

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

August 12, 2022

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

Ref: 22OD-015

OAHU

Grant of Term, Non-Exclusive Easement to Carolyn Carley and Lee A. Windeler  
for Access Purposes, Honolulu, Oahu, Tax Map Key: (1) 2-5-019: portions of 009.

APPLICANT:

Carolyn Carley and Lee A. Windeler, both unmarried, as Tenants in Common.  
("Applicants")

LEGAL REFERENCE:

Section 171-13 and 17, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of State land located at Honolulu, Oahu, identified by Tax Map Key: (1) 2-5-019:  
portions of 009, as shown on **Exhibits A1** and **A-2**.

AREA:

See two (2) portions of requested State lands marked on Exhibit A-2. Final area will be  
reviewed and approved by the Department of Accounting and General Services, Survey  
Division.

ZONING:

State Land Use District: Conservation  
City & County of Honolulu LUO: P-1

TRUST LAND STATUS:

Section 5(b) lands of Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Encumbered by Governor's Proclamation dated December 24, 1926 for Honolulu Watershed Forest Reserve.

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 purposes.

TERM:

65 years.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

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

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules ("HAR") § 11-200.1-15 and -16 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 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," and Part 1, Item No. 39 that states "Creation and termination of easement, covenants, or other rights in structures or land." The subject request is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of §11-200.1-17, HAR. See **Exhibit B**.

DCCA VERIFICATION:

Individual, not applicable.

APPLICANT REQUIREMENTS:

Applicants shall be required to:

1. Pay for an appraisal to determine the one-time payment;
2. Provide survey maps and descriptions according to State DAGS standards and at Applicants' own cost; and
3. Process and obtain designation of easement approval from City and County of Honolulu, Department of Planning and Permitting at Applicant's own cost.

REMARKS:

According to the Applicants, the house and the driveway on the private property, further identified as TMK (1) 2-5-013:001, were developed around 1914. Over the years, there were never any issues brought up regarding the lack of a legal access connecting the private property to Tantalus Drive. Recently, the Applicants were working with the Office of Conservation and Coastal Lands ("OCCL") of the department regarding the renovation of the house itself. In their reply to the Applicants (**Exhibit C**), OCCL noted that the structures on the property appear to be non-conforming as they were constructed prior to the advent of the conservation district. OCCL has no objections to the proposed improvements. It was during the due diligence that the lack of legal access over portions of the existing driveway was discovered.<sup>1</sup>

Applicants decided to resolve the legal access issue by obtaining an easement from the Board.

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.

Board of Water Supply and OCCL have no objection to the requested easement. Division of Forestry and Wildlife ("DOFAW") inquired about the future maintenance responsibilities on the easement area. Staff explained to DOFAW the standard conditions of the easement document require the grantee (Applicants) to maintain the easement alignment at its expense, and DOFAW did not have any further comment to the request.

There are no other pertinent issues or concerns. Staff recommends the Board approve the subject request as described in the Recommendation section.

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 as a de minimis action.

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<sup>1</sup> The driveway was built in a way to accommodate the terrain between the private property and Tantalus Drive. As shown on Exhibit A-2, the majority of the driveway was built on private lands. The subject request pertains only to the portion of the driveway built over the State land.

2. Authorize the subject request to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 2-5-013:001, 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 Applicants fulfilling all of the Applicant requirements listed above, authorize the issuance of a 65-year term, non-exclusive easement to Carolyn Carley and Lee A. Windeler covering the subject area for access 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. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 2-5-013:001, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
  - 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.

Respectfully Submitted,

*Barry Cheung*

Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

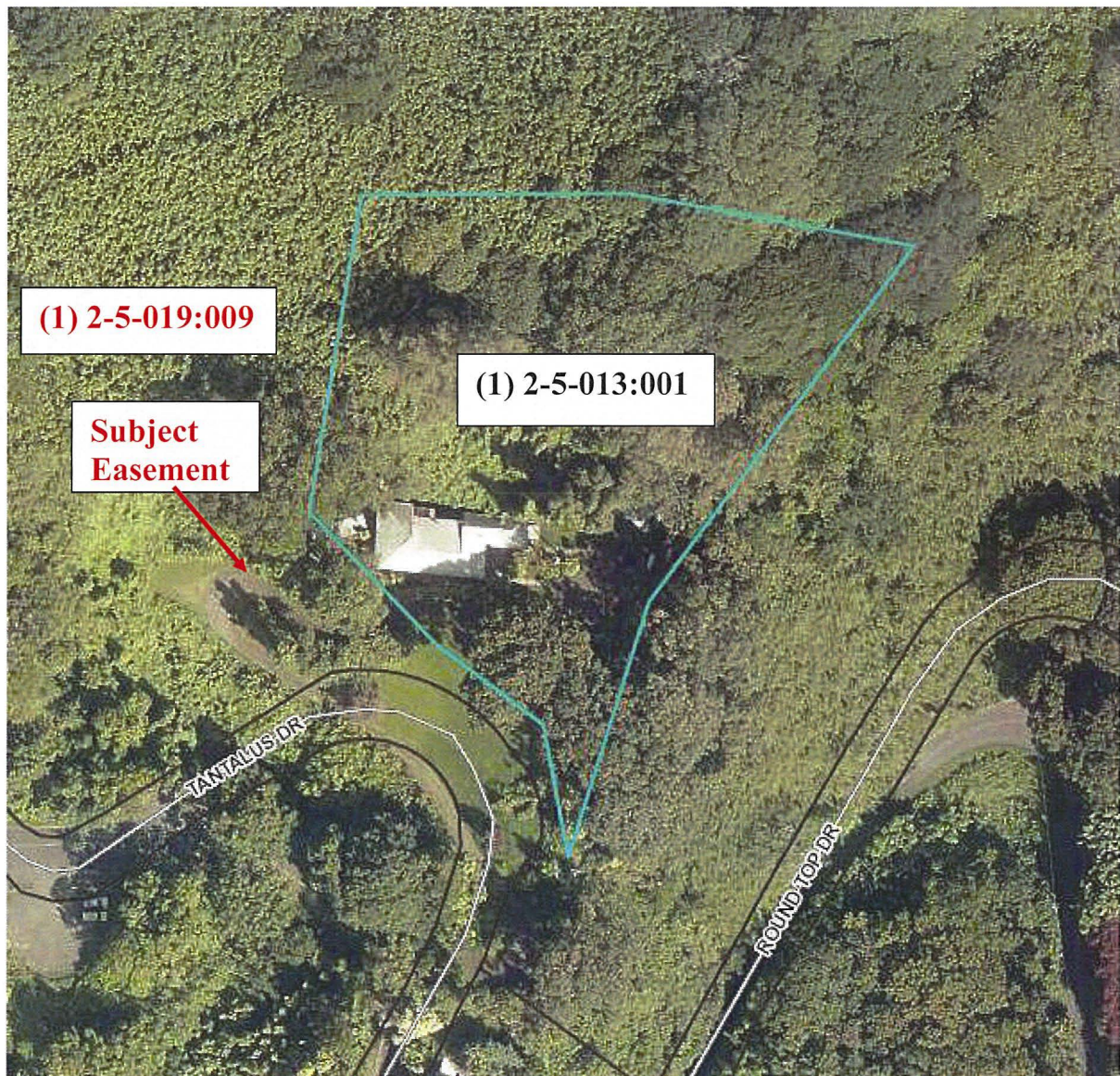
*Suzanne D. Case*

Suzanne D. Case, Chairperson

*for*

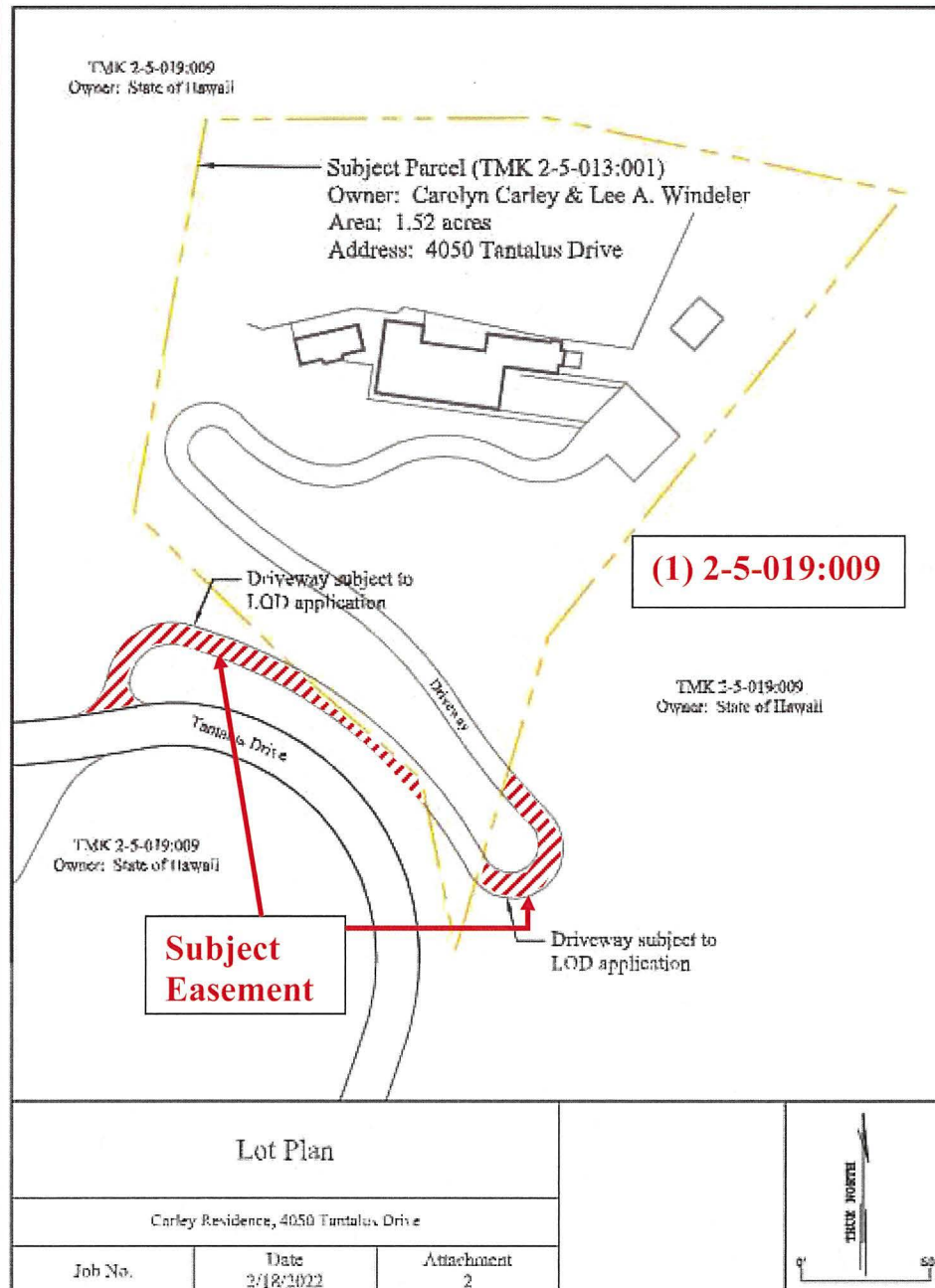
*RT*





**TMK (1) 2-5-019:009**

**EXHIBIT A-1**



**TMK (1) 2-5-019:009**

**EXHIBIT A-2**



### 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 Carolyn Carley and Lee A. Windeler for Access Purposes.

Reference No.: PSF 22OD-015

Project Location: Honolulu, Oahu, TMK (1) 2-5-019: portions of 009.

Project Description: Request for a term easement for access purposes to serve the land-locked private property owned by the applicants.

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

Exemption Class No.: In accordance HAR § 11-200.1-15 and -16 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 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," and Part 1, Item No. 39 that states "Creation and termination of easement, covenants, or other rights in structures or land." The subject request is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of §11-200.1-17, HAR.

Cumulative Impact of Planned Successive Actions in Same Place Significant? No. The request pertains to document the use of the existing access road by the owner of the adjacent private property. It is not anticipated that there are any major change or expansion of the existing uses.

Action May Have Significant Impact on Particularly Sensitive Environment? No. It is not anticipated that there are any major change or expansion of the existing uses.

**EXHIBIT B**

Consulted Parties:	Agencies noted in the submittal.
Analysis:	The request is to create an easement for an access way that has existed since 1914 and which does not involve any change or expansion of the existing uses.
Recommendation:	It is recommended that the Board find that this request will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment as a de minimis action.



August 12, 2022



DAVID Y. IGE  
GOVERNOR OF  
HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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  
KAOIOKAWA ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:OCCL:TM

RE:SPA OA 22-45

Makena White, AICP  
Planning Solutions, Inc.  
711 Kapi'olani Blvd., Suite 950  
Honolulu, HI 96816

FEB 24 2022

SUBJECT: Site Plan Approval (SPA) Request for Repair/Renovations of an Existing Non-Conforming Residence Located at 4050 Tantalus Drive, Honolulu, O'ahu, TMK: (1) 2-5-013:001

Dear Mr. White:

The Office of Conservation and Coastal Lands (OCCL) has reviewed your client, Carolyn Carley's SPA request regarding the subject matter. According to your information, the existing residence was damaged by fallen trees. In addition, due to the residence's age, some renovations are proposed. The application states alterations will consist of:

- Modifying the interior layout
- Enclosing a portion of an area that was formerly a covered lanai
- Replacing the remainder of the former covered lanai with a minor extension
- Rebuilding the roof

About 115-ft<sup>2</sup> of a former covered lanai will be enclosed increasing enclosed space from 2100-ft<sup>2</sup> to 2215-ft<sup>2</sup>, a 5% increase; and extending the lanai will result in approximately 28-ft<sup>2</sup>, a 1% increase. No grubbing/grading is proposed. In addition, Attachment 3, indicates a septic tank and leach field are also proposed on the property. Act 125 was passed in the 2017 legislative session and requires the replacement of all cesspools by 2050.

The OCCL notes the property lies within the Resource subzone of the Conservation District. The structures on the property appear to be non-conforming structures or structures created prior to the advent of the Conservation District. County records indicate a 2658-ft<sup>2</sup> building and a 286-ft<sup>2</sup> building believed to have been built in 1914 exists on the lot. According to your information, the primary residence is currently a one story [formerly two-story] structure of approximately 2,100-ft<sup>2</sup>.

The above noted improvements [repairs, alterations and septic system] appear to be minor in scope and an identified land use pursuant to the Hawai'i Administrative Rules (HAR) §13-5-22,

**EXHIBIT C**

Carolyn Carley  
c/o Makena White, AICP  
Planning Solutions, Inc.

RE:SPA OA 22-45

P-8 STRUCTURES AND LAND USES, EXISTING (A-1) Minor repair, maintenance, and operation to an existing structure, facility, use, land and equipment, whether it is nonconforming or permitted, that involves mostly cosmetic work or like-to-like replacement of component parts, and that results in negligible change to or impact to land, or a natural and cultural resource.

The OCCL has no objections to the proposed land uses as described in **Attachment 3 & 4** [attached] provided that the following general conditions are adhered to:

1. That in issuing this letter, the Department has relied on the information and data that has been provided in connection with the letter. If, subsequent to this letter, such information and data prove to be false, incomplete or inaccurate, enforcement proceedings may be initiated as necessary;
2. Typical Best Management Practices (BMP) shall be implemented while conducting any land use in the Conservation District. Unauthorized land uses such as the disposal of material within the Conservation District shall initiate enforcement proceedings; and
3. If the scope of the project changes or the cumulative natural resource impacts is perceived to be moderate or major, the department may require authorizations or approvals for the proposed land use.

The OCCL notes in reviewing various maps such as the tax map key on the County's website: [honolulupropertytax.com](http://honolulupropertytax.com), the public land trust information system at [pltis.hawaii.gov](http://pltis.hawaii.gov), and a Boundary Study Report of the Tantalus Drive and Round Top Drive Right of Way Assessment Project, there does not appear to be a recorded and/or legal right of access to the property and residence from Tantalus Drive. Portions of the driveway, landscaping and an entrance gate appear to be encroaching upon the adjacent State land noted as tax map key: (1) 2-5-019:009.

After further discussion with Planning Solutions, it is our understanding that a land disposition is being sought for the utilization of State land. While it appears that some of the encroaching land uses may be non-conforming, other land uses may require after the fact approval. Please consult with the OCCL to resolve any outstanding matters so that proper authorizations may be received to ensure access to the property.

As no SPA is required for minor improvements to existing land uses, we are returning your SPA fee of \$50.00. Should you have any questions regarding this correspondence, contact Tiger Mills of the OCCL at (808) 587-0382.

Sincerely,



K. Tiger Mills, Staff Planner  
Office of Conservation and Coastal Lands

C: ODLO  
City-DPP

Attachment 3 - Site Plan of Proposed Minor Alterations

