

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

March 22, 2013

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

PSF No.: 13HD-034

Hawaii

Issuance of Right-of-Entry Permit to Department of Accounting and General Services for the Purposes of Conducting a Biological and Archaeological Inventory Survey on State lands located at Kealakehe, North Kona, Hawaii; Tax Map Key: (3) 7-4-020:004.

APPLICANT:

State of Hawaii, Department of Accounting and General Services, a governmental entity.

LEGAL REFERENCE:

Sections 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of "The Villages of La'i'Opua – Phase 1", F.P. 2128 situated at Kealakehe, North Kona, Hawaii, identified by Tax Map Key: (3) 7-4-020:004, as shown on the attached map labeled Exhibit A.

AREA:

35.744 acres, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Open

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Vacant and Unencumbered, however, parcel is part of the Villages of La'i'Opua, a master planned community by Hawaii Housing, Finance and Development Corporation (HHFDC).

CHARACTER OF USE:

Biological and archaeological inventory survey purposes.

TERM OF RIGHT-OF-ENTRY:

One year from issuance.

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the Division of Land Management's Environmental Impact Statement Exemption List, approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class 5, No. 1, that states " Permission to enter State lands for the purpose of basic data collection, research, experimental management and resources evaluation activities such as archaeological survey, topographic survey, test borings for soil test, ground cover survey inspection of property for appraisal and development feasibility study purposes." Refer to attached Exhibit B.

DCCA VERIFICATION:

Applicant is a governmental agency and not subject to registration with the DCCA.

REMARKS:

The Department of Accounting and General Services (DAGS), on behalf of the State of Hawaii Judiciary (Judiciary) is proposing to build a new Judiciary Complex in Kona for the West Hawaii service area of the Third Circuit Court. The West Hawaii service area is a region with a growing population and inadequate facilities to perform necessary Judiciary functions.

In order to address a long-standing need for a new Judiciary complex in the West Hawaii service area, DAGS commissioned a Site Selection Study and Environmental Impact Statement (EIS) to identify candidate locations for the siting of the future Kona Judiciary Complex. The Final EIS (FEIS) was published in *The Environmental Notice* on December 23, 2011.

DAGS has determined the subject parcel to be the best fit for the new Judiciary complex. The FEIS did not specifically identify any biological species or archaeological features on the site. However, they desire to confirm this finding and avoid potential problems in the future by conducting a biological/archaeological inventory survey of the specific site.

The subject parcel is currently unencumbered. However, it is subject to a Memorandum of Understanding (MOU) between the Board of Land and Natural Resources (BLNR) and HHFDC. At its meeting of June 22, 1990, item F-4, the Board approved a MOU with an amendment that the final language and form of the MOU was subject to review and change by the Office of the Attorney General (AG).

The final AG approved MOU was fully executed on 1/4/1993 (see attached Exhibit C). The MOU acknowledged the HHFDC responsibility for effectuating the Governor's Comprehensive Housing Program pursuant to HRS 10-13.6, effectively transferring development rights to HHFDC.

Due to the ceded lands litigation filed in 1994, development of La'i'opua was suspended and the balance of the ceded lands portion of La'i'opua were eventually transferred to DHHL with Board approval at its meeting of 8/27/2004, item D-8. The subject parcel was excluded from the transfer to be held by HHFDC for future hospital and residential development.

On January 28, 2005, the HHFDC Board of Directors approved returning the development rights of the subject parcel to Department of Land and Natural Resources (DLNR) for the development of the Kona Community Hospital by Hawaii Health Systems Corporation. HHFDC retained a reversionary interest to the development rights, to be exercised if the hospital project did not commence by December 31, 2010. The hospital project has been planned for an alternate location and the development rights have reverted to the HHFDC.

On November 15, 2011, the HHFDC Board of Directors approved the subordination of HHFDC's development rights for the Kona Judiciary Complex (refer to attached Exhibit D) subject to the following conditions:

1. The land area subordinated shall not exceed 10 acres;
2. The remainder of the parcel is available for affordable housing development with two accesses from Kealakehe Parkway; and
3. Construction will commence by December 31, 2016 or the development rights revert to HHFDC.

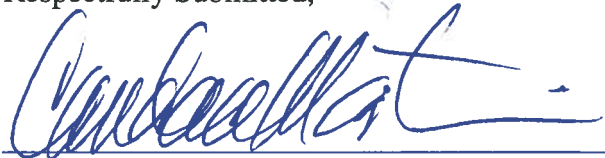
Staff has not solicited comments, as comments were solicited during the FEIS and no land disposition is contemplated at this time.

Staff is recommending issuance of the right-of-entry permit at gratis. DAGS is a State agency and the Kona Judiciary Complex will be a State facility.

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. Authorize the issuance of a right-of-entry permit to Department of Accounting and General Services 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. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



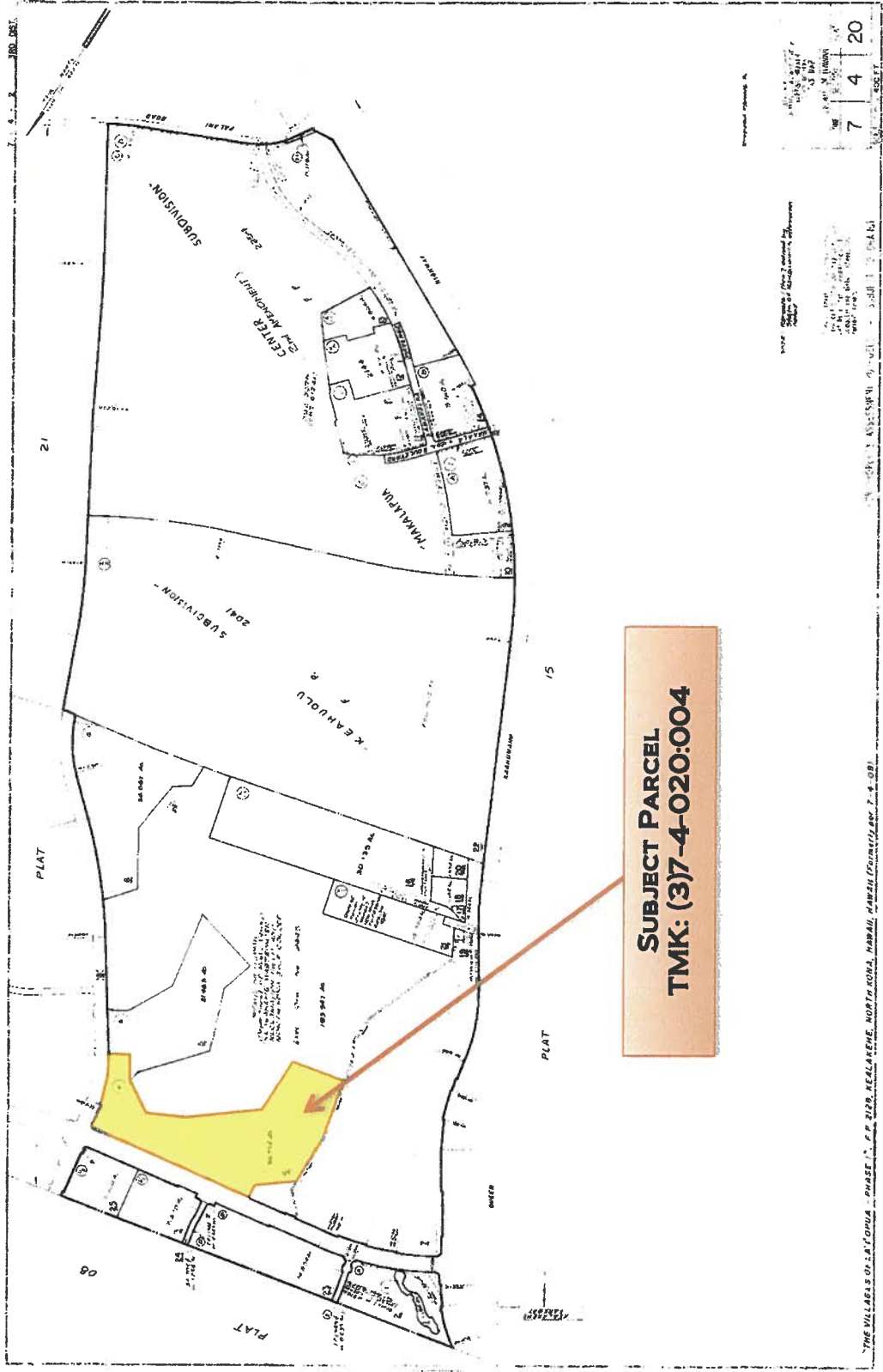
Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

EXHIBIT A



**SUBJECT PARCEL
TMK: (3)7-4-020:004**

THE VILLAGES OF IAI'OPUA - PHASE I - P.P. 2128, KEALAKEHE, NORTH KOHA, MAHAI, KAUAI (FORMERLY, DEC. 7, 1981)

Scale of Horizontal Distances



NEIL ABERCROMBIE
GOVERNOR OF HAWAII

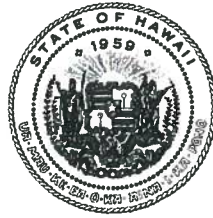


EXHIBIT B

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
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

March 20, 2013

EXEMPTION NOTIFICATION

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

Project Title: Issuance of Right-of-Entry Permit to Department of Accounting and General Services for the Purposes of Conducting a Biological and Archaeological Inventory Survey on State lands.

Project / Reference No.: PSF 13HD-034

Project Location: Kealakehe, North Kona, Hawaii; Tax Map Key: (3) 7-4-020:004.

Project Description: The Department of Accounting and General Services (DAGS), on behalf of the State of Hawaii Judiciary (Judiciary) is proposing to build a new Judiciary Complex in Kona for the West Hawaii service area of the Third Circuit Court.

In order to address a long-standing need for a new Judiciary complex in the West Hawaii service area, DAGS commissioned a Site Selection Study and Environmental Impact Statement (EIS) to identify candidate locations for the siting of the future Kona Judiciary Complex. The Final EIS (FEIS) was published in *The Environmental Notice* on December 23, 2011.


DAGS has determined the subject parcel to be the best fit for the new Judiciary complex. The FEIS did not specifically identify any biological species or archaeological features on the site. However, they desire to confirm this finding and avoid potential problems in the future by conducting a biological/archaeological inventory survey of the specific site.


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. 5, that states "Basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource."

Consulted Parties: Staff has not solicited comments, as comments were solicited during the FEIS and no land disposition is contemplated at this time.

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.



William J. Aila, Jr., Chairperson
N  3/5/13

Date

MEMORANDUM OF UNDERSTANDING

PURPOSE: The purpose of this Memorandum of Understanding between the **DEPARTMENT OF LAND AND NATURAL RESOURCES ("DLNR")** and the **HOUSING FINANCE AND DEVELOPMENT CORPORATION ("HFDC")** is to establish procedures to implement the valuation and compensation for the conveyance of land by DLNR to HFDC for the development of housing projects from the public land trust, as defined in §10-2, Hawaii Revised Statutes, at Lahaina, Maui, and Kealakehe, Hawaii, pursuant to Act 318, Session Laws of Hawaii ("SLH") 1992. For the purpose of this Memorandum of Understanding, the public land trust lands are hereinafter referred to as "public lands."

- I. DLNR is the administrator and trustee of the public lands.
- II. HFDC is responsible for effectuating the Governor's Comprehensive Housing Program.
- III. HFDC's housing program includes the utilization of public lands on the Island of Maui as identified by Tax Map Key No. (2) 4-5-21: Por. 3, 4 and 5, for the development of the Lahaina master planned community, and on the Island of Hawaii as identified by Tax Map Key No. (3) 7-4-8: Por. 12 and 17 for the development of the Kealakehe master planned community.
- IV. Act 318, SLH 1992 provides for the valuation of and compensation to Office of Hawaiian Affairs ("OHA") for public lands conveyed by DLNR to HFDC for the development of housing projects.

In consideration of the above, the parties hereby agree to the following:

- I. Valuation of housing project lands:
 - A. At the request of HFDC, DLNR shall convey to HFDC the public lands, or so much thereof, as the HFDC shall determine as required at that time for the development of a housing project, said lands hereinafter referred to as "housing project lands." Housing project lands shall be those lands determined by HFDC for residential and non-residential uses. Non-residential uses shall include but not be limited to the following:

1. Recreational community centers
2. Church/day-care facilities
3. Neighborhood/community commercial sites
4. Collector roads
5. State sponsored golf course and clubhouse
6. Reservoir site

Public lands within the Lahaina master planned community and the Kealakehe master planned community designated by HFDC for public and quasi-public uses and facilities, hereinafter referred to as "omitted lands," are not housing project lands and are not intended to be conveyed by DLNR to HFDC. The omitted lands are as follows:

1. Within the proposed Lahaina master planned community:
 - a. North school site
 - b. South school site
 - c. North park site
 - d. South park site
 - e. Electrical substation site
 - f. Existing electrical easement
 - g. Existing waterline easement
 - h. Existing roadway easement
 - i. By-pass road
2. Within the proposed Kealakehe master planned community:
 - a. County golf course site
 - b. Kealakehe high school site
 - c. Elementary school site
 - d. Reservoir site--DLNR/DOWALD
 - e. Archaeological park and archaeological (burial) preserve sites
 - f. Uhi Uhi preserve park site
 - g. State Department of Transportation (DOT) mauka-makai roadways and DOT setback along Queen Kaahumanu Highway
 - h. County mid-level regional roadway
 - i. County park facilities

The omitted lands shall be conveyed by DLNR to the appropriate agencies having jurisdiction over their respective uses (i.e., school sites to the State Department of Education, park sites to the County, major highways to DOT, utility sites and easements to utility companies, etc.).

B. Only housing project lands including residential and non-residential uses shall be appraised for Fair Market Valuation for the purpose of conveyance of public lands by DLNR to HFDC in accordance with the applicable provisions of Act 318, SLH 1992.

C. Fair Market Valuation of the housing project lands shall be determined on a per acre basis pursuant to appraisals performed in accordance with the Uniform Standards of Professional Appraisal Practices as adopted by the State Department of Commerce and Consumer Affairs, not more than ninety days before the conveyance of the land to HFDC.

II. Method of Compensation to OHA and DLNR when housing project lands are conveyed from DLNR to HFDC:

A. OHA shall be compensated by either one or more of the following methods with an amount equal to 20% of the Fair Market Value of the housing project lands conveyed:

1. Cash Payment at closing; or
2. Delivery of Purchase Money Mortgage securing any principal balance owing after the date of conveyance together with annual simple interest based on the 15-year treasury rate at the time of closing; or
3. Full or partial payment through the conveyance of parcel(s) of vacant land with off-site infrastructure for residential development; or
4. Full or partial payment through the conveyance of parcel(s) of land with improved residential lots and/or housing units.
5. Any combination of the alternatives above set forth and numbered 1 to 4, inclusive.

B. DLNR shall convey the housing project lands to HFDC for a consideration of One Dollar (\$1.00).

III. Acquisition processing procedures:

Procedures for the acquisition of public lands by HFDC from DLNR for the development of housing projects shall be in accordance with Act 318, SLH

1992 and HFDC's Action Plan Worksheet dated May 22, 1992.

IV. Attachments:

- A. Act 318, SLH 1992
- B. HFDC Action Plan Worksheet dated May 22, 1992
- C. General Instructions to Appraisers
- D. Uniform Standards of Professional Appraisal Practices

V. Encumbrances:

Except for the public lands at Lahaina already approved for withdrawal from General Lease S-4229, after conveyance of public lands at Lahaina by DLNR to HFDC, DLNR may continue to lease the public lands at Lahaina to Pioneer Mill Co. until expiration of the existing lease.

VI. Subject to approval:

This Memorandum of Understanding shall take effect upon its approval by the Board of Land and Natural Resources of DLNR and the Board of Directors of HFDC.

DEPARTMENT OF LAND AND NATURAL RESOURCES

By [Signature]
Its Chairman

Date: January 4, 1993

HOUSING FINANCE AND DEVELOPMENT CORPORATION

By [Signature]
Its Executive Director

Date: Aug 31, 1992

APPROVED AS TO FORM

[Signature]
Deputy Attorney General

Date: September 21, 1992

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EXHIBIT D

NEIL ABERCROMBIE
GOVERNOR



KAREN SEDDON
EXECUTIVE DIRECTOR

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DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

877 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII
11:DEV/0150

November 15, 2011

Mr. Ralph Morita, Public Works Manager
Department of Accounting and General Services
P. O. Box 119
Honolulu, Hawaii 96810

Mr. Jeffrey H. Overton
Group 70 International, Inc.
925 Bethel Street, 5th Floor
Honolulu, Hawaii 96813

Dear Messrs. Morita and Overton:

Subject: Candidate Site G
Village 9, Villages of La'i'opua
Kona Judiciary Complex Site Selection
Kona District, Island of Hawaii, Hawaii
TMK (3) 7-4-020: 004 (portion of)

On November 10, 2011, the Board of Directors of the Hawaii Housing Finance and Development Corporation (HHFDC) approved the subordination of HHFDC's development rights to Village 9 at the former Villages of La'i'opua project in Kealakehe, North Kona, Hawaii, TMK (3) 7-4-020: 004 (portion of), described as Candidate Site G in the Draft Environmental Impact Statement for the Kona Judiciary Complex Site Selection, subject to the following conditions:

1. The subordinated portion of Village 9 for the Kona Judiciary Complex shall not exceed 10 acres;
2. The balance of Village 9 shall be usable for development of affordable housing, including having two accesses from Kealakehe Parkway; and
3. Construction for the Kona Judiciary Complex shall commence by December 31, 2016, unless extended at the sole discretion of the Executive Director, or

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Mr. Ralph Morita, Public Works Manager
Mr. Jeffrey H. Overton
November 15, 2011
Page 2

development rights to the subordinated portion of Village 9 reverts back to HHFDC.

A copy of the approved For Action is enclosed for your information.

The HHFDC Board also requested for information on the amounts and schedule of Capital Improvement Program (CIP) funds already approved and planned for this project. Please forward this information.

Should there be any questions or comments regarding this matter, please contact Stan S. Fujimoto, Project Manager, at 587-0541.

Sincerely,



Karen Seddon
Executive Director

Enclosure

c: ✓ William J. Aila, Jr., Chairperson, BLNR, w/enclosure