

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

December 12, 2025

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

KAUAI

Set Aside of the East Kauai Water and Hanamaulu Ditch Systems to the Agribusiness Development Corporation for Agricultural Irrigation and Related Purposes; Issuance of an Immediate Right-of-Entry Permit to the Agribusiness Development Corporation for the East Kauai Water and Hanamaulu Ditch Systems for Due Diligence Purposes; and Approval of a Management Right of Entry to the Agribusiness Development Corporation for the East Kauai Water and Hanamaulu Ditch Systems; Portion of Government Lands and Waters within the drainage basins of North Wailua and Kapaa Rivers, Kawaihau, Kauai, Tax Map Keys: Various.

APPLICANT:

Agribusiness Development Corporation (ADC)

LEGAL REFERENCE:

Sections 171-11 and 171-55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

A portion of Government lands and waters, including drainage basins of North Wailua and Kapaa, Kauai, Hawaii, Tax Map Keys various, as shown on attached map labeled **Exhibit A**.

AREA:

The area will include the existing irrigation water diversion and transportation infrastructure system including diversions on the Kapaa Stream and on the Wailua River at Stable Storm, Wailua Reservoir and Aahoaka; the Wailua and Upper Kapahi Reservoirs; and the related transmission and lateral ditch lines.

NOT included are the non-operational parts of the system in the Kapaa area which have been decommissioned and/or officially abandoned. Additionally, Iliiliula north Wailua Ditch, the Blue Hole diversion, the Hanalei and Kapoko Stream diversions and related conduits; the Makaleha diversion and conduits including Mimino ditch which served fields

in Kealia; the abandoned Lower Kapahi reservoir and related conduits, nor any conduits south of the Amfac 18,000-acre parcel, nor north of the Kapaa Stream.

Additionally, the Governor's Executive Order (EO) and Right-of-Entry (ROE) will include portions of the Hanamaulu ditch system that will include ditches and reservoirs within the State-owned 6,700 acres behind Kalepa Ridge, currently set aside to ADC under Governor's Executive Orders 4328, 4401, 4587 and 4594.

ZONING:

State Land Use District: Agricultural, Conservation and Urban
County of Kauai CZO: Agricultural, Open and Residential

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act:

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES for water taken.

NO for the water transportation infrastructure.

CURRENT USE STATUS:

The East Kauai Water System is currently unencumbered except for the Wailua Reservoir, TMK (4) 4-2-001:004, which is encumbered by EO 1389 for the Wailua Game Management Area and TMK (4) 4-2-001: por. of 005, which is encumbered by EO 4320 issued to DAR for Wailua Public Fishing Area.

CHARACTER OF USE:

EO:

For the operation, repair and maintenance of irrigation water diversions and transportation infrastructure system including the right to divert, store, take, draw off, conduct away and dispose thereof government owned water from streams and rivers in the drainage area for irrigation purposes, under the provisions hereinafter contained.

ROE:

For due diligence purposes.

TERM OF RIGHT-OF-ENTRY:

The right-of-entry for due diligence purposes will continue for a period of one year or until the set-aside is complete, whichever shall first occur. Staff is additionally recommending the Board authorize the Chairperson to extend the right-of-entry for additional one-year periods for good cause shown.

The management right of entry shall be executed upon the completion of due diligence by ADC

CONSIDERATION:

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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 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 19 states, "Repair and maintenance of existing dam or reservoir structures and appurtenant features, including outlet works repair, gate replacements, ditch clearing, replacement of catwalk and access ways, spillway modifications to safely pass anticipated flood waters, and spillway reconstruction to mitigate possible failures";

Part 1, Item 20 that states, "Repair, maintenance, or relining of conveyance structures associated with existing dam or reservoir structures";

Part 1, Item 36 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 44 states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

ADC is proposing to assume management and operation of the system in a manner that is consistent with prior uses. The system has been used for irrigating nearby agricultural lands for over 100 years and have no resulted in known adverse impacts over this period. Furthermore, given the long-term extensive use of the system and surrounding lands for agricultural purposes, the subject lands are not considered to be located in a sensitive environment. Therefore, staff believes that any impact from this action can be considered de minimis actions and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR. Staff consulted with the staff of the Commission on Water Resource Management on the exemption. At this time, no expansion or change in use is planned by ADC. If ADC decides to implement future system projects or modifications, such actions may trigger the preparation of environmental assessment or environmental impact statement.

APPLICANT REQUIREMENTS:

If the applicant is required to provide survey maps and descriptions according to State DAGS standards, it shall be at the applicant's own cost.

REMARKS:

The East Kauai Water System (EKWS) was developed and constructed in the early part of the 19th century by the Lihue Plantation and the East Kauai Water Company. As the name suggests, the system is located in East Kauai (see **Exhibit A**) and at the height of its operations, included 51 miles of ditch and eighteen intakes. With the demise of the plantation era, the ownership of most portions of the system reverted to the State.

General Lease (GL) No. 3827 to the East Kauai Water Co., Ltd. (AMFAC) was a 30-year water license which expired in May 1995. GL 3827 covered an extensive water delivery and storage system, which runs from the drainage basins of Wailua, Kapaa, Anahola and Hanalei. Over time, many portions of this system were abandoned due to the encroachment of residential expansion in these communities, landslides (specifically Hanalei), and due to the slow demise of sugar operations.

In October 2000, the State contracted with water consultant ITC Water Management to study, identify water collection systems and ditches, and to develop an operating and management plan for the AMFAC/Lihue Plantation water system that existed in East Kauai. This study was necessary as AMFAC/Lihue Plantation was commencing to divest itself of all of its leasehold and fee holdings, including the 24,000-acre sugar plantation in Kekaha. DLNR staff had no working or technical knowledge of the East Kauai irrigation system. ITC had experience in this field as it had conducted such studies on Maui, Oahu and Kauai (for A&B).

The East Kauai Water Users' Cooperative (EKWUC) was incorporated March 30, 2001. It was comprised of local farmers and landowners in the Kapaa area who use this irrigation system and did not want to see it abandoned, as has happened in similar situations on other islands with the departure of the sugar industry. On January 11, 2001, under agenda item D-29, the Board of Natural Resources approved the issuance of a revocable permit (RP) to the EKWUC. Through funding provided by the Legislature and an agreement between the State and the EKWUC, the system was managed under RP S-7310. Eventually, the high costs of management and maintenance of the EKWS caused the EKWUC to terminate their agreement with the State and dissolve. RP S-7310 was cancelled on January 1, 2020, and since then, the Land Division has been responsible for the basic maintenance of the EKWS, at cost of approximately \$150,000.00 annually. The maintenance activities do not include operation of the system nor providing any irrigation water.

Upon approval of the set aside, ADC intends to use the system to provide water for agricultural irrigation purposes to ADC lands, as well as other lands served by EKWS, including the Department of Hawaiian Home Lands' (DHHL) properties and operations. Staff supports this transfer as it would ensure that the EKWS continues in operation to support the State's food sustainability priorities and public trust purposes. If the system is not transferred to ADC and remains under the Department's management, the Department would proceed with decommissioning the system including removal of the Wailua and Upper Kapahi reservoirs. The Department would not operate the system for the benefits

of other users as it does not have the resources or expertise to function as a water service provider. Furthermore, without proper management and maintenance, the reservoirs would become a liability in terms of both Dam Safety regulatory requirements and public health and safety.

In the 2024 legislative session, the Legislature recognized the value of the EKWS and appropriated funding and positions to allow ADC to acquire, manage, and rehabilitate the system. Further, the Hawaii Department of Agriculture contracted Element Environmental, LLC to conduct a facilities assessment study of the system that included an inventory of the system, a preliminary assessment of the system components, cost estimate to repair the system, cost estimate to operate and maintain the system, cost estimate for future improvements for efficiency, reliability, and metering, identify current and potential users, identify easements and maintenance access points, and identify existing permits or required permits for water intake and use.

This application by the ADC is to allow for the continuation in management and maintenance, while avoiding deterioration of the system that would have an adverse impact on the existing agricultural users of this system. The issuance of the ROE for due diligence purposes would allow ADC to determine the condition and needs of the system. The issuance of this EO is to ensure that ADC could function as the manager and operator of this existing extensive water delivery system. If ADC's due diligence is completed before the EO document is prepared, the Department also requests that the Board approve a management right of entry to ADC as an interim measure to allow it to assume management and operation of the EKWS. The management right of entry would be executed at a date mutually agreed upon the Department and ADC. There are no other changes as it relates to the system.

Public Trust Doctrine

Title to water resources is held in trust by the State for the benefit of its people. Pursuant to *In re Water Use Permits*, 94 Hawaii 97, 9 P.3d 409 (2000) (*Waiāhole I*), and *In re Wai'ola O Moloka 'i, Inc.*, 103 Hawai'i 401, 83 P.3d 664 (2004) the Hawai'i Supreme Court has identified four public trust purposes with respect to water:

1. Maintenance of waters in their natural state;
2. Domestic water use of the general public, particularly drinking water;
3. The exercise of Native Hawaiian and traditional and customary rights, including appurtenant rights; and
4. Reservations for Hawaiian home lands.

In addition, the Courts have indicated that the "dual mandate" of the public trust not only calls for the protection of water resources, but also requires the Board to promote the reasonable and beneficial use of water resources in order to maximize their social and economic benefits to the people of this state. *Waiāhole I*, 94 Hawai'i at 139, 141, 9 P.3d at 451, 453 ("The public has a definite interest in the development and use of water resources

for various reasonable and beneficial public and private offstream purposes, including agriculture.”). In order to satisfy its public trust obligations, the Board must balance the proposed use of water against the foregoing public trust purposes, as well as competing uses.

The proposed actions would allow for the use of surface water for agricultural purposes. In addition to its public trust duties, the Board also has a constitutional duty to promote diversified agriculture. With respect to the agricultural use of water, the Hawai`i Constitution provides:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.

Hawai`i Constitution, Article XI, Section 3.

The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law.

Hawai`i Constitution, Article XI, Section 10.

In staff’s view, making irrigation water available to farmers and ranchers supports the long-term viability and security of local agricultural operations, and is both in the best interest of the State and critical to the State’s compliance with the constitutional mandates of Article XI. It also allows for the local production of food, supporting the goal of food sustainability and food security for Hawai`i. It may also translate into lower prices for consumers when produce does not have to be shipped to Hawai`i from outside of the state.

As previously discussed, the only apparent alternative to the set aside would be to decommission to the EKWS. The result of this would be to leave the water in its natural state, with no diversions. However, staff believes that leaving water in its natural state would come at a cost of supporting other important public purposes. Aside from supporting local agriculture, keeping the EKWS in operation could also benefit DHHL’s beneficiaries that could receive water from the system. Additionally, the Wailua Reservoir is currently used by the Division of Aquatic Resources (DAR) as a public fishing area. If the reservoir is set aside to ADC, ADC would work with DAR to continue public fishing at the reservoir. Furthermore, any diversion of surface water must comply with the appropriate Interim Instream Flow Standards (IIFS) which have been established by CWRM. Finally, as ADC is a State agency, it is also bound by public trust obligations in its use of the system and water, rather than a disposition to a private entity. In view of these considerations, staff believes that setting aside the EKWS to ADC in support of the State’s agricultural goals is consistent with the public trust.

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. For the reasons stated herein, find that the proposed set aside and rights of entry are consistent with the public trust.
 3. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to Agribusiness Development Corporation 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. Only waters needed for the agricultural and related purposes of this irrigation system shall be diverted, any balance shall remain in said streams in compliance with the Interim Instream Flow Standards;
 - D. ADC shall consult with the Commission on Water Resource Management;
 - E. In its sole discretion, the State reserves the right to withdraw, regulate, allocate, control, restrict water taken to meet constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Home Lands rights under Section 221 of the Hawaiian Homes Commission Act, as well as other statutorily or judicially recognized interests relating to the right to withdraw water for the purposes of and in accordance with the provisions of Section 171-58(d), Hawaii Revised Statutes;
 - F. The State or its designated concessionaire retains the right to develop and manage the Wailua Reservoir and lands immediately adjacent to it, as a public fishing area and wildlife sanctuary;
 - G. The State reserves unto itself the rights to all fish and wildlife resources within the Wailua Reservoir;
 - H. ADC will notify the State at least two weeks in advance of any planned action to grade, grub or alter vegetation that may affect wildlife or aquatic habitat in or immediately around the Wailua Reservoir;
 - I. Review and approval by the Department of the Attorney General; and
 - J. 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 right-of-entry permit to Agribusiness Development Corporation for due diligence purposes 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 permit form, as may be amended from time to time;
 - B. The right-of-entry permit may be extended for additional periods of up to one year for good cause shown;
 - 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.
5. Authorize the issuance of a management right-of-entry permit to Agribusiness Development Corporation covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - E. The standard terms and conditions of the most current right of entry permit form, as may be amended from time to time;
 - F. Only waters needed for the agricultural and related purposes of this irrigation system shall be diverted, any balance shall remain in said streams in compliance with the Interim Instream Flow Standards;
 - G. ADC shall consult with the Commission on Water Resource Management;
 - H. In its sole discretion, the State reserves the right to withdraw, regulate, allocate, control, restrict water taken to meet constitutionally protected water rights, instream flow standards, reservations needed to meet the Department of Hawaiian Home Lands rights under Section 221 of the Hawaiian Homes Commission Act, as well as other statutorily or judicially recognized interests relating to the right to withdraw water for the purposes of and in accordance with the provisions of Section 171-58(d), Hawaii Revised Statutes;
 - I. The State or its designated concessionaire retains the right to develop and manage the Wailua Reservoir and lands immediately adjacent to it as described in EO 4320, as a public fishing area and wildlife sanctuary;
 - J. The State reserves unto itself the rights to all fish and wildlife resources within the Wailua Reservoir;
 - K. ADC will notify the State at least two weeks in advance of any planned action to grade, grub or alter vegetation that may affect wildlife or aquatic habitat in or immediately around the Wailua Reservoir;

- L. The right-of-entry permit may be extended for additional periods of up to one year for good cause shown;
- M. Review and approval by the Department of the Attorney General; and
- N. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Ian Hirokawa
Acting Administrator

APPROVED:



Dawn N. S. Chang, Chairperson

