

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

February 9, 2018

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

PSF No.: 17HD-021

Hawai'i

Set Aside to the Department of Hawaiian Home Lands for Agricultural Development, and Issuance of Immediate Management Right-of-Entry to the Department of Hawaiian Home Lands, Waiohinu, Ka'u, Hawaii, Tax Map Key: (3) 9-5-005:003.

APPLICANT:

Department of Hawaiian Home Lands

LEGAL REFERENCE:

Sections 171-11, -13, -26 and -55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Waiohinu, Ka'u, Hawaii, identified by Tax Map Key: (3) 9-5-005:003, as shown on the attached map labeled Exhibit A.

AREA:

378.87 acres, more or less.

ZONING:

State Land Use District:	Agriculture
County of Hawai'i CZO:	A-20a, Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES

CURRENT USE STATUS:

Currently encumbered under Revocable Permit No. S-7690, Kahua Ranch, Limited, for pasture purposes, and Revocable Permit No. S-7847, Richard and Donna Lee Souza, also for pasture purposes.

PURPOSE:

Agricultural 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. (Attached Exhibit B)

APPLICANT REQUIREMENTS:

Applicant shall be required to:

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

REMARKS:

BACKGROUND:

The subject parcel was previously encumbered by General Lease No. 3511 for sugar production to Hutchinson Sugar Company (HSC) from 1/01/1955 through 12/31/1969. Following the expiration of the lease, HSC held the land under Revocable Permit No. S-4737, effective 1/01/1970. Subsequent to the issuance of the RP, HSC changed its name to Kau Sugar Company, Inc., then to Kau Agribusiness Company, Inc. (KAC). The permit was cancelled 12/31/1999.

Prior to the cancellation of the revocable permit, KAC had been allowing ranching to occur on portions of State and private lands while it transitioned out of the sugar business. Three of the ranchers using these lands requested continued use of the State land for ranching purposes, and as a result, at the Land Board meeting of 4/12/2001, agenda item D-23, parcel (3) 9-5-005:003 was portioned out to Daleico Ranch, Felix Ibarra and S & S Dairy, Inc. for pasture use under three separate revocable permits. A smaller portion of the property was permitted to Sydney Andrade for intensive agriculture purposes. However, the agricultural portion was never utilized and remains vacant.

The subject property is currently encumbered by two separate month-to-month revocable permits: RP S-7690, Kahua Ranch, Limited, and RP S-7847, Richard and Donna Lee Souza. Both of these permits were issued for pasture purposes.

REQUEST:

In a memorandum dated February 3, 2017, the Honorable Jobie Masagatani, Chairman, Department of Hawaiian Home Lands (DHHL), presented a request regarding the possible acquisition of DLNR lands in Waiohinu, Kau. The acquisition of these lands would provide many opportunities for the Kau Hawaiian Home Lands Association (KHHLA) to conduct agriculture education programs and provide additional agriculture homesteading opportunities for DHHL beneficiaries.

KHHLA was organized in 2011 by a group of people who felt the need to represent the interests of the beneficiaries and lessees of DHHL in Kau and the Kau community at large. The intent of this organization is to improve and enhance the lives of native Hawaiians, other communities on the Island of Hawaii and throughout the State of Hawaii. KHHLA members consist of more than 80% beneficiary applicants.

Agricultural leases are one of the priority projects of the DHHL Kau Regional Plan¹ that DHHL Beneficiaries and the Kau community are involved in. Another priority project in the plan is to create a partnership with DLNR for Hawaiian Homesteading.

According to the KHHLA, with few commercial resources to obtain the necessary food supplies for their families², there is an urgent need to grow fresh fruits and vegetables in the Kau region. The Kau Community Development Plan also supports local farms and strengthening local agriculture. By KHHLA members pursuing strategies in sustainability and having access to healthy food, they will not only feed their Ohana, but it will connect them educationally, culturally, assist them economically and nurture their Ohana.

DHHL explains that the addition of this parcel of land to the DHHL inventory not only will enhance the opportunities of the DHHL beneficiaries, but also that of the greater Kau community. With the assistance of the DHHL, KHHLA will educate the youth and instill within them, the pride and historic significance of Kau, so they may promote and preserve the Hawaiian culture and natural resources for future generations.

A request for comments was sent to various government agencies and their responses are listed below.

<i>County of Hawaii Agencies</i>	<i>Comments</i>
Environmental Management	No Comments
Fire Department	No Comments
Planning	No Response
Police Department	No Comments
Public Works	No Response

1 More information regarding the Kau Regional Plan can be found at;
<http://dhhl.hawaii.gov/po/beneficiary-consultation/2011-beneficiary-consultations/ka%ca%bbu-regional-plan-2011/>

2 Currently in Kau, there is only one supermarket in the Ocean View Subdivision, 13 miles away from Naalehu and 26 miles from Pahala. However, there is a small grocery store in Naalehu in addition to convenience stores in the general area of these communities.

<i>State of Hawaii Agencies</i>	<i>Comments</i>
DLNR-Historic Preservation	No Objection
DLNR-DOFAW	Comments Below
DLNR-OCCL	No Response
DLNR-CWRM	No Response
DOH–Environmental Management	No Comments
DHHL	No Response
DOT Highways Division	Comments Below
Dept. of Agriculture	No Comments
<i>Other Agencies</i>	<i>Comments</i>
Office of Hawaiian Affairs	No Response
Corps of Engineers	No Comments
USDA-NRCS	No Response

The Division of Forestry and Wildlife (DOFAW) is requesting a 30-foot wide easement (Exhibit C) through the upper portion of the subject property for public and management access to the Kau Forest Reserve and the Ha’ao Springs Restricted Watershed. According to DOFAW personnel, the road is regularly used by the public to access the forest reserve for hunting, gathering and recreation. DOFAW will be required to provide a survey map along with a metes and bounds description of the easement. Reserving this public access is consistent with the Board’s responsibilities under Section 171-26, HRS, which provides in part as follows:

Prior to the disposition of any public lands, the board of land and natural resources shall lay out and establish over and across such lands a reasonable number of rights-of-way from established highways to the public beaches, game management areas, public hunting areas, and public forests and forest reserves in order that the right of the people to utilize the public beaches, game management areas, public hunting areas, and public forests and forest reserves shall be protected. . . .

The Department of Transportation, Highways Division indicated it has no record of a vehicle access driveway along the frontage of the subject property. A Permit to Perform Work upon State Highways will be required for any construction work within the highway right-of-way in accordance with HRS Section 264-6. DHHL will be responsible for securing access to the subject property from the State highway, as well as any access that may be needed over any adjacent private lands.

Staff will notify the current revocable permit holders on the land of today’s proposed action once confirmed on the agenda. If the Board approves the set-aside and right-of-entry to DHHL, DHHL will initially assume management authority over the land subject to the revocable permits and will collect the rents payable under the permits. Thereafter, DHHL may either maintain one or both of the revocable permits in place or terminate one or both of them in accordance with their terms and conditions.³

3 Revocable Permit Nos. RP S-7690 to Kahua Ranch, Limited, and RP S-7847, to Richard and Donna Lee Souza will be removed from Land Division’s list of annual revocable permit renewals going forward.

RECOMMENDATION:

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

1. Declare that, after considering the potential effects of the proposed dispositions 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. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Hawaiian Home Lands 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. Reserving to DOFAW, a thirty (30) foot roadway for public and management access to the Kau Forest Reserve and the Ha'ao Springs Restricted Watershed. The location of the roadway shall be determined by a survey map prepared by a licensed surveyor and paid for by DOFAW. The roadway shall be included in the final C.S.F. map and noted as an easement encumbrance in the description of the land;
 - C. 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;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of an immediate management right-of-entry permit to the Department of Hawaiian Home Lands covering the subject land 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 form, as may be amended from time to time, except that the right-of-entry permit shall include a provision expressly transferring to DHHL management authority over Revocable Permit Nos. RP S-7690 to Kahua Ranch, Limited, and RP S-7847 to Richard and Donna Lee Souza, including the right to collect rent under the permits;

It will be incumbent on DHHL to request the Board to renew the permits if DHHL desires to do so.

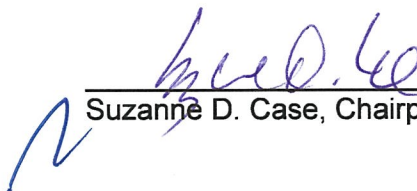
- B. The right-of-entry permit shall remain in force until the set-aside is complete; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Gordon C. Heit
District Land Agent

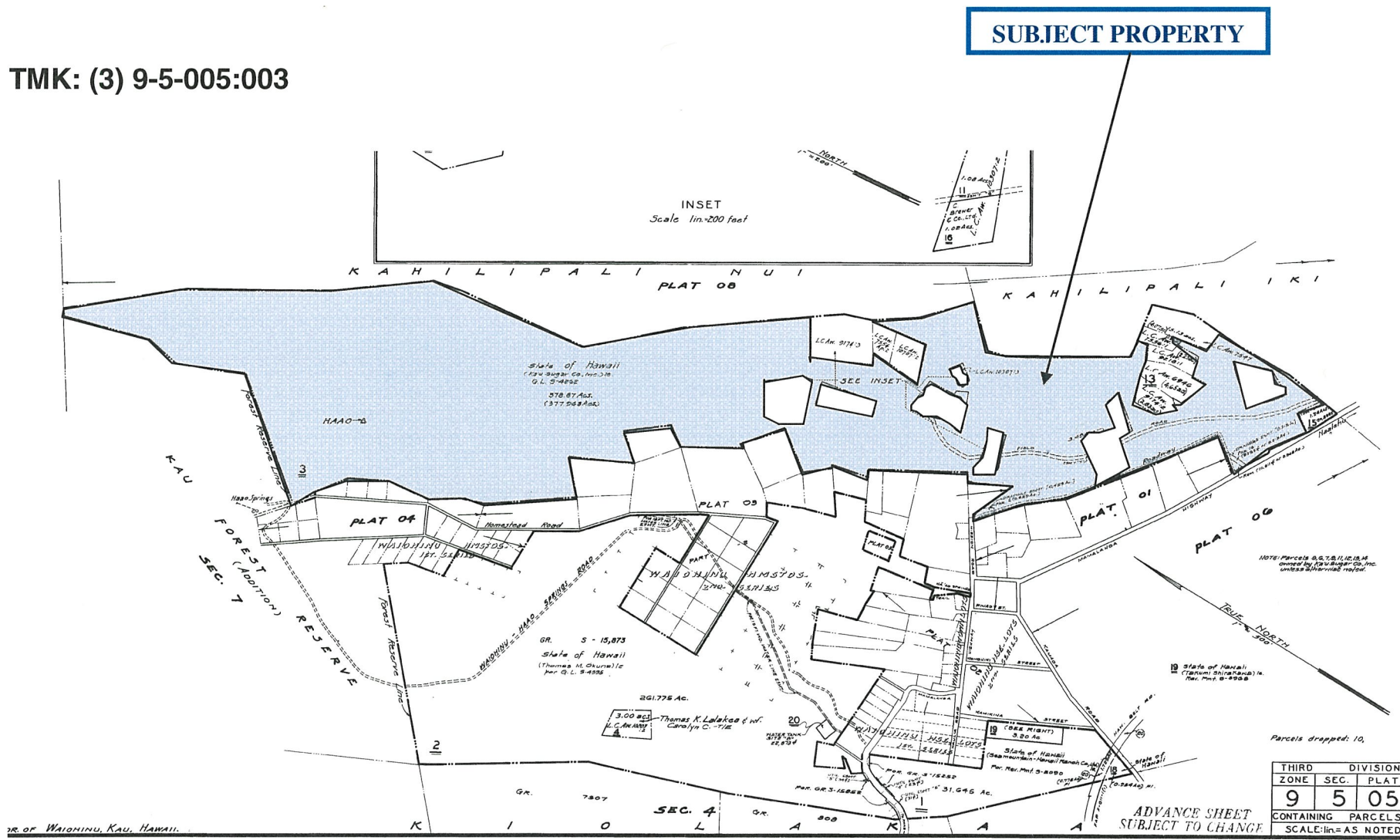
APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

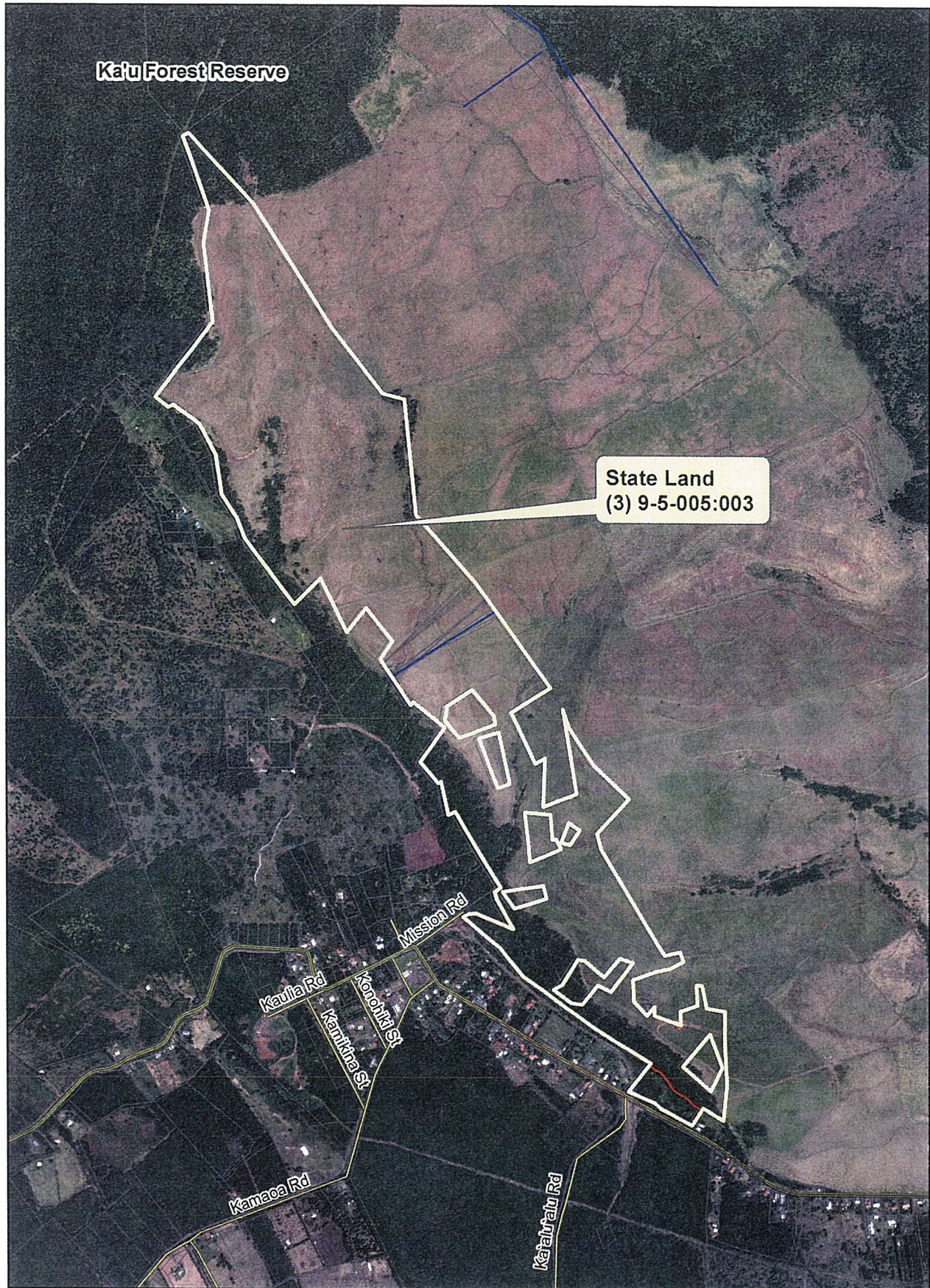
EXHIBIT A

TMK: (3) 9-5-005:003



Waiohinu, Ka'u

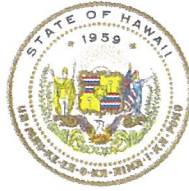
EXHIBIT A



0 600 1,200 2,400 3,600 4,800
Feet



DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY. T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Set Aside of State Lands to the Department of Hawaiian Home Lands for Agricultural Development.

Project Number: PSF No. 17HD-021

Project Location: Waiohinu, Ka'u, Hawaii, TMK: (3) 9-5-005:003.

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

Authorization: The Board, at its meeting of September 25, 2015, under agenda item D-17, delegated authority to the Chairperson to declare exempt those actions that are included in the Department-wide exemption list.

Project Description: Conveyance of improved State land to the Department of Hawaiian Home Lands (DHHL) for Agricultural Development. The Land is currently encumbered under Revocable Permits Nos. S-7690, and S-7847 for pasture purposes. The DHHL will utilize the subject parcel to expand the agricultural opportunities of the DHHL beneficiaries in the Ka'u district.

Consulted Parties: Various County, State and Federal agencies listed in submittal

EXHIBIT B

Exemption Class No.: In accordance with the "Exemption List for the Department of Land and Natural Resources", approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item No. 43 that states "Transfer of management authority over State-owned land, such as setting aside of State lands to and from other government agencies through a Governor's executive order".

Recommendation: 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.

**Ka'ū
Forest
Reserve**

HAAO SPRING
CLOSED WATERSHED

Hao
Springs
Water Tank

Board of Water Supply Gate

State Leased Land
(to be transferred to DHHL)
TMK: 3-9-5-005:003

Puu Niihau

EXHIBIT C