

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

June 22, 2007

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

PSF No.:02KD-047

KAUAI

Grant of Perpetual, Non-Exclusive Easement to Joseph Skaggs for Access and
Utility Purposes, Kekaha, Waimea, Kauai, Tax Map Key:(4) 1-2-02: por.01

APPLICANT:

Joseph Skaggs, single, whose business and mailing address is P.O. Box 212, Anahola,
Hawaii 96703.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kekaha situated at Waimea, Kauai, Hawaii, identified by
Tax Map Key: 1-2-02: por. 01, as shown on the attached map labeled Exhibit A.

AREA:

3,340 square feet, more or less. Not to exceed 30 feet wide x 111 feet long.

ZONING:

State Land Use District:	Urban
County of Kauai CZO:	General Industrial

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES

CURRENT USE STATUS:

Encumbered by Governor's Executive Order No. 4007, issued to Agribusiness Development Corporation, for agriculture and related purposes. Area is 12,592.133 acres.

This portion of Parcel 01 is currently being use as an access to and from the agricultural land mauka of the Mr. Skaggs' property to Kekaha Road. In the past this area was the access the Kekaha Sugar Mill on the south side of Kekaha Road directly across Mr. Skaggs' property.

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.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

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 April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 6, that states Construction or placement of minor structures accessory to existing facilities.

Ms. Nancy Heinrich of OEQC stated that this project would not trigger an Environmental Assessment and recommendation Exemption Class No. 6 as per the e-mail sent to Mr. Skaggs on November 19, 2003.

DCCA VERIFICATION:

Applicant is a landowner and, as such, is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

Applicant owns TMK 1-3-11: 39, which is approximately 11,604 square feet and surrounded by the State's property identified as TMK 1-2-2: 1. The parcel was previously owned in fee by AMFAC/Kekaha Sugar Co., and purchased by the Applicant when Kekaha Sugar Co. ceased its sugarcane operations in Kekaha. Applicant was cited for a County grading violation. As a result, Applicant ceased all work until the easement is obtained from the Land Board.

Parcel 39 is identified as Land Patent Grant No. 8143. By memo dated June 5, 2003, the staff abstractor confirmed, "parcel 39 is not a kuleana, and that Grant 8143 is silent as to any access or easement of ingress and egress to and from the subject parcel." (Exhibit B)

Applicant proposes to develop a warehouse or office building complex as allowed by the County of Kauai's present General Industrial zoning of the property. The applicant's original easement design was 8,520 square feet and ran along the east side of the property line in order to have design flexibility for the applicant's development proposal. That easement design was 44 feet wide by 193 feet long. As requested by Agribusiness Development Corporation and the Department, the easement alignment will be redesigned to terminate at the front (south) boundary line, and would not exceed 3,340 square feet or 30 feet wide by 111 feet long.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Comments were solicited from:

County Public Works Department: We request that a driveway approach within the Kekaha Road Right-of-Way be constructed, and a permit therefore, be obtained as conditional requirement for the grant of easement.

Agribusiness Development Corporation: Concerned that the proposed easement alignment would physically divide agricultural use of the surrounding State lands and bisect the heavily used former plantation road. Therefore, recommend changing the alignment. (Exhibit C)

Dept. of Hawaiian Home Lands. No comments.

Office of Hawaiian Affairs: No response.

DLNR-Historic Preservation Division: We believe there are no historic properties present, because previous grubbing/grading has altered the land. Thus, we believe that "no historic properties will be affected" by this undertaking.


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, 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 requirement listed above, authorize the issuance of a perpetual non-exclusive easement to Joseph Skaggs 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. Construction plans shall be approved by the County of Kauai, Department of Planning, Department of Public Works and Agribusiness Development Corporation prior to submittal to the Chairperson for review and approval.
 - C. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (4) 1-3-11:39, 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 Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - D. Review and approval by the Department of the Attorney General; and

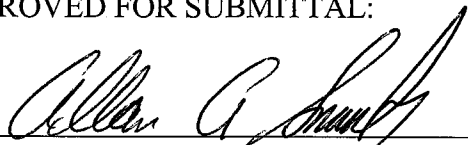
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

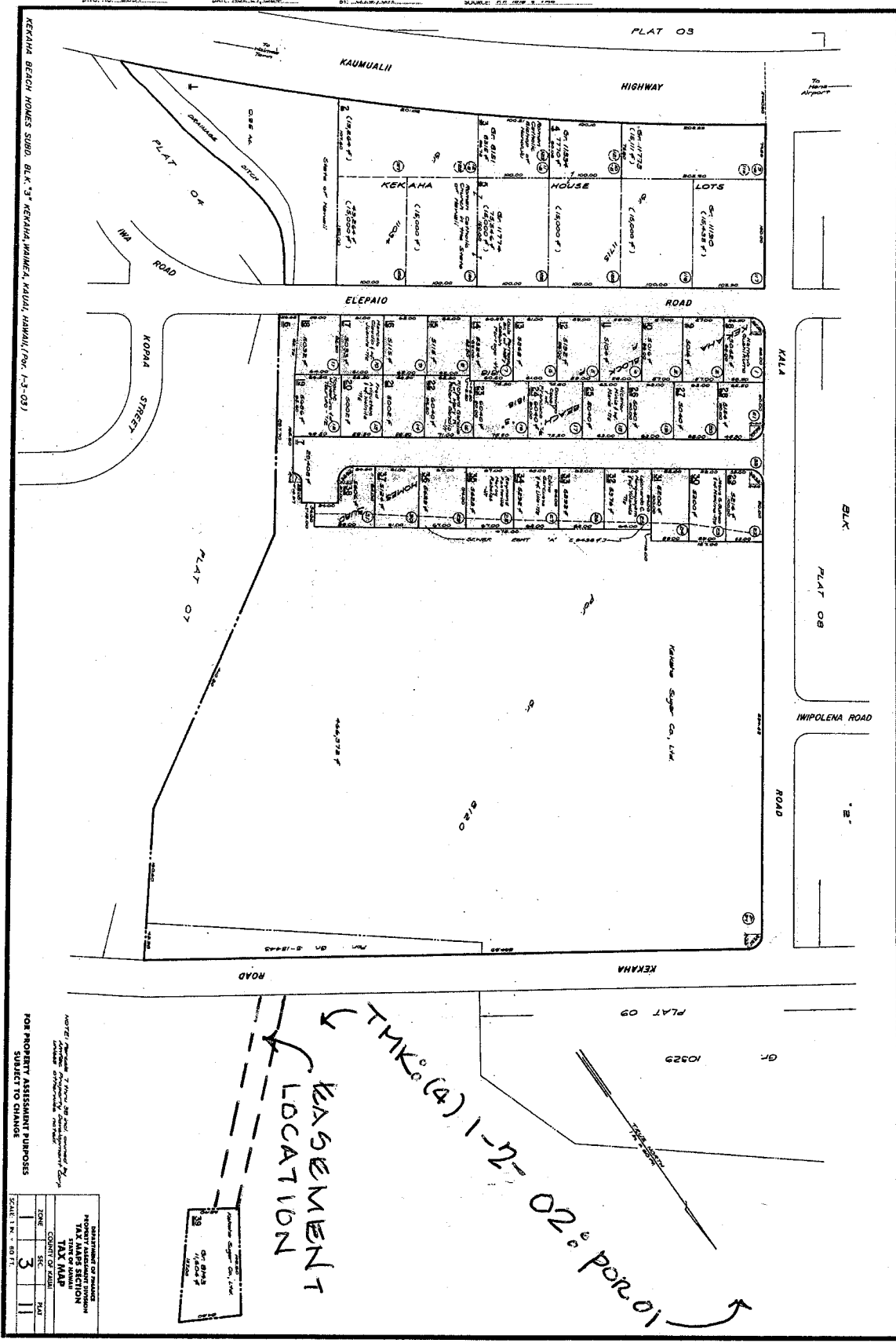


 Thomas Oi
Kauai District Land Agent

APPROVED FOR SUBMITTAL:



 Allan A. Smith, Interim Chairperson



KHAHA BEACH HOMES SUBD. BLK. 3 KHAHA, WAINENA, MAUI, HAWAII, (P.O. 1-3-03)

FOR PROPERTY ASSESSMENT PURPOSES

NOTE: Parcel 7 is not to be used for assessment purposes.

DEPARTMENT OF PUBLIC PROPERTY ASSESSMENT DIVISION TAX MAP			
ZONE	COUNTY OF MAUI	TAX MAP	SCALE 1" = 50 FT.
1	3	11	

EXHIBIT A

LINDA LINGLE
GOVERNOR

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. Box 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
DAN DAVIDSON
DEPUTY DIRECTOR FOR LAND
ERNEST Y.W. LAU
DEPUTY DIRECTOR FOR
THE COMMISSION ON WATER
RESOURCE MANAGEMENT

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND RESOURCES
ENFORCEMENT
CONVEYANCES
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAOIOLAWE ISLAND RESERVE
COMMISSION
LAND
STATE PARKS

June 5, 2003

9948(K)

MEMORANDUM

TO: Charlene E. Unoki, Assistant Administrator

THROUGH: Dierdre S. Mamiya, Administrator *[Signature]*

FROM: E. Mahoe Collins, ~~Abstractor~~

Subject: Kuleana Status of designated Tax Map Key parcel (4) 1-3-11: 39 situate, lying and being at Kekaha, District of Waimea, Island and County of Kauai.

We have been requested to determine the kuleana status of the original source of title to tax key parcel (4) 1-3-11: 39, identified as being all of Land Patent Grant 8143 dated December 27, 1922 to Jacob Piopio Kaapuawai.

Records filed in our office reveal that the subject parcel is a portion of the Ahupuaa of Kekaha set aside to the Hawaiian Government, by the king in the Mahale of 1848.

Through operation of laws subsequent, and in accordance with the provisions of Section 73 of the Hawaiian Organic Act, Section 357 of the Revised Laws of Hawaii of 1915 and Act 20, the subject parcel was sold by the government to the said grantee under Land Patent Grant No. 8143.

Having not been acquired "anterior to the law of December 10, 1845" we find that the subject parcel is not a kuleana.

We note that said Grant 8143 is silent as to any access or easement of ingress and egress to and from the subject parcel.

If you have any questions please feel free to call me at 587-0458.

DLNR KDLO RCVD
JUN 5 '03
AM 10:38:56

EXHIBIT "B"

LINDA LINGLE
Governor



ALFREDO A. LEE
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION

235 S. Beretania Street, Room 205
Honolulu, HI 96813

Phone: (808) 588-0186 Fax: (808) 588-0189

May 28, 2003

Ms. Charlene Unoki
Land Division
Dept. of Land and Natural Resources
3060 Eiwa Street
Lihue, Hawaii 96766

Subject: Joey Skaggs Request for Rights of Entry
for Use and Construction and Non-Exclusive
Easement for Access and Utility Purposes
to Serve Tax Map Key (4)1-3-11:39, Kekaha, Hawaii

Dear Ms. Unoki:

Thank you for referring the subject application to us for comment. We do have some concerns with Mr. Skaggs' request which are listed below.

The applicant requests two rights of entry, one for immediate use of a new 44 foot wide corridor from Kekaha road to the east side of his property and the second, to conduct unspecified construction within the access corridor. With respect to the first right-of-entry, we strongly recommend that the applicant be allowed to use the EXISTING plantation dirt road as opposed to allowing use of the new alignment. The present road is more than adequate to serve the applicant's needs without creating a new road. Additionally the new alignment will physically divide land covered by an agricultural revocable permit and bisect the heavily used former plantation dirt road.

The applicant's request for a construction right of entry should only be considered after the applicant provides more detail about his construction activity. Bearing in mind that the plantation road system is quite heavily used by large agricultural equipment sometimes on an around the clock basis, it would be helpful to know what the applicant proposes to do, over what period of time? Will his construction activity be compatible with the use of the road by other tenants? What kind of utilities does he intend to install? Will the height of overhead power lines and the location of poles take into consideration use of the same road by often very large and tall agricultural equipment?

Please ensure that the applicant understands that the easement will be non-exclusive and that the road will be used by others. Issues such as maintenance and repair, liability insurance, etc. will need to be worked out among the users.

EXHIBIT "C"

Ms. Charlene Unoka
May 28, 2003
Page 2 of 2

Please ensure that the applicant is aware that the easement cannot be gated or in any way restricted against use by others.

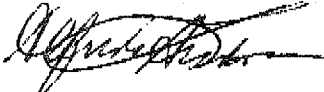
The easement should end at the makai (south) end of the applicant's property (see alignment of easement on the attached aerial map).

The applicant should justify the need for a 44-foot wide easement.

The grant of easement should contain a condition that the applicant shall not park any vehicle or store any items within the easement area at any time. The easement shall be kept open and unobstructed at all times.

Thank you again for providing us the opportunity to make comments.

Sincerely,



Alfredo A. Lee,
Executive Director

Attachment