

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

June 12, 2015

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

PSF No.: 15HD-080

Hawaii

Cancellation of Governor's Executive Order No. 3398 for the Bond Memorial Public Library, Kapaau, North Kohala, Hawaii; TMK: (3) 5-4-005:030 and Issuance of Direct Lease to The Dorrance Family Foundation for a North Kohala Community Heritage Center Purposes, Kapaau, North Kohala, Hawaii; TMK: (3) 5-4-005:030

APPLICANT:

Hawaii State Public Library System, a governmental body.
 The Dorrance Family Foundation, a 501c(3) eleemosynary organization.

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes, as amended.
 Section 171-43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kapaau, North Kohala, Hawaii identified by Tax Map Key: (3) 5-4-005:030, as shown on the attached map labeled Exhibit A.

AREA:

7,689 square feet, more or less.

ZONING:

State Land Use District: Urban
 County of Hawaii CZO: Village Commercial (CV-10)

TRUST LAND STATUS:

Section 5(a) 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. 3398 to the Department of Education for Library Site purposes.

CHARACTER OF USE:

Community Heritage Center and allied activities purposes.

LEASE TERM:

Thirty (30) years

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

Pursuant to HRS §171-43.1, and the minimum rent policy established by the Board at its meeting of May 13, 2005 under agenda item D-19, the annual rent will be set at \$480.00.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th and 20th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities – Electric, water, phone and cable.

Slope – Fairly level.

Elevation – Approximately 500 feet.

Rainfall – Averages 63 inches annually.

SCS Soil Series – Unclassified.

Legal access to property – Staff has verified that there is legal access to the property off of Akoni Pule Highway (Hwy 270).

Subdivision – Staff has verified that the subject property is a legally subdivided lot.

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." Refer to attached Exhibit B.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for the costs of public notice pursuant to section 171-16

REMARKS:

By deed dated February 24, 1928, Caroline S. Bond conveyed the subject parcel to the Territory of Hawaii for the purpose of a Public Library. The deed was made subject to the following conditions:

- (1) That a public library building be erected upon said property on or prior to July 1, 1929;*
- (2) That said building and property be used, on and after July 1, 1929, solely for public library purposes.*

In the event that the Territory shall fail or neglect to fulfill said conditions, upon written notice of such breach being filed with the Territory through its Commissioner of Public Lands, title in said property shall immediately revert in me, my heirs, executors or assigns, without the necessity of any other or further proceedings whatsoever.

Land Division files do not indicate when the library was constructed on the property, but there is no dispute that a public library known as the Bond Memorial Public Library (BMPL) operated on the site for many decades.

At its meeting of May 27, 1988, item F-5, the Land Board approved the set-aside of the parcel to the Department of Education, Hawaii State Public Library System (HSPLS), for library site purposes. The Board submittal mentions that HSPLS had been operating the BMPL (and other libraries throughout the State) without an executive order for the site.

BMPL was in use until about November 08, 2010 when the new North Kohala Public Library opened. By memorandum dated April 26, 2011, the State Librarian informed Land Division that the BMPL building was no longer needed by HSPLS and requested cancellation of the executive order.

Land Division sought counsel from the Office of the Attorney General (AG) regarding the impact of the reverter clause contained within the deed. The AG determined the reverter clause is enforceable, but is not automatic. Notice of breach of the condition must be given and at that time it is recommended to require a judicial determination that the entity giving notice is the rightful holder of the reverter interest. Until that time, the ownership interest in the property remains with the State.

Land Division required the completion of Phase 1 Environmental Site Assessment¹ prior to cancellation of the executive order. The assessment was completed in March 2013. An adjacent property owner had some concerns regarding the cesspool, but after further investigation it appears to be in compliance and the adjacent property owner has not provided documentation to the contrary.

It has been four years since the library closed and Land Division has not received notice from a rightful holder of the reverter interest. The community desires to keep the iconic building active within the community as a repository for local history, knowledge and culture.

As a means to accomplish this goal, Ka'apa'apa'a, a volunteer community group, has developed a collaboration with The Dorrance Family Foundation through its president, Bennett Dorrance, to secure a long-term lease of the property and develop a Community Heritage Center.

The activities of the Community Heritage Center (CHC) would be to care for, preserve, exhibit and interpret objects of North Kohala's history; provide cultural experiences that result in personal growth, awareness and enrichment, both for the community and visitors to the island. The CHC will involve the public through interactive exhibits, educational programs, lectures, living history programs and historic preservation, as a way to preserve Kohala's rich history and strengthen the bonds of the community for future generations.

Since North Kohala is the birthplace of King Kamehameha I, Ka'apa'apa'a is dedicated to focusing on the Kamehameha lineage and history going back 26 generations to King Kamehameha I, the story and legend of his prophecy and birth, civil wars leading to his reign and the significance of Kohala.

There will also be a focus on the hundreds of years of evolution of the islands in terms of how people have and should relate to their environments, practices of sustainability and

¹ The Phase 1 Site Assessment identified suspect asbestos containing building materials such as drywall, plaster, vinyl floor tiles, cove base, window caulking, skim coats over the concrete foundation walls, and vent and flashing mastics on the roof. In addition to the suspected asbestos, all paint is suspected to contain lead and the fluorescent light bulbs and fixtures may contain PCB's and/or mercury. The age of the building, its wooden structure, and the agricultural nature of the surrounding properties opens the possibility that other potentially carcinogenic pesticides may be present in the surrounding soil.

lessons from the ancestors. All levels of schools in the community, both public and private, will be involved and engaged. Students will participate in a place-based media program by recording talk story events and assisting in filming kupuna for a Living Treasures library of personal stories about Kohala.

The property is zoned village commercial; however, the deed is subject to use as a public library. The proposed use of the building falls, in part, within the definition of a public library, but could be determined to be outside of the deed restriction and subject to the reversion clause. In the event a rightful holder of the reverter interest provides notice of breach to the State, the property will revert to the claimant. This condition hampers the full-scale commercial potential of the property and makes the proposed use a best-fit scenario. Due to the nature of the reverter clause, the lease should contain a provision that would terminate the lease immediately upon the legal exercise of the clause. In such event, any prepaid but unearned lease rent would be reimbursed to the lessee, but otherwise the State and the lessee would have no further obligation to one another. The standard “quiet enjoyment” clause in the lease will also need to be modified or eliminated because the State cannot warrant that the lessee will “have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.” The lease should also contain a provision that the lessee accepts the premises in “as is, where is” condition, with all faults and defects, whether latent or patent.

The property was conceived and built as a community resource. The continued use of the property to care, preserve and promote the rich history and culture of the local community into the future serves the public interest.

A Request for Comments was sent out to various agencies and community/business members. Responses are in the following table.

State Agencies	Response
Dept. of Health - Environmental Planning	No Response
Dept. of Hawaiian Homes Land	No Response
DLNR - Historic Preservation	No Response
DOT - Highways Division	No use of highway right-of-way*
Hawaii County Agencies	Response
Planning Dept.	Permitted use within zoning*
Dept. of Public Works	No Response
Dept. of Water Supply	No Objections
Environmental Management	No Comments
Other Agencies	Response
Office of Hawaiian Affairs	No Response
Community Members	Response
North Kohala Community Resource Center	No Objections - Strongly in Favor
Carol Masuhara	No Objections

Rob Boose	No Response
Gino Amar	No Objections
Alyssa Ackerman Slaven	Parking concerns*
Jack Hoyt	No Objections - Strongly in Favor
Greg Harmon	No Objections
Robert Glory	No Response
Regina Gantala	No Objections

*See discussion below for further details

The Department of Transportation – Highways Division noted that parking is not allowed within the State Highway right of way fronting the Bond Memorial Library building. Refer to attached Exhibit A for identification of the right of way area.

The County of Hawaii – Planning Department noted that the proposed use was in accordance with the Hawaii County Code. The applicant will be required to file a plan approval application with the County.

Alyssa Ackerman Slaven is the proprietor of the Ackerman Gallery and Cafe located next to the subject property. She is concerned about the existing cesspool/septic system of the BMPL building. She also objects to the leasing of the BMPL building to a non-profit without provisions in the lease requiring the development of a parking lot and an inclusion of a non-compete clause. She states that public parking in the area is inadequate and a non-profit paying nominal rent is unfair business practices.

The size of the subject parcel and orientation of the building does not allow room to develop a parking lot on the property, but there are quite a few public parking stalls within close walking distance to the property.

The 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.

The Dorrance Family Foundation has provided evidence of its 501(c)(3) status. It has a proven track record of giving back to the community and a true desire to assist in preserving and protecting the community of North Kohala.

The proposed use is not significantly different from past use which has continued since 1929. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

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 the cancellation of Governor's Executive Order No. 3398 for the Bond Memorial Public Library, Kapaau, North Kohala, Hawaii.
3. Find that the public interest demands the issuance of this direct lease to The Dorrance Family Foundation for Community Heritage Center and allied activities purposes.
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to The Dorrance Family Foundation 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 (non-profit) lease document form, as may be amended from time to time, except that the lease shall include a provision for immediate termination in the event of the legal exercise of the reverter clause. In such event, any prepaid but unearned lease rent shall be reimbursed to the lessee, but otherwise the State and the lessee shall have no further obligation to one another. The standard "quiet enjoyment" clause of the lease shall be eliminated or modified as the Department of the Attorney General deems to be in the best interests of the State to address the concerns with the reverter clause noted above. Additionally, the lease shall include a provision that the lessee accepts the premises in "as is, where is" condition, with all faults and defects, whether latent or patent;
 - B. Rent will be established in accordance with the minimum rent policy;
 - 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.

Respectfully Submitted,


Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

EXHIBIT A

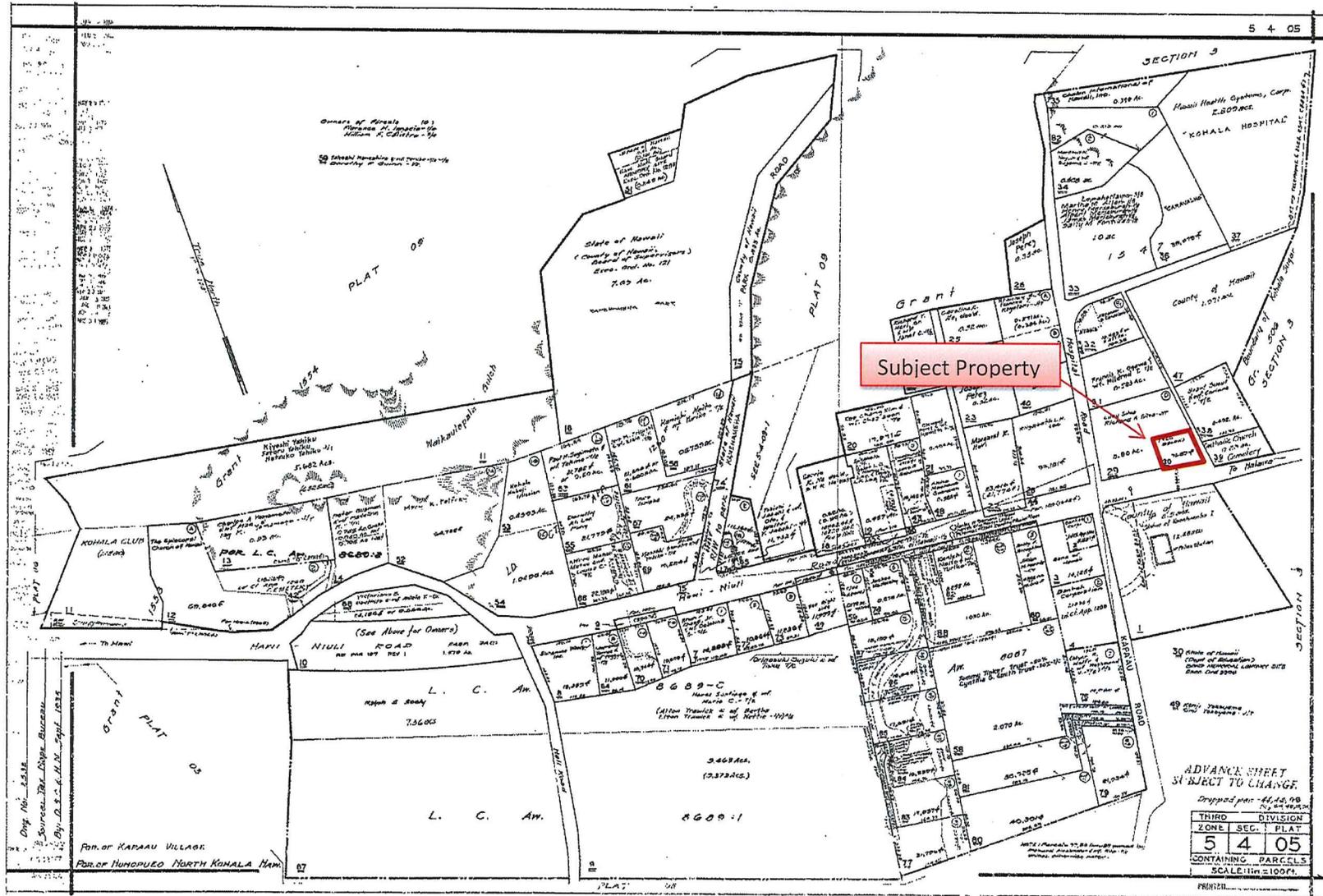
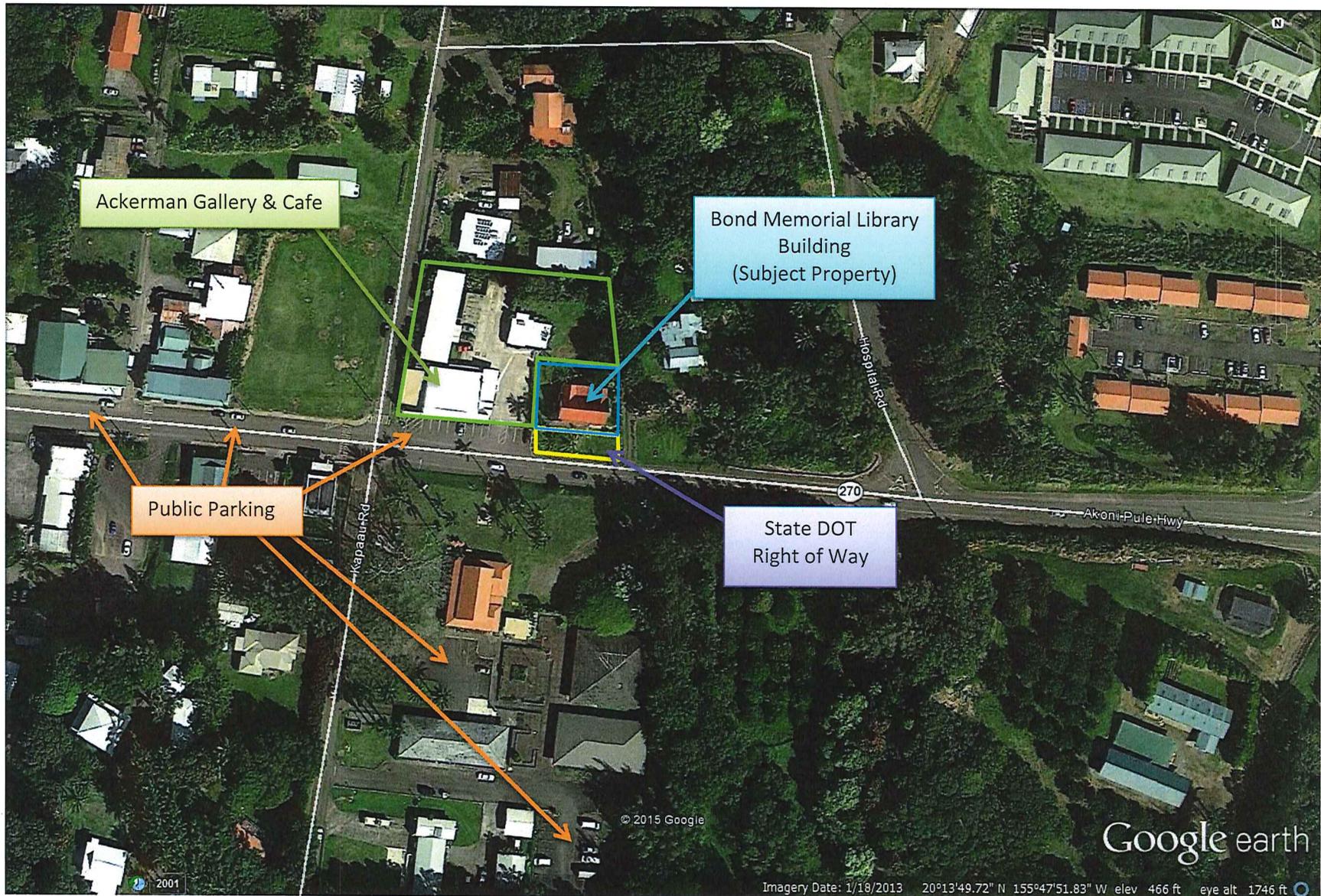


EXHIBIT A



DAVID Y. IGE
GOVERNOR OF HAWAII



EXHIBIT B

SUZANNE B. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

W. ROY HARDY
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May 29, 2015

EXEMPTION NOTIFICATION

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

Project Title: Issuance of Direct Lease to The Dorrance Family Foundation for a North Kohala Community Heritage Center Purposes

Project / Reference No.: PSF 15HD-080

Project Location: Kapaau, North Kohala, Hawaii; TMK: (3) 5-4-005:030

Project Description: North Kohala Community Heritage Center

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 Dorrance Family Foundation in cooperation with local community groups plans on using the iconic Bond Memorial Library building as a North Kohala Community Heritage Center which would care for, preserve, exhibit and interpret objects of North Kohala's history; provide cultural experiences that result in personal growth, awareness and enrichment, both for the community and visitors to the island.

Consulted Parties

Not applicable

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.



Suzanne D. Case, Chairperson

 _____
Date 5/29/15