

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

April 28, 2023

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

PSF No.: 22HD-099

HAWAII

Cancellation of Revocable Permit No. S-7377 to Ernest Pung and Waiver of Requirement to Conduct a Phase I Environmental Site Assessment; Issuance of Month-to-Month Revocable Permit to Spencer Nagata for Pasture Purposes; Piihonua, South Hilo, Hawaii, TMKs: (3) 2-3-032:001, (3) 2-3-030:001 with access over (3) 2-3-031:001por.

APPLICANT:

Spencer Nagata, individual, tenant in severalty (applicant).

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands described as Piihonua, South Hilo, Hawaii, identified by Tax Map Keys: (3) 2-3-032:001, (3) 2-3-030:001 with access over (3) 2-3-031:001por., as shown on the attached maps labeled Exhibit A.

AREA:

89.08 acres, more or less.

ZONING:

TMK: (3) 2-3-030:001 – State Land Use District: Conservation
 County of Hawaii CZO: Open

TMK: (3) 2-3-032:001 – State Land Use District: Urban
 County of Hawaii CZO: RS-10

TMK: (3) 2-3-031:001por. – State Land Use District: Urban
 County of Hawaii CZO: RS-10

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:

Revocable Permit No. S-7377 to Ernest Pung covering the same 89.08 acres.

CHARACTER OF USE:

Pasture purposes.

COMMENCEMENT DATE:

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

MONTHLY RENTAL:

The previous rent for this property was set at \$75.50 per month. Staff is recommending a 3% increase to the previous rent based on the recent annual renewal of revocable permits approved by the Board at its meeting of December 8, 2022, under agenda item D-4. Therefore, the new rent shall be \$77.77 per month.

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 General Exemption Type 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 Part 1, 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." (Exhibit B)

DCCA VERIFICATION:

Not applicable as individuals are not required to register with the DCCA.

JUSTIFICATION FOR REVOCABLE PERMIT:

This property is being processed as a month-to-month revocable permit as the subject properties are primarily surrounded by residential lots along with the city's main hospital and a few other healthcare facilities and potential further development of the area would make the subject properties not feasible for a long-term pasture lease. Leaving it unencumbered would promote growth and/or introduction of invasive plants so, a month-to-month permit would maintain the current condition and prevent growth of invasive plants.

REMARKS:

At its meeting on March 8, 1968, Item F-1, the Board approved the issuance of a revocable permit to Joseph Veriato to manage 22.7 acres (TMK: 3rd/2-3-030:001 por.) for pasture purposes. The permit was cancelled July 1974 for non-payment of rent.

At its meeting on February 28, 1969, Item F-1, the Board approved the issuance of Revocable Permit No. S-4282 (RPS-4282) to Ernest Pung to lease 27.34 acres (TMK: 3rd/2-3-030:001 por.) for pasture purposes.

In May 1998, complaints were received regarding cattle grazing on land formerly utilized by Mr. Veriato. An investigation report was made by DOCARE confirming the presence of cattle belonging to Mr. Pung and he was told to immediately remove his livestock from the vacant State land. Apparently, Mr. Pung did not have direct access to his portion of the property and had an oral agreement with Mr. Veriato to use his entrance from Waiau Street. Mr. Pung continued using the access subsequent to Mr. Veriato losing his permit and upon occasion, let his cattle on State property formerly covered by Mr. Veriato's canceled permit.

To resolve Mr. Pung's unauthorized use of State lands of TMK: 3rd/2-3-030:001 por., the Board, at its meeting of September 11, 1998, under Item D-12, approved the cancellation of RPS-4282 and issuance of Revocable Permit No. S-7161 (RPS-7161) to Ernest Pung to lease an additional 22.7 acres (TMK: 3rd/2-3-030:001 por.) for pasture purposes. The Board also imposed a fine in the amount of \$500.00 for unauthorized use of vacant State lands.

Subsequently, staff discovered that Mr. Pung was using the adjacent State land (TMK: 3rd/2-3-032:001 por.) without authorization. A complaint was received August 9, 2001, by the Hawaii District Land Office (HDLO) regarding a horse being pastured on State land. An investigation by staff confirmed the presence of a horse being pastured and a notice to vacate was posted. Mr. Pung called HDLO and admitted that he put the horse there. Staff advised him to remove the horse immediately. A follow-up inspection of the property showed possible grazing in several areas but nothing recently.

At its meeting of June 27, 2003, item D-15, the Board approved the cancellation of RPS-7161 and re-issuance of Revocable Permit No. S-7737 (RPS-7377) to Ernest Pung for pasture purposes. An area of 39.171 acres was added to RPS-

7377 to account for the portions he was using without authority. Staff recommended this route as very little to no interest had been shown for the use of this property and Mr. Pung agreed to maintain the land. The Board again imposed a fine of \$500.00 for the unauthorized use of State lands.

The June 27, 2003 staff submittal explained that Mr. Pung was accessing the lower end of his property through State land that was for a time being utilized by the University of Hawaii (TMK: 3rd/2-3-031:001). He stated that he had an agreement with the University to access his parcel through the property they were using. This access has been continually used even though the University had abandoned the area many years ago. Staff recommended at the June 27, 2003 meeting that access be added to the new revocable permit to resolve this issue.

Staff received a letter from Ernest Pung, dated June 26, 2022, stating that, due to his age and medical condition he will withdraw from RPS-7377 as of July 31, 2022. RPS-7377 provides at Section B.14 as follows:

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.

After speaking with Mr. Pung, he has asked to waive the requirement of a Phase I ESA as he confirmed that he did not use herbicides or any other hazardous materials on the subject properties. Also, there were no observations of oil stains or other signs of contamination during a site inspection of the property conducted on October 27, 2022 (attached as Exhibit C). Staff is therefore recommending the Board cancel Revocable Permit No. S-7377, Ernest Pung, Permittee, and waive the requirement to conduct a Phase I ESA.

The Applicant, Spencer Nagata, 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. Mr. Nagata has been raising beef cattle for 26 years in the Puna, Waiakea and Hamakua areas, generating approximately \$20K - \$30K per year. He also has a college degree (B.S.) in agriculture (animal science) from the University of Hawaii at Hilo (UHH) and work experience with UH College of Tropical Agriculture and Human Resources

Cooperative Extension Office, Soil and Water Conservation District and Research Corporation of the University of Hawaii/DLNR DOFAW. Mr. Nagata is currently working for USDA NRCS as a Soil Conservationist. He is also a ranch hand at his father's ranch, Pono Wai Ranch, and owns Kolekole Ranch, both beef cattle ranches. Furthermore, Mr. Nagata has about 10 years of combined experience as partner in Kaala Ranch and Pohoiki Ranch producing beef cattle. He worked with the withdrawing permittee, Ernest Pung, for almost 20 years in ranching operations.

Staff is recommending the Board issue a new month-to-month revocable permit to Spencer Nagata.

The subject properties are primarily surrounded by residential lots along with the city's main hospital and a few other healthcare facilities. Potential further development of the area would make the subject properties not feasible for a long-term pasture lease. Leaving it unencumbered would promote growth and/or introduction of invasive plants so, a month-to-month permit would maintain the current condition and prevent growth of invasive plants.

The Applicant intends to spend approximately \$220,000 in fencing improvements, \$80,000 in brush clearing of approximately 40 acres, \$12,000 in chemical treatment for herbaceous weed control of 60 acres, and \$40,000 in forage planting of 40 acres.

State land of TMK: 3rd/2-3-032:001 por. was previously encumbered by General Lease No. S-3662 to Mauna Kea Sugar Co. and expired in 1991. There are currently two easements on the property. The first one is a Land Office Deed No. 13967 (LOD 13967) to Richard Henderson for access purposes. The second is Land Office Deed No. 25758 to the County of Hawaii for drainage easement purposes. The new RP to Mr. Nagata will be subject to these easements.

Staff has reached out to various County, State, and other relevant agencies for comments or objections. No comments or objections were submitted from Department of Hawaiian Home Lands, State Historic Preservation Division, Commission on Water Resource Management, Natural Resource Conservation Service, COH Planning, COH Environmental Management, COH Public Works, Office of Hawaiian Affairs, Hilo Medical Center, and Hale Anuenue Restorative Care Center.

The Office of Conservation and Coastal Lands (OCCL) stated that any proposed land uses upon TMK (3) 2-3-030:001 shall require review by the OCCL and be consulted for any proposed land use, as defined by HAR Chapter 13-5 .

County of Hawaii Office of Housing and Development also responded addressing the potential need for a new access road and sewer connection through the subject parcels for the development of a new residential area on the County owned property adjacent to the subject parcels. The County has no objections to the proposed actions as an interim use and is requesting that the

revocable permit not preclude the ability of the County to request a withdrawal of land for a new road right of way across the subject parcels.

DLNR Division of Forestry and Wildlife responded with the issue of surface and subsurface fresh water sources (Kaumana-Ainako Fresh Water Spring complex) within the subject parcels. The concern was that grazing operations in the past have impacted water quality as livestock would defecate in, or near water sources and also erode the banks of streams and springs leaving run-off that eventually ends up in Hilo Bay. Although no objections were expressed, it was recommended that the permittee fence off streams and springs.

The applicant has been working as a soil conservationist for USDA NRCS for almost ten years and has also worked with the Mauna Kea Soil and Water Conservation District as a Conservation Specialist for over two years. He has a B.S. in Agriculture with a Concentration on Animal Science and Livestock production and has helped raise beef cattle at various ranches around the island for least 26 years. Staff is confident that Mr. Nagata is highly capable of managing the subject State lands and observing necessary conservation practices. He will be notified of this recommendation from DOFAW and will be reminded to apply as a cooperator with the Waiakea Soil and Water Conservation District.

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-7377 to Ernest Pung with waiver of requirement to conduct a Phase I Environmental Assessment, and issue a new permit to Spencer Nagata, 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. Applicant shall apply as a cooperator with the Waiakea Soil and Water Conservation District;
 - c. Applicant shall be required to fence off stream corridors and springs, where viable, to prevent run-off and erosion impacts due to grazing.

- d. Review and approval by the Department of the Attorney General;
and
- e. Such other terms and conditions as may be prescribed by the
Chairperson to best serve the interests of the State.

Respectfully Submitted,

Dan Gushiken

Dan K. Gushiken
Land Agent

APPROVED FOR SUBMITTAL:



Dawn N.S. Chang, Chairperson

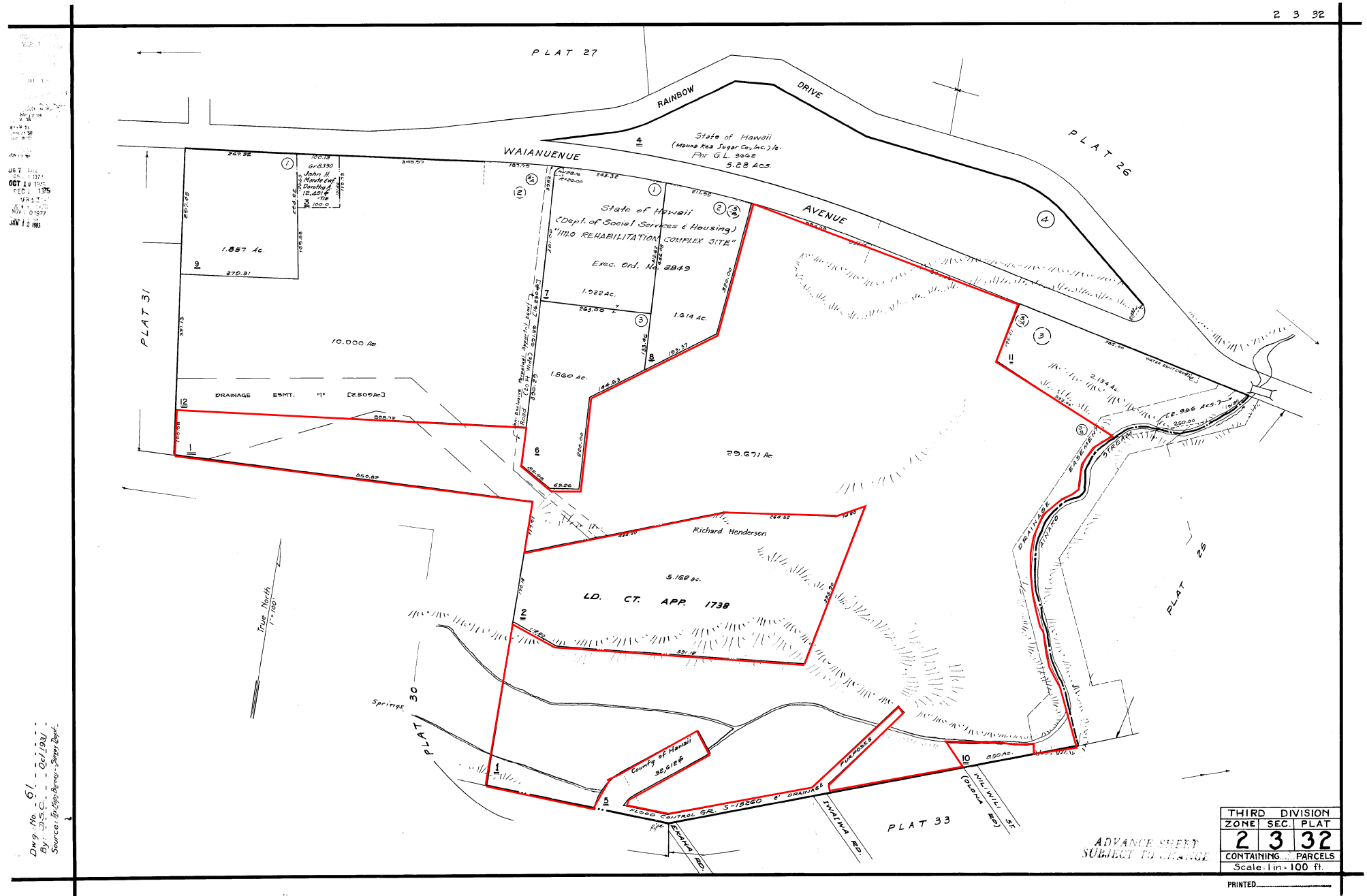
JCH

KM

RT

Revocable Permit No. S-7377 (RPS-7377)

2 3 32



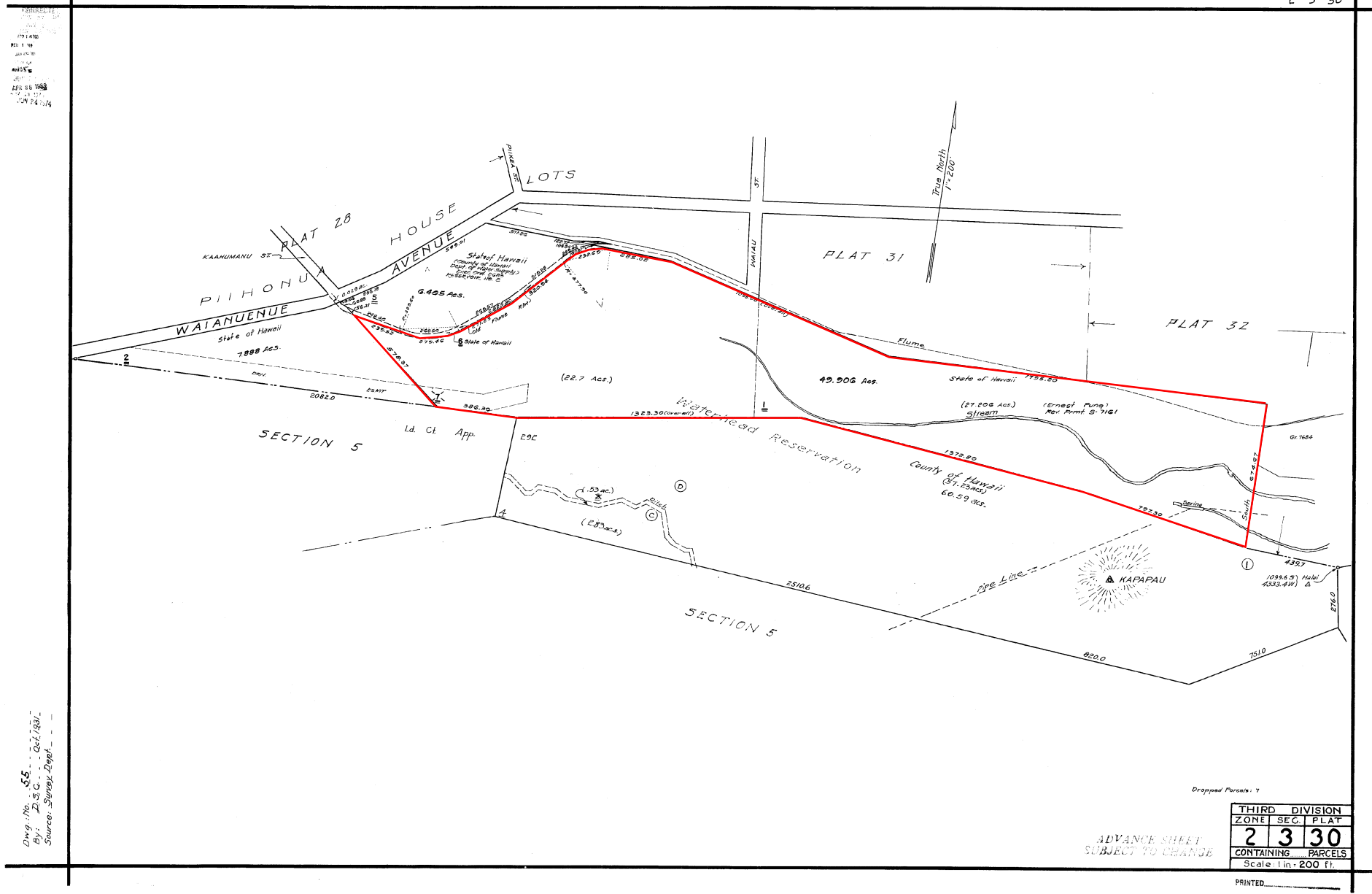
OCT 14 1975
 NOV 10 1977
 JAN 12 1980

Dwg. No. 61
 By: J.S.C. - Oct 1981
 Source: B. Higgins - Survey Dept.

| | | | |
|-----------------------|------|------|------|
| THIRD DIVISION | ZONE | SEC. | PLAT |
| | 2 | 3 | 32 |
| CONTAINING 10 PARCELS | | | |
| Scale: 1 in = 100 ft. | | | |
| PRINTED | | | |

ADVANCE SHEET
SUBJECT TO CHANGE

TMK: (3)2-3-032:001



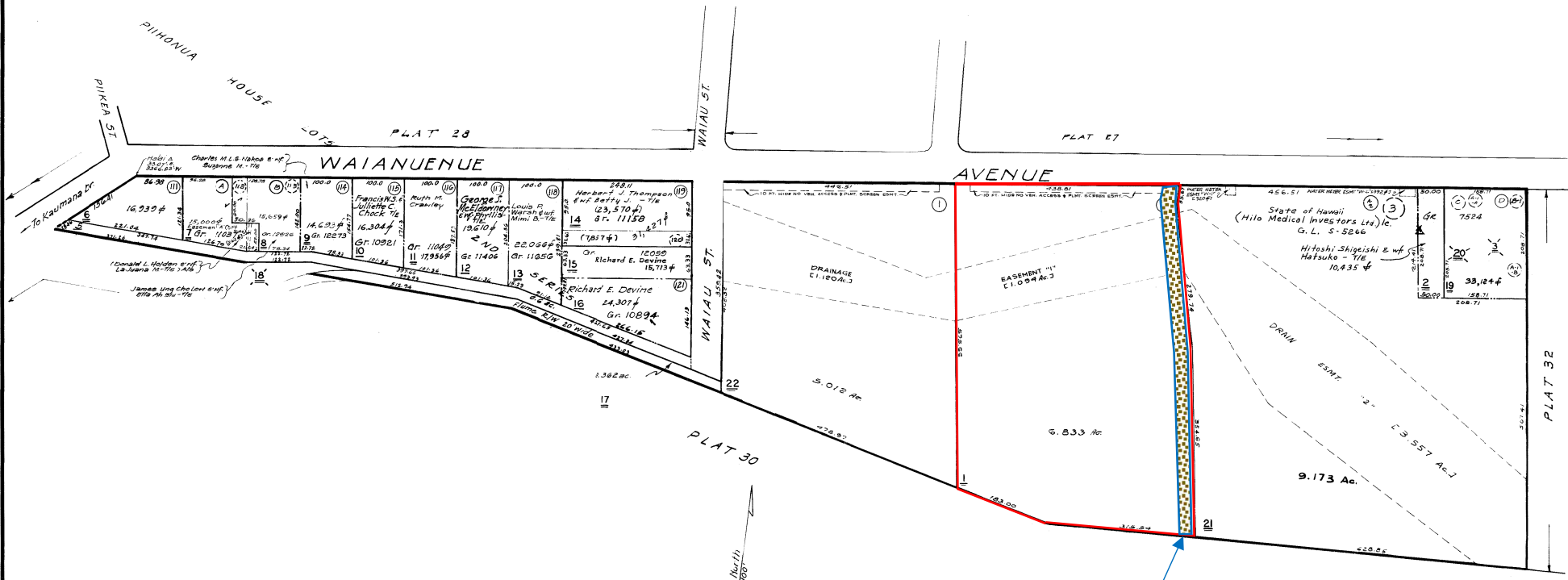
Drawn by: S.S.
 By: D.S.C. 0-1-1937
 Source: Survey Report

ADVANCE SHEET
SUBJECT TO CHANGE

| THIRD DIVISION | | |
|----------------------|------|------|
| ZONE | SEC. | PLAT |
| 2 | 3 | 30 |
| CONTAINING PARCELS | | |
| Scale - 1" = 200 ft. | | |

PRINTED

TMK: (3)2-3-030:001



Access Corridor

DEC 20 1993
DEC 21 1993
DEC 22 1993
DEC 23 1993
DEC 24 1993
DEC 25 1993
DEC 26 1993
DEC 27 1993
DEC 28 1993
DEC 29 1993
DEC 30 1993
DEC 31 1993

Dwg. No. 59
By: B.S.C.
Source: Survey Dept.

PIHONU, SO. HILO, HAWAII

NOTE: All parcels shown on the State of Hawaii unless otherwise noted.

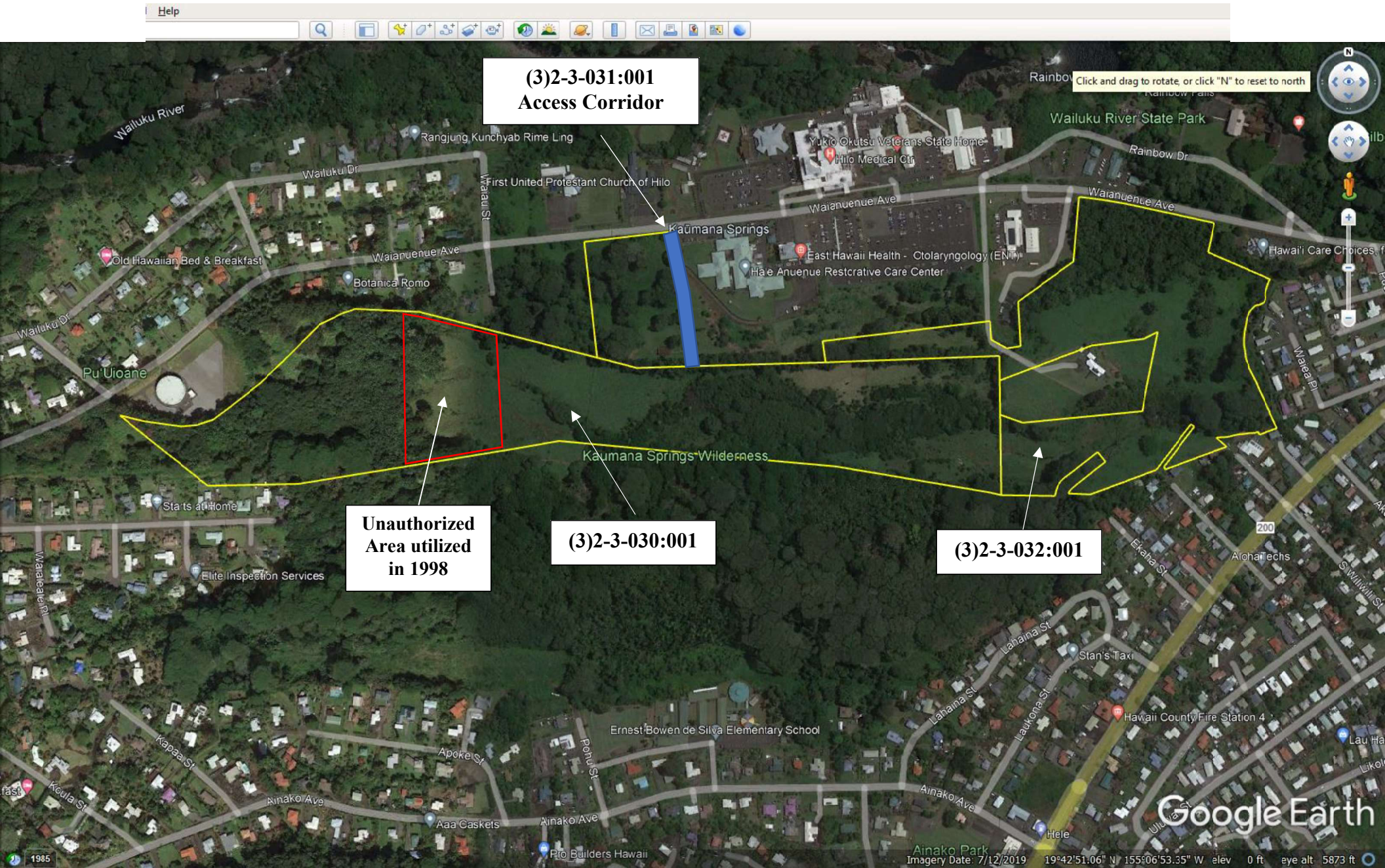
Parcel Shaded 8,201.5

| THIRD DIVISION | | |
|-----------------------|------|------|
| ZONE | SEC. | PLAT |
| 2 | 3 | 31 |
| CONTAINING 1 PARCELS | | |
| Scale: 1 in = 100 ft. | | |

PRINTED

TMK: (3)2-3-031:001

Revocable Permit No. S-7377 (RPS-7377)



JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



DAWN N. S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION**

75 Aupuni Street, Room 204
Hilo, Hawaii 96720
PHONE: (808) 961-9590
FAX: (808) 961-9599

April 28, 2023

EXEMPTION NOTIFICATION

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

Project Title: Cancellation of Revocable Permit No. S-7377 to Ernest Pung and Waiver of Requirement of Conduct a Phase I Environmental Assessment; Issuance of Month-to-Month Revocable Permit to Spencer Nagata for Pasture Purposes; Piihonua, South Hilo, Hawaii, TMKs: (3) 2-3-032:001, (3) 2-3-030:001 with access over (3) 2-3-031:001por.

Project / Reference No.: PSF 22HD-099

Project Location: Piihonua, South Hilo, Hawaii, TMKs: (3) 2-3-032:001, (3) 2-3-030:001 with access over (3) 2-3-031:001por.

Project Description: Cancellation of Revocable Permit No. S-7377 to Ernest Pung with Waiver of Requirement to Conduct a Phase I Environmental Assessment, and Issuance of Month-to-Month Revocable Permit to Spencer Nagata for Pasture Purposes

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

Exemption Class No. and Description: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 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" and Part 1, 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."

Exhibit B

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

No. The cumulative impact of planned successive actions on the subject parcels are negligible.

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

No. Although one of the subject parcels is zoned Conservation, the impact to this area will be negligible.

Analysis:

The issuance of a revocable permit to Spencer Nagata for the pasture purposes will result in minimal material change or significant cumulative impact. If further actions are taken that result in a material change, the Permittee will be required to comply with Chapter 343. The Permittee is also required to apply as a Cooperator with the Waiakea Soil and Water Conservation District. Mr. Nagata is currently a soil conservationist for USDA NRCS (10 years) and also worked with the Mauna Kea SWCD for over two years. Staff is confident that he is highly capable of managing the subject State lands and observing necessary conservation practices.

Consulted Parties:

DLNR Office of Conservation and Coastal Lands, Division of Forestry and Wildlife, State Historic Preservation Division, Commission on Water Resource Management, Department of Hawaiian Home Lands; COH's Planning Department, Environmental Management, Public Works; Office of Hawaiian Affairs, Hilo Medical Center, and Hale Anuenue Restorative Care Center.

Recommendation:

That the Board find this project will have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

INSPECTION REPORT
Intensive Ag/Special Livestock/Pasture/Commercial Timber

FINAL INSPECTION

General Information

Document Number: RPS-7377

Character of Use: Pasture

Inspection Date: October 27, 2022 Inspection Time: 10:00 AM

Land Agent: Dan Gushiken *DG*

TENANT INFORMATION

Name: Ernest Pung

Home Phone: [REDACTED]

Address: [REDACTED]
Hilo, HI 96720

Business Phone: _____

Fax: _____

Contact Person: _____

Contact Phone: _____

SITE INFORMATION

TMK: (3)2-3-030:001; (3)2-3-031:001 and (3)2-3-032:001

Area: 89.08 acres

Site Address: _____

FISCAL INFORMATION

| ITEM | NOT APPLICABLE | CURRENT = COMPLIANCE | DEFAULT = NON-COMPLIANCE |
|-----------------------|----------------|----------------------|--------------------------|
| Rent | | X | |
| Liability Insurance | | X | |
| Fire Insurance | X | | |
| Bond Security Deposit | | X | |
| Mortgage | X | | |
| | | | |

Exhibit C

ANNUAL INSPECTION REPORT
Intensive Ag/Special Livestock/Pasture/Commercial Timber

File Review

LICENSES/PERMITS/CONSENTS

| ITEM | DLNR Approval Docs in File | | | COMMENTS/NOTES/LISTS |
|---|----------------------------|-----|----|----------------------|
| | N/A | YES | NO | |
| Removal of Minerals/Waters | X | | | |
| Prehistoric/Historic Remains | X | | | |
| Cutting/Removal of Trees | X | | | |
| Hazardous Material Storage/Use | X | | | |
| Subletting | X | | | |
| Improvement Construction Buildings | X | | | |
| Improvement Construction Other structures | X | | | |
| Conservation Plan | X | | | |

Field Inspection

| ITEM | CRITERIA FOR COMPLIANCE | MEETS COMPLIANCE | | | COMMENTS/NOTES |
|---|--|------------------|-----|----|---|
| | | N/A | YES | NO | |
| Subletting | consents approved use adheres to lease purpose | X | | | |
| Buildings / Residences: roof, paint, exterior, interior | clean, sanitary, orderly suitable & well maintained DLNR construction consent adheres to completion schedule *check for hazardous materials | X | | | prior improvements need to be maintained by current tenant |
| Structures: roads, walkways, fence lines, pipelines, others | cross check w/ conservation plan clean, sanitary, orderly well maintained adheres to completion schedule *check for hazardous materials | | X | | Property only includes perimeter fencing and two small Shade huts. |
| Conservation Plan: conservation structures and plantings | adheres to plan map & schedule well maintained | | X | | Waiakea SWCD Cooperative Agreement June 9, 2003 |

| | | | | | |
|---------------------------------------|--|---|---|---|--|
| Premises | clean, sanitary, orderly | | X | | |
| Hazardous Material Storage / Use | controlled and adheres to consent | X | | | |
| Character of Use | adheres to lease purpose | | X | | |
| Phase 1 Environmental Site Inspection | as required in General Lease or Revocable Permit | | | X | Phase I Environmental Assessment has not been conducted pursuant to RPS-7377; B. Additional Conditions #14. Staff is recommending to waive this requirement based on no significant impact to the environment observed during inspection. |
| Other | | | | | <p>NOTES:</p> <ul style="list-style-type: none"> -Cattle have been removed -One shade hut has a vehicle parked under it. Will request removal by Permittee. -Final Inspection photos attached |



































