

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

April 8, 2022

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

PSF No.: 21KD-052

Kauai

Issuance of Direct Lease to Kaivin Farm Educational Programs for Pasture Purposes, Kalaheo Homesteads, 1st Series, Kalaheo, Koloa, Kauai, Tax Map Keys: (4) 2-4-003:017 and 018.

APPLICANT:

Kaivin Farm Educational Programs, a Hawaii non-profit organization and an Internal Revenue Code (IRC) Section 501(c)(3) tax exempt entity.

LEGAL REFERENCE:

Section 171-43.1, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of Kalaheo Homesteads, 1st Series, Kalaheo, Koloa, Kauai, Tax Map Keys: (4) 2-4-003:017 and 018, as shown on the attached map labeled Exhibit A.

AREA:

7.335 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: NO

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Pasture purposes.

LEASE TERM:

Thirty (30) years.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

\$480.00 per annum (Minimum Rent Policy for New Dispositions, May 13, 2005).

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

The annual rent shall be reopened and redetermined at the 10th and 20th years of the lease term based on the Board's then-prevailing Minimum Rent Policy for eleemosynary organizations.

PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities – None.

Legal access to property – Staff has verified that there is legal access to the property off of Kikala Road.

Subdivision – Staff has verified that the subject properties are legally subdivided lots.

Encumbrances – Staff has verified that no encumbrances exist on the property.

Improvements – None.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exemption Notification attached below as Exhibit B

DCCA VERIFICATION:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for the costs of public notice pursuant to section 171-16, HRS, if applicable.

REMARKS:

The two subject parcels are in the location of the former Kalaheo Reservoir Number 6. After the reservoir was decommissioned, the lands were used for pasture purposes. From at least 1961 through 2013, the subject parcels were encumbered by several pasture leases (GLS-3625, GLS-4865, GLS-5559 as well as RPS-7123). The property has sat overgrown and vacant since January 1, 2014. The applicant's proposed pasture use of the property is similar to the use that had previously existed. Dumping of rubbish has been an occasional issue and there have been complaints of the public using the area to ride ATVs and dirt bikes.

Kaivin Farm Educational Programs (KFEP) is an eleemosynary organization whose primary function is to serve the community. KFEP is a working farm for developmentally disabled children and adult farmers – a farm where people with disabilities can perform meaningful work, contribute, gain self-worth and confidence, improving their work and communication skills, while allowing social interaction. KFEP currently works with the Kekaha Community, Department of Vocational Rehab and Waimea High School to provide these services. KFEP supplies these services to the public free of charge. The president of KFEP has farmed all of her life and for the past 8 years has been taking students to her farm to gain work skills and learn the process of goat farming. Currently her farm is a classroom, and the students earn credits towards their graduation requirements when they work on the farm. It is KFEP's intent to do the same with the subject land. The applicant qualifies as a bona fide farmer pursuant to HRS 171-14.5.

KFEP will fence the property and build a non-permanent shade house. KFEP plans on keeping goats on the property. Applicant plans on collecting and removing a large amount of the goat feces to be used as fertilizer offsite, thus avoiding large amounts of surface runoff contaminated with animal waste. The removal of feces for fertilizer will also curb a potential increase in flies to the area. KFEP will not keep more than 55 goats on the subject area at any time.

KFEP has applied for a 30-year direct lease at nominal rent for pasture purposes.

The Board of Land and Natural Resources (Board) has authority to issue the leases at a nominal consideration and by direct negotiation to eleemosynary (charitable) organizations pursuant to the following authority:

§171-43.1 Lease to eleemosynary organizations. The Board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service. [L1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c202, §1; am L 1991, c 212, §3]

It is noted that the IRC Section 501(c)(1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while the Section 501(c)(3) organization is a privately organized charitable organization.

On May 13, 2005, the Board established a Minimum Rent Policy that stated, among other things, that the minimum rent for leases to charitable organizations be no less than \$480 per year.

KFEP is a domestic IRC Section 501(c)(3) nonprofit corporation. See Exhibit C.

KFEP has not had a lease, permit, easement or other disposition of State lands terminated within the past five years due to non-compliance with such terms and conditions.

To date, no other parties have expressed interest to utilize/lease the subject area.

The following State and County of Kauai (COK) agencies were consulted on this action with the results indicated:

Agency:	Comment:
Division of Forestry and Wildlife	No response by suspense date

Historic Preservation	No response by suspense date
Office of Hawaiian Affairs	No response by suspense date
Department of Agriculture	No response by suspense date
COK Planning Department	No response by suspense date
COK Department of Public Works	No response by suspense date

RECOMMENDATION: That the Board:

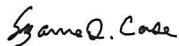
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to KFEP covering the subject areas 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 non-profit lease document form, as may be amended from time to time;
 - B. 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.

Respectfully Submitted,



Alison Neustein
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

RT

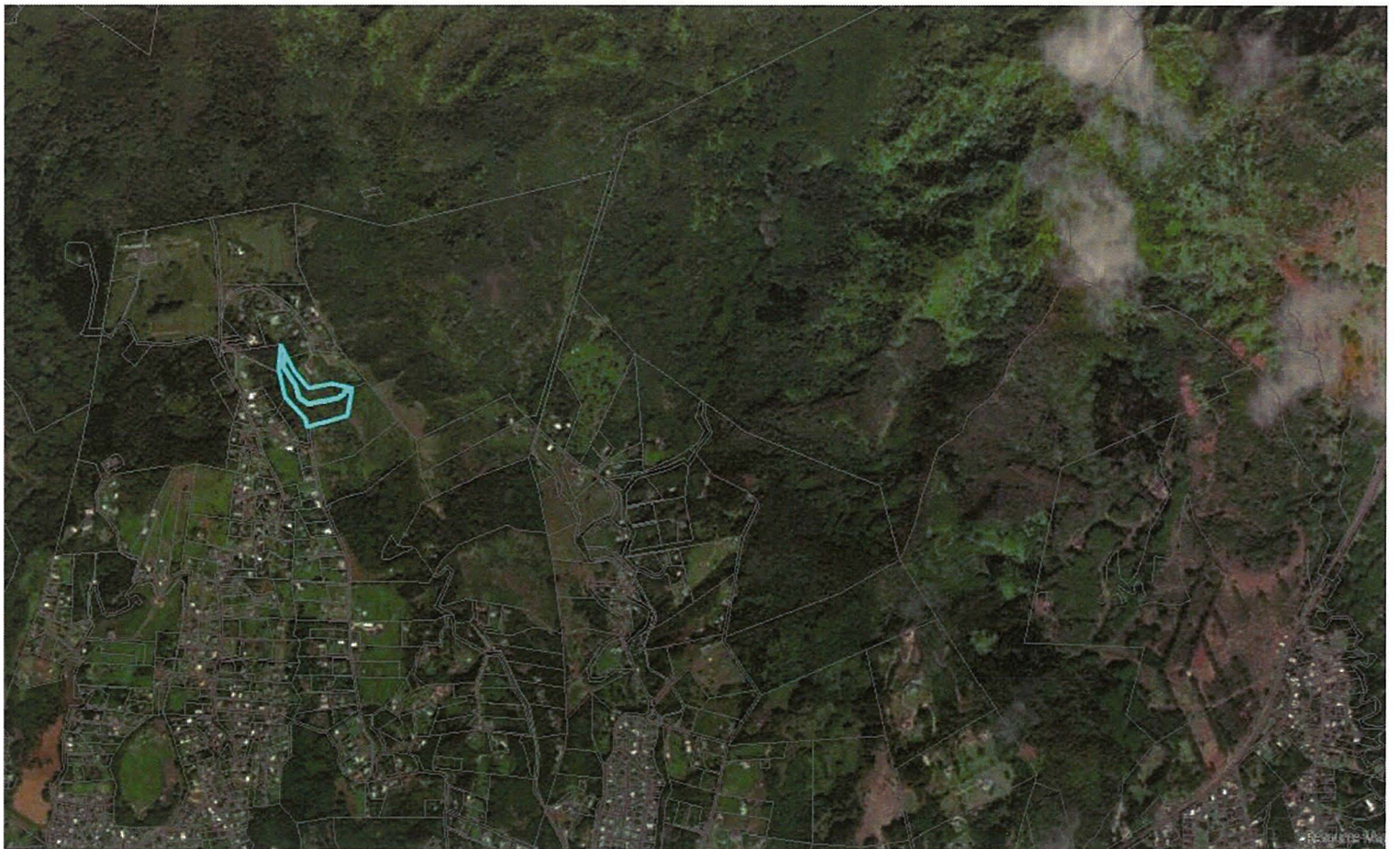
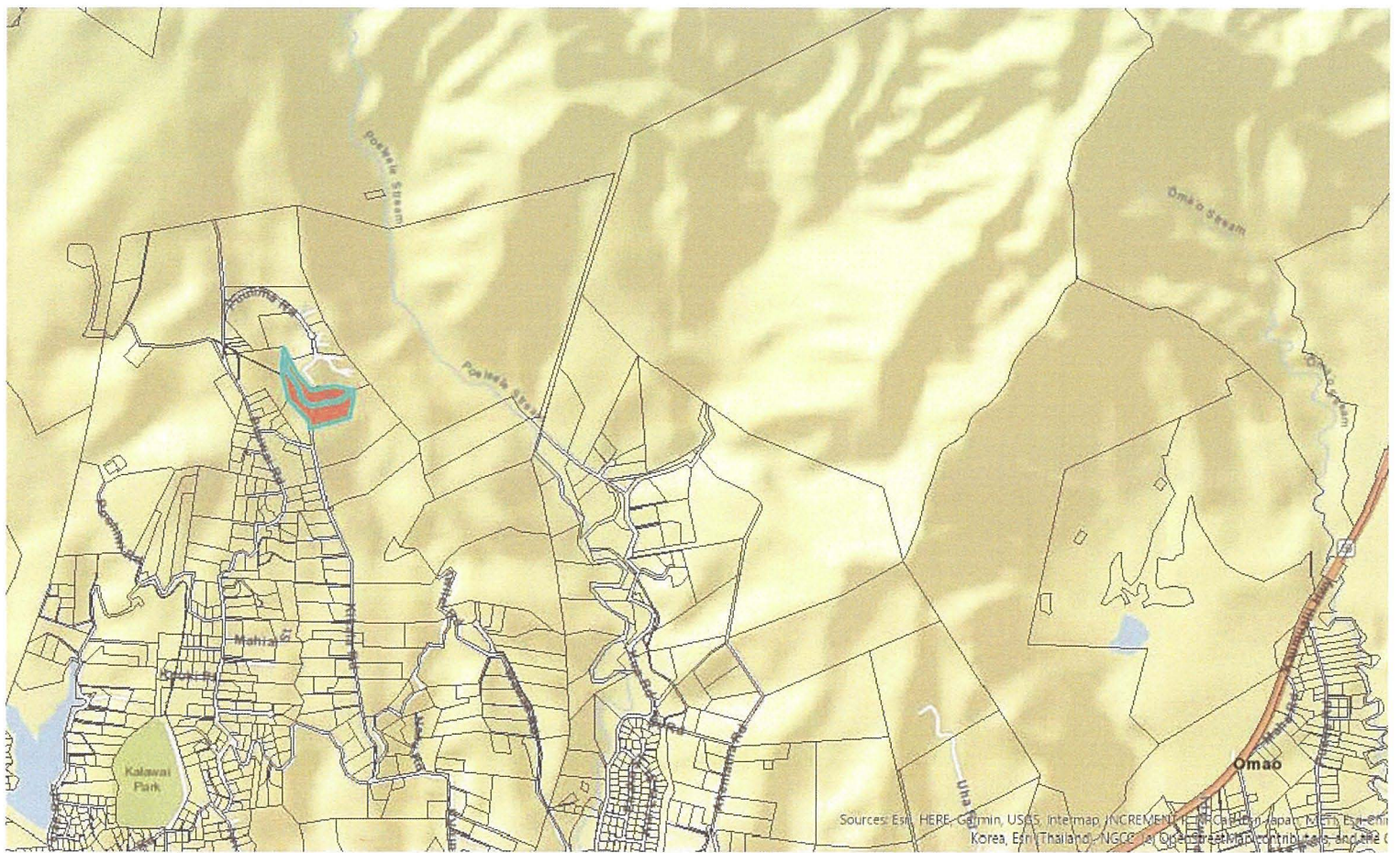


EXHIBIT A

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LIHUE - KOLOA FOREST RESERVE

PLAT 09

Joseph K. Palama
1898
LCAN 4820

Benny G. Silva
1845 Acs.
(7.51 Acs.)
SILVA TRACT
(F. P. 263)

Grantee 3-816

State of Hawaii

(Antone Andrade, et al.) 10.
G.L. 5-4865

KUWAANAA PASTURE LAND

103.845 Acs.

SECTION 5 PLAT

EXHIBIT A

Dropped parcels: 21, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 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1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934

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

April 8, 2022

EXEMPTION NOTIFICATION

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

Project Title: Issuance of Direct Lease to Kaivin Farm Education Programs for Pasture Purposes

Project / Reference No.: PSF No. 21KD-052

Project Location: Kalaheo Homesteads, 1st Series, Kalaheo, Koloa, Kauai, Tax Map Keys: (4) 2-4-003:017 and 018.

Project Description: Issuance of Direct Lease to Kaivin Farm Education Programs

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

Exemption Class No. and Item No.: In accordance with Section 11-200.1-15 of the Hawaii Administrative Rules and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, that 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," Part 1, Item 40, which states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existed."

Cumulative Impact of No, the request is a single occurrence in the area.

EXHIBIT B

**Planned Successive
Actions in Same Place
Significant?**

**Action May Have
Significant Impact on
Particularly Sensitive
Environment?**

Analysis:

No, the action proposed will have no significant impact to any particularly sensitive environment.

From 1961 to 2013 the subject property was used for pasture purposes. As such, staff believes that the requests would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties:

Comments from The Division of Forestry and Wildlife, State Historic Preservation Division, Office of Hawaiian Affairs, Department of Agriculture, COK Public Works, and COK Planning were solicited. No agency had any objection by the suspense date to the proposed exemption.

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is therefore presumed to be exempt from the preparation of an environmental assessment.



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
P.O. Box 2508
Cincinnati, OH 45201

KAIVIN FARM EDUCATIONAL PROGRAMS
C/O YVETTE NAKAAHIKI
PO BOX 349
KALAHEO, HI 96741

Date:
03/03/2021
Employer ID number:
[REDACTED]
Person to contact:
Name: Customer Service
ID number: [REDACTED]
Telephone: [REDACTED]
Accounting period ending:
December 31
Form 990-PF required:
Yes
Effective date of exemption:
December 8, 2020
Addendum applies:
No
DLN:
[REDACTED]

Dear Applicant:

We're pleased to tell you we determined you're exempt from federal income tax under Internal Revenue Code (IRC) Section 501(c)(3). Donors can deduct contributions they make to you under IRC Section 170. You're also qualified to receive tax deductible bequests, devises, transfers or gifts under Section 2055, 2106, or 2522. This letter could help resolve questions on your exempt status. Please keep it for your records.

Organizations exempt under IRC Section 501(c)(3) are further classified as either public charities or private foundations. We determined you're a private foundation within the meaning of Section 509(a).

You're required to file Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation, annually, whether or not you have income or activity during the year. If you don't file a required return or notice for three consecutive years, your exempt status will be automatically revoked.

If we indicated at the top of this letter that an addendum applies, the enclosed addendum is an integral part of this letter.

For important information about your responsibilities as a tax-exempt organization, go to www.irs.gov/charities. Enter "4221-PF" in the search bar to view Publication 4221-PF, Compliance Guide for 501(c)(3) Private Foundations, which describes your recordkeeping, reporting, and disclosure requirements.

Sincerely,

Stephen A. Martin

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

EXHIBIT C

Letter 1076 (Rev. 2-2020)
Catalog Number 35161A