

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

February 28, 2020

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

PSF No.: 19KD-047

KAUAI

Cancellation of Governor's Executive Order No. 1108 and Reset Aside to the County of Kauai for Park and Road Right-of-Way Purposes; Issuance of Immediate Construction and Management Right-of-Entry Permit to the County of Kauai, Kapaa House Lots, Kawaihau, Kapaa, Kauai, Tax Map Keys: (4) 4-6-015:021, 022 and 023.

CONTROLLING AGENCY

County of Kauai

APPLICANT:

County of Kauai

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Kapaa House Lots, Lot 41, situated at Kawaihau, Kapaa, Kauai, identified by Tax Map Keys: (4) 4-6-015:021, 022 and 023, as shown on the attached map labeled Exhibit A.

AREA:

0.659 acre, more or less.

ZONING:

State Land Use District:	Urban
County of Kauai CZO:	Residential-Park

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. 1108 setting aside 0.659 acre (net area 0.619 acre) to the County of Kauai for park use (Exhibit B).

PURPOSE OF SET ASIDE:

Set aside for Park and Road Right-of-Way Purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Section 11-200.1-15 of the Hawaii Administrative Rules (HAR) and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on 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, item No. 43 that states: "Transfer or management authority over state-owned land, such as setting aside of state lands to or from other government agencies through an executive order" (Exhibit C).

REMARKS:

Portions of Kapaa House Lots, Lot 41, Kawaihau, Kapaa, Kauai, Tax Map Keys: (4) 4-6-015:021 and 022, were initially set aside by Executive Order No. 1108 (EO 1108) dated March 27, 1945 to the Board of Supervisors of the County of Kauai, a former political body of the County. EO 1108 states the original public purpose of the set-aside was to "prevent traffic hazard and . . . no construction of any kind shall be made [on the land] but [it] shall be grassed and used as a park." EO 1108 excluded a ditch that bisected the property at the time. The ditch had an area of 0.04 acre and was designated as Tax Map Key: (4) 4-6-015:023. The ditch has been abandoned for many years.

The County of Kauai requests that the Board of Land and Natural Resources cancel EO 1108 and reset aside all three subject tax map parcels (including the abandoned ditch) to the County under a new executive order for park and road right-of-way purposes. This will allow the County to construct a peanut-shaped roundabout at the five-way intersection of Kawaihau Road, Hauaala Road and Mailihuna Road as part of the Complete Streets and Safety Improvements Project No. STP-0700(071). To enable the County to proceed with design and construction of the project, portions of the subject lands are needed.

The following State and County agencies were consulted on this action with the results indicated:

Agency:	Comment:
Historic Preservation	No response by suspense date
Office of Hawaiian Affairs	No response by suspense date
County of Kauai Planning Department	No response by suspense date

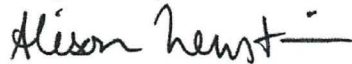
Staff has no objection to the request.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, 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. Approve of and recommend to the Governor issuance of an executive order canceling Governor's Executive Order No. 1108 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 lands to the County of Kauai 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. Grant an immediate construction and management right-of-entry to COK, its consultants, contractors, and/or persons acting for or on its behalf, onto the subject property 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 COK shall consult with the County Planning Department for obtaining any special permits prior to the commencement of any work activities;
 - C. This management and construction right-of-entry is effective upon COK submitting an executed copy of the right-of-entry permit and shall continue until the set aside is completed; and
 - D. 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,



Alison Neustein
Land Agent

APPROVED FOR SUBMITTAL:

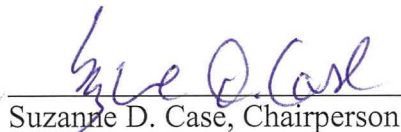
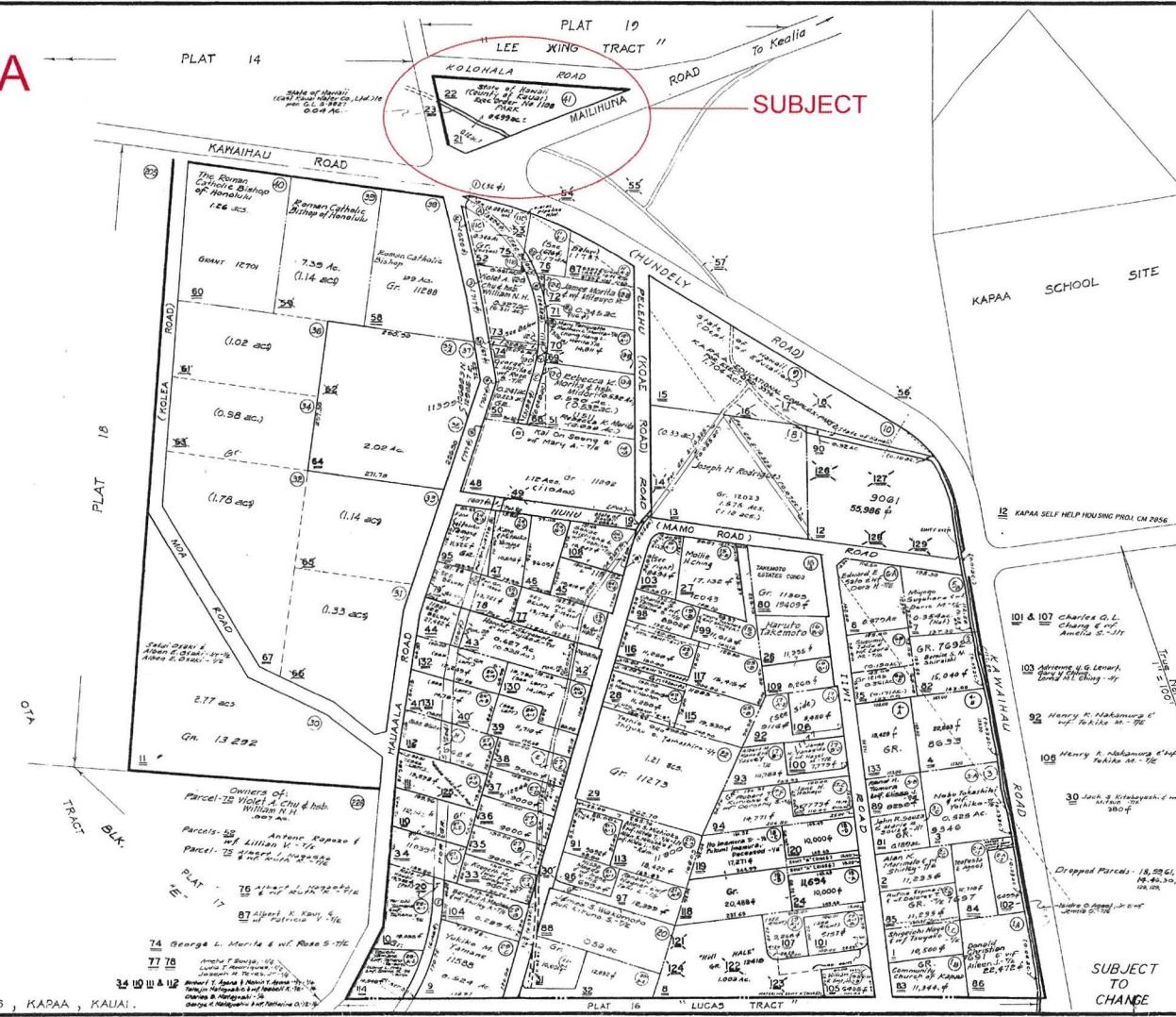

Suzanne D. Case, Chairperson

Exhibit A

Dep. No. 2859
Source : Tax Maps Bureau
By : R.M.B. & J.L.C. August, 1936.

- 45 Charles J. Haganaka & wife Fujiko M. Haganaka
- 19 State of Hawaii (Land Return under Co. L.N. 14)
- 20 State of Hawaii
- 39, 150 Isaac Takemoto & wife Maria K. - 176-2075
- 100 State of Hawaii
- 111 Hawaiian Trust

KAPAA HOUSE LOTS, KAPAA, KAUAI.



TAXATION MAPS BUREAU			
TERRITORY OF HAWAII			
TAX MAP			
ZONE	SEC.	DISTRICT	PLAT
4	6	15	
CONTAINING PARCELS			
SCALE: 1 in. = 100 ft.			

SUBJECT TO CHANGE

STATE LAND FOR AMENDED E.O. 1108

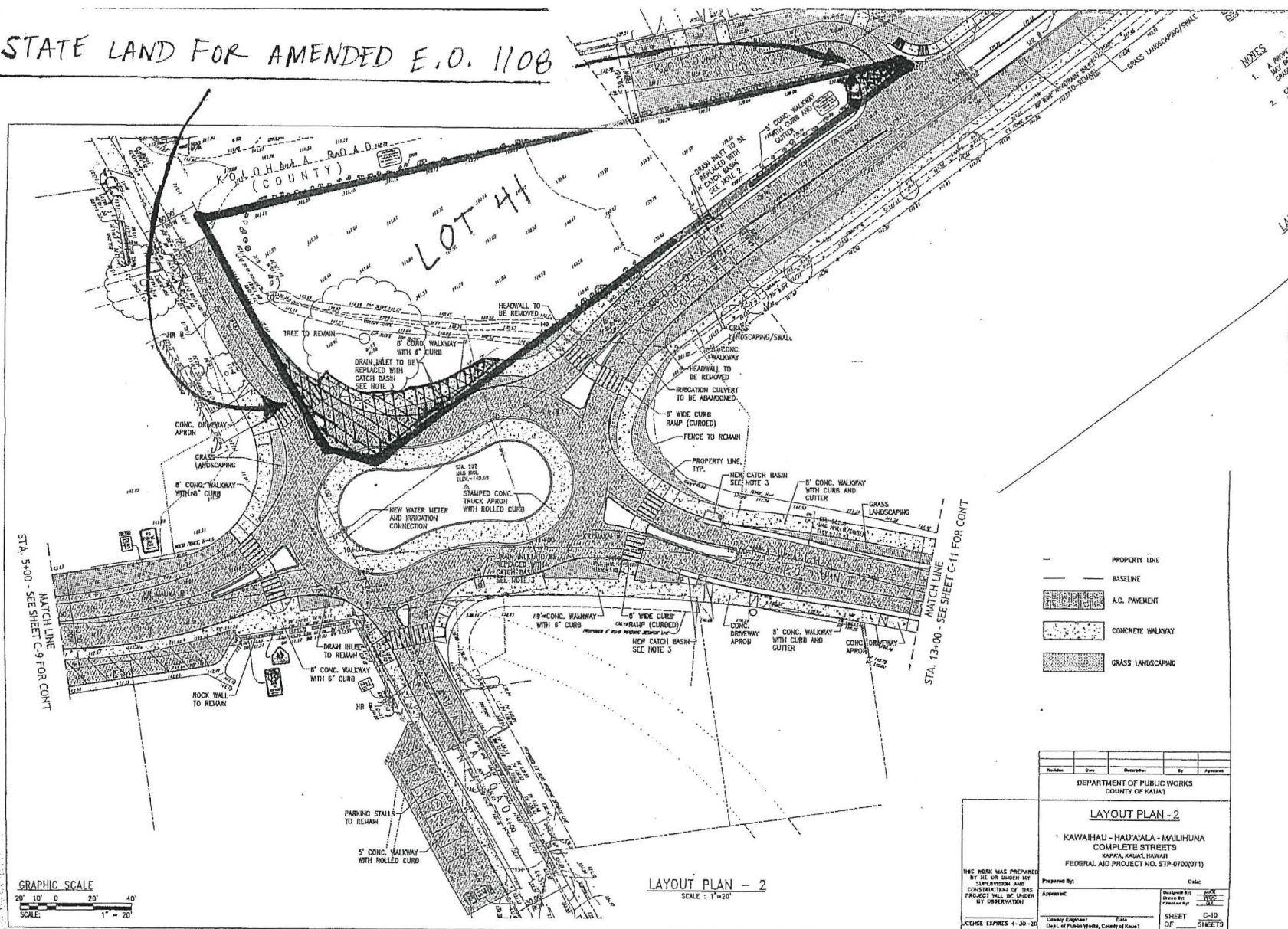


Exhibit A

Exhibit B

Executive Order No. 2105

Setting Aside Land for Public Purposes

By this Executive Order: I, the undersigned, Governor of the Territory of Hawaii, by virtue of the authority in me vested by paragraph q of Section 73 of the Hawaiian Organic Act, and every other authority me hereunto enabling, do hereby order that the public land hereinafter described be, and the same is, hereby set aside for the following public purposes:

TO prevent traffic hazard and on which no construction of any kind shall be made but shall be grassed and used as a park, to be under the control and management of the Board of Supervisors of the County of Kauai.

**Lot 41,
Kapaa House Lots,
Kapaa, Puna, Kauai.**

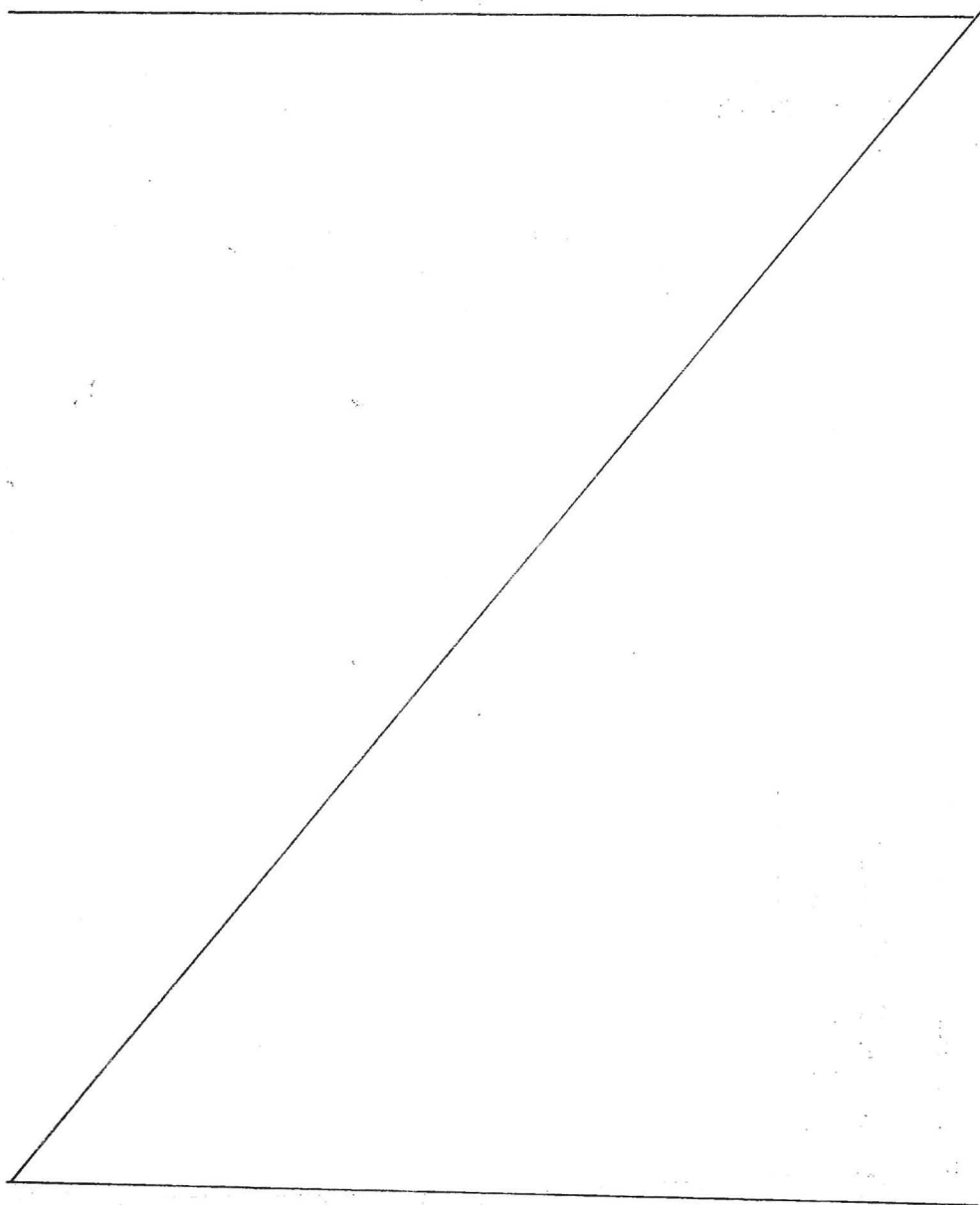
Beginning at the North corner of this lot, the Southeast corner of Hauaala Road and a 40-Foot Road, the coordinates of said point of beginning referred to Government Survey Trig. Station "Nonou" being 11,342.6 feet North and 13,143.9 feet East, as shown on Government Survey Registered Map 2613, and running by azimuths measured clockwise from true South:-

1. 293° 17' 30" 379.81 feet along a 40-Foot Road;
2. 88° 50' 348.14 feet along Mailihuna Road;
3. 137° 46' 25.70 feet along road;
4. 186° 48' 139.20 feet along Hauaala Road to the point of beginning.

AREA 0.659 ACRE

Excepting and reserving therefrom a right-of-way for the ditch (10 feet in width) across this lot, as shown on plan hereto attached and made a part hereof, said right-of-way containing an Area of 0.04 Acre, LEAVING A NET AREA OF 0.619 ACRE.

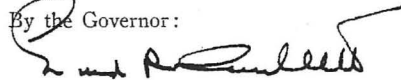
Exhibit B



In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the Territory of Hawaii to be affixed.

Done at the Capitol at Honolulu this Twenty-seventh day of March, Nineteen Hundred and Twenty-five

By the Governor:



Secretary of Hawaii.

bsy

Printshop—64622



Approved as to form:



Assistant

Deputy Attorney General.

Exhibit B

Territory of Hawaii

Office of the Secretary

This is to Certify That the within is a true copy of Executive Order No.
setting aside land for public purposes, the original of which is on file in this office

In Testimony Whereof the Secretary of the Territory of
Hawaii, has hereunto subscribed his name and caused the
Great Seal of the Territory to be affixed.



DONE in Honolulu, this Twenty seventh day of
March, A. D. 1941

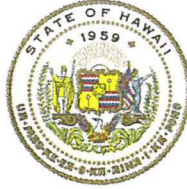
Executive Order No. _____

Setting Aside Land for Public Purposes

Land.....

Purpose.....

Date.....



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

3060 Eiwa Street, Room 208
Lihue, Hawaii 96766
PHONE: (808) 274-3491
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February 28, 2020

EXEMPTION NOTIFICATION

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

Project Title:	Cancellation of Governor's Executive Order No. 1108 and Reset Aside to the County of Kauai for Park and Road Right-of-Way Purposes; Issuance of Immediate Construction and Management Right-of-Entry Permit to the County of Kauai, Kapaa House Lots, Kawaihau, Kapaa, Kauai, Tax Map Keys: (4) 4-6-015:021, 022 and 023.
Project / Reference No.:	PSF No.: 19KD-047
Project Location:	Portion of Government lands of Kapaa House Lots, situated at Kawaihau, Kapaa, Kauai, identified by Tax Map Keys: (4) 4-6-015:021, 022 and 023.
Project Description:	Kapaa House Lots, Kawaihau, Kapaa, Kauai, Tax Map Keys: (4) 4-6-015:021 and 022, were initially set aside for Executive Order 1108 dated March 27, 1945. The existing Executive Order states the original public purpose was to "prevent traffic hazard and . . . no construction of any kind shall be made [on the land] but [it] shall be grassed and used as a park." The County of Kauai requests that the Board cancel and reissue EO 1108 with the recommended language: "for park and road right-of-way purposes, to be under control and management of the County of Kauai," and to include parcel 023, which was a ditch (now abandoned) excluded from EO 1108.
Chap. 343 Trigger(s):	Use of State land.
Exemption Class No. and Item No.:	In accordance with HAR Section 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on dated June 5,

EXHIBIT C

2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 43 that states: "Transfer or management authority over state-owned land, such as setting aside of state lands to or from other government agencies through an executive order."

Cumulative Impact of
Planned Successive
Actions in Same Place
Significant:

No. There will be no successive actions in same place or no significant cumulative impact.

Action May Have
Significant Impact on
Particularly Sensitive
Environment:

No. There will be no particularly sensitive environments involved and no significant impact.

Analysis:

The County of Kauai is requesting to cancel and reset aside Executive Order 1108 only in that EO 1108 currently states that on the subject parcel(s) "no construction of any kind shall be made." The reset aside will include the ditch (now abandoned) that was excluded from the set aside to the County under EO 1108. The County is planning on making improvements to the already existing surrounding roads. The County plans to use a just a small portion of the subject land for proposed Street transport purposes" so that the County can move forward with their roadway construction project.

Consulted Parties:

Office of Hawaiian Affairs, DLNR Historic Preservation and
County of Kauai Planning Department

Declaration:

It is recommended that the Board find that this project will probably have minimal or no significant effect on the environment and declares that this project is exempt from the preparation of an environmental assessment.