

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

August 26, 2022

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

PSF No.: 21HD-065

Hawaii

Cancellation of Revocable Permit No. S-7531, Winifred A. Sullivan, Successor Trustee of the Sullivan Family Trust, Permittee; Issuance of a Revocable Permit to Puako View LLC for Landscaping and Storage Purposes, Puako, Lalamilo, South Kohala, Hawaii, Tax Map Key: (3) 6-9-002:006.

REQUEST:

Cancellation of Revocable Permit No. S-7531 effective August 31, 2021.

Issuance of a revocable permit to Puako View LLC, a Washington limited liability company (Applicant) for landscaping and storage purposes.

LEGAL REFERENCE:

Sections 171-13 and -55 and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Government lands of Puako, Lalamilo, South Kohala, Hawaii, identified by Tax Map Key: (3) 6-9-002:006, as shown on the attached map labeled Exhibit A.

AREA:

22,942 square feet, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: V – Resort, Open

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:

Currently encumbered under Revocable Permit No. S-7531, Winifred A. Sullivan, Successor Trustee of the Sullivan Family Trust, for landscaping purposes.

CHARACTER OF USE:

Landscaping and storage purposes.

COMMENCEMENT DATE:

Effective date of September 1, 2021.

MONTHLY RENTAL:

Continuation of previous permit rent for land only.

\$293.00 per month – September 1, 2021 through December 31, 2021

\$337.21 per month – effective January 1, 2022

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

JUSTIFICATION OF REVOCABLE PERMIT:

The subject property is unsuitable for leasing through public auction for the following reasons: i) It is an irregularly shaped, substandard lot as indicated by the map attached as Exhibit A; ii) The lot is bisected by an Abandoned Old Government Road (AOGR), which likely falls under the jurisdiction of the County of Hawaii pursuant to the Highways Act, Section 264-1, HRS; iii) The Applicant will only be utilizing the property for landscaping and storage purposes and will not be receiving economic benefit from it. No other parties have requested use of this land. Although the State land has an area in excess of 22,000 square feet, the irregular shape of the property and its bisection by the AOGR render it impractical for long-term leasing within the County of Hawaii zoning restrictions.¹

¹ V - Resort, Hotel Districts. §25-5-95 Minimum building site average width. Each building site in the V district shall have a minimum average width of ninety feet.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Registered business name confirmed:	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Applicant in good standing confirmed:	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>

Puako View LLC is a Washington State limited liability company and is not required to register with the DCCA in the State of Hawaii solely by virtue of its ownership of an interest in real property in the State. Puako View LLC represents that it does not conduct business in the State.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-16 (a)(1) and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 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 minor expansion or minor change of use beyond that previously existing," and Item 44 that states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing." The proposed request is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR.

REMARKS:

Applicant Puako View LLC (Applicant) is the owner of a 1.155-acre parcel in Puako identified by TMK: (3) 6-9-002:005 (Parcel 5). The subject State parcel is situated between the Applicant's property and Puako Road. Access to the Applicant's property is afforded by a 2,074 square foot easement (LOD S-26,994) over the western end of the subject property.

At its meeting of August 26, 1983, under agenda item F-1-f, the Board approved Revocable Permit No. S-6056 (RPS-6056) issued to Miles F. Sullivan, Trustee of the Sullivan Family Trust (Sullivan Family Trust), for landscaping purposes. A site inspection conducted on May 17, 1984 indicated a rock wall was constructed along the Puako Drive roadway² (Exhibit B).

² There are no records in the HDLO files relating to plans for a rock wall or any other improvements submitted for approval.

In 2010, the Department implemented revisions to older permits. Updated language regarding insurance requirements and environmental responsibilities was included in the revised agreement issued to the Permittee. This resulted in RP S-6056 being replaced by RP S-7531, to the Sullivan Family Trust.

The Sullivan Family Trust sold their property (Parcel 5), in August 2021 to Applicant. Because revocable permits are not transferrable, the Sullivan Family Trust is requesting a cancellation of RP S-7531. The Applicant, as current owner of the adjoining Parcel 5, is asking that a new revocable permit be issued for the State land. There will be no change to the current existing use of the property.

A Phase I Environmental Site Assessment (ESA) was provided by the Applicant. A copy of the executive summary is attached as Exhibit C. According to the ESA, the subject property contains a rock wall, an open shed, a trellis, front gate, and portion of the driveway to the adjoining residential property. Staff is recommending the inclusion of a condition in the new revocable permit requiring Applicant to remove the rock wall, open shed, trellis, front gate, and the portion of the driveway located outside of the alignment authorized under LOD S-26,994 at its sole cost and expense in the event of the termination, revocation or non-renewal of the new revocable permit.

Staff is recommending the Board cancel Revocable Permit No. S-7531 to Winifred A. Sullivan, Successor Trustee of the Sullivan Family Trust, and issue a new permit to Applicant Puako View LLC.

A request for comments was sent to various government agencies with no objection or comments on the proposed month-to-month revocable permit.

RECOMMENDATION: That the Board:

1. Authorize the cancellation of Revocable Permit No. S-7531 to Winifred A. Sullivan, Successor Trustee of the Sullivan Family Trust in the manner specified by law.
2. 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 as a de minimis action.
3. Authorize the issuance of month-to-Month Revocable Permit to Puako View LLC covering the subject area for landscaping 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; provided, however, that the new revocable permit shall require Applicant to remove the rock wall, open shed, trellis, front gate, and the portion of the driveway located outside of the alignment authorized under LOD S-26,994 at its sole cost and expense in the event of the termination, revocation or non-renewal of the new revocable permit;
- 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,

Gordon C. Heit

PCW

Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case

RT

Suzanne D. Case, Chairperson

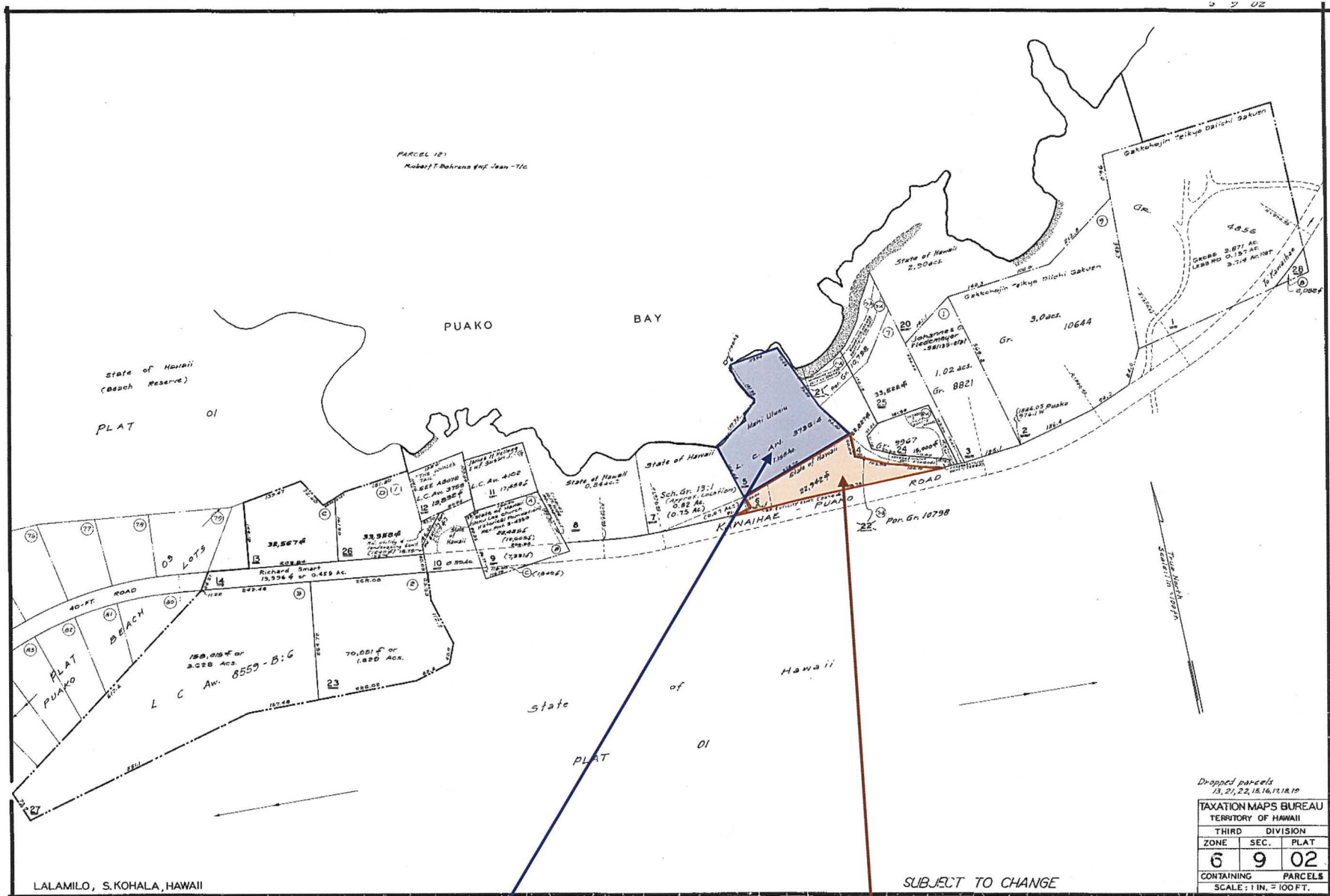
EXHIBIT A



Sullivan Trust – RP S-7531,
South Kohala, Hawaii

EXHIBIT A

TMK: (3) 6-9-002:006



APPLICANT'S PROPERTY

SUBJECT PROPERTY

RP S-7531

TMK: (3) 6-9-002:005



VIEW ALONG PUAKO ROAD

EXHIBIT B

EXECUTIVE SUMMARY

Puako View, LLC retained Ford & Associates, Inc. (FAI) to conduct a Phase I Environmental Site Assessment (Phase I ESA or assessment) of the Puako Beach property located adjacent to 69-1566 Puako Beach Drive at Tax Map Key Number (TMK): (3) 6-9-002: Parcel 006 in Waimea, Hawaii island (the "subject property"). The objective of the Phase I ESA was to provide an independent, professional opinion regarding recognized environmental conditions, as defined by ASTM International (ASTM), associated with the subject property. This Phase I ESA was requested in association with a State of Hawaii Revocable Permit.

FAI performed this Phase I ESA under the conditions of, and in accordance with FAI Proposal Number 21P-3120 (Rev.), dated January 3, 2022, and ASTM Practice E1527-13, *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process* as a guideline. Any exceptions to, or deletions from, this practice are described in Sections 1.2 and 1.3 of this report.

The subject property is an approximately 22,942 square-foot, irregular-shaped land parcel fronting the residential property located at 69-1566 Puako Beach Drive, and is owned by the State of Hawaii. The subject property is surrounded by a rock wall, and is currently undeveloped except for an open shed, a trellis, front gate, and a portion of the driveway to the adjoining residential property.

According to the County of Hawaii Real Property Tax Assessment database, the subject property is designated as TMK: (3) 6-9-002: Parcel 006. The County of Hawaii Department of Planning and Permitting (DPP) database indicates that the Property Tax Class for the subject property is "Residential."

The historical research presented in this assessment has established the use of the subject property since 1923. In addition, information on historic uses of adjoining properties was also obtained. A chronological summary of the historic uses of the subject and adjoining/nearby properties is presented below.

On the earliest available topographic map, from 1923, the subject property is depicted as undeveloped land located along the north side of a trail. Puako Bay is shown north of the subject property and the general area is labeled "Puako." The topographic map from 1928 appears similar, except the south adjoining trail is depicted as a portion of a railroad. The earliest available aerial photographs, dated from 1954 to 1976, show the subject property and all adjoining areas as undeveloped, densely vegetated land. A roadway, currently Puako Beach Drive, appears along the south side of the subject property in the east-west direction. The aerial photographs dated from 1985 to 2019 appear similar and depict the residential property adjoining the north side of the subject property. The subject property appears mostly vegetated. According to the Hawaii County Department of Planning and Permitting database, two building permits were listed for the subject property, including one dated 1985 for a non-residential building, and one dated 1988 for non-residential electrical work.

According to available records at the County of Hawaii Real Property Tax Assessment Office, the subject property is designated as TMK: (3) 6-9-002: Parcel 006. The earliest available record, dated 1944, indicates the subject property was owned by Robert Hind, Ltd. with a lease issued to the Territory of Hawaii. In 1952, the subject property was deeded to Richard Smart. The subject property was deeded

to the State of Hawaii, the current owner, in 1966. In 1978, a Grant of Easement was issued to William P. Hodges. Another Grant of Easement was issued to Melvin B. Hewett and James W. Growney, and a portion of an abandoned road and government remnant were dropped into the subject property in 1979. In 1983, a lease and revocable permit were issued to the Sullivan Family Trust.

The subject property and surrounding areas were identified in the State of Hawaii Department of Health (HDOH), Hazard Evaluation and Emergency Response (HEER) Office Release Notification database as an extended area of concern in the former Waikoloa Maneuver Area (WMA). This area was formerly used by the United States Navy for live-fire training, and is currently managed by the *Areawide Environmental Hazard Management Plan (AEHMP) for the Waikoloa Maneuver Area, Island of Hawaii, Explosives Safety Guidance to Help Protect You from Munitions*, prepared by the HDOH, HEER Office, dated March 2019. This AEHMP provides guidance to reduce risks related to unexploded military ordnance (UXO) in the WMA.

According to available documents, the subject property is located in Sector 17C, which is not part of the original WMA boundary, but was identified as an extended area of concern in 2006. Sector 17 is considered a low munitions and explosives of concern (MEC) hazard level. According to a 2013 site investigation report, soil and groundwater samples were collected from Sector 17, and analytical results indicated that concentrations of aluminum, antimony, copper, lead, and zinc were found below project action levels (PALs). In addition, nitroaromatic and nitramine explosives, white phosphorus, and picric acid were not detected above laboratory reporting limits. Therefore, these contaminants are not considered to be contaminants of potential concern for Sector 17. According to a 2014 MEC removal action report, MEC and munition debris (MD) were removed and disposed of across various sectors of the former WMA, which included Sector 17C. The report indicates that Sector 17C is 40 acres in area and 6,097 anomalies were investigated throughout this land area. Out of these anomalies, 23 lbs. were identified as MD and 2,856 lbs. were identified as other waste debris. MEC were not found in Sector 17C.

This Assessment has revealed no evidence of recognized environmental conditions, as defined by ASTM, in connection with the subject property.