

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

March 22, 2019

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

PSF No.: 18KD-036

Kauai

Issuance of Right-of Entry Permit to Gary W. Rodrigues for Conservation Management Purposes, Kawaihau, Kapaa, Kauai, Tax Map Key: (4) 4-6-008:023.

APPLICANT:

Gary W. Rodrigues, Individual, Tenant in Severalty.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Kapaa Homesteads situated at Kawaihau, Kapaa, Kauai, identified by Tax Map Key: (4) 4-6-008:023, as shown on the attached map labeled Exhibit A.

AREA:

32.8 acres, more or less.

ZONING:

State Land Use District: Agriculture
County of Kauai CZO: Unknown

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:

Vacant and unencumbered.

CHARACTER OF USE:

Conservation Management purposes.

TERM OF RIGHT-OF-ENTRY:

1-year. (1-year from date of signature of right-of-entry)

MONTHLY RENTAL:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exemption Declaration attached as Exhibit C.

DCCA VERIFICATION:

Applicant is not operating a business and, as such, is not required to register with DCCA.

REMARKS:

The subject parcel, identified by Tax Map Key: (4) 4-6-008:023, is irregularly shaped, covered with trees and is located in a valley north of Kapaa Town. According to Mr. Rodrigues, a large portion of the 33 acres is located on a 10 – 30-degree slope.

The parcel was formerly encumbered by Revocable Permit No. S-6399 to the applicant's father – John S. Rodrigues. The permit was cancelled as of March 9, 1995.

On October 8, 1999, Revocable Permit No. S-7190 was issued to Gary Rodrigues for Conservation Management purposes. During his time as a tenant, Mr. Rodrigues cleared the land of trash, abandoned vehicles and invasive species at his own expense.

On January 10, 2013 a letter was sent to Mr. Rodrigues stating that his permit would not be renewed if he did not pay his back rent of \$1,588.00.

On January 15, 2013, Mr. Rodrigues wrote a letter stating, "On September 16, 2010, my wife, Tani, submitted a check in the amount of \$467 to DLNR for fees and penalties and also notified DLNR that the revocable permit be terminated immediately." Mr. Rodrigues explained that he could not continue the revocable permit because of his financial conditions. He also mentioned that, in the future, he would be interested in volunteering

his time to help preserve the area. See Exhibit B.¹

On April 26, 2013, the Board approved Cancellation of Revocable Permit No. S-7190 to Gary Rodrigues and Request for Waiver of Level One (1) Hazardous Waste Evaluation Requirement. The Board approved retroactively terminating Revocable Permit No. S-7190 effective October 1, 2010.

Mr. Rodrigues is requesting a right-of-entry permit for Tax Map Key: (4) 4-6-008:023. The purpose of the right-of-entry permit is to remove invasive species such as Albizia trees and to prevent illegal dumping on the State parcel. Illegal dumping on unencumbered State parcels in the area, off Kahuna Road, is an ongoing problem. Mr. Rodrigues has also expressed interest in planting native trees in place of the removed invasive species.

Mr. Rodrigues intends to remove invasive species such as Albizia trees primarily using a chainsaw, but he also has a small backhoe to assist in the removal. Mr. Rodrigues mentioned that he intends to consult with DLNR Forestry and Wildlife about recommendations on planting native trees in the area such as milo or kukui nut. He is interested in purchasing tree seedlings from the State Tree Nursery to plant on the State parcel.

Staff recommends that the rent be gratis due to the intended work of conservation management being a benefit to State.

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.

State Agencies:

DLNR – CWRM	No response by due date.
DLNR – DOFAW	No objections. Before removing trees applicant must consult with DOFAW, follow their guidelines and might be required to obtain a permit.
DLNR – Historic Preserv.	No response by due date.
DOH	1. “Community Noise Control”, shall not be exceeded unless a noise permit is obtained from the Department of Health. 2. “Air Pollution Control”, effective air pollution control measures shall be provided to prevent or minimize any fugitive dust emissions caused by construction work from affecting the surrounding areas. 3. “Solid Waste Management Control”, the open burning of any of these wastes on or off site prohibited.
DOA	No response by due date.

¹ There is no letter on file from 2010 requesting the cancellation of Revocable Permit S-7190 or information of a verbal request. It is unknown to current KDLO staff why Revocable Permit S-7190 was not cancelled in 2010.

County Agencies:

County Planning	No objections & no comments.
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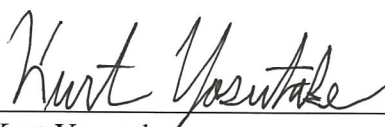
Other Agencies:

OHA	No response by due date.
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RECOMMENDATION: That the Board:

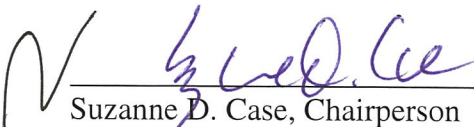
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a right-of-entry permit to Gary Rodrigues covering the subject area for Conservation Management 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 right-of-entry permit form, as may be amended from time to time; and
 - b. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

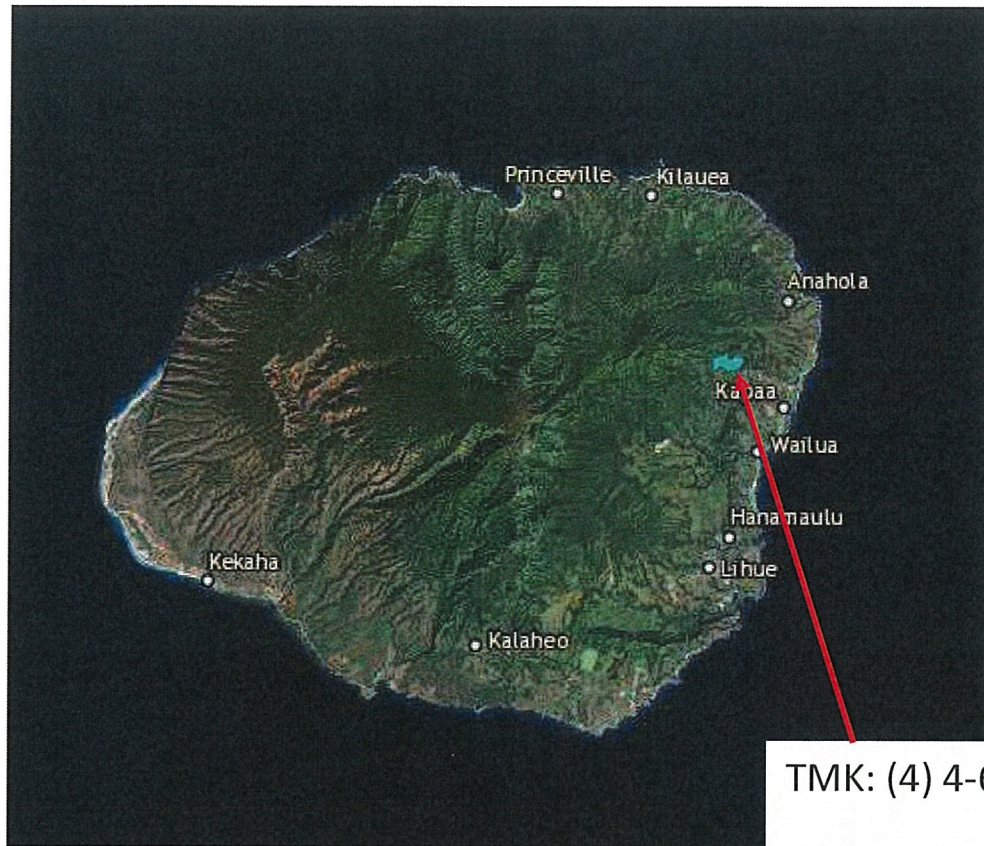


Kurt Yasutake
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



TMK: (4) 4-6-008:023

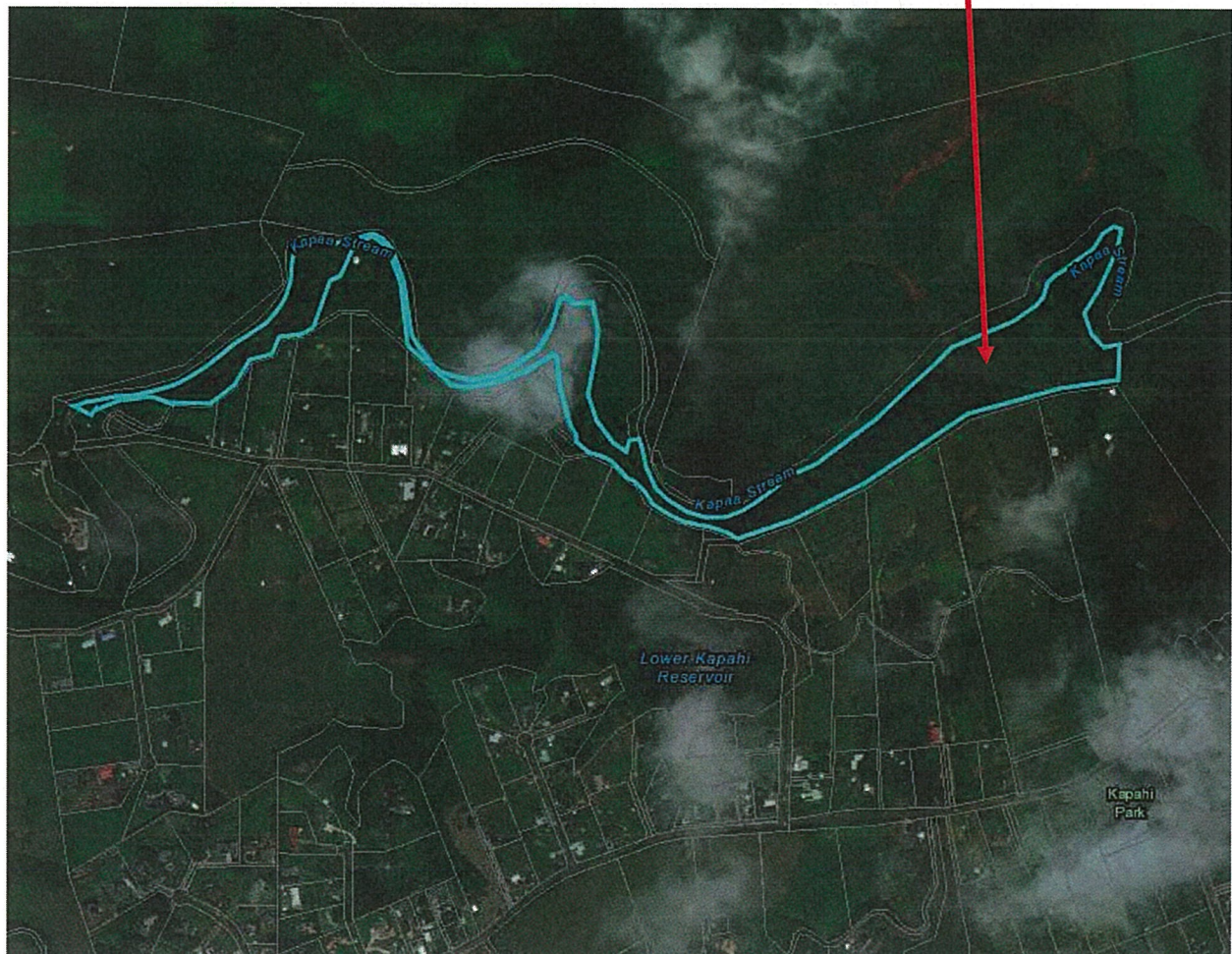



EXHIBIT A

To: Russell Y. Tsuji, Administrator
Department of Land and Natural Resources, Land Division
State of Hawaii
3060 Eiwa Street, Room 208
Lihue, HI 96766

From: Gary W. Rodrigues 

Re: Revocable Permit No. 7190

Date: January 15, 2013

This is to acknowledge receipt of your notice of January 10, 2013 that revocable permit no. 7190 was not renewed by the Board of Land and Natural Resources on December 14, 2012 because of rental payment in the arrears for more than sixty (60) days.

I have not occupied the premises and have no personal property on the premises. The premises are overgrown with trees and brush just as it was when was granted the revocable permit.

I request that my record with DLNR be corrected to reflect facts related to the revocable permit. On September 16, 2010, my wife, Tani, submitted a check in the amount of \$467 to DLNR for fees and penalties and also notified DLNR that the revocable permit be terminated immediately. Since that notice DLNR has continuously sent payment notices. It is unfortunate that we could not continue the permit because of financial conditions. If in the future DLNR would want to establish a program for me to volunteer my time to help preserve the area I would be happy to assist. I recommend that DLNR review such areas for conservation and grant permits without the requirement for any insurance requirement because the insurance exceeds \$1,000 per year as compared to the lease payment.

Please notify me when the DLNR records have been corrected. Mahalo.

EXHIBIT B

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

March 22, 2019

EXEMPTION NOTIFICATION

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

Project Title: Issuance of Right-of-Entry Permit to Gary W. Rodrigues for Conservation Management Purposes, Kawaihau, Kapaa, Kauai, Tax Map Key: (4) 4-6-008:023.

Project / Reference No.: 18KD-036

Project Location: Kawaihau, Kapaa, Kauai, identified by Tax Map Key: (4) 4-6-008:023.

Project Description: Issuance of Right-of-Entry Permit to Gary W. Rodrigues for Conservation Management Purposes. He intends to plant native trees and remove invasive species. Mr. Rodrigues also intends to prevent illegal dumping on the State parcel, which is a current problem on neighboring State parcels.

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

Exemption Class No. and Description: 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 34, which states the "Routine pruning, trimming, thinning, and removal of trees, excluding commercial logging".

EXHIBIT C

Exemption Class No. 1, Item 33, which states the
“Maintenance of state lands and waters to remove weed,
brushes, grass and other unwanted vegetation.”

Exemption Class No. 1, Item 38, which states the “Removal
and disposal of rubbish and debris from state lands and
waters.”

**Cumulative Impact of
Planned Successive Actions
in Same Place
Significant?:**

No. The temporary use of the land for land maintenance
purposes is compliant with county zoning requirements. Staff
believes there are no cumulative impacts involved.

**Action May Have
Significant Impact on
Particularly Sensitive
Environment?:**

No. There are no sensitive environmental issues involved
with the proposed use of the property.

Analysis:

Mr. Rodrigues proposed use of planting native trees,
removing invasive species and preventing illegal dumping
will benefit the State. Staff believes that the proposed use
will have little to no negligible or no expansion or change in
use of the subject area beyond that previously existing.

Consulted Parties:

Commission on Water Resource Management, Historical
Preservation Division, Department of Health, Department of
Agriculture, Office of Hawaiian Affairs & Kauai County
Planning Department.

Recommendation:

We recommend that the Land Board approve this project as it
will probably have minimal or no significant effect on the
environment and is presumed to be exempt from the
preparation of an environmental assessment.