

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

October 14, 2010

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

PSF No: 03KD-288  
KAUAI

Rescind Prior Board Action of January 9, 2004 (D-10), Consent to Assign Grant of Easement S-4389, Elsie Nancy Perez, Assigner, to Anderson Leroy Perry, Assignee; Termination of Grant of Easement S-4389; Grant of Perpetual, Non-Exclusive Easement to Anderson Leroy Perry for Access Purposes, Lawai, Koloa, Kauai, TMK: (4) 2-5-02.

APPLICANT:

Anderson Leroy Perry, Individual, whose mailing address is \_\_\_\_\_, Lawai, HI  
96765

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Lawai situated at Lawai, Koloa, Kauai, identified by Tax Map Key: (4) 2-5-02, as shown on the attached map labeled Exhibit A.

AREA:

1,035 Square Feet, more or less.

ZONING:

State Land Use District:      Agricultural  
County of Kauai CZO:        Agricultural

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 Grant of Easement S-4389, to Manual Perry, aka Manual Perez and Elsie F. Perry, aka Elsie F. Perez, Grantee, for non-exclusive easement for access purposes over and across Lawai Stream purposes and will expire on May 1, 2039.

CHARACTER OF USE:

Right, privilege and authority to construct, uses, maintain and repair a right-of-way over and across State-owned land.

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 Hawaii Administrative Rules, Section 11-200-8(A), the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing"

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to

- 1) Pay for an appraisal to determine one-time payment.

REMARKS:

Grant of Easement S-4389, was issued to Manuel Perry, aka Manuel Perez and Elsie F. Perry,

aka Elsie F. Perez husband and wife, as tenants by the entirety on May 2, 1974. This non-exclusive easement for access purposes over Lawai Stream was to service portion of Lot 42-B-2-C.

Manuel Perry, aka Manuel Perez and Elsie F. Perry, aka Elsie F. Perez husband and wife under quitclaim document 97-131878 recorded at the Bureau of Conveyances on September 30, 1997 all interest in Lots 43-B-2-A and 43-B-2-C to Anderson Leroy Perry their son. In the Quitclaim deed Grant of Easement S-4389 was excluded. (Exhibit B)

The Attorney General's office during its review of the assignment document from Elsie Perez assignor to Anderson Perry, assignee, discovered that the quitclaim deed did not include the Grant of Easement S-4398. Because of this and Ms. Elsie Perez's death on February 23, 2001, the assignment of Grant of Easement S-4398 from Elsie Nancy Perez to Anderson Leroy Perry cannot be completed.

Staff is recommending:

1. Rescinding prior Board action of January 9, 2004 under Item D-10, consent to assign Grant of Easement S-4389 to Elsie Nancy Perez assignor to Anderson Leroy Perry assignee.
2. Termination of Grant of Easement S-4389 and issuance of a new easement to Anderson Leroy Perry for access purposes over Lawai Stream.

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.

Grant of Easement S-4389 was issued in 1974 for access purposes and has been in use for 36 years. The new grant of easement will be over the existing easement and for the same purpose and is exempt from Chapter 343.

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. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 2-5-002: 010, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

3. Rescind its prior Board action of January 9, 2004, under agenda item D-10.
4. Terminate Grant of Easement S-4389.
5. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to Anderson Leroy Perry covering the subject area for Access 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. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (4) 2-5-002: 010, 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;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

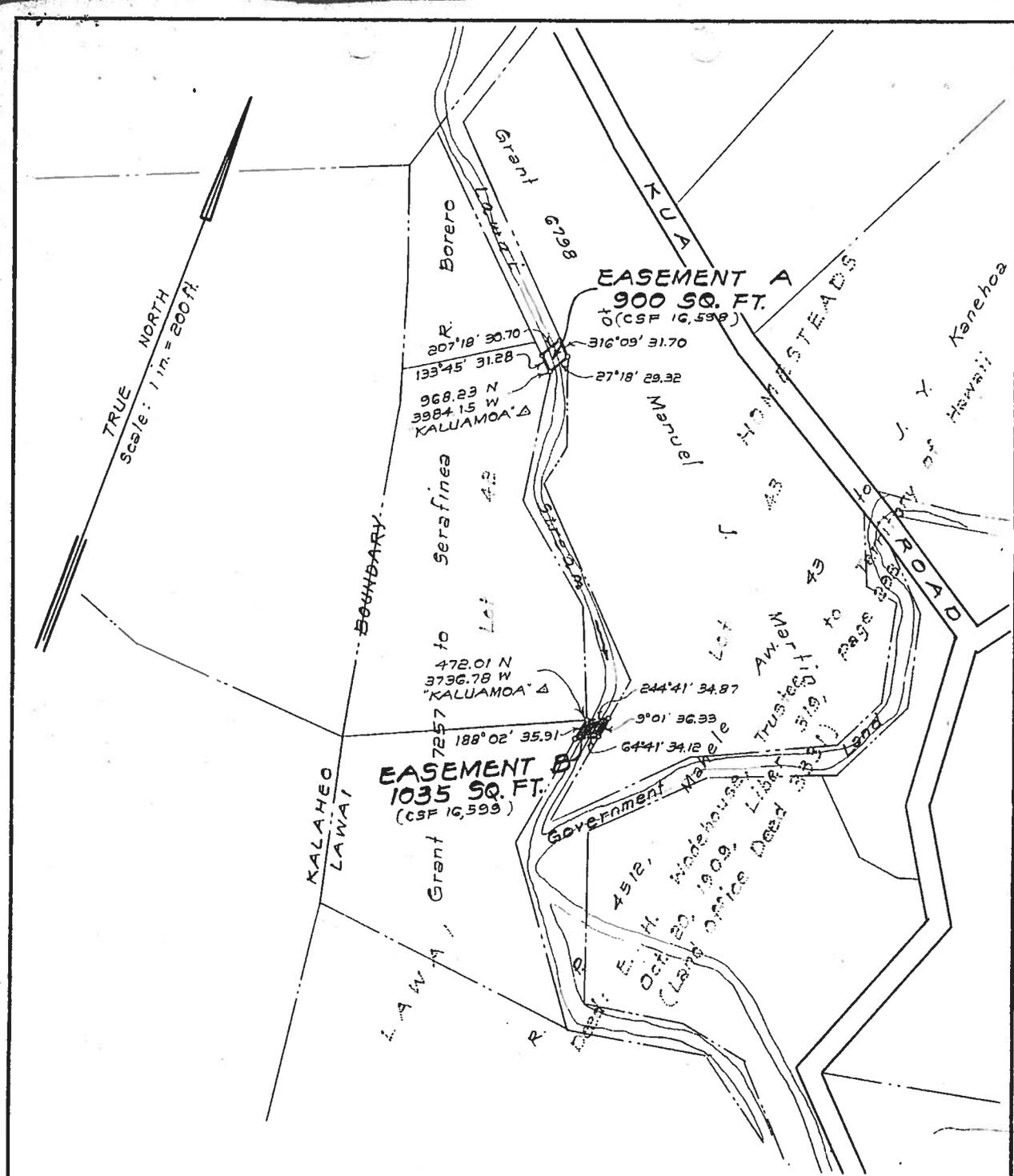
Respectfully Submitted,



for Tommy Oi  
District Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Laura H. Thielen, Chairperson



**EASEMENTS A AND B**  
**NON-EXCLUSIVE EASEMENT FOR ACCESS PURPOSES**  
**OVER AND ACROSS LAWAI STREAM**  
 Lawai, Koloa(Kona), Kauai, Hawaii  
 Scale: 1 inch = 200 feet

JOB K-5252  
 C. BK 2 (Ishida)

**EXHIBIT "A"**

TAX MAP 2-5-02

SURVEY DIVISION  
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
**STATE OF HAWAII**

**EXHIBIT "A"**

C. S. F. No. 16,598  
 16,599

A1. April 7, 1972

THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS,  
STATE OF HAWAII

BUREAU OF CONVEYANCES

DATE: **SEP 30 1997** TIME: **802**  
DOCUMENT NO.: **97-131878**

LAND COURT SYSTEM

REGULAR SYSTEM

Return by (XX) Mail ( ) Pickup

To: Mr. and Mrs. Manuel Perry

Lawai, Hawaii 96765

TITLE OF DOCUMENT:

Quitclaim Deed

PARTIES TO DOCUMENT:

Grantor(s): Manuel Perez, aka Manuel Perry, and Elsie F. Perez, aka Elsie F. Perry, husband and wife

Grantee(s): Anderson L. Perry (son of Manuel Perez and Elsie F. Perez)

PROPERTY DESCRIPTION:

TMK: (4) 2-5-002-9, LOTS 43-B-2-A & C  
Lawai, District of Koloa,  
Island and County of Kauai,  
State of Hawaii

LIBER/PAGE:

DOCUMENT NO.:

TRANSFER CERTIFICATE  
OF TITLE NO.:

**EXHIBIT "B"**

**QUITCLAIM DEED**

KNOW ALL MEN BY THESE PRESENTS:

That **MANUEL PEREZ**, aka **MANUEL PERRY** and **ELSIE F. PEREZ**, aka **ELSIE F. PERRY**, husband and wife and both with the same respective mailing and residence addresses of \_\_\_\_\_, Lawai, Hawaii, 96765, (hereinafter the said Manuel Perez and Elsie F. Perez collectively designated "GRANTORS"), for and in consideration of the sum of ONE DOLLAR (\$1.00) and other legal and valuable consideration provided to GRANTORS by **ANDERSON L. PERRY** (hereinafter designated "GRANTEE"), son of the said Manuel Perez and Elsie F. Perez, with respective mailing and residence addresses of \_\_\_\_\_, Lawai, Hawaii, 96765, do hereby remise, release and forever quitclaim unto GRANTEE, in fee simple as tenant in severalty, but reserving unto each of GRANTORS a life estate in, the below-described parcels of land:

**LOT 43-B-2-A:** ALL OF THAT CERTAIN PARCEL of land situate on the Southwest side of Kua Road, being a portion of Lot 43-B of Lawai Homesteads, located in Lawai Valley at Lawai, District of Koloa, Island and County of Kauai, State of Hawaii, being also Grants 7257 and 6798, and being more fully described as follows:

Beginning at a pipe at the Southeast corner of this parcel of land, and at the Northeast corner of Lot 43-B-2, the coordinates of this said point of beginning referred to Government Survey Triangulation Station "KALUAMOA" being 1,052.33 feet North and 3,627.40 feet West, thence running by azimuths measured clockwise from true South:

- |    |          |     |        |   |
|----|----------|-----|--------|---|
| 1. | 47° 07'  |     | 120.00 | feet along Lot 43-B-2 to a pipe;  |
| 2. | 53° 32'  | 30" | 138.56 | feet along Lot 43-B-2 to a pipe;  |
| 3. | 158° 57' | 10" | 241.00 | feet along Lot 42-B-1 to a pipe;  |
| 4. | 205° 48' |     | 120.00 | feet along Lot 42-B-1 to a pipe;  |
| 5. | 308° 48' |     | 180.00 | feet along Kua Road to a pipe;  |
| 6. | 301° 01' |     | 109.01 | feet along same to the point of beginning and containing an Area of 1.059 Acre. |

Subject to the condition that there shall be no new structures permitted within the Reserve; new structures should be set back from the 13 foot future road widening reserve along the frontage of Kua Road. Dwelling on the lot shall mean a SINGLE FAMILY dwelling used in connection with farm's agricultural activity.

**LOT 43-B-2-C:** ALL OF THAT CERTAIN PARCEL of land situate on the Southwest side of Kua Road, being a portion of Lot 43-B of Lawai Homesteads, located in Lawai Valley at Lawai, District of Koloa, Island and County of Kauai, State of Hawaii, being Grants 7257 and 6798, and being more fully described as follows:

Beginning at a "+" on a stone at the Northeast corner of this parcel of land, and at the Northeast corner of Lot 66, the coordinates of this said point of beginning referred to Government Survey Triangulation Station "KALUA-MOA" being 302.16 feet North and 4,095.83 feet West, thence running by azimuths measured clockwise from true South:

- |    |              |        |  |
|----|--------------|--------|--|
| 1. | 244° 41'     | 432.07 | feet along Lot 42-B-1 and Lawai Stream and passing over a pipe at 397.20 feet; |
| 2. | 189° 01'     | 61.38  | feet along the back of Lawai Stream to a pipe;                                 |
| 3. | 158° 57' 10" | 197.17 | feet along Lot 42-B-1 to a pipe;   |
| 4. | 228° 10'     | 362.70 | feet along Lot 43-B-2-B to a pipe;   |
| 5. | 301° 01'     | 60.00  | feet along Kua Road to a pipe;   |

Thence along the bank of Drain Ditch for the next six courses being:

- |     |          |        |                                      |
|-----|----------|--------|--------------------------------------|
| 6.  | 335° 31' | 124.40 | feet;                                |
| 7.  | 284° 24' | 56.07  | feet;                                |
| 8.  | 348° 27' | 163.00 | feet;                                |
| 9.  | 25° 34'  | 92.07  | feet;                                |
| 10. | 64° 37'  | 236.10 | feet;                                |
| 11. | 44° 03'  | 254.80 | feet to the bank of Lawai Stream;    |
| 12. | 189° 01' | 165.59 | feet along the bank of Lawai Stream; |
| 13. | 64° 41'  | 34.12  | feet over and across Lawai Stream;   |
| 14. | 8° 02'   | 202.79 | feet along the bank of Lawai Stream; |

- |     |          |        |   |
|-----|----------|--------|---|
| 15. | 324° 13' | 311.50 | feet along the bank of Lawai Stream;  |
| 16. | 97° 08'  | 450.00 | feet along Lot 41 to a "+" on a stone;  |
| 17. | 166° 40' | 270.40 | feet along Lot 66 to the point of beginning and containing a Gross Area of 6.777 Acres. |

EXCLUDING, therefrom, an existing Road Easement "B" (30 feet wide) over and across Lawai Stream, State of Hawaii-Owner, and further described as follows:

- |    |          |       |   |
|----|----------|-------|---|
| 1. | 244° 41' | 34.87 | feet over and across Lawai Stream;  |
| 2. | 9° 01'   | 36.33 | feet along the west bank of Lot 43-B-2-C;   |
| 3. | 64° 41'  | 34.12 | feet over and across Lawai Stream;  |
| 4. | 188° 02' | 35.91 | feet along the East bank of Lot 43-B-2-C to the point of beginning and containing an Area of 0.024 Acre, leaving a Net Area of 6.753 Acres. |

Subject to the condition that there shall be no new structures permitted within the Reserve; new structures should be set back from the 13 foot future road widening reserve along the frontage of Kua Road. Dwelling on the lot shall mean a SINGLE FAMILY dwelling used in connection with farm's agricultural activity.

TO HAVE AND TO HOLD the same, together with all improvements thereon, and all the rights, easements, appurtenances and remainders thereunto belonging or in anywise appertaining or held and enjoyed therewith, unto GRANTEE, in fee simple as tenant in severalty, but reserving unto each of GRANTORS a life estate therein, and GRANTEE's heirs, personal representatives, successors and assigns in fee simple, forever as to said parcel of land, but reserving unto each of GRANTORS a life estate therein, and absolutely and forever as to any personal property located thereon or therein.

IN WITNESS WHEREOF, GRANTORS have executed this instrument.

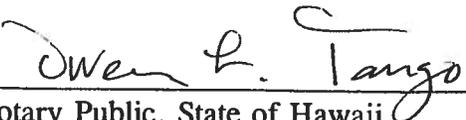
*Elsie F. Perez*

\_\_\_\_\_  
ELSIE F. PEREZ (aka Elsie F. Perry)

*Manuel Perez*  
\_\_\_\_\_  
MANUEL PEREZ (aka Manuel Perry)

STATE OF HAWAII        )  
                                  ) SS.  
COUNTY OF KAUAI     )

On this 13<sup>th</sup> day of August, 1997, ELSIE F. PEREZ and MANUEL PEREZ appeared personally before, and identified themselves to, me, affixed their respective signature to the foregoing document, and acknowledged that each executed it as her/his free act and deed.

  
\_\_\_\_\_  
Notary Public, State of Hawaii

LS

My commission expires: 6-21-2000.



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**LAND DIVISION**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

October 14, 2010

## **EXEMPTION NOTIFICATION**

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

**Project Title:** Grant of Perpetual, Non-Exclusive Easement to Anderson Leroy Perry for Access Purposes, Lawai, Koloa, Kauai, TMK (4) 2-5-002.

**Project / Reference No.:** 03KD-288

**Project Location:** Lawai, Kauai

**Project Description:** Grant of Easement

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

**Exemption Class No.:** In accordance with Hawaii Administrative Rules, Section 11-200-8(A), the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

This action is not part of a multi-phase project, and will result in minimal change to the environment. The issuance of this easement serves to replace an easement previously existing for thirty plus years, and is not a new land use. The continued existence of the access easement is unlikely to result in significant cumulative impact on the environment.

**Recommendation:** The Board is recommended to find that it is anticipated 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.

Exemption Notification for Grant of Access Easement

October 14, 2010

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Laura H. Thielen, Chairperson

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Date