

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

August 26, 2016

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

PSF No. 12OD-084

OAHU

Amend Board Action of February 22, 2013, Item D-11, as amended by Board Action of July 24, 2015, Item D-12; Issuance of Right-of-Entry to Maunalua Fishpond Heritage Center for Scientific Study, Educational, and Conservation Purposes, Honolulu, Oahu, Tax Map Key: (1) 3-7-002:018 & 077.

The Amendment is to Request a further Extension to the Right-of-Entry Permit Approved at the Prior Meetings.

BACKGROUND:

At its meeting on February 22, 2013, Item D-11, the Board approved as amended the staff recommendation by authorizing the issuance of a 24-month right-of-entry permit to Maunalua Fishpond Heritage Center (“MFHC”) for scientific study, educational, and conservation purposes. At its meeting on July 24, 2015, Item D-12, the Board approved a 12-month extension to the right-of-entry, which expired on August 1, 2016. A copy of the 2015 approved submittal is attached as **Exhibit A-1**.

REMARKS:

Recently, MFHC has submitted its final draft environmental assessment to Land Division for review, and staff anticipates the draft environmental assessment will be published for public comment soon. Upon completion of the environmental assessment process, staff will bring the request for a direct lease, if appropriate, to the Board for consideration at a later date.

MFHC plans to continue its work, including monitoring the fish pond and organizing educational visits for the community and schools, under the right-of-entry with the anticipation of obtaining a long term lease. Therefore, MFHC requests another extension of the right-of-entry.

In the 2015 meeting, the Chairperson raised the issue about the intrusion of water into the sewer line in the area and release of capital improvement funds to revitalize the fish pond. Applicant indicates that groundwater flows were partly restored following the 2010 sewer repair project, as documented in the draft environmental assessment. Additional funding was subsequently

requested for studies and actions to restore the groundwater flows back to the levels occurring prior to the highway widening.

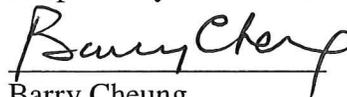
In the meantime, the Department's Engineering Division is finalizing the contract, utilizing the funding appropriated by the Legislature for the demolition of the houses, excluding the fish pond, on the subject properties.

Staff recommends the right-of-entry be extended for an additional year and that the Chairperson be authorized to grant an additional one-year extension should applicant require it.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of February 22, 2013, item D-11, as amended by July 24, 2015, item D-12 by extending the right-of-entry for an additional year and that the Chairperson be authorized to grant an additional one-year extension should applicant require it.
2. All terms and conditions listed in its approvals mentioned above to remain the same.

Respectfully Submitted,

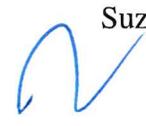


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



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

July 24, 2015

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

PSF No. 12OD-084

OAHU

Amend Prior Board Action of February 22, 2013, Item D-11, Issuance of Right-of-Entry to Maunalua Fishpond Heritage Center for Scientific Study, Educational, and Conservation Purposes, Honolulu, Oahu, Tax Map Key: (1) 3-7-002:018 & 077.

The Amendment is to Request a 12-month Extension to the 24-month Right-of-Entry Permit Approved at the Prior Meeting.

BACKGROUND:

At its meeting on February 22, 2013, under agenda item D-11, the Board approved as amended the staff recommendation by authorizing the issuance of a 24-month right-of-entry permit to Maunalua Fishpond Heritage Center ("MFHC") for scientific study, educational, and conservation purposes. A copy of the 2013 approved submittal is attached as **Exhibit 1**. A right-of-entry permit was subsequently issued on July 11, 2013, after negotiations on the conditions with MFHC, expiring on July 10, 2015.

REMARKS:

As noted in the 2013 decision, the Board required MFHC return to the Board for any request for extension. MFHC indicates that they do need a 12-month extension of the right-of-entry permit to complete the management plan and the environmental assessment. Both documents are pertaining to the request for a long term lease, which will be brought to the Board for consideration at a later date.

MFHC provides an account of activities conducted during the past 24 months, which include cultural inventory survey, biological flora and fauna survey, community planning development, hydrological monitoring, clearance of invasive species, free educational and cultural site visits for community and school groups, maintenance of native plants, removal of graffiti, and established security of the premises.

Staff has no objection to the request for 12-month extension.

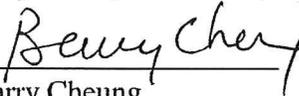
EXHIBIT "A-1"

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
July 24, 2015 *uo.*

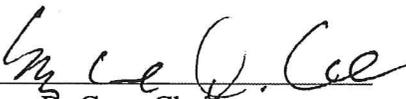
RECOMMENDATION: That the Board:

1. Amend its prior Board action of February 22, 2013, under agenda item D-11 by authorizing a 12-month extension to the right-of-entry permit described above, commencing from July 11, 2015.
2. All terms and conditions listed in its February 22, 2013 approval to remain the same.

Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

Land Board Meeting: July 24, 2015; D-12: Approved as submitted.

Approved as submitted. However, the Chairperson requested that this matter be brought back to the Board in 60 days with the Department of Transportation, Highways Division, and the City Department of Environmental Services in attendance, to discuss the safety and health issues associated with the intrusion of water into the sewer system in the area, and to expedite the release of capital improvement funds to revitalize the fish pond.

AMENDED

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

February 22, 2013

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

PSF No.: 12OD-084

OAHU

Issuance of Right-of-Entry to Maunalua Fishpond Heritage Center for Scientific Study, Educational, and Conservation Purposes, Honolulu, Oahu, Tax Map Key: (1) 3-7-002:018 & 077.

APPLICANT:

Maunalua Fishpond Heritage Center, a domestic non-profit corporation and 501(c)(3) organization.

LEGAL REFERENCE:

Section 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Honolulu, Oahu, identified by Tax Map Key: (1) 3-7-002:018 & 077, as shown on the attached map labeled **Exhibit A**.

AREA:

Parcel 18 5,407 square feet;
Parcel 77 5,497 square feet.
Total 10,904 square feet, more or less.

ZONING:

State Land Use District: Urban
City & County of Honolulu LUO: R-10

TRUST LAND STATUS:

Acquired after Statehood, i.e. non-ceded
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

^{as amended}
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
February 22, 2013 00.

EXHIBIT " 1 "

D-11

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Scientific study, educational, and conservation purposes.

CONSIDERATION:

Gratis. Non-profit organization.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is 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" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." See Exemption Notification at **Exhibit B**.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u> x </u>	NO _____
Registered business name confirmed:	YES <u> x </u>	NO _____
Good standing confirmed:	YES <u> x </u>	NO _____

APPLICANT REQUIREMENTS:

None

REMARKS:

Parcel 18 & 77 were acquired through condemnation by the Department of Transportation ("DOT") in the 1990s as part of the federal funded highway improvement project. It is staff's understanding that since the acquisition, DOT has been keeping both parcels vacant. There are improvements (house and garage) on each parcel, and a fish pond straddles the two parcels. A site layout provided by the Applicant is attached as **Exhibit C**.

In May 2012, Director of DOT and the Chairperson signed a memorandum (**Exhibit D**) regarding the transfer of "the ownership, jurisdiction, maintenance, liability and operation" of the subject parcels from DOT to this Department.

The Division has discussed with the Department of the Attorney General the leasing below fair market value of a federally funded acquisition property. Subsequently, staff obtained a

letter dated October 4, 2011 from the Federal Highway Administration (**Exhibit E**) approving the DOT's request for leasing at less than fair market value to MFHC.

In November 2012, Maunalua Fishpond Heritage Center ("MFHC") requested a right-of-entry to conduct activities on the fishpond, which include biological and hydrological monitoring, weed and graffiti control, free public education program regarding the cultural and biological values of the fishpond and ongoing maintenance of the fishpond. MFHC does not plan to use the improvements on the property. Nevertheless, MFHC is formulating a long term plan for the fishpond, which may require a long term disposition, for example, a lease. Staff will bring the request for long term disposition to the Board for consideration when the long term plan from MFHC becomes available.

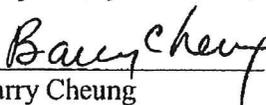
Staff did not solicit comments from other government agencies on the requested right-of-entry as the request will not involve in any change of use or condition of the subject parcels.

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.

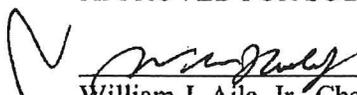
RECOMMENDATION: That the Board:

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 issuance of a right-of-entry permit to Maunalua Fishpond Heritage Center covering the subject area for scientific study, education, and conservation 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 right-of-entry permit document form, as may be amended from time to time; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

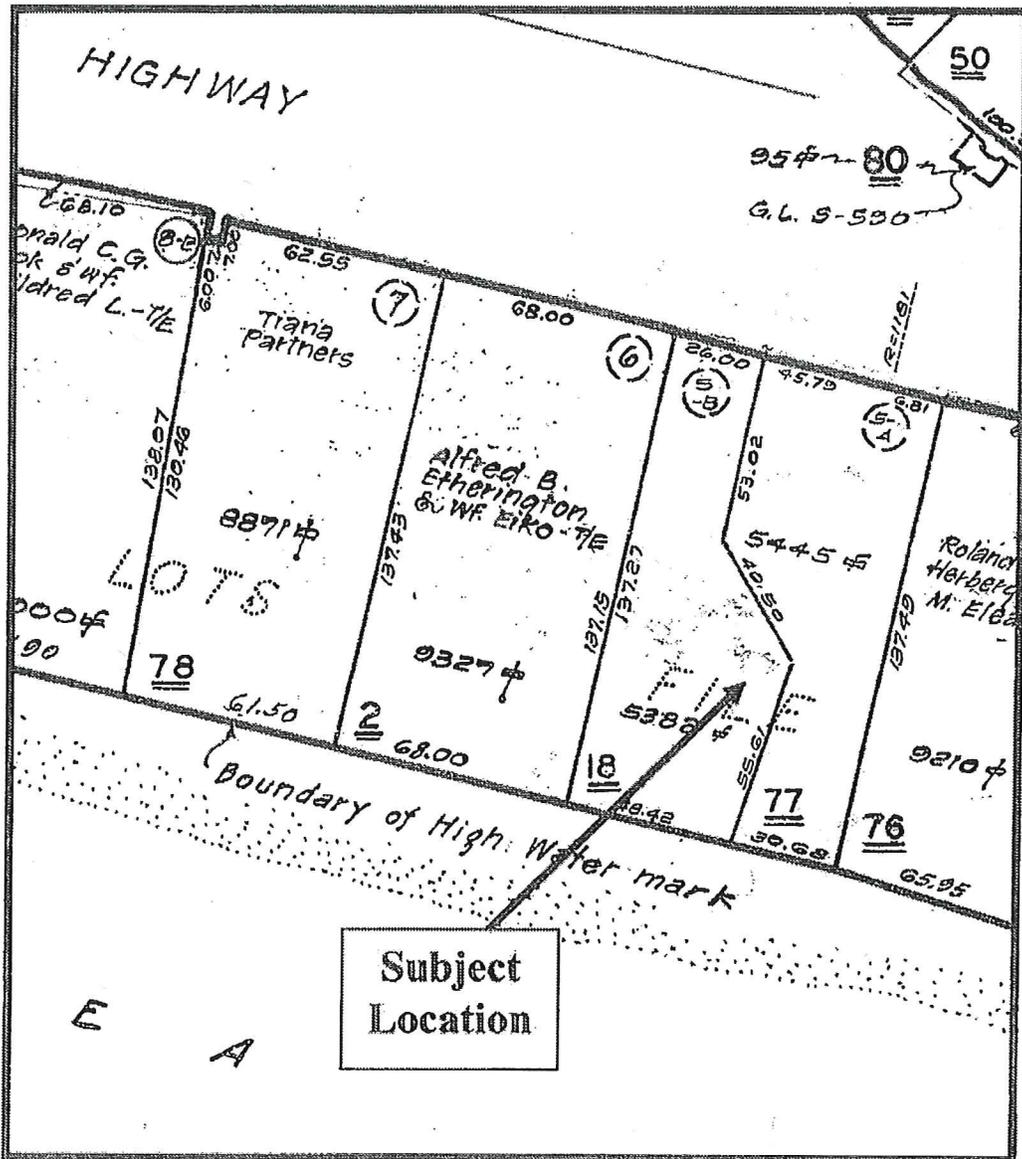

William J. Aila, Jr., Chairperson

Land Board Meeting: February 22, 2013; D-11: Approved as amended
See attached page.

Land Board Meeting: February 22, 2013; D-11: Approved as amended.

The Board limited the duration of the right-of-entry to two years. Accordingly, recommendation 2 is amended to read as follows:

- 2. Authorize the issuance of a right-of-entry permit to Maunalua Fishpond Heritage Center covering the subject area for scientific study, education, and conservation 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 right-of-entry permit document form, as may be amended from time to time;**
 - B. The term of the right-of-entry is two years. If Applicant requires a longer period of time for its project, it shall return to the Board with a request for extension or for a new disposition prior to the expiration of the right-of-entry; and**
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.**



TMK (1) 3-7-002:018 & 077

EXHIBIT A

EXEMPTION NOTIFICATION

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

Project Title: Right-of-Entry for Scientific Study, Educational, and Conservation Purposes

Project / Reference No.: PSF 12OD-084

Project Location: Honolulu, Oahu, Tax Map Key: (1) 3-7-002:018 & 077.

Project Description: Conduct scientific study, weed and graffiti control, public education regarding the cultural and biological values of fishpond.

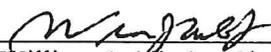
Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1), (4), and (5), the subject request is 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"; Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."; and Class No. 5, that states "Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource."

The applicant is not planning on conducting major change to the existing topographical and vegetation condition of the property. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties Not applicable

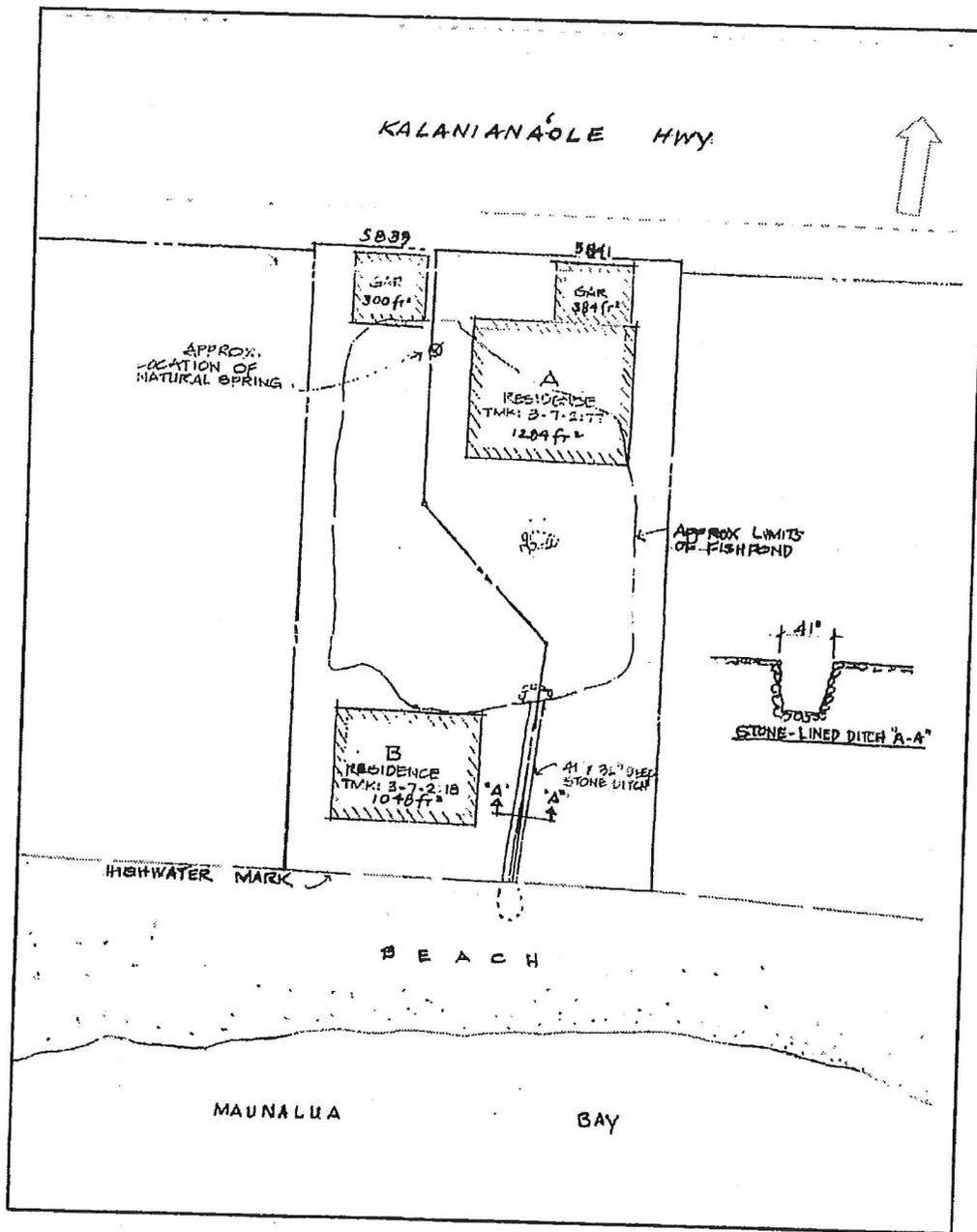
Recommendation: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila Jr., Chairperson
Date

EXHIBIT B

Site Diagram:
 Layout of the Kalauha'ihai Fishpond and facilities
 5839/5841 Kalaniana'ole Hwy



TMK 3-7-2-18 Lot 5B - 5,407 ft²
 TMK 3-7-2-77 Lot 5A - 5,497 ft²
 Fishpond area is approximately 4,320 ft²

EXHIBIT "C"

241E

NEIL ABERCROMBIE
GOVERNOR



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

GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
JADE T. BUTAY
FORD N. FUCHIGAMI
RANDY GRUNE
JADINE URASAKI

IN REPLY REFER TO:
HWY-RM
3.89214

MAY 17 2012

TO: THE HONORABLE WILLIAM J. AILA, JR., DIRECTOR
DEPARTMENT OF LAND AND NATURAL RESOURCES

FROM: GLENN M. OKIMOTO, Ph.D.
DIRECTOR OF TRANSPORTATION *Glenn M. Okimoto*

SUBJECT: KALANIANAOLE HIGHWAY, FAP NO. F-072-1 (39)
EAST HALEMAUMAU TO KEAHOLE STREET, ISLAND OF
OAHU, HAWAII, TMK: (1) 3-7-02:018 & 077
TRANSFER OF JURISDICTION OF PROPERTIES LOCATED AT 5839
AND 5841 KALANIANAOLE HIGHWAY

This letter is to memorialize the decision and to transfer the jurisdiction of the two properties located at 5839 and 5841 Kalanianaole Highway from the Department of Transportation (DOT) to the Department of Land and Natural Resources (DLNR).

Pursuant to the agreement made between the two Directors, William J. Aila, Jr., DLNR and Glenn M. Okimoto, Ph.D., DOT has agreed to transfer the ownership, jurisdiction, maintenance, liability and operation of the subject properties effective as of the date of this memo.

No water restoration shall be required from DOT while the properties are under DLNR's jurisdiction. Pursuant to the Code of Federal Regulations (CFR) 23, 710-409 d, should the properties no longer be used for public purposes the properties will revert back to DOT.

Please sign below and return original for our files.

By *Glenn M. Okimoto*

GLENN M. OKIMOTO, Ph.D.
Its DIRECTOR OF TRANSPORTATION

By *William J. Aila, Jr.*

WILLIAM J. AILA, JR.
Its DIRECTOR OF LAND AND
NATURAL RESOURCES

Enclosure

EXHIBIT "D"



U.S. Department
of Transportation
Federal Highway
Administration

Hawaii Federal-Aid Division

October 4, 2011

300 Ala Moana Blvd, Rm 3-306
Box 50206
Honolulu, Hawaii 96850
Phone: (808) 541-2700
Fax: (808) 541-2704

READING BLUES

In Reply Refer To:
HDA-HI

Glenn M. Okimoto, Ph.D.
Director
Hawaii Department of Transportation
869 Punchbowl Street
Honolulu, HI 96813

Dear Dr. Okimoto:

Thank you for your letter dated May 12, requesting our approval to lease Surplus Properties and Kalauha'ihai Pond at less than fair market value to the Maunaloa Fishpond Heritage Center, a non-profit organization. We are also in receipt of your September 14 letter requesting approval of a Public Interest Determination for this action. In accordance with 23 CFR 710.403(d)(1) and 710.409 (d), we concur with your public determination and approve your request.

Please note we have been contacted by another party with an interest in the surplus property and fishpond. Dean Yogi of your staff is familiar with this additional interest that you may wish to consider.

Sincerely Yours,

Abraham Wong
Division Administrator

Enclosures

EXHIBIT "E"