

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

September 22, 2017

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

Lana'i

SUBJECT: CONTINUATION OF A REVOCABLE PERMIT TO COON BROTHERS, INC., A HAWAI'I CORPORATION, FOR THE NON-EXCLUSIVE USE OF A LOADING DOCK AND SUBMERGED LANDS AT THE MANELE SMALL BOAT HARBOR (MSBH), MANELE, COUNTY OF MAUI, ISLAND OF LANA'I, TAX MAP KEY NO. (2) 4-9-017:por. 006.

REQUEST:

Continuation of a Revocable Permit (RP) to Coon Brothers, Inc., for the non-exclusive use of a loading dock and submerged lands situated at MSBH, Manele, County of Maui, Island of Lana'i.

APPLICANT:

Coon Brothers, Inc., a Hawai'i corporation.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at MSBH, Manele, County of Maui, Island of Lana'i, as shown on the map labeled EXHIBIT "A" and attached hereto, further identified by Tax Map Key No. (2) 4-9-017: 006 (por.).

AREA:

A loading dock of approximately 1,055 sq. ft., see attached EXHIBIT "B", and the adjacent submerged lands of approximately 4,225 sq. ft., see attached EXHIBIT "C"; hereinafter referred to collectively as the "Premises."

ZONING:

State Land Use District: Conservation, Urban  
County of Maui CZO: (Draft): Lana‘i Project District I (Manele)

TRUST LAND STATUS:

Section 5(b) lands of the Hawai‘i Admission Act: YES ☒ NO ☐

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

CURRENT USE STATUS:

Under RP NO. 38 to Coon Brothers, Inc.

CHARACTER OF USE:

Occupancy and use of the Premises for the following specified purposes: Non-exclusive use of a loading dock and submerged lands for the mooring of applicant vessels and embarking and disembarking of passengers.

COMMENCEMENT DATE:

January 1, 2018

MONTHLY RENTAL:

One thousand and no/100 dollars (\$1,000.00) per month, payable in advance by the first of each and every month.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 – HAWAI‘I ENVIRONMENTAL LAW COMPLIANCE:

Notice of completion of a Final Environmental Assessment for the “Mānele Small Boat Harbor Ferry System Improvements, TMK 4-9-17:6 and approximate 2-acre portion of 4-9-17:2; Lāna‘i Island, Maui County” was published in the Environmental Notice on August 8, 2005 with an associated finding of no significant impact (FONSI). Terminal improvements include ferry pier boardwalk improvements in the approximately 12.5-acre harbor area, and improvements to fuel storage at the ferry dock.

Last year, in accordance with the “Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council on June 5, 2015, the subject request for issuance of a revocable permit was found exempt from the preparation of an environmental assessment pursuant to Exemption Class 1, No. 12 (“Operation, repair and maintenance of existing loading docks, piers, piles, boat launch ramps, offshore mooring facilities, and other similar support structures, as permitted by the U.S. Army Corps of Engineers, Honolulu District, under a Nationwide Permit 3 (Maintenance).”) which included consultation with the offices of OCCL, OHA, and MACZAC, and concurrence with the proposed determination of exemption.

DCCA VERIFICATION:

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

REMARKS:

The current loading dock replaced a structure that affiliated companies to Coon Brothers, Inc. had constructed when Manele Harbor was under the jurisdiction of the State of Hawai‘i Department of Transportation. Over time, the former dock fell into disrepair and was severely damaged by the tsunami of 2011 such that public use was no longer feasible.

Since 2013, the Division of Boating and Ocean Recreation (DOBOR) has been constructing improvements in Manele Small Boat Harbor (MSBH) including tsunami damage repairs and Phase I and Phase II of the ferry system improvements. Improvements were completed in the MSBH and the new docks – including the current loading dock - were opened on April 2016.

Anticipating the construction of a usable public replacement dock, Coon Brothers, Inc. requested use of the newly constructed loading dock and adjacent submerged lands located in the proposed lease area.

On March 22, 2013, under Item J-1, the Board of Land and Natural Resources (Board) authorized issuance of a new lease by way of direct negotiation to applicant “Coon Brothers Inc. [sic] [Ja Hawai‘i corporation” that “presently conducts business through three wholly owned subsidiaries, including Trilogy Corporation, under use permits issued by the Division of Boating and Ocean Recreation for Manele Small Boat Harbor.”

Unlike the current RP, the authorization involved “Berth 24, Manele SBH, island of Lanai” and certain similarly-described premises: “a loading dock to be re-built with federal funds (approximately 1,100 square feet) and the adjoining water column (approximately 4,000 square feet, more or less), along with the submerged land and necessary adjoining land.”

The 2013 submittal did not specifically define or even describe a character of use for the proposed lease: “a passenger loading dock that will be re-constructed by the Department with federal funds, which lease shall be subject to federal funding requirements and federal and state law.”

In 2016, the June 24, 2016 submittal under Item J-3, the described character of use was stated as: “Maritime related activities to support the use of the loading dock space and adjoining water column. The Permittee may also occupy and use the Premises for any other uses permitted under applicable county zoning, subject to the prior approval of the Chairperson of the Board and the Permittee’s compliance with Chapter 343, Hawaii Revised Statutes.”

At the time of the 2016 submittal, no appraisal was available to determine the base rent. Instead, the amount of \$10,000 annual base rent (i.e., \$833.33 per month) was determined by “consultation” between DOBOR and Trilogy Corporation.<sup>1</sup> Without more to explain reasons for the base rent in the prior permit, this amount may be in conflict with policies suggested by the DLNR Revocable Permits Task Force.

The Board authorized the issuance of RP No. 38 on June 24, 2016 until such time as DOBOR could complete the required survey, appraisal and other documentation necessary for issuance of a direct lease as approved by the Board. The appraisal for the subject lease was completed by CBRE, Inc. and the proposed lease rent is \$105,000 per year. Coon Brothers, Inc. has rejected the proposed rent and has exercised their option to begin mediation of the rent according to Hawaii Revised Statutes §171-17, Appraisals.

DOBOR requests the continuation of RP NO. 38 be issued to Coon Brothers, Inc. on a month to month basis for up to one year in order to complete the mediation and possible arbitration of the lease rent.

RECOMMENDATION:

That the Board of Land and Natural Resources:

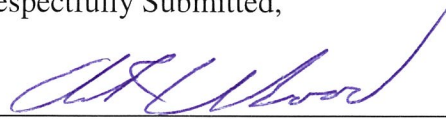
1. Declare that, after considering the potential effects of the proposed disposition as amended, as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the continuance of a Revocable Permit No. 38 to Coon Brothers, Inc., as amended, covering the subject area for the use, maintenance and operation of a loading dock and adjacent submerged lands 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; and
  - b. Review and approval by the Department of the Attorney General.

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<sup>1</sup>Upon representations of the applicant’s counsel on June 24, 2016, the submittal was corrected to clarify that the permittee should be Coon Brothers, Inc. rather than Trilogy Corporation. Also for purposes of clarification, the DOBOR regular mooring permit at berth #24 is to the Trilogy Corporation – not applicant Coon Brothers, Inc.

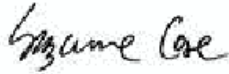
- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

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. Aerial Map of Manele Small Boat Harbor
- B. Survey of Loading Dock
- C. Survey of Water Column and Submerged Lands



**Coon Bros.**

Manele Small Boat Harbor

**Legend**

Manele Small Boat Harbor

**EXHIBIT A**

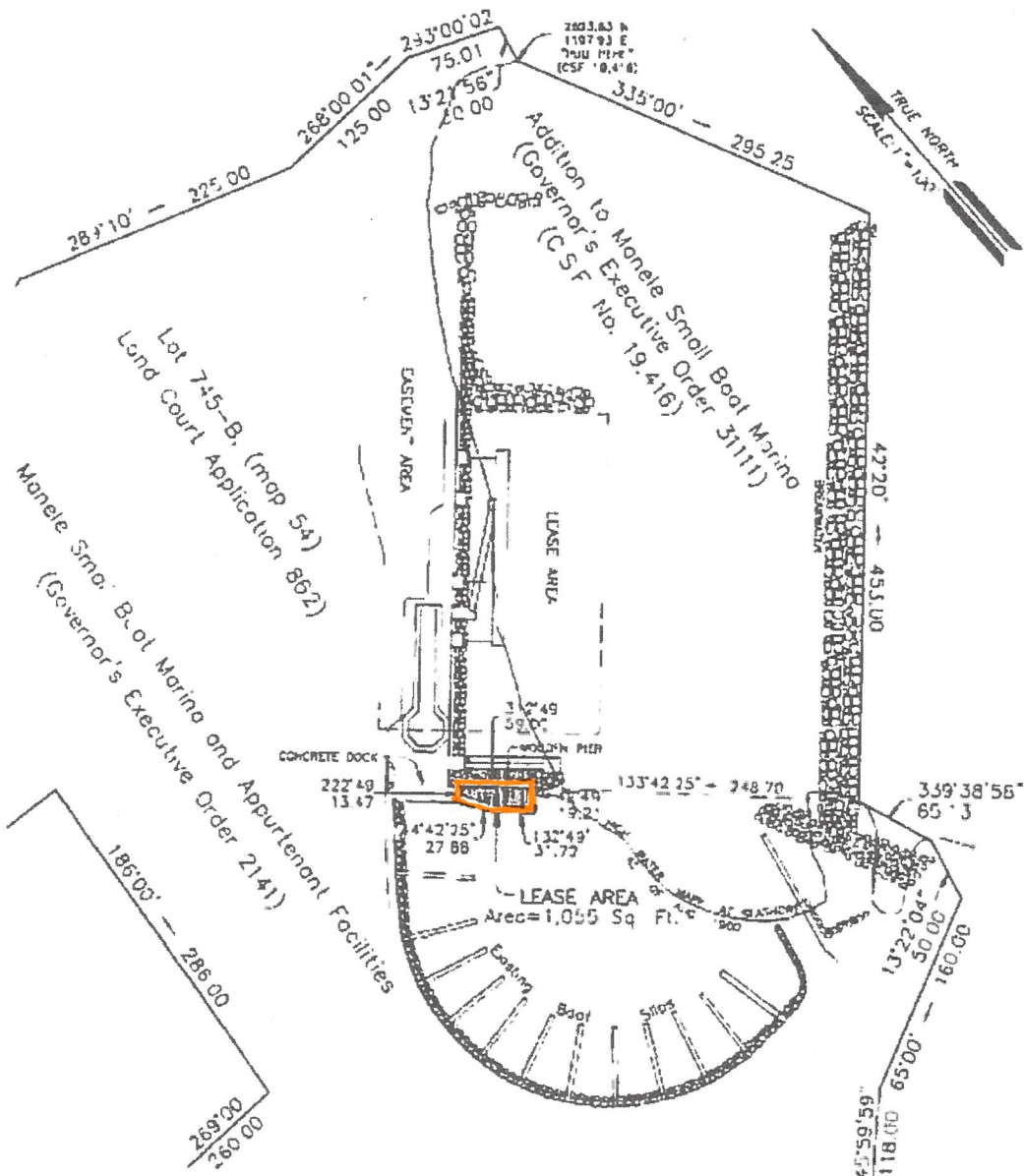
Google Earth

200 ft





Survey showing loading dock



**LEASE AREA 2**  
 Manele Small Boat Marina  
 and Appurtenant Facilities  
 (Governor's Executive Order 2141)

TMK (2) 4-9-17 006

Scale 1 inch = 100 feet

**EXHIBIT B**

Survey showing adjacent area of loading dock

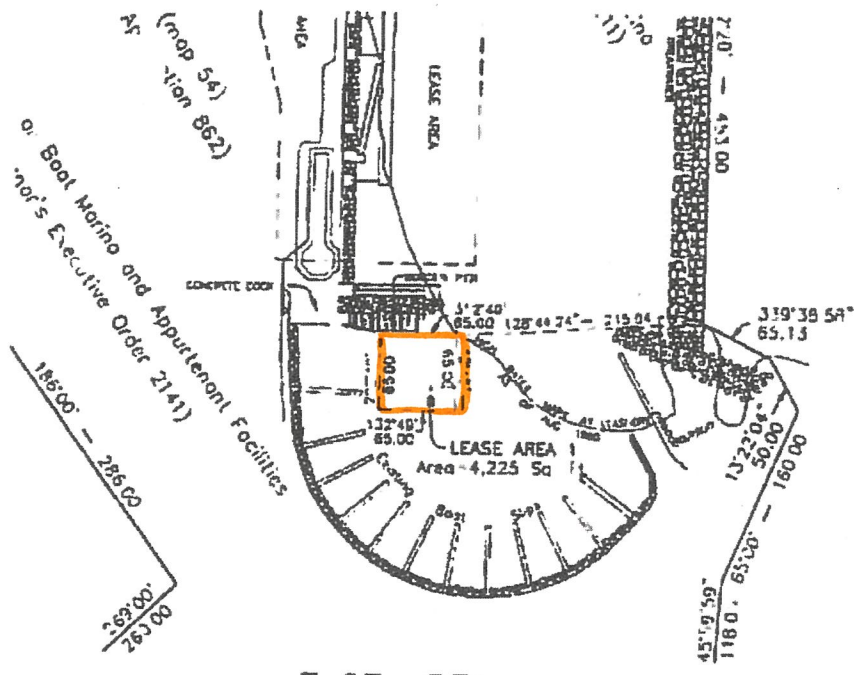


EXHIBIT C