

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

January 22, 2021

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

PSF No: 16KD-112

**KAUAI**

*Amend Prior Board Action of November 13, 2020, Item D-5, Amend Prior Board Action of February 23, 2018, Item D-2, Grant of Term, Non-Exclusive Easement to the County of Kauai, Department of Public Works (COK DPW), for its Lihue Town Core Mobility and Revitalization Project [FAP No. TGR-0700(073)], Kalapaki, Lihue, Kauai, Tax Map Keys: (4) 3-6-002:021 & 022; and Issuance of an Immediate Management and Construction Right-of-Entry to COK DPW for Proposed Lihue Town Core Mobility and Revitalization Project, Kalapaki, Lihue, Kauai, Tax Map Key: (4) 3-6-002:021 & 022.*

*The purpose of the prior amendment was to: 1) change the duration of the easement from term to perpetual, and 2) to correct the description of the easement Character of Use to read, "Right, privilege and authority to construct, use, maintain and repair an easement over, under and across State-owned land for shared-use path purposes."*

The purpose of the current amendment is to increase the area being utilized under Easement 1 from 6,500 square feet to 9,115 square feet, and increase the area being utilized under Easement 2 from 400 square feet to 790 square feet.

**BACKGROUND:**

At its meeting of November 13, 2020, Item D-5, the Board of Land and Natural Resources approved the amendment of its prior action of February 23, 2018, Item D-2, issuance of a grant of perpetual, non-exclusive easement with an immediate management and construction right-of-entry to the County of Kauai, Department of Public Works (COK DPW), for its Lihue Town Core Mobility and Revitalization Project [FAP No. TGR-0700(073)], Kalapaki, Lihue, Kauai, Tax Map Keys: (4) 3-6-002:021 & 022. **(Exhibit 1)**

**REMARKS:**

In the process of having the easement document prepared by the Department of the Attorney General, it was noted that there was a discrepancy in the amount of land being referenced. The survey depicted a larger area than what was indicated in the staff recommendation. The increase in the easement area depicted was due to the County's original estimates based on its conceptual plan at time of application, versus the actual amount of land utilized and surveyed upon completed construction of the shared-use path.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of November 13, 2020, under item D-5, and February 23, 2018, under agenda item D-2, by:
  - A. Increasing the easement area being utilized under Easement 1 from 6,500 square feet to 9,115 square feet, and increasing the area being utilized under Easement 2 from 400 square feet to 790 square feet.
2. Except as amended hereby, all terms and conditions as approved on February 23, 2018 and as amended on November 13, 2020 shall remain the same.

Respectfully Submitted,

*Wesley Matsunaga*

\_\_\_\_\_  
Wesley T. Matsunaga  
District Land Agent

*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

November 13, 2020

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

PSF No: 16KD-112

**KAUAI**

*Amend Prior Board Action of February 23, 2018, Item D-2, Grant of Term, Non-Exclusive Easement to the County of Kauai, Department of Public Works (COK DPW), for its Lihue Town Core Mobility and Revitalization Project [FAP No. TGR-0700(073)], Kalapaki, Lihue, Kauai, Tax Map Keys: (4) 3-6-002:021 & 022.*

*Issuance of an Immediate Management and Construction Right-of-Entry to COK DPW for Proposed Lihue Town Core Mobility and Revitalization Project, Kalapaki, Lihue, Kauai, Tax Map Key: (4) 3-6-002:021 & 022.*

The purpose of this amendment is to: 1) change the duration of the easement from term to perpetual, and 2) to correct the description of the easement Character of Use to read, "Right, privilege and authority to construct, use, maintain and repair an easement over, under and across State-owned land for shared-use path purposes."

BACKGROUND:

At its meeting of February 23, 2018, Item D-2, the Board of Land and Natural Resources approved the issuance of a grant of term, non-exclusive easement with an immediate management and construction right-of-entry to the County of Kauai, Department of Public Works (COK DPW), for its Lihue Town Core Mobility and Revitalization Project [FAP No. TGR-0700(073)], Kalapaki, Lihue, Kauai, Tax Map Keys: (4) 3-6-002:021 & 022.  
(Exhibit 1)

REMARKS:

In the process of having the easement document prepared by the Department of the Attorney General, the assigned deputy Attorney General noted that there is a discrepancy in the references relating to the term of the proposed easement.

The title on page 1 of the February 23, 2018 Board action indicated that the request was

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
November 13, 2020 *gd.*

**EXHIBIT 1**      D-5

for a term easement. However, within the body of the submittal on page 2, under the heading "Easement Term," a perpetual easement was referenced. The easement was intended to be perpetual. As a result, staff requests to delete all references to a term easement and refer instead to a perpetual, non-exclusive easement where applicable throughout the submittal.

It was further noted that the description used in the Character of Use was not consistent with the descriptions used in other sections of the submittal. Staff requests that the Character of Use be changed to read, "Right, privilege and authority to construct, use, maintain and repair an easement over, under and across State-owned land for shared-use path purposes."

RECOMMENDATION: That the Board:

1. Amend its prior Board action of February 23, 2018, under agenda item D-2, by:
  - A. Deleting all references to a term easement and refer instead to a perpetual, non-exclusive easement where applicable throughout the submittal. The term of the easement shall be perpetual.
  - B. Changing the Character of Use to read:

"Right, privilege and authority to construct, use, maintain and repair an easement over, under and across State-owned land for shared-use path purposes."
2. Except as amended hereby, all terms and conditions listed in the Board's February 23, 2018 approval shall remain the same.

Respectfully Submitted,

*Wesley Matsunaga*

Wesley T. Matsunaga  
District Land Agent

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KEM

APPROVED FOR SUBMITTAL:

*ST*

*Suzanne D. Case*

Suzanne D. Case, Chairperson



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

February 23, 2018

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

PSF No.: 16KD-112  
Ref. No.: EO 3657 & 4012  
**KAUAI**

Grant of Term, Non-Exclusive Easement to the County of Kauai, Department of Public Works (COK DPW), for its Lihue Town Core Mobility and Revitalization Project [FAP No. TGR-0700(073)], Kalapaki, Lihue, Kauai, Tax Map Keys: (4) 3-6-002:021 & 022.

Issuance of an Immediate Management and Construction Right-of-Entry to COK DPW for Proposed Lihue Town Core Mobility and Revitalization Project, Kalapaki, Lihue, Kauai, Tax Map Key: (4) 3-6-002:021 & 022.

APPLICANT:

County of Kauai, a municipal corporation of the State of Hawaii.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Lihue Town, located at Kalapaki, Lihue, Kauai, identified by Tax Map Key: (4) 3-6-002:021 por. & 022 por. Lot A, as shown on the attached map labeled Exhibit A.

TMK/ DISTRICT/ ZONING/ ENCUMBRANCE/ AREA:

TAX MAP KEY	DISTRICT	ZONING		ENCUMBRANCE	AREA
		SLU	CZO		Acres (sq ft)
(4) 3-6-002:021	Kalapaki, Lihue	Urban	RS-1	Executive Order No. 3657; Department of Education-Wilcox Elementary School.	9.952
				Easement-1	(400 sf)
(4) 3-6-002:022	Kalapaki, Lihue	Urban	RS-1	Executive Order No. 4012; Department of Education-Addition to Wilcox Elementary School.	29.00
				Easement-2	(6,500 sf)

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
February 23, 2018 Go

**EXHIBIT 1** D-2

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

YES \_\_\_\_\_ NO x

EASEMENT CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access (sidewalk and pathways) purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

EASEMENT TERM:

Perpetual, non-exclusive.

EASEMENT & RIGHT-OF-ENTRY CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See attached (Exhibit C)

DCCA VERIFICATION:

Not applicable. The Applicant is a government entity and is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Provide survey maps and descriptions for Easement 1 & Easement 2, according to State DAGS standards and at Applicant's own cost.

REMARKS:

By letter dated May 1, 2017, the County of Kauai, Department of Public Works, in reference to its Lihue Town Core Mobility and Revitalization Project, requested a grant

of easement with an immediate management and construction right-of-entry over State lands set aside to the Department of Education (DOE) for its Wilcox Elementary School. A portion of the proposed shared-use path will traverse Tax Map Key: (4) 3-6-002:021, which is under Executive Order No. 3657 to DOE, and will cover a 400 square foot area identified as Easement 1. The other portion of the shared-use path will traverse Tax Map Key: (4) 3-6-002:022, a school parking lot encumbered by Executive Order No. 4012 to DOE, and will cover a 6,500 square foot area is identified as Easement 2. Together, these two sections of easement will provide users the shortest and most direct route from the area pathways leading to the Kauai War Memorial Auditorium site, TMK: (4) 3-6-002:009.

DOE has been consulted on this project and signed a letter of concurrence for the issuance of an easement to the County of Kauai. (Exhibit B)

Applicant 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.

This recommendation was previously before the Land Board at its meeting of January 12, 2018, Item D-4, but was deferred because Board members had comments and questions on the request. No representative of the County of Kauai was present to respond. The Board members' comments and questions were:

The community opposes the shared-use path in their district. Why couldn't the County put the sidewalk and path in its own park? Why take State land, and school land?

Staff contacted Doug Haugh, County Building Division Chief, with these to follow up on these comments and questions. Mr. Haugh indicated that the County was not aware of any community opposition to the proposed location and alignment of the shared-use path. Mr. Haugh additionally explained that DOE concurred with the County's request to use of a portion of the Wilcox School's parking area, provided in exchange, the County would make significant improvements to the school parking lot. Staff has recommended to the County that it send a representative to the February 23, 2018 Board meeting to answer any other questions the Board members may have.

RECOMMENDATION: That the Board:

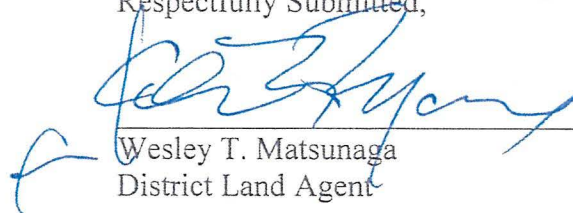
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to the County of



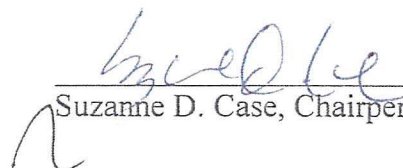
Kauai, covering the subject area for sidewalk and shared-use pathways purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- 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 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) 3-6-002:021 & 022, 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. Prior to the commencement of any ground work activities, COK DPW shall coordinate its proposed work schedule and activities with DOE-Wilcox Elementary School;
  - C. This management and construction right-of-entry is effective upon Land Board approval and shall continue until the grant of easement is issued; and
  - D. 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,

  
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Wesley T. Matsunaga  
District Land Agent

APPROVED FOR SUBMITTAL:

  
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Suzanne D. Case, Chairperson



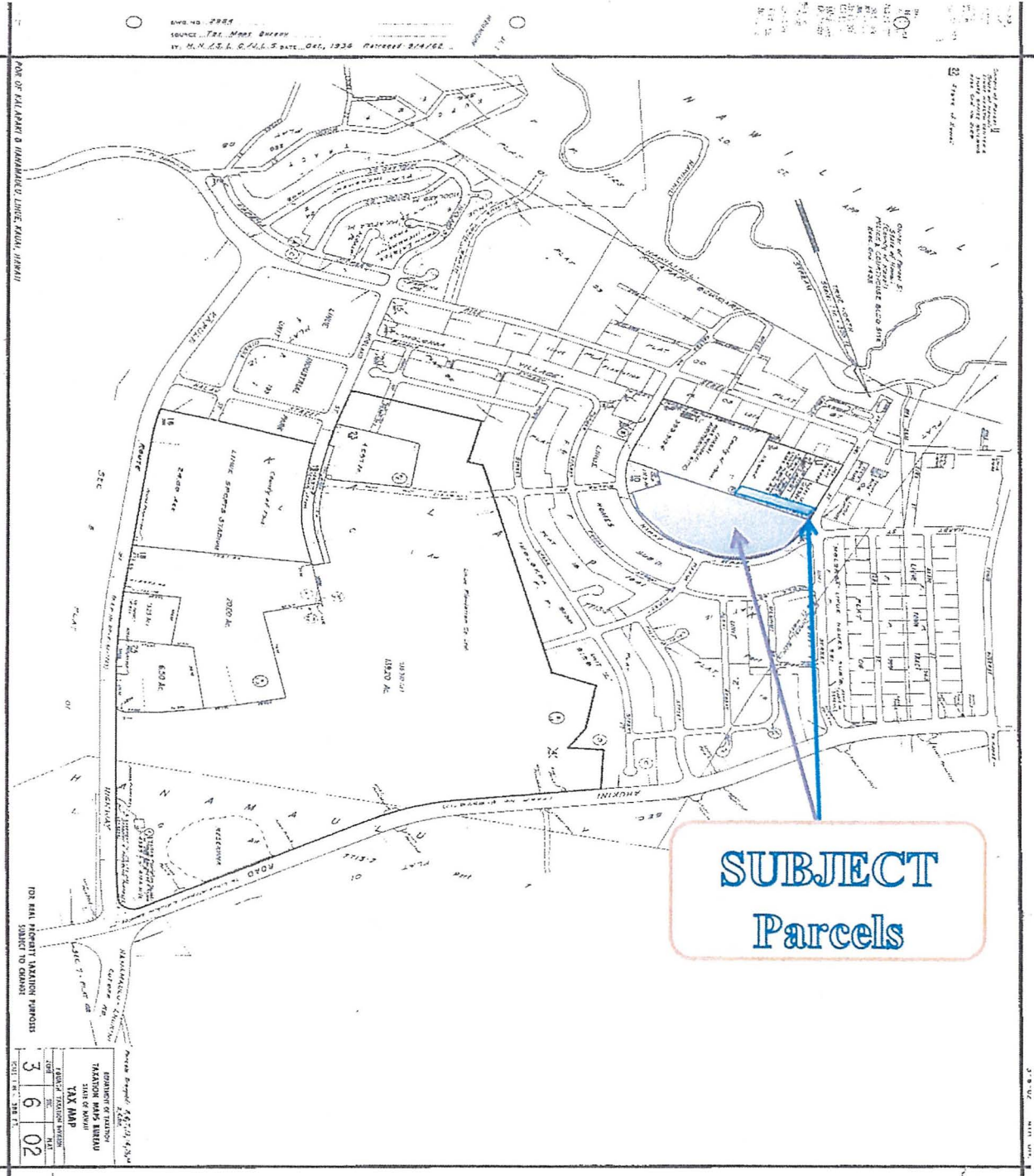


EXHIBIT A





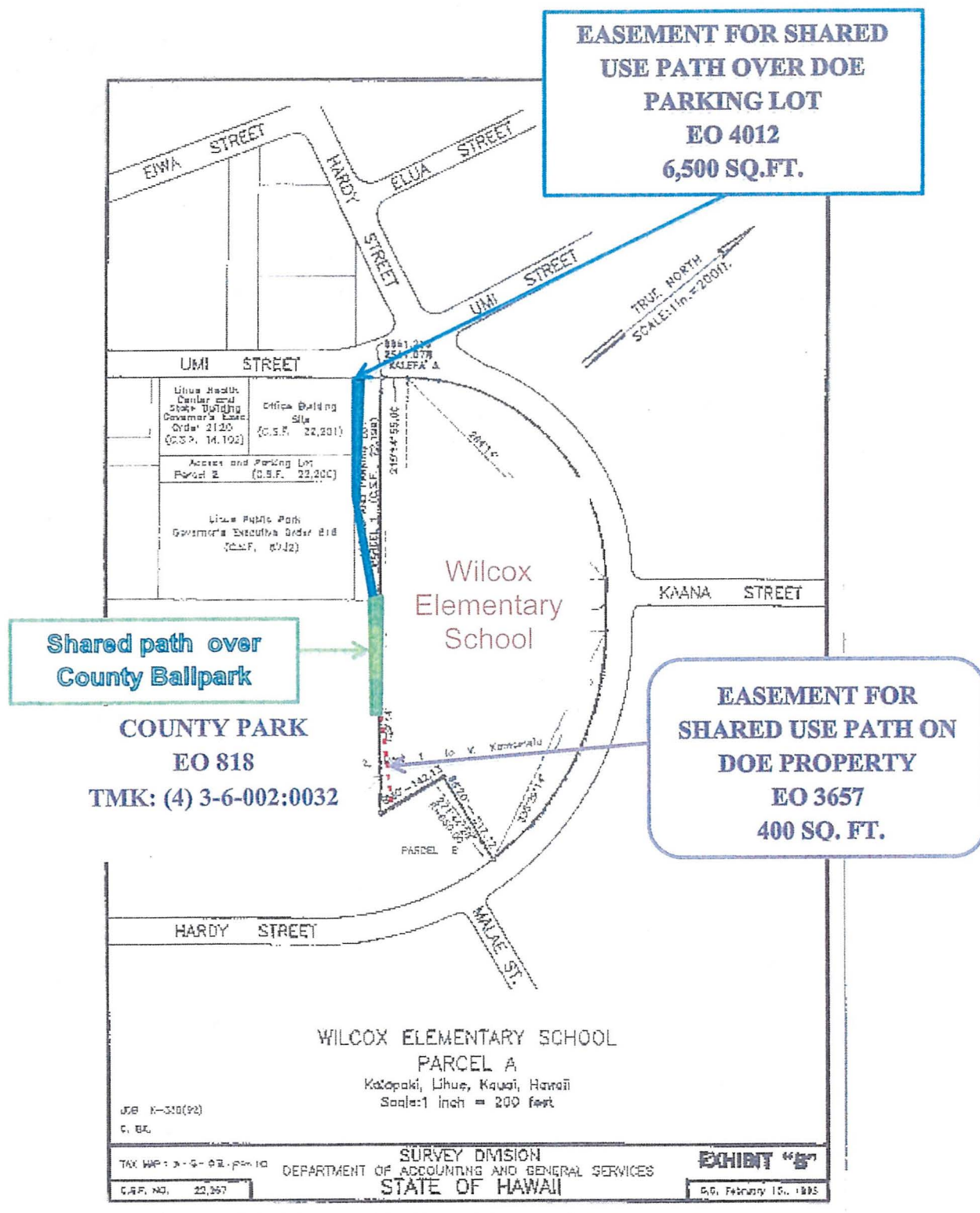
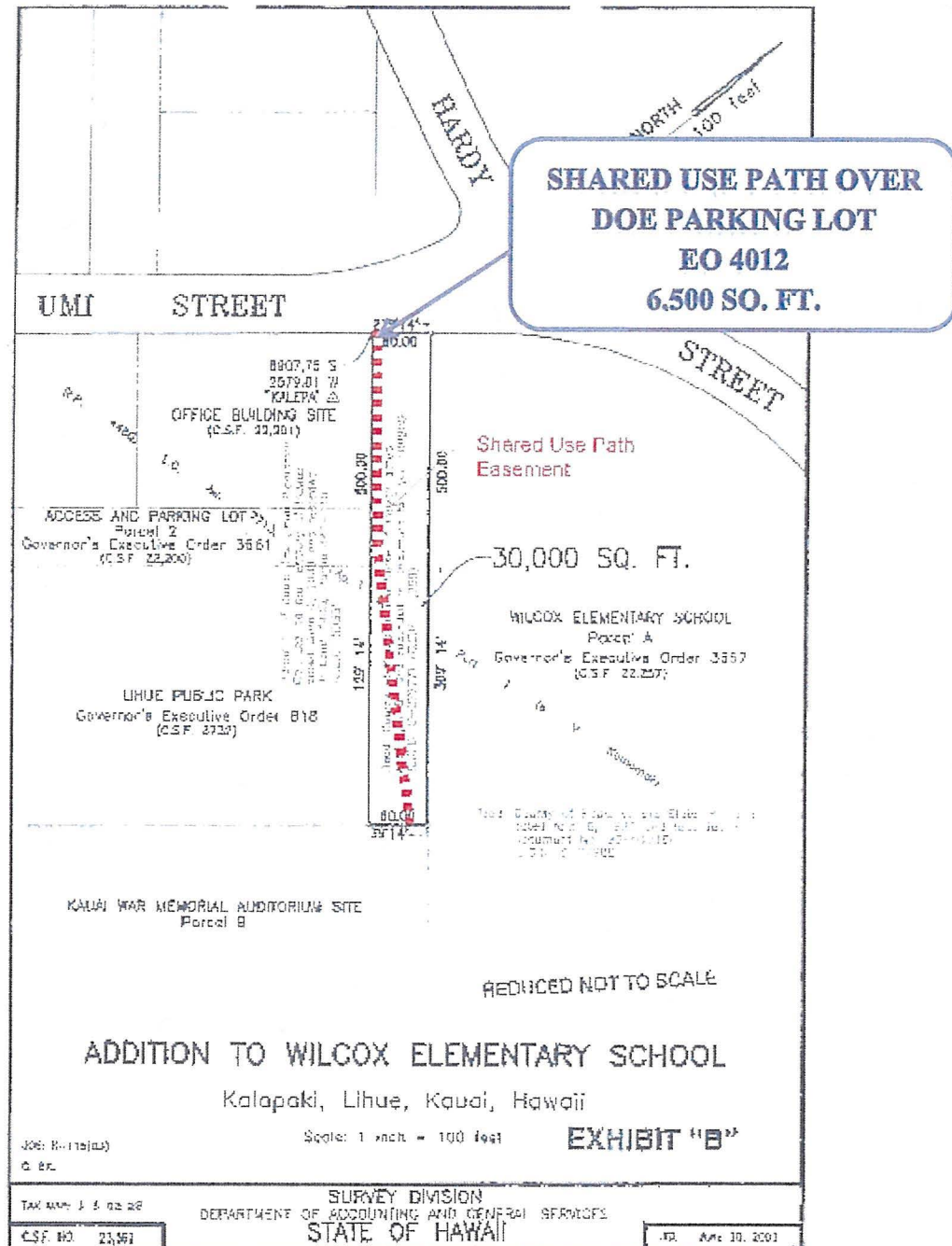


EXHIBIT A



**EXHIBIT A**





View of Shared-Use Path at entrance to DOE Parking Lot off Umi Street





Completed portion of the shared-use path along perimeter  
of DOE property.





View of DOE parking lot under EO 4012.

Easement will traverse along the right boundary of the parking lot, to the tree with yellow flowers in the background.





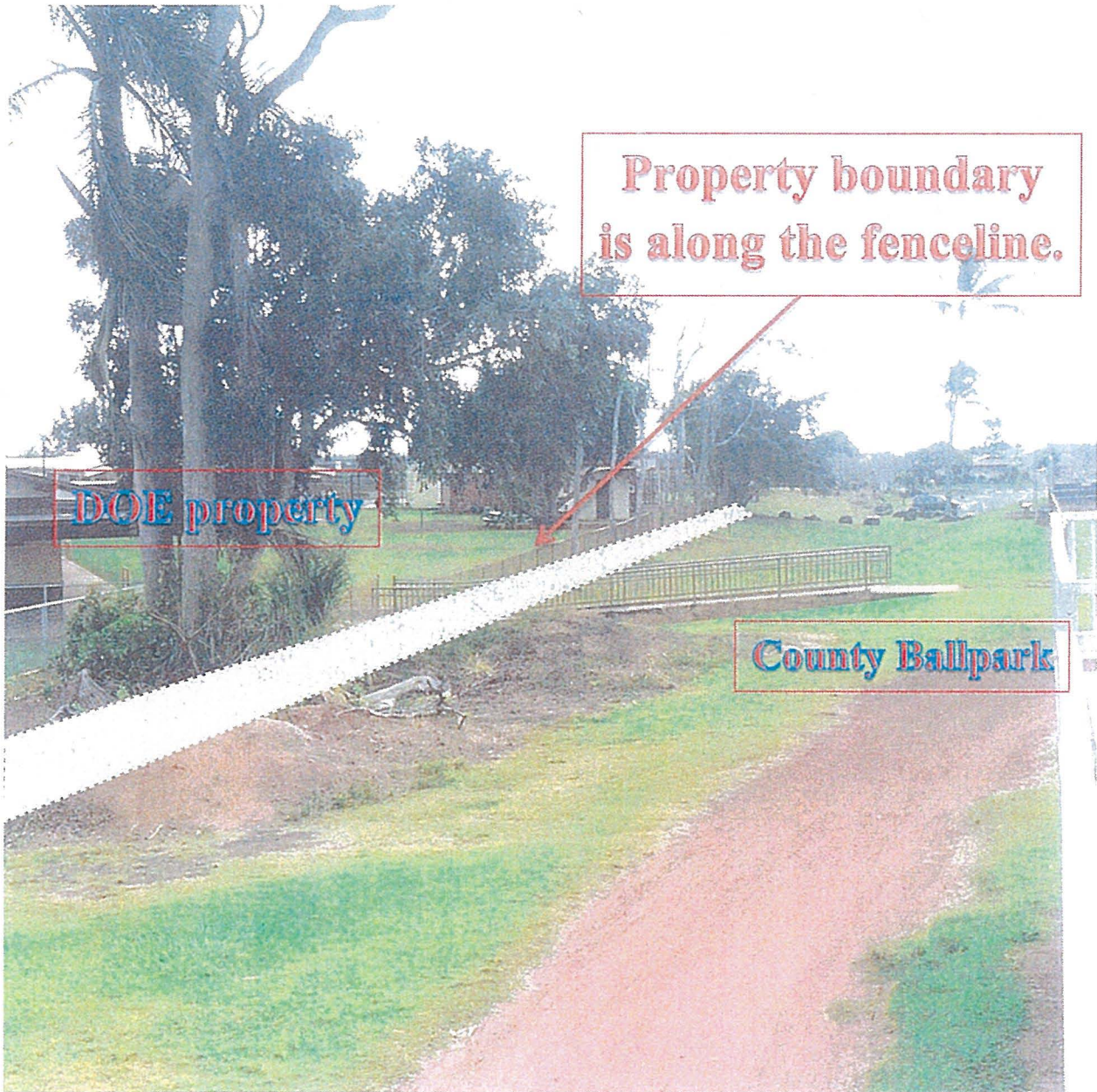
View down along the right boundary of the school parking lot. The shared-use path will follow the utility pole alignment, up to the ballpark.





The shared-use path will follow the utility pole alignment along parking lot, then veer left up to and along the chained linked fence of DOE boundary.





View of proposed shared-use path along DOE/  
County park property boundary, to Kauai War  
Memorial Auditorium.





**View along DOE fence, up to County Tennis Courts,  
by the Kauai War Memorial Auditorium.**



## County Tennis Courts



Shared-use pathway along County Tennis Courts



**Bernard P. Carvalho, Jr.**  
Mayor



**Lyle Tabata**  
Acting County Engineer

**Wallace G. Rezentes, Jr.**  
Managing Director

**DEPARTMENT OF PUBLIC WORKS**

**County of Kaua'i, State of Hawai'i**  
4444 Rice Street, Suite 275, Lihue, Hawai'i 96766  
TEL (808) 241-4992 FAX (808) 241-6604

May 1, 2017

Kathryn Matayoshi, Superintendent  
Hawai'i State Department of Education  
P.O. Box 2360  
Honolulu, Hawaii 96804

Subject: Lihue Town Core Mobility and Revitalization Project, FAP No. TGR-0700(073)  
TMK (4) 3-6-002:021 & TMK (4) 3-6-002:022 Lot A

Dear Ms. Matayoshi,

The County of Kauai is proposing a shared-use path on the south side of Wilcox Elementary School that will traverse approximately 400 SF of State owned property set aside for Wilcox Elementary School under the control and management of the Department of Education (Executive Order No. 3657), identified as a portion of Tax Map Key No. (4) 3-6-002:021 and approximately 6,500 SF of State owned property set aside for addition to Wilcox Elementary School under the control and management of the Department of Education (Executive Order No. 4012), identified as a portion of Tax Map Key No. (4) 3-6-002:022 Lot A, both situated in Lihue, Kauai, Hawaii.

We will be asking the Board of Land and Natural Resources to set-aside to the County of Kauai easements and construction right-of-entries onto portions of the subject properties to accommodate the shared-use-path.

In order to expedite the Land Board's approval of the easements and right-of-entries to the County of Kauai we request your concurrence to the proceeding. Enclosed for your information are the following:

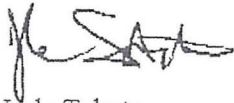
1. Civic Center Exhibit showing shared-use path locations in TMKs 3-6-002:021 & 3-6-002:022 Lot A
2. Parcel Map from Executive Order No. 3657 delineating the Easement.
3. Parcel Map from Executive Order No. 4012 delineating the Easement.

If there is no objection to our Land Board request for easements and right-of-entries, please acknowledge your concurrence by signing, dating, and returning the concurrence portion of this letter.

Ms. Matayoshi  
May 1, 2017  
Page 2

Your assistance in this matter will be appreciated. If there are any questions, please call me at (808) 241-4994 or email me at ltabata@kauai.gov.

Yours truly,



Lyle Tabata  
Acting County Engineer

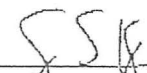
Concurrence

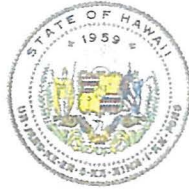
Subject to final approval by the Department of the Attorney General, State of Hawaii, I/We, the undersigned, concur with the Board of Land and Natural Resources to set-aside easements and issuance of right-of-entries to the County of Kauai onto properties currently set-aside under Executive Order Nos. 3657 and 4022 to the Department of Education, identified as being a portion of Tax Map Key No. (4) 3-6-002:021, containing an area approximately 1,500 square feet and Tax Map Key No. (4) 3-6-002:022 Lot A, containing an area approximately 5,000 square feet, both situated in Lihue, Kauai, Hawaii. It is acknowledged that the easements and right-of-entries are required to allow the County of Kauai to construct a shared-use path in connection with the Lihue Town Core Mobility and Revitalization Project, FAP No. TGR-0700(073).

Hawai'i State Department of Education

MAY 4 2017

Date

  
Kathryn Matayoshi, Superintendent



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

February 23, 2018

Ref. No.: 16KD-112

**EXEMPTION NOTIFICATION**

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

Project Title:	Grant of Perpetual, Non-Exclusive Easement with Rights-of-Entry to the County of Kauai for shared use path purposes.
Project / Reference No.:	PSF No.: 16KD-112
Project Location:	Kalapaki, Lihue, Kauai, Tax Map Keys: (4) 3-6-002:021 por. & 022 por.
Project Description:	Grant of Perpetual, Non-Exclusive Easement to the County of Kauai, Department of Public Works for Shared Use Path for Proposed Lihue Town Core Mobility & Revitalization Project.
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 and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to, Exemption Class 1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing." Item 31, "Repair and maintenance of existing roadways, roadway shoulders, road structures and signage, parking areas, walkways, bikeways, multi-use pathways, driveways, and boat launch ramps (includes grading, resurfacing, infilling, sealing, grooving, cleaning, chipping, painting and patching); Item 46, "Creation or termination of easement, covenants, or other rights in structures or land; and Item 51, "Permits, licenses, registrations, and rights-of entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing".

**EXHIBIT C**



Consulted Parties:

County Department of Public Works, and Department of Education, and Department of Accounting and General Services.

Recommendation:

The prior use of the subject area by the Department of Education for sidewalk and parking lot purposes have resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources. As such staff believes that the proposed easement and right-of-entry to COK DPW for shared use path would involve negligible or no expansion or change in use of the subject area beyond that previously existing. The issuance of a grant of easement with right-of-entry permit to the County of Kauai, in itself will probably have minimal or no significant effect on the environment. It is recommended that the Board of Land and Natural Resources find that the action is exempt from the preparation of an environmental assessment.