

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

December 14, 2018

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

18HD-125

Hawaii

Report to Board on Status of Revocable Permit No. S-7867; Renewal of Revocable Permit No. S-7867 for 2019, followed by Cancellation of Revocable Permit No. S-7867, Association of Apartment Owners of Country Club Hawaii, Inc., and Issuance of Month-to-Month Revocable Permit to OceanFront 121 Inc., for Apartment and Hotel purposes, Banyan Drive, Waiakea, South Hilo, Hawaii; Tax Map Key: (3) 2-1-005:020.

APPLICANT:

The Association of Apartment Owners of Country Club Hawaii, Inc., a Hawaii non-profit corporation and OceanFront 121 Inc., a Hawaii corporation.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Banyan Drive situated at Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-1-005:020, as shown on the attached map labeled Exhibit A.

AREA:

1.166 acres, more or less.

ZONING:

State Land Use District:	Urban
County of Hawaii CZO:	Resort-Hotel (V- .75; 750sf /dwelling unit)

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:

Encumbered by Revocable Permit No. S-7867, issued to Applicant.

CHARACTER OF USE:

Apartment and hotel purposes.

COMMENCEMENT DATE:

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

MONTHLY RENTAL:

Current rent is \$4,268.57 per month. Staff recommends a 3% increase to monthly rental which is consistent with other revocable permits in the area. Monthly rent for 2019 would be \$4,396.63.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with 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 51. See Exemption Declaration attached as Exhibit B.

DCCA VERIFICATION:

*Association of Apartment Owners of Country Club Hawaii, Inc. and
Oceanfront 121 Inc. :*

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

STATUS REPORT ON REVOCABLE PERMIT NO. S-7867:

At its meeting of June 26, 2015, item D-4, in an effort to retain occupancy of the building immediately following the expiration of General Lease No. 3269, the Board approved the issuance of a month-to-month revocable permit to the Association of Apartment Owners of Country Club Hawaii, Inc. (AOAO). The AOAO is a non-profit corporation with the purpose of administration of the Country Club Hawaii Condominium Project and was managing the property prior to expiration of the lease. The membership of the AOAO consisted of owners of the individual condominium units. The owners elected a Board of Directors to oversee the daily operations of the condominium project. Condominium ownership was coterminous with the lease and therefore the condominium project ceased to exist when the long-term lease expired. It was soon realized that the operation of the corporation within its articles of incorporation was adversely affected by the lack of “condominium owners”, and therefore a lack of members. This situation is further impacted by the question of whether the AOAO still qualifies as a non-profit corporation.

At the time of issuance of the revocable permit, there were several prior condominium owners still occupying the individual units. Some of these owners refused to pay monthly fees to cover expenses, such as water, electricity, sewer, property taxes and maintenance. The AOAO began legal actions to obtain possession of these units. Currently, there is only one remaining prior condominium owner that refuses to pay and has been sued by the AOAO for possession of the unit. The AOAO is awaiting decision by the court.

Last year during the annual renewal process of revocable permits issued on Hawaii Island, it came to light that “possession agreements” were being sold to individuals by the AOAO for specific units within the subject building. The possession agreements provided exclusive use of a specified unit to a purchaser for the duration of the revocable permit. Possession Agreements were sold to prior condominium owners in good standing with respect to monthly fees for \$1,260. There were 5 Possession Agreements sold to others for a total of \$142,000, which cleared the fees owed on those units. While the possession agreements were only valid during the revocable permit period, it was unclear if they violated the terms of the permit by exceeding the monthly rental period stipulated in the permit. The Board at its meeting of September 8, 2017, item D-1, instructed the permittee to cease selling possession agreements. The permittee has complied and is no longer issuing possession agreements.

The property has a total of 140 rooms. Of this total, 55 are held under possession agreements as room numbers: 204, 205, 206, 214, 217, 218, 223, 226, 227, 229, 307, 309, 317, 323, 325, 329, 330, 331, 332, 405, 408, 410, 411, 412, 416, 421, 424, 426, 428, 429, 430, 431, 432, 512, 514, 515, 519, 521, 527, 529, 530, 531, 532, 605, 606, 607, 614, 618, 621, 623, 625, 629, 630, 631 and 632.¹ The status of the remaining 85 rooms is as

¹ Staff has a detailed listing of tenants and unit numbers available for Board member review if requested. This listing was not included in the submittal due to privacy concerns.

follows:

- 59 rooms are active daily, weekly, monthly rentals managed directly by the AOA. Eight of these rooms are rented to County Housing with the revenue going directly to the County of Hawaii Wastewater Division to pay down a prior stipulated judgment.
- 19 rooms are vacant and in need of renovation to make suitable for renting.
- 6 rooms are used for operations: AOA office, laundry, storage, and 2 employee rooms.
- 1 room is still occupied by a former condominium owner and the AOA is waiting on a court decision regarding a writ of possession.

The AOA has several employees to cover the front desk, housekeeping and grounds and building maintenance. It has just hired an on-site building manager.

Staff has reviewed the accounts of the AOA for the period March 2018 through October 2018 to verify average operational income and expenses. Holders of the 55 possession agreements pay approximately \$430 per month per room which generates \$24,222 per month on average. The average monthly rental is \$725 and the daily rate is \$75-\$100 per night. The 59 rental rooms generate \$53,709 per month on average. Average total monthly income is \$77,931.

When the current Board of Directors took over management of the property the utilities were grossly in arrears. Past due accounts to electricity of ~\$430,000, water ~\$58,000 and sewer ~\$60,000 + a stipulated judgment of \$187,000. As of now, all utilities are current with the exception of the sewer stipulated judgment which the AOA continues to make payments on, including the 8 county housing rental payments noted above as required by the judgment filed 12/18/2014.

In addition to clearing previous arrearages on utility accounts, the AOA has spent ~\$96,000 to repair and maintain the 2 elevators, \$52,000 to install a new backflow prevention device for the fire suppression system, \$10,000 to seal gaps around pipes passing through the ceiling in the garage area to meet fire code standards and about \$20,000 to correct other fire and building violations related to safety.

Monthly expenses average \$65,425 which only includes operations. Any renovations or repairs and maintenance comes from the ~\$12,500 net monthly gain.

In August of 2017, the County of Hawaii issued a Notice of Violation to the AOA for building and fire code violations as a result of an inspection of the premises.² The AOA has been working with the County to cure the violations and states that the status of building and fire violations for the premises is understood to be in negotiated status. All

² The Board received copies of the Notice of Violation at its September 8, 2017 meeting.

life safety issues have been cured/addressed. Building code issues which require construction money remain. The County of Hawaii has not responded to staff requests for status on the notice of violations. Staff will continue to pursue a written response from the County regarding the status.

JUSTIFICATION FOR REVOCABLE PERMIT:

Due to the potential liability and attendant problems of illegal habitation of vacant property, staff believes it is in the best interest of the State to have the property remain occupied until such time that a redevelopment plan can be adopted and implemented for the Banyan Drive area, and/or the Board authorizes a new disposition for the property.

REMARKS:

A brief inspection of the property on November 5, 2018 revealed a much improved environment. The property is being slowly revamped and the safety issues have been addressed. Photos illustrate the ideal being set for room appeal. Many rooms have been fully renovated with new floor coverings and fixtures. The hallways are clear and clean. The elevators work fine and are clean and fresh. (Refer to attached Exhibit C).

As previously stated, operation of the AOA within its corporate charter may not currently be possible. Membership in the AOA requires ownership of a condominium unit. In order to rectify this situation, the Board members of the AOA have formed a new for-profit entity named "Oceanfront 121 Inc." The permittee is requesting that the current revocable permit be canceled and a new revocable permit be issued to the new entity.

Since the possession agreements were for the duration of the permit, they will lapse with the cancellation of the permit. The shareholders of the new entity are the current holders of possession agreements and will enter into rental agreements. All rooms will be daily, weekly or monthly rentals and under the direct control of the permittee.

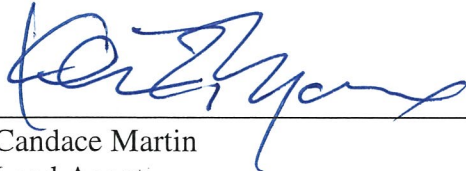
Staff is recommending the cancellation of the current revocable permit simultaneous with the issuance of a new revocable permit to the new entity. However, due to processing time, the new revocable permit will not be issued before December 31, 2018 when the current permit is set to expire. Therefore, staff is recommending that the current revocable permit be renewed for calendar year 2019 with a 3% increase in the monthly rent to remain consistent with the other hotel revocable permits in the same area. The rent for the new revocable permit will be equal to the current revocable permit which includes the 3% increase.

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.

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. Approve the continuation of Revocable Permit No. S-7867 to the Association of Apartment Owners of Country Club Hawaii, Inc. on a month-to-month basis effective January 1, 2019 for another one-year period through December 31, 2019 and to increase the monthly rent 3% to \$4,396.63 effective January 1, 2019; and
3. Authorize the cancellation of Revocable Permit No. S-7867 to the Association of Apartment Owners of Country Club Hawaii, Inc. and Issuance of a new month-to-month revocable permit to OceanFront 121 Inc. covering the subject area for Apartment and Hotel 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 monthly rent to be set at \$4,396.63;
 - 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.

Respectfully Submitted,



Candace Martin
Land Agent

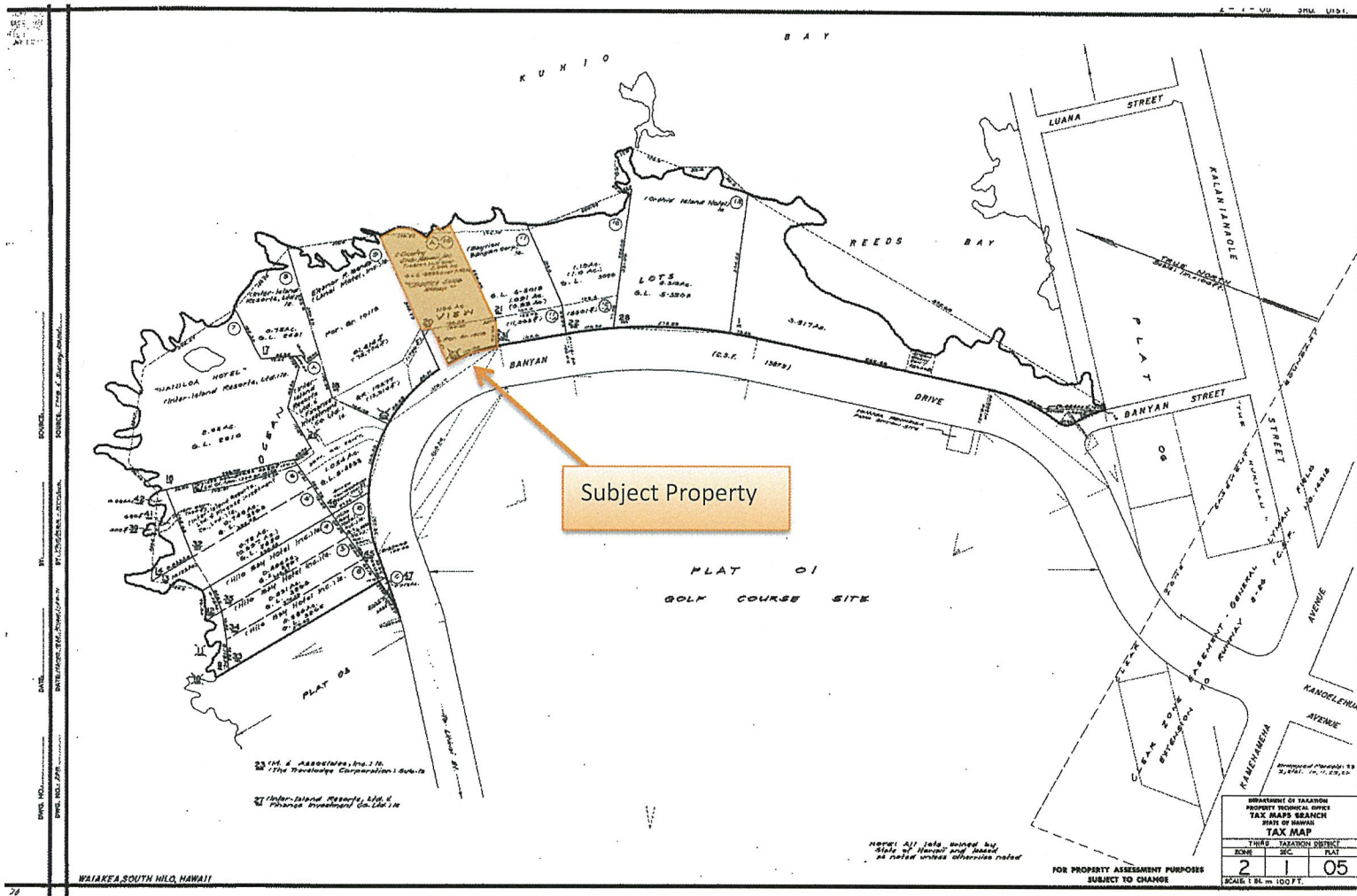
APPROVED FOR SUBMITTAL:



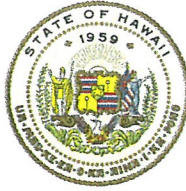
Suzanne D. Case, Chairperson



EXHIBIT A



DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 20, 2018

EXHIBIT B

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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

EXEMPTION NOTIFICATION

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

Project Title:	Issuance of Month-to-Month Revocable Permit to OceanFront 121 Inc., for Apartment and Hotel purposes.
Project / Reference No.:	PSF: 18HD-125
Project Location:	Banyan Drive, Waiakea, South Hilo, Hawaii; Tax Map Key: (3) 2-1-005:020.
Project Description:	Current permittee has reorganized and is requesting a new month-to-month revocable permit be issued to the new entity to allow it to continue its tenancy until such time as a redevelopment plan can be adopted and implemented for the Banyan Drive area.
Chap. 343 Trigger(s):	Use of State Land.
Exemption Class No.:	In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with 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, "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" Item No. 51, which states "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing".
Cumulative Impact of Planned Successive Actions in Same Place Significant?:	No. There are no planned successive actions. The current actions have been occurring for the previous 70 years, which have not proven to have a significant impact.

Action may have
Significant Impact on
Particularly Sensitive
Environment?:

No. The proposed disposition does not pose a significant impact either on or near a particularly sensitive environment.

Consulted Parties:

County of Hawaii:
Department of Public Works
Fire Department

These agencies were consulted on the propriety of the HRS Chapter 343 exemption, and expressed no comments in opposition to the exemption.

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 in accordance with the Department-wide exemption list, Class No. 1, Item No. 51.

EXHIBIT C

INSPECTION PHOTOS OF RP S-7867 ON 11/05/2018:



Streetside View

New Backflow Prevention Device





Kitchenette and Bathroom in renovated room



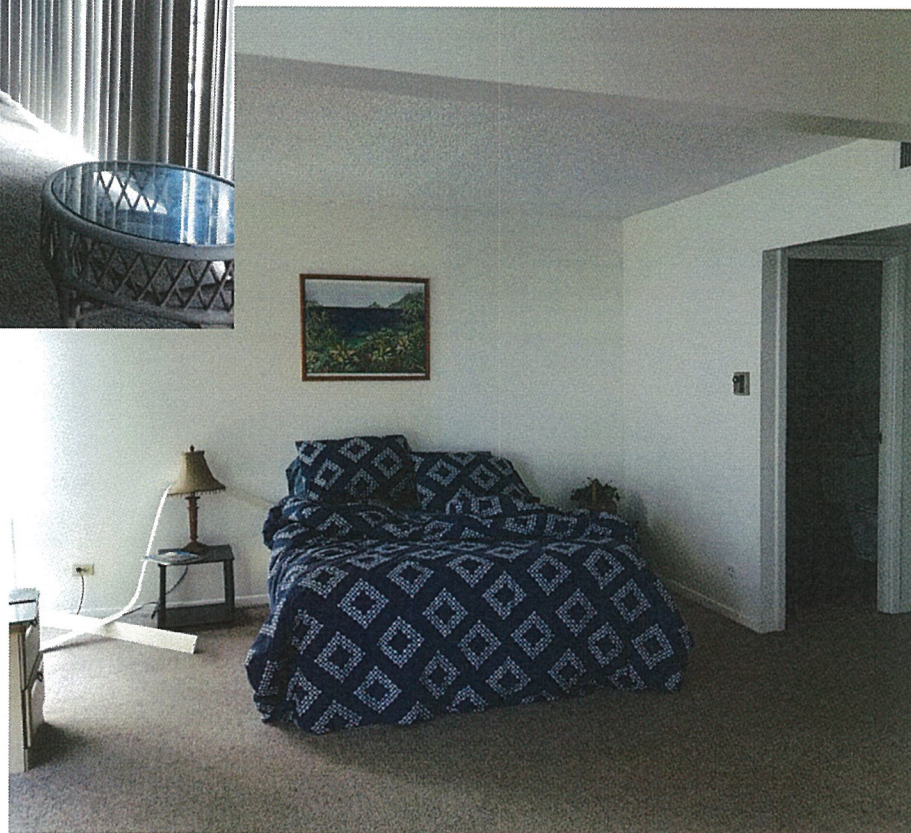
Sleeping area and entry with bathroom and kitchenette
to the left and right at back of photo



Bathroom and kitchenette from previous photo



Kitchenette and bedroom of a double room





Bathroom of a double room



Kitchenette and sleeping area of a nicely renovated room





Another nicely renovated room with kitchenette, sleeping area and bathroom.