

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

February 9, 2018

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

PSF No.: 17OD-162

OAHU

Request of Waiver of Requirement for Conducting Phase 1 Environmental Site Assessment upon Cancellation of Revocable Permit No. 7469; Cheryl McConnell and Wesley Furtado, Former Permittees; and

Issuance of Revocable Permit and Right-of-Entry Permit to Richard & Kathleen Teixeira for Pasture and Horse Stabling Purposes; Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-013:022.

APPLICANTS:

Richard R. Teixeira and & Kathleen V. Teixeira, husband and wife, Tenants by the Entirety.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Waimanalo Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-1-013:022, as shown red on the attached map labeled **Exhibit A**.

AREA:

6.860 acres, more or less.

ZONING:

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

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 by Revocable Permit No. S-7469, Cheryl McConnell and Wesley Furtado, former Permittees, for pasture and horse stabling purposes, cancelled on November 30, 2017 pursuant to the request of the former Permittees.

CHARACTER OF USE:

Pasture and horse stabling purposes.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

MONTHLY RENTAL:

\$160.29, in accordance with the Board action of August 25, 2017, item D-8 regarding the annual renewal of revocable permits on Oahu of which the rent was raised by 1.5% effective from January 1, 2018. The monthly rent under the previous RP 7469 was \$157.92.

Staff believes the rent proposed is fair under the circumstances. The justification of the proposed monthly rent [\$160.29] was adopted by the Board at its prior meeting noted above.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental for revocable permit.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land and Natural Resources, concurred and reviewed by the Environmental Council on June 5, 2015, 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 item 47, which states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existing." See **Exhibit B**.

DCCA VERIFICATION:

Individuals, not applicable.

JUSTIFICATION FOR REVOCABLE PERMIT:

At its meeting on November 10, 2016, under agenda item D-13, the Board approved the set aside of various properties, including the subject parcel, on Oahu to the Department of Agriculture pursuant to Act 90, Session Laws of Hawaii 2003.

While most of the parcels approved in November 2016 Board action have been transferred pursuant to Governor's Executive Orders No. 4534 and 4535 signed in July and August 2017 respectively, staff continues to work on the legal description and map for the subject parcel before the executive order can be drafted.

On October 25, 2017, Permittees Cheryl McConnell and Wesley Furtado requested cancellation of RP 7469 effective December 1, 2017 due to personal reasons. Staff inspected the property in the presence of Ms. McConnell in early November and noted the subject property is well maintained. Ms. McConnell has removed a truck from the subject parcel since the site inspection. Staff understands that when the truck was on the property, it was used for storage with the engine and fuel removed. Therefore, there is little risk of contamination from automotive fluids on the property. See **Exhibit C** for the inspection photos. Staff confirmed the removal of the truck at subsequent inspection.

Staff believes it is appropriate to issue a revocable permit to applicants Richard and Kathleen Teixeira during the interim until the set aside mentioned above is consummated. The presence of a permittee on the ground can help to deter any vandalism on the State parcel.

REMARKS:

The subject property has been encumbered with revocable permit since 1958 for the same purposes. Ms. McConnell and Mr. Furtado became the permittees in 2009 upon the death of their parents, who were the permittees under RP 6973 since 1995. A recent site inspection indicated that the subject State parcel is well maintained. There are no compliance issues for the permittees and staff is not aware of any pending litigation involving the permittees or the applicants.

Waiver of Phase I environmental site assessment for canceled RP 7469
Condition 14 of RP 7469 provides that:

"Prior to termination or revocation of the subject Permit, Permittee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the DLNR. Failure to comply with the provisions of this paragraph shall not extend the term of this Permit or automatically prevent termination or revocation of the Permit. The Board, at its sole option, may refuse to approve termination or revocation unless this evaluation and abatement provision has been performed. In

addition or in the alternative, the Board may, at its sole option if Permittee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Permittee."

Former permittees, Cheryl McConnell and Wesley Furtado have requested a waiver of the foregoing requirement for a Phase 1 environmental site assessment (ESA). Based on a review of files for the subject parcel and observations during the above-mentioned site inspection, staff did not notice any possible environmental contamination on the property. Staff recommends the Board authorize waiving the requirement of Additional Condition No. 14 regarding the conducting of a Phase 1 ESA.

Mr. Teixeira worked in farming and ranching (horses and cattle) since the mid-1960s, with positions held ranging from farm worker to horseback riding concession manager at a resort on Oahu. He is also involved in the community with rodeo events, cattle herding, caring for livestock etc. In addition, he helps with the removal of large animals astray on public highways, when requested by the police. Staff believes Mr. Teixeira's experience would qualify him as the permittee for the proposed permit, with his wife helping him out on the paperwork.

At the time of writing the submittal, staff has not received any other applications for the subject parcel.

State Historic Preservation Division, Department of Agriculture, Office of Hawaiian Affairs, Department of Planning Permitting, and Department of Facility Maintenance have not offered any comments before the deadline. Division of Forestry and Wildlife and Board of Water Supply have no comments/ objections to the subject request.

Division of Aquatic Resources recommends that Best Management Practices be implemented to prevent pollution of adjacent streams by animal waste and sediments from denude land, especially during rain events. Staff recommends inserting the condition in the Recommendation Section below.

Applicants have 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.

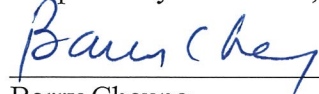
Staff recommends the Board authorize the issuance of an immediate right-of-entry permit to the applicants at the same monthly rental [\$160.29], until the issuance of the revocable permit.

RECOMMENDATION: That the Board:

1. Waive the requirement of Additional Condition No. 14 regarding the conducting of a Phase 1 environmental site assessment upon cancellation of Revocable Permit No. 7469.

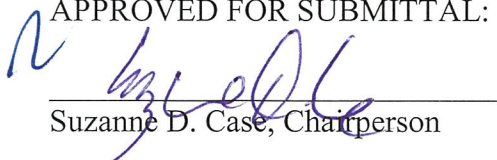
2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
3. Authorize the issuance of a revocable permit to Richard R. Teixeira and & Kathleen V. Teixeira covering the subject area for pasture and horse stabling 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. Permittee shall implement Best Management Practices to prevent pollution of adjacent streams by animal waste and sediments from denude land, especially during rain events;
 - 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.
4. Authorize the issuance of a right-of-entry permit to Richard R. Teixeira and & Kathleen V. Teixeira 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 permit shall expire upon the issuance of the requested revocable permit described above; 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:


Suzanne D. Case, Chairperson



TMK (1) 4-1-013:022

EXHIBIT A

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 for Pasture and Horse Stabling Purposes.
Project / Reference No.:	PSF 17OD-162
Project Location:	Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-013:022
Project Description:	Issuance of Revocable Permit for Pasture and Horse Stabling Purposes.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	<p>In accordance with the Exemption List for the Department of Land and Natural Resources, concurred and reviewed by the Environmental Council on June 5, 2015, 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 item 47, which states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existing."</p> <p>The request pertains to the change of permittee over the same area for the same purpose as previously existed on the ground. There is no plan for any additional improvements at the moment. Staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.</p>
Consulted Parties	Agencies noted in the 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.

EXHIBIT B



EXHIBIT C

