

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

November 9, 2018

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

PSF No.: 17OD-074

Oahu

Set Aside to Department of Agriculture for Agricultural Purposes; Issuance of Immediate Management Right-of-Entry to Department of Agriculture, Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-031:001.

APPLICANT:

Department of Agriculture

LEGAL REFERENCE:

Sections 171-11 and -55, Hawaii Revised Statutes (HRS), as amended, and Act 90 Session Laws of Hawaii 2003, now codified at Chapter 166E, HRS.

LOCATION:

Portion of Government lands situated at Honouliuli, Ewa, Oahu, identified by Tax Map Key: (1) 9-1-031:001, as shown on the maps attached as **Exhibits A1** and **A2**.

AREA:

110.106 acres, more or less.

ZONING:

State Land Use District: Urban  
County of Honolulu CZO: I-2 Intensive Industrial District

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Vacant and unencumbered.

PURPOSE:

Agricultural 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, “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 43, which states the “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,” and Item 51, “Permits, licenses, registrations, and rights-of-entry issued by the department that are routine in nature, involving negligible impacts beyond that previously existing.” (See **Exhibit B**)

BACKGROUND:

At its meeting of August 25, 2006, under agenda item D-12, the Board of Land and Natural Resources Board found that the public interest demanded that a lease for the property be disposed of through negotiation pursuant to Section 171-59(a) of the Hawaii Revised Statutes, as amended, and delegated the authority to the Chairperson to issue a Request for Qualifications/Request for Proposals (RFQ/RFP).

On November 8, 2009, DLNR issued an RFQ/RFP to select a developer for the Subject Property. As a result of the RFQ/RFP process, the State of Hawaii, by its Chairperson of the Board of Land and Natural Resources (Chairperson) entered into a Development Agreement with West Wind Works, LLC (3W) made effective November 24, 2011 for the development of the Oahu Renewable Energy Park and terminating on December 31, 2013 or sooner.

Following 3W’s default on its monetary and non-monetary obligations, staff requested the Board cancel the Development Agreement at its meeting on May 25, 2012, Item D-16. After deferring action on the cancellation, the Board approved the assignment of the Development Agreement to International Electric Power, LLC.

Through subsequent assignments of and amendments to the Development Agreement, PSP III, LLC assumed the role of developer, and the termination date of the Development Agreement was amended to December 31, 2016 or sooner.

Unable to negotiate a power purchase agreement with Hawaiian Electric Co., Inc. (HECO),

PSP III, LLC exercised its option to cancel the Development Agreement in a letter dated December 5, 2016.

REMARKS:

The Subject Property is located at Honouliuli, Ewa, Oahu within the Campbell Industrial Park. The Subject Property was acquired by the State by condemnation in 1997 for the purposes of “land banking, protection and preservation of agricultural land, and for providing for various public uses.” Prior to condemnation, the Subject Property was used as a livestock feedlot. Since termination of feedlot operations, the property has remained vacant and underutilized, in large part due to the lack of roadways and utility infrastructure.

In a letter dated April 12, 2016, the Department of Agriculture (DOA) inquired about the possibility of setting aside approximately 35 acres of the subject parcel to the DOA for water credits. The Chairperson responded in a letter dated May 20, 2016 that a set aside was not possible at that time, as the property was encumbered through December 31, 2016.

Following the Developer’s cancellation of the Development Agreement, the DOA has again requested this property be set aside to it pursuant to Act 90, Session Laws of Hawaii 2003, which provides for the transfer of non-agricultural park lands to DOA from the Department of Land and Natural Resources. The DOA seeks to return the use of this parcel to its original purpose as a cattle feed lot, which is permitted under the zoning, and to provide DOA the needed water allocation for an adjacent property. The set-aside furthers the State’s goals of greater food security by increasing local food production, which is one of the Governor’s initiatives.

In the event staff receives proposals in the future to lease portions of this property for renewable energy projects, staff is recommending that the Board reserve the right to withdraw appropriate acreage or use rights from the set-aside for leasing to renewable energy producers, provided such leases will not unreasonably interfere with DOA’s use of the land. In response, DOA expressed concerns that its prospective tenants may want to install photovoltaic arrays on the land to generate power in support their operations, and DOA has therefore requested that the Board’s reserved right not prohibit renewable energy projects by DOA or its tenants.

In staff’s view, the parcel is large enough to accommodate small-scale photovoltaic projects providing energy only to the tenants on site, as well as larger scale projects that would generate power for consumption off-site under a power purchase agreement with HECO. Accordingly, staff is agreeable to the Board’s reserved right being qualified as DOA suggests, provided that DOA and its tenants obtain the prior written approval of the Chairperson before installing any photovoltaic arrays or other renewable energy projects on the land.<sup>1</sup>

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<sup>1</sup> If a renewable energy project by DOA or its tenants involves a lease, sublease, license, easement or permit to a third party, DOA would additionally need to obtain the Board’s consent thereto under Section 171-11, HRS.



Staff consulted the agencies listed below on the submittal and proposed exemption from an environmental assessment with the results indicated:

Agency	Comments
State Historic Preservation Division	SHPD has no objections to this Board submittal at this time, however SHPD requests the opportunity to review and comment on any future permit application involving ground disturbing activities.
Division of Forestry and Wildlife	No comments received by suspense date.
Division of Aquatic Resources	DAR has no objections to this Board submittal at this time, however DAR requests the opportunity to review and comment on any future development other than stated in this Board submittal.
Office of Conservation and Coastal Lands	No comments received by suspense date.
Department of Agriculture	DOA has no objection to the set aside, and has subsequently been made aware of the 2008 Phase II Environmental Assessment findings of elevated levels of Contaminants of Concern in both soil and groundwater and has no comments or concerns with this Board submittal at this time. Future development of the land may trigger reevaluation, investigation and/or remediation of the site.
Office of Hawaiian Affairs	No comments received by suspense date.
Board of Water Supply	BWS has no objections to this Board submittal at this time. BWS plans to obtain a Grant of Pipeline Easement along Olai Street in the future.
C&C Department of Facility Maintenance	DFM has no objections to this Board submittal at this time, however they pointed out a 50-foot drainage easement on the west side of the parcel that must be maintained by the owner as shown on Exhibit A1.

Although the parcel is located next to the ocean, staff has determined that there is existing lateral public access to the beach in the vicinity of the parcel 0.26 miles away, from Barbers Point Beach Park to the west and that there is no need to reserve additional rights-of-way to the beach over the subject industrial land.

Staff proposes to establish the seaward boundary in the executive order setting aside the property at the mean lower low water line. This will give the DOA management

jurisdiction over the entire area instead of leaving DLNR with management responsibility for a strip of land seaward of the shoreline. The executive order will provide that no agricultural activity will be permitted seaward of the shoreline, and that the public will continue to have lateral access to the shoreline from Barbers Point Beach Park.

Staff believes this is an equitable arrangement given that Board is setting aside scarce and valuable industrial land. This arrangement will also allow staff to focus on other higher priority items such as converting certain revocable permits to other types of appropriate dispositions and working on the various complex shoreline issues. This set aside of the makai boundary at the mean low water line is modeled after other set asides to County Parks (e.g., Kuhio Beach, Waialea Beach and Black Pots on Kauai) where the makai boundary of the set aside are located at the mean lower low water line. This approach allows for a single management agency over the subject land and simplifies enforcement in the area. The DOA is agreeable to accepting the set aside to the mean low water line.<sup>2</sup>

Due to its location within the Campbell Industrial Park, this property is subject to the Conditions, Covenants and Restrictions (CC&Rs) made by the Trustees Under the Will and of the Estate of James Campbell, Deceased and assigned to MMGD LLC (MMGD). Pursuant to Section 2.04c of the CC&Rs, MMGD invoices the property owners within the industrial park annually for their pro rata share of common area costs. This expense has already been paid by DLNR for 2018, and will be DOA's responsibility once the Executive Order is executed. In the event the Executive Order is executed prior to MMGD's next billing cycle, DOA agrees to pay its prorated share of the common area costs for that year.

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. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject land to the Department of Agriculture under the terms and conditions cited above, including the establishment of the seaward boundary of the subject land at the mean lower low water line, 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; provided, however, that the set-aside shall reserve to the Board the right to issue leases for renewable energy projects on the land to the extent such leases will not unreasonably interfere with DOA's use of the land; provided further that DOA and its tenants shall

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<sup>2</sup> In addition, in the past the Department set aside the prime usable and developable lands to other requesting agencies while retaining hazardous mountainsides thereby leaving mitigation responsibility and liability (e.g., Ko Road and Menehune Road hazard mitigation projects) with the Department. This set aside seeks to avoid such result.

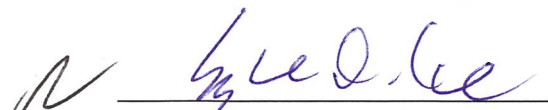
not be prohibited from installing photovoltaic arrays or locating other renewable energy projects on the land as long the power generated thereby is wholly consumed on the land; and provided further that DOA and its tenants shall obtain the prior written consent of the Chairperson of the Board of Land and Natural Resources before installing photovoltaic arrays or locating any other renewable projects on the land;

- 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.
3. Grant an immediate management right-of-entry to the Department of Agriculture over the subject 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 management and construction right-of-entry form, as may be amended from time to time;
  - B. The right-of-entry shall be effective upon acceptance and shall terminate upon issuance of the executive order; and
  - C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.

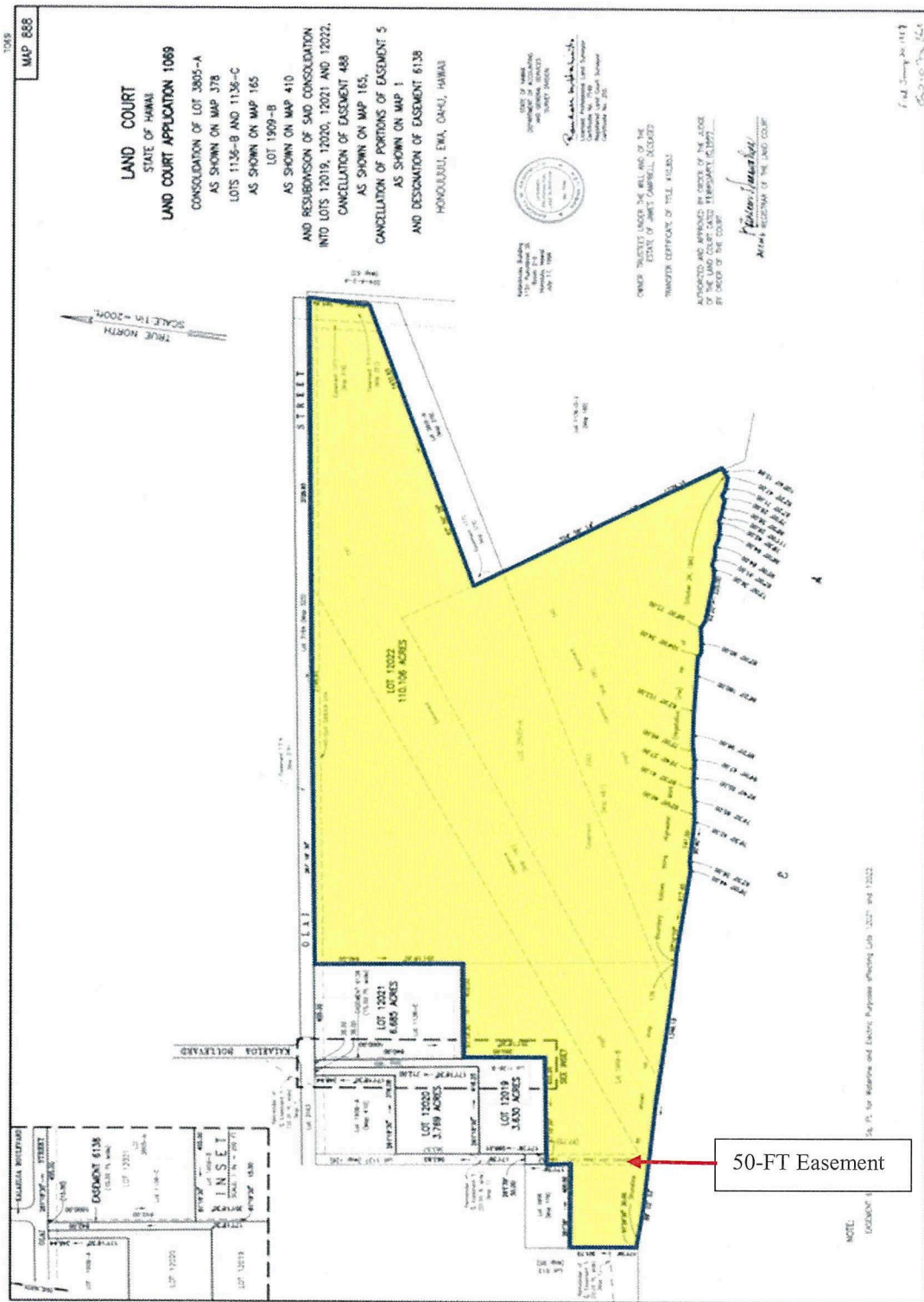
Respectfully Submitted,

  
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
Suzanne D. Case, Chairperson





TMK (1) 9-1-031:001

EXHIBIT A1





**TMK (1) 9-1-031:001**

**EXHIBIT A2**



**EXEMPTION NOTIFICATION**

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

Project Title: Set aside of State lands to Department of Agriculture (DOA) and issuance of immediate management right-of-entry.

Project / Reference No.: PSF 17OD-074

Project Location: Honouliuli, Ewa, Oahu, identified by Tax Map Key: (1) 9-1-031:001

Project Description: Set aside to DOA for agricultural purposes and issuance of immediate management right-of-entry.

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

Exemption Class No. and Description: 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, "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 43, which states the "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," and Item 51, "Permits, licenses, registrations, and rights-of-entry issued by the department that are routine in nature, involving negligible impacts beyond that previously existing."

Cumulative Impact of Planned Successive Actions in Same Place Significant? No. The proposed action involves a one-time set aside of land in the area to DOA for agricultural use. 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.

Analysis: The proposed action involves the transfer of management jurisdiction over the subject land from the Board of Land and Natural Resources to DOA. DOA will be responsible for

**EXHIBIT B**

compliance with Chapter 343, HRS, in the event it proposes any development of the land that is not exempt from Chapter 343. As such, staff believes that transfer of management jurisdiction to DOA involves negligible or no expansion or change of use beyond that previously existing, and should therefore be found exempt from the preparation of an environmental assessment under Chapter 343, HRS.

Consulted Parties:

Historic Preservation Division, Division of Forestry and Wildlife, Division of Aquatic Resources, Office of Conservation and Coastal Lands, Department of Agriculture, Office of Hawaiian Affairs, Board of Water Supply, City and County Department of Facility Maintenance. See agency comments in attached submittal.

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.