

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

September 13, 2024

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

PSF No.: 24MD-059

Maui

Grant of Perpetual, Non-Exclusive Access and Utility Easement Including a Construction Right-of-Entry Permit to the County of Maui, Keokea, Kula, Island of Maui, Hawaii, TMK: (2) 2-2-004:066 por.

APPLICANT:

County of Maui (COM)

LEGAL REFERENCE:

Sections 171-11, -55 and -95, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of State lands situated at Keokea, Kula, Island of Maui, Hawaii, as shown on the attached maps labeled as **Exhibit 1**.

AREA:

2,236 square feet, more or less.

ZONING:

State Land Use District: Agriculture and Rural
County of Maui: Agriculture

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:

Set aside to the Department of Agriculture for agricultural purposes pursuant to Governor's Executive Order No. 4625.

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:

Perpetual.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, 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," and Part 1, Item 44 that states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing." See **Exhibit 2**.

DCCA VERIFICATION:

Not applicable. As a government agency, Applicant is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to provide a survey map and description of the proposed easement area according to State DAGS standards and at Applicant's own cost.

REMARKS:

The subject lands were set aside to the Department of Agriculture (DOA) by Governor’s Executive Order No. 4625 on February 21, 2020, for agricultural purposes pursuant to Act 90, Session Laws of Hawaii 2003. At its meeting on September 26, 2023, under agenda item IV B-1, the Board of Agriculture (BOA) approved of a grant of perpetual access and utility easement to the COM. See **Exhibit 3**. The following background is excerpted from the DOA staff submittal to the BOA:

“The Keokea Kai Subdivision is part of 33 acres in Keokea originally purchased in 1918 by Harry Fong. The Fong family have been working to develop a 13-lot family subdivision off Cross Road in Keokea. Before homes can be built on the lots, the County of Maui required improvements, such as roads and waterlines, to be constructed. Construction began in 2016 after the [Fongs] obtained financing and permits to commence work. Before the 1980’s, when there were no homes in the area, the existing Maui County dead-end section of Cross Road, serviced only one cattle rancher with a pasture.

Construction of the mandatory 20-foot-wide roadway for firetruck access on Cross Road requires a perpetual easement from the State of Hawaii in favor of the County of Maui for a 2,236 sq.ft. portion of the parcel (TMK: (2) 2-2-004:066) that is outside of the existing road right-of-way (ROW). Obtaining this easement will enable the fire trucks to navigate around the bend in the road (see Exhibit "A"). This specific easement area has a sharp 74-degree ROW angle that follows the adjacent private property lines and, because of this sharp turn, the existing road in this area has always crossed outside the ROW into State land.

The State agricultural parcel (2) 2-2-004:066 is currently vacant awaiting disposition of a lease resulting from a public auction awarding various Kula parcels to qualified ranching applicants.”

The following State and COM agencies were consulted on this action with the results indicated:

Agency	Comments
DLNR, State Parks	No response by suspense date
DLNR, Division of Forestry and Wildlife	No response by suspense date
DLNR, Office of Conservation & Coastal Lands	No response by suspense date
Department of Hawaiian Homelands	No response by suspense date
Office of Hawaiian Affairs	No response by suspense date
County of Maui, Public Works	No response by suspense date
County of Maui, Facility Maintenance	No response by suspense date
County of Maui, Planning	No response by suspense date
DOT-Highways Division	No response by suspense date

Department of Agriculture	No response by suspense date
County of Maui, Water Supply	No response by suspense date

Staff has no objection to the requested easement to COM and is also recommending below the issuance of a construction right-of-entry to COM to allow work to start on the subject land prior the issuance of the easement.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed dispositions 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. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual, non-exclusive easement to the County of Maui 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 perpetual easement document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of a construction a right-of-entry permit to the County of Maui, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and

- C. The Chairperson is authorized to continue the right-of-entry permit for additional one-year periods for good cause shown.

Respectfully Submitted,

T. Chee

Timmy Chee
Land Agent

MF

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APPROVED FOR SUBMITTAL:



Dawn N. S. Chang

Ken

EXHIBIT 1

TAX MAP PARCEL: (2) 2-2-004:066 (Por.)

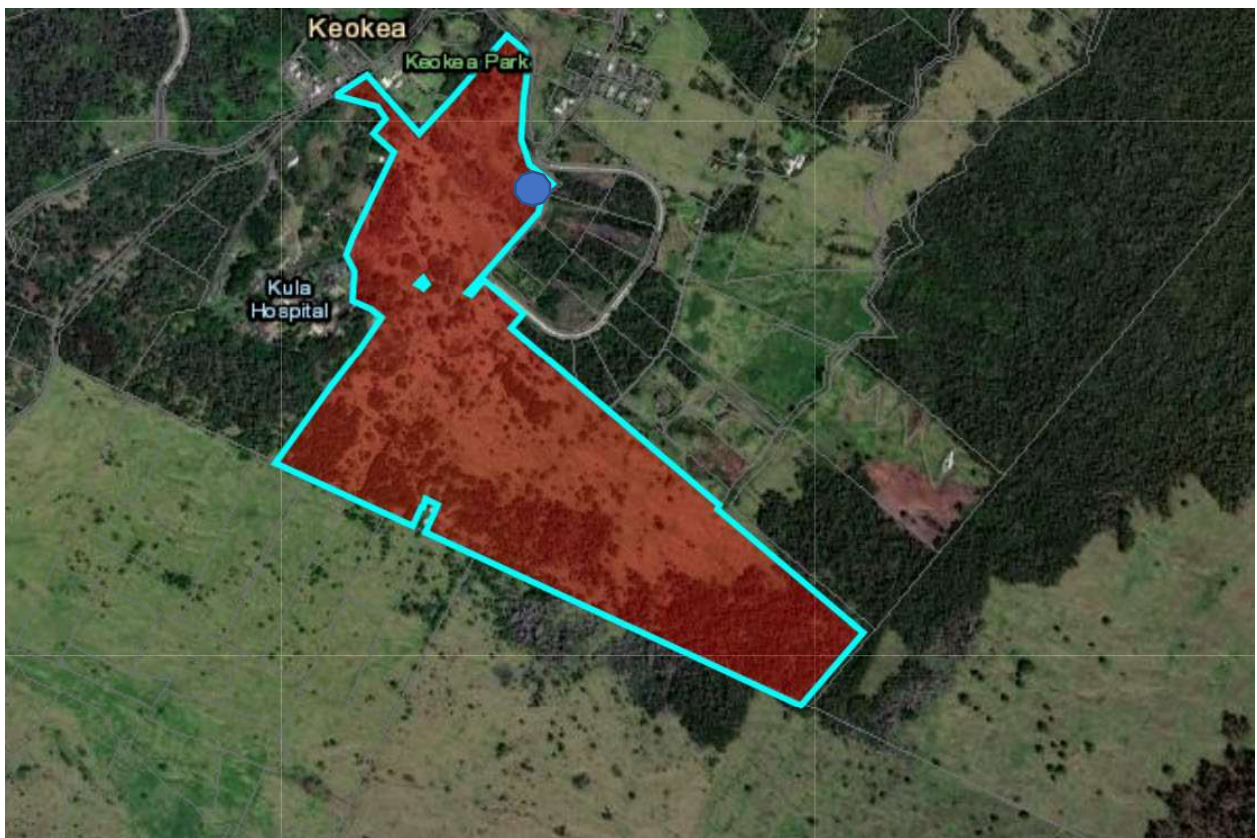


EXHIBIT 1

EXHIBIT 2

EXEMPTION NOTIFICATION

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

Project Title: Request for Approval of Grant of Perpetual Access and Utility Easement Including a Construction Right-of-Entry to the County of Maui

Project / Reference No.: PSF 24MD-059

Project Location: Kokea, Kula, Island of Maui, Hawaii, Tax Map Key Number: (2) 2-2-004:066 por.

Project Description: Grant of Perpetual Access and Utility Easement Including A Construction Right-of-Entry to the County of Maui

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

Exemption Class No.: In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, 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." And Part 1, Item 44 that states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

Cumulative Impact of Planned Successive Action in Same Place Significant?: No, there is no cumulative impact since there are no successive actions in the same place, for which there would be any significance.

Action May Have Significant Impact on Particularly Sensitive Environment?: No, a particularly sensitive environment does not exist whereby it could be significantly impacted.

EXHIBIT 2

Analysis: No plans for the project are known that will have a significant effect on the environment.

Consulted Parties: Agencies as noted in the submittal.

Recommendation: It is recommended that the Board find that 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 3

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
AGRICULTURAL RESOURCE MANAGEMENT DIVISION
HONOLULU, HAWAII

September 26, 2023

**Board of Agriculture
Honolulu, Hawaii**

Subject: REQUEST FOR APPROVAL OF GRANT OF PERPETUAL ACCESS AND UTILITY EASEMENT TO THE COUNTY OF MAUI, TMK: (2) 2-2-004:066 POR., KEOKEA, KULA, ISLAND OF MAUI, HAWAII

Authority: 166E-6, Hawaii Revised Statutes (HRS); 4-158-2(a)(8), Hawaii Administrative Rules (HAR)

Grantor: STATE OF HAWAII

Grantee: COUNTY OF MAUI

Land Area: 2,236 square feet, more or less

Tax Map Key: (2) 2-2-004:066 (see Exhibit "A")

Land Status: Encumbered by Governor's Executive Order No. 4625 to the Department of Agriculture (DOA) for non-agricultural park land purposes dated March 6, 2020

Term: Perpetual

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.

BACKGROUND

The Keokea Kai Subdivision is part of 33 acres in Keokea originally purchased in 1918 by Harry Fong. The Fong family have been working to develop a 13-lot family subdivision off Cross Road in Keokea. Before homes can be built on the lots, the County of Maui required improvements, such as roads and waterlines, to be constructed. Construction began in 2016 after the Fong's obtained financing and permits to commence work. Before the 1980's, when there were no homes in the area, the existing Maui County dead-end section of Cross Road, serviced only one cattle rancher with a pasture.

EXHIBIT 3

B2


Construction of the mandatory 20-foot wide roadway for firetruck access on Cross Road requires a perpetual easement from the State of Hawaii in favor of the County of Maui for a 2,236 sq.ft. portion of the parcel (TMK: (2) 2-2-004:066) that is outside of the existing road right-of-way (ROW). Obtaining this easement will enable the fire trucks to navigate around the bend in the road (see Exhibit "A"). This specific easement area has a sharp 74-degree ROW angle that follows the adjacent private property lines and, because of this sharp turn, the existing road in this area has always crossed outside the ROW into State land.

The State agricultural parcel (2) 2-2-004:066 is currently vacant awaiting disposition of a lease resulting from a public auction awarding various Kula parcels to qualified ranching applicants.

RECOMMENDATION:

That the Board of Agriculture approve the request for a grant of perpetual non-exclusive access and utility easement to the County of Maui, TMK: (2) 2-2-004:066 Por., Keokea, Kula, Island of Maui, Hawaii. All documents are subject to review and approval as to form by the Department of the Attorney General, and such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

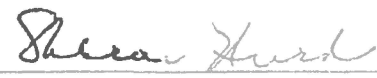
Respectfully submitted,



BRIAN KAU, P.E.
Administrator and Chief Engineer
Agricultural Resource Management Division

Attachment – Exhibit "A"

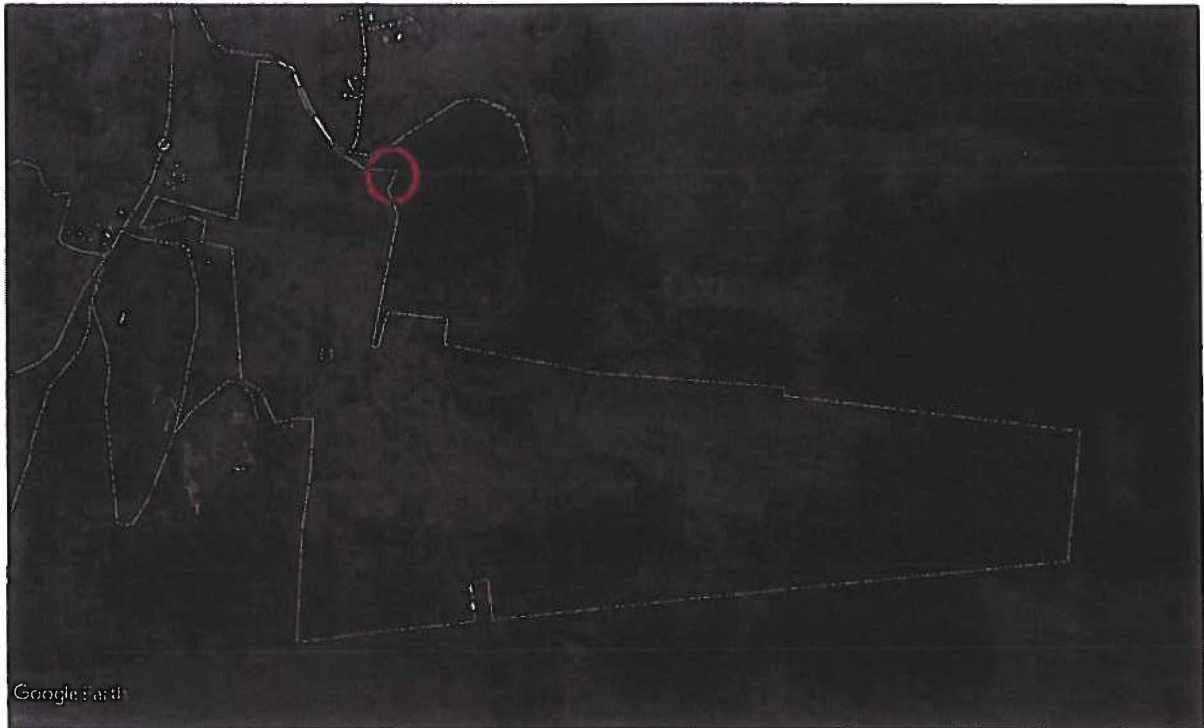
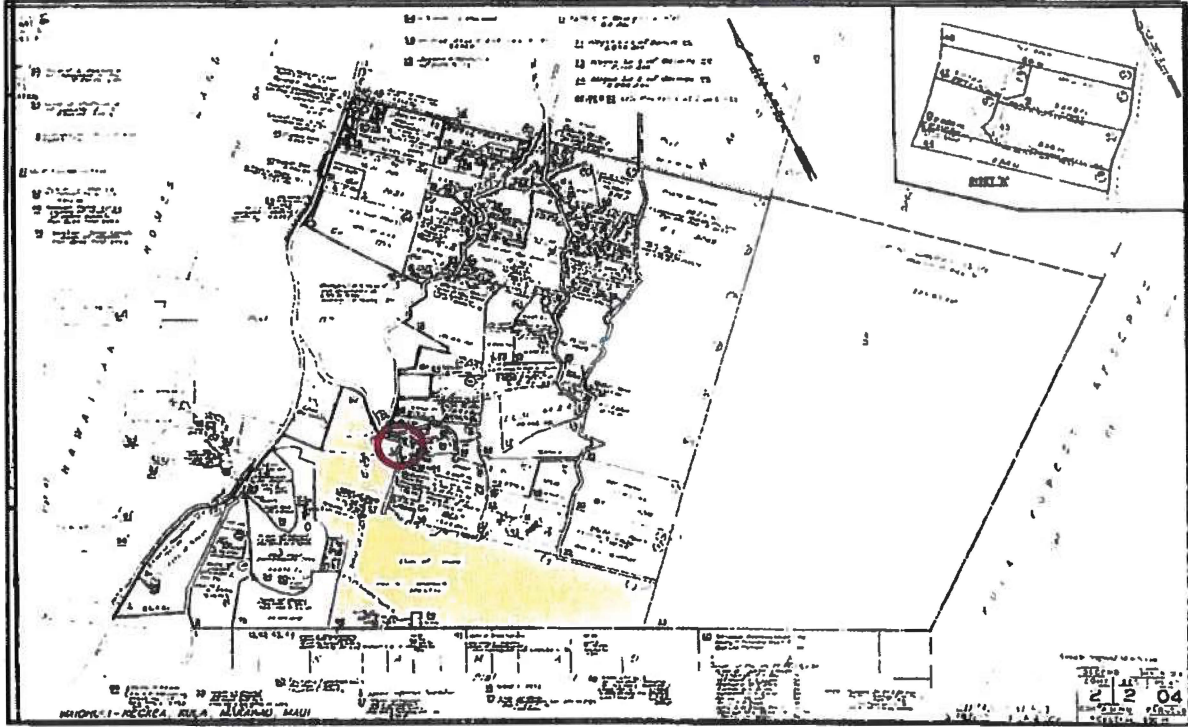
APPROVED FOR SUBMISSION



SHARON HURD
Chairperson, Board of Agriculture

Approved by the Board of
Agriculture at its meeting held
9/26/2023
as agenda item IV B-1

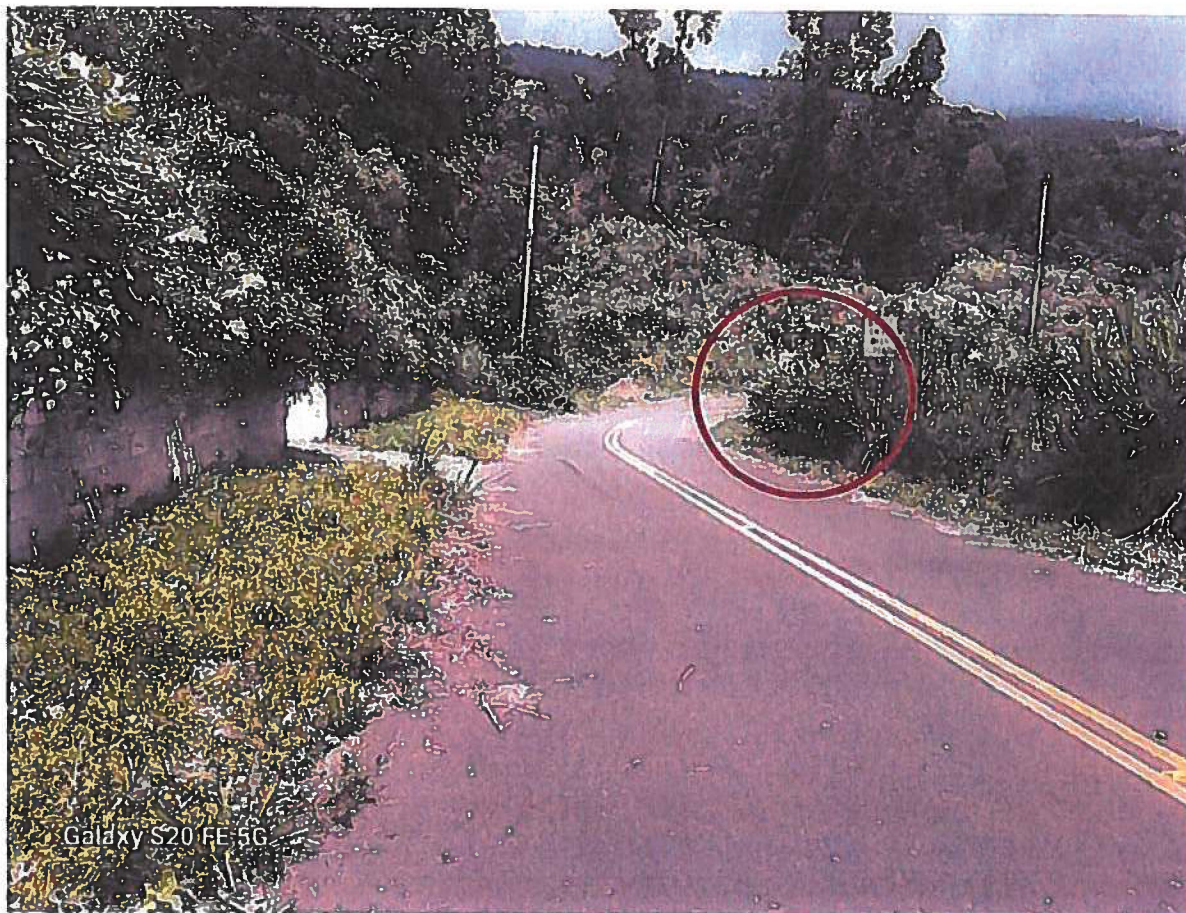
EXHIBIT "A"



Google Earth

B3

BA



COMMENTS RESPONSES
NONE

END