

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

October 26, 2018

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

PSF No. 18HD-102

HAWAII

Set Aside and Issuance of Immediate Management Right-of-Entry to Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Kawaihae Small Boat Harbor-South at Kawaihae 1st and 2nd, South Kohala, Hawaii, Tax Map Keys: (3) 6-1-003:025 (portion), (3) 6-1-003:026 (portion) and seaward of same.

CONTROLLING AGENCY:

Department of Land and Natural Resources

APPLICANT:

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

LEGAL REFERENCE:

Section 171-11, and -55 Hawaii Revised Statutes ("HRS"), as amended, and Act 272, Session Laws of Hawaii 1991 ("Act 272").

LOCATION:

Portion of Government lands of Kawaihae Harbor situated at Kawaihae, Hawaii, identified by Tax Map Keys: (3) 6-1-003: 025 (portion), (3) 6-1-003:026 (portion) and seaward of same, as shown on the attached map. See **Exhibit 1**.

AREA:

Areas withdrawn from the jurisdiction of Department of Transportation, Harbors Division ("DOT") by Governor's Executive Order ("GEO"), as follows:

Kawaihae Small Boat Harbor ("SBH")-South:

GEO 4521 withdrawn from GEO 1988 19.973 acres, more or less

October 26, 2018

GEO 4523 withdrawn from GEO 2142	3.142 acres, more or less
GEO 4524 withdrawn from GEO 1904	14.987 acres, more or less
Submerged lands	<u>6.160 acres seaward of, more or less</u>

TOTAL 44.262 acres, more or less

ZONING:

State Land Use District:	Urban
County of Hawaii CZO:	Open, General Industrial, and Multiple-Family Residential,

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act.
Section 5(b) lands of the Hawaii Admissions Act.
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

The Kawaihae SBH-South facility includes a loading ramp, floating dock with a 24-berth Tahitian mooring area, comfort station, and parking areas.

The subject property consists of 44.262 acres more or less of State lands, including submerged lands.

The subject property is encumbered by Revocable Permit No.29 issued to Island of Hawaii YMCA for sailing programs, storage purposes, marine education and youth programs, and RP No. 22 issued to Na Kalai Wa'a for vessel storage, general storage, maintenance of improvements, youth programs, educational programs, and affiliated community programs.

DOBOR also holds 24 commercial/recreational permits for the moorings/slips. See **Exhibit 2.**

PURPOSE OF SET ASIDE:

For Small Boat Harbor and related purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council on June 5, 2015, the subject action is exempt from the preparation of an environmental assessment pursuant to Exemption Class 1, "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features,

involving negligible or no expansion or change beyond that previously existing;” Item 43, “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.” See **Exhibit 3** attached.

Inasmuch as the Chapter 343 environmental requirements apply to the Applicant’s future use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

BACKGROUND

The Kawaihae Harbor Project came into being with GEO No. 1759, which set aside 30.259 acres, more or less, of State lands on the northwest Kohala Coast to be under the control and management of the Department of the Army of the United States (“Army”). Development of the Harbor Project continued with portions of the Army lands being returned to the State of Hawaii by GEO 2142, as well as having been expanded several times throughout the years by numerous GEOs. This submittal concerns GEOs with land withdrawn from DOT’s jurisdiction and intended to be set aside to DOBOR, pursuant to Act 272. The specific GEOs that are the subject of this submittal are discussed below.

One such expansion was accomplished by GEO No. 1904, dated March 17, 1960, which set aside 52.98 acres, more or less, for receiving or discharging passengers, and for loading and landing merchandise, with warehouse or warehouse space, office or office space, storage for wares and merchandise, and the like, to be under the control and management of the Board of Harbor Commissioners of the Territory of Hawaii, as part of the Kawaihae Harbor Project. At its meeting on December 12, 2014, under agenda item M-3, the Board of Land and Natural Resources (“BLNR”) approved the withdrawal of 14.987 acres, more or less, from GEO No. 1904. The rationale for the withdrawal was to allow DOBOR to have its own road to the small boat harbor separate of DOT’s security requirements. On December 19, 2016, by GEO 4524, 14.987 acres, more or less, were withdrawn from the DOT’s jurisdiction.

The harbor was further expanded by GEO No. 1988 dated December 12, 1961, which set aside an additional 39.74 acres, more or less, for receiving or discharging passengers, and for loading and landing merchandise, with warehouse or warehouse space, office or office space, storage for wares and merchandise, and the like, to be under the control and management of the DOT. At its meeting on September 26, 2014, under agenda item M-4, the Board approved the withdrawal of 19.973 acres, more or less from GEO No. 1988. On November 23, 2016, by GEO No. 4521, 19.973 acres, more or less, were withdrawn from DOT’s jurisdiction.

On June 2, 1964, by GEO No. 2142, 6.37 acres of filled land, previously returned by the United States of America, were set aside for addition to Kawaihae Harbor, to be under the control and management of the DOT, State of Hawaii. At its meeting on December 12, 2014, under agenda item M-3, the BLNR approved the withdrawal of 3.142 acres,

more or less, from GEO 2142. On December 19, 2016, by GEO 4523, 3.142 acres, more or less, were withdrawn from DOT's jurisdiction.

REMARKS

In 1991, Act 272 transferred the management authority of 54 small boat harbors, launching ramps, jetties, wharves and landings in the State from DOT to DOBOR. The Kawaihae SBH-South was one of the 54 SBHs to have been transferred.

Although in 1992 DOBOR took over management of Kawaihae SBH-South, then consisting of a designated mooring area within the larger commercial Kawaihae Harbor, the formal Executive Order to DOBOR still has not yet been completed. Notwithstanding the aforesaid, DOBOR has continued management and oversight over the small boat harbor area uninterrupted since 1992.

In 2008, DOBOR relocated the SBH-South outside of the deep-water commercial harbor and constructed a new facility comprised of a loading ramp, floating dock with a 24-berth Tahitian mooring area, comfort station, and parking areas.

In July of 2018, DOBOR notified Land Division staff ("Staff") of their desire to seek approval to enter into a direct lease with a 501(c)(3) entity at the Kawaihae SBH-South facility and requested that execution of this intended set-aside be prioritized to allow processing of the DBOR lease.

Staff consulted the agencies listed below on the submittal and proposed exemption from an environmental assessment with the results indicated:

Agency	Comments
DLNR, Division of Aquatic Resources	
DLNR, Division of Boating and Ocean Recreation	DOBOR has no objections to this board submittal at this time because this re-setting aside finalizes Act 272, SLH 1991, that transferred from the DOT to DLNR-DOBOR fifty-four (54) small boat harbors, launching ramps, jetties, wharves and landings statewide. DOBOR is prepared to continue the management of this small boat harbor.
DLNR, Office of Conservation and Coastal Lands	No response by suspense date
Department of Transportation, Harbors Division	No response by suspense date
Office of Hawaiian Affairs	No response by suspense date
County of Hawaii, Parks and Recreation	No comments

County of Hawaii, Public Works	No response by suspense date
County of Hawaii, Department of Water Supply	No comments
County of Hawaii, Planning Department	No response by suspense date
U.S. Army Corp of Engineers	No response by suspense date
U.S. Parks Service	No response by suspense date

The Board's approval of the following recommendations will bring the documentation status current for the Kawaihae SBH-South.

RECOMMENDATION:

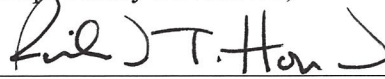
That the Board:

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 preparation of an environmental assessment.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside a portion of the Kawaihae SBH-South lands described in GEO Nos. 4521, 4523, and 4524, together with 6.16 acres, more or less, of submerged land to the DLNR, DOBOR, 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 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. Grant an immediate management right-of-entry to the DLNR, DOBOR over the subject lands, 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 management and construction right-of-entry form, as may be amended from time to time;

October 26, 2018

- b. The right-of-entry shall be effective upon acceptance and shall terminate upon issuance of the executive order.

Respectfully Submitted,



Richard T. Howard
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



Kawaihae Small Boat Harbor-South



SLIP NO.	Vessel Name	Permittee	Permit Type
S1	MAKAI	Kohala Cruises, LLC	C
S2	LIO KAI	James Bergan	R
S3	INFINITY	Eric Wakely	R
S4	SHOGUN	Kendell Shamel	R
S5	SLIPPERY SLOPE	Kawaihae Watersports, Inc.	C
S6	EHU KAI	Gary Grosshuesch	C
S7	SCHEDAR	Kohala Blue, LLC	C
S8	RIVA	Kohala Sail & Sea, LLC	C
S9	TATTOO KAI	Peter Gardiner	R
S10	LACEY	Jake Penny	R
S11	HO'OILINA	Alice Feeney	R
S12	EVADO	Karl Toubman	R
S13	MAHI	Jay Chavez	C
S14	KOLEA	Jessica McArdle	R
S15	EAGLE 1	Charles Kenney	R
S16	LANI KAI	Waikoloa Coast Divers, Inc	C
S17	TA'AROA	David Gunnels	R
S18	KITTA	Tommy Tinker	R
S19	JOLLY ROGERS	Paul Maciaz	R
S20	HIKAROA	Michael Sperka	R
S21	MELE MAKANI	Gary Miltimore	R
S22	HOKU PA'A	Joseph McKeown	R
S23	SAPHIRA	Pua Ka Ilima Charters, LLC	C
S24	AQUA SAFARI	Kawaihae Offshore Adventures, LLC	C

EXHIBIT 2

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes and Chapter 11-200, Hawaii Administrative Rules:

PROJECT TITLE:	Set Aside and Issuance of Immediate Management Right-of-Entry to Department of Land and Natural Resources, Division of Boating and Ocean Recreation for Kawaihae Small Boat Harbor-South at Kawaihae 1 st and 2 nd , South Kohala, Hawaii.
PROJECT / REFERENCE NO.:	PSF No. 18HD-102
PROJECT LOCATION:	TMK: (3) 6-1-003:025 (portion), (3) 6-1-003:026 (portion) and seaward of same.
PROJECT DESCRIPTION:	Set aside portion of for Kawaihae Small Boat Harbor-South purposes.
CHAPTER 343 Trigger(s):	Use of State Funds
EXEMPTION CLASS NO.:	In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with 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 43, "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."
CUMULATIVE IMPACTS OF PLANNED SUCCESSIVE ACTIONS IN SAME PLACE SIGNIFICANT:	No. The request is a single occurrence in the area.
ACTION MAY HAVE SIGNIFICANT IMPACT ON PARTICULARLY SENSITIVE ENVIRONMENT:	No. The action proposed will have no significant impact to the environment.
ANALYSIS:	Fifty-four (54) small boat harbors were transferred from the Department of Transportation to the Department of Land and Natural Resources, DOBOR through Act 272, SLH 1991 and have been managed accordingly since 1991.

There will be no changes in the use or management of this wharf beyond that currently existing. As such, staff believes that the completion of the set-aside as stipulated by Act 272 is exempt from the preparation of an environmental assessment.

RECOMMENDATION: It is recommended that the Board find that 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.

EXHIBIT 3