

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

October 27, 2017

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

PSF No.: 17OD-131

OAHU

Cancellation of Governor's Executive Order No. 3736 and Reset Aside to Department of Accounting and General Services for Kapolei State Office Building Purposes, Authorization to Enter Mutual Cancellation and Termination of Ground, Lease and Lease Agreement; Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-160:019.

APPLICANT:

Department of Accounting and General Services (DAGS)

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Honouliuli, Ewa, Oahu, identified by Tax Map Key: (1) 9-1-160:019, as shown on the attached map labeled **Exhibit A**.

AREA:

7.145 acres, more or less.

ZONING:

State Land Use District: Urban
City and County of Honolulu LUO: B-2

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Governor's Executive Order No. 3736 setting aside 7.145 acres to Department of Accounting and General Services for Kapolei State Office Building purposes.

PURPOSE OF SET ASIDE:

Kapolei State Office Building purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 5, 2015, 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." Item No. 43 that states "transfer of management authority over state-owned land, such as setting aside for state lands to or from other government agencies through a Governor's executive order". See **Exhibit B**.

APPLICANT REQUIREMENTS:

None

REMARKS:

The State acquired the subject parcel from The Estate of James Campbell in July 1997 subject to an existing ground lease between the former owner and the developer who constructed the office building. After the developer entered a sublease with the State through DAGS, various State agencies started moving into the State office building. At the same time, the State issued a Certificate of Participation (COP) as the finance vehicle to pay off the cost of the improvements.

At its meeting of October 23, 2009, under agenda item D-8, the Board consented to refinance the COP in view of a lower interest rate. Upon paying off the COP, which currently is anticipated to be May 2018, the improvements will become State's property.

In anticipation of the payoff of the COP in May 2018, DAGS requests the Board's authorization to execute the Mutual Cancellation and Termination of Groundlease, Lease and Lease Agreement, which has been reviewed by the deputy Attorney General representing DAGS. A copy of the latest draft prepared by DAGS is attached as **Exhibit C**. According to DAGS, the lessor of the groundlease did not see the draft yet. To accommodate any possible changes needed for the document, staff recommends the Board authorize the execution of the document, further subject to any terms and

conditions prescribed by the Comptroller of DAGS to best serve the interest of the State.

In reviewing the subject Executive Order No. 3736, staff notes that the set aside is only pertaining to the land, to which the State has held title since 1997. Staff brings the request to the Board today recommending a new executive order setting aside both the land and improvements to DAGS, and EO 3736 will be cancelled.

Other than DAGS, staff did not solicit comments from other agencies as the request is mainly a housekeeping matter. There are no other pertinent issues or concerns.

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 Comptroller of the Department of Accounting and General Services and the Chairperson to execute the Mutual Cancellation and Termination of Groundlease, Lease and Lease Agreement described above and subject further to the following:
 - A Review and approval by the Department of the Attorney General; and
 - B Such other terms and conditions as may be prescribed by the Comptroller of the Department of Accounting and General Services to best serve the interests of the State.
3. Approve of and recommend to the Governor issuance of an executive order canceling Governor's Executive Order No. 3736 and subject to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. 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;
 - 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.
4. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands and improvements thereon to the Department of Accounting and General Services under the terms and conditions cited above, which are by this reference

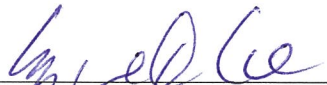
incorporated herein and subject further to the following:

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


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

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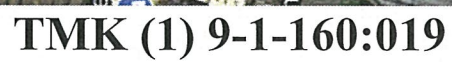


EXHIBIT A

EXEMPTION NOTIFICATION

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

Project Title:	Setting aside for office building purposes.
Project / Reference No.:	PSF 17OD-131
Project Location:	Kapolei, Ewa, Oahu, Tax Map Key: (1) 9-1-160:019.
Project Description:	Set aside for both land and improvements for office building purposes
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	<p>In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 5, 2015, 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. "Item No. 43 that states "transfer of management authority over state-owned land, such as setting aside for state lands to or from other government agencies through a Governor's executive order".</p> <p>Since the request is pertaining to transfer of management jurisdiction. 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.</p>
Consulted Parties	Department of Accounting and General Services
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.

EXHIBIT B

**MUTUAL CANCELLATION AND TERMINATION
OF GROUNDLEASE, LEASE AND LEASE AGREEMENT**

THIS MUTUAL CANCELLATION AND TERMINATION OF GROUNDLEASE, LEASE AND LEASE AGREEMENT (this "Mutual Cancellation"), dated as of May 1, 2018, by and between the STATE OF HAWAII, by its Department of Accounting and General Services, as ground lessor (in such capacity, the "Ground Lessor"), whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as ground lessee and as premises lessor (the "Lessor"), whose address is 700 South Flower Street, Suite 500, Los Angeles, California 90017, and the STATE OF HAWAII, by its Department of Accounting and General Services, as premises lessee (in such capacity, the "Lessee"), whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813;

W I T N E S S E T H

WHEREAS, the Ground Lessor has heretofore leased certain land to the Lessor, as described in Exhibit A hereto (the "Site", pursuant to an Amended and Restated Groundlease (the "Groundlease")), dated as of November 1, 1998; and

WHEREAS, the Lessor subleased to the Lessee, and the Lessee has subleased from the Lessor, the Site, together with certain improvements thereon (collectively, the "Premises") pursuant to a Lease Agreement, dated as of November 1, 1998 (as amended and supplemented, the "Lease" and the "Lease Agreement"); and

WHEREAS, under the Lease, the Lessee is obligated to make base rental and additional rental payments to the Lessor for the lease of the Premises; and

WHEREAS, as of May 1, 2018, the Lessee has made all required base rental and additional rental payments to the Lessor pursuant to the Lease and has no further obligations under the Lease Agreement, and the Lessor shall have no further obligations under the Groundlease; and

WHEREAS, the Ground Lessor, the Lessor and the Lessee mutually desire to cancel and terminate the Groundlease, the Lease and the Lease Agreement;

NOW, THEREFORE, for and in consideration of the above recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

The Ground Lessor, the Lessor and the Lessee each hereby mutually agree to cancel and terminate any and all rights, title and interest each party may hold under either the Groundlease, the Lease or the Lease Agreement, and further agree that the Groundlease, the Lease and the Lease Agreement shall have no further force and effect. This Mutual Cancellation may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

EXHIBIT "C"

IN WITNESS WHEREOF, the parties hereto have caused this Mutual Cancellation to be executed and delivered as of the date first above written.

STATE OF HAWAII

By _____
Department of Accounting and General Services

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.,
as Lessor

By: _____
Title: _____

STATE OF HAWAII

By _____
Department of Accounting and General Services

APPROVED PURSUANT TO CHAPTER 37D,
HAWAII REVISED STATUTES:

By _____
Director of Finance

APPROVED PURSUANT TO CHAPTER 37D,
HAWAII REVISED STATUTES:

By _____
Attorney General

Approved:

BOARD OF LAND AND NATURAL
RESOURCES

By _____
Its Chairperson and Member

Approved by the Board of Land and
Natural Resources at its meeting held
on _____, Item _____

EXHIBIT A

DESCRIPTION OF REAL PROPERTY

All of that certain parcel of land situate at Honouliuli, District of Ewa, City and County of Honolulu, State of Hawaii, described as follows:

LOT 11000, area 7.145 acres, more or less, as shown on Map 820, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1069 of the Trustees under the Will and of the Estate of James Campbell, deceased:

Being the land described in Transfer Certificate of Title No. 496,527 issued to the State of Hawaii, by its Board of Land and Natural Resources and set aside for public purposes under the control and management of the Department of Accounting and General Services pursuant to Executive Order No. 3736, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 286061 and noted on said Transfer Certificate of Title No. 496,527