

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

July 10, 2015

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

PSF No: 14HD-073
Hawaii

Amend Prior Board Action of June 27, 2014, Item D-6, Cancellation of Revocable Permit S-7711 Richard E. Souza and Donna Lee Souza with Issuance of New Month-to-Month Revocable Permit to Richard E. and Donna Lee Souza, for Pasture Purposes, Waiohinu, Kau, Hawaii, Tax Map Key: (3) 9-5-005: portion 003.

The purpose of the amendment is to waive the requirement for a Phase 1 Environmental Site Assessment for the cancellation of the old permit.

BACKGROUND:

At its meeting of June 27, 2014, item D-6, the Board approved the cancellation of Revocable Permit S-7711 (RP-7711) to Richard E. and Donna Lee Souza (the Souzas) with the issuance of a new revocable permit. The Souzas want to increase the acreage on their revocable permit from 48 acres to 188 acres by adding an adjacent unencumbered portion of the same parcel. Refer to attached submittal marked as Exhibit A.

REMARKS:

Condition 13 of Section B Additional Conditions within RP-7711 states:

“Prior to termination or revocation of the subject Permit, Permittee shall conduct a Phase 1 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 practical application of the Phase 1 requirement is to protect the State from future remediation/abatement costs by requiring the *vacating* permittee to perform the Phase 1 assessment.


In this case, the permittee is not vacating, but taking on the stewardship of additional lands. The new revocable permit will contain the same requirement to perform a Phase 1 environmental assessment at the termination or revocation of the permit. Therefore, the waiving of the Phase 1 requirement on the cancellation of RP-7711 is really a deferment of the requirement.

Due to the low environmental risk of contamination from the pasture use of this property, staff recommends the waiving of the Phase 1 environmental assessment on the cancellation of RP-7711.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of June 27, 2014, under agenda item D-6 by waiving the Phase 1 Environmental Assessment requirement of Revocable Permit No. S-7711.
2. All terms and conditions listed in its June 27, 2014 approval to remain the same.

Respectfully Submitted,



Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

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

June 27, 2014

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

PSF No.: 14HD-073

Hawaii

Cancellation of Revocable Permit S-7711 Richard E. Souza and Donna Lee Souza with Issuance of New Month-to-Month Revocable Permit to Richard E. and Donna Lee Souza, for Pasture Purposes, Waiohinu, Kau, Hawaii, Tax Map Key: (3) 9-5-005: portion 003.

APPLICANT:

Richard E. and Donna Lee Souza, husband and wife, Tenants by the Entirety, dba R&D Farm.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Waiohinu, Kau, Hawaii, identified by Tax Map Key: (3) 9-5-005: portion 003, as shown on the attached map labeled Exhibit A.

AREA:

188 acres, more or less.

ZONING:

State Land Use District: Agricultural
County of Hawaii CZO: A-20a (Agricultural-20 acre minimum)

EXHIBIT A

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

June 27, 2014 *yo*

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act: YES

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES

CURRENT USE STATUS:

Parcel is encumbered as follows:

Revocable Permit No. S-7690 to Kahua Ranch Limited, 141 acres for pasture purposes;
Revocable Permit No. S-7711 to Applicants, 47.69 acres for pasture purposes;
Land Office Deed No. 28,289 to County of Hawaii, 0.674 acres for drainage easement;
Right-Of-Entry No. 3960 to Agribusiness Development Corporation, 5 acres for proposed
waterline survey.

CHARACTER OF USE:

Pasture purposes.

COMMENCEMENT DATE:

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

MONTHLY RENTAL:

\$120.00 per month subject to review and approval by the Chairperson.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1. Refer to attached Exhibit B.

DCCA VERIFICATION:

Individuals operating as sole proprietors and/or under a trade name are not required to register with the DCCA.

REMARKS:

On January 20, 1970, General Lease No. S-4262 (GL S-4262) was sold at public auction to Hutchinson Sugar Company, Ltd. By letter dated February 13, 1973, the department was informed that Hutchinson Sugar Company, Ltd. was merged into Kau Sugar Company, Inc., later known as Kau Agribusiness Co., Inc. (Kau Ag). GL S-4262 expired on September 28, 1994.

At its meeting of August 11, 1995, agenda item F-1-c, the Board authorized the issuance of a revocable permit (RP S-6974) to Kau Ag for the cultivation of sugar cane. By letter dated November 12, 1999, Kau Ag notified the department they were terminating the revocable permit as of December 31, 1999.

Prior to the cancellation of the revocable permit, Ka'u Ag had allowed ranching to occur on portions of State lands under its control while it transitioned out of the sugar business. Three of the ranchers using these lands requested continued use of the State land for ranching purposes and as a result, at its meeting of April 12, 2001, the subject parcel was portioned out to Daleico Ranch (96 acres), Felix Ibarra (140 acres) and S & S Dairy, Inc. (48 acres) for pasture use. A smaller 1.5 acre portion of the property was permitted to Sydney Andrade for intensive agriculture purposes.

The 140 acre portion parceled to Felix Ibarra as RP S-7764 is the subject of this request. At its meeting of February 24, 2012, agenda item D-7, the Board approved the cancellation of RP S-7764 as a result of rent payment delinquency coupled with an inconsistent payment history.

The Applicants, Richard E. and Donna Lee Souza (formerly S&S Dairy, Inc.), would like to add the subject 140 acres to their existing revocable permit (RP S-7711). This action requires the cancellation of the applicant's current permit for 48 acres of pasture and the issuance of a new permit for a combined total acreage of 188 acres. The recent drought has greatly reduced the carrying capacity per acre of land, resulting in a need for more acreage to pasture the same number of cattle.

The land use classification is agricultural and county zoning is Ag-20a which supports the current and past use of the property.

The Applicants are current with rent, insurance and performance bond. They have 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. Applicants have over 25 years of experience as dairy and cattle ranchers and would qualify as bona fide farmers pursuant to HRS §171-14.5.

In January 2008, the Board approved the set aside of portions of the subject property to the Agribusiness Development Corporation (ADC) for the purpose of management and maintenance of the water infrastructure (tunnels, springs, flumes, etc.) abandoned due to the demise of the sugar industry. The specific boundaries of the areas to be set aside need to be identified and mapped. The ADC is in progress on this project and several years away from any actual management/development activities on the property. As such, staff recommends a month-to-month tenancy is presently more appropriate than a long-term disposition.

Currently, no established legal access exists to the permit area and the actual access is over/across private lands. The Souzas have access over/across private lands.

Staff recommends the Board authorize the issuance of the requested revocable permit at a monthly rent of \$120.00, which is the combined total of the previous two permits.

Request for comments were sent to various agencies and are listed in the table below. There were no comments or objections to the proposed action from the responders.

Federal Agencies	Response
Natural Resource Conservation Service	No Response
State Agencies	Response
Dept. of Health - Environmental Planning	No Response
Dept. of Hawaiian Homes Land	No Response
DLNR - Forestry and Wildlife	No Objections
Dept. of Agriculture	No Comments
Agribusiness Development Corporation	No Response
Hawaii County Agencies	Response
Planning Dept.	No Objections
Dept. of Public Works	No Objections
Environmental Management	No Comments
Other Agencies	Response
Office of Hawaiian Affairs	No Response

The proposed use has continued since 2001 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.

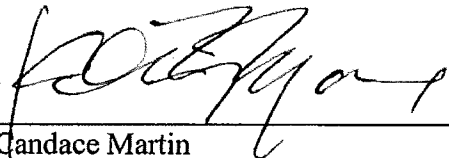
RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as

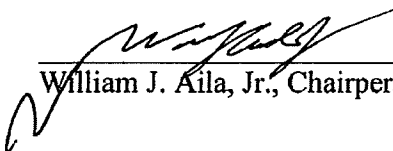
provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Authorize the cancellation of revocable Permit No. S-7711 to Richard E. and Donna Lee Souza and the issuance of a new revocable permit to Richard E. and Donna Lee Souza 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. The monthly rental amount is \$120.00 with a performance bond of \$240.00;
 - c. The permittees are aware there is no established legal access to the permit area and agrees to be responsible for obtaining any access necessary for their use, at their own cost;
 - 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,

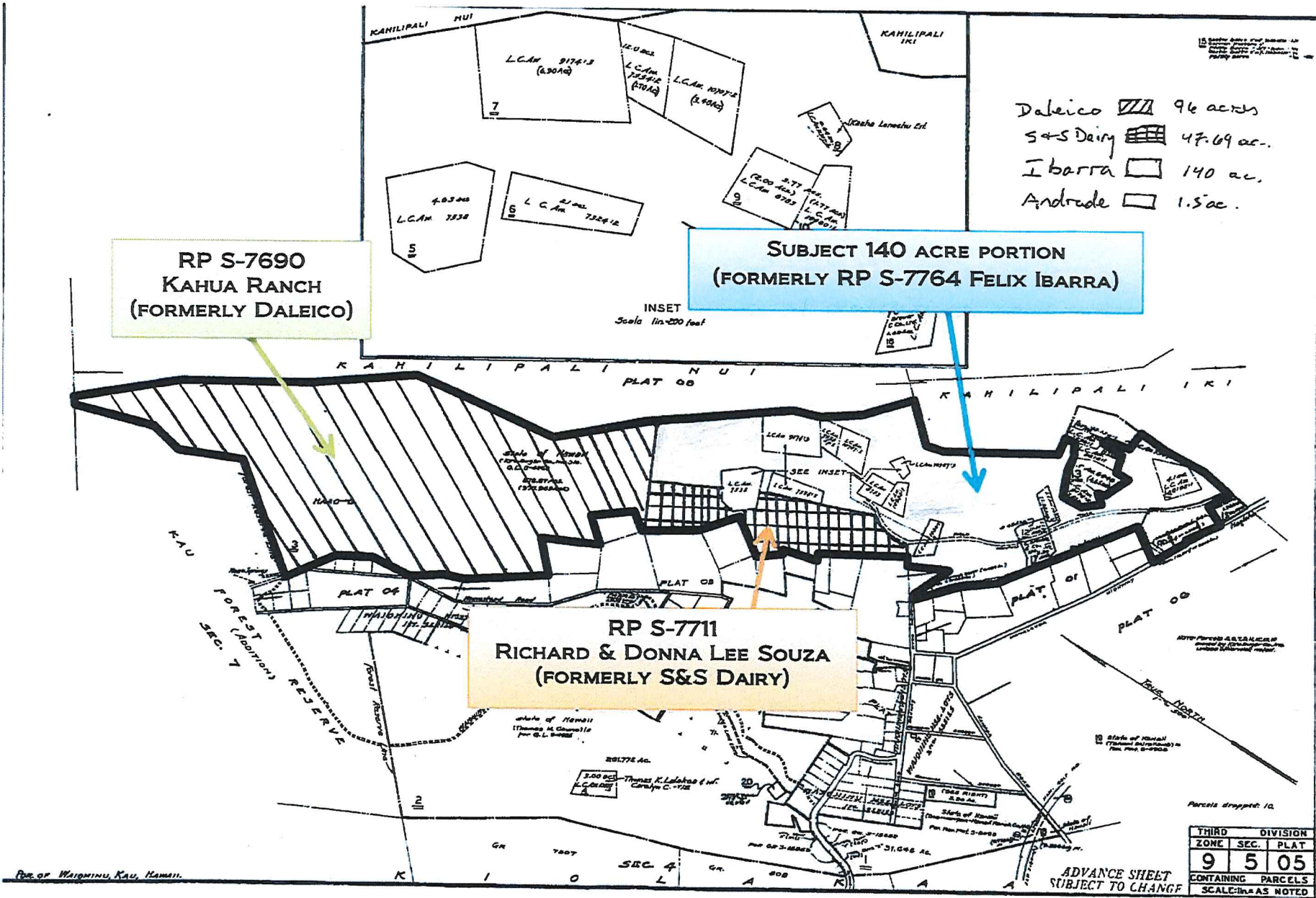

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Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

EXHIBIT A



**RP S-7690
KAHUA RANCH
(FORMERLY DALEICO)**

**SUBJECT 140 ACRE PORTION
(FORMERLY RP S-7764 FELIX IBARRA)**

**RP S-7711
RICHARD & DONNA LEE SOUZA
(FORMERLY S&S DAIRY)**

Daleico [hatched] 96 acrs
 S&S Dairy [grid] 47.69 ac.
 Ibarra [white] 140 ac.
 Andrade [white] 1.5 ac.

THIRD DIVISION		
ZONE	SEC.	PLAT
9	5	05
CONTAINING PARCELS		
SCALE: 1/4" = AS NOTED		

ADVANCE SHEET
SUBJECT TO CHANGE

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



EXHIBIT B

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 6, 2014

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Cancellation of Revocable Permit S-7711 Richard E. Souza and Donna Lee Souza with Issuance of New Month-to-Month Revocable Permit to Richard E. and Donna Lee Souza, for Pasture Purposes

Project / Reference No.: PSF 14HD-073

Project Location: Waiohinu, Kau, Hawaii, Tax Map Key: (3) 9-5-005: portion 003

Project Description: Issuance of Revocable Permit for Pasture Purposes

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

Exemption Class No.: 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 December 4, 1991, 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".

The subject property has been utilized as pasture since at least 2001. The proposed use is similar in type and scope to the use of surrounding properties. Such use has resulted in no known significant impacts 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.

Consulted Parties: Not applicable

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



William J. Aila, Jr., Chairperson

A 6/12/14
Date