

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

September 11, 2020

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

PSF No.:15KD136

Kauai

Request for Cancellation of Revocable Permit No. S-7785 (RP S-7785) to JINTA, LLC; Waiver of Phase I Environmental Site Assessment Requirement Under RP S-7785; Issuance of Revocable Permit to Jackson Wong Inc. for Landscaping and Business Parking Lot Purposes; Grant of Term, Non-Exclusive Easement to Jackson Wong, Inc. for Portion of Encroaching Building Addition; and Sale of Lease at Public Auction, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-010:042.

APPLICANT:

Jackson Wong Inc., a Hawaii profit corporation, doing business as Wong's Chinese Restaurant.

LEGAL REFERENCE:

Sections 171-13, -14, -16, -17, -41 and -55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of Hanapepe Town Lots situated at Hanapepe, Waimea, Kauai, identified by Tax Map Key: (4) 1-9-010:042, as shown on the attached map labeled Exhibit A.

AREA:

12,256 square feet, more or less.

ZONING:

State Land Use District:	Urban
County of Kauai CZO:	Open Commercial

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-7785, JINTA, LLC, Permittee, for landscaping and business parking lot purposes.

Encumbered by Grant of Easement under Land Office Deed No. S-27,633, Nonaka-Wong, Inc., Grantee, for the right, privilege, and authority to construct, reconstruct, use, operate, maintain and repair subsurface sanitary sewer pipeline or perpetual non-exclusive sewer line easement.

REVOCABLE PERMIT:

CHARACTER OF USE:

Landscaping and business parking lot purposes.

COMMENCEMENT DATE:

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

MONTHLY RENTAL:

\$167.08

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

EASEMENT:

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove portion of building addition over, under and across State-owned land.

TERM:

Thirty (30) years.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
- 3) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

AUCTION LEASE:

CHARACTER OF USE:

Landscaping and business parking lot purposes.

LEASE TERM:

Thirty (30) years.

COMMENCEMENT DATE:

The date of sale if the current occupant is the successful bidder, otherwise, sixty (60) days after the date of sale; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

MINIMUM UPSET ANNUAL RENT:

To be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th and 20th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities - None

Existing Improvements - None

Legal access to property – Staff has verified that there is legal access to the property off Puolo Road.

Subdivision – Staff has verified that the subject property to be auctioned is a legally subdivided lot.

Encumbrances – Staff has verified that the following encumbrances exist on the property:

Encumbered by Revocable Permit No. S-7785, JINTA, LLC, Permittee, for landscaping and business parking lot purposes.

Encumbered by Grant of Easement under Land Office Deed No. S-27,633, Nonaka-Wong, Inc., Grantee, for the right, privilege, and authority to construct, reconstruct, use, operate, maintain and repair subsurface sanitary sewer pipeline or perpetual non-exclusive sewer line easement.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit B

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

JUSTIFICATION FOR REVOCABLE PERMIT:

The subject property has been used by the abutting restaurant since 1956 for business (parking lot) purposes. Currently the parcel is encumbered by Revocable Permit No. S-7785 to JINTA, LLC, but is being used by Jackson Wong Inc. In November 2015, JINTA,

LLC sold the restaurant located on the adjacent private property to Jackson Wong, Inc.

While staff prepares the State lot for lease by public auction, Jackson Wong Inc. respectfully requests that a new revocable permit be issued to it as an interim measure in order to continue use of the lot without disrupting its business. The public auction will not be conducted until the easement is granted and noted as an encumbrance on the property description in the lease to be auctioned.

REMARKS:

Jackson Wong Inc. (JWI), dba Wong's Restaurant, owns the private property at the corner of Kaumualii Highway and Puolo Road designated as TMK No.: (4) 1-9-010:041 (Parcel 41), which abuts the subject State property designated as TMK No.: (4) 1-9-010:042 (Parcel 42). Parcel 42 has been used in conjunction with the restaurant on Parcel 41 since January 19, 1956, initially under Revocable Permit (RP) No. 1589 to Hideo Nonaka for his family restaurant business. On September 9, 2005, the Board of Land and Natural Resources (Board) approved the cancellation of RP 1589 to Hideo Nonaka and issued Revocable Permit No. S-7418 to JINTA, LLC, commencing on September 10, 2005. JINTA, LLC is a limited liability company owned by Hideo Nonaka's family.

On November 22, 2010, the Board approved the reissuance of a large number of revocable permits statewide to update insurance and other provisions to protect the State's interest. As a part of that process, RP S-7418 to JINTA, LLC was replaced by RP S-7785 also to JINTA, LLC, commencing on September 1, 2011. Included in the terms of this agreement was a requirement to conduct a Phase I Environmental Site Assessment and complete abatement and disposal (if necessary) prior to termination of the permit under section B, additional condition no. 14.

In a letter dated November 18, 2015, the Kauai District Land Office (KDLO) received a request from JINTA, LLC to cancel RP S-7785 due to the sale of Parcel 41 to JWI, applicant for the new revocable permit. Staff notified the tenant of the requirement to conduct a Phase I Environmental Site Assessment. Mr. Frank Nonaka, Manager of JINTA, LLC, stated that only a portion of Parcel 42 has periodically been used for parking purposes when the restaurant had a function in the banquet room and needed Parcel 42 as an overflow parking lot. Otherwise, use of the parcel was limited to delivery of propane gas to the gas tank that was previously located at the rear of Parcel 42 once or twice a month. The rest of the time a landscaper was hired to maintain the lawn area and surrounding trees and bushes.

There are no documents in the file to indicate when the propane tank was installed, and no authorization was approved by the Board. KDLO informed the applicant that the propane tank would need to be moved. KDLO inspected the property on May 4, 2020 and found that the tank had been moved and is no longer on State parcel 42. At no time was there any

use of heavy equipment or chemicals on the property (other than propane gas contained in the tank).

During the application process, an unauthorized building addition to Wong's Restaurant on parcel 41 was discovered and appears to be encroaching onto the State's parcel 42. It was at that time KDLO informed JWI that if they moved the gas tank, they would be allowed to apply for an easement for the building addition. The gas tank was moved and accordingly, JWI requested the grant of easement.

JWI is requesting the subject easement so that the additional structure can remain on the property in the event JWI is not the successful bidder at auction. There are no documents in the file to indicate when the addition was constructed, and no prior authorization was approved by the Board. However, the addition was located on Parcel 42 at the time JWI acquired Parcel 41 from JINTA, LLC. The building addition has a footprint of approximately 150 square feet and is encroaching approximately 15 feet beyond the boundary of Parcel 41 and onto parcel 42. The building is attached to the existing structure. See Exhibit C.

An inspection of the property was conducted on November 27, 2015, May 14, 2019 and again on May 4, 2020. At all times the premises were found to be clean with no chemical spills, no traces of automobile oil leakage on the ground, and no trash or abandoned property.

Therefore, based on the landscaping and business parking lot purposes character of use in the revocable permit, the statements of the permittee, and findings at the time of the inspections, staff agrees that the Phase I Environmental Site Assessment should be waived.

The staff believes that there would be no change in use of the subject area beyond that previously existing.

The parcel is Open zoned and undeveloped, so it probably cannot be put to a higher and better use without a zoning change/variance and an environmental assessment.

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.

The following State and County of Kauai (COK) agencies were consulted on this action with the results indicated:

Agency:	Comment:
Historic Preservation	No response by suspense date
Office of Hawaiian Affairs	No response by suspense date

COK Planning Department	No response by suspense date
COK Department of Public Works	No objections
Department of Health	No objections
Department of Water	No response by suspense date

The proposed RP use has continued since 1956 and will continue. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

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. Authorize the cancellation of Revocable Permit No. S-7785 and the waiver of the Phase I Environmental Site Assessment required thereunder per the request of JINTA, LLC;
3. Authorize the issuance of a revocable permit to Jackson Wong Inc. covering the subject area for landscaping and business parking lot 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;
4. Authorize the issuance of a term non-exclusive easement to Jackson Wong Inc. covering the subject area for building addition 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 term easement document form, as may be amended from time to time;
 - b. TERM: The easement shall run with the land and shall inure to the benefit of

the real property described as Tax Map Key: (4) 1-9-010:041, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;

- 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.
5. Find that the subject area is not suitable for hunting, nor will it become so during the term of the lease.
6. Find the area to be an economic unit in terms of the intended use.
7. Authorize the sale of a lease at public auction covering the subject area for business or commercial purposes (landscaping and/or business parking) 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 business or commercial (landscaping and/or business parking) general lease 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,



Alison Neustein
Land Agent

WTM

KEM

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

KAUMUALII

HIGHWAY

HANAPEPE 86

Grant 10849 to H. W. Kinney
TOWN

Grant 12405 to
Hideo Nonaka
(see map)

Grant 12406 to
Hideo Nonaka
(see map)

5502.50
3987.00
"PUOLO" AREA

LOT 87
12,256 SQ. FT.

ROAD

PUOLO

True North
Scale 1" = 50 ft

subject

Land

(OSP 18687)

Portion of
L.C. Aw. 8020
Ap. 4 to Kapoi

Government

Government
Land
(OSP 18687)

HANAPEPE TOWN LOTS 1ST SERIES

81

Grant 9986 to
Hanapepe Japanese School Association

PRELIM. APPR'D.
Department of the
Attorney General

(REVISED MAY 1969)

HANAPEPE TOWN LOTS, 1ST SERIES

LOT 87

Hanapepe, Waimea (Kona), Kauai, Hawaii

Scale: 1 inch = 50 feet

JOB K-4098
C. M. 17, Sakamoto

Survey marked by Mr. Kip
12.4.1969/1969 July 24, 1969 R.B. 1969

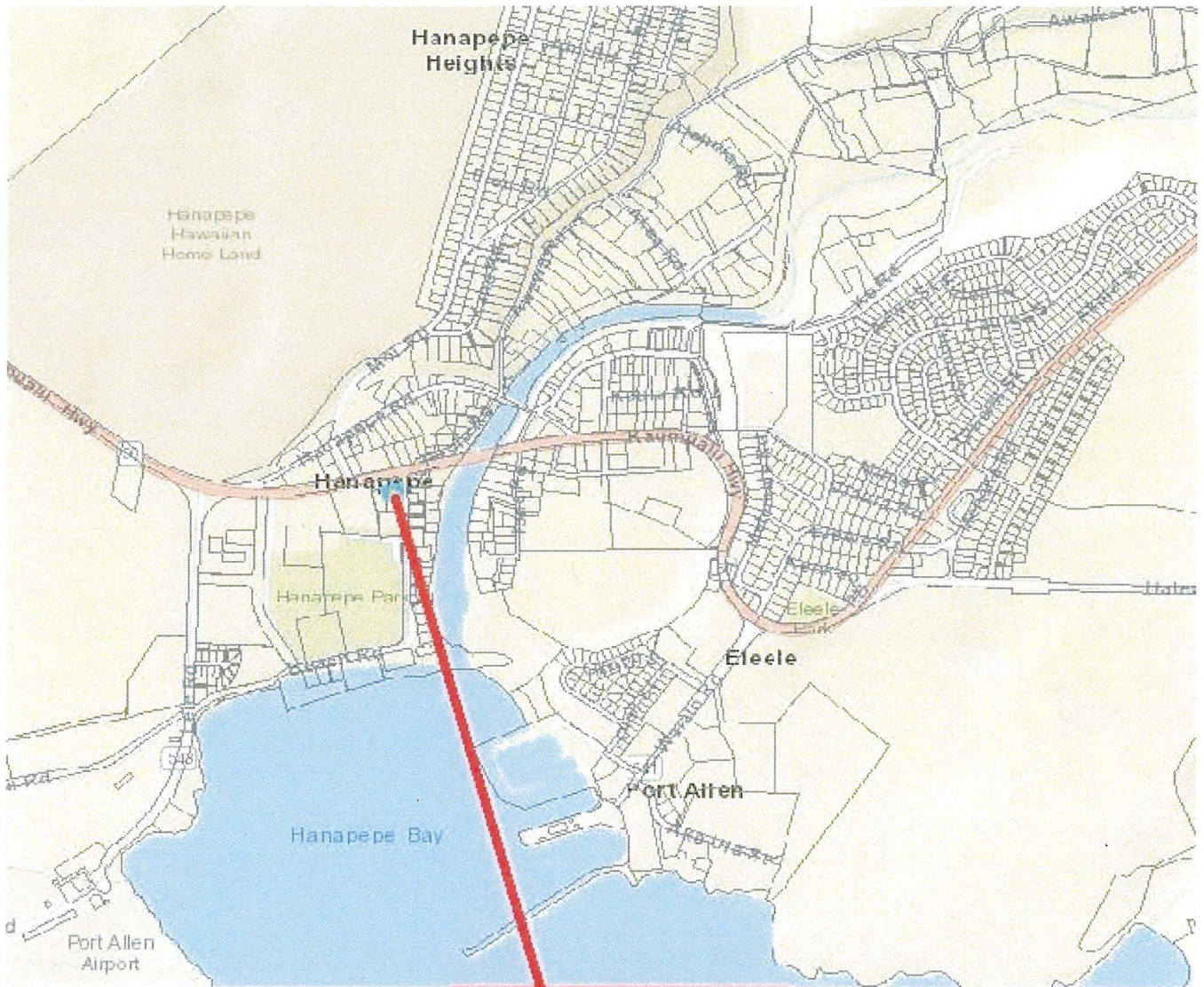
TAX MAP 1-5-17
KONA FILE
C. M. 17, Sakamoto

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

1.5. May 21, 1969

PRELIM. APPR'D.
Department of the
Attorney General

EXHIBIT A



TMK (4) 1-9-010:042

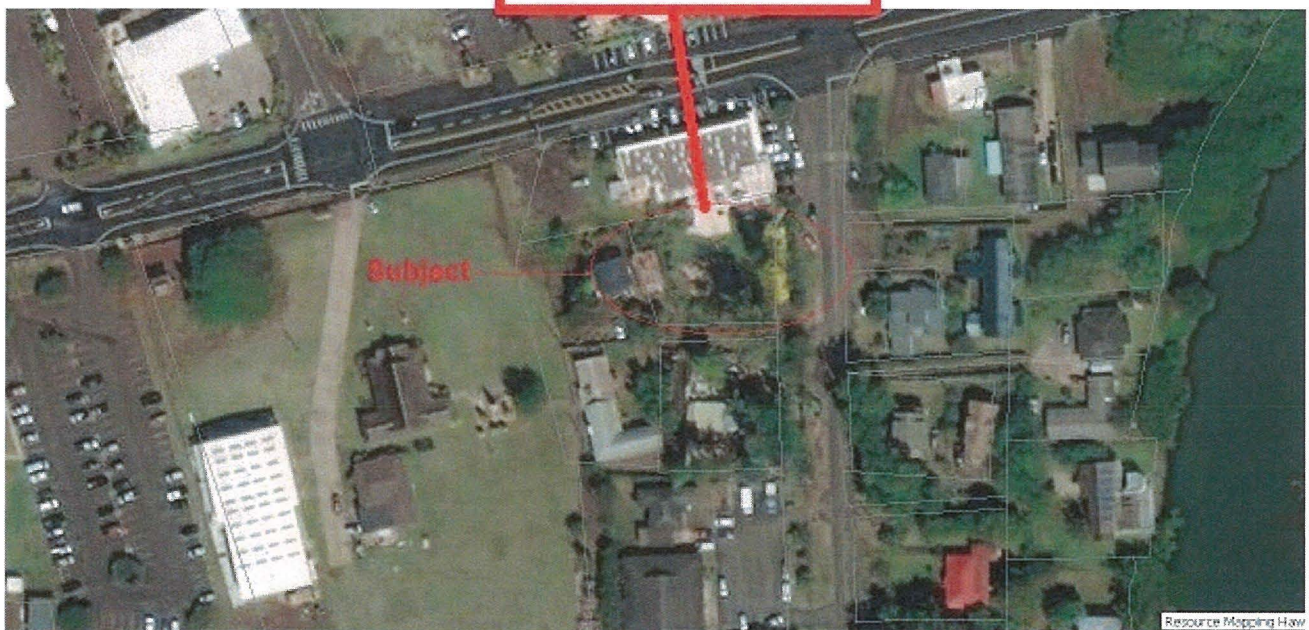
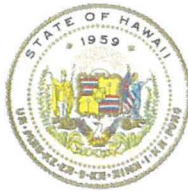


Exhibit A



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

3060 Eiwa Street, Room 208
Lihue, Hawaii 96766
PHONE: (808) 274-3491
FAX: (808) 241-3535

September 11, 2020

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1-15, HAR.

Project Title:	Request for Cancellation of Revocable Permit No. S-7785 (RP S-7785) to JINTA, LLC; Waiver of Phase I Environmental Site Assessment Requirement Under RP S-7785; Issuance of Revocable Permit to Jackson Wong Inc. for Landscaping and Business Parking Lot Purposes; Grant of Term, Non-Exclusive Easement to Jackson Wong, Inc. for Portion of Encroaching Building Addition; and Sale of Lease at Public Auction, Hanapepe, Waimea, Kauai, Tax Map Key: (4) 1-9-010:042.
Project / Reference No.:	PSF No.: 15KD-136
Project Location:	Portion of Government lands of Hanapepe Town Lots situated at Hanapepe, Waimea, Kauai, identified by Tax Map Key: (4) 1-9-010:042.
Project Description:	Issuance of Revocable Permit For Landscaping and Business Parking Lot Purposes; Grant of Term, Non-Exclusive Easement to Jackson Wong Inc., Doing Business as Wong's Chinese Restaurant for Addition to Building Structure; and Sale of Lease at Public Auction.
Chap. 343 Trigger(s):	Use of State land.

EXHIBIT B

Exemption Class No.
and Item No.:

In accordance with Section 11-200.1-15 of the Hawaii Administrative Rules and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated March 3, 2020, 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," Item 27, which states, "Maintenance of existing landscaping, including planting, trimming, mowing, and irrigation," and Item No. 40, "Creation or termination of easement, covenants, or other rights in structures or land."

Cumulative Impact of
Planned Successive
Actions in Same Place
Significant?

No, the request is a single occurrence in the area.

Action May Have
Significant Impact on
Particularly Sensitive
Environment?

No, the action proposed will have no significant impact to any particularly sensitive environment.

Analysis:

Wong's Restaurant is located at the corner of Kaumualii Highway and Puolo Road and abuts the subject State property. The State lot has been used by the restaurant since February 1956 under RP No. 1589 in conjunction with the family restaurant business owned by Hideo Nonaka. On September 10, 2005, RPS-7418 was issued to JINTA LLC., which was owned by Hideo Nonaka and his family. Wong's Restaurant has since taken over the restaurant space and has assumed the use and maintenance of the parking lot and garden area. They have no knowledge of when the building addition was originally built, but it appears to have been onsite for some time. The staff believes that

EXHIBIT B

there would be no change in use of the subject area beyond that previously existing.

Consulted Parties:

Comments from The State Historic Preservation Division, Office of Hawaiian Affairs, Department of Health, County of Kauai (COK) Department of Water, COK Public Works and COK Planning were solicited. No agency had any objection to the proposed exemption.

Recommendation:

It is anticipated this activity will probably have minimal or no significant effect on the environment. As a result, it is recommended that the Board find the activity will involve minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.





EXHIBIT C