

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

April 28, 2017

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

Hawaii

GKM, Inc., Harbor Lease No. H-82-4, a Hawaii Corporation, Lessee, Honokohau Small Boat Harbor, Kealakehe, Kailua-Kona, Hawaii, requests authorization to sublease portions of its current lease area to the sublease tenants listed in Exhibit A.

APPLICANT:

GKM, Inc., a Hawaii corporation, dba Gentry's Kona Marina, located at 74-425 Kealakehe Parkway, Kealakehe, Honokohau, North Kona, Hawaii, 96740.

LEGAL REFERENCE:

Sections 171-36(a)(6), (b) Hawaii Revised Statutes, as amended.

LEASE LOCATION AND AREA:

The premises containing fast and submerged lands at the Honokohau Boat Harbor, Kona, Hawaii, TMK: (3) 7-4-008:42, comprising an area of 177,860 square feet or 4.083 acres, currently under lease to GKM, Inc., Harbor Lease H-82-4.

SUBLEASE LOCATION AND AREA:

See the attached Exhibit A for Schedule of Subleases.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act. YES X NO

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

LEASE CHARACTER OF USE:

GKM, Inc., Lease No. H-82-4 relative to “use”, reads in part:

“...for the construction of certain improvements which shall be used principally for marine or marine-related activities which shall include the following:

Sales:

1. Marine hardware and supplies
2. Marine paints and other finish material

Services:

1. The construction, operation and maintenance of a boat haul-out facility for boat repair and storage
2. Repair facility for the maintenance and repair of boats
3. Marine workshop facilities
4. Rigging and swaging for vessels
5. Administrative offices for boat repair and storage facilities
6. The submerged land shall be used exclusively for the berthing of vessels for servicing and repair and the adjacent land area for use as a work dock area

The following additional marine-related activities may also be conducted within the demised premises upon prior written approval by the Lessor.

Sales:

1. Sailboats and power boats and other water craft (new and brokerage)
2. Charts, maps and nautical publications
3. Navigation instruments and supplies
4. Marine electrical and electronic gear and radios
5. Fishing tackle, lures, ice and fresh bait
6. Outboard and inboard engines and supplies.

Services:

1. Sail making, canvas goods and repair
2. Repair and maintenance of marine electrical and electronic equipment
3. Marine surveys
4. The construction, operation and maintenance of vessels and marine equipment storage facilities
5. Scuba/skin diving services associated with marine repair and salvage
6. Repair and maintenance of marine instruments and navigation equipment
7. Marine upholstery, draperies and interior finishes
8. Repair facility for the maintenance and repair of boats
9. Cold storage facility or ice house
10. Vending machines for the sale of sandwiches, snacks, hot and cold drinks, candies, cigarettes, etc.
11. Other related activities as approved in writing by the Lessor

The Lessee is made aware that the Lessor does not guarantee that the additional permitted activities listed above shall be for the exclusive use of the Lessee within the boundaries of the Honokohau Boat Harbor.”

SUBLEASE CHARACTER OF USE:

See the attached Exhibit A for each listed Sublessee and character of use.

TERM OF LEASE:

Harbor Lease No. H-82-4 was originally for Thirty-five (35) years, commencing on April, 1, 1984 and expiring on March 31, 2019. On March 24, 2006, Item J-1, the Board of Land and Natural Resources (Board), approved the extension of Harbor Lease No. H-82-4 for an additional Twenty (20) years, from April 1, 2019 to March 31, 2039.

TERM OF SUBLEASES:

See attached schedule of subleases.

ANNUAL RENTAL:

Currently \$120,184 per annum, payable \$30,046 quarterly.

SUBLEASE RENTAL:

The subletting provision of GKM, Inc., Harbor Lease No. H-82-4, provides:

"Subletting. That the LESSEE shall not rent or sublet the whole or any portion of the demised premises, without the prior written approval of the Director and the Board pursuant to Section 171-11 and 171-36(a)(6). The Director shall have the right to deny uses contrary to the primary purpose of the lease. The Board shall have the right to review and approve the rent to be charged to the proposed sublessee and, if necessary, revise the rent and rent structure charged to the LESSEE by the LESSOR in light of the rental rate charged to the proposed sublessee by the LESSEE; provided, further, that the rent may not be revised downward."

DCCA VERIFICATION:

SUBLESSOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

See Exhibit A for each listed Sublessees.

REMARKS:

On March 24, 2017, the Division of Boating and Ocean Recreation (DOBOR), brought a request to sublease by Kona Marine Holdings, LLC (KMH), to Jacks Diving Locker, Item J-2. During the discussion, the General Manager of GKM, Inc. testified that DOBOR had not brought GKM, Inc.'s requests to sublease before the Board that were made prior to KMH's request as well as having concerns on how gross receipts were being calculated regarding fuel sales and sublease rents. DOBOR indicated that the reason the requests to sublease by GKM, Inc. were not brought to the Board prior to the KMH request was because there was missing information, such as sublease agreements, insurance documents, and DCCA verifications. DOBOR indicated that it had requested the missing information but to date had not received all the missing documents. DOBOR committed to bringing GKM, Inc's request to sublease space 17 as well as the other subleases that had been issued without Board approval to the April 28, 2017 meeting.

Exhibit A identifies the current subleases that GKM, Inc. has approved and provided to DOBOR. It appears that most of the subleases meet the character of uses specified in the lease except for the restaurant subleases.

Under the authorized “service uses” in the lease, item 10 states, “Vending machines for the sale of sandwiches, snacks, hot and cold drinks, candies, cigarettes, etc.” Although the GKM, Inc. Harbor Lease H-82-4 does not have a provision allowing the operation of a restaurant on the premises, as stated on page 2, under the First Services Section, Paragraph 2... “The Lessee is advised that the Lessor intends to authorize by separate lease the operation of a full-fledged restaurant within the boundaries of the Honokohau Boat Harbor.”

Similarly, Space No. 17, Keoni’s Point of View, LLC., is planning to operate as a wholesale and retail sale of fresh, frozen, and packaged fish and seafood and operation of a seafood restaurant.

Neither the Harbor House restaurant nor the current request to sublease Space No. 17 to Keoni’s Point of View for a seafood restaurant were offered by lease as per Hawaii Revised Statute §171-14.

Under the authorized “service uses” in the GKM, Inc. Lease No. H-82-4, item 11 allows for “Other related activities as approved in writing by the Lessor.” Under this provision, the Board may be able to approve the existing sublease to the Harbor House restaurant as well as the new request to issue a sublease for space No. 17 to Keoni’s Point of view for a seafood restaurant.

RECOMMENDATION:

That the Board consent to the subject subleases under GKM, Inc. Lease No. H-82-4 between GKM, Inc. as Sublessor and the Sublessees found in Exhibit A.

Subject to the following terms and conditions:

1. Any amendment to the Sublease must be approved in writing by the Chairperson;
2. Sublessee must comply with all Federal, State, and County requirements;
3. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
4. If applicable, revision of the rent and rent structure charged to GKM, Inc. in light of the rental rate charged to the proposed sublessee by the LESSEE;
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,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case
Chairperson