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

January 8, 2010

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

PSF No.: 09KD-057

Kauai

Cancellation of Revocable Permit No. S-7408 to Coco Palms Ventures LLC; Set Aside to Department of Transportation, Highways Division for Bike and Pedestrian Path Purposes; Re-Issuance of Revocable Permit to Coco Palms Ventures LLC for Restaurant, Landscaping and Related Purposes; and Issuance of a Right-of-Entry Permit to the Department of Transportation, Highways Division for Construction Purposes, Wailua, Kawaihau (Puna), Kauai, Tax Map Key:(4) 4-1-05:017.

APPLICANTS:

Department of Transportation, Highways Division whose business and mailing address is 600 Kamokila Boulevard, Room 691, Kapolei, Hawaii 96707.

Coco Palms Ventures LLC, a Hawaii limited liability company, whose mailing address is 1919 West Street, Suite 100, Annapolis, MD 21401

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Wailua House Lots situated at Wailua, Kawaihau (Puna), Kauai, identified by Tax Map Key: (4) 4-1-05:017, as shown on the attached map labeled Exhibit A.

AREA:

0.00175 acres, more or less.

ZONING:

State Land Use District: Urban
County of Kauai CZO: R-10

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-7408 to Coco Palms Ventures LLC, Permittee, for restaurant, landscaping and related purposes.

PURPOSE FOR THE SET ASIDE:

Bike and pedestrian path purposes.

CHARACTER OF USE FOR THE REVOCABLE PERMIT:

Restaurant, landscaping and related purposes.

COMMENCEMENT DATE FOR THE REVOCABLE PERMIT:

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

MONTHLY RENTAL FOR THE REVOCABLE PERMIT:

To be determined by staff appraiser, subject to review and approval by the Chairperson.

COLLATERAL SECURITY DEPOSIT FOR THE REVOCABLE PERMIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Special Management Area Use Permit SMA (U)-2008-1 and Shoreline Setback Variance Permit SSV – 2008-1 were issued on September 11, 2007 to the County of Kauai.

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice in April 2007 with a finding of no significant impact (FONSI).

The Final Environmental Assessment for the subject project was published in the Federal Highway Administration Environmental Notice in September 2007 with a finding of no significant impact (FONSI).

APPLICANT REQUIREMENTS:

Department of Transportation, Highways Division shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

BACKGROUND:

The Land Board at its meeting of March 25, 1965, under agenda Item F-25, authorized the preparation of a 20-year lease for public auction. Briefly, Island Holidays, Ltd. proposed to develop a resort beach club and cabana on their Lot 13-A and the adjoining Government land. Proposed improvements would include a restaurant operation with an adjoining umbrella lanai for dining, to be located on Island Holidays, Ltd. fee land. Improvements contemplated for the State land include a party lanai-pavilion with barbeque pit on a landscaped elevated platform, a "lookout", a beach pavilion providing shower facilities for bathers, and suitable landscaping. This operation will tie in with their hotel and provide additional services to residents and visitors alike.

Subsequently, the Land Board at its meeting of April 23, 1965, under agenda Item F-12, amended its previous approval by amending (a) the market rental to $1,999.74 per annum, representing a 6% return of the market value of $33,329 of the land determined by independent appraisal; (b) upset rental to be $2,000 per annum; (c) rental reopening at the end of the 10th year; (d) authorized the issuance of a right-of-entry permit to Island Holidays, Ltd. for site-preparation purposes; and (e) the lease will commence 30 days from the date of sale in the event the purchaser of a lease to the premises is other than the applicant, otherwise the lease will commence from the date of sale.

The Land Board at its meeting of September 13, 1968, under agenda Item F-1-e, authorized the issuance of a revocable permit to Island Holidays, Ltd. for non-exclusive easement for building and landscaping purposes. Island Holidays completed construction of a restaurant (Sea Shell Restaurant) on its property (Lot 13-A) and, in addition to grading and landscaping, constructed sidewalks and 5 circular 'hardstands' for outdoor tables on the adjacent State property. On the basis of objections voiced by the Department of Planning & Economic Development the lease application was held in abeyance. Pending further disposition of the matter, it was recommended that the subject area be placed under a revocable permit to island Holidays, Ltd. Revocable Permit No. S-4250 was issued to island Holidays, Ltd. effective July 1, 1966.

The Land Board at its meeting of August 22, 1980, under agenda Item F-34, approved and authorized the direct sale of a perpetual, non-exclusive easement to Island Holidays, Ltd., doing business as Coco Palms Resort Hotel for landscaping and patio purposes. By letter dated June 16, 1983, Mr. David Ueno, Resident Manager for Coco Palms Resort Hotel informed the Department it was unable purchase the easement due to recessive economic conditions and setbacks caused by Hurricane Iwa.

The Land Board at its meeting of July 26, 1985, under agenda Item F-11, authorized the cancellation of Revocable Permit Nos. S-4250 and S-5958 and re-issuance of new revocable permits to Wailua Associates. This was necessary due to the sale of Coco Palms Hotel from Fort Associates Limited Partnership to Wailua Associates. The sale also included the assignment of 2 leases and 3 easements which were covered in a separate submittal. Revocable Permit No. S-6234 was issued to Wailua Associates effective August 29, 1985.

The Land Board at its meeting of September 14, 2001, under agenda Item D-3, (1) consented to the assignment of General Lease Nos. S-4740, S-4645, S-4244; and Land Office Deeds Nos. 27,442 and 12,850 from Wailua Associates to Coco Kauai LLC; (2) authorized the cancellation of Revocable Permit Nos. S-6233 and S-6234 to Wailua Associates; (3) authorized the issuance of Revocable Permits to Coco Kauai, LLC; and amended the submittal by adding (4) the Board's action is subject to the satisfactory closing of the sale transaction between Wailua Associates and Coco Kauai, LLC within 60 days of the Board's approval and (5) The Chairperson is delegated the authority to extend the date another 60 days as he deems appropriate. Briefly, the Coco Palms Hotel was severely damaged by Hurricane Iniki (September 11, 1992). Because of disputes over repairs, the Coco Palms Hotel has remained closed. Wailua Associates has reached an agreement to sell the property to Coco Kauai, LLC which plans to renovate and operate the hotel. The transfer of 8 parcels is part of a larger integrated "patchwork" of government and private lands that have made-up the Coco Palms Hotel. The sale is scheduled to close in September 2001.

The Land Board at its meeting of January 11, 2002, under agenda Item D-17, approved staff's recommendation to rescind its approval of September 14, 2001. On December 5, 2001, Coco Kauai, LLC representatives confirmed that the sales transaction had fallen apart due in part to the events of September 11, 2001.

The Land Board at its meeting of January 14, 2005, under agenda Item D-29, (1) consented to the assignment of General Lease Nos. S-4787 and S-4740, Grant of Easement Bearing GL Nos. S–4645 and S-4244, and Grant of Easement Bearing LOD Nos. S-12,850 and S-27,442 from Wailua Associates to Coco Palms Ventures LLC; (2) authorized the issuance of replacement revocable permits to Coco Plams Ventures LLC for Revocable Permit Nos. S-6233 and S-6234; (3) authorized the cancellation of Revocable Permit Nos. S-6233 and S-6234; and (4) if the proposed sale of Coco Palms Hotel fails to close for any reason, consent to the assignment of General Lease Nos. S-4787 and S-4740, Grant of Easement Bearing GL Nos. S–4645 and S-4244, and Grant of Easement Bearing LOD Nos. S-12,850 and S-27,442,

from Coco Palms Ventures LLC to Wailua Associates. Briefly, 2 government leases, 4 easements, and 2 revocable permits are part of the Coco Palms Hotel Complex in Wailua, Kauai. The Coco Palms Hotel was severely damaged on September 11, 1992 by Hurricane Iniki. Because of disputes over repairs, the Coco Palms has been closed since Hurricane Iniki. The present owner of the hotel and lessee Wailua Associates has reached an agreement to sell the property to Coco Palms Ventures LLC, which plans to renovate the parcel for use as a hotel and condominium complex. Coco Palms Ventures LLC is composed of members with long-term experience in developing real estate properties. They plan to extensively renovate the property to create a hotel with full amenities and a condominium complex and still keep the atmosphere of the Coco Palms Hotel of old. Revocable Permit No. S-7408 to Coco Palms Ventures LLC was issued effective February 1, 2006.

As of today, this parcel and Coco Palms Hotel has not reopened.

REMARKS:

The State of Hawaii, Department of Transportation, Highways Division has a road widening project along Kuhio Highway which includes the construction of a shared-use path called the Lydgate-Kapaa Bike and Pedestrian Path that will transverse this State parcel. Eventually, this will complete the connection to the existing Kapaa-Kealia Bike and Pedestrian Path for the County of Kauai. The State and County agreed that since the land is immediately adjacent to Kuhio Highway, it made more sense to include the parcel in the road right-of-way. There are other places where the path is within DOT's ROW. There will be a use agreement between DOT and the County of Kauai to cover the use of the path within DOT's ROW.

The tenant has no objections to the DOT's request, as labeled Exhibit B.

Since 1966, the character of use remains the same and will continue on the State property as noted in Ms. Jeanine s. Ogawa letter dated January 14, 2008 on behalf of Coco Palms Ventures LLC, as labeled Exhibit C.

Renewal of Revocable Permit No. S-7408 for 2010 was approved by the Land Board at its meeting held on October 23, 2009, under agenda Item D-9.

Cancellation of Revocable Permit No. S-7408 and re-issuance of a new Revocable Permit to Coco Palms Ventures LLC is required as the property will be down-sized due to DOT's road widening project and Coco Palms Ventures LLC still wishes to continue utilizing this property.

Comments were solicited from:

State Agencies:

DOH	No environmental health concerns
DHHL	No comments
Historic Preservation	No response by suspense date
OCCL	No comments
DOT - Highways	Recommend approval

County Agencies

Planning Dept.	No objections
Parks & Recreation	No response by suspense date
Public Works	Recommend approval
Dept. of Water	No comments

RECOMMENDATION: That the Board

A. Authorize the cancellation of Revocable Permit No. S-7408.

B. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to Department of Transportation, Highways Division under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

1. The standard terms and conditions of the most current executive order form, as may be amended from time to time;

2. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;

3. Review and approval by the Department of the Attorney General; and

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

C. For the new revocable permit to Coco Palms Venture, LLC, 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.

D. Authorize the issuance of a revocable permit to Coco Palms Venture, LLC covering the subject area for restaurant, landscaping and related purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

1. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;

2. Review and approval by the Department of the Attorney General; and

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

E. Authorize the issuance of a right-of-entry permit to the Department of Transportation, Highways Division and its consultants, contractors, and/or persons acting for or on its behalf, for construction purposes, as cited above, which are by this reference incorporated herein and subject further to the following:

1. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;

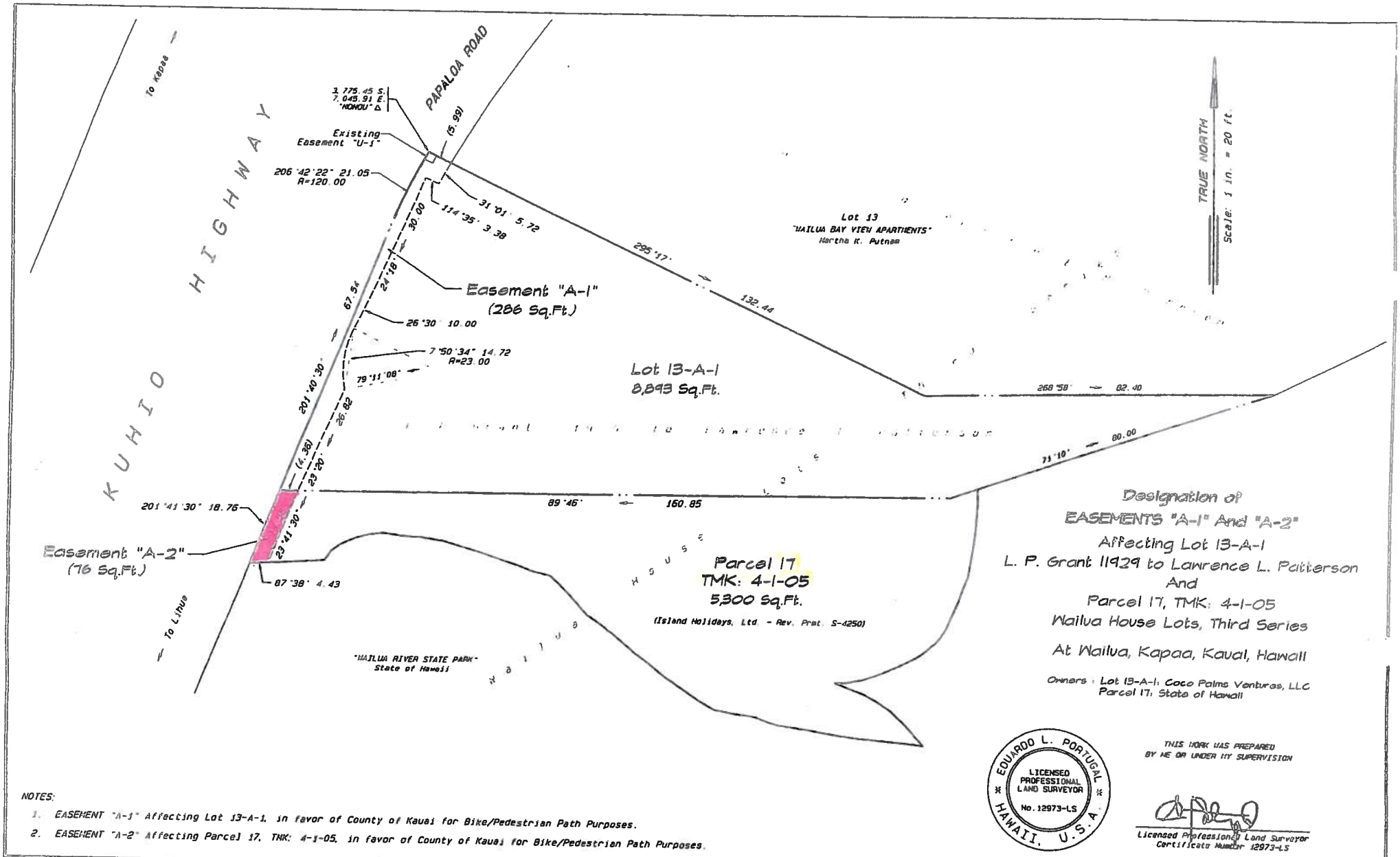
2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Marvin Mikasa
Land Agent

APPROVED FOR SUBMITTAL:

Laura H. Thielen, Chairperson



NOTES:

1. EASEMENT "A-1" Affecting Lot 13-A-1, in favor of County of Kauai for Bike/Pedestrian Path Purposes.
2. EASEMENT "A-2" Affecting Parcel 17, TMK: 4-1-05, in favor of County of Kauai for Bike/Pedestrian Path Purposes.

Tax Map Key (4)-4-1-05: 14 & 17
Map File 4-105P14-17ESMT

Portugal Surveying & Mapping Inc.
1840 Lelelona Street

11" x 17"
January 6, 2009

EXHIBIT "A"

OCT 19 2009

HWY-RL
3.87249

Concurrence

I/We, the undersigned, concur with the Board of Land and Natural Resources to set-aside an easement and issuance of a right-of-entry to the Department of Transportation onto property currently encumbered under Revocable Permit No. S-7408 to Coco Palms Ventures LLC, identified as being a portion of Tax Map Key No. (4) 4-1-05:17, containing an area approximately 76 square feet, situated in Wailua, Kapaa, Kauai, Hawaii. It is acknowledged that the easement and right-of-entry are required to allow the County of Kauai to construct a shared-use bike/pedestrian path in connection with the Lydgate-Kapaa Bike & Pedestrian Path, Federal Aid Project No. CMAQ-0700(49).

COCO PALMS VENTURES LLC

10-22-09
Date

By: [signature]
Print Name: Phillip L. Ross
Its: Member

EXHIBIT "B"

Ashford & Wriston

A LIMITED LIABILITY LAW PARTNERSHIP LLP

JEANINE S. OGAWA
A Limited Liability Company
Direct: (808) 539-0443
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Fax: (808) 533-4945

January 14, 2008

Mr. Thomas H. Oi
District Land Agent
Land Division
Department of Land and Natural Resources
3069 Eiwa Street
Lihue, Hawaii 96766

Re: Coco Palms Ventures LLC – Consent to Mortgage

Dear Mr. Oi:

On March 29. 2006, Coco Palms Ventures LLC ("Coco Palms") submitted a request to the Department of Land and Natural Resources of the State of Hawaii ("DLNR") to consent to a mortgage of its interests in the following:

1. General Lease No. S-4878;
2. Grant of Easement S-4645;
3. Grant of Easement S-1 and S-2;
4. Grant of Easement S-4244;
5. Grant of Easement recorded in Liber 2972, at Page 357;
6. Revocable Permit S-7407; and
7. Revocable Permit S-7408.

In connection with the foregoing, the DLNR recently requested that Coco Palms provide it with a general description of its planned use for these parcels. Coco Palms plans to use the land covered under the lease, easements and permits for the same purposes previously permitted, which are described as landscaping purposes, utility easements, drainage, driveways, access to the Project and parking. All such uses shall be in accordance with the said lease, easements and permits, as well as the Special Management Area Use Permit SMA(U)-2005-1, Project Development Use Permit U-2005-4, Use Permit U-2005-6, Variance Permit V-2005-1, and Class IV Zoning Permit Z-IV-2005-5, as amended.

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EXHIBIT "C"

Please contact us if you require additional information regarding the above.

Very truly yours,
ASHFORD & WRISTON
A Limited Liability Law Partnership LLP

By
Jeanine S. Ogawa

cc: Phillip Ross
Michael Swanson

392001.2

EXHIBIT "C"