

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

February 24, 2012

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

Hawaii

Forfeiture of Revocable Permit No. S-7764, Felix Ibarra, Permittee, Waiohinu, Ka'u, Hawaii, Tax Map Key: 3rd/9-5-05: portion of 03.

PURPOSE:

Forfeiture of Revocable Permit No. S-7764, Felix Ibarra, Permittee.

LEGAL REFERENCE:

Section 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waiohinu, Ka'u, Hawaii, identified by Tax Map Key: 3rd/9-5-05: portion of 03, as shown on the attached map labeled Exhibit A.

AREA:

140 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CHARACTER OF USE:

Pasture purposes.

COMMENCEMENT DATE OF PERMIT:

RP S-7421 commenced on 01/01/2000.

RP S-7764 commenced on 08/24/2011

MONTHLY RENTAL:

\$80.00.

REMARKS:

Pursuant to the provisions contained in Revocable Permit S-7764, Felix Ibarra, Permittee, was mailed three default notification letters dated 1/9/10, 12/3/10 and 11/8/11 for:

Failure to keep lease rental payments current

Failure to post required security deposit

Failure to post required fire insurance policy

Failure to post required liability insurance policy

Other: _____

The notice was for rent owed for the months of September, October and November 2011. The Permittee has not made a payment since 8/15/11.

As of 1/24/12, the current status of all permit compliance items is as follows:

RENT: The Permittee has a rental delinquency of \$730.00 for the time period from 9/01/10 to 2/29/12.
The delinquency amount includes all late fees and service charges.

INSURANCE: The Permittee has posted the required liability insurance policy.

SECURITY DEPOSIT:

The Permittee has posted the required security deposit.
(cash deposit \$160.00)

The subject parcel was previously encumbered by General Lease No. 3511 for sugar production to Hutchinson Sugar Company (HSC) from 1/01/1955 through to 12/31/1969. Following the expiration of the lease, HSC held the land under Revocable Permit No. S-4737, effective 1/01/1970. Subsequent to the issuance of the RP, HSC changed its name to Ka'u Sugar Company, Inc., then to Ka'u Agribusiness company, Inc. The permit was cancelled 12/31/1999.

Prior to the cancellation of the revocable permit, Ka'u Agribusiness had been allowing ranching to occur on portions of State and private lands 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 4/12/2001, parcels 3rd/9-5-05:03 and 3rd/9-5-13:01 were portioned out to Daleico Ranch, Felix Ibarra and S & S Dairy, Inc. for pasture use. A smaller portion of the property was permitted to Sydney Andrade for intensive agriculture purposes.


Felix Ibarra has been utilizing a portion (approximately 140 acres) of parcel 9-5-05:03 under RP S-7272 as of January 1, 2000. A new permit (RP S-7764) with an effective date of 8/24/2011 was issued to the Permittee. This new permit was a result of the Board action of 11/22/2010 agenda item D-1 revising the insurance requirements for Revocable Permits statewide.

From May 2008, rent payment has been periodic with late fees accumulating. On two separate occasions, payment checks were returned due to insufficient funds. The most recent, dated September 29, 2010 was returned as unpaid by the Bank of Hawaii. As a result of inconsistent payment from the Permittee, staff is recommending the cancellation of Revocable Permit No. S-7764.

RECOMMENDATION: That the Board:

1. Authorize the cancellation of Revocable Permit No. S-7764 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under Revocable Permit No. S-7764 to be applied to any past due amounts;
3. Terminate the permit and all rights of Permittee and all obligations of the Permitter effective as of February 24, 2012, provided that any and all obligations of the Permittee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Permitter reserves all other rights and claims allowed by Revocable Permit No. S-7764 or law, including, without limitation, the right, at the Board's option, to conduct a Phase I Environmental Site Assessment of the premises at Permittee's sole cost and expense; and
4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under Revocable Permit No. S-7764 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,



Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

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EXHIBIT A

FELIX IBARRA RP S-7764

TMK: 3rd/9-5-05: portion of 03

