

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

July 13, 2018

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

PSF No.: 18HD-055

Hawai'i

Set Aside to the Department of Agriculture for Pasture Purposes, Pahinahina-Kiiokalani, Makiloa, Kalala Mauka, North Kohala, Hawaii, Tax Map Keys: (3) 5-9-001:004; 5-9-003:002 & 004; 5-9-004:001 & 008; (3) 5-9-002:006; (3) 5-8-002:002.

APPLICANT:

State of Hawaii, Department of Agriculture

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of:

- GL S-5599 – Pahinahina-Kiiokalani Government Tract, Section 1, North Kohala, Hawaii, identified by Tax Map Keys: (3) 5-9-001:004; 5-9-003:002 & 004; 5-9-004:001 & 008;
 - GL S-5655 – Makiloa Mauka Government Tract, Section 2, North Kohala, Hawaii, identified by Tax Map Key: (3) 5-9-002:006;
 - RP S-7496 – Kalala Mauka Government Remainder, North Kohala, Hawaii, identified by Tax Map Key: (3) 5-8-002:002.
- as shown on the attached maps labeled Exhibit A.

AREA:

GL S-5599 – 5,864 acres, more or less.

GL S-5655 – 138 acres, more or less.

RP S-7496 – 73 acres, more or less.

ZONING:

State Land Use District:	Agriculture
County of Hawaii CZO:	A-20 acre, A-5 acre

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 under the following dispositions:

- GL S-5599 – 5,846 acres
- GL S-5655 – 138 acres
- RP S-7496 – 73 acres

PURPOSE:

Pasture purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Exemption List for the Department of Land and Natural Resources, reviewed and concurred upon 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, Item No. 43 which states "Transfer of management authority over state-owned land, such as setting aside of state lands to or from other government agencies through a Governor's executive order." (Exhibit B)

REMARKS:

BACKGROUND:

The set aside of agriculture lands to the Department of Agriculture (DOA) is pursuant to Act 90, SLH 2003. The purpose of Act 90 is to ensure the long-term productive use of public lands leased or available to be leased by the Department of Land and Natural Resources (DLNR) for agricultural purposes by allowing those lands to be transferred to and managed by the DOA.

REQUEST:

The DOA has identified two leases and one revocable permit suitable for transfer from the Department of Land and Natural Resources inventory. These properties are identified by General Lease No. S-5599, General Lease No. S-5655 and Revocable Permit No. S-7496, all currently encumbered to Ponoholo Ranch, Ltd. for pasture purposes.

- GL S-5599 was previously encumbered under Revocable Permit No. S-6958 to Ponoholo Ranch, Ltd. (PRL) for pasture purposes. At its meeting of January 10, 1998, under agenda item D-6, the Board approved the sale at public auction of the pasture permit. PRL was the sole bidder at the public auction held on February 23, 2000 and was awarded the lease for the upset price of \$27,060 per annum. The total area of the lease lands is 5,864.0 acres with the specific use of pasture purposes. The term of the lease is for 20 years with a rental reopening at the end of

the 10th year of the lease term. The rent for the remaining 10-year term was established at \$22,810 per annum.

- GL S-5655 was previously encumbered under Revocable Permit to PRL for pasture purposes. At its meeting of March 12, 1999, under agenda item D-9, the Board approved the sale at public auction of the pasture permit. The upset annual rent for the 138-acre parcel was set at \$1,518.00. There were three qualified bidders for the public auction conducted on August 28, 2002. The winning bid from PRL set the annual rent for the first ten-year period at \$10,100.00. The rent for the remaining 10-year term was established at \$1,630.00 per annum.
- RP S-7496 was previously encumbered under Revocable Permit No. S-6978 to PRL for pasture purposes. The property is situated approximately 2.5 miles from the Kohala mountain road, has no legal access and therefore, not suitable for long-term lease at public auction. The parcel abuts private property¹ owned by Ponoholo Ranch, Ltd. The previous permit, RP S-6978 was cancelled effective December 31, 2009 when the Board approved (10/23/09, D-12) staff's request to re-issue new revocable permits statewide for those older permits with either vague or no insurance requirements contained in the document and replace them with revocable permits containing the current insurance requirements as provided by the Attorney General's office. As a result, Revocable Permit No. S-7496 was issued to PRL effective January 1, 2010.

The DOA will assume management responsibilities for the properties under the current dispositions to PRL.

Comments were solicited from State, County and Federal agencies with the following comments to the proposed set aside.

<i>County of Hawaii Agencies</i>	<i>Comments</i>
Planning	Comments Below
<i>State of Hawaii Agencies</i>	<i>Comments</i>
DLNR-Historic Preservation	No Response
DLNR – DOFAW	Comments Below
DHHL	Comments Below
<i>Other Agencies</i>	<i>Comments</i>
Office of Hawaiian Affairs	No Response
U.S. Army Corps of Engineers	No Response

The County of Hawaii Planning Department has identified several sites on parcel (3) 5-9-003:004 as being historic and expressed concern that although the proposed set aside would not change the zoning or use of the land, a change in management could affect the protection of State registered historic sites, and/or inhibit further archaeological studies of these sites.

¹ TMK: (3) 5-9-005:004

There is specific language in the lease that reserves all prehistoric and historic remains to the State.² This condition will remain in effect throughout the term of the current lease. Staff will recommend a continuation of this requirement as a condition to the set aside of all lands to be turned over to the DOA.

The DLNR Division of Forestry and Wildlife (DOFAW) notes that GL S-5599 is part of the Kahua/Ponoholo Cooperative Hunting Area pursuant to Hawaii Administrative Rules (HAR) § 13-122-11. This hunting area is open to the public for game bird hunting during the general game bird season (November through January). DOFAW staff is requesting that any transfer of lands to the DOA maintain the status quo of GL S-5599 as a Public Hunting Area for game birds. In addition, DOFAW is asking for access/use of the water system within GL S-5599 to allow for the installation of small water units for birds and other game species.

DOFAW is also requesting for consideration, future game mammal management/hunting opportunities be included in this transfer. The presence of wild pigs, goats and sheep in the area is well documented and the management of these ungulates provides an opportunity that may benefit both the Lessee and the public.

In response to staff's request for comments, the Department of Hawaiian Home Lands (DHHL) requested a right-of-first-refusal for any pasture lands prior to their conveyance to the DOA. DHHL noted that although the conveyance of these properties to the DOA is consistent with Act 90 of SLH 2003, Act 14 of SLH 1995 precedes Act 90 and that DHHL is still owed lands from DLNR under the terms of the Act 14 settlement agreement.

Land Division staff alerted DHHL personnel that the DHHL land settlement issue has been resolved. The DLNR Chairperson and Deputy along with Land Division staff worked extensively with then Chair Micah Kane and subsequently Kaulana Park and the DHHL staff in identifying the lands to be conveyed to DHHL in settlement of its claim. This resulted in the Board of Land and Natural Resources, at its meeting of October 28, 2010 approving the transfer of government lands to DHHL as part of a full and final settlement.

RECOMMENDATION:

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

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. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Agriculture under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

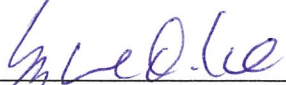
² GL S-5599, page 4 - Reserving unto the Lessor the Following: 2. Prehistoric and historic remains. All prehistoric and historic remains found on the premises.

- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
- B. Reserve unto the State of Hawaii, through its Board of Land and Natural Resources, all prehistoric and historic remains found on the premises;
- C. Continuation of the Kahua/Ponoholo Cooperative Hunting Area agreement, to be maintained as a public hunting area for game birds, pursuant to HAR§ 13-122-11;
- D. 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;
- E. Review and approval by the Department of the Attorney General; and
- F. 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

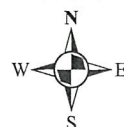


Ponoholo Ranch Lease, GL S-5599

EXHIBIT A



0 1,800 3,600 7,200 10,800 14,400 Feet



Ponoholo Ranch Lease, S-5655

EXHIBIT A



0 550 1,100 2,200 3,300 4,400 Feet



Ponoholo Ranch Permit, S-7496

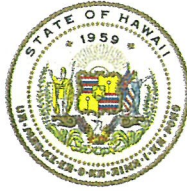
EXHIBIT A



0 875 1,750 3,500 5,250 7,000 Feet



DAVID Y. IGE
GOVERNOR OF HAWAII



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
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FORESTRY AND WILDLIFE
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LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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June 27, 2018

EXEMPTION NOTIFICATION

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

Project Title:	Set Aside to the Department of Agriculture for Pasture Purposes.
Project / Reference No.:	PSF 18HD-055
Project Location:	Government lands of, Pahinahina-Kiiokalani, Makiloa, Kalala Mauka, North Kohala, Hawaii, Tax Map Keys: (3) 5-9-001:004; 5-9-003:002 & 004; 5-9-004:001 & 008; (3) 5-9-002:006; (3) 5-8-002:002
Project Description:	The subject property is currently encumbered under General Lease Nos. S-5599, S-5655 and a month-to-month revocable permit. The transfer of these pasture lands is pursuant to Act 90 2003 SLH.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No. and Description:	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 June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 43 that states " <u>Transfer of management authority over State-owned lands, such as setting aside of State lands to or from other government agencies through a Governor's Executive Order</u> ".
Cumulative Impact of Planned Successive Actions in Same Place Significant?:	No. The use of the land for pasture purposes is a continuation of the previous use of the property and is compliant with county zoning requirements. Staff believes there are no cumulative impacts involved.
Action May Have Significant Impact on Particularly Sensitive Environment?:	No. There are no particular sensitive environmental issues involved with the proposed use of the property.

Exhibit B

Analysis:

The subject properties are currently encumbered under General Lease Nos. S-5599 and S-5655 along with Revocable Permit No. S-7496 issued to Ponoholo Ranch, Ltd. The transfer of these pasture lands is in conjunction with Act 90 of the 2003 Session Laws of Hawaii, requiring all existing agriculture leases and permits along with all suitable agricultural lands to be transferred from the Department of Land and Natural Resources to the Department of Agriculture.

Consulted Parties:

County of Hawaii, Planning Department, the Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW), and the Department of Hawaiian Home Lands (DHHL).

DOFAW is requesting the Kahua/Ponoholo Cooperative Hunting Area agreement with the current Lessee continue after the lands have been transferred to the DOA.

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.