

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

August 12, 2016

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

Statewide

**Continuation of Revocable Permits on the Islands of Oahu, Maui, Lanai, Hawaii, and Kauai;
Various Locations and Tax Map Keys Statewide**

REQUEST

Continuation of the revocable permits (“**RP**s”) listed in Exhibit “A” retroactively from July 1, 2016 through June 30, 2017.

LEGAL AUTHORITY

HRS §171-55. “Notwithstanding any other law to the contrary, the board of land and natural resources may issue permits for the temporary occupancy of state lands or an interest therein on a month-to-month basis by direct negotiation without public auction, under conditions and rent which will serve the best interests of the State, subject, however, to those restrictions as may from time to time be expressly imposed by the board. A permit on a month-to-month basis may continue for a period not to exceed one year from the date of its issuance; provided that the board may allow the permit to continue on a month-to-month basis for additional one year periods.”

BACKGROUND

The Division of Boating and Ocean Recreation (“**DOBOR**”) is responsible for managing the State’s recreational boat harbors and facilities, offshore waters, and ocean recreation resources and activities. In managing the fast lands, submerged lands, and facilities under its jurisdiction, DOBOR issues long-term leases, concession agreements, and month-to-month RPs. The revenues collected from the leases, concession agreements, and RPs are deposited into DOBOR’s boating special fund, which is DOBOR’s sole source of funding for its operations, including repair and maintenance of its harbors and facilities, ocean recreation programs, debt-service for capital improvements, and administrative expenses.

The 31 RPs listed in Exhibit "A" encumber almost 20 acres of state lands and generate \$320,619.60 in annual base rent.¹

On July 24, 2015, under Agenda Item J-3, the Board of Land and Natural Resources (“**Board**”) approved the continuation of the RPs managed by DOBOR, on a month-to-month basis for up to one additional year, retroactively from July 1, 2015 through June 30, 2016.

¹ Exhibit "A" does not include four (4) RPs that were recently issued by DOBOR since the continuation of the new RPs is not necessary at this time. The annual base rent excludes percentage or gallonage rent to which DOBOR may be entitled (in excess of the annual base rent) under 11 of its RPs.

The Board also authorized three additional actions. The three actions are described below together with the current status of DOBOR's progress on each action:

1. Execution of new RPs in the most current RP form approved by the Department of the Attorney General ("AG"). The purpose of this action is to update DOBOR's RPs to the most current RP form, which includes updated insurance and environmental conditions and allows the permitted uses specified in the existing RP as well as any other uses permitted under the applicable county zoning, subject to the prior approval of the Chairperson and compliance with HRS Chapter 343.

Current Status: The AGs prepared new RP documents for all of DOBOR's RPs, which DOBOR has sent to the permittees for execution.

2. Adjustments to the RP rents by the Chairperson based on an independent appraisal procured by DOBOR.

Current Status: DOBOR retained an independent appraiser to determine current market rents for the RPs. In connection with this effort, DOBOR enlisted the assistance of two Land Division staff members who prepared a detailed inventory of the RPs, met with the appraiser to discuss each RP listed in the inventory, and drafted the scope of work for the appraisal. A notice to proceed has been issued to the appraiser, and the draft appraisal report is expected to be completed by September 9, 2016.

Once the appraisal is completed, the RP rents will be adjusted to the market rents determined by the appraisal.² Should any permittee object to the new rent, the permittee may exercise its right to terminate the RP by providing DOBOR written notice in accordance with the terms of the RP.

3. Interim increases to the RP rents until the market rents are determined by independent appraisal. The interim rent increases shall be equal to the CPI for the most recent five (5) years or the number of years the RP has been in existence, whichever is shorter.

Current Status: DOBOR implemented the interim rent increases approved by the Board.

On July 24, 2015, under Agenda Item J-3, three (3) permittees testified before the Board that they had previously requested long-term leases from DOBOR for their respective parcels, but that DOBOR had not addressed their requests. The Board required DOBOR to report back to the Board on why it had not addressed the three permittees requests for long-term leases and whether DOBOR would be able to replace the existing RPs with long-term leases.

On March 24, 2016, under Agenda Item J-1, DOBOR staff provided a status report to the Board on the above-mentioned requests of the three permittees. According to staff's research, DOBOR cannot issue long-term leases because all three of the RPs is for lands that are not legally subdivided lots.³ In addition, staff's research indicated the current operations conducted on the three permittees' lands may not be allowed under current county zoning ordinances.⁴

REMARKS

² The Board previously authorized the Chairperson to adjust the rent for any RP in accordance with the terms of the RP.

³ For purposes of this submittal, staff's use of the term "legally subdivided lot" or "legal lot of record" means a lot that has been created pursuant to the applicable county's subdivision approval process. County subdivision approval ensures that all lots meet county subdivision standards and have access to a public road and to utility services.

⁴ The current uses may have been "grandfathered" but further research would be necessary to confirm this.

Revocable Permit Task Force. In response to concerns and issues raised by the public and media, a Revocable Permit Task Force was convened to review DLNR's RP process and permit status and to provide recommendations on how to improve DLNR's RP program. On June 24, 2016, under Agenda Item D-7, the Board approved the Task Force's findings and recommendations.

Among the principles identified by the Task Force were DLNR's constitutional and statutory fiduciary obligations as the manager of the public trust, obtaining a fair revenue for the trust and trust beneficiaries, and developing an RP process and decision-making standards that are consistent and equitable across the respective DLNR divisions. The Task Force also promoted the concepts of openness, fairness and competition and recommended making all RPs available to the public for review. DOBOR is currently working on listing its RPs online which will include significant property characteristics and DOBOR's contact information for interested parties.

DOBOR will work with the other DLNR Divisions towards developing an RP process and decision-making standards that are consistent and equitable across the respective DLNR divisions.

Subdivision Issues. During its Board meeting on March 24, 2016, the Board raised the issue of whether state-owned lands are subject to the counties' subdivision ordinances. Staff deferred to the Attorney General's office on that issue but indicated that it is possible the State may not be subject to the counties' subdivision ordinances in certain instances. Staff, however, also explained that even if DOBOR is not subject to the counties' subdivision ordinances, it may not be prudent to offer a long-term lease for un-subdivided lands in certain cases.

DOBOR believes creating legally subdivided lots is prudent land management for the following reasons:

1. Creating legally subdivided lots enhances the value and use of the property because it facilitates a private lessee's ability to acquire a building permit, financing, and title insurance.
2. Creating legally subdivided lots enhances DOBOR's ability to use or lease the remainder of the property (which is oftentimes larger than the leased area).
3. Creating legally subdivided lots prevents a lease, mortgage, or lien from potentially encumbering lands in excess of the intended demised area. This is particularly a concern when the subject area is registered with Land Court.⁵

When appropriate and consistent with prudent land management practices, DOBOR will seek to create legally subdivided lots to offer for lease.

Justification for Revocable Permits. Based on staff's preliminary research, it appears that the lands demised by DOBOR's RPs are not legally subdivided lots. As stated above, DOBOR is unable to offer long-term leases for lands that are legally subdivided lots. Until DOBOR can create legally subdivided lots to offer for lease, RPs are the appropriate disposition. DOBOR is not aware of any non-compliance issues, or pending litigation with any of the 31 RPs.

Executive Orders. In general, fee simple title to State lands is held by DLNR and under Land Division's jurisdiction. Management jurisdiction of state lands is transferred to other State agencies and divisions by

⁵ Staff has not conducted a comprehensive review/research of all title and Land Court records but is aware of some DOBOR lands that are registered with the Land Court. Once an encumbrance is noted on a Land Court Certificate of Title for a Land Court lot, the encumbrance would likely be deemed an encumbrance against the entire Land Court lot.

a Governor's Executive Order ("EO") pursuant to HRS §171-11.

Prior to June 30, 1992, the State Department of Transportation ("DOT") managed both the State's commercial harbors and the State's recreational small boat harbors. As such, EOs were issued to DOT for all of the State harbors.

On July 1, 1992, the recreational small boat harbors were transferred from DOT to DOBOR via Act 272 (1991). To properly document the transfer, the EOs issued to DOT need to be cancelled, and new EOs issued to DOBOR.⁶ Land Division is responsible for canceling and issuing EOs. To date, new EOs for some of the recreational small boat harbors have been issued, but many remain outstanding.

In addition to the EO issue, staff believes that the lands for the entire area of some of the recreational small boat harbors may not be legally subdivided lots. For example, where a commercial harbor is located adjacent to a recreational small boat harbor, the lands for the recreational small boat harbor transferred from DOT to DOBOR may still be a portion of a larger legal lot of record that remains under DOT's jurisdiction (e.g., the Kahului harbors).⁷

Staff recommends obtaining large lot (or bulk lot) subdivision approvals from the applicable county for the recreational small boat harbor lands transferred to DOBOR and completing the cancellation and reissuance of the EOs, particularly for those harbors that are core assets with development and revenue potential. Staff also recommends this be done prior to DOBOR commencing any development solicitations (e.g., RFPs) that contemplate a private-public partnership as such preliminary title issues are integral to private developers.

DOBOR Staffing. As previously reported to the Board, DOBOR's property manager position had been vacant since 2014 which created a backlog in DOBOR's property management projects and tasks. In the interim, DOBOR enlisted the assistance of two Land Division staff members to assist with certain projects, including analyzing all of DOBOR's RPs, retaining an independent appraiser to determine current market rents, recommending and implementing the interim rent increases, and preparing the last three RP Board submittals, including this one.

In March 2016, DOBOR hired a property manager who had been in training and began addressing the backlog of projects and tasks. Managing DOBOR's RPs was also the responsibility of the new property manager. Unfortunately, the new property manager did not pass the probationary period, and the position is once again vacant. In addition, Land Division recently terminated the contract of one of the two Land Division staff members who were assisting DOBOR. DOBOR is re-enlisting the assistance of the one remaining Land Division staff member for certain projects (including its RPs) until a new property manager is hired.

RECOMMENDATION

That the Board:

⁶ Although management jurisdiction was legally transferred by law, it would be prudent to properly document the transfer by cancelling the EOs to DOT and issuing new EOs to DOBOR. This issue was previously raised by a potential developer/lessee and its lender who expressed concern about a lack of documentation granting DOBOR the authority to issue a long-term lease.

⁷ The common practice within the State when transferring management jurisdiction of lands via an EO entails attaching a survey map and description of the lands, which map is created by a State surveyor. However, the map and description merely reflect the metes and bounds of the lands but generally do not reflect a legal lot of record.

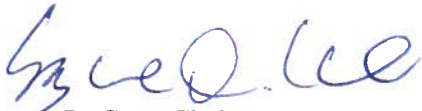
1. Approve the continuation of each RP listed in Exhibit "A" on a month-to-month basis for a one-year period, retroactively from July 1, 2016 through June 30, 2017, subject to the permittee being in full compliance with all of the RP terms and conditions.
2. Delegate to the Chairperson the authority to adjust the rent for any RP in accordance with the rents determined by independent appraisal and the terms of the RP.

Respectfully Submitted,



Edward R Underwood, Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

DIVISION OF BOATING AND OCEAN RECREATION

Continuation of Revocable Permits on the Islands of Oahu, Maui, Lanai, Hawaii, and Kauai
Retroactively From 07/01/16 - 06/30/17

No	Permittee Name	RP No	Location	Tax Map Key	SLU Designation	County Zoning	Effective Date	RP Area (Sq Ft) ⁽¹⁾		RP Current Rent ⁽²⁾	Character of Use			
								Fast	Subm Total					
OAHU														
1	Cates International, Inc.	B-01-02	Keeki	(1) 1-2-025:043	Urban	I-2	12/01/01	3,500	1,800	5,300	\$7,252.08	\$604.34	0%	Staging area, docking of vessel and storage in conjunction with fish farming activity. DOBOR's improvements.
2	Hawaiian Parasail, Inc.	BO-12090	Ala Wai	(1) 2-3-037:012 (por)	Urban	Pub	11/01/12	36	0	36	\$3,171.12	\$264.26	0%	Patio to support commercial parasail operations. DOBOR identifying an alternative disposition vehicle.
3	Honolulu Transpac, Ltd.	BO-13060	Ala Wai	(1) 2-3-037:012 (por)	Urban	Pub	07/01/07	699	0	699	\$3,800.64	\$316.72	0%	Headquarters for the biennial Transpacific Yacht Race which occurs in alternate years.
4	Kaneohe Cultural Foundation	BO-12021	Heeia	(1) 4-6-006:069	Urban	P-2	10/01/12	2,600	0	2,600	\$0.00	\$0.00	0%	Canoe/equipment storage.
5	Surf N' Sea, Inc.	BO-1170	Haleiwa	(1) 6-2-003:039 (por)	Urban	R-5	10/01/11	5,227	0	5,227	\$65,899.68	\$5,491.64	0%	Hardware/sporting goods store. DOBOR's improvements.
6	South Pacific Ocean Tours, Inc.	B-96-74	Haleiwa	(1) 6-6-001:002 (por)	Urban	B-1	11/19/96	36	0	36	\$537.24	\$44.77		Ticket booth for selling tickets for commercial thrill crafts. DOBOR identifying an alternative disposition vehicle.
7	Dolphin Excursions Hawaii, Inc.	BO-14100	Waianae	(1) 8-5-002:044 (por)	Urban	P-2	12/01/14	39,640	0	39,640	\$24,336.00	\$2,028.00	10%	Trailer boat storage. Dobor's improvements. DOBOR consolidating RP BO-14100 and RP BO-13040.

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Retroactively From 07/01/16 - 06/30/17

No	Permittee Name	RP No	Location	Tax Map Key	SLU Designation	County Zoning	Effective Date	RP Area (Sq Ft) ^[1]		RP Current Rent ^[2]		Character of Use	
								Fast	Subm	Annual	Monthly		
8	Dolphin Excursions Hawaii, Inc.	BO-13040	Waianae	(1) 8-5-002:051	Urban	P-2	05/01/13	6,655	0	6,655	\$9,067.32	\$755.61	10% Sale of incidental marine related items, and cold storage. DOBOR's improvements. DOBOR consolidating RP BO-14100 and RP BO-13040.
Oahu Subtotal								58,393	1,800	60,193	\$114,064.08	\$9,505.34	
MAUI													
9	Diamond Parking Services	BO-0035	Maalaea	(2) 3-6-001:002 (por)	Urban	B-2	07/01/15	N/A	N/A	N/A	\$24,000.00	\$2,000.00	10% Parking concession.
10	Maalaea Charters, Inc.	BM-12051	Maalaea	(2) 3-6-001:002 (por)	Urban	B-2	10/01/12	144	0	144	\$3,171.12	\$264.26	5% Commercial charter vessel office. DOBOR's improvements.
11	Maui Oil Company, Inc.	RP 12015	Maalaea	(2) 3-6-001:002 (por)	Urban	B-2	10/01/12	0	0	0	\$1,268.40	\$105.70	Gal To dispense fuel via tank truck.
12	Maui Petroleum, Inc.	BM-12016	Maalaea	(2) 3-6-001:002 (por)	Urban	B-2	01/01/14	0	0	0	\$1,216.80	\$101.40	Gal To dispense fuel via tank truck.
13	Pacific Biodiesel Logistics, LLC	BM-14070	Maalaea	(2) 3-6-001:002 (por)	Urban	B-2	09/01/14	0	0	0	\$1,216.80	\$101.40	Gal To dispense fuel via tank truck.
14	Maalaea Boat & Fishing Club	B-10-01	Maalaea	(2) 3-6-001:034 (por)	Urban	B-1	10/01/10	4,981	0	4,981	\$8,841.24	\$736.77	0% Boat and fishing club, management of boat haul-out for self repair dry dock services for Permittee and public.
15	Island Ice Company L.L.C.	BM-09-51	Kahului Ramp	(2) 3-7-001:023 (por)	Conservation	N/A	06/01/10	200	0	200	\$3,021.72	\$251.81	8% Retail operation and an automated ice machine.
16	Lahaina Yacht Club	BM-07-36	Lahaina	(2) 4-5-005:003 (por)	Urban	R-1	07/01/07	785	0	785	\$1,745.88	\$145.49	0% Sailing program storage.
17	Wilson Keahi	S-5867	Mala Ramp	(2) 4-5-005:019	Urban	R-2	09/01/81	18,644	0	18,644	\$8,514.48	\$709.54	0% Landscaping, maintenance and storage.
Maui Subtotal								24,754	0	24,754	\$52,996.44	\$4,416.37	

Exhibit "A"

August 12, 2016, Item J-1

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DIVISION OF BOATING AND OCEAN RECREATION

Continuation of Revocable Permits on the Islands of Oahu, Maui, Lanai, Hawaii, and Kauai
Retroactively From 07/01/16 - 06/30/17

No	Permittee Name	RP No	Location	Tax Map Key	SLU Designation	County Effective Zoning Date	RP Area (Sq Ft) ⁽¹⁾		RP Current Rent ⁽²⁾	Character of Use				
							Fast	Subm Total						
							Monthly	%						
LANAI														
18	Trilogy Corporation	B-98-03	Manele	(2) 4-9-017-006 (por)	Conservation	N/A	6,100	0	6,100	\$3,970.44	\$330.87	0%	Landscaping, and pavilion. DOBOR consolidating into Permittee's existing lease of adjacent lands.	
Lanai Subtotal							6,100	0	6,100	\$3,970.44	\$330.87			
HAWAII														
19	Island of Hawaii YMCA, The	BH-13082	Kawaihae So	(3) 6-1-003:022 (por)	Urban	MG-1A	10/01/13	6,098	0	6,098	\$1,238.76	\$103.23	0%	Sailing/youth programs, storage, and marine education.
20	Na Kai'ai Wai'a	BH-13081	Kawaihae So	(3) 6-1-003:022 (por)	Urban	MG-1A	11/01/13	22,216	0	22,216	\$2,477.40	\$206.45	0%	Storage, programs (community, educational, youth).
21	Hawaii Petroleum, Inc.	BH-12013	Kailua Kona Pier	(3) 6-1-003:023, 7-5-006:039, 7-8-012:055	N/A	Inclus	01/01/14	0	0	0	\$1,216.80	\$101.40	Gal	To dispense fuel via tank truck.
22	DLNR Aquatic Resources	B-05-01	Honokohau	(3) 7-4-008:003 (por)	Urban	Open	02/01/05	7,500	0	7,500	\$0.00	\$0.00	0%	Office trailers, and parking. Government gratis.
23	GKM, Inc.	BH-010-07	Honokohau	(3) 7-4-008:003 (por)	Urban	Open	10/01/12	392,040	0	392,040	\$87,737.40	\$7,311.45	5%	Boat/trailer storage facility, employee parking. DOBOR consolidating into Permittee's existing lease of adjacent lands.
24	Hawaii Big Game Fishing Club, Inc.	BH-1202	Honokohau	(3) 7-4-008:003 (por)	Urban	Open	07/01/12	9,975	0	9,975	\$2,536.92	\$211.41	0%	Fishing/boating activities, public meetings, tournaments, harbor meetings and youth groups.

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No	Permittee Name	RP No	Location	Tax Map Key	SLU Designation	County Zoning	Effective Date	RP Area (Sq Ft) ⁽¹⁾		RP Current Rent ⁽²⁾	Character of Use	
								Fast	Total			
26	Hawaii Island Paddlesport Association	BH-010-06	Honokohau	(3) 7-4-008:003 (por)	Urban	Open	09/01/10	6,000	0	\$3,357.48	0% Hawaiian style Halaau for meetings, storage of canoes, kayaks, general equipment and staging area for race events.	
26	Keahole Point Fish, LLC	BH-010-05	Honokohau	(3) 7-4-008:003 (por)	Urban	Open	07/01/10	20,000	0	\$15,444.56	\$1,287.03 Land-based operations supporting ocean-based aquaculture project. DOBOR considering issuing a lease.	
27	Kona Sailing Club	B-97-02	Honokohau	(3) 7-4-008:003 (por)	Urban	Open	10/01/97	14,196	0	\$11,549.64	\$962.47 Trailered boat storage, sailing related equipment, ocean safety education/training.	
28	Ocean Wings Hawaii, Inc.	BH-13011	Honokohau	(3) 7-4-008:003 (por)	Urban	Open	04/01/13	300	0	\$6,193.56	\$516.13 5% Sale of ocean activity photographs and ad videos from a parked vehicle removed each evening. DOBOR identifying an alternative disposition vehicle.	
29	US Dept of the Interior	RP 6783	Honokohau	(3) 7-4-008:003 (por)	Urban	Open	09/01/91	273,992	0	\$0.00	\$0.00 Management of existing archaeological features and anchialine ponds. Government grants.	
								Hawaii Subtotal	0	752,318	\$131,752.32	\$10,979.36

Exhibit "A"

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Retroactively From 07/01/16 - 06/30/17

No	Permittee Name	RP No	Location	Tax Map Key	SLU Designation	County Zoning	Effective Date	RP Area (Sq Ft) ^[1]		RP Current Rent ^[2]	Character of Use			
								Fast	Subm			Total	Annual	Monthly
KAUAI														
30	Outfitters Kauai, Ltd.	BO-1171	Nawiliwili	(4) 3-2-003:007 (por)	Urban	I-G	10/01/11	3,171	0	3,171	\$11,180.64	\$931.72	0%	Portable storage, parking, staging area, access to Huleia River.
31	True Blue, Inc.	BO-1172	Nawiliwili	(4) 3-2-003:007 (por)	Urban	I-G	10/01/11	1,742	0	1,742	\$6,655.68	\$554.64	0%	Portable storage, parking, staging area, access to Huleia River.
								4,914	0	4,914	\$17,836.32	\$1,486.36		
Kauai Subtotal								846,478	1,800	848,278	\$320,619.60	\$26,718.30		
Statewide Total														

[1] Based on preliminary research, it appears that all of the demised lands are not legally subdivided lots. Further research will be done to confirm this once DOBOR hires a new property manager.

[2] Rents were increased retroactively, effective July 1, 2015 as approved by the BLNR at its meeting on July 24, 2015, under Agenda Item J-3.