

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

October 14, 2016

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

Maui

Annual Renewal of Revocable Permit S-7581 to Ulupalakua Ranch, Inc., Kamaole, Kula, Maui, Hawaii, Tax Map Key: (2) 2-2-007:003.

HRS CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council on June 5, 2015, the subject action is exempt from the preparation of an environmental assessment pursuant to Exemption Class 1, “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.” See Exhibit 1 attached.

BACKGROUND:

At the end of each calendar year, Land Division reviews its list of current revocable permits issued statewide and determines which ones to recommend to the Board of Land and Natural Resources for renewal for the upcoming year. Generally, those revocable permits in good standing will be recommended for renewal, unless the Board has approved a different disposition for the land covered by a particular permit.

In the past, staff has brought all revocable permits to the Board for renewal in one submittal. At its meeting on December 11, 2015, agenda item D-14, as amended, the Board directed staff to submit revocable permit renewals by county over four meetings, with an explanation of why a revocable permit is the appropriate disposition and how the rent was set. At its meeting on June 24, 2016, agenda item D-7, the Board further approved the recommendations of the Department of Land and Natural Resources Revocable Permit Task Force, as amended, requesting all divisions notate any non-compliance issues and pending litigation in the renewal template. In accordance with this directive, staff is submitting revocable permit S-7581 for renewal, including the additional information the Board requested.

Revocable Permit S-7581, issued to Ulupalakua Ranch, Inc., was removed from the list of revocable permits for Maui County that staff recommended be renewed for 2017 as submitted to the Board for approval at its meeting on September 23, 2016, agenda item D-6. Although four Board Members were present at this meeting, thereby establishing a quorum, the inclusion of RP S-7581 with the other Maui County revocable permits would have forced Board Member Gomes to recuse himself from voting on this agenda item, due to his position as Operations Manager for Ulupalakua Ranch, Inc. His recusal would have left the Board without a quorum, and resulted in the agenda item being deferred. After consulting with the Attorney General's office, staff decided to remove Ulupalakua Ranch's permit from the list of Maui County revocable permits recommended for renewal, and renew RP S-7581 on its own. The survey map for the subject parcel is attached as Exhibit 2.

REMARKS:

The permit was issued April 1, 2010 for pipeline right-of-way purposes at an annual rental of \$156.00. This rent was carried over from cancelled RP S-2412, dated November 13, 1957, and was set by Board action on December 7, 1990, agenda item F-20. It was reviewed and left unchanged by Board action on June 25, 1999, agenda item D-11. Staff has sought an opinion from the Attorney General's office as to whether Ulupalakua Ranch will be required to apply for a water lease pursuant to Section 171-58 Hawaii Revised Statutes for the water it draws from Polipoli Spring. The pipeline is located within the Conservation District, as noted in OCCL's comments, and staff was unable to find any evidence of a CDUP application in permittee's files. The property has been encumbered by land licenses or revocable permits since 1901. Staff consulted with OCCL, which agreed the pipeline is a non-conforming use, and no CDUP is required. Staff will work to convert the permit to an easement, which is the more appropriate disposition. There are no non-compliance issues or pending litigation associated with this revocable permit.

Staff has procured a contract with James Hallstrom of The Hallstrom Group/CBRE, Inc. for appraisal consulting services to assist in establishing the scope of work with respect to valuing the rent to charge for the use of State lands underlying revocable permits statewide as of 1/1/17, and ground rent discounts for tenancy and use restriction, if any. Once the scope is established, a second phase of the contract will be negotiated for appraisal services to set new rents for significantly underperforming assets. Upon receipt of the appraisal report(s) for these assets, staff will obtain the Chairperson's approval for the implementation of new rents, unless the Board would prefer that staff return to the full Board for review of the rents.

As an interim measure, to ensure a reasonable return for the use of public lands, the Board is requested to approve an increase in rents for all revocable permits. Staff recommends that the new rent for each revocable permit be based on a one-time increase of 1.5% of the base rent, multiplied by the number of years since first issuance of the permit, or since the most recent rental evaluation, beginning in 1999. For example, for a revocable permit issued in 1999 with an annual rent of \$1,000.00, the rent would be

increased by 27.00%, for a new annual rent of \$1,270.00. This increase would be across the board, regardless of the type of revocable permit, or location of the land. Below is a table of the percentage increase in annual rent based on the year that the revocable permit was issued.

YEAR PERMIT ISSUED OR LAST YEAR RENT EVALUATED	RECOMMENDED RENT INCREASE (% OF BASE RENT)
1999	27.00%
2000	25.50%
2001	24.00%
2002	22.50%
2003	21.00%
2004	19.50%
2005	18.00%
2006	16.50%
2007	15.00%
2008	13.50%
2009	12.00%
2010	10.50%
2011	9.00%
2012	7.50%
2013	6.00%
2014	4.50%
2015	3.00%
2016	1.50%

Beginning in 2017, the annual rent for every revocable permit would be subject to an annual increase of 1.5% until the rent can be appraised at fair market value. Considering that the average annual increase in the consumer price index for Honolulu from 1999 to the present is 2.52%, staff believes that the 1.5% annual increase is a fair compromise, taking into account the various land uses and locations for revocable permits statewide. Applying this formula to RP S-7581 results in an increase in rent from \$156.00 per year to \$198.12 per year as of January 1, 2017.

The following State and County of Maui agencies were consulted on this action with the results indicated:

Agency:	Comment:
Division of Forestry and Wildlife	No comments regarding this permit
Office of Conservation and Coastal Lands	OCCL identified RP7581 as falling within the Conservation District. Staff consulted with OCCL, who agreed the use to be non-conforming.

Agency:	Comments:
State Parks	No comments
Historic Preservation	No comments regarding this permit
Engineering	No comments
Maui District Land Office	No comments regarding this permit
Commission on Water Resource Management	No response by suspense date
Division of Conservation and Resources Enforcement	No comment by suspense date
Department of Hawaiian Home Lands	No comment by suspense date
Department of Agriculture	No comments regarding this permit
Agribusiness Development Corporation	No comment by suspense date
Office of Hawaiian Affairs	See attached Exhibit 3
County Planning Department	No comments regarding this permit
County Department of Public Works	No response by suspense date
County Department of Water Supply	No response by suspense date

RECOMMENDATION: That the Board:

1. Approve the continuation of Revocable Permit S-7581 on a month-to-month basis for another one-year period through December 31, 2017 as staff works to convert it to an easement;

and
2. Approve rent adjustment effective January 1, 2017 for the current monthly rent for Revocable Permit S-7581 in accordance with the table above, provided however, that the Land Board reserves and delegates to the Chairperson the right at any time to review and reestablish new rental charges for revocable permit, to reflect market conditions or the fair market rental for the rights and privileges granted by such revocable permit and to best serve the interests of the State.

Respectfully Submitted,



Richard T. Howard
Land Agent

APPROVED FOR SUBMITTAL:



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: Annual Renewal of Revocable Permits on the Islands of Maui, Molokai and Lanai

Project / Reference No.: Not applicable

Project Location: Various locations on the Islands of Maui, Molokai and Lanai

Project Description: Renew existing revocable permits for a term of one year.

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

Exemption Class No.: In accordance with the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council on June 5, 2015, the subject request for issuance for right-of-entry is exempt from the preparation of an environmental assessment pursuant to Exemption Class 1, "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 annual renewal of existing revocable permits on State lands involves the continuation of existing uses on the lands. No change in use is authorized by the renewal.

Consulted Parties Agencies listed in submittal.

Recommendation: That the Board find 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.

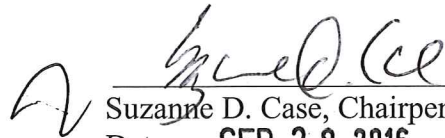
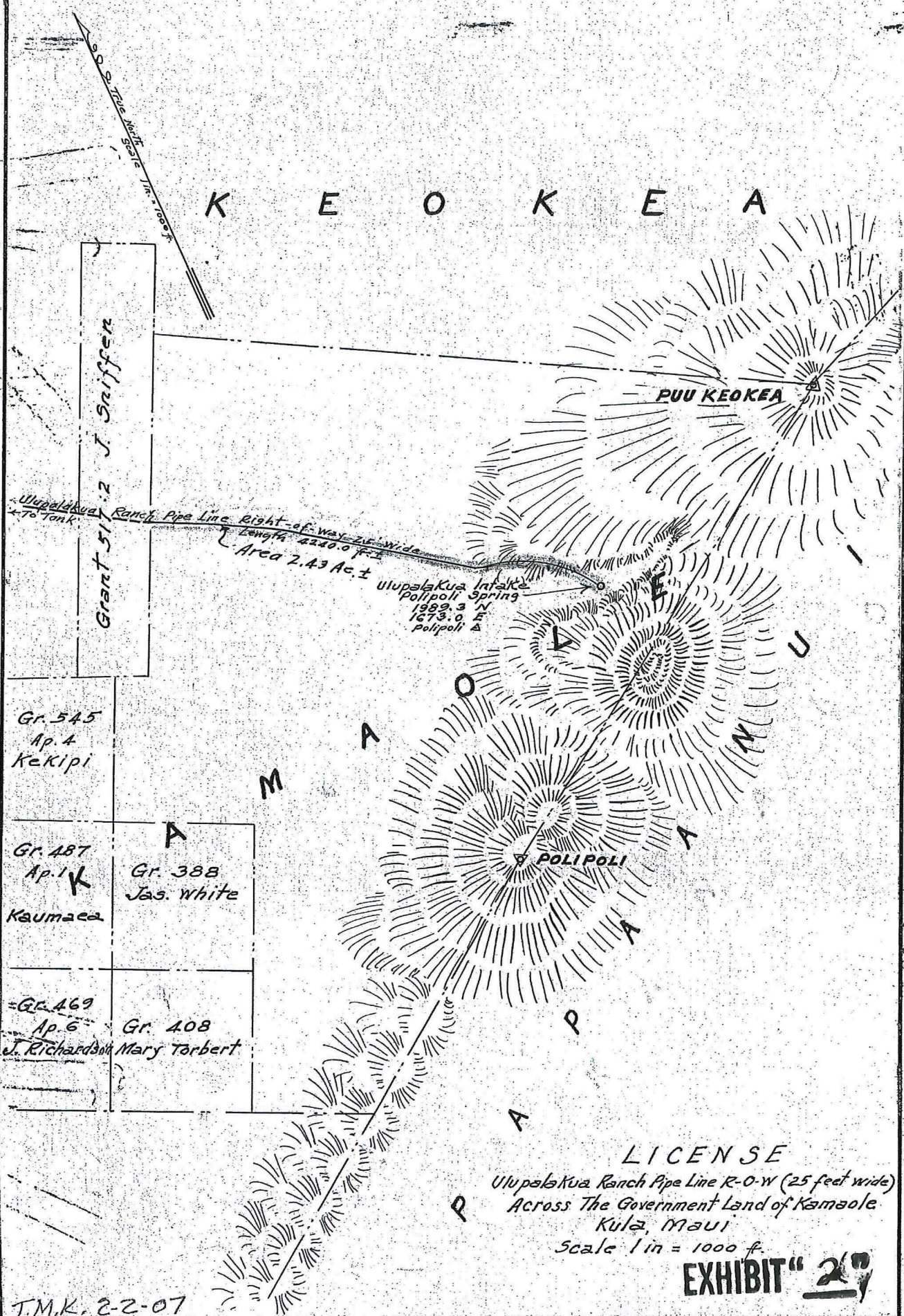

Suzanne D. Case, Chairperson
Date SEP 28 2016

EXHIBIT 1



Grant 5172 J Sniffen

Gr. 545
Ap. 4
Kekipi

Gr. 487
Ap. 1
Kaumaea

Gr. 388
Jas. White

Gr. 469
Ap. 6
J. Richards

Gr. 408
Mary Torbert

T.M.K. 2-2-07

PUU KEOKEA

POLIPOLI

LICENSE

Ulupekua Ranch Pipe Line R.O.W (25 feet wide)
Across The Government Land of Kamaole
Kula, Maui

Scale 1 in = 1000 ft.

EXHIBIT "27"

PHONE (808) 594-1888

FAX (808) 594-1938



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 N. NIMITZ HWY., SUITE 200
HONOLULU, HAWAII 96817

HRD16-7900

July 5, 2016

Richard T. Howard, Land Agent
Department of Land and Natural Resources, Land Division
Post Office Box 621
Honolulu, Hawai'i 96809

RECEIVED
LAND DIVISION
2016 JUL 11 AM 11:16
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Re: OHA comments on "Annual Renewal of Revocable Permits for Maui"
Maui, Molokai, and Lāna'i Mokupuni

Aloha e Mr. Howard:

The Office of Hawaiian Affairs (OHA) received your draft staff submittal to the Board of Lands and Natural Resources (Land Board), dated June 16, 2016. The Department of Land and Natural Resources (DLNR) Land Division proposes to renew 86 month-to-month revocable permits (RPs) held on Maui County for a one-year period. Exhibit 2 of the draft submittal provides a list of the subject Maui County RPs.

As noted in the staff submittal, the subject action was prepared in response to the Land Board's directive on December 11, 2015, which requested staff to submit the RP renewals for each county over four meetings, with an explanation of why a revocable permit is the appropriate disposition and how the rent for each permit was set. In addition, DLNR Chairperson Suzanne Case convened the DLNR Revocable Permits Task Force to revisit and evaluate the existing protocols and criteria for RPs and to make recommendations for improvements to the RP system. At the time of this letter's writing, the DLNR Revocable Permits Task Force had presented its report and recommendations the prior week to the Land Board on June 24, 2016; however, the minutes for the June 24th meeting are not yet available.

As drafted, OHA has a number of concerns regarding the presentation of the Maui County revocable permit list and the process for renewal of these RPs, many of which our agency raised in the annual RP renewals for Kaua'i, O'ahu, and Hawai'i Islands, as well.

EXHIBIT "3"

Richard Howard, DLNR Land Agent

July 5, 2016

Page 2

First, we note that the renewal action covers all RPs in Maui County, rather than just "Maui" as provided for in the subject line of the transmittal memo. The agenda item should clearly reflect that the action covers Maui, Lānaʻi, and Molokai, as reflected in the draft submittal.

Second, the staff submittal does not set forth a clear action for the Land Board. The staff submittal presents the action as an "annual renewal" but it was released for interagency review in June, rather than near the usual timeframe for annual renewals at the end of the calendar year. The Recommendation section similarly requests that the Land Board "[a]pprove the continuation of the revocable permits in Exhibit 2 on a month-to-month basis for another one-year period through December 31, 2017." Such a timeframe would exceed the one-year maximum length allowed by Hawaiʻi Revised Statutes § 171-55, if this item were agendized before December.

Third, the staff submittal also appears premature given that the draft submittal was distributed prior to the presentation of the DLNR RP Task Force and action by the Land Board. Given our understanding of the action taken by the Land Board, we believe that the three staff submittals should be revised and re-released for interagency comment, with the additional requirements approved by the Land Board on June 24, 2016.

Fourth, a number of individual RPs note that the use of a parcel by a permittee assists DLNR with its maintenance of the parcel, presumably as a justification for a discounted rent for the associated parcel. While it would make sense that occupancy of a parcel is preferable to a vacancy, generally, this justification would appear applicable to most RPs and not be the basis for a reduced rent or short-term disposition by RP. For such RPs, we ask to see a discussion of specific maintenance or services provided by the permittee that benefit the state and a discussion of long-term plans for the parcel.

Finally, should the division choose to move forward with this submittal notwithstanding the release of a revised staff submittal for interagency review, we would ask that the Exhibit 2 master list of RPs be revised to include the following:

1. Page numbers and a sequential listing of RPs, which will facilitate discussions of the RPs by the Land Board members and public;
2. The trust land status of the subject parcel(s);
3. The date of the last affirmative review of the permit holder's compliance with the most recent permit terms;
4. A discussion of pending challenges to the land uses contemplated under each permit, if applicable;
5. The amount of water diverted, for those RPs involving water; and
6. Consistent comments across all RPs, particularly related to long-term disposition and a lack of outside interest. The inclusion of certain comments for some RPs but not others is confusing (i.e., has there been other interested parties for all RPs except those that state "No interest shown in parcels by public"?).

Richard Howard, DLNR Land Agent
July 5, 2016
Page 3

Mahalo for the opportunity to provide comments on the draft staff submittal for the Maui County RPs. We hope to review a revised submittal that incorporates the Land Board action on the RP Task Force report and recommendations. If you have any questions, please contact Everett Ohta, OHA Lead Compliance Specialist, at 594-0231 or everetto@oha.org.

'O wau iho nō me ka 'oia 'i'o,



Kamana'opono M. Crabbe, Ph.D.
Ka Pouhana, Chief Executive Officer

KC:eo