

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of State Parks  
Honolulu, Hawaii 96813

August 26, 2016

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

SGL 5518

Kauai

Issuance of a Revocable Permit to Michael Fernandes and Leland Fernandes, for Pasture Purposes, Lot 24 ,Wailua Rice and Kula Lots, Wailua, Lihue, Kauai, Hawaii, Tax Map Key: (4) 3-9-004:001.

APPLICANT:

Michael Fernandes and Leland Fernandes, Joint-Tenants.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Wailua Rice and Kula Lot 24, Kauai, Hawaii, identified by Tax Map Key: (4) 3-9-004:001, as shown on the attached map labeled Exhibit A.

AREA:

7.824 acres, more or less.

ZONING:

State Land Use District: Conservation  
County of Kauai CZO:

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO X

CURRENT USE STATUS:

Encumbered by Governor's Executive Order 4260 setting aside land for state park purposes to be under the control and management of the Division of State Parks in 2009. Formerly encumbered under Land Division General Lease No. S-5518 to Richard Jasper, which expired on January 1, 2012.

ITEM E-2

CHARACTER OF USE:

Pasture purposes. "Pasture" shall mean the conduct of livestock operation consisting of the keeping of cattle, primarily, and others, in a minor role, such as horses and sheep wherein the animals graze the land for feed produced thereon. Permitted uses shall include such compatible uses as woodland management, wildlife management, and the cultivation of feed crops to be used strictly within the premises, The keeping, raising, or grazing of goats or swine shall not be permitted. The operation of commercial activities such as feedlots (excepting a private feedlot designed to feed the lessee's own cattle), dairy milking parlors, boarding of horses, piggeries, and poultry husbandry shall also not be permitted.

COMMENCEMENT DATE:

February 1, 2012 .<sup>1</sup>

MONTHLY RENTAL:

\$38.00 per month. (Previous rent under SGL-5518).

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 -ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land and Natural Resources Environmental Impact Statement Exemption List", 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 Nos. 47 and 51 as stated in the Exemption Notification attached as Exhibit B.

DCCA VERIFICATION:

Not applicable. The Applicant is sole proprietorship and, as such, is not required to register with DCCA.

JUSTIFICATION FOR REVOCABLE PERMIT:

State Parks has learned from the Department of Agriculture (DOA) that several of the pasture properties in that area had been transferred to DOA by way of Act 90, Session Laws of Hawaii (SLH) 2003, which established the Non Agricultural Park Lands program within the Hawaii Department of Agriculture ("HDOA"), and was codified as Chapter 166E , Hawaii Revised Statutes ("HRS"). Under this program, the legislature found that certain public lands classified for agricultural use by the Department of Land and Natural Resources (DLNR) should be transferred to the HDOA for purposes and in a manner consistent with article X1, section 10, of the State Constitution

The purpose of this chapter is to ensure the long-term productive use of public lands leased or available to be leased by the DLNR for agricultural purposes by allowing these lands to be transferred to the HDOA for leasing and management at a later date.

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<sup>1</sup> Staff is recommending a commencement date retroactive to February 1, 2012 because the applicants remained in possession of the property after the expiration of General Lease No. S-5518 in January 2012.

REMARKS:

The subject property identified as Lot 24, was one of the nine (9) fifteen (15) year pasture leases which were authorized at public auction, and the issuance of revocable permits upon the expiration of the leases by the Board at its meeting of June 14, 1996, under item D-20.

Land Division initially issued the subject property to Richard Jasper for pasture purposes for a term of fifteen (15) years commencing on February 1, 1997 through January 31, 2012 and also approved the issuance of a revocable permit for this property when the lease expired in 2012.

By way of Governor Executive Order No. 4260, approximately (3) three of those nine (9) pasture leases, which were located along the Wailua River, were set aside to the Division of State Parks as addition to the Wailua State Park.

However, when the properties were transferred to the Division of State Parks by the Land Division, State Parks was not aware of these pastures leases along the Wailua River. The lease for Lot 24 to Richard Jasper had expired on January 31, 2012, and Mr. Jasper has elected to vacate the property when the lease expired.

However, over the years due to Richard Jasper's failing health, Michael Fernandes who had been leasing the abutting property from the State, had been assisting Richard Jasper in maintaining the permit area and had elected to remain on the property after Richard Jasper's lease expired on January 31, 2012.

The Division of State Parks had received a request from Michael Fernandes and his son Leland Fernandes for the issuance of a revocable permit to be able to continue to use the subject property for pasture purposes.

The commencement date for the new revocable would continuous upon expiration of the prior permit under SGL 5518 which expired on January 31, 2012. Tenant was current in the rent upon the expiration of lease and is agreeable toward paying the new rent amount retroactive from the expiration date of SGL 5518 on January 31, 2012.

State Parks has learned from the Department of Agriculture (DOA) that several of the pasture properties in that area had been transferred to DOA by way of Act 90, Session Laws of Hawaii (SLH) 2003, which established the Non Agricultural Park Lands program within the Hawaii Department of Agriculture ("HDOA"), and was codified as Chapter 166E, Hawaii Revised Statutes ("HRS"). Under this program, the legislature found that certain public lands classified for agricultural use by the Department of Land and Natural Resources (DLNR) should be transferred to the HDOA for purposes and in a manner consistent with article XI, section 10, of the State Constitution.

The purpose of this chapter is to ensure the long-term productive use of public lands leased or available to be leased by the DLNR for agricultural purposes by allowing these lands to be transferred to the HDOA for leasing and management at a future date.

The Applicant has 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. No comments were solicited from other government or community agencies, as there will be no changes in the existing use of the property.

The Division of State Parks has no objections to the issuance of a revocable permit to Michael Fernandes and Leland Fernandes for pasture purposes with the intention of having this property withdrawn from EO 4260 and the property transferred over to the Hawaii Department of Agriculture at a later date.

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. Authorize the issuance of a revocable permit to Michael Fernandes and Leland Fernandes covering the subject area for pasture 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) 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.
5. Authorize the Chairperson to negotiate any other specific terms necessary to effectuate the revocable permit.

Respectfully Submitted,



Curt A. Cottrell  
Administrator

APPROVED FOR SUBMITTAL:



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Suzanne D. Case, Chairperson



**EXEMPTION NOTIFICATION**

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

Project Title: Issuance of Revocable Permit To Michael Fernandes and Leland Fernandes for pasture purposes.

Project / Reference No.: SGL5518

Project Location: Lot 22, Wailua Rice and Kula Lots, Wailua, Lihue, Kauai, Hawaii  
TMK: (4)3-9-004:001

Project Description: Issuance of Revocable Permit To Michael Fernandes and Leland Fernandes for pasture purposes.

Chapter 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with the Exemption List for the Department of Land and Natural Resources Environmental Impact Statement Exemption List, 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 Nos. 47 and 51 as stated in the Exemption Notification attached as Exhibit B.

There would be no change in the proposed use of the property from the existing use of the property. Such use have resulted in no known significant impacts to the natural, environmental and cultural resources in the area. As such, staff believes the proposed use 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 anticipated 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.

  
Suzanne D. Case, Chairperson

Date: 8/15/16

EXHIBIT "B"