

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

April 26, 2024

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

PSF: 24KD-028

Kauai

Approve One or More Dispositions to Applicants RP21 Coco Palms LLC and/or I Ola Wailuanui, Inc. and/or Sale of Lease at Public Auction, or No Action for Parcel B, Wailua, Kawaihau, Kauai, TMK: (4) 4-1-003:017 as Follows:

- Option B1: Issuance of Term, Non-Exclusive Easement to RP21 Coco Palms LLC for Access Purposes, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-003: portion of 017 (Parcel B);
- Option B2: Issuance of Term, Non-Exclusive Easement to RP21 Coco Palms LLC for Access and Landscaping Purposes, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-003: 017 (Parcel B);
- Option B3: Issuance of Direct Lease to I Ola Wailuanui, Inc. for Parking, Landscaping and Beautification Purposes, Subject to Access Easement(s) in Favor of RP21 Coco Palms LLC, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-003:017 (Parcel B);
- Option B4: Sale of Lease at Public Auction for Access, Parking and Landscaping Purposes, Subject to Access Easement(s) in Favor of RP21 Coco Palms LLC, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-003:017 (Parcel B);
- Option B5: No Action, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-003:017 (Parcel B).

Approve One or More Dispositions to Applicants RP21 Coco Palms LLC and/or I Ola Wailuanui, Inc. or No Action for Parcel C, Wailua, Kawaihau, Kauai, TMK: (4) 4-1-005:017, as Follows:

- Option C1: Issuance of Term, Non-Exclusive Easement to RP21 Coco Palms LLC for Encroachment and Related Purposes Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-005: portions of 017 (Parcel C);
- Option C2: Issuance of Term, Non-Exclusive Easement to RP21 Coco Palms LLC for

Encroachment, Landscaping and Related Purposes Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-005:017 (Parcel C);

- Option C3: Issuance of Direct Lease to I Ola Wailuanui, Inc. for Public Access and Shoreline Preservation Initiatives, Subject to Term, Non-Exclusive Easement to RP21 Coco Palms LLC for Encroachment and Related Purposes, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-005:017 (Parcel C); and/or
- Option C4: Issuance of Direct Lease to I Ola Wailuanui, Inc. for Public Access and Shoreline Preservation Initiatives (Not Subject to Any Easement in Favor of RP21 Coco Palms LLC), Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-005:017 (Parcel C);
- Option C5: No Action, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-005:017 (Parcel C).

BACKGROUND:

At its meeting of December 7, 2023, under Agenda Item D-6, the Board of Land and Natural Resources (Board) approved the grant of one-year, non-exclusive easements to each of RP21 Coco Palms LLC (RP21CP) and I Ola Wailuanui (IOW) for access purposes over a 440 square foot portion of Parcel A, designated as Tax Map Key: (4) 4-1-003:044. The Board directed staff to return to the Board in January 2024 with a submittal recommending dispositions to RP21CP and/or IOW over the two remaining parcels that are the subject of the submittal: Parcel B, designated at TMK: (4) 4-1-003:017, and Parcel C, designated as TMK: (4) 4-1-005:017. At its meeting of January 12, 2024, under Agenda Item D-1, as amended, the Board gave staff 90 days from January 26, 2024 to bring the matter back to the Board.

APPLICANTS:

RP21 Coco Palms LLC (RP21CP), a Utah limited liability company.

I Ola Wailuanui (IOW), a Hawaii non-profit organization and an Internal Revenue Code Section 501(c)(3) qualified nonprofit entity.

LEGAL AUTHORITY:

Sections 171-13, -14, -16, -17, -41, -43.1, Hawaii Revised Statutes, as amended.

LOCATIONS:

Portions of Government lands of Wailua situated at Kawaihau, Kauai, Hawaii, identified by Tax Map Keys: (4) 4-1-003:044 (“Parcel A”), (4) 4-1-003:017 (“Parcel B”) and (4) 4-1-005:017 (“Parcel C”), as shown on the attached maps labeled Exhibit 1, 2 and 3. The entire resort property is shown on attached maps labeled Exhibit 4.

AREA:

As shown on the attached maps labeled Exhibit 1, 2 and 3. See also table below.

TMK (4):	Parcel Letter	Parcel Area	Encumbrances
4-1-003:044	Parcel A	17,964 sf	Encumbered by EO 2744 to the County of Kauai for sewage pumping station and emergency power generator. Board approved one-year access easements to RP21CP and IOW at its meeting of 12/7/23, Item D-6, as amended.
4-1-003:017	Parcel B	0.855 ac	Encumbered by 25-foot wide perpetual access easement to RP21CP under LOD 12850.
4-1-005:017	Parcel C	5,244 sf	Unencumbered with encroachments.

CURRENT USE STATUS:

Both Parcel B and Parcel C are part of the Coco Palms Resort Historic District (Historic District) under the State and National Historic Registers. The existing parking area on Parcel B is located at the south end of the Historic District. Pursuant to conditions in the County's building permits, RP21CP is required to provide for at least 20 parking stalls that are for public beachgoers use only (see attached Exhibit 5). Even if RP21CP were to accommodate the County's request by utilizing its adjacent private property, an access easement over and across the State parcel in favor of RP21CP would be necessary. Parcel B is currently vacant and fenced off.

Parcel B, TMK: (4) 4-1-003:017: Encumbered by Land Office Deed No. S-12850 (LOD 12850), for a perpetual access easement in favor of RP21CP (as successor in interest to Island Holidays, Limited et al.). Although RP21CP already has a perpetual easement for access, due to a recent Department of Transportation (DOT) road widening project in the area, access for ingress/egress to and from the hotel entrance is no longer feasible if only using the area described under LOD 12850. Parcel B was previously under revocable permits to the predecessors-in-interest of RP21CP for parking and landscaping purposes, the last of which expired as of December 31, 2023. Portions of Parcel B have historically been used for parking and a small portion of the parcel had previously been paved and/or consists of what appears to be compacted base-rock. Any additional construction or expansion of paved area will most likely require an EA or EIS.

Parcel C, TMK: (4) 4-1-005:017: Portion encumbered by Executive Order 4317 (EO 4317) to the Department of Transportation for bike and pedestrian path purposes. The restaurant on the adjoining fee simple property owned by RP21CP is currently vacant, but a portion

of a rock wall, stairs and cement pads are existing on Parcel C. It should be noted that the improvements on Parcel C, as well as the improvements on the adjoining private property, are listed on the State and National Historic Registries.

OPTIONS FOR PARCEL B:

Option B1:

Issuance of Term, Non-Exclusive Easement to RP21CP for Access Purposes, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-003: portion of 017. As noted above, there is already a perpetual easement in favor RP21CP (as successor in interest to Island Holidays, Limited et al.,) over another portion of Parcel B pursuant to LOD 12850, but due to a recent DOT road widening project in the area, access for ingress/egress to and from the hotel entrance is no longer feasible if only using the area described under LOD 12850. Under this option, the area outside of the access easement corridors would remain vacant, unencumbered land and maintenance of that area would likely be a burden on Land Division. For this reason, staff recommends this option only be approved in conjunction with Option B4 discussed below (sale of lease at public auction for parking and landscaping purposes).

Option B2:

Issuance of Term, Non-Exclusive Easement to RP21CP for Access and Landscaping Purposes, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-003: 017. Option B2 is a variant of Option B1 that would authorize RP21CP to landscape and maintain the entire parcel under a non-exclusive easement, which would relieve Land Division of maintenance obligations for the parcel. Under this option, RP21CP would not be able to exclude the public from any portion of the parcel.

RP21CP additionally proposed to provide for a minimum of 20 public parking spaces on Parcel B as well as construct a comfort station on its abutting fee simple land for the public's use. There is little to no public parking in the area for those who want to use the beach across the road from the hotel and a County owned public shower was removed from their beach park area due to coastal erosion.

Option B3:

Issuance of Direct Lease to IOW for Parking, Landscaping and Beautification Purposes, Subject to Access Easement(s) in favor of RP21CP, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-003: 017. A direct lease to IOW would necessarily be subject to the perpetual easement in favor of RP21CP or its predecessor-in-interest, and may also be subject to a separate term, non-exclusive easement for access in favor or RP21CP if approved by the Board.

Options B1, B2 and B3 would allow for one or both parties to use portions of Parcel B. IOW plans on removing invasive species and replanting native plants, and installation of

culturally appropriate informational signage. IOW would provide for some public parking if there is enough area to allow for it on the portion of the parcel that had previously been paved and/or consists of what appears to be compacted base-rock. IOW previously proposed the construction of an aboveground waste management system on Parcel B. However, such an improvement would require an environmental assessment, which IOW has not conducted. Accordingly, IOW withdrew the proposal for the waste management system in its most recent application for use of the area. RP21CP would be allowed to use portions of this parcel for access to its abutting fee simple hotel. The direct lease to IOW would be subject to RP21CP's existing perpetual easement and an additional term easement (if approved by the Board). Under a direct lease, IOW would be prohibited from making any use of the property that would unreasonably interfere with RP21CP's easements.

Option B4:

Sale of Lease at Public Auction for Parking, Landscaping and Beautification Purposes, Subject to Access Easement(s) in favor of RP21CP, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-003:017. As noted above, there is already a perpetual easement in favor of RP21CP or its predecessor-in-interest over another portion of Parcel B pursuant to LOD 12850, and RP21CP seeks an additional easement by the present Board action. Under this option, the successful bidder at auction would be able to use Parcel B, subject to the non-exclusive access easement(s) in favor of RP21CP.

Option B4 would allow for both IOW and RP21CP (as well as any other interested parties) an equal chance at use of the entire parcel for uses that do not trigger an environmental assessment (EA) or environmental impact statement (EIS).

Option B5:

No Action, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-003:017 (Parcel B).

Option B5 would allow for the Land Board to take no action on this parcel at this time and the parcel would remain unencumbered indefinitely (with the exception of the existing perpetual access easement across the parcel) and under the management of the Land Division.

OPTIONS FOR PARCEL C:

Option C1:

Issuance of Term, Non-Exclusive Easement to RP21CP for Encroachment and Related Purposes, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-005: portions of 017.

Option C1 would allow for the maintenance of encroaching structures on Parcel C (including portion of restaurant structure, sidewalks, and hardstands for outdoor dining tables) and allow for RP21CP's continued use of the encroachments for restaurant and

related purposes as the improvements are recorded with the National and State Historic Registries. Under this option, the area outside of the encroachment easement would remain vacant, unencumbered land and maintenance of that area would likely be a burden on Land Division. For this reason, staff recommends this option only be approved in conjunction with Option C3 discussed below (direct lease to IOW for public access and shoreline preservation initiatives, subject to term, non-exclusive easement to RP21CP for encroachment and related purposes).

Option C2:

Issuance of Term, Non-Exclusive Easement to RP21CP for Encroachment, Landscaping and Related Purposes, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-005:017.

Option C2 would allow for the maintenance of encroaching structures on Parcel C (including portion of restaurant structure, sidewalks, and hardstands for outdoor dining tables) and allow for RP21CP's continued use of the improvements as recorded with the National and State Historic Registries. RP21CP would be authorized to landscape and maintain the entire parcel but would not be able to exclude the public from any portion of it.

Option C3:

Issuance of Direct Lease to IOW for Public Access and Shoreline Preservation Initiatives, Subject to Term, Non-Exclusive Easement for to RP21CP for Encroachment and Related Purposes, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-005:017.

Option C3 would grant RP21CP an easement for the encroaching portions of its improvements on Parcel C but would otherwise give IOW the right to use the parcel for public access and shoreline preservation initiatives. Thus, Option C3 would allow for both parties to utilize portions of the parcel. Option C3 would allow the encroaching structures on Parcel C (including portion of restaurant structure, sidewalks, hardstands for outdoor dining tables) to remain and allow for RP21CP's continued use of the encroachments for restaurant and related purposes as the improvements are recorded with the National and State Historic Registries while also allowing IOW to maintain and beautify the remainder of the parcel.

Option C4:

Issuance of Direct Lease to IOW for Landscaping and Beautification Purposes, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-005: 017.

Option C4 would allow IOW to use the entire area of Parcel C without RP21CP having any right to maintain its encroachments in place. However, requiring RP21CP or IOW to remove the encroachments is problematic. Parcel C is in the Special Management Area and, as noted above, the improvements are on the National and State Registers of Historic Places. Removal of the encroaching improvements may trigger an EA/EIS before removal

could be permitted. Additionally, a portion of the existing stairs IOW would need to use to access Parcel C is located on RP21CP's private property. IOW would need to reach an agreement with RP21CP regarding the stairs before using them to access Parcel C.

IOW indicated in its application that its request is to utilize the property for public access and shoreline preservation initiatives. The viability of the requested use is questionable since the County already manages the makai area designated as TMK: (4) 4-1-005:004 (Parcel 4) as part of the County beach park. The County's Parcel 4 lies in between the State's Parcel C and the shoreline. The County's Parcel 4 already provides public access to the shoreline. Also, Land Division staff is unclear on the shoreline preservation initiatives IOW has planned, but IOW was informed that the State's Department of Transportation already has permits in place and is working on a new experimental sand saver project for that beach area. IOW would need to consult with SHPD, OCCL and/or the County in order to confirm whether IOW's plans for Parcel C would be allowed.

Option C5:

No Action, Wailua, Kawaihau, Kauai, Tax Map Key: (4) 4-1-005:017 (Parcel C). Option C5 would allow for the Land Board to take no action on this parcel at this time and the parcel would remain unencumbered indefinitely (with encroachments) and under the management of the Land Division. The State reserves its rights to require the removal of any and all encroachments at any time in the future.

TERM EASEMENTS TO RP21CP OVER PORTIONS OF PARCELS B AND C:

EASEMENT TERM:

30 years.

EASEMENT CHARACTER OF USE PARCEL B IF NO LEASE TO IOW:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across a portion of State-owned land for access purposes and for landscaping on entire parcel.

EASEMENT CHARACTER OF USE PARCEL B IF LEASE ISSUED TO IOW:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access purposes.

ACCESS EASEMENT AREA ON PARCEL B IF LEASE ISSUED TO IOW:

7,500 square feet, more or less (see approximate area as shown on Exhibit 6).

EASEMENT CHARACTER OF USE PARCEL C IF NO LEASE TO IOW:

Right, privilege and authority to use, maintain, repair, replace and remove existing encroachments, including portions of a restaurant structure, sidewalks, and hardstands for outdoor dining tables over, under and across State-owned land, and to use such encroachments for restaurant and related purposes, and to landscape and maintain the entire parcel.

EASEMENT CHARACTER OF USE PARCEL C IF LEASE ISSUED TO IOW:

Right, privilege and authority to use, maintain, repair, replace and remove existing encroachments, including portions of a restaurant structure, sidewalks, and hardstands for outdoor dining tables over, under and across State-owned land, and to use such encroachments for restaurant and related purposes.

EASEMENT COMMENCEMENT DATE:

To be determined by the Chairperson.

EASEMENT CONSIDERATION:

Separate one-time payments for each easement to be determined by independent appraisal establishing fair market rents, subject to review and approval by the Chairperson.

APPLICANT REQUIREMENTS FOR EASEMENTS TO RP21CP:

Applicant RP21CP shall be required to:

- 1) Pay for an appraisal to determine initial rent or one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at RP21CP's own cost; and
- 3) Obtain a title report to ascertain ownership, where necessary, at RP21CP's own cost and subject to review and approval by the Department.

PARCELS B AND C DIRECT LEASE TO IOW:

CHARACTER OF USE FOR PARCEL B:

Parking, landscaping and beautification purposes.

CHARACTER OF USE FOR PARCEL C:

Public Access and Shoreline Preservation Initiatives.

LEASE TERM:

Thirty (30) years.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL LEASE RENT:

\$480 per year based on the Board’s current minimum rent policy for rents to eleemosynary organizations if the Board were to find that IOW’s proposed use provides a public benefit.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

The annual rental shall be reopened and redetermined at the 10th and 20th years of the lease term based on the Board’s then prevailing Minimum Rent Policy for eleemosynary organizations if the Board were to find that IOW’s proposed use provides a public benefit.

PERFORMANCE BOND:

Twice the annual rental amount.

APPLICANT REQUIREMENTS FOR DIRECT LEASES TO IOW:

Applicant IOW shall be required to:

- 1) Pay for an appraisal to determine fair market rent under the lease in the event the Board does not approve nominal rent;
- 2) Provide survey maps and descriptions according to State DAGS standards and at IOW’s own cost; and
- 3) Obtain a title report to ascertain ownership, where necessary, at IOW’s own cost and subject to review and approval by the Department.

AUCTION LEASE OF PARCEL B:

CHARACTER OF USE:

Access, parking and landscaping purposes.

LEASE TERM:

Forty (40) years.

COMMENCEMENT DATE:

Sixty (60) days after the date of sale; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

MINIMUM UPSET ANNUAL RENT:

To be determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson. The appraisal shall determine the upset rent for land for the first 10 years of the lease, as well as the fair market rent for the second 10-year period of the lease to provide the successful bidder with rent certainty for the first 20 years of the lease. Rent for the remaining 20-year period of the lease shall be reopened in accordance with HRS Section 171-17(d), and the terms and conditions of the State's most current standard form lease.

REIMBURSE STATE AND PAY COSTS:

The successful bidder at auction shall be required to reimburse the State for the cost of the appraisal setting the upset rent pursuant to Section 171-17(a), HRS, and for any survey costs required to prepare a CSF map and description for the property, and will also have to pay document, map and publication fees.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 20th and 30th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities – None

Existing Improvements – None

Legal access to property – Staff has verified that there is legal access to the property off of Kuamoo Road.

Subdivision – Staff has verified that the subject property to be auctioned is a legally subdivided lot.

Encumbrances – Staff has verified that LOD 12850, in favor of RP21CP (as successor in interest to Island Holidays, Limited et al.), for a perpetual access easement, exists on the property. The lease of the parcel will be sold at auction subject to easement LOD 12850 and any additional easement(s) that may be granted by the Board.

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 requests are exempt from the preparation of an environmental assessment pursuant to General Exemption Type 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,” Part 1, Item 39, that states, “Creation or termination of easement, covenants, or other rights in structures or land,” Item 40, that states, “Leases of state land involving negligible or no expansion or change of use beyond that previously existing.”

Portions of Parcel B have historically been used for parking and a small portion of the parcel had previously been paved and/or consists of what appears to be compacted base-rock.

REMARKS:

RP21CP and IOW have both applied for long-term dispositions Parcels B and C.

RP21CP wishes to continue use of the parcels as previous hotel owners had done in the past under various revocable permits.

Land Division (LD) believes IOW’s proposed vision for the land would be challenging to implement using just Parcels B and C alone (Parcel A is already encumbered by EO 2744 to the County and is not available for disposition apart from access easements to which the County may consent). Parcel C has limited access options due to its configuration and location. If IOW is granted a lease of the area and is unable to work out an agreement with RP21CP regarding use of the access stairs, then IOW will have difficulty accessing a large portion of the parcel since the only access points would include the stairs that are partially on RP21CP’s fee simple private land or a walk up the rock riprap extending from the shoreline and the County’s EO area.

Parcel B:

A lease auction will allow for all parties an equal chance at use of the entire parcel. This will also allow for the State to collect a maximum amount of rent for the parcel. Board approval of Option B4 would allow this to happen.

Parcel C:

The unusual shape, small size and location of Parcel C may make it difficult to utilize as a standalone parcel.

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, the proposed dispositions will probably have minimal or no significant effect on the environment and are therefore exempt from the preparation of an environmental assessment.
2. Find that any area to be leased by direct negotiation or public auction is an economic unit in terms of the intended use and that such areas are not suitable for hunting, nor will they become so during the term of the lease.
3. Approve one or more of the following options as it deems appropriate for Parcel B, Wailua, Kawaihau, Kauai, TMK: (4) 4-1-003:017:

Option B1: Subject to the Applicant RP21 Coco Palms LLC fulfilling all of the Applicant requirements listed above applicable to it, authorize the issuance of term, non-exclusive easement to RP21 Coco Palms LLC for access purposes, under the applicable 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: (4) 4-1-003:007, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other 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.

Option B2: Subject to the Applicant RP21 Coco Palms LLC fulfilling all of the applicant requirements listed above applicable to it, authorize the issuance of a term, non-exclusive easement to RP21 Coco Palms LLC for access and landscaping purposes, under the applicable 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: (4) 4-1-003:007, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other 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.

Option B3: Subject to the Applicant I Ola Wailuanui fulfilling all of the Applicant requirements listed above applicable to it, authorize the issuance of direct lease to I Ola Wailuanui for parking, landscaping and beautification purposes, subject to access easement(s) in favor of RP21 Coco Palms LLC, under the applicable 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 non-profit lease 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.

Option B4: Authorize the Sale of Lease at Public Auction for Access, Parking and Landscaping Purposes, Subject to Access Easement(s) in Favor of RP21 Coco Palms LLC, 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 business or commercial general lease 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.

Option B5: No action by the Land Board on this parcel at this time and the parcel would remain unencumbered indefinitely (with the exception of the existing perpetual access easement across the parcel) and under the management of the Land Division.

4. Approve one or more of the following options as it deems appropriate for Parcel C, Wailua, Kawaihau, Kauai, TMK: (4) 4-1-005:017:

Option C1: Subject to the Applicant RP21 Coco Palms LLC fulfilling all of the Applicant requirements listed above applicable to it, authorize the issuance of term, non-exclusive easement to RP21 Coco Palms LLC for Encroachment and Related Purposes, under the applicable 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: (4) 4-1-005:014, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other 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.

Option C2: Subject to the Applicant RP21 Coco Palms LLC fulfilling all of the Applicant requirements listed above applicable to it, authorize the issuance of term, non-exclusive easement to RP21 Coco Palms LLC for Encroachment, Landscaping and Related Purposes, under the applicable 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: (4) 4-1-005:014, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other 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.

Option C3: Subject to the Applicant I Ola Wailuanui fulfilling all of the Applicant requirements listed above applicable to it, authorize a direct lease to I Ola Wailuanui for public access and shoreline preservation initiatives, subject to a term, non-exclusive easement to RP21 Coco Palms LLC for encroachment and related purposes, under the applicable 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 non-profit lease 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.

Option C4: Subject to the Applicant I Ola Wailuanui fulfilling all of the Applicant requirements listed above applicable to it, authorize a direct lease to I Ola Wailuanui for public access and shoreline preservation initiatives (not subject to any easement in favor of RP21 Coco Palms LLC), under the applicable 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 non-profit lease 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.

Option C5: No action by the Land Board on this parcel at this time and the parcel would remain unencumbered indefinitely (with encroachments) and under the management of the Land Division. The State reserves its rights to require the removal of any and all encroachments at any time in the future.

5. Authorize the easement requests listed above to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Keys: (4) 4-1-003:007 and (4) 4-1-005:014, 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.

Respectfully Submitted,



Alison Neustein
District Land Agent

APPROVED FOR SUBMITTAL:



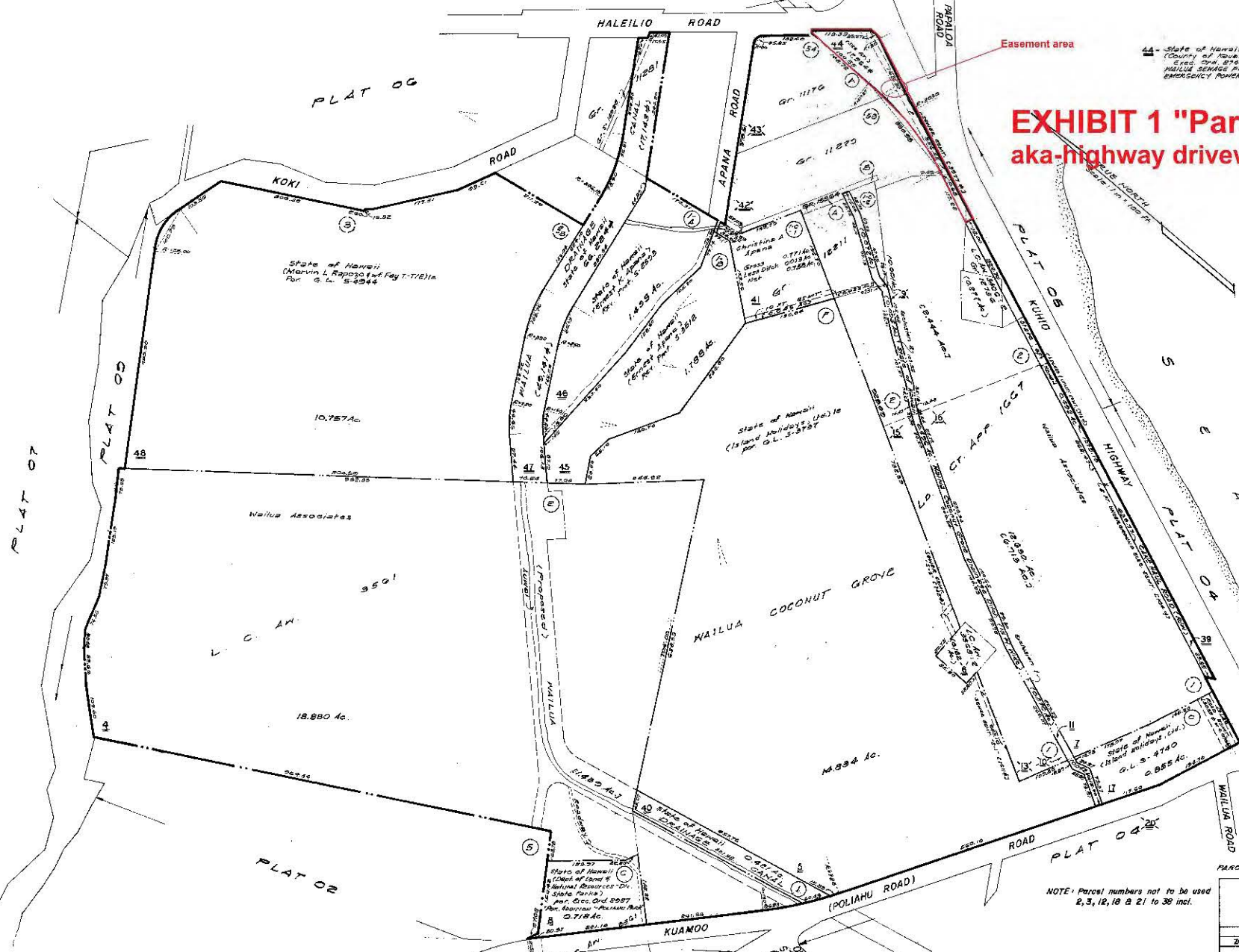
Dawn N.S. Chang, Chairperson

RT

Easement area

41 - State of Hawaii
(County of Kauai)
Exec. Ord. 8788
HAILEI SERVICE PLANNING STUDY &
EMERGENCY POWER GENERATOR SITE

EXHIBIT 1 "Parcel A" aka-highway driveway



DMC NO. 2-0-022
 Revised March 25, 1988
 BY: [unclear]
 DATE: [unclear]
 SOURCE: [unclear]

POR. KAWAIHAU, KAUAI, HAWAII

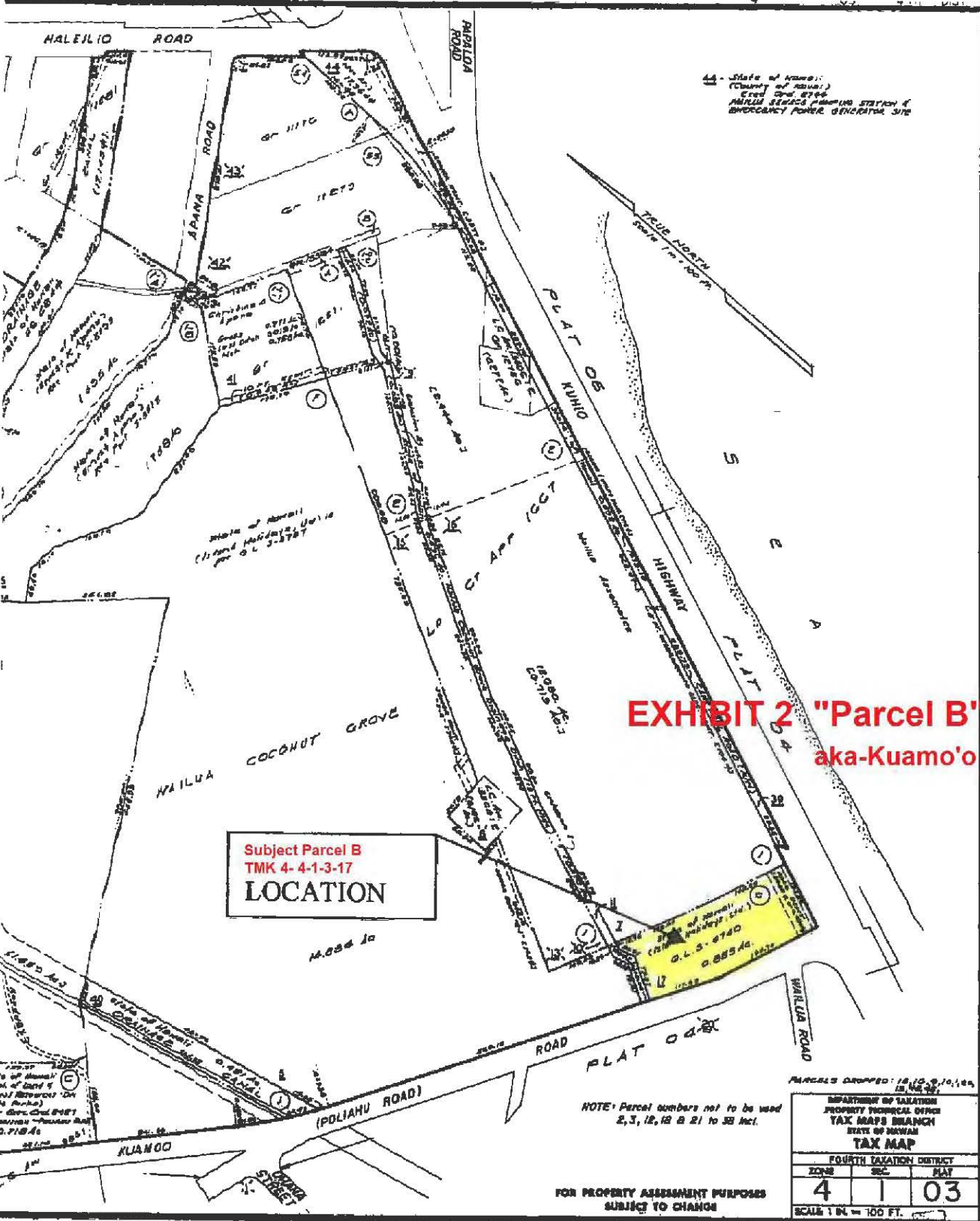
FDR PROPERTY ASSESSMENT PURPOSES
SUBJECT TO CHANGE

PARCELS DROPPED: 18, 19, 20, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

NOTE: Parcel numbers not to be used 2, 3, 12, 18 & 21 to 38 incl.

DEPARTMENT OF TAXATION PROPERTY TECHNICAL OFFICE TAX MAPS BRANCH STATE OF HAWAII TAX MAP		
FOURTH TAXATION DISTRICT		
ZONE	SEC.	PLAT
4	1	03

SCALE 1 IN. = 100 FT.



44 - State of Hawaii
 (County of Hawaii)
 1998 Ord. 8749
 HAILUA SEWER PUMPING STATION &
 EMERGENCY POWER GENERATOR SITE

EXHIBIT 2 "Parcel B"
 aka-Kuamo'o parcel

Subject Parcel B
TMK 4-4-1-3-17
LOCATION

NOTE: Parcel numbers not to be used
 2, 3, 12, 18 B 21 to 33 incl.

PARCELS DROPPED: 18, 19, 20, 10, 12, 15, 16, 21

DEPARTMENT OF TAXATION
 PROPERTY RECORDS OFFICE
 TAX MAPS BRANCH
 STATE OF HAWAII
TAX MAP

FOURTH TAXATION DISTRICT		
ZONE	SEC	PLAT
4	1	03

SCALE 1 IN. = 100 FT.

FOR PROPERTY ASSESSMENT PURPOSES
 SUBJECT TO CHANGE

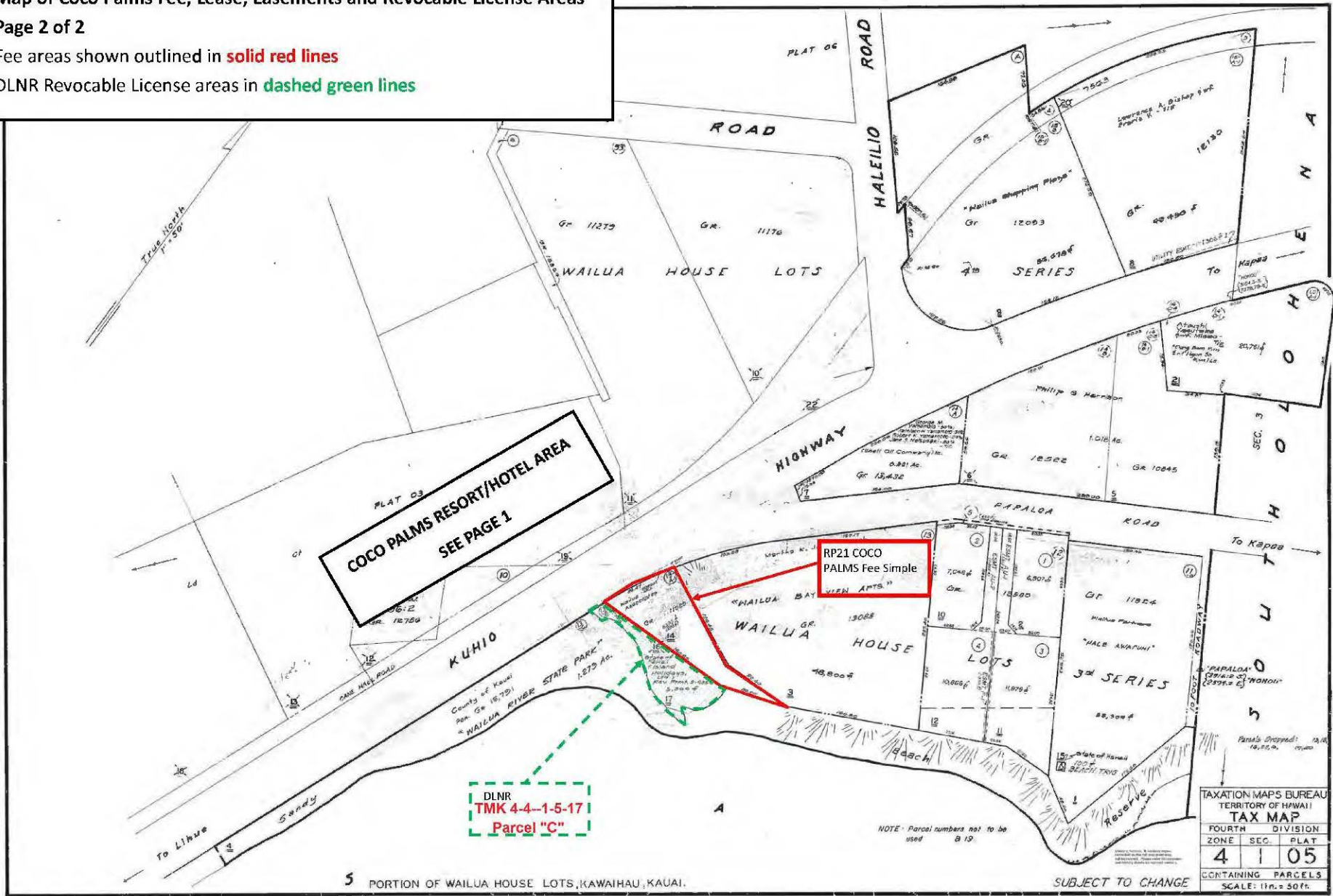
EXHIBIT 3 "Parcel C" aka-Shell Restaurant

Map of Coco Palms Fee, Lease, Easements and Revocable License Areas

Page 2 of 2

Fee areas shown outlined in **solid red lines**

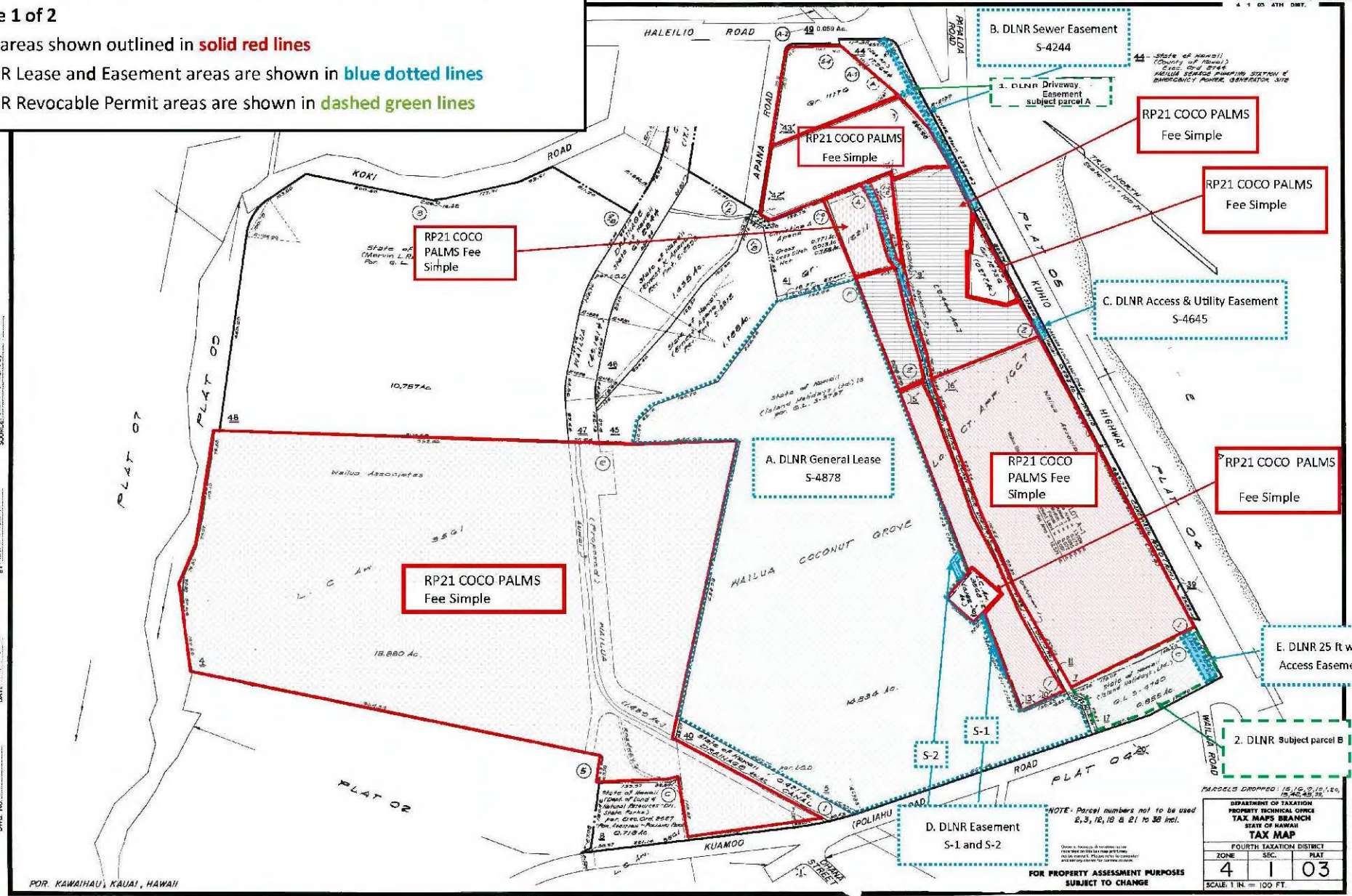
DLNR Revocable License areas in **dashed green lines**



TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
FOURTH DIVISION
ZONE SEC. PLAT
4 1 05
CONTAINING PARCELS
SCALE: 1 in. = 50 ft.

EXHIBIT 4 all property mauka of highway map

Map of Coco Palms Fee, Lease, Easements and Revocable License Areas
Page 1 of 2
 Fee areas shown outlined in **solid red lines**
 DLNR Lease and Easement areas are shown in **blue dotted lines**
 DLNR Revocable Permit areas are shown in **dashed green lines**



DIVE NO. 2, 8380
 Revised 10/16/12
 DATE APPROVED
 BY: JACOB T. ASHLEY
 SOURCE: DEPARTMENT OF TAXATION

POR. KAWAIIHAU, KAUI, HAWAII

NOTE: Parcel numbers not to be used
 2, 3, 12, 19 & 21 to 30 incl.

FOR PROPERTY ASSESSMENT PURPOSES
 SUBJECT TO CHANGE

PARCELS DROPPED: 10, 12, 19, 10, 12, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

DEPARTMENT OF TAXATION
 PROPERTY TECHNICAL OFFICE
 TAX MAPS BRANCH
 STATE OF HAWAII

TAX MAP

FOURTH TAXATION DISTRICT		
ZONE	SEC.	PLAT
4	1	03

SCALE: 1 IN. = 100 FT.

DAVID Y IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

FORD N. FUCHIGAMI
DIRECTOR

Deputy Director
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:
HWY-PS 2.5417

August 10, 2017

Mr. Michael A. Dahilig
Director
Planning Department
County of Kauai
444 Rice Street, Suite A-473
Lihue, Hawaii 96766-1326

Dear Mr. Dahilig:

Subject: Coco Palms Hui, LLC for Coco Palms Resort
Class IV Zoning Permit Z-IV-2015-8, Project Development Use Permit PDU 2015-7
Variance Permit V-2015-1, and Special Management Area Use Permit SMA (U)-2015-6
Wailua, Kawaihau, Kauai
TMK: (4) 4-1-003:004 (por.), 005, 007, 011 & 017, and (4) 4-1-005:014 & 017

The Coco Palms Hui, LLC is proposing rehabilitation work on the Coco Palms Resort that consists of 350 rooms including the rehabilitation of an off-site restaurant. It will also have a cultural center mauka of the resort. Vehicular access for the resort will be from Kuhio Highway where the primary accesses will be by driveways off Kuamoo Road and Apana Road, and secondary accesses directly off Kuhio Highway, a right-in access and right-out access. Access to Seashell Restaurant will be by shuttle service from Coco Palms Resort. Access to the cultural center will be from Kuamoo Road. A Traffic Impact Analysis Report (TIAR) dated February 9, 2015, has been submitted as part of the permit application and has an outstanding evaluation by the State Department of Transportation (HDOT).

The Coco Palms Resort abuts the State Route No. 56, Kuhio Highway at approximately milepost 6, and State Route No. 580, Kuamoo Road at approximately milepost 0. Kuhio Highway is functionally classified as a Principal Arterial and on the National Highway System. It is a significant highway for the island that it is the sole connection between the north and east side of the island with the Lihue urban center for the movement of people, goods and services. To expand on this importance, Kuhio Highway provides access and mobility to more than 40% of the island's population and about 30% of the island's employment. The integrity of this highway's functionality should be maintained in the interest of the public.

In accordance to the subject permit conditions dated October 21, 2016, that pertain to the State Highway System, the HDOT understands the Applicant, Coco Palms Hui, LLC shall comply with the following:

16. *Screening of the construction site during construction along Kuhio Highway and Kuamoo Road to be aesthetically consistent with current construction standards on Kauai while maintaining compatibility with the nature of the site sitting at a coastal gateway for the area. Screening shall be properly maintained in a manner acceptable to the Director until such time as the Applicant has completed all vertical improvements. Further, the Applicant shall work with the HDOT to provide landscaping along the strip of land fronting the property fronting Kuhio Highway and properly maintain this landscaping in perpetuity.*

18. *The Applicant shall provide 20 public parking spaces at the North end of the project site with signage identifying their use by beachgoers and those using public transit when the operator opens to the public the building of the project that is closest to the parking lot containing such public parking spaces. Further, the Applicant shall provide 20 stalls for parking with signage identifying their use by public beachgoers along the south end of the project. These stalls shall be clearly marked for public beachgoers use only. Also, the Applicant, at its own expense, shall work with the county to site, design, construct and maintain in perpetuity, a comfort station consisting of restrooms and showers for beachgoers. This comfort station shall be located adjacent or approximate to this public beachgoers parking area.*
19. *All parking for guests, customers, and employees shall be accommodated on site. No parking on Kuamoo, Haleilio or Apana Roads shall be allowed. No use of parking lots on adjacent property shall be allowed as well.*
20. *Given outstanding evaluation of the TIAR by both the Department of Public Works (DPW) and HDOT, in the interim, the Applicant shall provide the following to mitigate traffic impacts created by the development:*
 - a. *Provide, at the Applicant's expense, a shuttle for eighteen (18) months beginning when the hotel operator opens the main lobby, at least 277 guest rooms and the food and beverage facilities and services of the project to the public as a pilot program to facilitate transit to and from the Lihue Airport and the development;*
 - b. *Provide, at the Applicant's expense, a circulator shuttle for eighteen (18) months beginning when the hotel operator opens the main lobby, at least 277 guest rooms and the food and beverage facilities and services of the project to the public to move patrons from the hotel to Lydgate and Wailua Beach Park, the Seashell Restaurant Site, the Coconut Marketplace and other destinations within the main Kapaa transit corridor that shall be determined by the County of Kauai Executive on Transportation at least 90 days before such shuttle service is scheduled to begin;*
 - c. *Provide, at the Applicant's expense, a bike share program operated by the Applicant or a vendor selected by the Applicant for patrons of the resort to allow guests to ride bikes into Kapaa Town and other destinations without driving;*
 - d. *The Applicant shall work with the HDOT and the DPW to resolve pedestrian crossing, sidewalks and vehicular traffic demands created by the development, and bear implementation costs proportional to the impact that arises, including the installation of a continuous public sidewalk on the Kuhio Highway frontage between Kuamoo and Haleilio Roads;*
 - e. *Provide the Planning Department, DPW and the HDOT an update to the TIAR one (1) year after receiving the last certificate of occupancy for the project evaluating traffic impacts created by the resort and analyze the need for additional bus stops; and*

- f. *Provide the HDOT with a report on the Applicant's efforts to work with the Department of Land and Natural Resources to obtain permission to use the lands held by lease for a mauka access, either vehicular, or bike/pedestrian, to allow movement of residents between Kuamoo road and Haleilio Road.*

Should the updated TIAR, as accepted by the three agencies, determine a significant adverse change in the traffic conditions resulting solely from project beyond the traffic conditions anticipated in the original TIAR, the Applicant is aware that this permit is subject to reasonable modification by the Planning Commission that the Applicant may be responsible for the proportionate costs for any impacts of such significant adverse change for which a nexus to the additional anticipated traffic conditions may be identified.

21. *The Applicant shall work with the county and bear the costs of the following improvements:*
- a. *Design and complete construction of continuous public sidewalks along Apana Road to Haleilio Road and along Haleilio Road to Kuhio Highway fronting the Applicant's property. Sidewalks must be a minimum of 5 ft wide and shall be dedicated to the County to the extent owned by the Applicant.*
 - b. *Provide in lieu payment of \$93,750 to the County of Kauai by June 30, 2017, for the cost of a dedicated right-turn lane on Haleilio Road, from Apana Road to Kuhio Highway in addition to an existing through lane. The portions of said right-turn lane owned by the Applicant shall be dedicated to the County at its request.*
 - c. *Design and complete construction of widening Apana Road to be wide enough for two-way vehicle travel from the project entry on Apana Road to Haleilio Road. The Applicant will work with the DPW on the width, length, and other design details for this improvement, which shall be dedicated to the County to the extent owned by the Applicant.*
 - d. *Design and complete construction of "Do Not Block" markings along the eastbound lanes of Haleilio Road at the intersection with Apana Road, similar to the striping at Kuamoo Road and Wailua Road.*

The Applicant shall retain a surveyor to survey the portions of the Applicant's land over which the right-turn lane right-of-way and sidewalks to be constructed pursuant to subparagraphs a-c above that will be dedicated to the County, then prepare and record the necessary title documents. The County, Planning Department and DPW will cooperate fully to process all necessary subdivision and dedication approvals on an expedited basis

22. *If requested by the Transportation Agency due to increased ridership demand caused by the development, the Applicant shall provide proportional support for one (1) additional bus stop and shelter for the Kauai Bus.*
24. *The Applicant shall encourage employees to utilize the Transportation Agency's transit services to mitigate commuter trips to and from the development. The Applicant shall work with the Transportation Agency on promotional events encouraging usage of the transit system at Coco Palms, including selling bus passes on behalf of the agency, signage, etc.*

The HDOT has evaluated the 2015 TIAR and offer the following responses:

1. Currently, Kuhio Highway fronting the Coco Palms Resort is three lanes; two northbound lanes and one southbound lane. The TIAR identifies the HDOT project Kuhio Highway Short Term Improvements that adds one additional southbound lane as a completed project in the Future Without Project Conditions forecast. This is not entirely correct since the HDOT is currently in the environmental and design phase for this project.

In the case the HDOT does not complete this project, it is recommended the TIAR's forecast of the Future Without Project Conditions exclude this project and the transportation mitigations be re-evaluated.

2. The TIAR provides signal timing adjustments for both AM and PM peak hours for both 2017 forecast conditions; Future Without Project and Future With Project. It is unclear whether the provided signal timing adjustments are in support of the development, Kuhio Highway or both.
3. Page 16, III. Future Without Project Conditions, C. Volumes, 1. Background Growth - An annual cumulative growth rate of 0.5 % was applied to through traveling volumes along Kuhio Highway using the HDOT's Average Daily Travel data from 2004 to 2011. For the update of the 2015 TIAR request, response 11, the HDOT recommends the growth rate be re-evaluated.
4. Page 20, IV. Future With Project Conditions, A. Geometric Conditions, 1. Project Access – the HDOT agrees with the primary ingress coming from the south is off Kuamoo Road, and is relocated from 75 ft to 250 ft mauka of Kuhio Highway, and agrees with the primary ingress coming from the north is off of Apana Road via Haleilio Road.

The HDOT agrees patrons of the Seashell Restaurant will not have vehicular parking and therefore; will be shuttled from the resort.

The HDOT does not agree with the right-in access and the right-out access with Kuhio Highway. There is concern of the proximity of these accesses with the intersection of Haleilio Road and Kuamoo Road, respectively. These accesses may degrade the congestion benefit of the additional south-bound lane, cause vehicular weaving conflicts with the intersections and additional conflict points of vehicles, pedestrians and bicyclists.

The HDOT recommends no direct access onto Kuhio Highway. However, in the case an access is pursued, one midblock access may be considered with a deceleration lane and no acceleration lane. This midblock access requires accommodation by the HDOT's Kuhio Highway Short Term Improvements project. Therefore, a preliminary design of this midblock access should be submitted to the HDOT for coordination with the ongoing environmental and design work of the project. If the Coco Palms Resort LLC does not provide the midblock design in time of the HDOT's completion of the preliminary engineering for this project segment, the HDOT will not accommodate a midblock access in its project.

In the case the midblock access or any other resort accommodation causes additional costs towards the design and construction of the HDOT's Kuhio Highway Short Term Improvements project, the Coco Palms Resort, LLC shall be responsible for the difference in cost of the project with the midblock access and any other resort accommodation less the cost of the project without the midblock access. This cost excludes the cost of the Coco Palms Resort, LLC's cost to design and construct the said midblock access.

5. Page 20, IV. Future With Project Conditions, A. Geometric Conditions, 2. Roadway/Intersection Improvements - The HDOT agrees with proposed conditions that pertain to its State Highway System, which are:

- A dedicated right and left-turn lane marked along Haleilio Road at the intersection with Kuhio Highway.
- A 5-ft sidewalk north of the Kuhio Highway right-in driveway to Haleilio Road continuing along the south side of Haleilio Road, from Kuhio Highway to Apana Road.

The HDOT recommends that the design and construction of this 5-ft sidewalk be integrated with the design and construction of the sidewalk identified in permit condition item 20. d. The HDOT understands that these improvements are not in the HDOT right-of-way and are the cost of the Coco Palms Hui, LLC.

6. Page 21, IV. Future With Project Conditions, B. Volumes, 1. Project Volumes, a) Trip Generation, Table 9: Project Related Volumes Trip Generation - The trip generation due to the Retail/Commercial operations onsite should be included.
7. Page 27, IV. Future With Project Conditions, D. Mitigation - All accesses onto Kuhio Highway shall allow for the proper sight distance as provided by current Federal and State guidance.
8. Page 29, IV. Future With Project Conditions, E. Construction Period - If Kuhio Highway or Kuamoo Road are impacted during construction, the HDOT recommends a Construction Traffic Plan be submitted for review and comment.
9. Through recent coordination, the HDOT understands the Kauai Fire Department requests three fire accesses for the resort onto Kuhio Highway. The HDOT recommends they be at the proposed locations of the right-in, midblock, and right-out access sites, and have driveways perpendicular to Kuhio Highway. Any access for fire access purposes only shall have restrictive public access using bollards or other physical barrier, as approved by the HDOT.

These fire accesses require the preliminary design to be submitted to the HDOT for approval and accommodation by the environmental and design work of the Kuhio Highway Short Term Improvements project. In the case these fire accesses cause additional costs towards the design and construction of the HDOT's Kuhio Highway Short Term Improvements project, the Coco Palms Resort, LLC shall be responsible for the difference in cost of the project with the fire accesses less the cost of the project without the fire accesses.

Mr. Michael A. Dahilig
August 10, 2017
Page 6

HWY-PS 2.5417

10. The HDOT recommends the resort pedestrians accessing the makai-side of Kuhio Highway utilize the signalized intersection crosswalks at Kuamoo Road and Haleilio Road. A mid-block crosswalk will not be allowed.
11. The HDOT recommends that the 2015 TIAR be revised to address applicable HDOT responses above, and the Existing and Future forecast years be updated.
12. Additionally, responses shall be provided on all the HDOT responses.

If there are any questions, please contact Ken Tatsuguchi, Engineering Program Manager, Highways Division, Planning Branch, at (808) 587-1830 or ken.tatsuguchi@hawaii.gov. Please reference file review number PS 2015-047 in all correspondence regarding this letter.

Sincerely,

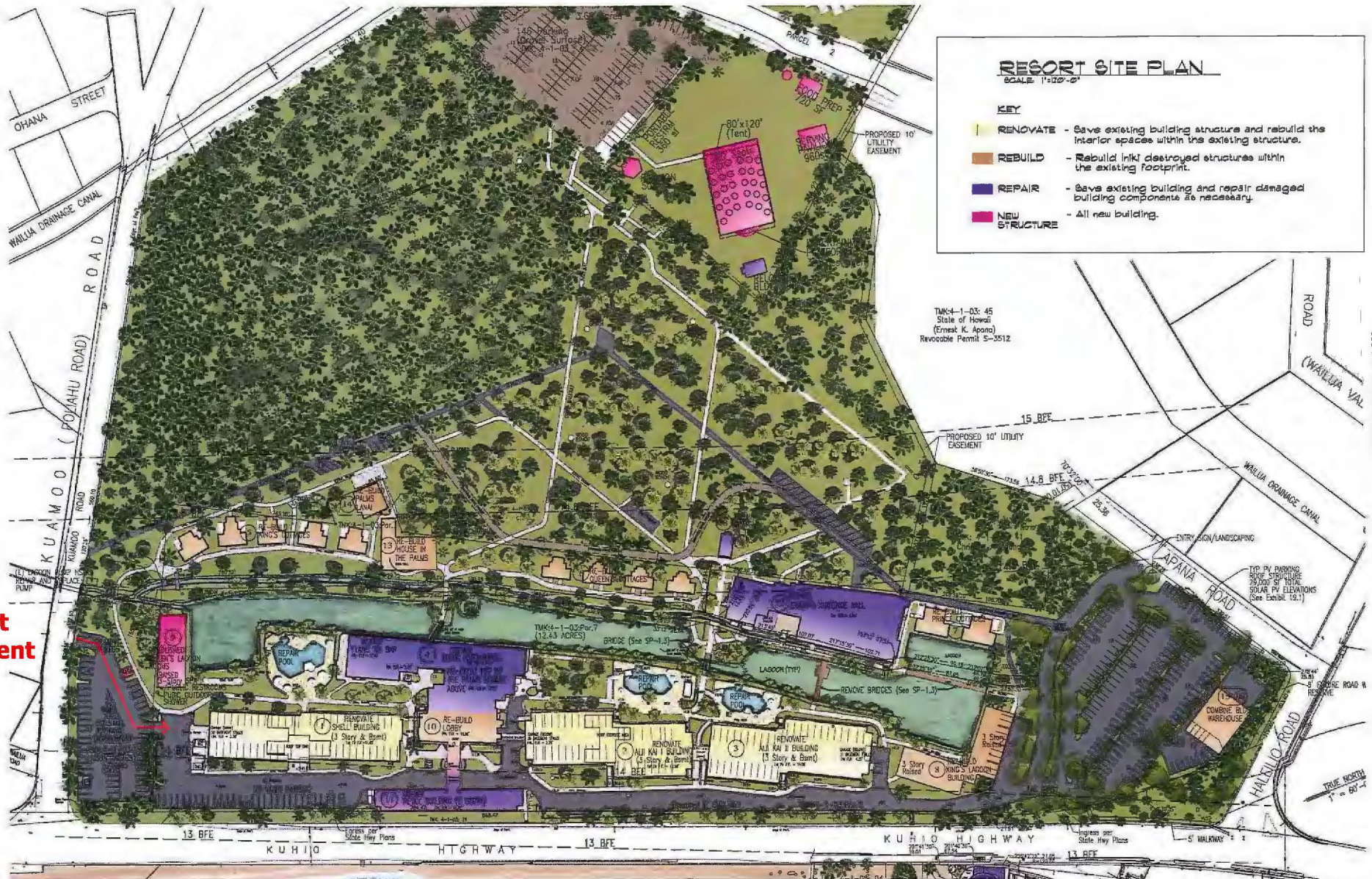


FORD N. FUCHIGAMI
Director of Transportation

bc: DEP-HWY, HWY, HWY-K, -PS (2015-047)

KT:emk

EXHIBIT 6



RESORT SITE PLAN
SCALE: 1"=120'-0"

KEY

- RENOVATE** - Save existing building structure and rebuild the interior spaces within the existing structure.
- REBUILD** - Rebuild lost/destroyed structures within the existing footprint.
- REPAIR** - Save existing building and repair damaged building components as necessary.
- NEW STRUCTURE** - All new building.

TMK-4-1-03: 45
State of Hawaii
(Ernest K. Apana)
Revocable Permit S-3512

EXHIBIT "H"

Subject Easement Area

EXHIBIT "SP-12"
SITE PLAN 12-12-2014