

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

October 10, 2014

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

PSF No. 10OD-113

OAHU

Amend Prior Board Action of December 9, 2010, Item D-6, Cancel Governor's Executive Order (GEO) Nos. 1330, 1786, and 1795, and Reset Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Ala Wai Small Boat Harbor, Beach Control and Related Purposes, Kewalo and Kalia, Waikiki, Honolulu, Oahu, Tax Map Keys: (1) 2-1-58: Various, (1) 2-3-37: Various, (1) 2-6-01, 02, 04, 05, 10: Various, and (1) 3-1-30, 31, 32: Various.

The Amendment is Regarding the Issuance of Revocable Permit to the City and County of Honolulu for Beach Management Purposes over Fort DeRussy Beach.

BACKGROUND:

At its meeting on December 9, 2010, item D-6 (**Exhibit 1**), the Board approved the cancellation and reset aside of the subject State lands to the Department of Land and Natural Resources' Division of Boating and Ocean Recreation (DOBOR). The 2010 action was for housekeeping purposes following the creation of DOBOR, pursuant to Act 272, SLH 1991.

Among the EOs scheduled to be cancelled and reset aside, EO 1786 covers the beach and water area from the Ala Wai Canal to the Elks Club, including Fort DeRussy Beach, identified as tax map key (1) 2-6-005:seaward of 001.

To date, the executive orders necessary for the cancellation of the prior executive orders and reset-aside of the lands have not been completed.

REMARKS:

Recently, the Department noted that multiple tent sites began appearing on Fort DeRussy Beach. Upon further inspection, the Department believes the tent sites belong to homeless population in the vicinity. Following research and discussions among the respective divisions of the Department, staff reached the conclusion that there are no rules of the

Department in effect for this area. However, the Public Lands statute, Hawaii Revised Statutes Chapter 171, remains applicable to the area. The Department met with the City and County of Honolulu and sought its assistance to have consistent management along Waikiki beach. The City agreed to assume control over the area on a short-term basis for health and safety reasons via a revocable permit. The Department appreciates the City's assistance in this matter and recommends the issuance of revocable permit at gratis to the City for purposes of managing the use of the beach in accordance with the City's ordinances and rules. The City will not have any responsibility for erosion control, sand replenishment, or sand cleaning on the beach.

The revocable permit to the City is intended to allow proper authority for the City to manage the use of the beach, until the issuance of executive orders to DOBOR. For the Board's information, Land Division will follow-up on the issuance of those requested executive orders.

Pending the issuance of the revocable permit, the issuance of an immediate right-of-entry will authorize the City to commence managing the area.

Further, the area under the revocable permit is depicted by hatch marks on the aerial map attached as **Exhibit 3**. The mauka boundary of the permit area is delineated by the makai edge of the paved walkway on the beach, and the makai boundary of the permit area is delineated by the mean lower low water line. The combined duration of the right-of-entry and revocable permit is anticipated not to exceed one year.

There are no other pertinent issues or concerns. Staff has no objection to the request.

RECOMMENDATION: That the Board amend its prior Board action of December 9, 2010, under agenda item D-6 by:

1. Authorizing the issuance of a revocable permit to the City and County of Honolulu covering the subject area for beach management purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A 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. See **Exhibit 2**;
 - B The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - C Review and approval by the Department of the Attorney General and by the

Corporation Counsel for the City and County of Honolulu; and

- D Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorizing the issuance of an immediate management right-of-entry to the City and County of Honolulu over 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; and
 - B Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Except as amended hereby, all terms and conditions listed in its December 9, 2010 approval shall remain the same.

Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

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

December 9, 2010

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

PSF No.: 100D-113

OAHU

Cancel Governor's Executive Order (GEO) Nos. 1330, 1786, and 1795, and Reset Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Ala Wai Small Boat Harbor, Beach Control and Related Purposes, Kewalo and Kalia, Waikiki, Honolulu, Oahu, Tax Map Keys: (1) 2-1-58: Various, (1) 2-3-37: Various, (1) 2-6-01, 02, 04, 05, 10: Various, and (1) 3-1-30, 31, 32: Various.

CONTROLLING AGENCY (of subject executive order):

Board of Harbor Commissioners now the Department of Transportation, Harbors Division.

APPLICANT (requesting set aside):

Department of Land and Natural Resources, Division of Boating and Ocean Recreation

LEGAL REFERENCE:

Act 272, SLH 1991 and Section 171-11, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Lot 2, Map 1, Land Court Application 852, covered by Certificate of Title 12829, issued to the Territory of Hawaii.

Portion of Lot 5-A-1, Map 4, Land Court Application 852, covered by Certificate of Title 12829, issued to the Territory of Hawaii.

Portion of Lot 5-A-2-A, Map 5, Land Court Application 852, covered by Certificate of Title 42731, issued to the Territory of Hawaii.

Portion of Lot 5-A-2-B-1, Map 6, Land Court Application 852, covered by Certificate of Title 42731, issued to the Territory of Hawaii.

All of Lot 1, Map 2, Land Court Application 1092, covered by Certificate of Title 42731

Portion of Grant 2789 to W.L. Moehonua, covered by Deed of E. Coit Hobron and Hikealani Hobron to Minister of Interior, dated July 1,

EXHIBIT "1"
D-6

December 9 2010

1896.

Portion of Grant 2789 to W.L. Moehonua, conveyed by Deed of E. Coit Hobron by Guardian, et al., to the Territory of Hawaii, dated May 29, 1920.

Portion of former underwater area of Kalia Fishery transferred to the Territory of Hawaii by Presidential Proclamation Nos. 1818 and 1856, dated October 25, 1927 and October 27, 1928, respectively.

Portions of the former underwater areas of the Kukuluaeo and Kalia Fisheries not covered by any Presidential Proclamation.

All situated at Kewalo and Kalia, Waikiki, Honolulu, Oahu, identified by Tax Map Keys: (1) 2-1-58: Various, (1) 2-3-37: Various, (1) 2-6-01, 02, 04, 05, 10: Various, and (1) 3-1-30, 31, 32: Various, as shown on the attached maps labeled Exhibits A and B.

AREA (acres, more or less):

GEO No. 1330:	8.443	
Withdrawn by GEO No. 2307	(1.545)	
Withdrawn by GEO No. 3855	<u>(3.045)</u>	
Remainder of GEO No. 1330		3.853

GEO No. 1795:	153.518	
Withdrawn by GEO No. 2047	(9.664)	
Withdrawn by GEO No. 2216	(22.464)	
Withdrawn by GEO No. 2306	(0.526)	
Addition by GEO No. 2575	<u>2.071</u>	
Remainder of GEO No. 1795		122.935

GEO No. 1786:	496.000	
Withdrawn by GEO No. 2215	(22.464)	
Withdrawn by GEO No. 3934	<u>(0.407)</u>	
Remainder of GEO No. 1786		<u>473.129</u>

To be Reset Aside to DOBOR for Ala Wai Small Boat Harbor, Beach Control and Related Purposes		<u>599.917</u>
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ZONING:

State Land Use District:	Urban
County of Honolulu CZO:	Resort/Hotel/General Preservation

TRUST LAND STATUS:

Section 5(a)(b) and (e) lands of the Hawaii Admission Act.

DHHL 30% entitlement lands pursuant to the State Constitution: NO

December 9, 2010

CURRENT USE STATUS:

GEO No. 1330 setting aside 3.853 acres to the Board of Harbor Commissioners, for Kewalo and Ala Wai Yacht Basins purposes.

GEO No. 1795 setting aside 122.935 acres to the Board of Harbor Commissioners, for Ala Wai Boat Harbor purposes.

GEO No. 2170 setting aside 0.426 acres to DOT for Ala Wai Boat Harbor purposes.

GEO No. 1786 setting aside 473.129 acres to the Board of Harbor Commissioners for beach control purposes.

PURPOSE OF SET ASIDE:

Ala Wai Small Boat Harbor, Beach Control and related purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules 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 proposed action 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 beyond that previously existing," and Exemption Class No. 4, which exempts "Minor alterations in the condition of land, water, or vegetation."

The proposed action is an existing authorized use of State land, structures, and facilities that will continue without interruption or change in use (see Exhibit C).

Inasmuch as the Chapter 343 environmental requirements apply to Applicant's future use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

REMARKS:

The Ala Wai Small Boat Harbor is one (1) of fifty-four (54) small boat harbors, launching ramps, jetties, wharves and landings statewide transferred from the Department of Transportation to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation by Act 272, SLH 1991.

To date, eighteen (18) of the above facilities have been either set aside or approved by the Board of Land and Natural Resources for set aside to the Department's Division of Boating and Ocean Recreation.

Located on Oahu's south shore, between Waikiki and Ala Moana beaches, the Ala Wai Small Boat Harbor is the State's major

recreational boat harbor. It consists of about 700 berths with water and electricity available and over 60 moorings accommodating boats up to eighty (80) feet in length. There are also dry berthing spaces, a harbor agent's office, comfort stations, showers, paved parking, a launching ramp, and pier.

GEO No. 1330, issued in 1949, set aside government land at both the Kewalo and Ala Moana basins to the Board of Harbor Commissioners. In 1951 construction of the Ala Wai Small Boat Harbor began with the dredging of the harbor entrance and the building of the seawall on the eastern shoreline of Magic Island.

GEO No. 1795, issued in 1957, set aside portions of the filled and underwater areas of the Kalia Fishery to the Board of Harbor Commissioners. Over the next three (3) decades several major construction projects were completed making the Ala Wai Small Boat Harbor substantially what it is today.

In 1962 GEO No. 2047 withdrew 9.664 acres from GEO No. 1795, which was reset aside to the City and County of Honolulu for the first increment of Magic Island.

In 1964 DOT requested that a 22.464-acre portion of GEO No. 1795, being the Hilton Lagoon and adjacent Duke Kahanamoku Beach, be withdrawn because it was not being used for the public purpose stated in GEO No. 1795. Accordingly, the area was withdrawn by GEO No. 2216 and currently remains unencumbered.

During the late 1960s land was withdrawn from GEO No. 1795 by GEO No. 2306 and GEO No. 2307 withdrew land from GEO No. 1330 as part of a land exchange between the State and the Dillingham Corporation to acquire Dillingham Corporation's Honolulu Harbor properties. However, the land exchange was eventually abandoned when the State chose to purchase the properties outright. The issuance of GEO No. 2575 reset aside to DOT, as an addition to the Ala Wai Small Boat Harbor (GEO No. 1795), the lands previously withdrawn by GEO Nos. 2306 and 2307. The 3.045-acre Kewalo basin portion of GEO No. 1330 was withdrawn by GEO No. 3855 leaving 3.853 acres remaining under the operation of GEO No. 1330.

GEO No. 1786 was issued to DOT for beach control purposes covering 496 acres of shore and ocean waters stretching from the confluence of the Ala Wai Canal and Ala Wai Yacht basin to the Elks Club, as shown on the attached map labeled Exhibit D. The withdrawal of the 22.464-acre Hilton Lagoon and Duke Kahanamoku beach site by GEO No. 2215 and 0.407 acres on the seaward side of the Waikiki Natatorium by GEO No. 3934 leaves GEO No. 1786 with a remainder of 473.129 acres.

Except for the Office of Hawaiian Affairs no other agencies were solicited for comments because this action was legislatively mandated. The Office of Hawaiian Affairs had no comments.

December 9, 2010

RECOMMENDATION: That the Board:

1. Approve of and recommend to the Governor issuance of an executive order canceling Governor's Executive Order Nos. 1330, 1786, and 1795, issued to the Board of Harbor Commissioners, 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 next following the date of the setting aside.
 - C. Review and approval by the Department of the Attorney General.
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

2. Approve of and recommend to the Governor the issuance of an executive order resetting aside the lands formerly encumbered by Governor's Executive Order Nos. 1330, 1786, and 1795, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, for Ala Wai Small Boat Harbor, Beach Control and other related purposes, 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 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 next following the date of the setting aside.
 - C. Review and approval by the Department of the Attorney General.

December 9, 2010

- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.


Respectfully Submitted,



Gary Martin
Land Agent

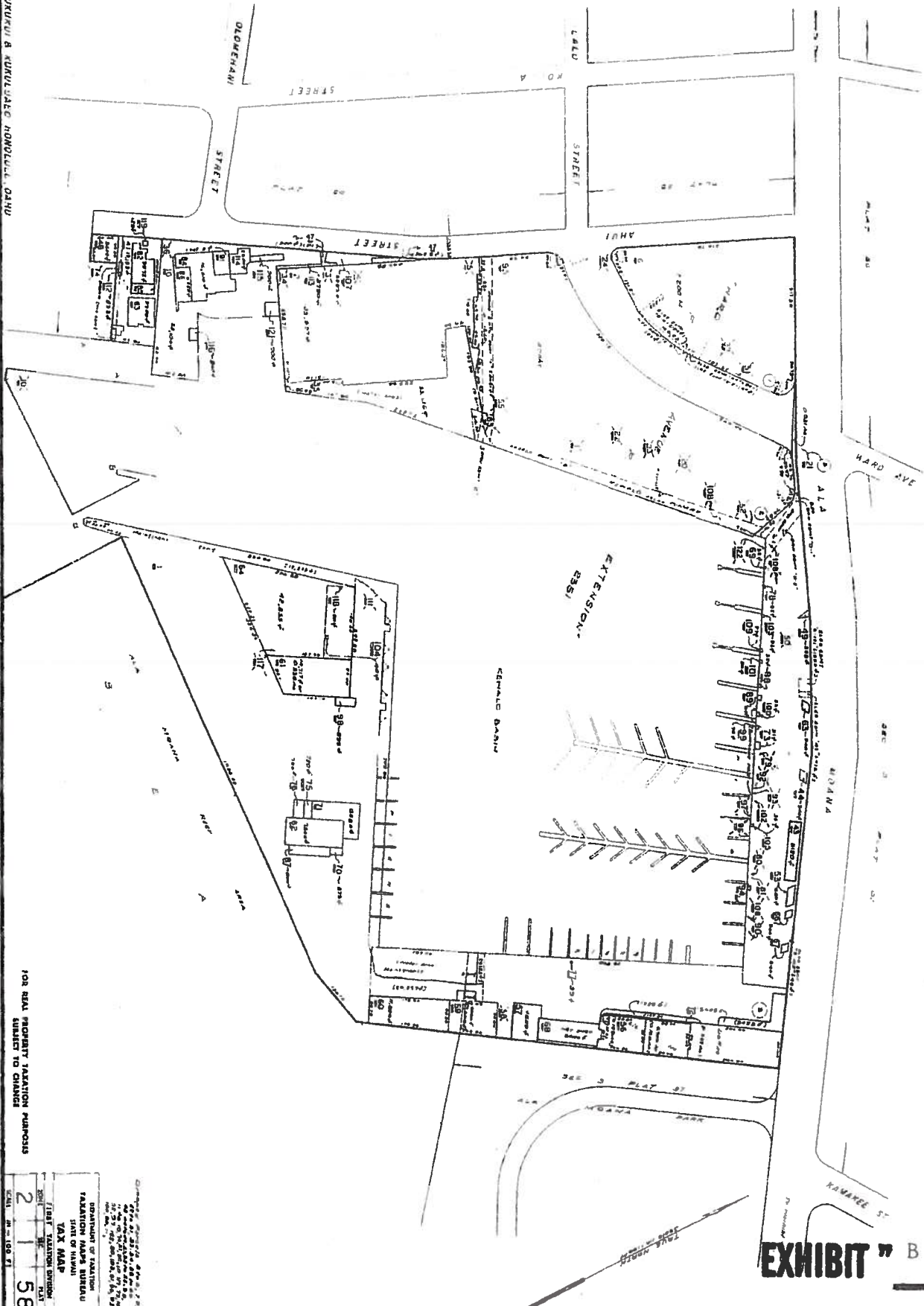
APPROVED FOR SUBMITTAL:



 Laura H. Thielen, Chairperson

EWS NO 340 (REV 8-22-83)
 SOURCE FROM E BROS OCHA 882, 1941
 DATE 10/15/83
 BY [unclear]

FOR KAKAIAKULU & KUNIAWALE HONOLULU, OAHU



FOR REAL PROPERTY TAXATION PURPOSES
SUBJECT TO CHANGE

DEPARTMENT OF REAL ESTATE
 TAX MAP
 STATE OF HAWAII
 2 1 58
 1983

EXHIBIT B

2-1-88 1ST DIV



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 12, 2010

EXEMPTION NOTIFICATION

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

Project Title: Cancel Governor's Executive Order Nos. 1330, 1786, 1795, 2575 and Reset Aside to DLNR, Division of Boating and Ocean Recreation for Ala Wai Small Boat Harbor, Beach Control and Related Purposes, Kewalo and Kalia, Waikiki, Honolulu, Oahu, TMK: (1) 2-1-58: Various, (1) 2-3-37: Various, (1) 2-6-01, 02, 04, 05, 10: Various, and (1) 3-1-30, 31, 32: Various.

Project/Reference No.: 10OD-113

Project Location: Kewalo and Kalia, Waikiki, Honolulu, Oahu

Project Description: Cancel executive orders and issuance of an executive order resetting aside the land.

Exemption Class No.: In accordance with Hawaii Administrative Rules, Section 11-200-8(A), the subject project is considered to be 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 beyond that previously existing," and No. 4, that states, "Minor alterations in the condition of land, water or vegetation."

Consulted Parties: Division of Boating and Ocean Recreation

The proposed exemption applies as this action is simply a transfer of management jurisdiction to the Division of Boating and Ocean Recreation. The current use of the land is authorized and no changes are expected as a result of this set aside. The set aside is not part of a multi phase project and no significant cumulative impacts are expected.

Recommendation: That the Board find that this project will probably have minimal or no significant effect on the environment and, therefore, is exempt from the preparation of an environmental assessment.

Laura H. Thielen, Chairperson

Date

FIRST DISTRICT
ZONE
213
DATE
YEAR



ALA Wai Small Boat Harbor

Beach Control
(473.129 acres)

Elks Club

EXEMPTION NOTIFICATION

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

Project Title: Revocable Permit for Beach Management Purposes on Fort DeRussy Beach

Project / Reference No.: PSF 100D-113

Project Location: Waikiki, Honolulu, Oahu, TMK (1) 2-6-005:seaward of 001.

Project Description: Beach management purposes

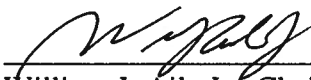
Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4), 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"

The applicant is not planning of any improvements on the subject location. As such staff believes that the proposed event would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties: Not applicable

Recommendation: It is recommended that the Board find 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.



 William J. Aila Jr., Chairperson
 Date **SEP 29 2014**

EXHIBIT 2



EXHIBIT 3