

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

October 14, 2022

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

PSF No: 21HD-020
Hawaii

Rescind Prior Board Action of October 8, 2021, Item D-7, Grant of Term, Non-Exclusive Quitclaim Easement to Lenore Lincoln LLC, Elizabeth L. Reis as Trustee for the Lei Clotilda Mathews Living Trust dated October 23, 2008, Frances J. Segundo as Trustee for The Francis and Frances Segundo Trust dated November 1, 2017, Patricia L. Rickard and Jon K. Lincoln, for Access and Utility Purposes, Lanihau 2nd, North Kona Hawaii, TMK: (3) 7-5-006:034 (por.).

BACKGROUND:

The applicants are in escrow on the sale of their hotel located on the adjacent private parcel. A preliminary title report indicated the private parcel was landlocked due to the State's ownership of a "road reserve" that lay between the private parcel and a county roadway.

The County of Hawaii Department of Public Works (County) denied ownership of the road reserve stating it was not in its inventory, however, wanted the road reserve to stay in government control in case future road widening necessitated the need for the subject parcel.

Land Division's position is that pursuant to Sections 171-2(3) and 264-1, Hawaii Revised Statutes, the Board of Land and Natural Resources (Board) has no jurisdiction over land used as roads, streets or highways. However, to avoid an impasse over the applicants' access issue, staff recommended the issuance of quitclaim easement for access and utility purposes across the subject parcel, which the Board approved at its meeting of October 8, 2021, under agenda item D-7. See attached Exhibit A for the subject submittal.

REMARKS:

The disposition was surveyed, appraised and paid for by Lenore Lincoln LLC (one of the applicants). All documentation was sent to the Department of the Attorney General (AG) for drafting of the quitclaim easement. The AG declined to process the disposition as a quitclaim easement, but indicated a regular easement or sale of the area as a remnant may be possible

depending on the State's title to the land. The AG and Land Division thereafter asked for the Department of Accounting and General Services, Survey Division and Land Division's abstractors to determine the ownership of the road reserve.

The results of this inquiry provided a determination from 1961 that the subject parcel was reserved by the County for future road widening by recommendation of the County's Chief Engineer.

Staff presented these findings to the County and the County has agreed that the subject parcel is part of a County road and, as such, the applicants' private land is not landlocked as the title report indicated.

The applicants now want to cancel their request for an easement and are seeking reimbursement of the consideration (\$10,800.00), document fee (\$30) and survey map fees (\$25) totaling \$10,855.00. They request the fees be reimbursed to Lenore Lincoln LLC, the payor.

Staff has no objections to the request and believes reimbursement is appropriate under the circumstances.

RECOMMENDATION: That the Board:

1. Rescind the prior Board action of October 8, 2021, under agenda item D-7; and
2. Reimburse fees and costs totaling \$10,855.00 to Lenore Lincoln LLC.

Respectfully Submitted,

Candace Martin

KCM

Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:

JCH

Suzanne D. Case

Suzanne D. Case, Chairperson

RT

EXHIBIT A

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

October 8, 2021

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

PSF No.:21HD-020

Hawaii

Grant of Term, Non-Exclusive Quitclaim Easement to Lenore Lincoln LLC, Elizabeth L. Reis as Trustee for the Lei Clotilda Mathews Living Trust dated October 23, 2008, Frances J. Segundo as Trustee for The Francis and Frances Segundo Trust dated November 1, 2017, Patricia L. Rickard and Jon K. Lincoln, for Access and Utility Purposes, Lanihau 2nd, North Kona, Hawaii, Tax Map Key: (3) 7-5-006:034 (por.).

APPLICANTS:

Lenore Lincoln LLC, a Hawaii corporation, Tenants in Common (33% interest);

Elizabeth L. Reis as Trustee for the Lei Clotilda Mathews Living Trust dated October 23, 2008, Tenants in Common (33% interest); and

Frances J. Segundo as Trustee for The Francis and Frances Segundo Trust dated November 1, 2017, Tenants in Common; Patricia L. Rickard, married, Tenants in Common; and Jon K. Lincoln, married, Tenants in Common (34% interest).

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Lanihau 2nd situated at Kailua Village, North Kona, Hawaii, identified by Tax Map Key: (3) 7-5-006:034, as shown on the attached map labeled Exhibit A.

AREA:

Approximately 300 square feet, more or less. Exact area to be determined by survey.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
October 8, 2021 up.

ZONING:

State Land Use District:	Urban	
County of Hawaii CZO:	V-.75	Resort-Hotel

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 Revocable Permit No. S-7580, Bougainvillea Plaza Limited Partnership,
Permittee, for parking with loading/unloading zone purposes.

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 and utility purposes.

TERM:

Sixty-five (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) § 11-200.1-16 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 Exemption
Class 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 Item 39 that states, "Creation or
termination of easement, covenants, or other rights in structures or land."

DCCA VERIFICATION:

Lenore Lincoln, LLC:

Place of business registration confirmed: YES
Registered business name confirmed: YES
Applicant in good standing confirmed: YES

Not applicable to all other applicants as they are either trusts or individuals and as such are not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant 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 Applicant's own cost.

REMARKS:

The subject parcel is a road reserve that is located between private land owned by the applicants and a county road, Likana Lane.

In March 1965, Land Patent Grant No. S-14,666 was issued to the adjacent landowner (predecessor of the current applicants), Thomas J. Lincoln, for half the depth of the original road reserve. It is unclear why the entire road reserve was not sold at that time.

In 1969, a hotel was built on the adjacent property and the purchased road reserve area was used as a parking lot for the hotel. The entrance to the parking lot is across the subject parcel and utilities to service the hotel have also been brought across the subject parcel (refer to Exhibit C – photo of entrance to hotel parking). The hotel property has no other access.

At its meeting of November 18, 1988, item F-1-c, the Board of Land and Natural Resources (Board) approved the issuance of a month-to-month revocable permit to Clyde Coatney for loading and unloading zone purposes. Clyde Coatney owned private land across Likana Lane from the subject parcel. At the time, the County of Hawaii requested that the subject parcel not be sold as a remnant but remain under public ownership as it will be needed in the future for road/traffic improvements. The county did not have any objections to the issuance of a revocable permit for the proposed use.

Revocable Permit S-6596 was issued January 1, 1989 and included provision B.13 which stated “Reserve unto the State of Hawaii an area sufficient for a driveway for access purpose to tax map key (3) 7-5-06:15”. This provision provides access to the applicant’s

parking lot, but there is no information in the file as to why this provision was included. Extensive research has not uncovered anything documenting a previous agreement to provide access across the subject parcel. However, provision B. 13 does suggest that access was intended at some point under some terms.

The applicants are the succedent owners of the adjacent hotel property and began reaching out to Land Division staff in April 2020. They have listed the hotel property for sale and a preliminary title report indicates there is “a lack of recorded access to a public street or highway”. The applicants have always thought they had access across the subject parcel to the county road, Likana Lane. The applicant’s legal property address is Likana Lane. They are now seeking to purchase an easement across the subject parcel to clear up the “lack of recorded access to a public street or highway”.

The submittal was sent out to various agencies for comments with the results as listed in the table below.

State Agencies	Response
DHHL	No Response
DOH- Environmental Planning	No Response
Hawaii County Agencies	Response
Planning	No Objections/Comments
Public Works	See comment in text
Other Agencies & Interested Parties	Response
Office of Hawaiian Affairs	No Response

Staff contacted the County of Hawaii, Public Works Division to inquire as to its interest in the subject parcel for future County use. It is noted that the County’s position has not changed since 1988, however it does not have any immediate plans to incorporate the subject parcel into its inventory.

The applicants are in escrow with a pending sale for the hotel property and need to secure legal access for the transaction to proceed. The County of Hawaii is not currently claiming ownership of the parcel and the State of Hawaii recognizes the parcel is a road reserve (not an actual road). In an effort to not hold up the process, staff is recommending the Board authorize the issuance of a quitclaim easement for access and utility purposes to the applicants. In the event that the County claims the property in the future for road widening purposes, access to hotel from a public road will be maintained.

The 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.

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 request to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (3) 7-5-006:015, 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 quitclaim grant of a term, non-exclusive easement to Lenore Lincoln LLC, Elizabeth L. Reis as Trustee for the Lei Clotilda Mathews Living Trust dated October 23, 2008, Frances J. Segundo as Trustee for The Francis and Frances Segundo Trust dated November 1, 2017, Patricia L. Rickard and Jon K. Lincoln covering the subject area for access and utility 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 quitclaim 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: (3) 7-5-006:015, 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,

Candace Martin

KCM

Candace Martin
Land Agent

APPROVED FOR SUBMITTAL: *JCH*

Suzanne D. Case

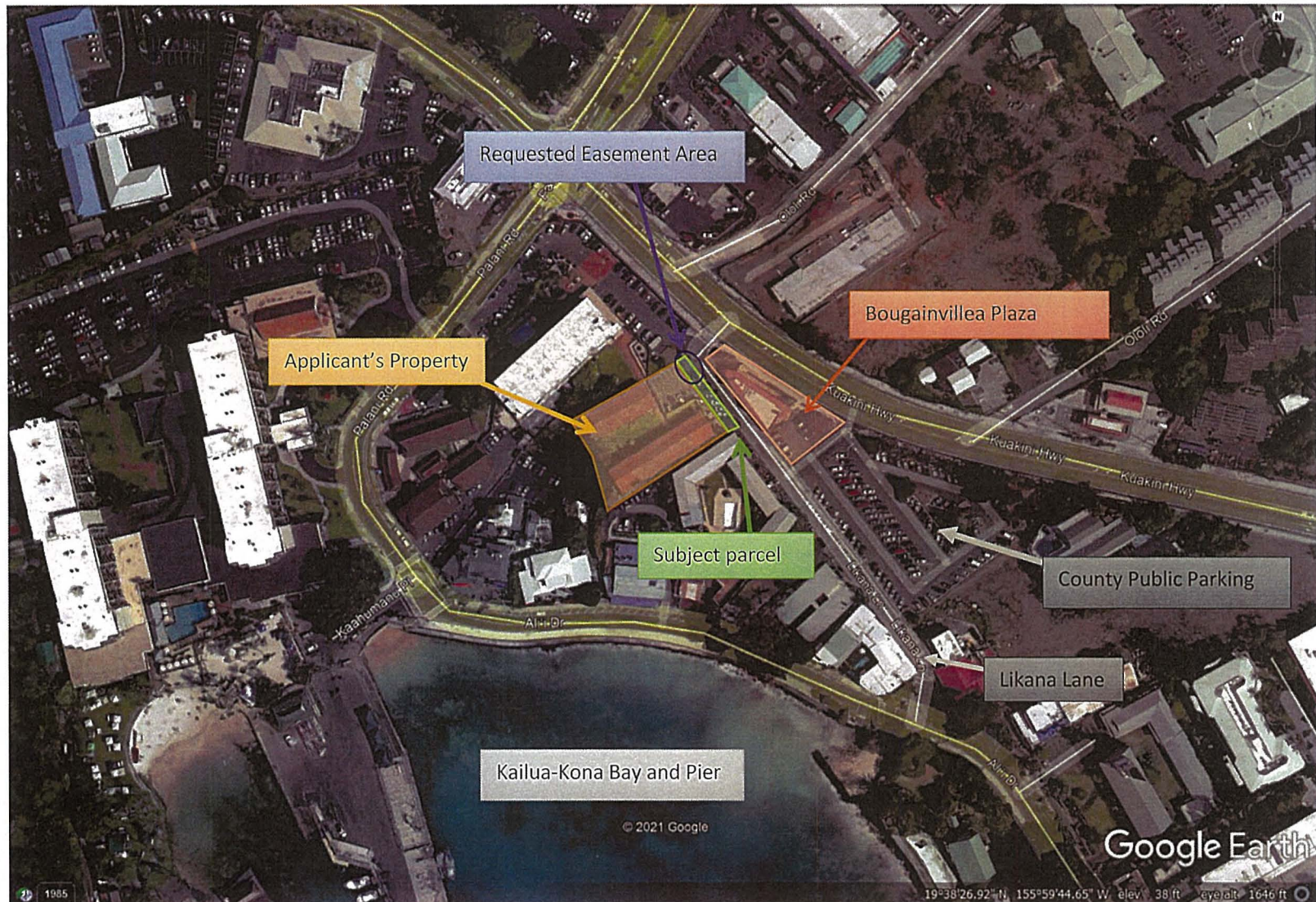
RT

Suzanne D. Case, Chairperson

Land Board Meeting: October 8, 2021; D-7: Approved as submitted.

Approved as submitted. (6 ayes and one abstention).

EXHIBIT A



DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

September 22, 2021

EXHIBIT B

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
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

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

Project Title:	Grant of Term, Non-Exclusive Quitclaim Easement to Lenore Lincoln LLC, Elizabeth L. Reis as Trustee for the Lei Clotilda Mathews Living Trust dated October 23, 2008, Frances J. Segundo as Trustee for The Francis and Frances Segundo Trust dated November 1, 2017, Patricia L. Rickard and Jon K. Lincoln, for Access and Utility Purposes.
Project / Reference No.:	PSF 21HD-020
Project Location:	Lanikai 2 nd , North Kona, Hawaii, Tax Map Key: (3) 7-5-006:034.
Project Description:	Easement for access and utilities.
Chap. 343 Trigger(s):	Use of State Land.
Exemption Class No.:	In accordance with Hawaii Administrative Rule Section 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council and dated November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class 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 Item 39, "Creation or termination of easement, covenants, or other rights in structures or land."
Cumulative Impact of Planned Successive Actions in Same Place Significant?:	No. The requested easement is to legitimize an existing driveway and utility line crossing that has been in use since at least 1969 and have not had a significant impact.

Action may have
Significant Impact on
Particularly Sensitive
Environment?:

No. The parcel is zoned resort-hotel and the surrounding area is developed in accordance with the zoning. Not a sensitive environment.

Consulted Parties:

State of Hawaii:
DHHL, DOH-Environmental Planning
County of Hawaii:
Planning Department, Public Works
Other Agencies:
Office of Hawaiian Affairs

These agencies were consulted on the propriety of the HRS Chapter 343 exemption, and expressed no comments in opposition to the exemption.

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.

EXHIBIT C

