

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

November 9, 2017

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

PSF No.: 17HD-051

Hawaii

Set Aside to the Division of Boating and Ocean Recreation for Small Boat Harbor and Related Purposes; Issuance of Immediate Management Right-of-Entry to the Division of Boating and Ocean Recreation, Kealakehe, North Kona, Hawaii, Tax Map Key: (3) 7-4-008:071.

APPLICANT:

State of Hawaii, Department of Land and Natural Resources, Division of Boating and Ocean Recreation.

LEGAL REFERENCE:

Sections 171-11 and -55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Kealakehe, North Kona, Hawaii, identified by Tax Map Key: (3) 7-4-008:071, as shown on the attached map labeled Exhibit 1.

AREA:

218.45 acres, more or less.

ZONING:

State Land Use District:	Urban & Conservation (portion of parcel along the coastline is in the Resource Conservation Subzone)
County of Hawaii CZO:	Open

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:

Encumbered by a right-of-entry permit to Kona RC Flyers for the purpose of conducting an environmental assessment for potential future disposition of a portion of the subject lands. DOBOR is the approving agency for the environmental assessment.

PURPOSE:

Small Boat Harbor and Related Purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Exemption List for the Department of Land and Natural Resources, reviewed and concurred upon by the Environmental Council on June 5, 2015," the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item No. 43 which states "Transfer of management authority over state-owned land, such as setting aside of state lands to or from other government agencies through a Governor's executive order." (Exhibit 2)

APPLICANT REQUIREMENTS:

- 1) Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.
- 2) Applicant shall be required to provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

Before 1992, Honokohau Small Boat Harbor (SBH) was under the management authority of the Department of Transportation, Harbors Division (DOT). But in 1991, the legislature passed Act 272, Session Laws of Hawaii (1991), which provided for the transfer of all of the small boat harbors in the State from DOT to DLNR. DOBOR took over management of Honokohau SBH in approximately 1992.

At its meeting of September 22, 2000, Item D-7, the Board approved the set-aside of lands designated as Tax Map Key: (3) 7-4-008:003 por., area 127.312 acres (Parcel 3), to DOBOR. See Exhibit 3 attached. This area included the harbor and general vicinity, including 4.372 acres of submerged lands in the harbor channel.

Executive Order No. 3858 formalizing the set-aside was signed by the Governor on February 13, 2001. However, due to an error in preparing the executive order, it inadvertently set aside more land than the Board had approved. In addition to Parcel 3, Executive Order No. 3858 set aside TMK: (3) 7-4-008:041 (Parcel 41), area 7.25 acres,

and the subject parcel, TMK: (3) 7-4-008:071 (Parcel 71), area 218.45 acres, to DOBOR. Subsequently, at its meeting of December 13, 2002, Item D-38, the Board approved the set-aside of Parcel 71 to DOBOR for marina and marina enhancement purposes. See Exhibit 4 attached. However, the Board's approval action obtained after the execution of Executive Order No. 3858 did not cure the error in the executive order. Accordingly, Land Division staff prepared a second executive order, Executive Order No. 3984 signed by the Governor on April 1, 2003, which cancelled Executive Order No. 3858.

In the meantime, DLNR sought to lease the State lands around the Honokohau SBH to a qualified lessee/developer to expand the existing harbor and generate revenues for the State. At its meeting of April 25, 2003, Item D-14, the Board approved the issuance of a request for qualifications/request for proposals to select a developer/lessee for approximately 350 acres of public lands at Kealakehe for a master-planned mixed-use development project with resort, commercial, industrial, recreational and marina components. The project area was to include all of Parcel 71 and a portion of Parcel 3, carving out the existing Honokohau SBH to remain under DOBOR management. See Exhibit 5 attached.

Later, at its meeting of, September 23, 2005, Item D-3, the Board approved, as amended, a request for the set-aside of a 68.55-acre portion of Parcel 3 to DOBOR for the operation of the Honokohau SBH, as well as a development agreement and proposed master ground lease between the Board and Jacoby Development, Inc. (JDI) for the development of master-planned mixed-use development project at Kealakehe.

The development agreement was executed on November 18, 2005. In the years that followed, JDI conducted its due diligence review and commenced the environmental impact statement and land use entitlement processes for the project. Ultimately, however, JDI determined the entitlement process and state of the economy made pursuing the project unfeasible, and JDI elected to terminate the development agreement. Staff reported the termination of the development agreement to the Board at its meetings of September 26, 2008, Item D-5, and February 27, 2009, Item D-7. As such, the subject parcel is no longer encumbered by the development agreement.

In 2009, the County of Hawaii initiated an effort to downzone the project property, including portions of Parcels 3 and 71, by amending the County General Plan to change the land use designation on the applicable Land Use Pattern Allocation Guide Map from Urban Expansion to Open. The County sought the re-designation to settle a lawsuit to which DLNR was not a party. Despite objections from DLNR, the County Planning Commission and the County Council approved the change in 2009. As a result of the Open land use designation, any development of the area would be difficult.

Executive Order 4334 was signed by the Governor on October 18, 2010 and set aside to DOBOR parcels (3) 7-4-008: 003, 040, 041, 042, 046, 050 and 075 for Small Boat Harbor and Related Purposes.

In light of the foregoing, staff is recommending that Parcel 71 be set aside to DOBOR as

well. Staff has received several inquiries from parties interested in utilizing Parcel 71 purposes more suitable for management by DOBOR. These requests include boat and marine storage, the relocation of the Keauhou Yacht Club and a request from Kona R/C Flyers, among others.

In 2011, the former DOBOR District Manager approved an Adopt-A-Harbor Program Agreement (Exhibit 6) for the Kona R/C Flyers (KRCF), a community organization that flies remote-controlled model airplanes. The Adopt-A-Harbor Permit allowed the KRCF to construct and utilize a portion of DOBOR property, identified as Tax Map Key: (3) 7-4-008: portion of 071. The KRCF constructed a runway and controller/operator shelter on the lava field for take-offs, flights, and landings of the remote-controlled model airplanes. The KRCF group utilized the airfield only on the weekends. The Adopt-A-Harbor Agreement which expired on March 31, 2012, required that the KRCF, 1) keep the flying site clear of trash/wreckage, 2) control litter at the entrance and pathways to the KRCF Airfield Site, and 3) improve the R/C Airfield Site. Upon expiration of the agreement, the KRCF continued to utilize the property, unaware that the portion of the property it occupied was not under DOBOR management as originally presumed. There are no records of Land Board approvals or preparation of an environmental assessment for the development of an airfield on the premises. A request for a month-to-month revocable permit was submitted by the KRCF for the continued use of the area. Staff advised the KRCF that an environmental assessment would be required and the revocable permit should be issued by DOBOR as manager of the land.

Honokohau Harbor has been in operation in the area for approximately 30 years. Staff believes the continued use of the area for the harbor represents the highest and best use of the land. Staff knows of no alternative highest and best uses for the subject area. Staff believes the proposed use fully utilizes the land to the extent the land can be utilized in light of applicable land use and zoning designations, and existing archaeological and wetland features.

Staff is also recommending that the seaward boundary in the executive order setting aside the property be established at the mean lower low water line. This will give DOBOR management jurisdiction over the entire area instead of leaving Land Division, which has jurisdiction over all unencumbered State lands, with management responsibility for a narrow strip of unencumbered land seaward of the shoreline.

Comments were solicited from several State, County and Federal agencies with the following comments to the proposed set aside.

<i>County of Hawaii Agencies</i>	<i>Comments</i>
Fire Department	Response Below
Planning	No Response
Public Works	No Comments
Police Department	No Comments
Water Department	No Objections

Environmental Department	No Response
<i>State of Hawaii Agencies</i>	<i>Comments</i>
DLNR-Historic Preservation	No Response
DLNR – OCCL	No Response
DLNR – Engineering Division	No Response
DLNR – DOFAW	Response below
DHHL	No Response
DOH – Environmental Division	No Response
<i>Other Agencies</i>	<i>Comments</i>
Office of Hawaiian Affairs	No Response
U.S. Army Corps of Engineers	No Response

The County of Hawaii Fire Department recommends that should any development occur on the subject property, the Division of Boating and Ocean Recreation comply with the NFPA 1, UNIFORM FIRE CODE, 2006 EDITION.

The Division of Forestry and Wildlife has provided the following recommended mitigation measures to help protect endangered and/or sensitive flora, fauna, and habitats that may occur in these coastal areas:

Hawaiian Hoary Bats:

- Avoid using barbed wire – bat mortalities have been documented as a result of becoming ensnared by barbed wire during flight.
- Do not remove any trees and/or woody plants over 15 feet tall during bat birthing and pup rearing season (June 1 through September 15)

Seabirds:

- Artificial lighting can adversely impact seabirds that may pass through the area at night causing disorientation which could result in collision with manmade artifacts or grounding of birds. DOFAW recommends any lights used be fully shielded and face downward to minimize impacts.

Coastal Plants:

- Plants such as naupaka and beach heliotrope are known hosts to the endangered yellow-faced bees. DOFAW recommends surveys done by DOFAW entomologists before work occurs in the vicinity.

Anchialine Ponds:

Anchialine pool shrimp and Anchialine pools may be present on the parcel. Avoidance and minimization measures should include the following;

- Avoid inhibiting or changing the natural movement of fresh and salt water within the Anchialine pools.
- Avoid development near the Anchialine pools, especially if runoff is created.

- Avoid increase in impervious surfaces and associated increase in storm water runoff and non-point source pollution.
- Avoid any action that may result in the introduction of non-native fish or other non-native predators to Anchialine pools.
- Avoid using herbicides or pesticides near aquatic habitats.
- Avoid any actions that may alter the water quality and quantity of aquatic habitats.
- The U.S. Fish and Wildlife Service recommends Standard Best Management Practices should be incorporated into any project in the area.
- Anchialine pools should be protected from the following human incursion:
 - a. Vehicles should be restricted to existing roads and trails.
 - b. Trash and other waste should be prevented from entering wetlands, streams or Anchialine pools.
 - c. Human recreation.

DOFAW is also recommending that personnel from the Boating Division contact the Division of Aquatic Resources for additional minimization measures and information regarding Anchialine pools on the property.

RECOMMENDATIONS:

That the Board, subject to Applicant fulfilling the Applicant Requirements above:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation under the terms and conditions cited above, including the establishment of the seaward boundary of the subject land at the mean lower low water line, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

3. Direct the Division of Boating and Ocean Recreation to work with the Division of Forestry and Wildlife (DOFAW) and the Division of Aquatic Resources in the implementation of mitigation measures recommended by DOFAW as referenced above;
4. Authorize the issuance of an immediate management right-of-entry permit to the Division of Boating and Ocean Recreation covering the subject land and lease 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 right-of-entry permit form, as may be amended from time to time;
 - B. The right-of-entry permit shall remain in force until the set-aside is complete; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



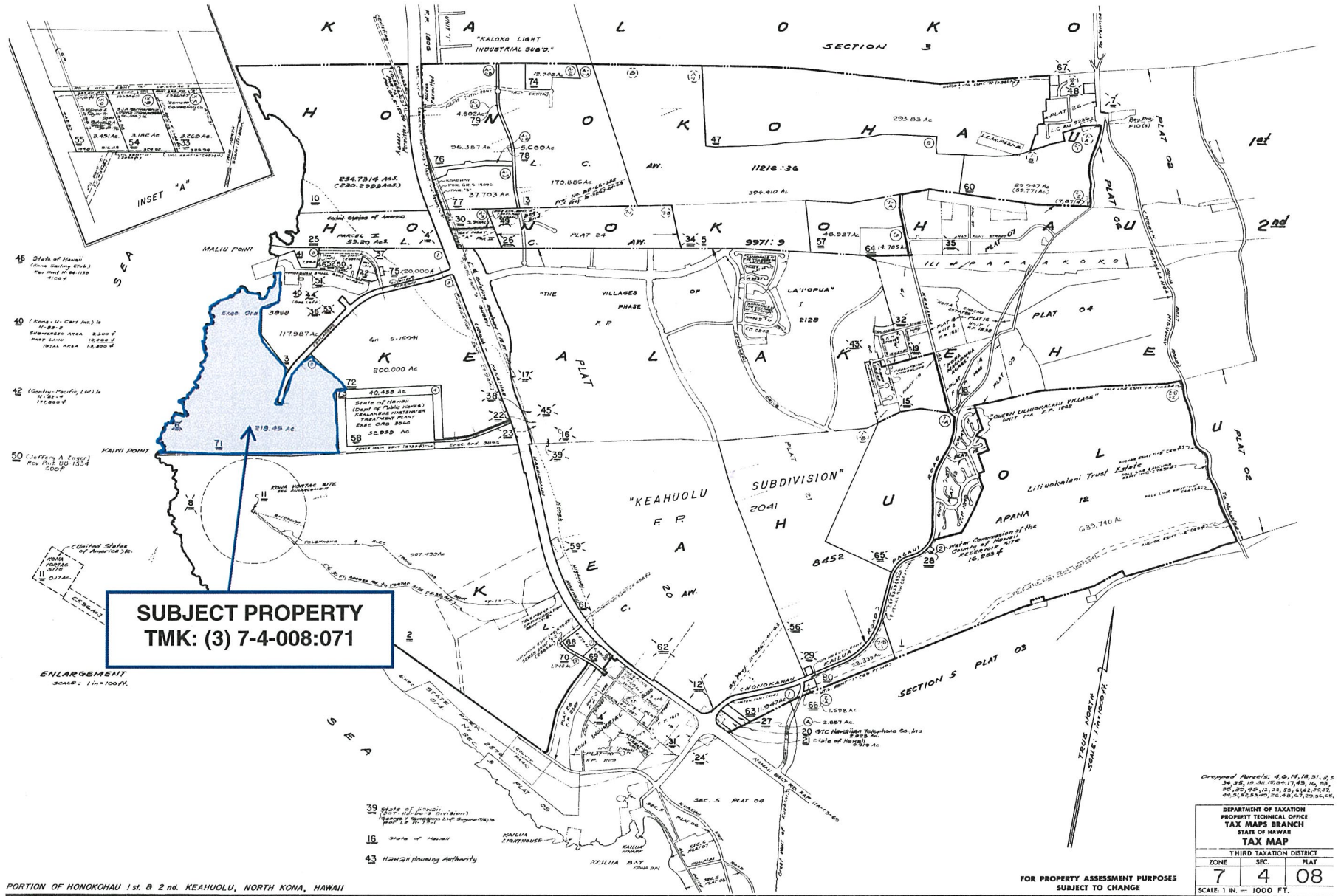
Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



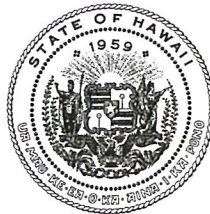


Honokohau Harbor



0 285 570 1,140 1,710 2,280
Feet

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

October 20, 2017

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Set Aside to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Boating and/or Recreational Purposes.

Project / Reference No.: PSF 17HD-051

Project Location: Kealakehe, North Kona, Hawaii, Tax Map Keys: (3) 7-4-008:071.

Project Description: This is a transfer of management authority over state-owned lands between divisions of the same State department via a Governor's executive order.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item No. 43 which states "Transfer of management authority over state-owned land, such as setting aside of state lands to or from other government agencies through a Governor's executive order."

Authorization: The Board, at its meeting of September 25, 2015, under agenda item D-17, delegated authority to the Chairperson to declare exempt those actions that are included in the Department-wide exemption list.

Consulted Parties:

County of Hawaii Agencies	Comments
Fire Department	See staff submittal
Planning	No Response
Public Works	No Comments
Police Department	No Comments
Water Department	No Objections
Environmental Department	No Response
State of Hawaii Agencies	Comments
DLNR-Historic Preservation	No Response
DLNR – OCCL	No Response
DLNR – Engineering Division	No Response
DLNR –DOFAW	See staff submittal
DHHL	No Response
DOH – Environmental Division	No Response
Other Agencies	Comments
Office of Hawaiian Affairs	No Response
U.S. Army Corps of Engineers	No Response

Recommendation:

That the Chairperson find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



D-7

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

September 22, 2000

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii 96813

HAWAII

RESCIND PRIOR BOARD ACTION OF JULY 24, 1981 (AGENDA ITEM F-2) APPROVING THE SET ASIDE OF STATE LAND, SITUATE AT KEALAKEHE, NORTH KONA, ISLAND OF HAWAII, TO THE DEPARTMENT OF TRANSPORTATION FOR THE HONOKOHAU BOAT HARBOR AND SET ASIDE OF SAME, TOGETHER WITH ANY IMPROVEMENTS THEREON, TO THE DEPARTMENT OF LAND AND NATURAL RESOURCES, DIVISION OF BOATING AND OCEAN RECREATION FOR THE HONOKOHAU SMALL BOAT HARBOR, TAX MAP KEY: 7-4-08:3

APPLICANT:

Department of Land and Natural Resources, Division of Boating and Ocean Recreation, pursuant to Act 272, SLH 1991.

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes, as amended

LOCATION AND AREA:

Portion of the Government Land of Kealakehe, same being Lot 1, Kealakehe, North Kona, Island of Hawaii, and further identified as Tax Map Key: 7-4-08:Por. 3 (Exhibit A) containing 127.312 acres, which includes 4.37 acres of submerged land that is the harbor's ingress and egress channel.

ZONING:

State Land Use District:
County of Hawaii:

Urban and Conservation
Open Space

LAND TITLE STATUS:

Section 5(b) lands of the Hawaii Admission Act.

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

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

September 22, 2000.

EXHIBIT 3

CURRENT USE STATUS:

The subject land is operated and maintained as the Honokohau Small Boat Harbor.

PURPOSE OF SET ASIDE:

For the Honokohau Small Boat Harbor.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

An Environmental Impact Statement (EIS) entitled Honokohau Boat Harbor, North Kona, Hawaii, was accepted by the Governor on May 7, 1976, and subsequently, published in the Office of Environmental Quality Control Bulletin. The EIS determined that no adverse impacts to the affected resources from the development and operation of the then proposed Honokohau Boat Harbor have been identified.

Additionally, at its January 9, 1981 meeting, under agenda item H-2, the Board approved a Conservation District Use Application covering the portion of the harbor located in the conservation district (submerged land).

REMARKS:

Act 272, SLH 1991 established the Department of Land and Natural Resources (DLNR) as the agency responsible for overseeing and administering the boating and coastal areas programs, then under the jurisdiction of the Department of Transportation (DOT), and to provide for the orderly transition of the jurisdictional responsibilities for the boating and coastal areas programs from DOT to DLNR.

One of the functions assumed by the Board is operating and maintaining small boat harbors such as the Honokohau Small Boat Harbor. This harbor was the result of governmental and community participation and Federal funds appropriated under Section 301 of the River and Harbor Act of 1965. Construction on the harbor began in the early 1970s and at its completion was the only all-weather, adequately protected harbor along the Kona Coast of Hawaii. Prior to the harbor, boats moored in the open waters of Kailua Bay and Keauhou Bay were sustaining annual damages ranging from \$25,000 to \$75,000 from storms and surge conditions, especially during the winter months. The harbor has enhanced the area's tourist industry due to near ideal conditions for recreational and sport fishing in its coastal waters.

DLNR's Division of Boating and Ocean Recreation (DOBOR) has managed the harbor for the past eight (8) years. Prior to that, DOT's occupancy of the premises was through a right-of-entry issued to it in 1981, as the set aside approved by the Board on July 24, 1981 (agenda item F-2) was never processed.

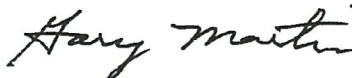
The Honokohau Boat Harbor subdivision requirement contained in agenda item F-2 of the Board's July 24, 1981 meeting was met when DHHL included the harbor site in its subdivision application for its 200 acres adjacent to the harbor. The County of Hawaii, Planning Commission granted final approval of the subdivision on May 30, 2000.

September 22, 2000

RECOMMENDATION: That the Board

- A. Rescind its prior action of July 24, 1981, under agenda item F-2; and
- B. Approve of and recommend to the Governor issuance of an executive order setting aside the Honokohau Small Boat Harbor, including the adjoining submerged land, together with any improvements thereon, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, subject to any existing easements and rights-of-way, subject further to the terms and conditions cited above, which are by this reference incorporated herein, in addition to the following:
 - 1. Review and approval by the Department of the Attorney General, Land/Transportation Division;
 - 2. The standard terms and conditions of the most current executive order document form, as may be amended from time to time; and
 - 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- C. Authorize the issuance of a management right-of-entry to DOBOR covering the Honokohau Small Boat Harbor, subject to the following:
 - 1. DOBOR shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State, and the County governments relative to the rights granted herein;
 - 2. This right-of-entry is effective upon Land Board approval and shall expire on the issuance date of the set aside document or one (1) year, whichever occurs first; and
 - 3. The Department reserves the right to impose additional terms and conditions at any time it deems necessary while this right-of-entry is in force.

Respectfully submitted,

GARY MARTIN
Land Agent

APPROVED FOR SUBMITTAL:


TIMOTHY E. JOHNS, Chairperson

D-38

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

December 13, 2002

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

PSF No.: 02HD-121

HAWAII

RESUBMITTAL

Set Aside to the Department of Land and Natural Resources,
Division of Boating and Ocean Recreation for Marina and Marina
Enhancement Purposes, Kealakehe, North Kona, Hawaii, Tax Map
Key: 7-4-08: 3

APPLICANT:

Department of Land and Natural Resources, Division of Boating and
Ocean Recreation (DOBOR).

LEGAL REFERENCE:

Section 171-11 and 200-2.5, Hawaii Revised Statutes (HRS), as
amended.

LOCATION:

Portion of the Government land of Kealakehe, being Parcel 2 situated
at Kealakehe, North Kona, Hawaii, identified by Tax Map Key: 7-4-08:
3 as shown on the attached map labeled Exhibit A.

AREA:

218.45 acres, more or less.

ZONING:

State Land Use District:	Urban and Conservation
County of Hawaii CZO:	Open Space

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:

Vacant and unencumbered.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

December 13, 2002. por

Item D-38

EXHIBIT 4

PURPOSE:

Marina and marina enhancement purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

Applicant shall be required to provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

The subject parcel was subdivided into Lots 1 - 5 receiving final approval from the County of Hawaii, Planning Commission on May 30, 2000.

Lot 1 is the site of the Honokohau Small Boat Harbor. Its set aside to DOBOR was approved by the Board at its September 22, 2000 meeting, under agenda item D-7. Governor's Executive Order No. 3858 was subsequently prepared by the Department of the Attorney General and issued, to DOBOR, by the Governor's Office on February 13, 2001.

Due to the subject's immediate proximity to the existing Honokohau Small Boat Harbor, DOBOR proposes to develop the subject property in ways that would support and supplement the existing harbor and, at the same time, also provide it with additional mooring revenues. Future plans include the excavation of a second mooring basin that will at least double the current berthing capacity and, resort, retail and golf course development. Currently, DOBOR has a list of over 300 people waiting for berthing slips to become available at the Honokohau Small Boat Harbor. The additional revenues would allow DOBOR to make needed repairs and improvements to small boat facilities statewide.

DOBOR has applied with the County of Hawaii to amend the County's General Plan by changing the County's General Plan designation of the subject 218 acres from open to urban utilization.

Comments regarding the subject disposition were solicited from the following agencies:

<u>Agency</u>	<u>Comments</u>
DHHL	Owns adjacent land and would like

to see harbor development that would enable compatible development.

DLNR-Aquatic Resources	Had no objections.
DLNR-Historic Preservation	No reply.
DLNR-State Parks	Had no objections.
DLNR-Conservation Dist. Plng.	"...Any future development will require Chapter 343 compliance as well as Chapter 13-5 HAR."
DLNR-Hawaii District Branch	"...DOBOR should provide some discussion as to what is planned or timetable for the development of those remaining lands..." (undeveloped lands)
DOT-Harbors Division	Had no objections.
County-Planning	No reply.
County-Parks and Recreation	No reply.

The West Hawaii coastline is characteristically resort in nature. The Honokohau Small Boat Harbor, being a shallow draft harbor, primarily accommodates pleasure/recreational types of boats. DOBOR's future plans for the expansion of the Honokohau Small Boat Harbor will help to further perpetuate the area's resort character.

This request previously came before the Board at its October 25, 2002 meeting as agenda item D-12. The Board deferred action on this item requesting "1) more details on DOBOR's intended plans and 2) what DOBOR has been doing to coordinate their efforts with surrounding landowners, specifically, DHHL."

In response, DOBOR provided Land Division staff with information, confirmed by DHHL, indicating that DHHL and DOBOR intends to partner in master planning all of the Honokohau government lands makai of the Queen Kaahumanu Highway, a total of about 550 acres. The Plan will benefit both agencies envisioning uses such as harbor expansion, a commercial village, yacht clubs, Hawaiian wellness and healing center, canoe club halau, fishing village, time-share condominiums, marine commercial/support services, commercial/retail center, golf course, county recreational park, etc. DOBOR favors a joint RFP between the two agencies with the objective of achieving the maximum revenue stream for each agency. The completed master plan will be presented to the Land Board and Hawaiian Homes Commission in the near future.

DOBOR is also working with the National Park Service to provide

public access to the shoreline and to align and develop the entry road to the park. The National Park Service holds a revocable permit covering adjacent State-owned land identified as Tax Map Key: 7-4-08: 41 containing a petroglyph field on the 7.25-acre site.

Additionally, DOBOR is working with the Hawaii County Planning Department and members of the Hawaii County Council to amend the County General Plan to re-designate the subject 218 acres from open to urban expansion. The Council could act on the amendment by early 2003.

RECOMMENDATION:

That the Board, subject to Applicant fulfilling the Applicant Requirements above:

1. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject land to the Department of Land and Natural Resource, Division of Boating and Ocean Recreation under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order document form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the issuance of a right-of-entry to DOBOR for management purposes, subject to the following:
 - A. Effective upon approval and shall expire upon the issuance date of the executive order setting aside the site to DOBOR.
 - B. The Grantee shall observe and comply with all laws, ordinances, rules and regulations of the Federal, State and County governments;
 - C. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, color, sex, national origin,

December 13, 2002

religion, marital status, ancestry, physical handicap, disability, age, or HIV (Human Immunodeficiency Virus);

- D. Hazardous waste provision;
- E. Archaeological artifacts provision;
- F. All consultants, contractors and/or agents of the Grantee shall have liability insurance coverage insuring both itself and the State of Hawaii against liability to any third party for damage to property, bodily injury, or death, in the minimum amounts of \$50,000 property damage, \$150,000 each person for bodily injury or death, and \$1,000,000 each accident for bodily injury or death. A certificate of insurance taken out hereunder shall be deposited with the Grantor; and
- G. Such other conditions as may be deemed necessary.

Respectfully Submitted,

Gary Martin

GARY MARTIN
Land Agent

dm

APPROVED FOR SUBMITTAL:

Gilbert S. Coloma-Agaran
GILBERT S. COLOMA-AGARAN, Chairperson

[illegible]

PORTION OF NONOKOMAU 1st & 2nd, KEANUOLU, NORTH KONA, HAWAII

EXHIBIT A

DEPARTMENT OF TREASURY
PROPERTY TAX MAPS BRANCH
TAX MAPS
THIRD TAXATION DISTRICT
7 4 08
SCALE 1 IN. = 1000 FT.

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

April 25, 2003

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

Hawaii

Approve the issuance of a lease of approximately 350 acres of public lands (including future submerged lands) and a land license, both by direct negotiation, to allow a master-planned mixed-use development at Kealakehe, North Kona, Island of Hawaii, Hawaii.
Tax Map Keys: (3) 7-4-08: 3, 40, 41, 42, 46, 50 and 71

REQUEST:

1. Approve the issuance, by direct negotiation, of a master lease of approximately 350 acres of public lands, including future submerged lands, at Kealakehe, North Kona, Island of Hawaii, for a master-planned mixed-use development.
2. Authorize the Chairperson to (i) issue a request for proposal pursuant to HRS §171-59(a) for the selection of the lessee/developer; (ii) establish the criteria for evaluating and selecting the lessee; (iii) accept and evaluate the applications submitted by prospective lessees; and (iv) select the best applicant.
3. Approve the issuance of a land license by direct negotiation, for the excavation of a harbor basin adjacent to the existing Honokohau Small Boat Harbor.

APPLICANT:

Department of Land and Natural Resources ("DLNR"), Land Division

LEGAL REFERENCE:

Sections 171-6, 16, 17, 35, 36, 53, 54, 59, and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

SUBJECT PROPERTY:

Location:

Portion of Government lands situated at Kealakehe, North Kona, Island of Hawaii, Hawaii, identified by Tax Map Keys: (3) 7-4-08: 3, 40, 41, 42, 46, 50 and 71, as generally shown on Exhibit A.

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON *KE*
April 25, 2003

EXHIBIT 5

ITEM D-14

Area:

348.642 acres, more or less, subject to confirmation by the
Department of Accounting and General Services, Survey Division.

Zoning:

State LUC District: Conservation (Parcels 3 & 71 only) & Urban
County of Hawaii Zoning Code: Open

Trust Land Status:

Section 5(b) lands of the Hawaii Admission Act; Public Law 88-233

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

Current Use Status / Existing Leases:

The following is a summary of the subject area.

TMK	Area (Acres)	Encumbrance/Current Use
7-4-8:03	118.446	Encumbered by: RP 6783 to US Govt, National Parks (6.929 acres); LOD 25583 to US Govt (1.014 acres); LOD 28397 to GTE (.0220 acres). See below for details
7-4-8:40	0.305	vacant
7-4-8:41	7.250	vacant
7-4-8:42	4.083	vacant
7-4-8:46	0.094	vacant
7-4-8:50	0.014	vacant
7-4-8:71	218.450	vacant

STATUTORY AUTHORITY: (relevant excerpts attached as Exhibit B)

- A. Disposition of Lease by Negotiation. HRS 171-59(a) provides that a lease of public land may be disposed of through negotiation upon a finding by the Board that the public interest demands it.
- B. Disposition of Submerged Public Lands. HRS §171-53(c) provides that the Board, with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution, may lease state submerged lands and lands beneath tidal waters under the terms, conditions, and restrictions provided in HRS Chapter 171.
- C. Land License. HRS §171-54 provides that the Board may dispose of a land license affecting public lands by negotiation, without recourse to public auction, if it determines that the public

interest will best be served thereby; provided that the Board first publishes notice in accordance with HRS §171-16(d).

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a request for the authorization to issue a request for proposal to select a lessee and to negotiate a new lease and land license. This action does not, in and of itself, constitute a use of State lands or funds. Therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. The issuance of the lease and/or license will be conditioned upon the proposed lessee/licensee prior compliance with all Chapter 343 environmental requirements regarding the lessee's proposed use of the property.

PROPOSED NEW LEASE:

<u>Character of Use:</u>	Master-planned mixed-use development project with resort, commercial, industrial, recreational and/or marina components.
<u>Land Use Entitlements:</u>	The lessee shall be responsible for obtaining all land use entitlements, permits and approvals necessary to implement the master plan.
<u>Lease Term:</u>	Sixty-five (65) years
<u>Annual Rent:</u>	To be determined by independent appraisal, subject to review and approval by the Board.
<u>Required Improvements:</u>	To be determined, subject to review and approval by the Board.
<u>Property Characteristics:</u>	
Existing Improvements:	The majority of the subject property is vacant, except for a few harbor-related facilities adjacent to the existing Honokohau Small Boat Harbor such as a boat fueling dock, and sailing and fishing club facilities.
Legal access:	Staff has verified that there is legal access to the property off of Kealakehe Parkway.

Subdivision: Staff has verified that the subject property consists of legally subdivided lots.

Encumbrances: Staff has verified that the following encumbrances exist on the property:

- Revocable Permit No. 6783 to the U.S. Gov't (Dept of Interior/National Parks), for 6.929 acres of tax parcel 3, for management of existing archaeological features and anchialine ponds.
- LOD No. 25583 to the U.S. Gov't (Army Corps of Engineers) for a perpetual easement over 1.014 acres of tax parcel 3, for construction/maintenance of wave absorber structures and installation/maintenance of U.S. Coast Guard navigational lights
- LOD No. 28397 to GTE for a perpetual utility easement over .022 acres of tax parcel #3.
- DOBOR has issued several revocable permits for areas adjacent to the Honokohau Harbor, including permits to the private sailing and fishing clubs, and for the Kona fuel dock. Staff has not been able to confirm the specific revocable permit numbers and areas with DOBOR.

PROPOSED LAND LICENSE:

Purpose: To excavate a marina basin adjacent to the existing Honokohau Small Boat Harbor.

License Term: To be negotiated, and subject to review and approval by the Chairperson.

License Fee: To be determined by independent appraisal, and subject to review and approval by the Chairperson.

Conditions: The licensee shall be required to obtain all land use entitlements, permits, and approvals necessary to excavate the harbor

basin, and shall comply with all terms and conditions imposed under such entitlements, permits, and approvals.

REQUEST FOR PROPOSALS:

Upon the Board approval to dispose of the lease by negotiation, the lease shall be issued according to the procedures set forth in HRS §171-59(a). These procedures require that public notice of the disposition be given, that the Board accept applications submitted by prospective lessees, and that the Board evaluate the applications according to criteria established by the Board and determine which applicants meet the criteria.

If only one applicant meets the criteria, the Board may dispose of the lease by negotiation. If two or more applicants meet the criteria, the Board shall select the lessee who submits the highest offer contained in a sealed bid deposited with the Board.

Staff is requesting that the Board authorize the Chairperson to issue the request for proposals, establish the evaluation criteria, evaluate the applications, and select the best applicant. Staff anticipates that the criteria for selection of the lessee will include, at a minimum, the following:

Master Plan:

The applicant shall provide a proposed master plan for the subject property that seeks to maximize the development potential of the subject property and the returns to both the lessee and lessor. The master plan may, but shall not be required, to include the adjacent 200-acre DHHL parcel.

The master plan may provide for a marina located adjacent to the Honokohau Small Boat Harbor that would provide additional boat slips and would share channel access to the ocean with the Honokohau Small Boat Harbor. Staff contemplates that the marina, if any, would be managed and operated separately from the existing Honokohau Harbor, which would continue to be managed by DLNR's Division of Boating and Ocean Recreation.

Development Expertise:

The applicant shall provide descriptions of its prior experience and expertise in development, operation, and management, of the proposed components of the project.

Financial Capability: The applicant shall provide evidence of the financial capacity to develop the project.

Entitlements/Permits: The applicant shall describe all of the necessary land use entitlements and governmental permits/approvals required to develop the project.

Lease Rent: The applicant shall submit a proposed rent structure for the new lease.

Improvements: The applicant's proposal shall describe the off-site and on-site improvements to be constructed by the applicant and the estimated costs to construct the improvements (including predevelopment and actual development costs).

Timepath: The applicant shall provide an estimated timepath for the full development of the project.

REMARKS:

A. BACKGROUND.

The subject area is located in Kealahou, North Kona, and includes the existing Honokohau Small Boat Harbor and ancillary harbor facilities. (see Exhibit C) The majority of the subject parcel is vacant and undeveloped.

The subject property has development potential due to the proximity to the Queen Kaahumanu Highway, the ocean, and the Honokohau Small Boat Harbor. However, the majority of the property is vacant and underutilized, largely due the current zoning of the property, the lack of infrastructure, and the State's lack of available funds to construct the necessary infrastructure and/or develop the property on its own. Staff believes that a master-planned development on the subject property would substantially increase the value of the lands and the return to the State on these lands, especially if the State can secure a private developer that would undertake the various predevelopment duties (e.g., EIS, land use entitlements, etc.) and construct the necessary infrastructure and other on-site improvements.

Because of the complexity of developing such a project, including an extended pre-development stage, DLNR would not be able to attract quality lessees/developers by offering a lease through

the public auction process.¹ The development of a master planned project on the subject property would require extensive negotiations, including negotiation of the developer's obligations to obtain the necessary land use entitlements and governmental approvals/permits and to construct the various off-site and on-site improvements. It would not be feasible to attempt to address these requirements in a public auction lease.

Therefore, staff believes issuance of a master lease pursuant to HRS §171-59(a) (which allows DLNR to seek master-plan development proposals, evaluate the proposals and the proposed lessees, and negotiate the terms of a master lease), is the best vehicle to accomplish the objective of developing the subject property.

Staff understands there are several parties interested in developing the subject property (see discussion of Adjacent DHHL Parcel below).

B. ADJACENT DHHL PARCEL.

Immediately adjacent to the subject property is a 200-acre parcel (see Exhibit C), which is owned by the Department of Hawaiian Home Lands (DHHL). DHHL has issued a request for applicants to lease its 200-acre parcel and develop and operate/manage a commercial or commercial/industrial mixed use project and related facilities. Staff understands that DHHL has selected the sole qualified applicant to be the lessee and will be commencing lease negotiations.

The sole applicant's proposal for the DHHL parcel provided for a 200-acre mixed use project that will include marine commercial/support services, commercial facilities, a business park, and resort/timeshare uses. However, the applicant has also indicated to DLNR that its preferred scenario would be to develop a larger master-planned project that would include both the subject property and the DHHL parcel. Staff understands that DHHL is open to this possibility and remains flexible regarding the proposed uses to be developed on its lands.

C. PROCESS.

Staff intends to follow the proposed process attached as Exhibit D for selection of the lessee, and negotiation and issuance of the lease.

¹ Land use entitlements and government approvals required for a mixed-use project on the subject property would likely include: EIS, rezoning, SMP, shoreline setback variance, conditional use permit, and subdivision approvals. If the master plan includes a marina component, a Corps of Engineers Section 404 permit, DOH water quality certification, and water use permit would also be required.

If the selected applicant's master plan provides for a marina component, the applicant would also be required to obtain a land license for excavation of the marina basin, and the lease would include submerged lands upon excavation of the marina basin, which would require the applicant to also comply with HRS §171-53(c), including the requirements to obtain approvals of the governor and legislature. The attached process provides for this possibility.

RECOMMENDATION:

That the Board:

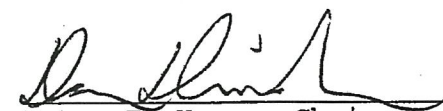
1. Find that the public interest demands that a lease for the subject property be disposed of through negotiation and approve the disposition of a master lease for a master-planned mixed-use development project with the terms described above pursuant to Section 171-59(a) of the Hawaii Revised Statutes, as amended ("HRS"), which lease may include future submerged lands if the requirements of HRS §171-53(c) are satisfied.
2. Authorize the Chairperson to (i) issue a request for proposal pursuant to HRS §171-59(a) for the selection of the lessee; (ii) establish the criteria for evaluating and selecting the lessee; (iii) accept and evaluate the applications submitted by prospective lessees; and (iv) select the lessee, which selection shall be subject to review and approval of the Board.
3. Find that the public interest will best be served by the disposition of a land license by negotiation pursuant to HRS §171-54 for the excavation of a harbor basin adjacent to the existing Honokohau Small Boat Harbor.

Respectfully Submitted,



Keith Chun
Planning and Development Manager

APPROVED FOR SUBMITTAL:


for Peter T. Young, Chairperson

April 25, 2003 Land Board Meeting:

14. Approve the issuance of a lease of approximately 350 acres of public lands (including future submerged lands) and a land license, both by direct negotiation, to allow a master-planned mixed-use development at Kealakehe, North Kona, Island of Hawaii, TMK: (3) 7-4-08: 3, 40, 41, 42, 46, 50 and 71.

Approved as amended. The Board amended:

- 1) **The Recommendation Section to read as follows:**

"That the Board:

1. Find that the public interest demands that a lease for the subject property be disposed of through negotiation [~~and approve the disposition of a master lease for a master-planned mixed-use development project with the terms described above~~] pursuant to Section 171-59(a) of the Hawaii Revised Statutes, as amended ("HRS") [~~which lease may include future submerged lands if the requirements of HRS §171-53(e) are satisfied~~].
2. Authorize the Chairperson to (i) issue a request for proposal pursuant to HRS §171-59(a) for the selection of the lessee; (ii) establish the criteria for evaluating and selecting the lessee; (iii) accept and evaluate the applications submitted by prospective lessees; and (iv) [~~select the lessee, which selection shall be subject to review and approval of the Board~~] make a preliminary determination of the qualified applicants.
3. Find that the public interest will best be served by the disposition of a land license by negotiation pursuant to HRS §171-54 [~~for the excavation of a harbor basin adjacent to the existing Honokohau Small Boat Harbor~~].
4. Rescind its prior action of December 13, 2002, under agenda item D-38.
5. The findings and authorizations in paragraphs 1, 2 and 3 above shall not apply to the existing Honokohau Small Boat Harbor.
6. The findings and authorizations in paragraphs 1, 2 and 3 above shall not be deemed to be an authorization to enter into a lease or land license for any part of the subject property."

- 2) **Exhibit D, Proposed Process, to read as follows:**

"1. Land Board approval:

- Determine public interest demands direct negotiation of master lease
- Approve concept of issuance of lease by negotiation for a master planned mixed-use development project per HRS §171-59(a).
- Approve concept of issuance of lease of future submerged lands by negotiation per HRS §171-53(c)
- Approve concept of issuance of land license by negotiation for excavation of a harbor basin per HRS §171-54
- Authorize Chairperson to issue RFP [~~and select lessee~~]

1.5 Conduct public meeting to obtain community input for development of RFP/RFQ.

1.6 Board briefing on RFP/RFQ criteria

- 2. Publish notice of intent to issue lease via negotiation; establish criteria for selection of lessee; evaluate applicants; [~~select lessee~~] make a preliminary determination of the qualified applicants, all per HRS §171-59(a).**

2.5 Board briefing of qualified applicants and their respective proposals

3. Land Board approval:

- Selection of lessee
- Require lessee to do EIS
- Authorize Chairperson to negotiate terms of master lease

- 4. Governor's approval and Legislative concurrent resolution for lease of submerged lands**

- 5. EIS (by [~~lessee/developer~~] selected applicant)**

6. Negotiate terms of the lease and license:

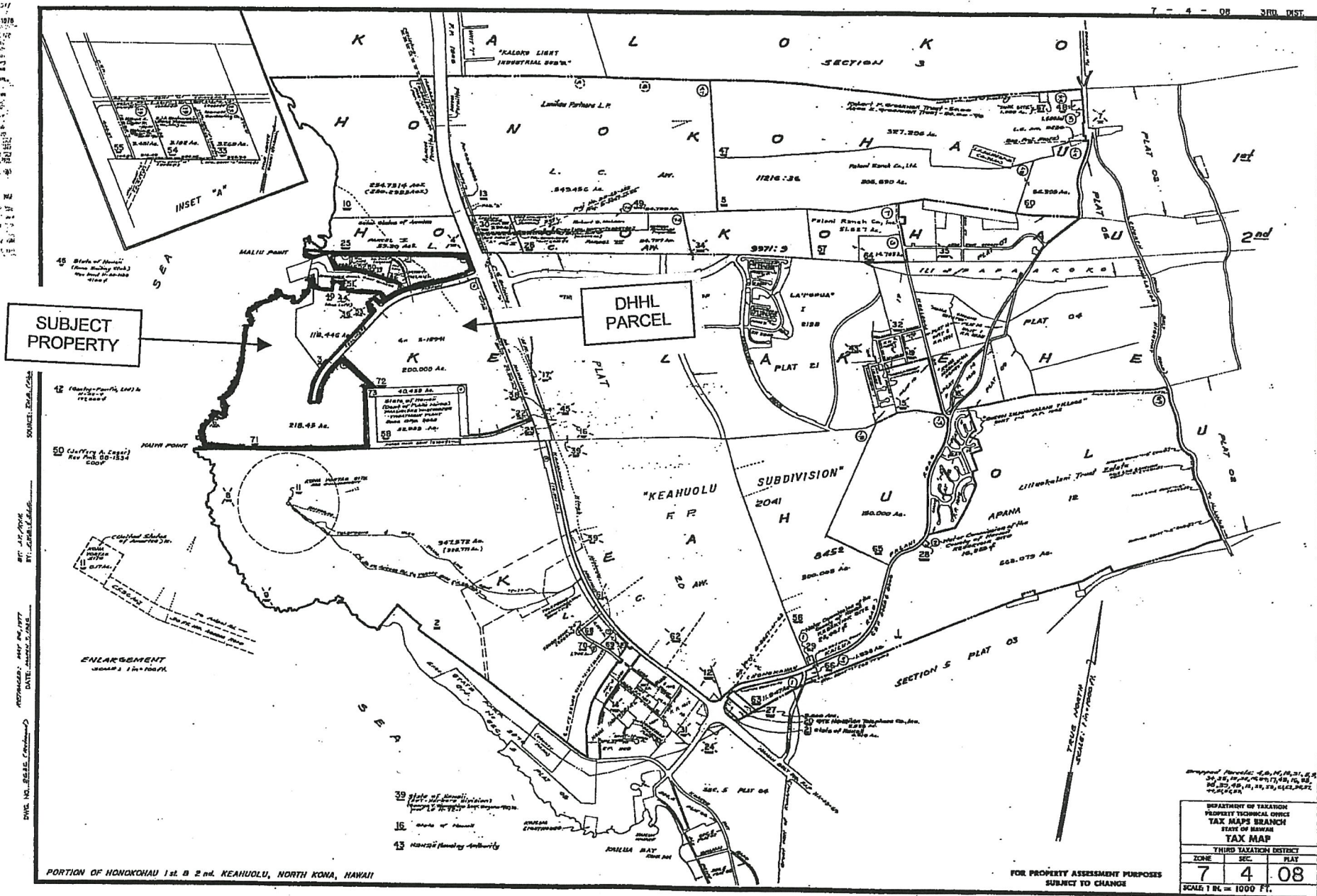
- Minimum lease rent
- [~~Lessee/developer~~] Selected applicant responsible to obtain all land use entitlements
- [~~Lessee/developer~~] Selected applicant to construct off-site and on-site improvements

- 7. Land Board approval of EIS & lease and license terms**

- 8. Enter Memorandum of Understanding with lessee's development conditions and requirements, etc.**

- 9. Issue lease and license"**

EXHIBIT A



EXCERPTS FROM HRS §§171-53, 54, and 59

§171-53 Reclamation and disposition of submerged or reclaimed public land. * * * (c) The board, with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution, may lease state submerged lands and lands beneath tidal waters under the terms, conditions, and restrictions provided in this chapter; provided that the authorization of the legislature shall not be required for leases issued under chapter 190D; and provided further that the approval of the governor and authorization of the legislature shall not be required for any grant of easement or lease of state submerged lands or lands beneath tidal waters used for moorings, cables, pipelines, or noncommercial piers; provided further that this exemption shall not apply to easements for cables used for interisland electrical transmission or slurry pipelines used for transportive materials, mined at sea, or waste products from the processing of the same.

§171-54 Land license. The board of land and natural resources may issue land licenses affecting public lands for a period not exceeding twenty years. No land license shall be disposed of except at public auction as provided in this chapter; provided that the board may, after publication of notice in accordance with section 171-16(d), dispose of a land license by negotiation, without recourse to public auction, if it determines that the public interest will best be served thereby. The disposition of a land license by negotiation shall be upon such terms and conditions as the board determines shall best serve the public interest.

§171-59 Disposition by negotiation. (a) A lease of public land may be disposed of through negotiation upon a finding by the board of land and natural resources that the public interest demands it. Where the public land is being sought under this section by a sugar or pineapple company, and the company is the owner or operator of a mill or cannery, then, for the purposes of this section, the economic unit shall be that acreage of public land which when taken together with the lands already owned or controlled or available to the company, when cultivated is found by the board to be necessary for the company's optimum mill or cannery operation. In all other cases, public land to be sold under this section shall be an economic unit as provided in section 171-33(3).

After a determination is made to negotiate the disposition of a lease, the board shall:

- (1) Give public notice as in public auction, in accordance with the procedure set forth in section 171-16(a), of its intention to lease public land through negotiation setting forth the minimum conditions thereunder, the use for which the public land will be leased. Any person interested in securing the lease shall file an application with the board not later than forty-five days after the first publication of the notice;

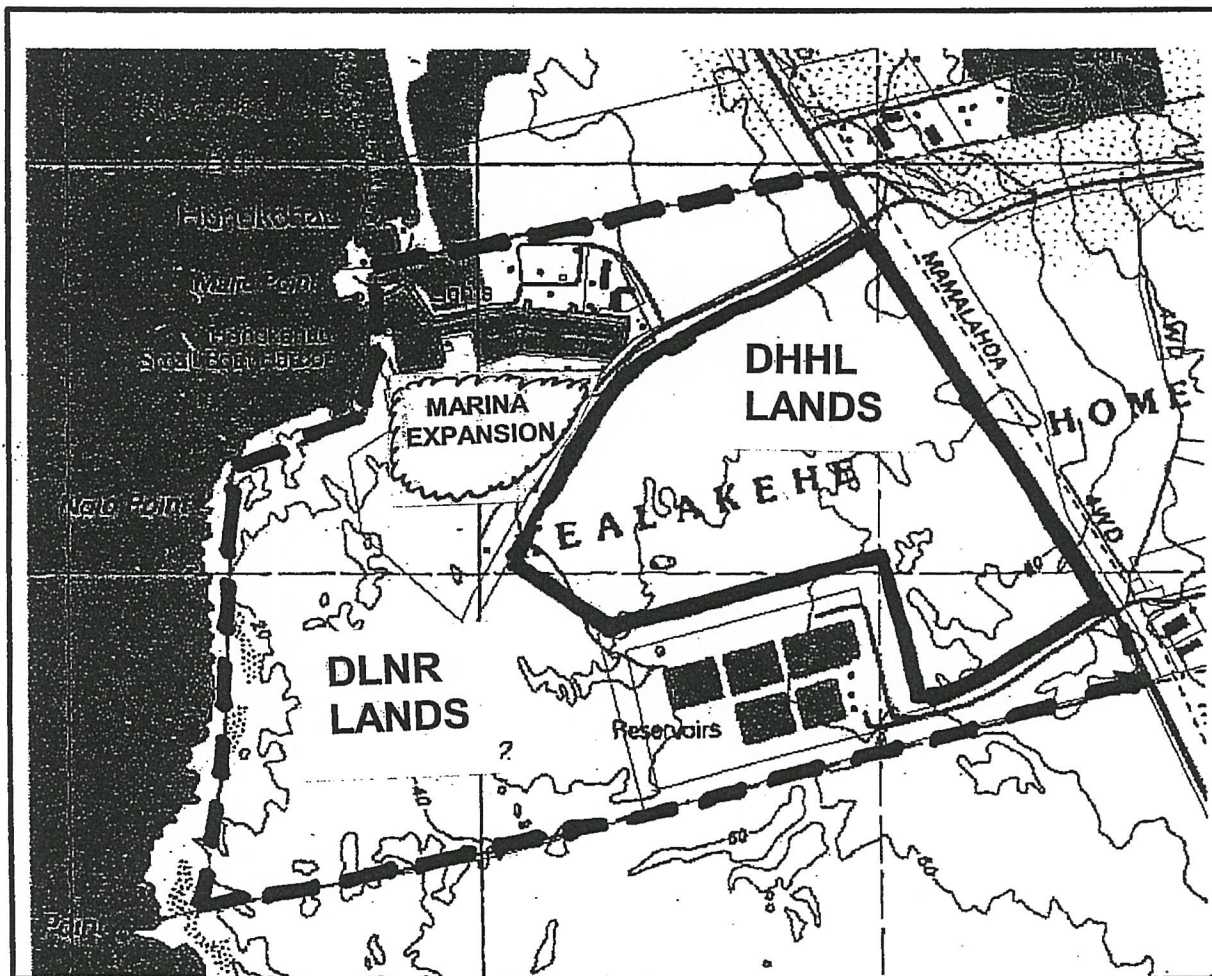
(2) Establish reasonable criteria for the selection of the lessee; provided that where the intended use of the land is agriculture, the department of agriculture shall establish the criteria;

(3) Determine the applicants who meet the criteria for selection set by the board or the department of agriculture, as the case may be, and notify all applicants of its determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board or the department of agriculture were followed; provided that if any applicant does not notify the board of the applicant's objections, and the grounds therefor, in writing, within twenty days of the receipt of the notice, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of the board to follow the conditions and criteria.

If only one applicant meets the criteria for selection of the lessee, the board may, after notice as provided in (3), above, dispose of the lease by negotiation.

If two or more applicants meet the criteria for the selection of the lessee, the board shall select the lessee who submits the highest offer contained in a sealed bid deposited with the board.

Honokohau



hawtmk

KEALAKEHE MASTER PLANNED MIXED-USE DEVELOPMENT PROJECT
PROPOSED PROCESS

1. Land Board approval:
 - Determine public interest demands direct negotiation of master lease
 - Approve issuance of lease by negotiation for a master planned mixed-use development project per HRS §171-59(a).
 - Approve issuance of lease of future submerged lands by negotiation per HRS §171-53(c)
 - Approve issuance of land license by negotiation for excavation of a harbor basin per HRS §171-54
 - Authorize Chairperson to issue RFP and select lessee
2. Publish notice of intent to issue lease via negotiation; establish criteria for selection of lessee; evaluate applicants; select lessee, all per HRS §171-59(a).
3. Land Board approval:
 - Selection of lessee
 - Require lessee to do EIS
 - Authorize Chairperson to negotiate terms of master lease
4. Governor's approval and Legislative concurrent resolution for lease of submerged lands
5. EIS (by lessee/developer)
6. Negotiate terms of the lease and license:
 - Minimum lease rent
 - Lessee/developer responsible to obtain all land use entitlements
 - Lessee/developer to construct off-site and on-site improvements
7. Land Board approval of EIS & lease and license terms
8. Enter Memorandum of Understanding with lessee's development conditions and requirements, etc.
9. Issue lease and license

Adopt - A - Harbor Program

Division of Boating and Ocean Recreation

Adoption Agreement



Date: 03 / 28 / 2011

Adopter: KONA RC FLYERS

Address: 73-1679 Hao Street

City: Kailua-Kona Zip Code: 96740

Phone: Bus: 854-1522 Res: _____

Harbor Name: Honokou Small Boat Harbor

Harbor Address: 74-380 Kealakehe Parkway

City: Kailua-Kona Zip Code: 96740

We wish to volunteer our services to help at this harbor and assist in sustaining Hawaii's resources for future generations.

Our Coordinator(s): Richard J. Bailey, JR. / Blake Senderling
ERIC NELSON

Address: 73-1679 Hao St.

City: Kailua-Kona Zip Code: 96740

Phone: Bus: 854-1522 Res: _____

We, the Adopters, wish to assume partial responsibility for this Harbor. The specific proposed responsibilities include:

1. Flying site clearing of trash/wreckage
2. Liter control at entrance/pathway
3. Improve area suitable for flying RCcraft.

EXHIBIT 6

PERFORMANCE:

The Adopter agrees to perform their volunteer services in a safe and reasonable manner. It is the Adopter's responsibility to become acquainted with the procedures and tools necessary to perform these tasks and to monitor the actions of their group of volunteers.

Prior to commencement and periodically throughout the adoption, the Adopter will conduct safety briefings with their volunteers to ensure that they are aware of any potential safety hazards. The Adopter will have all members of the party sign liability waivers. Also, the Adopter will instruct the volunteers in the proper method of performing their tasks.

The State Harbor Agent is available to assist in providing safety presentations and written documentation on safety and proper methods of performing the work. An on-site evaluation, to discuss procedures, can be scheduled prior to Adoption.

The State Harbor Agent and the Adopter will agree on a schedule of when volunteer work will be performed. The State Harbor Agent will monitor the progress of the adoption and maintain close communication with the Adopter. The Adopter will notify their State Harbor Agent contact, if a schedule change is necessary, or if additional work (outside of the agreed upon tasks) is to be performed.

The use of the harbor by the Adopter shall be according to the Rules and Regulations of the Division of Boating and Ocean Recreation (Hawaii Administrative Rules Title 13, Chapters 250 through 256) and not for the personal use or privilege of the Adopter.

DURATION:

It is understood that the duration of this agreement is one (1) year beginning April 1, 2011 and terminating 3/31/2012. While the agreement is in effect, a sign may be posted by the Boating and Ocean Recreation Division providing acknowledgment to the Adopter. Continued adoption after the one (1) year duration is subject to written agreement by both the Adopter and the Boating and Ocean Recreation Division.

TERMINATION:

If either party is dissatisfied with the performance of the other, this agreement may be terminated, by written notice from the District Manager, or by written notice from the Coordinator of the organization.

DIVISION OF BOATING AND OCEAN RECREATION CONTACT:

Contact: Nancy E. Murphy
Address: 74-380 Kealahouhe Parkway
City: Kailua-Kona Zip Code: 96740
Phone: Bus: 327-3690 Pager: _____

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed
this 6th day of March, 19 2011.

**DIVISION OF BOATING AND
OCEAN RECREATION**

By N. E. Murphy
District Manager, DLNR Division
of Boating and Ocean Recreation

By D. J. K. M.
State Harbor Agent

Enclosures:

Appendix A - Map of Harbor
Appendix B - Safety Checklist
Appendix C - Liability Waiver

THE ADOPTER

By Rich Bailey
Adoption Coordinator
Rich Bailey

And By Blake Sanderling
Back-up/Adoption Coordinator

Back-up End here

Department of Land and Natural Resources Volunteer Safety Procedures

We welcome you and your organization to our volunteer projects and appreciate your help in sustaining Hawaii's natural resources. Through the efforts and assistance provided by groups such as yours we can ensure that our natural and cultural resources are protected for today and tomorrow. To make your project successful, we request that you read these safety procedures carefully and ensure that all your volunteers are aware of them. Remember - **SAFETY FIRST!**

Safe Work Habits

- Volunteers should be well supervised and thoroughly trained in proper work methods and safety procedures. Our staff is available to give safety presentations to your group prior to beginning your projects. Call _____ to set up a safety briefing.
- Ensure that all volunteers are capable of performing the assigned work.
- If tools are used, ensure that they are handled properly and volunteers are briefed on proper use.
- **Be Alert!** Stop work during bad weather or when unsafe conditions arise.

Safe Work Clothes

- Volunteers should wear appropriate clothing such as covered shoes, protective clothing, gloves and eye protection.
- Rubber gloves should be worn when painting or removing graffiti.
- Respirators or dust masks should be worn when using paints.
- Head protection (hat) and sun screen should be worn to protect from the sun. Remember to drink plenty of water while working or in the sun.
- Wear bright colored clothes or safety vests when working along roadways or near traffic.

Potential Hazards During Cleanups

Volunteers may find potentially dangerous items while performing cleanups/maintenance in parks, at beaches, on the trails, or in the harbors.

- Broken glass, boards with nails, splinters and other sharp objects should be handled with care and covered before discarding into a trash bag.
- Watch for trip hazards, particularly on docks and piers, such as cleats and mooring lines, large branches, etc..
- Medical waste (hypodermic needles, pill containers, etc.) should only be handled by responsible adults and carefully disposed of in trash containers not thrown into garbage bags.
- Never open or pour out closed containers of liquids. We can't be sure of what these liquids are and they need to be disposed of carefully in trash containers.
- Avoid lifting heavy objects to keep from hurting your back. Do not over fill trash bags.
- Avoid insects that bite or sting such as bees, wasps and centipedes.
- Do not handle large dead animals, contact DLNR staff for removal.
- Avoid confrontation with people who may be breaking the law such as committing vandalism or littering. Gather your groups and leave the area, then call the Police, Harbor Agent (in a State Harbor), or Division of Conservation and Resources Enforcement.

Finally, please remember that your project should be safe and enjoyable. We look forward to a safe and productive volunteer experience for you and your group.

2013 AUG 20 AM 9: 56

Honokohau Community RC Complex

Phase 1, The Kona RC Flyers Club & the Honokohau Community RC Complex

-The KRCF Club is the "Founding Organization" of the Honokohau Community RC Complex. They have a vested interest, and history within the Kona community dating back more than 20 years, and have been encroached upon by continuous commercial development, contractors, condos, apartments, and an ever increasing public domain usage.

-During the initial developmental phase of the Honokohau Community RC Complex the membership of the KRCF Club were granted "Key Access" to a gated or locked area in accordance with S13-232-43 Construction of structures, Subsection (b) granting... "preferential, but not exclusive use of the facility"... AND in accordance with S13-231-3 Use permits; issuance, Subsection (9-C), which indicates that a use permit does not create a property interest, or "unrestricted" use of the rc complex or its facilities.

With respect to the aforementioned regulations, and the clubs history of respect for keyed access during the initial phase of the rc complex and its facilities...As the project now heads into the "public access" phase, we respectfully request that the current KRCF club members who have keys be "Grandfathered" into maintaining their keyed access as part of the preferential use referred to in S13-232-43, Subsection (b), with the restriction that access would be restricted from one hour before sunrise to one hour after sunset, as referred to in S13-231-3 (any exceptions would require pre-notification).

-The KRCF Club will maintain its efforts to improve safety, and public access to the rc complex, BUT they will have no legal responsibilities, or duties regarding the daily operation of the rc complex itself...other than their "Gentlemen's Agreement" regarding KRCF Club rituals.

The Kona RC Flyers Club Gentlemen's Agreement

"IF only club members and their invited guest are present...THEN all those present may enjoy a Gentlemen's Toast to Victory...as long as they can do so as Gentlemen".

Honokohau Community RC Complex

Phase 2, Use Permit Compliance & Transition to Public Access

Technical Design Force, Inc. is applying for a use permit in conjunction with the development of the Honokohau Community RC Complex, and its transition to public access usage as required in S13-231-50 General Statement... "No regular or extensive use of any state property or facilities for private gain or purposes shall be permitted without corresponding and reasonable benefits and returns to the public".

The goal of the TDF use permit application is to provide immediate and complete compliance regarding the continued development of the rc complex facilities, and their transition to public access...and to provide a corporate shell of protection for the KRCF Club, and its membership. (No later than 6-30-2014 an intrinsic and completely dedicated corporation currently referred to as the "Honokohau Community RC Complex, Corporation" will have been formed, and will meet all of the requirements regarding insurance, public restrooms, gatekeeper responsibilities, general maintenance of the complex facilities, and its daily operations. Most of its officers, and staff are expected to come from within the KRCF Club membership).

As the rc complex prepares to transition to public access it is important to keep in mind some specific, and intrinsic considerations. For example, the entire rc complex is located in a restricted area behind a secured gate requiring keyed access. It is not feasible to provide keyed access to the public, or expect the general public to be knowledgeable regarding daily operational rules and perimeters, or completely trustworthy in regard to observing those rules. In addition, it is not normally a good idea to mix professional pilots, (some of which have aircraft that cost thousands of dollars), with rookie pilots with limited experience, and who have aircraft that cost much less...or ground based rc vehicles in general.

By opening the complex facilities for one day during the week, and one day during the week end the requirement specified within S13-231-50 for "...corresponding and reasonable benefits and returns to the public"...will be satisfied. The final decision is of course up to the DLNR, but we would recommend the following public access schedule:

Wednesday 09:00-12:00 hours and 16:30 hours till sunset

Saturday 09:00-12:00 hours and 16:30 hours till sunset

Obviously TDF, Inc. will provide at least one "Gatekeeper" who is dedicated to securing the gated access to the property, watching over the facilities during public access hours of operations, and maintaining a written log of usage activities, which will be included in the monthly report to the DLNR.

Monday, August 12, 2013
4:30 PM

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

LNR 3-016
(03/10)

THIS SPACE FOR DODOR USE ONLY

Received by: _____
Date: _____
Use Permit No.: _____

APPLICATION FOR BOAT HARBOR AGREEMENT
AND USE PERMIT

I, I (name) Technical Design Force, Inc. (TDI)

hereby request that an Agreement and Use Permit be issued for use of the following facilities and services public access
comptroller for the 'Honokohau Community RC Complex'
at (harbor) Honokohau Harbor, Kailua-Kona, HI

2. RESIDENCE:

Physical Street Address (No PO Box): 75-5749 Kalawa St. #202 Kailua-Kona, HI
Home Telephone/Cellular No.: _____
E-Mail Address: _____

3. DATE OF BIRTH (month/day/year): _____ 4. OCCUPATION: Inventor

5. EMPLOYER: TDI, Inc. 6. BUSINESS ADDRESS: SAME

7. BUSINESS PHONE/FAX NO.: 808-799-6063 - Fax #808-329-9232

8. AUTOMOBILE DESCRIPTION(s): (a) _____ (b) _____

a) Registered Owner (name): _____ License No. & State: _____

b) Registered Owner (name): _____ License No. & State: _____

9. SEND MONTHLY STATEMENTS TO (if different from RESIDENCE):

Name: Cecil Boyd
Address: 74-5576 Pauahi Place #5499

10. VESSEL DESCRIPTION: -NA-

Name of Vessel: _____
Registered/Document No.: _____ Draft: Feet: _____ Inches: _____
Registered or Documented at: _____

Length (over deck): Feet: _____ Inches: _____ Beam: Feet: _____ Inches: _____
Length Overall (including bowsprings, bumpkins, etc.): _____

Principal Type of Propulsion:

Power: Inboard _____ Outboard _____ Inboard/Outboard _____
Sail: Rig _____ No. of Hulls: _____
Auxiliary Power: Inboard _____ Outboard _____ Inboard/Outboard _____

Engine:

Manufacturer: _____
Horsepower: _____ Single: _____ Twin: _____
Fuel (circle one) Diesel / Gasoline / Other: _____

Vessel Manufacturer: _____ Year Built: _____

Hull (circle one) wood / metal / fiberglass / plastic / other _____ Radio Call Letters: _____

Hull colors: _____

Manufacturer's Serial (Hull) No.: _____

Other identifying vessel features: _____

11. NUMBER OF PERSONS THAT WILL BE LIVING ABOARD VESSEL: 0
(Ala Wai SBH and Kechi SBH Only)

12. VESSEL USE (circle one): Pleasure / Commercial. If Commercial (circle one): Passenger / Fishing / Charter / Dealer

13. I OWE THE STATE OF HAWAII A BALANCE OF \$ 0 FOR THE USE OF HARBOR FACILITIES OR SERVICES AT (harbor) Honolulu WHICH I UNDERSTAND MUST BE PAID IN FULL BEFORE THE STATE WILL ACCEPT THIS APPLICATION.

14. THE VESSEL IS OWNED BY:

Principal Owner's Name: Cecil E. Boyd

Principal Owner's Address/Phone: 77-113 Kaiupoho Place, Kailua-Kona, HI 96740

Co-Owner's Name: _____

Co-Owner's Address/Phone: _____

15. INSURANCE CARRIER/POLICY NUMBER/AGENT/CONTACT INFORMATION: Laura M. Jennison
ATLAS Insurance 808-854-2530, Fax #808-326-2730

DOBOR STAFF TO VERIFY THAT SOH-DLNR-DOBOR IS INCLUDED ON VESSEL INSURANCE POLICY AND THAT A COPY OF THE CURRENT POLICY IS ON FILE. STAFF INITIALS: _____

16. REMARKS: This application details S13-231-3 "Use Permits; Issuance"
Sub-section (9) "Miscellaneous Permit."

I understand that pursuant to the Small Boat Harbor Rules, I must inform the Harbor Supervisor, within seven days, of any sale, lease, or rental of the vessel described in this application. I also understand if I violate any of the provisions of the aforementioned Rules that, in addition to any fines and penalties a Court may impose, my permit to moor in the Harbor may be revoked. I understand that upon expiration of the permit, the permit and all rights shall automatically terminate unless the permit is renewed prior to its expiration. I also understand that I must notify the Harbor Office, in writing, if my vessel is to be absent from its berth for fourteen or more days.

The information given by me on this application is true, correct and complete to the best of my knowledge and belief. Any incorrect or false information may result in revocation of use permit.

Applicant (signature): Cecil E. Boyd, TDF-Ins.

Date: 8-14-2013

IN THE EVENT OF AN EMERGENCY, PLEASE CONTACT:

NAME: Bill Abell TELEPHONE/CELLULAR: _____

COMPLETE ADDRESS: West Hawaii Financial, Kailua-Kona, HI 96740