

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

April 22, 2022

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

Ref: 22OD-003

OAHU

Cancellation of Governor’s Executive Order No. 4474 and Reset Aside to Department of Agriculture for Aquaculture, Diversified Agriculture, and Ancillary Uses Purposes; Consent to the Issuance of Right-of-Entry to the Division of Forestry and Wildlife; Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-9-001:002, 003, and 036.

CONTROLLING AGENCY (of subject executive order):

Agribusiness Development Corporation (“ADC”).

APPLICANT (requesting set aside):

Department of Agriculture (“DOA”).

LEGAL REFERENCE:

Sections 171-11 and 55, Hawaii Revised Statutes, as amended; and Act 90, Session Laws of Hawaii 2003, now codified as Chapter 166E, Hawaii Revised Statutes (“HRS”).

LOCATION:

Portions of Government lands situated at Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-9-001:002, 003, and 036, as shown on **Exhibits A-1** and **A-2**.

AREA:

147.646 acres, more or less.

ZONING:

State Land Use District: Conservation and Agriculture
City and County of Honolulu LUO: P-1 & P-2

TRUST LAND STATUS:

(1) 6-9-001:002 and 036
Acquired after Statehood, i.e., non-ceded.

(1) 6-9-001:003

Section 5(b) lands of the Hawaii Admission Act

All parcels

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

CURRENT USE STATUS:

Encumbered by Governor’s Executive Order No. 4474 to ADC for agriculture purposes.

PURPOSE OF SET ASIDE:

Aquaculture, Diversified Agriculture, and Ancillary Uses purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

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 November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, Part 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,” and Item 36 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.” The subject request is a de minimis action that will probably have minimal or no significant effect on the environmental and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR. See **Exhibits B**.

APPLICANT REQUIREMENTS:

None

REMARKS:

On July 25, 2014, under agenda item D-10, the Board authorized setting aside the subject parcels to ADC for agriculture purposes. Pursuant to the Governor’s Executive Order No. 4474 dated November 24, 2014, it was ADC’s intent to issue a direct lease for aquaculture over the set-aside area to Hawaii Fish Company (“HFC”), who was the holder of a revocable permit issued by the Board since 1992. Unfortunately, ADC and HFC were not able to come to an agreement for a long-term lease.

Section 4-158, HAR, allows aquacultural use which is included in DOA’s diversified agriculture as a character of use for DOA to issue long term lease. DOA planned to request resetting aside the subject area in anticipation of issuance of a direct lease to HFC for aquaculture purposes. Subsequently, boards of ADC and DOA approved the proposed transfer at their meetings of April 28 and May 25, 2021 respectively.

Division of Forestry and Wildlife's Plan

Discussions were held among DOA, HFC, and the Division of Forestry and Wildlife (DOFAW), who is interested in securing approximately 61 acres of the land for its forest reserve, game management area and other recreational uses. With the tentative configuration of DOFAW's desired portions shown on **Exhibits C-1 and C-2**, DOFAW was advised that a conservation district use permit would be required to subdivide Parcel 3, which is conservation district. For the Board's information, DOFAW is also interested in obtaining an executive order in the future to include the adjacent unencumbered parcel, (1) 6-9-001:004, for its forest reserve.

DOA and DOFAW agreed to enter into a memorandum of understanding to document DOFAW's commitment to seek federal or other funding for a subdivision approval regarding the 61-acre portion as needed by DOFAW. Any subdivision will ensure proper legal access to serve the areas to be managed by DOFAW. Upon subdivision approval, staff will bring the request for withdrawal and reset-aside to DOFAW for the Board's consideration. Until final configuration of the respective areas to be managed by DOFAW and DOA is agreed upon and approved by the Board, DOA will continue to manage the subject area pursuant to the executive order under the subject request. In addition, DOA agreed to issue a right-of-entry to DOFAW over the 61-acre portion until the entire subdivision and set-aside process is completed.

The Department of Planning and Permitting and Division of State Parks have no objections or comments on the subject request. DOFAW supports the request as shown in the past communications with the staff.

The Department of Transportation, Highways Division, requested notification by DOA if it decides to perform any work within the right-of-way or change the access onto the highway. The Office of Conservation and Coastal Lands provided comments on the provisions of Chapter 13-5, HAR, about land uses in the conservation district.

The Agribusiness Development Corporation, Division of Aquatic Resources, Commission on Water Resources Management, Office of Hawaiian Affairs, Department of Parks and Recreation, Board of Water Supply, and Department of Facility Maintenance have not responded to the solicitation for comments prior to the deadline.

There are no other pertinent issues or concerns regarding the subject request. Staff recommends the Board approve the request as described in the Recommendation section.

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 as a de minimis action.
2. Approve of and recommend to the Governor issuance of an executive order canceling Governor's Executive Order No. 4474 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 Department of Agriculture 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. Upon issuance of the Governor’s Executive Order described in Recommendation 3, authorize the issuance of right-of-entry permit by the Department of Agriculture to the Division of Forestry and Wildlife under the terms and conditions cited above, and such other terms and conditions as may be prescribed by the Chairperson of Agriculture to best serve the interest of the State.

Respectfully Submitted,

Barry Cheung

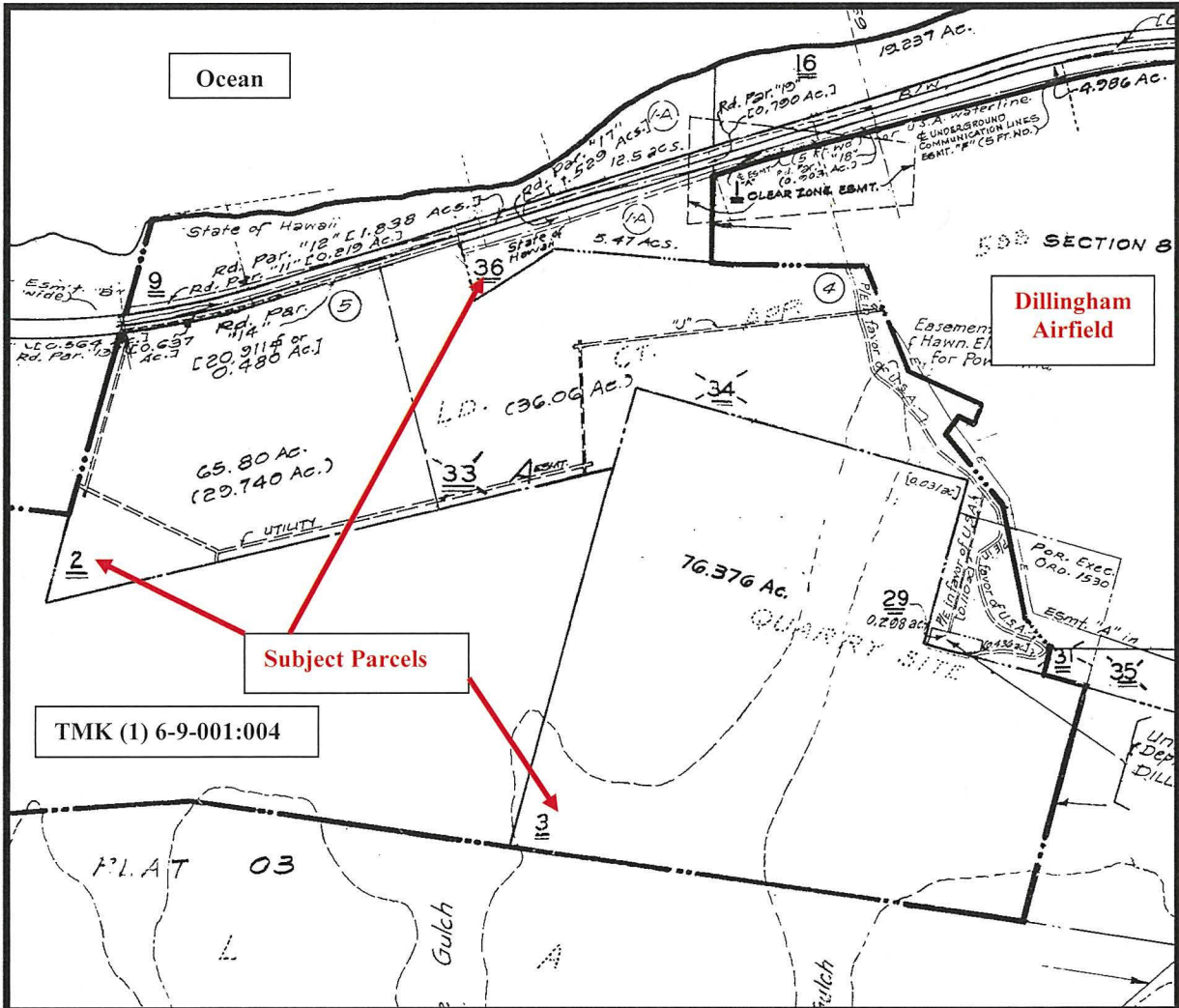
Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case

Suzanne D. Case, Chairperson *PCM*

RT



TMK (1) 6-9-001:002, 003, and 036

EXHIBIT A-1



TMK (1) 6-9-001:002, 003, and 036

EXHIBIT A-2

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, HAR

Project Title:	Cancellation of Governor’s Executive Order No. 4474 and Reset Aside to Department of Agriculture for Aquaculture, Diversified Agriculture, and Ancillary Uses Purposes; Consent to the Issuance of Right-of-Entry to the Division of Forestry and Wildlife.
Reference No.:	PSF 22OD-003
Project Location:	Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-9-001:002, 003, and 036.
Project Description:	The transfer of management of the State parcels between two State agencies.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	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 November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, Part 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,” and Item 36 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.” The subject request is a de minimis action that will probably have minimal or no significant effect on the environmental and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR.
Cumulative Impact of Planned Successive Actions in Same Place Significant?	No. The request pertains to documenting the transfer of management jurisdiction between two State agencies, while the current revocable permit will continue to exist. It is not anticipated that there are any major change or expansion of the existing uses.
Action May Have Significant Impact on	No. It is not anticipated that there are any major change or expansion resulted from the subject request.

EXHIBIT B

Particularly Sensitive
Environment?

Consulted Parties:

As listed in the submittal.

Analysis:

It is not anticipated that there are any major change or expansion resulted from the subject request.

Recommendation:

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

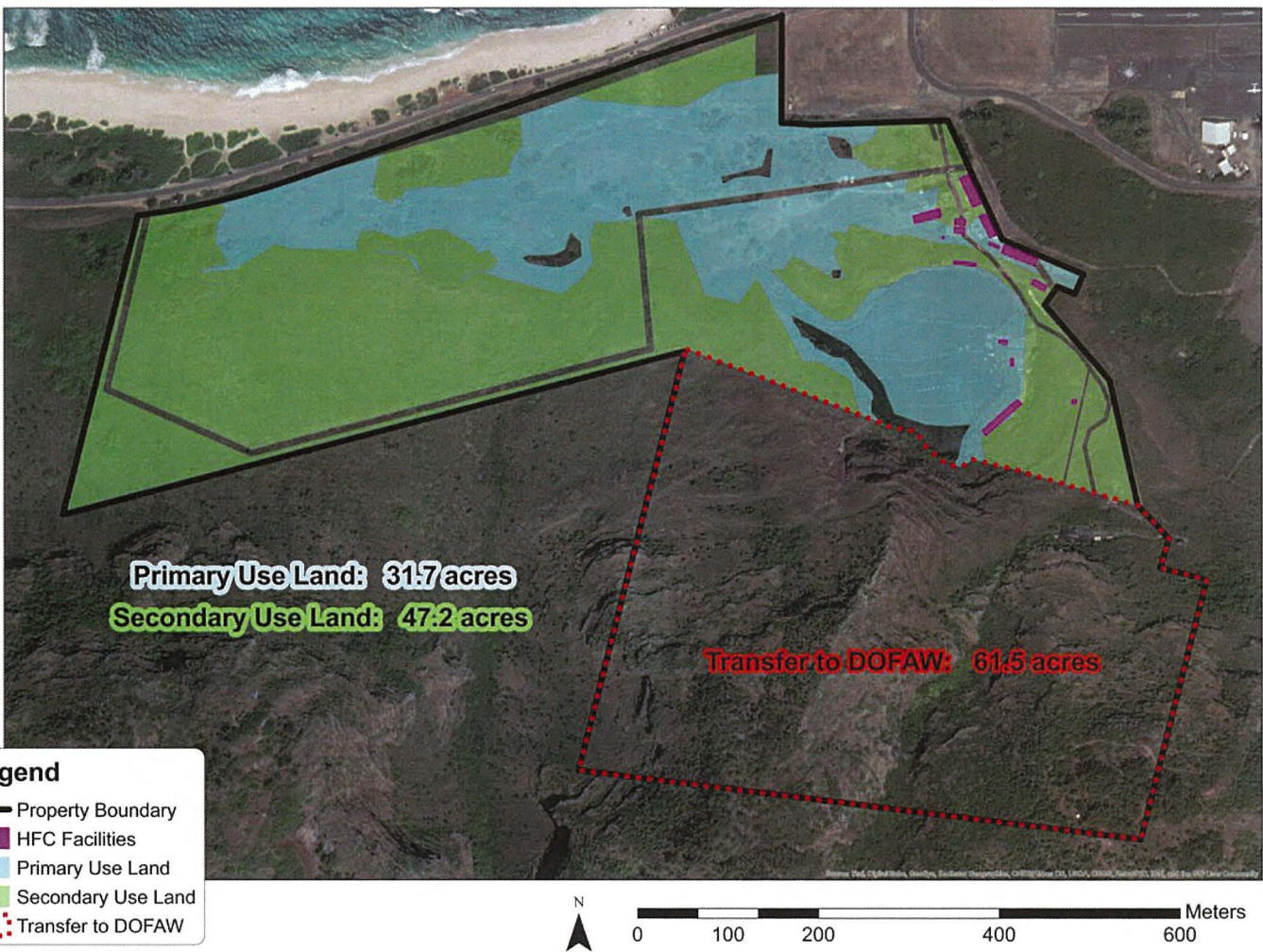


EXHIBIT C-1

