

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

December 13, 2013

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

PSF No.: 13OD-053

OAHU

Sale of Remnant to Doris L. Kawagoe, Karen C. Yoneda, and Judy Hideko Hiratsuka Revocable Trust Agreement dated November 17, 1983; Withdrawal from Governor's Executive Order No. 1598, Waimanalo, Koolaupoko, Oahu; Tax Map Key: (1) 4-1-024:portion of 066

APPLICANTS:

Doris L. Kawagoe, Karen C. Yoneda, and Judy Hideko Hiratsuka Revocable Trust Agreement dated November 17, 1983 as tenants in common.

LEGAL REFERENCE:

Section 171-11 and 171-52, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waimanalo, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-1-024:portion of 066, shown on the map attached as **Exhibit A**.

AREA:

0.324 acre, more or less

ZONING:

State Land Use District: Agricultural  
City & County of Honolulu LUO: AG-2

TRUST LAND STATUS FOR BOTH LOTS:

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

CURRENT USE STATUS:

Encumbered by Governor's Executive Order No. 1598 to the Department of Agriculture for operation and maintenance of an irrigation system to develop small scale farming.

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by an independent appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that 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" and Class No. 4, that states "Minor alteration in the conditions of land, water or vegetation." See **Exhibit B**.

DCCA VERIFICATION:

Not applicable. The Applicants as landowners are not required to register with DCCA.

APPLICANTS REQUIREMENTS: Applicants shall be required to:

1. Provide survey maps and descriptions for both remnants according to DAGS standards and at the Applicants' own cost;
2. Pay for an appraisal to determine the one-time payment of fair market value for both remnants; and
3. Consolidate the remnant with the Applicants' abutting property identified as (1) 4-1-024:060 through the county subdivision process.

REMARKS:

The Applicants are requesting the purchase of the portion of abandoned irrigation ditch State-owned lands and intend to consolidate such portion with their adjacent farmland. The subject location was formerly used for transmission of irrigation water.

Pursuant to section 171-52, HRS, a remnant is defined as "a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics."

The Applicants are the fee owner of private properties identified as tax map key (1) 4-1-024:060 and 061, as confirmed by the City's Real Property Tax Office website. For the Board's information, the parents of the Applicants are also noted as owners of the private properties. However, the Applicants advised the staff that upon the death of their parents, the parents' interests were transferred to the Applicants.

The subject portion of ditch is located between the said Applicants' properties. Therefore, staff believes the subject portion of ditch is incapable for development or utilization as a separate unit and recommends the Board declare the requested area as remnant.

Department of Health, Division of Aquatic Resources, Department of Facility Maintenance, Department of Planning and Permitting, Department of Agriculture, Department of Hawaiian Home Lands, and Board of Water Supply have no objection or comment to the subject request.

Commission on Water Resource Management and State Historic Preservation Division have not responded to the solicitation of comments at the time of writing this submittal.

Office of Hawaiian Affairs requests that "Land Division staff investigate any past and potential future use of these ditches for traditional and customary practices. OHA asks that this information be provided to the BLNR so it may carry out its legal responsibilities to reasonably ensure any potential cultural practitioners safe and continued access to and through the subject area." A copy of OHA's letter is attached as **Exhibit C** for reference.

Staff notes other portions of the same former ditch adjacent to the requested area has been authorized by the Board to be sold as remnants to the abutting private owners, as shown on Exhibit A. A site visit confirmed that the requested area is vegetated with grass and is not serving any irrigation purposes any longer. Staff understands that most of the farmlands in the area are served by the irrigation pipelines system maintained by the Department of Agriculture, and staff is not aware of use of the ditches for customary and traditional practices. In short, the irrigation ditches mentioned under EO 1598 are replaced by contemporary irrigation pipeline system. Therefore, the subject portion of the former irrigation ditch is no longer needed. As noted above, State Historic Preservation Division has not responded to our request for comment. Upon receipt of OHA's comment, staff contacted the State Historic Preservation Division again. At the time of writing this submittal, staff has not received any response from State Historic Preservation Division.

Applicants request the consolidation of the subject remnant with only one of their properties, identified as (1) 4-1-024:060. Staff does not have any objection to this request.

The Applicants have not had a lease, permit, easement or other disposition of State lands

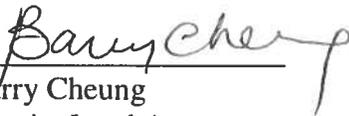
terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

1. Find that the subject land is economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics and, therefore, by definition is a remnant pursuant to Chapter 171, HRS.
2. 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.
3. Authorize the subject request to be applicable in the event of a change in the ownership of the abutting parcels described as Tax Map Key: (1) 4-1-024:060 and 061 provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
4. Approve of and recommend to the Governor the issuance of an executive order withdrawing the subject area from Governor's Executive Order No. 1598, subject 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 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.
5. Authorize the subdivision and consolidation of the subject remnant by the Applicants.
6. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the sale of the subject remnant to Doris L. Kawagoe, Karen C. Yoneda, and Judy Hideko Hiratsuka Revocable Trust Agreement dated November 17, 1983 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 deed or grant (remnant) 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.

Respectfully Submitted,

  
\_\_\_\_\_  
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
William J. Aila, Jr., Chairperson  




### EXEMPTION NOTIFICATION

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

Project Title: Sale of Remnant

Project / Reference No.: PSF 130D-053

Project Location: Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-24:por. 66

Project Description: Sale of Remnant

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

Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that 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" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

The applicants do not have any long term plan for the subject remnant. There will be minimal to none alteration in the conditions of land, water, and vegetation of the subject remnant. Therefore it is recommended that the subject request be exempted from an environment assessment.

Consulted Parties Agencies listed in submittal.

Exemption Item Description  
from Agency Exemption List: Not applicable

Recommendation: It is recommended that the Board declare 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.

  
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William J. Aila, Jr., Chairperson  
Date



**EXHIBIT B**



**STATE OF HAWAII**  
**OFFICE OF HAWAIIAN AFFAIRS**  
711 KAPI'OLANI BOULEVARD, SUITE 500  
HONOLULU, HAWAII 96813

May 17, 2013

RECEIVED  
LAND DIVISION  
2013 MAY 24 AM 11:44  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Barry Cheung  
District Land Agent  
Department of Land and Natural Resources  
1151 Kalanimoku Building  
Honolulu, HI 96813

**Re: Comments on draft Land Board submittals for Requests for Sale of Remnants at Waimānalo, Ko'olaupoko, O'ahu (TMK 1-4-1-024: portion of 066) and Kāne'ohē, Ko'olaupoko, O'ahu (TMK 1-4-5-043: portion of 003)**

Aloha mai e Mr. Cheung:

Mahalo nui for your letters dated April 11, 2012 and April 15, 2012 transmitting the draft Land Board submittals for Requests for Sale of Remnants at Waimānalo, Ko'olaupoko, O'ahu (TMK 1-4-1-024: portion of 066) and Kāne'ohē, Ko'olaupoko, O'ahu (TMK 1-4-5-043: portion of 003), respectively, for our review. The Office of Hawaiian Affairs offers the following comments.

The Office of Hawaiian Affairs (OHA) is the constitutionally-established body responsible for protecting and promoting the rights of Native Hawaiians.<sup>1</sup> OHA has substantive obligations to protect the cultural and natural resources of Hawa'i for the agency's beneficiaries.<sup>2</sup> Accordingly, OHA is required to serve as the principal public agency in the State of Hawai'i responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; assess the policies and practices of other agencies impacting native Hawaiians and Hawaiians; and conduct advocacy efforts for native Hawaiians and Hawaiians.<sup>3</sup>

<sup>1</sup> HAW. CONST. ART. XII SEC. 5

<sup>2</sup> See HRS Chapter 10/

<sup>3</sup> HRS § 10-3.

The subject draft Land Board submittals indicate that the remnants proposed for sale are portions of abandoned irrigation ditches formerly used for the transmission of irrigation water. OHA respectfully requests that Land Division staff, in consultation with the State Historic Preservation Division, examine the potential historic significance of these irrigation ditches and report any findings in its final submittals to the Board of Land and Natural Resources (BLNR). The BLNR must be supplied appropriate information to consider whether these ditches may be considered part of historic properties eligible to be listed in the Hawai'i and/or National Historic Register and especially whether either was built upon a traditional 'auwai.

As recognized by long- and well-established case law, Hawai'i state agencies have an affirmative legal duty to reasonably protect and enforce the rights of Native Hawaiians, including access to less-than-fully developed lands for the practice of traditional and customary gathering rights.<sup>4</sup> This duty includes the identification of traditional and customary practices and cultural resources that may be impacted by agency decisions affecting less-than-fully developed lands; the extent to which these practices and resources may be impacted; and any feasible actions which may be taken to reasonably protect any identified Native Hawaiian rights and cultural resources.<sup>5</sup>

Therefore, OHA respectfully requests that Land Division staff investigate any past and potential future use of these ditches for traditional and customary practices. OHA asks that this information be provided to the BLNR so it may carry out its legal responsibilities to reasonably ensure any potential cultural practitioners safe and continued access to and through the subject area. Given these areas' characters as ceded lands, to which Native Hawaiians never relinquished their claims; the historic and ongoing occurrence of traditional and customary practices that may occur in or adjacent to this area; and the affirmative obligations of the state to protect and enforce the rights of Native Hawaiians to engage in such practices; OHA believes providing this information to the BLNR as they consider approving these sales would be reasonable and consistent with state law and policy.

Thank you very much for your consideration of this matter.

Should you have any questions or concerns, please have your staff contact us via Kamaile Maldonado, Public Policy Advocate, by phone at (808) 594-1759 or by email at kamailem@oha.org.

'O wau iho nō me ka 'oia'i'o,



Kamana'opono M. Crabbe, Ph.D.  
Ka Pouhana, Chief Executive Officer

KMC;km

<sup>4</sup> See, e.g., HAW. CONST. ART. XII SEC. 7, Ka Pa'akai o ka 'Āina v. Land Use Comm'n, 94 Hawai'i 31 (2000); Pele Defense Fund v. Paty, 73 Haw. 578 (1992).

<sup>5</sup> Ka Pa'akai o ka 'Āina, 94 Hawai'i at 47.