

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

January 11, 2019

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

Ref No. 18OD-133

Oahu

Cancellation of Governor's Executive Order No. 3953 issued to the Department of Transportation and Re-set Aside to Department of Transportation Harbors Division for Harbors Related Purposes; Iwilei, Honolulu, Oahu, Tax Map Key: (1) 1-5-035:010.

APPLICANT:

Department of Transportation, Harbors Division ("DOT-Harbors").

LEGAL REFERENCE:

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

LOCATION:

Government lands of Iwilei, Honolulu, Oahu, Tax Map Key: (1) 1-5-035:010 (**Exhibit 1A and 1B**).

AREA:

160,639 square feet, more or less.

ZONING:

State Land Use District: Urban

City and County of Honolulu LUO: I-3 Waterfront Industrial District

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:

Governor's Executive Order No. 3953, setting aside 160,639 sq. ft. to the Department of Transportation, Airports Division ("DOT-Airports") for airport related purposes.

PURPOSES OF SET-ASIDE:

Harbors Related 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 of state lands to or from other government agencies through a Governor's executive order". See **Exhibit 2**.

REMARKS:

On April 21, 1993, by Quitclaim Deed filed in the Bureau of Conveyances, as Document No. 2024227, Chevron U.S.A. Inc., conveyed to the State of Hawaii, Lot 35, with an area of 160,639 square feet. The area was subsequently set aside to DOT-Airports Division by Executive Order No. 3953 (EO 3953), issued on October 29, 2002 for airport related purposes.

On April 27, 2018, under agenda Item M-4, the Board authorized the issuance of a revocable permit for space for freight forwarding, warehousing and trucking operation to Honolulu Freight Service for a period of six (6) months. The Board also asked DOT to return in three (3) months for a report on the following issues. DOT's responses¹ are shown below in italics following the questions.

Q. Progress of request for authorization to go to public auction or report back, for these reasons DOT does not think public auction is the way to go for this property

At the April 27, 2018 BLNR meeting, the Harbors Administrator learned that an Airports Division's tenant, Honolulu Freight Trucking, Inc. (also Honolulu Freight Service- Trade Name) located at Pier 33, did not have a lease. Honolulu Freight Trucking, Inc.'s land disposition was a month to month permit (Revocable Permit). Without a long-term lease or entitlements to the property and Honolulu Freight having only a Revocable Permit, the circumstances provided the Harbors Division with an

¹ DOT provided its responses through an email dated December 4, 2018.

*opportunity to purchase the property from the Airports Division. The Harbors Division needs an improved access to Nimitz Hwy for westward cargo as provided in its response to DLNR's request for comments regarding the proposed transfer of lands from Airports to Highways, see **Exhibit 3A** (by memo dated August 22, 2018, i.e. access, expansion of cargo yards etc.). Therefore, having a public auction would be detrimental to the Harbors Division's expansion and future plans.*

Q. Answer the questions how long the tenant has been using the building.

As far as the Airports Division can determine, Honolulu Freight has been using the Building (the building in question (Building 185) since 2015. In reviewing three Revocable Permits, the tenants [Sherman Enterprises, Inc, DBA City Wide Transportation Co., Revocable Permit 5758 (July 28, 1999), [Sherman Enterprises, Inc, DBA City Wide Transportation Co., Revocable Permit 5804 (October 11, 2000), and Honolulu Freight Service, Revocable Permit 6593 (January 11, 2007), there is no record of either Sherman Enterprises, Inc. or Honolulu Freight Service, having agreed to rent Building 185.

During 2015, Airports Division observed Honolulu Freight Service using the Building 185. Upon their findings, the Airports Division revised the rental amount to reflect a building rate for and therefore should pay for Building 185 (later renumbered and identified as Building 298). There was no other evidence of prior use.

Q. DOT proposal to collect back rent for that time period the tenant has been using the building.

As answered above, the Airports Division observed the tenant using the space during 2015 inspection of the Honolulu Freight property. Since 2015, the Airports Division addressed the issue with Honolulu Freight Service and the tenant is paying for the building 185. From January 1, 2015 – September 30, 2017, the Airports Division increased the monthly rent to include Building 185 from \$49,063.89/per month to \$75,019.24/per month. Effective October 1, 2017, the rental rates were revised again to \$89,856.53/per month.

None of the Revocable Permits have the tenants, past and current, agreeing to rent Building 185. There is no evidence of prior use nor can the Airports Division determine use of Building 185 prior to 2015. As stated above, the Airports Division addressed the issue with Honolulu Freight that they should pay for the use of Building 185; and increased the monthly rent to include the Building 185 from \$49,063.89/per month to \$75,019.24/per month. Effective October 1, 2017, the rental rates were revised again to \$89,856.53/per month.

By its request dated October 17, 2018 (**Exhibit 3A**), the Department of Transportation requested the cancellation of EO 3953 and reset aside of the same parcel to DOT-Harbors. The proposed transfer to DOT-Harbors will facilitate a more efficient access to and from the Honolulu Harbor, which is constantly undergoing expansion.

DOT-Airports is under the oversight of the Federal Aviation Administration (FAA) Airport Compliance Program (Order 5190.6B, 2009) which stipulates property not used to directly support aviation operations may be sold at fair market value, subject to FAA approval. As such, the Airports Division has agreed to work with the Harbors Division on the release conditions, subject to receiving appropriate FAA and other Government agency approval.

DOT-Harbors has provided an expanded response for comments as **Exhibit 3B**. The area to be re-set aside to Harbors Division will provide for future expansion of the cargo yard to support vessel operations at Piers 31-33. The area will also be developed to provide an access route to Nimitz Highway for West-bound cargo traffic to utilize the intersection of Nimitz Highway and Alakawa Street.

In addition, Board of Water Supply has no objection to the request and concurs to the proposed environmental assessment exemption declaration. Department of Planning and Permitting and Office of Hawaiian Affairs have not responded as of the suspense date.

Staff understands DOT-Harbors is negotiating with DOT-Highways in securing the access over the adjoining State parcel further identified as TMK (1) 1-5-034:026, which is not part of the subject request.

DOT-Harbors requests issuance of a management right-of-entry pending issuance of the requested executive order.

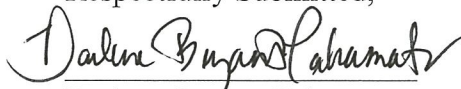
There are no pertinent issues or concerns, and staff does not have any objection to the request.

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 issuance of an executive order canceling Governor's Executive Order No. 3953 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;

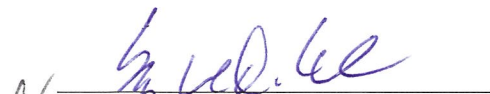
- C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject State land to the Department of Transportation, Harbors Division, 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.
4. Authorize the issuance of a management right-of-entry permit to the Department of Transportation, Harbors Division covering the subject area 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 form, as may be amended from time to time; and
 - B. Such other terms and conditions as may be described by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Darlene Bryant-Takamatsu
Land Agent

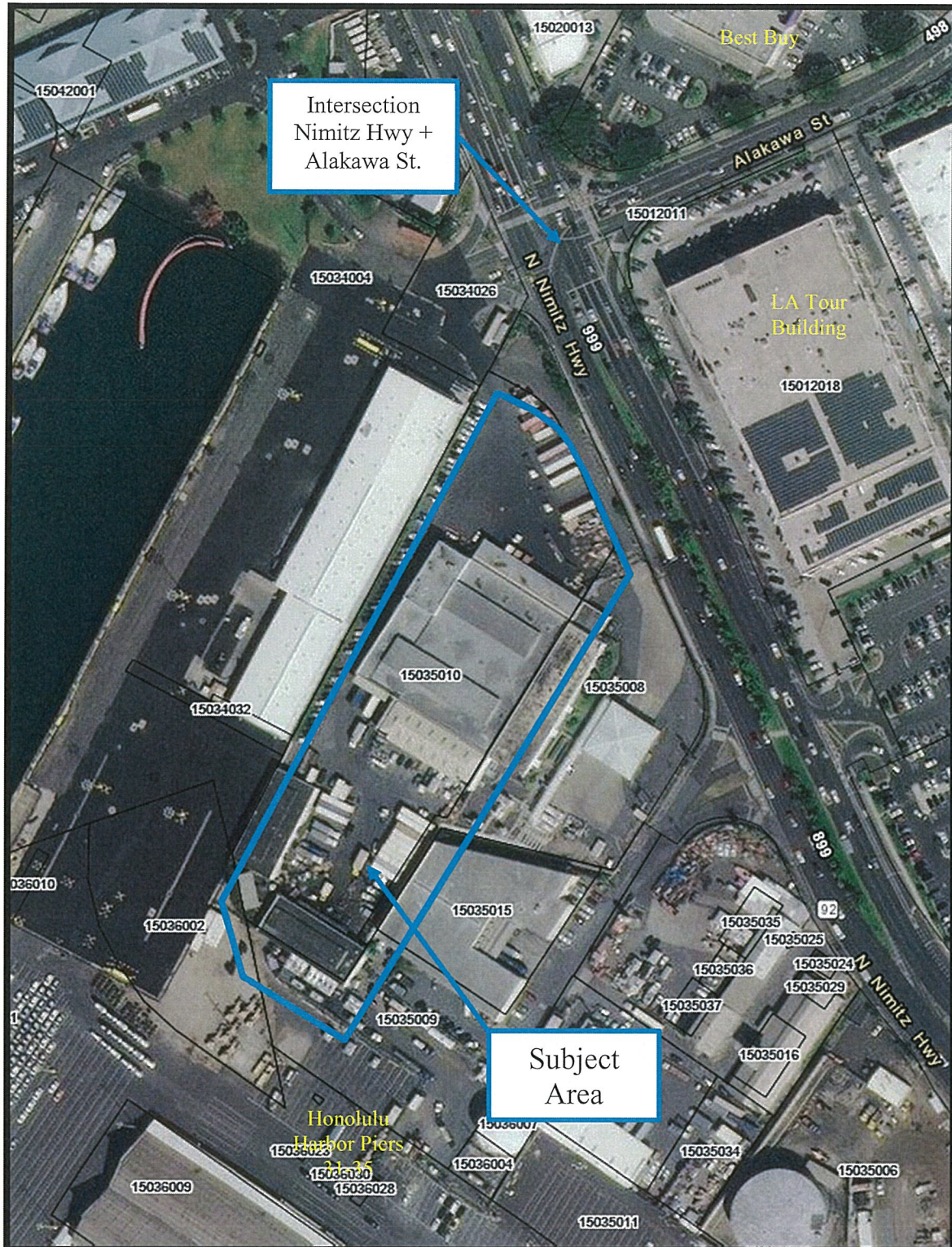
APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



TMK: (1) 1-5-035:010

EXHIBIT 1A



TMK: (1) 1-5-035:010

EXHIBIT 1B

EXEMPTION NOTIFICATION

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

Project Title:	Re-set aside of State land to the Department of Transportation Harbors Division.
Project / Reference No.:	PSF 18OD-133
Project Location:	Iwilei, Honolulu, Oahu, Tax Map Key: (1) 1-5-035:010
Project Description:	To re-set aside land for Department of Transportation, Harbors Division, for Harbor related purposes.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	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 of state lands to or from other government agencies through a Governor's executive order".
Cumulative Impact of Planned Successive Actions in Same Place Significant:	No, being that this request is pertaining to a transfer of controlling and management authority from within the Department of Transportation. Staff believes that the request would involve negligible expansion or change in use of the subject area beyond previously existing.
Action May Have Significant Impact on Particularly Sensitive Environment:	The requested area is in a heavily used Industrial area. Staff is not aware of any particularly sensitive environmental issues and use of the area would involve negligible change from what is existing.
Consulted Parties	Agencies as noted in the submittal.

EXHIBIT 2

Analysis: The analysis factors are the proposed transfer of controlling and management authority within the Department of Transportation and negligible expansion or change in use of the subject area beyond previously existing. Taking these two factors into consideration staff believes there would be no significant impact to sensitive environmental or ecological receptors.

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.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

October 17, 2018

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROY CATALANI
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:
AIR-PM
18.0767

TO: THE HONORABLE SUZANNE CASE, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

FROM: JADE T. BUTAY
DIRECTOR OF TRANSPORTATION

SUBJECT: TRANSFER OF TMK (1) 1-5-035:10, 3.53 ACRES,
FROM AIRPORTS DIVISION TO HARBORS DIVISION

RECEIVED
LAND DIVISION
2018 OCT 19 AM 10:30
AIRPORTS
STATE OF HAWAII

The Airports Division and Harbors Division of the State of Hawai'i, Department of Transportation, have requested and received approval to transfer property near Pier 35 from the Airports Division to Harbors Division (see attached memo dated 8/22/18).

Also attached is a tentative schedule which has the following anticipated dates: (1) completion of appraisal by end of November 2018, (2) prepare and execution of a transfer agreement by end of 2019, (3) request to the Land Board for approval of cancellation of existing DOT-Airports' EO and re-set aside to DOT-Harbors, (4) DLNR to process issuance of the executive orders, (5) submit formal request to FAA for approval for the release of the parcel from the Airports' inventory, and (6) FAA approval is anticipated in September/October 2019.

In light of the above, the Airports Division requests the Board rescind the timetable approved for Item M-4 of the Friday, April 27, 2018 meeting to allow the transfer of the property and its subsequent use for maritime purposes.

Attachments

RECEIVED
2018 OCT 18 AM 10:31
DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

EXHIBIT 3A

State of Hawaii
Department of Transportation
MEMORANDUM

Dep A 18.0151
DEP-H 7119.19

Date: August 22, 2018

TO: ROSS HIGASHI
DEPUTY DIRECTOR OF TRANSPORTATION
AIRPORTS DIVISION

THRU: JADE BUTAY
DIRECTOR OF TRANSPORTATION

FROM: DARRELL T. YOUNG
DEPUTY DIRECTOR OF TRANSPORTATION
HARBORS DIVISION


SUBJECT: REQUEST TO ACQUIRE TMK (1) 1-5-35:10, 3.53 ACRES, HONOLULU
FREIGHT SERVICE, 933 N. NIMITZ HWY, HONOLULU, HAWAII 96817

The Harbors Division is requesting your concurrence to acquire the above land located near Pier 35 and adjacent to Piers 31-33, Honolulu Harbor, Oahu, Hawaii. The Harbors Division understands that the land is currently under a month to month (revocable permit) and, without an aeronautical related purpose, the Board of Land and Natural Resources would require the Airports to auction the disposition of the land.

About five years ago, the Harbors Division sought an easement through the subject property to provide access to the traffic light at the intersection of Nimitz Highway and Alakawa Street. The acquisition of the subject property would benefit future expansion of the cargo yards to support vessel operations at Piers 31-33.

If you agree to the Harbors request for the acquisition, please acknowledge your concurrence in the space provided below.

(X) CONCUR () DO NOT CONCUR


ROSS HIGASHI
Deputy Director of Transportation
Airports Division

9/5/18
DATE

DAVID Y. IGE
GOVERNOR

RECEIVED
LAND DIVISION

RECEIVED
HARBORS DIVISION



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION
79 S. Nimitz Hwy., Honolulu, Hawaii 96813-4898

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROY CATALANI
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:
RS 19.0154
HAR 3133.19

October 31, 2018

TO: DARLENE BRYANT-TAKAMATSU, LAND AGENT
DEPARTMENT OF LAND AND NATURAL RESOURCES

THRU: JADE T. BUTAY,
DIRECTOR OF TRANSPORTATION
DARRELL T. YOUNG
DEPUTY DIRECTOR, HARBORS DIVISION

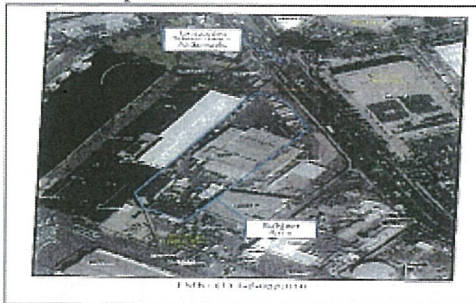
FROM: DAVIS K. YOGI, HARBORS ADMINISTRATOR

SUBJECT: REQUEST FOR CANCELLATION OF EO3953 AND RE-SET ASIDE

The Harbors Division has no objection to the Request for the cancellation of EO 3953 that set aside 160,639 square feet to the Department of Transportation, Airports Division (DOTA); and, re-set aside 160,639 square feet to the Department of Transportation, Harbors Division (DOTH).

The DOTH needs a roadway access from Piers 31-33 to Nimitz Highway for west-bound cargo. During April 2018, the DOTH attended a Board of Land and Natural Resources (BLNR) meeting and learned that the DOTA issues a month to month permit, also referred to as a Revocable Permit ("RP"). Because the tenant does not have a long term right at the property, the DOTH requested, and the DOTA agreed during August 2018, to transfer the property to the DOTH at appraised value.

Proposed Re-Set-aside to DOTH



Site at Piers 31-33

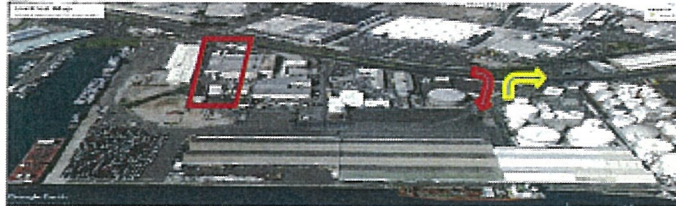


Currently, in-coming vehicles (new as cargo) are discharged from vessels and landed at open areas around Piers 31-33 (see above site picture.) Vehicles are picked up by the auto dealers through the only road access to Nimitz Highway shown below. Drivers are known to leave

EXHIBIT 3B

Pier 31 and make a u-turn at the intersection of Pacific Street and Nimitz Highway and travel West.

Piers 31-33 Entrance and Exit



The set aside of 160,639 square feet to the DOTH will provide cargo space for future cargo yard needs at Piers 31-33 and access to the traffic lights at Alakawa and Nimitz Highway for westward cargo. (See diagram below.)

Future Piers 31-33 Entrance and Exit
Alakawa and Nimitz Highway



Below is an illustration where the Re-set aside lands will provide space for the future expansion of the DOTH lands.

Future Piers 31-33 Cargo Yard Expansion with Re-Set aside

