

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

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



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

P.O. BOX 621
HONOLULU, HAWAII 96809

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

LAURA H.E. KAAKUA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

June 23, 2023

Board of Agriculture
Honolulu, Hawaii

PSF No.: 22OD-002

SUBJECT: Department of Land and Natural Resources' Testimony Regarding Proposed Board of Agriculture Action; Request for Consent to Amend General Lease No. S-3138; Hawaii Land & Livestock, LLC, Lessee; TMK: (1) 9-1-031:001, Honouliuli, Ewa, Oahu.

Thank you for the opportunity to provide testimony on this matter. The Department of Land and Natural Resources (DLNR) provides the following comments:

Governor's Executive Order No. 4584 (EO) setting aside the subject parcel to the Department of Agriculture (DOA) for agricultural purposes contains a reservation to the Board of Land and Natural Resources (BLNR) for renewable energy projects on the subject parcel. This parcel was requested by former DOA Chairperson Scott Enright because the slaughterhouse on the adjoining facility needed additional water to sustain and grow its operations (Exhibit A). The BLNR approved the set aside with the understanding that the property would be used for this purpose (Exhibit B). DLNR has historically earmarked this intensive industrial zoned parcel for renewable energy projects to generate revenue to support DLNR's stewardship mission and inserted the reservation to allow DLNR to continue to pursue such projects on this parcel to the extent that such a project would not unreasonably interfere with DOA's use of the land.

The DOA staff submittal requesting the amendment of General Lease No. S-3138 (GL 3138) to Hawaii Land and Livestock (HLL) states that "it was calculated that portions of the entire 110 acres could be used for agricultural activities other than feedlot purposes". When the BLNR authorized the set aside of the subject parcel to DOA it did not contemplate any uses beyond supplementing the slaughterhouse's water allocation and allowing the parcel to be used as a feedlot. The BLNR never considered allowing DOA or its tenant to use this intensive industrial zoned parcel for general agricultural purposes and certainly never considered allowing a potential DOA tenant to convert the parcel to an agricultural park of subleases to its own benefit.

Pursuant to Act 90, Session Laws of Hawaii 2003, DLNR has already transferred over 19,000 acres each to DOA and the Agribusiness Development Corporation (ADC). If agricultural land is needed

Board of Agriculture
Re: Hawaii Land & Livestock (GL S-3138)
June 23, 2023
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to grow additional feed to support local cattle producers or grow Bana grass for conversion to natural gas, there exists ample more suitable agricultural lands under the jurisdiction of DOA or ADC which are not located on intensive industrial zoned land within an urban industrial park and are not encumbered by a reservation to BLNR to pursue renewable energy projects. Any portion of the subject parcel not needed for feedlot or cattle resting purposes should be returned to DLNR to pursue renewable energy production.

Thank you for the opportunity to provide comments on this proposed action.

Sincerely,



Dawn N. S. Chang
Chairperson

RT

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

April 12, 2016

Suzanne Case, Chairperson
Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, HI 96813

Dear Ms. Case:

SUBJECT: GENERAL LEASE NO. S-8500
LESSEE: HAWAII LIVESTOCK COOPERATIVE
TERM: FEBRUARY 1, 2000 – JANUARY 31, 2035
TMK: 1st Div/9-1-031:025; AREA: 5.585 ACRES
CAMPBELL INDUSTRIAL PARK, KAPOLEI, ISLAND OF OAHU, HAWAII
REQUEST FOR ADDITIONAL WATER ALLOCATION

The Department of Agriculture (DOA) respectfully requests from the Department of Land and Natural Resources (DLNR), an additional water allocation amount for the benefit of the lessee that holds General Lease No. S-8500. The lessee, Hawaii Livestock Cooperative (HLC), is a slaughterhouse operation located at Campbell Industrial Park, Kapolei, Hawaii. The Campbell Industrial Park covenant regarding water consumption restricts usage to 800 gallons per acre per day, therefore, HLC's water allocation is approximately 4000 gallons of water per day which falls short of the 32,000 gallons per day required for their operations. Therefore, HLC requires an additional 28,000 gallons per day for their operations. It is crucial for HLC to have an adequate amount of water to fully utilize the slaughterhouse facility.

Water Allocation Background

The Campbell Industrial Park DECLARATION OF COVENANTS REGARDING WATER CONSUMPTION AND DEVELOPMENT, JAMES CAMPBELL INDUSTRIAL PARK, dated January 21, 1997, filed as Land Court Document No. 2361779 (Attachment "A"), restricts the allocation of water consumption by its property owners to 800 gallons per acre per day. The referenced lot is owned by the State of Hawaii and was transferred for management to the Hawaii Department of Agriculture by Governor's Executive Order No. 3801 in 1999.

The lessee, Hawaii Livestock Cooperative (HLC) requires an estimated additional 28,000 gallons of water per day or the equivalent of approximately 35 acres for its livestock slaughter operation.

DLNR owns and manages the adjacent vacant lot identified as TMK: 1st Div/9-1-031:001, Lot 1 of approximately 110 acres (see Attachment "B" - yellow highlight). From this vacant lot, DOA requests



that 28,000 gallons of water per day be set aside to the DOA for water allocation purposes only. This additional water allocation is to benefit General Lease No. S-8500 until the expiration of the lease or for as long as the character of "use" is for livestock slaughter and related purposes, whichever is longer.

Background Information

The HLC lot is owned by the State of Hawaii and was transferred from DLNR to DOA by Governor's Executive Order No. 3801 in 1999 for management purposes.

The Hawaii Livestock Cooperative is Oahu's only USDA certified slaughterhouse. Loans in excess of \$1 million were made by HLC to build the facility, and there are current outstanding balances due of more than \$650,000. HLC has been under difficult economic hardship for many years because of the closing of dairy businesses on Oahu and the decreased number of cattle for slaughter.

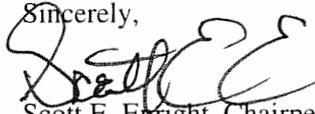
Due to economic hardships of declining business operations and decreased revenue, HLC is negotiating a purchase contract to assign General Lease No. S-8500 to Hawaii Land & Livestock, LLC (HLL). The agreement includes HLL assuming the outstanding loan balances as well. For more information on the assignee, HLL, attached is the approved Hawaii Board of Agriculture submittal dated November 24, 2015 (see Attachment "C") request for approval of the assignment of General Lease No. S-8500 from Hawaii Livestock Cooperative to Hawaii Land & Livestock, LLC. Allocating adequate water resources for operational use is essential to consummating this assignment agreement to assure HLL the capacity to increase operations and maintain profitability.

Summary

The slaughterhouse operation requires approximately 28,000 gallons of water per day more water than the 800 gallons per acre per day allowed by the Campbell Industrial Park water consumption covenant. To accommodate this need, DOA requests that DLNR set aside 28,000 gallons of water per day from DLNR's Lot 1 to DOA. This will ensure the continued operation of Oahu's only USDA certified slaughterhouse, which is a local service critical to Hawaii's sustainability for the future.

Should there be any questions regarding this request, please do not hesitate to have your staff contact Linda Murai via email at Linda.H.Murai@hawaii.gov or call 808-973-9471.

Sincerely,



Scott E. Enright, Chairperson
Board of Agriculture

Attachments

Attachment "A"

L-220 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

JAN 23, 1997 09:45 AM

Doc No(s) 2361779

on Cert(s) 410,853

/s/ CARL T. WATANABE
ASSISTANT REGISTRAR

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY Mail () Pickup ()

Ashford & Wriston
Douglas W. MacDougal
P. O. Box 131
Honolulu, Hawaii 96810
539-0400

Agreement No. A01063500 TMK: (1) 9-1-031:001, 025, 026 and 037

DECLARATION OF COVENANTS REGARDING
WATER CONSUMPTION AND DEVELOPMENT
JAMES CAMPBELL INDUSTRIAL PARK

THIS DECLARATION, made this 23rd day of January,
1997, by P. R. CASSIDAY, C. D. PRATT, JR., C. R. CHURCHILL and
D. A. HEENAN, the duly appointed, qualified and acting TRUSTEES
UNDER THE WILL AND OF THE ESTATE OF JAMES CAMPBELL, DECEASED,
acting in their fiduciary and not in their individual capacities
(the "Declarant");

ARTICLE I

RECITALS

1.01 The Property. Declarant is the owner of those certain
parcels of real property in the City and County of Honolulu,
State of Hawaii, described as:

Lot 3805-A, area 93.895 acres, as shown on Map 378
Lot 1136-B, area 1.947 acres, as shown on Map 165
Lot 1136-C, area 4.184 acres, as shown on Map 165,
and
Lot 1909-B, area 24.164 acres as shown on Map 410

ARTICLE II

COVENANTS

- 2.01 Water Consumption and Development. Property Owner shall consume no more than eight hundred (800) gallons per acre per day of domestic water. Said average shall be calculated yearly and based upon annual usage commencing on the first day of the calendar year following execution of this Declaration. Property Owner, in addition, shall at no time install or have installed a domestic water meter of larger than four (4) inches for water services to the Property, or install or have installed more than one such meter. Water facilities including, but not limited to, water source, treatment, and storage facilities, wells and transmission lines (the "Facilities"), have been or may be developed and constructed for the use and benefit of consumers in the Benefited Property by the Board of Water Supply of the City and County of Honolulu, or for the Board of Water Supply by other governmental agencies or private companies, persons or other legal entities, including Declarant. Property Owner agrees (i) to pay his, her or its pro rata share of the cost of such Facilities (defined in Section 2.02) through payment of Board of Water Supply facilities charges, improvement district assessments, facilities charges imposed by Declarant to pass through any costs of such Facilities incurred by Declarant, and to comply with such other methods as may be devised to recover said costs from the property owners in the Benefited Property and (ii) to support Declarant in any and all procedures and proceedings necessary or convenient to the implementation of the means selected.

Property Owner agrees to supply to Declarant whatever water consumption data is kept by Property Owner upon written request of Declarant. By his, her or its execution hereof, Property Owner authorizes Declarant to obtain water consumption records pertaining to the Property from the Board of Water Supply and agrees to provide any written authorization to do so if so required.

Property owner shall, whenever non-potable water is reasonably available, use its best efforts to use such non-potable water for all uses for which the use of such water is feasible. Any development of non-potable water resources and facilities undertaken by Property Owner shall be in accordance with plans and specifications approved in advance by Declarant. Without limiting the generality of the foregoing, Declarant expresses its intention to refuse its approval to a plan for development of non-potable water sources which would adversely affect the quality, quantity

(or to whom Declarant directs such payment to be made) within thirty (30) days of receipt of the notice of assessment by the Property Owner.

(b) If Declarant so elects, Property Owner shall pay the estimated cost of Facilities before the same are constructed or developed.

In such case, Declarant shall provide to Property Owner a pro forma budget setting forth the total estimated expenses for the Facilities. Property Owner shall pay or cause to be paid to Declarant one-quarter of its pro rata share of such expenses on the first day of January, April, July and October, or in such other manner as Declarant may designate. Declarant reserves the right at any time to revise the pro forma budget as the circumstances may require and upon notification of such revision, Property Owner shall pay or cause to be paid to Declarant its pro rata share quarterly of said revised budget. Declarant shall notify Property Owner of any adjustments in the pro forma budget resulting from actual expenses and, upon notification of such adjustment, Property Owner shall immediately pay or cause to be paid to Declarant its pro rata share of said adjustment. If Property Owner has overpaid, the amount of such overpayment will be credited against the Property Owner's pro rata share next coming due or, at Declarant's option, refunded in cash.

2.06 Lien for Unpaid Charges.

(a) If Property Owner fails to pay any portion of the Property Owner's Obligation to Declarant (or to whom Declarant directs such payment to be made), pursuant to Section 2.05 above, then Declarant may pay such monies for the account of Property Owner, and all expenses of Declarant so incurred on account of such non-payment shall be payable by Property Owner to Declarant together with interest at the maximum rate then permitted by law, or if no maximum rate is specified, at twelve percent (12%) per annum, accruing from the date of expenditure by Declarant until paid in full. The amount of the Property Owner's Obligation, together with all expenses of Declarant incurred as set forth immediately above, as well as all other sums hereunder required to be paid by Property Owner to Declarant and not paid when due, including without limitation attorneys' fees and all costs of collection shall constitute and be a lien in favor of Declarant on the Property upon filing of a notice of lien in the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

Rata Share (Section 2.05), and Lien for Unpaid Charges (Section 2.06). As to all other matters contained herein, this Declaration shall continue to control notwithstanding such election. In such case, where the provisions of Sections 2.02 through 2.06 above conflict with the manner in which Common Facilities are treated in the Master Declaration, the terms of the Master Declaration shall control. (For example, among other things the pro rata share and Property Owner's Obligation under Section 2.02 would not under the Master Declaration be computed on the basis of water use, but on the basis of lot size; the reduction formula in Section 2.03 above would not be applicable under the Master Declaration; and the owners of other lots have certain non-exclusive rights to use Common Facilities under the Master Declaration which are not given in Section 2.04 above.) Notwithstanding any election to designate any Facilities as "Common Facilities", however, nothing herein or under any application of the Master Declaration shall be deemed or construed to impose any duty upon Declarant or any other person or entity to provide or allocate water to the Property or to Property Owner, or to construct or develop Facilities, or plan for same, now or at any future time.

ARTICLE III

TERM, TERMINATION, MODIFICATION AND ASSIGNMENTS OF DECLARANT'S RIGHTS AND DUTIES

- 3.01 Term. This Declaration, and every provision hereof, shall continue in full force and effect for a period of fifty (50) years from the date hereof unless Declarant terminates or changes this Declaration as provided in Section 3.02 hereof.
- 3.02 Termination and Modification. This Declaration, or any provision hereof, may be terminated, extended, modified, amended or waived in whole or in part, as to the whole of the Property or any portion thereof, only by Declarant, as Declarant deems necessary or appropriate in its sole judgment to alleviate undue hardship or otherwise to fulfill the intent of this Declaration. No such termination, extension, modification, amendment or waiver shall be effective until a proper instrument has been executed, acknowledged and filed with the Assistant Registrar of the Land Court of the State of Hawaii.
- 3.03 Assignments of Declarant's Rights and Duties. Any and all of the rights, powers and reservations of Declarant herein

and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person or persons, corporation or corporations, or other legal entity or entities acquired an interest in the Property.

- 4.02 Declaration Runs with Land. All provisions contained herein shall burden each and every part of the parcel of the Property for the benefit of the Benefited Property; and shall operate as covenants running with the land, and shall apply to and bind the heirs, devisees, personal representatives, assignees and successors in interest of the Property Owner, and all lessees and sublessees or vendees of all or any portion of the Property, and shall be enforceable as such in accordance with the terms and provisions of this Declaration; provided, however, the right to enforce this Declaration is reserved to Declarant, its successors in trust and assigns, and to no one else.
- 4.03 Failure to Enforce Not a Waiver of Rights. Each remedy provided for in this Declaration is cumulative and non-exclusive. The failure of Declarant in any case to enforce any of the provisions of the restrictions herein contained shall in no event be deemed to be a waiver of the right to enforce any such provision or to do so thereafter, nor of the right to enforce any other provisions of this Declaration.
- 4.04 Paragraph Headings. Paragraph headings are utilized for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.
- 4.05 Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

indemnifying the Grantee from and against any and all damages, claims or suits that may arise as a result of the exercise of said reserved right, and provided, also, that Grantors will restore the setback areas promptly after exercising such reserved rights. Grantee's right to the property shall at all times be subject to such easement or grants to others, within said setback areas, as now exist or may be granted in the future by the Grantors. If and when any grant of easement is made by the Grantors and if Grantors request the joinder therein by Grantee, Grantee covenants, for itself and its successors and assigns, that it will join in any such grant of easement".

D. LEASE NO. 929 dated January 9, 1964, filed as Land Court Document No. 363289, by and between the Trustees Under the Will and of the Estate of James Campbell, Deceased, as Lessor and Hawaii Meat Co., Ltd., as Lessee; leasing and demising the land described herein for a term of 50 years, commencing October 1, 1963. Said Lease was amended by instrument dated June 5, 1967, effective April 1, 1967, filed as Land Court Document No. 420962; and further amended by unrecorded supplement to Lease dated June 28, 1983, effective October 1, 1979, and by Partial Surrender of Lease dated April 4, 1987 filed as Land Court Document No. 1456023.

E. Restrictions contained in that certain unrecorded Option Agreement dated October 16, 1959 by and between the Trustees Under the Will and of the Estate of James Campbell, Deceased and Hawaiian Cement Corporation, a Hawaii corporation, as said Option Agreement has been amended and clarified by unrecorded agreements dated February 12, 1960, March 31, 1961, November 7, 1962, February 17, 1965, April 7, 1966, July 1, 1981, February 17, 1984, November 28, 1984 and November 29, 1984, and assigned to Lone Star Hawaii, a Hawaii general partnership, by unrecorded instrument dated May 7, 1985. By Partnership Change of Name Statement filed with the Department of Commerce and Consumer Affairs of the State of Hawaii on June 27, 1985, the name Lone Star Hawaii was changed to Hawaiian Cement.

F. Restrictions, encumbrances and obligations contained in that certain Agreement Between State of Hawaii and the Estate of James Campbell Re Condemnation of Golden Triangle, Feedlot and Hawaii Raceway Park Properties dated November 29, 1991, and in documents implementing said Agreement.

G. Declaration of Covenants, Conditions and Restrictions dated January 21, 1997, filed in said Office as Land Court Document No. X 2361778.

B. Easement "1373" (area 12,275 square feet, 40 feet wide) for access purpose, as shown on Map 378, as set forth by Land Court Order No. 72794, filed February 20, 1985.

C. Perpetual (unless dedicated for public use) Grant in favor of the United States of America, dated August 23, 1985, filed as Land Court Document No. 1320615, for access over Easement "1373" besides other land.

D. Reservation to the Trustees Under the Will and of the Estate of James Campbell, Deceased of the right to grant easements in favor of the City and County of Honolulu for flowage purposes over Easement "771".

E. Lot 3805-A will have access over Olai Street (Lot 3164, as shown on Map 325) and then to Kalaeloa Boulevard, as set forth by Land Court Order No. 72794, filed February 20, 1985.

4. As to Lot 1136-B:

A. Easement "488", as shown on Map 165, as set forth by Land Court Order No. 24293, filed June 1, 1965.

B. Sublease dated January 1, 1965, filed as Land Court Document No. 364165; entered into by and between Hawaii Meat Company, Ltd., as Sublessor, and Hawaii Meat Products Corp., a Hawaii corporation, as Sublessee; subleasing and demising said Lot 1136-B for a term of 48-3/4 years commencing January 1, 1965. Consent thereto given by the Trustees under the Will and of the Estate of James Campbell, Deceased, by instrument dated June 25, 1965, filed as Land Court Document No. 364166. Said Sublease is subject to the following:

Mortgage dated July 9, 1965, filed as Land Court Document No. 365237, recorded in Liber 5084 at Page 437, made by Hawaii Meat Products Corp., a Hawaii corporation in favor of Bank of Hawaii, a Hawaii corporation, to secure the repayment of the sum of \$225,000.00. Consent thereto given by the Trustees Under the Will and of the Estate of James Campbell, Deceased, by instrument dated July 22, 1965, filed as Land Court Document No. 367868, recorded in Liber 5110 at Page 448.

By instrument dated January 24, 1967, recorded in Liber 5567 at Page 78, the name of Hawaii Meat Products Corp., a Hawaii corporation, was changed to Island Commodities Corp.

Judgment in favor of Plaintiffs dated January 11, 1985, was filed in the Circuit Court of the First Circuit,

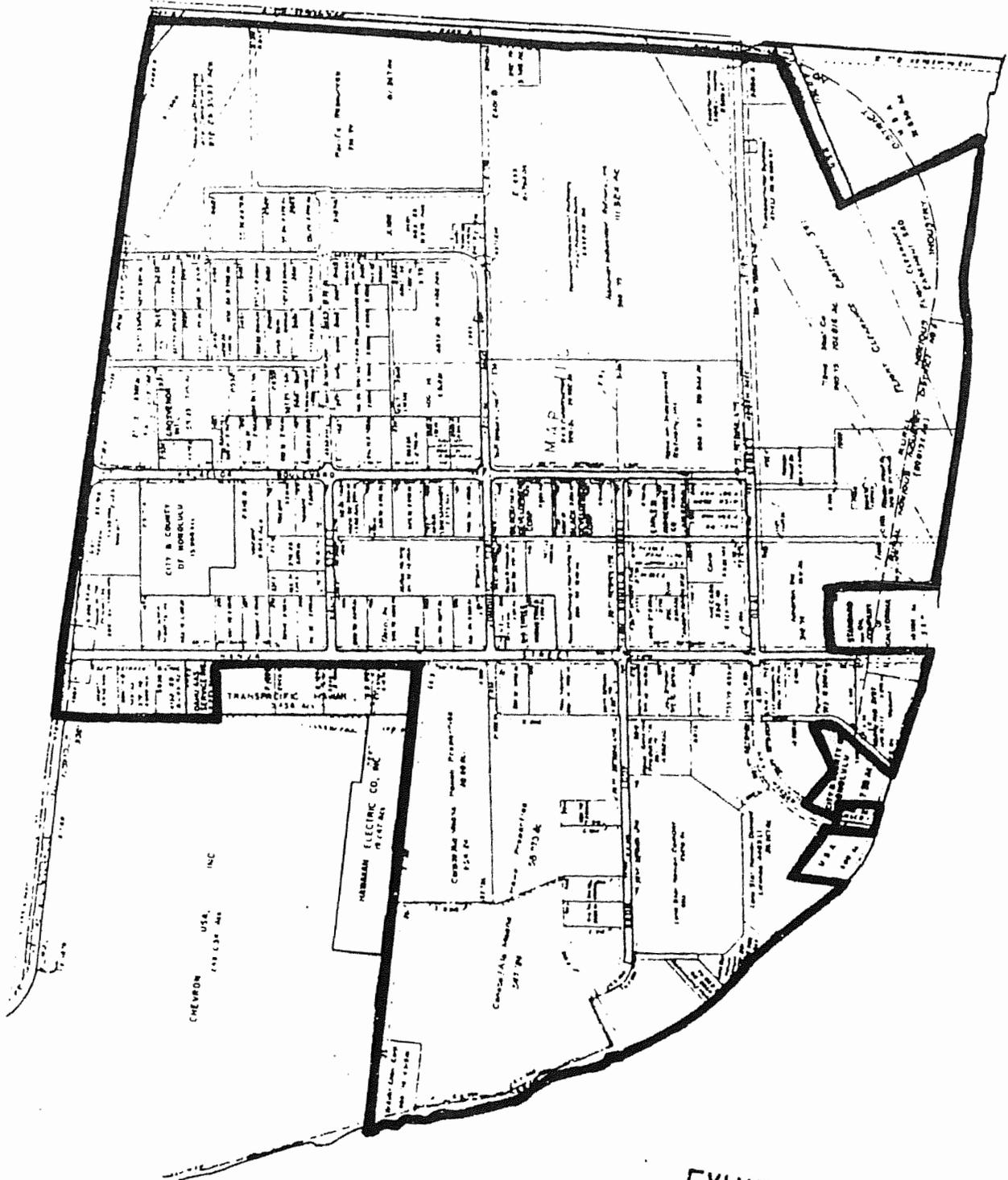


EXHIBIT B

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

November 9, 2018

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

PSF No.: 17OD-074

Oahu

Set Aside to Department of Agriculture for Agricultural Purposes; Issuance of Immediate Management Right-of-Entry to Department of Agriculture, Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-1-031:001.

APPLICANT:

Department of Agriculture

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Honouliuli, Ewa, Oahu, identified by Tax Map Key: (1) 9-1-031:001, as shown on the maps attached as **Exhibits A1 and A2**.

AREA:

110.106 acres, more or less.

ZONING:

State Land Use District: Urban
County of Honolulu CZO: I-2 Intensive Industrial District

TRUST LAND STATUS:

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

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
November 9, 2018 *Go*

CURRENT USE STATUS:

Vacant and unencumbered.

PURPOSE:

Agricultural purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, “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,” Item 43, which states the “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 Item 51, “Permits, licenses, registrations, and rights-of-entry issued by the department that are routine in nature, involving negligible impacts beyond that previously existing.” (See **Exhibit B**)

BACKGROUND:

At its meeting of August 25, 2006, under agenda item D-12, the Board of Land and Natural Resources Board found that the public interest demanded that a lease for the property be disposed of through negotiation pursuant to Section 171-59(a) of the Hawaii Revised Statutes, as amended, and delegated the authority to the Chairperson to issue a Request for Qualifications/Request for Proposals (RFQ/RFP).

On November 8, 2009, DLNR issued an RFQ/RFP to select a developer for the Subject Property. As a result of the RFQ/RFP process, the State of Hawaii, by its Chairperson of the Board of Land and Natural Resources (Chairperson) entered into a Development Agreement with West Wind Works, LLC (3W) made effective November 24, 2011 for the development of the Oahu Renewable Energy Park and terminating on December 31, 2013 or sooner.

Following 3W’s default on its monetary and non-monetary obligations, staff requested the Board cancel the Development Agreement at its meeting on May 25, 2012, Item D-16. After deferring action on the cancellation, the Board approved the assignment of the Development Agreement to International Electric Power, LLC.

Through subsequent assignments of and amendments to the Development Agreement, PSP III, LLC assumed the role of developer, and the termination date of the Development Agreement was amended to December 31, 2016 or sooner.

Unable to negotiate a power purchase agreement with Hawaiian Electric Co., Inc. (HECO),

PSP III, LLC exercised its option to cancel the Development Agreement in a letter dated December 5, 2016.

REMARKS:

The Subject Property is located at Honouliuli, Ewa, Oahu within the Campbell Industrial Park. The Subject Property was acquired by the State by condemnation in 1997 for the purposes of “land banking, protection and preservation of agricultural land, and for providing for various public uses.” Prior to condemnation, the Subject Property was used as a livestock feedlot. Since termination of feedlot operations, the property has remained vacant and underutilized, in large part due to the lack of roadways and utility infrastructure.

In a letter dated April 12, 2016, the Department of Agriculture (DOA) inquired about the possibility of setting aside approximately 35 acres of the subject parcel to the DOA for water credits. The Chairperson responded in a letter dated May 20, 2016 that a set aside was not possible at that time, as the property was encumbered through December 31, 2016.

Following the Developer’s cancellation of the Development Agreement, the DOA has again requested this property be set aside to it pursuant to Act 90, Session Laws of Hawaii 2003, which provides for the transfer of non-agricultural park lands to DOA from the Department of Land and Natural Resources. The DOA seeks to return the use of this parcel to its original purpose as a cattle feed lot, which is permitted under the zoning, and to provide DOA the needed water allocation for an adjacent property. The set-aside furthers the State’s goals of greater food security by increasing local food production, which is one of the Governor’s initiatives.

In the event staff receives proposals in the future to lease portions of this property for renewable energy projects, staff is recommending that the Board reserve the right to withdraw appropriate acreage or use rights from the set-aside for leasing to renewable energy producers, provided such leases will not unreasonably interfere with DOA’s use of the land. In response, DOA expressed concerns that its prospective tenants may want to install photovoltaic arrays on the land to generate power in support their operations, and DOA has therefore requested that the Board’s reserved right not prohibit renewable energy projects by DOA or its tenants.

In staff’s view, the parcel is large enough to accommodate small-scale photovoltaic projects providing energy only to the tenants on site, as well as larger scale projects that would generate power for consumption off-site under a power purchase agreement with HECO. Accordingly, staff is agreeable to the Board’s reserved right being qualified as DOA suggests, provided that DOA and its tenants obtain the prior written approval of the Chairperson before installing any photovoltaic arrays or other renewable energy projects on the land.¹

¹ If a renewable energy project by DOA or its tenants involves a lease, sublease, license, easement or permit to a third party, DOA would additionally need to obtain the Board’s consent thereto under Section 171-11, HRS.

Staff consulted the agencies listed below on the submittal and proposed exemption from an environmental assessment with the results indicated:

Agency	Comments
State Historic Preservation Division	SHPD has no objections to this Board submittal at this time, however SHPD requests the opportunity to review and comment on any future permit application involving ground disturbing activities.
Division of Forestry and Wildlife	No comments received by suspense date.
Division of Aquatic Resources	DAR has no objections to this Board submittal at this time, however DAR requests the opportunity to review and comment on any future development other than stated in this Board submittal.
Office of Conservation and Coastal Lands	No comments received by suspense date.
Department of Agriculture	DOA has no objection to the set aside, and has subsequently been made aware of the 2008 Phase II Environmental Assessment findings of elevated levels of Contaminants of Concern in both soil and groundwater and has no comments or concerns with this Board submittal at this time. Future development of the land may trigger reevaluation, investigation and/or remediation of the site.
Office of Hawaiian Affairs	No comments received by suspense date.
Board of Water Supply	BWS has no objections to this Board submittal at this time. BWS plans to obtain a Grant of Pipeline Easement along Olai Street in the future.
C&C Department of Facility Maintenance	DFM has no objections to this Board submittal at this time, however they pointed out a 50-foot drainage easement on the west side of the parcel that must be maintained by the owner as shown on Exhibit A1.

Although the parcel is located next to the ocean, staff has determined that there is existing lateral public access to the beach in the vicinity of the parcel 0.26 miles away, from Barbers Point Beach Park to the west and that there is no need to reserve additional rights-of-way to the beach over the subject industrial land.

Staff proposes to establish the seaward boundary in the executive order setting aside the property at the mean lower low water line. This will give the DOA management

jurisdiction over the entire area instead of leaving DLNR with management responsibility for a strip of land seaward of the shoreline. The executive order will provide that no agricultural activity will be permitted seaward of the shoreline, and that the public will continue to have lateral access to the shoreline from Barbers Point Beach Park.

Staff believes this is an equitable arrangement given that Board is setting aside scarce and valuable industrial land. This arrangement will also allow staff to focus on other higher priority items such as converting certain revocable permits to other types of appropriate dispositions and working on the various complex shoreline issues. This set aside of the makai boundary at the mean low water line is modeled after other set asides to County Parks (e.g., Kuhio Beach, Waialea Beach and Black Pots on Kauai) where the makai boundary of the set aside are located at the mean lower low water line. This approach allows for a single management agency over the subject land and simplifies enforcement in the area. The DOA is agreeable to accepting the set aside to the mean low water line.²

Due to its location within the Campbell Industrial Park, this property is subject to the Conditions, Covenants and Restrictions (CC&Rs) made by the Trustees Under the Will and of the Estate of James Campbell, Deceased and assigned to MMGD LLC (MMGD). Pursuant to Section 2.04c of the CC&Rs, MMGD invoices the property owners within the industrial park annually for their pro rata share of common area costs. This expense has already been paid by DLNR for 2018, and will be DOA's responsibility once the Executive Order is executed. In the event the Executive Order is executed prior to MMGD's next billing cycle, DOA agrees to pay its prorated share of the common area costs for that year.

RECOMMENDATION: That the Board:

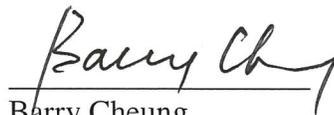
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject land to the Department of Agriculture under the terms and conditions cited above, including the establishment of the seaward boundary of the subject land at the mean lower low water line, 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; provided, however, that the set-aside shall reserve to the Board the right to issue leases for renewable energy projects on the land to the extent such leases will not unreasonably interfere with DOA's use of the land; provided further that DOA and its tenants shall

² In addition, in the past the Department set aside the prime usable and developable lands to other requesting agencies while retaining hazardous mountainsides thereby leaving mitigation responsibility and liability (e.g., Ko Road and Menehune Road hazard mitigation projects) with the Department. This set aside seeks to avoid such result.

not be prohibited from installing photovoltaic arrays or locating other renewable energy projects on the land as long the power generated thereby is wholly consumed on the land; and provided further that DOA and its tenants shall obtain the prior written consent of the Chairperson of the Board of Land and Natural Resources before installing photovoltaic arrays or locating any other renewable projects on the land;

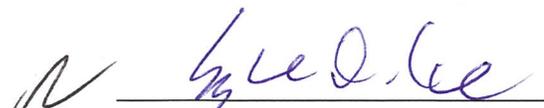
- B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Grant an immediate management right-of-entry to the Department of Agriculture over the subject lands, 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 management and construction right-of-entry form, as may be amended from time to time;
 - B. The right-of-entry shall be effective upon acceptance and shall terminate upon issuance of the executive order; and
 - C. The Department of Land and Natural Resources reserves the right to impose additional terms and conditions at any time if it deems necessary while this right-of-entry is in force.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



Subject

TMK (1) 9-1-031:001

EXHIBIT A2

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Set aside of State lands to Department of Agriculture (DOA) and issuance of immediate management right-of-entry.

Project / Reference No.: PSF 17OD-074

Project Location: Honouliuli, Ewa, Oahu, identified by Tax Map Key: (1) 9-1-031:001

Project Description: Set aside to DOA for agricultural purposes and issuance of immediate management right-of-entry.

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

Exemption Class No. and Description: In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, "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," Item 43, which states the "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 Item 51, "Permits, licenses, registrations, and rights-of-entry issued by the department that are routine in nature, involving negligible impacts beyond that previously existing."

Cumulative Impact of Planned Successive Actions in Same Place Significant? No. The proposed action involves a one-time set aside of land in the area to DOA for agricultural use. Staff believes there are no cumulative impacts involved.

Action May Have Significant Impact on Particularly Sensitive Environment? No. There are no particular sensitive environmental issues involved with the proposed use of the property.

Analysis: The proposed action involves the transfer of management jurisdiction over the subject land from the Board of Land and Natural Resources to DOA. DOA will be responsible for

EXHIBIT B

compliance with Chapter 343, HRS, in the event it proposes any development of the land that is not exempt from Chapter 343. As such, staff believes that transfer of management jurisdiction to DOA involves negligible or no expansion or change of use beyond that previously existing, and should therefore be found exempt from the preparation of an environmental assessment under Chapter 343, HRS.

Consulted Parties:

Historic Preservation Division, Division of Forestry and Wildlife, Division of Aquatic Resources, Office of Conservation and Coastal Lands, Department of Agriculture, Office of Hawaiian Affairs, Board of Water Supply, City and County Department of Facility Maintenance. See agency comments in attached submittal.

Recommendation:

That the Board find 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.