

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

May 11, 2018

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

Land Board Members:

SUBJECT: AUTHORIZE THE ISSUANCE OF A DIRECT LEASE AND REDUCE RENT TO KAUA'I SAILING ASSOCIATION FOR SAILING PURPOSES; AND DECLARE EXEMPTION FROM REQUIREMENTS OF CHAPTER 343, HAWAII REVISED STATUTES AT NAWILIWILI SMALL BOAT HARBOR, NAWILIWILI, ISLAND OF KAUA'I, HAWAII; TAX MAP KEY: (4) 3-2-03:043 (POR)

APPLICANT:

Kaua'i Sailing Association (KSA), a Hawai'i, 501 (c)(3) non-profit corporation, whose mailing address is Post Office Box 3661, Lihue, Hawai'i 96766.

LEGAL REFERENCE:

Hawai'i Revised Statutes (HRS) § 171-13, 171-55 and 171-43.1, as amended.

LOCATION:

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

AREA:

Approximate area of 8,698 square feet, more or less

ZONING:

State Land Use District: Urban

County of Kaua'i: CZO: General Industrial

TRUST LAND STATUS:

Section 5(b) lands of the Hawai'i Admission Act

DHHL 30% entitlement lands pursuant to the Hawai'i 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 NSBH.

Encumbered by Revocable Permit No. 50 to Nawiliwili Yacht Club (NYC).

CHARACTER OF USE:

KSA shall occupy and use the Premises for the specified purposes: educational purposes regarding sailing, marine cultural exploration, science, ecology, biology, navigation, and boating safety education.

COMMENCEMENT DATE:

To be determined by the Board of Land and Natural Resources (Board).

LEASE TERM:

Five (5) years

CURRENT MONTHLY RENTAL:

One thousand one hundred six and 67/00 dollars (\$1,106.67) per month, or five percent (5%) of gross receipts, whichever is greater.

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 Resource, State of Hawai'i, as concurred in by the Environmental Council, State of Hawai'i", dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, "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 No. 47. "Leases of state land involving negligible or no expansion or change of use beyond that previously existing." (see EXHIBIT B)

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:

KSA is a non-profit organization that was formed in 2008 by NYC members expressing a desire to provide sailing skills and boating safety instructions to the community of Kaua'i. It was determined the best way to achieve these goals was to form a separate non-profit sailing association and to maintain a working relationship with NYC.

KSA is a 501(c)(3) non-profit corporation and accredited youth sailing program that offers sailing lessons and marine educational courses to the youth and adults of Kaua'i. Currently, KSA operates out of the NYC and teaches all age groups life skills through marine awareness which include teamwork, leadership, self-confidence, self-awareness and integrity. KSA is known for its ongoing educational programs and expanding its youth and adult programs.

On August 28, 2017, Item J-1, the Board of Land and Natural Resources (Board) allowed KSA the opportunity to apply for a direct lease and restricted the use of the facility to sailing purposes with no commercial and yacht club activities.

Hawaii Revised Statutes (HRS), §171-43.1, Lease to eleemosynary organizations, states, "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."

KSA's "Profit and Loss Previous Year Comparison" statement, dated January 17, 2018, for January through December 2017, shows that the Net income totaled \$46,323.98; attached hereto as EXHIBIT C. KSA's total expense for 2017 totaled \$56,292.86, with a negative balance of \$9,968.88.

DOBOR issues leases at a fair market value, as determined by an appraiser via public auction, or "nominal consideration" under HRS 171-43. On May 13, 2005, the Board established a "Minimum Rent Policy" that stated, among other things, that the minimum rent for lease be no less than \$480.00 per year.

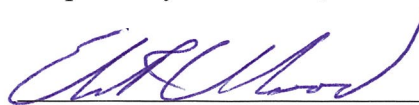
Should the Board authorize the issuance of this lease, KSA has requested nominal consideration in rent. The current appraised rent for the area is \$1,746.67 or 5% of gross receipts. DOBOR analyzed the request for a reduction rent according to the Review Process Flow Chart (see Exhibit D) and recommends that the minimum rent of \$480.00 per year be approved for this lease.

RECOMMENDATION:

That the Board of Land and Natural Resources:

1. Authorize the issuance of a Direct Lease and reduced rent; and declare exemption from requirements of Chapter 343 to Kaua'i Sailing Association for sailing and educational purposes with no commercial and yacht club activities at Nawiliwili Small Boat Harbor, Nawiliwili, Island of Kaua'i, Hawai'i. Tax Map Key: (4) 3-2-03:043 portion 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 general lease form, as may be amended from time to time; and
  - b. Residential use shall not be allowed on the Premises;
  - c. Review and approval by the Department of the Attorney General.
  - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Reduction from \$1,746.67 to the minimum rent of \$480.00 per year.
3. Declare exemption from requirements of Chapter 343 to Kaua'i Sailing Association from the Exemption Class 1: Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing. And description item no. 47: Leases of state land involving negligible or no expansion or change of use beyond that previously existing.

Respectfully Submitted,



EDWARD R. UNDERWOOD, Administrator  
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:

  
SUZANNE D. CASE, Chairperson



Attachments:

- A. Aerial Map of Kauai Sailing Association, Nawiliwili Small Boat Harbor
- B. Environmental Exemption
- C. Profit & Loss Prev Year Comparison
- D. Land Board Submittal dated August 25, 2017, Item J-1



NAWILIWILI SMALL BOAT HARBOR

KAUAI SAILING ASSOCIATION

EXHIBIT A

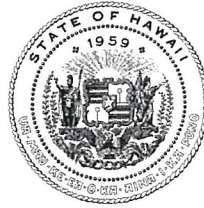
Google Earth

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DAVID Y. IGE  
GOVERNOR OF  
HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

May 11, 2018

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

**DECLARATION OF EXEMPTION**

Regarding the preparation of an environmental assessment under the authority of  
Chapter 343, HRS and Section 11-200-8, HAR

Project Title:	Issuance of a Direct Lease to Kauai Sailing Association situated at Nawiliwili Small Boat Harbor.
Project Number:	None
Project Location:	Nawiliwili, Island of Kauai, Hawaii, TMK (4)3-2-03:043 Portion
Chapter 343 Trigger(s):	No additional changes to existing structures
Project Description:	The Department of Land and Natural Resources, Division of Boating and Ocean Recreation (DOBOR) previously leased the Premises to Nawiliwili Yacht Club (Current tenant) under Boating Lease No. B-00-3 (Lease) which expired on September 1, 2016. Land Board Submittal dated August 28, 2016, Item J-1, the Board agreed to a direct lease to Kauai Sailing Association (KSA) because they qualify under HRS § 171-43.1 as a 501 (c)(3) non-profit organization. With the amendment restricting the use of the facility to sailing purposes and no commercial activities.
Consulted Parties:	Office of Conservation and Coastal Lands Land Division Both agencies concurred with the proposed exemption notification.
Authorization:	Exemption Authority: Exemption List for the DLNR-DOBOR approved by the Environmental Council on June 5, 2015. Exemption Class 1: Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing.
Exemption Class & Description:	Item 47: "Leases of state land involving negligible or no expansion or change of use beyond that previously existing."
Determination:	Division of Boating & Ocean Recreation declares that this project will likely have minimal or no significant impact on the environment and is therefore exempt from the preparation of an environmental assessment under the above exemption classes.

**EXHIBIT B**



# Kauai Sailing Association

## Profit & Loss Prev Year Comparison

### January through December 2017

	Jan - Dec 17	Jan - Dec 16	\$ Change
<b>Ordinary Income/Expense</b>			
<b>Income</b>			
Dividends & Interest-securities	0.00	392.89	-392.89
Donation - Restricted	2,300.00	26,350.00	-24,050.00
Donation - Unrestricted	21,130.00	40,313.08	-19,183.08
Donations - In-Kind	500.00	0.00	500.00
<b>Earned revenues</b>			
Instruction Fees	16,117.68	26,080.86	-9,963.18
Kids Club	261.00	477.82	-216.82
Kids leadership camp	0.00	1,033.35	-1,033.35
Regatta Fees	0.00	420.00	-420.00
Earned revenues - Other	1,633.52	3,140.26	-1,506.74
<b>Total Earned revenues</b>	<b>18,012.20</b>	<b>31,152.29</b>	<b>-13,140.09</b>
<b>Special events</b>			
Food sales at events	-20.80	50.00	-70.80
Greek Night	0.00	2,058.00	-2,058.00
Table 53	4,402.58	0.00	4,402.58
<b>Total Special events</b>	<b>4,381.78</b>	<b>2,108.00</b>	<b>2,273.78</b>
<b>Total Income</b>	<b>46,323.98</b>	<b>100,316.26</b>	<b>-53,992.28</b>
<b>Expense</b>			
Bank and Merchant Fees	694.94	366.92	328.02
Depreciation	0.00	9,785.00	-9,785.00
Dues	150.00	0.00	150.00
General Excise Tax	1,539.52	82.72	1,456.80
Grant & contract expense			
Grants to other organizations	100.00	25,000.00	-24,900.00
<b>Total Grant &amp; contract expense</b>	<b>100.00</b>	<b>25,000.00</b>	<b>-24,900.00</b>
Instructor Stipends	1,514.25	795.00	719.25
Insurance	1,718.50	1,718.00	0.50
License and Fees	3.50	10.00	-6.50
<b>Misc expenses</b>			
Advertising expenses	369.78	130.21	239.57
Interest expense - general	72.78	1.57	71.21
Misc expenses - Other	15.97	1,112.13	-1,096.16
<b>Total Misc expenses</b>	<b>458.53</b>	<b>1,243.91</b>	<b>-785.38</b>
<b>Misc. Fees</b>			
Late Fees	0.50	15.00	-14.50
Misc. Fees - Other	40.00	0.00	40.00
<b>Total Misc. Fees</b>	<b>40.50</b>	<b>15.00</b>	<b>25.50</b>
<b>Non-personnel expenses</b>			
Telephone & telecommunications	1,746.49	1,739.76	6.73
Non-personnel expenses - Other	471.86	0.00	471.86
<b>Total Non-personnel expenses</b>	<b>2,218.35</b>	<b>1,739.76</b>	<b>478.59</b>
Office Supplies	72.77	89.93	-17.16
Postage	32.00	14.34	17.66
Printing & copying	93.23	0.00	93.23
Repairs - Boat	549.63	-1,111.34	1,660.97
<b>Salaries &amp; related expenses</b>			
Employee Benefits - Medical Ins	4,768.66	2,845.45	1,923.11
Employee benefits - not pension	1,207.19	832.80	374.39
Payroll taxes	2,849.52	2,301.48	348.04
Salaries & wages - other	28,512.00	26,576.00	1,936.00
<b>Total Salaries &amp; related expenses</b>	<b>37,137.27</b>	<b>32,555.73</b>	<b>4,581.54</b>



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01/17/18

Accrual Basis

# Kauai Sailing Association

## Profit & Loss Prev Year Comparison

### January through December 2017

	Jan - Dec 17	Jan - Dec 16	\$ Change
Supplies	2,482.22	2,121.06	361.16
Supplies - Boat	3,414.06	5,541.44	-2,127.38
Supplies - Equip (de minimu)	0.00	2,884.78	-2,884.78
Teaching Materials	423.24	77.99	345.25
Training	1,297.21	0.00	1,297.21
Travel	2,270.00	257.68	2,012.32
Travel & meetings expenses			
Meals and Entertainment	58.14	96.51	-38.37
Vehicle	25.00	139.00	-114.00
Total Travel & meetings expenses	83.14	235.51	-152.37
Total Expense	56,292.86	83,403.43	-27,110.57
Net Ordinary Income	-9,968.88	16,912.83	-26,881.71
Other Income/Expense			
Other Income			
Investment Income			
Realized Gain or Loss	2,973.91	0.00	2,973.91
Total Investment Income	2,973.91	0.00	2,973.91
Unrealized gain (loss)			
Unrealized gain(loss) - investm	0.00	910.22	-910.22
Total Unrealized gain (loss)	0.00	910.22	-910.22
Total Other Income	2,973.91	910.22	2,063.69
Other Expense			
Foreign Tax Credit	0.00	0.92	-0.92
Investment Expense	0.00	185.48	-185.48
Penalties	10.00	10.00	0.00
Total Other Expense	10.00	196.40	-186.40
Net Other Income	2,963.91	713.82	2,250.09
Net Income	-7,004.97	17,626.65	-24,631.62



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01/17/18

Accrual Basis

# Kauai Sailing Association

## Balance Sheet Prev Year Comparison

As of December 31, 2017

	Dec 31, 17	Dec 31, 16	\$ Change
<b>ASSETS</b>			
Current Assets			
Checking/Savings	0.00	8,182.31	-8,182.31
Ameritrade cash	14,647.95	59,408.90	-44,760.95
BOH - Checking	379.90	1,854.90	-1,475.00
Paypal			
Total Checking/Savings	15,027.85	69,446.11	-54,418.26
Total Current Assets	15,027.85	69,446.11	-54,418.26
Fixed Assets			
Accumulated Depreciation	-40,041.00	-40,041.00	0.00
Boats	119,158.42	53,857.24	65,301.18
Furniture, fixtures, & equip	608.15	608.15	0.00
Total Fixed Assets	79,725.57	14,424.39	65,301.18
Other Assets			
Investment - Change in Value	0.00	-1,762.30	1,762.30
Investments - Ameritrade	0.00	13,248.56	-13,248.56
Total Other Assets	0.00	11,486.26	-11,486.26
<b>TOTAL ASSETS</b>	<b>94,753.42</b>	<b>95,356.76</b>	<b>-603.34</b>
<b>LIABILITIES &amp; EQUITY</b>			
Liabilities			
Current Liabilities			
Other Current Liabilities			
Direct Deposit Liabilities	-882.42	-881.42	-1.00
Jordan Note	5,000.00	0.00	5,000.00
Payroll Liabilities	2,602.38	1,199.75	1,402.63
Total Other Current Liabilities	6,719.96	318.33	6,401.63
Total Current Liabilities	6,719.96	318.33	6,401.63
Total Liabilities	6,719.96	318.33	6,401.63
Equity			
Unrestrict (retained earnings)	95,038.43	77,411.78	17,626.65
Net Income	-7,004.97	17,626.65	-24,631.62
Total Equity	88,033.46	95,038.43	-7,004.97
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>94,753.42</b>	<b>95,356.76</b>	<b>-603.34</b>

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, HAWAII. 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."

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
AUG 25 2017

w/ Amendments

Item J-1

EXHIBIT D



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
= Annual Fair Market Rent, effective July 1, 2017:	\$21,588.80

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).

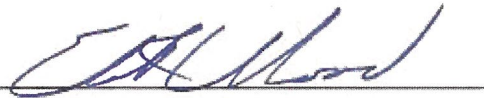
RECOMMENDATION:

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:

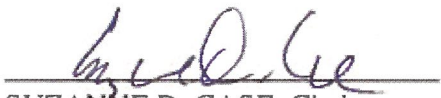
- a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
- b. Review and approval by the Department of the Attorney General; and
- c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the 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



BLNR 8-25-17, Item J-1 Amendments:

- Rent to remain at the current monthly fee of \$1,106.67

FEB 09 2018

MEETING MINUTES  
FOR THE  
BOARD OF LAND AND NATURAL RESOURCES

DATE: FRIDAY, AUGUST 25, 2017  
TIME: 9:30 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

Chair Case called the meeting to order at 9:31 a.m. She preceded to read the contested case advisory.

MEMBERS

Suzanne Case  
Thomas Oi  
Stanley Roehrig

Keone Downing  
Chris Yuen  
Sam Gon

STAFF

Russell Tsuji/LAND  
Kevin Moore/LAND  
Marvin Miyasaka/LAND  
Mike Auerback-DOT-LAND

Alton Miyasaka/DAR  
Richard Howard/LAND  
Maria Carnavaele/DAR

OTHERS

Julie China/AG  
Rory Reiley/D8  
Li Cobian/D8  
Richard Howard/K1, D7  
Jim Saylor/J1  
Astrid Anderson/J1  
Troy Hanohano/D1

Ross Smith/DOT-Air  
Alika Anixt/D8  
Tom Pierce/D9  
Stephanie Pascua/D3,4,6  
Fred Styel/J1  
Lillie Flynn/J1  
Kamealoha Smith/D1

## A. MINUTES

1. Request approval of Meeting Minutes from April 28, 2017

**Approved as amended (Yuen, Roehrig) unanimous.**

**ITEM D-1** Issuance of Right-of-Entry Permit to Kaiaulu Papaloa onto State Lands to Conduct Studies and Surveys for an Environmental Assessment, Kapa'a Homesteads, 1<sup>st</sup> & 3<sup>rd</sup> Series, Kawaihau, Kaua'i, Tax Map Key: (4) 4-6-008:001 & 059, and 4-6-009:028 & 045.

Kevin Moore presented the staff submittal on behalf of the Land Division. Kamealoha Smith presented on behalf of the applicant. Noted that they do one publication a year, usually a moon calendar, or a book. It is done in both Hawaiian and English. He noted that their work with children and families has been wonderful.

### Board Discussion

Gon asked if their program has been in existence for about 6-7 years. Smith said yes and gave some history of their program. He noted that they have a small community board and re-emphasized their program. Kaiaulupapaloa.com is their website. Smith gave a history of their name and noted that Papaloa is the reef that surrounds Kauai, so the name is specific to their island.

Public Testimony- None

Motion

**Approve as submitted (Oi, Gon) unanimous.**

**ITEM D-3** Issuance of Right-of-Entry Permit to Hawai'i Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display at Duke Kahanamoku Beach on October 9, November 4, and December 31, 2017, Waikiki, Honolulu, O'ahu, Tax Map Key: (1) 2-3-037:021 Portion.

**ITEM D-4** Issuance of Right-of-Entry Permit to Hawai'i Explosives and Pyrotechnics, Inc. for Aerial Fireworks Display on December 31, 2017 at the beach fronting Kahala Hotel, Wai'alae, Honolulu, O'ahu, Tax Map Key: (1) 3-5-023: seaward of 041.

**ITEM D-6** Issuance of Right-of-Entry Permits to Hawai'i Explosives & Pyrotechnics, Inc. for Aerial Fireworks Display on Encumbered State lands off Ko 'Olina Beach on October 2, November 4, and December 31, 2017, Hono'uli'uli, 'Ewa, O'ahu, Tax Map Key: (1) 9-1-057: seaward of 006.

Kevin Moore presented the Item D-3, D-4 and D-6 staff submittals.

### Board Discussion

Board Discussion-None

Public Testimony-None

Motion

**Approved as submitted (Yuen, Roehrig) unanimous.**

**ITEM J-1.** Issuance of Revocable Permit, to Nāwiliwili Yacht Club, Nāwiliwili Small Boat Harbor, Nāwiliwili, 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, Hawai'i Revised Statutes for the project.

Ed Underwood presented on behalf of DOBOR and went over the history of this revocable permit. At issue is whether a lease can be given for this property under direct negotiation and without a public auction under 171-43.1. The division is working with the Attorney General (AG) and needs additional time. The submittal asks to give Nāwiliwili Yacht Club a revocable permit until they can address the long-term lease issue.

Board Discussion

Oi noted that the characteristic of the permit is for small boat harbor purposes. Does this allow the club to be able to open a restaurant as a 501 (c) (3)? Underwood said he believes a restaurant meets the purposes of general boating. Case clarified that the board could limit the purposes of the harbor.

Case noted that she has questions of the applicant regarding their activities under their 501 (c) (3) vs. their activities under their 501 (c) (4). She also asked the term of the RP. Underwood said the RP is up to 1 year. The rental terms have increased to \$1799/month or 5% of gross receipts. The Board approved this lease going out to public auction on June 9.

Public Testimony

Fred Styer with Nāwiliwili Yacht Club (NYC) and Gayle Shore, with Kauai Sailing Association(KSA), for the applicant. There are 140 members of the Yacht Club, which mainly holds Thursday night races, and supports the efforts of KSA. Yacht Club time/effort and space divides up to be about 90% KSA and 10% NYC. KSA grew out of a lease requirement that NYC have an accredited junior sailing program. NYC is a 501(c)(4), and therefore not eligible, under 171-73.1 to a lease by direct negotiation. Once people take a class with KSA then they can become members of the Yacht Club and use the Yacht Clubs boats. KSA is an accredited youth sailing program within the yacht club and is a 501(c)(3). The NYC gives KSA a place to provide their services, including storing their boats. Nāwiliwili Harbor is an ideal place to sail the break water protects them from waves. Gayle shore spoke about 4 KSA programs:

- STEM—Partner with US Sailing to develop the program. Has reached 238 kids. 60% are on scholarships provided by KSA.



- Malama Huleia—mangrove eradication. Working with National Geographic. This may become a 3-year program.
- Polynesian Voyaging Society (PVS)—teaching people how to sail Na Mahoe, Kaua'i's double hulled canoe, as well as working with PVS when other canoe come to Kauai.
- Leadership Program—work with Leadership Kauai to train kids in presentation skills and creating a safe environment.

The Board re-iterated that they were still concerned about the close relationship between KSA as the 501 (c) (3) and NYC as the 501 (c) (4). Other Yacht clubs do not get a lease by direct negotiation, and so NYC is also not eligible. The Board is concerned that because of the close relationship of the two organization clouds the lease relationship with DOBOR. The public benefit must be foremost for a lease under HRS 171-43.1.

Applicant asked about the DOBOR condition in the lease that KSA is not be allowed to use the property.

Case noted that the Noard understands that KSA will be using the facility. Case asked if the lease is restricted to sailing uses, then theoretically the value would be less? Old rent is \$1107.

*Written Testimony submitted in Support; Nā Kālai Wa'a o Kaua'i, Nawiliwili Yacht Club & Kaua'i Sailing Association, Fred W. Styler, Mel Rapozo, Joann Yukimura, Kevin Arndt, Elisabeth Biuk-Aghai, Janice Portillo, J.T. Schoonover, Kahanu Keawe, Kathleen Ho, Risa Whetsel, Kristiina Chapman, Maria Briones, Tim Flynn, Melissa Burovac, Stephen Taylor, Shaun Lehman, Snow Carapetyan, Zac Young, Andrea Erichsen.*

**Amendment:**

***Rent at \$1107 and restricting use of facility to sailing purposes, no commercial activities.***

**Motion**

**Approved as amended (Oi/Gon) unanimous.**

**ITEM D-8** Annual Renewal of Revocable Permits on the Island of O'ahu. See Exhibit 2 for list of Revocable Permits.

Kevin Moore and Barry Cheung presented for the Land Division. Moore noted that there are some amendments:

- On page 2, Under "Remarks," 2<sup>nd</sup> paragraph-Change appraisal date, implement rents to January 1, 2018.
- Re: Larry Jefts (RP 7402)—the Board previously authorized withdrawal of some parcels. Barry will process a permit for a smaller area.