

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

January 8, 2021

PSF No: 17KD-036

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

KAUAI

Amend Prior Board Action of June 9, 2017, Item D-1, Partial Withdrawal of 3.20 Acres From Governor's Proclamation dated June 5, 1909; Reset Aside 3.20 Acres to the County of Kauai, Department of Water for Proposed Clearwell Reservoir, Access Road, Water Pipelines, and Related Purposes; Issuance of Management and Construction Right-of-Entry at Kalaheo, Wahiawa, Koloa, Kauai, Tax Map Key: (4) 2-4-009: portion of 003.

The purpose of this amendment is to: 1) change the Governor's Proclamation referenced from Governor's Proclamation dated June 5, 1909 to Governor's Proclamation dated December 24, 1926, and 2) change the areas withdrawn and reset aside from 3.20 acres to 2.752 acres, more or less.

BACKGROUND:

At its meeting of June 9, 2017, item D-1, the Board of Land and Natural Resources approved the partial withdrawal of 3.20 acres from Governor's Proclamation dated June 5, 1909; Reset aside 3.20 acres to the County of Kauai, Department of Water for proposed Clearwell Reservoir, access road, water pipelines, and related purposes; Issuance of management and construction right-of-entry at Kalaheo, Wahiawa, Koloa, Kauai, Tax Map Key: (4) 2-4-009: portion of 003. (Exhibit 1)

REMARKS:

In preparing the documents for the withdrawal and reset aside of the subject State lands, the Department of the Attorney General noted that the Governor's Proclamation referenced was in error.

Although the documents provided by applicant indicated that the subject area was encumbered under Governor's Proclamation dated June 5, 1909, the survey as prepared

and provided by the Department of Accounting and General Services, Survey Division, indicated that the subject area was in fact land under Governor's Proclamation dated December 24, 1926. (Exhibit 2)

The decrease in the amount of lands withdrawn for reset aside is due to the County's original estimate on how much land was needed, versus the actual amount of land utilized upon completed construction of the reservoir site.

As a result, staff is recommending that the prior Board action of June 9, 2017, item D-1, be amended to change the Governor's Proclamation referenced, and to decrease the area of the set aside to match on the information contained in the survey.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of June 9, 2017, under agenda item D-1, by:
 - A. Changing the Governor's Proclamation referenced therein from Governor's Proclamation dated June 5, 1909 to Governor's Proclamation dated December 24, 1926, and
 - B. Changing the area to be withdrawn and reset aside from 3.20 acres to 2.752 acres, more or less.
2. Except as amended hereby, all terms and conditions as approved on June 9, 2017 shall remain the same.

Respectfully Submitted,

Wesley Matsunaga

Wesley T. Matsunaga
District Land Agent

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KEM

APPROVED FOR SUBMITTAL:

RT

Suzanne D. Case

Suzanne D. Case, Chairperson

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

June 9, 2017

PSF No.: 17KD-036

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

KAUAI

Partial Withdrawal of 3.20 Acres From Governor's Proclamation dated June 5, 1909; Reset Aside 3.20 Acres to the County of Kauai, Department of Water for Proposed Clearwell Reservoir, Access Road, Water Pipelines, and Related Purposes; Issuance of Management and Construction Right-of-Entry at Kalaheo, Wahiawa, Koloa, Kauai, Tax Map Key: (4) 2-4-009: portion of 003.

APPLICANT:

County of Kauai, Department of Water (COK DOW).

LEGAL REFERENCE:

Sections 171-11, 183-11, and 183-12 Hawaii Revised Statutes, as amended, and Sections 104-20 and 105-5(1), Hawaii Administrative Rules, as amended.

LOCATION:

Portion of Government lands of Lihue-Koloa Forest Reserve situated at Wahiawa, Koloa, Kauai, identified by Tax Map Key: (4) 2-4-009: portion of 003, as shown on the attached map labeled Exhibit A.

AREA:

3.20 acres, more or less.

ZONING:

State Land Use District:	Conservation: General/ Resource Subzones
County of Kauai CZO:	Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

EXHIBIT 1

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

June 9, 2017 LD

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES _____ NO x

CURRENT USE STATUS:

Encumbered under Governor's Proclamation dated June 5, 1909 (CSF 1966) to the Division of Forestry and Wildlife for the Lihue-Koloa Forest Reserve (29,260 acres).

PURPOSE:

Reservoir Site, Access Roads, Water Pipelines, and Related purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on July 23, 2012 with a finding of no significant impact (FONSI).

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Process and obtain subdivision at Applicant's own cost;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Obtain the written concurrence of the Division of Forestry and Wildlife to the withdrawal of the subject land from Governor's Proclamation dated June 5, 1909; and
- 4) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

REMARKS:

The subject parcel, identified as Tax Map Key: (4) 2-4-009: portion of 003, consisting of approximately 3.20 acres, is encumbered under Governor's Proclamation dated June 5, 1909 for the Lihue-Koloa Forest Reserve (29,260 acres) to the Division of Forestry and Wildlife.

The County of Kauai (COK), Department of Water (DOW), is proposing to repair, upgrade or replace its aging water system equipment in upland Kalāheo, Kauai, to meet Maximum Day Demand storage capacity and fire flow requirements for current and future demand in the Kalāheo-Lāwa'i-Ōma'o Water Service Area. Proposed improvements include replacing two existing water tanks with a new 0.5 million gallon tank and constructing a new production well, 12,500 linear foot transmission main,

modified booster pump station, upgraded booster pumps, and relocated existing pressure reducing valve stations. The project area is located approximately 1.2 miles upland (north) of Kaumuali'i Highway on Pu'uwai Road, Po'ohiwi Road, and Kikala Road. The improvements will occur primarily on existing DOW properties and County road rights-of-way, which are occupied by existing public facilities. One of the properties was recently acquired by DOW and will require removal of an abandoned dwelling. Installation of the transmission main will occur within the road rights-of-way under the County, but traffic control measures will be employed to assure continual vehicular passage through the construction area.

The existing water system is over 65 years old, requiring DOW to comprehensively review its system for needed repairs, upgrades, or replacement of the aging facility, which includes additional lands being acquired. The existing Clearwell site, which contains a 330,000 gallon tank, will remain, but will be demolished once the newer reservoir/tank is built.

It is not certain when exactly the facility was first built as neither the County nor Land Division could locate any files relating to its approval and construction. The only document found was a Plot Plan (Job No. 51-KW-10) dated November 1972, prepared by Philip K.H. Yee & Associates Consulting Engineers, for the County of Kauai for water treatment plant modification and appurtenances. The oldest water pipeline installed in Kalaheo was back in 1942. Problems with the current water supply include deficient fire flows in agricultural/open zoned areas, undersized mains, and the aging system. The costs to upgrade the Clearwell Facility are estimated to be \$275,000 (design) and \$4,550,000 (construction), for a total of \$4,825,000. To properly set aside the subject lands to the COK BOW, the 3.20 acres must first be withdrawn from Governor's Proclamation dated June 5, 1909, then reset aside to the COK DOW for its Clearwell Reservoir site.

During the Conservation District Use Application and Environmental Assessment process, several government agencies and interest groups were solicited for comments. There were no negative responses to the request.

AGENCIES	COMMENTS
State of Hawaii:	
CWRM	See comments below
DHHL	No objections
DOCARE	No response
DOFAW	No objections
DOH-Clean Water Branch	No objections
DOH-Environmental Planning Office	No objections
Engineering	See comments below

OCCL	See comments below
SHPD	No comments
SP	No comments
County of Hawaii:	
Planning Department	No response
Public Works	No comments
Other Agencies/ Interest Groups:	
OHA	No response
Hawaiian Telcom	No response
Kauai Island Utility Cooperative	No objections
Marty Hoffmann (Landowner)	No response
Richard Sugimura Trust (Landowner)	No response

The Commission on Water Resources Management commented that it recommends: 1) coordination with the county to incorporate this project into the County's Water use and Development Plan, 2) adopting landscape irrigation conservation best management practices endorsed by the Landscape Industry Council of Hawaii, 3) a well construction permit is required before any well construction work begins, 4) a Pump Installation Permit before ground water is developed as a source of supply, and 5) based upon the experience of two wells within 1/3 mile, the expectations for the proposed well seem reasonable.

DLNR Engineering confirms that the project site, according to flood Insurance Rate Map (FIRM), is located in Zone X. The National Flood Insurance Program does not have any regulations for developments within Zone X.

The Office of Conservation and Coastal Lands (OCCL) has indicated that based on the information provided to the OCCL, the proposal to improve the Kalaheo Water System appears to be an identified land use in the Conservation District Resource, Limited and General Subzones pursuant to Hawaii Administrative Rules (HAR) §13-5-22, P-6 Public Purpose uses.

The Division of Forestry and Wildlife commented that it had no objections to the request to withdraw 3.20 acres from Proclamation dated June 5, 1909 for reset aside to the COK DOW.

RECOMMENDATION:

That the Board, subject to Applicant fulfilling the Applicant Requirements above:

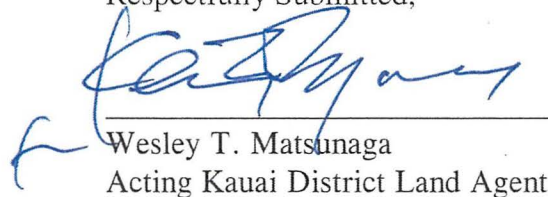
1. Approve of and recommend to the Governor the issuance of an executive order for a partial withdrawal of 3.20 acres, more or less from Governor's Proclamation

dated June 5, 1909, subject to:

- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the Division of Forestry and Wildlife to conduct a public hearing on the Island of Kauai regarding the proposed withdrawal from the Lihue-Koloa Forest Reserve, and further, pursuant to HRS Section 183-12, as amended, authorize the Chairperson to:
- A. Set the date, location and time of the public hearing; and
 - B. Appoint a hearing master(s) for the public hearing.
3. Approve of and recommend to the Governor the issuance of an executive order setting aside the 3.20 acres, more or less, previously withdrawn, to the County of Kauai, Department of Water, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Grant an immediate management and construction right-of-entry to the County of Kauai, its consultants, contractors, and/or persons acting for or on its behalf, over portions of TMK (4) 2-4-009: portion of 003, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

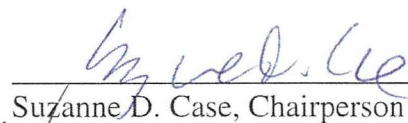
- A. The standard terms and conditions of the most current management and construction right-of-entry form, as may be amended from time to time;
- B. This management and construction right-of-entry is effective upon Land Board approval and shall continue until the executive order is issued; and
- C. 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,



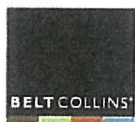
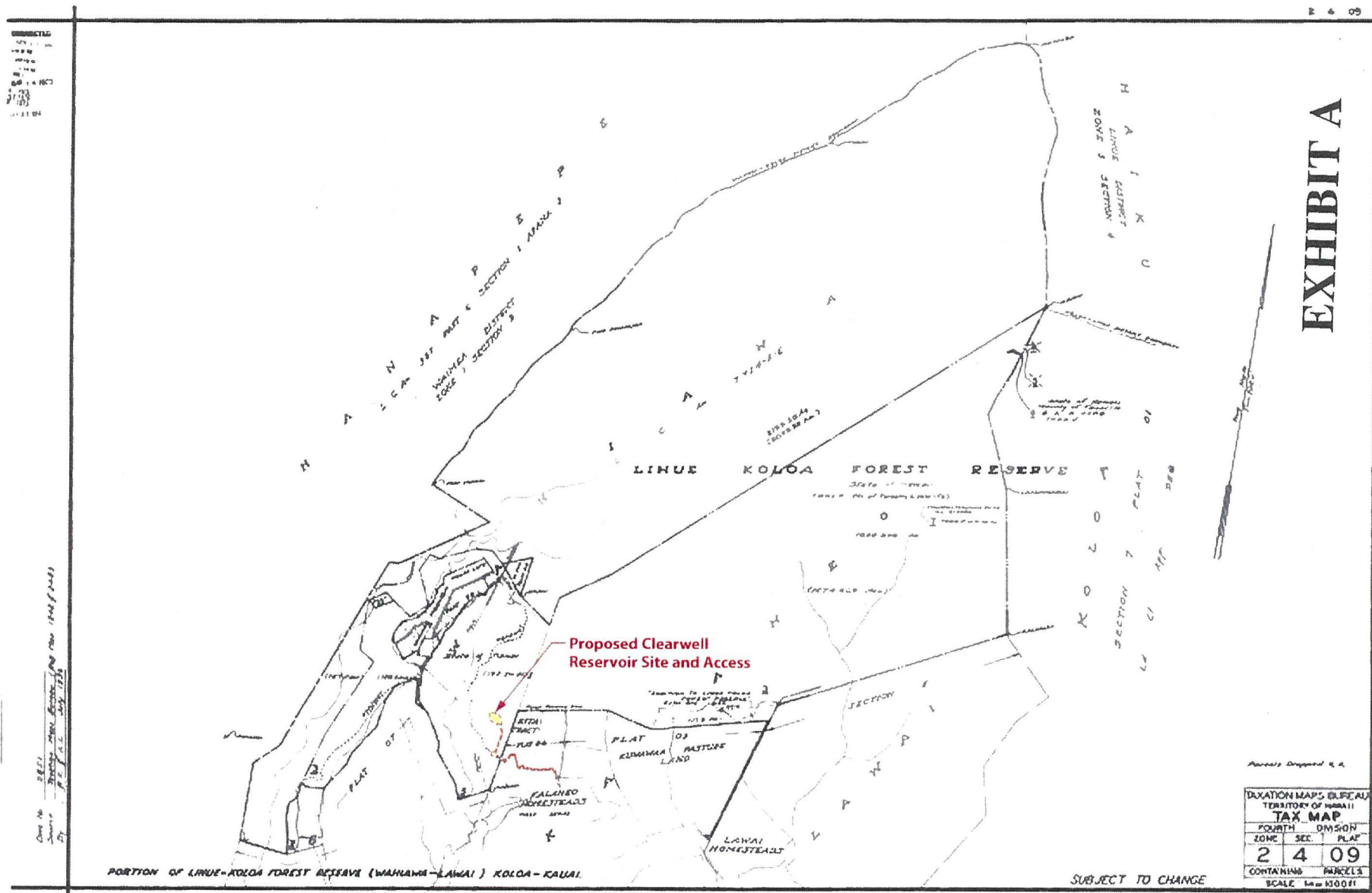
Wesley T. Matsunaga
Acting Kauai District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

EXHIBIT A



NORTH NOT TO SCALE

Attachment B
TAX MAP OF CLEARWELL RESERVOIR SITE
 Kalāheo Water System Improvements
 Kalāheo, Kauaʻi

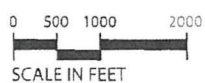
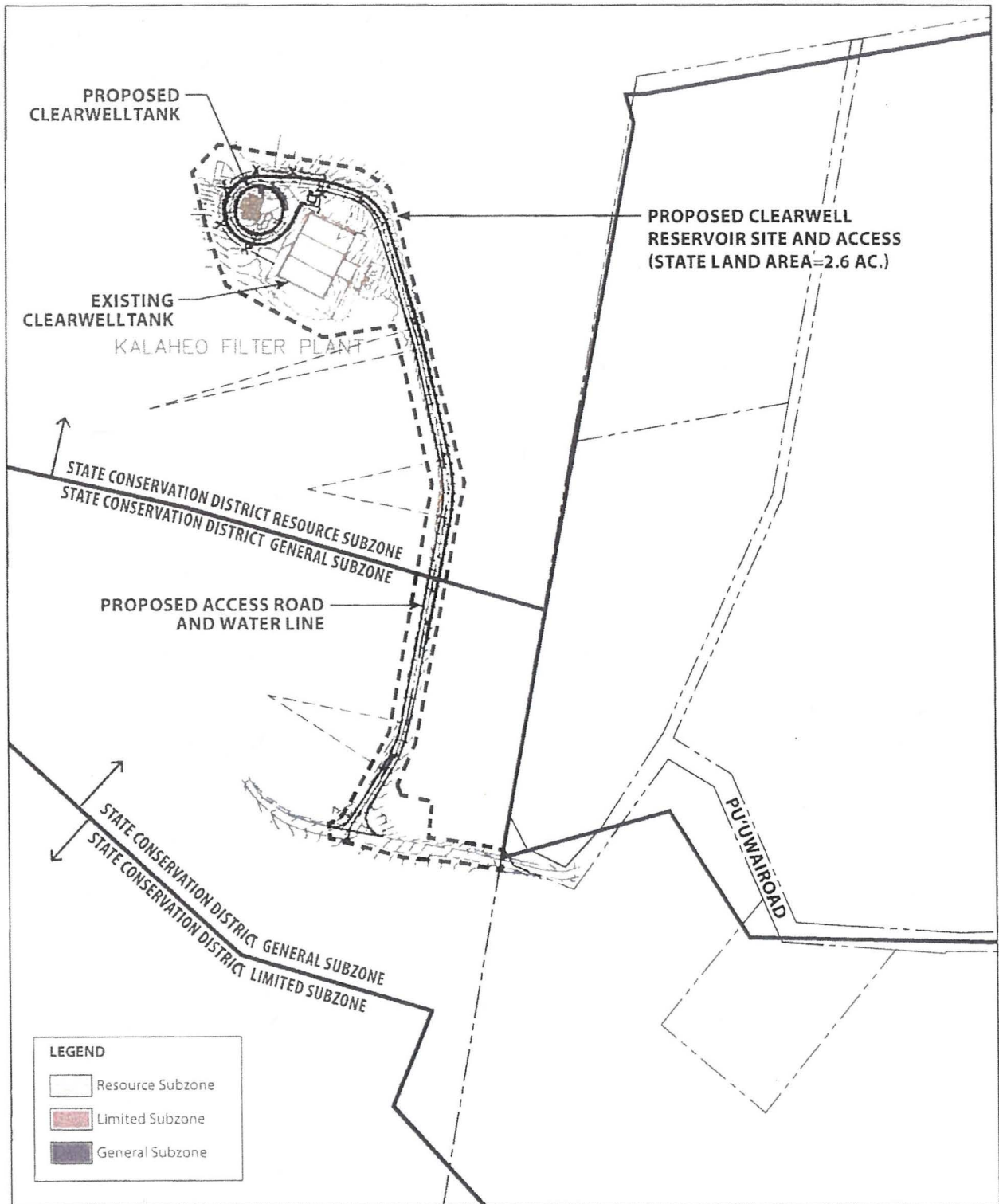


EXHIBIT A



NORTH



Attachment C
PROPOSED CLEARWELL RESERVOIR SITE,
ACCESS ROAD AND WATER LINES
 Kalāheo Water System Improvements
 Kalāheo, Kauaʻi

EXHIBIT A



STATE OF HAWAII
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 25.819

October 16, 2020

WITHDRAWAL
PORTION OF LIHUE-KOLOA FOREST RESERVE
Governor's Proclamation dated December 24, 1926

Wahiawa, Koloa, Kauai, Hawaii

Being a portion of Royal Patent 7813, Land Commission Award 7714-B, Apana 6 to Moses Kekuaiwa conveyed the Territory of Hawaii by Ernest H. Wodehouse by deed dated October 20, 1909 and recorded in Liber 319, Page 293 (Land Office Deed 3331).

Beginning at the southeast corner of this parcel of land, on the southeast boundary of Lihue-Koloa Forest Reserve, Governor's Proclamation dated December 24, 1926 and on the west boundary of Park Site, Governor's Executive Order 2375, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PAPAPAHALOHALO" being 1502.00 feet North and 803.26 feet West, thence running by azimuths measured clockwise from True South:-

1. 101° 02' 61.06 feet along the remainder of Lihue-Koloa Forest Reserve, Governor's Proclamation dated December 24, 1926;
2. 94° 04' 91.93 feet along the remainder of Lihue-Koloa Forest Reserve, Governor's Proclamation dated December 24, 1926;

3. 107° 08' 101.84 feet along the remainder of Lihue-Koloa Forest Reserve,
Governor's Proclamation dated December 24,
1926;
4. 195° 32' 23.92 feet along the remainder of Lihue-Koloa Forest Reserve,
Governor's Proclamation dated December 24,
1926;
5. 253° 27' 17.90 feet along the remainder of Lihue-Koloa Forest Reserve,
Governor's Proclamation dated December 24,
1926;
6. 204° 50' 179.56 feet along the remainder of Lihue-Koloa Forest Reserve,
Governor's Proclamation dated December 24,
1926;
7. 190° 20' 331.90 feet along the remainder of Lihue-Koloa Forest Reserve,
Governor's Proclamation dated December 24,
1926;
8. 166° 57' 240.52 feet along the remainder of Lihue-Koloa Forest Reserve,
Governor's Proclamation dated December 24,
1926;
9. 80° 43' 106.20 feet along the remainder of Lihue-Koloa Forest Reserve,
Governor's Proclamation dated December 24,
1926;
10. 118° 50' 30" 205.80 feet along the remainder of Lihue-Koloa Forest Reserve,
Governor's Proclamation dated December 24,
1926;
11. 176° 26' 128.15 feet along the remainder of Lihue-Koloa Forest Reserve,
Governor's Proclamation dated December 24,
1926;
12. 209° 30' 62.26 feet along the remainder of Lihue-Koloa Forest Reserve,
Governor's Proclamation dated December 24,
1926;
13. 279° 57' 217.30 feet along the remainder of Lihue-Koloa Forest Reserve,
Governor's Proclamation dated December 24,
1926;

- | | |
|--------------|---|
| 14. 307° 49' | 49.16 feet along the remainder of Lihue-Koloa Forest Reserve,
Governor's Proclamation dated December 24,
1926; |
| 15. 343° 20' | 190.84 feet along the remainder of Lihue-Koloa Forest Reserve,
Governor's Proclamation dated December 24,
1926; |
| 16. 347° 09' | 252.00 feet along the remainder of Lihue-Koloa Forest Reserve,
Governor's Proclamation dated December 24,
1926; |
| 17. 11° 13' | 351.01 feet along the remainder of Lihue-Koloa Forest Reserve,
Governor's Proclamation dated December 24,
1926; |
| 18. 16° 29' | 125.34 feet along the remainder of Lihue-Koloa Forest Reserve,
Governor's Proclamation dated December 24,
1926; |
| 19. 276° 27' | 163.87 feet along the remainder of Lihue-Koloa Forest Reserve,
Governor's Proclamation dated December 24,
1926; |

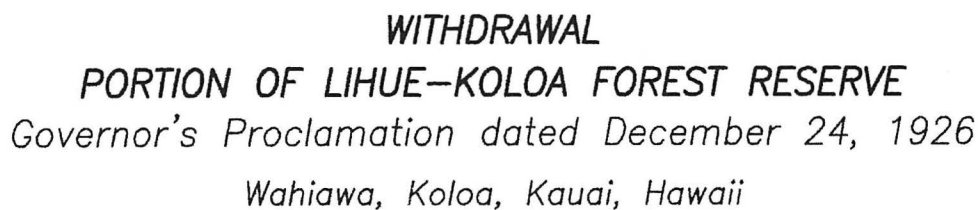
20. 10° 18'

86.66 feet along the west end of Puuwai Road and northwest boundary of Park Site, Governor's Executive Order 2375 to the point of beginning and containing an AREA OF 2.752 ACRES.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: See 3. 42:
Gerald Z. Yonashiro
Land Surveyor rm

Compiled from map and desc. furn.
by Controlpoint Surveying, Inc.
Said map and description have been
examined and checked as to form and
mathematical correctness but not on
the ground by the Survey Division.



RDM October 16, 2020