

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

January 13, 2012

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

PSF No.: 11od-122

OAHU

Withdrawal from Governor's Executive Order No. 3481 to the Department of Agriculture; Issuance of Right-of-Entry to Ka'ala Farm, Inc. for Maintenance Purposes, Waianae-Kai, Waianae, Oahu, Tax Map Key: (1) 8-5-006:004 por.

APPLICANT:

Department of Agriculture (DOA) – Controlling Agency

Ka'ala Farm, Inc., a domestic nonprofit corporation, whose mailing address is P.O. Box 630, Waianae, Hawaii 96792.

LEGAL REFERENCE:

Section 171-11 and 55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waianae-Kai, Waianae, Oahu, identified by Tax Map Key: (1) 8-5-006:004 por. as shown on the attached map labeled Exhibit A.

AREA:

Lot 18, File Plan 1932, 1,121.465 acres, more or less.

ZONING:

State Land Use District: Agricultural
City and County of Honolulu LUO: AG-2

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. 3481 setting aside the subject lands to the Department of Agriculture for agricultural park purposes (“Waianae Agricultural Park Subdivision”).

PURPOSE FOR REVOCABLE PERMIT:

Maintenance purposes.

COMMENCEMENT DATE:

January 1, 2012

[Note: The proposed right-of-entry permit is set to commence immediately after the expiration of the right-of-entry issued to the Applicant by DOA. See Remarks Section.]

MONTHLY RENTAL:

Gratis. See Remarks Section.

COLLATERAL SECURITY DEPOSIT:

Not applicable.

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**)

APPLICANT REQUIREMENTS:

None

REMARKS:

Pursuant to the Governor’s Executive Order No. 3481, Lots 1 to 18 of File Plan 1932 with a total area of about 1,166.384 acres of State lands have been set aside to DOA for agricultural park purposes. Waianae Valley Ranch LLC used to lease Lot 18 from DOA for pastoral grazing purposes.

In November 2010, Department of Hawaiian Home Lands (DHHL) inquired the possibility of transferring Lot 18 from DOA to DHHL. Staff noted the reason underlying DHHL’s request was due to its “natural and cultural resources”. DOA had no objection to the request in 2010.

On June 28, 2011, the Board of Agriculture approved the cancellation of the lease to Waianae Valley Ranch LLC effective on September 26, 2011. Staff understands the former lessee failed to comply with the terms and conditions of the lease regarding the maintenance of the property.

At the time of writing this submittal, staff did not receive any further correspondence from DHHL pertaining to the proposed transfer of Lot 18.

Applicant has been conducting cultural programs in the community for a long time. Currently, the Applicant owns the adjacent property. Before the former DOA’s lessee was removed from the property, the Applicant has approached DOA requesting for permission to maintain the property. A right-of-entry was issued by DOA to the Applicant expiring on December 31, 2011 (**Exhibit C**).

The Applicant has indicated that it intends to obtain a direct lease from the Board to expand its cultural program. Applicant is aware of the compliance with the environmental assessment before the request for a direct lease is considered by the Board. During the interim period, the Applicant plans to continue the maintenance of the property. Further, the Applicant is also willing to use its resources to protect the cultural sites on the property. Therefore, the Applicant requests the Board for a right-of-entry permit to conduct the above mentioned activities.

Staff has solicited comments from the following agencies:

Department of Agriculture

DOA has issued a revocable permit to Diamond J Ranch allowing the capture and removal of cattle from the former ranch. The permit expired on December 31, 2011. The permittee has removed approximately 68 cattle from the property. The permittee is collaborating with the applicant in clearing an access road for the installation of a pen to capture the cattle.

Staff Response

Upon approval of the subject right-of-entry, the applicant will continue coordinate with the relevant party in relation to the capture and removal of cattle. If

necessary, staff will bring any request for permit capturing and removing cattle at a later date.

Division of Forestry and Wildlife

DOFAW raised its concerns on the future management plan of the subject property. The issues include wildfire, cattle, and access for DOFAW personnel.

Staff Response

The applicant is aware of DOFAW’s concern and is willing to engage DOFAW in developing a management plan mutually agreed. Therefore, staff recommends the Board authorize adding of a condition requiring the applicant to develop a management plan with the consultation of DOFAW.

Department of Hawaiian Home Lands and Office of Hawaiian Affairs

Both agencies have not submitted response at time of drafting the submittal.

The purpose of the requested right-of-entry is to maintain the property before a lease is approved. The Applicant requests the Board waive the permit fee, and such waiver is further supported by the nonprofit status of the Applicant. Staff has no objection to the permit fee waiver.

Staff will bring the request for a direct lease upon receipt of an application from the Applicant. There are no other pertinent issues or concerns to the subject request.

RECOMMENDATION: That the Board:

1. Approve of and recommend to the Governor issuance of an executive order withdrawing 1,121.465 acres from the Governor’s Executive Order No. 3481, subject to:
 - 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.
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.

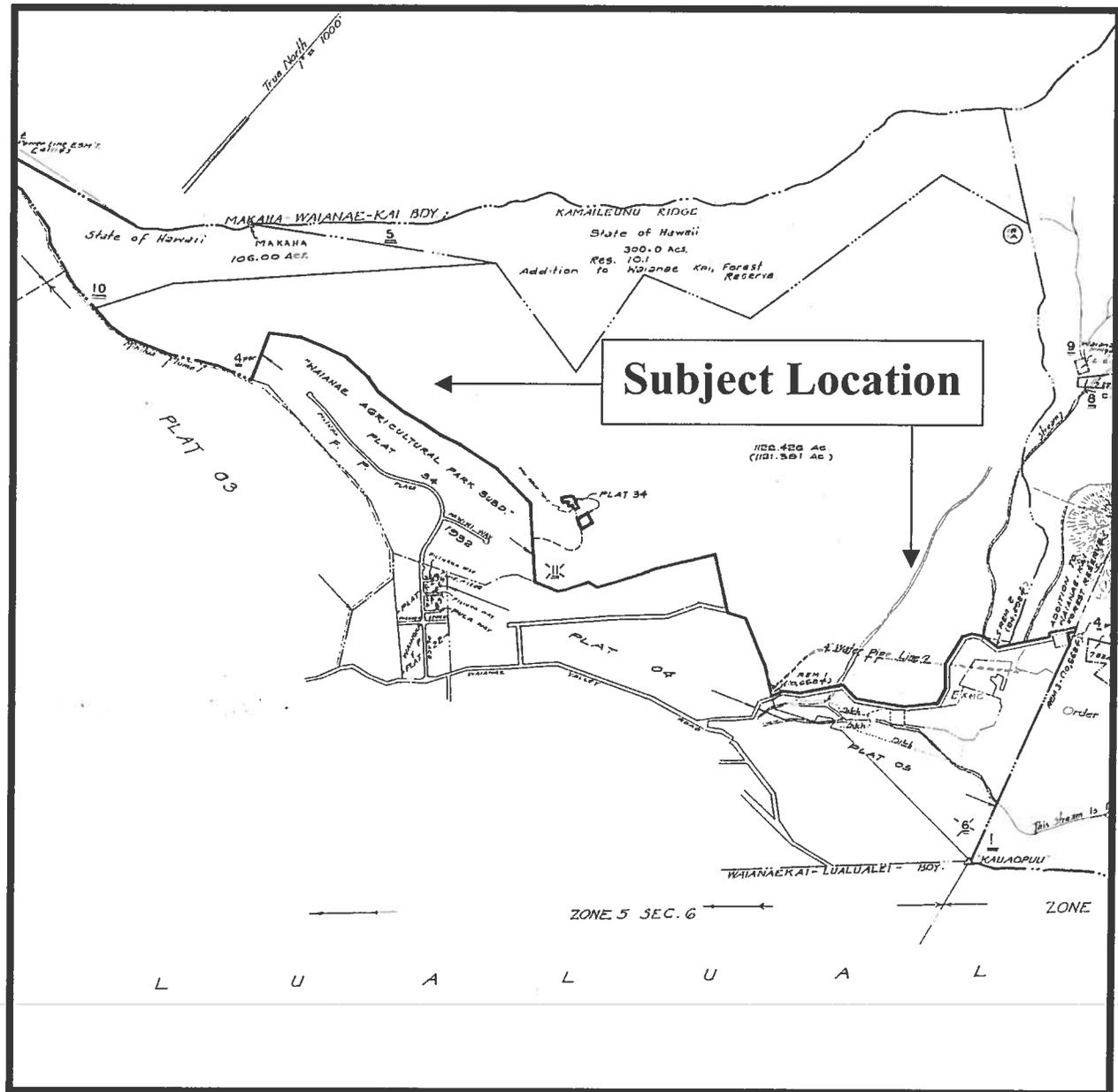
3. Authorize the issuance of a right-of-entry permit to Ka’ala Farm, Inc. covering the subject area for maintenance purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. Ka’ala Farm, Inc. shall consult with the Division of Forestry and Wildlife to develop a management plan; 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:


William J. Aila, Jr., Chairperson



TMK (1) 8-5-006:004 portions

EXHIBIT A

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 13, 2012

EXEMPTION NOTIFICATION

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

Project Title: Withdrawal from Governor's Executive Order No. 3481 and Issuance of Right-of-Entry Permit for Maintenance Purposes.

Project / Reference No.: PSF 110d-122

Project Location: Waianae-Kai, Waianae, Oahu, Tax Map Key: (1) 8-5-006:004 por.

Project Description: Right-of-Entry Permit for Maintenance Purposes,

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 subject property used to be occupied by a rancher leased from the Department of Agriculture. The lease was cancelled by the Board of Agriculture effective September 26, 2011. The Applicant obtained a right-of-entry from the Department of Agriculture to maintain the property from vandalism. The subject request is to issue a revocable permit to the Applicant to continue the ongoing maintenance after the said right-of-entry expired on December 31, 2011. The Applicant does not plan to change any use of the subject property during the revocable permit. Staff does not

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

GUY H. KAULUKUKUI
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

EXHIBIT B

anticipate the request will result in major alterations in the conditions of land, water and vegetation. Therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements.

Consulted Parties

Not applicable

Recommendation:

That the Board finds 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.


for _____
William J. Aila, Jr., Chairperson

✓ _____
Date

10/1/11

RIGHT OF ENTRY AGREEMENT

1. Date of this Agreement: September 23, 2011

2. Parties to this Agreement:

Owner: State of Hawaii
Department of Agriculture
Contact: Randy Teruya, Ag Resource Mgmt. Division

Entrant: KA'ALA FARMS, INC.
Contact: Eric Enos

Authorized Contractor for: N/A

3. Property: TMK: 1st DIV/8-5-005:004

4. Activities to be Conducted on the Property:

Entrant has requested permission from Owner to enter the Property to conduct the following activities:

Maintain a presence on the subject property to prevent or mitigate unauthorized trespass, malicious vandalism and property damage.

5. Term of this Agreement:

The term of this Agreement shall begin on the date of this Agreement set forth above and shall terminate on December 31, 2011 unless sooner terminated pursuant to the terms set forth in this paragraph 5 or in other provisions of this Agreement. Entrant or Owner may sooner terminate this Agreement, with or without cause, after furnishing to the other party ten (10) days prior written notice of such.

6. Permission to Enter Property:

Owner hereby gives Entrant permission to enter the Property to conduct the activities listed in paragraph 4 above, subject to the terms and conditions contained in this Agreement.

7. Conditions to Entry:

Entrant may enter the Property subject to the following conditions:

- a. Entrant shall conduct only those activities listed in paragraph 4 above and no other activities.

- b. Entrant shall not interfere with or disrupt any of Owner's or Owner's lessees' or tenants' activities on the Property.
- c. Entrant shall exercise due care for public and private safety on the Property.
- d. The activities conducted on the Property by Entrant shall be conducted in a manner that is unobtrusive and blends in with the surroundings to the extent possible.
- e. Upon expiration or earlier termination of this Agreement, Entrant shall remove all equipment and other items of Entrant's and shall restore the Property to the same condition existing prior to Entrant's entry on the Property.
- f. Prior to exercising the rights granted under this Agreement, the Entrant shall give the Owner at least forty-eight (48) hours prior written notice of the desire to exercise the rights granted under this Agreement, which notice shall indicate the dates of the intended access and use of the Property pursuant to the terms of this Agreement.

8. Indemnification:

Entrant agrees to indemnify Owner and tenants occupying the Property, against all loss, damage, costs, expenses, charges, reasonable attorneys' fees and liability for injury to property or persons, including wrongful death, arising out of or caused by any accident on or in connection with activities as described above in paragraph four, or the entry or use of Entrant, of the Property and improvements thereon, or arising out of failure of Entrant to observe and perform any term, covenant or condition herein contained and on the part of Entrant to be observed and performed, or caused by Entrant in the exercise of the rights and duties granted hereunder. The term "Entrant" as used in this paragraph shall mean and include the Entrant and its employees, agents, and contractors who enter the Property to exercise the rights granted under this Agreement.

9. Self-Insurance:

Notwithstanding anything to the contrary that may be contained in this Agreement, the insurance required to be carried by Entrant under this Agreement or any part or portion thereof, may be carried under any plan or plans of self-insurance.

If Entrant shall maintain such plan or plans of self-insurance, Entrant shall furnish to Owner a letter by a duly authorized signatory of Entrant certifying: 1) the plan or plans of self-insurance meet or exceed the insurance coverage required to be maintained by Entrant pursuant to this Agreement and 2) the procedure for Entrant to report any claims under such plan or plans of self-insurance.

10. Preservation of Historic and Archaeological Sites:

Entrant shall take every reasonable precaution to preserve and leave unaltered all places, if any, of historic and/or archaeological interest, including without limitation structures and sites listed on the Hawaii State Register of Historic Places and/or the National Register of Historic Places, ponds, reservoirs, heiau, altars, agricultural terraces, lo'i, walls, auwai, house platforms, imu, petroglyph sites, cemeteries; and all objects, if any, of historic and/or archaeological interest, including without limitation antiquities and specimens of Hawaiian or other ancient art or handicraft which may be found in or on the Premises. Upon the discovery of such objects or of any human remains in or on the Premises, the Lessee will leave the same untouched and will immediately notify the Lessors of the type and location of such discovery.

11. No Assignment:

Entrant shall not assign or transfer any right under this Agreement.

12. Termination of Agreement:

In the event that Owner, in Owner's judgment, determines that any of the terms or conditions contained in this Agreement have been breached, or upon the condemnation of the Property or any portion thereof, Owner shall have the right to terminate this Agreement without having to furnish Entrant prior notice.

13. No Real Property Interest:

Entrant agrees that Entrant does not and shall not claim at any time any real property interest in the Property. **THIS AGREEMENT IS NOT A LEASE OR A GRANT OF AN EASEMENT.**

14. Compliance With Law: Entrant shall comply with all federal, state, and county laws, ordinances, and regulations associated with the exercise of Entrant's rights under this Agreement, and shall indemnify and hold Owner harmless from and against any and all violations by Entrant of such laws, ordinances, and regulations.

15. **Insurance:** Entrant shall procure and maintain throughout the term of this Agreement worker's compensation insurance on all of Entrant's employees and shall provide Owner with certificates of insurance evidencing such worker's compensation insurance. Entrant shall secure for the term of this Agreement liability insurance for all operations directly or indirectly connected with Entrant's operations contemplated under this Agreement including, but not limited to, if applicable, the transportation of Entrant's employees, agents or contractors to the Property with limits not less than \$1,000,000.00 each occurrence for bodily injury, and \$2,000,000.00 in the aggregate with \$100,000.00 for property damage and excess general liability coverage of \$3,000,000.00. Before commencement of Entrant's operations under this Agreement, Entrant shall file with Owner certificates of insurance acceptable to Owner showing Owner as an additional insured. All certificates to be provided Owner under this Agreement shall contain a provision that the coverage afforded under the policies will not be canceled or materially changed until at least ten (10) days prior written notice has been given to Owner.
16. **No Offensive Use:** Entrant will not suffer, make, commit, or permit any waste or strip or unlawful or improper or offensive use of the Property or any part thereof. Entrant will ensure that any and all material such as, but not limited to, paper products, soda cans, etc., brought to the Property by Entrant or its employees, agents, or contractors shall be removed from the Property each day of Entrant's exercise of the rights granted under this Agreement.
17. **Operation and Control:** Entrant shall be responsible for the actions and activities of its employees, agents, and contractors acting in the course of their employment and operations pursuant to this Agreement. Entrant's operations will be conducted in a professional, workmanlike and orderly manner.
18. **No Warranties and Assumption of Risk:** Owner makes no representations as to the present or future condition of the Property. Entrant assumes all risks of personal injury or damage to Entrant, its employees, agents, and contractors in connection with the operations contemplated under this Agreement.
19. **Attorney's Fees and Costs:** Should any litigation be commenced between the parties concerning this Agreement between them or the rights and duties of either in relation thereto, the prevailing party in such litigation shall be entitled, and in addition to such other relief as may be granted, a reasonable sum for its attorney's fees and costs for litigation which will be determined by the Court.
20. **Amendments:** This Agreement may not be amended or modified in any respect except by an instrument in writing executed by the parties.

