

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

June 10, 2010

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

MAUI

Rescind Prior Amended Board Action of September 9, 1988,
Item F-1-f, for Issuance of a Revocable Permit to William G.
Fisher for the Development of a Freshwater Spring at Waipio
Bay, Haiku, Maui, TMK: (2) 2-9-007:017

BACKGROUND:

By Board of Land and Natural Resources amended action of September 9, 1988, under F-1-f (Exhibit A), approval was provided for the issuance of a revocable permit to William G. Fisher. As the owner of a tropical flower farm at TMK: (2) 2-9-007:046 located adjacent to the subject state land, Mr. Fisher requested a permit to pump water from a spring located on the side of a near vertical cliff (approximately 75 feet above the ocean) for purposes of irrigating his flower farm. The plan was for the pumped water to seep back into the ground and eventually cycle back into the spring.

Because the cliff is zoned as Conservation, a CDUA was approved by Board action of July 8, 1988, Item H-1 (Exhibit B) with the condition that application for occupancy of the state lands be done through the Land Division, subject to conditions of the CDUA approval.

On September 22, 1989 the Board granted a request to extend Mr. Fisher's Conservation District Use Application (CDUA) for an additional 120-days due to his inability to meet the required conditions of obtaining a Stream Diversion works Permit and Stream Channel Alteration Permit.

REMARKS:

Upon recent review of this file by Land Division staff, and follow-up contact with the Office of Conservation and Coastal Lands (OCCL), it was found that an inspection of January 18, 1993 verified that the project was incomplete, with a finding of no work either started or completed. Also, the last correspondence to applicant in the OCCL files dated October 20, 1989 reflect a request to Mr. Fisher for submittal of construction plans. There was however, no record of further submittals by the applicant.

Mr. Fisher sold his flower farm at parcel 046 in 2005. Land Division was not apprised until recently of this change. The new owner, Hawaiian Paradise Holdings LLC dba Huelo Point Flower Farm has been contacted by the land division and on June 10, 2009 provided written confirmation that they are not receiving water from the spring and do not have any intention of pursuing the process to reapply for use of the source. Most recent contact with the land division land agent confirmed that the installation of the pumping system was never completed and is not in use.

Due to the abandonment of the development of a freshwater spring irrigation system by Mr. Fisher and pursuant to condition 8 of the September 9, 1988 board approval, "...failure to comply with any of these conditions shall render this Conservation District Land Use Application permit null and void," recommendation is for the rescind of the issuance of a revocable permit.

RECOMMENDATION: That the Board:

1. Rescind the prior Amend Board action of September 9, 1988 under agenda item F-1-f.

Respectfully Submitted,



Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



September 9, 1988

REVOCABLE PERMIT:

MAUI

WILLIAM G. FISHER (Applicant)

LOCATION AND AREA:

Portion of government land situate at Huelo Hui Partition Lots, Waipio-Huelo, Hamakualoa, Island of Maui, shown outlined in red on map labeled Land Board Exhibit "A" appended to the basic file.

Tax Map Key No.: 2-9-07:por. 17

Land Area: 12,000 sq. ft., more or less

LAND TITLE STATUS:

Subsection 5(b) land

STATUS:

Unencumbered

ZONING:

State Land Use Commission: Conservation District
County of Maui: Preservation

PURPOSE:

Development of a freshwater spring

MONTHLY RENTAL:

\$12.00 (minimum rental charge)

TAX ASSESSED VALUATION:

\$1.00

COMMENCEMENT DATE:

To be determined by the Chairperson

COLLATERAL SECURITY DEPOSIT:

\$24.00 to twice the monthly rental, whichever is greater.

LIQUIDATED DAMAGE:

\$3.00 per day or twenty percent (20%) of the monthly rental, whichever is greater.

ITEM # 1-ε

EXHIBIT A

REVOCABLE PERMIT: (continued)

WILLIAM G. FISHER

OTHER TERMS AND CONDITIONS:

Authorize the Chairperson to impose such other terms and conditions which will best serve the interests of the State.

REMARKS:

At its July 8, 1988 meeting, under agenda Item H-1, the Board approved the applicant's request for a Conservation District Use Application (CDUA) permit for the development of a freshwater spring on the subject parcel. The approval was given subject to the following terms and conditions:

1. The applicant and other users shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, Administrative Rules, as amended;
2. The applicant and other users, their successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, their successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. Since this approval is for the use of conservation lands only, the users shall obtain appropriate authorization through the Division of Land Management, State Department of Land and Natural Resources, for the occupancy of State lands;
4. The applicant and other users shall comply with all applicable Department of Health Administrative Rules;
5. The applicant and other users shall provide documentation (i.e. book and page number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
6. Before proceeding with any work authorized by the Board, the applicant and other users shall submit four (4) copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declaration set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not infer approval required of other agencies. Compliance with Condition 1 remains the responsibility of the applicant and other users;

REVOCABLE PERMIT: (continued)

WILLIAM G. FISHER

REMARKS: (continued)

7. Any work or construction to be done on the land shall be initiated within one (1) year of the approval of such use, and all work and construction must be completed within three (3) years of the approval of such use;
8. That failure to comply with any of these conditions shall render this Conservation District Land Use Application permit null and void;
9. The applicant and other users must obtain a permit from the State Water Commission through our Division of Water and Land Development for construction work on the spring sites and the taking of water from the spring;
10. The applicant and other users must obtain a water license from the Division of Land Management for the use of State waters; and
11. Other terms and conditions as prescribed by the Chairperson. The State land which is the subject of this application is a steep cliff approximately 300 feet high. On a ledge about 75 feet above the ocean where the spring water is discharged, a submersible pump will be placed into a small 300± -gallon tank.

The water will be pumped up the cliff into a 24,000-gallon tank on the applicant's property. Because this project is meant to be a back-up system for use during drier periods, the amount of water pumped will depend on the amount of rainfall in the area and the amount of water used for irrigation purposes.

Much interest in this project was uncovered at the public hearing for this CDDA and similar requests from the applicant's neighbors are being anticipated. Therefore, we are not recommending encumbrance of the entire parcel in this application in order to afford others the same opportunity in the future.

RECOMMENDATION:

That the Board authorize the issuance of a revocable permit to the applicant covering the subject area under the terms and conditions previously listed which are by reference incorporated herein, including the following additional terms and conditions:

1. Standard terms and conditions of a revocable permit;
2. Standard indemnification and hold-harmless clause; and
3. Such other terms and conditions as may be prescribed by the Chairperson.

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

9/09/88



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P. O. BOX 621
HONOLULU, HAWAII 96809

WILLIAM W. PATY, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

LIBERT K. LANDGRAF
DEPUTY

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

FILE NO.: MA-2095A
DOC. NO.: 6464E

September 22, 1989

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

Gentlemen:

REGARDING: Request to Amend the Initiation Deadline
for Conservation District Use Application
MA-2095

APPLICANT: William G. Fisher

BACKGROUND:

On July 8, 1988, the Board approved Cдуа MA-2095 for a spring-fed irrigation system at Haiku, Maui, subject to 11 conditions. Condition No. 7 of the approval required the applicant to initiate construction within one year of approval. However, the applicant is still in the process of obtaining the Stream Diversion Works Permit and a Stream Channel Alteration Permit from the Commission on Water Resource Management. These are expected to be issued within a month.

CURRENT REQUEST:

The applicant has requested, by a letter dated July 3, 1989, a time extension to initiate construction of the project. This would allow him to obtain the necessary permits for the project.

DISCUSSION:

The current request was made prior to the deadline to begin construction and, therefore, the Board will not have to consider reinstating a voided approval.

The Stream Diversion Works Permit and the Stream Channel Alteration Permit currently in process are required by the State Water Code as well as Condition No. 9 of the Cдуа approval. Since the permits are expected to be issued by the end of September, a lengthy extension is not required. The extension, if granted, must include the time that has transpired since the July 8, 1989 deadline. A four-month extension should be sufficient for the applicant to obtain the needed permits and initiate construction.

The applicant's tardiness in obtaining these permits has not been explained; however, this negligence seems to be a minor oversight.

Exhibit B

ITEM H-4

Therefore, Staff recommends that:

RECOMMENDATION:

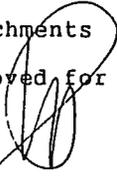
The Board approve a four-month (120 days) extension to initiate construction of the project subject to all remaining applicable conditions of CDUA MA-2095. The new initiation deadline would be November 5, 1989.

Respectfully submitted,


DON HORIUCHI
Staff Planner

Attachments

Approved for submittal:


WILLIAM W. PATY

0 EEA

July 3, 1989

William G. Fisher

RECEIVED
JUL 11 11 46 AM '89
DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

DN
U02095A

Mr. William W. Paty
Chairperson
Board of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

RE: File NO.: MA-1/20/88-2095

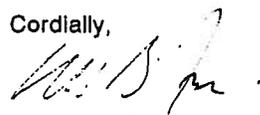
Dear Mr. Paty:

This requests that the Department of Land and Natural Resources grant me a one year extension for development of a freshwater spring on the pali located on State lands below my property in Huelo. The main reason for the extension is that I am still in the process of obtaining the Stream Diversion Works Permit and a Stream Channel Alteration Permit from the Commission on Water Resource Management. They have told me that these permits could be obtained in about 90 days. I will then begin the process to complete the development of the spring.

If you have any questions please give me a call at your help on this matter.

Thank you for

Cordially,



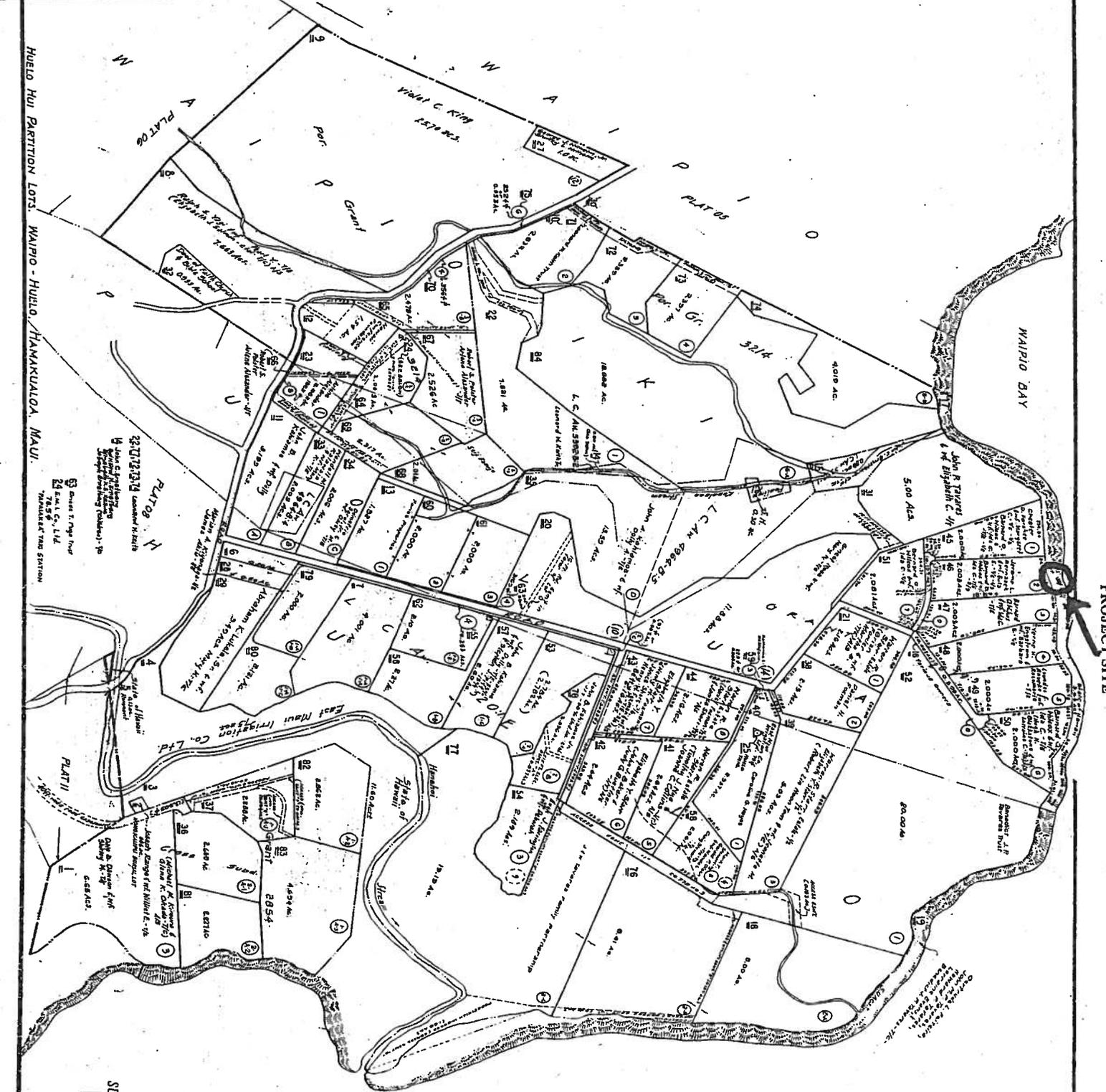
William G. Fisher

SOEN

JUN 13 PM 2:39

RECEIVED

Dwg No. 2185
 Source: Tax Maps Division
 Date: 12/11/1954



ADVANCE SHEET
 SUBJECT TO CHANGE
 SECOND DIVISION
 ZONE 1 SEC. 1 PLS
 2 9 07
 CONTAINING PARCELS
 Scale: 1"=100'
 PRINTED

EXHIBIT "C"