

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

December 9, 2022

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

22HD-084

Hawaii

Cancellation of Revocable Permit No. S-7914, Oceanfront 121, Inc., and Request for Waiver of Requirement for Conducting Phase I Environmental Assessment upon Cancellation; Issuance of Month-to-Month Revocable Permit and Management Right-of-entry to Banyan Drive Management, LLC, for Apartment and Hotel Purposes, Waiakea, South Hilo, Hawaii; Tax Map Key: (3) 2-1-005:020.

APPLICANT:

Banyan Drive Management, LLC, 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:

1.22 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-7914, issued to Oceanfront 121, Inc.

CHARACTER OF USE:

Apartment and hotel purposes.

COMMENCEMENT DATE:

January 1, 2023.

MONTHLY RENTAL:

Current rent is \$4,635.74 per month. Staff recommends no change in rent.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

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.

DCCA VERIFICATION:

Banyan Drive Management, LLC: A Hawaii registered corporation.

Place of business registration confirmed: YES
Registered business name confirmed: YES

Applicant in good standing confirmed: YES

BACKGROUND:

The subject property has been under lease and revocable permit for many years dating back to 1949. General Lease No. 3269 (GL 3269) dated June 1, 1949 was sold at public auction to Mr. A.M.M. Osorio for a term of 21 years. On December 18, 1953, the Board approved the assignment of lease from A.M.M. Osorio to Constantine Roumanis. As a result of damage caused by the tsunami on May 23, 1960, the lease qualified for an extension under §87 of Act 32, Session Laws of Hawaii 1962. At its meeting of April 4, 1962 under agenda item F-16, the Board approved the extension of the lease term through March 14, 2015.

At its meeting of November 22, 1967 (supplemental), the Board approved the assignment of lease from Constantine Roumanis, assignor, to M. & Associates, Inc., assignee. The assignee submitted plans for the construction of a hotel on the property. This brought about a change in the use of the premises and resulted in the Board action of April 26, 1968, agenda item F-25, modifying the lease extension agreement by establishing a new annual rental rate and approving the gratis conveyance of a 10,890 square foot parcel of private property (Former Parcel 23) fronting the lease land from M. & Associates, Inc. to the State, subject to an estate of years up to and including March 14, 2015. This parcel is indicated as dropped parcel 23 on Exhibit A-2 attached. The deed recorded with the Bureau of Conveyances on July 2, 1968, states in part that it is the intent of the grantor “to continue to maintain complete control over the use and possession of the premises until March 14, 2015.” Former Parcel 23 is now State land and part of Tax Map Key: (3) 2-1-005:020 (Parcel 20).¹

Then, at its meeting of April 24, 1970 under agenda item F-1-b, the Board consented to the sublease of GL 3269 from M. & Associates, Inc., sublessor, to Travelodge International, Inc., sublessee.

At its meeting of February 10, 1984 under agenda item F-1-f, the Board consented to the assignment of lease from M. & Associates, Inc., assignor, to Richard M. Jitchaku, assignee. At its meeting of February 13, 1987 under agenda item F-2, the Board consented to the assignment of lease from Richard M. Jitchaku, assignor, to Country Club-Hawaii, Inc. (Country Club), assignee. The submittal also included a provision for the creation of a horizontal property regime (now known as a condominium property regime (CPR)) allowing the individual units on the property to be converted into leasehold condominium apartments and created the Association of Apartment Owners of Country Club Hawaii, Inc. (AOAO). The CPR expired when the lease expired.

¹ The tax map (Exhibit A-2) shows a short driveway connecting Parcel 20 to Banyan Drive. However, staff verified with the Land Survey Division of the Department of Accounting and General Services that the driveway was consolidated into the larger parcel in 1970. Exhibit A-3 shows the current official Land Survey Division map for Parcel 20.

At its meeting of February 27, 2015, under agenda Item D-8, the Board approved a one-year holdover of GL 3269 and subsequent issuance of a month-to-month permit to Country Club. Country Club intended to assign the lease to the AOA during the holdover period, but the parties could not reach agreement on the terms of the assignment. At its meeting of June 26, 2015, under agenda Item D-4, the Board therefore rescinded its action of February 27, 2015, Item D-8, approved a three-and-one-half month holdover of the lease to Country Club, and a subsequent month-to-month revocable permit to the AOA for apartment and hotel purposes.

At its meeting of December 14, 2018, under agenda Item D-3, the Board approved the cancellation of Revocable Permit No. S-7867 and the issuance of a new revocable permit to a replacement entity formed by the principals of the AOA with the name OceanFront 121, Inc. (OceanFront 121). Revocable Permit No. S-7914 was thereafter issued to OceanFront 121 effective April 1, 2019 for apartment and hotel purposes, and that disposition remains in effect at the present time.

REMARKS:

On June 30, 2022, OceanFront 121 notified Land Division that it is unable to continue managing the apartment/hotel property under a month-to-month revocable permit because the short-term nature of the disposition does not allow it to make necessary investments in the property. Ongoing maintenance issues with the air conditioning system as well as the water heater unit and the one remaining operating elevator have proven to be too much for the current permittee to effectively manage. OceanFront 121 advised the Land Division in writing that it intends to surrender RP7914 at the end of December 2022.

At its meeting of July 22, 2022 under agenda item D-5, the Board authorized the issuance of a Request for Qualifications / Request for Proposals for (RFQ/RFP) Lease of Improved Public Lands pertaining to the subject property. This process was initiated on September 1, 2022 with notice for the RFQ/RFP published in the local and statewide newspapers. However, the timetable for the selection process to determine a qualified applicant and review the development proposals cannot be completed before the end of the year.

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 encumbered by a new revocable permit until such time that a redevelopment plan for this property can be adopted and implemented.

The applicant, Banyan Drive Management, LLC (BDM), has experience in managing residential properties within the Hilo and Puna communities and is familiar with the current condition of the property. BDM has agreed to assume temporary management control of the property effective January 1, 2023. Staff anticipates returning to the Board in early 2023 with a recommendation to select a lessee for a new long-term lease under

the above-mentioned RFQ/RFP. The management right-of-entry will allow the applicant to begin managing the property on January 1, 2023 while the documents for the revocable permit are being prepared by the Office of the Attorney General.

Additional Condition, Section B, Item 13 of RP7914 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.

The Department procured the services for an architectural study completed in June 2016 by Erskine Architects, Inc. along with a remediation analysis report conducted by R.M. Towill Corp. in February 2018. Both reports fully analyzed the building's condition providing environmental, structural and mechanical assessments. The permittee has maintained the property in its current condition while making some improvements such as installation of a backflow preventer and other plumbing work that did not involve the introduction of hazardous materials to the site. While there are hazardous materials in the building as shown in the Erskine/RM Towill reports, including asbestos and lead paint, these were on the property prior to the current permittee taking possession. Staff recommends the Board authorize waiving the Phase I environmental site assessment requirement as required by Additional Condition 14 of the permit.

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 11-200.1, 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.
2. Find that approving the revocable permit under the conditions and rent set forth herein will serve the best interests of the State.
3. Authorize cancellation of Revocable Permit No. S-7914 to OceanFront 121, Inc.

and Issuance of a new month-to-month revocable permit to Banyan Drive Management, LLC covering the subject area for Hotel and Apartment 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. Maintain the current rent of \$4,635.74 per month effective 01/01/2023;
 - 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.
4. Authorize the issuance of an immediate management right-of-entry permit to Banyan Drive Management, LLC covering the subject area, 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;
 - b. The right-of-entry permit shall remain in force until the approved Revocable Permit issued to the applicant is fully executed; 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

for

Gordon C. Heit
District Land Agent

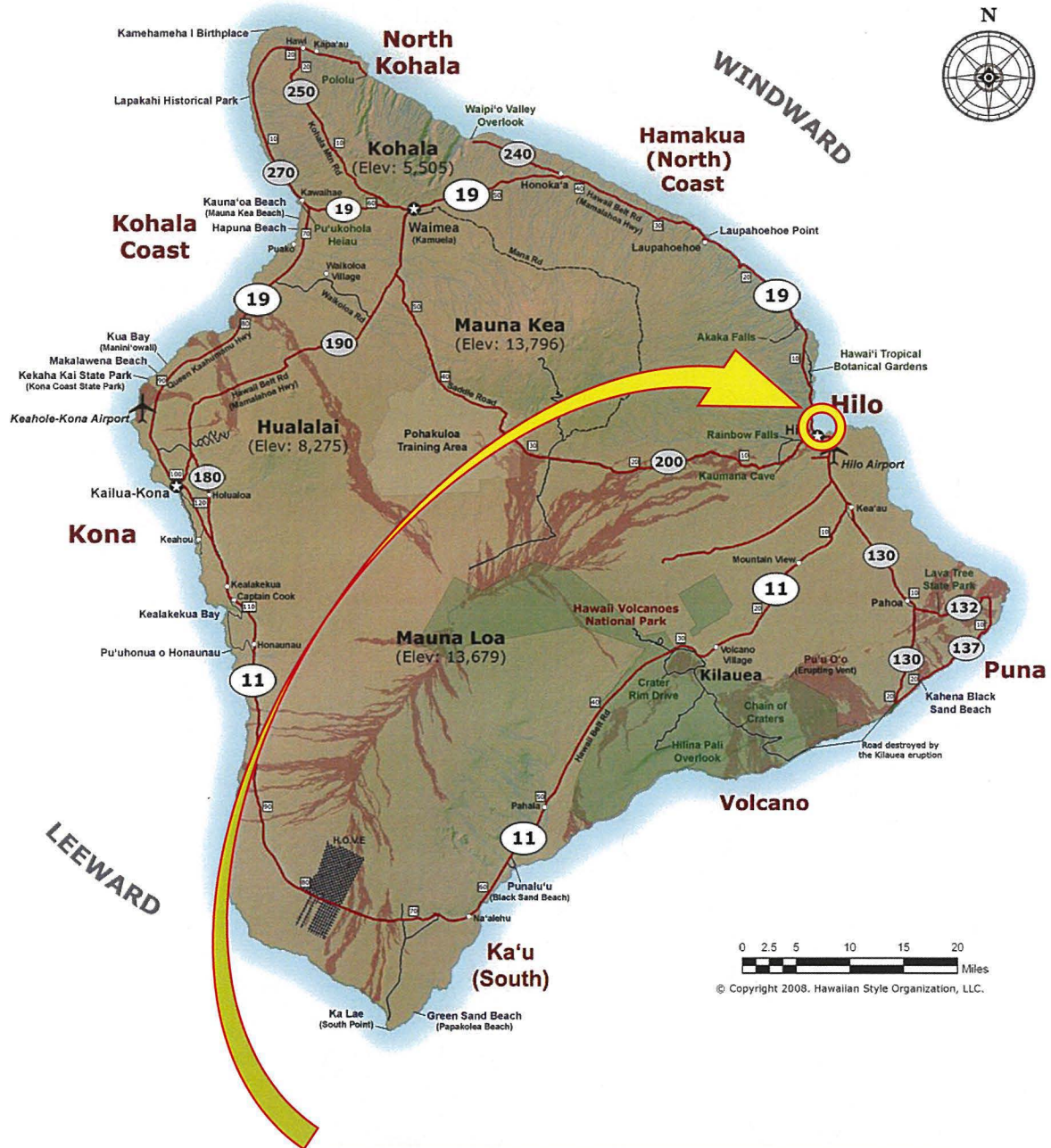
APPROVED FOR SUBMITTAL:

Suzanne D. Case

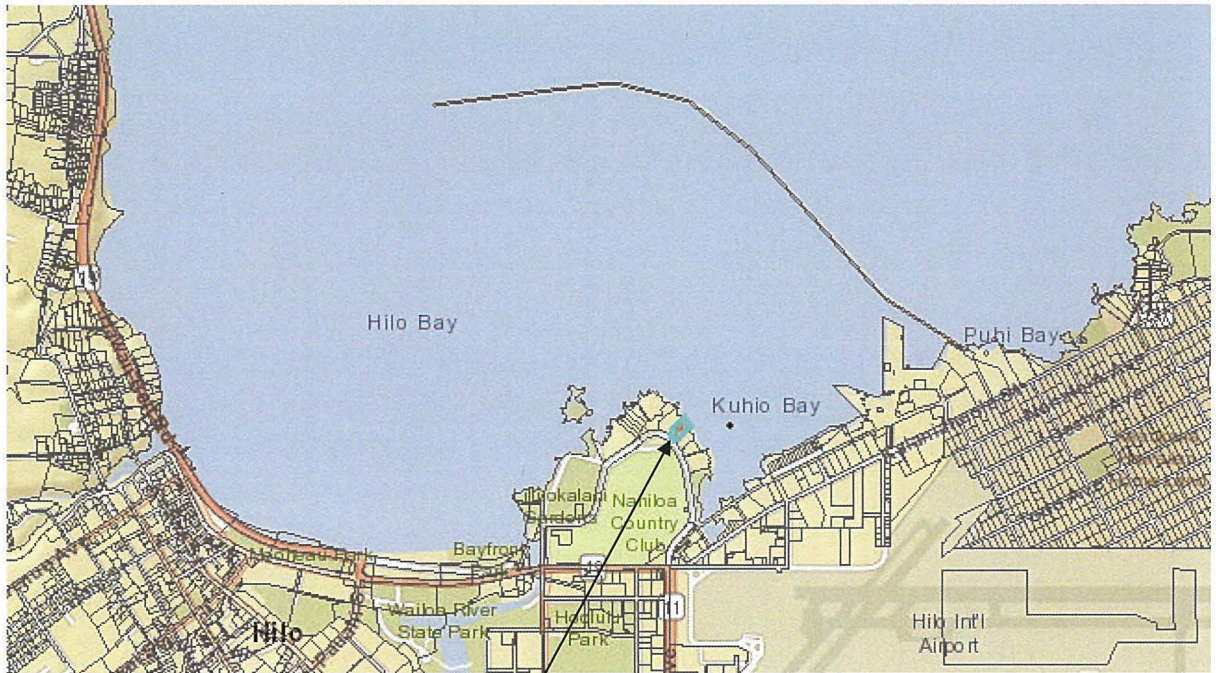
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Suzanne D. Case, Chairperson

EXHIBIT A



RP S-7914 - Hilo, Hawaii



**Former Country Club Hawaii
Condominium and Hotel
TMK: (3) 2-1-005:020**



EXHIBIT A-1

