Irrigation Purposes, Wai'oli, Hanalei, Kauai, Tax Map Key: (4) 5-6-002:001.

APPLICANT:

Wai'oli Valley Taro Hui, Inc., a domestic nonprofit corporation.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government Waters of Wai'oli Stream situated at Wai'oli, Hanalei, Kauai, Tax Map Key: (4) 5-6-002:001.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CHARACTER OF USE:

Taro Irrigation purposes.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

MONTHLY RENTAL:

Gratis

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

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. 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing.", Item 51 that states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing." An Exemption Notice is attached.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO
Registered business name confirmed:	YES <u>X</u>	NO
Applicant in good standing confirmed:	YES <u>X</u>	NO

BACKGROUND

At its meeting on May 24, 2019, the Board approved as amended the grant of a 55-year term, non-exclusive easement to the Wai'oli Valley Taro Hui, Inc. (Hui) for surface water diversion and irrigation system purposes. The purpose of the easement was to allow the Hui to conduct regular maintenance and repair on an irrigation system located on State land that diverts water from the Wai'oli stream and irrigates a number of taro farms located on privately owned parcels. The Hui consists of those taro farmers served by the irrigation system. The Board amended the approval to include an immediate right of entry to the Hui to allow its members to conduct repair and maintenance of the system in

the interim while the easement document is completed. The approved as amended submittal is included as **Exhibit A**.

During the discussion of this item, the Board questioned why staff recommended a term easement instead of perpetual. Staff noted that the 55-year term is consistent with the Board's standard practice for easements for other than access and utility purposes. The Board determined that a perpetual easement may be appropriate for this particular situation and instructed the staff bring the matter back for the Board's consideration. Staff concurs that such an amendment is appropriate because, based on research conducted by the Office of Hawaiian Affairs (OHA), evidence indicates that the irrigation system has been in existence since pre-contact times. Additionally, records from the Great Mahele of March 7, 1848 indicate that, at that time, the system provided water to kuleana parcels that were engaged in taro cultivation.

Therefore, staff presents a recommendation that the Board amend its prior approval to change the term of the easement from 55 years to perpetual. Additionally, since the prior Board approval the easement has been surveyed and mapped. During this process it was discovered that the easement area is larger than originally believed and affects another State-owned parcel. The Board is also requested to amend its prior approval to increase the easement area from approximately 1.15 acres, more or less, to approximately 6.627 acres, more or less, and add Tax Map Key: (4) 5-5-008:018 to the easement. The easement only applies to those portions of the irrigation system located on State land. The Hui will be responsible for working with the appropriate landowners to resolve the portions of the irrigation systems that are located on private land. An easement map is included as **Exhibit B**.

The Hui continues to work with the Department to obtain an appropriate disposition for the use of water. Additionally, the Legislature is currently considering potential amendments to Section 171-58, HRS, the statutory provision governing water leases. In the interim, the Hui has requested, and staff recommends, that the Board approve a revocable permit for the use of water. The use of water under the revocable permit will be limited to taro irrigation purposes. In consideration of the limited use, as well as the Hui's non-profit status, staff recommends that the revocable permit be issued gratis. Staff will consult with the Attorney General to determine the appropriate consideration if the Hui pursues a long-term disposition for water.

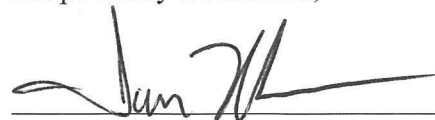
The irrigation system now managed by the Hui has been used for taro irrigation purposes since pre-contact times. The Hui has used the irrigation system and water for those same purposes and will continue to do so with no expansion or change in use. In addition to taro cultivation, the Hui supports watershed management, native habitat protection, natural and cultural resource protection and community outreach and education activities. Based on measurements conducted by the staff of the Commission on Water Resource Management (CWRM) the amount of water diverted for taro irrigation is approximately 10.07 million gallons per day (mgd), against a flow of Wai'oli stream measured at 21.14 mgd. Based on observations made during a site inspection by Land Division staff, the diversion does not prevent continuous stream flow. Furthermore, the use of water for

taro irrigation is largely non-consumptive, with the water remaining within the watershed. The revocable permit will require reporting on the usage of water, and Land Division staff will continue to work with CWRM to ensure that the usage will be consistent with surface water resource management.

RECOMMENDATION: That the Board:

- 1) Amend its prior approval as amended of Item D-1 at its meeting on May 24, 2019 to:
 - a. Change the term of the subject non-exclusive easement from 55 years to perpetual;
 - b. Increase the area of the approved easement from approximately 1.15 acres, more or less to approximately 6.627 acres, more or less; and
 - c. Add Tax Map Key: (4) 5-5-008:018 to the approved easement.
- 2) Acknowledge that, except as amended hereby, all terms and conditions listed in the Board's action of May 24, 2019 shall remain the same.
- 3) 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.
- 4) Authorize the issuance of a revocable permit to Wai'oli Valley Taro Hui, Inc. for the use of State water for taro irrigation 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 revocable permit 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.

Respectfully Submitted,



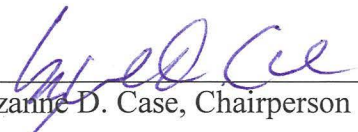
Ian Hirokawa
Special Projects Coordinator

Amend Board Approval
Issuance of Easement to
Wai'oli Valley Taro Hui, Inc.

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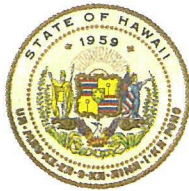
February 28, 2020

APPROVED FOR SUBMITTAL



Suzanne D. Case, Chairperson

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

February 28, 2020

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

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

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1-15, HAR

Project Title:	Issuance of Revocable Permit to Wai'oli Valley Taro Hui, Inc. for Use of State Water from Wai'oli Stream for Taro Irrigation Purposes, Wai'oli, Hanalei, Kauai, Tax Map Key: (4) 5-6-002:001.
Project Location:	Portion of Government Waters of Wai'oli Stream situated at Wai'oli, Hanalei, Kauai, Tax Map Key: (4) 5-6-002:001.
Project Description:	Revocable permit for continued water use by Wai'oli Valley Taro Hui
Chap. 343 Trigger(s):	Use of State Water (Land)
Exemption Class No. and Description:	In accordance with Hawaii Administrative Rule Sections 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 15, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing", Item 51 that states "permits, license, registrations, and rights-of-entry issues by the Department that are routine in nature, involving negligible impacts beyond that previously existing."
Cumulative Impact of Planned Successive Actions in Same Place Significant:	The māno takes some water from the stream, but it does not disrupt the ma uka to ma kai flow of Wai'oli Stream, which remains perennial, and all of the water is returned to the watershed (in either Wai'oli Stream or Hanalei River).
Action May Have Significant Impact on Particularly Sensitive Environment:	The traditional and customary Native Hawaiian use of water resources in this manner is minor, non-consumptive, instream, and almost entirely within the watershed of origin; although

one ho‘i (water return) flows into Hanalei River, it does so in the Wai‘oli watershed.

Agencies Consulted:

Commission on Water Resource Management

Analysis:

The State Intermediate Court of Appeals has determined that pursuant to HRS 171-55, the Board may issue temporary permit in the interim while a permittee pursues a long-term water lease. For the revocable permit, the proposed use will involve negligible or no expansion or change of use beyond that previously existing.

Researchers dated the Native Hawaiian lo‘i kalo system (including the mānowai, po‘owai, and ‘auwai) now stewarded by members of the Wai‘oli Valley Taro Hui (“Hui”) as pre-contact; or, having been in existence since before the arrival of westerners in Hawai‘i. For at least three to five generations now, Hui members and their ancestors have cared for this lo‘i kalo system and seek only to continue its operation in the manner and practice that has taken place for hundreds of years.

The Hui supports and enhances ma uka to ma kai biocultural resources in the Wai‘oli Valley watershed, protects natural and cultural resources that enable traditional and customary Native Hawaiian practices, maintains habitat(s) for endangered Hawaiian birds, and engages the larger Kaua‘i communities through educational outreach programs and initiatives related to kalo farming and community-based stewardship of water resources.

Recommendation:

It is anticipated 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.

AMENDED

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

May 24, 2019

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

KAUAI

Grant of Term, Non-Exclusive Easement to Wai'oli Valley Taro Hui, Inc. for Surface Water Diversion and Irrigation System Purposes, Wai'oli, Hanalei, Kauai, Tax Map Key: (4) 5-6-002:001 (portion).

APPLICANT:

Wai'oli Valley Taro Hui, Inc., a 501(c)(3) domestic nonprofit corporation.

LEGAL REFERENCE:

Section 171-13 and 43.1, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government land located at Wai'oli, Hanalei, Kauai, identified by Tax Map Key: (4) 5-6-002:001, as shown on the attached map labeled Exhibit A.

AREA:

Approximately 1.15 acres, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ☐ NO ☒

as amended

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

May 24, 2019 Go

EXHIBIT "A"

CURRENT USE STATUS:

Encumbered by LOD 28292 to Max W.J. Graham, Jr. and Karen L. Graham for access and utility purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove surface water diversion and irrigation system over, under and across State-owned land.

TERM:

55 years.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Gratis

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council on June 15, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing", Item No. 46, that states "Creation or termination of easement, covenants, or other rights in structures or land."

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>x</u>	NO <u> </u>
Registered business name confirmed:	YES <u>x</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>x</u>	NO <u> </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at

Applicant's own cost.

REMARKS:

Applicant Wai'oli Valley Taro Hui, Inc. (the "Hui") is a 501(c)(3) domestic nonprofit corporation that represents a collective of taro farmers located on privately owned lands in Hanalei, Kauai. The various taro farms are irrigated via surface water from the Wai'oli stream via a diversion and ditch system located on State parcel (4) 5-6-002:001. This traditional lo'i kalo system in Wai'oli has been utilized since time immemorial. In recent memory, the use of Wai'oli's lo'i kalo for subsistence and cultural purposes is recorded in Land Commission Awards as early as 1850. The system's mānowai (traditional intake from the main stream channel), po'owai (secondary diversion to traditional irrigation ditches), and 'auwai (traditional kalo irrigation ditches) structures are now located on State Conservation lands. The Hui seeks a term, non-exclusive easement for these structures so that its members may continue to utilize them to perpetuate their cultural practice of wetland kalo cultivation, as their ancestors have for many, many generations.

The system was damaged during the heavy rains and flooding during April 2018. The County of Kauai is engaged in repairing the damage to the system caused by the severe weather. However, the Hui is requesting an easement from the Board in order for its members to conduct ongoing maintenance and repair as needed to ensure continued irrigation of the downstream taro farms. Such activities that are contemplated include cleaning the system of silt, rocks and other debris. Additionally, regular maintenance and repair must be conducted after periods of heavy rainfall. The primary intake diversion from the stream is an impermanent structure that has been engineered to break apart during times of heavy rains in order to prevent flooding of the irrigated taro farms. As the system provides water for the benefit of the taro farmers, staff is supportive of the Hui's request for the easement.

Although it is not clear who originally built the system, based on research conducted by the Hui, the system was likely constructed pre-contact. Additionally, the system has served the cultivation of wetland kalo long before statehood. Furthermore, the Hui has consulted with the Commission of Water Resource Management (CWRM) and the Office of Conservation and Coastal Lands (OCCL) on this matter. The diversion is registered with CWRM, and Land Division, Engineering Division, CWRM and Attorney General staff have conducted site inspections of the system. Furthermore, OCCL has determined that a conservation District Use Application was not required.

As the Hui is a 501(c)(3) domestic nonprofit corporation, they are requesting that the easement be granted at gratis pursuant to Section 171-43.1, HRS. Members of the Hui and their ancestors have been utilizing and caring for a traditional Native Hawaiian irrigation system for wetland kalo (taro) cultivation since time immemorial. The Hui is organized and operates for the purposes of education and charity. Specifically, pursuant to its articles of incorporation, the Hui supports and enhances mauka to makai biocultural resources in the Wai'oli Valley watershed, protects natural and cultural resources that enable traditional and customary Native Hawaiian practices, maintains habitat(s) for endangered Hawaiian

waterbirds, and engages the larger Kaua'i communities through educational outreach programs and initiatives related to kalo farming and community-based stewardship of water resources.

Staff clarifies that the Board is requested to approve the easement for the physical diversion and irrigation system structures only. In regards to the Hui's use of the water from Wai'oli stream, the Hui is working with the Department to apply for a water lease. As the statutory requirements for obtaining a water lease are much more complex, that request will be brought to the Board for approval at a later date. However, approval of the easement will allow the Hui to assume responsibility for the operation, repair and maintenance of the system in the interim. The Hui has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

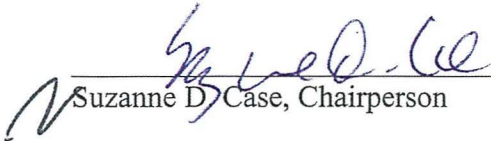
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to the Wai'oli Valley Taro Hui, Inc. covering the subject area for surface water diversion and irrigation system 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 term 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.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

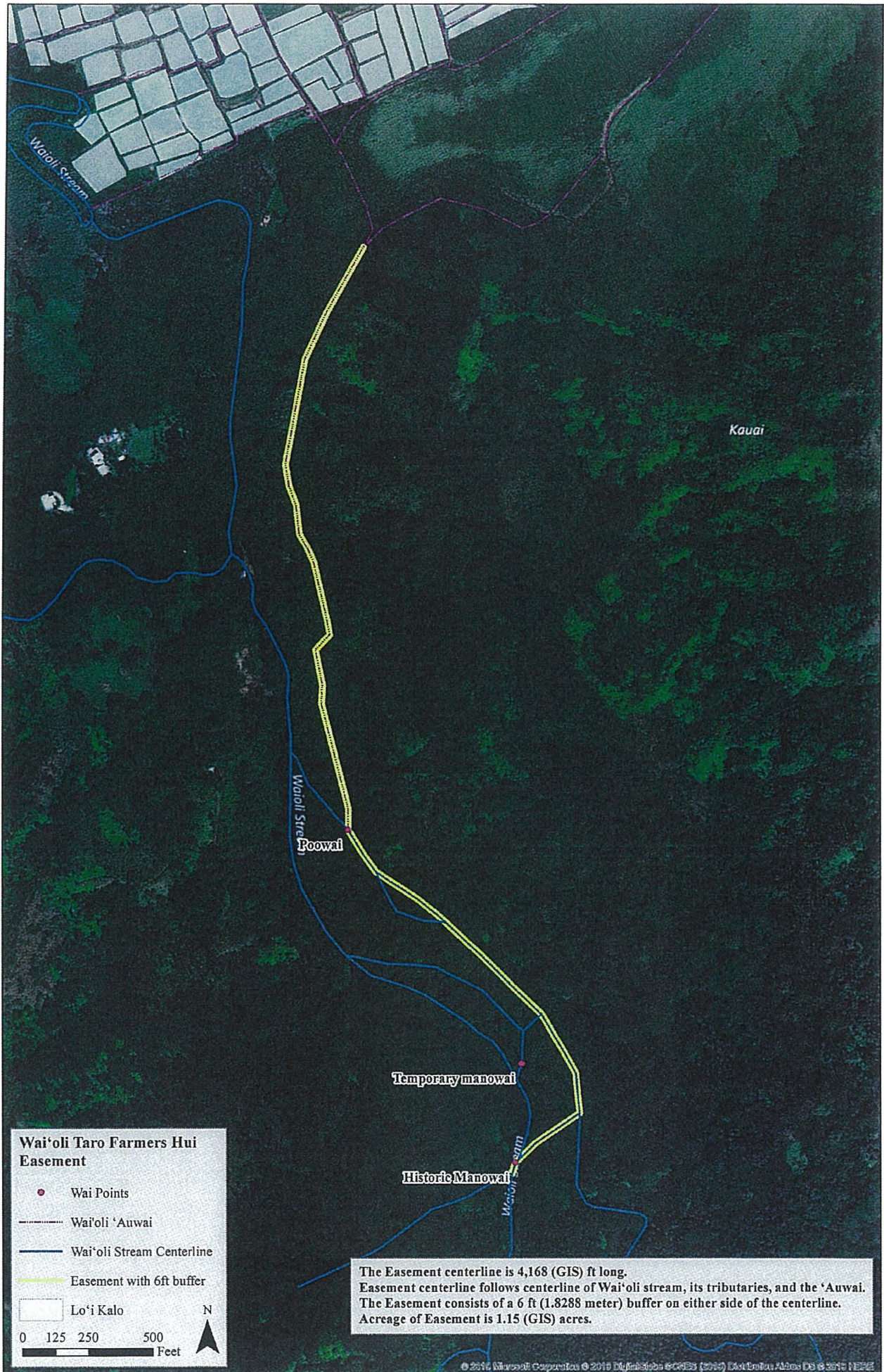
APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

Land Board Meeting: May 24, 2019; D-1: Approved as amended.

Approved as amended. The Board added in the recommendation section the issuance of an immediate management and construction right of entry to the Waioli Valley Taro Hui, Inc..



DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May 24, 2019

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

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

EXEMPTION NOTIFICATION

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

Project Title:	Grant of Term, Non-Exclusive Easement to Wai'oli Valley Taro Hui, Inc. for Surface Water Diversion and Irrigation System Purposes, Wai'oli, Hanalei, Kauai, Tax Map Key: (4) 5-6-002:001 (portion).
Project Location:	Portion of Government land located at Wai'oli, Hanalei, Kauai, identified by Tax Map Key: (4) 5-6-002:001, as shown on the attached map labeled Exhibit A.
Project Description:	Term, non-exclusive easement for the right, privilege and authority to construct, use, maintain, repair, replace and remove surface water diversion and irrigation system over, under and across State-owned land
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No. and Description:	In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council on June 15, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing", Item No. 46, that states "Creation or termination of easement, covenants, or other rights in structures or land."
Cumulative Impact of Planned Successive Actions in Same Place Significant:	No, this is not a recurring action.
Action May Have Significant Impact on	No evidence that action has resulted in any significant impact.

Particularly Sensitive
Environment:

Agencies Consulted: Commission on Water Resource Management, Office of
Conservation and Coastal Lands

Analysis: As the diversion and irrigation system was likely constructed
pre-contact, its longstanding use for the purpose of traditional
wetland taro cultivation has not resulted in any known
significant impacts to the surrounding environment.

Recommendation: It is anticipated 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 "B"

