


STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

October 22, 2019

MEMORANDUM

TO: Davis K. Yogi, Administrator  
Department of Transportation- Harbors Division

FROM: Russell Tsuji, Administrator   
Department of Land and Natural Resources- Land Division

SUBJECT: **Board meeting of October 25, 2019, Agenda item M-6**  
Request for Approval to Proceed with Acquiring Lands for the Department of Transportation, Harbors Division, for Hilo Harbor, island of Hawaii; Kahului Harbor, island of Maui; and Kalaeloa, Barbers Point Harbor, island of Oahu, for a Public Purpose; and, for Delegation to the Chairperson of the Board of Land and Natural Resources the Authority to Initiate Work to Acquire the Lands for Final Approval

The Department of Land and Natural Resources, Land Division, provides the following comments to the Department of Transportation, Harbors Division (Applicant) regarding its submittal on the agenda of the October 25, 2019 meeting of the Board of Land and Natural Resources, item M-6.

**LEGAL REFERENCES**

Below for your consideration are legal references that could be included in Applicant's acquisition request:

Section 107-10, HRS (acquiring or real property and prior approval of the AG),  
Section 171-55, HRS (Right of Entry Permits) /Section 13-221-5, Hawaii Administrative Rules, Permits / Section 101, HRS (eminent domain and condemnation), and  
Section 171-95, HRS (Disposition to government agency).

**CHAPTER 343, HRS - ENVIRONMENTAL ASSESSMENT**

**Kalaeloa Barbers Point Harbor, Island of Oahu**

Pursuant to Section 343-5(a)(1), HRS, and Chapter 11-200.1, HAR, an environmental assessment (EA) does not appear to be required where State or county funds are used for the acquisition of unimproved real property. As the Oahu lands are unimproved, an EA appears not to be required for their acquisition. However, an EA or environmental impact statement (EIS), as applicable, will be required for the development of the land after acquisition.

**Kahului Harbor, Maui**

As to the Maui parcels, these parcels are encumbered and improved, and accordingly compliance with Chapter 343, HRS, must be demonstrated in the submittal either through the publication of

an EA and finding of no significant impact (FONSI) or EIS, or through the declaration of an exemption from Chapter 343, HRS. If compliance with Chapter 343, HRS, is not shown in the submittal, a decision by the Board on this matter could be clouded by procedural irregularity (i.e., "cart before the horse").

### **Hilo Harbor Island of Hawaii**

Similar to Maui, the Hilo, Big Island Hawaii parcels are encumbered and improved, and accordingly compliance with Chapter 343, HRS, must be demonstrated in the submittal either through the publication of an EA and FONSI or EIS, or through the declaration of an exemption from Chapter 343, HRS. If compliance with Chapter 343, HRS, is not shown in the submittal, a decision by the Board on this matter could be clouded by procedural irregularity (i.e., "cart before the horse").

## **ADDITIONAL COMMENTS ON THE REQUESTED ACQUISITIONS**

### **Kahului Harbor, Maui**

1. Since portions of parcels are sought in the acquisition the three (3) parcels will require subdivision. The Land Board might be interested in knowing the funding source and appropriation plan to pay for the parcel subdivisions that would occur in advance of the acquisition. Applicant could additionally explain that Applicant's deputy attorney general would assist on any condemnation action.

### **Kalaeloa Barbers Point Harbor, Island of Oahu**

Real Property Tax research reveals that the Kalaeloa, Kapolei parcel has 334.934 acres with land assessments totaling \$68,422,000, of which approximately 263.293 acres is industrial zoned, and 71.641 acres is agricultural zoned lands.

1. Applicant indicates that it seeks to acquire a portion of Tax Map Key (1) 9-1-01:042. Is the correct tax map key instead (1) 9-1-014:042?
2. Since a portion of the parcel is sought in the acquisition the parcel may need to be subdivided. The Land Board might also be interested in knowing the funding source and appropriation plan to pay for the parcel subdivision that would occur in advance of the acquisition. Additionally, if the acquisition will occur pursuant to a condemnation action, it might be helpful to explain that Applicant's deputy attorney general will handle the condemnation proceedings.
3. Confirmation that the Kalaeloa, Kapolei parcel is in fact unimproved would be helpful to support the Chapter 343, HRS, analysis in the submittal.

## **ADDITIONAL TERMS FOR ACQUISITION REQUESTS**

It would be helpful to include a statement that Applicant will be required to conduct its own due diligence activities, subject to the Department's review, and specifically Applicant will:

1. Pay for the appraisal cost to determine the value of the properties to be acquired;

2. Process and obtain subdivision approval at Applicant's own cost prior to the acquisition, where applicable;
3. Provide survey maps and descriptions for the privately-owned properties according to State DAGS standards and at Applicant's own cost;
4. Obtain a title report for the privately-owned properties at Applicant's own cost and subject to review and approval by the Department. Applicant shall pay for any costs to remove encumbrances or deed provisions subject to the Departments and Department of Attorney General's review and approval;
5. Obtain and pay for any title insurance if required by Applicant, and subject to review and approval by the Department;
6. Obtain prior to the acquisition all necessary entitlements (i.e. land use, county zoning, etc.) as may be required by the Applicant, and subject to review and approval by the Department;
7. Pay for and conduct a Phase I environmental site assessment and, if the Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to the Department, and all to the satisfaction of the Department. Pay for and obtain any updated environmental assessment reports, as needed;
8. Pay for any mapping charges due prior to transaction closing;
9. Prior to recordation, pay for any Conveyance Tax, if applicable, or insure that sellers are appropriately charged, and provide any Conveyance Tax Certifications necessary to record the conveyance documents;
10. If an escrow company is used, Applicant is responsible for providing any closing instructions, subject to the approval of the Department, and shall pay all escrow and closing fees, and provide the Department with final settlement statements.

**RECOMMENDATIONS TO ADD TO APPLICANT'S ACQUISITION REQUEST:**

The following recommendations could be added to applicant's acquisition request:

RECOMMENDATION: That the Board:

1. [If applicable:] Declare that, as to the Kapolei, Oahu unimproved land acquisition, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS and Chapter 11-200.1, 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. Authorize the acquisition of the unimproved private 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 deed document form, as may be amended from time to time;
  - B. Eminent domain proceedings, as may be necessary for the acquisition, pursuant to Chapter 101, HRS;
  - C. Review and approval by the Department of the Attorney General;
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Upon Deed conveyance to the Department of acquired parcels, authorize the issuance of a management right of entry permit to the Department of Transportation for the benefit of the its Harbors Division covering the subject parcels for harbor public purposes 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 permit form, as may be amended from time to time;
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Transportation for the benefit of the its 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
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Cc Board of Land and Natural Resources Meeting October 25, 2019, agenda item M-6

Office of the Attorney General:  
Deputy Attorney General Linda Chow  
Deputy Attorney General Marjorie Lau  
Deputy Attorney General Fawn Yamada