

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

May 12, 2023

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.);*

Reimburse 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 Easement Consideration, Document Fee and Map Fee Previously Paid to the Department;

Quitclaim of State's Interests, if Any, in Remnant Road Reserve to the County of Hawaii, North Kona, Hawaii, TMK: (3) 7-5-006:034 (por.)

APPLICANTS:

Applicants Under the Action of October 8, 2021, Item D-7 (to be Rescinded):

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).

The foregoing persons are referred to collectively hereafter as “Parcel 15 Owners.”

Applicant Under Current Request for Quitclaim of Remnant Road Reserve:

County of Hawaii (“County”).

LEGAL REFERENCE:

Sections 171-52, -95, 264-1 and -2, 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 1.

AREA:

2,634 square feet, more or less.

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:

Formerly encumbered by Revocable Permit No. S-7580, Bougainvillea Plaza Limited Partnership, Permittee, for parking with loading/unloading zone purposes. The permit was not renewed for 2023.

CONSIDERATION:

Gratis. This is a quitclaim conveyance of a remnant road reserve to the County of Hawaii. It is the Department’s position that the road reserve is already owned by the County and the subject quitclaim conveyance is only intended to address a

legal access issue the Parcel 15 Owners are experiencing with respect to the private property designated as Tax Map Key: (3) 7-5-006:015.

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 37 that states, "Transfer of title to land." The proposed quitclaim conveyance of the remnant road reserve to the County 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.

REMARKS:

Background:

The Parcel 15 Owners are in escrow on the sale of their hotel located on their private parcel identified as Tax Map Key: (3) 7-5-006:015 (Parcel 15), which is adjacent to the subject remnant road reserve. A preliminary title report indicated that Parcel 15 was landlocked due to the State's ownership of a "road reserve" that lay between Parcel 15 and a county roadway called Likana Lane.

The County Department of Public Works 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 use of 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 Parcel 15 Owners' access issue, staff recommended the issuance of a 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 2 for the subject submittal.

The disposition was surveyed, appraised and paid for by Lenore Lincoln LLC (one of the Parcel 15 Owners). However, Land Division was not able to proceed

with the documentation of a quitclaim easement due to legal questions such a disposition raised. Land Division then asked the Department of Accounting and General Services, Survey Division, and Land Division's abstractors to determine the ownership of the road reserve.

There was 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.

After discussing a quitclaim easement with the Department of the Attorney General, we determined that the State could instead quitclaim its interest (if any) to the County, since both the State and County agree that the parcel was reserved for the County for widening of a County road.

Accordingly, at the Board meeting of October 28, 2022, agenda Item D-7, staff recommended the rescission of the grant of quitclaim easement that the Board had authorized at its meeting of October 8, 2021, Item D-7, and the reimbursement to Applicants of the consideration paid for the easement (\$10,800.00), document fee (\$30) and survey map fees (\$25) totaling \$10,855. However, a representative of the Parcel 15 Owners, Laura Chong, testified at the meeting and explained that the title company the Parcel 15 Owners are working with still would not recognize legal access to Parcel 15 over the road reserve. Additionally, Ms. Chong requested reimbursement of amounts she paid for the survey of the easement (\$2,415) and for the cost of the appraisal by the State (\$4,500).

The Board deferred action on the matter on October 28, 2022, under Agenda Item D-7, as the Chairperson wanted additional time to discuss with staff.

Quitclaim to County of Hawaii:

After the Board meeting of October 28, 2022, the Chairperson and staff met with a representative of Title Guaranty of Hawaii, Inc. (TG), Lorrin Hirano, who indicated that if the State were to quitclaim its interest in the road reserve to the County, TG would then recognize Parcel 15 as has having legal access to a public road. Land Division discussed this proposal with the County who submitted a letter dated February 24, 2023 requesting conveyance of the road reserve to it. See Exhibit 3 attached. Now staff is bringing this item to the Board to quitclaim the road reserve to the County as a remnant.

Pursuant to section 171-52, HRS, a remnant is defined as "a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other

characteristics." The subject parcel has been determined to be a remnant by this definition for the following reasons:

The parcel is a remnant road reserve with an area of 2,634 square feet, more or less, which meets the definition of a county highway under the Highways Act, Chapter 264, HRS, is therefore already owned by the County, and, as a result, is unsuitable for development by the Department.

In addition to the authority cited above, pursuant to Section 171-95(a)(5), HRS, the Board may:

Execute quitclaim deeds to the governments and agencies, with or without consideration, releasing any claim to the property involved made upon disputed legal or equitable grounds, whenever the board in its discretion deems it beneficial to the State

In the present case, it is beneficial to the State to quitclaim the remnant road reserve to the County in the interest of resolving concerns about public access over the land.

Reimbursement:

The Department recommends only a reimbursement for the amounts paid for the easement based on the fair market value appraisal (\$10,800), document fee (\$30) and survey map fees (\$25) for a total of \$10,855. In addition, the Parcel 15 Owners are asking for reimbursements for amounts they paid to a private surveyor (\$2,415) to map the easement corridor and for the cost of the State's appraisal (\$4,500) to determine the easement consideration. The Department disagrees with paying these latter amounts since they were costs paid to third-party consultants for work performed. The surveyor was hired by and paid directly by the Parcel 15 Owners and the appraisal fee was paid by the Parcel 15 Owners to the Department to pay the appraiser for services rendered—for valuing the easement that had been applied for by the Parcel 15 Owners. The Department is unable to reimburse these costs already paid to third-party consultants.

RECOMMENDATION: That the Board:

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

3. Find that the subject land is economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics, including the fact that the land is a road reserve owned by the County of Hawaii by operation of law, and, therefore, by definition is a remnant pursuant to Chapter 171, HRS.
4. 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;
5. Determine that executing a quitclaim deed to the County of Hawaii is beneficial to the State and authorize the quitclaim of interests, if any, the State may have in the subject remnant road reserve to the County of Hawaii covering the subject area, subject to 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 deed 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.

Respectfully Submitted,

Candace Martin

KEM

Candace Martin
Land Agent

APPROVED FOR SUBMITTAL: *gch*



Dawn N. S. Chang, Chairperson

RT

EXHIBIT 1

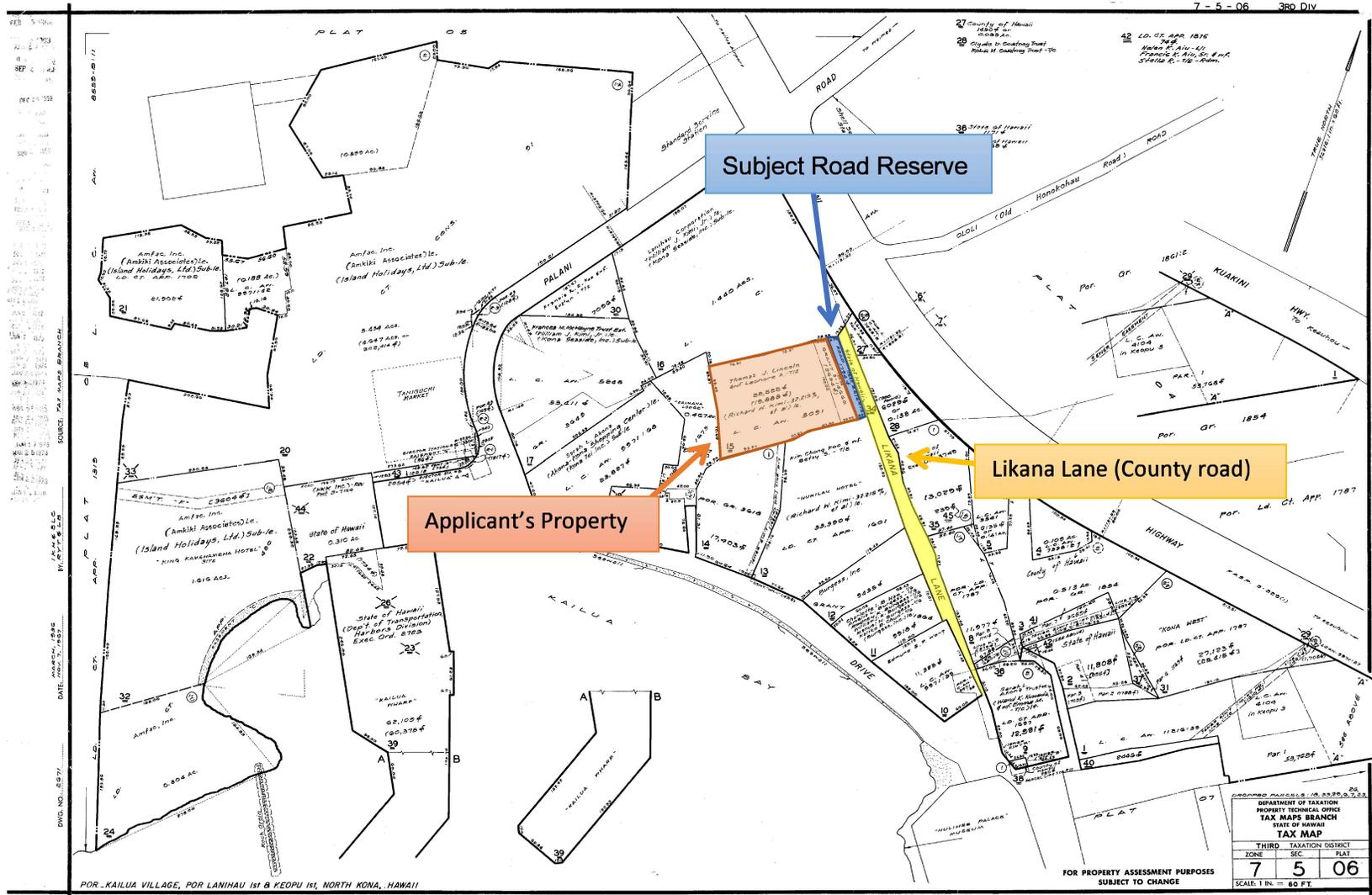


EXHIBIT 2

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

KM

Candace Martin
Land Agent

APPROVED FOR SUBMITTAL: *JCA*

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: Lanihau 2nd, 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:

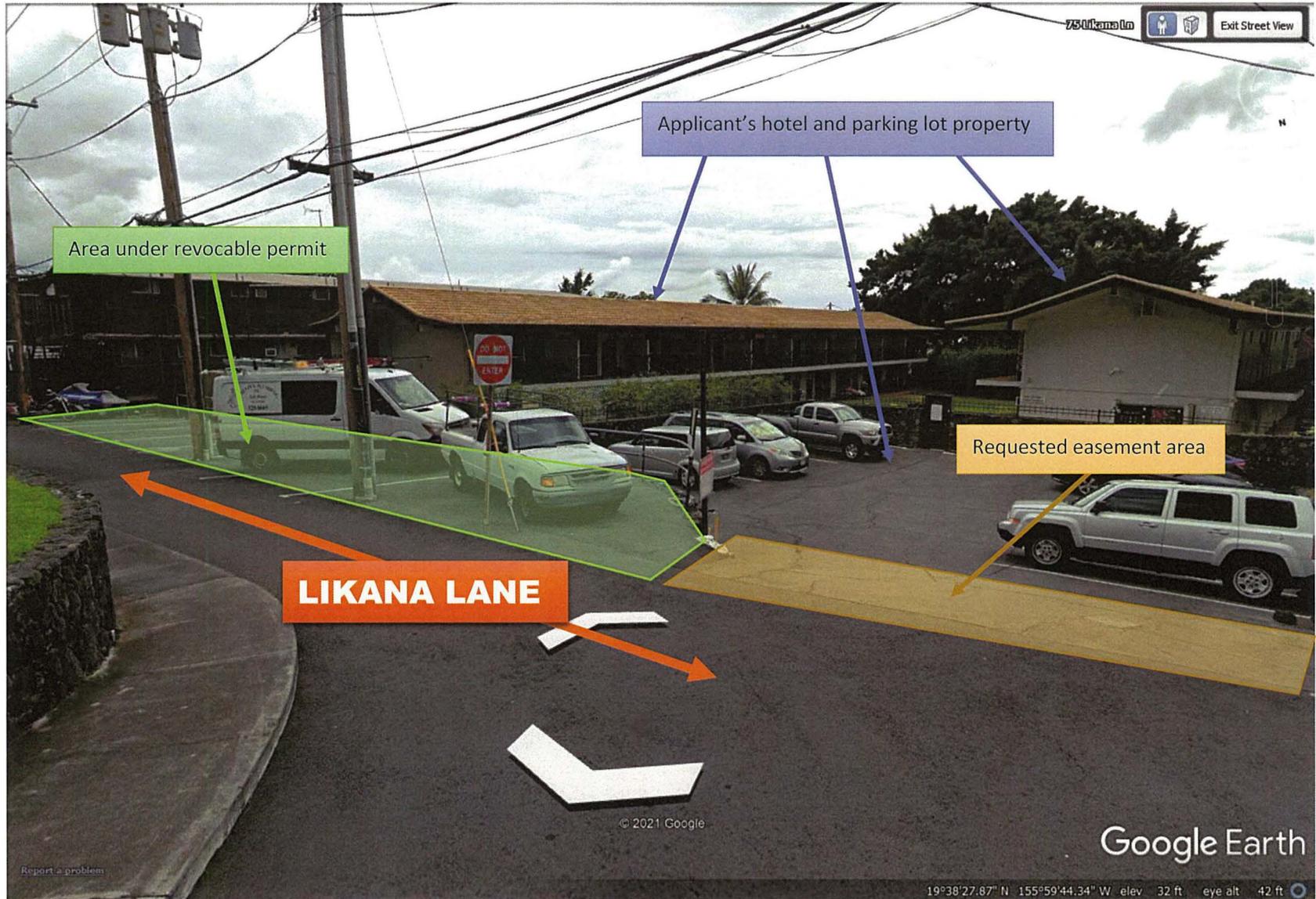
State of Hawaii:
DHHL, DOH-Environmental Planning
County of Hawaii:
Planning Department, Public Works
Other Agencies:
Office of Hawaiian Affairs

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



Mitchell D. Roth
Mayor



Lee E. Lord
Managing Director

Robert H. Command
Deputy Managing Director

County of Hawai'i
Office of the Mayor

25 Aupuni Street, Suite 2603 • Hilo, Hawai'i 96720 • (808) 961-8211 • Fax (808) 961-6553
KONA: 74-5044 Ane Keohokalole Hwy., Bldg C • Kailua-Kona, Hawai'i 96740
(808) 323-4444 • Fax (808) 323-4440

February 24, 2023

Ms. Dawn N.S. Chang, Chairperson
Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawai'i 96813

Subject: Acquisition of Road Remnant, TMK (3) 7-5-006-:034, North Kona, Hawai'i

Dear Ms. Chang:

The County of Hawai'i is interested in acquiring the above-referenced road remnant parcel from the State of Hawai'i. We believe County ownership of this parcel will benefit the public by providing public parking, which is much needed in urban Kona and provide surrounding parcels access to the County right-of-way Likana Lane.

We respectfully request your presentation of this land conveyance request to the board. This request is being made to clear title for the subject property. Should you have any questions or further requirements, please contact Keone Thompson, Department of Public Works Engineering Division Chief at [REDACTED] with any questions or concerns.

With Aloha,

Mitchell D. Roth, Mayor
County of Hawaii

cc: Stephen Pause, P.E. Director, Department of Public Works
Keone Thompson, Engineering Division Chief, Department of Public Works
Kevin Moore, DLNR Assistant Administrator