

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

January 14, 2022

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

PSF No.:21KD-076

KAUAI

Grant of Term, Non-Exclusive Easement to Duke's Canoe Club, LLC dba Duke's Kauai for Access, Landscaping, Maintenance, Signage and Beautification Purposes, Nawiliwili, Lihue, Kauai, Tax Map Key: (4) 3-2-004: portions of 047.

Issuance of Right-of-Entry Permit to Duke's Canoe Club, LLC dba Duke's Kauai for Temporary Access, Landscaping, Maintenance, Signage and Beautification Purposes, Nawiliwili, Lihue, Kauai, Tax Map Key: (4) 3-2-004: portions of 047.

APPLICANT:

Duke's Canoe Club, LLC dba Duke's Kauai, a Hawaii limited liability company.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located at Nawiliwili, Lihue, Kauai, identified by Tax Map Key: (4) 3-2-004: portions of 047, as shown on the attached map labeled EXHIBIT A.

AREA:

1,377 square feet, more or less.

ZONING:

State Land Use District:	Urban
County of Kauai CZO:	Neighborhood Commercial

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:

Encumbered by Grant of Term Non-Exclusive Easement No. S-5556, Duke's Canoe Club, for Landscaping, Maintenance, and Beautification purposes. Term of non-exclusive easement to expire on May 8, 2022.

CHARACTER OF USE:

Right, privilege, and authority to use subject premises for access, landscaping, maintenance, and beautification purposes; to provide signage; and to provide a theme-entry to Tax Map Key: (4) 3-5-002:002.

TERM OF EASEMENT:

Twenty-five (25) years.

RIGHT-OF-ENTRY TERM:

Commencing May 9, 2022 and expiring May 8, 2022, subject to extension at the Chair's discretion for good cause shown.

COMMENCEMENT DATE OF EASEMENT:

May 9, 2022.

CONSIDERATION FOR EASEMENT:

One-time payment to be determined by independent or staff appraisal establishing fair market rent as of May 9, 2022, subject to review and approval by the Chairperson.

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 November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, Part 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," and Item 44 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" and Part 1, Item No. 39 that states, "Creation or termination of easement, covenants, or other rights in structures or land." See EXHIBIT B.

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 rent or one-time payment.

REMARKS:

On May 9, 1997, under Item D-41, the Board of Land and Natural Resources approved the issuance of term, non-exclusive easement for landscaping, maintenance, signage, and beautification purposes. Duke's Canoe Club proposed building a pedestrian bridge on the south portion of the subject parcel lined with propane gas torches, similar to those that presently exist at the Duke's Restaurant.

On June 26, 1997, the Chairperson approved the plans for the proposed sign for Duke's Canoe Club.

On October 10, 1997, the Chairperson approved the plans for the proposed pedestrian bridge. Duke's Canoe Club subsequently built a 1,272 sq. ft. bridge.

On June 1, 1999, Grant of Non-Exclusive Easement No. S-5556 to Duke's Canoe Club was executed. The term of the non-exclusive easement was for twenty-five (25) years and will expire on May 8, 2022.

In anticipation of the impending expiration of Grant of Non-Exclusive Easement No. S-5556, the applicant is requesting the issuance of a new term, non-exclusive easement for twenty-five (25) years to continue with the same purposes of landscaping, maintenance, signage, and beautification purposes.

The pedestrian bridge is open to the public, which (in addition to Duke's Kauai) is frequently used to access the Royal Sonesta Kauai Resort and Kalapaki Beach.

On December 3, 2021, Staff conducted an inspection of the subject area and found that it was in overall satisfactory condition. See EXHIBIT C for inspection report.

The 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.

Various government agencies and interest groups were solicited for comments.

AGENCIES	COMMENTS
County of Kauai:	
Public Works Department	No response by suspense date.
Planning Department	"We have no objections." "We have no comments."
State of Hawaii:	
Commission on Water Resource Management	No response by suspense date.
Department of Transportation – Highways Division	"We have no objections."
Other:	
Office of Hawaiian Affairs	No response by suspense date.

Staff is including a recommendation for a right-of-entry permit (ROE) to the applicant in the event the new easement is not executed by the time the current easement expires on May 8, 2022. No consideration will be charged for the ROE because the new easement's commencement date will be set at May 9, 2022 even if the easement is executed after that date. The ROE will ensure that a formal land disposition is in place, together with insurance and indemnity requirements in favor of the State, for any gap period that may occur between May 8, 2022 and the execution of the new easement.

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. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 3-2-004: portions of 047, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term non-exclusive easement to Duke's Canoe Club, LLC dba Duke's Kauai covering the subject area for Landscaping, Maintenance, and Beautification 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.
4. Authorize the issuance of a right-of-entry permit to Duke's Canoe Club, LLC dba Duke's Kauai covering the subject area for Landscaping, Maintenance, and Beautification 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 right-of-entry permit form, as may be amended from time to time; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Kurt Yasutake

Kurt Yasutake
Land Agent

KYM

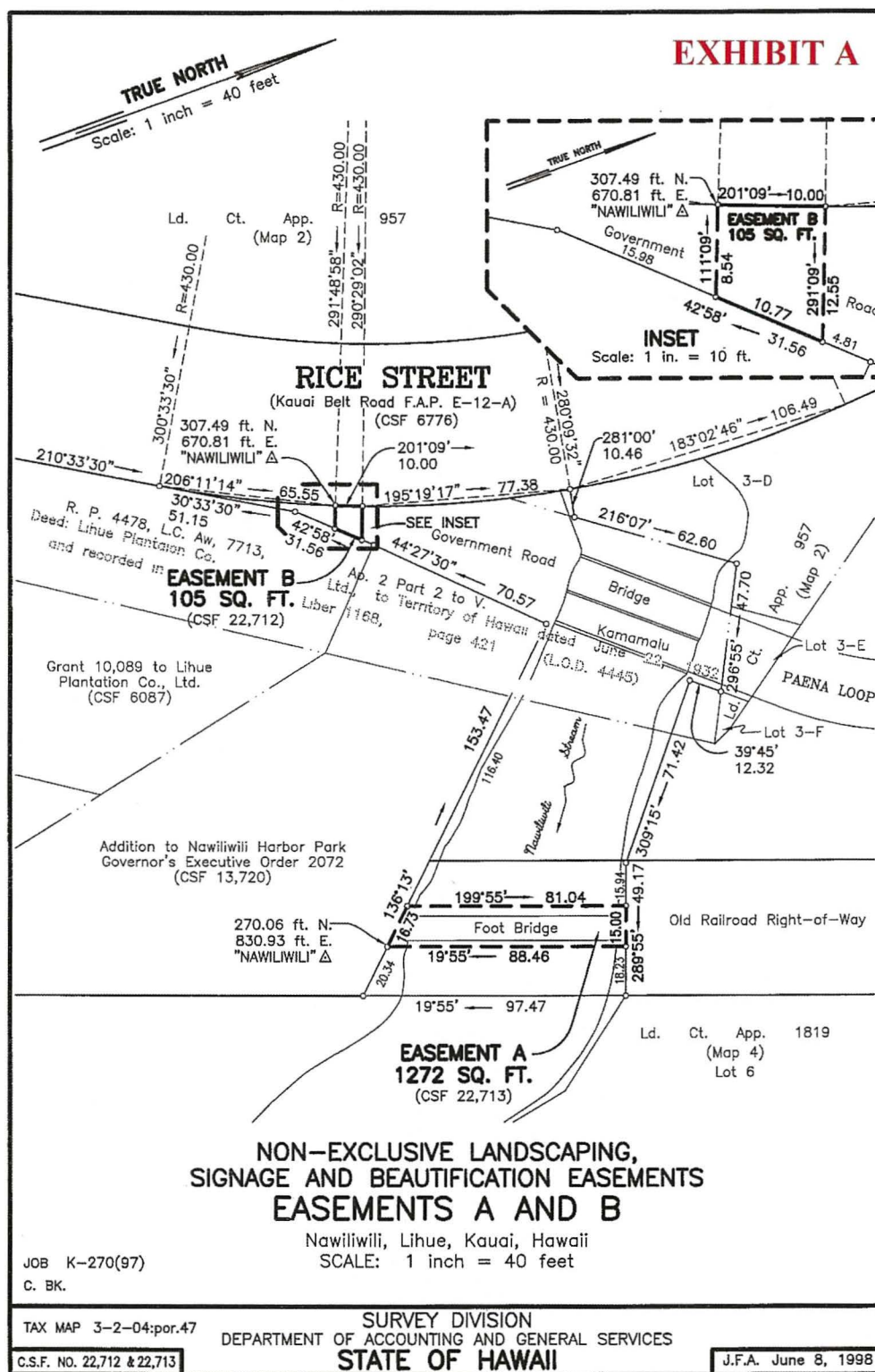
APPROVED FOR SUBMITTAL:

RT

Suzanne D. Case

Suzanne D. Case, Chairperson





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

EXHIBIT B

EXEMPTION NOTIFICATION

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

Project Title:	Grant of Term, Non-Exclusive Easement to Duke's Canoe Club, LLC dba Duke's Kauai for Access, Landscaping, Maintenance, and Beautification Purposes. Issuance of Right-of-Entry Permit to Duke's Canoe Club, LLC dba Duke's Kauai for Temporary Access, Landscaping, Maintenance, and Beautification Purposes.
Project / Reference No.:	21KD-076
Project Location:	Nawiliwili, Lihue, Kauai, Tax Map Key: (4) 3-2-004: portions of 047
Project Description:	The subject location is currently encumbered by Grant of Term Non-Exclusive Easement No. S-5556 to Duke's Canoe Club, LLC dba Duke's Kauai for Landscaping, Maintenance, and Beautification purposes. The term non-exclusive easement expires on May 8, 2022. The applicant is requesting the issuance of a new term, non-exclusive easement for twenty-five (25) years to continue with the same purposes of landscaping, maintenance, signage and beautification purposes.
Chap. 343 Trigger(s):	Use of State Land

**Exemption Class No.
and Description:**

In accordance with HAR Section 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, which states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," and Part 1, Item 44 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," and Item No. 39 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?:**

Staff believes there will be no significant cumulative impact.

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

There are no sensitive environmental issues involved with the proposed use of the property.

Analysis:

In the past, easements were issued for similar access, landscaping and beautification purposes, which have resulted in no known significant impacts to the natural and environmental resources in the area. As such, staff believes that the proposed new easement 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 Department, Department of Land and Natural Resources Commission on Water Resource Management, Department of Transportation Highways Division, and the Office of Hawaiian Affairs.

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.