

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

April 8, 2016

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

PSF No.: 16HD-032

Hawaii

Issuance of a Month-to-month Revocable Permit to C. W. Maintenance, Inc. for Janitorial Service Purposes, and Issuance of a Right-of-Entry Permit to Mar-Les Corporation for Remediation Purposes, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-049:014.

APPLICANT:

Revocable Permit:
C. W. Maintenance, Inc., a Hawaii corporation

Right-of-entry:
Mar-Les Corporation, a Hawaii corporation

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kanoiehua Industrial Lots situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-049:014, as shown on the attached map labeled Exhibit A.

AREA:

15,866 square feet, more or less.

ZONING:

State Land Use District: Urban.
County of Hawaii CZO: ML 20, limited industrial.

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:

Previously encumbered under General Lease No. S-3602 to Mar-Les Corporation for pest control and janitorial supplies purposes. Lease expired 1/15/16.

REVOCABLE PERMIT CHARACTER OF USE:

Industrial uses as allowed by current County of Hawaii zoning.¹

REVOCABLE PERMIT TERM:

Effective date of January 16, 2016. Billing period shall be the first day of the month. Revocable Permit will not extend past July 31, 2016.

REVOCABLE PERMIT MONTHLY RENTAL:

\$1,350.00 per month. Continuation of previous lease rent.

REVOCABLE PERMIT COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

RIGHT-OF-ENTRY CHARACTER OF USE:

For remediation of contamination purposes only.

RIGHT-OF-ENTRY TERM:

One year. Chairperson may extend for additional one year periods for good cause shown.

RIGHT-OF-ENTRY PERMIT MONTHLY RENTAL:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the Department's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated June 5, 2015, the subject requests are exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item Nos. 1 and 51 as stated in the Exemption Notification attached as Exhibit B.

¹ Previous encumbrance GL S-3602 - Pest Control and Janitorial Supplies purposes.

DCCA VERIFICATION:

C. W. Maintenance, Inc.

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>__</u>

Mar-Les Corporation

Place of business registration confirmed:	YES <u>X</u>	NO <u>__</u>
Registered business name confirmed:	YES <u>X</u>	NO <u>__</u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u>__</u>

REMARKS:

Background, GL S-3602:

Under the provisions of the special disaster legislation (Act 4, First Session Laws of Hawaii 1960), the Department of Land and Natural Resources was authorized to enter into direct negotiation leases of public lands to victims of natural disasters. General Lease No. S-3602 was issued to E.G. Wence and Wallace C. Chow, Co-Partners, dba Hawaii Pest Control Company. The term of the lease was for fifty-five (55) years, commencing on January 16, 1961, and ending on January 15, 2016.

At its meeting on February 9, 1962, the Board approved the consent to assignment of GL S-3602 from E.G. Wence and Wallace C. Chow to Hawaii Pest Control, Ltd.

Further, at its meeting on June 14, 1963, the Board approved the consent to assignment of the subject lease from Hawaii Pest Control, Ltd. to E.G. Wence and Wallace C. Chow, co-partners, dba Hawaii Pest Control Company.

At its meeting on June 27, 1969, the Board approved the consent to assignment of the subject lease from E.G. Wence and Wallace C. Chow, co-partners, dba Hawaii Pest Control Company to E.G. Wence. Then, at its meeting of August 14, 1970, the Board approved the consent to assignment of the subject lease from E.G. Wence to Hawaii Pest Control, Inc. On August 1, 1985, Hawaii Pest Control, Inc. changed its name to Mar-Les Corporation.

At its meeting on August 23, 1996, under agenda item D-12, the Board consented to the sublease of GL S-3602, Mar-Les Corporation, as Sublessor, to RNB Ventures, Inc. and C.W. Maintenance, Inc., as Sublessee. Although the sublease agreement expired in 2000, the Sublessee continued to occupy a portion of the property.²

Mar-Les had initially requested an extension of the lease pursuant to Act 207, Session Laws

2 Par. 22. Assignments, etc. that the Lessee shall not assign, sublet or mortgage the whole of the leasehold premises without the prior written approval of the Board, and in the event such written approval is granted, the same shall not operate as an authorization of any other or further transfer without the further written consent of the Lessor thereto; provided, further, that the Lessee may sublet a part of the leasehold premises without approval of the Board. Such approval shall not be unreasonably or arbitrarily withheld.

of Hawaii, 2011. This request would have extended the lease through January 15, 2026. However, Mar-Les withdrew its request for an extension at the last moment and the lease expired on January 15, 2016. A performance bond in the amount of \$32,400 continues to be posted for the lease obligations in the form of certificates of deposit at Bank of Hawaii.

Environmental Conditions:

In conjunction with the closing of their pest control business, the Lessee conducted a Phase I Environmental Site Assessment (ESA) on the former Hawaii Pest Control Building (HPC) to identify "recognized environmental conditions" in accordance with the American Society for Testing and Materials (ASTM) Standard E1527-94. Ten (10) surface soil samples were taken on September 30, 1996 to quantify the concentrations of pesticides and polychlorinated biphenyls (PCBs) in on-site surface soils. The material that showed the highest concentrations in on-site surface soils is chlordane, which was present in all of the surface soil samples and ranged in concentration from 0.71 to 6,700 mg/kg (parts per million). Dieldrin was present in six (6) of the surface soil samples and ranged in concentration from 0.032 to 37 mg/kg. Aldrin was present in one surface soil sample at a concentration of 35 mg/kg. No PCBs were detected. According to this assessment, recognized environmental conditions are present which could affect the subject property and off-site properties.

In 1997, an environmental engineering company performed additional site characterization which involved the installation of thirty-seven (37) soil borings. The three areas with chlordane above 500 ppm were identified as the unpaved open bay under the building's roof, the gravel area near the trash bin, and the northwest corner of the property where surface water drains to.

In February 1998, Dawson Environmental Services, Inc. assessed the mobility of the pesticides to determine the migration potential and exposure pathways.

In August 2006, as a result of recommendations made by HEER, a Site Investigation Work Plan (SI-WP) was conducted by EnviroServices & Training Center, LLC (ETC) for the former HI Pest Control building. The plan was later revised in June 2010 after further correspondence with Hawaii Department of Health (DOH) Hazard Evaluation and Emergency Response (HEER) Office advised further investigations. According to the SI-WP, the conclusion can be made that the entire site has been impacted by organochlorine pesticides at concentrations exceeding current DOH Tier 1 Environmental Action Levels (EALs). The general purpose of this investigation will be to address concerns raised by the HEER office, recommending additional characterization be done to underlying ground water samples, samples collected from beneath the on-site buildings, and off-site samples. Findings of the investigation will be used to determine the feasibility of future corrective actions, specifically exploring the possibility of placing a "cap" on contaminated portions of the property to eliminate direct exposure concerns to property users and potential migration of contaminated surface soil by storm water run-off.

On May 23, 2013, ETC provided a quote estimating the costs of implementing the recommended SI-WP to be in the range of \$38,440.00 - \$49,242.00.

Staff was not aware of the recognized environmental conditions mentioned above until recently and after the Lessee's application for the 10 year extension was submitted to the Hawaii District Land Office (HDLO). It was brought to our attention by the Lessee while

discussing the feasibility of the granting the extension.

Although Mar-Les withdrew its request for a 10-year lease extension, it will continue to be responsible for the complete remediation of the subject property. Staff will work with the Department of Health HEER branch to assure the property is clear of any and all contamination.

Staff is recommending the Board issue a right-of-entry permit to Mar-Les Corporation for remediation purposes only. The right-of-entry will allow the company and its agents access to the property for the purpose of remediation of all the contaminated areas. The right-of-entry will be effective upon receipt of a signed copy of the permit, submittal of proof of liability insurance and shall be effective for one year, with additional one-year extensions allowable at the Chairperson's discretion for good cause shown. Staff is including a recommendation below that Mar-Les report back to the department and the Board on the status of the remediation in one year. The staff recommendation also provides for the department not to release the performance bond under expired General Lease No. S-3602 until the report has been provided and staff determines, in coordination with the Department of Health, that the premises have been satisfactorily remediated.

Revocable Permit:

The business, C.W. Maintenance, Inc. (CWMI), was originally started by the Lessee over forty years ago and occupied a portion of the lease property. Although CWMI was sold off in 1996, the company continued use of the premises through a sublease agreement. CWMI is in the process of relocating its business operation to another warehouse facility. CWMI was informed by the Lessee that a ten-year extension was in place and could remain on the property while CWMI finished the construction of its new facilities and was unaware that the Lessee had withdrawn the request for the lease extension.

CWMI is requesting additional time to finish construction of its new warehouse. It is asking for a month-to-month revocable permit through the end of July 2016. This would allow time to finish the construction project and relocate without disrupting its business operation. CWMI is aware of the contamination of the premises.

Request for comments was sent to various government agencies with no objection to the proposed use.

Staff is recommending that the Board issue a month-to-month revocable permit for industrial purposes to CWMI, provided that the duration of the revocable permit shall not extend beyond July 31, 2016.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed dispositions as provided by Chapter 343, HRS, and Chapter 11-200, HAR, the projects 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 revocable permit to C.W. Maintenance, Inc., covering the subject area for industrial 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 revocable permit form, as may be amended from time to time;
 - b. The revocable permit shall contain an acknowledgment by the permittee that the entire permit premises may have been impacted by recognized environmental conditions including organochlorine pesticides at concentrations exceeding current DOH Tier 1 Environmental Action Levels; that permittee accepts the premises in "AS IS, WHERE IS" condition with all faults and defects, whether latent or patent, and assumes the risk of any environmental conditions on the premises. The permit shall also contain an acknowledgment by permittee that Mar-Les Corporation holds a concurrent right-of-entry over the entire premises for remediation of contamination;
 - c. The term of this revocable permit shall be effective January 16, 2016 and shall not extend past July 31, 2016;
 - d. Review and approval by the Department of the Attorney General; and
 - e. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of a right-of-entry permit to Mar-Les Corporation 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. The right-of-entry will be effective upon receipt of a signed copy of the permit, submittal of proof of liability insurance and shall terminate one year thereafter. The Chairperson may extend the right-of-entry for additional one-year periods for good cause shown;
 - c. Mar-Les Corporation shall provide a report to the Department and Board no later than one year from the date of today's action on the status of the clean-up. Mar-Les Corporation's performance bond of \$32,400 shall not be released until Mar-Les Corporation provides the report and staff determines, in coordination with the Department of Health, that the remediation of the premises has been satisfactorily completed;
 - d. Review and approval by the Department of the Attorney General; and

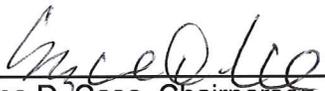
- e. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



Kanoelehua Industrial Leases

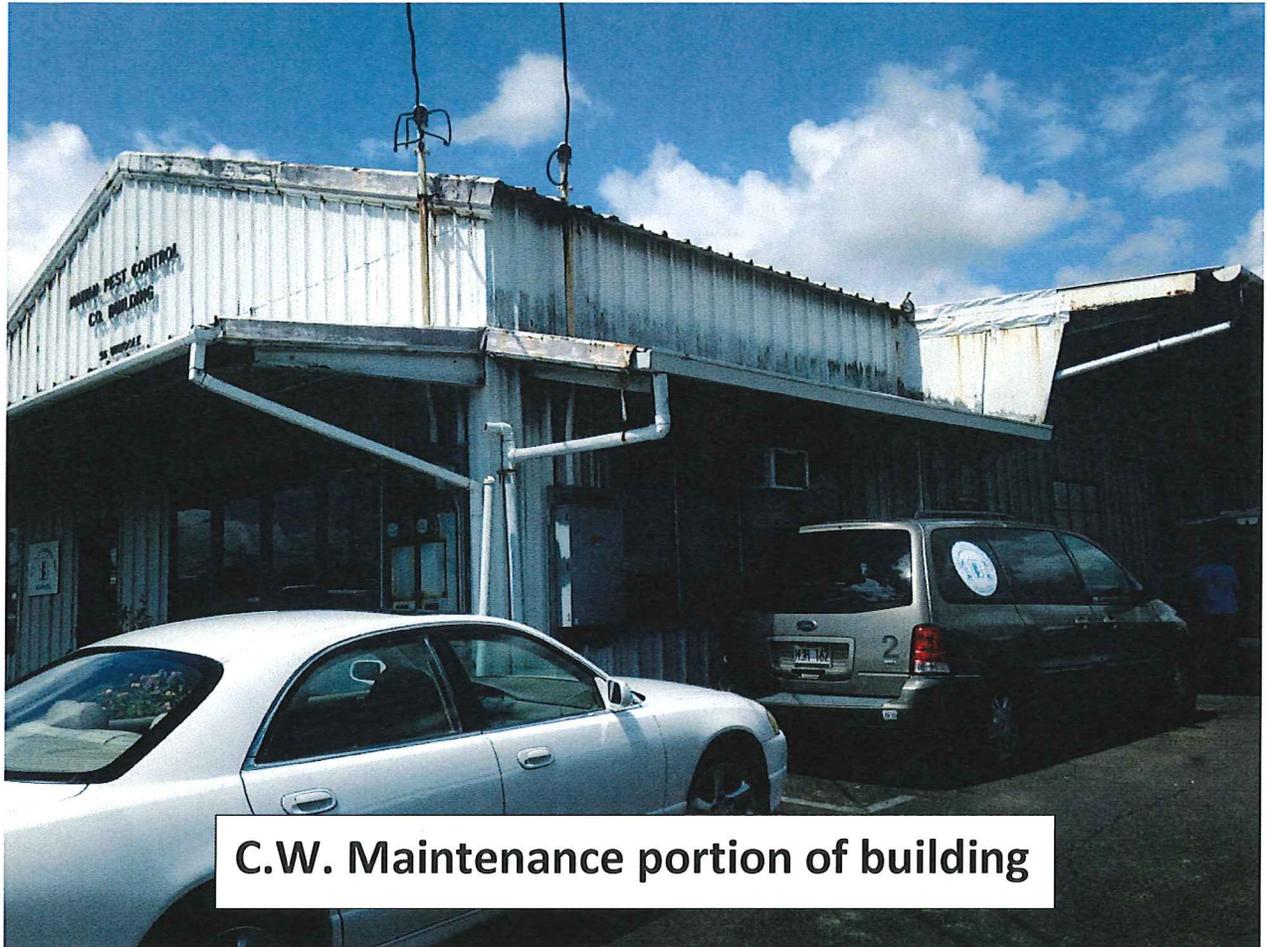


EXHIBIT A

GL S-3602: Mar-Les Corporation (Photos taken May 2015)







C.W. Maintenance portion of building



Old HI Pest Control portion of building



Old Hawaii Pest Control portion of building



C.W. Maintenance storage room

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

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

Project Title: Request for Revocable Permit to C.W. Maintenance, for Janitorial Supplies Purposes and Right-of-entry to Mar-Les Corp. for Hazardous Remediation Purposes.

Project Number: PSF No. 16HD-032

Project Location: Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-049:014.

Project Description: The requested parcel was previously encumbered under GL S-3602 for pest control and janitorial supplies purposes. The lease expired on January 15, 2016. The applicant was subleasing a portion of the property and wishes to continue occupying their portion while they finish constructing their new business location which is expected to be completed by the end of July, 2016

Consulted Parties: County Planning Dept. and County Dept. of Public Works.

EXHIBIT B

Exemption Class No.:

In accordance with the "Exemption List for the Department of Land and Natural Resources", approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item No. 1 that states "Mitigation of any hazardous conditions that present imminent danger as determined by the Department Director and that are necessary to protect public health, safety, welfare, or public trust resources" and No. 51 that states "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

Recommendation:

It is anticipated 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.



Suzanne D. Case, Chairperson

3/25/16

Date

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