

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96819

January 10, 2025

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

Land Board Members:

SUBJECT: Cancellation of Revocable Permit No. 147, Issued to Da So Fresh Express LLC, Effective December 31, 2024, situated at the Honokohau Small Boat Harbor, Kealakehe, Kona, Island of Hawaii, Hawaii, Tax Map Key: (3) 7-4-008:042 (por.)

APPLICANT:

Da So Fresh Express LLC, a Hawaii Corporation, whose mailing address is Post Office Box 383381, Waikoloa, Hawaii 96738.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Honokohau Small Boat Harbor, Kealakehe, Kona, Island of Hawaii, Tax Map Key: (3) 7-4-008:003 (por.) hereinafter referred to as the "Premises" as shown on the maps labeled **Exhibit A-1 and A-2** and attached hereto.

AREA:

Approximate 160 square feet.

ZONING:

State Land Use District: Urban
County of Hawaii: Open

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ___ NO X

CURRENT USE STATUS:

Encumbered by Revocable Permit No. 147, see **Exhibit B**.

CHARACTER OF USE:

Mobile food trailer-truck selling shave ice.

COMMENCEMENT DATE OF REVOCABLE PERMIT:

May 01, 2024.

MONTHLY RENTAL:

Two hundred dollars (\$200.00) per month or ten percent (10%) of gross receipts, whichever is greater.

SECURITY DEPOSIT:

Twice the Monthly Rental.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with Hawai'i Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Exemption Type 1: "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 No. 44, which states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

REMARKS:

At its meeting on February 23, 2024, under agenda item J-7, the Board of Land and Natural Resources ("Board") approved the issuance of a revocable permit to Da So Fresh Express LLC. for mobile food concession purposes.

Revocable Permit No. 147 was signed, and the permittee was allowed to start operating from May 1, 2024. The Permittee paid for the security deposit and was current with rental payments until July 2024. Staff sent reminders by email and left voice messages, but permittee stopped replying and was not able to be reached by phone, email, or postal mail. Since September 2024, we have not received any payments or gross receipts reports and the account has since accrued additional late fees.

RECOMMENDATIONS:

That the Board:

1. Authorize the cancellation of Revocable Permit No. 147 issued to Da So Fresh Express LLC, effective December 31, 2024; and
2. Authorize the retention of all sums heretofore paid or pledged under Revocable Permit No. 147 to be applied to any past due amounts.
3. Authorize the Department of the Attorney General, DLNR or their agents to collect all monies due the State of Hawaii under Revocable Permit No. 147 and pursue all other rights and remedies as appropriate.

Respectfully Submitted,



MEGHAN L. STATTS, Administrator
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:



DAWN N.S. CHANG, Chairperson
Board of Land and Natural Resources

Attachments:

- Exhibit A-1 – Site Location
- Exhibit A-2 – Site Location
- Exhibit B – RP 147

EXEMPTION NOTIFICATION

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

Project Title:	Cancellation of Revocable Permit No. 147, Issued to Da So Fresh Express LLC, Effective December 31, 2024, situated at the Honokohau Small Boat Harbor, Kealakehe, Kona, Island of Hawai'i, Hawai'i, Tax Map Key: (3) 7-4-008:042 (por.).
Project / Reference No.:	N/A
Project Location:	Honokohau Small Boat Harbor, Kailua-Kona, North Kona, Hawaii, Tax Map Key: (3) 7-4-008:003 (por).
Project Description:	Cancellation of Revocable Permit No. 147, Issued to Da So Fresh Express LLC, Effective December 31, 2024.
Chap. 343 Trigger(s):	Use of State lands
Exemption Class No(s).:	In accordance with Section 11-200.1-15, Hawaii Administrative Rules (HAR) and the Exemption List for the Department of Land and Natural Resources, reviewed and concurred 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, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," Part 1, Item No. 44, which states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."
Cumulative Impact of Planned Successive Actions in Same Place Significant?	There are no permanent above ground structures. Activities in the subject area have resulted in no known significant impact to the natural and environmental resources in the area.
Action May have Significant Impact on Particularly Sensitive Environment?	Staff is not aware of any particularly sensitive environmental issues and use of the area would not change negligently from what is existing.
Analysis:	Based on the above mentioned, staff believes there would be no significant impact to the environment.
Consulted Parties:	None
Declaration:	The Board find that this project will probably have minimal or no significant effect on the environment and declares that this project is exempt from the preparation of an environmental assessment.

Exhibit A-1
Location of Da So Fresh Express LLC
Honokohau Small Boat Harbor

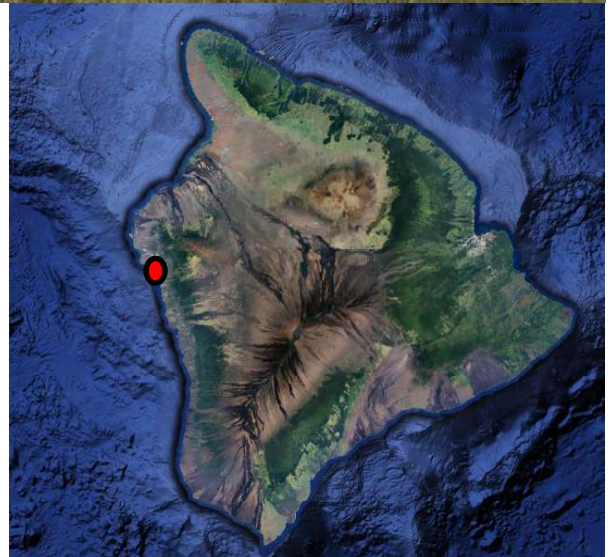


Exhibit A-2
Location of Da So Fresh Express LLC
Honokohau Small Boat Harbor



Approximate
Location of Food Truck
Not to scale

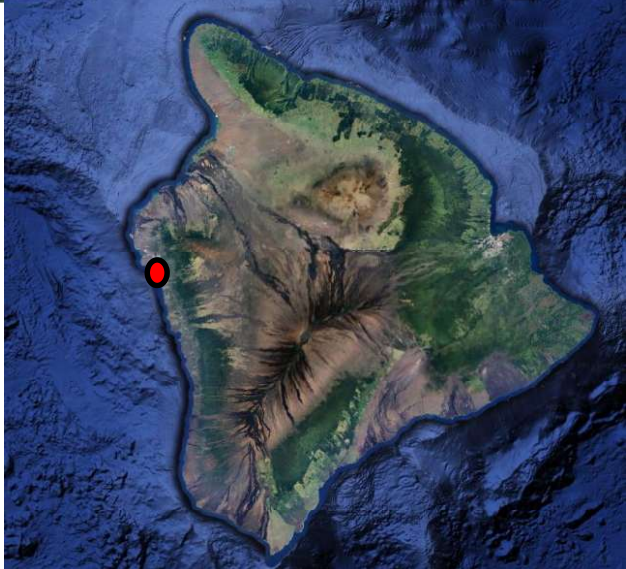


Exhibit B

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

REVOCABLE PERMIT NO. 147

KNOW ALL MEN BY THESE PRESENTS:

This Agreement (hereinafter referred to as the "Permit") is executed this 1st day of May, 20 24, by and between the STATE OF HAWAII, hereinafter referred to as the "State," by its Board of Land and Natural Resources, hereinafter called the "Board," and DA SO FRESH EXPRESS LLC, a Hawaii limited liability company, hereinafter called the "Permittee," whose mailing address is P.O. Box 383381, Waikoloa, Hawaii 96738. The Board and Permittee (collectively, the "Parties") agree that commencing on the 1st day of May, 20 24, ("commencement date"), Permittee is permitted to enter and occupy, on a month-to-month basis only, pursuant to section 171-55, Hawaii Revised Statutes, that certain parcel of public land (and any improvements located thereupon) situate at Honokohau Small Boat Harbor, Kailua-Kona, Island of Hawaii, Hawaii, tax map key no. (3) 7-4-008:003 (portion), as indicated on the maps identified as Exhibit A-1 and Exhibit A-2, attached hereto and made a part hereof, containing an approximate area of 160 square feet, which parcel is hereinafter referred to as the "Premises."

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The Permittee shall:

1. Occupy and use the Premises for the following specified purposes only: for mobile food trailer-truck concession selling shave ice. The Permittee will operate at the Premises five to seven days a week from 10:00 am to 6:00 pm and will remove the mobile food trailer-truck from the Premises at the end of each day that it is operating. The Premises will be cleared at the end of each workday so that nothing from its operations will be left behind. An upgraded solar system will provide power to run the truck and equipment with a generator available to be only used as a backup. The Permittee will be required to comply with environmental best practices in using eco-friendly, compostable, and biodegradable shave ice supplies from bowls to wooden spoons and paper straws.
2. Pay, at the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, 4 Sand Island Access Road, Honolulu, Hawai'i 96819, monthly rent in the sum of TWO HUNDRED AND NO/100 DOLLARS (\$200.00) payable in advance by the first day of each and every month or ten percent (10%) of gross receipts sales, whichever is

greater. "Gross receipts" shall mean all sales made or proceeds earned or received by the Permittee in connection with or resulting from the use of the Premises.

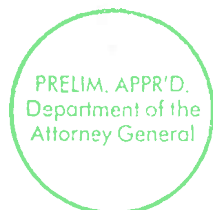
Permittee shall submit by the first of each and every month, including the month following the last month under the Permit, a statement of gross receipts for the prior month's sales or proceeds together with a check for any differences between the rent actually paid for the prior month and the ten per cent (10%) of gross receipts for that period if the ten per cent (10%) of gross receipts was owing for that month.

The interest rate on any unpaid or delinquent rent shall be at one per cent (1%) per month.

If monthly rent is not received at the above address on or before the first day of the month for which it is due, then a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment shall be assessed and payable. The service charge is in addition to interest on unpaid or delinquent rent. Interest shall not accrue on the service charge.

Payment of such service charge shall not excuse or cure any default by Permittee under this Permit.

3. Upon execution of this Permit, deposit with the Board an amount equal to two times the monthly rent stated above in paragraph A.2, as security for the faithful performance of all of these terms, covenants, and conditions. The deposit will be returned to the Permittee upon termination or revocation of this Permit, if and only if all of the terms and conditions of this Permit have been observed and performed to the satisfaction of an authorized representative of the Department of Land and Natural Resources ("DLNR"). Otherwise, the deposit may, at the option of an authorized representative of the DLNR be applied toward payment of any amounts owed hereunder, without waiving any of the Board's other rights hereunder.
4. At the Permittee's own cost and expense, keep any government-owned improvements located on the Premises insured against loss by fire and other hazards, casualties, and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and loss payee and shall be filed with the DLNR. In the event of loss, damage, or destruction of those improvements, the DLNR shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the government-owned improvements and the balance of those proceeds, if any, shall be delivered to the Permittee.



5. Give the Board twenty-five (25) calendar days notice, in writing, before vacating the Premises.
6. Pay all real property taxes assessed against the Premises from the commencement date of this Permit.
7. At its own cost and expense, observe, perform and comply with all laws, ordinances, rules and regulations of all governmental authorities now or at any future time during the term of this Permit applicable to the Premises, including, without limiting the generality of the foregoing, the Americans with Disabilities Act of 1990 and all regulations promulgated with respect thereto, as well as any other laws, ordinances, rules and regulations imposing any requirements that the Premises be made accessible to persons with disabilities; and, release and indemnify the State of Hawaii against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of said laws, ordinances, rules and regulations or of this covenant.
8. Repair and maintain all buildings or other improvements now or hereafter on the Premises.
9. Obtain the prior written consent of the Board before making any major improvements.
10. Keep the Premises and improvements in a clean, sanitary, and orderly condition.
11. Pay all charges, assessments, or payments for water, other utilities, and the collection of garbage as may be levied, charged, or be payable with respect to the Premises.
12. Not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises.
13. At all times with respect to the Premises, use due care for public safety.
14. Procure and maintain, at its own cost and expense, in full force and effect throughout the term of this Permit, general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A- VIII" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy of the policy or other documentation required by the State shall be filed with the DLNR. The insurance shall cover the entire Premises, including all buildings,

improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the use or control of the Permittee.

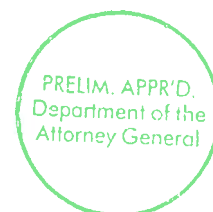
Prior to entry and use of the Premises or within fifteen (15) days after the commencement date of this Permit, whichever is sooner, furnish the State with a policy(s) or other documentation required by the State showing the policy(s) to be initially in force, keep the policy(s) or other documentation required by the State on deposit during the entire Permit term, and furnish a like policy(s) or other documentation required by the State upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the State. The State may at any time require the Permittee to provide the State with copies of the insurance policy(s) that are or were in effect during the permit period.

The State shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Permit. If, in the opinion of the State, the insurance provisions in this Permit do not provide adequate protection for the State, the State may require Permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The State's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The State shall notify Permittee in writing of changes in the insurance requirements and Permittee shall deposit copies of acceptable insurance policy(s) or other documentation required by the State thereof, with the State incorporating the changes within thirty (30) days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Permittee's liability under this Permit nor to release or relieve the Permittee of the indemnification provisions and requirements of this Permit. Notwithstanding the policy(s) of insurance, Permittee shall be obligated for the full and total amount of any damage, injury, or loss caused by Permittee's or the Permittee's employees, agents, officers, or invitees' negligence or neglect connected with this Permit. It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance provided by Permittee's policy.

The insurance policy(s) or other documentation required by the State shall be mailed to:

State of Hawaii
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
4 Sand Island Access Road
Honolulu, Hawaii 96819



15. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Permittee (other than condemnation proceedings), the Permittee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State.
16. The Permittee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of this Permit, in recovering possession of the Premises, or in the collection of delinquent rent, taxes, and any and all other charges.
17. The introduction of noxious, invasive, or exotic plant and animal species to the Premises shall not be permitted. The Permittee shall be solely responsible for the removal, at no cost to the State, of any and all noxious, invasive, or exotic plant and animal species on the Premises. This provision shall not apply to native species.

B. Additional Conditions:

1. This Permit is issued and effective on a month-to-month basis. The Permit shall automatically terminate one year from the commencement date, unless earlier revoked as provided below, provided further that the Board may allow the Permit to continue on a month-to-month basis for additional one year periods. Any such extension shall have the same terms and conditions as this Permit, except for the commencement date and any amendments to the terms, as reflected in the Board minutes of the meeting at which the Board acts. Permittee agrees to be bound by the terms and conditions of this Permit and any amendments to this Permit so long as Permittee continues to hold a permit for the Premises or continues to occupy or use the Premises.
2. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rent is delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) calendar days prior to the revocation.
3. If the Permittee fails to vacate the Premises upon expiration, revocation or termination of the Permit, the Permittee shall be liable for and shall pay the previously applicable monthly rent, computed and prorated on a daily basis, for each day the Permittee remains in possession.
4. If the Permittee fails to vacate the Premises upon expiration, revocation or termination of the Permit, the Board, by its agents, or representatives, may

enter upon the Premises, without notice, and at Permittee's cost and expense remove and dispose of all vehicles, equipment, materials, or any personal property remaining on the Premises, and the Permittee agrees to pay for all costs and expenses of removal, disposition, or storage.

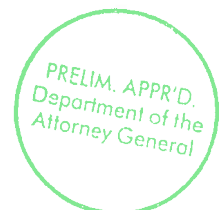
5. The Board may at any time increase or decrease the monthly rent by written notice at least thirty (30) business days prior to the date of change of rent. Upon such notice, the Permittee shall deposit with the Board any additional monies required to maintain an amount equal to two times the new monthly rent as security for the faithful performance of all of these terms and conditions.
6. Any major improvements, including but not limited to buildings and fences, erected on or moved onto the Premises by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the expiration, termination or revocation of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the Permittee shall fail to remove the improvements prior to the expiration, termination or revocation of this Permit or within an additional period the Board in its discretion may allow, the Board may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.
7. The Board reserves the right for its agents or representatives to enter or cross any portion of the Premises at any time.
8. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
9. Permittee has inspected the Premises and knows the conditions thereof and fully assumes all risks incident to its use.
10. The acceptance of rent by the Board shall not be deemed a waiver of any breach by the Permittee of any term, covenant, or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option of this Permit.
11. The use and enjoyment of the Premises shall not be in support of any policy which discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.
12. Permittee shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. Permittee shall not allow

the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of Permittee's business, and then only after written notice is given to the Board of the identity of such materials and upon the Board's consent, which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Permittee, then the Permittee shall be responsible for the costs thereof. In addition, Permittee shall execute affidavits, representations and the like from time to time at the Board's request concerning the Permittee's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by Permittee.

Permittee agrees to release, indemnify, defend, and hold the State of Hawaii, the Board, and their officers, employees, and agents harmless from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the use or release of hazardous materials on the Premises occurring while Permittee is in possession, or elsewhere if caused by Permittee or persons acting under Permittee. These covenants shall survive the expiration, revocation, or termination of the Permit.

For the purpose of this Permit "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

13. Prior to expiration, 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 expiration, 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.



14. Permittee shall release, indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the Permittee or the Permittee's employees, agents, officers, or invitees under this Permit. The provisions of this paragraph shall remain in full force and effect notwithstanding the revocation, expiration, or termination of this Permit. The purchase of liability insurance shall not relieve Permittee of the obligations described herein.
15. Unless otherwise agreed by the Board in its sole discretion, payments received will be applied first to attorneys' fees, costs, assessments, real property taxes, or other costs incurred or paid by the Board with respect to the Premises, next to service charges or interest, next to any other charges due or owing under the Permit, next to delinquent monthly rent, and next to current rent.
16. Any notice required or permitted to be given hereunder shall be in writing, given by personal delivery or by first class mail, postage prepaid. Notice to Permittee shall be delivered or addressed to the address stated above.


Notice to State of Hawai'i shall be delivered or addressed to the Chairperson of the Board at 1151 Punchbowl Street, Room 130, Honolulu, Hawai'i 96813 and to the Administrator of the Division of Boating and Ocean Recreation at 4 Sand Island Access Road, Honolulu, Hawai'i 96819. Mailed notices shall be deemed given upon actual receipt, or two business days following deposit in the mail, postage prepaid, whichever occurs first. Either party may by written notice to the other specify a different address for notice purposes, provided that Permittee's mailing address shall at all times be the same for both billing and notice. In the event there are multiple Permittees hereunder, notice to one Permittee shall be deemed notice to all Permittees.

17. The Board requires the Permittee to apply for a Special Management Area Assessment Application to be approved by the County of Hawaii Planning Department (COH PD). The COH PD provided the State and Permittee with Special Management Area Use Permit No. 266, a copy of which is identified as Exhibit B, attached hereto and made a part hereof, which indicates no Special Management Area (SMA) is needed for the proposed placement of a shave ice truck for concessions (PL-INT-2024-007013). In the event that the COH PD requires Permittee to apply for a SMA permit during the term of this Permit, the Permittee shall comply.
18. Unless the text indicates otherwise, the use of any gender shall include all genders and, if the Permittee includes more than one person, the singular shall signify the plural and this Permit shall bind the persons, and each of them jointly and severally.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the Parties hereto have caused these presents to be executed the day, month and year first above written.


STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meeting held on February 23, 2024.


By 
DAWN N. S. CHANG
Chairperson of the Board of Land and Natural Resources

APPROVED AS TO FORM:


STATE


DANICA L. SWENSON
Deputy Attorney General

Dated: March 19, 2024

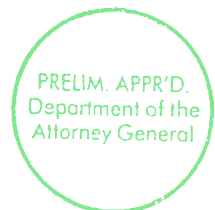
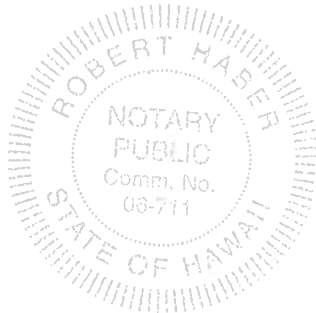
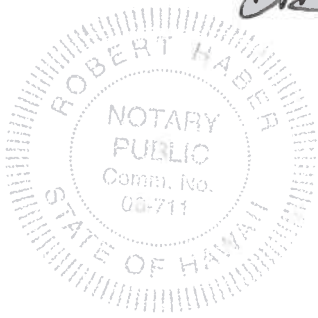
Date: 4-8-24 #Pages: 10 + Exhibits
Description: RENEWABLE FIELDS
No. 147
Notary Name: Robert Haber 3rd Cir.
 Date: 4-8-24 Commission exp. 11-19-2026

DA SO FRESH EXPRESS LLC, a Hawaii limited liability company

By 
Christopher Maesaka
Its owner

By _____
Its _____

PERMITTEE



STATE OF HAWAII)
) SS.
COUNTY OF)

On this _____ day of _____, 20____, before me personally appeared _____ and _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii

My commission expires: _____

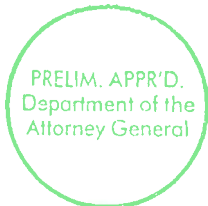
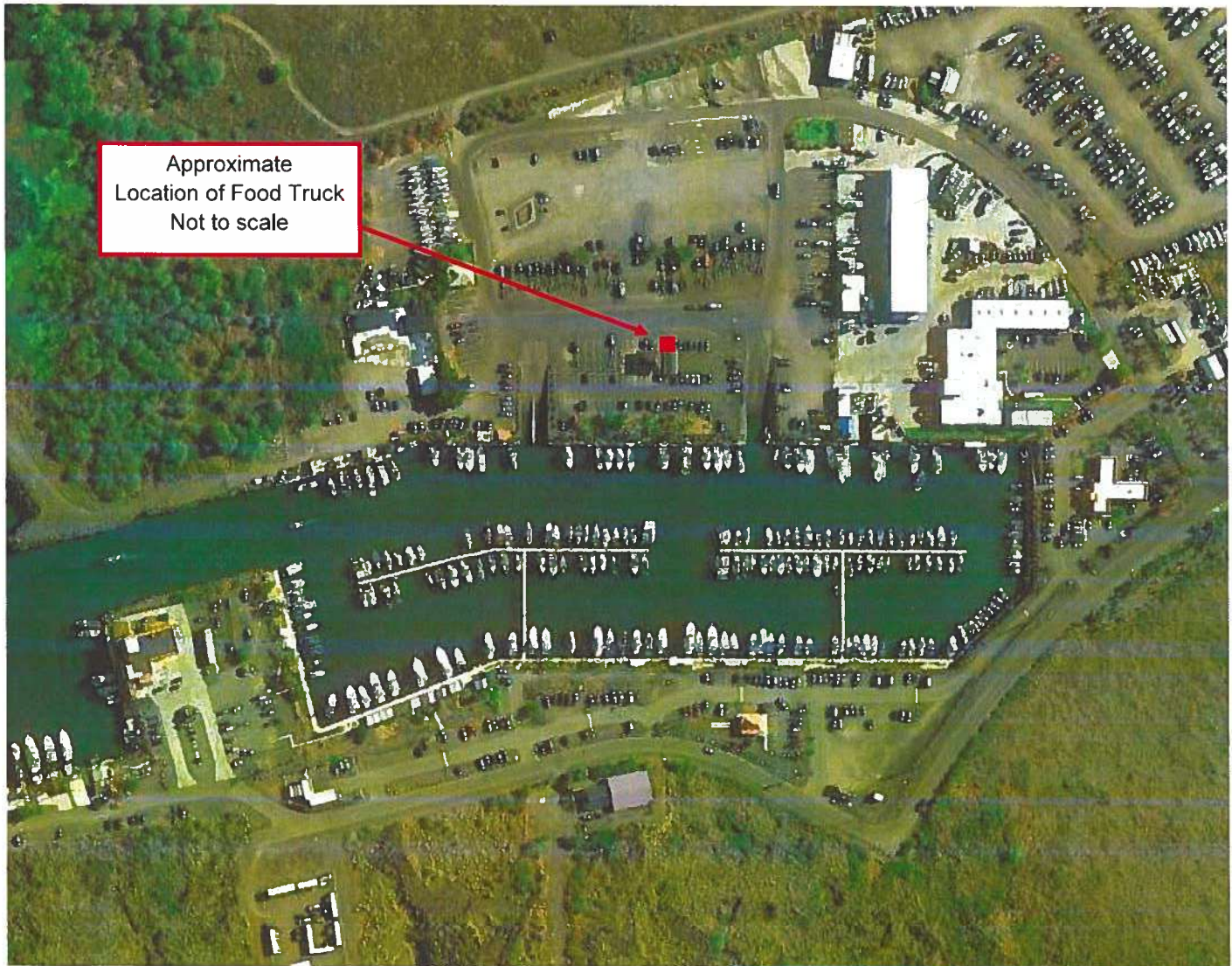


Exhibit A-1
Location of Da So Fresh Express LLC
Honokohau Small Boat Harbor



PRELIM. APPR'D.
Department of the
Attorney General

Exhibit A-2

**Location of Da So Fresh Express LLC
Honokohau Small Boat Harbor**



Approximate
Location of Food Truck
Not to scale



PRELIM. APPR'D.
Department of the
Attorney General

CERTIFIED MAIL

December 17, 1987

Mr. David Higa, Chief
State Department of Transportation
Harbors Division
79 So. Nimitz Highway
Honolulu, Hawaii 96813

Dear Mr. Higa:

Special Management Area (SMA) Use Permit Application
State Department of Transportation, Harbors Division
TMK: 7-4-08:3

The Planning Commission at its duly held public hearing on December 9, 1987, voted to approve the application, Special Management Area Use Permit No. 266, to allow further development at the Honokohau Small Boat Harbor, Kealahou, North Kona, Hawaii, Hawaii.

Approval of this request is based on the following:

The proposed project consists of the additional development of the existing Honokohau Small Boat Harbor. These improvements are not anticipated to have any substantial adverse environmental or ecological effects.

The immediate project site having been previously altered is not known to contain any unique ecological systems nor provide habitats for any endangered plant or animal species.

In addition, the purpose of the harbor expansion is to provide for boating and recreational needs of the people in the Kona area which is keeping with the SMA policies of providing adequate, accessible, and diverse recreational opportunities in the coastal zone management area and by providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation including adequate public access to and along shorelines with recreational value.

PRELIM. APPR'D.
Department of the
Attorney General

EXHIBIT "B"

DEC 17 1987

Mr. David Higa, Chief
Page 2
December 17, 1987

While there may be some adverse affect from noise and other impacts associated with the construction phase of the project, these impacts, however, will be short-term and can be mitigated by existing regulations.

The proposed project is consistent with the objectives, policies, and SMA guidelines. These were established to provide guidance for the preservation, protection, and the development of coastal resources of the State and County. They identify several areas of management concern including historic, recreational, open space and scenic resources, coastal ecosystems, economic uses and coastal hazards.

The proposed expansion to the existing boat harbor is consistent with the Open designation of the General Plan as well as the Open zoning designation.

As previously discussed, the proposed project will occur within already altered harbor lands, therefore, no significant archaeological sites will be affected by this proposal.

Based on the foregoing, it is determined that the proposed development will not have any substantial adverse effect on the environment; and therefore, will not be contrary to the purpose and intent of Chapter 205-A, HRS, relating to Coastal Zone Management; Rule No. 9 of the Planning Commission relating to Special Management Area; or the General Plan or Zoning Code of the County of Hawaii.

Approval of this request is subject to the following conditions:

1. The petitioner, its successors or assigns, shall be responsible for complying with all of the stated conditions of approval.
2. Submit construction plans for Plan Approval within one year from the effective date of this SMA Use Permit.
3. Construction shall commence within one year from the date of receipt of Final Plan Approval and shall be completed within two years thereafter.
4. Secure a Conservation District Use Application (CDUA) from the Department of Land and Natural Resources for all activities within the Conservation District.
5. Comply with all other applicable rules, regulations, and requirements, including those of the U.S. Army Corps of Engineers and the Department of Water Supply.

PRELIM. APPR'D.
Department of the
Attorney General

Mr. David Higa, Chief

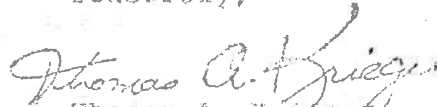
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6. A coastal water quality monitoring program shall be developed and submitted to the Planning Department prior to commencement of the proposed activities.
7. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
8. An extension of time for the performance of conditions within the permit may be granted by the planning director upon the following circumstances: a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors, or assigns, and that are not the result of their fault or negligence; b) granting of the time extension would not be contrary to the general plan or zoning code; c) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to nullify the permit.

Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,



Thomas A. Krieger
Chairman, Planning Commission

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Office - Sona
DBED, CZM Program w/background
bcc: Plan Approval Section



PRELIM. APPR'D.
Department of the
Attorney General