

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawai'i 96819

October 25, 2019

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

SUBJECT: CONTINUATION OF REVOCABLE PERMIT NO. 38 TO COON BROTHERS, INC., MĀNELE SMALL BOAT HARBOR, PĀLĀWAI, ISLAND OF LĀNA'I, HAWAI'I, TAX MAP KEY (2) 4-9-017:006 (por.)

AND

NOTICE OF EXEMPTION FROM PREPARATION OF AN ENVIRONMENTAL ASSESSMENT UNDER CHAPTER 343, HRS AND TITLE 11, CHAPTER 200.1, HAWAII ADMINISTRATIVE RULES.

APPLICANT:

Coon Brothers, Inc. ("Permittee"), whose mailing address is P.O. Box 1119, Lahaina, HI 96767

LEGAL REFERENCES:

Sections 171-13, and 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Mānele Small Boat Harbor ("MSBH"), Mānele, Island of Lāna'i, Hawai'i, Tax Map Key No. (2) 4-9-017: 006 (por.) as shown on attached maps labeled **EXHIBIT A1 & EXHIBIT A2**, and hereinafter referred to as the "Premises".

AREA:

Areas consisting of a portion of a loading dock of approximately 1,055 sq. ft. and the adjacent submerged lands of approximately 4,225 sq. ft.

ZONING:

State Land Use District: Conservation, Urban  
County of Maui CZO: (Draft): Lāna‘i Project District I (Mānele)

TRUST LAND STATUS:

Section 5(b) lands of the Hawai‘i Admission Act: YES

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Currently encumbered by Revocable Permit No. 38 to Coon Brothers, Inc., expiring December 31, 2019. Governor’s Executive Order 4348

CHARACTER OF USE:

Occupancy and use of the Premises for the following specified purposes: Non-exclusive use of a loading dock and submerged lands for the mooring of applicant vessels and embarking and disembarking of passengers.

COMMENCEMENT DATE:

January 1, 2020, with and expiration date of June 30, 2020.

MONTHLY RENTAL:

One thousand and no/100 dollars (\$1,000.00) per month, payable in advance by the first of each and every month.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

DCCA VERIFICATION:

Place of business registration confirmed:	YES	<u>X</u>	NO
Registered business name confirmed:	YES	<u>X</u>	NO
Applicant in good standing confirmed:	YES	<u>X</u>	NO

HRS CHAPTER 343 – HAWAI‘I ENVIRONMENTAL LAW COMPLIANCE:

Issuance of the permit allows a use of a portion of the state dock and the adjacent submerged state lands for vessel mooring activities dating from after the construction of the MSBH in 1965. The dock was declared unusable after damage to the wooden structure from the 2011 tsunami. The dock was reconstructed with federal funding in 2016 and a Final Environmental Assessment for the “Mānele Small Boat Harbor Ferry System Improvements, TMK 4-9-17:6 and approximate 2-acre portion of 4-9-17:2; Lāna‘i Island, Maui County” was published in the Environmental Notice on August 8, 2005 with an associated finding of no significant impact (FONSI) prior to construction. Terminal improvements include ferry pier boardwalk improvements in the approximately 12.5-acre harbor area, and improvements to fuel storage at the ferry dock.

Based on the general exemption type in HAR § 11-200.1-15(c)(1)(operations, repairs, or maintenance of existing structures, facilities, equipment or topographical features, involving minor expansion or minor change of use beyond that previously existing) and DLNR’s department-wide approved exemption list (approved June 5, 2015), Exemption Class 1, Items 7, 12, and 51, DOBOR is of the opinion that the Board may exempt the continuation of the permit as having minimal or no significant effect on the environment. This action is likely not to have a significant cumulative impact and the harbor is not a particularly sensitive environment as would make an exemption inapplicable. See **EXHIBIT B**.

DOBOR consulted with the Office of Conservation & Coastal Lands who agreed with the propriety of this exemption notice.

REMARKS:

At its meeting on March 22, 2013, under agenda item J-1, the Board approved the petition of Coon Brothers, Inc. to negotiate a lease of certain submerged lands and the dock at that time being reconstructed with federal funding at the Mānele Small Boat Harbor. At its meeting on June 24, 2016, under agenda item J-3, the Board approved the issuance of a revocable permit (RP) to Coon Brothers, Inc for maritime-related activities to support the use of the loading dock space and adjoining water column until such time as DOBOR could complete the required survey, appraisal and other documentation necessary for issuance of a direct lease.

Staff procured a contract with CBRE, Inc (“CBRE”) to establish the fair market value for annual rent for the submerged lands and dock. The permittee did not agree with CBRE’s appraised rent and hired its own appraiser. Staff did not agree with the permittee’s appraiser’s valuation, which resulted in the parties entering into non-binding mediation to resolve their differences as required by HRS § 171-17, and possible binding arbitration proceedings if differences cannot be resolved. Staff is requesting a short continuation of the RP to Coon Brothers, Inc. to allow DOBOR and the Office of the Attorney General to see if the Parties can finalize the lease negotiations or will undertake arbitration proceedings as required by the HRS § 171-17 appraisal process, as necessary.

RECOMMENDATION:

That the Board of Land and Natural Resources:

1. Determine, through its judgment and experience, that the action will individually and cumulatively probably have minimal or no significant effects, and that the issuance of the revocable permit is declared exempt from the preparation of an environmental assessment for the anticipated continuation period.

Authorize the continuance of a Revocable Permit No. 38 for temporary occupancy on a month-to-month basis to Coon Brothers, Inc., as amended, covering the subject area for the use, maintenance and operation of a loading dock and adjacent submerged lands 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 Revocable Permit form, as may be amended from time to time;
- b. Review and approval by the Department of the Attorney General.
- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



EDWARD R. UNDERWOOD, Administrator  
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson  
Board of Land and Natural Resources

Attachments:

- A1 Aerial Map of Manele Small Boat Harbor
- A2 CSF Maps
- B Notice of Exemption

EXHIBIT A1



SEE ATTACHED EXHIBIT  
A2

Manele Small Boat Harbor

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STATE OF HAWAI'I  
SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

C.S.F. No. 25,566

November 21, 2016

MANELE BAY SMALL BOAT HARBOR

LEASE AREAS 1 AND 2

Palawai, Lanai, Hawaii

Being portions of Lot 745-B as shown on Map 54 of Land Court Application 862 filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii covered by Transfer Certificate of Title 89708 issued to the State of Hawaii.

Being also portions of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348.

LEASE AREA 1

Beginning at the east corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PEHE" being 2226.30 feet North and 849.21 feet East, thence running by azimuths measured clockwise from True South:-

- 1. 42° 49' 65.00 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;
- 2. 132° 49' 65.00 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;



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3. 222° 49' 65.00 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;
4. 312° 49' 65.00 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348 to the point of beginning and containing an AREA OF 4225 SQUARE FEET.

LEASE AREA 2

Beginning at the east corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PEHE" being 2263.01 feet North and 837.86 feet East, thence running by azimuths measured clockwise from True South:-

1. 42° 49' 19.21 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;
2. 132° 49' 31.72 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;
3. 144° 42' 25" 27.88 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;
4. 222° 49' 13.47 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348;

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5. 312° 49'

59.00 feet along the remainder of Part 2 of Manele Bay Small Boat Harbor, Governor's Executive Order 4348 to the point of beginning and containing an AREA OF 1055 SQUARE FEET.

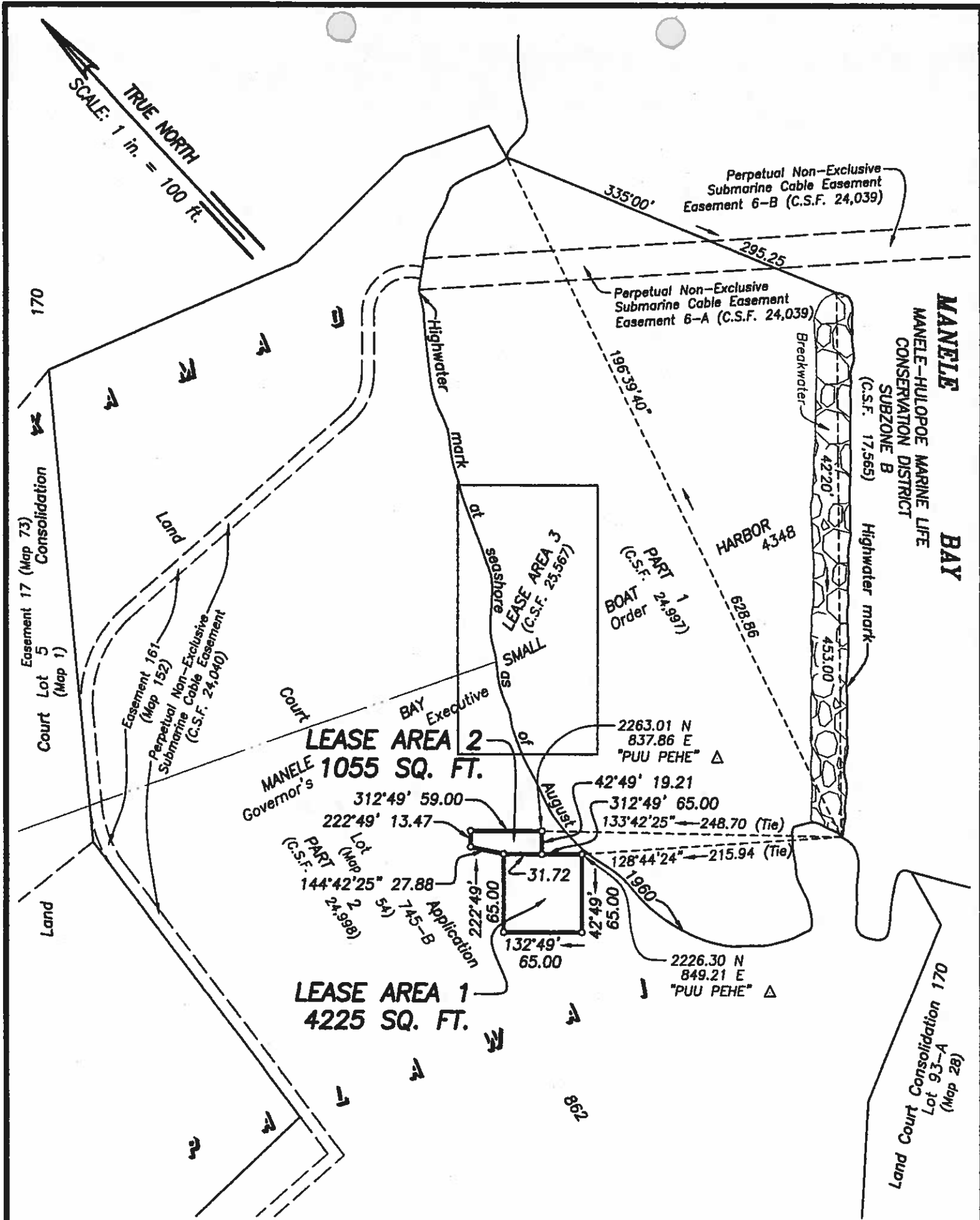
SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: *Gerald Z. Yonashiro*  
Gerald Z. Yonashiro  
Land Surveyor

rk

Compiled from map and desc. furn.  
by Valencia Land Surveying. Said  
map and desc. have been examined and  
checked as to form and mathematical  
correctness but not on the ground by  
the Survey Division.





**MANELE BAY SMALL BOAT HARBOR  
LEASE AREAS 1 AND 2**

Palawai, Lanai, Hawaii

Job L-170(16)

Scale: 1 inch = 100 feet

C. BK.

TMK: 4-9-17: Pors. 06

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
**STATE OF HAWAII**

C.S.F. NO. 25,566

RDM November 21, 2016



DEPARTMENT OF LAND AND NATURAL RESOURCES  
1151 PUNCHBOWL STREET, HONOLULU, HAWAII 96813

October 25, 2019  
J-1

**EXEMPTION NOTICE**

TO: DLNR Public Files for HRS Chapter 343 Exemptions  
FROM: BLNR via Chairperson for DOBOR  
RE: Exempted applicant action as defined by HRS § 343-5(b) and HAR § 11-200.1-9

Project Name and Location (incl. address, island & district; TMK or other geolocation):	Continuation of Revocable Permit No 38, to Coon Brothers, Inc.  Manele Small Boat Harbor, Pālāwai, Island of Lāna‘i, Hawaii, Tax Map Key (2) 4-9-017:006 (Por.)
Project Start/End:	January 1, 2020 to June 30, 2020
Project Approvals:	Revocable Permit (RP) fr. BLNR; HRS § 171-53(c) fr. Governor, concurrent resolution of Legislature; CDUP/site plan approval
Project Description:	Issuance of Revocable Permit No 38, to Coon Brothers, Inc., for continuance of non-exclusive use of a loading dock and submerged lands for the mooring of applicant vessels and embarking and disembarking of passengers.
HRS § 343-5 Trigger(s):	Use of state lands; conservation district
Exemption Class No(s):  (see general Exemption Types in HAR § 11-200.1-15; or if and approved Exemption List, cite the class and item)	This Exemption Notice for the above action is based on general exemption types enumerated in HAR § 11-200.1-15, under Exemption Type(s):  1. Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving, minor expansion or minor change of use beyond that previously existing.  Also, under DLNR Exemption List reviewed and concurred to by the Environmental Council on June 5, 2015: Exemption List Class 1:  Item 7, “Operations, repair, and maintenance, of existing Department structures and facilities, including base yards, offices, cabins, sheds and fencing”.  Item 12, “Operations, repair, and maintenance of existing loading docks, piers, piles, boat launch ramps, offshore mooring facilities, and other similar support structures”.  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”.



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<p>Analysis re: Application of Exemption(s) to the Proposed Action:  (see HAR §11-200.1-17)</p>	<p>In 2016, the concrete dock replaced the wooden pier originally built by the Applicant after the MSBH opened in 1965. A Final Environmental Assessment (FEA) for “Mānele Small Boat Harbor Ferry System Improvements, TMK 4-9-17:6 and approximate 2-acre portion of 4-9-17:2; Lāna‘i Island, Maui County” was published in the Environmental Notice on August 8, 2005; with notice of FONSI by DLNR. Three years later, use of the concrete pier and adjacent submerged lands for vessel moorings and passenger/cargo operations is according to the anticipated design with minor or no change from prior existing uses (see gen. exemption type HAR § 11-200.1-15(c)(1) – i.e., type 1). Since the adoption of HAR chapter 11-200.1, DLNR has not had the opportunity to submit an updated departmental exemption list for acceptance since the 2015 list.</p>
<p>Previous Determinations and Exemption Notices? (see HAR §11-200.1-11 and -12)</p>	<p>See 2005 FEA and FONSI for construction of ferry dock referenced above. While it is likely that additional environmental review is not required, prior exemptions were under HAR chapter 11-200 (repealed 8/9/19).</p>
<p>Adverse Cumulative Impacts to Receiving Environment?  (Particularly sensitive environment? Mitigation or Best Management Practices necessary?)</p>	<p>None likely. This was a commercial harbor under the Dept. of Transportation since 1965, until jurisdiction changed to DLNR as a small boat/recreational harbor facility in 1992. The currently existing dock facilitates permittee and public access, minimizing any damage from mooring, erosion, coral impacts that might otherwise be caused if the structure was not used. Although there may be a potential for fuel spills from boating operations, the alternative to not use the designed boat dock would not obviate such risks. Any risk from cumulative impacts appears negligible.  The Mānele small boat harbor is not a particularly sensitive environment, and no known threatened, endangered, or endemic species are impacted by issuance of this short term permit. No mitigation is necessary nor best management practices need be imposed.</p>
<p>Other Considerations?</p>	<p>In DOBOR’s experience issuance of an RP for use of a small boat harbor facility is unlikely to raise environmental concerns and is likely to enhance public safety for the boating public.</p>
<p>Analysis:</p>	<p>Based its expertise and experience, DLNR/DOBOR believes the proposed action is a routine activity and ordinary function that merits exemption from the preparation of an environmental</p>



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	assessment.
Consulted Parties re: Propriety of Exemption:	Office of Conservation and Coastal Lands- was consulted and concurred with respect to the HRS Chapter 343 exemption.
Declaration	The Board determines, through its judgment and experience, that the requested action will individually and cumulatively probably have minimal or no significant effects on the environment, and that the proposed action is consistent with exemption and therefore declared exempt from the preparation of an environmental assessment.