

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

October 11, 2019

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

PSF No.: 17MD-081

Maui

Rescind Prior Board Action of June 25, 1993, Item F-4, *Lease – Public Auction Covering State Land at Waiohuli-Keokea, Kula, Makawao, Maui, Tax Map Key: (2) 2-2-004:001, 002, 029 and 066;*

Rescind Prior Board Action of June 24, 1997, Item D-18, *Request to Amend the Board's June 25, 1993 Agenda Item F-4 Authorizing the Issuance of a Revocable Permit to the Present Occupant for Pasture Purposes and Sale of Lease at Public Auction for Property Identified as Tax Map Keys: (2) 2-2-004: 001, 002, 029 and 066, Situate at Waiohuli-Keokea, Kula, Makawao, Maui;*

Rescind Prior Board Action of April 13, 2012, Item D-5, *Amend prior Board Action of June 24, 1997, Item D-18, to Authorize the Inclusion of Three (3) Additional Parcels in the Sale of Leases at Public Auction for Pasture Purposes, Waiohuli-Keokea, Kula, Makawao, Maui, Tax Map Key: (2) 2-2-004:001, 002, 029, 031, 066, and (2) 2-2-005:047 & 053;*

Rescind Prior Board Action of November 30, 2012, Item D-4, *Clarification of On-Site and Off-Site Conditions Related to the Sale of Lease at Public Auction for Pasture Purposes Amended and Approved by the Board Action of April 13, 2012, Item D-5, Waiohuli-Keokea, Kula, Makawao, Maui, Tax Map Key: (2) 2-2-004:001, 002, 029, 031, 066, and (2) 2-2-005:047 & 053;*

Set Aside to the Department of Agriculture for Agriculture Purposes and the Issuance of an Immediate Management Right-of-Entry for Unencumbered Parcels at Waiohuli-Keokea, Kula, Makawao, Maui, Tax Map Keys: (2) 2-2-004:001, 002, 029, 031, 066, and (2) 2-2-005:047 & 053.

APPLICANT:

Department of Agriculture (DOA)

LEGAL REFERENCE:

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

LOCATIONS:

Government lands situated at Waiohuli-Keokea, Kula, Makawao, Maui (**Exhibit 1**), identified by Tax Map Keys: (2) 2-2-004: 001, 002, 029, 031, 066 (**Exhibit 2**), (2) 2-2-004: 066 (**Exhibit 3**) and (2) 2-2-005: 047 & 053 (**Exhibit 4**).

AREA, ZONING AND CURRENT USE:

TMK: (2)	AREA	STATE LAND USE & ZONING	CURRENT USE
2-2-004:001	22 acres	SLU: Agriculture CZO: Agriculture	Vacant and unencumbered
2-2-004:002	13 acres	SLU: Agriculture CZO: Agriculture	Vacant and unencumbered
2-2-004:029	20.98 acres	SLU: Agriculture CZO: Agriculture	Vacant and unencumbered
2-2-004:031	139.28 acres	SLU: Agriculture CZO: Agriculture	Vacant and unencumbered
2-2-005:047	19.10 acres	SLU: Agriculture CZO: Agriculture	Vacant and unencumbered
2-2-005:053	223.29 acres	SLU: Agriculture CZO: Agriculture	Vacant and unencumbered
2-2-004:066	149.03 acres	SLU: Agriculture, Rural, Urban CZO: Agriculture, Interim, Public/Quasi- Public, Park-Community, Unzoned Road	GL No. S-5866 for access and utility

TRUST LAND STATUS FOR ALL SUBJECT PARCELS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

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. See **Exhibit 5**, following in this report.

BACKGROUND:

Land Formerly Held By Lease or Revocable Permit to Charles Ota, dba Landmark Ranch, Referred to as the Waiohuli-Keokea, Kula, Makawao Parcels:

At its meeting of June 25, 1993, under Item F-4, as amended at its meeting of June 24, 1997, under Item D-18, the Board of Land and Natural Resources (Board) approved the sale of lease at public auction for State lands identified as Tax Map Keys: (2) 2-2-004: 001, 002, 029 and 066.

At its meeting of April 13, 2012, under Item D-5, the Board approved to amend its prior Board action of June 24, 1997, Item D-18, to include 3 (three) additional parcels in the approved sale of lease at public auction. Following, a total number of seven (7) parcels of land were included:

1. Tax Map Key: (2) 2-2-004:001, 002, 029 and 066, formerly encumbered by Revocable Permit No. S-7092.
2. Tax Map Key: (2) 2-2-004: 031, formerly encumbered by General Lease No. S-4532.
3. Tax Map Key: (2) 2-2-005:047 and 053, formerly encumbered by General Lease No. S-4533.

Note: The DOA will be required to ensure that a special buffer zone be designated with the installation of a stockproof perimeter fence to prevent the disturbance of possible burial remains located along the southwest corner of Tax Map Key: (2) 2-2-004:066. The buffer zone will be situated within a rectangular-shaped area, consisting of approximately 2.75 acres, as shown in **Exhibit 3**. **Also, see the Recommendation section for item 3A., and the Exemption Notification (Exhibit 5), following within this report.**

REMARKS:

Pursuant to Act 90, Session Laws of Hawaii 2003, the State Department of Agriculture

requests the set-aside of the subject parcels of State lands located on the Island of Maui for agriculture purposes. Staff concurs that the set-aside of the lands to DOA is appropriate under Act 90.

As discussed above, the Board had previously approved the sale of leases at a public auction for the parcels at Waiohuli-Keokea, Kula, Makawao. However, to date, a public auction for the subject parcels have not been scheduled. Staff is recommending a rescission of the Board's prior approvals concerning a public auction of the subject parcels.

The Department of Agriculture, the Division of Forestry and Wildlife and Land Division are all in agreement that the subject parcels of State lands that were formerly encumbered by leases to Mr. Charles Ota be set aside to the Department of Agriculture.

An initial request for comments was made by staff to the State Historic Preservation Division (SHPD), and the following response was received: **"SHPD has no objections to the set aside of State lands to the DOA."** A second request for comments to the SHPD was made explaining that burial remains might possibly exist within Tax Map Key: (2) 2-2-004:066. See the rectangular mapped area, included within **Exhibit 3**. This matter had been brought to staff's attention following its initial request to SHPD. However, staff did not receive any additional comments or a further response from SHPD regarding the second request that was made.

The Division of State Parks, Maui Department of Planning Administration and the Maui Department of Public Works.

The Department of Health, Department of Hawaiian Homelands, Office of Conservation and Coastal Lands, Commission on Water Resource Management, Office of Hawaiian Affairs, Maui Maintenance Division and Maui Department of Water Supply did not respond as of the suspense date of the subject request for comments.

Section 171-26, HRS, provides in part:

§171-26 Rights-of-way to the sea, game management areas, and public hunting areas. 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. . . .

Staff has confirmed with the Division of Forestry and Wildlife that the subject parcels do not abut any game management areas, public hunting areas, public forests or forest reserves and that there is no need to reserve rights-of-way to such public areas over the subject

lands.

Currently, there are no existing issues or pertinent concerns that are known by the members of our staff. As such, the staff has no objections with regards to the subject request.

Staff also recommends that the Board issue an immediate management right-of-entry permit pending the issuance of an executive order setting aside of the subject State lands to DOA.

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. Rescind the prior Board actions of: November 30, 2012, under Item D-4, April 13, 2012, under Item D-5, June 24, 1997, under Item D-18, and June 25, 1993, under Item F-4.
3. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject State 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:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time; ***and that with respect to the parcel identified as Tax Map Key: (2) 2-2-004: 066, the executive order will require that the Department of Agriculture shall cause any lessee or permittee to install a stockproof fence located at the perimeter of the buffer zone and not utilize the fenced area due to the possibility of burial remains located there. The buffer zone will be situated within a rectangular-shaped area, consisting of approximately 2.75 acres, located along the southwest corner of the subject parcel;***
 - 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;

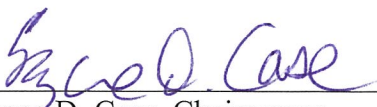
- C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the issuance of an immediate management right-of-entry permit to the Department of Agriculture covering 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;
 - B. The right-of-entry shall be effective upon acceptance and shall terminate upon the 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,



Timmy Chee
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

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EXHIBIT 1



Tax Map Keys: (2) 2-2-004:001, 002, 029, and 066

EXHIBIT 2



TAX MAP KEY: (2) 2-2-004:066 showing burial buffer zone bordered in red.

EXHIBIT 3



TAX MAP KEYS: (2) 2-2-005:047 and 053

EXHIBIT 4

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, Hawaii Administrative Rules (HAR)

Project Title: Rescind Prior Board Actions of: June 25, 1993, Item F-4, June 24, 1997, Item D-18, April 13, 2012, Item D-5, November 30, 2012, Item D-4 Related to the Sale of Leases at Public Auction. Set Aside to the Department of Agriculture for Agriculture Purposes and the Issuance of an Immediate Management Right-of-Entry for Agriculture Purposes.

Project / Reference No.: PSF 17MD-081

Project Location: Tax Map Key: (2) 2-2-004:001, 002, 029, 031, 066, and (2) 2-2-005:047 and 053. Island of Maui

Project Description: Set Aside of State Lands to the Department of Agriculture (DOA) for Agriculture Use Purposes

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

Exemption Class No.: In accordance with HAR Section 200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on 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 "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 No. 51, that states "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

The proposed action involves the transfer of management authority over the lands from the Department of Land and Natural Resources (DLNR) to DOA for agriculture purposes. The lands were formerly in agricultural/pastoral use with the DLNR. As such, there will be negligible or no expansion or change of use beyond that previously existing.

Cumulative Impact of
Planned Successive
Action in Same Place
Significant?

No, there is no significant cumulative impact since there are no successive actions in the same place.

Action May Have
Significant Impact on
Particularly Sensitive
Environment?

No, the Department of Agriculture shall cause any lessee or permittee to install a stockproof fence located at the perimeter of the buffer zone and not utilize the fenced area due to the possibility of burial remains located there. The buffer zone will be situated within a rectangular-shaped area, consisting of approximately three (3) acres, located along the southwest corner of the subject parcel.

Analysis:

No plans for the project are known that will have a significant effect upon the environment.

Consulted Parties:

Governmental agencies as noted in the submittal.

Recommendation:

It is recommended that the Board find that 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.