

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

July 8, 2011

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

PSF No.: 11HD-083

Hawaii

Cancellation of Governor's Executive Order No. 2413 and Reset-Aside to the Department of Agriculture for Non-Agricultural Park Lands Purposes, Waikoloa and Lalamilo, Waimea, South Kohala, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 6-6-05:28.

CONTROLLING AGENCY:

Department of Agriculture

APPLICANT:

Department of Agriculture

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Waikoloa and Lalamilo situated at Waimea, South Kohala, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/ 6-6-05:28, as shown on the attached map labeled Exhibit A.

AREA:

3.675 acres, more or less.

ZONING:

State Land Use District: Agriculture  
County of Hawaii CZO: A-5a (por.) and A-1a (por.)

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:

Governor's Executive Order No. 2413 setting aside 3.675 acres to the Department of Agriculture for Kamuela Vacuum Cooling Plant Site purposes.

PURPOSE OF SET ASIDE:

Non-Agricultural Park Lands purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit B attached.

APPLICANT REQUIREMENTS:

None.

REMARKS:

Land Division files show that in the early 1960s, the Kamuela Farm Bureau (Bureau) approached the Department of Agriculture (DOA) and the Department of Land and Natural Resources with a request for State lands on which to construct a vacuum cooling plant for locally grown produce. The Bureau explained that the construction and operation of such a plant would help prevent "soft rot" decay of produce before reaching market.

At its meeting of April 23, 1965, Item F-6, the Board of Land and Natural Resources approved the set-aside of two acres of the subject lands to DOA for the Kamuela Vacuum Cooling Plant Site. Governor's Executive Order No. 2233 thereafter issued to DOA for the plant site. At its meeting of March 8, 1968, Item F-20, the Board approved the set-aside of an additional 1.675 acres to DOA for the site. As a result, Executive Order No. 2233 was canceled and the subject Executive Order No. 2413 issued to DOA for the plant as of November 7, 1968. The cooling plant has occupied the larger land area since that time.

Since its inception, the plant has been operated by the Kamuela Vacuum Cooling Cooperative, Ltd. (KVCCL), an agriculture/fish co-op organized under Hawaii law. KVCCL initially held a month-to-month permit for the site, but at its meeting of May 14,

1993, Item F-1-b, the Land Board consented to DOA's issuance of a 35-year lease to KVCCL. That lease is designated as DOA General Lease No. S-3002 commencing on December 1, 1993 and terminating on November 30, 2028.

By memorandum dated May 4, 2011, the Chairperson of the Board of Agriculture, Russell S. Kokubun, requested the cancellation of Executive Order No. 2413 and the reset-aside of the land to DOA for Non-Agricultural Park Lands purposes. See Exhibit C attached. Chairperson Kokubun explains that KVCCL desires to lease and install a photovoltaic system to offset the rising costs of electricity, but that it requires at least 20-years on DOA Lease S-3002 to negotiate a long-term lease of the photovoltaic system. Chairperson Kokubun additionally explains that DOA issued the lease pursuant to Hawaii Revised Statutes Section 171-59, which sets the maximum term of such a lease at 35-years and contains no provision for extension.

After the issuance of DOA Lease S-3002, the legislature in 2003 enacted HRS Chapter 166E, titled "Non-Agricultural Park Lands." This act provides for the transfer of lands from DLNR to DOA for agricultural purposes other than agricultural parks.<sup>1</sup> In his memorandum, Chairperson Kokubun requests that Executive Order 2413 be canceled and that the subject land be reset-aside to DOA for Non-Agricultural Park Lands purposes pursuant to HRS Chapter 166E. Chairperson Kokubun explains that a set-aside under Chapter 166E will allow DOA to extend the lease to a term that will enable KVCCL to negotiate the lease for the photovoltaic system.

Applicant's proposed use of lands represents the highest and best use of the land under the applicable agricultural zoning, and fully utilizes the lands. The proposed use will be a continuation of a use that has existed for approximately 46 years.

Comments were solicited from the agencies identified below with the results indicated.

<b>Agency</b>	<b>Response</b>
<b>State:</b>	
DLNR-Engineering	The site is located in Flood Zone X. The National Flood Insurance Program does not have any regulations for developments within Zone X. Engineering has no objection to the proposed action.
Office of Hawaiian Affairs	No response.
<b>County:</b>	
Planning Department	The subject parcel is designated Urban

<sup>1</sup> DOA already had authority to accept land designated for agricultural parks pursuant to HRS Chapter 166.

	Expansion by the Hawaii County General Plan Land Use Pattern Allocation Guide Map. Planning Department has no objections.
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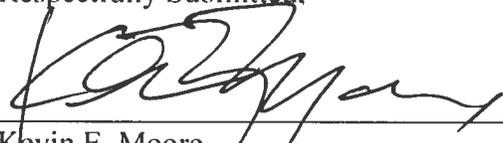
Staff has no objection to the requested action. Once the cancellation of Executive Order No. 2413 and the reset-aside of the land to DOA are completed, DOA will need to request the Land Board's consent to the five-year extension of DOA Lease No. S-3002 pursuant to HRS Section 171-11.

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 of and recommend to the Governor issuance of an executive order canceling Governor's Executive Order No. 2413 and 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; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Agriculture 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; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

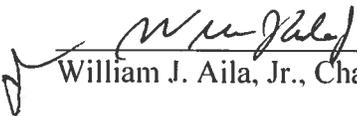
Respectfully Submitted,



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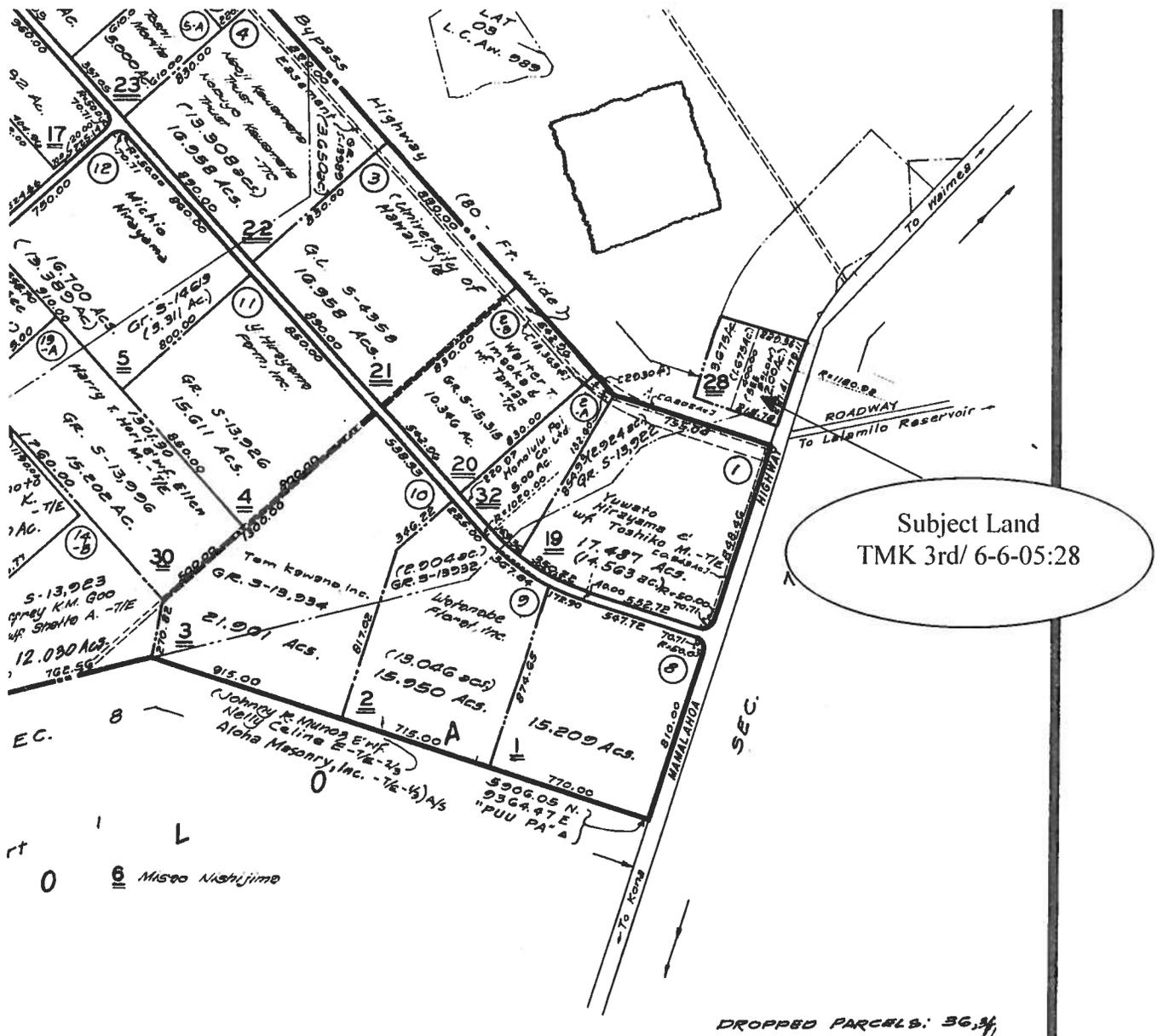
Kevin E. Moore  
District Land Agent

APPROVED FOR SUBMITTAL:



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William J. Aila, Jr., Chairperson



LANT 91TB  
operative, Ltd.)  
600Ac.)

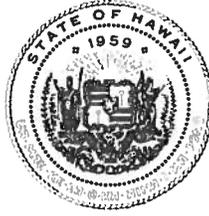
Note: All parcels owned by the State of Hawaii unless otherwise noted.

FOR REAL PROPERTY TAXATION PURPOSES  
SUBJECT TO CHANGE

DEPARTMENT OF TAXATION		
TAXATION MAPS BUREAU		
STATE OF HAWAII		
<b>TAX MAP</b>		
THIRD TAXATION DIVISION		
ZONE	SEC.	PLAT
<b>6</b>	<b>6</b>	<b>05</b>
SCALE: 1 IN. = 500 FT.		

**EXHIBIT A**

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**EXEMPTION NOTIFICATION**

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

**Project Title:** Cancellation of Governor's Executive Order No. 2413 and Reset-Aside to the Department of Agriculture for Non-Agricultural Park Lands Purposes

**Project Number:** PSF No. 11HD-083

**Project Location:** Waikoloa and Lalamilo, Waimea, South Kohala, Hawaii, Tax Map Key: 3<sup>rd</sup>/6-6-05:28

**Project Description:** Cancellation of existing Executive Order No. 2413 for the Kamuela Vacuum Cooling Plant Site and Reset-Aside to the Department of Agriculture for Non-Agricultural Park Lands Purposes

**Consulted Parties:** Department of Land and Natural Resources, Engineering Division; County of Hawaii Planning Department

**Exemption Class No.:** 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 under the following:

Exemption Class No. 1, which 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."

**EXHIBIT B**

The cancellation of Executive Order No. 2413 and the reset-aside of the subject land to the Department of Agriculture (DOA) is intended merely to allow DOA's lessee, Kamuela Vacuum Cooling Cooperative, Ltd. (KVCCL), to obtain a lease extension from DOA that will enable KVCCL to negotiate the lease of photovoltaic equipment to power the plant. DOA will continue to have control and management of the subject land pursuant to Hawaii Revised Statutes Section 171-11, and KVCCL will continue the operation of the vacuum cooling plant and related facilities that began in approximately 1965, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements.

**Recommendation:**

The cancellation of Executive Order No. 2413 and the reset-aside of the subject land to DOA to continue an existing use in itself will probably have minimal or no significant effect on the environment. It is recommended that the Board of Land and Natural Resources find that the proposed lease is exempt from the preparation of an environmental assessment. Inasmuch as the Chapter 343 environmental requirements apply to DOA's or KVCCL's proposed use of the lands, DOA and/or KVCCL shall be responsible for compliance with Chapter 343, HRS, as amended.

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

  
6/22/11  
\_\_\_\_\_  
Date

NEIL ABERCROMBIE  
Governor



State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512

09011  
RUSSELL S. KOKUBUN  
Chairperson, Board of Agriculture

JAMES J. NAKATANI  
Deputy to the Chairperson

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MEMORANDUM

May 4, 2011

DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII

TO: Honorable William J. Aila, Jr.  
Chairperson, Board of Land & Natural Resources

FROM: Russell S. Kokubun *RSK*  
Chairperson, Board of Agriculture

SUBJECT: Request for the Withdrawal of Governor's Executive Order No. 2413  
And Re-Set Aside for Non-agricultural Park Lands Purposes

RECEIVED  
LAND DIVISION  
HILLO, HAWAII

2011 MAY 13 P 1:00 PM

The Board of Agriculture at its meeting of April 26, 2011, approved a request by the Kamuela Vacuum Cooling Cooperative to cancel Governor's Executive Order No. 2413 and re-set aside the subject property to the Department of Agriculture for Non-Agricultural Park Lands purposes. A copy of the approved board submittal is attached.

The Kamuela Vacuum Cooperative ("Coop") desires to lease and install a photovoltaic (PV) solar system to offset the rising costs of electricity, however, General Lease No. S-3002 only has 17 years remaining on its lease term. The Coop requires at least twenty years remaining on the lease term to negotiate a long term lease of the PV system. The original lease was issued pursuant to Section 171-59, Hawaii Revised Statutes (HRS) and does not contain provisions to extend the subject lease to meet the twenty year minimum period to lease the PV system. Chapter 166E, HRS, does provide the Coop with an opportunity to extend its lease and consummate a lease agreement for the installation of the PV system.

Therefore, the department respectfully requests your assistance in acquiring land board approval for the cancellation of Governor's Executive Order No. 2413 and the re-set aside of the subject property and General Lease No. S-3002 to the Department of Agriculture for Non-Agricultural Park Lands purposes.

Should you have any questions regarding this matter, please feel free to contact Randy Teruya, Agricultural Asset Manager, at 973-9478.

Attachment

*5-11 by: HDLO*

2011 MAY 11 02:54



EXHIBIT C

extra

STATE OF HAWAII  
DEPARTMENT OF AGRICULTURE  
AGRICULTURAL RESOURCE MANAGEMENT DIVISION  
HONOLULU, HAWAII 96814

April 26, 2011

Board of Agriculture  
Honolulu, Hawaii

Subject: REQUEST FOR PERMISSION TO SUBMIT A REQUEST TO THE BOARD OF LAND AND NATURAL RESOURCES TO WITHDRAW GOVERNOR'S EXECUTIVE ORDER NO. 2413 AND TO RE-SET ASIDE THE SUBJECT PROPERTY TO THE DEPARTMENT OF AGRICULTURE FOR NON-AGRICULTURAL PARK LANDS PURPOSES AND TO EXTEND THE TERM OF GENERAL LEASE NO. S-3002 LALAMILO, WAIMEA, SOUTH KOHALA, HAWAII

Authority: Section 171-11, Hawaii Revised Statutes (HRS)

Lease: General Lease No. S-3002, dated September 22, 1993

Lessee: Kamuehn Vacuum Cooling Cooperative

Land Area: 3.675 acres

Tax Map Key: 3<sup>rd</sup> Division: 6-6-005:028

Land Status: Property set aside to the Department of Agriculture by Governor's Executive Order No. 2413, dated November 7, 1968

Lease Term: 35 years, December 1, 1993 to November 30, 2028

Rent: \$2,120.00 per year until next rent reopening on December 1, 2013

Facilities Capital Recovery Fee: \$203.00 per month for the term of the lease, in addition to annual rent.

Character of Use: Agricultural Processing – means the processing of agricultural or aquacultural products, including marshalling, cooling, treating or transshipping, which are grown, raised or produced within the State.

A.4

