

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

July 28, 2023

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

PSF No.: 21KD-007

KAUAI

Cancellation of Revocable Permit No. S-7683, Michelle K. Walker, Permittee, with Reservation of the State's Right to Charge the Cost and Expense of a Phase I Environmental Site Assessment to Michelle K. Walker; Set Aside to the County of Kauai (COK) for Affordable Housing Purposes; Issuance of Immediate Management Right-of-Entry to COK, Lot 10-B, Block D, Waimea Town Lots, Waimea, Kauai, Tax Map Key: (4) 1-6-004:015.

APPLICANTS:

Michelle K. Walker – Applicant for Cancellation of Revocable Permit No. S-7683
County of Kauai Housing Agency – Applicant for set-aside

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Waimea situated at Waimea Town Lots, Waimea, Kauai, identified by Tax Map Key: (4) 1-6-004:015, as shown on the attached map labeled Exhibit A.

AREA:

0.34 acre, more or less.

ZONING:

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

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.

PURPOSE:

Affordable housing purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit B.

REMARKS:

Michelle K. Walker has requested the cancellation of Revocable Permit (RP) No. S-7683 for residential and home business purposes. The COK has requested the set-aside of the land and improvements to it for affordable housing purposes.

Background:

General Lease (GL) S-3123 was issued to Masao Yasutake on April 16, 1946, covering Tax Map Key: (4) 1-6-004:015 for residential purposes and expired on September 23, 1967. RP S-4110 was then issued to Fumio Kagawa in October 1967 on the same parcel. During Mr. Kagawa's Tenancy, he added a utility shed and garage for business purposes. At the expiration of the GL, ownership of the leasehold improvements on the premises vested in the State of Hawaii and the use of the land and improvements continued under RP S-4100 as a permitted "home business."

After Mr. Kagawa passed away in September 1984, his wife Mary Kagawa remained in the house under RP S-7401 issued on March 22, 2005, as joint tenants along with her daughter Michelle K. Walker. On May 24, 2011, RP S-7683 was issued to Mary Kagawa-Walker and Michelle K. Walker as part of a statewide insurance provision change to many of the Land Division's month-to-month revocable permit tenants. Mary Kagawa-Walker passed away in September 2018 leaving Michelle K. Walker as the sole permittee.

Cancellation of RP S-7683:

On January 30, 2019, Michelle K. Walker (Permittee Walker) notified the Land Division (LD), that she was unable to continue making rent payments and maintaining the property and wanted to cancel the permit as she was no longer able to reside on the premises. LD staff accordingly instructed the Fiscal Office to stop billing. Permittee Walker was very apologetic for leaving the property in such poor condition and said that she felt that mold in the home was causing her and her daughter to have health issues and that she was on disability. The house itself is in disrepair and shows signs of termite damage and wood rot. There is a lot of deferred maintenance on the home and a lot of rubbish, car/boat parts, etc. left on the State parcel.

Paragraph 14 of RP S-7683 provides as follows:

Prior to the termination or revocation of the subject Permit, Permittee shall conduct a Phase I Environmental Site Assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health and the DLNR. Failure to comply with the provisions of this paragraph shall not extend the term of this Permit or automatically prevent termination or revocation of the Permit. The Board at its sole option, may refuse to approve termination or revocation unless this evaluation and abatement provision has been performed. In addition, or in the alternative, the Board may, at its sole option if Permittee does not do so, arrange for performance of the provisions of this paragraph, all costs, and expenses of such performance to be charged to and paid by permittee.

Although a Phase I Environmental Site Assessment (Phase I ESA) is required under RP S-7683, the Permittee does not have the money to pay for it. In light of the condition of the property, however, staff is unable to recommend a waiver of the Phase I ESA requirement and is therefore recommending that the Board reserve the right to charge all costs and expenses of a Phase I ESA to Permittee Walker, should the Department find it necessary or desirable to procure one. Staff believes that reservation of the Board's right is appropriate in view of Paragraph 13 of the permit, which provides as follows:

Permittee agrees to indemnify, defend, and hold the State of Hawaii, the Board, and their officers, employees, and agents harmless from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the use or release of hazardous materials on the Premises occurring while Permittee is in possession, or elsewhere if caused by Permittee or persons acting under Permittee. These covenants shall survive the expiration, revocation, or termination of the Permit.

Set Aside to County of Kauai:

In February 2019, the Division of Forestry and Wildlife had expressed an interest in the

property for storage and base yard purposes, but upon further review, opted not to proceed. They were concerned with having to make a county zoning change as well as dealing with the cleanup of the property. The property has since been sitting vacant and falling further into disrepair.

COK Housing Agency expressed an interest in the subject property being set aside to it for affordable housing purposes since the abutting parcel was also set aside for affordable housing via Governor’s Executive Order No. 4636 on August 14, 2020. The COK currently has the property zoned for residential use. The COK is aware of the property’s condition and it willing to accept it in “As-Is” condition and will be responsible for cleaning the property and making any necessary improvements. By accepting the property in As-Is condition, the COK will save the State a significant amount of money that would have been necessary in order to clean the property.

Since the LD no longer offers new residential leases and the costs involved with cleaning it would be significantly high, LD staff feels that it is in the State’s best interest to set aside the parcel to the COK and avoid the expense of procuring a vendor to clean the parcel.

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

Agency:	Comment:
Historic Preservation	No Response by Suspense Date
Water Resource Management	No Response by Suspense Date
Office of Hawaiian Affairs	No Response by Suspense Date
County of Kauai Planning Department	No Response by Suspense Date
County of Kauai Public Works	No Response by Suspense Date
County of Kauai Water Department	No Objection

Staff has no objection to the request.

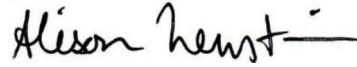
RECOMMENDATION: That the Board:

1. Authorize the cancellation of Revocable Permit No. S-7683 in the manner specified by law.

2. Terminate the permit and all rights of Permittee Walker and all obligations of the Permitter effective as of January 1, 2019, provided that any and all obligations of Permittee Walker that have accrued up to said effective date or which are stated in the permit to survive termination shall endure past such termination date until duly fulfilled, and further provided that Permitter reserves the right to charge all costs and expenses for a Phase I ESA of the premises to Permittee Walker should the Permitter find it necessary or desirable to procure one, and further provided that the Permitter reserves all other rights and claims allowed by law.
3. 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.
4. 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. County of Kauai agrees to accept subject property in As-Is condition;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Approve of and recommend that the Chairperson authorize the issuance of a management ROE to the County of Kauai covering the subject area 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 ROE permit form, as may be amended from time to time;
 - B. The ROE shall be effective upon Land Board approval and shall continue for a period of one year or until the set-aside is complete, whichever shall first occur. The Chairperson is authorized to continue the ROE for additional one-year periods for good cause shown; 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:



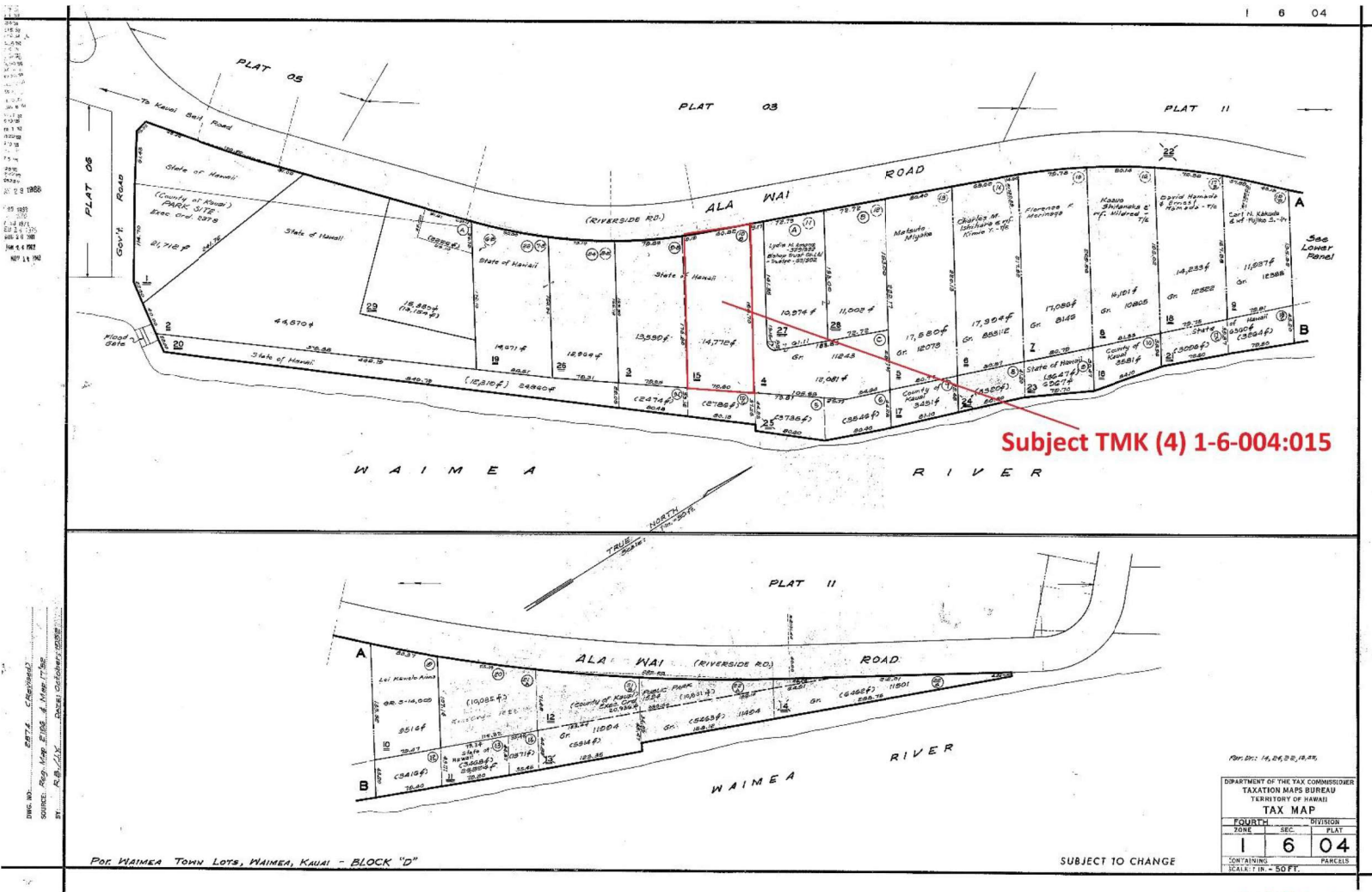
Dawn N.S. Chang, Chairperson *et*



Subject parcel (4) 1-6-004:015



Exhibit A



Subject TMK (4) 1-6-004:015

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 15 199
 15 200

BETA
 Eng. & Arch.
 R.B. / J.Y.

Por. WAIIMEA Town Lots, WAIIMEA, KAUAI - BLOCK "D"

SUBJECT TO CHANGE

14, 24, 32, 15, 25
 DEPARTMENT OF THE TAX COMMISSIONER
 TERRITORY OF HAWAII
 TAXATION MAPS BUREAU
 TAX MAP

COUNTY	SEC.	DIVISION
1	6	04

CONTAINING 1 PARCELS
 SCALE: 1" = 50 FT.

Exhibit A

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



DAWN N. S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA
LAND DIVISION

3060 Eiwa Street, Room 208
Lihue, Hawaii 96766

June 9, 2023

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes (HRS), and Chapter 11-200.1-16, Hawaii Administrative Rules (HAR):

Project Title:	Set Aside to the County of Kauai for affordable housing, Lot 10-B, Block D, Waimea Town Lots, Waimea, Kauai, Tax Map Key: (4) 1-6-004:015.
Project / Reference No.:	PSF No.: 21KD-007
Project Location:	Portion of Government lands of Waimea situated at Waimea Town Lots, Waimea, Kauai, identified by Tax Map Key: (4) 1-6-004:015.
Project Description:	Set aside to County of Kauai Housing Agency for affordable housing purposes.
Chap. 343 Trigger(s):	Use of State land.
Exemption Class No. and Item No.:	In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred 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 that states: "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor 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."

EXHIBIT B

**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 or no significant impact.

Consulted Parties:

Office of Hawaiian Affairs, DLNR Historic Preservation, DLNR Water Resource Management, County of Kauai Planning Department, Public Works and Water Department

Recommendation:

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.



Exhibit C



Exhibit C

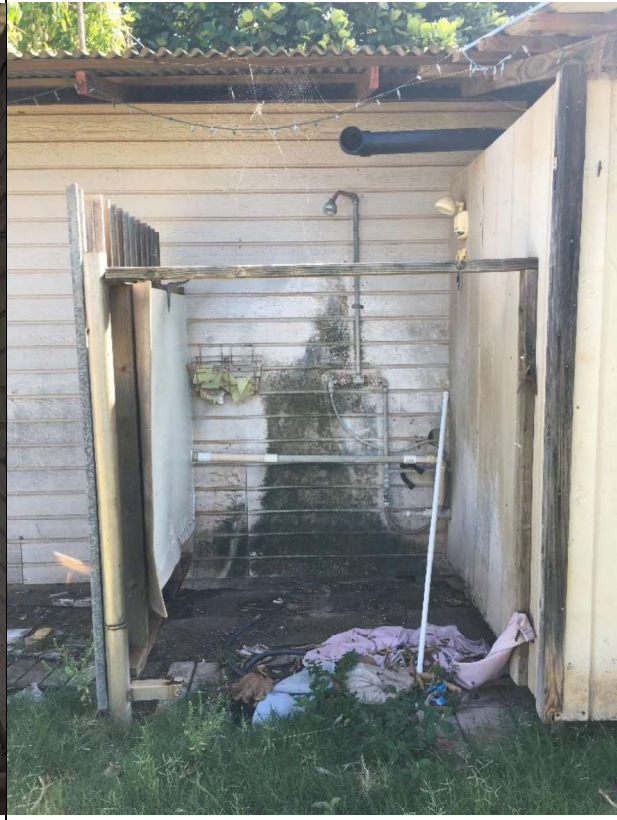


Exhibit C



Exhibit C



Exhibit C



EXHIBIT C

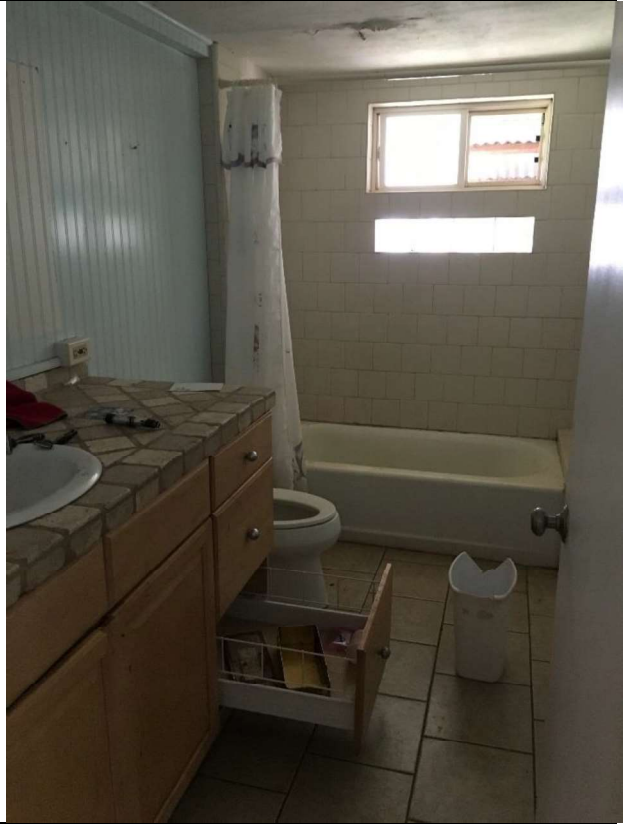
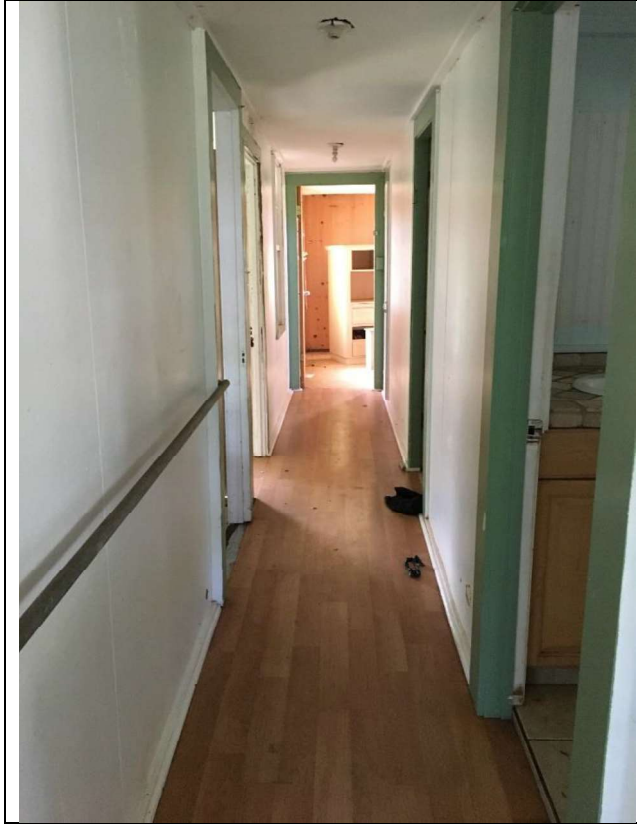


EXHIBIT C