

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

May 23, 2014

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

PSF No.: 14OD-015

OAHU

Sale of Remnant to Kole Group, LLC; Withdrawal from Governor's Executive Order No. 1598, Waimanalo, Koolaupoko, Oahu; Tax Map Key: (1) 4-1-024:portion of 068

APPLICANTS:

Kole Group, LLC, a domestic limited liability company.

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 068, shown on the map attached as **Exhibit A**.

AREA:

0.346 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: Applicant shall be required to:

1. Provide survey maps and descriptions for both remnants according to DAGS standards and at the Applicant's own cost; and
2. Pay for an appraisal to determine the one-time payment of fair market value for both remnants.

REMARKS:

The Applicant, recently acquired the abutting property, and requests the purchase of the portion of abandoned irrigation ditch State-owned lands and intends to consolidate such portion with their adjacent property. 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 Applicant is the fee owner of private properties identified as tax map key (1) 4-1-024:033, as confirmed by the warranty deed recorded as A-51160363 on January 3, 2014.

The subject portion of ditch is located between the Applicant's property and the adjacent private properties, identified as tax map key (1) 4-1-024:034, 036, and 108. Therefore, staff believes the subject portion of ditch, due to its size, is incapable for development or

remnant.

Owners of the adjacent private, identified as Parcel 034, 036, and 108 have indicated in writing that they have no objection to the proposed sale of the remnant to the applicant.

Department of Planning and Permitting, Department of Agriculture, Board of Water Supply, Division of Aquatic Resources, and Department of Facility Maintenance have no comments/objections to the request.

Department of Health, State Historic Preservation Division, Commission on Water Resource Management, and Office of Hawaiian Affairs have not responded as of the suspense date.

Department of Hawaiian Home Lands (“DHHL”) provided its comment at **Exhibit C**, in which DHHL requests documentation to support the trust land status, DHHL’s entitlement to the subject portion of ditch, and protection of DHHL’s water rights. Article XII, Section 1 of the Hawaii State Constitution provides that DHHL shall be entitled to 30% of State receipts derived in three situations, namely, (1) leasing of sugarcane cultivated lands; (2) water licenses; and (3) leasing of lands cultivated as sugarcane lands as of November 7, 1978. The subject remnant is formerly a portion of an irrigation ditch, which has been abandoned. It was not a portion of sugarcane land in 1978 and the subject request is not leasing for sugarcane cultivation. In addition, the request is not a water license. Therefore, staff respectfully disagrees with the contents of DHHL’s letter at Exhibit C.

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. There are no other pertinent issues or concerns, and staff recommends the Board authorize the sale of the subject remnant according to the terms and conditions described above.

**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) 4-1-024:033 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, as appropriate, of the subject remnant by the Applicant.
6. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the sale of the subject remnant to Kole Group, LLC 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.

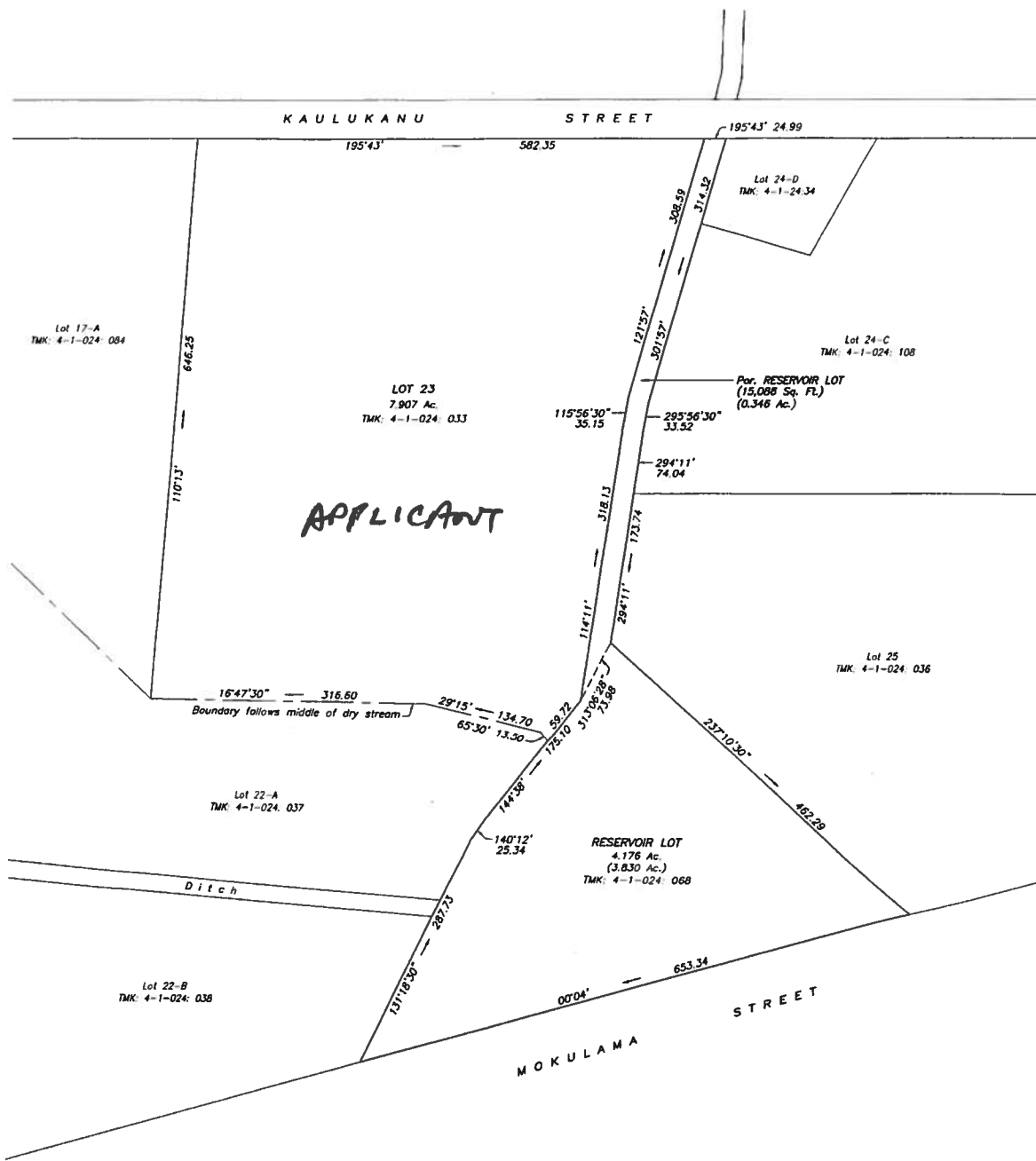
Respectfully Submitted,



Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
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William J. Aila, Jr., Chairperson



This work was prepared by me  
or under my supervision

GIL P. BUMANGLAG  
Licensed Professional Land Surveyor  
Certificate Number 8948



MAP SHOWING  
LOT 23 AND RESERVOIR LOT  
OF "WAIMANALO FARM LOTS"  
AS SHOWN ON REGISTERED MAP 4063  
Tax Map Key: (1) 4-1-024: 033 & 068  
At WAIMANALO, KOOLAUPOKO, OAHU, HAWAII

### 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 14OD-015  
 Project Location: Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-24:por. 68  
 Project Description: Sale of Remnant  
 Chap. 343 Trigger(s): Use of State Land

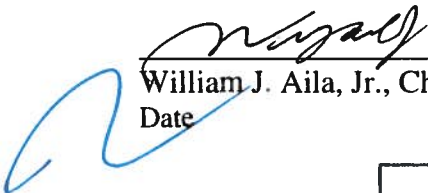
Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental 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 applicant does 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  
DEPARTMENT OF HAWAIIAN HOME LANDS

P O BOX 1879  
HONOLULU HAWAII 96818

February 28, 2014

MEMORANDUM

TO: Barry Cheung, District Land Agent  
Department of Land and Natural Resources

FROM: Jobie M. K. Masagatani, Chairman  
Hawaiian Homes Commission *J.M. Masagatani*

SUBJECT: Request for Comments on Kole Group, LLC Request for  
Sale of Remnant, Waimanalo, Koolaupoko, Oahu,  
TMK (1) 4-1-024:portion of 068

The Department of Hawaiian Home Lands (DHHL) received the above-mentioned letter dated January 27, 2014, regarding the draft Board of Land and Natural Resources submittal for the above-referenced request involving State lands. DHHL offers the following comments:

(1) Trust Land Status. DHHL requests that it be provided with supporting documentation to verify the Trust Land status for the subject parcel by either the Department of Land and Natural Resources (DLNR), or the applicant, prior to the authorization of the sale of this subject parcel.

In the January 27, 2014, letter, DLNR indicated that the Trust Land status for the remnant parcel was not DHHL 30 percent entitlement lands pursuant to the Hawaii State Constitution. However, no documentation was provided to verify that conclusion. The subject parcel is located in the ahupuaa of Waimanalo, which was included in the original Hawaiian Homes Commission Act, but excluded based on "sugar lands." Preliminary analysis indicates that portions of the subject parcel may, at one time, have been utilized for sugar cane cultivation and is therefore subject to Article XII, Section I, of the Hawaii State Constitution, and DHHL is entitled to 30 percent of the revenue generated by the sale of this property.

EXHIBIT "C"

Mr. Barry Cheung  
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2) Protection of DHHL's water rights. DHHL is entitled to 30 percent of the receipts collected from water licenses issued by the State per Article XII, Section I, of the State Constitution. Additionally, per the State Water Code as well as the Hawaiian Homes Commission Act, the Commission on Water Resource Management shall "reserve" water for future DHHL needs to the extent applicable, based on DHHL projections. As a result, the sale of the property, which includes an abandoned irrigation ditch, should address these rights and/or DHHL's right to revenue or to water in the irrigation ditch.

Mahalo for the opportunity to comment. If you have further questions, please contact Andrew Choy at (808) 620-9279 or email him at [andrew.h.choy@hawaii.gov](mailto:andrew.h.choy@hawaii.gov).