

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

March 27, 2020

PSF No.: 20KD-017

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

**KAUAI**

Cancellation of Governor's Executive Order No. 3633; Partial Withdrawal of 103.041 Acres from Governor's Executive Order No. 4259; Reset Aside of the 164.353 Acres Formerly Under Governor's Executive Order No. 3633 and the 103.041 Acres Withdrawn From Governor's Executive Order No. 4259 to the Agribusiness Development Corporation for Agricultural and Related Purposes, Kekaha, Waimea, Kauai, Tax Map Keys: (4) 1-2-002:001, 006, 022, 035, 042 & 043, and (4) 1-2-016:001 through 020.

CONTROLLING AGENCY:

The Department of Agriculture (DOA).

APPLICANT:

Agribusiness Development Corporation (ADC), a body corporate and politic and an instrumentality and agency of the State of Hawaii.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government Agricultural Park Lands situated at Kekaha, Waimea, Kauai, identified by Tax Map Keys: (4) 1-2-002: 006, 022, 035, 042 & 043 and (4) 1-2-016:001 through 020, as shown on the attached map labeled Exhibit A.

AREA:

EXECUTIVE ORDER NO.	TAX MAP KEY	AREA (Acres)	TOTAL
<b>EO 3633</b>	1-2-016:001	6.37	
	1-2-016:002	13.73	
	1-2-016:003	10.83	
	1-2-016:004	10.01	
	1-2-016:005	9.95	
	1-2-016:006	8.47	
	1-2-016:007	8.50	
	1-2-016:008	8.11	
	1-2-016:009	6.05	
	1-2-016:010	5.42	
	1-2-016:011	7.60	
	1-2-016:012	5.47	
	1-2-016:013	5.98	
	1-2-016:014	7.91	
	1-2-016:015	7.85	
	1-2-016:016	7.75	
	1-2-016:017	9.45	
	1-2-016:018	9.45	
	1-2-016:019	7.59	
	1-2-016:020	7.86	<b>164.353</b>
<b>EO 4259</b>	1-2-002:006	32.929	
	1-2-002:022	5.195	
	1-2-002:035	42.019	
	1-2-002:042	5.601	
	1-2-002:043	17.297	<b>103.041</b>

EO 3633: 164.353 acres, more or less.

EO 4259: 103.041 acres, more or less.

ZONING:

State Land Use District: Agriculture  
County of Kauai CZO: Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES \_\_\_\_ NO   x  

CURRENT USE STATUS:

Governor's Executive Order No. 3633 setting aside 164.353 acres to the DOA for Kekaha Agricultural Park purposes.

Governor's Executive Order No. 4259 setting aside 121.409 acres to DOA for agricultural purposes.

PURPOSE OF SET ASIDE:

For agricultural and related purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit C.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Provide survey maps and descriptions according to State Division of Accounting and General Service standards and at ADC's own cost, if required.

REMARKS:

The Board of Land and Natural Resources (Board) approved the set-aside of 164.353 acres of State lands to DOA under Governor's Executive Order No. 3633 dated October 17, 1994 (EO 3633), for the Kekaha Agricultural Park.

The Board approved the set-aside of 121.409 acres of State lands to DOA under Governor's Executive Order No. 4259 dated January 6, 2009 (EO 4259), for agricultural purposes.

By letter dated December 17, 2018, DOA and ADC jointly requested that all of the Kekaha lands under EO 3633 and 103.041 acres of the Kekaha Agricultural Park lands under EO 4259 be withdrawn, and that those lands be re-set aside for agricultural and related purposes to ADC. Both the Board of Agriculture at its meeting of October 23, 2018 and ADC Board at its meeting of November 28, 2018 have approved this request. (Exhibit B)

Currently, the Kekaha Agriculture Association (KAA) operates ADC's hydroelectric plants located on ADC lands. The KAA buys and sells under-and-over energy supplies from Kauai Island Utility Cooperative (KIUC) pursuant to an expired, held-over Power



Purchase Agreement (PPA). KIUC and KAA are currently negotiating a new PPA. One of the largest users of ADC energy is Sunrise Capital, LLC to operate the pumps in the ponds on the Agricultural Park lands. Although there have been no issues with this arrangement to date, in an abundance of caution, KAA believes that having all of the lands serviced by ADC hydroelectric plants under the management of one landowner where the lands are contiguous will eliminate any issue before the Public Utilities Commissions over whether the KAA is a “public utility” as defined by §269-1, HRS.

At this time, there are no alternative higher and/or best uses of the subject lands. Applicant’s proposed use will fully utilize the lands requested.

On February 10, 2020, various government agencies and interest groups were solicited for comments. No response was received by the suspense date.

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 the cancellation of Governor’s Executive Order No. 3633, 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 partial withdrawal of 103.041 acres from Governor’s Executive Order No. 4259, 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.
4. Approve of and recommend to the Governor the issuance of an executive order re-setting aside the subject 164.353 acres of land that was previously under Governor's Executive Order No. 3633 and the subject 103.041 acres withdrawn from Governor's Executive Order No. 4259 to the Agribusiness Development Corporation 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.
5. Grant an immediate management and construction right-of-entry to ADC, its consultants, contractors, and/or persons acting for or on its behalf, onto the subject property to secure, maintain and manage the 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. This management and construction right-of-entry is effective upon Land Board approval and shall continue until the set-aside is completed; 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.

ADC/DOA-Withdrawal & Reset Aside  
of Kekaha Agricultural Park Lands  
TMK: (4) 1-2-002:001, 006, 022, 035,  
042 & 043 and (4) 1-2-016:001-020

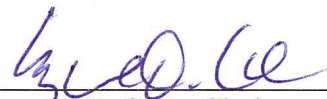
Page 6

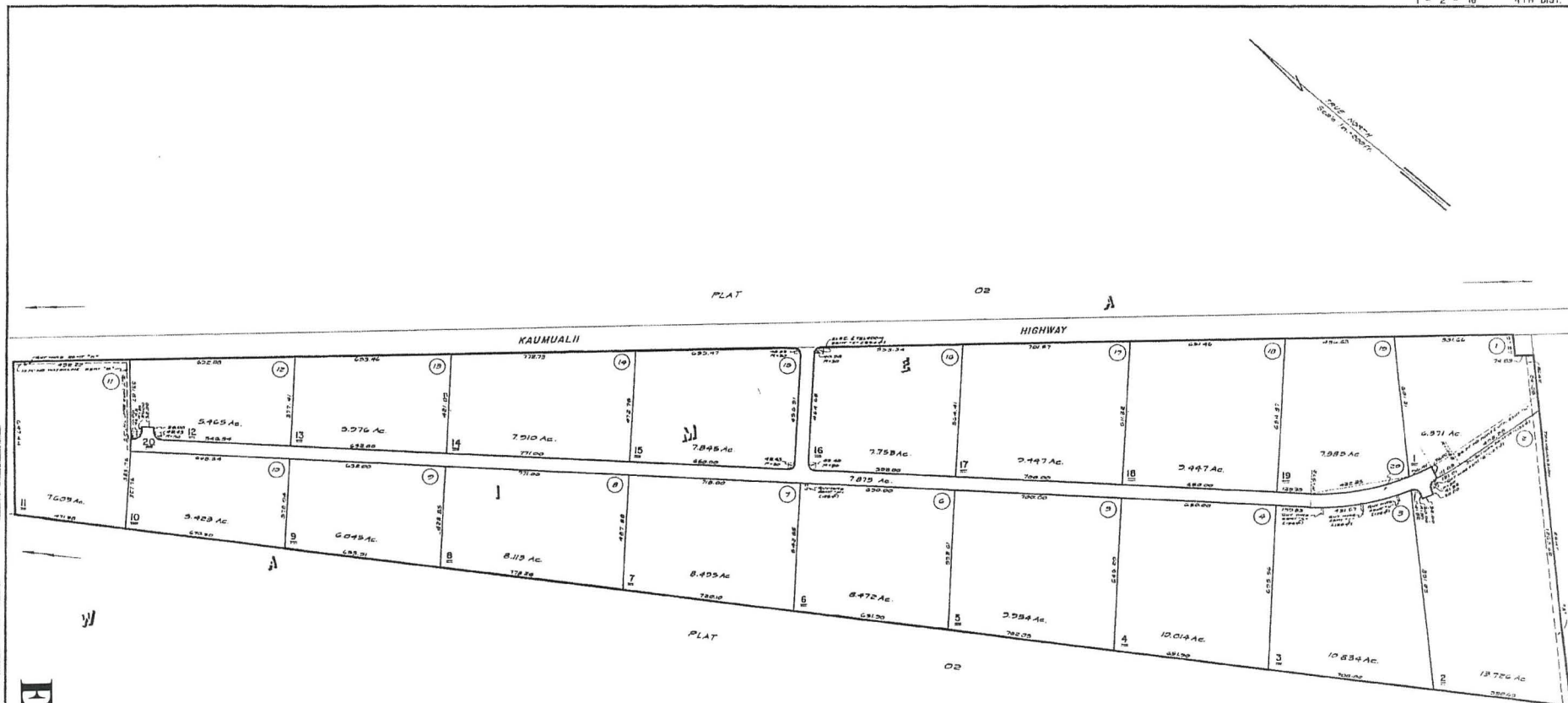
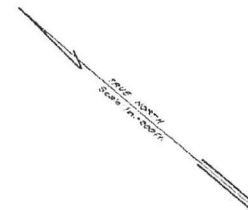
March 27, 2020

Respectfully Submitted,

  
\_\_\_\_\_  
Wesley T. Matsunaga  
District Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Suzanne D. Case, Chairperson



NOTE: All data entered by State of Hawaii, unless otherwise noted.

Owner, lessee, & vendee name recorded on this tax map print may not be current. Please refer to computer and battery should for current owners.

COUNTY OF KAUAI		
ZONE	SECTION	PLAT
1	2	16

SCALE: 1 IN. = 200 FT.  
PRINTED:

FOR PROPERTY ASSESSMENT PURPOSES - SUBJECT TO CHANGE

**EXHIBIT A-1**

"KENEHA AGRICULTURAL PARK SUBD," F.P. 2136, KENEHA, WAIMEA, KAUAI, HAWAII (Formerly par. 1-2-02)







DAVID Y. IGE  
Governor

JOSH GREEN  
Lt. Governor



GEO 3633  
GEO 4259

RECEIVED NAKATANI  
LAND DIVISION Director

2018 DEC 24 AM 11:35

STATE OF HAWAII  
AGRIBUSINESS DEVELOPMENT CORPORATION  
235 S. Beretania Street, Room 205  
Honolulu, HI 96813  
Phone: (808) 586-0186 Fax: (808) 586-0189

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

December 17, 2018

Suzanne Case, Chairperson,  
And Members of the  
Board of Land and Natural Resources  
State of Hawai'i  
1151 Punchbowl Street  
Honolulu, Hawai'i 96813

RECEIVED  
2018 DEC 21 PM 1:13  
DEPT. OF LAND  
& NATURAL RESOURCES  
STATE OF HAWAII

Dear Chair Case and Board Members:

Re: Request for withdrawal of Executive Order Nos. 3633 and 4259 (por), and issuance of new EO to the Agribusiness Development Corporation for agricultural lands located in Kekaha, Island of Kauai, Hawaii

Executive Order No. 3633, approved by the Board of Land and Natural Resources ("Board") and executed by the Governor on October 17, 1994 ("EO 3633"), set aside 164.353 acres of agricultural land located in Kekaha for the Kekaha Agricultural Park to be under the control and management of the Department of Agriculture, State of Hawaii ("HDOA"). With the exception of one lot, the Kekaha Ag Park is leased to Sunrise Capital, LLC ("Sunrise") for shrimp and bivalve breeding ("Ag Park lands").

Executive Order No. 4259, approved by the Board and executed by the Governor on January 6, 2009 ("EO 4259"), set aside 121.409 acres of agricultural land located in Hanapepe, Kapaa, and Kekaha for agricultural purposes to be under the control and management of HDOA. Of the 121.409 total acres set aside under EO 4259, 103.041 acres are located in Kekaha. The Kekaha lands are used for office buildings, a shrimp hatchery and crops ("improved lands").

In the meantime, Executive Order No. 4007, approved by the Board and executed by the Governor on September 16, 2003 ("EO 4007"), set aside 12,592.133 net acres of agricultural land for agricultural and related purposes to be under the control and management of the Agribusiness Development Corporation ("ADC"). The lands set aside to the ADC are used primarily for crops ("ADC lands").

All of these Kekaha lands are located within three-fourths of a mile of each other. By this letter, HDOA and the ADC jointly request that all of the Kekaha lands under EO 3633 and 103.041 acres of Kekaha lands under EO 4259 be withdrawn, and that those lands be re-set aside for agricultural and related purposes to be under the control and management of the ADC. Both the Board of Agriculture at its meeting held on October

12.24.18 by: KDLO

**EXHIBIT B**

23, 2018 and the ADC board at its meeting held on November 28, 2018 have approved this request.

### **Bases for the Transfer**

Currently, the Kekaha Agriculture Association ("KAA") operates ADC's hydroelectric plants located on ADC lands. The KAA currently buys and sells energy under- and over-energy supplies from the Kauai Island Utility Cooperative ("KIUC") pursuant to an expired, held-over Power Purchase Agreement ("PPA"). KIUC and KAA are currently negotiating a new PPA. One of the largest users of ADC energy is Sunrise to operate the pumps in the ponds on the Ag Park lands. Although there have been no issues on this arrangement to date, in an abundance of caution, the KAA believes that having all of the lands serviced by the ADC hydros under the management of one landowner where the lands are contiguous will eliminate any issue before the Public Utilities Commissions ("PUC") over whether the KAA is a "public utility" as defined by §269-1, Hawaii Revised Statutes ("HRS").

Additionally, in an effort to meet the Hawaii Constitutional mandate of conserving and protecting agricultural lands, promoting diversified agriculture, increasing agricultural self-sufficiency, and assuring the availability of agriculturally suitable lands, the KAA has proposed to voluntarily petition the Land Use Commission for a declaratory order designating portions of the ADC Mana plain lands as Important Agricultural Lands under Chapter 205, HRS ("IAL"). If successful, such designation could result in tremendous benefits to the KAA, and to qualified agricultural costs incurred by individual tenants. The petition will only seek IAL designation; there will be no request to reclassify any ADC lands.

### **Chapter 343 – Environmental Assessment**

The requested withdrawal of EO 4287 and issuance of a new executive order is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and, therefore, this action does not trigger the requirement of an environmental assessment. Any future use of the subject lands will be subject to a determination of the applicability of Chapter 343, HRS.

### **Request**

Based on the foregoing, HDOA and ADC jointly requests that the Board of Land and Natural Resources recommend to the Governor that EO Nos. 3633 and 4259 be withdrawn and in its stead a new executive order be issued setting aside the same lands for agricultural and related purposes to be under the control and management of the Agribusiness Development Corporation, a public body corporate and politic and an instrumentality and agency of the State of Hawaii.

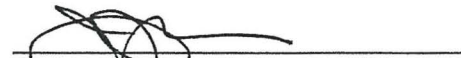
Request for withdrawal of Executive Order Nos. 3633 and 4259 (por), and issuance of new EO to the Agribusiness Development Corporation for agricultural lands located in Kekaha, Island of Kauai, Hawaii  
December 17, 2018  
Page 3 of 3

Your favorable consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott E.", written over a horizontal line.

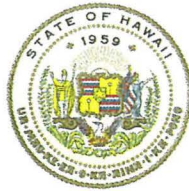
Scott E. Enright  
Chairperson, Board of Agriculture

A handwritten signature in black ink, appearing to read "James J.", written over a horizontal line.

James J. Nakatani,  
Executive Director, ADC



DAVID Y. IGE  
GOVERNOR OF HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**LAND DIVISION**

3060 Eiwa Street, Room 208  
Lihue, Hawaii 96766  
PHONE: (808) 274-3491  
FAX: (808) 241-3535

March 27, 2019

Ref. No.: 20KD-017

**EXEMPTION NOTIFICATION**

Regarding the preparation of an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes (HRS), and Chapter 11-200.1-15, Hawaii Administrative Rules (HAR):

**Project Title:** Cancellation of Governor's Executive Order (GEO) No. 3633; Partial Withdrawal from GEO No. 4259; Reset Aside to the Agribusiness Development Corporation at Kekaha, Waimea, Kauai.

**Project / Reference No.:** 20KD-017

**Project Location:** Kekaha Agricultural Park, Kekaha, Waimea, Kauai, Tax Map Key: (4) 1-2-002:001, 006, 022, 035, 042 & 043 and (4) 1-2-016:001-020.

**Project Description:** Cancellation of GEO No. 3633; Partial Withdrawal from GEO No. 4259; and Reset Aside to ADC.

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

**Exemption Class No. and Description:** In accordance with Hawaii Administrative Rules (HAR) § 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 June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, which 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," and 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."

**EXHIBIT C**



**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 are no particularly sensitive environmental issues involved with the proposed use of the property.

**Analysis:**

The proposed use will involve negligible or no expansion or change of use beyond that previously existing.

**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.