

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

April 26, 2019

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

Land Board Members:

SUBJECT: AUTHORIZE A TWENTY-YEAR EXTENSION OF LEASE NO. H-78-5
TO LA MARIANA SAILING CLUB, INC., KALIHI-KAI, HONOLULU,
OAHU, TAX MAP: (1) 1-2-023:052.

AND

DECLARE PROJECT EXEMPT FROM REQUIREMENTS OF
CHAPTER 343, HRS AND TITLE 11, CHAPTER 200, HAWAII
ADMINISTRATIVE RULES.

APPLICANT:

La Mariana Sailing Club, Inc.

LEGAL REFERENCE:

Sections 171-36 (b) (3), Hawaii Revised Statutes (HRS), as amended

LOCATION:

Portion of Governor's Executive Order No. 1458 consisting of fast and submerged lands situated seaward of Sand Island Access Road, Kalihi-Kai, Honolulu, Oahu, identified by Tax Map Key: (1) 1-2-023:052, hereinafter referred to as the "Premises" as shown on the map labeled **EXHIBIT A** and attached hereto.

AREA:

Total area of 2.979 acres, more or less, consisting of .605 acres of fast land (8,679 sq. ft. Exclusive Use Area, 3,888 and 13,798 Nonexclusive Use Area), and 2.374 acres of submerged land.

ZONING:

State Land Use District: Urban
City & County of Honolulu: I-2

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act: YES NO

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

CURRENT USE STATUS:

Encumbered by Executive Order No. 1458 setting aside to the Department of Transportation for airport and harbor related purposes.

Encumbered by Lease No. H-78-5, La Mariana Sailing Club, Inc., which allowed Lessee to construct certain improvements which were to be used primarily for a private sailing club for sailboats only. Liveboards are not permitted. The improvements included suitable piers and may include a clubhouse with a snack bar and bar for members, bathroom showers for men and women and a building to house an office, recreation room, bathroom and kitchenette, workshop, lockers and a caretaker's quarters. The premises may also be used for such other purposes related to the private sailing club, as may be approved in writing by the lessor.

CHARACTER OF USE:

Private sailing club purposes for sailboats only, no liveboards permitted.

TERM OF LEASE:

Original term of 35 years, commencing May 1, 1979, and expiring on April 30, 2014.

Request extension of 5 years granted by the Board of Land and Natural Resources commencing May 1, 2014 and expiring on April 30, 2019.

Requested extension of 20 years commencing May 1, 2019 and expiring on April 30, 2039.

ANNUAL RENTAL:

\$75,600.00 paid quarterly.

RENTAL REOPENINGS:

Rental reopenings in the original term were at the end of the 15th and 25th years of the term. The last reopening occurred on May 1, 2004.

Rental reopenings for the extended term shall be at fair market value on May 1, 2019 and May 1, 2029.

PROPOSED IMPROVEMENTS:

The lessee is proposing to spend \$467,750.00 to make improvements to its docks (**EXHIBIT C**).

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

APPLICANT REQUIREMENTS:

Applicant shall be required to complete the improvements listed in **EXHIBIT C** by December 31, 2019. Proceeds of the mortgage or loan shall be used solely for the operations or improvements on the demised property.

BACKGROUND:

Lease No. H-78-5 was awarded to Annette L. Nahinu dba La Mariana Sailing Club on July 14, 1978 for a period of thirty-five (35) years.

At its meeting on April 9, 1999, the Board approved the assignment of Lease No. H-78-5 to La Mariana Sailing Club, Inc. (lessee).

On March 11, 2011, the tsunami that hit the Hawaiian Islands, together with debris carried by it, caused close to \$400,000.00 in damage to the lessee's docks. Staff has inspected lessee's invoices, check stubs and receipts, and is satisfied that the cost to repair the tsunami damage is as stated.

The lessee previously requested an extension of its lease for an addition five (5) years. At its meeting on June 14, 2013, under agenda item J-3, the Board approved the extension of the lease for an additional five (5) years, extending the lease termination date to April 30, 2019.

REMARKS:

As stated in its use clause, the lessee is, primarily, a private sailing club. An important portion of its revenue is derived from the renting of slips to boaters. For the lessee to continue to generate adequate revenue from this part of the business, it is necessary for it to periodically make improvements to its mooring facilities. Operating revenue alone will not cover the costs of these improvements, so a loan is required.

Bank of Hawaii, as agent for Judith Calma, Trustee of the Annette Nahinu Trust ("trust") dated February 21, 1995 (See **EXHIBIT D**), has stated the trust is willing to lend the lessee \$467,750.00 to make improvements to lessee's floating docks provided the lessee is able to obtain a twenty-

year lease extension. The promissory note would have a term of twenty (20) years with monthly installment payments of \$2,408.59.

If the Board grants the twenty-year extension as requested in this submittal, the aggregate term of this lease will be sixty (60) years.

Staff believes the lessee's request meets the conditions outlined in HRS 171-36(b)(3) for the Board to extend the term of the lease. Specifically, that the premises will continue to be used for the purpose for which they were leased, the aggregate lease term will not exceed sixty-five years, the rent reopenings will be at the fair market rental, the private lending institution is qualified to do business in the State of Hawaii and the proceeds from the loan will be used for operations or improvements at the demises premises.

Staff did not solicit comments from other agencies, as there will be no changes to the land use.

RECOMMENDATION:

That the Board of Land and Natural Resources:

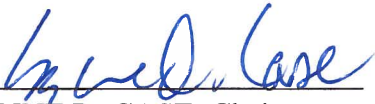
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, Hawaii Administrative Rules, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Approve a 20-year extension of Lease No. H-78-5, 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 lease extension form, as may be amended from time to time; and
 - b. Review and approval by the Department of the Attorney General; and
 - c. The lessee shall complete its improvements costing no less than \$467,750.00; and
 - d. 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:

- A1 Aerial Site Plan
- A2 Aerial Site Plan
- B Letter Requesting 20-year lease extension
- C La Mariana Dock Repair and Replacement Proposal
- D Bank of Hawaii Letter.
- E Dock Photographs

EXEMPTION NOTIFICATION

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

Project Title:	Authorize a twenty-year extension of Lease No. H-78-5
Project / Reference No.:	
Project Location:	Kalihi-Kai, Honolulu, Oahu, Tax Map Key: (1) 1-2-023:052
Project Description:	Twenty-year extension of Lease No. H-78-5
Chap. 343 Trigger(s):	Use of State land
Exemption Class No(s).:	No. 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," Item 47, which states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existing."
Cumulative Impact of Planned Successive Actions in Same Place Significant?	No, the requested location has been in the same use for many years with no known significant impact to the environment. As the tenant is not expanding or changing its use of the premises, an extension of twenty years with the same use will not have a significant impact. Therefore, staff believes the holdover for an additional year has no significant effect on the environment.
Action May have Significant Impact on Particularly Sensitive Environment?	No, staff does not believe the twenty-year extension of the lease for the tenant, a sailing club, will have significant impact on the environment, as the premises and neighboring parcels are zoned for intensive industrial use.
Analysis:	The request pertains to authorizing a twenty-year extension of Lease No. H-78-5 at the subject location. The location has been used for the same purpose since 1978, with no known significant impact to the environment. Therefore, staff believes that the request would involve negligible or no expansion or change in use of the subject location beyond that previously existing.
Consulted Parties:	Land Division-ODLO was consulted and concurred with respect to the Chapter 343 exemption
Declaration	The Board finds that this project will probably have minimal or no significant effect on the environment and declares that this project is exempt from the preparation of an environmental assessment.

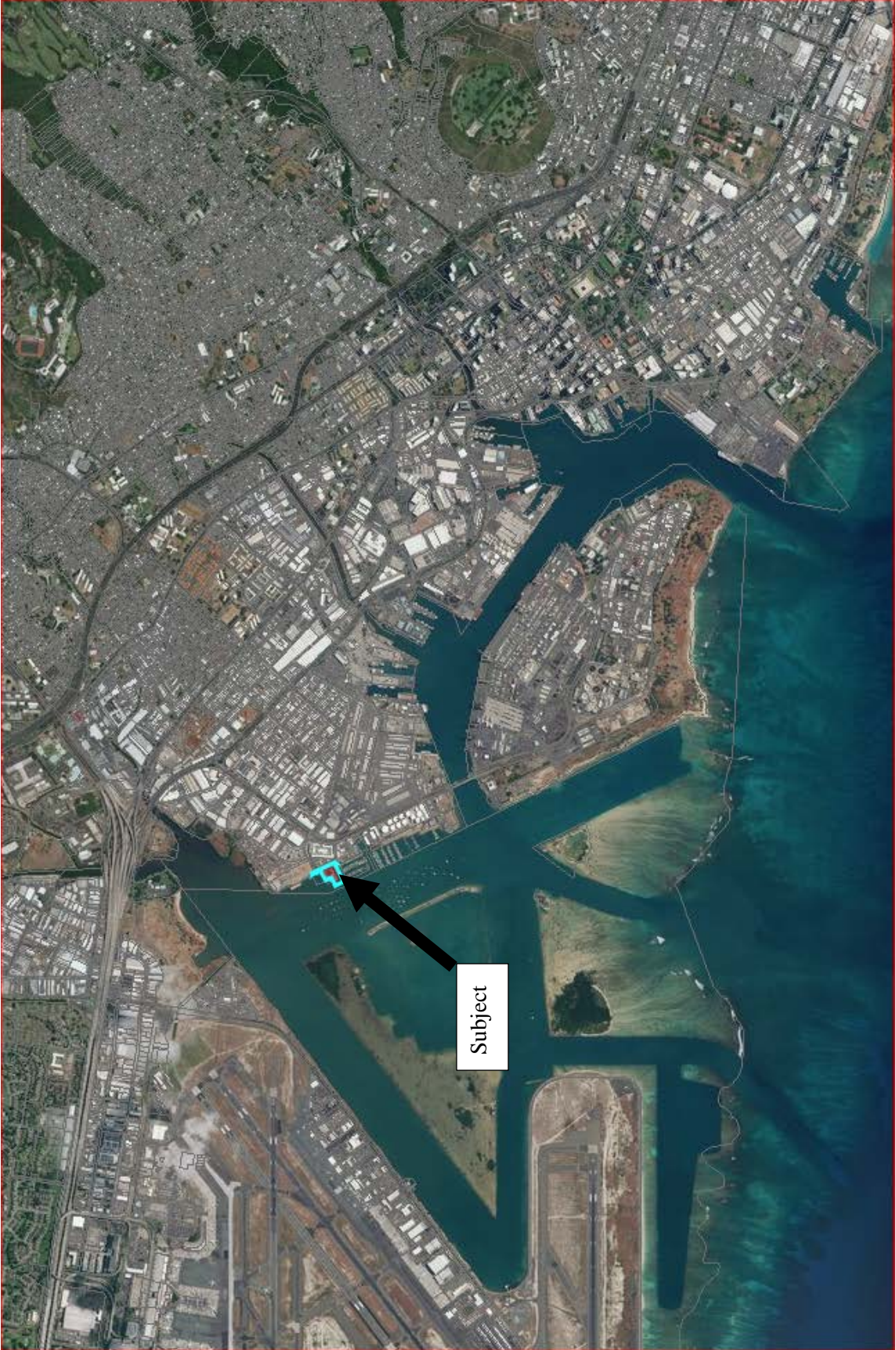


Exhibit A1

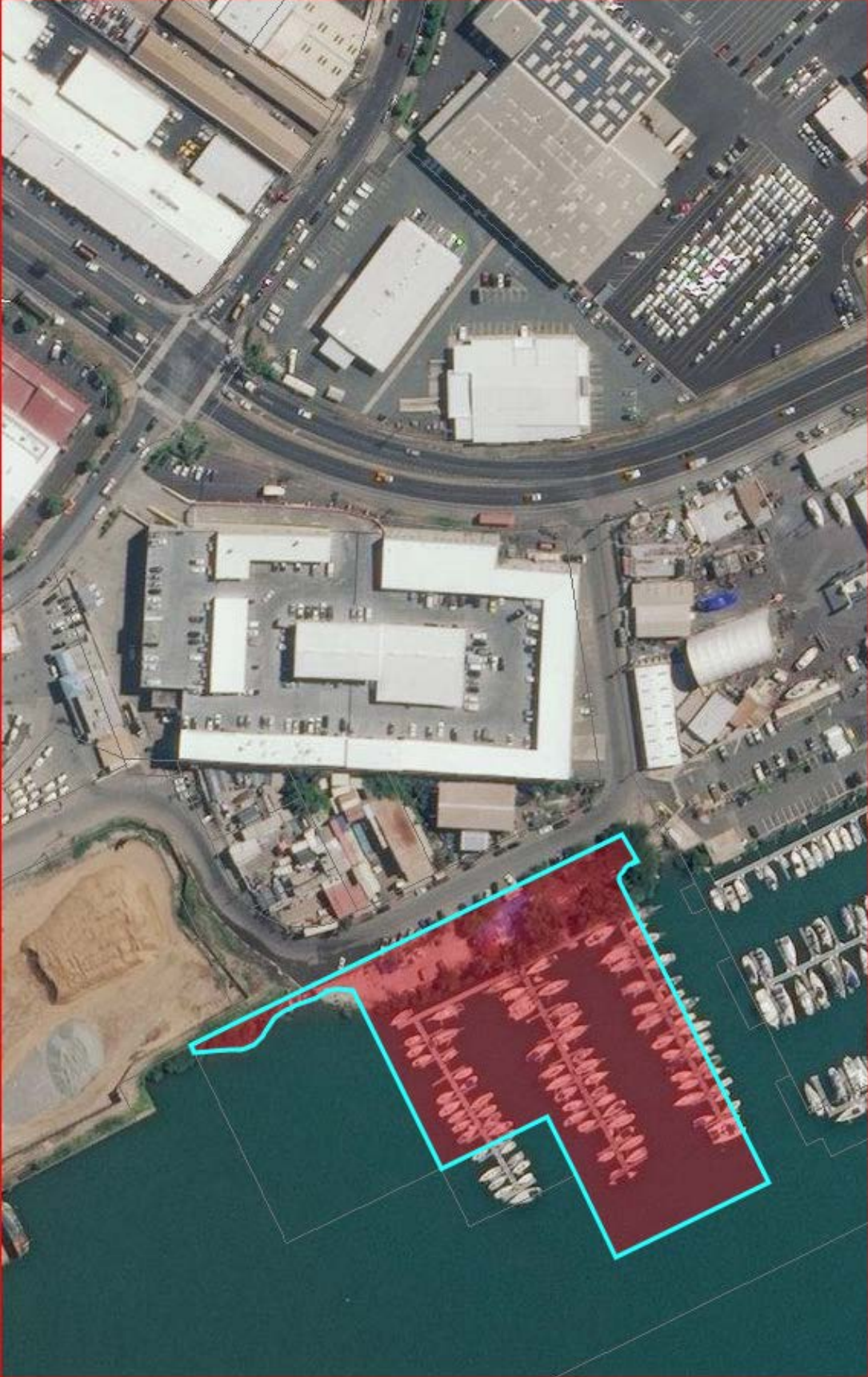


Exhibit A2

RUSH MOORE LLP

A Limited Liability Law Partnership

Attorneys at Law

Offices in Honolulu and Kona

Honolulu Office: 737 Bishop Street, Suite 2400, Honolulu, Hawaii 96813 / Tel. (808) 521-0400 / Fax (808) 521-0497

VIA EMAIL (richard.t.howard@hawaii.gov)

Richard Howard

March 25, 2019

Re: Extension of Lease No. H-78-5 issued to La Mariana Sailing Club, Inc.

Dear Mr. Howard,

We are requesting an extension of Lease No. H-78-5 issued to La Mariana Sailing Club, Inc. ("La Mariana") for twenty (20) years. La Mariana requests this extension in order to repair its three main docks, which are significantly damaged. A March 22, 2019 estimate from a reputable local dock specialist places the cost of repairs at \$467,750.00 plus applicable tax.

The disrepair of the dock has been exacerbated with time, most recently by storm damage that occurred on February 9 - 10, 2019. Attached are photographs of the dock after this 2019 storm, as well as the March 22, 2019 estimate from Bluewater Marine & Dock Specialties, Inc. ("BWM") for all repairs necessary to the docks. The Lease is set to terminate on April 30, 2019.

Factual Background

La Mariana possesses Lease No. H-87-5, assigned on July 14, 1978 ("Lease"). In 2011, a tsunami hit the Hawaiian Islands and caused roughly \$400,000.00 in damage to La Mariana's docks. In addition to repairing its tsunami damage, La Mariana also replaced its septic system. La Mariana sought an extension of the Lease in order to amortize its repair costs. La Mariana hoped to seek a ten (10) year lease extension, but upon contacting DLNR, La Mariana was informed by DLNR that La Mariana could only seek an extension of up to five (5) years. Based on this information, La Mariana thus made a request for a lease extension of five (5) years. After reviewing proof of La Mariana's "substantial economic hardship," the Board granted this request for lease extension on June 14, 2013, setting a new lease termination date of April 30, 2019. La Mariana is still amortizing its costs from the damage caused by the 2011 tsunami, and at a significant cost given the short amortization period and large amount of the loan.

La Mariana's three main docks, titled A, B, and C respectively, are now in need of significant repairs. Dock C in particular recently sustained serious damage from a storm with high winds which occurred during February 9 - 10, 2019. Photographs of Dock C following this storm are enclosed.

A March 22, 2019 estimate from Bluewater Marine & Dock Specialties, Inc. ("BWM") details the repairs necessary to all three docks, including removal and disposal of the damaged

EXHIBIT B

Dock C mainwalk, installation of a new aluminum framed floating dock system, repairs to Docks A and B, and installation/moving of anchor blocks to secure the docks. According to BWM's estimate, the cost of these repairs is \$467,750.00 plus applicable tax. As detailed in BWM's estimate, this cost could be even greater if BWM finds it necessary to replace existing electrical power pedestals and supply cables after repairing the dock system.

As of the end of 2019, La Mariana will have held the Lease for forty-one (41) years. La Mariana is concerned that its remaining lease is insufficient to make the necessary repairs to the dock.

Relevant Law

Haw. Rev. Stat. § 171-36(b)(3) allows the Board to extend the term of a lease in order to allow a party to "amortize the cost of substantial improvements to the demised premises that are paid for by the lessee without institutional financing, such extension being based on the economic life of the improvements as determined by the board or an independent appraiser," subject to certain conditions.

- (1) The demised premises have been used substantially for the purpose for which they were originally leased;
- (2) The aggregate of the initial term and any extension granted shall not be for more than sixty-five years;
- (3) In the event of a reopening, the rental for any ensuing period shall be the fair market rental at the time of reopening;
- (4) Any federal or private lending institution shall be qualified to do business in the State;
- (5) Proceeds of any mortgage or loan shall be used solely for the operations or improvements on the demised premises;
- (6) Where improvements are financed by the lessee, the lessee shall submit receipts of expenditures within a time period specified by the board, otherwise the lease extension shall be canceled; and
- (7) The rules of the board, setting forth any additional terms and conditions, which shall ensure and promote the purposes of the demised lands.

In Wille v. Board of Land and Natural Resources, 2013 WL 1729711, *1 (Ct.App. 2013), "pursuant to Hawaii Revised Statutes (HRS) § 171-36(b)," Parker Ranch requested that the Board extend its pasture leases by twenty (20) years. "After considering the testimony [of members of the community] and the DLNR staff report, the BLNR unanimously agreed to extend the terms of all three Leases by twenty years." Id. Wille demonstrates the Board's general power under subsection (b) to grant lease extensions.

Richard Howard
March 25, 2019
Page 3

Request

Under HRS § 171-36(b), the Board possesses the general power to grant extensions, with the aggregate of the initial lease and any extensions totaling no more than sixty-five (65) years. As such, **we are requesting a twenty (20) year extension of the lease to repair Docks A, B, and C due to repair costs of \$467,750.00.**

Thank you for your consideration.

Very truly yours,

RUSH MOORE LLP
A Limited Liability Law Partnership

A handwritten signature in black ink, appearing to be 'Jason Tani', written in a cursive style.

Jason Tani

BLUEWATER MARINE & DOCK SPECIALTIES, INC.

350 Ward Ave., Ste. 106 ♦ Honolulu, Hawaii 96814

PHONE 808 237-4504 ♦ FAX 808 237-4545

La Mariana Dock Repair and Replacement Proposal

March 22, 2019

La Mariana Sailing Club, Inc.
50 Sand Island Access Rd.
Honolulu, HI. 96819

Dear Rachel,

Per our conversations and the present condition of your floating dock system, BWM proposes to perform the following;

- 1) Remove and dispose of the main access floating dock, and C dock mainwalk.
- 2) Remove and reattach all existing fingers on C dock to new aluminum framed floating dock.
- 3) BWM to furnish and install a new aluminum framed floating dock system, and a new aluminum gangway.

Based on preliminary measurements the amount of new docks would be as follows;

Access dock: 6' x 365'.

C dock mainwalk: 6' x 270'.

- 4) Repair damaged fingers on A and B docks.
- 5) Repair damaged mainwalk on B dock.
- 6) Move all anchor blocks into proper location, and make sure chains are secure.
- 7) Provide and install missing anchor blocks and chain as needed.
- 8) Electrical: Reuse all power pedestals and supply cable as possible. If certain pedestals and some portions of wire are not able to be reused, then BWM will provide cost to provide and install new. This price will be discussed and agreed to prior to BWM doing the work.
- 9) Plumbing. All plumbing lines to be re used as possible.

3) Complete project oversight. This will include our demolition and installation crew working along with the LMSC and electrician in coordinating the entire project.

Total cost for all work detailed above: \$467,750 plus applicable tax

Payment terms: 20% upon issuance of Work Order

40% upon confirmation of bulk materials delivered to BWM shop in Waialua.

Balance upon completion of installation of new docks.

EXHIBIT C

La Mariana responsible for the following;

- All permits and permit costs as may be required.
- Moving of boats as needed.

Please contact me with any questions or comments.

Sincerely,

Jim Booth
G.M. Bluewater Marine

March 25, 2019

Department of Land & Natural Resources
1151 Punchbowl Street, #3
Honolulu, HI 96813

Gentlemen:

Re: La Mariana Sailing Club, Inc.

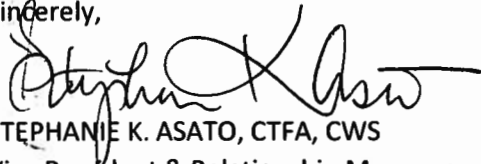
This letter will confirm that the La Mariana Sailing Club, Inc., a Hawaii corporation, having its principal place of business at 50 Sand Island Access Road, Honolulu, HI 96818 will be borrowing \$467,750 from the Annette L. Nahinu Trust dated February 21, 1995, as amended, at Bank of Hawaii, P. O. Box 3170, CC#718, Honolulu, HI 96807-3170. Bank of Hawaii is Agent for Judith Calma, Trustee of the Annette Nahinu Trust dated February 21, 1995.

The purpose of this loan is to repair the damage and replace the floating dock to the Marina that has occurred due to the wear and tear as well as the storm in February 2019.

The term will be for 20 years or 240 consecutive months with interest at 2.19% with a monthly payment of \$2,408.59 payable on the first day of the month effective, April 1, 2019 through March 1, 2039. Payments will be applied first to interest and the balance to principal. There will be no prepayment penalty on all or any portion of the Promissory Note.

Please contact me should you have any questions. Thank you for your attention in this matter.

Sincerely,



STEPHANIE K. ASATO, CTFA, CWS
Vice President & Relationship Manager
Tel. No. (808) 694-6596
Email: stephanie.asato@boh.com

EXHIBIT D



EXHIBIT E



