

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

August 28, 2020

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

PSF No.: 20KD-056

KAUAI

Cancellation of Revocable Permit No. S-7870, Charmaine Manuel, Permittee; Request for Waiver of Requirement for Conducting Phase I Environmental Site Assessment upon Cancellation of Revocable Permit No. S-7870; Issuance of New Revocable Permit to Pedryn Baniaga; Kekaha, Waimea (Kona), Kauai, Tax Map Key: (4) 1-3-002:030.

APPLICANT:

Pedryn Baniaga, Married, Individual.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Kekaha situated at Kekaha, Waimea (Kona), Kauai, identified by Tax Map Key: (4) 1-3-002:030, as shown on the attached map labeled EXHIBIT A.

AREA:

0.40 acre, more or less.

ZONING:

State Land Use District:	Agriculture and Urban
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:

Encumbered by Revocable Permit No. S-7870 (Permittee) for pasture purposes.

CHARACTER OF USE:

Pasture purposes.

COMMENCEMENT DATE:

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

MONTHLY RENTAL:

\$43.75 per month, based on the current Board approved rental value for Revocable Permit No. 7870, attached as EXHIBIT B.¹

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (“HAR”) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on March 3, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states “Operation, 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 D.

DCCA VERIFICATION:

Not applicable. The Applicants as landowners are not required to register with DCCA.

¹ At its meeting on September 27, 2019, under Item D-1, the Board approved the Annual Renewal of Revocable Permits for 2020. EXHIBIT 2 of the submittal included a Revocable Permit Master Checklist 2019, which recommended that Revocable Permit No. S-7870 rental for 2020 would be \$525.00 annually, a 3% increase over 2019’s rental.

JUSTIFICATION FOR REVOCABLE PERMIT (IF APPLICABLE):

Pedryn Baniaga is the only interested person at this time and the parcel is an elongated triangle shaped parcel. Staff believes that there would not be enough market demand for the parcel because of the restrictive shape of the land to warrant a public auction.

REMARKS:

On September 26, 2014, under Item D-1, the Board of Land and Natural Resources approved the issuance of Revocable Permit to Charmaine Manuel for pasture purposes located at Kekaha, Waimea (Kona), Kauai, Tax Map Key: (4) 1-3-002:030 (Parcel 030).

On April 30, 2020, Kauai District Land Office (KDLO) staff received a letter from Charmaine Manuel requesting to cancel her Revocable Permit No. S-7870 for pasture purposes. She also mentioned that her nephew (Pedryn Baniaga) was interested in applying for a revocable permit for Parcel 030.

On June 2, 2020, KDLO staff received an application from Pedryn Baniaga requesting the issuance of a revocable permit for pasture purposes on Parcel 030. Mr. Baniaga plans to continue using Parcel 030 for a horse corral.

Additional Condition 14 of Revocable Permit No. S-7870 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.”

On June 30, 2020, staff conducted an inspection of Parcel 030. Staff did not find evidence of environmental contamination on the property. Staff recommends the Board authorize waiving the Phase I ESA requirement as required by Additional Condition 14 of the permit. See EXHIBIT C for photo of Parcel 030.

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.

Various government agencies and interest groups were solicited for comments.

AGENCIES	COMMENTS
County of Kauai:	
Planning Department	No response by suspense date.
Public Works	“We have no objections.”
State of Hawaii:	
Department of Agriculture - ADC	“We have no objections.”
Department of Health	No response by suspense date.
DLNR – Historic Preservation	No response by suspense date.
Other Agencies/ Interest Groups:	
Office of Hawaiian Affairs	No response by suspense 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 11-200.1, 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. Waive the requirement of Additional Condition No. 14 regarding the conducting of a Phase I Environmental Site Assessment upon cancellation of Revocable Permit No. S-7870.
3. Authorize cancellation of Revocable Permit No. S-7870 to Charmaine Manuel and the issuance of a new revocable permit to Pedryn Baniaga 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.

Respectfully Submitted,

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Kurt Yasutake

Kurt Yasutake
Land Agent

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KEM

APPROVED FOR SUBMITTAL:

RT

Suzanne D. Case

Suzanne D. Case, Chairperson

REVOCABLE PERMIT MASTER LIST 2019/ Note: Permits showing "0" annual rent may be gratis, or subject to a non-fixed rental amount, e.g. % of net revenue, or amount per event. Rent is reflected in US dollars and rounded for fiscal billing purposes.

Doc No.	T Y p e	Permittee Name	TMK	Land Trust Status	Revocable Permit From	Char of Use / CDUP Info, as Applicable	Permit Area	2019 Annual Rent	Proposed 2020 Annual Rent	Indicated Annual Market Rent (CBRE 2018)	Comments re rent amount and why no long-term disposition
rp7870	4	MANUEL, CHARMAI NE	(4) 1-3- 002:030- 0000 KEKAHA	5(b)	4/1/2016	Pasture	0.4	509.36	525.00		•2018 rent was increased 1.5% over 2017 rent. 2019 rent was increased by 3% over 2018 rent. Staff recommends increasing 2020's rent by approx 3% over 2019's rent. •Wedge-shaped, residentially zoned remnant parcel from GL4222 to Kekaha Sugar Company. Staff will continue in its efforts to have the CoK's Housing Agency take over the administration of the Division's residentially zoned parcels, although it is not clear if this parcel is buildable. The current disposition is appropriate at this time.

EXHIBIT B

UNLESS OTHERWISE NOTED, THERE ARE NO
 NON-COMPLIANCE ISSUES OR PENDING LITIGATION

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BLNR September 27, 2019, Item D-1
 EXHIBIT 2



EXHIBIT C

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

EXHIBIT D

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, Hawaii Administrative Rules.

Project Title: Cancellation of Revocable Permit No. S-7870, Charmaine Manuel, Permittee; Request for Waiver of Requirement for Conducting Phase I Environmental Site Assessment upon Cancellation of Revocable Permit No. S-7870; Issuance of New Revocable Permit to Pedryn Baniaga.

Project / Reference No.: 20KD-056

Project Location: Kekaha, Waimea (Kona), Kauai, Tax Map Key: (4) 1-3-002: portion of 030.

Project Description: Cancellation of Revocable Permit No. S-7870, Charmaine Manuel, Permittee; Request for Waiver of Requirement for Conducting Phase I Environmental Site Assessment upon Cancellation of Revocable Permit No. S-7870; Issuance of New Revocable Permit to Pedryn Baniaga.

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

Exemption Class No.: In accordance with Hawaii Administrative Rules ("HAR") § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on March 3, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operation, 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 Part 1, Item No. 38, that states "Transfer of title to land."

Cumulative Impact of
Planned Successive
Actions in Same Place
Significant?

No. There is no projected negative cumulative impact due to successive action.

Action May Have
Significant Impact on
Particularly Sensitive
Environment:

No. Any particularly sensitive environmental issues for the subject area were not brought to the attention of the Division.

Consulted Parties

Agencies as noted in the submittal.

Analysis:

Based on the above mentioned, staff believes there would be no significant impact to the environment.

Recommendation:

That the Board finds 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.