

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

November 10, 2016

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

PSF No.: 16MD-106

Maui

Set Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife for Forestry and Wildlife Purposes and Issuance of an Immediate Management Right-of Entry; Honuaula, Makawao, Maui, Tax Map Key Nos.: (2) 2-1-002:001, 009, 010, & 012 and (2) 2-1-004:075, & 110

APPLICANT:

Department of Land and Natural Resources, Division of Forestry and Wildlife

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands at Honuaula, Makawao, Maui, identified by Tax Map Key Nos.: (2) 2-1-002:001, 009, 010, & 012 and (2) 2-1-004:075 & 110 as shown on the attached maps labeled **Exhibits A1 & A2**.

AREA and ZONING:

TMK No.	AREA (acres)	State LUD	County CZO
(2) 2-1-002:001	5,948.00	Ag, Conservation	Ag, Interim
(2) 2-1-002:009	96.16	Conservation	Interim
(2) 2-1-002:010	51.00	Conservation	Ag, Interim
(2) 2-1-002:012	6.00	Conservation	Ag
(2) 2-1-004:075	13.00	Ag, Conservation	Beach ROW, PK Park
(2) 2-1-004:110	4.36	Conservation	Ag, Beach ROW, PK Park, Proposed Road

Area: Total of 6,118.52 acres, more or less.

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:

Vacant and Unencumbered.

PURPOSE:

Forestry and Wildlife Purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

Applicant shall be required to provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

On May 8, 2015, under agenda item C-4 (see **Exhibit B** attached),¹ the Board of Land and Natural Resources ("Land Board") approved the Division of Forestry and Wildlife's ("DOFAW") request for a selection of competitive sealed process and authorization for the Chairperson to award and execute a contract for the development of management plan for the Kanaio region of southern Maui. DOFAW is ready to award a contract for developing a strategic management plan and completing regulatory compliance as required for establishing and operating the Kanaio Game Management Area ("GMA").

DOFAW's management of the Kanaio GMA may involve funds from the Pittman-Robertson Game grant, which is awarded annually by the U.S. Fish and Wildlife Service, Wildlife and Sport Fish Restoration Program ("WSFR"), to enhance public hunting opportunities. WSFR informed DOFAW that WSFR will have greater confidence in

¹ The Draft Request for Proposals that was attached to the DOFAW submittal of May 8, 2015, item C-4, has been omitted from Exhibit B attached due to its length.

approving DOFAW's eligibility to use WSFR funds if DOFAW obtained management authority over the Kanaio GMA. Hence, the request to set-aside the subject lands to DOFAW is before the Land Board today.

While the management plan is being developed, DOFAW is requesting an immediate management right-of-entry to enhance the protection of natural and cultural resources in the area, and to reduce the ongoing negative impacts of human-caused disturbance, degradation, and destruction of State property. The immediate management of the subject lands will remain with DOFAW until the execution of the set aside.

Various government agencies and interest groups were solicited for comments. The Maui County Departments of Planning, Parks and Recreation, Public Works and Water, and the State Departments of Health and Agriculture had no comments or objections. DLNR's Divisions of Aquatic Resources and Forestry and Wildlife had no objections.

The Office of Conservation and Coastal Lands ("OCCL") informed staff that its records show that a Conservation District Use Permit ("CDUP") was issued on August 11, 2000, by the Land Board to the Hawaii Army National Guard ("HIARNG") to subdivide public lands to be set-aside by Executive Order for military purposes. HIARNG was unable to meet the conditions of the CDUP, and recently, informed staff that it will not pursue use of this area. OCCL also commented that any future land uses may require a CDUP.

The Marine & Coastal Zone Advocacy Council asked to be informed throughout the planning and environmental process.

Finally, the State Department of Hawaiian Home Lands, DLNR's Divisions of Conservation and Resource Enforcement, Commission on Water Resource Management, and State Historic Preservation Division; Office of Hawaiian Affairs, the Army Corps of Engineers, the Maui Island Burial Council, Aha Moku Advisory Committee and the Maui Na Ala Hele Advisory Council did not respond by the suspense date.

RECOMMENDATION:

That the Board, subject to Applicant fulfilling the Applicant Requirements above:

- A. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to Division of Forestry and Wildlife 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

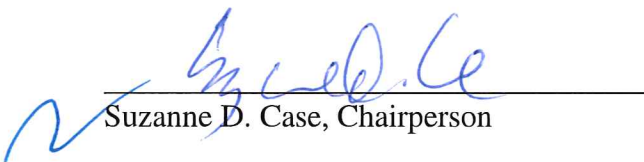
- Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
3. Review and approval by the Department of the Attorney General; and
 4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Authorize the issuance of an immediate management right-of-entry permit to the Division of Forestry and Wildlife covering the subject area 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 right-of-entry permit form, as may be amended from time to time; and
 2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

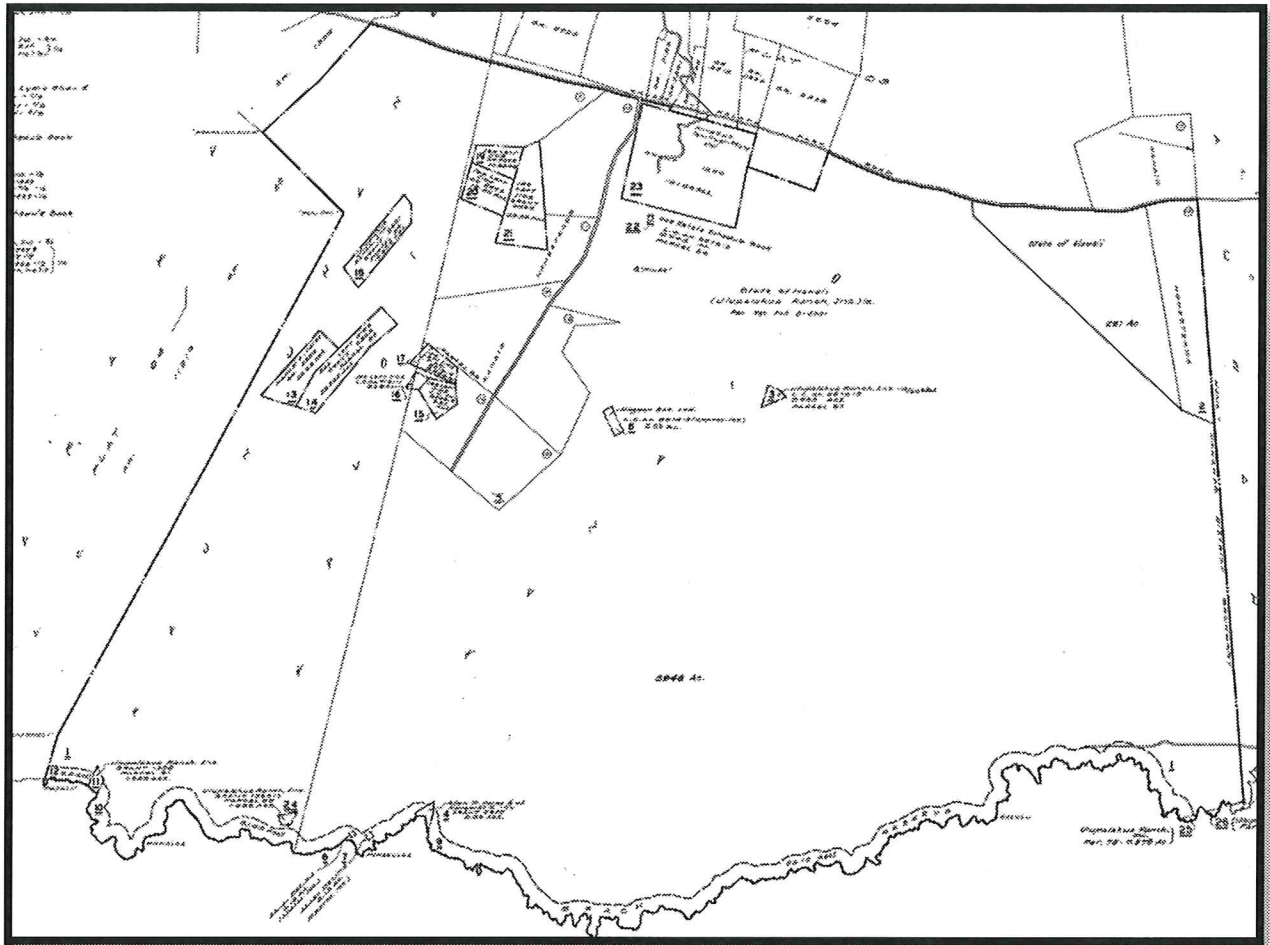


Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:

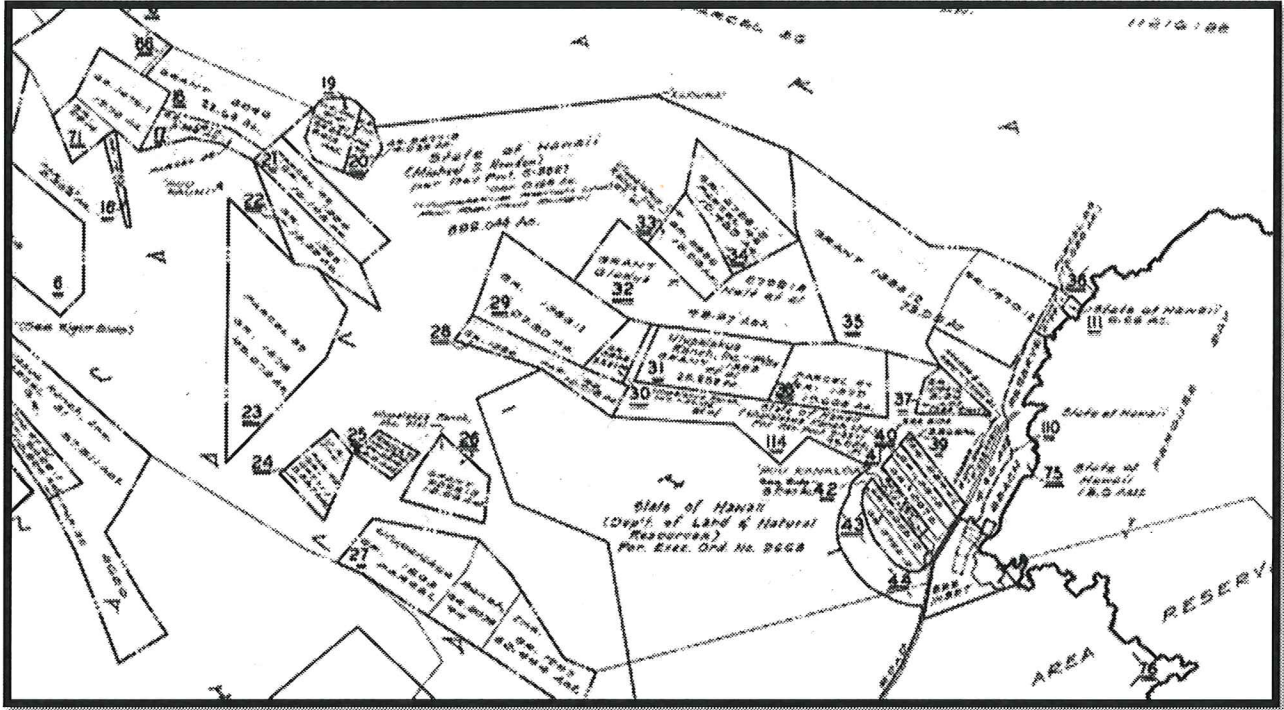


Suzanne D. Case, Chairperson



TMK Nos. (2) 2-1-002: 001, 009, 010 & 012

Exhibit A1



TMK Nos. (2) 2-1-004: 075 & 110

Exhibit A2

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

May 08, 2015

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Land Board Members:

SUBJECT: REQUEST APPROVAL FOR SELECTION OF COMPETITIVE SEALED PROPOSAL PROCESS AND AUTHORIZE THE CHAIRPERSON TO AWARD AND EXECUTE A CONTRACT FOR DEVELOPMENT OF A MANAGEMENT PLAN AND COMPLETION OF ENVIRONMENTAL ASSESSMENTS AND RELATED REGULATORY COMPLIANCE DOCUMENTS FOR ESTABLISHING THE KANAIO GAME MANAGEMENT AREA AT KANAIO, KALOI, KAUNUHANE, PAPA KA I, AND KALIHI, MAUI, MULTIPLE TMKs

SUMMARY:

The Division of Forestry and Wildlife (DOFAW) requests that the Board of Land and Natural Resources (BLNR) approve the issuance of a Request for Proposals (RFP) under the competitive sealed proposal process, and authorize the Chairperson to award and execute a contract for the development of a strategic management plan and the completion of federal and state Environmental Assessments (EAs) and related regulatory compliance documents for establishing the Kanaio Game Management Area at Kanaio, Kaloi, Kaunuhane, Papaka Kai, and Kalihi, Maui.

BACKGROUND:

In order to expand opportunities for public hunting and enhance the Department's protection of our state's natural and cultural resources, DOFAW plans to establish a Game Management Area (GMA) on approximately 8,000 acres of state and private land in the Kanaio region of southern Maui, extending from the shoreline to 1,800 feet. This remote area includes lands within the State Agricultural Land Use District and the State Conservation Land Use District (General and Resource subzones); contains critical habitat for five endangered plant species and one endangered insect species; holds a multitude of potentially significant archaeological sites, human burials, and cultural practice areas; and supports substantial recreational and subsistence activity along the shoreline, which is traversed by the Hoapili Trail. Much of the area, including the mauka parcel of unencumbered state land that forms the bulk of the GMA (5,948 acres),

ITEM C- 4

Exhibit B

suffers from the negative impacts of illegal off-road vehicle traffic; unauthorized cattle grazing; other human-caused disturbance, degradation, and destruction (including a legacy of military abuse); and feral ungulates (primarily goats).

DOFAW will limit public hunting in the Kanaio GMA to areas that are mauka of the Hoapili Trail, only. Methods of hunting will include archery for game mammals (deer, pig, goat) and shotgun for game birds. The conceptual plan for the Public Hunting Area (PHA) includes firebreaks; safety zones; interior roads and turnouts; wildlife watering units and vegetation plots (for game birds only); hunter check stations and related signage; and protective fencing for sensitive biological and cultural resources. In order to further ensure the protection of sensitive biological and cultural resources, DOFAW will fence the entire makai boundary of the public hunting area (along the mauka side of the Hoapili Trail) to exclude game mammals from shoreline areas, and will build partnerships with area residents, cultural practitioners, recreational users, and community organizations; private landowners; federal and state agencies; DLNR divisions/offices and DOFAW programs; and Maui County to conduct programs, projects, and activities aimed at preserving and accessing the area's rich cultural and natural heritage. In support of these objectives, makai areas of the GMA may include additional fencing and signage, comfort stations, roadways and pathways, and parking areas.

DOFAW's management of the GMA may involve (1) use of federal funds from the U.S. Fish and Wildlife Service (USFWS) to manage game animals and provide access to hunting opportunities (Pittman-Robertson Game Grant); (2) change in use of State lands (from unencumbered/vacant to GMA); and (3) use of lands in the State Conservation Land Use District and in the Shoreline area. Therefore, DOFAW intends to develop a management plan for the area and complete federal and state EAs for its proposed actions. In the process of developing the management plan and completing the EAs, DOFAW intends to conduct Section 7 endangered species consultation with the USFWS; Section 106 historic preservation consultation with the State Historic Preservation Division (SHPD), including SHPD approval of a Preservation Plan and a Burial Treatment Plan; and consultation with the Department's constituents in the affected community, including game management area cooperators, neighboring landowners, cultural practitioners, and recreational users.

If completion of the management plan and EAs results in suitable approvals and findings, then DOFAW and Land Division will request that the Board set-aside four to six parcels of unencumbered state land (about 6,101 to 6,118 acres total) to DOFAW for public use and wildlife-based recreation purposes, and DOFAW will conduct administrative rulemaking to establish regulatory parameters for public hunting in the GMA. If an adjoining private landowner agrees to cooperate with DOFAW to expand the GMA onto private land, then DOFAW will request that the Board execute a Cooperative Game Management Agreement with the landowner, and will conduct administrative rulemaking to establish regulatory parameters for public hunting in the Cooperative GMA.

DISCUSSION:

Chapter 3-122-43, Hawai'i Administrative Rules (HAR), allows the Department to use the competitive sealed proposal process, rather than the competitive sealed bidding process, when the competitive sealed bidding process is not practicable or advantageous. The requirements and special conditions of the subject procurement align with several of the factors that can be used to determine that competitive sealed bidding is not practicable or advantageous (please see factors listed below). Therefore, DOFAW recommends using a competitive sealed proposal process to select a contractor for development of a strategic management plan and the completion of federal and state Environmental Assessments (EAs) and related regulatory compliance documents for establishing the Kanaio Game Management Area at Kanaio, Maui.

Under HAR § 3-122-43(b), factors to be considered in determining whether competitive sealed bidding is not practicable include:

- (1) Whether the primary consideration in determining award may not be price;
- (2) Whether the contract needs to be other than a fixed-price type;
- (3) Whether the specifications for the goods, services, or construction, or delivery requirements cannot be sufficiently described in the invitation for bids;
- (4) Whether oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposals;
- (5) Whether offerors may need to be afforded the opportunity to revise their proposals, including price; and
- (6) Whether award may need to be based upon a comparative evaluation as stated in the request for proposals of differing price, quality, and contractual factors in order to determine the most advantageous offering to the State. Quality factors include technical and performance capability and the content of the technical proposal.

Under HAR § 3-122-43(c), factors to be considered in determining whether competitive sealed bidding is not advantageous include:

- (1) If prior procurements indicate that competitive sealed proposals may result in more beneficial contracts for the State; and
- (2) Whether the factors listed in subsection (b) (4) through (b) (6) are desirable in conducting a procurement rather than necessary; if they are, then the factors may be used to support a determination that competitive sealed bidding is not advantageous.

Also, HAR § 3-122-45.01 requires that, prior to the preparation of the request for proposals, a determination shall be made by the procurement officer that the procurement officer or an evaluation committee shall evaluate the proposals. An evaluation committee shall consist of at least three governmental employees with sufficient qualifications in the area of the goods, services, or construction to be procured. DOFAW recommends that an evaluation committee, consisting of the individuals listed below, evaluate the proposals to allow for best professional judgment of the most appropriate proposal for the project characteristics:

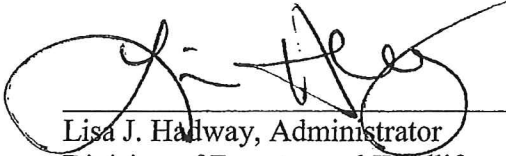
Shane De Mattos, DOFAW (MauiNui Game Biologist)
Scott Fretz, DOFAW (MauiNui District Manager)
James Cogswell, DOFAW (Wildlife Program Manager)
Jenny Pickett, SHPD (MauiNui Archaeologist)

RECOMMENDATIONS:

That the Board, as the Department Procurement Officer, approves:

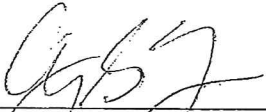
1. The use of a competitive sealed proposal procurement process for the development of a strategic management plan and the completion of federal and state Environmental Assessments (EAs) and related regulatory compliance documents for establishing the Kanaio Game Management Area at Kanaio, Kaloi, Kaunuhane, Papaka Kai, and Kalihi, Maui.
2. The use of an evaluation committee comprised of the individuals identified above to evaluate the competitive sealed proposals.
3. The authorization of the Chairperson to award and execute a contract for goods and services, subject to the availability of funds and approval as to form by the Department of the Attorney General.
4. The authorization of the Chairperson to (a) appoint evaluation committee alternates and (b) reduce the committee by one member should the need arise.

Respectfully submitted,



Lisa J. Halway, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



CARTY S. CHANG, Acting Chairperson
Board of Land and Natural Resources

Attachments:

1. Draft Request for Proposals