

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

June 9, 2022

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

PSF No.: 4HD-341

Hawaii

Rescind Prior Board Action of May 12, 2006, Item D-3, *Grant of Perpetual, Non-Exclusive Avigation and Noise Easement to State of Hawaii, Department of Transportation, Airports Division, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-37:41*

BACKGROUND:

At its meeting of May 12, 2006, Item D-3 (Exhibit I), the Board of Land and Natural Resources (Board) approved the issuance of a perpetual, non-exclusive avigation and noise easement to the Department of Transportation, Airports Division (DOT-A) to help support operations at the Hilo International Airport. However, the easement was not executed and is no longer necessary because the Board approved the set-aside of the entire parcel to DOT-A by Governor's executive order (EO) at its meeting of October 28, 2010, under agenda Item D-3, as recently amended at its meeting of January 14, 2022, under agenda Item D-1 (Exhibit II).

REMARKS:

In preparing the documents for the EO set-aside, staff noted the approved avigation and noise easement and determined it was no longer needed as DOT-A would control the subject parcel. As a result, staff is recommending the prior Board action of May 12, 2006, Item D-3, be rescinded.

RECOMMENDATION: That the Board:

Rescind its prior Board action of May 12, 2006, under agenda item D-3.

June 9, 2022

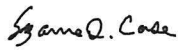
Respectfully Submitted,



May 9, 2022

Michael Ferreira
Land Agent

APPROVED FOR SUBMITTAL:



May 10, 2022

Suzanne D. Case, Chairperson

RT

EXHIBIT I

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

May 12, 2006

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

PSF No. 04HD-001

Hawaii

Grant of Perpetual, Non-Exclusive Avigation and Noise Easement to State of Hawaii,
Department of Transportation, Airports Division, Waiakea, South Hilo, Hawaii, Tax Map
Key: (3) 2-2-37:41.

APPLICANT:

State of Hawaii, Department of Transportation, Airports Division ("DOT-Airports").

LEGAL REFERENCE:

Section 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiakea Homesteads situated at Waiakea, South Hilo,
Hawaii, identified by Tax Map Key: (3) 2-2-37:41. The general location of the easement
area is shown on the attached **Exhibit A**.

AREA:

To be determined by the Department of Accounting and General Services, Survey
Division and/or DOT-Airports, Survey/Cadastral Division. The Easement Area is the
airspace over a portion of the underlying TMK Parcel 41. TMK Parcel 41 is 2.847 acres.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: MCX-20, Industrial-commercial mixed use

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ☐ NO ☒

CURRENT USE STATUS:

Vacant and unencumbered.

EXHIBIT I

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

May 12, 2006

CHARACTER OF USE:

- Avigation and noise easement for Applicant's operation of the Hilo International Airport.

Avigation Easement: the right, privilege and authority for the passage of all lawful aircraft ("aircraft" being defined for the purposes of this instrument as any contrivance now known or hereafter invented, used, or designated for use in the navigation of or flight in the air) by whomsoever owned and operated, in the air space above the civil airport imaginary surface, as prescribed by Title 19, Department of Transportation, Subtitle 2, Airports Division, Chapter 12, Airport Zoning, Hawaii Administrative Rules (Chapter 19-12, Hawaii Administrative Rules), as the same may be amended, that are located within the easement area, to an infinite height above said civil airport imaginary surfaces; provided that this grant of easement shall not operate to authorize or excuse DOT-Airports' operation of the Hilo International Airport in violation of the noise easement described below or any applicable federal or state requirements governing aircraft safety and noise abatement measures or any other measures, nor shall it authorize or excuse any negligence or willful misconduct of DOT-Airports in operating the Hilo International Airport.

The Department of Land and Natural Resources, for itself and its assigns, covenants and agrees that it will not erect, permit the erection of, or permit the growth of, any structure, tree or other object within the easement area which shall exceed or project above a height of forty-seven (47) feet above mean sea level ("amsl") at the northeast corner of the easement area and sixty-one (61) feet amsl at the southeast corner of the easement area. The height limit shall increase within the easement area from the northeast corner to the southeast corner by one (1) foot in elevation for each thirty-four (34) feet of horizontal distance.

Noise Easement: the right, privilege and authority to discharge, emit or otherwise transmit aircraft noise at levels not exceeding sixty (60) dnl and also fumes, smoke, vibrations and other substances and phenomena from aircraft as well as the operation of the Hilo International Airport, as it currently exists or as it will be developed in the future, including, but not limited to, runway and other physical improvements, frequency of aircraft flights, types of aircraft and flight patterns, provided that this grant of easement shall not operate to authorize or excuse DOT-Airports' operation of the Hilo International Airport in violation of any applicable federal or state requirements governing aircraft safety and noise abatement measures or any other measures, nor shall it authorize or excuse any negligence or willful misconduct of DOT-Airports in operating the Hilo International Airport.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

As the manager of public lands, the Department normally requires payment from grantees of easements over public lands the sum equal to the fair market value of the easement, as determined by appraisal. An appraisal report by Medusky & Co., Inc. dated March 2005 concluded the proposed avigation easement would reduce the annual

market rent for property by \$9,100 (from \$91,000 to \$81,900). The appraisal also concluded the fair market value of the avigation easement would be equal to a one-time payment of \$130,000. The Department, however, often waives the fee for easements granted to other State agencies, and therefore, staff recommends the fee for the avigation easement be waived.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the Hilo International airport subject project was published in the OEQC's Environmental Notice on May 8, 2003 with a finding of no significant impact (FONSI). The Final Environmental Assessment for the property to be encumbered by the subject easement was published in the OEQC's Environmental Notice on June 23, 2003 with a finding of no significant impact (FONSI).

DCCA VERIFICATION:

Not applicable. The Applicant is an agency of the State of Hawaii.

APPLICANT REQUIREMENTS:

Applicant shall be required to provide a survey map and description according to State DAGS standards and at Applicant's own cost for the easement area, provided, however, that the Chairperson may elect to have the map and description prepared by the State DAGS, Survey Division, in which case, Applicant shall cooperate by providing DAGS Survey Division with the information necessary to prepare the map/description in a timely manner.

REMARKS:

The property has excellent development and revenue generating potential to the state due to the size and central location of the parcel. Development of the property was previously hindered by the RS-10 (residential) zoning. However, in January 2004, the County approved DLNR's application to rezone the property to MCX-20 (industrial-commercial mixed-use), which will allow DLNR to offer a long-term industrial-commercial ground lease. There has been widespread interest in the property, and to date, the Hawaii District Land Office has compiled a list of 77 prospective applicants/bidders.

In its review comments to DLNR's EA and rezoning application, DOT-airports indicated that the property is located within the Hilo International Airport's runway protection zone, that therefore, DOT-Airports it would seek an avigation easement. By memo dated August 30, 2004, DOT provided height limits and noise disclosure requirements for the avigation easement, which have been incorporated in the Character of Use section above.

The Board previously authorized the sale of a ground lease by public auction pursuant to its actions on October 8, 2004 (Item D-1) and February 25, 2005 (Item D-5). In its approval, the Board acknowledge DOT-Airport's request for an avigation easement, which is the subject of this submittal.

RECOMMENDATION: That the Board:

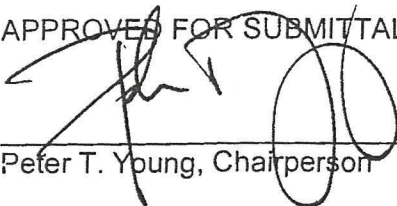
1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to the State of Hawaii, Department of Transportation, Airports Division, covering the easement area for avigation and noise purposes under the terms and 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 perpetual avigation and noise easement document form, as may be amended from time to time;
 - B. The easement shall run with the land;
 - 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.

Respectfully Submitted,



Keith Chun
Planning and Development Manager

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson



--- DLNR PARCEL (to be encumbered by Easement)
+++ EASEMENT AREA

EXHIBIT A

EXHIBIT II

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

January 14, 2022

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

PSF No.: 04HD-341

Hawaii

Amend Prior Board Action of October 28, 2010, Item D-13, Set Aside to State of Hawaii, Department of Transportation, Airports Division for Runway Protection Zone Preservation, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-037:041.

The purposes of the amendment are to remove a condition requiring the Department of Transportation, Airports Division (DOTA), to compensate the Department of Land and Natural Resources for the set-aside of the land, to remove all other non-standard conditions for a set-aside under Section 171-11, Hawaii Revised Statutes, and to require DOTA to provide survey maps and descriptions according to State Department of Accounting and General Services' standards and at DOTA expense.

BACKGROUND:

At its meeting of October 28, 2010, under agenda Item D-13, the Board of Land and Natural Resources (Board) approved the set-aside of the subject parcel to the Department of Transportation, Airports Division (DOTA), for runway protection zone and preservation purposes. A copy of the prior Board action is attached as Exhibit 1 and a location map of the parcel is attached as Exhibit 2.

As explained in the submittal, the Department of Land and Natural Resources (DLNR or Department) had planned and taken action to develop the parcel for purposes of generating revenue to support the operations of the Department. After much effort on its part including rezoning of the land from residential to commercial-industrial mixed-use, DLNR was notified that the parcel could not be developed due to concerns articulated by DOTA and the Federal Aviation Administration about the location of the parcel within the Hilo International Airport's secondary runway protection zone. DOTA requested that the land be set aside to it.

Typically, set-asides are done without payment of any consideration by the receiving agency to the DLNR. Due to the subject land's high potential for revenue generation, however, the Board included a condition that DOTA pay the land's June 9, 2010

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
January 14, 2022 *uo.*

appraised value of \$2,356,000 to DLNR as a condition of the set-aside. DLNR intended to use those proceeds to purchase comparable property to support the operations of the Department.

DISCUSSION:

Shortly after the Board approved the transaction, State administrations transitioned from the Lingle Administration to the Abercrombie Administration. Staff understands the Abercrombie Administration did not support DOTA paying DLNR for the set-aside. As a result, no set-aside occurred and the land remained under DLNR management with an ROE to DOTA for tree-trimming and removal purposes approved by the Chairperson on January 18, 2013 and extended in 2014 and 2015.

In recent years, DOTA reiterated its request for the set-aside of the land. Land Division then became aware that the Division of Forestry and Wildlife (DOFAW) was looking to expand its base yard near the Kahului Airport on Maui, and that there is land set aside to DOTA next to the DOFAW base yard that could be used for that purpose. DOTA and DOFAW thereafter entered into negotiations that resulted in an agreement in concept for DOFAW to use a portion of the DOTA set-aside area for expansion under a Memorandum of Agreement (MOA) regarding DOFAW's use of the area. A separate submittal before the Board today seeks approval for DOFAW to enter into the MOA with DOTA.

In view of this development, staff is seeking an amendment of the Board's action of October 28, 2010, Item D-13, to allow the subject land to be set aside to DOTA without compensation and in accordance with standard practices for a set-aside under Section 171-11, Hawaii Revised Statutes (HRS). Specifically, Recommendations 1.B., 1.C., 1.D., 2 and 3 of the October 28, 2010 Board approval will need to be deleted. Additionally, staff is recommending that the "REQUIREMENTS" section on page 2 of the 2010 submittal be deleted in its entirety and replaced with the following:

APPLICANT REQUIREMENTS:

DOTA shall be required to provide survey maps and descriptions according to State DAGS standards and at DOTA expense.

RECOMMENDATION:

That the Board:

1. Amend its prior Board action of October 28, 2010, under agenda Item D-13, by:
 - A. Deleting all references to a set-aside of the land to DOTA conditioned on DOTA's payment of consideration to DLNR or on any other non-standard requirements for a set-aside under Section 171-11, HRS;

- B. Deleting Recommendations 1.B., 1.C., 1.D., 2 and 3 on page 7 of the prior action;
- C. Deleting the “REQUIREMENTS” section on page 2 of the prior action in its entirety and replacing it with the following:

APPLICANT REQUIREMENTS:

DOTA shall be required to provide survey maps and descriptions according to State DAGS standards and at DOTA expense.

- 2. Affirm that, except as amended hereby, all terms and conditions listed in its October 28, 2010 approval shall remain the same.

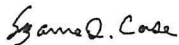
Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:

RT



Suzanne D. Case, Chairperson

EXHIBIT 1

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

October 28, 2010

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

PSF No.:04HD-341

Hawaii

Set Aside to State of Hawaii, Department of Transportation,
Airports Division for Runway Protection Zone Preservation,
Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-37:41.

APPLICANT:

State of Hawaii, Department of Transportation, Airports Division

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Waiakea situated at Waiakea, South
Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-37:41, as shown
on the attached Exhibit A.

AREA:

124,002 square feet, or approximately 2.847 acres

ZONING:

State Land Use District: Urban
County of Hawaii CZO: MCX-20, Industrial-commercial mixed-use

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO XX _____

CURRENT USE STATUS:

Vacant and unencumbered.

EXHIBIT 1

October 28, 2010

D-13

PURPOSE:

Runway protection zone preservation.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit B attached.

REQUIREMENTS:

- 1) DLNR shall be required to provide survey maps and descriptions according to State DAGS standards.
- 2) DOTA shall be required to pay DLNR a one-time consideration in the amount of TWO MILLION THREE HUNDRED FIFTY-SIX THOUSAND AND NO/100 DOLLARS (\$2,356,000.00), which an independent appraiser determined to be the fair market value of the Subject Parcel as of June 9, 2010.

BACKGROUND:

Due to unusual circumstances, the Department of Land and Natural Resources and the Department of Transportation, Airports Division ("DOTA") have agreed, with Federal Aviation Administration ("FAA") support, that this particular set-aside merits fair market value consideration. The circumstances are that DLNR had planned and taken action to develop the parcel for generating revenue to support the management of State lands. After much effort, DLNR was notified that the parcel could not be developed due to DOTA and FAA concerns. Now, with the support of DOTA and FAA, DLNR will receive compensation for the set-aside of the land and will use those funds to purchase a comparable property to generate income to support the management of State lands.

Accordingly, the DOTA and DLNR Land Division request the Board of Land and Natural Resources ("BLNR") approve and recommend to the Governor the issuance of an executive order setting aside to the DOTA 124,002 square feet, or approximately 2.847 acres, of commercial-industrial mixed-use zoned land situated in Waiakea, South Hilo, Hawaii, further identified by tax map key as TMK (3) 2-2-37:41 ("Subject Parcel"). A copy of the Subject Parcel tax map is attached as Exhibit A.

DLNR, as the manager of the public land trust, is responsible for managing approximately 1.3 million acres of State-owned lands and the State's natural resources. To support its duties and mission, DLNR seeks to utilize a portion of its lands for income generating purposes. Lease revenues from such lands are used to support DLNR's operations and its various public programs and functions. At its meeting on August 14, 2009, BLNR designated the Subject Parcel as a revenue generating property to fund the Department's Recreational Renaissance Plan B.

The Subject Parcel has excellent development potential due to its location along two major Hilo thoroughfares, Kanoelehua and Kekuanaoa Avenues. The property, however, remained vacant and underutilized for decades primarily due to its then RS-10 (residential) zoning designation. The value of the Subject Parcel and its revenue generating potential were improved substantially when DLNR obtained rezoning approval from the County of Hawaii to allow industrial and/or commercial uses.

During the rezoning application process, DOTA submitted agency review comments that the Subject Parcel is located within the Hilo International Airport's secondary runway protection zone.¹ As such, DOTA indicated it would seek to acquire the Subject Parcel, or, if DOTA were unable to acquire the property, DOTA would seek an avigation easement over the property. Due to the excellent revenue potential of the property, DLNR informed DOTA that it would not transfer the property to DOTA but would be willing to consider recommending that the Board grant an avigation easement.

The County of Hawaii approved DLNR's rezoning application in January 2004, and DOTA subsequently provided DLNR with the detailed requirements (e.g., height, noise disclosures) for the proposed avigation easement.

DLNR proceeded to prepare the requested avigation easement as well as prepare for a public auction of a ground lease for the Subject Parcel.

On October 8, 2004, under agenda Item D-1, the BLNR approved the sale of a 55-year ground lease over the subject parcel by public auction, subject to a proposed avigation easement being granted to DOTA. DOTA subsequently raised additional concerns, and the BLNR, at its meeting of February 25, 2005, Item D-5, approved additional lease terms to address DOTA's new concerns.

In a memorandum dated February 28, 2006, DOTA confirmed that development of the Subject Parcel would be acceptable if all improvements were kept within the height limits set by DOTA (which height limits were set forth in the avigation easement previously agreed upon).

Based on the foregoing, at its meeting of May 12, 2006, Item D-3, BLNR approved granting an avigation easement to DOTA and agreed to waive the fair market value compensation² normally required. DLNR then renewed its efforts to proceed with a public auction of

1 The secondary runway is primarily used only when the main runway is closed down for some reason such as repairs.

2 The fair market value of the avigation easement was valued at \$130,000. Appraisal dated March 2005 performed by Medusky & Co.

the Subject Parcel subject to the proposed aviation easement.

In June 2006, however, DOTA informed DLNR of an on-going FAA land use audit and requested that DLNR again refrain from proceeding with its auction until the FAA audit report was received. Although the timing for the report was projected to be a few months, DLNR agreed to wait until the end of the year.

With no response from DOTA regarding the FAA land use audit report, DLNR emailed DOTA on March 8, 2007, and confirmed a conversation to inform DOTA that DLNR would again proceed with its public auction of a lease covering the Subject Parcel.

In May 2007, DOTA notified DLNR that the FAA land use audit recommended that no development be allowed on the Subject Parcel.

As a result, DLNR continued to work with DOTA and FAA on a possible resolution agreeable to all parties.

In a correspondence from FAA to DOTA dated May 11, 2010 (Exhibit C) FAA has indicated that it can support a proposal in which DOTA would acquire the Subject Parcel from DLNR, provided certain conditions can be fulfilled, as follows:

1. The acquisition cost may be funded with airport revenue or State of Hawaii Special Funds.
2. The property must be properly identified in the Deed (metes and bounds) and the Airport Layout Plan and Exhibit A updated to show the parcel is airport property.
3. The acquisition price may be based on fair market value rates.
4. The acquired parcel will remain under airport's custody and authority in perpetuity as long as the airport exists.
5. There should be written agreement to document the monetary payment and the transfer of the land to [DOTA].
6. There should also be a signed commitment to use best efforts to obtain Governor's approval of an Executive Order memorializing the transaction and recognizing the land is in the custody of [DOTA].
7. This determination for the proposal to acquire subject parcel at [Kanoelehua] Avenue does not establish precedent for future land use issues, acquisitions, or releases. Each case must be evaluated on its own

merits and will be decided based on airport specific circumstances, federal law, and FAA policy.

Staff believes that it is in the State's interest to agree to the FAA conditions. Condition 1 relates to the source of DOTA's funding for the acquisition, which is essentially a matter between FAA and DOTA. However, there is an impact to DLNR relative to the funding source should the land be returned to DLNR in the future. In such an event, DLNR will need to pay DOTA fair market value at time of transfer based on appraisal to reacquire the land.

There will be no problem in complying with condition 2 because the executive order by which the land will be set aside to DOTA will contain a metes and bounds description of the land as well as survey map of the parcel. Staff has confirmed with FAA and DOTA that an executive order in lieu of the "Deed" referenced in the condition will be acceptable to FAA.

DLNR should receive fair market value for the land as contemplated by condition 3. In this regard, an independent appraisal of the Subject Parcel has established the fair market value at \$2,356,000 as of June 9, 2010. DOTA has agreed to pay DLNR this amount as part of the transaction.³

20% of the consideration to be paid for the Subject Parcel will be going to OHA, and 80% would be deposited "Special Land and Development Fund" (SLDF). The money will be set aside to acquire comparable land and revenues dedicated to support the management of public lands under DLNR jurisdiction.

The SLDF covers 100% of the payroll, fringes, operating and maintenance expenses for the Department's Land Division, the Office of Conservation and Coastal Lands, the Geothermal program staff, and most recently, the Dam Safety Program as mandated by the 2009 Legislature. The SLDF also covers the payroll and fringes of certain staff from the Commission on Water Resource Management, and has been relied upon by most Divisions and Offices within the Department to cover emergency response, hazard mitigation and budgetary shortfalls in program funding. Over the years, the importance of the SLDF to the Department has correspondingly increased, especially during declining economies and tight budgets. Due in part to numerous "special fund" raids, and most recently a decline in tenant revenues, the SLDF's

3 The appraised value does not reflect the aviation easement the BLNR previously approved to be placed on the land. The easement was approved at DOTA's specific request and should not affect the value DOTA is to pay DLNR for the land. Staff is not recommending the rescission of the prior Board actions mentioned above at this time. Should the proposed transaction not be consummated for any reason, or should the Subject Parcel be reacquired by DLNR in the future, staff believes that the BLNR's prior approvals would be desirable to have in place.

current revenue stream is now barely sufficient to cover the Land Division's basic payroll obligations, and ordinary operating expenses. As such, it is imperative that the Department be productive to maximize revenues in order to support the Department's programs and operations-for the sake and survival of the Department.⁴

Condition 4 presents no problem for DLNR as many if not most set-asides remain effective as long as the land is used for the specific purpose identified in the executive order. Condition 5 will be satisfied by the issuance of the executive order to DOTA as well as by a separate Memorandum of Agreement (MOA) to be executed by DOTA and BLNR prior to the issuance of the executive order that will memorialize the terms of the transaction as set forth herein. The signed commitment required under condition 6 to use best efforts to secure the executive order setting aside the Subject Parcel to DOTA can be included in the MOA.

Finally, condition 7 setting forth FAA's policy statement on the transaction can be included in both the MOA and executive order.

Staff is soliciting comments on the proposed disposition from the following agencies:

DLNR-Historic Preservation
DLNR-Engineering
Office of Hawaiian Affairs
County Planning Department
Federal Aviation Administration

Any responses received will be provided to the Board separately at the meeting.

Based on the foregoing, staff respectfully requests that the BLNR approve and recommend to the Governor the issuance of an executive order setting aside the Subject Parcel to DOTA. DOTA has advised staff that DOTA will need to obtain legislative approval to fund the purchase of the Subject Parcel. In the event that DOTA is unsuccessful in obtaining such approval during the 2011 Legislative Session, staff is including a recommendation below that Land Division be authorized to proceed with the auction of a lease of land for industrial-commercial purposes consistent with the Board's prior approvals.

Additionally, staff also recommends the BLNR delegate authority to the Chairperson to negotiate and enter into the MOA to

⁴ Although the Land Division generally serves as a land bank to provide public lands to other divisions, agencies and Departments for their programs and needs, the Subject Parcel is unique in that DLNR and the Board have expended considerable time, energy and money into making it a revenue-generating commercial/industrial property to meet DLNR's own needs.

memorialize the terms and conditions under of the agreement between BLNR and DOTA.

RECOMMENDATION:

That the Board, subject to Applicant fulfilling the Applicant Requirements above:

1. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Transportation, Airports 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. The Subject Parcel shall remain under DOTA's control and management in perpetuity as long as the airport exists;
 - C. In the event that DOTA should no longer need the Subject Parcel and return it to DLNR in accordance with HRS Section 171-11, DLNR will pay DOTA fair market value at the time of transfer based on appraisal to reacquire the Subject Parcel;
 - D. The FAA's determination on DOTA's proposal to acquire the Subject Parcel does not establish precedent for future land use issues, acquisitions, or releases. The FAA advises that each case must be evaluated on its own merits and will be decided based on airport specific circumstances, federal law, and FAA policy;
 - E. 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;
 - F. Review and approval by the Department of the Attorney General; and
 - G. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Delegate authority to the Chairperson to negotiate and execute a Memorandum of Agreement under the terms and conditions cited above, which are by this reference incorporated herein.

October 28, 2010

3. In the event that DOTA is unsuccessful in obtaining funding approval for the purchase of the Subject Parcel during the 2011 Legislative Session, Land Division is authorized to proceed with the auction of a lease of the land for industrial-commercial purposes consistent with the Board's prior approvals.

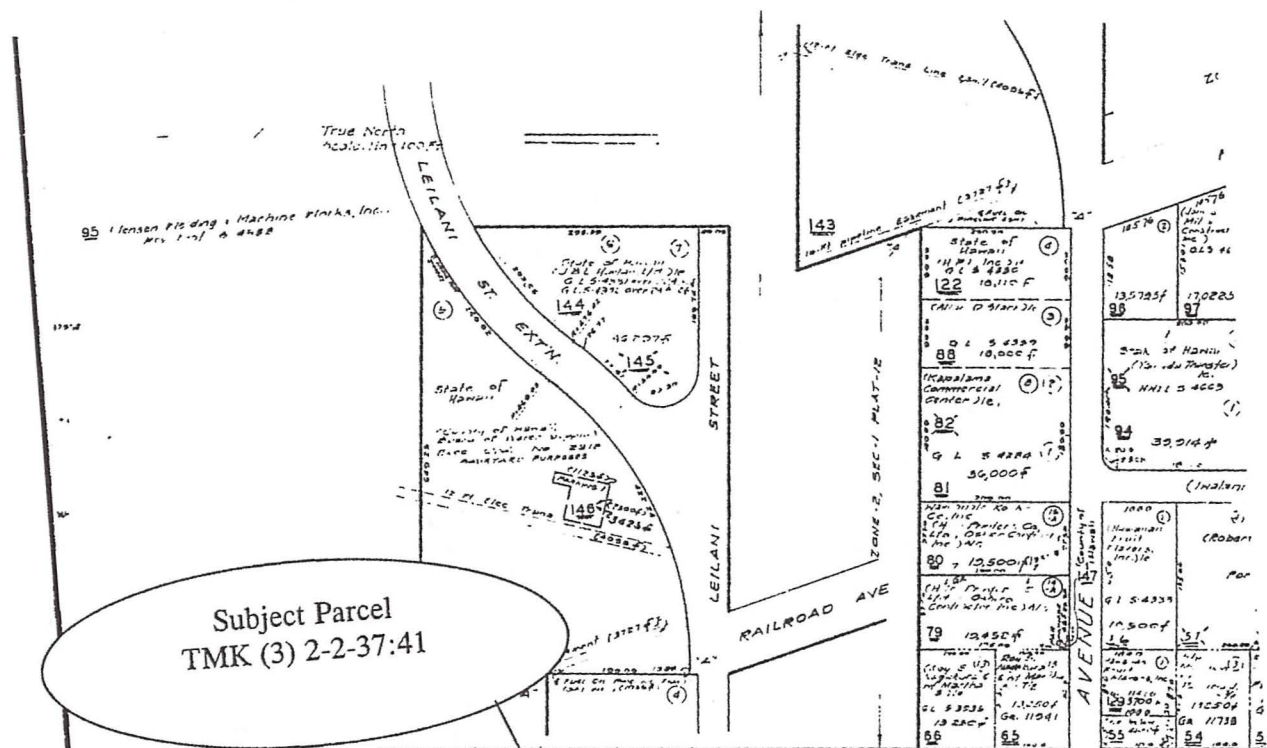
Respectfully Submitted,



Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:


a Laura H. Thielen, Chairperson



LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Set Aside to State of Hawaii, Department of Transportation, Airports Division for Runway Protection Zone Preservation

Project Number: PSF No. 04HD-341

Project Location: Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-37:41

Project Description: Set aside to Department of Transportation, Airports Division, of approximately 2.847 acres of industrial/commercial mixed use zoned land near Hilo International Airport for runway protection zone preservation.

Consulted Parties: County of Hawaii Planning Department; and others

Exemption Class No.: In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment under the following:

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."

This action before the Board is merely a transfer of management jurisdiction and does not

EXHIBIT B

constitute an "action" that triggers the need for an environmental assessment.

A land use audit prepared by the Federal Aviation Administration (FAA) recommends that no development be allowed on the subject site, the Department of Transportation, Airports Division (DOTA), intends to preserve the entire site in its existing condition pursuant to said FAA land use audit recommendations. Accordingly, DOTA's use of the subject site is exempt from the provisions of Chapter 343, HRS, relating to environmental assessments, because the action involves negligible or no expansion or change of use beyond that previously existing.

Recommendation: The set-aside to DOTA will probably have minimal or no significant effect on the environment. It is recommended that the Board of Land and Natural Resources find that the proposed action is exempt from the preparation of an environmental assessment. Inasmuch as the Chapter 343 environmental requirements apply to any future use DOTA may make of the land that is consistent with the purpose of the set-aside, DOTA shall be responsible for compliance with Chapter 343, HRS, as amended.

Laura H. Thielen, Chairperson

Date

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U.S. Department
of Transportation
Federal Aviation
Administration

Western-Pacific Region
Airports District Office

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300 Ala Moana Blvd., Rm. 7-128
P.O. Box 50244
Honolulu, Hawaii 96850-0001
Tel: (808) 541-1232
Fax: (808) 541-3566

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& NATURAL RESOURCES
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LAND DIVISION

May 11, 2010

Mr. Brennon T. Morioka
Director
State of Hawaii
Department of Transportation
869 Punchbowl Street, Room 509
Honolulu, HI 96813-5097

Subject: Hawaii Land Use Audit and
Request for Airport Land Release

Dear Mr. Morioka:

As disclosed in our last letter dated December 22, 2009, we do not concur with the Hawaii Department of Land and Natural Resources' (DLNR) prior suggestion for a land exchange that proposed to trade a parcel at Kanoalehua Avenue for land at Ualana Street. Nevertheless, the FAA still seeks to establish compatible land use for the Runway 3 Runway Protection Zone at Hilo International Airport.

We have evaluated the proposal discussed at the January 11, 2010 meeting that would allow the Hawaii Department of Transportation to acquire the Kanoalehua Avenue parcel from the DLNR.

We determined the FAA can support this proposal as long as the following conditions can be fulfilled:

1. The acquisition cost may be funded with airport revenue or State of Hawaii Special Funds.
2. The property must be properly identified in the Deed (metes and bounds) and the Airport Layout Plan and Exhibit A updated to show the parcel is airport property.
3. The acquisition price may be based on fair market value rates.
4. The acquired parcel will remain under airport's custody and authority in perpetuity as long as the airport exists.
5. There should be a written agreement to document the monetary payment and the transfer of the land to Hawaii Department of Transportation Airports Division (HDOTA).

EXHIBIT C

6. There should also be a signed commitment to use best efforts to obtain Governor's approval of an Executive Order memorializing the transaction and recognizing the land is in the custody of HDOTA.

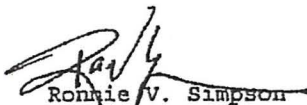
7. This determination for the proposal to acquire subject parcel at Kanoalehua Avenue does not establish precedent for future land use issues, acquisitions, or releases. Each case must be evaluated on its own merits and will be decided based on airport specific circumstances, federal law, and FAA policy.

We have also considered DLNR's request that the additional land release proposal for Kona International be separated from the resolution of the Land Use Audit. We are not at liberty to alter FAA compliance requirements. As we previously disclosed, FAA Order 5190.6b, Airport Compliance Manual requires that we evaluate the State's compliance record and willingness to resolve outstanding compliance issues. In view of the circumstances, the FAA cannot separate the land release request from the Land Use Audit issues that remain unresolved.

We remind the State, based on our letter dated December 22, 2009, that a formal corrective action plan is still needed to resolve non-conforming conditions and bring the State into compliance with the grant assurances. Consideration of a land release will have to remain in abeyance until satisfactory corrective action has been completed and all the Land Use Audit issues are satisfactorily resolved.

If you have any questions, please do not hesitate to call me at (808) 541-1232.

Sincerely,



Ronnie V. Simpson
Manager, Honolulu Airports District Office

cc: Ms. Laura Thielen, Chairperson, Hawaii DLNR
Brian Sekiguchi, HDOT Deputy Director - Airports

EXHIBIT 2

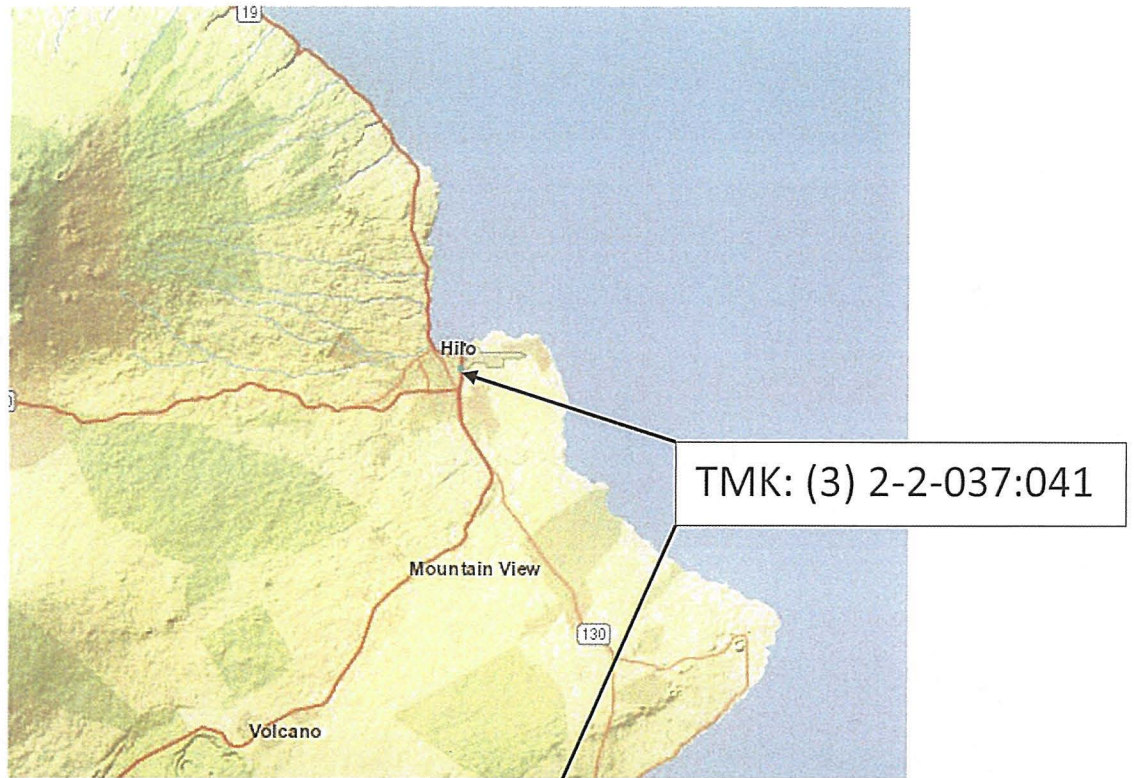


EXHIBIT 2