

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

September 23, 2022

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

PSF No: 21KD-076

**KAUAI**

*Amend Prior Board Action of January 14, 2022, Item D-12, 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.*

The purposes of the amendment are to: (i) correct the character of use of the easement to "Access, Landscaping, Maintenance, Signage and Beautification Purposes; to Provide Signage; and to Provide a Theme-Entry to Tax Map Key; (4) 3-5-002:002"; (ii) correct the termination date of the right-of-entry permit approved by the Board to May 8, 2023, subject to an extension of up to an additional year at the Chairperson's discretion for good cause shown; (iii) delete Recommendation 2 of the January 14, 2022 action authorizing the subject requests to applicable in the event of a change of the ownership of the abutting parcel described as Tax Map Key: (4) 3-2-004: portions of 047; and (iv) include Exhibit C, which is an inspection report of the easement area that was inadvertently omitted from the prior action, in the amended action.

**BACKGROUND:**

On May 9, 1997, under Item D-41, the Board of Land and Natural Resources (Board) approved the issuance of 25-year term, non-exclusive easement for access, landscaping, maintenance, signage, and beautification purposes. Duke's Canoe Club, a Hawaii limited partnership, proposed building a pedestrian bridge on the south portion of the subject parcel. Grant of Term Non-Exclusive Easement No. S-5556 was thereafter issued to

Duke’s Canoe Club with an effective date June 1, 1997 and an expiration date of May 8, 2022.

At its meeting of January 14, 2022, under Item D-12, the Board approved the issuance of a new 25-year term easement to Duke’s Canoe Club, LLC covering the same location and for the same purposes to commence on May 9, 2022. The approval also authorized the issuance of a management right-of-entry permit pending documentation of the new easement. A copy of the Board’s action of January 14, 2022, Item D-12, is attached as Exhibit 1.

REMARKS:

In the course of processing the new easement, it was brought to staff’s attention that there are some discrepancies in the prior staff submittal of January 14, 2022, Item D-12.

First, the character of use of the new easement was set forth fully on page 2 of the submittal as, “Access, Landscaping, Maintenance, Signage and Beautification Purposes; to Provide Signage; and to Provide a Theme-Entry to Tax Map Key (4) 3-5-002:002.” However, the title and recommendation section of the submittal did not track this language exactly. Staff is therefore including a recommendation to amend the title and recommendations section to be consistent with the language used on page 2 of the January 14, 2022 action.

Second, the submittal contains an error in the termination date of the management right-of-entry permit (ROE), setting it at May 8, 2022. The ROE should commence on May 9, 2022 and terminate on May 8, 2023, subject to an extension of up to an additional year at the Chairperson’s discretion for good cause shown.

Third, the January 14, 2022 submittal includes the following language at recommendation 2:

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.

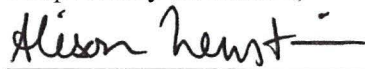
This language is normally used in situations where the requested easement will be appurtenant to private property and “run with” that property in the event of a sale or other transfer of it. In this case, the quoted language incorrectly refers to the State land upon which easement is located. Moreover, the easement at issue is not appurtenant to any private property, but is instead to be held “in gross” by Duke’s Canoe Club, LLC. Staff is therefore recommending that this paragraph be deleted.

Fourth, the staff submittal for the January 14, 2022 action should have included as Exhibit C a copy of an inspection report of the easement area. By oversight, Exhibit C was not included in the published version of the submittal provided to the Board members. Staff is therefore recommending an amendment to the prior action to include Exhibit C attached hereto.

RECOMMENDATION: That the Board:

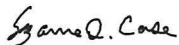
- A. Amend its prior Board action of January 14, 2022, under agenda item D-12, by:
1. Changing the character of use of the new easement to “Access, Landscaping, Maintenance, Signage and Beautification Purposes; to Provide Signage; and to Provide a Theme-Entry to Tax Map Key (4) 3-5-002:002” in the title and recommendation section of the submittal, and anywhere else the character of use is referenced;
  2. Changing the termination date of the right-of-entry permit May 8, 2023, subject to an extension of up to an additional year at the Chairperson’s discretion for good cause shown”;
  3. Deleting Recommendation 2 in its entirety and renumbering the remaining recommendations accordingly; and
  4. Including the previously omitted Exhibit C attached hereto as part of the Board action.
- B. Affirm that, except as amended hereby, all terms and conditions listed in its January 14, 2022 approval shall remain the same.

Respectfully Submitted,



Alison Neustein  
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

RT

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

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
January 14, 2022 *gd.*



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
<b>County of Kauai:</b>	
Public Works Department	No response by suspense date.
Planning Department	"We have no objections." "We have no comments."
<b>State of Hawaii:</b>	
Commission on Water Resource Management	No response by suspense date.
Department of Transportation – Highways Division	"We have no objections."
<b>Other:</b>	
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

*KY*

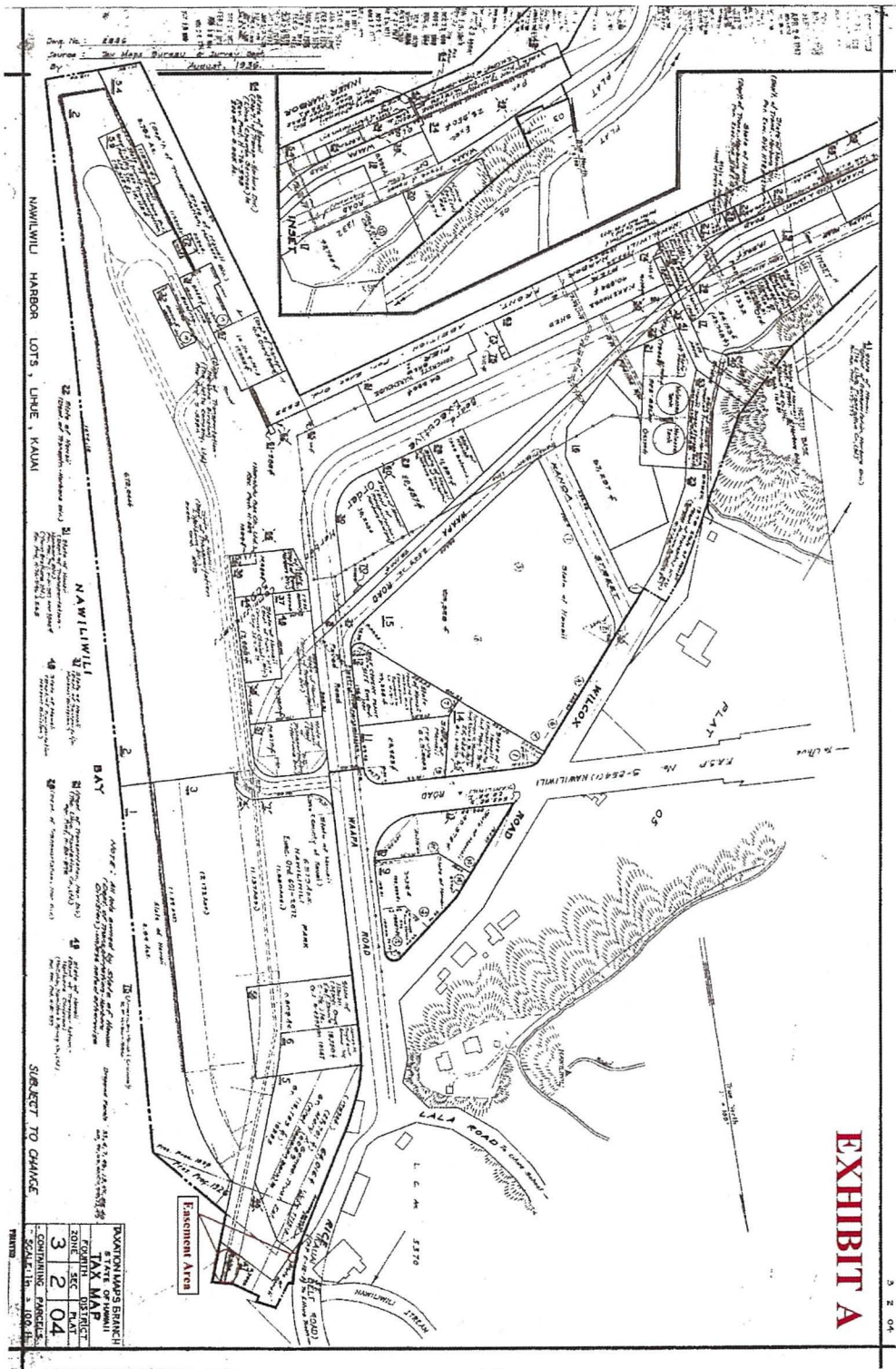
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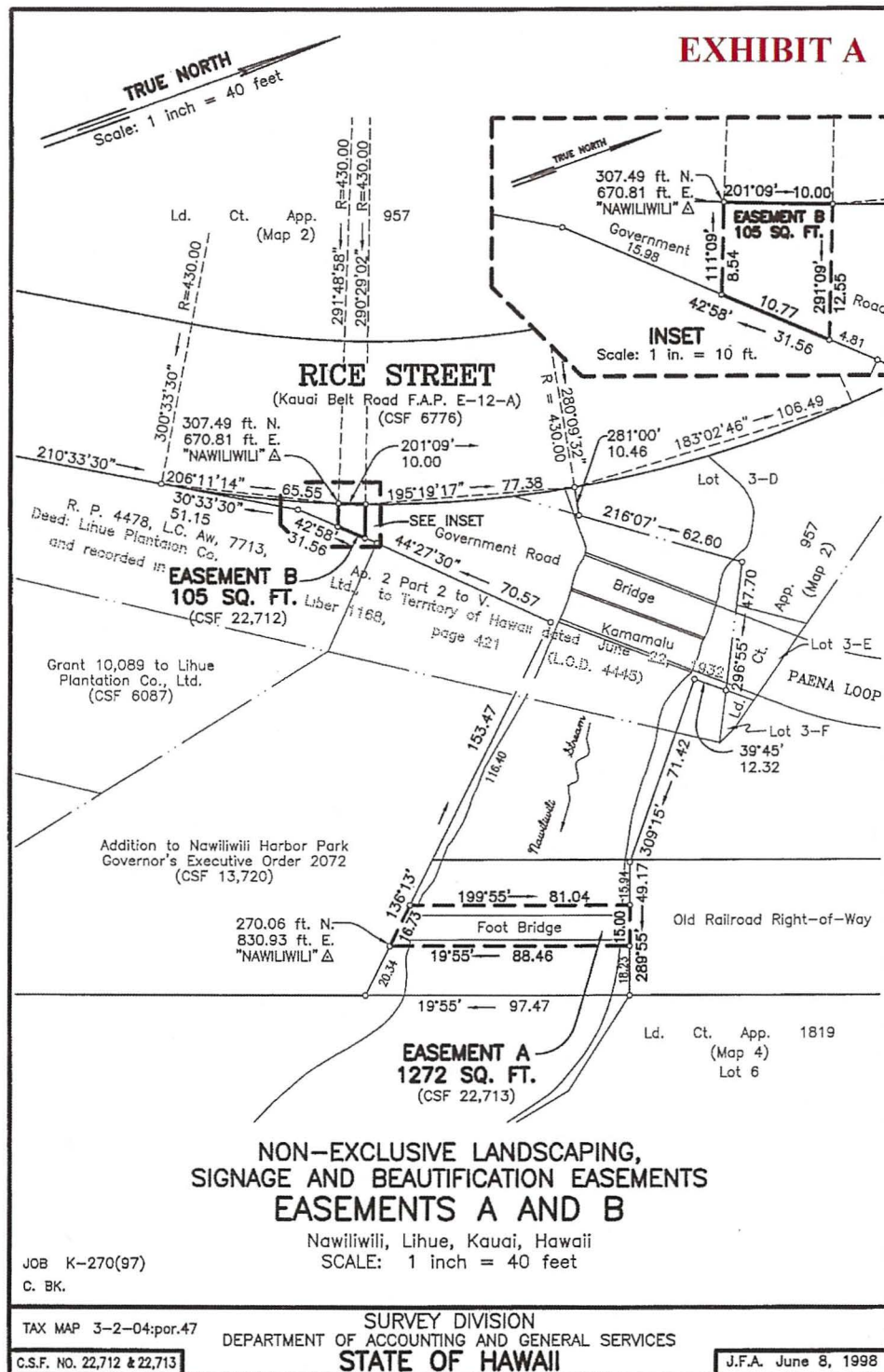
*RT*

*Suzanne D. Case*

Suzanne D. Case, Chairperson







DAVID Y. IGE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

## EXHIBIT B

### EXEMPTION NOTIFICATION

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

<b>Project Title:</b>	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.
<b>Project / Reference No.:</b>	21KD-076
<b>Project Location:</b>	Nawiliwili, Lihue, Kauai, Tax Map Key: (4) 3-2-004: portions of 047
<b>Project Description:</b>	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.
<b>Chap. 343 Trigger(s):</b>	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.

**INSPECTION REPORT**  
Commercial/Industrial/Resort/Other Business

**EXHIBIT C**

**General Information**

Document Number: GLS 5556 or RPS \_\_\_\_\_

Character of Use Landscaping, maintenance, beautification

Inspection Date: 12/3/21 Inspection Time: 11:00 am

Land Agent: Kurt Yasutake

**TENANT INFORMATION**

Name: Duke's Canoe Club, LLC dba Duke's Kauai

Home Phone: \_\_\_\_\_

Address: 2530 Kekaa Drive, Suite C-2

Business Phone: \_\_\_\_\_

Lahaina, HI 96761

Fax: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Phone: \_\_\_\_\_

**SITE INFORMATION**

TMK: (4) 3-2-004: portion of 047

Area: 1,377 square feet

Site Address: Nawiliwili, Lihue, Kauai

**FISCAL INFORMATION**

ITEM	N/A	CURRENT= COMPLIANCE	DEFAULT = NON-COMPLIANCE	COMMENTS
Rent		<b>X</b>		
Liability Insurance		<b>X</b>		
Fire Insurance	<b>X</b>			
Bond		<b>X</b>		

**FIELD INSPECTION RESULTS** (refer to Field Inspection Worksheet)

ITEM	N/A	COMPLIANCE	NONCOMPLIANCE	COMMENTS
Subleases	<b>X</b>			
Improvements		<b>X</b>		
Premises		<b>X</b>		
Character of Use		<b>X</b>		

**Field Inspection Worksheet**  
**Commercial/Industrial/Resort/Other Business**

**File Review**

**LICENSES/PERMITS/CONSENTS**

ITEM	DLNR Approval Docs in File			COMMENTS/NOTES/LISTS
	N/A	YES	NO	
Subletting	<b>X</b>			attach copy of list or map if applicable
Improvement Construction Buildings		<b>X</b>		note deadlines for % completion
Improvement Construction Other structures/misc.		<b>X</b>		note deadlines for % completion

**Field Inspection**

ITEM	SATISFACTORY?			COMMENTS/NOTES
	N/A	YES	NO	
<b>SUBLEASES</b>				
Consents approved	<b>X</b>			
Use adheres to lease purpose	<b>X</b>			Entrance in overall satisfactory condition.
<b>IMPROVEMENTS</b>				
<u>Buildings/Residences:</u> roof		<b>X</b>		
paint		<b>X</b>		
exterior		<b>X</b>		
interior		<b>X</b>		
<u>Structures:</u> roads		<b>X</b>		Walkways and fencelines in overall satisfactory condition.
walkways		<b>X</b>		
fencelines		<b>X</b>		
others				
<b>PREMISES</b>				Premises in overall satisfactory condition.
clean, sanitary, orderly		<b>X</b>		
appropriate storage/use of hazardous materials	<b>X</b>			
<b>CHARACTER OF USE</b>				
adheres to lease purpose		<b>X</b>		

ITEM	SATISFACTORY?			COMMENTS/NOTES
	N/A	YES	NO	
Other:				



