

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

August 25, 2017

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

Land Board Members:

**SUBJECT:** ISSUANCE OF REVOCABLE PERMIT, TO NAWILIWILI YACHT CLUB, NAWILIWILI SMALL BOAT HARBOR, NAWILIWILI, ISLAND OF KAUA'I, HAWAI'I. TAX MAP KEY: (4) 3-2-03:043 PORTION.

AND

REQUEST APPROVAL OF DECLARATION OF EXEMPTION TO CHAPTER 343, HAWAII REVISED STATUTES FOR THE PROJECT

**APPLICANT:**

Nawiliwili Yacht Club, a 501 (c)(4) tax-exempt corporation, whose address is Post Office Box 3661, Lihue, Hawaii 96766, hereinafter referred to as the "NYC".

**LEGAL REFERENCE:**

Sections 171-40, Hawaii Revised Statutes, as amended.<sup>1</sup>

**LOCATION:**

Portion of government lands situated at Nawiliwili Small Boat Harbor, Nawiliwili, Lihue, Kaua'i, Hawai'i, identified by Tax Map Key ("TMK"): (4) 3-2-03:043 portion, as shown on the attached maps labeled EXHIBIT A and B.

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<sup>1</sup> HRS § 171-40, provides that the Board of Land and Natural Resources ("Board") may, "Expired leases; holdover. Upon expiration of the lease term, if the leased land is not otherwise disposed of, the Board may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms, and conditions as the Board may prescribe...Upon expiration of the one-year extension, if the Board has not yet decided upon the re-lease of the land or reservation for other purposes, the board may issue a temporary permit to the lessee, subject to section 171-55 and the rent and such other terms and conditions as the board may prescribe."

AREA:

Approximate area of 8,698 square feet, which parcel is hereinafter referred to as the “Premises.”

ZONING:

State Land Use District: Urban

County of Kaua‘i CZO: General Industrial

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Set aside by Governor's Executive Order No. 3134 and 3371, for 31.924 acres, under the control and management of the Department of Land and Natural Resources, Division of Boating and Ocean Recreation (“DOBOR”), for Nawiliwili Small Boat Harbor (“NSBH”).

Encumbered by DOBOR Holdover of expired Lease, No. B-00-3, to NYC, Holdover expiring September 1, 2017, (“Holdover”).

CHARACTER OF USE:

Small boat harbor purposes.

COMMENCEMENT DATE:

September 2, 2017

MONTHLY RENTAL:

\$1,799.07 per month, or five percent (5%) of gross receipts, whichever is greater.

Rent established by fair market rent, adjusted for one (1) year escalation. Based upon private independent CBRE appraisal report, dated January 2017, attached as EXHIBIT C.

Annual Fair Market Rent, effective July 1, 2016:	\$20,960.00
x Escalation of Market Rent Factor @ 3% per year:	x 1.03
<u>= Annual Fair Market Rent, effective July 1, 2017:</u>	<u>\$21,588.80</u>

Or, divided by 12 months = \$1,799.07 per month

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Comprehensive Exemption List for the Division of Boating and Ocean Recreation, Department of Land and Natural Resources, State of Hawaii, as concurred in by the Environmental Council, State of Hawaii", dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states pertinent part, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond previously existing.", Item 51, that states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

DCCA VERIFICATION:

Place of business registration confirmed:	YES X	NO
Registered business name confirmed:	YES X	NO
Applicant in good standing confirmed:	YES X	NO

REMARKS:

Original Lease. Boating Lease No. B-00-3, ("Lease"), awarded via public auction, leased the Premises to NYC for a term of fifteen (15) years. The Lease commenced on September 2, 2001, and expired on September 1, 2016. During the term, NYC had expressed interest in obtaining an extension to the Lease by direct negotiation, but was informed that DOBOR was required to offer the lease by public auction.

Holdover to Lease. Consequently, to bring NYC's documentation of occupancy current, on February 24, 2017, Item J-1, staff requested Board approval of a holdover for the Lease, retroactive, beginning on September 2, 2016, and expiring on September 1, 2017, with the rent adjusted from the expired lease amount, to fair market value, consistent with current DOBOR pricing practice recommended by the RP Task Force. However, NYC submitted testimony to the Board in support of the Holdover, except for maintaining the rent to that prior to the expiration, below fair market value. NYC cited financial hardship and represented that they were negotiating as a 501(c)3 charitable organization. Thus, the Board approved the Holdover, except that the rent was amended to be maintained at the below fair market value. The Board reminded NYC to submit their application for justification of the lower rent.

On March 7, 2017, DOBOR sent a letter to NYC, requesting, as directed by the Board, to submit a Request for State Lands Application with supporting documentation, within 90 days, by May 24, 2017; to substantiate the claim of status to receive the discounted rent agreed to by the Board.

Reduced Rent and Direct Negotiation: In the same written testimony to the Board, NYC also requested entering direct negotiations for the Premises, as provided under HRS 171-43.1.<sup>2</sup> Upon review, it was determined that NYC is a 501(c)4, and as such, NYC is not qualified for consideration under HRS 171-43.1, for reduced rent or direct negotiation.

Request for State Lands Applications: In response to the DOBOR letter requesting NYC to submit a Request for State Lands, (“Application”), for the justification of lower rent for the holdover, on May 22, 2017, DOBOR received an Application, not from NYC as directed by the Board, but from Kauai Sailing Association (“KSA”). The letter states that past members of NYC formed KSA, that both NYC and KSA are operating on the same property leased from DLNR and with the affiliation, NYC supports the KSA Application.

The Lease provides that NYC not permit any other person to occupy or use the Premises or any portion, transfer, assign the Lease, or any interest without prior written approval of the Board. The Lease also requires that any public use of the Premises be submitted for DOBOR approval. Prior to the Application, DOBOR was not notified of the KSA operation and had not received information documenting the official relationship between NYC and KSA. It appears that KSA does not have authorization to operate on the Premises.

On June 9, 2017, Item J-2, the Board authorized the public auction of a lease for the Premises.

On July 26, 2017, DOBOR received a letter from Bays Lung Rose Holma, Attorneys at Law, representing NYC and KSA, demanding that DOBOR grant the KSA request in accordance with 171-43.1 and statements by the Board and DOBOR, alleging that DOBOR officials were fully informed of the NYC/KSA relationship, improperly denied the KSA Application, violated procedure and both groups due process rights. They assert that, due to the alleged violations, and since their client followed all proper procedure, the public auction is invalid, demanding that the following actions be taken to rectify the situation: (1) the Application from KSA be accepted and timely acted upon and (2) the public auction be stayed until after the KSA application receives the consideration it was promised. The letter is attached as EXHIBIT D.

On July 31, 2017, DLNR received a letter from NYC regarding their Request for State Lands application submitted to DOBOR on May 17, 2017.

On August 1, 2017, DOBOR received a letter from NYC, as notification of their intent to remain on the Premises after September 1, 2017.

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<sup>2</sup> HRS 171-43.1 provides where the board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service.

JUSTIFICATION FOR REVOCABLE PERMIT:

Issuance of a Revocable Permit (“RP”) is justified, as an interim arrangement pending Board decision regarding the long-term disposition of the Premises. Currently, the required survey and appraisal work in preparation for public auction is in progress. Projected completion is six (6) to eight (8) weeks, and the auction process may commence with advertising in October.

However, the timetable may be affected due to allegations made by NYC in the letter from their attorney. The letter was referred to the Department of the Attorney General for review.

The proposed use is allowable in the County zoning and compatible with surrounding existing use.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Month-to-month tenancy is more appropriate than long-term disposition in this case, since DOBOR is currently in the process of preparing an offering of lease by public auction for the Premises.

The Revocable Permit shall also be subject to the following terms and conditions:

1. Applicant shall maintain insurance covering personal injury/property liability for \$1,000,000.00 for each occurrence, and \$2,000,000.00 aggregate coverage, naming DOBOR and the State of Hawaii as an additional insured. Proof of insurance shall be provided to the Division of Boating and Ocean Recreation Property Management prior to the Commencement Date.
2. The sale and consumption of alcoholic beverages is prohibited within the Revocable Permit area and within the NSBH (except within retail establishments with a valid liquor license).

RECOMMENDATION:

That the Board of Land and Natural Resources:

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. Authorize the issuance of a revocable permit to NYC covering the subject area for vessel storage purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
- b. Review and approval by the Department of the Attorney General; and
- c. 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  
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson  
Board of Land and Natural Resources

Attachment:

- A. Public Land Trust Map of Nawiliwili Small Boat Harbor
- B. Map of Nawiliwili Yacht Club
- C. CBRE Appraisal
- D. Bays, Lung, Rose, Holma Attorneys at Law; Letter for Nawiliwili Yacht Club

**ID Search**

Enter an Alternate ID, tax map key (TMK), portion of TMK or range of 9 digit TMKs  
e.g. (1) 2-1-033-025 or 121033025

(4) 3-2-003-043

Or enter an Encumbrance ID

Encumbrance ID

Polygon Search

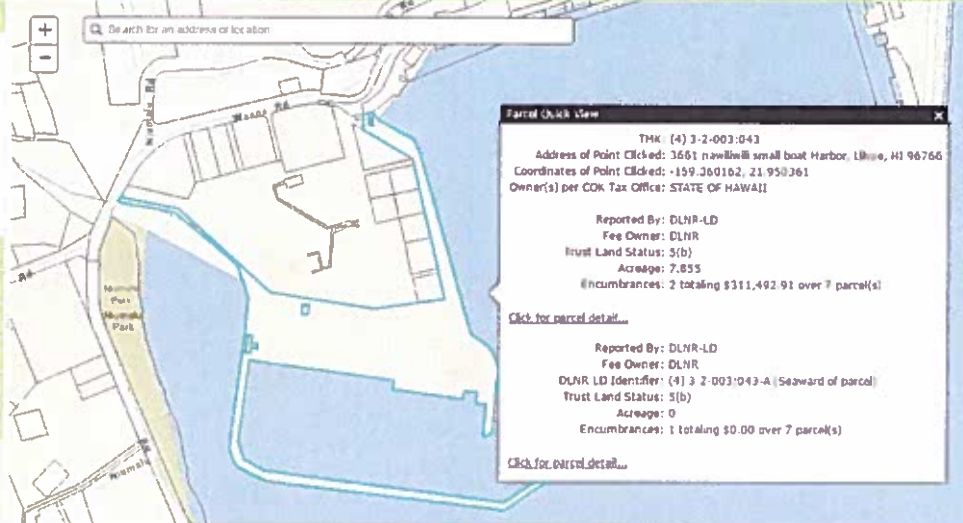
Basic Query

Advanced Query

Layers and Rendering

Print and Bookmark

Map Legend



Enter an Alternate ID, tax map key (TMK), portion of TMK or range of 9 digit TMKs  
e.g. (1) 2-1-033-025 or 121033025

(4) 3-2-003-043

Or enter an Encumbrance ID

Encumbrance ID

Polygon Search

Basic Query

Advanced Query

Layers and Rendering

Print and Bookmark

Map Legend



Nawiliwili Yacht Club

Nawiliwili Yacht Club



Exhibit B



January 27, 2017

Edward R. Underwood  
DOBOR Administrator  
STATE OF HAWAII  
P.O. Box 621  
Honolulu, Hawaii 96809

**RE: Appraisal of Market Rent for  
Nawiliwili Yacht Club Site  
Nawiliwili Harbor, Lihue, Kauai, Hawaii 96766  
CBRE, Inc. File No. 17-251LA-0254**

Dear Mr. Underwood:

On October 31, 2016, we transmitted a portfolio appraisal of the fair market rent for 18 State of Hawaii revocable permits managed by the Department of Boating and Ocean Recreation (DOBOR) having an effective date of July 1, 2016. Included in this study were the valuation of market rents for revocable permits to Outfitters Kauai, Ltd. and True Blue, Inc. located at the Nawiliwili Small Boat Harbor. Subsequently, we received a request to estimate market rent for a one-year holdover of Boating Lease No. B-00-3 to Nawiliwili Yacht Club located in the same area. The Nawiliwili Yacht Club property is an 8,698-square-foot site identified on Hawaii Tax Maps as Fourth Division Tax Map Key 3-2-03, Parcel 43 (por.). The property is improved with a two-story, wood frame structure constructed by the permittee. As such, the existing structural improvements have been excluded in our market rent analysis.

#### **Scope of Assignment**

In this assignment, the client has requested that we estimate market rent for the 8,698-square-foot Nawiliwili Yacht Club site as of the July 1, 2016 effective date of our portfolio appraisal. Our study will be used for negotiating a one-year holdover rent for Boating Lease No. B-00-3 to Nawiliwili Yacht Club commencing September 2, 2016. Consistent with our earlier appraisal, sales comparison has been employed to estimate the fee simple interest in land. Annual rent has been estimated as the product of fee simple land value and the prevailing land rate of return.

#### **Purpose and Function of Report**

The purpose of this appraisal is to estimate market rent for the 8,698-square-foot Nawiliwili Yacht Club site effective as of the July 1, 2016 effective date of the portfolio report. The function of our report is to provide real property information, real estate market data, and an informed professional opinion of market rent to establish ground rent for a one-year holdover period commencing September 2, 2016 of Boating Lease No. B-00-3. This report is a supplement to our portfolio Appraisal Report transmitted on October 31, 2016, having an effective date of

valuation of July 1, 2016. As such, our October 31, 2016 report is incorporated herein in its entirety and this supplement cannot be understood properly as a free-standing document.

**Fee Simple Land Value**

As shown in the following table, the fee simple land value of the 8,698-square-foot Nawiliwili Yacht Club site, effective July 1, 2016, was estimated at \$262,000, or \$30.10 per square foot.

<b>LAND TRANSACTIONS ADJUSTMENT ANALYSIS</b>				
<b>Nawiliwili Yacht Club</b>				
<b>Nawiliwili, Kauai, Hawaii</b>				
	<b>Subject</b>	<b>K-1</b>	<b>K-2</b>	<b>K-3</b>
<b>Tax Map Key</b>	(4) 3-2-03-43 (per.)	(4) 3-3-10-36	(4) 3-3-12-36	(4) 3-3-13-45
<b>Zoning</b>	I-G	CG	I-L	I-L
<b>Total Land Area in Sq. Ft.</b>	8,698	21,825	16,411	24,125
<b>Height Limit in Feet</b>	50	50	30	30
<b>Instrument</b>		Deed	Deed	Deed
<b>Effective Date</b>		18-Mar-14	16-Jun-14	1-Jul-15
<b>Indicated Total Price</b>		\$567,450	\$435,000	\$630,000
<b>Price Per Sq. Ft.</b>		\$26.00	\$26.51	\$26.11
<b>Composite Market Conditions Adjustment</b>		1.07	1.06	1.03
<b>Market Conditions Adjtd. Price Per Sq. Ft.</b>		\$27.82	\$28.10	\$26.90
<b>ADJUSTMENTS</b>				
<b>Location</b>	<b>Nawiliwili</b>	Lihue - Grove Farm Comparable	Puhi Industrial Park Comparable	Puhi Industrial Park Comparable
		0%	0%	0%
<b>Frontage/Corner</b>	<b>Nawiliwili Harbor</b>	Pahee Street Comparable	Haleukana Street Comparable	Haleukana Street Comparable
		0%	0%	0%
<b>Zoning / Height Limit / SMA</b>	<b>I-G / 50 Feet / Yes</b>	CG / 50 Feet / No Superior	I-L / 30 Feet / No Superior	I-L / 30 Feet / No Superior
		-5%	-5%	-5%
<b>Physical Characteristics</b>	<b>Near Rectangular Shaped, Level</b>	Irregular Shape, Level Inferior	Rectangular shape, Level Comparable	Near Rectangular Shape, Level Comparable
		5%	0%	0%
<b>NET ADJUSTMENTS</b>		0%	-5%	-5%
<b>Adjusted Price Per Sq. Ft.</b>		\$27.82	\$26.69	\$25.55
<b>Size Adjustment</b>		1.15	1.10	1.17
<b>Size Adjusted Price Per Sq. Ft.</b>		\$31.99	\$29.36	\$29.89
<b>Proportionate Weighting Factor</b>		0.20	0.40	0.40
<b>Product</b>		\$6.40	\$11.74	\$11.96
<b>Mean Value Per Sq. Ft.</b>	<b>\$30.41</b>			
<b>Weighted Value Per Sq. Ft.</b>	<b>\$30.10</b>			
<b>Concluded Value Per Sq. Ft.</b>	<b>\$30.10</b>			
<b>Total Fee Simple Land Value</b>	<b>\$261,810</b>			
<b>Rounded</b>	<b>\$262,000</b>			
Source: The Hallstrom Group/CBRE, Inc., as of July 1, 2016.				

### Land Rate of Return

Data presented in our portfolio Appraisal Report supports a land rate of return of eight percent for commercial and industrial property.

### Concluded Market Base Rent

The annual market base rent for the 8,698-square-foot Nawiliwili Yacht Club site, effective July 1, 2016, is shown below:

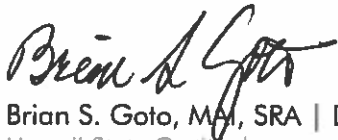
<b>MARKET LAND RENT CONCLUSION</b>			
<b>Licensee</b>	<b>Interest Appraised</b>	<b>Square Feet</b>	<b>Total Annual Rent</b>
<b>Nawiliwili Yacht Club</b>	<b>Market Rent</b>	<b>8,698</b>	<b>\$20,960</b>
<b>Compiled by CBRE</b>			

### Certification

I certify to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in or bias with respect to the property that is the subject of this report and have no personal interest in or bias with respect to the parties involved with this assignment.
4. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
5. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
6. This appraisal assignment was not based upon a requested minimum valuation, a specific valuation, or the approval of a loan.
7. My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice, as well as the requirements of the State of Hawaii.

8. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
9. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
10. As of the date of this report, Brian Goto has completed the continuing education program for Designated Members of the Appraisal Institute.
11. Brian Goto has not made a personal inspection of the property that is the subject of this report for this supplemental study.
12. No one provided significant real property appraisal assistance to the person signing this report.
13. Valuation & Advisory Services operates as an independent economic entity within CBRE, Inc. Although employees of other CBRE, Inc. divisions may be contacted as a part of our routine market research investigations, absolute client confidentiality and privacy were maintained at all times with regard to this assignment without conflict of interest.
14. Brian Goto has not provided services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.



Brian S. Goto, MAI, SRA | Director  
Hawaii State Certified  
General Appraiser, CGA-62  
Exp. Date December 31, 2017

/as/17-0254

July 25, 2017

Via U.S. Mail

Edward Underwood  
Administrator  
Dept. of Land and Natural Resources  
Division of Boating and Ocean Recreation  
4 Sand Island Access Road  
Honolulu, HI 96819

Dana Yoshimura  
Manager for Planning and Development  
Dept. of Land and Natural Resources  
Division of Boating and Ocean Recreation  
4 Sand Island Access Road  
Honolulu, HI 96819

Re: Boating Lease No. B-00-3 between the State of Hawaii and Nawiliwili  
Yacht Club at Nawiliwili Small Boat Harbor, Kauai Hawaii, Identified by  
Tax Map Key: (4) 3-2-03:43

Dear Messrs. Underwood and Yoshimura:

Our law firm represents Nawiliwili Yacht Club ("NYC") and Kauai Sailing Association ("KSA") in matters concerning Boating Lease No. B-00-3 ("Lease") to Nawiliwili Yacht Club for activities of a private, non-profit, recreational boating and ocean activities facility, and ancillary uses at the Nawiliwili Small Boat Harbor, Island of Kauai, Hawaii, on the property identified by Tax Map Key: (4) 3-2-03:43 ("Property"). The purpose of this letter is to demand that the Department of Land and Natural Resources ("DLNR") Division of Boating and Ocean Recreation ("DOBOR") grant KSA's Request for State Lands in accordance with HRS § 171-43.1 and prior statements by the Board of Land and Natural Resources ("BLNR") and DOBOR officials.

As you know, DLNR first granted NYC its initial lease on or around September 2, 2001. Our clients complied with all of the terms of the Lease, including building a yacht club facility and creating a junior sailing program, both of which satisfied the requirement to provide

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Dana Yoshimura  
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a location for maritime education on Kauai. Our clients were never delinquent on a payment during the Lease term.

As you also know, at the end of the Lease's 15-year term, DOBOR had not completed preparations for a public auction. As a result, at the February 24, 2017 BLNR meeting, DOBOR requested a one-year holdover lease for the premises that would be retroactive to the date of the lease's expiration. Mr. Fred Styer and Mr. Jim Saylor, the current commodore of NYC and a former NYC commodore and a member of KSA's Board of Directors, also testified. During their testimony, the two gentlemen made it clear that they represented both NYC, a 501(c)(4), and KSA, a 501(c)(3). The record shows that they even "asked whether they could get a negotiated lease as a 501(c)(3)." BLNR Member Stanley Roehrig responded that similar issues with maritime-related non-profits and rent had recently come before BLNR and reiterated his displeasure on how these issues were being handled.<sup>1</sup> After discussing the fact that "the [NYC] site may not be ready for long-term disposition" due to zoning, subdivision, and septic system issues, DOBOR consented to and BLNR approved a Holdover Lease for NYC for the term of September 1, 2016 to September 1, 2017 for \$1,107 per month.

Subsequent to that meeting, Dana Yoshimura sent NYC a letter requesting NYC's "Application and Documentation to the Board for Securing of Discounted Rent, and Request to be Considered to Enter into Direct Negotiation for Lease." In the letter, Mr. Yoshimura requested that NYC submit documentation its of non-profit status in order to

receive the discounted rent agreed to by the BLNR at the [February 24, 2017] meeting. In addition, the application and supporting documentation is needed to consider your request to enter into direct negotiation for the parcel identified by TMK (4) 3-2-03:043 (por.), as intimated by you in your written testimony to the Board.

The timeframe given for submission of the relevant documentation was no later than May 24, 2017.

On May 15, 2017, relying on the statements made at the February 24, 2017 meeting and in the March 7, 2017 letter from DOBOR, KSA submitted the requested application in accordance with HRS § 171-43.1. The application included KSA's Articles of Incorporation, its IRS Letter granting its 501(c)(3) status, its DCCA Registration Certification, and its Bylaws, all of which demonstrate it to be a legitimate non-profit organization in Hawaii. The application was submitted on KSA letterhead, referred to the joint efforts by NYC and KSA to satisfy the

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<sup>1</sup> In fact, in July 2013, BLNR had allowed a youth paddling and sailing program in Hilo by permitting the 501(c)(3) to submit a separate application and request issuance of a revocable permit for use of a portion of the harbor property. Member Roehrig was referring to recent issues brought to BLNR regarding the tripling of rent for those same paddling groups and other sailing clubs.

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educational requirements of the lease, was signed by the Chair of the KSA and the Commodore of the NYC, and directly referred to the March 7, 2017 letter sent by DOBOR to NYC. Neither KSA nor NYC received any response from DOBOR regarding the KSA application. In fact, NYC and KSA had relied on the statements made in the meeting and the letter that KSA's application would satisfy the requirements for entering into direct negotiations for the lease of the Property and were awaiting a timeline from DOBOR to enter into those direct negotiations.

Despite knowing that KSA had complied with DOBOR's prior requests and all statutory requirements, DOBOR submitted a request to proceed to public auction of the Lease at the June 9, 2017 BLNR meeting. DOBOR knew that the KSA application had been submitted prior to the May 24, 2017 deadline. DOBOR submitted this request without notifying NYC or KSA that the KSA application had been denied. DOBOR further failed to notify NYC or KSA that DOBOR intended to request to proceed to public auction of their lease at the June 9, 2017 BLNR meeting. We do not believe that DOBOR notified BLNR of its receipt of KSA's compliant application prior to requesting approval to proceed to public auction of the Lease.

When our clients discovered that their reliance on the statements of government officials had been misplaced and that DOBOR had instead submitted and received approval from BLNR to proceed to public auction, our clients called Mr. Yoshimura to request the status of their application. In complete violation of appropriate procedure, Mr. Yoshimura informed our clients that the application was denied. When asked why a legitimate 501(c)(3)'s application had been denied without notification, Mr. Yoshimura replied that KSA was not in their files. Because Mr. Yoshimura was at the meeting where the relationship between NYC and KSA was discussed, because the application referred to both KSA and NYC, and because 30-second search of the DCCA website provides all the pertinent information about KSA, this denial was clearly in violation of both the March 7, 2017 letter and the statute regarding such applications and negotiations. The further refusal of DOBOR to send an official notification to either KSA or NYC is an obvious violation of both groups' due process rights.


Both DOBOR's unofficial rejection and its request to proceed to public auction violate administrative and statutory procedures in Hawaii and are therefore invalid. Furthermore, our clients relied on the statements made to them on the record by officials from both the BLNR and from DOBOR. In reliance on those statements, our clients complied with the appropriate procedures and awaited procedurally appropriate responses from State officials. They received neither. We therefore demand the following actions be taken to rectify the situation: (1) the application from KSA be accepted and timely acted upon and (2) the public auction be stayed until after the KSA application receives the consideration it was promised. If we do not hear from you regarding this demand by August 4, we reserve the right to seek immediate injunctive relief regarding the public auction of the Lease.

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We additionally demand that future communications concerning BL No. B-00-3 and the Property be addressed or copied to our office. NYC also renews their request to be informed on all future revocable permits, public auctions, and other matters involving the Property. Should you have any questions or wish to discuss this matter further, please do not hesitate to contact me. We look forward to hearing from you in this matter.

Sincerely,

BAYS LUNG ROSE & HOLMA

By:  \_\_\_\_\_

Bruce D. Voss  
Attorney at Law, A Law Corporation  
Its General Partner

BDV/KEV:jfk

cc: Board of Land and Natural Resources