

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

October 13, 2023

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

PSF No.:23OD-021

OAHU

Request for Set Aside to the City and County of Honolulu, Board of Water Supply for Water Tank Purposes; Grant of Perpetual, Non-Exclusive Easement for Access and Utility Purposes; Issuance of Immediate Construction and Management Right-of-Entry Permit; Honouliuli, Ewa, Oahu, Tax Map Key (1) 9-1-018: portions of 008.

APPLICANT:

City and County of Honolulu, for the use by the Board of Water Supply (“BWS”).

LEGAL REFERENCE:

Sections 171-11, 55, and 95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Honouliuli, Ewa, Oahu, identified by Tax Map Key: (1) 9-1-018: portions of 008, as shown on the map attached as **Exhibit A**.

AREA:

Set aside is 2.164 acres and Easement is a 20-foot strip, with an area of about 8,400 square feet, more or less, subject to review and approval by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Urban
City and County of Honolulu LUO: AG-1

TRUST LAND STATUS:

Acquired after Statehood, i.e., non-ceded
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Encumbered by Revocable Permit No. 7907, Larry Jefts dba Sugarlands Farm, Inc., Permittee, for agriculture purposes.

CHARACTER OF USE:

Set aside: Water tank for recycled water purposes.

Easement: Access and utility purposes

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules Section (“HAR”) 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources 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, 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." Part 1, Item No. 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”; and Part 1, Item No. 39 that states, “creation or termination of easement, covenants, or other rights in structures or land.” See **Exhibit B**.

DCCA VERIFICATION:

Not applicable. Government agency.

CONSIDERATION:

One-time payment to be determined by an independent appraisal establishing fair market rent, subject to review and approval by the Chairperson. See below.

As explained further in the Remarks section, the Department is undergoing a master planning process to develop the subject and the adjoining parcels in Kapolei as outlined in yellow on Exhibit A into revenue-generating properties, as the East Kapolei Transit Oriented Development (“TOD”) Project. Such revenues will help to fund various programs administered by other divisions in the Department. Any land disposition authorized by the Board over these parcels for non-income-generating purposes will directly reduce any developable acreage and any associated potential revenue.

Land Division (“LD”) supports the subject request of using recycled water for irrigation purposes. Nevertheless, Land Division does not want to lose the opportunity of generating revenue for other public programs administered by the Department. Therefore, LD is working with BWS on a possible allocation of water credits to properties managed by LD

on Oahu. LD will contract for an independent appraisal to determine the fair market value of any land disposition in favor of BWS, and the fair market value will be considered as a water credit toward any BWS fees or charges in connection with bringing water service to the East Kapolei TOD Project administered by LD. When a mutually agreed document is available, LD will return to the Board asking for approval to enter into the agreement with BWS.

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Process and obtain subdivision approval at the City and County of Honolulu, Department of Planning and Permitting, at Applicant's own cost;
2. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
3. Pay for an appraisal to determine the fair market value of both the set aside and perpetual easement.

REMARKS:

The State acquired through condemnation the subject parcel from the Estate of James Campbell in the 1990s, subject to a lease to Larry G. Jefts. At its meeting on January 28, 2005, item D-22, the Board authorized the issuance of a revocable permit to Larry Jefts dba Sugarland Farms, Inc. in light of the expiration of the lease and in anticipation of other planned uses of the parcel.

On January 11, 2008, under agenda item D-15, the Board approved of and recommended to the Governor the issuance of an executive order setting aside a 3.504-acre portion of the subject parcel (red hatch-marked area on Exhibit A) to BWS for water [potable] tank reservoir purposes. Governor's Executive Order No. 4307 was issued in November 2010.

At its meeting of September 25, 2015, item D-16, the Board authorized the issuance of a right-of-entry permit to BWS for due diligence purposes regarding the reliability of the R-1 recycled water in the vicinity. BWS subsequently concluded that they could move forward with the project. Therefore, BWS requests a land disposition over the subject 2.164-acre portion of Parcel 8 (area outlined in navy blue on Exhibit A) for the purpose of a 3-million-gallon storage tank that will improve the reliability of the R-1 recycled water system. The proposed tank will serve the various developments in the East Kapolei area undertaken by public [e.g. UH West Oahu campus, DHHL, HHFDC] and private entities. BWS will utilize the existing easement for the new recycled water tank.

Notwithstanding BWS will negotiate separately with the private owner on the town side of the existing easement for additional area, BWS requests an easement over a 20-foot strip located south of the existing tank (as shown light blue on Exhibit A) for access and utility purposes serving the recycled-water tank.

In will also provide access to the proposed new water tank. Staff understands the requested area is not currently utilized by the permittee under RP 7907. Accordingly, no rent adjustment is necessary to RP 7907. Upon finalization of the set aside area, staff will revise the leased acreage under RP7907 accordingly.

LD has retained the services of a planning consultant to develop an Environmental Impact Statement (EIS) for the parcels managed by LD in East Kapolei (parcels outlined in yellow on Exhibit A), including the subject Parcel 8, as the East Kapolei TOD Project. The EIS will formulate the long-term planning for these income-generating parcels. In addition to revenue to support Department programs, the Project will also address other public priorities such as rental housing, job creation and economic development for the area. LD has been helping programs undertaken by sister divisions of the Department with revenue generated from the leases/permits managed by LD. The parcels in this area are the ones which possess development potential and LD does not want to lose the opportunity of any future development/revenue.

When BWS initially discussed their project with LD, various ideas (e.g., purchase, lease at market rent) to compensate LD for the loss of developable acreage due to the BWS project, were explored. Eventually, parties agreed that provision of water credits to LD to provide water service for the project in exchange for the proposed setting aside and easement appear to be the ideal solution. At the time of preparing this submittal, reviews and discussions were conducted to finalize the conditions under a proposed memorandum of agreement. LD will bring the memorandum of agreement to the Board for consideration and approval, if appropriate, at a later date.

Division of Aquatic Resources indicated that the request is not expected to impact the aquatic resource values in this area. Department of Planning and Permitting, Department of Facility Maintenance, and Commission on Water Resource Management have no objection to the subject request. Division of Forestry and Wildlife, Department of Hawaiian Home Lands, Office of Hawaiian Affairs, and Department of Parks and Recreation have not responded to the request for comment before the deadline.

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

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 issuance of an executive order setting aside Tax Map Key: (1) 9-1-018: portion of 008 to the City and County of Honolulu, Board of Water Supply 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.
3. Authorize the issuance of perpetual, non-exclusive easements to the City and County of Honolulu, Board of Water Supply covering the subject areas for access and utility 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 easement 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.
4. Authorize the issuance of an immediate construction and management right-of-entry permit to the City and County of Honolulu, Board of Water Supply 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 right-of-entry form, as may be amended from time to time; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

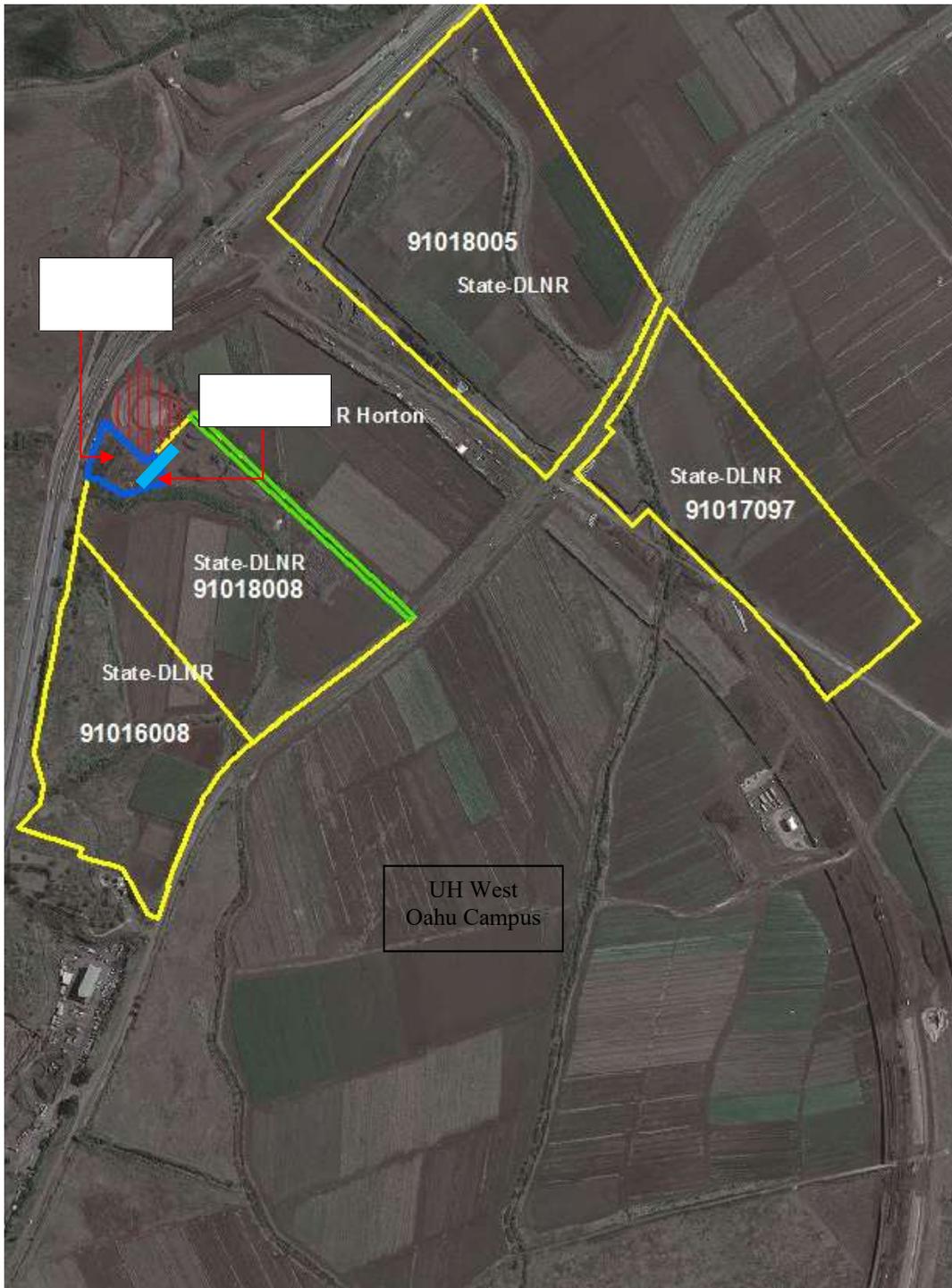
APPROVED FOR SUBMITTAL:



Dawn Chang, Chairperson

KCM

RT



TMK (1) 9-1-018: portions of 008

Note: (1) 9-1-018:005 is now known as (1) 9-1-018:014 [DLNR] and 015 [DOT].

EXHIBIT A

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1-15, HAR

Project Title: Set aside of State land and Grant of Perpetual, Non-Exclusive Easement to the City and County of Honolulu, Board of Water Supply.

Reference No.: PSF 23OD-021

Project Locations: Honouliuli, Ewa, Oahu, TMK (1) 9-1-018: portions of 008

Project Description: The request is regarding the construction of a water tank and associated access and utility easement for recycled water aiming to serve recycled water to the public and private projects in the vicinity.

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

Exemption Class No.: In accordance with Hawaii Administrative Rules Section 11-200.1-15 and -16 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, 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." Part 1, Item No. 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"; and Part 1, Item No. 39 that states, "creation or termination of easement, covenants, or other rights in structures or land."

Cumulative Impact of Planned Successive Actions in Same Place Significant?

Staff believes that there would be no significant cumulative impact.

Action May Have Significant Impact on Particularly Sensitive Environment?

Staff believes there would be no significant impact to sensitive environmental or ecological receptors.

Consulted Parties:

Agencies as noted in the submittal.

EXHIBIT B

Analysis: Staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Recommendation: It is recommended that the Board find that 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.