

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

December 9, 2011

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

Hawai'i

Cancellation of Revocable Permit No. S-6941, Julio Resurreccion, Permittee and Set Aside to the Division of Forestry and Wildlife, Keopu 2, North Kona, Hawai'i, Tax Map Key:3rd/7-5-01:22.

PURPOSE:

Cancellation of Revocable Permit No. S-6941, Julio Resurreccion, Permittee.

LEGAL AUTHORITY:

Section 171-39, Hawaii Revised Statutes, as amended.
Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION AND AREA:

Portion of Government lands of Keopu 2 Government Remainder situated at Keopu 2, North Kona, Hawai'i, identified by Tax Map Key: 3rd/7-5-01:22, consisting of approximately 17.490 acres, as shown on the attached map labeled Exhibit A.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Pasture purposes.

TERM OF PERMIT:

Month-to-month, commencing on 9/26/1993.

MONTHLY RENTAL:

\$21.00.

REMARKS:

Pursuant to the provisions contained in Revocable Permit S-6941, Julio Resurreccion, Permittee, was served a default notification letter by certified mail dated September 14, 2011 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

X Other: **No legal access to property. Access to permitted State land has been withdrawn from the Keopu Mauka Property Owners Association.**

Said notice, accepted by the Lessee on **September 23, 2011**, offered the Lessee a thirty-day cure period to correct the default. This cure period expired on **October 23, 2011**. As of November 10, 2011, this breach has not been cured.

As of November 10, 2011, the current status of all permit compliance items is as follows:

RENT: The Permittee is **not** current with all rent obligations.

INSURANCE: The Permittee **has not** posted the required liability insurance policy.

SECURITY DEPOSIT:

The Permittee has posted the required security deposit.

OTHER: Access to permitted State land has been withdrawn from the Keopu Mauka Property Owners Association (Exhibit B)1.

1 Par. 17 of the revocable permit states; Within thirty (30) days of receipt of the documents, the Permittee shall provide in writing to the Hawai'i District Land Office, evidence that the Permittee has obtained the right to utilize the private subdivision road as access to Tax Map Key: 3rd/7-5-01:22.

At a public auction of Government leases held on September 26, 1968, Keopu 2 Government Remainder, Keopu 2, North Kona, Hawaii, further identified as Tax Map Key: 3rd/7-5-01:22 was awarded to Hiroshi Matsuyama, the highest bidder, under General Lease No. S-4202 for a term of 25 years, expiring on September 25, 1993.

At its meeting of May 11, 1984, under Agenda Item F-1-c, the Board consented to the assignment of General lease No. S-4202 from Hiroshi Matsuyama to Julio Resurreccion. On August 16, 1984, plans for a tack room/equipment storage shed were submitted by Mr. Resurreccion and approved by the Chairperson.

By letter dated June 28, 1993, Mr. Resurreccion requested a lease renewal or a month-to-month revocable permit. A review of available records and an inspection of the premises revealed that access to Parcel 22 is through a private road within the Keopu Mauka Subdivision. Staff concluded that a long-term lease was not available for this property and proceeded with the Revocable Permit process. Revocable Permit No. S-6941 was issued on September 26, 1993 to Mr. Resurreccion.

As a part of the procedure in closing a lease, a final inspection was done on the property. This inspection revealed the existing structure had been modified and showed signs of occupancy. A memo from staff at that time indicated that a letter would be sent to the Lessee, requesting the removal of the structure

In the past years, the surrounding Keopu Mauka Subdivision has seen an increase in the development of its properties. As a result, the state land is adjacent to residential improvements where none were before. This has resulted in subdivision resident's complaining that the Permittee was living on the property. Staff conducted an inspection of the property on October 6, 2000. The inspection revealed that a structure was still there and that additions were built onto it. The inspection also revealed that the property was only partially cleared and that the fencing did not completely encompass the property. The Permittee was informed by certified mail dated October 12, 2000 that he was in violation of the terms and conditions of the revocable permit. Staff instructed Permittee to cease using the property as a residence, remove all existing structures, install stock proof fence around the entire perimeter of the property and verify with the Keopu Mauka Property Owners Association (KMPOA) the right-of-entry onto the property. Permittee was given thirty (30) days to comply with these conditions.

A follow-up inspection of the premises on November 14, 2000 showed compliance with some of the conditions. Although the fencing of the perimeter was completed, there was the matter of the structure. Permittee had removed the most recent improvements to the structure but was still using the remainder for storage and possible dwelling purposes. Staff reiterated in a letter dated November 29, 2000 that the structure was to be removed in its entirety.

On March 6, 2001, staff received another complaint regarding Mr. Resurreccion. On this occasion, the Permittee was allegedly leaving several dogs unattended on the property for days at time. The dogs were constantly barking and causing a disturbance throughout the subdivision. Staff told Permittee in a telephone call to remove the dogs at once. Permittee admitted he had dogs on the property and said he would comply immediately.

On September 28, 2001, staff again received a complaint that Mr. Resurreccion was staying on the property. A site visit by staff accompanied by a DOCARE officer on October 5, 2001, confirmed the structure was still there and that there was evidence of occupancy.

At its meeting of November 16, 2001, under agenda item D-4, the Board cancelled RP S-6941 and following staff's recommendation, gave the Permittee thirty (30) days to remove all structures from the property. A site inspection conducted on December 17, 2001 showed the Permittee had complied with the Board recommendation and removed all structures from the property. The Permittee then petitioned the Board to reconsider the termination of the revocable permit, and on January 11, 2002, under agenda item D-21 the Board rescinded the cancellation.

Most recently in a letter dated June 10, 2011, the attorney representing the KMPOA (exhibit B) informed the Permittee of the termination of access rights to the Keopu Mauka road effective June 30, 2011. As this is the only access to the State land, the Permittee will no longer be able to maintain the land. Therefore, staff is recommending the Board cancel Revocable Permit No. S-6941.

SET ASIDE TO THE DIVISION OF FORESTRY AND WILDLIFE

By way of memorandum dated November 22, 2010, the Division of Forestry and Wildlife (DOFAW) expressed interest in taking over management of this land and including it as an addition to the Honuaula Forest Reserve. The transfer of this parcel would provide an important corridor to the forest reserve. Upon cancellation of this revocable permit, HDLO will begin the process for the set aside to DOFAW of the 17.5 acres.

PURPOSE:

Forest reserve purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See attached Exhibit C.

Request for comments were solicited from various government agencies regarding the set aside to the Division of Forestry and Wildlife.

County of Hawaii Agencies	Comments
Environmental Management	No Comments
Fire Department	No Response
Planning	No Objection
Police Department	No Comments
Public Works	No Response
State of Hawaii Agencies	Comments
DOH-Environmental Management	No Comments
DHHL	No Objections
DLNR-Historic Preservation	No Response
DLNR CWRM	No Comments
DLNR Forestry & Wildlife	No Response
Other Agencies	Comments
Office of Hawaiian Affairs	No Objection
U.S. Army Corps. Of Engineers	No Response

RECOMMENDATION: That the Board:

A: CANCELLATION OF RP S-6941:

1. Authorize the cancellation of Revocable Permit No. S-6941 in the manner specified by law;
2. Authorize the retention of all sums heretofore paid or pledged under Revocable Permit No. S-6941 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 December 9, 2011, 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 law; 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-6941 and to pursue all other rights and remedies as appropriate.

B: SET ASIDE TO DOFAW:

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. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to Division of Forestry and Wildlife under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
3. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
4. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
5. Review and approval by the Department of the Attorney General; and
6. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

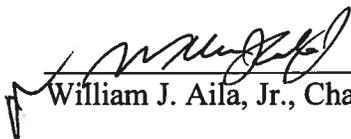
Respectfully Submitted,



Gordon C. Heit
Land Agent



APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

MICHAEL S. ZOLA
ATTORNEY AT LAW
KONA INN, SUITE 223
75-5744 ALII DRIVE
KAILUA-KONA, HAWAII 96740

2011 SEP -6 P 1:17

(808) 329-1333

June 10, 2011

RECEIVED
LAND DIVISION
HILLO, HAWAII

Mr. Julio Resureccion

Holualoa, HI 96725

Re: Notice of Termination of
access rights to Keopu Mauka Road

Dear JR:

I represent and am the President of Keopu Mauka Property Owners Association (KMPOA). On behalf of KMPOA, your access to your leasehold interest on State of Hawaii DLNR land over and across Keopu Mauka Road which is owned and maintained by KMPOA is hereby terminated effective at midnight on June 30, 2011.

In May, 2010 you were notified that the annual access fee of \$500, the same amount paid by all members of KMPOA, was due and owing. In March, 2011 you were sent a reminder statement advising you that the annual access fee was due, owing and delinquent and must be paid in full within 30 days. No payment or response has been received whatsoever.

This Notice of Termination applies to you and to all of your heirs, assigns, tenants, business invitees and guests. A copy of this Notice is being forwarded to DLNR.

Very truly yours,

Michael S. Zola

cc: Department of Land and Natural Resources,
State of Hawaii

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

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



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Cancellation of Revocable Permit No. S-6941, Julio Ressurecion, Permittee; Approval in Concept of the Set-Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife, of 17.490 Acres for Addition to the Honuaula Forest Reserve.

Project Number: PSF No. 10HD-216

Project Location: Portion of Government lands of Keopu 2 Government Remainder situated at Keopu 2, North Kona, Hawaii, Tax Map Key: 3rd/7-5-01:22

Project Description: Cancellation of Revocable Permit No. S-6941, Julio Ressurecion, Permittee; Approval in Concept of the Set-Aside to the Department of Land and Natural Resources, Division of Forestry and Wildlife, of 17.490 Acres for Addition to the Honuaula Forest Reserve.

Exemption Class No.: 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 under the following:

Exemption Class No. 1, which 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."

EXHIBIT C

With respect to the cancellation of Revocable Permit No. S-6941 and approval in concept of the set-aside to DOFAW, the action is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements.

Recommendation: The subject land is currently under a month-to-month revocable permit to Julio Ressurecion for pasture purposes pursuant to Revocable Permit No. S-6941. The purpose of the cancellation and set-aside of the land encumbered by revocable permit to DOFAW is to add the land to the Honuaula Forest Reserve. As such, the proposed cancellation and set-aside would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

The cancellation of the revocable permit and the approval in concept of the set-aside to DOFAW will probably have minimal or no significant effect on the environment. It is recommended that the Board of Land and Natural Resources find that the proposed action is exempt from the preparation of an environmental assessment. Inasmuch as the Chapter 343 environmental requirements apply to DOFAW's proposed use of a portion of the lands for an addition to the Honuaula Forest Reserve, DOFAW shall be responsible for compliance with Chapter 343, HRS, as amended.



William J. Aila, Jr., Chairperson



11/25/11

Date