

GENTRY'S
KONA MARINA
HONOKOHAU HARBOR

74-425 Kealahou Parkway, Kailua-Kona, Hawaii 96740 • Phone 808.329.7896 Fax 808.329.7372 • Toll Free 888.458.7896

July 2, 2020

Suzanne Case, Chairperson
Members of the Board of Land and Natural Resources

Re: Testimony in Support of Agenda Item J-4 - Consent to Sublease under Harbor Lease No. H-82-4, GKM, Inc., Lessee, to: Hawaii Data Center, LLC, Sublessee

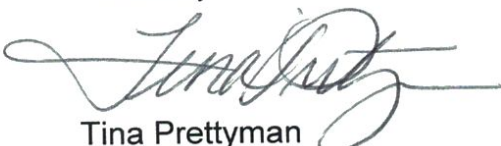
Dear Chairperson Case and Board Members:

Pursuant to the above noted agenda Item J-4, GKM would like to take this opportunity to comment on the following:

- 1) Submitted before the Board is a renewal of a sublessee, Hawaii Data Center. Hawaii Data Center was previously approved as a sublessee at the April 28, 2017 BLNR meeting, and has been a long term tenant of GKM since February 1, 2010.
- 2) GKM continues to maintain its position on any and all matters concerning rent participation and any future revisions to rent structures. GKM previously submitted testimony through our legal representation, Ashford & Wriston, for the May 8, 2020 BLNR meeting on Agenda Item J-2. That prior testimony is incorporated herein in its entirety.
- 3) GKM's revenues continue to decline amid the Covid-19 pandemic (sublease tenants are vacating and those remaining are struggling). The Board recently approved at its meeting on June 12, 2020 an approximately 67% increase in ground lease rents and GKM will need to seek some form of rent relief. (See attached GKM Testimony to BLNR dated June 11, 2020).

GKM appreciates and supports staff recommendations to approve the Consent to sublease for Hawaii Data Center LLC; however, GKM does not agree with, or support, any future unknown changes in its rent structure.

Sincerely,



Tina Prettyman
General Manager

Enc.

TO THE BOARD OF LAND AND NATURAL RESOURCES
MEETING OF MAY 8, 2020 RE **AGENDA ITEM J-2**

GKM's Testimony in Support of Staff Recommendation re BLNR
Consent to Subleases and to Correct Facts for the Record

Chairperson and Members of the Board of Land and Natural Resources:

GKM respectfully urges the Board to adopt Staff's recommendation to consent to GKM's Subleases. GKM appreciates this opportunity to provide important background information and to correct for the record certain facts in the Staff's report to the Board.¹

DOBOR's Submittal Finalizes the Mediated Lease Rent Agreement

DOBOR brings this matter to the Board to comply with the final condition of the mediated agreement regarding rent for the Honokohau Small Boat Harbor Lease H-82-4, as extended ("Lease") between GKM and the State of Hawaii, by its BLNR.

That rent was to be renegotiated as of March 31, 2019. To resolve a disagreement over the rent amount, DOBOR and GKM participated in a mediation. That mediation was successfully concluded on January 7, 2020 (subject to Board approval with the full endorsement of DOBOR). (Ex. 2). Shortly following that settlement, the issue of sublease consent arose. DOBOR and GKM again successfully compromised their positions, leading to Staff's submittal.

It should be noted that the mediated settlement concludes upon the Board's approval of the mediated settlement as noted below:

"First, thank you for a fair resolution of the current matters between our respective clients. **(1) DOBOR's staff will submit GKM's five pending requests for sublease consent to the BLNR with staff recommendation that BLNR consent be given with no adjustment to the Lease's rent or rent structure. (2) If the BLNR accepts the DOBOR staff recommendation, then GKM confirms its agreement to abide by the mediated rent settlement dated January 7, 2020.**" (Letter from GKM's attorney to DOBOR's attorney, Ex. 3; emphasis added.)

Thus, contrary to Staff's characterization in its report on page 5, last paragraph, that "the status of the mediated settlement is unclear," the matter will be resolved when the Board approves the requested consent to sublease renewal and then the Mediation Agreement.

¹ DOBOR notified GKM of this meeting and of its report on May 1. Although GKM's request for Board consent has been pending for months, DOBOR refused GKM's request for a short deferral, stating: "I'm advised we will not defer the submittal, due to the fact you have already issued the subleases." (Ex. 1) GKM does not understand the urgency of addressing this matter now. The Subleases have been in place, with Board consent, for between 15 – 35 years.

GKM Corrects for the Record Certain Facts

To provide the Board Members with a complete understanding of the matter before them, GKM respectfully corrects for the record certain facts contained in DOBOR's submittal.

- 1) Three of the five subtenants have had their businesses at the Honokohau Small Boat Harbor for over 35 years. The remaining two subtenants have had their businesses there for more than 15 years. Accordingly, the matter before the Board does not involve consent to "AFTER-THE-FACT" subleases. Rather, this matter more accurately concerns RENEWAL OF SUBLEASES. GKM recounts the complete history in footnote 2, below.
- 2) The State started processing and approving subleases that GKM submitted only in the past 3 years. The process has unfortunately not proceeded in a timely fashion. For example, GKM submitted the Honokohau Food Service, Inc. and The Charter Locker subleases to DOBOR for renewal consent on October 1, 2019, and the Michael Akazawa sublease on October 9, 2019, well in advance of the expiration of their December 31, 2019 terms. All five subtenants have in their respective sublease agreements a "holdover clause" which continues the sublease terms and conditions on a month-to-month basis after the expiration of their sublease term. GKM used this sublease clause so the subtenant did not have to move out while awaiting approval of sublease renewal from BLNR. DOBOR certainly never intended these long-term sublessees to vacate their businesses on December 31, 2019 because it failed to seek Board consent to the sublease renewals.
- 3) With regards to Dolphin Journey's sublease referenced in Staff's report on page 5, paragraph 6, GKM made a clerical error in its sublease submittal on the sublease commencement date. GKM subsequently corrected this mistake, which correction was noted at the June 28, 2019 Board meeting. Dolphin Journey's LLC was an approved sublessee before this submitted request for sublease renewal and on "holdover" status. It was therefore not in breach of contract.

Sublessees' Uses Conform to the Lease Use Provision

The Lease broadly characterizes the use of the premises "principally for marine or marine-related activities." Other activities are allowed as approved by the State. All the Sublessees use their respective areas in conformance with this Lease provision and those uses were all previously consented to by the Board.²

² From 2004-2017, GKM submitted its subleases to DOBOR as they came up for renewal. DOBOR did not send the renewals to BLNR. GKM was told by the then Property Manager, Bill Andrews, that the Board authorized him to renew the subleases. Consistent with that information, GKM continued to renew the subleases and forward them to DOBOR. DOBOR never indicated that this was not the correct procedure. A more complete history follows for each of the five subleases here involved.

By way of further background for the Board, GKM understands that in the development of the Small Boat Harbor by the original lessee, Gentry Pacific, the leased premises covered two acres. That area was later expanded to four acres. As part of the development expansion (in 1984-1985), additional uses for Harbor Lease H-82-4 were negotiated by Norman Gentry.

When GKM took an assignment of the Lease, the existing approved subleases were in place at that time. Those uses have not changed. They are the same uses that are described in the Staff's submittal to the Board in connection with this May 8, 2020 BLNR meeting.

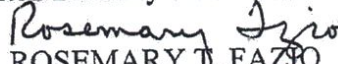
Conclusion

GKM appreciates this opportunity to participate in this matter and present this testimony to the Board members.

In conclusion, GKM respectfully requests the Board to:

(1) consent to the sublease renewals under Harbor Lease No. H-82-4 as referenced in the Staff's submittal, and

(2) affirm the mediated settlement between GKM and the State, as presented in the agreement dated January 7, 2020, signed by Edward R. Underwood (DOBOR's Administrator), Daniel A. Morris (DOBOR's counsel), Gary Lambert (GKM's vice-president) and the Mediator (Appraiser Chris Ponsar). (Ex. 2).

ASHFORD & WRISTON
A Limited Liability Law Partnership LLP
By 
ROSEMARY T. FAZIO
NAOMI U. KUWAYE

Kona Boat Club Inc.: BLNR consented to this sublease at its meeting on December 10, 2004 (at that time the sublessee was PRONET MARKETING CORPORATION dba Kona Boat Rentals; Eric McCormack, its principal, later changed the corporation to THE KONA BOAT CLUB INC.). The renewal of this sublease was approved at the BLNR meeting on April 28, 2017.

Honokohau Food Service, Inc., dba Harbor House: This 20-year sublease (from December 10, 1984 to December 9, 2004) was originally approved by DOT in 1984. BLNR approved its renewal at its meeting on December 10, 2004 and again on April 28, 2017.

The Charter Locker, Inc.: BLNR approved its sublease on December 10, 2004 and its renewal on April 28, 2017. Prior to 2004 there are notes in the file confirming DOT's approval.

Michael Akazawa dba Akazawa Painting: BLNR approved this sublease in March, 2000. BLNR approved the renewal on December 10, 2004 and again on April 28, 2017.

Lito's Marine L.L.C.: Mr. Lito Caoile originally operated this business as Pacific Marine LLC. When his partner passed away, he renamed the company. GKM sent the original sublease to DOBOR which never responded during the 2004-2017 period, as noted above.

EXHIBIT “1”

Subject:

RE: [EXTERNAL] GKM Inc. BLNR J-2 Submittal for May 8, 2020 - Request to Defer

Subject: RE: [EXTERNAL] GKM Inc. BLNR J-2 Submittal for May 8, 2020 - Request to Defer

Date: 2020-05-01 16:03

From: "Bryant, Teresa A" <teresa.a.bryant@hawaii.gov>

To: Tina Prettyman <tina@gentrykona.com>

Cc: "Underwood, Ed R" <ed.r.underwood@hawaii.gov>, "Howard, Richard T" <richard.t.howard@hawaii.gov>, "Young, Carl G" <carl.g.young@hawaii.gov>

Hi Tina,

I'm advised we will not defer the submittal, due to the fact you have already issued the subleases.

Please let me know what else I can assist you with.
Best regards,

Teresa Bryant
Property Manager IV
Department of Land & Natural Resources
Division of Boating & Ocean Recreation
Property Management Section
4 Sand Island Access Road
Honolulu, HI 96819
Phone: (808)587-2683
Fax: (808)587-1977

From: Tina Prettyman <tina@gentrykona.com>

Sent: Friday, May 1, 2020 2:55 PM

To: Bryant, Teresa A <teresa.a.bryant@hawaii.gov>

Subject: [EXTERNAL] GKM Inc. BLNR J-2 Submittal for May 8, 2020 - Request to Defer

Dear Ms. Bryant:

Thank you for sending us DOBOR's report today. As you know, these matters have been pending for a long time.

Under the Governor's order and recommendation, GKM, Inc. has been closed since March 23, 2020. We hope to be reopen the first week in May for business. We are not certain that this will happen.

GKM accordingly requests a deferral of the BLNR submittal, so we may have the opportunity to review Mr. Underwood's report with our counsel and respond. Thank you for your attention and kokua during these difficult times.

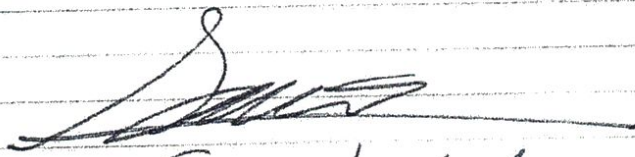
Sincerely,


Tina Prettyman
General Manager
Gentry's Kona Marina
74-425 Kealakehe Pkwy
Kailua Kona, HI 96740


EXHIBIT “2”

1/7/2020

FKM Proposes Settlement
at \$200,000 per year.


Gary Lambert


Edward R. Underwood


Daniel A. Morris

* Subject to BLNR approval, Ed Underwood
pledges to fully endorse this agreement.



Chris Ponsar, Mediator

EXHIBIT “3”



ASHFORD + WRISTON

ROSEMARY T. FAZIO
A Law Corporation
Direct: (808) 539-0415
rfazio@awlaw.com

February 26, 2020

Daniel A. Morris, Esq.
Dept. of the Attorney General
465 S. King Street, Room 300
Honolulu, HI 96813

Re: Harbor Lease H-82-4 (Rent Renegotiation and Sublease Consents)

Dear Dan:

This letter responds to your attached email message dated February 21, 2020.


First, thank you for a fair resolution of the current matters between our respective clients. (1) DOBOR's staff will submit GKM's five pending requests for sublease consent to the BLNR with staff recommendation that BLNR consent be given with no adjustment to the Lease's rent or rent structure. (2) If the BLNR accepts the DOBOR staff recommendation, then GKM confirms its agreement to abide by the mediated rent settlement dated January 7, 2020.

Second, thank you also for advising GKM of DOBOR's intended future efforts to have the BLNR amend its current rent participation policy in connection with requests for sublease consent. Acceptance by GKM of the above resolution of the current disputed matters does not constitute acceptance of any of DOBOR's notice of intended future positions contained in the third paragraph of your email.

GKM cannot predict what DOBOR will recommend to BLNR regarding future revisions to existing BLNR policies. GKM cannot also predict how the BLNR will revise its current policies, if at all, and whether future policy changes would apply to GKM. Accordingly, DOBOR should similarly be on notice that if BLNR modifies its current rent participation policy, GKM reserves all its rights and positions in connection with future issues and BLNR policy modifications.

Very truly yours,
ASHFORD & WRISTON
A Limited Liability Law Partnership LLP

By


ROSEMARY T. FAZIO

Rosemary T. Fazio

From: Morris, Daniel A <Daniel.A.Morris@hawaii.gov>
Sent: Friday, February 21, 2020 9:25 AM
To: Rosemary T. Fazio
Cc: Wynhoff, Bill J; Underwood, Ed R; Howard, Richard T; Young, Carl G
Subject: RE: GKM/DOBOR Lease Rent

Rosemary:

This will confirm my phone conversation with you yesterday regarding the above-referenced consent-to-sublease issue. Based on DOBOR's current rent participation policy and the Board's discussion in 2017 regarding that policy, DOBOR staff will agree to submit the pending sublease consents to the Board with their recommendation that consent be given with no adjustment be made to the rent or rent structure. Of course, the Board would still retain their discretion under the Lease to withhold consent, or condition their consent on some form of rent adjustment.

In light of the foregoing, I also understand we are in agreement to abide by our mediated agreement on the periodic rent without the need for arbitration.

Finally, I want to confirm my communication to you that DOBOR staff intends to ask the Board to amend their current rent participation policy to specifically allow an adjustment to the rent (or rent structure) in connection with sublease consent. Thus, GKM should be on notice that if the Board approves an amended policy, any future sublease consents (i.e. after the five pending ones) will be considered in connection with the new rent participation policy. In addition, the State does not waive its position that: (1) rent adjustments as a condition of sublease consent are already allowed under the Lease and the current DOBOR policy (which does give DOBOR a degree of flexibility); (2) DOBOR is not obligated to treat pending or future sublease consents in the same manner as they did for prior sublease consents - or in the same manner as provided in the 2016 Settlement Agreement referenced in your letter of February 18, 2020; and (3) a rent adjustment may be made by the Board as provided for under the Lease regardless of the application of DOBOR's rent participation policy.

I hope this resolves the current issues. Thank you for the additional information about the improvements made by GKM and its predecessor. I will share that data with DOBOR staff and let you know if any additional information is necessary.

Daniel A. Morris

GENTRY'S
KONA MARINA
HONOKOHAU HARBOR

74-425 Kealahou Parkway, Kailua-Kona, Hawaii 96740 • Phone 808.329.7896 Fax 808.329.7372 • Toll Free 888.458.7896

June 11, 2020

Suzanne Case, Chairperson
and
Members of the Board of Land and Natural Resources

Re: Board of Land and Natural Resources Meeting on June 12, 2020, Item J-2 – Harbor Lease H-82-4
Mediated Settlement of Rent Reopening

Dear Chairperson Case and Board Members:

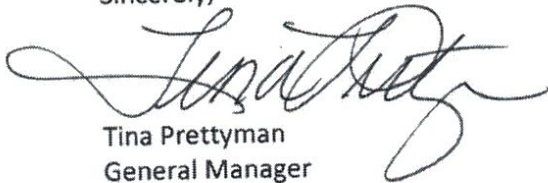
GKM, Inc. (GKM) would like to present the following testimony:

Due to COVID19 and the drastic shut down of the economy including incoming visitors to the State and the cancellations of commercial boating permits, GKM is struggling financially.

We have had long term subtenants vacate their sublease spaces and expect more to follow in the coming months. The Governor's order issued on June 10, 2020 extends the 14-day travel quarantine restriction until the end of July and without visitors it has completely decimated the charter boat industry, which GKM also depends on for a substantial portion of their revenues.

The negotiated rent of \$200,000/year represents an approximately a 67% increase in previous annual rental paid (\$120,184/year). It is imperative that the Board know that it will cause GKM, its tenants and customers, to possibly fail. At the time the rent was negotiated in January to today a lot has changed and if GKM's revenues continue to decline, GKM will need to request some form of rental relief.

Sincerely,



Tina Prettyman
General Manager

Sylva Rivera
sylvar44@gmail.com
Phone: (808) 308-8031

July 03, 2020

To: State of Hawaii
Department of Land and
Natural Resources (DLNR),
Attn: Board Members
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813

Re: Item J-4, Written and Verbal Testimony Request for SUBJECT: Consent to Sublease Under Harbor Lease No. H-82-4, GKM., Lessee, to: Hawaii Data Center, LLC, Sublease, Kealakehe, Kailua-Kona, Hawaii, Tax Map Key: (3) 7-4-008:42. Written Testimony and Request to Testify at July 10, 2020 meeting.

Aloha Board Members,

First of all, this is not intended to deny Hawaii Data Center their sublease. I am in strong opposition to any movement under Harbor Lease No. H-82-4. GKM., as a Lessee for Kealakehe, Kailua-Kona, Hawaii, Tax Map Key (3) 7-4-008:42 for the following reasons:

- 1) DLNR/DOBOR are of knowledge and information that Gentry Kona Marina ("GKM"), Formerly, Gentry Pacific Inc. ("GPI"), are in violation of Lease H-82-4 for Illegal and unpermitted Fuel Storage, Fuel Spills and Fuel Sales for numerous years. And without any Environmental Inspection having been done. **See Exhibit 1 attached hereto;**
- 2) According to Lease No. H-82-4, No Fuel Storage, Above of Under Ground was ever legally and lawfully permitted. No Legal or Lawful sales of fuel was ever permitted, and no public environmental inspection reports has ever been reported, even though the Board knew or should have known that fuel spills did occur. **Again, see Exhibit 1 attached hereto. SEE HRS Chapter 343**
- 3) In the "Lease Character of Use" There is nothing that nothing specifies "Fuel Storage and or sales.

4) GKM should not have even been allowed to extend its lease in 2006 (H-82-4), pending a full and thorough investigation, as there appears environmental crimes have been committed. **These claims are in fact supported by Public Records** found in their own (“DLNR/DOBOR”), records. **See Exhibits 2 and 3 attached hereto. See HRS Chapter 343, HRS Subsection 343-2:** [“A]ction” means any program or project to be initiated by any agency or applicant.” **Also See** [“Applicant”] means any person who, pursuant to statute, ordinance, or rule, officially requests approval for a proposed action.” **Also See:** [“Environmental assessment”] means a written evaluation to determine whether an action may have a significant effect.”

5) Further more, why did DOBOR property managers Keikiki Kipapa and Kenyatta Russell resign after reporting GKM’s lease violations for the illegal fuels sales? It appears that there was retaliation against these two individuals. The public has a right to know. **Again see Exhibit 1 attached hereto.**

6) The Public Trust Doctrine, as stated by the Hawaii Supreme Court’s Waiahole decision characterizes the State’s responsibility as that of a trustee means that the state “**must act with the diligence and care of a fiduciary in assuring that... “those bona fide trust purpose as such as traditional and customary Hawaiian rights, wildlife maintenance of ecological balance and scenic, beauty, and the preservation and enhancement of the water for various uses in the public interest.”** .

The Hawaii State Constitution Article XI, Section 1 States: “**For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii’s natural beauty and all natural resources, including land, water, air, minerals and energy sources.**”

I would also like to remind the Board at this time of 18 U.S.C. Section 242, U.S.C. 42 Section 1985. There appears to be criminal violations by GKM and certain Public Officials. The General Public and our natural resources deserves protections that should come before big money interests.

Therefore, we, the people of Hawai’i demand a full and thorough investigation. Thank you for your time and attention in these matters.

Respectfully submitted,

Sylva Rivera

cc: fls.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 15, 2012

FILE COPY

JUL 08 2012

OFFICE OF ENVIRONMENTAL QUALITY CONTROL

12 JUN 15 PM 2:27

RECEIVED

Gary L. Hooser, Director
Office of Environmental Quality Control
235 South Street, Suite 702
Honolulu, Hawaii 96813


Dear Director Hooser,

Finding of No Significant Impact for Boat Park Expansion at
Honokohau Harbor, on State Land, North Kona, Hawaii, TMK: (3) 7-4-08:37

The Department of Land and Natural Resources, and its Division of Boating and Ocean Recreation has reviewed the Final Environmental Assessment during the 30-day public comment period which ended on January 21, 2011, and has determined that this project will not have significant impacts and has issued a Finding of No Significant Impact (FONSI). In addition, by way of its regular meeting on June 8, 2012, under Submittal J-1, the Board of Land and Natural Resources approved the Department's issuance of the FONSI. Please publish notice in the next available OEQC Environmental Notice.

Enclosed is a completed OEQC Publication Form, one (1) copy of the document in PDF format on CD; and one (1) hard copy of the Final EA. Please call the Division of Boating and Ocean Recreation, Property Manager William Andrews at (808) 587-1978 should you have any questions.

Sincerely,


William J. Aila, Jr., Chairperson
For Board of Land and Natural Resources

Attachment

Publication Form
The Environmental Notice
Office of Environmental Quality Control

Name of Project: Boat Storage Expansion at Honokohau Harbor
Applicable Law: Chapter 343, Hawai'i Revised Statutes
Type of Document: Final Environmental Assessment
Island: Hawai'i
District: North Kona
TMK: (3) 7-4-08:37 (previously lots 21-A, 21-B, 22)
Permits Required: County of Hawaii grubbing permit, SMA Minor Permit, if necessary, National Pollutant Discharge Elimination System (NPDES) Permit, if necessary

Name of Applicant or Proposing Agency: GKM Inc. dba Gentry's Kona Marina
Address 74-425 Kealakehe Pkwy.
City, State, Zip Kailua Kona, HI 96740
Contact and Phone Tina Prettyman, 808-329-7896

Approving Agency: State of Hawai'i, DLNR, Division of Boating and Ocean Recreation
Address 333 Queen St., Room 300
City, State, Zip Honolulu, HI 96813
Contact and Phone William R. Andrews, 808-587-1966

Project Summary: Expand current boat park facility from six to nine acres for additional boat park storage and employee parking. Six of the nine acres are already being utilized as a boat storage facility. An Environmental Assessment for the original six acres was completed in January, 1994, with a negative declaration filed. The additional three acres for expansion consists of grubbing and leveling of open lava fields. No known native species of wildlife, flora or fauna exists. Also there are no known cultural or archeological sites. There would be some dust and noise during the grubbing process, but no long term impacts or cumulative impacts are anticipated.

FINAL ENVIRONMENTAL ASSESSMENT

For Proposed
Boat Park Expansion
at Honokohau Harbor, Hawaii

Prepared for:

State of Hawai'i
Department of Land and Natural Resources
Division of Boating and Ocean Recreation

February, 2012

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SUMMARY

Project Name:	Proposed Boat Park Expansion at Honokohau Harbor, North Kona, Hawai'i
Type of Document:	Final Environmental Assessment
Legal Authority:	Chapter 343, Hawai'i Revised Statutes
Agency Determination:	Finding of No Significant Impact
Applicable Environmental Assessment Review "Trigger":	Use of State Lands
Location:	TMK: (3) 7-4-08:37 (previously lots 21-A, 21-B, 22)
Applicant:	GKM Inc. dba Gentry's Kona Marina 74-425 Kealakehe Pkwy. Kailua Kona, HI 96740 Contact: Tina Prettyman, General Manager Phone: 808-329-7896
Approving Agency:	State of Hawai'i, Department of Land and Natural Resources, Division of Boating and Ocean Recreation 333 Queen Street, Room 300 Honolulu, Hawai'i 96813 Contact: William R. Andrews, Property Manager Phone 808-587-1966
Project Summary:	Expand current boat park facility from six to nine acres for additional boat park storage and employee parking.

PROJECT OVERVIEW

Project Location, Existing Use, and Land Ownership

The property is located at Honokohau Small Boat Harbor on the west coast of Hawaii, approximately three miles south of the Kona International Airport. Six of the nine acres are already being used for dry land storage of vessels and an Environmental Assessment was completed on the original six acre parcel (originally issued under Revocable Permit B-93-01) in January, 1994, with a negative declaration filed, and the Final Environmental Assessment was published in the OEQC Bulletin. Land Ownership is the State of Hawaii, Department of Land and Natural Resources.

Proposed Action

To clear, level and add gravel to the additional three acres to the east of the existing boat park facility to expand boat storage and add an employee parking area. There would also be some perimeter fencing constructed. See Exhibit A.

Project Need

There is a very long wait list for wet slips with some waiting years before having an opportunity to moor a vessel within the harbor. As a result there is a high demand for dry land vessel storage space at Honokohau Small Boat Harbor.

Agencies Consulted

1. Department of Business, Economic Development and Tourism
2. DBEDT - Office of Planning
3. Department of Hawaiian Home Lands
4. Department of Health, Clean Water Branch
5. Department of Land and Natural Resources, Land Division
6. Department of Land and Natural Resources, Division of Boating & Ocean Recreation (approving agency)
7. DLNR, Historic Preservation Division
8. DLNR, Historic Preservation Division, Hawai'i Island Office
9. Department of Transportation
10. Office of Hawaiian Affairs
11. Department of Environmental Management, County of Hawaii
12. Planning Department, County of Hawaii
13. Hawaii Fishing and Boating Association
14. State Representative, Denny Coffman, District 6
15. US National Park Service

Appendix A has been added to the Final EA and contains written comments received by GKM, Inc. and any responses to these comments. Some of the input received in the comments were incorporated into the Final EA and these additions or modifications are indicated by double underlines, as in this paragraph.

Project Timeframe and Costs

Project costs are estimated at \$50,000 and the proposed project should not take more than 90 days to complete the minimal grading and leveling.

PROJECT CHARACTERISTICS

General

The proposed project will be done in accordance with the terms and conditions approved by the Board of Land and Natural Resources in their July 8, 2010 meeting, Item J-1, and any other applicable State or County permitting requirements.

Technical

Six of the nine acres are already utilized as a boat storage facility. This project proposes to expand the existing facility by minimally grading and leveling an additional three acres to the east of the existing facility for additional boat storage and employee parking. Ingress and egress will be through existing entrances. Some additional perimeter fencing will be installed for security.

Social and Economic

There has been a high demand for boat storage facilities. There are no new harbors or wet slips being planned in the near future in the West Hawaii area. Some commercial operators and fishermen find economic benefit in having their vessels parked within close proximity to the launching ramps and other marine services within Honokohau Small Boat Harbor. Recreational ramp users also do not want to tow their vessels uphill to their homes along very congested roadways.

There is also a need to provide dry storage for larger non-trailerable vessels. Vessels using this service may store their vessel seasonally, in between long oceanic passages, paused in the middle of renovation or just find it necessary to store their vessel for a period of time. Storing a vessel on land for a period of time usually lessens maintenance costs.

Environmental

The area of the proposed improvements consists of dry land and will require minimal excavation to make it level. There will be an increase in noise and some dust generated by the construction; however they are temporary and lasting only for the duration of the construction. These increases are not expected to permanently lower air or water quality in the surrounding area. Also, the proposed project will not endanger any marine or other wildlife in the area.

SUMMARY OF AFFECTED ENVIRONMENT

Soil and Climate

The proposed site according to the Web Soil Survey, United States Department of Agricultural, Natural Resources Conservation Service, the landform is Pahoeheo lava field beds with a drainage class of Excessively Drained. See Appendix A for Custom Soil Resource Report.

Climate is mild year-round with very low annual rain fall.

Flood and Tsunami Hazards

The property according to the Flood Insurance Rate Map (attached as Appendix A). Federal Emergency Management Agency, is located within Zone X (areas outside the 500 year flood plain).

Archeological and Cultural

There are no known archeological or cultural sites on the property. Field inspection report by Rechtman Consulting, LLC attached in Appendix A.

Flora and Fauna

Land is mostly covered in fountain grass (pennisetum setaceum) and other invasive plant species. No endangered species or flora or fauna are known to exist in the project site. The Division of Forestry and Wildlife of the Hawaii Department of Land and Natural Resources has designated fountain grass (pennisetum setaceum) as one of Hawaii's Most Invasive Horticultural Plants. Botanical Survey performed by Geometrician Associates, LLC cited "that no listed or proposed threatened or endangered species were found." This survey is attached in Appendix A.

SUMMARY OF MAJOR IMPACTS

Short Term

There would be some dust and noise during the construction.

Long Term

There would be no long-term impacts.

ALTERNATIVES CONSIDERED

A "reduced scope of work" alternative and the "no-action" alternative were considered but deem unacceptable. Either of these alternatives would result in the continued existence of less efficient boating facilities.

PROPOSED MITIGATION MEASURES

Provisions will be made in the project specifications to control and minimize the temporary adverse effects as follows:

Prior to construction:

Trap any feral cats and mongoose in the area to prevent their relocation to the adjacent Federal park.

During construction:

Utilize water trucks and any other measures required by State our County laws, to control dust in the area.

ANTICIPATED DETERMINATION

Since no major impacts are anticipated, costly detailed studies are considered inappropriate. Consequently, an Environmental Impact Statement is not required.

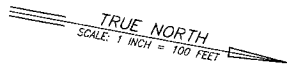
FINDINGS AND REASONS SUPPORTING ANTICIPATED DETERMINATION

Evaluation of the effects of the proposed project on the environment indicates that there will be no significant adverse effects on the environment. The project will not:

1. Affect any rare, threatened, or endangered species or animals, plants or habitats. No endangered species or flora or fauna are known to exist in the project site.
2. Involve irrevocable commitment to loss or destruction of any natural or cultural resources, except for the labor and materials related to the expansion of the project.
3. Permanently curtail the beneficial uses of the environment.
4. Conflict with the State's long-term environmental policy goals or guidelines.
5. Permanently degrade the environmental quality.
6. Cause the displacement of any persons;
7. Generate controversy.

For the reasons above, it is anticipated that the proposed project will not have any significant effect in the context of Chapter 343, Hawaii Revised Statutes and Section 11-200-12 of the State Administrative Rules.

Portion of R. P.	L. C.	Aw.	Ap.	9	to W. P.	Teleinoku
6855,						
		9971,				



- Denotes Vehicular Access Permitted.

A horizontal scale bar labeled "SCALE IN FEET" at the bottom. The scale has major markings at 0, 50, 100, 200, and 300 feet. The bar is divided into segments corresponding to these measurements.

*Being a Portion of Government Land of Kealahou
At Kealahou, North Kona
Island and County of Hawaii, State of Hawaii*

Prepared By:

WES THOMAS ASSOCIATES
 -- Land Surveyors --
 75-5749 Kalawa Street
 Kailua-Kono, Hawaii 96740-1817
 TEL (808) 329-2353
 FAX (808) 329-5334 EMAIL surveys@wtahawaii.com

PROJECT NO.: 157272
DATE: OCTOBER 20, 2010
FIELD BOOK NO.:
TAX MAP KEY: 7-4-008. POR 00

This work was prepared by me or under my direct supervision.

Chaebe Arnold
CHRISTAL THOMAS YAMASAKI
Licensed Professional Land Surveyor
State of Hawaii Certificate Number LS-4331
Expiration Date: April 2012

This work was prepared by me or under my direct supervision.

October 20, 2010
 u:\15500-15999\157272\990\157272a.doc

GKM Inc. dba Gentry's Kona Marina
Final Environmental Assessment

APPENDIX A

William P. Kenoi
Mayor

William T. Takaba
Managing Director



Frank J. DeMarco, P.E.
Director

Ivan M. Torigoe
Deputy Director

County of Hawai'i
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
25 Aupuni Street • Hilo, Hawai'i 96720
(808) 961-8083 • Fax (808) 961-8086
http://co.hawaii.hi.us/directory/dir_envmng.htm

January 3, 2011

GKM Inc. dba Gentry's Kona Marina
74-425 Kealakehe Parkway
Kailua-Kona, HI 96740

Attention: Ms. Tina Prettyman
General Manager

RE: Boat Storage Expansion at Honokohau Harbor
Expand current boat park facility from six to nine acres for additional boat park storage and
employee parking
North Kona, HI
TMK: 7-4-08:37 (previously lots 21-A, 21-B and 22)

Dear Ms. Prettyman,

We have no comments to offer on the subject project.

Thank you for allowing us to review and comment on this project.

Sincerely,

Frank DeMarco

Frank J. DeMarco, P.E.
DIRECTOR

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

January 11, 2011

Ms. Tina Prettyman, General Manager
GKM Inc. dba Gentry's Kona Marina
74-425 Kealakehe Parkway
Kailua Kona, Hawaii 96740

Dear Ms. Prettyman:

SUBJECT: Review of Draft Environmental Assessment
Project: Boat Storage Expansion at Honokōhau Harbor
TMK: (3) 7-4-008:003; North Kona, Hawai'i

Thank you for your letter received December 23, 2010 requesting comments from this office regarding the Draft Environmental Assessment (DEA) for the proposed expansion of the current boat park facility from six to nine acres for additional boat park storage and employee parking.

The project site is zoned Open. The project site is situated within the State Land Use Urban District. In addition, according to the County of Hawai'i General Plan 2005 (amended December 2006), the subject properties are designated as Open by the Land Use Pattern Allocation Guide (LUPAG).

Please note that Section 25-5-167 of the Hawai'i County Code (Zoning) states that Plan approval shall be required for all new structures and additions to existing structures in the Open district.

The subject parcel is also located entirely within the Special Management Area (SMA). According to Hawai'i Revised Statutes (HRS) Chapter 205A-22 and Planning Commission (PC) Rule 9-4(e) (1) (A) and (B), "development" includes *Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste and Grading, removing, dredging, mining, or extraction of any materials*. Therefore, the proposed project requires either a Special Management Area Minor Permit or a Special Management Area (Major) Use Permit.

Ms. Tina Prettyman, General Manager
GKM Inc. dba Gentry's Kona Marina
January 11, 2011
Page 2

We have no further comments to offer, at this time. However, please keep us informed and provide our department with a copy of the Final Environmental Assessment for our records.

If you have any further questions or if you need further assistance, please feel free to contact Bethany Morrison of this office at 961-8138.

Sincerely,


for BJ LEITHEAD TODD
Planning Director

BJM:cs

P:\wpwin60\Bethany\EA-EIS Review\draftea Gentrys Kona Marina boat storage expansion.doc



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

HRD10/5465

January 6, 2011

William R. Andrews
Department of Land and Natural Resources-Division of Boating and Ocean Recreation
333 Queen Street, Room 300
Honolulu, Hawaii'i 96813

Re: Draft Environmental Assessment
Gentry's Kona Marina, Inc. Boat Park Facility Expansion
Honokohau, North Kona, Island of Hawai'i

Aloha e William Andrews,

The Office of Hawaiian Affairs (OHA) is in receipt of a December 15, 2010 request for comments on a draft environmental assessment (DEA) to support the proposed expansion of the existing Gentry's Kona Marina, Inc. Boat Park Facility (facility) at Honokohau Harbor. Based on the information contained within the DEA, the facility will be expanded from six to nine acres in size. The additional three acre expansion area will be leveled (a County of Hawai'i grading permit will be required) and graveled.

OHA does not concur with the "finding of no significant impact" within the DEA at this time as we feel the conclusion on page 4 of the DEA that "*there are no known archaeological or cultural sites on the property*" needs to be substantiated. While OHA recognizes that the majority of the lands within the Honokohau Boat Harbor (harbor) have been intensely disturbed during initial harbor development and subsequent construction of harbor facilities, certain portions of land have not been subject to previous ground disturbance. Cultural sites are present within the harbor as evidenced by a small walled preserve (containing petroglyphs) in the southwest portion of the harbor. Thus, OHA requests an appropriate assessment of the three acre expansion area to determine the presence or absence of cultural sites be completed before the DEA is accepted and approved.

Thank you for the opportunity to comment. Should you have any questions or concerns, please contact Keola Lindsey at 594-0244 or keolal@oha.org.

'O wau iho nō me ka 'oia'i'o,

A handwritten signature in black ink, appearing to read "Clyde W. Nāmu'o".

Clyde W. Nāmu'o
Chief Executive Officer

C: OHA- West Hawai'i Community Outreach Coordinator
Gentry's Kona Marina, Inc. (74-425 Kealakehe Parkway, Kailua-Kona Hawai'i 96740)



January 17, 2011

Tina Prettyman
General Manager
GKM Inc. dba Gentry's Kona Marina
74-425 Kealakehe Pkwy.
Kailua Kona, HI 96740

Re: Draft Environmental Assessment
Boat Storage Expansion at Honokohau Harbor
TMK: (3) 7-4-008:003: North Kona, Hawai'i

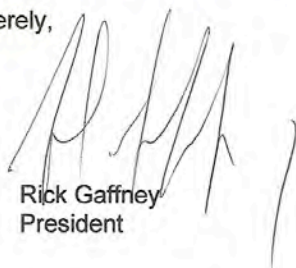
Dear Ms. Prettyman:

The Board of Directors of the Hawaii Fishing & Boating Association met and discussed the Draft Environmental Assessment for your proposed boat storage expansion dated, December 15, 2010.

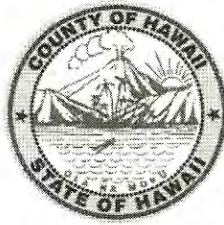
We are in support of your plans to expand the existing boat storage facility from six to nine acres. We know that many of our members could benefit from the availability of additional storage in close proximity to Honokohau's launch ramps. We know that in past years many boat owners have had to waitlist for storage space. It is inconvenient, expensive and sometimes dangerous to navigate a boat trailer on the steep, crowded roads in Kona.

We have no further comments on your project at this time and look forward to the boat park expansion at Honokohau Small Boat Harbor. It's been long overdue!

Sincerely,


Rick Gaffney
President

K. Angel Pilago
Councilmember
District 8 - North Kona



Phone No.: (808) 327-3642
Fax No.: (808) 329-4786
E-Mail: apilago@co.hawaii.hi.us

HAWAI'I COUNTY COUNCIL

County of Hawai'i
Kailua Trade Center
75-5706 Hanama Place, Suite 109
Kailua-Kona, Hawai'i 96740

January 20, 2011

GKM Inc. dba Gentry's Kona Marina
74-4425 Kealakehe Parkway
Kailua Kona HI 96740

RE: BOAT STORAGE EXPANSION AT HONOKOHAU HARBOR

To Whom It May Concern,

As Councilmember representing District 8, North Kona, I wholeheartedly support the expansion of the boat storage at Honokohau Harbor.

Gentry's Kona Marina has served our community for many years by providing storage and parking for commercial and recreational boats. This service is especially important to our fishing families to sustain and feed their families in times of economic hardships.

Expanding the current boat park facility from six to nine acres will increase the opportunities for our residents to store their boats and is sorely needed at this time.

I urge a favorable recommendation for this project.

Thank you,

A handwritten signature in cursive script that reads "K. Angel Pilago".

K. Angel Pilago



PACIFIC BOATS & YACHTS

74-425 Kealahou Parkway #3B
Kailua Kona, HI 96740
Phone 808.329.4066 • Fax 808.329.4824
www.pacificboatsales.com • pby@pacificboatsales.com

January 18, 2011

Tina Prettyman
GKM Inc. dba Gentry's Kona Marina
74-425 Kealahou Pkwy.
Kailua Kona, HI 96740

Re: Draft Environmental Assessment
Boat Storage Expansion at Honokohau Harbor
TMK: (3) 7-4-008:003: North Kona, Hawai'i

Dear Tina:

Thanks for sending me the Draft Environmental Assessment for Gentry's proposed boat dry-storage area expansion. In my opinion it is long over due and I'm pleased that progress is being made toward finally realizing the expansion of your storage area for boats.

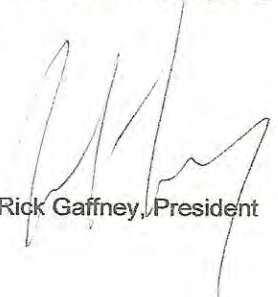
I am in full support of the plans to expand the existing boat storage facility from six to nine acres. Many of our clients already utilize your facilities and local, national and international boaters could certainly benefit from the close availability of additional boat storage, close to Honokohau's launch ramps and your dry-dock.

The Draft EA appears to be a complete assessment of the impacts of this expansion, and I hope that you are able to get quick approval of the EA and permission to proceed, without any further delay.

This expansion has been a long time coming, is definitely needed by the boating community, will be good for local-area businesses, will bring additional revenues into State coffers and is an appropriate use of State harbor lands adjacent to the Honokohau Small Boat Harbor.

Let me know if there is anything more I can do to support this boat storage expansion.

Aloha,



Rick Gaffney, President



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 20, 2011

GKM Inc. dba Gentry's Kona Marina
74-425 Kealakehe Parkway
Kailua-Kona, Hawaii 96740

Attention: Ms. Tina Prettyman, General Manager

Ladies and Gentlemen:

Subject: Draft Environmental Assessment for Boat Storage Expansion at
Honokohau Harbor

Thank you for the opportunity to review and comment on the subject matter. The Department of Land and Natural Resources' (DLNR), Land Division distributed or made available a copy of your report pertaining to the subject matter to DLNR Divisions for their review and comment.

Other than the comments from Engineering Division, Division of State Parks, Commission on Water Resource Management, Division of Boating & Ocean Recreation, Land Division-Hawaii District, the Department of Land and Natural Resources has no other comments to offer on the subject matter. Should you have any questions, please feel free to call our office at 587-0414. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell Y. Tsuji".

Russell Y. Tsuji
Administrator



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809
Phone: (808) 587-0433
Fax: (808) 587-0455

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LAND DIVISION

2011 JAN 11 A 10:29

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

December 27, 2010

MEMORANDUM

TO:

DLNR Agencies:

- ☒ Div. of Aquatic Resources
- ☒ Div. of Boating & Ocean Recreation
- ☒ Engineering Division
- ☒ Div. of Forestry & Wildlife
- ☒ Div. of State Parks
- ☒ Commission on Water Resource Management
- ☐ Office of Conservation & Coastal Lands
- ☒ Land Division - Hawaii District
- ☒ Historic Preservation

FROM: Charlene Unoki, Assistant Administrator

SUBJECT: Draft Environmental Assessment for Boat Storage Expansion at Honokohau Harbor

LOCATION: Island of Hawaii

APPLICANT: GKM Inc. dba Gentry's Kona Marina

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by January 19, 2011.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

- () We have no objections.
- () We have no comments.
- (X) Comments are attached.

Signed:

Date: 1/10/11

**DEPARTMENT OF LAND AND NATURAL RESOURCES
ENGINEERING DIVISION**

LD/CharleneUnoki
REF.:DEAHonokohauBoatStorageExpansion
Hawaii.499

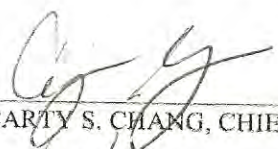
COMMENTS

- (X) We confirm that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Zone X. The Flood Insurance Program does not have any regulations for developments within Zone X.
- () Please take note that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Zone ____.
- () Please note that the correct Flood Zone Designation for the project site according to the Flood Insurance Rate Map (FIRM) is ____.
- () Please note that the project must comply with the rules and regulations of the National Flood Insurance Program (NFIP) presented in Title 44 of the Code of Federal Regulations (44CFR), whenever development within a Special Flood Hazard Area is undertaken. If there are any questions, please contact the State NFIP Coordinator, Ms. Carol Tyau-Beam, of the Department of Land and Natural Resources, Engineering Division at (808) 587-0267.

Please be advised that 44CFR indicates the minimum standards set forth by the NFIP. Your Community's local flood ordinance may prove to be more restrictive and thus take precedence over the minimum NFIP standards. If there are questions regarding the local flood ordinances, please contact the applicable County NFIP Coordinators below:

- () Mr. Robert Sumitomo at (808) 768-8097 or Mr. Mario Siu Li at (808) 768-8098 of the City and County of Honolulu, Department of Planning and Permitting..
- () Mr. Carter Romero at (808) 961-8943 of the County of Hawaii, Department of Public Works.
- () Mr. Francis Cerizo at (808) 270-7771 of the County of Maui, Department of Planning.
- () Ms. Wynne Ushigome at (808) 241-4890 of the County of Kauai, Department of Public Works.
- () The applicant should include water demands and infrastructure required to meet project needs. Please note that projects within State lands requiring water service from the Honolulu Board of Water Supply system will be required to pay a resource development charge, in addition to Water Facilities Charges for transmission and daily storage.
- () The applicant should provide the water demands and calculations to the Engineering Division so it can be included in the State Water Projects Plan Update
- () Additional Comments: _____
- () Other: _____

Should you have any questions, please call Ms. Suzie S. Agraan of the Planning Branch at 587-0258.

Signed: 
CARTY S. CHANG, CHIEF ENGINEER

Date: 1/10/11



54534

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



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NATURAL RESOURCES
STATE OF HAWAII

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DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809
Phone: (808) 587-0433
Fax: (808) 587-0455

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STATE PARKS DIV.

DEC 28 10:30

December 27, 2010

MEMORANDUM

TO:

DLNR Agencies:

- ☒ Div. of Aquatic Resources
- ☒ Div. of Boating & Ocean Recreation
- ☒ Engineering Division
- ☒ Div. of Forestry & Wildlife
- ☒ Div. of State Parks
- ☒ Commission on Water Resource Management
- ☐ Office of Conservation & Coastal Lands
- ☒ Land Division -Hawaii District
- ☒ Historic Preservation

FROM:

Charlene Unoki, Assistant Administrator

SUBJECT:

Draft Environmental Assessment for Boat Storage Expansion at Honokohau Harbor

LOCATION: Island of Hawaii

APPLICANT: GKM Inc. dba Gentry's Kona Marina

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by January 19, 2011.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

- ☒ We have no objections.
- ☐ We have no comments.
- ☐ Comments are attached.

Signed:

Date: 12/28/10



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809
Phone: (808) 587-0433
Fax: (808) 587-0455

December 27, 2010

MEMORANDUM

TO:

DLNR Agencies:

- ☒ Div. of Aquatic Resources
- ☒ Div. of Boating & Ocean Recreation
- ☒ Engineering Division
- ☒ Div. of Forestry & Wildlife
- ☒ Div. of State Parks
- ☒ Commission on Water Resource Management
- ☒ Office of Conservation & Coastal Lands
- ☒ Land Division - Hawaii District
- ☒ Historic Preservation

FROM:

Charlene Unoki, Assistant Administrator

SUBJECT:

Draft Environmental Assessment for Boat Storage Expansion at Honokohau Harbor

LOCATION: Island of Hawaii

APPLICANT: GKM Inc. dba Gentry's Kona Marina

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by January 19, 2011.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

- ☐ We have no objections.
- ☒ We have no comments.
- ☐ Comments are attached.

Signed:

Date:

[Signature]
1.4.11



RECEIVED
LAND DIVISION
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
2010 DEC 29 P 2:28
POST OFFICE BOX 621
HONOLULU, HAWAII 96809
Phone: (808) 587-0433
Fax: (808) 587-0455
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII
December 27, 2010

2010 DEC 28 PM 1:31

MEMORANDUM

TO:

DLNR Agencies:

- ☒ Div. of Aquatic Resources
☒ Div. of Boating & Ocean Recreation
☒ Engineering Division
☒ Div. of Forestry & Wildlife
☒ Div. of State Parks
☒ Commission on Water Resource Management
☐ Office of Conservation & Coastal Lands
☒ Land Division - Hawaii District
☒ Historic Preservation

FROM:

Charlene Unoki, Assistant Administrator

SUBJECT:

Draft Environmental Assessment for Boat Storage Expansion at Honokohau Harbor

LOCATION: Island of Hawaii

APPLICANT: GKM Inc. dba Gentry's Kona Marina

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by January 19, 2011.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

- ☒ We have no objections.
☐ We have no comments.
☒ Comments are attached.

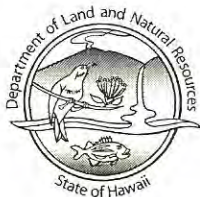
TRK IS incorrect

Signed:

Date:

RKC Prong
12/28/10

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DOC ID:	7264.1



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LAND DIVISION
2009 DEC 27 11 00
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
POST OFFICE BOX 621
HONOLULU, HAWAII 96809
Phone: (808) 587-0433
Fax: (808) 587-0455

December 27, 2010

MEMORANDUM

TO:

DLNR Agencies:

- ☒ Div. of Aquatic Resources
- ☒ Div. of Boating & Ocean Recreation
- ☒ Engineering Division
- ☒ Div. of Forestry & Wildlife
- ☒ Div. of State Parks
- ☒ Commission on Water Resource Management
- ☐ Office of Conservation & Coastal Lands
- ☒ Land Division -Hawaii District
- ☒ Historic Preservation

FROM: Charlene Unoki, Assistant Administrator

SUBJECT: Draft Environmental Assessment for Boat Storage Expansion at Honokohau Harbor

LOCATION: Island of Hawaii

APPLICANT: GKM Inc. dba Gentry's Kona Marina

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by January 19, 2011.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

- ☒ We have no objections.
- ☐ We have no comments.
- ☐ Comments are attached.

Signed:

Date: 12/28/10

DEC28'10PM12:28B0R DIV



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 27, 2011

GKM Inc. dba Gentry's Kona Marina
74-425 Kealakehe Parkway
Kailua-Kona, Hawaii 96740

Attention: Ms. Tina Prettyman, General Manager

Ladies and Gentlemen:

Subject: Draft Environmental Assessment for Boat Storage Expansion at
Honokohau Harbor

Please pardon our lateness. Thank you for the opportunity to review and comment on the subject matter. The Department of Land and Natural Resources' (DLNR), Land Division distributed or made available a copy of your report pertaining to the subject matter to Division of Aquatic Resources for their review and comment.

The Department of Land and Natural Resources has no other comments to offer on the subject matter. Should you have any questions, please feel free to call our office at 587-0414. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Charlene Unoki".

Charlene Unoki
Assistant Administrator



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809
Phone: (808) 587-0433
Fax: (808) 587-0455

December 27, 2010

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2011 JAN 21 P 3:02

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

AMV
WV
DAR0578

MEMORANDUM

TO:

DLNR Agencies:

- ☒ Div. of Aquatic Resources
- ☒ Div. of Boating & Ocean Recreation
- ☒ Engineering Division
- ☒ Div. of Forestry & Wildlife
- ☒ Div. of State Parks
- ☒ Commission on Water Resource Management
- ☐ Office of Conservation & Coastal Lands
- ☒ Land Division -Hawaii District
- ☒ Historic Preservation



FROM: Charlene Unoki, Assistant Administrator
SUBJECT: Draft Environmental Assessment for Boat Storage Expansion at Honokohau Harbor
LOCATION: Island of Hawaii
APPLICANT: GKM Inc. dba Gentry's Kona Marina

Transmitted for your review and comment on the above referenced document. We would appreciate your comments on this document. Please submit any comments by January 19, 2011.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at 587-0433. Thank you.

Attachments

- ☒ We have no objections. WJU
- ☐ We have no comments.
- ☐ Comments are attached.

Signed:

Date: 1/5/11



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

01028PSW.11

January 31, 2011

Ms. Tina Prettyman
General Manager
GKM Inc. dba Gentry's Kona Marina
74-425 Kealakehe Parkway
Kailua Kona, HI 96740

Dear Ms. Prettyman:

**SUBJECT: Draft Environmental Assessment
Boat Storage Expansion at Honokohau Harbor
North Kona, Island of Hawaii, Hawaii
TMK: (3) 7-4-008:037 (previously lots 21-A, 21-B & 22)**

The Department of Health, Clean Water Branch (CWB), has reviewed the document, received December 27, 2010, regarding the subject project and offers these comments. Please note that our review is based solely on the document for the subject project and its compliance with Hawaii Administrative Rules (HAR), Chapters 11-54 and 11-55. You may be responsible for fulfilling additional requirements related to our program. We recommend that you also read our standard comments on our website at

<http://hawaii.gov/health/environmental/env-planning/landuse/CWB-standardcomment.pdf>

1. Any project and its potential impacts to State waters must meet the following criteria:
 - a. Anti-degradation policy (HAR, Section 11-54-1.1), which requires that the existing uses and the level of water quality necessary to protect the existing uses of the receiving State water be maintained and protected.
 - b. Designated uses (HAR, Section 11-54-3), as determined by the classification of the receiving State waters.
 - c. Water quality criteria (HAR, Sections 11-54-4 through 11-54-8).
2. You are required to obtain a National Pollutant Discharge Elimination System (NPDES) permit for discharges of wastewater, including storm water runoff, into State surface waters (HAR, Chapter 11-55). For the following types of discharges into Class A or Class 2 State waters, you may apply for NPDES general permit coverage by submitting a Notice of Intent (NOI) form:

- a. Storm water associated with construction activities, including clearing, grading, and excavation, that result in the disturbance of equal to or greater than one (1) acre of total land area. The total land area includes a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under a larger common plan of development or sale. This includes areas used for a construction base yard and the storage of any construction related equipment, material, and waste products. An NPDES permit is required before the start of the construction activities.
- b. Hydrotesting water,
- c. Construction dewatering effluent.

You must submit a separate NOI form for each type of discharge at least 30 calendar days prior to the start of the discharge activity, except when applying for coverage for discharges of storm water associated with construction activity. For this type of discharge, the NOI forms may be picked up at our office or downloaded from our website at <http://hawaii.gov/health/environmental/water/cleanwater/forms/genl-index.html>

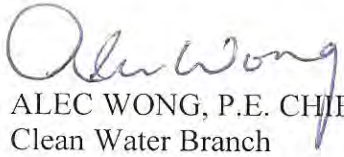
3. For other types of wastewater not listed in Item No. 2 above or wastewater discharging into Class 2 or Class AA waters, an NPDES individual permit will need to be obtained. An application for an NPDES individual permit must be submitted at least 180 calendar days before the commencement of the discharge. The NPDES application forms may be picked up at our office or downloaded from our website at <http://hawaii.gov/health/environmental/water/cleanwater/forms/environmental/water/cleanwater/forms/indiv-index.html>
4. Please call the Army corps of Engineers at (808) 438-9258 to determine which Department of the Army (DA) permit(s) shall be required for the subject project. Permits may be required for work performed in, over, and under navigable waters of the United States. Projects requiring a DA permit also require a Section 401 Water Quality Certification (WQC) from our office.
5. Please note that all discharges related to the project construction or operation activities, whether or not NPDES permit coverage and/or 401 WQC are required, must comply with the State's Water Quality Standards. Noncompliance with water quality requirements contained in HAR, Chapter 11-54, and/or permitting requirements, specified in HAR, Chapter 11-55, may be subject to penalties of \$25,000 per day per violation.

Ms. Tina Prettyman
January 31, 2011
Page 3

01028PSW.11

If you have any questions, please visit our website at
<http://hawaii.gov/health/environmental/water/cleanwater/index.html>, or contact the Engineering
Section, CWB, at 586-4309.

Sincerely,


ALEC WONG, P.E. CHIEF
Clean Water Branch

SW:ml



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

GLENN M. OKIMOTO
INTERIM DIRECTOR

Deputy Directors
Ford N. Fuchigami
Jan S. Gouveia
Randy Grune
Jadine Urasaki

IN REPLY REFER TO:

STP 8.0337

February 2, 2011

Ms. Tina Prettyman, General Manager
GKM Inc., dba Gentry's Kona Marina
74-425 Kealakehe Parkway
Kailua-Kona, Hawaii 96740

Dear Ms. Prettyman:

Subject: Honokohau Harbor Boat Storage Expansion
Draft Environmental Assessment (DEA)

Thank you for requesting the State Department of Transportation's (DOT) review of the subject project. DOT understands your firm, as the project applicant, is proposing to expand the existing boat park facility from six to nine acres for additional boat park storage and employee parking. The expansion of the additional three acres will consist of some minor grading and leveling of open lava fields. Access to the subject project is from Kealakehe Parkway.

DOT offers the following comments:

1. The activities associated with the subject expansion project are not anticipated to generate significant numbers of additional vehicle trips that could have an adverse impact on State highways facilities.
2. The transport of oversized or overweight marine equipment or loads on State highways, however, will need to be handled with the necessary proper precautions, safety measures and the applicable highway use permit.
3. Clarification and consultation with the DOT Highways Division Planning Branch and Hawaii District Office is needed on two matters:
 - a. The DEA included a map showing the lease area for boat/trailer storage facility and employee parking. The map depicts the existing edge of pavement connection outside of the vehicle access permitted symbols on the DOT Highways Division right-of-way map. This matter should be discussed with the Department of Land and Natural Resources (DLNR) before consulting with DOT Highways Division.

Ms. Tina Prettyman, General Manager
Page 2
February 2, 2011

STP 8.0337

- b. DOT has no record of a permit to perform work upon state highways for the existing paved connection at Kealahou Parkway. DOT recommends that the connection be constructed to current standards.

DOT appreciates the opportunity to provide comments on the subject project. If there are any questions, including the need to meet with DOT Highways Division staff, please contact Mr. David Shimokawa of the DOT Statewide Transportation Planning Office at telephone number (808) 831-7976.

Very truly yours,



GLENN M. OKIMOTO, Ph.D.
Interim Director of Transportation

- c: William R. Andrews, Department of Land and Natural Resources, Division of Boating and Ocean Recreation



United States Department of the Interior

NATIONAL PARK SERVICE
Kaloko-Honokohau National Historical Park
73-4786 Kanalani St., Suite 14
Kailua-Kona, HI 96740

IN REPLY REFER TO:
L7621

January 21, 2010

Ms. Tina Prettyman, General Manager
GKM Inc. dba Gentry's Kona Marina
74-425 Kealakehe Pkwy.
Kailua Kona, HI 96740

RE: NPS Comments on the Draft Environmental Assessment for Proposed Boat Harbor Park Expansion at Honokohau Harbor, Hawaii.

Dear Ms. Prettyman:

Thank you for providing the National Park Service (NPS) with the opportunity to review the *Draft Environmental Assessment for Proposed Boat Park Expansion at Honokohau Harbor, Hawaii, December 2010* (Draft EA). The proposed project would expand the existing boat park facility from six to nine acres by clearing, grading, leveling and adding gravel to three acres to the east of the existing boat storage facility and would add perimeter fencing. The project area was not clearly marked on the map provided with the Draft EA. However we assume that the proposed project area for the boat park expansion is bounded on the line labeled "edge of grub" on the west and the line labeled "333°55'-551.62" on the east in the map attached to the Draft EA. The proposed project area is immediately adjacent to Kaloko-Honokohau National Historical Park's southeastern boundary, which is also the southern boundary of the Honokohau Settlement National Historic Landmark.

Kaloko-Honokohau National Historical Park was authorized in 1978 by Congress to preserve, interpret, and perpetuate traditional native Hawaiian activities and culture (Public Law 95-625). The authorization was based on a study and report¹ by a congressional advisory commission, which recommended that the Honokohau Settlement National Historical Landmark (NHL) site (designated in 1962) and its adjacent waters be preserved for the benefit of the Hawaiian people and the nation as part of the national park system. Kaloko-Honokohau NHP encompasses over 450 known historic and prehistoric Hawaiian archeological sites that comprise a unique cultural landscape including fishponds, *mauka-makai* trails, heiau, and multiple other significant sites. The National Park Service is tasked with the protection and preservation of these important cultural sites and the special natural resources of the Park. The National Park contains two large (11 and 15- acre) ancient Hawaiian fishponds with large associated wetlands, more than 185 known anchialine pools, and 596 acres of marine waters. The parklands, and marine and aquatic resources provide habitat for 17 federally protected and candidate endangered species, and

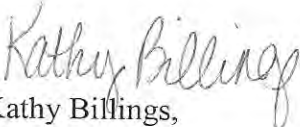
¹ Honokohau Study Advisory Commission. 1974. The Spirit of Kaloko-Honokohau. A proposal for the establishment of a Ka-loko Hono-ko-hau National Cultural Park, Island of Hawaii, State of Hawaii. 83 p.

endemic species. Aimakapa Fishpond and wetland is a significant foraging and nesting habitat for two endangered waterbird species, the Hawaiian stilt and the Hawaiian coot, and is an important habitat for migratory waterfowl.

Development on lands adjacent to the National Park/NHL has the potential to significantly impact the National Park's cultural landscape, cultural and natural resources, and traditional practices by Hawaiians in the Park, and must be undertaken with care and consideration. Therefore, we submit the attached comments and concerns regarding the Draft EA. Specifically, we find that the Draft EA lacks the necessary information regarding cultural and natural resources, summary of impacts, and mitigation measures to adequately determine the potential direct and secondary impacts of the project. Because additional information is needed regarding impacts to historic properties, and protected species, and because mitigation measures are not well described, the National Park Service does not agree with the anticipated determination of no significant impact at this time.

We appreciate this opportunity to participate in your environmental review process. If you have any questions regarding our comments please contact me at (808) 329-6881 x1201, or at kathy_billings@nps.gov, or my staff, Sallie Beavers, Chief of Resources Management, at extension 1220 or at sallie_beavers@nps.gov. We would like to schedule a meeting to discuss the project and possible mitigation measures. Please contact Sallie Beavers to schedule a meeting at your convenience.

Sincerely,


Kathy Billings,
Superintendent

cc: Office of Environmental Quality Control
W. Andrews, DLNR Division of Boating and Recreation
N. Murphy, DLNR Division of Boating and Recreation
R. McDonald Office of Hawaiian Affairs
K. Lindsey, Office of Hawaiian Affairs
A. Arakaki, Ala Kahakai National Historical Trail
T. Donham, State Historic Preservation Division
L. Mehrhoff, US Fish and Wildlife Service
B.J. Leithead-Todd, County of Hawaii Planning Dept.

NATIONAL PARK SERVICE COMMENTS ON DRAFT ENVIRONMENTAL
ASSESSMENT FOR BOAT STORAGE EXPANSION AT HONOKOHAU HARBOR

Project Location, Existing Use, and Land Ownership Page 2: The EA should clarify that the 1994 EA was for the use of the original six acres, and did not include the additional three acres in the proposed project.

Project Area Map: The project area should be more clearly defined and labeled

Technical Section, Page 3: Please include in the EA where and what measures will be used to install additional perimeter fencing, i.e. drilling, etc.

Environmental, Page 3: The Draft EA should include descriptions of what “minimal excavation” will include and what specifically will be the process to make the area level. The NPS is concerned about air quality and dust control, the Draft EA should describe measures to control dust during site work. Describe how the historic trail passing through the area will be preserved.

Soil and Climate Section, Page 4: Resources used to make determinations should be noted in the EA. For example, provide the source NRCS document or webpage used to determine soil type. The Draft EA does not include a description of activities that will be permitted or prohibited within the boat storage area. Identification of activities or restrictions on activities within the boat storage area is necessary to determine any potential impacts to National Park/NHL resources. For example, because of the porous nature of the project area soils, if boat washing or repairs are allowed, then the area becomes a source of nonpoint source pollutants, which may affect aquatic resources in the National Park.

Flood and Tsunami Hazard, Page 4: The Draft and Final EAs should include maps of Flood and Tsunami Hazard findings (HAR 11-200-11.2). The proposed project area falls within the Hawaii Civil Defense Evacuation Zone (<http://www.co.hawaii.hi.us/cd/tsunami/maps>).

Archeological and Cultural Resources, Page 4: The Draft EA is inadequate in this section. The Draft EA states: “*There are no known archeological or cultural sites on the property.*” However, no survey report supporting this statement was attached. The Draft EA should include the archeological survey results to substantiate the claim that no archeological or cultural properties are present in the project area. According to a published reports^{2,3} and NPS data,^{4,5} a historic trail (State Site Number SIHP 50-10-27-21588) passes through the proposed project area and into the National Park. Because this trail is on state land and is a continuation of a historic trail within the National Park/NHL and the cultural landscape of the Honokohau, Honokohau Iki and Kealakehe *ahupua’a*, the National Park Service requests that the project proponent consult with

² Reinecke, J. E. 1930. Survey of Sites on West Hawaii. Manuscript on file Department of Anthropology, Bishop Museum, Honolulu, Hawaii..

³ Emory, K.P. and L.J. Soehren. 1971. Archaeological and Historical Survey, Honokohau Area, North Kona, Hawaii. Department of Anthropology Report 61-1. Bishop Museum, Honolulu, Hawaii.

⁴ Durst, M. & C. Glidden. 1999. Archaeological Investigations of the Honokohau Ahupuaa of Kaloko-Honokohau National Historical Park, North Kona, Hawaii, 1992-1998. Report to the National Park Service.

⁵ Nelson, N. and R. Gmirkin. 2001. An Archeological Survey of the KAHO 157 Project: A New Visitor’s Contact Station, Parking Lot and Associated Structures. Project Report, Kaloko-Honokohau NHP, Kailua-Kona, Hawaii.

the State Historic Preservation Division and the NPS regarding the historic trail to develop a preservation plan or appropriate mitigations.

Flora and Fauna, Page 4:

The Draft EA should include documentation of the biological survey used to support the statement in the Draft EA that “*No endangered species or flora or fauna are known to exist in the project site.*” Although no threatened or endangered species may be present on the proposed project site, endangered species are adjacent to the site within the National Park and will suffer secondary impacts from the project action. Because this project will be removing vegetation, invasive predator species (mongoose and feral cats) inhabiting the project area will be displaced and will likely relocate to the Park, posing a threat to the endangered Hawaiian stilt and the Hawaiian coot breeding population within the National Park. Park staff have observed this migration associated with other adjacent projects (The Shores at Kohaniaiki) involving ground clearing along the National Park Boundary. Therefore if the project is approved, to mitigate impacts on endangered waterbirds the NPS requests that for one month prior to and for two months following any vegetation clearing or ground disturbance, the applicant will trap and permanently remove invasive small mammal predators from the project area.

Summary of Major Impacts and Alternatives Considered, Page 4: The Impact Section should be revised to include potential impacts to endangered species and impacts to the historic trail. The Alternatives Considered section should have more information on the reduced scope of work and reasons for discarding the alternative.

Proposed Mitigation Measures, Page 5: The Draft EA should be revised to include a detailed discussion on the mitigation measures for effective dust control, endangered species, historic properties, and nonpoint source pollution.

Findings and Reasons Supporting Anticipated Determination, Page 5: The Draft EA is inadequate and does not provide data to support the findings and reasons in this section.

GENTRY'S
KONA MARINA
HONOKOHAU HARBOR

74-425 Kealahou Parkway, Kailua-Kona, Hawaii 96740 • Phone 808.329.7896 Fax 808.329.7372 • Toll Free 888.458.7896

April 12, 2011

Mr. Clyde W. Namu'o
Chief Executive Officer
State of Hawai'i, Office of Hawaiian Affairs
711 Kapi'olani Blvd., Ste. 500
Honolulu, HI 96813

Re: Response to Draft Environmental Assessment Comments for
GKM Inc. Boat Park Storage Expansion
Honokohau Harbor, North Kona, Island of Hawai'i

Dear Mr. Namu'o:

Thank you for providing William R. Andrews your input and concerns in your letter dated January 6, 2011. We were copied in your letter and with the permission of William R. Andrews, we are responding to you directly to address your concerns about the proposed expansion of the boat storage facility from its current size of six acres to a total of nine acres. The three-acre expansion would involve some grading and leveling to make it usable as a boat storage facility. Prior to any construction, we would obtain all applicable federal, state and/or county permits.

To address your concern about the presence or absence of any archeological or cultural sites, on January 8, 2011, we hired Dr. Bob Rechtman to do a field inspection of the approximate three-acre expansion area. He has concluded, "*that development of the 3-acre area will have no direct adverse impact on any archeological resources.*" I have attached his report for your review.

I have went ahead and copied Keola Lindsey, William R. Andrews and OHA – West Hawai'i Community Outreach Coordinator in this correspondence. Should there be any further questions or concerns, please feel free to contact me directly at (808) 329-7896.

Sincerely,



Tina Prettyman
General Manager

Enc.

cc: Keola Lindsey
OHA –West Hawai'i Community Outreach Coordinator
William R. Andrews, DLNR - DOBOR

RECHTMAN CONSULTING, LLC

507-A E. Lanikaula St. Hilo, Hawaii 96720
phone: (808) 969-6066 fax: (808) 443-0065
e-mail: bob@rechtmanconsulting.com
ARCHAEOLOGICAL, CULTURAL, AND HISTORICAL STUDIES

January 8, 2011

RC-0734

Tina Prettyman
GKM Inc. dba Gentry's Kona Marina
74-425 Kealakehe Pkwy.
Kailua Kona, HI 96740

Dear Tina:

As requested, Rechtman Consulting, LLC conducted an archaeological field inspection of a roughly 3 acre portion of a 9-acre lease area within TMK:3-7-4-08:003 in Kealakehe Ahupua'a, North Kona, Island of Hawai'i. The scope of work included a cursory review of both historic maps and previous archaeological studies conducted within the vicinity of the current project area; a thorough on-foot reconnaissance of the project area; and this written report documenting our findings.

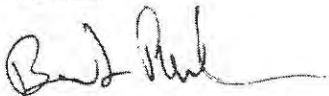
Historic maps and previous archaeological work indicated that a traditional Hawaiian trail (recorded elsewhere as SIHP Site 23023) is located in the immediate vicinity of the study area. It is also possible that temporary habitation sites and petroglyphs could be present in the study area.

On January 8, 2011, David Nelson, B.A. under the direction of Robert B. Rechtman, Ph.D. conducted a thorough inspection of the 3-acre study area. There were no archaeological sites observed within the study area during this inspection. A single rock cairn and possible trail alignment were observed to the southwest of the study area between Kealakehe Parkway and the existing boat/trailer storage facility. This trail alignment had been previously impacted.

Given the negative finding of this study it is concluded that development of the 3-acre study area will have no direct adverse impact on any archaeological resources. However, if during development activities any suspicious finds are made DLNR-SHPD should be contacted immediately as outlined in HAR 13§13-280.

Thank you for the opportunity to provide you with our services. Should you have any questions, or would like further information please feel free to contact me.

Regards,



Bob Rechtman, Ph.D.
Principal Archaeologist

GENTRY'S
KONA MARINA
HONOKOHAU HARBOR

74-425 Kealahou Parkway, Kailua-Kona, Hawaii 96740 • Phone 808.329.7896 Fax 808.329.7372 • Toll Free 888.458.7896

April 6, 2011

Ms. Kathy Billings, Superintendent
United States Department of the Interior
National Park Service
Kaloko-Honokohau National Historic Park
73-4786 Kanalani St., Suite 14
Kailua Kona, HI 96740

Re: Response to your comments on the Draft Environmental Assessment for
Proposed Boat Park Expansion

Dear Ms. Billings:

Thank you for providing us with your concerns and comments regarding our plans to expand the current boat park facility from the existing six acres to a total of nine acres.

Our response to your comments are noted below in italics:

Project Location, Existing Use and Land Ownership Page 2: The EA should clarify that the 1994 EA was for the use of the original six acres, and did not include the additional three acres in the proposed project.

The original EA covered the original six acre parcel which has already been developed, leveled and graded to accommodate the existing boat storage facility. This existing facility stores vessels on jackstands and vessels on trailers. We are proposing to expand the boat storage facility by an additional three acres, just east of the existing six acres for additional boat storage and eventually when the need arises utilize a small area near the access roadway for employee parking. Enclosed is a copy of Exhibit C of the July 8, 2010 Department of Land and Natural Resources Board Submittal that notes the conditions of the 30-day revocable permit.

GKM Inc. also does not wish to make any more improvements other than grading, leveling and adding gravel to expand the existing boat parking facility on a 30-day revocable permit.

Ms. Kathy Billings, Superintendant
March 6, 2011
Page Two

Project Area Map: The project area should be more clearly defined and labeled.

Enclosed is a revised map outlining the proposed project area.

Technical section, page 3: Please include in the EA where and what measures will be used to install additional perimeter fencing, i.e. drilling.

The proposed fencing in noted on enclosed map. Installation of the fencing would involve placement of a six foot tall chain link fence topped with three strands of bobwire. Schedule 40 pipe would be utilized. Line posts would be 2 3/8" in diameter with corner posts at 2 7/8" in diameter. Line posts would be set at approximately 24" in the ground and corner posts at approximately 30" in ground. Installation would involve use of a jack hammer and shovel. 2500 PSI concrete would be used to securely set poles in the ground.

Environmental, Page 3: The draft EA should include descriptions of what "minimal excavation" will include and what specifically will be the process to make the area level. The NPS is concerned about air quality and dust control, the Draft EA should describe measures to control dust during site work. Describe how the historic trail passing through the area will be preserved.

The process of grading and leveling would entail utilizing an excavator, a bulldozer, a backhoe, dump trucks, a compacting roller and a water truck for dust control.

No historic trail has been located within proposed expansion area (approximately 3 acres.) See attached Archeological Field Inspection from Dr. Bob Rechtman dated January 8, 2011.

Soil and Climate Section, Page 4: Resources used to make determinations should be noted in the EA. For example, provide the source NRCS document or webpage used to determine soil type. The Draft EA does not include a description of activities that will be permitted or prohibited within the boat storage area. Identification of activities or restrictions on activities within the boat storage area is necessary to determine any potential impacts to National Park/NHL resources. For example, because of the porous nature of the project area soils, if boat washing or repairs are allowed, then the area becomes a source of nonpoint source pollutants, which may affect aquatic resources in the National Park.

Ms. Kathy Billings, Superintendant
March 6, 2011
Page Three

Soil Survey - See attached 14 page report generated from the United States Department of Agriculture website for the proposed project area. No boat repair or washing down of boats is permitted in our boat storage facility.

Flood and Tsunami Hazard, Page 4: The Draft and Final EA should include maps of Flood and Tsunami Hazard findings (HAR 11-200-11.2). The proposed project area falls within the Hawaii Civil Defense Evacuation Zone.

I have attached maps as printed from the Federal Emergency Management Agency. Also the State of Hawaii, Department of Land & Natural Resources, Engineering Division, in response to the draft EA sent to them for comments, has confirmed that the project site is located within Zone X. Letter from Carty S. Chang, Chief Engineer dated January 10, 2011 is attached.

The property is located in a Tsunami Evacuation Zone. The storage facility consists of storing vessels on jackstands and vessels on trailers.

Archeological and Cultural Resources, Page 4: The draft EA is inadequate in this section. The Draft EA states: "There are no known archeological or cultural sites on the property." However, no survey report supporting this statement was attached. The Draft EA should include the archeological survey results to substantiate the claim that no archeological or cultural properties are present in the project area. According to a published reports, and NPS data, a historic trail (State Site Number SIHP 50-10-27-21588) passes through the proposed project area and into the National Park. Because this trail is on state land and is a continuation of a historic trail within the National Park/NHL and the cultural landscape of the Honokohau, Honokohau Iki and Kealakehe ahupua'a, the National Park Service requests that the project proponent consult with the State Historic Preservation Division and the NPS regarding the historic trail to develop a preservation plan or appropriate mitigation.

No cultural trail was found to exist in proposed construction area.

Ms. Kathy Billings, Superintendant
March 6, 2011
Page Five

Proposed Mitigation Measures, Page 5: The Draft EA should be revised to include a detailed discussion on the mitigation measures for effective dust control, endangered species, historic properties, and nonpoint source pollution.

We will utilize water trucks to control dust in the area during construction. No endangered species and no archeological or cultural sites were found within the projects proposed three-acre expansion. Regarding nonpoint source pollution mitigation, there will be no working on vessels within the boat storage facility.

Findings and Reasons Supporting Anticipated Determination, Page 5: The draft EA is inadequate and does not provide data to support the findings and reasons in this section.

No significant adverse effects is anticipated in the context of Chapter 343, Hawaii Revised Statutes and Section 11-200-12 of the State Administrative Rules.

I would be happy to meet and discuss all of the above findings with you and go over a mitigation plan to trap any feral cats or mongoose prior to any construction.

We sincerely value your input and appreciate the concerns you have brought to our attention.

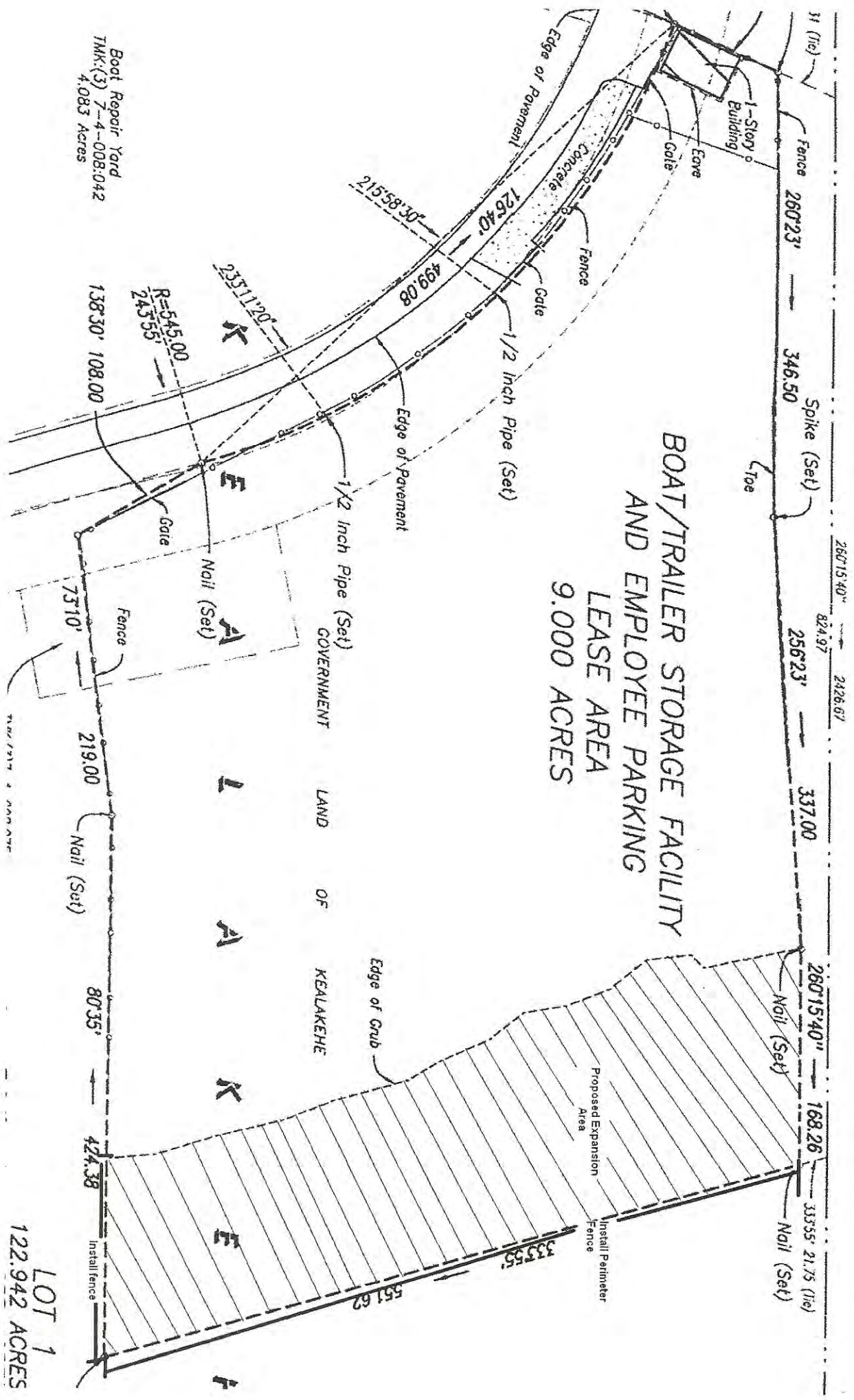
Sincerely,



Tina Prettyman
General Manager

Enc.

Cc: Office of Environmental Quality Control
W. Andrews, DLNR Division of Boating and Recreation
N. Murphy, DLNR Division of Boating and Recreation
R. McDonald, Office of Hawaiian Affairs
K. Lindsey, Office of Hawaiian Affairs
A. Arakaki, Ala Kahakai National Historical Trail
T. Donham, State Historic Preservation Division
L. Mehrhoff, US Fish and Wildlife Service
B.J. Leithead-Todd, County of Hawaii Planning Department



From: Board of Land and
Natural Resources
Submitted July 8, 2010

Boat Storage Facility Additional Conditions

The PERMITEE shall have the right to have and to hold the said premises with any appurtenances for activities of a boat/trailer storage facility and offering such sales and services that would be normally associated with operating a storage facility. The following conditions shall describe the allowable use and restrictions as follows:

1. The right to conduct all activities reasonably necessary and incidental to the operation of a boat/trailer storage facility, and for portion to be used for employee parking.
2. The right to clear, level and add gravel to the premises as necessary to make suitable for the purposes allowed under the terms of the Revocable Permit.
3. The right to install perimeter fencing, gates, and to provide security measures.
4. Any construction of structures incidental to the operation of a boat/trailer storage facility, shall require the Chairperson's prior written approval.
5. The rights to construct, install, or otherwise provide lockers, as well as other secure areas for the storage of tools, equipment and supplies incidental to the operation of the Boat storage facility. Any plans shall require the Chairperson's written approval.
6. The right to plant and continue to maintain landscaping as well as improve the aesthetics of the premises.
7. The right to provide storage areas for yacht clubs, boating clubs, and other ocean recreation related organizations upon approval of the Chairperson.
8. All plans and the design of all improvements in the newly expanded Three (3) acre area shall require the written approval of the chairperson prior to construction. Any additional improvements to be made in the present Six (6) acre portions above existing, shall also require the written approval of the Chairperson.
9. All vessel construction, painting or vessel engine, or hull repairs shall be done within the confines of the Haul-out facility only; except that the Permittee may perform or allow to perform minor repairs or routine maintenance to vessels under the terms and conditions of a valid storage agreement.
10. The Permittee is prohibited from an illegal activity, or to perform any act which may result in the creation or commission of a nuisance on said premises or permit to be caused or produced upon the premises, or emanate there from, any unusually offensive sounds, or any noxious fumes, smoke, gasses, vapors or odors.
11. The Permittee shall comply with all Federal, State and County laws and requirements.
12. The Permittee shall maintain insurance for the entire term of the Permit.
13. The Permittee shall provide statement of gross receipts, with rental payment.

EXHIBIT C

RECHTMAN CONSULTING, LLC

507-A E. Lanikaula St. Hilo, Hawaii 96720
phone: (808) 969-6066 fax: (808) 443-0065
e-mail: bob@rechtmanconsulting.com
ARCHAEOLOGICAL, CULTURAL, AND HISTORICAL STUDIES

January 8, 2011

RC-0734

Tina Prettyman
GKM Inc. dba Gentry's Kona Marina
74-425 Kealakehe Pkwy.
Kailua Kona, HI 96740

Dear Tina:

As requested, Rechtman Consulting, LLC conducted an archaeological field inspection of a roughly 3 acre portion of a 9-acre lease area within TMK:3-7-4-08:003 in Kealakehe Ahupua'a, North Kona, Island of Hawai'i. The scope of work included a cursory review of both historic maps and previous archaeological studies conducted within the vicinity of the current project area; a thorough on-foot reconnaissance of the project area; and this written report documenting our findings.

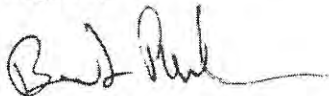
Historic maps and previous archaeological work indicated that a traditional Hawaiian trail (recorded elsewhere as SIHP Site 23023) is located in the immediate vicinity of the study area. It is also possible that temporary habitation sites and petroglyphs could be present in the study area.

On January 8, 2011, David Nelson, B.A. under the direction of Robert B. Rechtman, Ph.D. conducted a thorough inspection of the 3-acre study area. There were no archaeological sites observed within the study area during this inspection. A single rock cairn and possible trail alignment were observed to the southwest of the study area between Kealakehe Parkway and the existing boat/trailer storage facility. This trail alignment had been previously impacted.

Given the negative finding of this study it is concluded that development of the 3-acre study area will have no direct adverse impact on any archaeological resources. However, if during development activities any suspicious finds are made DLNR-SHPD should be contacted immediately as outlined in HAR 13§13-280.

Thank you for the opportunity to provide you with our services. Should you have any questions, or would like further information please feel free to contact me.

Regards,



Bob Rechtman, Ph.D.
Principal Archaeologist



United States
Department of
Agriculture



NRCS

Natural
Resources
Conservation
Service

A product of the National
Cooperative Soil Survey,
a joint effort of the United
States Department of
Agriculture and other
Federal agencies, State
agencies including the
Agricultural Experiment
Stations, and local
participants

Custom Soil Resource Report for Island of Hawaii Area, Hawaii

Soil Survey - GKM Inc. Boat
Storage Expansion



January 26, 2011

Preface

Soil surveys contain information that affects land use planning in survey areas. They highlight soil limitations that affect various land uses and provide information about the properties of the soils in the survey areas. Soil surveys are designed for many different users, including farmers, ranchers, foresters, agronomists, urban planners, community officials, engineers, developers, builders, and home buyers. Also, conservationists, teachers, students, and specialists in recreation, waste disposal, and pollution control can use the surveys to help them understand, protect, or enhance the environment.

Various land use regulations of Federal, State, and local governments may impose special restrictions on land use or land treatment. Soil surveys identify soil properties that are used in making various land use or land treatment decisions. The information is intended to help the land users identify and reduce the effects of soil limitations on various land uses. The landowner or user is responsible for identifying and complying with existing laws and regulations.

Although soil survey information can be used for general farm, local, and wider area planning, onsite investigation is needed to supplement this information in some cases. Examples include soil quality assessments (<http://soils.usda.gov/sqi/>) and certain conservation and engineering applications. For more detailed information, contact your local USDA Service Center (<http://offices.sc.egov.usda.gov/locator/app?agency=nrcs>) or your NRCS State Soil Scientist (http://soils.usda.gov/contact/state_offices/).

Great differences in soil properties can occur within short distances. Some soils are seasonally wet or subject to flooding. Some are too unstable to be used as a foundation for buildings or roads. Clayey or wet soils are poorly suited to use as septic tank absorption fields. A high water table makes a soil poorly suited to basements or underground installations.

The National Cooperative Soil Survey is a joint effort of the United States Department of Agriculture and other Federal agencies, State agencies including the Agricultural Experiment Stations, and local agencies. The Natural Resources Conservation Service (NRCS) has leadership for the Federal part of the National Cooperative Soil Survey.

Information about soils is updated periodically. Updated information is available through the NRCS Soil Data Mart Web site or the NRCS Web Soil Survey. The Soil Data Mart is the data storage site for the official soil survey information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means

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How Soil Surveys Are Made

Soil surveys are made to provide information about the soils and miscellaneous areas in a specific area. They include a description of the soils and miscellaneous areas and their location on the landscape and tables that show soil properties and limitations affecting various uses. Soil scientists observed the steepness, length, and shape of the slopes; the general pattern of drainage; the kinds of crops and native plants; and the kinds of bedrock. They observed and described many soil profiles. A soil profile is the sequence of natural layers, or horizons, in a soil. The profile extends from the surface down into the unconsolidated material in which the soil formed or from the surface down to bedrock. The unconsolidated material is devoid of roots and other living organisms and has not been changed by other biological activity.

Currently, soils are mapped according to the boundaries of major land resource areas (MLRAs). MLRAs are geographically associated land resource units that share common characteristics related to physiography, geology, climate, water resources, soils, biological resources, and land uses (USDA, 2006). Soil survey areas typically consist of parts of one or more MLRA.

The soils and miscellaneous areas in a survey area occur in an orderly pattern that is related to the geology, landforms, relief, climate, and natural vegetation of the area. Each kind of soil and miscellaneous area is associated with a particular kind of landform or with a segment of the landform. By observing the soils and miscellaneous areas in the survey area and relating their position to specific segments of the landform, a soil scientist develops a concept, or model, of how they were formed. Thus, during mapping, this model enables the soil scientist to predict with a considerable degree of accuracy the kind of soil or miscellaneous area at a specific location on the landscape.

Commonly, individual soils on the landscape merge into one another as their characteristics gradually change. To construct an accurate soil map, however, soil scientists must determine the boundaries between the soils. They can observe only a limited number of soil profiles. Nevertheless, these observations, supplemented by an understanding of the soil-vegetation-landscape relationship, are sufficient to verify predictions of the kinds of soil in an area and to determine the boundaries.

Soil scientists recorded the characteristics of the soil profiles that they studied. They noted soil color, texture, size and shape of soil aggregates, kind and amount of rock fragments, distribution of plant roots, reaction, and other features that enable them to identify soils. After describing the soils in the survey area and determining their properties, the soil scientists assigned the soils to taxonomic classes (units). Taxonomic classes are concepts. Each taxonomic class has a set of soil characteristics with precisely defined limits. The classes are used as a basis for comparison to classify soils systematically. Soil taxonomy, the system of taxonomic classification used in the United States, is based mainly on the kind and character of soil properties and the arrangement of horizons within the profile. After the soil scientists classified and named the soils in the survey area, they compared the

Custom Soil Resource Report

individual soils with similar soils in the same taxonomic class in other areas so that they could confirm data and assemble additional data based on experience and research.

The objective of soil mapping is not to delineate pure map unit components; the objective is to separate the landscape into landforms or landform segments that have similar use and management requirements. Each map unit is defined by a unique combination of soil components and/or miscellaneous areas in predictable proportions. Some components may be highly contrasting to the other components of the map unit. The presence of minor components in a map unit in no way diminishes the usefulness or accuracy of the data. The delineation of such landforms and landform segments on the map provides sufficient information for the development of resource plans. If intensive use of small areas is planned, onsite investigation is needed to define and locate the soils and miscellaneous areas.

Soil scientists make many field observations in the process of producing a soil map. The frequency of observation is dependent upon several factors, including scale of mapping, intensity of mapping, design of map units, complexity of the landscape, and experience of the soil scientist. Observations are made to test and refine the soil-landscape model and predictions and to verify the classification of the soils at specific locations. Once the soil-landscape model is refined, a significantly smaller number of measurements of individual soil properties are made and recorded. These measurements may include field measurements, such as those for color, depth to bedrock, and texture, and laboratory measurements, such as those for content of sand, silt, clay, salt, and other components. Properties of each soil typically vary from one point to another across the landscape.

Observations for map unit components are aggregated to develop ranges of characteristics for the components. The aggregated values are presented. Direct measurements do not exist for every property presented for every map unit component. Values for some properties are estimated from combinations of other properties.

While a soil survey is in progress, samples of some of the soils in the area generally are collected for laboratory analyses and for engineering tests. Soil scientists interpret the data from these analyses and tests as well as the field-observed characteristics and the soil properties to determine the expected behavior of the soils under different uses. Interpretations for all of the soils are field tested through observation of the soils in different uses and under different levels of management. Some interpretations are modified to fit local conditions, and some new interpretations are developed to meet local needs. Data are assembled from other sources, such as research information, production records, and field experience of specialists. For example, data on crop yields under defined levels of management are assembled from farm records and from field or plot experiments on the same kinds of soil.

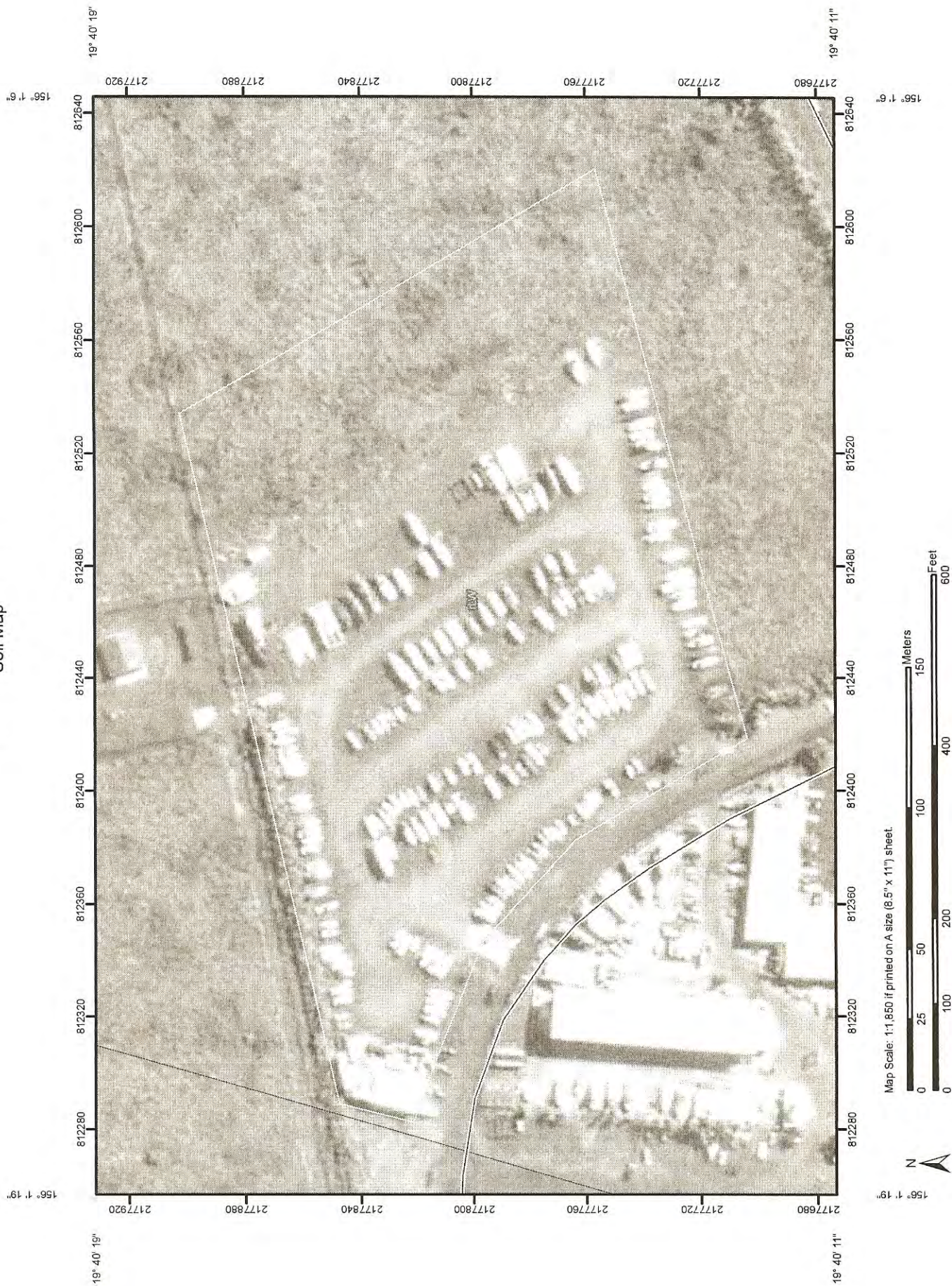
Predictions about soil behavior are based not only on soil properties but also on such variables as climate and biological activity. Soil conditions are predictable over long periods of time, but they are not predictable from year to year. For example, soil scientists can predict with a fairly high degree of accuracy that a given soil will have a high water table within certain depths in most years, but they cannot predict that a high water table will always be at a specific level in the soil on a specific date.

After soil scientists located and identified the significant natural bodies of soil in the survey area, they drew the boundaries of these bodies on aerial photographs and identified each as a specific map unit. Aerial photographs show trees, buildings, fields, roads, and rivers, all of which help in locating boundaries accurately.












Soil Map

The soil map section includes the soil map for the defined area of interest, a list of soil map units on the map and extent of each map unit, and cartographic symbols displayed on the map. Also presented are various metadata about data used to produce the map, and a description of each soil map unit.

Custom Soil Resource Report
Soil Map



MAP LEGEND

Area of Interest (AOI)		Very Stony Spot
		Wet Spot
		Other
Soils		
Area of Interest (AOI)		Very Stony Spot
		Wet Spot
		Other
Soil Map Units		
Special Point Features		Special Line Features
		Gully
		Short Steep Slope
Special Line Features		Other
Political Features		Cities
Water Features		Oceans
		Streams and Canals
Transportation		Rails
		Interstate Highways
		US Routes
Major Roads		Major Roads
Local Roads		Local Roads

MAP INFORMATION

Map Scale: 1:1,850 if printed on A size (8.5" x 11") sheet.

The soil surveys that comprise your AOI were mapped at 1:24,000.

Please rely on the bar scale on each map sheet for accurate map measurements.

Source of Map: Natural Resources Conservation Service
 Web Soil Survey URL: <http://websoilsurvey.nrcs.usda.gov>
 Coordinate System: UTM Zone 4N NAD83

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Island of Hawaii Area, Hawaii
 Survey Area Data: Version 3, Sep 21, 2009

Date(s) aerial images were photographed: Data not available.

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend

Island of Hawaii Area, Hawaii (HI801)			
Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
rLW	Lava flows, pahoehoe	9.3	100.0%
Totals for Area of Interest		9.3	100.0%

Map Unit Descriptions

The map units delineated on the detailed soil maps in a soil survey represent the soils or miscellaneous areas in the survey area. The map unit descriptions, along with the maps, can be used to determine the composition and properties of a unit.

A map unit delineation on a soil map represents an area dominated by one or more major kinds of soil or miscellaneous areas. A map unit is identified and named according to the taxonomic classification of the dominant soils. Within a taxonomic class there are precisely defined limits for the properties of the soils. On the landscape, however, the soils are natural phenomena, and they have the characteristic variability of all natural phenomena. Thus, the range of some observed properties may extend beyond the limits defined for a taxonomic class. Areas of soils of a single taxonomic class rarely, if ever, can be mapped without including areas of other taxonomic classes. Consequently, every map unit is made up of the soils or miscellaneous areas for which it is named and some minor components that belong to taxonomic classes other than those of the major soils.

Most minor soils have properties similar to those of the dominant soil or soils in the map unit, and thus they do not affect use and management. These are called noncontrasting, or similar, components. They may or may not be mentioned in a particular map unit description. Other minor components, however, have properties and behavioral characteristics divergent enough to affect use or to require different management. These are called contrasting, or dissimilar, components. They generally are in small areas and could not be mapped separately because of the scale used. Some small areas of strongly contrasting soils or miscellaneous areas are identified by a special symbol on the maps. If included in the database for a given area, the contrasting minor components are identified in the map unit descriptions along with some characteristics of each. A few areas of minor components may not have been observed, and consequently they are not mentioned in the descriptions, especially where the pattern was so complex that it was impractical to make enough observations to identify all the soils and miscellaneous areas on the landscape.

The presence of minor components in a map unit in no way diminishes the usefulness or accuracy of the data. The objective of mapping is not to delineate pure taxonomic classes but rather to separate the landscape into landforms or landform segments that have similar use and management requirements. The delineation of such segments on the map provides sufficient information for the development of resource plans. If intensive use of small areas is planned, however, onsite investigation is needed to define and locate the soils and miscellaneous areas.

Custom Soil Resource Report

An identifying symbol precedes the map unit name in the map unit descriptions. Each description includes general facts about the unit and gives important soil properties and qualities.

Soils that have profiles that are almost alike make up a *soil series*. Except for differences in texture of the surface layer, all the soils of a series have major horizons that are similar in composition, thickness, and arrangement.

Soils of one series can differ in texture of the surface layer, slope, stoniness, salinity, degree of erosion, and other characteristics that affect their use. On the basis of such differences, a soil series is divided into *soil phases*. Most of the areas shown on the detailed soil maps are phases of soil series. The name of a soil phase commonly indicates a feature that affects use or management. For example, Alpha silt loam, 0 to 2 percent slopes, is a phase of the Alpha series.

Some map units are made up of two or more major soils or miscellaneous areas. These map units are complexes, associations, or undifferentiated groups.

A *complex* consists of two or more soils or miscellaneous areas in such an intricate pattern or in such small areas that they cannot be shown separately on the maps. The pattern and proportion of the soils or miscellaneous areas are somewhat similar in all areas. Alpha-Beta complex, 0 to 6 percent slopes, is an example.

An *association* is made up of two or more geographically associated soils or miscellaneous areas that are shown as one unit on the maps. Because of present or anticipated uses of the map units in the survey area, it was not considered practical or necessary to map the soils or miscellaneous areas separately. The pattern and relative proportion of the soils or miscellaneous areas are somewhat similar. Alpha-Beta association, 0 to 2 percent slopes, is an example.

An *undifferentiated group* is made up of two or more soils or miscellaneous areas that could be mapped individually but are mapped as one unit because similar interpretations can be made for use and management. The pattern and proportion of the soils or miscellaneous areas in a mapped area are not uniform. An area can be made up of only one of the major soils or miscellaneous areas, or it can be made up of all of them. Alpha and Beta soils, 0 to 2 percent slopes, is an example.

Some surveys include *miscellaneous areas*. Such areas have little or no soil material and support little or no vegetation. Rock outcrop is an example.

Island of Hawaii Area, Hawaii

rLW—Lava flows, pahoehoe

Map Unit Setting

Elevation: 0 to 13,000 feet

Mean annual precipitation: 10 to 250 inches

Mean annual air temperature: 36 to 75 degrees F

Frost-free period: 365 days

Map Unit Composition

Lava flows, pahoehoe, pahoehoe: 100 percent

Description of Lava Flows, Pahoehoe, Pahoehoe

Setting

Landform: Pahoehoe lava flows

Landform position (two-dimensional): Footslope

Landform position (three-dimensional): Mountainflank, free face, rise

Down-slope shape: Linear

Across-slope shape: Concave

Parent material: Pahoehoe lava

Properties and qualities

Slope: 0 to 40 percent

Depth to restrictive feature: 0 inches to lithic bedrock

Drainage class: Excessively drained

Capacity of the most limiting layer to transmit water (Ksat): Moderately low to moderately high (0.06 to 0.20 in/hr)

Available water capacity: Very low (about 0.0 inches)

Interpretive groups

Land capability (nonirrigated): 8s

Typical profile

0 to 60 inches: Bedrock

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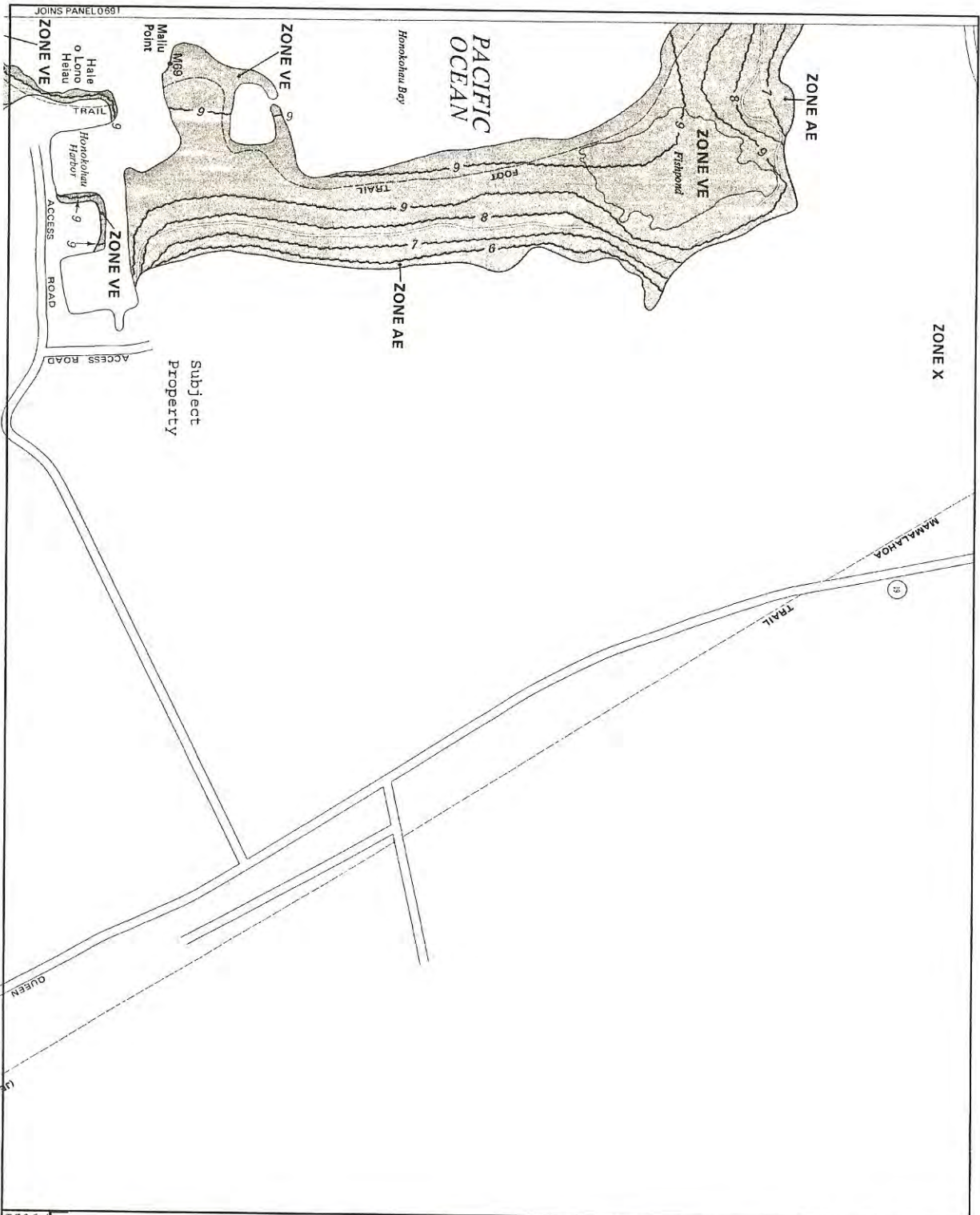
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Custom Soil Resource Report

United States Department of Agriculture, Soil Conservation Service. 1961. Land capability classification. U.S. Department of Agriculture Handbook 210.



NATIONAL FLOOD INSURANCE PROGRAM

FIRM
FLOOD INSURANCE RATE MAP

HAWAII COUNTY,
HAWAII

PANEL 692 OF 1900
(SEE MAP INDEX FOR PANELS NOT PRINTED)



PANEL LOCATION

COMMUNITY PANEL NUMBER
155166 0692 C

MAP REVISED:
SEPTEMBER 16, 1988

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using FEMA's OnLine. This map does not reflect changes or amendments which may have been made subsequent to the date on the map. For the most current information, please check the FEMA's Flood Map Store at www.fema.gov.

DEPARTMENT OF LAND AND NATURAL RESOURCES
ENGINEERING DIVISION

LD/CharleneUnoki

REF.:DEAHonokohauBoatStorageExpansion
Hawaii.499

COMMENTS

- (X) We confirm that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Zone X. The Flood Insurance Program does not have any regulations for developments within Zone X.
- () Please take note that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Zone _____.
- () Please note that the correct Flood Zone Designation for the project site according to the Flood Insurance Rate Map (FIRM) is _____.
- () Please note that the project must comply with the rules and regulations of the National Flood Insurance Program (NFIP) presented in Title 44 of the Code of Federal Regulations (44CFR), whenever development within a Special Flood Hazard Area is undertaken. If there are any questions, please contact the State NFIP Coordinator, Ms. Carol Tyau-Beam, of the Department of Land and Natural Resources, Engineering Division at (808) 587-0267.

Please be advised that 44CFR indicates the minimum standards set forth by the NFIP. Your Community's local flood ordinance may prove to be more restrictive and thus take precedence over the minimum NFIP standards. If there are questions regarding the local flood ordinances, please contact the applicable County NFIP Coordinators below:

- () Mr. Robert Sumitomo at (808) 768-8097 or Mr. Mario Siu Li at (808) 768-8098 of the City and County of Honolulu, Department of Planning and Permitting..
- () Mr. Carter Romero at (808) 961-8943 of the County of Hawaii, Department of Public Works.
- () Mr. Francis Cerizo at (808) 270-7771 of the County of Maui, Department of Planning.
- () Ms. Wynne Ushigome at (808) 241-4890 of the County of Kauai, Department of Public Works.
- () The applicant should include water demands and infrastructure required to meet project needs. Please note that projects within State lands requiring water service from the Honolulu Board of Water Supply system will be required to pay a resource development charge, in addition to Water Facilities Charges for transmission and daily storage.
- () The applicant should provide the water demands and calculations to the Engineering Division so it can be included in the State Water Projects Plan Update
- () Additional Comments: _____
- () Other: _____

Should you have any questions, please call Ms. Suzie S. Agraan of the Planning Branch at 587-0258.

Signed: _____

CARTY S. CHANG, CHIEF ENGINEER

Date: _____

Botanical Survey
Gentry's Kona Marina Boat Storage Expansion Area,
Honokohau, North Kona, Island of Hawai'i

By Ron Terry, Ph.D., Geometrician Associates, LLC
Prepared for Gentry Kona Marina
March 2011

Introduction

This report describes the results of a botanical survey of an approximately 3-acre area that is part of TMK 7-4-008:003, on State property under lease to Gentry's Kona Marina, at Honokohau Harbor on the Big Island of Hawai'i (Figs. 1a-b). According to personnel from Gentry's Kona Marina, six of the nine acres in their current leased boat storage area are already in use for storage. They intend to bulldoze, level and gravel the remaining three acres to the east (towards the highway) of the existing yard to utilize a total of nine acres.

Purpose and Methodology

The objectives of the botanical survey were to 1) describe the vegetation; 2) list all species encountered; and 3) identify threatened or endangered plant species. I surveyed the area on March 2, 2011. The boundaries were staked and clearly identifiable. I walked the perimeter of the area and then several dozen transects inside, covering essentially 100 percent of the surface. After this, I walked a berm on the long axis of the area and surveyed it from above. Although the *koa haole* and fountain grass vegetation was fairly dense, the entire area was adequately covered.

Species were identified in the field and, as necessary, collected and keyed out in the laboratory. Special attention was given to the possible presence of any federally (USFWS 2006) listed threatened or endangered plant species.

Limitations

No botanical survey of a large area can claim to have detected every species present. Some species are cryptic in juvenile or even mature stages of their life cycle. Dry conditions can render almost undetectable plants that extended rainfall may later invigorate and make obvious. Thick grass can obscure small individuals. The findings of this survey must therefore be interpreted with proper caution; in particular, there is no warranty as to the absolute and permanent absence of any particular species.

Vegetational Influences

The geologic substrate in this area is a lava flow from Hualalai volcano dating from 5,000-10,000 years before the present (Wolfe and Morris 1996). The surface is pahoehoe, which is smooth or ropy lava. The elevation is about 35 feet above sea level. Annual rainfall in this area of Kona is about 20 inches. Almost no weathering has occurred on this substrate and little soil is present.

Figure 1a Map of Survey Area

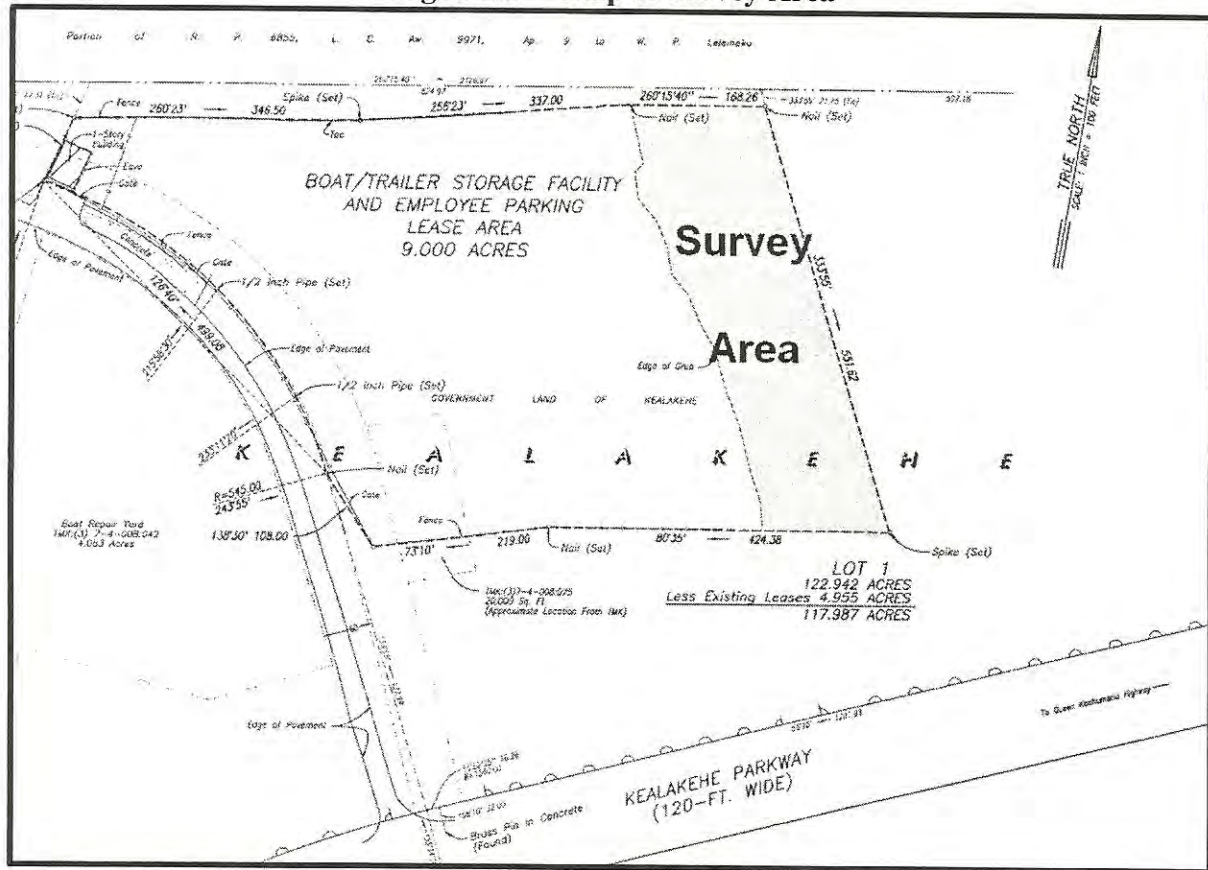


Figure 1b Photo of Survey Area



Based on the evidence of current rainfall, geology, and vegetation, the area probably supported a Coastal Dry Shrubland (per Gagne and Cuddihy 1990) prior to human disturbance. It was likely dominated in different places by 'ilima (*Sida fallax*), pili grass (*Heteropogon contortus*), and *maiapilo* (*Capparis sandwichiana*), among other plants. Certain low-elevation areas of Kona that have avoided disturbance (often because of a rough 'a'a substrate) maintain semi-intact native vegetation. For example, a survey of relatively undisturbed land several miles north at somewhat higher elevations than the maximum found on this property (Hart 2003), found a *lama*-dominated forest with three endangered species: *halepepe* (*Pleomele hawaiiensis*), *uhiuhi* (*Caesalpinia kawaiiensis*), and 'aiea (*Nothocestrum breviflorum*), as well as several rare species: 'ohe makai (*Reynoldsia sandwicensis*) and *maua* (*Xylosma hawaiiense*). Although elevation, rainfall and geology are not ideal for these on the subject property, some of these rare species may also have inhabited parts of it and were thus especially sought during the surveys.

This area seems to have avoided severe disturbance such as grading, although it has likely been intensely grazed by goats and two of the four margins have been graded.

Current Vegetation

Vegetation is nearly continuous and is dominated by scattered bunch grasses, low shrubs and herbs subdominant (Figure 1b). The two principal species are the non-native and invasive fountain grass (*Pennisetum setaceum*) and *koa haole* (*Leucaena leucocephala*). Some low *kiawe* (*Prosopis pallida*) is also present. In the herb layer, the natives 'uhaloa (*Waltheria indica*) and *ilima* are common. Minor elements of the vegetation include a number of non-native plants: two species of *Portulaca*, Christmas berry (*Schinus terebinthifolius*), and garden spurge (*Chamaesyce hirta*). Property margins are highly disturbed and weedy.

A full list of plant species found on the site is contained in Table 1, below. **No listed or proposed threatened or endangered plant species were found.** No rare plants, including the locally common *maiapilo* (*Capparis sandwichiana*), considered a species of concern by the U.S. Fish and Wildlife Service, were detected on the property. I identified no botanical issues on the site.

Impacts and Mitigation Measures

Landscaping should avoid invasive species and employ native species to the greatest degree consistent with project goals. Reputable Kona nurseries will supply lists of, and sources for, suitable native species. I recommend that special consideration be given to planting *maiapilo*, as this is a somewhat unusual and valuable plant that is also important in traditional Hawaiian medicine.

Table 1
Plants Observed on Property

Scientific Name	Family	Common Name	Life Form	Status*
<i>Amaranthus</i> sp.	Amaranthaceae	Amaranth	Herb	A
<i>Boerhavia coccinea</i>	Nyctaginaceae	Boerhavia	Herb	A
<i>Cenchrus echinatus</i>	Poaceae	Sandbur	Grass	A
<i>Chamaecrista nictitans</i>	Fabaceae	Partridge pea	Herb	A
<i>Chamaesyce hirta</i>	Euphorbiaceae	Garden spurge	Herb	A
<i>Chloris barbata</i>	Poaceae	Swollen fingergrass	Grass	A
<i>Desmodium tortuosum</i>	Fabaceae	Florida beggarweed	Herb	A
<i>Eleusine indica</i>	Poaceae	Wire grass	Grass	A
<i>Indigofera suffruticosa</i>	Fabaceae	Indigo	Shrub	A
<i>Ipomoea triloba</i>	Convolvulaceae	Little bell	Vine	A
<i>Leucaena leucocephala</i>	Fabaceae	Haole koa	Tree	A
<i>Lycopersicon esculenta</i>	Solanaceae	Tomato	Herb	A
<i>Momordica charantia</i>	Cucurbitaceae	Bitter gourd	Vine	A
<i>Pennisetum setaceum</i>	Poaceae	Fountain grass	Grass	A
<i>Pluchea symphytifolia</i>	Asteraceae	Sourbush	Shrub	A
<i>Portulaca oleracea</i>	Portulacaceae	Pig weed	Herb	A
<i>Portulaca pilosa</i>	Portulacaceae	Portulaca	Herb	A
<i>Prosopis pallida</i>	Fabaceae	Kiawe	Tree	A
<i>Rhynchelytrum repens</i>	Poaceae	Natal red-top	Grass	A
<i>Schinus terebinthifolius</i>	Anacardiaceae	Christmas berry	Shrub	A
<i>Sida fallax</i>	Malvaceae	'Ilima	Shrub	I
<i>Tridax procumbens</i>	Asteraceae	Coat buttons	Herb	A
<i>Waltheria indica</i>	Sterculiaceae	'Uhaloa	Herb	I

A = alien, E = endemic, I = indigenous, End = Federal and State listed Endangered Species

REFERENCES

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- U.S. Fish and Wildlife Service (USFWS). 2011. *USFWS Threatened and Endangered Species System (TESS)*. Washington: GPO. http://ecos.fws.gov/tess_public/StartTESS.do.
- Wolfe, E.W., and J. Morris. 1996. *Geologic Map of the Island of Hawai'i*. USGS Misc Investigations Series Map i-2524-A. Washington, D.C.: U.S. Geological Survey.

GENTRY'S
KONA MARINA
HONOKOHAU HARBOR

74-425 Kealahou Parkway, Kailua-Kona, Hawaii 96740 • Phone 808.329.7896 Fax 808.329.7372 • Toll Free 888.458.7896

July 6, 2011

Ms. Kathy Billings, Superintendent
United States Department of the Interior
National Park Service
Kaloko-Honokohau National Historic Park
73-4786 Kanalani St., Suite 14
Kailua Kona, HI 96740

Re: May 5, 2011 meeting follow up and subsequent site visit on July 5, 2011 by Rick Gmirkin, Archeologist, NPS Ala Kahakai National Historical Trail, regarding the possibility of a historical trail in the proposed three-acre boat storage expansion area.

Dear Ms. Billings:

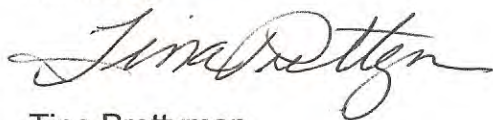
We appreciate Rick Gmirkin taking time out of his busy schedule to visit the site where we propose to expand our boat storage facility from the existing six acres to a total of nine acres.

As a result of his site visit on July 5, 2011, Rick has confirmed the findings of Dr. Bob Rechtman, who previously concluded in a letter dated January 8, 2011 that there is no historical trail that runs through the three-acre expansion area.

Also, as discussed in our meeting on May 5, 2011, we will set aside a reasonable amount of time prior to any construction for trapping of any feral cats and mongoose in the area.

We sincerely value the input you and your team have provided us during this environmental assessment process.

Sincerely,



Tina Prettyman
General Manager

cc: Rick Gmirkin, Archeologist, NPS Ala Kahakai National Historical Trail

Machine Shop • Metal Fabrication • Propeller Repair • Boat Park

Tackle Shop • Surf/Dive • Tournaments • 50-Ton Travellift • Open Yard Storage • Shipwrights • Fiberglass Repair • Engine Repair • Electrical Repair
Marine Hardware • Dining Facilities • Fish & Ice House • Fish Scale • Fuel • Charter Activities • Yacht Brokerage • Deli & Convenience Store • Graphic Design • Marine Clothing & Accessories

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KONA MARINA
HONOKOHAU HARBOR

74-425 Kealahou Parkway, Kailua-Kona, Hawaii 96740 • Phone 808.329.7896 Fax 808.329.7372 • Toll Free 888.458.7896

December 8, 2011

Glenn M. Okimoto, Ph.D.
Interim Director of Transportation
State of Hawaii
Department of Transportation
869 Punchbowl Street
Honolulu, HI 96813-5097

Re: Response to your comments regarding the Boat Storage Expansion, Honokohau Harbor

Dear Dr. Okimoto:

I appreciate you taking the time to comment on the proposed boat storage expansion at Honokohau Harbor in your letter dated February 2, 2011.

I was able to clarify with Eric Yuasa, Engineering Branch Head, DLNR, yesterday, that the road connection being utilized for the ingress and egress of the boat park facility is owned by the DLNR.

If any further information is needed, please do not hesitate to contact me directly at (808) 329-7896.

Sincerely,



Tina Prettyman
General Manager

RECHTMAN CONSULTING, LLC

507-A E. Lanikaula St. Hilo, Hawaii 96720
phone: (808) 969-6066 fax: (808) 443-0065
e-mail: bob@rechtmanconsulting.com
ARCHAEOLOGICAL, CULTURAL, AND HISTORICAL STUDIES

January 8, 2011

RC-0734

Tina Prettyman
GKM Inc. dba Gentry's Kona Marina
74-425 Kealakehe Pkwy.
Kailua Kona, HI 96740

Dear Tina:

As requested, Rechtman Consulting, LLC conducted an archaeological field inspection of a roughly 3 acre portion of a 9-acre lease area within TMK:3-7-4-08:003 in Kealakehe Ahupua'a, North Kona, Island of Hawai'i. The scope of work included a cursory review of both historic maps and previous archaeological studies conducted within the vicinity of the current project area; a thorough on-foot reconnaissance of the project area; and this written report documenting our findings.

Historic maps and previous archaeological work indicated that a traditional Hawaiian trail (recorded elsewhere as SIHP Site 23023) is located in the immediate vicinity of the study area. It is also possible that temporary habitation sites and petroglyphs could be present in the study area.

On January 8, 2011, David Nelson, B.A. under the direction of Robert B. Rechtman, Ph.D. conducted a thorough inspection of the 3-acre study area. There were no archaeological sites observed within the study area during this inspection. A single rock cairn and possible trail alignment were observed to the southwest of the study area between Kealakehe Parkway and the existing boat/trailer storage facility. This trail alignment had been previously impacted.

Given the negative finding of this study it is concluded that development of the 3-acre study area will have no direct adverse impact on any archaeological resources. However, if during development activities any suspicious finds are made DLNR-SHPD should be contacted immediately as outlined in HAR 13§13-280.

Thank you for the opportunity to provide you with our services. Should you have any questions, or would like further information please feel free to contact me.

Regards,



Bob Rechtman, Ph.D.
Principal Archaeologist

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

July 27, 2018

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

Land Board Members:

SUBJECT: REQUEST AUTHORIZATION TO ALLOW GKM, INC. (BOATING LEASE NO. H-82-4) TO ADD FUEL SALES TO THE LEASE “CHARACTER OF USE” AT A RENTAL RATE OF FIVE PERCENT (5%) OF GROSS FUEL RECEIPTS, SITUATED AT HONOKOHAU SMALL BOAT HARBOR, KAILUA-KONA, KEALAKEHE, ISLAND OF HAWAII, HAWAII, TAX MAP KEY (3) 7-4-008:042 (POR.)

REQUEST:

The Division of Boating and Ocean Recreation (“DOBOR”) is seeking approval from the Board of Land and Natural Resources (Board) to authorize GKM, Inc. to conduct fuel sales and to update the Lease “Character of Use” to include fuel sales at a rate of five percent (5%) of gross fuel receipts at the Honokohau small boat harbor, Hawaii. (see attached EXHIBIT A)

CHARACTER OF USE:

Occupy and use the premises principally for marine and marine-related activities which include the following:

Sales:

1. Marine hardware and supplies
2. Marine paints and other finish material

Services:

1. The construction, operation and maintenance of a boat haul-out facility for boat repair and storage
2. Repair facility for the maintenance and repair of boats
3. Marine workshop facilities
4. Rigging and swaging for vessels
5. Administrative offices for boat repair and storage facilities
6. The submerged land shall be used exclusively for the berthing of vessels for servicing and repair and the adjacent land area for use as a work dock area

The following additional marine-related activities may also be conducted within the demised premises upon prior written approval by the Lessor:

Sales:

1. Sailboats and power boats and other water craft (new and brokerage)
2. Charts, maps, and nautical publications
3. Navigation instruments and supplies
4. Marine electrical and electronic gear and radios
5. Fishing tackle, lures, ice and fresh bait
6. Outboard and inboard engines and supplies

Services:

1. Sail making, canvas goods and repair
2. Repair and maintenance of marine electrical and electronic equipment
3. Marine surveys
4. The construction, operation and maintenance of vessels and marine equipment storage facilities
5. Scuba/skin diving services associated with marine repair and salvage
6. Repair and maintenance of marine instruments and navigation equipment
7. Marine upholstery, draperies and interior finishes
8. Repair facility for the maintenance and repair of boats
9. Cold storage facility or ice house
10. Vending machines for the sale of sandwiches, snacks, hot and cold drinks, candies, cigarettes, etc.
11. Other related activities as approved in writing by the Lessor

ANNUAL RENTAL:

\$120,184.00 per annum, payable in quarterly installments of \$30,046.00

REMARKS:

During the process of reviewing DOBOR fuel agreements, DOBOR Property Management Staff found that there was no fuel agreement for GKM, Inc. After reviewing GKM Inc. records, DOBOR found a plethora of documents referencing GKM, Inc. offering fuel sales at Honokohau Small Boat Harbor without BLNR approval (see attached EXHIBIT B).

As a reference, Kona Marine Holdings, Inc. Lease gives them rights to sell fuel, but not exclusive rights to sell fuel at Honokohau Small Boat Harbor. Also, Kona Marine Holdings, Inc. is required to pay 5% of gross fuel sales. According to the GKM, Inc. Lease No. H-82-4, the "Character of Use" does not include fuel sales. Furthermore, Kona Marine Holdings, Inc. is at a disadvantage in competing with GKM, Inc. because Kona Marine Holdings, Inc. Lease requires them to pay five (5%) percent gross receipts while GKM, Inc. is presently conducting fuel operations without written approval and is currently not paying any percentage of gross receipts to the State of Hawaii.

Sublease

The State of Hawaii consented to a sublease by Gentry Pacific, Ltd., Lease No. H-83-2, to Honokohau Fuel Inc., dba Honokohau Gas & Oil Co., Lease No. GKM-011 (see attached EXHIBIT C). The Board approved the sublease on October 12, 1984. The sublease term was for 20 years commencing February 12, 1985 and ending February 2005. However, Honokohau Fuel, Inc., filed for bankruptcy between August 15-22, 1986 effectively ending Sublease No. GKM-011, see attached EXHIBIT D.

Honokohau Fuel Bankruptcy / Termination of Lease

Honokohau Fuel, Inc. filed for bankruptcy between August 15-22, 1986. Gentry Pacific Ltd. petitioned the United States Bankruptcy Court on January 27, 1989 with a “motion for order Confirming Rejection and Termination of Sublease No. GKM-011. Gentry Pacific’s Motion for order Confirming Rejection and Termination of Lease was granted, and the Sublease No. GKM-011 was deemed rejected and terminated on February 3rd, 1989 by the United States Bankruptcy Court (see attached EXHIBIT E). After the bankruptcy was completed, GKM Inc. took over the operation of the business without assignment/approval from the State of Hawaii.

Permitted Use of Lease

The permitted use of Sublease No. GKM-011 was to be used by the Sublessee solely for the following and for no other purpose(s): “Selling of gas, diesel and oil to commercial, charter and pleasure boats, within the Leased area”. The fueling facility within Gentry’s leased area was approved by the State with the condition that fuel will be “sold only to its tenants and not intended as a retail fuel facility to service the general public”.

Currently there is no lease provision granting GKM, Inc. permission to conduct fuel sales at Honokohau Small Boat Harbor. DOBOR previously sent three separate certified letters (July 13, 2017, November 17, 2017, and June 7, 2018) to GKM, Inc. requesting evidence of any documentation from the Lessor granting permission to conduct fuel sales. DOBOR has yet to receive any evidence from GKM Inc. granting permission to conduct fuel sales.

GKM Response

GKM, Inc’s Attorney responded by letter on June 25, 2018 which stated that GKM, Inc. was granted rights to conduct fuel by assignment of lease recorded October 16, 2002 (see attached EXHIBIT F). GKM, Inc. also stated that fuel sales were initially conducted by Honokohau Fuel, Inc./Honokohau Partnership, Inc. and they consider the on-going fueling activities permitted under said lease.

Ms. Prettyman’s letter also alluded to selling fuel to the general public – “There is currently no way for the Honokohau trailer-boating community to procure fuel unless they drive all the way around to the other end of Honokohau Small Boat Harbor where vehicles are fueled (no launch ramps located there), then drive back around to the launch ramps on our (North) side of the harbor. Very challenging and not safe.”

Note: Honokohau Fuel, Inc. filed for bankruptcy and Honokohau Partnership, Inc. permitted lease use was for the sale of ice, fish, and photography only.

GKM, Inc.’s Attorney states that “At a hearing on March 24, 2006, the DLNR approved the relocation of the fuel dispensers and the convenience store-fueling station improvements and consented to Gentry’s Kona Marina’s mortgaging of its lease to secure the \$1,000,000.00.” They further contend that “the approval of the loan and the extension and mortgaging of the Lease for the express written purpose of relocating and improving an ongoing fueling operation at Honokohau Harbor is all the written approval that should be required.” Item J-1 of the March 24, 2006 Board of Land and Natural Resources meeting does not contemplate the relocation of the fuel dispensers and the convenience store-fueling station improvements. In fact, the submittal states “Loan proceeds will be used to renovate the existing steel building and add additional square footage. Plans were approved by DLNR on December 29, 2004. GKM, Inc. also proposes to renovate the haul-out slip and travel lift to accommodate larger vessels and make repairs to existing buildings, parking lot, and fencing.” Nowhere in the submittal or minutes does it mention fueling facilities. (see attached EXHIBIT G).

Gentry Pacific Ltd. History of Selling Fuel to the General Public

Gentry Pacific Ltd. has continuously disregarded instructions over the years from both the Department of Transportation and the Division of Boating & Ocean Recreation to cease offering fuel sales to the general public. (see attached EXHIBIT B).

On July 17, 2017, Tina Prettyman sent a letter to DOBOR stating the following regarding the fuel sales at Gentry’s Kona Marine “With regards to the sales of fuel, GKM, Inc. has correspondence on file with your department and board approval for a convenience store-gas station” (see attached EXHIBIT H). DOBOR has requested this documentation from GKM, Inc. several times but DOBOR has yet to receive any such documentation. Furthermore, during the sublease period, GKM, Inc. requested several times to amend their lease to sell fuel to “outside vehicles and vessels.” The Department of Transportation denied each request (see attached EXHIBIT I).

DOBOR is seeking to amend GKM Inc. lease to include fuel sales at a rental rate of five percent (5%) of Gross Fuel Receipts. DOBOR is also seeking to honor the original sublease terms that limited fuel sales to GKM, Inc.’s tenants only.

RECOMMENDATION:

That the Board of Land and Natural Resources:


1. Authorize GKM, Inc. to conduct fuel sales, under the terms and conditions cited above, which are by this reference, incorporated herein and further subject to the following:
 - a. Update Boating Lease No. H-82-4 “Character of Use” to include fuel sales at a rental rate of five percent (5%) of Gross Fuel Receipts.
 - b. Restrict fuel sales to GKM, Inc. tenants only.

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

Respectfully Submitted,


for 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 Honokohau Small Boat Harbor: GKM, Inc. and Kona Marine Holdings, Inc. Fuel Facility Locations
- B. DOT & DOBOR and GKM, Inc. Fuel Sale History
- C. Honokohau Fuel Inc., dba Honokohau Gas & Oil Co., Sublease No. GKM-011
- D. Honokohau Fuel Inc., dba Honokohau Gas & Oil Co. Bankruptcy Filing
- E. Sublease No. GKM-011 Termination
- F. 6/25/18 Response Letter from GKM, Inc.'s Attorney
- G. BLNR March 24, 2006 Meeting Minutes & Land Board Submittal
- H. 7/17/2017 GKM, Inc. Letter
- I. GKM, Inc. Request's to Amend sublease & DOT Denial

Honokohau Small Boat Harbor

GKM Inc. and Kona Marina Holdings Fuel Locations

Legend

Fuel Locations

GKM Inc. Fuel Location

Kona Marina Holdings Fuel Location

EXHIBIT A

Google Earth

400 ft



History
SUMMARY OF COMMUNICATIONS RE UNAUTHORIZED SALE OF FUEL FROM
THE GENTRY PROPERTY'S LEASE AT HONOKOHAU HARBOR

Lease
4/8/1983

Date	Communication	Content
Nov. 19, 1984	Colin L. Love to Harbors Division, Adam Vincent	First written complaint about Gentry's sale of fuel
Nov. 30, 1984	Adam Vincent to Colin L. Love	Gentry was given approval to sell fuel to its tenants only, and is not intended to be a retail fuel facility to service the general public.
Sept. 6, 1985	Jack Hall to Harbors Division, Adam Vincent	Gentry's fueling facility is now a full service facility selling fuel to the general public.
Dec. 4, 1985	Colin L. Love to Harbors Division, Adam Vincent	The sale of fuel to motorists and boat owners coming in off of the highway on the way to the launch ramp appears to be a consistent pattern.
Feb. 9, 1987	Jack Hall to Edward Hirata, Director of Dept. of Transportation	Summarizes the communications between Kona Fuel and Marine, or its officers, or attorney, during 1985 through December 1986. Reference to various telephone calls on a number of problems, including the illegal sale of fuel. Copies of letters were attached as exhibits.
Mar. 3, 1987	Edward Hirata to Jack Hall	Robbie Holmes advised to stop fueling vehicles that are not users of the Gentry facility.
Mar. 9, 1987	Robert Garcia, Esq., to David Higa, Harbors Division	Garcia represents Hawaii Petroleum, the fuel supplier for the Fuel Dock. Garcia informs Higa that Holmes & Sawyer, Gentry's sublessee, have been selling fuel to the public, and advertising the sale of fuel. Ian Birnie (Harbors) has agreed that Gentry's actions are a flagrant violation of the lease.
May 5, 1987	David Higa, Chief of Harbors Division to Robert Garcia	Holmes has been told to stop selling fuel to the general public. Harbors does not condone the continued unauthorized use of the lease premises.
Dec. 8, 1987	Jack Hall to Wendy E. Oda, Harbors Division	The department has given notice to Gentry to stop the unauthorized sale of fuel, but nothing happens. Hall is interested in knowing how the department plans on correcting the situation.

Sub-Lease GMK-oil Honokohau Fuel Inc.

Aug. 5, 1988	Colin L. Love to Dan Kochi, Deputy Director for Harbors	Recites past problems, and references a real estate ad for the sale of Holmes' fueling operation. The listing says they have two Chevron pumps, and that the sale of gas and diesel fuel is permitted. It indicates \$541,451.00 in annual income, (most of which was fuel). Points out that the State gets no part of this income.
Feb. 1, 1989	Edward Hirata to Jack Hall	The State is satisfied that the KF&M fuel facility meets the present and projected future demands for a fueling facility.
Feb. 28, 1989	Jack Hall to Ian Birnie, Harbors Division	Request for a reduction in rent because of lost profit caused by: <ol style="list-style-type: none"> 1. The unfair and unauthorized competition in the sale of fuel from the Gentry lease; 2. Delays in the State approving subleases; 3. The State left us no alternative but to sell or sue.
June 2, 1989 and June 6, 1989	Colin L. Love to John Uchima, Deputy Director, Harbors Division	Settlement letters regarding the sale of Harbor Lease H-83-2 to the Dahlbergs. The letter recites past problems. The settlement includes Harbors agreeing that if there is a foreclosure and if KF&M takes the lease back, KF&M can re-sell with no consent fee. \$75,000 was paid for this agreement that KF&M would not have to fight over the consent fee again. Timing was critical, and KF&M was forced to this settlement.
Jan 17, 1990	WIIT article	Complaints about Dahlberg at the harbor have resulted in plans for a new fueling facility.
Jan 18, 1990	Colin L. Love to Edward Hirata, Director of DOT	Transmitted the news paper article (above). Again the history of the unauthorized sale of fuel is presented, and the department is asked for help.
Apr 16, 1993	Jack Hall to Larry Cobb, Harbors Division	Inquiry into the status of Dahlberg's payment of rent.
Apr. 21, 1993	David Parsons, Harbors Division, to Jack Hall	Dahlberg has not paid percentage rent for 1990, 1991 and 1992.
Apr. 24, 1993	Jack Hall to David Parsons, Harbor Division	Reference to the continued illegal sale of fuel from the Gentry Lease and the failure of Harbors to take any action. Videos of the illegal activities

		were taken and given to the State, then lost by the State.
Apr. 29, 1993	Transcript of a meeting between Dahlberg, Larry Cobb, Ian Birnie and Jack Hall	Dahlberg says he withheld the percentage rent for three years because the State did not put a stop to the illegal sale of fuel from the Gentry lease. The State did not know they were not being paid the lease rent.
June 4, 1993	David Parsons, Harbors Division to Dahlberg	Acknowledges the unauthorized sale of fuel, but does not agree that it justified the withholding of Statements of Gross Receipts for three years. Parsons says that the statements should have been sent to them, and they should have been afforded the chance to correct the situation (unauthorized sale of fuel)
Mar. 7, 1994	Jack Hall to David Parsons, Harbors Division	This letter addressed: <ol style="list-style-type: none"> 1. The failure of the State to address lease violations by Gentry; 2. Harbor lease H-83-2 is the only authorized fuel facility; 3. If the State wants an additional facility, put it out to bid; 4. The history of the problems with Gentry, the State's promises and the State's lack of performance; 5. The State's attempt to legitimize the illegal sale of fuel from the Gentry lease; 6. KF&M's security interest is jeopardized by the State's failure to prevent the illegal sale of fuel, and KF&M demands action.
May 17, 1994	Jack Hall to Larry Cobb, Property Management Division, DLNR-Boating	Provided Larry Cobb with a complete package of correspondence since 1983, and asked him to take action to prevent the illegal sale of fuel from the Gentry lease.
June 13, 1994	David Parsons, Boating Division to Jack Hall	The State has no objection to Gentry selling fuel to vessels stored on their premises. They do not admit that the previous administration made any mistakes. (No reference to the ongoing problem with the illegal sale of fuel.)
June 24, 1994	Jack Hall to David Parsons	The letter addresses: <ol style="list-style-type: none"> 1. KF&M never agreed that Gentry could fuel boats stored at its facility. KF&M is the only authorized facility; 2. Changes that will be made in the facility to

		<p>increase income;</p> <ol style="list-style-type: none"> 3. Loss of income to the State because Harbors allows the illegal sale of fuel from the Gentry lease; 4. Gentry is fueling boats at will, many of them charter boats and commercial vessels; and 5. A list of illegal fueling operations, names of boats and dates is attached.
Sept. 15, 1994	Colin L. Love to John Keppeler, Deputy Director	Reference to a massive fuel spill at the Gentry fueling operation, and the continued illegal sale of fuel from the Gentry lease.
Nov. 30, 1994	Keith W. Ahue, Chairperson, Board of Land and Natural Resources, to Jack Hall	The alleged illegal fueling activities at the Gentry lease has been the subject of investigation. The State has determined that the lessee may be in violation of its lease, and is taking appropriate action to demand that the matters be resolved
Nov. 30, 1994	Keith W. Ahue, Chairperson, Board of Land and Natural Resources to Gentry Properties	Notice to stop the unauthorized sale of fuel or their lease will be terminated. Given 60 days to comply.
Jan. 20, 1995	Michael D. Wilson, chairperson of Board of Land and Natural Resources to Jack Hall	Edward Hirata did not have the authority to bind the Board of Land and Natural Resources to a settlement agreement whereby KF&M paid \$75,000 in return an agreement whereby they could take the harbor lease back from the Dhalbergs in the event of their default, and re-assign it to a new buyer, without having to pay a consent fee.
Jan. 23, 1995	Colin L. Love to Dawn Chang, Office of the Attorney General	The failure of the State to prevent the unauthorized sale of fuel by Gentry may have caused Dahlberg to fail. The department has made demands on Gentry before, but that has not stopped them from the unauthorized sale of fuel.
March 9, 1995	Colin L. Love to Dawn Chang, Office of the Attorney General	One of the conditions for KF&M paying the delinquent rent is that DLNR will stop the unauthorized sale of fuel from the Gentry Properties lease.
March 14, 1995	Dawn Chang, Office of the Attorney General, to Colin L. Love	The DLNR has conducted its own investigation, and will continue to monitor the fueling activities of Gentry Properties, and if a violation has occurred, the State will take action against the Gentry lease.

Dec. 1, 1995	Jack Hall to David Parsons, State Boating Administrator	Requests credit for the \$75,000 paid to the State for an agreement that Edward Hirata did not have the authority to make.
February 27, 1996	Jack Hall to Kazu Hayashida, Director, DOT	Letter explaining the background of the \$75,000 payment to DOT, attaching a copy of the settlement agreement and asking that the funds be applied to the Dahlberg delinquent rent.
Mar. 9, 1996	Jack Hall to David Parsons, State Boating Administrator	Notification of objections to the State's efforts to increase the unauthorized sale of fuel from the Gentry lease by moving the pumps so that it will be easier for cars coming in from the highway to get fuel.
April 1, 1996	Thomas T. Fujikawa, Chief of the Harbors Division of DOT to Jack Hall	A letter from DOT responding to KF&M's letter of Feb. 27, 1996 requesting money paid to DOT be applied to the Dahlberg rent delinquency. KF&M is referred to DLNR-DBOR and Larry Cobb.
June 1 - 6, 1996	List	List of illegal fuel transactions at the Gentry facility, statement by John White that he stopped surveillance because he was threatened by Holmes.
June 12, 1996	Colin L. Love to Gilbert Coloma-Aguran, Deputy Director DLNR	The letter explains the full background of the problems with the unauthorized sale of fuel from the Gentry lease, and described the efforts of Gentry (Gary Lambert, their manager) and Larry Cobb from Harbors to expand the Gentry fueling facility to make it easier for cars coming in from the street to buy fuel.
July 10, 1996	KF&M to DLNR-DBOR	Check for \$50,000, paid to DLNR without DLNR-DBOR providing an accounting of the amount due.
July 11, 1996	Colin L. Love to Michael Wilson, Chairperson, BLNR	A five page letter summarizing the thirteen years of problems in dealing with DOT and BLNR and their failure to collect rent from the Dahlbergs and their failure to prevent the illegal sale of fuel at the harbor, etc. A copy of all of the foregoing letters were attached, and a copy of the letter to Mr. Wilson and all of the attachments was given to each member of the board.

July 16, 1996	Cohn L. Love to Kona Fuel & Marine, Inc	The letter summarizes the July 12, 1996 BLNR meeting and the demands made upon KF&M.
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Documents Recently Obtained

May 29, 1987	Norman Gentry, V.P. Gentry-Pacific, Ltd. to David Higa, Chief, Harbors Division, DOT	Letter acknowledging a complaint about Robbie Holmes selling fuel and referring David Higa to Gary Lambert.
June 3, 1987	Gary Lambert, General Manager for Gentry's Kona Marina to Robbie Holmes	Memo to Holmes telling him that he can only sell fuel in accordance with his sublease.
June 8, 1987	Harvey Jay Migdal, Corporate Counsel for Gentry to David Higa, Chief, Harbors Division, DOT	Letter taking the position that there are no limitations to the sale of fuel in the Holmes <u>sublease</u> .
January 25, 1989	Ian Birnie, Harbors District Manager to Dep-K	Memorandum to Honolulu office of Harbors division reporting: <ul style="list-style-type: none"> 1. He was told by Gentry's Kona attorney that Holmes had ignored a notice to cease selling fuel to automobiles. 2. Gentry was filing for summary possession. 3. The Kona attorney had been threatened by Holmes. 4. Ian Birnie was going to seek police protection.
May 10, 1989	Gentry-Pacific, Ltd., Robert K. Holmes and Steven Sawyer	Stipulated settlement of a summary possession action that had been filed by Gentry-Pacific against Holmes for violating his sublease by selling fuel to automobiles. Holmes agrees to not sell fuel to automobiles. Gentry is to seek an amendment of the sublease that will allow Holmes to sell fuel to automobiles.
June 17, 1993	S.V. Quiitiquit, Esq., to David E. Parsons, DLNR-DBOR	Letter denying any knowledge of Holmes selling fuel to automobiles and contending that the Gentry's lease allows them to sell fuel to vessels on the water.

JOHN WAIMEE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P.O. BOX 821
HONOLULU, HAWAII 96809

KEITH W. AHUE, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

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HISTORIC PRESERVATION
PROGRAM
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

REF: BOR-PM/LC

November 30, 1994

Gentry Properties
P. O. Box 295
Honolulu, HI 96809

Gentlemen:

Subject: Harbor Lease No. H-82-4, Honokohau Boat Harbor,
Island of Hawaii

This is to officially notify you that the Department of Land and Natural Resources, upon consultation with the Attorney General's office, has determined that certain activities of your subleasee, Honokohau Fuel, Inc., GMK-011, has violated the terms of Harbor Lease No. H-82-4.

An investigation has recently been completed in conjunction with the Department of the Attorney General, Investigations Division. The investigation indicates that your sublessee, Honokohau Fuel, Inc., GMK-011, has violated the terms of the sublease and your lease. Specifically, occurrences of fueling vehicles, trailer boats not stored on the premises, and fueling of vessels in the haul out slip have been observed and documented. You have been notified on previous occasions that these practices violate the terms of the Harbor Lease No. H-82-4 and applicable Hawaii Administrative Rules.

You are hereby notified that the above mentioned violations constitutes a breach of Harbor Lease No. H-82-4. Under the terms of Paragraph 23 of the lease, you have sixty (60) days from receipt of this notice to cure the breach.

You are required to provide the Department with evidence of corrective action to satisfy the breach. Mere assurances or promises of compliance will not suffice. As a minimum, it will be necessary to remove the fuel truck (Hawaii State License No. 313 MCC registered to Honokohau Marine Ice House, Inc.) from the premises.

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION
4 Sand Island Access Road
Honolulu, Hawaii 96819

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES 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 RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES INFORMATION
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIROHAWI ISLAND RESERVATION COMMISSION
LAND
STATE PARKS

BOR-PM-204-18

GKM, Inc.
c/o Tina Prettyman
74-425 Kealakehe Parkway
Kailua-Kona, HI 96740

Dear: Tina Prettyman,

On May 25, 2018, Item J-7, the Board of Land and Natural Resources authorized the continuation of your revocable permit #5, retroactively for one year from July 1, 2018 to June 30, 2019. During the RP #5 submittal process, DOBOR was informed of ongoing fuel sale operations being conducted at the Honokohau Small Boat Harbor location (Lease # H-82-4).

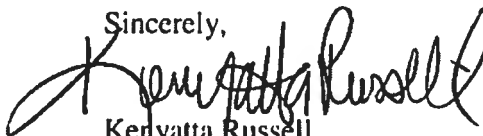
According to the GKM INC., lease (Lease # H-82-4) the Character of Use does not include fuel sales. DOBOR has no records or lease addendums granting permission to conduct fuel sales at this location. However, fuel sales may be conducted within the demised premises upon prior written approval by the Lessor per GKM INC. lease.

The Division of Boating and Ocean Recreation (DOBOR) will be going before the Board of Land and Natural Resources (the BLNR) tentatively July 13th, 2018 to request authorization to allow GKM INC. to offer fuel sales. DOBOR is seeking to add fuel sales to GKM INC. "Character of Use" at a rate of five percent (5%) of gross fuel receipts.

If you have any documentation granting permission to conduct fuel sales please forward a copy to Kenyatta.russell@hawaii.com and or the address above attention Kenya Russell prior to July 1st, 2018.

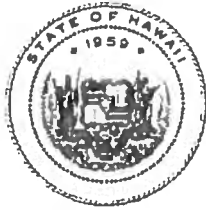
Should you have any questions, please contact Property Management, at (808) 587-1978.

Sincerely,


Kenyatta Russell
Property Manager

Sent by regular and
Certified Mail:
7017 0530 0001 0150 5454

DAVID Y. IGE
GOVERNOR OF HAWAII



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

4 Sand Island Access Road
Honolulu, Hawaii 96819

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
CYMBIYAMINON WATER RESOURCES MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

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

EDWARD R. UNDERWOOD
ADMINISTRATOR
DIVISION OF BOATING AND OCEAN RECREATION

BOR.PM-101.18

November 17, 2017

Certified Mail
7017 0530 0001 0153 3600

GKM, Inc.
c/o Ms. Tina Prettyman
74-425 Kealakehe Parkway
Kailua-Kona, HI 96740

Dear Ms. Prettyman,

On July 13, 2017, the Division of Boating and Ocean Recreation (DOBOR) requested your assistance with providing any documentation of approval given by the Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR), regarding the fuel operations at GKM, Inc.

Upon our review of your tenant files, DOBOR currently has no evidence of an agreement made between GKM, Inc. and DLNR-DOBOR for fuel operations. Please provide copies of all documents you may have pertaining to this matter. Should you not have written approval from the Board of Land and Natural Resources, we will prepare a submittal requesting that the Board approve fuel operations to occur at the GKM, Inc. facility.

Please contact our Property Management office at (808) 587-1964 if you have any questions regarding this matter.

Regards,

A handwritten signature in black ink, appearing to read "Keiki E. Kipapa".

Keiki, E. Kipapa
Property Manager III



**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION**

79 SO NIMITZ HWY • HONOLULU, HAWAII 96813

December 23, 1988

12-21-88 C. H. ref.
EDWARD Y. HIRATA
DIRECTOR

DEPUTY DIRECTORS
JOHN K. UCHIMA
RONALD N. HIRANO
DAN T. KOCHI
JEANNE K. SCHULTZ

IN REPLY REFER TO:

Dawn Suyenaga Candon, Esq.
Associate Corporate Counsel
Gentry-Pacific, Ltd.
P. O. Box 295
Honolulu, Hawaii 96809

Dear Ms. Candon:

Thank you for your letter of December 8, 1988,
regarding Harbor Lease No. H-82-4, to Gentry-Pacific, Ltd.,
and Sublease No. GKM-011, to Honokohau Fuel, Inc.

Given the physical location of your Gentry Kona Marina
office and Honokohau Fuel, Inc.,'s fuel pumps, it is
inconceivable your management was not aware of fuel sales to
private vehicles. Your letter to the sublessee in fact
state "...warnings have been given to you to halt such
sales." Additionally, departmental records indicate that
Gentry-Pacific, Ltd., was notified of illegal fuel sales by
then Deputy Director Adam Vincent as long ago as March 20,
1985.

We appreciate your stated intention to halt the
unauthorized sale of fuel by Mr. Holmes. The status of
lease No. H-82-4 depends entirely upon your actions.

Please call me if you have any questions.

Yours very truly,

A handwritten signature in cursive script that reads "Dan T. Kochi".

Dan T. Kochi
Deputy Director

bcc. Dir, Chief, Har-H

Mr. Robert Holmes
February 11, 1987
Page 2

HAR-PM 2658

We understand that the sign is now at your gas pumps and that you continue to sell gasoline to anyone who drives in. You must cease such sales and operate within the uses permitted under your sublease.

Please call Mr. Artemio Delos Reyes, Harbors Division Property Manager, at 548-2525, if you have any questions.

Very truly yours,

IS/ John Uehara

for Edward Y. Hirata
Director of Transportation.

ADR:jls

bcc: HAR-H
HAR-B

November 23, 1988

HAR-PM 1966

Gentry-Pacific, Ltd.
P. O. Box 295
Honolulu, Hawaii 96809

Gentlemen:

We have been informed by Mr. Ian Birnie, Hawaii District Manager, that Mr. Robert Holmes, Honokohau Fuel, Inc. (Sublease No. GKM-011), continue to sell fuel to private vehicles. This is in violation of the purpose set forth in Item D, Page 2, of the sublease by Gentry-Pacific, Ltd. to Honokohau Fuel, Inc. and Honokohau Gas and Oil Company now Honokohau Fuel, Inc., dated February 12, 1985, pursuant to the terms of Harbor Lease No. H-82-4.

The permitted use under Sublease No. GKM-011 states in Item D: "The premises shall be used by the Sublessee solely for the following and for no other purpose(s): selling of gas, diesel and oil to commercial, charter and pleasure boats within the leased area."

Mr. Holmes continue to sell fuel to private vehicles in breach of the terms and conditions of the sublease consented by the State on December 5, 1984.

You are hereby notified to remedy the breach within sixty (60) days from the date of receipt of this letter. This notice is pursuant to Paragraph 23, Page 18, of your lease and Sections 171-20, HRS. Failure to remedy the illegal fueling of private vehicles within the 60-day period will subject your lease to termination pursuant to the provisions of Section 171-21, HRS. This notice is also being sent to First Hawaiian Bank, mortgagee of your property as required under Section 171, HRS and Paragraph 23 of the lease.

Your cooperation in resolving this matter is requested.

Very truly yours,

Dan T. Kochi
Dan T. Kochi
Deputy Director for Harbors

ADR:jls

cc: First Hawaiian Bank

bcc: HAR-H

Seen
CH, HAR

C.O.
HAR-S

APR 88 7:16
HAR-PM

B

CONSENT TO SUBLEASE

KNOW ALL MEN BY THESE PRESENTS:

That the STATE OF HAWAII, Lessor in Harbor Lease No. H-82-4, does hereby consent to the Sublease by GENTRY-PACIFIC, LTD. of a portion of the premises demised under said Lease, to wit: An area containing approximately N/A square feet to Honokohau Fuel, Inc., dba Honokohau Gas & Oil Co., whose principal place of business and post office address is P.O. Box 2078, Kailua-Kona, HI 96745.

This Consent shall (1) neither authorize nor be deemed to authorize any further or other sublease of said portion or any other portion or portions of the premises demised under said Lease; (2) not be deemed a waiver of any terms, covenants, provisions or conditions in said Lease contained and on the part of the Lessee to be observed or performed; (3) not be construed as a waiver by the STATE of any legal rights it may have under or in connection with said Lease; (4) not be deemed to estop the STATE from pursuing any cause of action it may have against Lessee either legal or equitable.

This Consent is further subject to the condition that the STATE does not hereby incur any additional liability, either direct or implied.

DATED: Honolulu, Hawaii, 12/5/84.

APPROVED AS TO FORM:

Bethia K. Dawson
Deputy Attorney General

STATE OF HAWAII

By [Signature]
Its Director of Transportation

APPROVED:

BOARD OF LAND AND NATURAL RESOURCES

By [Signature]
Chairman and Member

By [Signature]
Member

Approved by the Board
at its meeting held on

10/12/84, J-8 [Signature]

EXHIBIT C

GENTRY KONA MARINA SUBLEASE

GENTRY-PACIFIC, LTD.

to

Honokohau Fuel, Inc. and

Arthur M. Barnes and Steven Sawyer

Sublease No. GKM-011

11 23

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GENTRY KONA MARINA SUBLEASE

THIS SUBLEASE made and entered into this 12TH day of FEBRUARY, 1985, by and between GENTRY-PACIFIC, LTD., a Hawaii corporation, hereinafter called "Sublessor", and Honokohau Fuel Inc, and Honokohau Gas and Oil Company, whose principal place of business and post office address is P.O. Box 2078, Kailua-Kona, -
Hi. 96745, hereinafter called "Sublessee",

WITNESSETH:

In consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Sublessee to be kept, observed and performed, the Sublessor does hereby demise and lease unto the Sublessee, and the Sublessee does hereby lease and hire from the Sublessor, the Premises hereinafter described in the Basic Provisions and Exhibits.

BASIC PROVISIONS AND EXHIBITS

Item A -- PREMISES: Premises is defined in this Sublease as the area outlined on Exhibit A which is attached hereto and made a part hereof. The Premises is located in the Honokohau Boat Harbor, and, is specifically in the area of property leased by Gentry-Pacific, Ltd. from the State of Hawaii.

Item B -- LEASED AREA: For all purposes under this Sublease, the Leased Area of the Premises shall be deemed to contain approximately na square feet.

Item C -- SUBLEASE TERM; SUBLEASE YEAR; EXTENSIONS AND RENEWALS:

The Sublease Term is 20 years, and no months and no days, commencing 30 days after issuance of Certificate of Occupancy, or date, ("the Commencement Date"), and ending no later than midnight on 20 years hence., ("the Termination Date"). A Sublease Year shall mean a period of

twelve (12) consecutive full calendar months. The first Sublease Year shall begin on the Commencement Date if such Commencement Date shall occur on the first day of a calendar month. If such Commencement Date shall not fall on the first day of a calendar month, the first Sublease Year shall commence on the first day of the calendar month immediately following the month in which the term would otherwise have commenced. Each succeeding Sublease year shall commence on the anniversary date of the first Sublease Year. The Sublease Term includes all extensions and renewals of the original Sublease term herein set forth.

Item D -- PERMITTED USE: The Premises shall be used by the Sublessee solely for the following and for no other purpose(s): selling of gas, diesel and oil to commercial, charter and pleasure boats, within the Leased area.

The Sublessee is aware that the Sublessor does not guarantee that the Permitted Use listed above shall be for the exclusive use of the Sublessee within the area of the Honokohau Boat Harbor and/or within the area of Gentry's Kona Marina.

Item E -- TRADE NAME: Sublessee shall operate and do business on the Premises with all signs and advertising under the trade name: Honokohau Gas & Oil Company

Item F -- FIXED MINIMUM RENT:

(1) From the Commencement Date through year three, inclusive, a minimum annual rent of \$ 2,400.00, in monthly installments of \$ 200.00

(2) For Sublease Year 4, through 5, inclusive, a minimum annual rent of \$ 2,760.00 in monthly installments of \$ 230.00.

(3) For Sublease Year na, through na, inclusive, a minimum annual rent of \$ na in monthly installments of \$ na.

(4) For Sublease Year na, through na, inclusive, a minimum annual rent of \$ na in monthly installments of \$ na.

Rent for the remaining 3 five-year rental periods will be renegotiated in accordance with Covenant Number 3, entitled Rental Redetermination, but in no event will the rent for each new rental period be less than the rent for the immediately preceding rental period.

Item G -- PERCENTAGE RENT: none percent (---%) In the event this Sublease provides that the percentage rent is to be renegotiated, then the parties shall mutually agree to the new percentage rent not less than 90 days prior to the expiration of the last Sublease Year for which the percentage rent is fixed; and, in the event Sublessor and Sublessee fail to so agree on a new percentage rent, then such percentage rent shall be redetermined by an arbitrator or arbitrators in the same manner as they are appointed and used under paragraph no. 3 entitled Rental Redetermination, hereinafter. In no event shall the redetermined percentage rent be less than the percentage rent for the immediately preceding period.

Item H -- SECURITY DEPOSIT: \$ 200.00 . This Security Deposit shall be held by Sublessor as security for the faithful performance by Sublessee of all of the terms, covenants and conditions of this Sublease by Sublessee. This deposit bears no interest, may be comingled with Sublessor's other funds, shall be increased by Sublessee if the Fixed Minimum Rent increases and shall be returned at the termination of this Sublease if Sublessee has complied with all of the terms, covenants and conditions of this Sublease, including the payment of rent, and Sublessee has vacated the Premises.

Item I -- GUARANTOR(S): Arthur M. Barnes and Steven Sawyer

Item J -- SUBLESSEE'S SHARE OF TAXES AND ASSESSMENTS: three and 47/100 percent (3.47 %) for the land and na percent (na %) for the buildings and improvements. (16)
93

Said percentage has been calculated as shown in Exhibit "C" attached hereto and made a part hereof, and Sublessee hereby acknowledges that Sublessor may use any other method of weighted proration which reasonably allocates such charges among the leased areas, as solely determined by Sublessor. Sublessee also acknowledges that the square footages of the various classes of leaseable space and of the common area space as estimated in Exhibit "C" may materially change as solely determined by Sublessor, as the Gentry Kona Marina is developed and subsequently operated.

Item K -- COMMON AREA EXPENSES: Sublessee's percentage of common area expenses which Sublessee must bear is one 14/100 percent (1.14 %). Said percentage of common area expenses shall be paid by Sublessee monthly within 5 days after Sublessor notifies Sublessee of the monthly amount due. Sublessee agrees that Sublessor may adjust once per each Sublease Year the above percentage of common area expenses which Sublessee must bear. (16)
93

Said percentage has been calculated as shown in Exhibit "C" attached hereto and made a part hereof, and Sublessee hereby acknowledges that Sublessor may use any other method of weighted proration, which reasonably allocates such charges among the leased areas, as solely determined by Sublessor. Sublessee also acknowledges that the square footages of the various classes of leaseable space and of the common area space as estimated in Exhibit "C" may materially change as solely determined by Sublessor, as the Gentry Kona Marina is developed and subsequently operated.

Item L -- BROKER(S): NONE.

Item M -- STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION HARBOR LEASE NO, H-82-4:

Notwithstanding anything contained to the contrary in this Sublease, in any and all events, the State of Hawaii, Department of Transportation Harbor Lease No. H-82-4 between the State of Hawaii and Gentry-Pacific, Ltd. controls and is paramount, which includes the required consent of the State of Hawaii, otherwise this Sublease will be of no force and effect. (Lease No. H-82-4 is herein sometimes referred to as the "Lease".) The property subject to said Lease No. H-82-4 is depicted in Exhibit "A", and legally described in Exhibit "B", of which the Premises is a part.

Sublessee hereby acknowledges and represents that Sublessee has received a copy of the Lease, and has reviewed the Lease.

Item N -- SUBLESSOR'S ADDRESS FOR RENTAL PAYMENTS AND NOTICE: Gentry-Pacific, Ltd., P. O. Box 295, Honolulu, Hawaii 96809, and at such other place as Sublessor may designate in writing to Sublessee from time to time.

Item O -- EXHIBITS: The following drawings and special provisions are attached hereto as exhibits and are expressly incorporated in this Lease for all purposes:

Exhibit "A" -- Plan outlining the Premises and Site plan of Gentry Kona Marina.

Exhibit "B" -- Legal description of Gentry Kona Marina.

Exhibits "C" -- Projected Allocation Estimates for Sublessee's Percentage Liability of Real Property Taxes and Assessments (Item J) and Common Area Expenses (Item K)

Note: Although Gentry-Pacific, Ltd. may lease additional land in the Honokohau Boat Harbor, those additional lands will not be included in computing the percentages in Items J and K.

Item P -- OTHER CONDITIONS:

1. Additional rent of one cent (\$.01) per gallon for every gallon sold which exceeds 20,000 gallons per month shall be paid by sublessee. Sublessee to report total gallons sold by the 10th day of each month in accordance with Covenant Number 4, entitled Percentage Rent.
2. Sublessee shall maintain fuel tankwalls and foundation, and fuel lines.
3. Sublessee is hereby permitted to use sublessor's three (3) fuel lines already in place during the term of this Sublease. Sublessee shall fully maintain said fuel lines during the term of this sublease.
4. ~~Sublessor has provided Sublessee with full access of one of two 4 inch electric service ducts for the purpose of conducting business. Said ducts terminate in Sublessee's Space Number 22. Sublessee may, at Sublessor's sole discretion and with written approval from Sublessor, use any excess electrical capacity available in the said second four inch service duct which is owned by Sublessor.~~

THE SUBLESSEE COVENANTS AND AGREES WITH THE SUBLESSOR AS
FOLLOWS:

1. **Payment of Rent.** Beginning with the Commencement Date, monthly in advance throughout the term of this Sublease, without demand or notice, Sublessee shall pay said rent in legal tender of the United States of America to Gentry Kona Marina at the time, in the manner and form set forth in the Basic Provisions and Exhibits, and at the place specified above, or at such other place and to such other nominee as Sublessor may from time to time designate. In the event the Commencement Date falls on other than the first day of the month, the rental for the first fractional month shall be computed on a daily basis from the Commencement Date to the end of the month by multiplying the Fixed Monthly Minimum Rent by a fraction, the numerator of which is the number of days from the Commencement Date to the end of the month and the denominator of which is the number of days in the month.

2. **Service Charge and Default Rate of Interest.** Without prejudice to any other remedy available to Sublessor, a service charge of four (4) cents for each dollar of each rental payment owed for the particular month which is not made on time shall be assessed against Sublessee if the rental is paid more than 5 days after the due date to cover the extra expense involved in handling delinquent payments, and, any amounts owing by Sublessee to Sublessor under the terms of this Sublease shall bear interest from the date same becomes due until paid at the specified maximum rate, if any, then allowed by applicable law or if there is no such specified maximum rate, at a floating rate equal to three (3) percentage points over the large business prime rate then being charged by Bank of Hawaii. Said interest shall be considered as a part of the rental payable in this Sublease.

3. **Rental Redetermination.** Rental Redetermination means that a new Fixed Minimum Rent must be renegotiated. In the event this Sublease requires a reopening of the Fixed Minimum Rent, then such Fixed Minimum Rent shall be the rental for the immediately preceding Sublease Year, or 100% of the fair market rental at the time of the redetermination, whichever is higher.

In determining the fair market rental, the land, buildings and Permitted Use of the Premises as set forth herein in this Sublease shall be considered. The value of Sublessee's

equipment and furnishings shall not be considered in determining the said rental rate.

At the time of redetermination, the fair market rental shall be determined by mutual agreement of Sublessor and Sublessee not less than ninety (90) days prior to the expiration of the period for which minimum rent is fixed. If Sublessor and Sublessee fail to agree upon such fair market rental not less than ninety (90) days prior to the expiration of said fixed period, the fair market rental shall be determined by an arbitrator or arbitrators appointed as hereinafter provided.

Either party may give to the other written notice of its desire to fix such fair market rental by arbitration. If, within ten (10) days after the receipt of such notice, Sublessor and Sublessee are able to agree upon a single arbitrator, then said arbitrator alone shall determine said fair market rental. The decision and award of such arbitrator shall be final, conclusive and binding upon both parties for the period of redetermined rent, unless the same shall be vacated, modified or corrected, as provided in Chapter 658, Hawaii Revised Statutes, as the same may be amended. If Sublessor and Sublessee have not agreed upon one (1) such arbitrator within ten (10) days after said receipt of such notice, then such determination shall be made by two (2) arbitrators, each of whom must be a member of the American Institute of Real Estate Appraisers, and either party may give to the other party a written notice naming one (1) of the two (2) arbitrators. Thereupon, the other party shall, within ten (10) days after receipt of such notice, name a second arbitrator, and in case of failure so to do, the party who has already named an arbitrator may have the second arbitrator selected or appointed by any judge of the First Circuit Court of the State of Hawaii. With forty-five (45) days of their respective appointments, each arbitrator shall determine said fair market rental and submit their reports to the Sublessor and Sublessee. If the fair market rental determined by each of the arbitrators varies by five percent (5%) or less between them, the average of the two shall be controlling, unless the same shall be vacated, modified or corrected, as provided in said Chapter 658. If the fair market rental determined by each arbitrator varies by more than five percent (5%) between them, then, within ten (10) calendar days of the submission of the last fair market rental determination, both arbitrators shall appoint a third arbitrator who shall be a member of the American Institute of Real Estate Appraisers, and in case of failure so to do, either party may have the third arbitrator selected or appointed by any

judge of the First Circuit Court of the State of Hawaii. Said third arbitrator shall, within thirty (30) calendar days of his appointment, determine said fair market rental and submit his report to the Sublessor and Sublessee. The fair market rental determined by the third arbitrator shall be controlling unless it is less than that set forth in the lower fair market rental report previously obtained, in which case the fair market rental set forth in said lower report shall be controlling, or unless it is greater than that set forth in the higher fair market rental report previously obtained, in which case the fair market rental set forth in said higher report shall be controlling, and, unless the determination as herein provided with respect to the third arbitrator shall be vacated, modified or corrected, as provided in said Chapter 658. The arbitrator or arbitrators shall have all the powers and duties prescribed by said Chapter 658, and judgment may be entered upon any such decision and award as provided in said Chapter 658. All costs and expenses of the arbitration shall be borne equally by Sublessor and Sublessee except that each party shall bear the fees and costs of the arbitrator appointed by it, or by the Court on its behalf in lieu of appointment, and shall bear its own attorneys' and witnesses' fees and costs of court if the arbitration becomes the subject of litigation. If and whenever the fixing of such fair market rental is under arbitration, Sublessee, pending the determination thereof, shall continue to pay the then monthly rental which it had been paying during the period of fixed rent and shall promptly pay without any prior demand therefor and without any deduction or set off whatsoever, the deficiency, if any, upon the conclusion of the arbitration proceedings together with interest thereon at the rate of twelve percent (12%) per annum from the commencement of the period of rental redetermination until the date upon which said deficiency and interest are actually paid to Sublessor.

4. **Percentage Rent.** For each and every calendar month or fraction thereof during the term of this Sublease, Sublessee shall pay to Sublessor, on or before the tenth (10th) day of the next succeeding month, as additional rent, a sum of money determined by deducting the Fixed Minimum monthly or fractional monthly rent from the percentage rent for such preceding calendar month or fractional month. The percentage rent shall be determined by multiplying the percentage as set forth in Item G of the Basic Provisions hereinabove by Sublessee's gross sales for each month. In no event, however, shall the monthly rent to be paid by Sublessee to Sublessor be less than the Fixed Minimum Rent herein specified.

5. **Gross Sales and Reports.** The term "gross sales," means the entire amount of the actual sales price, whether for cash or otherwise, of all sales of merchandise or services, and all other receipts whatsoever of all business conducted at, in, from or upon the Premises, less any Hawaii State General Excise Taxes. Sublessee shall submit to Sublessor on or before the tenth (10th) day of each and every calendar month (excluding the 10th day of the first month of the first Sublease Year but including the 10th day of the month following the end of the term) at the place then fixed for the payment of rent, together with the remittance of monthly percentage rent, a written statement signed by Sublessee or by a person duly authorized by Sublessee showing in detail the amount of gross sales of the preceding calendar month or fractional month, if any.

6. **Gross Income Tax.** Sublessee shall also pay to Sublessor as additional rent, together with each payment of rental, real property taxes, and other charges payable by Sublessee hereunder, including but not limited to, the State of Hawaii General Excise Tax (the payment for which under this Sublease would presently be 4.167%).

7. **Preservation and Disclosure of Records.** For the purpose of ascertaining the amount of rent, Sublessee agrees to prepare and keep on the Premises for a period of not less than two (2) years following the end of each Sublease Year, or until Sublessor's auditors have had reasonable opportunity to audit the same, whichever is later, adequate records which shall show inventories and receipts of merchandise at the Premises and daily receipts from all sales and other transactions on the Premises by Sublessee and any other persons conducting any business upon said Premises.

8. **Audits.** Sublessee grants unto Sublessor and its agents the right at all reasonable times to have access to all books, accounts, records and reports, including, without limitation, gross income tax reports and purchase orders, which must be kept by Sublessee with respect to its business on the Premises for at least three (3) years following the end of a calendar year.

9. **Taxes, Assessments, etc.** Sublessee shall pay or cause to be paid, when due, as additional rent, its prorated amount, which is the percentage set forth in the Basic Provisions and Exhibits (Item J, and as set forth in Exhibit "C"), of all taxes, rates, assessments and other charges of every description to which said Premises are subject, including any improvements thereon and the parcel of land of which the Premises is a

part, which taxes, rates, assessments and other charges are now or may hereafter be assessed against the Sublessor or Sublessee by authority of law during the term of this Sublease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Sublessee shall be required to pay proratably only such installments, together with interest, as shall become due and payable during the term of this Sublease.

10. **Minerals and Waters.** Pursuant to the Lease, the State of Hawaii has reserved the right to all minerals as hereinafter defined, in, on or under the demised premises therein and the Premises herein, and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and the removal of such minerals by any means whatsoever, including strip mining. "Minerals," as used herein shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on or under the land.

11. **Prehistoric and Historic Remains.** All prehistoric and historic remains found on the premises demised herein shall be and remain the property of the State of Hawaii and shall not be disturbed or removed by Sublessee, its employees, agents or contractors, without the express approval of the Director of Transportation of the State of Hawaii.

12. **Easements.** Sublessor and the State of Hawaii reserve the right to establish, or to sell or grant to others, easements required for maritime or utility purposes, provided that such easements shall not, in any substantial way, interfere with Sublessee's use of the Premises.

13. **Construction of Improvements; Environmental Impact Assessment.** In the construction of any improvements by Sublessee, if required by the State of Hawaii, Sublessee shall, within sixty (60) days of the issuance of the building permit, prior to constructing any improvements on the Premises, submit an Environmental Impact Assessment to the Department of Transportation of the State of Hawaii. Within thirty (30) days after the approval of any such required Environmental Impact Statement or

Negative Declaration, whichever is necessary to comply with Chapter 343, Hawaii Revised Statutes, as amended, and the Regulations of the State of Hawaii's Environmental Quality Commission, Sublessee will submit completed building plans to the Harbors Division and Sublessor for approval.

If required by the State of Hawaii or County of Hawaii, prior to construction, Sublessee must obtain Department of Health approval for disposal of sewage, Hawaii County approval of a shoreline management permit, and Hawaii County approval for shoreline setback requirements and a building permit from Hawaii County. All costs associated with meeting the requirements hereinabove will be borne by Sublessee. Sublessee must also file and receive, if required by the State of Hawaii and/or County of Hawaii, approval of a Conservation District Use Application from the Department of Land and Natural Resources.

During the term of this Sublease, no improvements, alterations or additions will be constructed on or under the Premises unless Sublessee first submits its plans and specifications to Sublessor for its approval (and to the State of Hawaii if required) and approval is granted by Sublessor in writing (and the State of Hawaii, if so required). The plans and specifications must be in full compliance with all statutes, ordinances, and rules and regulations applicable thereto.

14. Improvement Bond. Sublessee will, at the time of the issuance of any building permit to Sublessee procure and deposit with Sublessor a surety bond in the amount of the construction costs, which bond shall (1) name the State of Hawaii and Sublessor as obligees, (2) be conditioned upon the faithful observance and performance of the building plans submitted to and approved by Sublessor (and the State of Hawaii, if required) and (3) save and hold the State of Hawaii and Sublessor harmless from all liens, suits, actions or damages arising out of, caused by or attributable to such work performed under the building permit.

15. Contractor's Insurance. Before commencing the construction or installation of any improvements, equipment or fixtures on the Premises, Sublessee shall require that all contractors and subcontractors employed on the Premises by Sublessee or Sublessee's contractor procure and maintain in full force and effect during the course of construction and installation the following insurance:

a. **Workmen's Compensation as required by law.**

b. **Contractor's Comprehensive General Liability and Property Damage** with a combined minimum single limit of \$1,000,000.00 for bodily injury and property damage per occurrence.

c. **Contractor's Automobile General Liability and Protective Property** with a combined minimum single limit of \$500,000.00 for bodily injury and property damage per occurrence.

16. **Utilities.** Water, sewer, and electricity are available at the approximate locations depicted on Exhibit "A".

17. **Utility Services; Rubbish Disposal.** Sublessee shall pay when due, all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which said Premises, or any part thereof, or any improvements thereon or Sublessor or Sublessee in respect thereof may during the term of this Sublease become liable, whether assessed to or payable by Sublessor or Sublessee. If such utility services are furnished by Sublessor, the charges to Sublessee will be the greater of Sublessor's actual costs for the furnishing of said services or the rate which would be payable if the Tenant were to purchase the same services from the public utility involved.

18. **Covenant Against Discrimination.** The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, sex, color, religion or ancestry.

19. **Sanitation, etc.** Sublessee shall keep the Premises and improvements in a strictly clean, sanitary and orderly condition.

20. **Waste and Unlawful, Improper or Offensive Use of Premises.** Sublessee shall not commit, suffer or permit to be committed any waste, nuisance, strip, loud or offensive noise, or unlawful, improper or offensive use of the Premises, or any part thereof.

21. **Compliance with Laws.** Sublessee shall comply with all of the requirements of all municipal, state and federal authorities and observe all municipal ordinances and state and federal statutes pertaining to the Premises, now in force or which may hereinafter be in force.

22. **Inspection of Premises.** Sublessee will permit Sublessor and the State of Hawaii

and their agents, at all reasonable times during the said term, to enter the Premises and examine the state of repair and condition thereof.

23. **Improvements.** Sublessee shall not at any time during the term of this Sublease construct, place, maintain and/or install on the Premises any building, structure and/or improvement of any kind and description whatsoever except with the prior approval of Sublessor and the prior approval of the Director of Transportation of the State of Hawaii, if required by the Director, and Sublessor and upon such conditions as said Director and Sublessor may impose.

24. **Repairs to Improvements.** Sublessee shall, at its own expense, keep, repair and maintain the Premises and improvements thereon now existing or hereafter constructed or installed on the Premises in good order, condition and repair, reasonable wear and tear excepted.

25. **Common Area; Rules and Regulations.** The term "common area," as used in this Sublease, shall be deemed to include those portions of the Gentry Kona Marina as are designated by Sublessor for the non-exclusive use of Sublessee in common with other authorized users, including but not limited to, roadways, service areas, driveways, areas of ingress and egress, landscaped and planted areas, sidewalks and other pedestrian ways, corridors, courts, public washrooms, drinking fountains, community rooms, toilets, stairs, ramps, areas containing buildings or structures used in connection with the maintenance of said common area, together with the buildings and structures constructed thereon, and all other similar facilities from time to time provided for the joint use and convenience of such authorized users.

Sublessee shall pay to Sublessor during the term of this Sublease, as additional rent, its pro rata share which is the percentage set forth in the Basic Provisions and Exhibits at Item K, and as set forth in Exhibit "C", of the cost and expenses which are incurred by or on behalf of Sublessor each calendar year, or part thereof, in maintaining and operating the common area (as hereinabove defined), including insurance premiums for the common areas, and the utility systems, lines, conduits, appurtenances thereto and security services serving the Gentry Kona Marina.

Sublessor shall have the exclusive right to police, regulate traffic in and otherwise control the use of parking, sidewalks, and all other portions of the common areas of the

Gentry Kona Marina. In furtherance of such right, Sublessor may from time to time promulgate and amend reasonable rules and regulations with respect to the common area, including hours of operation, which shall be binding upon Sublessee on reasonable notice. For the enforcement of said rules and regulations, Sublessor shall have all remedies in this Sublease provided for a breach of the term of this Sublease, as if said rules and regulations were expressly incorporated herein, and all other legal or equitable remedies whether or not provided for in this Sublease.

26. **Encumbrances, Rights Reserved to Sublessor.** Sublessor reserves the following rights:

(a) The right to grant or relocate all easements now or hereafter required by Sublessor for the construction, installation, operation, maintenance, repair and replacement of rights of way, underground lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewage, drainage and other public services and utilities; and

(b) The exclusive right to the use of the roof, exterior walls and area beneath the Premises, together with the right, from time to time, to install, maintain, use, repair and replace utility mains and other facilities serving other premises within the Gentry Kona Marina, when such location is dictated by necessities of engineering design, good practice and/or code requirements.

27. **Right to Change.** Sublessor reserves the absolute right at any time and from time to time to increase, reduce, change, or alter the size, height, layout, or location of any buildings, driveways, entrances and exits, automobile parking areas, and other circulation areas now or at any time hereafter forming a part of the Gentry Kona Marina.

28. **Right to Enter.** The agents and representatives of the State of Hawaii and the County of Hawaii may enter and cross any portion of the Premises for the purpose of performing any public or official duties; provided, however, in the exercise of such duties, the rights of the Sublessee to the use and enjoyment of the Premises shall not be unreasonably interfered with.

Sublessee will permit Sublessor and its agents to enter into and upon said premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining the building in which said Premises are situated, or for the purpose of making

repairs, alterations or additions to any other portion of said building, including the erection and maintenance of such scaffolding, canopies, fences and props as may be required, without any rebate of rent and without any liability to Sublessee for any loss of occupation or quiet enjoyment of the Premises thereby occasioned; provided, that except in case of emergencies, Sublessor shall make such entry for the purpose of repairing and maintaining the building only during non-business hours, and all such work shall be done in such manner as to cause as little interference as reasonably possible.

29. **Liens.** Sublessee will not commit or suffer any act or neglect whereby the Premises or any improvement thereon or the estate of the State of Hawaii or Sublessor or Sublessee become subject to any attachment, lien, charge or encumbrance whatsoever, and shall indemnify and hold harmless the Sublessor and the State of Hawaii from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

30. **Assignments and Subletting.** Sublessee shall not transfer or assign this Sublease or any interest herein. Sublessee shall not rent nor further sublet the whole or any portion of the Premises, without the prior written approval of Sublessor and the Director of Transportation of the State of Hawaii, which written approval each may unilaterally and arbitrarily withhold. Sublessee understands that said Director and Sublessor also have the right to deny uses contrary to the primary purpose of this Sublease.

31. **Rental Revisions under the Lease.** Sublessee understands that the Board (as it is defined in the Lease) has the right to review and approve the rent to be charged to Sublessee herein and, if necessary, to revise the rent and rent structure charged to the Lessee by the State of Hawaii in the Lease in light of the rental rate to be charged to the Sublessee herein by Sublessor. In the event such revision takes place under the Lease, then Sublessor may revise the rent and rent structure charged to Sublessee herein by passing onto Sublessee the share of such revision attributed to the increase of the rent charged by the State of Hawaii in the Lease to Lessee therein. Likewise, Sublessee understands that this same procedure and rental revision right applies to any assignment or subletting which may be approved under paragraph no. 30 entitled, Assignments and Subletting, above.

32. **Mortgage.** Upon due application and with the written consent of Sublessor and

the State of Hawaii, Sublessee may mortgage this lease or any interest herein or create a security interest in the Premises. Any such mortgage, hypothecation or pledge given by Sublessee without the prior written approval of the Sublessor and said Director shall be null and void. If the mortgage or security interest is to a recognized lending institution, authorized to do business as a lending institution, in either the State of Hawaii or elsewhere in the United States, such consent may extend to foreclosure and sale of Sublessee's interest at such foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified under Chapter 171, Hawaii Revised Statutes, as amended, to lease, own or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder of this Sublease shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of such mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers on the holder than those conferred with respect to any of the aforementioned Federal agencies.

Sublessee shall upon execution of any such mortgage promptly deliver a true copy of such mortgage or written notice thereof to Sublessor. The mortgagee or its assigns may enforce such mortgage and acquire title to the leasehold estate in any lawful way, and pending foreclosure of such mortgage may take possession of and rent the Premises, and upon foreclosure thereof may without further consent of Sublessor sell and assign the leasehold estate by assignment in which the assignee shall expressly assume and agree to observe and perform all the covenants of the Sublessee contained in the mortgaged lease, and such assignee may make a purchase money mortgage thereof to the assignor, provided that upon execution of any such assignment or mortgage a true copy thereof shall be delivered promptly to Sublessor and that no other or further assignment of this Sublease for which any provision hereof requires written consent of Sublessor shall be made without such consent. The mortgagee or its assigns of such mortgage shall be liable to perform

the obligations of the Sublessee under such mortgaged Lease only during the period such person has possession or ownership of the leasehold estate. Nothing contained in such mortgage shall release or be deemed to relieve Sublessee from the full and faithful observance and performance of Sublessee's covenants herein contained or from any liability for the nonobservance or nonperformance thereof, nor be deemed to constitute a waiver of any rights of Sublessor hereunder, and the terms, covenants and conditions of this Sublease shall control in case of any conflict with the provisions of such mortgage.

33. **Protection of Mortgagee.** During the continuance in effect of any authorized mortgage of this Sublease, Sublessor will not terminate this Sublease because of any default on the part of Sublessee to observe or perform any of the covenants or conditions herein contained if the mortgagee or its assigns, within sixty (60) days after Sublessor has mailed to the mortgagee or its assigns at the last known address thereof a written notice of intention to terminate this Sublease for such cause, shall cure such default, if the same can be cured by the payment of money, or, if such is not the case, shall undertake in writing to perform and shall thereafter perform all the covenants of this Sublease capable of performance by the mortgagee or its assigns until such time as the leasehold estate shall be sold upon foreclosure of such mortgage, and any default consisting of Sublessee's failure promptly to discharge any lien, charge or encumbrance against the leasehold estate junior in priority to such mortgage shall be deemed to be duly cured if such mortgage shall be foreclosed by appropriate action instituted within said 60-day period and thereafter prosecuted in diligent and timely manner.

34. **Subordination and Attornment.** Sublessee agrees upon request of Sublessor to subordinate this Sublease and Sublessee's rights hereunder to the loans and mortgages now or hereafter placed, charged or enforced against Sublessor's interest in this Sublease and the leasehold estate hereby created, the Premises or the land, building or improvements included therein or of which the Premises are a part, and execute and deliver (but without cost to Sublessee) at any time and from time to time upon demand by Sublessor such documents as may be required to effectuate such subordination, and in the event that Sublessee shall fail, neglect or refuse to execute and deliver any such document within ten (10) days after receipt of written notice so to do and the receipt by Sublessee of the documents to be executed by it, Sublessee hereby appoints Sublessor, its successors and

assigns, the attorney in fact of Sublessee irrevocably to execute and deliver any and all such documents for and on behalf of Sublessee, provided that such holder of a mortgage shall agree that Sublessee may attorn to it or to any purchaser on foreclosure and this Sublease shall continue in effect if Sublessee is not then in default hereunder. In the event that the mortgagee or beneficiary of any such mortgage or deed of trust elects to have this Sublease a prior lien to its mortgage or deed of trust, then and in such event upon such mortgagee or beneficiary giving written notice to Sublessee to that effect, this Lease shall be deemed a prior lien to such mortgage or deed of trust whether this Sublease is dated or recorded prior to or subsequent to the date of filing of such mortgage or deed of trust.

35. **Financial Statements.** Should a lender advancing funds to Sublessor for the purpose of financing the construction of the Premises, or should the Sublessor require financial statements relating to Sublessee, Sublessee shall submit to such lender or to the Sublessor the required balance sheets and profit and loss statements and financial statements, and shall keep such reports, in the case of a lender, current so long as such lender shall require.

36. **Indemnity.** Sublessee will indemnify, defend and hold Sublessor and the State of Hawaii harmless (1) from and against any claim or demand by third persons for loss, liability or damage, including claim for property damage, personal injury or wrongful death, arising out of any accident in or about the Premises, sidewalks and roadways adjacent thereto or occasioned by any act or nuisance made or suffered on the Premises, or by any fire thereon or growing out of or caused by any failure on the part of Sublessee to maintain the premises in a safe condition; and will reimburse Sublessor and the State of Hawaii for all costs and expenses in connection with the defense of such claims; (2) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

37. **Costs of Litigation.** In case Sublessor or the State of Hawaii shall, without any fault on their part, be made a party to any litigation commenced by or against Sublessee (other than condemnation proceedings), Sublessee shall and will pay all costs and expenses

incurred by or imposed on Sublessor and/or the State of Hawaii; furthermore, Sublessee shall and will pay all costs and expenses which may be incurred or paid by Sublessor or the State of Hawaii in enforcing the covenants and agreements of this Sublease, in recovering possession of the Premises or in the collection of delinquent rental, taxes and any and all other charges. In the event Sublessee brings an action or proceeding against Sublessor arising out of any breach of the terms and conditions hereof, and prevails against Sublessor, Sublessee shall be entitled to recover its costs and reasonable attorneys' fees from Sublessor.

38. Insurance.

A. **Liability Insurance.** Sublessee shall procure, at its own cost and expense, and keep in force during the entire term of this Sublease, with an insurance company or companies acceptable to Sublessor, a policy or policies of comprehensive general liability insurance in a combined single limit amount of not less than \$1,000,000.00 for bodily injury and property damage per occurrence; that said policy or policies shall cover the Premises, including all buildings, improvements and grounds and all roadways and sidewalks on or adjacent to the Premises in the control of Sublessee. Sublessee shall furnish Sublessor with a certificate showing such policy to be in force and shall furnish a like certificate upon each renewal of such policy, each such certificate to contain or be accompanied by an assurance of the insurer that Sublessor and the State of Hawaii, through its Director of Transportation, shall be notified at least thirty (30) days prior to any termination or cancellation of, or material change in said policy. The procuring of this policy shall not release or relieve Sublessee of its responsibility under this Sublease. The policy or policies required under this provision shall name Sublessor and the State of Hawaii as additional insureds.

The minimum limits of insurance recited herein may be increased by such amounts as Sublessor and/or the Director of Transportation, in the exercise of sound and prudent judgment, may require.

B. **Fire Insurance.** Sublessee will, at its own expense, at all times during the term of this Sublease, keep the Premises insured in the names of Sublessor, the State of Hawaii, Sublessee and all Mortgagees, if any, as their interests may appear, against loss or damage by fire including perils specified in the extended coverage endorsement and in an

amount equal to the maximum insurable value thereof, in a company or companies approved by Sublessor, and will pay the premiums thereon at the time and place the same are payable; that the policy or policies of insurance shall be made payable in case of loss to Sublessor, the State of Hawaii, Sublessee, and the Mortgagees, if any, as their interests may appear, and shall be deposited with the Mortgagee, if any, otherwise with Sublessor; and that any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible, be used by Sublessee for rebuilding, repairing, or otherwise reinstating the buildings in a good and substantial manner according to the plans and specifications approved in writing by Sublessor, and the Director of Transportation; provided, however, that with the approval of Sublessor, Sublessee may surrender this lease and pay the balance owing on any mortgage and Sublessee shall then receive that portion of said proceeds which the unexpired term of this sublease at the time of said loss or damage bears to the whole of said term, Sublessor to retain the balance of said proceeds.

Sublessee shall furnish to Sublessor, the State of Hawaii, and the Mortgagees, if any, a certificate showing such policy or policies to be initially in force and shall furnish a like certificate upon each renewal of such policy or policies, each such certificate to contain or be accompanied by an assurance of the insurer to notify Sublessor, the State of Hawaii, and the Mortgagees, if any, of any intention to cancel or materially change any such policy or policies, 30 days prior to actual cancellation.

39. **Surrender.** Sublessee shall and will at the expiration or sooner termination of this sublease, peaceably and quietly surrender and deliver possession of the Premises to Sublessor, together with all improvements constructed thereon by Sublessee of whatever nature or description, in good order and condition, reasonable wear and tear excepted; provided, that trade fixtures, equipment and personal property may be removed by Sublessee prior to such expiration or termination; and provided further, that within sixty (60) days after the termination or expiration of this Sublease, Sublessor may, at its option and upon written notice to Sublessee, require Sublessee to remove all or any portion of any improvement constructed by Sublessee on the Premises, and its equipment, fixtures, trade or otherwise, and/or personal property all at Sublessee's sole expense and cost.

Sublessee shall, in the removal of any of its improvements, equipment, trade fixtures

and/or personal property from the Premises, conduct such removal in such a manner as to cause no damage to the Premises, and in the event of such damage, Sublessee shall, at its own cost and expense, repair or replace the same.

If Sublessee fails or neglects, when so required by Sublessor, to remove all or any portion of any improvement constructed on the Premises by Sublessee of whatever nature or description, equipment, fixtures, trade or otherwise, and/or personal property within sixty (60) days after receipt of written notice to so remove, Sublessor may remove and dispose of the same and charge the cost of such removal and disposal to Sublessee, which costs Sublessee hereby agrees to pay.

40. **Breach.** Time is of the essence of this Sublease and if Sublessee shall fail to yield or pay such rent, costs, charges, assessments, or the like, as required of Sublessee in this Sublease, or any part thereof at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the Premises, or if this Sublease and the Premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of Sublessee's property for the benefit of creditors, or if Sublessee shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and such failure shall continue for a period of more than ten (10) days with respect to the payment of rent with no written notice required, and for a period of more than thirty (30) days after delivery by Sublessor of a written notice of any other breach or default by personal service, registered mail or certified mail to the Sublessee at its last known address and to each mortgagee or holder of record having a security interest in the Premises, if any, Sublessor may, at once re-enter the Premises or any part thereof, and upon or without such entry, at its option, terminate this Sublease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements constructed thereon by Sublessee shall become the property of the Sublessor, or at Sublessor's option, be removed by Sublessee as provided in paragraph 38 hereinabove.

In the case of the non-payment of rent during the term of this Sublease, Sublessor may re-enter the Premises and terminate the Sublease. Sublessee shall be liable for subsequently accruing rent during the term of the Sublease when the Premises are not

re-let and for any deficiency resulting from a re-letting of such Premises plus expenses for the re-letting.

In the event Sublessee discontinues using the Premises for 15 consecutive days for the uses enumerated herein and activities related thereto, without the consent of Sublessor from the date hereof, Sublessor reserves the right to terminate the Sublease on 10 days' written notice.

41. **Condemnation.** In the event that at any time during the term of this Sublease, the Premises or any part thereof shall be required, taken or condemned for any public use, by any condemning authority, the estate and interest of Sublessee in the property taken shall at once terminate, and all compensation payable or to be paid by reason of the taking of any land shall be payable to and be the sole property of Sublessor, and Sublessee shall not by reason of the taking be entitled to any claim against Sublessor for compensation or indemnity for its leasehold interest; that such compensation as shall represent the value of any buildings or improvements erected or owned by Sublessee upon the land shall be divided between Sublessor and Sublessee in the ratios that the expired and unexpired portions of the term of this Sublease, respectively, shall bear to the whole term hereby created, and that in case only a part of the buildings or improvements constructed or owned by Sublessee are taken, Sublessee may claim and receive from the condemning authority but not from Sublessor, any expense incurred by Sublessee in repairing any damage thereto; provided that, in case a part of the Premises shall be required, taken or condemned, the rent thereafter payable for the remainder of the term shall be reduced in the proportion that the area of land so taken shall bear to the area hereby subleased; provided, further, that in case such condemnation and taking shall by mutual agreement of the parties hereto be held to render the remainder of the Premises unfit for the purposes of Sublessee, Sublessee shall have the option to surrender this Sublease within 15 days of such condemnation and taking.

42. **Inspection by Prospective Sublessees.** Sublessor shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following a published notice for the proposed sale or other disposition of the Premises for purposes of informing and apprising such person or persons of the condition of the Premises preparatory to such proposed disposition; provided, however, that any

such entry and inspection shall be conducted during reasonable hours after notice to enter is first given to Sublessee, and shall, if Sublessee so requires, be made in the company of Sublessee or designated agents of Sublessee; provided, further, that no such authorization shall be given more than one year before the expiration of the term of this Sublease.

43. **Sale or Assignment by Sublessor.** Sublessor may at any time assign or transfer its interest as Sublessor in and to this Sublease, or any part thereof, and may at any time sell or transfer its interest in and to the whole or any portion of the Premises.

44. **Attornment.** Sublessee hereby agrees to attorn to the assignee, transferee, or purchaser of Sublessor from and after the date of notice to Sublessee of such assignment, transfer or sale, in the same manner and with the same force and effect as though this Sublease were made, in the first instance, by and between Sublessee and such assignee, transferee or purchaser.

45. **Transfer of Sublessor's Obligations.** In the event of any transfer or conveyance of the Sublessor's interest hereunder other than by way of security only, the Sublessor herein named, except as hereinafter provided (and in case of any subsequent transfers or conveyances, except by way of security only, the then Grantor) shall be automatically free and relieved from and after the date of such transfer or conveyance of all personal liability with respect to the performance of any covenants or obligations on the part of Sublessor contained in this Sublease thereafter to be performed, provided that any funds in the hands of such Sublessor, or the then Grantor, at the time of such transfer or conveyance in which Sublessee has interest shall be turned over to the Transferee or Grantee, and any amount then due and payable to Sublessee by Sublessor, or by the then Grantor, under any provisions of this Sublease shall be paid to Sublessee, it being intended hereby that the covenants and obligations contained in this Sublease on the part of the Sublessor to be kept and performed by it shall, subject as aforesaid, be binding on Sublessor, its successors and assigns only during and in respect to their respective successive periods of ownership.

46. **Extension of Time.** Notwithstanding any provision contained herein to the contrary, wherever applicable, Sublessor may for good cause shown, and in its sole discretion, allow additional time beyond the time or times specified herein to Sublessee, in which to comply with, observe or perform any of the terms, conditions and covenants

contained herein.

47. **Quiet Enjoyment.** Sublessor hereby covenants and agrees with Sublessee that upon payment of said rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms and conditions hereof on the part Sublessee to be observed and performed, Sublessee shall and may have, hold, possess and enjoy the demised premises for the term hereby demised, without hindrance or interruption by Sublessor or any other person or persons lawfully claiming by, through or under it.

48. **Short Form Lease.** This Sublease shall not be recorded by either Sublessor or Sublessee, provided, that Sublessor may, at its discretion, permit Sublessee to record a short-form counterpart of this Sublease, setting forth only the date of commencement and the date of termination of this Sublease and describing the Premises.

49. **Waiver of Jury Trial and Counterclaims.** The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on matters relating to the payment of rent in this Sublease and matters relating to the proper use of the Premises.

50. **Signs.** All exterior signs, installed or painted, advertising the business or activity conducted on the Premises, shall be restricted to the appurtenant equipment or any improvements constructed by Sublessee and are subject to the approval of the Sublessor. All signs installed or painted shall be done in good aesthetic taste and shall strictly conform to the sign ordinance of Hawaii County.

51. **Non-Waiver.** The waiver by Sublessor of any breach of any term, covenant or condition herein contained, including the acceptance of rent, shall not be deemed to be a waiver of the term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained, and the exercise of one right or remedy by Sublessor shall not impair Sublessor's right to any other remedy.

52. **Brokerage Commissions.** Sublessee represents that Sublessee has dealt directly with (and only with) the broker(s) identified in Item L of the above Basic Provisions and Exhibits in connection with this Sublease, and that no other broker negotiated this Sublease or is entitled to any commission in connection herewith. Sublessee agrees to indemnify Sublessor against, and hold Sublessor harmless from, all liabilities arising from

the claims of any other broker based upon acts of Sublessee (including, without limitation, attorneys' fees incurred by Sublessor in connection therewith).

IN WITNESS WHEREOF, the State of Hawaii, Sublessor, and Sublessee herein have caused these presents to be executed this 12th day of February, ¹⁹⁸⁵~~1984~~, both ^{at}~~in~~ effective on the day and year hereinabove set forth.

GENTRY-PACIFIC, LTD.

By

Its

By

Its

Sublessor

HONOKOHAU FUEL, INC.

By

Its

PRESIDENT

Sublessee

Arthur M. Barnes

Sublessee

Steven Sawyer

Sublessee

at
n.p.

STATE OF HAWAII)
) : SS:
CITY AND COUNTY OF HONOLULU)

On this 28th. day of May, 1985, before
me appeared NORMAN GENTRY and _____
to me personally known, who, being by me duly sworn, did say that
he is
they are the Vice President and _____,
respectively, of GENTRY-PACIFIC, LTD.
a Hawaii corporation, and that the seal affixed to the foregoing
instrument is the corporate seal of said corporation, and that said
instrument was signed and sealed in behalf of said corporation by
authority of its Board of Directors, and the said NORMAN GENTRY
and _____ acknowledged said instrument to be the
free act and deed of said corporation.

Smith Linn L.
Notary Public, First Judicial Circuit,
State of Hawaii

My commission expires: 25 December 1986

STATE OF HAWAII)
 : SS:
CITY AND COUNTY OF HONOLULU)

On this ____ day of _____, 19____, before
me appeared _____ and _____
to me personally known, who, being by me duly sworn, did say that
they are the _____ and _____,
respectively, of _____ GENTRY-PACIFIC, LTD.,
a Hawaii corporation, and that the seal affixed to the foregoing
instrument is the corporate seal of said corporation, and that said
instrument was signed and sealed in behalf of said corporation by
authority of its Board of Directors, and the said _____
and _____ acknowledged said instrument to be the
free act and deed of said corporation.

Notary Public, First Judicial Circuit,
State of Hawaii

My commission expires: _____

STATE OF HAWAII
CITY AND COUNTY OF HONOLULU)
Hawaii) : SS:

On this 20th day of November, 1984, before
me appeared Arthur M. Barnes and -
to me personally known, who, being by me duly sworn, did say that
they are the President and -,
respectively, of Honolulu Fuel, Inc.,
a Hawaii corporation, and that the seal affixed to the foregoing
instrument is the corporate seal of said corporation, and that said
instrument was signed and sealed in behalf of said corporation by
authority of its Board of Directors, and the said President
and - acknowledged said instrument to be the
free act and deed of said corporation.

Edna M. Shepherd
Notary Public, First Judicial Circuit,
State of Hawaii

My commission expires: 10-29-85

L.S.

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)
: SS:
)

On this 5th day of December, 1984,
before me personally appeared STEVEN SAWYER

to me known to be the person__ described in and who executed the
foregoing instrument and acknowledged that he executed the same
as his free act and deed.

Annette L. Clemmer
Notary Public, State of Hawaii

My commission expires: 9/1/85

REPAIR YARD
HONOKOHAU BOAT HARBOR

Being a portion of Government Land of Kealakehe

Being also a portion of submerged land of Honokohau Boat Harbor

Land situated at Kealakehe, North Kona, Island of Hawaii, State of Hawaii

Beginning at the northwest corner of the Repair Yard, on the northwest side of Access Road, the coordinates of said point of beginning referred to "HAWAII PLANE COORDINATE GRID SYSTEM, ZONE 1" (Central Meridian 155° 30' 00.00") being 305,540.20 feet north and 319,530.41 feet east and running by azimuths measured clockwise from Grid South of said Hawaii Plane Coordinate Grid System, Zone 1:

1. 307° 52' 49" 425.78 feet along on a curve to the right with a radius of 485.00 feet;
2. 333° 55' 233.09 feet along Access Road;
3. 63° 55' 156.33 feet along the southeast boundary of the Repair Yard;
4. 96° 03' 238.34 feet along the southern boundary of the Repair Yard;
5. 6° 03' 40.00 feet along a portion of the Repair Yard, walkway and submerged land of the boat harbor;
6. 96° 03' 115.00 feet along submerged land of the boat harbor;
7. 186° 03' 545.09 feet along a portion of submerged land of the boat harbor and western boundary of the Repair Yard to the point of beginning and containing an area of 177,860 square feet or 4.083 acres.

EXHIBIT B

EXHIBIT "C"

GENTRY KONA MARINA
PROJECTED ALLOCATION ESTIMATES FOR
SUBLESSEE'S PERCENTAGE LIABILITY OF REAL PROPERTY TAXES
AND ASSESSMENTS (ITEM J) AND COMMON AREA EXPENSES (ITEM K)

I. APPROXIMATE SQUARE FOOTAGE OF AREAS IN GENTRY KONA MARINA (GKM):

"Class I", which is Improved, Enclosed Space	23,383 sf
"Class II", which is Partially Improved, Roofed Space	14,556 sf
"Class III", which is Open Space	34,156 sf

Approximate total leasable sf in GKM	72,095 sf
Approximate common area square feet	102,145 sf

Approximate total area sf of GKM	174,240 sf
	=====

II. COMPUTATION OF REAL PROPERTY TAXES AND ASSESSMENTS FOR SUBLESSEE:

A. Computation on land - Sublessee's pro rata share of taxes and assessments for land is computed as follows:

2,500 sq. ft. (Sublessee's space) : 72,095 sq. ft. (Approximate total leaseable square feet in Gentry Kona Marina) = 3.47 % (Sublessee's percentage of liability for real property taxes and assessments on all land in GKM)

B. Computation on buildings and improvements - Sublessee's weighted pro rata share of taxes and assessments for buildings and improvements is computed as follows:

Class I, which is 23,383 sq. ft. (and is to be weighted 6.7) x 6.7 = 156,666 sf
(which is the weighted amount of Class I improvements)
Class II, which is 14,556 sq. ft. (and is to be weighted 2.0) x 2.0 = 29,112 sf
(which is the weighted amount of Class II improvements)

Total weighted amount of Class I and II improvements = 185,778 sf

2,500 sq. ft. of Class III (Sublessee's Premises x na, which is na weight = na (Sublessee's weighted space) na (total weighted space) = na % (Sublessee's percentage of liability for real property taxes and assessments on all buildings and improvements in GKM)

III. COMPUTATION OF COMMON AREA MAINTENANCE CHARGE FOR SUBLESSEE:

Sublessee's weighted pro rata share of common area maintenance charges is computed as follows:

Class I, which is <u>23,383</u> sf (and is to be weighted 6.7) x <u>6.7</u>	= <u>156,666</u> sf
Class II, which is <u>14,556</u> sf (and is to be weighted 2.0) x <u>2.0</u>	= <u>29,112</u> sf
Class III, which is <u>34,156</u> sf (and is to be weighted 1.0) x <u>1.0</u>	= <u>34,156</u> sf

Total weighted amount of Class I, II, and III space = 219,934 sf

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
MEMORANDUM

HAR-H
81

DOT 1027
(Rev. 11/68)
Bik

TO: Ch, HAR

DATE: August 27, 1986

FROM: HAR-H

SUBJECT: HONOKOHAU FUEL, INC. *< Gentry - Pacific Sublease*

On August 26, we received the enclosed copy of Honokohau Fuel's request to their landlord, Gentry, that their lease be amended to allow fuel sales to outside vehicles and vessels. Note that the request is dated 8/22.

Also enclosed is an excerpt from the 8/25 issue of Pacific Business News, stating that Honokohau Fuel filed for bankruptcy, under Chapter 11, between August 15 and 22.

The dates of these separate actions indicate that the bankruptcy filing took place on or before the request to amend the lease. It appears that the amendment request was not written in good faith. Furthermore, Gentry's manager, Gary Lambert, stated (on August 25) that the bankruptcy filing voids the sublease. Mr. Lambert further stated that Gentry would probably not put the fuel facility out for sub-lease again, but would manage it themselves. He implied that they would abide by the permitted use statement and not sell fuel to autos.

If the sublease to Honokohau Fuel was not voided by the bankruptcy, I would strongly oppose approval of the requested amendment as being unfair to the successful bidder (Jack Hall) at public auction for that service.

The demise of Honokohau Fuel probably has no bearing on Honokohau Partnership (ice, fish and photography), which recently opened. The same principals, Steven Sawyer and Skip Barnes, were in both, and I believe Rob Holmes bought both companies. On August 14, Holmes telephone me and asked if I was going to shut down all other fish handlers in Honokohau (referring to Jack Hall's sub-lessee, Flying Seafoods) now that he was open for business. I told him to take it up with his landlord - Gentry.


IAN BIRNIE

Enc

EXHIBIT D

FORECLOSURES

Filed Aug. 14-22

C-86-3147—First Hawaiian Bank vs. Robert S. Mist et al. Suit to foreclose mortgage on 2747 Puuhonua St., Manoa Valley, Oahu, for alleged non-payment of principal sum of \$85,128. Atty. for plaintiff: Barry K. Tagawa.

C-86-3157—Hawaii Housing Authority vs. Derrick T. Trukuda, Brenda Calero, Rita Brenda Trukuda, et al. Suit for foreclose mortgage on Apt. D-114 of Waikele condominium at Waikele, Oahu, for alleged default. Atty. for plaintiff: Stephen K.C. Nui.

Kaonohi, Ewa, Oahu, for alleged default. Atty. for plaintiff: Ronald V. Grant.

C-86-3186—First Hawaiian Bank vs. Kenneth W. and Jeranne E. Johnson, et al. Suit to foreclose mortgage on 75-5718 Alahou St., North Kona, Hawaii, for alleged non-payment of principal sum of \$35,000. Atty. for plaintiff: Michael L. Biehl.

C-86-3189—Territorial S&L Assn. vs. Shu W. Chun, Omel I. Turk, et al. Suit to foreclose mortgage on Apt. 710 of Pacific Grand condominium at Honolulu, Oahu, for alleged non-payment of principal sum of \$41,351. Atty. for plaintiff: Philip Spradlin.

C-86-3191—Assn. of Apt. Owners of Canterbury Place vs. Lori F. and Laurie M. Zaccaria, et al. Suit to foreclose mortgage on Apt. 203 of Canterbury Place condominium at Waikele, Oahu, for alleged non-payment of principal sum of \$1,397. Atty. for plaintiff: J. Eric Parton.

ML-86-0078—J.M. Sueda Inc. vs. Dynamic Industries Corp., Pauahi Realty Inc., City & County of Honolulu, et al.; \$10,144; 167 N. Pauahi St., Honolulu, Oahu; Kenneth K.S. Lau.

BANKRUPTCIES

The following debtors' petitions were filed Aug. 15-22

Chapter 7

• 86-00509—Charles K. Whitsell, aka Charles Whitsell Photography, 581 Kamoku St., Suite 3004. Debts: \$20,166. Assets: \$5,500.

• 86-00519—Alan Tucker, 1099 Green St., Suite 211. Debts and assets not listed.

• 86-00520—Shannon M.I. Manaois, 955 Ala Liliwai St., Suite 604. Debts: \$18,880. Assets: \$1,050.

• 86-00521—Glenn T. Kawachi, 990 Ala Nanala Pl., Suite 16-C. Debts and assets not listed.

• 86-00522—Daryl E. Wallace, 94-1044 Mahua Rd., Waipahu. Debts and assets not listed.

• 86-00523—John M. Moore, 4300 Waiatae Ave., Suite 706-A. Debts and assets not listed.

• 86-00524—James A. Sr. and Betty J. Lidia, P.O. Box 4341, Hilo, Hawaii. Debts: \$38,267. Assets: \$1,850.

• 86-00525—Edward Jr. and Marie H. Balaj, 84-538-A Hanalei St., Wai-anae. Debts and assets not listed.

• 86-00527—Lester L. Pertz, P.O. Box 3534, Honolulu. Debts and assets not listed.

• 86-00528—Debra D. Figueroa, aka Debra D. Frigillana, 1720 Poki St., Suite 212. Debts: \$23,193. Assets: \$5,670.

• 86-00529—La Paloma Numero Cinco Inc., by its trustees in dissolution, Joseph G. Jr. and Laura R. Martinez, c/o 324 Awini Pl. Debts and assets not listed.

• 86-00531—Rosemary S. Antcliff, 2365-D Gemini Ave., Hickam Air Force Base. Debts: \$12,671. Assets: \$1,250.

• 86-00532—Sabina K. Milan, 3137

George St. Debts: \$20,201. Assets: \$3,119.

• 86-00533—John P. and Sherry L. Barnett, 1351-C Dorey St., Wahiawa. Debts: \$9,301. Assets: \$2,209.

• 86-00535—Michael A. Pope, 2030 Ahualani Pl. Debts and assets not listed.

Chapter 11

• 86-00510—(INVOLUNTARY)—Buena Vista #2ABC Partnership, 1580 Makaloa St., Suite 1177. Petitioner: Roy Y. Awaya. Debts and assets not listed.

• 86-00511—(INVOLUNTARY)—Buena Vista #6 Partnership, 1580 Makaloa St., Suite 1177. Petitioner: John W. Nakao. Debts and assets not listed.

• 86-00512—(INVOLUNTARY)—Buena Vista #3 Partnership, 1580 Makaloa St., Suite 1177. Petitioner: Michael Katsumoto. Debts and assets not listed.

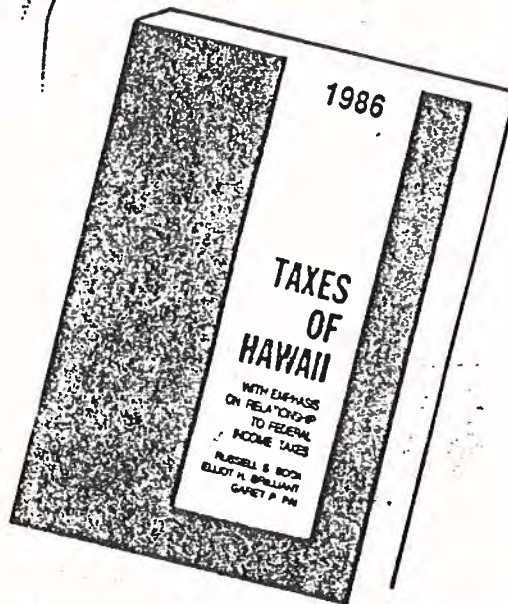
• 86-00513—(INVOLUNTARY)—Buena Vista #4 Partnership, 1580 Makaloa St., Suite 1177. Petitioner: Paul S. Haraguchi. Debts and assets not listed.

• 86-00514—(INVOLUNTARY)—Buena Vista #1-K Partnership, 1580 Makaloa St., Suite 1177. Petitioner: Stewart A. Green. Debts and assets not listed.

• 86-00526—JCSY Inc., Kailua Shopping Center, Kailua. Debts: \$357,196. Assets: \$35,000.

• 86-00530—Honokohau Fuel Inc., P.O. Box 5111, Kailua-Kona, Hawaii. Debts: \$81,642. Assets: \$62,804.

• 86-00534—Dochia A. Gonzalez, aka Dochia Gonzalez, Joseph A. Gonzalez Jr., aka Joe Gonzalez, DJ's Ceramics, and DJ's Ceramics Ltd., 96-1417 Waihana Pl., Pearl City. Debts and assets not listed.



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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

MEMORANDUM

HAR-H
355

TO: HAR-PM *pm 3/8/89*
THRU: DEP-K *K*
FROM: HAR-H

DATE: February 2, 1989

SUBJECT: SUBLEASE GKM-OIL, GENTRY AND HONOKOHAU FUEL, INC., R/S 2559

It is interesting that Gentry's attorney is acting on Holmes' bankruptcy, using that as grounds for termination of the sublease.

I notified you by memo (HAR-H 81, 8/27/86) two and a half years ago that Honokohau Fuel, Inc., had filed for bankruptcy under Chapter 11 between August 15-22, 1986. I also advised you that I had discussed the bankruptcy petition with Gentry's Kona manager, Gary Lambert, on 8/25/86, and he had informed me that it was cause for automatically voiding the sublease. Gentry and we have taken two and a half years to follow up on this matter.

The 1/31/89 hearing in Kona was postponed because Gentry's attorney has been unable to serve Rob Holmes. Maybe his friend Derrick Lining can provide information as to his whereabouts.



IAN BIRNIE

Enc.

IAN -

TRY SOUTH AMERICA!

Of Counsel:
CASE & LYNCH

SYLVESTER V. QUITIQUIT
DAVID C. FARMER
Suites 2500 and 2600
Grosvenor Center, Mauka Tower
737 Bishop Street
Honolulu, Hawaii 96813
Telephone No. 547-5400

Attorneys for GENTRY PACIFIC, LTD.

R 92784
UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII
1989 FEB -8 AM 11:14
DOROTHY A. FERNALD CLERK

FEB - 8 1989

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re	)	CASE NO. 86-000530
	)	(Chapter 11)
HONOKOHAU FUEL, INC.)	
	)	ORDER CONFIRMING REJECTION AND
	)	TERMINATION OF DEBTOR'S
	)	INTEREST IN LEASE
Debtor.)	
	)	DATE: January 27, 1989
	)	TIME: 9:30 a.m.
	)	JUDGE: Jon J. Chinen
)	

3435U/13048-16

ORDER CONFIRMING REJECTION AND
TERMINATION OF DEBTOR'S INTEREST IN LEASE

Gentry Pacific, Ltd.'s ("Gentry Pacific") Motion for Order Confirming Rejection and Termination of Lease was heard before the Honorable Jon J. Chinen on Friday, January 27, 1989, at 9:30 a.m. David C. Farmer, Esq. appeared on behalf of Gentry Pacific, and Mark D. Bernstein, Esq. appeared on behalf of Steven Sawyer, Sublessee.

The Court, having considered the motion, the files and records in the case, and the representations of counsel, and no objections having been filed;

EXHIBIT E

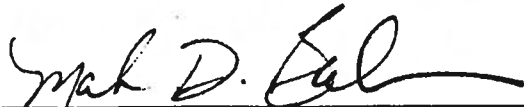
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Gentry Pacific's Motion for Order Confirming Rejection and Termination of Lease is hereby granted, and the Debtor's interest in Sublease No. GKM-011 is deemed rejected and terminated.

DATED: Honolulu, Hawaii, FEB - 3 1989.

JON A. CHINEN

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:



MARK D. BERNSTEIN, ESQ.
Attorney for Steven Sawyer

In re Honokohau Fuel, Inc., Case No. 86-000530 United States Bankruptcy Court for the District of Hawaii (Chapter 11) "ORDER CONFIRMING REJECTION AND TERMINATION OF DEBTOR'S INTEREST IN LEASE"

STEPHEN D. WHITTAKER

Attorney at Law, A Limited Liability Law Company

Post Office Box 964, Kailua-Kona, Hawaii 96745-0964
73-1459 Kaloko Drive, Kailua-Kona, Hawaii 96740-0916
Telephone: (808) 960-4536 Facsimile: (808) 325-7530
e-mail: stephen@whittakerlawkona.com

June 25, 2018

State of Hawaii
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
Attention: Kenyatta Russell, Property Manager
4 Sand Island Access Road
Honolulu, Hawaii 96819

By email, also, to Kenyatta.russell@hawaii.com

Re: *Your Letter to GKM, Inc., c/o Tina Prettyman Received June 8, 2018*

Dear Mr. Russell:

I have been retained by GKM, Inc. (1) to respond in answer to your letter, referenced above, with the history of fuel sales at Honokohau Harbor and (2) to rebut the suggestion in your letter that the "Character of Use" for GKM, Inc. under Lease # H-82-4 ("Lease") does not include fuel sales. You have invited my client to provide "documentation granting permission to conduct fuel sales" to you at the above addresses prior to July 1, 2018. This letter includes a brief history of fuel operations at Gentry's Kona Marina and provides the requested documentation.

Fuel Sales at Honokohau Harbor

Pursuant to Lease # H-82-4 and the authority therein granted the Lessee (initially Gentry-Pacific, Ltd. and by Assignment of Lease recorded October 16, 2002, now GKM, Inc.) fuel sales have been a permitted use at Gentry's Kona Marina since 1985. Fuel sales were initially conducted by Honokohau Fuel, Inc./Honokohau Partnership, Inc. and there is, or should be, substantial documentation in your office establishing such use. We have incomplete records as not all files and correspondence were "assigned" with the Lease, but among the records is a June 28, 1991, letter from Bruce Shimokawa, Property Manager with the State of Hawaii Department of Transportation, directed to GKM, Inc.'s Gary Lambert, requesting a new insurance policy for the fuel operators, Honokohau Fuel, Inc. and Honokohau Partnership, Inc. (Copy 1 enclosed.) We provide this as the earliest evidence in our files documenting fuel operations at Gentry's Kona Marina.

In the summer of 1994 Gary Lambert, then General Manager for Gentry's Kona Marina, at the request of Larry Cobb of the State of Hawaii DLNR, DOBOR, prepared a "status report of all subleases and Sub-Subleases" as Mr. Cobb had reported that some of the leases "were

EXHIBIT F

JUL 2'18AM 7:18BOR ADM

State of Hawaii
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
Attention: Kenyatta Russell, Property Manager
June 25, 2018
Page 2

possibly misplaced or [had] 'disappeared' or been sent to [the] legal department." Mr. Lambert's letter and the status report show Honokohau Fuel, Inc. and Honokohau Partnership, Inc. as having "Approved" existing subleases in June of 1994. (Copy of letter and status report enclosed as 2).

On February 12, 1996, Gary Lambert again had occasion to write to the DLNR, this time to Mr. Boniface Espinda, District Manager, in connection with a request "to make alterations to the now exiting fuel station." Mr. Lambert included in his letter a Site Plan and a Building Plan and he copied the letter to David Parsons. (Copy of letter and Site Plan and Building Plan enclosed as 3). This letter was answered, we believe, on May 7, 1996, in a letter which approved the alterations to the fueling station, though Gentry's Kona Marina has not been able to locate a copy of the May 7, 1996, letter.

Though we do not have the May 7, 1996, letter, we have an October 9, 1996, letter to Mr. Lambert on the subject of the fueling station which states unqualifiedly "This will acknowledge receipt of the 107 names submitted on the petition, "to allow the continuation of fueling of all boats and trailers at Gentry's Kona Marina that was mailed to me on October 3, 1996." (Emphasis in original)(Copy 4 enclosed).

In July of 2004, in a continuing pattern of cooperation with the DLNR and its property managers, Gentry's Kona Marina prepared and sent to Steve Molmen a tenant roster which, again, showed Honokohau Fuel, Inc. as a tenant. At this point in time it was known that Gentry's Kona Marina would not renew the sublease to Honokohau Fuel, Inc. and that fact was made known to Mr. Molmen and to DLNR in Mr. Lambert's summary. (Copy 5 enclosed). Gentry's Kona Marina needed to make plans for the continuation of the services that had been provided by Honokohau Fuel, Inc. and Honokohau Partnership, Inc.

Gas Station-Convenience Store Improvements, Lease Extension and Mortgage

In late 2004, coinciding with the expiration of the sublease to Honokohau Fuel, Inc./Honokohau Partnership, Inc., and in response to the ongoing needs of the boating community at Honokohau Harbor, Gentry's Kona Marina developed a plan to relocate the fueling operations to the north boundary of Lease # H-82-4. In connection with the plan Mr. Lambert wrote to First Hawaiian Bank on November 30, 2004, with a rough outline of the company's needs and received a letter in answer on December 21, 2004, expressing the bank's interest in the business. The bank cautioned that a lease extension would be required for the substantial ONE MILLION DOLLAR (\$1,000,000.00) loan under discussion. (Copies of letters are Enclosure 6).

On December 29, 2004, Steven M. Molmen, in his capacity as Property Manager for

State of Hawaii
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
Attention: Kenyatta Russell, Property Manager
June 25, 2018
Page 3

DLNR and its DOBOR, wrote with approval of the plan for the investment in the improvements and the construction of the improvements, including a convenience store and fueling station. While Mr. Molmen cautioned that "nothing contained [in his letter] shall be deemed to alter, expand or otherwise amend the marine or marine-related activities specified in the subject lease," as shown above (see, e.g. Enclosure 4), the fueling activities were an ongoing permitted use under the Lease. (Copy of approval is Enclosure 7).

In response to Mr. Molmen, and in reliance on the continuing approvals of the DLNR and DOBOR, Mr. Lambert wrote for Gentry's Kona Marina on January 6, 2005, providing Mr. Molmen with a copy of First Hawaiian Bank's letter on the proposed \$1,000,000.00 loan for the improvements (Enclosure 6) and requesting the DLNR/DOBOR agree to an extension of the Lease so that the loan under discussion with First Hawaiian Bank could be amortized as the bank required. (Enclosure 8). The matter was still under consideration when Mr. Lambert wrote again on October 24, 2005, outlining the steps that Gentry's Kona Marina had taken to that point to facilitate the construction of the improvements, including the fueling station and convenience store (Copy is Enclosure 9):

- 1. On November 18, 2004, I provided Nancy Murphy, Hawaii District Manager-DLNR-BOR, with our capital improvement plans (over \$1,000,000).*
- 2. These plans were approved on December 29, 2004 - see enclosure "A".*
- 3. On January 6, 2005, we requested a twenty (20) year extension on our lease- see enclosure "B". Our bank, First Hawaiian, is requiring the twenty (20) year extension in order to approve \$1,000,000 in capital improvement financing - please see enclosed correspondence "C".*
- 4. The fueling operation at our business was shut down on February 12, 2005.*
- 5. Our DLNR-approved capital improvement plans included new, safer fuel dispensers and location.*
- 6. There is currently no way for the Honokohau trailer-boating community to procure fuel unless they drive all the way around to the other end of Honokohau Small Boat Harbor where vehicles are fueled (no launch ramps located there), then drive back around to the launch ramps on our (north) side of the harbor. Very challenging and not safe.*

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- 7. We currently have a slightly hostile environment due to the inability of fisherman to obtain fuel.*
- 8. Our buildings are home to twenty-two (22) small businesses, and an additional 60 plus small businesses depend upon our marina for their survival. .. and this does not include the 120 plus marine activity and charter fishing boats and 80 plus commercial fishermen that rely on our services.*
- 9. Letter from Peter Yong stating DLNR cannot commit to any such extension until the negotiations with JOI have concluded.*
- 10. Board of Land and Natural Resources meeting on September 23, 2005 - Approval of set aside to Department of Land and Natural Resources 68.55 acres of public lands at Honokohau (Gentry's Kona Marina land lease is no longer in the JOI negotiations).*
- 11. It is in the public's best interest that Gentry's Kana Marina be granted the twenty-year lease extension to allow for improvements and continued maintenance of their boating facility.*

At a hearing on March 24, 2006, the DLNR approved the relocation of the fuel dispensers and the convenience store-fueling station improvements and consented to Gentry's Kona Marina's mortgaging of its Lease to secure the \$1,000,000.00. In reliance on such approval Gentry's Kona Marina proceeded to with its plans and made a request of the County of Hawaii for approval of a plan to "Convert warehouse to retail office and relocation of existing fuel facilities" and got appropriate approval. (Copy is Enclosure 10).

While our files don't include a letter or minutes of the March 24, 2006, hearing and approval, I enclose a June 28, 2007, letter directed to Ms. Janice A. Pakele at the Department of Liquor Control, County of Hawaii, signed by Allan A. Smith as Interim Director of the Department of Land and Natural Resources. While the subject of the letter is the GKM, Inc. Liquor License, the letter recites, "This correspondence shall formally serve as the Letter of Consent to the County of Hawaii **approving the improvement plans by GKM, Inc., for a convenience store-gas station** that may provide Prepackaged Beer and Wine for sale." (Emphasis added)(Copy is Enclosure 11).

Fulfilling its promise to consent to an extension of the Lease to facilitate the loan and improvements, the DLNR entered into an Extension Of Harbor Lease No. H-82-4 on May 12,

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2006, and the Extension was duly recorded with the Bureau of Conveyances of the State of Hawaii. The Extension (Copy is Enclosure 12) provides, in part:

2. The annual rental shall be reopened and redetermined on March 31, 2019, March 31, 2024, March 31, 2029, and March 31, 2034.
....
3. The proceeds of the ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) loan shall be used as indicated on the Board submittal approved by the Board of Land and Natural Resources for purposes of leasehold improvements.

In the event the parties do not agree on a new rental at reopening, there are detailed provisions in the Extension on how an appraisal process would proceed. There are no provisions for a unilateral increase in rent by DLNR.

The Lease, with the Extension, allows for the Lessee, among other things, to offer as "Services", "11. Other related activities as approved in writing by the Lessor". See Lease at Page 3. GKM, Inc. contends that the enclosures, the record of the March 24, 2006, hearing, the approval of the loan and the extension and mortgaging of the Lease for the express, written purpose of relocating and improving an ongoing fueling operation at Honokohau Harbor is all the written approval that should be required. The DLNR and DOBOR are estopped from claiming that GKM, Inc. does not have "written" authority to conduct fuel sales at Gentry's Kona Marina.

The Extra-Contractual Fuel Charge

Against this background the letter which Keiki E. Kipapa, then Property Manager, wrote for the DLNR on July 13, 2017, a decade after the deal was done, feigning surprise at the fact that GKM, Inc. was conducting fuel sales, came as a shock to GKM, Inc. (Copy is Enclosure 13). The July 13, 2017, letter recited that, "Our records do not indicate previous approval from the BLNR and we kindly request your assistance in resolving this matter."¹ Tina Prettyman, General Manager for GKM, Inc. wrote on July 17, 2018, in answer, referencing some of the correspondence which is enclosed with this letter and, additionally, protesting the arbitrary and unfair decision of the DLNR to put the boat yard developed by GKM, Inc. out to auction. (Copy is Enclosure 14). Ms. Prettyman's made the point this letter does, to wit, the DLNR has long known and long approved the fuel operations of, first, Honokohau Fuel, Inc./Honokohau Partnership, Inc. and, by succession and written consent, GKM, Inc.

¹ We would point out that the record demonstrates a poor history of accurately maintaining records at the DLNR/DOBOR and that the Department has turned to GKM, Inc. and its predecessor entities in the past for "help" in replacing lost or "disappeared" records.

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The undated letter you wrote which was received June 8, 2018, states, "The Division of Boating and Ocean Recreation (DOBOR) will be going before the Board of Land and Natural Resources (the BLNR) tentatively July 13th, 2018 to request authorization to allow GKM INC. to offer fuel sales. DOBOR is seeking to add fuel sales to GKM INC. "Character of Use" at a rate of five percent (5%) of gross fuel receipts." This is an anticipatory breach of Lease # H-82-4 and the Extension Of Harbor Lease No. H-82-4 made May 12, 2006.

On behalf of GKM, Inc., we are expressing our strong objection to your threat to change the terms of the Lease and unilaterally impose on GKM, Inc. an extra-contractual charge on operations that have been approved and ongoing for decades. Nothing in the Lease or the Extension authorizes such unilateral action, and the general law certainly does not sanction such behavior in breach of lease. Obviously, GKM, Inc. has a huge reliance interest in the improved premises. GKM, Inc. made those improvements for the continued operation of a fueling station with the written consent of the DLNR more than a decade ago. To suggest, as your letter does, that the DLNR has the right to impose a five percent (5%) charge on GKM, Inc.'s fuel sales just because it wants to, is not the law.² GKM, Inc. has the right to enforce the Lease and Extension as written.

We respectfully request that you consider the enclosures and withdraw your planned request to the BLNR to impose a surcharge on Lease # H-82-4. Changing financial needs of the DOBOR or whatever incentives may be at play in this matter do not give the DLNR the legal right to change the terms of Lease No. H-82-4. Of course, should you decline our invitation to withdraw your request and proceed to hearing, we will ask to appear and be heard for GKM, Inc. In this connection GKM, Inc. reserves all of its legal rights and remedies under the Lease, the Extension and applicable law.

Very truly yours,


Stephen D. Whittaker

Enclosures

cc: GKM, Inc. c/o Tina Prettyman

² It hardly seems necessary to point out that a rent increase that is not allowed by the parties' agreement or is fraudulently or improperly assessed or charged can expose the landlord to legal liability. See, e.g. *Molokai Services Inc. v. Hodgins*, 142 Hawai'i 150, 414 P.3d 202 (Ct. App. 2018).

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, MARCH 24, 2006
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:00 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young (left at 9:02 am)
Mr. Ted Yamamura
Mr. Ron Agor (arrived at 9:20 am)

Mr. Tim Johns
Mr. Gerald DeMello
Ms. Taryn Schuman

STAFF

Mr. Sam Lemmo, OCCL
Mr. Dan Quinn, Parks
Ms. Christen Mitchell, DOFAW
Mr. Ross Smith, DOT

Ms. Charlene Unoki, Land
Mr. Glen Abe, DOT
Mr. Richard Rice, DOBOR
Ms. Athline Clark, DAR

OTHERS

Mr. Randy Ishikawa, Deputy Attorney General
Mr. Douglas Chin, D-3
Ms. Diana Bertsch, E-1
Mr. Gary Lambert, J-1
Mr. Mike Tousad, F-3
Mr. Don Palawski, F-3
Mr. Robert Braun, F-3

Mr. William Moore, D-2
Mr. John Sakaguchi, K-1
Mr. Phil Hauret, D-7
Dr. Bud Antonelis, F-3
Ms. Cha Smith, F-3

{Note: language for deletion is [bracketed], new/added is underlined}

Motion made to amended the title of item F-2 to read

“The Division of Aquatic Resources Requests BLNR Authorization/Approval to Issue two (2) Northwestern Hawaiian Islands (NWHI) Access permits to the National Marine Fisheries Service: 1) A Research, Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring Cetaceans, Enhancing Monk Seal Pup Survival and Small Boat Operations); and 2) Special Activity Permit (Allowing entry to State Waters Surrounding the NWHI).”

Unanimously approved to amend the title of Item F-2 (Johns/Schuman).

Item A-2: Minutes of February 24, 2006 briefing.

Deferred due to lack of quorum.

Item A-4: Minutes of March 10, 2006

The Board made the following changes:

1) Page 3, first sentence

“[Kauai] Kali Watson, attorney for All Tree Service, Inc., appeared before the Board and together with Dave Kendrick and Terry Rodriguez conducted a power point presentation showing the subject site and their operation.”

Unanimously approved as amended (Yamamura/DeMello).

Item D-3: Consent to Assign Grant of Easement Identified as General Lease No. S-4227, SWVP Keauhou L.L.C., Assignor, to KBH, Inc., Assignee, Kahaluu, North Kona, Hawaii, TMK: (3) 7-8-13:42.

Charlene Unoki, Acting Assistant Administrator of the Land Division let it be known that the current tenant SWVP Keauhou LLC is in the process of selling their hotel and would like to transfer the subject easement to the new owner. Ms. Unoki recommended the Board consent to the assignment of the existing Grant of Easement identified as General Lease No. S-4227, from Keauhou L.L.C., as Assignor to KBH Inc., as Assignee subject to the terms and conditions listed in staff's submittal.

Douglas Chin of Carlsmith Ball LLP was present and noted his agreement with staff's recommendation.

Unanimously approved as submitted (DeMello/Schuman).

Item D-2: Conveyance By Land Patent Grant of Addition to Hilo Medical Center, Hawaii Health Systems Corporation, Piihonua, South Hilo, Hawaii, TMK; (3) 2-3-032:portion of 001.

Ms. Unoki is seeking the Board's permission to convey a piece of property (10 acres) that is currently being used as a parking lot. She reminded the Board Act 262, SLH 1996 created the Hawaii Health Systems Corporation (HHSC) for the purpose of operating the community hospitals statewide. Ms. Unoki also noted that HHSC is asking that the rent be waived although staff is not in agreement. Ms. Unoki recommended the Board authorize the fee simple conveyance by land patent grant of an approximate 10-acre portion of TMK: 2-3-032: 001 to HHSC and grant an immediate right of entry to HHSC to allow planning and construction of the parking lot and related improvements.

William Moore, a Planning Consultant representing Hilo Medical Center and Ron Terry, the chief author of the Environmental Assessment project were present to answer any questions. The Board asked Mr. Terry if an agreement was made on a rent amount to be paid starting in 1997, why has his organization failed to make payments. Mr. Moore noted that the State is subsidizing the hospital and they are willing to pay the back rent as well as the agreed upon rent.

Unanimously approved as submitted (DeMello/Schuman).

Item E-1: Request from the World Triathlon Corporation to use the Hapuna Beach State Recreation Area in South Kohala, Hawaii for the 2006 Ford Ironman 70.3 Honu Half Triathlon (70.3).

Dan Quinn, Administrator of State Parks mentioned that the World Triathlon Corporation is seeking permission to use the Hapuna Beach State Park to stage the 2006 Ford Ironman 70.3 Honu Half Triathlon. Mr. Quinn conveyed the swim portion of the Triathlon will be based out of the park. Race organizers are asking to begin set up on Thursday, June 1, 2006. Mr. Quinn recommended the Board approve the issuance of a Special Use Permit to the World Triathlon Corporation to utilize the Hapuna Beach State Recreation Area for the 2006 Ford Ironman Honu Half Triathlon subject to the four conditions listed in staff's submittal.

Diana Bertsch representing the World Triathlon Corporation was present.

Unanimously approved as submitted (DeMello/Yamamura).

Item K-1: State Civil Defense Warning and Communications Device Installation at Haena Beach Park, Haena, Halele'a, Kauai, TMK: (4) 5-9-005:019.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands noted that the County of Kauai is requesting placement of a warning and communication device at Haena Beach Park. Mr. Lemmo recommended the Board approve this application to install a State Civil Defense Disaster Warning and Communication Device subject to the terms and conditions listed in staff's submittal.

John Sakaguchi representing the agent Wilson Okamoto announced that he has read staff's submittal and is in agreement with the terms and conditions.

Unanimously approved as submitted (Agor/DeMello).

Item K-2: Amendment to Condition 7 & 9 of Conservation District Enforcement File No. HA-05-19 located at Hokukano, Ka'u, Island of Hawaii, TMK: (3) 9-5-016:036.

Motion to Withdraw.

Unanimously approved to withdraw (DeMello/Agor).

Item J-1: Consent to Mortgage and Amendment for Extension of Lease Term, General Lease No. H-82-4, GKM, Inc., Lessee, Kailua-Kona, North Kona, Hawaii, Tax Map Key: 7-4-008-042.

Richard Rice, Administrator of the Division of Boating and Ocean Recreation (DOBOR) communicated that GKM, Inc. dba Gentry's Kona Marina would like to acquire a mortgage from First Hawaiian Bank for \$1,000,000 to make improvements at the subject site. As a requirement of the mortgage Gentry is seeking to extend the term of the lease for an additional twenty years. Mr. Rice recommended the Board consent to the mortgage between GKM, Inc., Mortgagor and First Hawaiian Bank Mortgagee subject to the terms and conditions listed in staff's submittal.

Gary Lambert, General Manager of Gentry's Kona Marina and Vice President of GKM, Inc., appeared before the Board seeking their approval of staff's recommendation. Mr. Lambert let it be known the proceeds from the mortgage will be used to renovate the haul out slip, travel lift and an existing steel building on the property. They estimate these improvements to cost \$1,000,000.

Unanimously approved as submitted (DeMello/Yamamura).

Item M-3: Amendment to Issuance of a Direct Lease Together with a Construction Right-of-Entry to Sause Bros., Inc., Kalaeloa Barbers Point Harbor, Honouliuli, Ewa, Oahu, Tax Map Key Nos. (1) 9-1-14:24 (Por) and (1) 9-1-74:37 & 38 (Pors).

Item M-4: Issuance of an Inconsistent Revocable Permit A Tom Moffatt Production, Inc. Pier 19 Ferry Terminal Building, Honolulu Harbor.

Unanimously approved as submitted (Yamamura/DeMello).

Item M-1: Issuance of Revocable Permit Ground Transport, Inc. for Inconsistent Use Honolulu International Airport.

Item M-2: Consent to Sublease Retail Concession DFS Group L.P. to Maui Divers of Hawaii, Ltd Honolulu International Airport.

Unanimously approved as submitted (Yamamura/DeMello).

Item D-7: Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. for Access and Utility Purposes, Sunset Beach Elementary School, Pupukea, Oahu, TMK: 5-9-05:18 portion.3

Member Johns recused himself.

Ms. Unoki announced that the state acquired the property from the James Campbell Estate in 1975 and with the property came an encumbrance by Hawaiian Electric Company for a term easement. Ms. Unoki recommended the Board authorize the issuance of a perpetual non-exclusive easement to Hawaiian Electric Company, Inc. covering the subject area for access and utility purposes.

Phil Hauret representing Hawaiian Electric was present.

Unanimously approved as submitted by the remaining Board members (Yamamura/DeMello).

Item F-3: The Division of Aquatic Resources Requests BLNR Authorization/Approval to Issue two (2) Northwestern Hawaiian Islands (NWHI) Access permits to the National Marine Fisheries Service: 1) A Research, Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring Cetaceans, Enhancing Monk Seal Pup Survival and Small Boat Operations); and 2) Special Activity Permit (Allowing entry to State Waters Surrounding the NWHI).

Athline Clark, a Planner with the Division of Aquatic Resources (DAR) noted this is the first access permit to the Northwestern Hawaiian Islands (NWHI) being issued. This permit would allow access for the National Marine Fisheries Service to conduct three different types of activities – setting up a monk seal recovering camp and recovering work, conducting green sea turtle research and conducting a research project on sharks and shark incidents involving monk seal pups at the French Frigate Shoals. The second permit which is a supplemental permit would allow access for the research vessel. Due to the timing of the project, Ms. Clark noted that the review process has to be cut short but noted that it is their intention to go through the entire review process on future permits. With regards to the permit review process, Ms. Clark noted that three staff members were asked to review the permit and went through each of their recommendations. Ms. Clark recommended the Board authorize and approve with stated conditions, a Research, Monitoring and Education Permit and Special Activity Permit to the National Marine Fisheries Service and the Oscar Elton Sette, for activities and access within the NWHI.

The Board asked Ms. Clark to update them on the formulization of the permit review committee. Ms. Clark communicated they are in the process of putting together a permit

review committee that will be made up of someone from the Kahoolawe Island Reserve Commission (KIRC), a staff member from the Division of Forestry and Wildlife (DOFAW) that works at Kure Atoll, staff from DAR, individuals from the Office of Hawaiian Affairs (OHA), staff from Fish and Wildlife Service, the National Fisheries Service and NWHI Ecosystems Reserve. Ms. Clark informed the Board the next set of permits will be reviewed by the committee.

Mike Tousad, Deputy Regional Administrator for the Pacific Islands regional office of the NOAA Fisheries Service came forward to provide testimony. Mr. Tousad let it be known that they hope to address some of staff's recommendation but agrees with the need to work with the State and the Fish and Wildlife Service to regulate these activities. He feels there is a need to slow the decline in the population of monk seals.

Dr. Bud Antonelis conducted a power point presentation that dealt with a shark removal Experiment at French Frigate Shoals. Mr. Antonelis believes the Hawaiian monk seal is a national and international treasure and is one of only two endemic mammals in Hawaii. He went on to say the Hawaiian monk seal population is at its lowest level in recorded history and is in a crisis situation. At present through mitigation efforts the decline in the populations has slowed to about 4% per year. Mr. Antonelis believes the number of seals will probably fall below 1000 within the next five years. A large factor contributing to this decline is the juvenile mortality rate of the monk seals due to attacks by sharks. He went on to say a discrete number of Galapagos sharks have learned to predate on young pup seals and this shark behavior likely stems from such factors as loss of habitat, access to pups and easy access into the atoll via previously dredged channels. Dr. Antonelis went over the results of the shark removal experiment at French Frigate Shoals. The results showed that the removal of sharks preying on young pups before or near the time of weaning is one of the most successful and measurable actions taken to enhance juvenile survival. Predation on pre-weaned pups has dropped significantly from 37 in 1997 to an average of about 10 per year since the study began in 2000.

Don Palawski, who works for the US Fish and Wildlife Service and manages eight (8) national wildlife refuges in the central Pacific, testified. He spoke of the Hawaiian Islands refuge that was established in 1909 by Teddy Roosevelt which extends from Nihoa to the Pearl and Hermes. He spoke of their work at the French Frigate Shoals and working with the National Marine Fisheries Service to monitor and inventory monk seals and green sea turtles. With regards to staff recommendation, Mr. Palawski agrees with and supports monitoring and inventorying of the monk seal and sea turtle population. Mr. Palawski noted they started this project five years ago in which they researched if sharks were getting pups before being weaned from their mothers and what techniques through research would be used in the future to protect these young seals. In closing, Mr. Palawski agrees with staff's recommendation to monitor the monk seal and turtle population but would like other actions to hold until various organizations will be able to meet and discuss if this is the best way to proceed.

Cha Smith, Director of Kahea read comments supplied by Stephanie Fried. Ms. Fried had four impressions upon reading staff's submittal 1) The first permit application for the

new NWHI State Refuge is notable for what it does say as well as what it doesn't say; 2) the permit request is for the killing of apex predators in this apex-predator dominated ecosystem; 3) there have been only very limited consultation with the Native Hawaiian community and 4) the realization that it is the Department's first attempt and although somewhat bumpy will be worked out once protocols are established. Ms. Fried's letter expressed significant concern that there is no recognized panel of ecosystem scientists to evaluate the impact to the ecosystem. She also noted that there is no mention made by NMFS of the fact that juvenile seals are also found emaciated and starving and that lack of prey may play an important role. Ms. Fried believes it would be important to learn what measures could be taken to reduce competition for monk seal prey.

Bob Braun, a veterinarian in Hawaii for twenty years and a contractor to NOAA Fishers provided testimony. Mr. Braun spoke of their efforts in 2001 to haze the aggressive sharks then deter the sharks prior to attacking the pups. At that time the take requirement for the sharks was that the shark would need to attack a pup while staff maintained visual contact of the shark only after the second attack could they take down the shark. Mr. Braun feels the opportunity for public input is more than adequate. Lastly, Mr. Braun communicated that there is a mixing of two types of issues – the overall decline in the population of juvenile monk seals being attributed solely to sharks and secondly the taking of sharks to prove this theory.

The Board amended the Recommendation Section by deferring the recommendation dealing with sharks and instructed staff and the permit applicant to work with US Fish and Wildlife Service and the Native Hawaiian community to come up with some protocols.

Unanimously approved as amended (Yamamura/Schuman).

Item F-1: Request for Approval to Amend/Extend a DLNR/UH Contract (No 47471 – Hawaii Fish Aggregating Device System) to Provide Additional Funds (\$320,000) for the Period of July 1, 2006 Through June 30, 2007.

Item F-2: Request for Approval to Amend/Extend Eight (8) Project Agreements with the Research Corporation of the University of Hawaii for FY07 for the Following Projects: Coral Reef Initiative (Contract No. 49090), Coastal Stock Enhancement (Contract No. 49820), Public Fishing Areas (Contract No. 50027), Stream/Estuarine Studies (Contract No. 51059), Marine Population Survey (Contract No. 51058), Ulua Tagging (Contract No. 52851), and Finfish Broodstock and Larvae Culture (Contract No. 52994), and Hawaii Marine Recreational Fishing Survey (Contract No. 48518).

Unanimously approved as submitted (Yamamura/DeMello).

Item C-1: Request approval of Contract with Ms. Denise Laitinen to Coordinate the Federally Funded Assistance Function of the Hawaii Firewise Program for the Division of Forestry and Wildlife.

Item C-2: Authority to Conduct a Public Hearing to Add the Land of Wao Kele O Puna (Tax Map Keys: (3) 1-2-010:002 and (3) 1-2-010:003) to the Forest Reserve System.

Unanimously approved as submitted (DeMello/Yamamura).

Item D-5: Forfeiture of Duke Kahanamoku Beach Concession Contract Filed as General Lease No. S-5801, C & K Beach Service, Inc., Concessionaire, Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, TMK: 2-3-037:021.

Motion to defer.

Unanimously approved to defer (Yamamura/Agor).

Item D-1: Grant of Term, Non-Exclusive Easement to Brendan McNamara for Access and Utility Purposes, Wailua, Kawaihau, Kauai, TMK: (4) 4-1-06:within 53 & 54.

Item D-4: Grant of Perpetual, Non-Exclusive Easement to John Ellis and Claudia Johnson-Ellis for Access and Utility Purposes, Makawao, Maui, TMK: (2) 2-9-05:portion 20.

Item D-6: Withdrawal from Governor's Executive Order No. 1786 to the Board of Harbor Commissioners for Beach Control Purposes, Waikiki, Honolulu, Oahu, TMK: (1) 2-3-37:21, 2-6-8:29.

Item D-8: Rescind Prior Board Action of January 28, 2000 (Item D-22), Department of Agriculture Requests for Designation, Set Aside for Addition to the Kalaeloa Agricultural Park and a Management Right-of-Entry at Honouliuli, Oahu, TMK: (1) 9-1-31:portion of 1.

Item D-9: Set Aside to the City and County of Honolulu Department of Parks and Recreation for Park Purposes, Waiawa, Oahu, TMK: (1) 9-7-68:4.

Item D-10: Amend Prior Board Action of January 13, 2006 (Agenda Item D-16), After-the-fact Approval of Lease of Federal Property with the Secretary of the Air Force on behalf of the Department of Education, for Public School Purposes, Hickam Air Force Base, Oahu, TMK: (1) 9-9-01:13 (Portion).

Unanimously approved as submitted (DeMello/Agor).

Item L-1: Approval for Award of Construction Contract – Job No. J00CF11A, Iolani Palace State Monument ADA Barrier Removal, Honolulu, Oahu, Hawaii.

Unanimously approved as submitted (Yamamura/DeMello).

Item E-2: Briefing to the Board on the Status of the Diamond Head Crater Celebration at Diamond Head State Monument, Oahu.

Mr. Quinn went over the set up on the grounds of Diamond Head as well as the line up of entertainers. He indicated the organizers of the event will be setting up throughout the week leading up to the event. Mr. Quinn informed the Board staff would be present beginning on Friday and through the end of the event.

The Board instructed staff to report to the Board at the completion of the event.

No Action.

Item E-3: Update to the Board of Land and Natural Resources on action taken at the September 23, 2005 BLNR meeting relating to Kealakekua Bay.

Member Johns made it known that he is still receiving calls and emails from members of the community stating that there has been insufficient time for input prior to this report coming before the Board.

The Board instructed staff to re-double their efforts in working with the community.

No Action.

Item A-1: Supplement to January 13, 2006.

Member Yamamura recused himself.

Unanimously approved by the remaining Board members (Schuman/Agor).

Item A-3: March 9, 2006

Member DeMello recused himself.

Unanimously approved as submitted by the remaining Board members (Yamamura/Schuman).

Item A-5: Minutes of March 16, 2006.

Member Johns and Yamamura recused themselves.

The Board made a change on page 2, third paragraph to read

“Board Member Agor asked the Attorney General if a situation occurs in which an agent of the state inspects a private dam and a decision is made that immediate [~~mediation~~] action needs to happen will the state take responsibility for that dam or do we instruct the private owners to do something about that situation.”

Unanimously approved as amended by the remaining Board members (DeMello/Schuman).

There being no further business, Chairperson Young adjourned the meeting at 10:55 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson’s Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Terry Crowell

Approved for submittal:



PETER T. YOUNG

Chairperson

Department of Land and Natural Resources

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

March 24, 2006

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

ISLAND OF HAWAII

Consent to Mortgage and Amendment for Extension of Lease Term,
General Lease No. H-82-4, GKM, Inc., Lessee, Kailua-Kona, North Kona,
Hawaii, Tax Map Key: 7-4-008-042.

APPLICANT AND REQUEST:

Consent to Mortgage from First Hawaiian Bank, Mortgagee, to GKM, Inc., in an amount not to exceed \$1,000,000.00.

For Mortgagor to qualify for this mortgage, Mortgagee requires extension of General Lease No. H-82-4 of 20 years, commencing on April 1, 1984 and expiring on March 31, 2039 for an aggregate term (initial term plus all extensions) of 55 years.

LEGAL REFERENCE:

Sections 171-22 and 36(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Honokohau Harbor situated at Kailua-Kona, North Kona, Hawaii, identified by Tax Map Key: 7-4-008-042, as shown on the attached map labeled Exhibit A, and A-1.

AREA:

4.083 acres, more or less.

TRUST LAND STATUS:

Section 5(B) Lands of the Hawaii Admission Act
YES x NO

ITEM J-I

CHARACTER OF USE:

Haul-out and repair facility for small marine vessels.

TERM OF LEASE:

Original term of 35 years, commencing on April 1, 1984 and expiring on March 31, 2019.

Requested extension of 20 years, commencing on April 1, 2019 and expiring on March 31, 2039.

ANNUAL RENTAL:

Current rent is \$60,000.00, due in quarterly installments of \$15,000.00 on January 1st, April 1st, July 1st, and October 1st of each year.

RENTAL REOPENINGS:

Rental reopenings in the original term were scheduled at the end of the 5th, 10th, 15th, 20th, 25th, and 30th years of the term, or on March 31, 1989, March 31, 1994, March 31, 1999, March 31, 2004, March 31, 2009, and March 31, 2014. The last rental reopening occurred on March 31, 2004.

Reopening for the extended term shall continue on the same schedule every five years, reopening on March 31, 2019, March 31, 2024, March 31, 2029, and March 31, 2034 with the next scheduled reopening to be March 31, 2039.

Note: An appraisal is in progress for the reopening scheduled on March 31, 2004 and pending final collaboration of three appraisers on the rental value.

USE OF LOAN PROCEEDS:

Loan proceeds will be used to renovate the existing steel building and add additional square footage. Plans were approved by DLNR on December 29, 2004. GKM, Inc. also proposes to renovate the haul-out slip and travel lift to accommodate larger vessels and make repairs to existing buildings, parking lot, and fencing.

Use of funds as follows:

Foundation	\$ 150,000.00
Steel Frame	\$ 445,500.00
Rough Frame	\$ 86,000.00
Exterior shell, siding, windows and doors	\$ 100,000.00
Electric	\$ 150,000.00

Plumbing	\$ 50,000.00
Paint	\$ 18,500.00
TOTAL COST OF IMPROVEMENTS:	\$1,000,000.00

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for an appraisal for the immediate rental reopening.

REMARKS:

GKM, Inc. dba Gentry's Kona Marina operates the only marina/haul-out facility at Honokohau Harbor located on the Big Island. Harbor Lease No. H-82-4 was publicly auctioned in 1982 and executed on April 8, 1983. The term of the lease began on April 1, 1984, and runs for thirty-five years. It is a commercial-industrial lease issued for marine or marine related purposes. Currently GKM, Inc. has, and continues to operate in compliance with its lease terms and conditions. They have consistently made on-time lease payments and maintained the bond and insurance required by the lease agreement. They are current with rent payments, and have no history of default.

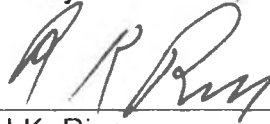
Currently Kona has seen a considerable amount of development, and growth. In addition, recently Jacoby Development, Inc. (JDI) has been selected by the State to develop a portion of land adjacent to Honokohau Harbor. As part of this proposal, JDI is planning construct a harbor alongside the existing Honokohau Harbor with an approximately 800 slips planned. Currently Honokohau has approximately 270 slips. The requested twenty year extension will allow GKM, Inc. an opportunity to secure a loan for the necessary funds to improve its facilities and enhance existing services to accommodate this growth.

RECOMMENDATION:

That the Board, subject to the Applicant fulfilling the Applicant requirement listed above:

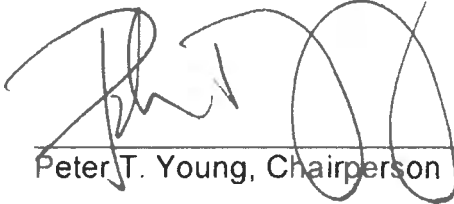
1. Consent to the mortgage between GKM, Inc., Mortgagor, and First Hawaiian Bank, Mortgagee, subject to the following:
 - A. The loan proceeds shall be used solely for the operations or improvements of the leased premises as identified in the "Use of Loan Proceeds" section above. The Lessee shall maintain records of loan expenditures, which may be inspected by the Department;
 - B. The standard terms and conditions of the most current consent to mortgage form, as may be amended from time to time.
 - 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. Authorize the extension of General Lease No. H-82-4 under the terms and conditions cited above, which are by this reference incorporated herein.
 - A. The standard terms and conditions of the most current lease extension form, as may be amended from time to time.
 - B. Review and approval by the Department of the Attorney General.
 - C. Such other conditions as may be prescribed by the Chairperson which are in the best interests of the State.

Respectfully Submitted,



Richard K. Rice
Administrator

APPROVED FOR SUBMITTAL


Peter T. Young, Chairperson

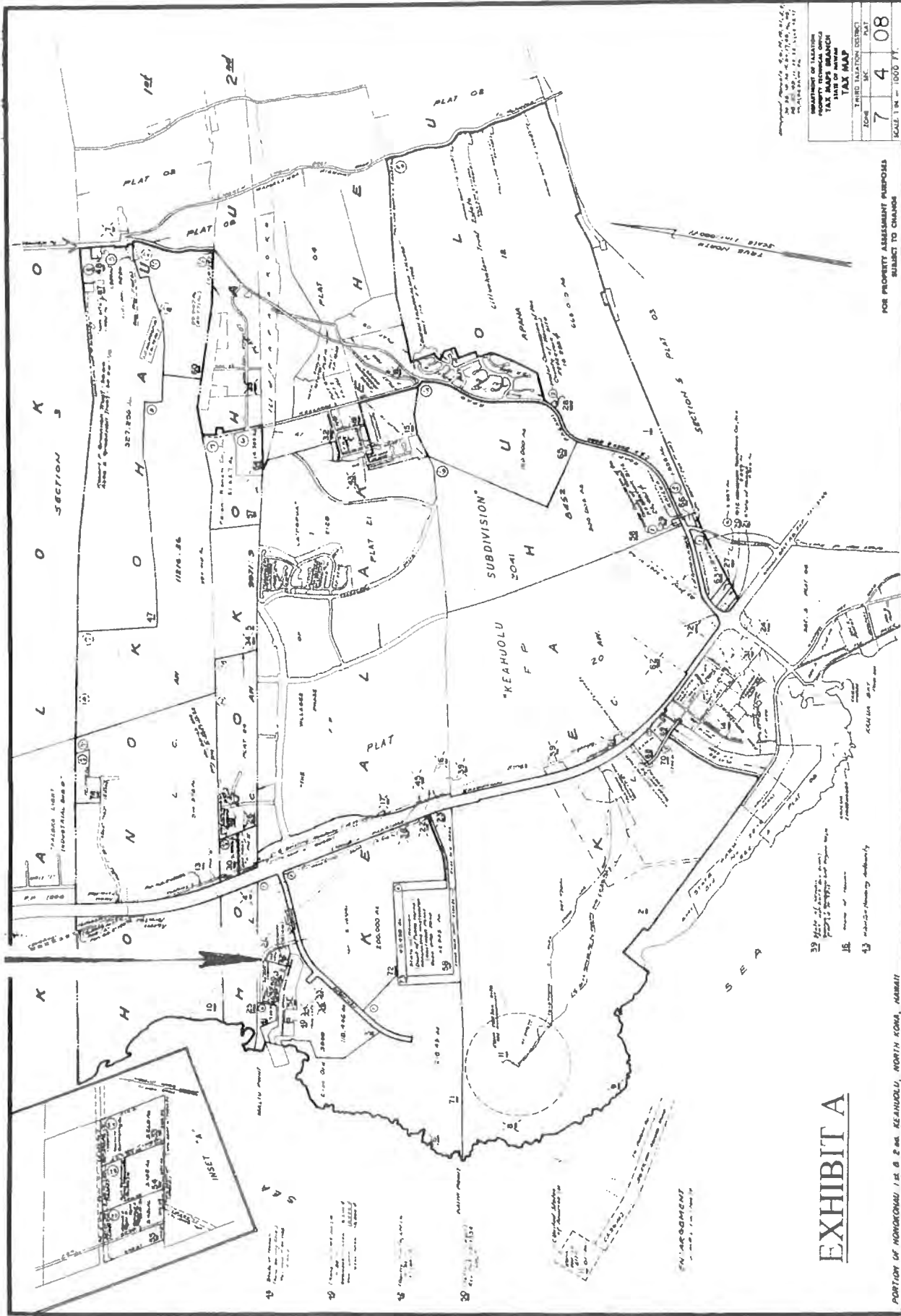


EXHIBIT A

PORTION OF HONOLULU 1/4 & 2/4 KEANULU, NORTH KONA, HAWAII

- 1/4 SECTION 3
- 1/4 SECTION 5
- 1/4 SECTION 6

DIVISION OF LAND PROPERTY TAX MAPS TAX MAPS BRANCH TAX MAP			
ZONE	MC	PLAT	
7	4	08	
SCALE 1" = 1000 FT.			

FOR PROPERTY ASSESSMENT PURPOSES
SUBJECT TO CHANGE



MAP OF PARCEL 42
HONOKOHAU MARINA
T.M.K. 3-7-4-008-042
ISLAND & COUNTY OF HAWAII
STATE OF HAWAII
SHOWING EXISTING FEATURES

IN ORDER TO BE A MEMBER OF THE



E. Diller

Leaves

TO TMR 7-4-60 44-

GENTRY'S KONA MARINA
T.M.K. 7-4-008 : 042
KAPUA - KONA, HAWAII

EXHIBIT A-1

GENTRY'S
KONA MARINA
HONOKOHAU HARBOR

74-425 Kealahou Parkway, Kailua-Kona, Hawaii 96740 • Phone 808.329.7896 Fax 808.329.7372 • Toll Free 888.458.7896

July 17, 2017

JUL20'17PM 1:41BDR ADM

Ms. Keiki E. Kipapa
Property Manager
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
4 Sand Island Access Road
Honolulu, HI 96819

via Certified Mail
7016 0750 0000 3284 3406

Re: Letter dated July 13, 2017 regarding a Notice of Intent for Public Auction of Lands at Honokohau Harbor of nine acres and Fuel Sales at Gentry's Kona Marina

Dear Ms. Kipapa:

Did you receive my letter dated June 6, 2017 regarding our request for a Sublease for additional land (West) of Gentry's Kona Marina? I am still waiting for your department's response to our request.

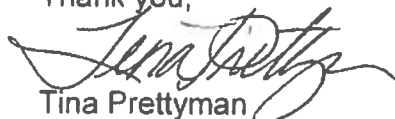
[With regards to the sales of fuel, GKM, Inc. has correspondence on file with your department and board approval for a convenience store-gas station.]

In the last 15 years we have written numerous times requesting an extension of the original five-year lease, or a new lease, for the nine acres you are proposing to now put out to public auction. To date, we haven't received a response to any of our requests. Is this your answer?

By the hostile tone of your letter - telling us you are putting a property we have developed after 21 years out to bid and erroneously indicating that we are operating without approval for fuel sales - this feels a lot like harassment. Under our lease we are entitled to "quiet enjoyment" of the leased property.

Please send us copies of any and all correspondence and any bid information, and Request for Proposals for the nine acres you intend to put out to bid at Honokohau Harbor.

Thank you,


Tina Prettyman
General Manager

August 22, 1986

HARBORS DIVISION
HAWAII
DEPT. OF TRANS.

'86 AUG 26 AM 11 54

Honokohau Fuel Inc.
74-425 Kealakehe Parkway
Kailua-Kona, HI. 96740

Gentry-Pacific Ltd.
Kona Marina
POBox 1928
Kailua-Kona, HI. 96745-1928

RECEIVED

Dear Sirs.

Honokohau Fuel Inc. would like an amendment to our Sublease No. GKM-011.

Item D -- Permitted Use states that Honokohau Fuel Inc. can sell gas, diesel and oil to commercial, charter and pleasure boats, within the Leased area.

Honokohau Fuel Inc. would like it amended to state that we can sell to
OUTSIDE VEHICLES AND VESSELS.

I hope this will comply with your request of August 6, 1986.

Sincerely,


Robert Holmes, Pres.

Honokohau Fuel, Inc.

c/c State of Hawaii-Harbors Division

EXHIBIT I

Dec 18 3 25 PM '89

12-20-89

HARBORS DIVISION

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
M E M O R A N D U M

HAR-H
279

TO: HAR-PM *af* *10*

DATE: December 14, 1989

THRU: DEP-K *af*

FROM: HAR-H

SUBJECT: Gentry Companies Letter to DEP-K, re Holmes & Sawyer, Log #5286

I was not aware that Holmes and Sawyer had "initiated a lawsuit to determine the extent of the permitted uses" at the Gentry Kona Marina.

My comments and recommendations have remained consistent for several years. They are:

1. We should not consider the fueling of vehicles and boats in the water until there is a demonstrated need for that service.
2. If we allow the fueling, we should require no less than what we receive from The Fuel Dock, i.e., five per cent of the gross.

Our collective failure to terminate Holmes' illegal activity for several years resulted in his feeling he had the right to continue, and led to an assault on my person by friends of his.



IAN BIRNIE

IB:acm



August 31, 1989

74-425 KEALAKEHE PARKWAY KAILUA-KONA, HAWAII 96740
(808) 329-1181

Mr. Gary Lambert
Gentry's Kona Marina
Honokohau Harobor, HI. 96740

Dear Gary:

We have been informed repeatedly by not only your head attorney, Harvey Migdal in Honolulu, and by your attorney, Bud Quitiquit, and by Dede Dawson of the State of Hawaii's Attorney General's Office, that any request for modification of the lease between Gentry and the State must come directly from Gentry and not by way of any letter that my attorney, Jim Sogi, may have drafted. A major point has been made of this, and I find it incomprehensible that the State is now acting upon a letter as you have represented in your letter dated August 28, 1989.

The Settlement Agreement between Marina Oil & Fuel and Gentry requires that Gentry use its best good faith efforts to request an amendment from the State to allow me to pump fuel to vehicles at the fuel pump area.

I request that you provide me a copy of Gentry's letter to the State evidencing your good faith compliance with the terms of the Settlement Agreement by requesting the permission of the State to amend the lease to allow vehicular fueling. It has been seven months now since the Settlement Agreement has been in effect, and unless I shortly receive confirmation of your good faith efforts to comply with it, I will have no other alternative but to instruct my attorney to seek court assistance to enforce the terms of the Settlement Agreement over which the Court retains jurisdiction. I have complied with my side of the Settlement Agreement by paying your attorney's fees, and feel it would be only proper for you to comply with your side of the bargain as well. You must also realize that your failure to comply in good faith with the request for the change to allow vehicular fueling from the State has resulted in my continuing damages by way of lost sales in a substantial amount.

In view of the fact that I have complied with my side of the Settlement Agreement by paying your attorney's fees, I request that you comply with yours. I look forward to your prompt response in not only supplying me with a copy of the letter which you have sent to the State.

Truly yours,

A handwritten signature in dark ink, appearing to read "Robert Holmes".

Robert Holmes
President, Marina Oil & Fuel

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

MEMORANDUM

HAR-PM 1117

MAY 7 5 01 PM '90

DATE: MAY 3, 1990

DEPT. OF
TRANSPORTATION

TO: DIR
THRU: PMN *AK*
FROM: DEP-T *Olson* DEP-K *V*
SUBJECT: HONOKOHAU FUEL, INC. (ROBERT K. HOLMES), SUBLEASE NO. GKM-011,
HARBOR LEASE NO. H-82-4, GENTRY PROPERTIES

QUESTION:

Should sublease be amended to allow fueling of outside vehicles?

FACTS:

Sublease No. GKM-011 dated 2-12-85 was approved by BLNR on 10-12-84 and consented by the State on 12-5-84 for a fueling facility for the sale of gas, diesel and oil to commercial charter and pleasure boats within the leased area (4.083 acres). The sale of fuel to others is prohibited.

Shortly after the sublease was approved by the State, the sale of fuel to outside vehicles was observed by our HAR-H personnel. Although letters were sent to the lessee, Gentry Properties (Gentry), to advise Mr. Holmes to cease the illegal fueling, the activity continued. Fliers were circulated in Kona advertising lowest prices for super, regular and diesel fuels at the facility. An ice/gas sign was observed at the entrance into Gentry's leased area. The sign was subsequently removed by the Harbor Agent due to nonremoval by the sublessee and/or lessee.

Mr. Norman Gentry was reminded by letter that the fueling facility was for the purpose of providing fuel to commercial charter and pleasure boats within the leased area. However, our HAR-H personnel continued to observe the illegal sale of fuels to the general public.

We received a request dated August 22, 1986 from Mr. Holmes to have the sublease amended to allow fueling of outside vehicles. The request was denied based on our decision that the existing fueling facility operated by Mr. Jack Hall, under Harbor Lease No. H-83-2, was sufficient to satisfy the fuel demand at the harbor.

Due to continued fueling of outside vehicles by Mr. Holmes, Gentry was put on notice that the State would initiate legal process to have Harbor Lease No. H-82-4 terminated.

Gentry subsequently filed a court action against Mr. Holmes to have him cease the illegal fueling. The court action succeeded in stopping the illegal fueling by Mr. Holmes. In accordance with the court action, Gentry submitted to the State a formal request to have the sublease amended to allow Mr. Holmes to fuel outside vehicles and to allow the fueling of commercial charter and pleasure boats, and loading of ice and other supplies at a new dockside facility.

Mr. Holmes followed with a letter submitting a petition signed by boaters and the general public to use Mr. Holmes' fueling facility. The names on the petition were analyzed and only a small percentage were boaters in Honokohau Boat Harbor. A majority of the petitioners were nonboat owners.

Harbor Lease No. H-82-4 was leased through public auction for specific uses (Attachment A) of which fueling was not a permitted use. Gentry was the only bidder during the auction.

Harbor Lease No. H-83-2 was leased through public auction primarily for a fueling facility (Attachment B). Mr. Hall was the successful bidder. The lease was subsequently assigned to James and Diane Dahlberg, dba Honokohau Fuel Dock.

DISCUSSION:

Based on staff review, we conclude that the Department cannot amend Gentry's sublease to permit an additional marine fueling facility to serve other than Gentry boat repair customers for the following reasons:

1. Safety:

- a. Fire Safety. The marine fuel facility must be able to develop a contingency plan that will provide a safe evacuation route for vessels in case of accident or other emergency. Gentry's location in the corner of Basin No. 2 would preclude safe evacuation of vessels moored along the end of the basin and on the inside of the "T" pier in case of a fire or explosion involving burning fuel floating on the surface. We also believe the fuel facility would be located too close to the existing snack bar and would expose customers to unnecessary risk, as the snack bar is not enclosed by any protective structure.
- b. Operational Safety. Unnecessary congestion is expected to result from vessels having to "back track" to

Gentry's location for fuel. The fairway width was designed to handle only two-way traffic past that location and there is no additional maneuvering room to accommodate vessels waiting in line for fuel. Standard marina design criteria usually calls for a fueling facility to be located as close to the entrance channel and turning basin as possible to allow the fueling of vessels upon entering or leaving the harbor to eliminate unnecessary vessel traffic through the mooring areas. (Reference: U.S. Army Corps of Engineers Special Report No. 2, "Small Craft Harbors: Design, Construction and Operation")

2. Basic Lease Provisions. The primary purpose of Gentry's lease is for a vessel repair facility and related activities. From previous discussion with LEG on this subject, we have been cautioned that all activities within the premises must be related to that function, and that the terms of the lease cannot be expanded to fuel any boats other than those being stored or repaired at that location, nor expanded to include the sale of fuel to automobiles belonging to the general public.
3. Legal Issues. LEG has advised orally that expansion of Gentry's lease to include a marine fueling facility may raise the constitutional issue of "impairment of contract" with respect to Dahlberg's lease (H-83-2), in that the Constitution prevents any person with a contract with another party from taking any action which may subvert that contract. Before a second retail fueling facility would be permitted, we would have to show a demonstrated need based on an investigative finding that the existing fueling facility is unable to satisfy the daily demand. If the need was clearly there, we would have to put the new fuel facility lease out for public auction which would not be part of Gentry's lease (H-82-4).
4. Fuel Dock as Proposed by Mr. Holmes. Drawing shows the construction of a fueling pier outside the lease area. This will affect five existing berths which we cannot afford to delete. We cannot legally amend the Gentry lease to add this additional facility since it was leased through public auction and for specific uses of which a fueling facility was excluded.

A lawsuit by the current fuel dock facility lessee, James and Diane Dahlberg, may occur if we consent to the proposed

DIR
MAY 3, 1990
Page 4

HAR-PM 1117

amendment since his attorney has already sent us a letter indicating that legal action was contemplated.

The public was properly informed by conducting informational meetings prior to the disposition of the fuel facility lease and the boat repair lease. We made it clear that we would be issuing one fuel facility lease. Under the provisions of the existing fuel facility lease, the State may issue a second fueling facility lease. However, we would have to show a demonstrated need based on an investigative finding that the existing fueling facility is unable to satisfy the daily demand. Currently, the existing fuel dock is open twelve hours per day and it has been observed that there is seldom a wait for fuel except during large tournaments.

CONCLUSION:

We do not see the need for a second fueling facility at the present time. The existing fueling facility operated by the Dahlberg's is satisfactorily providing the necessary fuel for all the vessels currently at Honokohau Boat Harbor.

RECOMMENDATION:

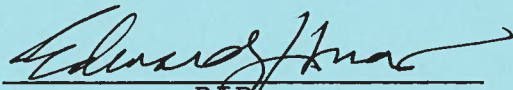
Deny the request to amend Sublease No. GKM-011 (Robert K. Holmes) to allow fueling of outside vehicles.

ADR:jls

Att. (2)

c: HAR-H

APPROVED/~~DISAPPROVED~~:



DIR



Date

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

MEMORANDUM

HAR-PM 1117

TO: DIR
THRU: PMN
FROM: DEP-T  DEP-K

DATE: MAY 3, 1990

SUBJECT: HONOKOHAU FUEL, INC. (ROBERT K. HOLMES), SUBLEASE NO. GKM-011,
HARBOR LEASE NO. H-82-4, GENTRY PROPERTIES

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DISCUSSION:

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1. Safety:

- a. Fire Safety. The marine fuel facility must be able to develop a contingency plan that will provide a safe evacuation route for vessels in case of accident or other emergency. Gentry's location in the corner of Basin No. 2 would preclude safe evacuation of vessels moored along the end of the basin and on the inside of the "T" pier in case of a fire or explosion involving burning fuel floating on the surface. We also believe the fuel facility would be located too close to the existing snack bar and would expose customers to unnecessary risk, as the snack bar is not enclosed by any protective structure.

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Gentry's location for fuel. The fairway width was designed to handle only two-way traffic past that location and there is no additional maneuvering room to accommodate vessels waiting in line for fuel. Standard marina design criteria usually calls for a fueling facility to be located as close to the entrance channel and turning basin as possible to allow the fueling of vessels upon entering or leaving the harbor to eliminate unnecessary vessel traffic through the mooring areas. (Reference: U.S. Army Corps of Engineers Special Report No. 2, "Small Craft Harbors: Design, Construction and Operation")

2. Basic Lease Provisions. The primary purpose of Gentry's lease is for a vessel repair facility and related activities. From previous discussion with LEG on this subject, we have been cautioned that all activities within the premises must be related to that function, and that the terms of the lease cannot be expanded to fuel any boats other than those being stored or repaired at that location, nor expanded to include the sale of fuel to automobiles belonging to the general public.
3. Legal Issues. LEG has advised orally that expansion of Gentry's lease to include a marine fueling facility may raise the constitutional issue of "impairment of contract" with respect to Dahlberg's lease (H-83-2), in that the Constitution prevents any person with a contract with another party from taking any action which may subvert that contract. Before a second retail fueling facility would be permitted, we would have to show a demonstrated need based on an investigative finding that the existing fueling facility is unable to satisfy the daily demand. If the need was clearly there, we would have to put the new fuel facility lease out for public auction which would not be part of Gentry's lease (H-82-4).
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MAY 3, 1990
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HAR-PM 1117

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CONCLUSION:

We do not see the need for a second fueling facility at the present time. The existing fueling facility operated by the Dahlberg's is satisfactorily providing the necessary fuel for all the vessels currently at Honokohau Boat Harbor.

RECOMMENDATION:

Deny the request to amend Sublease No. GKM-011 (Robert K. Holmes) to allow fueling of outside vehicles.

ADR:jls

Att. (2)

c: HAR-H

APPROVED/DISAPPROVED:



DIR

5/14/90


Date



CH. HAR

C. O.

HAR-S



HAR-PM

November 30, 1984

HAR-PM 2132

Mr. Colin L. Love
Attorney at Law
77-6400 Nalani Street
Kailua-Kona, Hawaii 96740

Dear Mr. Love:

Harbor Lease No. H-83-2, Honokohau
Boat Harbor, Hawaii (Kona U-Cart, Inc.)

This is in response to your letter dated November 9, 1984
pertaining to Gentry's fueling of trailer boats.

The fueling facility within Gentry's leased area was
approved by the State with the condition that fuel will be sold
only to its tenants and not intended as a retail fuel facility
to service the general public.

Kona U-Cart, Inc. is expected to provide the fuel retail
sales to the general public, other than Gentry's tenants. It
is our conclusion that there is no conflict between the two
activities.

Very truly yours,



Adam D. Vincent
Deputy Director

ADR:jls

bcc: HAR-B
HAR-H

HAR-B —

C.O.
R.S.

W.S.C. *dh*
R.P.

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
Harbors Division

11/29/84 DOT 3-1
(HAR r10)

DATE 11/28 19 84

FROM HAR. B SUBJECT LEASE No H-83-2, HONOKOHAU SBH (KONA U-CART, INC)

TO: ☐ DIR. ☐ HAR. ☐ HAR-S
☐ DEP-S ☐ HAR-SE
☐ DEP-H ☐ HAR-SF
☐ DEP-P ☐ HAR-SP
☐ DEP-A ☐ HAR-PM
☐ DIR-P ☐ HAR-SO
☐ BUS ☐ HAR-B
☐ CSS ☐ HAR-BA
☐ INF ☐ HAR-BO
☐ LEG ☐ HAR-E
☐ MVS ☐ HAR-EP
☐ PER ☐ HAR-ED
☐ PMN ☐ HAR-EC
☐ PPB ☐ HAR-EM
☐ PRO ☐ HAR-O
☐ STP ☐ HAR-OC
☐ VIP ☐ HAR-OM
☐ OFC ☐ HAR-OO
☐ AIR ☐ HAR-H
☐ HWY ☐ HAR-M
☐ ☐ HAR-K
☐ ☐ Secretary

FOR: ☐ Appropriate Attention & Action
☐ Arrange Meeting
☐ Comments & Recommendations
☐ Draft Reply
☐ For Your Direct Action/Reply
☐ Information
☐ See Me
☐ Signature
☐ File
☐
☐
☐

SUSPENSE DATE

GENTRY'S LEASE INCLUDES A FUEL FACILITY FOR USE BY THEIR TENANTS, AND WAS NOT INTENDED AS A RETAIL FUEL FACILITY TO SERVICE THE GENERAL PUBLIC. THE SALE OF FUEL TO TRAILER BOATERS USING THE RAMP IS NOT ANTICIPATED, ALTHOUGH THE FUELING OF BOATS WHICH MAY BE STORED IN THE DRY STACK-STORAGE FACILITY IS PERMISSIBLE.

KONA U-CART, INC. IS EXPECTED TO PREPARE THE FUEL RETAIL SALES TO THE GENERAL PUBLIC, OTHER THAN GENTRY TENANTS. NO CONFLICT IS CONSIDERED TO EXIST

JP

THE ENVIRONMENTAL NOTICE

*A semi-monthly periodic bulletin published by the Office of Environmental Quality Control pursuant to
Section 343-3,
Hawai'i Revised Statutes
July 8, 2012*

Interim Guidance for Implementation of Act 172, Session Laws of Hawai'i, Regular Session of 2012

On June 27, 2012, the Governor signed SB 2281, SD1 HD1 into law as [Act 172 \(12\)](#) and informed both the Senate President and the Speaker of the House of Representatives (GM 1275). The new Act was effective upon approval and modifies the existing process under Chapter 343, Hawaii Revised Statutes, by allowing agencies to determine, based on their judgment and experience, that an environmental impact statement is likely to be required for a proposed action, and, therefore, choose not to prepare an environmental assessment or to allow an applicant not to prepare an environmental assessment and instead proceed directly to the preparation of a draft environmental impact statement.

The preamble to Act 172 states in pertinent part that "[t]he legislature finds that state agencies that have experience with environmental review in Hawaii are able to determine which projects are likely to require full environmental review and should proceed directly to the preparation of an environmental impact statement. While this omits one layer of public participation through the environmental assessment, opportunities for public participation remain in the environmental impact statement process. The legislature further finds that bypassing the environmental assessment in certain situations will improve the efficiency of the environmental review process and speed the progress of completing those proposed actions."

The first issue of the periodic bulletin that will accommodate the direct-to-EIS provisions of Act 172-12 will be published on July 23, 2012.

The [Guide to the Implementation and Practice of the Hawaii Environmental Policy Act](#) is in the process of being wholly revised to address the provisions of Act 172 (12). In the interim, the Office of Environmental Quality Control issues the following guidance. When an agency chooses to invoke the provisions of Act 172, the agency must timely submit to the Office of Environmental Quality Control the following materials in accordance with the published [calendar deadlines for 2012](#):

1. A letter to the Director of the Office of Environmental Quality Control stating that the agency has "determined at the outset" that a proposed action will proceed directly to the preparation of a draft environmental statement pursuant to the provisions of Act 172-12." This letter determination will be known as an "ACT 172-12 ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE." The use of "Act 172-12" as an adjective before the term "environmental impact statement preparation notice" serves to distinguish between the "[environmental impact statement preparation notice](#)" as used in [Section 11-200-11.2, Hawai'i Administrative Rules](#) that accompanies a final environmental assessment and the statutory appropriation of this term as found in the current Act 172-12 process. The ACT 172-12 ENVIRONMENTAL IMPACT STATEMENT PREPARATION NOTICE on the other hand will NOT be accompanied by an environmental assessment. Sample correspondence for [agency action submittals](#) and [applicant action submittals](#) to the Office of Environmental Quality Control can be found on the [OEQC SharePoint Site](#).
2. As a consequence of the Act 172-12 passage, the OEQC Bulletin Publication Form has been wholly revised. Please use the appropriate form for either [agency action](#) or [applicant action](#) submittals. These forms are available for download on the OEQC SharePoint Site.
3. A summary description of the proposed action must be sent to the OEQC by electronic mail (or be available on a timely-submitted CD).

Upon timely receipt of the above, the Office of Environmental Quality Control will publish notice of availability of the agency's "Act 172-12 Environmental Impact Statement Preparation Notice" in the periodic bulletin. Pursuant to [Section 11-200-15, Hawaii Administrative Rules](#), the public will have thirty-days to comment on the proposed action and request to be a consulted party. For more information, please call the Office of Environmental Quality Control at (808) 586-4185.

Note: If you get a message saying that the file is damaged when you click on the link, then the file is too big to open within your web browser. To view the file, download directly to your hard drive by going to File and select Save As in your web browser.

The Environmental Notice informs the public of environmental assessments and other documents that are available for review and comment per HRS 343-3 and is issued on the 8th and 23rd of each month on the Office of Environmental Quality Control's website. If you would like to be notified when it is issued, send us your email address and we'll put you on our mailing list.



Neil Abercrombie, Governor · Gary Hooser, Director · Office of Environmental Quality Control · 235 South Beretania Street, Suite 702 · Honolulu, HI 96813
Tel: 586-4185 · Fax: 586-4186 · Email: oeqc@doh.hawaii.gov ·
Website: <http://hawaii.gov/health/environmental/oeqc/index.html/>
Toll Free: Kaua'i: 274-3141 ext. 64185 · Maui: 984-2400 ext. 64185 · Moloka'i/Lāna'i: 1-800-468-4644 ext. 64185
Hawai'i: 974-4000 ext. 64185

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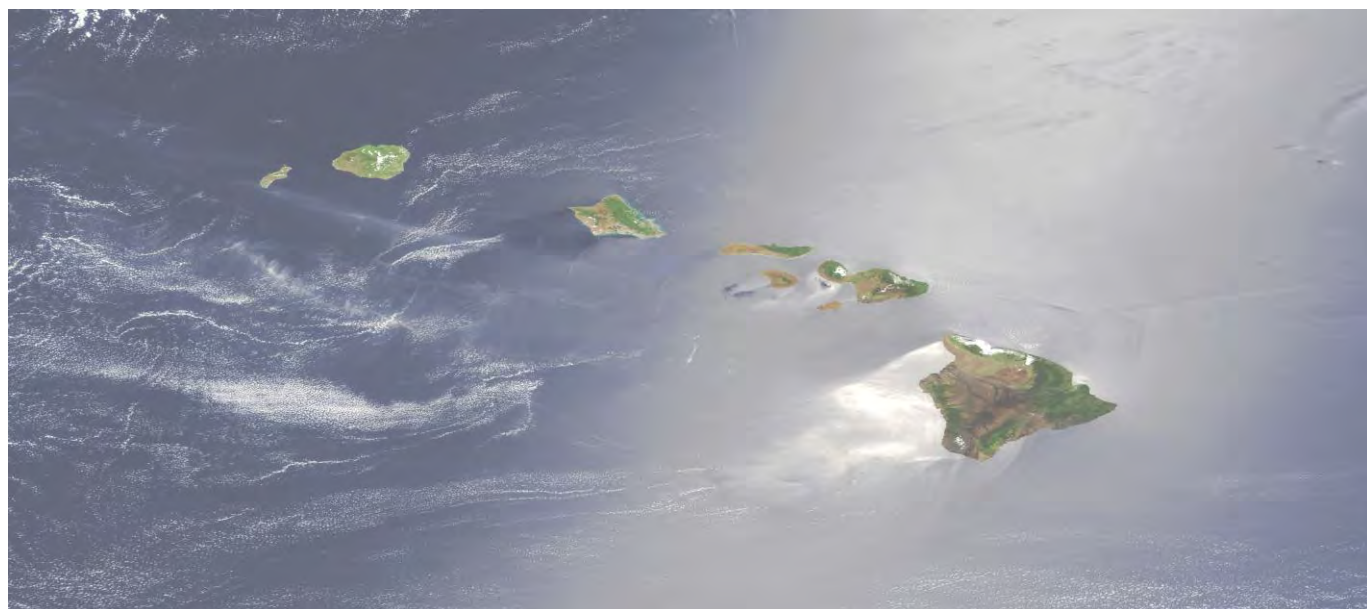
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HAWAI'I NOTICES (HRS 343)

1. Boat Storage Expansion at Honokohau Harbor FEA-FONSI

Island: Hawai'i
District: North Kona
TMK: (3) 7-4-08:37 (previously lots 21-A, 21-B, 22)
Permits: County of Hawai'i grubbing permit, SMA Minor Permit, if necessary, National Pollutant Discharge Elimination System (NPDES) permit, if necessary
Applicant: GKM Inc. doing business as (dba) Gentry's Kona Marina, 74-425 Kealakehe Pkwy., Kailua-Kona, Hawai'i 96740. Contact: Tina Prettyman, (808) 587-1966.
Approving Agency: State of Hawai'i, DLNR, Division of Boating and Ocean Recreation, 333 Queens St., Room 300. Honolulu, Hawai'i 96813. Contact: William R. Andrews, (808) 587-1966.
Status: Finding of No Significant Impact Determination



Expand current boat park facility from six to nine acres for additional boat park storage and employee parking. Six of the nine acres are already being utilized as a boat storage facility. An Environmental Assessment for the original six acres was completed in January, 1994, with a negative declaration filed.

The additional three acres for expansion consists of grubbing and leveling of open lava fields. No known native species of wildlife, flora or fauna exists. Also there are no known cultural or archeological sites. There would be some dust and noise during the grubbing process, but not long term impacts or cumulative impacts are anticipated.

2. Kumau Street Entrance Improvements at Pier 4, Hilo Harbor FEA-FONSI

Island: Hawai'i
District: Hilo
TMK: (3) 2-1-007: 052; 005; and 007
Permits: Community Noise Permit; NPDES NOI Forms C (Construction Stormwater) & F (Hydrotesting), DOT Plan review and approval
Proposing/Determination Agency: Hawai'i Department of Transportation, Harbors Division, Hale 'Awa Ku Moku Building, 79 South Nimitz Highway, Honolulu, Hawai'i 96813. Contact: Bert Toba, (808) 586-2455.
Consultant: R.M. Towill Corporation, 2024 North King Street, Suite 200, Honolulu, Hawai'i 96819. Contact: Brian Takeda, 842-1133.
Status: Finding of No Significant Impact Determination



The purpose of the proposed project is to facilitate and integrate with the future planned completion of the Pier 4, Interisland Cargo Terminal at Hilo Harbor, as previously identified in the Hawai'i Commercial Harbors 2020 Master Plan, Final EIS¹. The Pier 4 Terminal will accommodate projected future increases in interisland cargo volume that will utilize the proposed access through Kumau Street.

Kuhio Street, the main entrance to the harbor accommodates cargo and passenger traffic. The demand for this project stems from the need for an alternative entryway to provide greater accessibility and an alternative means for container movement at the west end of the harbor near Kalaniana'ole Avenue. Kumau Street is presently too narrow to adequately accommodate the movement of tractor trailers hauling shipping containers. Widening the road will provide easier passage of the cargo containers and other vehicles transporting wide and heavy loads. The proposed project will provide a solution by widening Kumau Street to serve as an additional entrance, thus alleviating congestion on Kuhio Street.

The project will benefit harbor users by decreasing the volume of traffic on Kuhio Street by diverting container and heavy truck movement from this location to Kumau Street. The diversion of container and heavy truck traffic will reduce congestion on Kuhio Street and improve the reliability and efficiency of the planned Pier 4, Interisland Cargo Terminal.

MAUI NOTICES (HRS 343)

3. Piipholo Water Treatment Plant Organic Carbon Reduction Project DEA-AFONSI

Island: Maui
District: Makawao
TMK: 2-4-016:002
Permits: Grading permit, Building permit, NPDES permits (as applicable), Site Plan Approval for construction within a Conservation District.

Proposing/ Determination

Agency: Department of Water Supply, County of Maui, 200 South High Street, Wailuku, Maui, Hawai'i 96793.
Contact: Mr. Jeffery Pearson, (808) 270 - 7681

Consultant: Austin, Tsutsumi & Associates, 501 Sumner St., Suite 521, Honolulu, Hawai'i 96817.
Contact: Mr. Ivan Nakatsuka, (808) 533-3646.

Status: Statutory 30-day public review and comment period starts; comments are due on August 7, 2012. Send comments to the Proposing Agency and Consultant.



The project involves construction of new granular activated carbon (GAC) vessels and a booster pump station within the fenced site of the existing Piipholo Water Treatment Plant (WTP). A portion of the existing fence line will be relocated to allow for the WTP upgrade, however, the upgrade will remain within the existing property. The new GAC vessels will be utilized as a filtration system to remove total organic carbon (TOC) from the water. Removal of TOC is required to ensure that the drinking water produced by the Piipholo WTP will be in compliance with future stricter Department of Health (DOH) and U.S. Environmental Protection Agency (EPA) regulations.

4. Walter Hester Residence – Seawall Construction at Napili DEA-AFONSI

Island: Maui
District: Napili
TMK: (2) 4-3-015:003
Permits: Grading, Special Management Area Use Permit, Shoreline Setback Variance
Applicant: Mr. Walter F. Hester, III, c/o Mr. Paul Mancini, Esq., 33 Lono Avenue, Suite 470, Kahului, Hawai'i 96793.
Contact: Mr. William Spence, (808) 871-8351.

Approving

Agency: Maui Planning Commission c/o Department of Planning, County of Maui, 250 South High Street, Wailuku, Hawai'i 96793.
Contact: Mr. William Spence, (808) 270-7753.

Consultant: Chris Hart & Partners, Inc., 115 North Market Street, Wailuku, Hawai'i 96793.
Contact: Mr. Chris Hart, (808) 270-1955

Status: Statutory 30-day public review and comment period starts; comments are due on August 7, 2012. Send comments to the Applicant, Approving Agency and Consultant.



The Applicant proposes to construct a structurally engineered shoreline armoring system in order to stabilize the shoreline bluff at the *makai* (seaward) limit of the property. Construction of the proposed wall would involve the installation of a poured-in-place, micropile-supported grade beam across approximately 150 feet of the yard area at the top of the cliff. The grade beam would serve as an

emergency equipment platform during construction, and would become part of the permanent structure. Two (2) additional micropile-supported grade beams would be installed parallel and slightly seaward of the first grade beam, located midway up the bank and at the base of the bank, respectively. The base of the wall would consist of Dura-Bloc, while a sprayed-on concrete facing would be applied to the face of the 14-foot midsection of the wall. The top six (6) feet would consist of Dura-Bloc with a green wall. The wall will include one five (5) foot wide terrace located five (5) feet below the top of the bank.

The proposed development is not anticipated to result in significant environmental impacts to surrounding properties, nearshore waters, natural resources, and/or archaeological and historic resources on the site or in the immediate area.

5. Habitat for Humanity Kahawai Condominium FEA-FONSI

Island: Maui
District: Wailuku
TMK: (2)3-4-033:002
Permits: Maui Redevelopment Agency Approval, NPDES, Construction Permits



Proposing/ Determination

Agency: Department of Housing and Human Concerns, One Main Plaza, 2200 Main Street, Suite 546, Wailuku, Hawai'i 96793. Contact: JoAnn T. Ridao, (808) 270-7805.
Consultant: Munekiyo & Hiraga, Inc., 305 S. High Street, Room 104, Wailuku, Hawai'i 96793. Contact: Colleen Suyama, (808) 244-2015
Status: Finding of No Significant Impact Determination

Habitat for Humanity Maui, Inc. proposes to develop the 16 unit, three-story Kahawai Condominium to be located at 2024 Kahawai Street in Wailuku, Maui. The three-story building will be comprised of two (2) stories of condominium units over ground floor parking for 20 vehicles. Access to the condominium complex will be provided via Kahawai Street at the property's southern boundary.

The proposed project will include 12 one-bedroom/one-bathroom units and four (4) two-bedroom/one-bathroom units. The units will range from 595 sq. ft. for a one-bedroom unit to 874 sq. ft. for a two-bedroom unit. Each one-bedroom unit will have one (1) parking space while the two-bedroom units will have two (2) parking spaces. One (1) space will be reserved for handicap parking.

Proposed site improvements include grading and utilities installation of onsite water, sewer, and drainage systems. The onsite drainage system will consist of catch basins and underground drain lines leading to an onsite subsurface drainage system located beneath the paved parking. Electrical, telephone, and cable utility systems will be installed from the existing overhead facilities servicing the project area.

O'AHU NOTICES (HRS 343)

6. Waimanalo Bay Beach Park Master Plan FEA-FONSI

Island: O'ahu
District: Ko'olaupoko
TMK: 4-1-015:015
Permits: Special Management Area Use Permit; Compliance with Ch.6E, HRS (Historic Preservation); Grading Permit

Proposing/ Determination

Agency: City and County of Honolulu, Department of Design and Construction, Facilities Division, Planning Branch, 650 S. King Street, 9th floor. Contact: Terry Hildebrand, (808) 768-8401.
Consultant: PBR Hawaii & Associates, Inc., 1001 Bishop Street, Suite 650, Honolulu, Hawai'i 96813-3484. Contact: Catie Cullison, (808) 521-5631.

Status: Finding of No Significant Impact Determination

The Waimanalo Bay Beach Park Master Plan includes sports fields, an increase in the number of camp sites, two group camping/gathering areas, walking trails, picnic areas along with new comfort stations and parking areas.

The Master Plan is compliant with land use controls of the City, State and Federal government and not expected to have a significant impact on the natural or social environment. The primary mitigation measure proposed is to avoid construction in sensitive areas, including: areas of known archaeological resources; intact sand dunes; large trees; and the floodplain. In the areas where earth movement is proposed, Archaeological Inventory Survey prior to action and archaeological monitoring alongside best management practices during construction are recommended. The Master Plan anticipates the possibility of lighting one sports field. Proposed mitigation includes shielding light fixtures and incorporating automatic timers for shut off. To mitigate against the impacts to water resources, the Master Plan proposes the use of pervious materials for parking areas, landscaped bioswales and use of treated, recycled water from the Waimanalo Waste Water Treatment Plant for landscape irrigation. Traffic mitigation measures include widening the on-site access drive to allow for a left turn lane out of the Park.



MOLOKA'I NOTICES (HRS 343)

7. Notman Hangar, Moloka'i Airport DEA-AFONSI

Island: Moloka'i
District: Molokai
TMK: 5-2-004: 008
Permits: Building Permit
Applicant: Steven Notman, 2840 Kalua Koi Road, P.O. Box 286, Maunaloa, Hawai'i 96770. (808) 552-2311.

Approving Agency: State of Hawai'i, Department of Transportation Airports Division, Engineering Branch, 400 Rodgers Blvd. 7th Fl., Honolulu, Hawai'i 96819. Contact: Kim Evans, (808) 838-8810.
Status: Statutory 30-day public review and comment period starts, comments are due on August 7, 2012. Send comments to the Applicant and Approving Agency.



Applicant proposes to construct a private hangar at Moloka'i airport with private funds for general aviation use. The hangar will be approximately 1,920 square feet to shelter the applicant's aircraft from salt corrosion. The hangar will be located in the master planned general aviation area of the airport. The existing General Aviation improved (paved) tie down space is limited to eight airplane tie downs. Four of these are used on a permanent basis, leaving only four that are open to transient aircraft. A hangar would serve to relieve some of the congestion at the tie down area and serve to protect the aircraft stored inside. The hangar will not include utilities, nor will any additional business activities take place in the proposed hangar. The project triggers compliance with HRS 343 for the use of state lands. The project will not result in changes to the level of aircraft operations to Moloka'i Airport. The Department of Transportation Airports Division is the accepting authority and has reviewed the draft environmental assessment and anticipates a finding of no significant impact.

ENVIRONMENTAL COUNCIL NOTICE

The Environmental Council has a tentative meeting scheduled for July 19, 2012. Please go to the State [Calendar](#) website six days prior to the meeting date to review the agenda. For more information, contact the Council at oeqc@doh.hawaii.gov or call 586-4185.

COASTAL ZONE MANAGEMENT NOTICES

Special Management Area (SMA) Minor Permits

The SMA Minor permits below have been approved or are pending approval (HRS 205A-30). For more information, contact the county/state Planning Department. Honolulu (768-8014); Hawai'i (961-8288); Kaua'i (241-4050); Maui (270-7735); Kaka'ako or Kalaeloa Community Development District (587-2841).

Location (TMK)	Description (File No.)	Applicant/Agent
Hawai'i: Puna (1-5-010: 023)	Six Lot Subdivision (SMM 12-226)	Linda Bangert Harris and David C. Bangert
Hawai'i: South Kohala (6-9-002: 007, 008, 009 and 010)	Consolidation and Resubdivision of Four Lots into One Lot, a Road Lot and a Remnant (SMM 12-227)	Hawai'i Conference Foundation
Maui: Kahului (3-8-079: 022)	Produce & Dairy Cooler Addition (SM2 20120074)	Costco Wholesale Corporation
Maui: Wailea (2-1-008: 092)	Relocated Restrooms/Roof Expansion (SM2 20120075)	Barry Helle
Maui: Huelo (2-9-007: 058)	Accessory Buildings (SM2 20120076)	Jeff & Sharyn Stone
Maui: (2-1-008: 067)	Tournament at Wailea Beach Park (SM2 20120077)	Charles Spencer
Maui: Huelo (2-9-007: 020)	25,000 Gallon Water Tank (SM2 20120078)	Ross, Jonathan & Sean
O'ahu: Aiea (9-8-009: 005 and 017)	Temporary Storage Yard (2012/SMA-23)	Kiewit Infrastructure West Co./Edwina A. Campbell

SHORELINE NOTICES

Shoreline Certification Applications

The shoreline certification applications above are available for review at the DLNR Offices on Kaua'i, Hawai'i, Maui, and Honolulu, 1151 Punchbowl Street, Room 220 (HRS 205A-42 and HAR 13-222-12). All comments shall be submitted in writing to the State Land Surveyor, 1151 Punchbowl Street, Room 210, Honolulu, HI 96813 and postmarked no later than 15 calendar days from the date of the public notice of the application. For more information, call Ian Hirokawa at 587-0420.

File No.	Date	Location	Applicant/Owner	TMK
HA-449	6/21/12	Lot 17, Vacationland Hawai'i Subdivision, being portions of R.P. 4479 and L.P. 8177, L.C. Aw. 8559, Apana 5 to C. Kanaina, and R.P. 7483 L.C. Aw. 4452, Apana 1 and 2 to H. Kalama situate at Kapoho, Puna, Island of Hawai'i Address: Wai Opae Road Purpose: Determine shoreline setback	Daniel Berg/ Mary Fleming & Chris Biltoft	1-4-068:004

Shoreline Certifications and Rejections

The shoreline notices below have been proposed for certification or rejection by DLNR (HRS 205A-42 and HAR 13-222-26). Any person or agency who wants to appeal shall file a notice of appeal in writing with DLNR no later than 20 calendar days from the date of this public notice. Send the appeal to the Board of Land and Natural Resource, 1151 Punchbowl Street, Room 220, Honolulu, HI 96813.

File No.	Proposed/Rejected	Location	Applicant/Owner	TMK
OA-1488	Proposed Shoreline Certification	Parcel 13 of Tax Map Key (1) 4-4-022 situate at Puahu'ula, Kane'ohe, Ko'olaupoko, O'ahu Address: 44-005 Aumoana Place Purpose: Obtain building permit	Wesley T. Tengan/ Howard Green	4-4-022:013
HA-447	Withdrawal	L.P. 8098, Land Commission Award 5377 to Luahine situate at Kealakekua Bay at Kalama 5, South Kona, Island of Hawai'i Address: Manini Beach Road Purpose: Document tsunami damage	Cameron Healy/ The Bill Healy Foundation	8-2-006:027

CONSERVATION DISTRICT USE APPLICATIONS

Persons interested in commenting on the following Conservation District Use Applications or interested in receiving notification of determinations on Conservation District Use Applications must submit comments and requests to the Department of Land and Natural Resources. Notification requests must include the following information: 1) Name and address of the requestor; 2) The application for which the requestor would like to receive notice of determination; and 3) The date the notice was initially published in the Environmental Notice. Send comments and requests to: Department of Land and Natural Resources, Office of Conservation and Coastal Lands, P.O. Box 621, Honolulu, Hawai'i 96809. DLNR will make every effort to notify those interested in the subject CDUAs. However, DLNR is not obligated to notify any person not strictly complying with the above requirements. For more information, please contact the Office of Conservation and Coastal Lands (OCCL) staff listed below.

PROJECT:

File No.: CDUA HA-3630
Name of Applicant: Kohanaiki Shores, LLC.
Location: Kohanaiki, North Kona, Island of Hawai'i
TMKs: (3) 7-3-009:018
Proposed Action: Frontage Road from Hulikoa Intersection to Kohanaiki Way
343, HRS determination: FONSI published in the March 8, 2012 Environmental Notice
Applicant's Contact: Tom Schnell of PBR Hawaii & Associates, Inc. (808) 521-5631
OCCL Staff Contact: Tiger Mills (808) 587-0382

FEDERAL NOTICES

1. Disaster Declaration (FEMA-4062-DR), for the State of Hawaii, dated April 18, 2012

<http://www.gpo.gov/fdsys/pkg/FR-2012-06-25/pdf/2012-15457.pdf>

The President of the United States has issued a declaration of a major disaster for the State of Hawaii (FEMA-4062-DR), dated April 18, 2012, and related determinations. DATES: Effective April 18, 2012. FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3886 (see, 77 FR 37195, June 25, 2012).

2. Endangered and Threatened Wildlife and Plants; Proposed Rulemaking to Revise Critical Habitat for Hawaiian Monk Seals <http://www.gpo.gov/fdsys/pkg/FR-2012-06-25/pdf/2012-15441.pdf>

The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA) published a proposed rule in the Federal Register on June 2, 2011, proposing to revise critical habitat for the Hawaiian monk seal under the Endangered Species Act (ESA) and requesting information related to the proposed action. This document announces a 6-month extension of the deadline for a final determination on the proposed rule. Based on comments received during the public comment period, NMFS finds that substantial disagreement exists regarding the sufficiency and accuracy of the data and analyses used to support the scope of the proposed critical habitat designation in the Main Hawaiian Islands. Accordingly, NMFS is extending the deadline for the final revision to critical habitat for the Hawaiian monk seal an additional 6 months to further analyze data and consider concerns raised by State, Federal, and other entities, and better inform our determinations for the final revision of Hawaiian monk seal critical habitat under the ESA. DATES: A final revision will be made no later than December 2, 2012. ADDRESSES: The proposed rule, maps, and other materials relating to this proposal can be found on the NFMS Pacific Island Region's Web site at http://www.fpir.noaa.gov/PRD/prd_critical_habitat.html. FOR FURTHER INFORMATION CONTACT: Jean Higgins, NMFS, Pacific Islands Regional Office, (808) 944-2157; Lance Smith, NMFS, Pacific Islands Regional Office, (808) 944-2258; or Dwayne Meadows, NMFS, Office of Protected Resources (301) 427-8403. (see, 77 FR 37867, June 25, 2012).



3. Endangered Species File No. 17022 <http://www.gpo.gov/fdsys/pkg/FR-2012-06-25/pdf/2012-15442.pdf>

The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce has given notice that the Pacific Islands Fisheries Science Center (PIFSC; Samuel Pooley, Ph.D., Responsible Party), has applied in due form for a permit to take green (*Chelonia mydas*) and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research. Written, telefaxed, or email comments must be received on or July 25, 2012. ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 17022 from the list of available applications. These documents are also available upon written request or by appointment in the following offices: Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427-8401; Pacific Islands Region, NMFS, 1601 Kapi'olani Blvd., Rm. 1110, Honolulu, HI 96814-4700; phone (808) 944-2200; fax (808) 973-2941. Written comments on this application should be submitted to the Chief, Permits and Conservation Division: By email to NMFS.Pr1Comments@noaa.gov (include the File No. in the subject line of the email), by facsimile to (301) 713-0376, or at the address listed above. Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate. FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Colette Cairns, (301) 427-8401 (see, 77 FR 37877, June 25, 2012).

4. Marine Mammals; File No. 16163 <http://www.gpo.gov/fdsys/pkg/FR-2012-06-25/pdf/2012-15445.pdf>

The National Marine Fisheries Service (NMFS) gives notice that the Northwest Fisheries Science Center (NWFS, Dr. M. Bradley Hanson, Principal Investigator), 2725 Montlake Blvd. East, Seattle, WA 98112-2097, has applied for an amendment to Scientific Research Permit No. 16163. DATES: Written, telefaxed, or email comments must be received on or before July 25, 2012. The application and related documents are available for review by selecting Records Open for Public Comment from the Features box on the Applications and Permits for Protected Species home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 16163 from the list of available applications. Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713-0376, or by email to NMFS.Pr1Comments@noaa.gov. Please include the File No. 16163 in the subject line of the email comment. Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate. FOR FURTHER INFORMATION CONTACT: Laura Morse or Jennifer Skidmore, (301) 427-8401 (see, 77 FR 37877, June 25, 2012).

GLOSSARY

Agency Actions

Any department, office, board, or commission of the state or county government which is part of the executive branch of that government per [HRS 343-2](#).

Applicant Actions

Any person who, pursuant to statute, ordinance, or rule, requests approval for a proposed action per [HRS 343-2](#).

Draft Environmental Assessment

When an Agency or Applicant proposes an action that [triggers](#) HRS 343, an Environmental Assessment shall be prepared at the earliest practicable time to determine whether an environmental impact statement shall be required per [HRS 343-5\(b\)](#), for Agency actions and [HRS 343-5\(c\)](#), for Applicant actions. For environmental assessments for which a Finding of No Significant Impact is anticipated, a Draft EA (DEA) shall be made available for public review and comment for 30 days and public notice is published in this periodic bulletin per (HRS 343-3), also known as The Environmental Notice.

Final Environmental Assessment and Finding of No Significant Impact

The Agency shall respond in writing to comments received during the review and prepare a Final EA (FEA) to determine whether an environmental impact statement shall be required. The FEA must respond to all public comments. If there are no significant impacts, then the Agency will issue a Finding of No Significant Impact (FONSI). An Environmental Impact Statement will not be required and the project may then be implemented. The public has 30 days from the notice of a FONSI in this bulletin to ask a court to require the preparation of an EIS.

Final Environmental Assessment and Environmental Impact Statement Preparation Notice

An EIS shall be required if the Agency finds that the proposed action may have a significant effect on the environment. The Agency shall file notice of such determination with OEQC, called an EIS Preparation Notice (EISPN). After the notice of the EISPN is published in this bulletin, the public has 30 days to request to become a consulted party and make written comments. The public (including the Applicant) has 60 days from the notice of the EISPN in this bulletin to ask a court to not require the preparation of an EIS.

Draft Environmental Impact Statement

After receiving the comments on the EISPN, the Agency or Applicant must prepare a Draft Environmental Impact Statement (DEIS). The [content requirements](#) of the DEIS shall contain an explanation of the environmental consequences of the proposed action including the direct, indirect and cumulative impacts and their mitigative measures. The public has 45 days from the first publication date in this bulletin to comment on a DEIS. The DEIS must respond to comments received during the EISPN comment period in a point-by-point manner.

Final Environmental Impact Statement

After considering all public comments filed during the DEIS stage, the Agency or Applicant must prepare a [Final EIS](#) (FEIS). The FEIS must respond in a point-by-point manner to all comments from the draft and must be included in the FEIS. See here for [style](#) concerns. For Applicant projects, the Approving Agency is authorized to accept the FEIS. For an Agency project, the Governor or the Mayor (or their designated representative) is the Accepting Authority. Only after the FEIS is accepted may the project be implemented.

Acceptability

If the FEIS is [accepted](#), notice of this action is published in this bulletin. The public has 60 days from the date of notice of acceptance to ask a court to vacate the acceptance of a FEIS. For Applicant actions, the Approving Agency must make a determination on acceptance within 30 days of receipt of the FEIS or the FEIS is deemed accepted. For Applicant actions, the law provides for an administrative appeal of a non-acceptance to the Environmental Council.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) requires federal projects to prepare an EA or EIS. In many ways it is similar to Hawaii's law. Some projects require both a State and Federal EIS and the public comment procedure should be [coordinated](#). OEQC publishes NEPA notices in this bulletin to help keep the public informed of important federal actions.

Conservation District

Any use of land in the State Conservation District requires a Conservation District Use Application (CDUA). These applications are reviewed and approved by the Board of Land and Natural Resources. Members of the public may intervene in the permit process. Notice of permit applications are published in this bulletin.

Special Management Area and Shoreline Setback Area

The Special Management Area (SMA) is along the coastline of all islands and development in this area is generally regulated by [HRS 205A](#), and county ordinance. A special subset of the SMA that is regulated by HRS 343, is the [Shoreline Setback Area](#). Most development in this area requires a Special Management Permit. This bulletin posts notice of these SMA applications to encourage public input.

Shoreline Certifications

State law requires that Hawaii shorelines be surveyed and certified when necessary to clearly establish the shoreline setback from the certified shoreline. The public may participate in the process to help assure accurate regulatory boundaries. Private land owners often petition to have their shoreline certified by the State surveyor prior to construction. This bulletin publishes notice from the Department of Land and Natural Resources of shoreline certification applicants and final certifications or rejections.

Environmental Council

The [Environmental Council](#) is a 15-member citizen board appointed by the Governor. They serve as a liaison between the Director of OEQC and the general public concerning ecology and environmental quality. The Council makes the rules that govern the Environmental Impact Statement process (HRS 343). [Agendas](#) of their regular meetings are posted on the Internet and the public is invited to attend.

Exemption Lists

Government agencies must keep a list describing the minor activities they regularly perform that are [exempt](#) from the environmental review process. These lists and any amendments shall be submitted to the Council for review and concurrence ([HAR 11-200-8\(d\)](#)). This bulletin will publish an agency's draft exemption list for public comment prior to Council decision making, as well as notice of the Council's decision on the list.

Endangered Species

This bulletin is required by [HRS 343-3\(c\)](#), to publish notice of public comment periods or public hearings for Habitat Conservation Plans (HCP), Safe Harbor Agreements (SHA), or Incidental Take Licenses (ITL) under the federal Endangered Species Act, as well as availability for public inspection of a proposed HCP or SHA, or a proposed ITL (as a part of an HCP or SHA).

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

July 27, 2018

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

Land Board Members:

SUBJECT: REQUEST AUTHORIZATION TO ALLOW GKM, INC. (BOATING LEASE NO. H-82-4) TO ADD FUEL SALES TO THE LEASE “CHARACTER OF USE” AT A RENTAL RATE OF FIVE PERCENT (5%) OF GROSS FUEL RECEIPTS, SITUATED AT HONOKOHAU SMALL BOAT HARBOR, KAILUA-KONA, KEALAKEHE, ISLAND OF HAWAII, HAWAII, TAX MAP KEY (3) 7-4-008:042 (POR.)

REQUEST:

The Division of Boating and Ocean Recreation (“DOBOR”) is seeking approval from the Board of Land and Natural Resources (Board) to authorize GKM, Inc. to conduct fuel sales and to update the Lease “Character of Use” to include fuel sales at a rate of five percent (5%) of gross fuel receipts at the Honokohau small boat harbor, Hawaii. (see attached EXHIBIT A)

CHARACTER OF USE:

Occupy and use the premises principally for marine and marine-related activities which include the following:

Sales:

1. Marine hardware and supplies
2. Marine paints and other finish material

Services:

1. The construction, operation and maintenance of a boat haul-out facility for boat repair and storage
2. Repair facility for the maintenance and repair of boats
3. Marine workshop facilities
4. Rigging and swaging for vessels
5. Administrative offices for boat repair and storage facilities
6. The submerged land shall be used exclusively for the berthing of vessels for servicing and repair and the adjacent land area for use as a work dock area

The following additional marine-related activities may also be conducted within the demised premises upon prior written approval by the Lessor:

Sales:

1. Sailboats and power boats and other water craft (new and brokerage)
2. Charts, maps, and nautical publications
3. Navigation instruments and supplies
4. Marine electrical and electronic gear and radios
5. Fishing tackle, lures, ice and fresh bait
6. Outboard and inboard engines and supplies

Services:

1. Sail making, canvas goods and repair
2. Repair and maintenance of marine electrical and electronic equipment
3. Marine surveys
4. The construction, operation and maintenance of vessels and marine equipment storage facilities
5. Scuba/skin diving services associated with marine repair and salvage
6. Repair and maintenance of marine instruments and navigation equipment
7. Marine upholstery, draperies and interior finishes
8. Repair facility for the maintenance and repair of boats
9. Cold storage facility or ice house
10. Vending machines for the sale of sandwiches, snacks, hot and cold drinks, candies, cigarettes, etc.
11. Other related activities as approved in writing by the Lessor

ANNUAL RENTAL:

\$120,184.00 per annum, payable in quarterly installments of \$30,046.00

REMARKS:

During the process of reviewing DOBOR fuel agreements, DOBOR Property Management Staff found that there was no fuel agreement for GKM, Inc. After reviewing GKM Inc. records, DOBOR found a plethora of documents referencing GKM, Inc. offering fuel sales at Honokohau Small Boat Harbor without BLNR approval (see attached EXHIBIT B).

As a reference, Kona Marine Holdings, Inc. Lease gives them rights to sell fuel, but not exclusive rights to sell fuel at Honokohau Small Boat Harbor. Also, Kona Marine Holdings, Inc. is required to pay 5% of gross fuel sales. According to the GKM, Inc. Lease No. H-82-4, the "Character of Use" does not include fuel sales. Furthermore, Kona Marine Holdings, Inc. is at a disadvantage in competing with GKM, Inc. because Kona Marine Holdings, Inc. Lease requires them to pay five (5%) percent gross receipts while GKM, Inc. is presently conducting fuel operations without written approval and is currently not paying any percentage of gross receipts to the State of Hawaii.

Sublease

The State of Hawaii consented to a sublease by Gentry Pacific, Ltd., Lease No. H-83-2, to Honokohau Fuel Inc., dba Honokohau Gas & Oil Co., Lease No. GKM-011 (see attached EXHIBIT C). The Board approved the sublease on October 12, 1984. The sublease term was for 20 years commencing February 12, 1985 and ending February 2005. However, Honokohau Fuel, Inc., filed for bankruptcy between August 15-22, 1986 effectively ending Sublease No. GKM-011, see attached EXHIBIT D.

Honokohau Fuel Bankruptcy / Termination of Lease

Honokohau Fuel, Inc. filed for bankruptcy between August 15-22, 1986. Gentry Pacific Ltd. petitioned the United States Bankruptcy Court on January 27, 1989 with a “motion for order Confirming Rejection and Termination of Sublease No. GKM-011. Gentry Pacific’s Motion for order Confirming Rejection and Termination of Lease was granted, and the Sublease No. GKM-011 was deemed rejected and terminated on February 3rd, 1989 by the United States Bankruptcy Court (see attached EXHIBIT E). After the bankruptcy was completed, GKM Inc. took over the operation of the business without assignment/approval from the State of Hawaii.

Permitted Use of Lease

The permitted use of Sublease No. GKM-011 was to be used by the Sublessee solely for the following and for no other purpose(s): “Selling of gas, diesel and oil to commercial, charter and pleasure boats, within the Leased area”. The fueling facility within Gentry’s leased area was approved by the State with the condition that fuel will be “sold only to its tenants and not intended as a retail fuel facility to service the general public”.

Currently there is no lease provision granting GKM, Inc. permission to conduct fuel sales at Honokohau Small Boat Harbor. DOBOR previously sent three separate certified letters (July 13, 2017, November 17, 2017, and June 7, 2018) to GKM, Inc. requesting evidence of any documentation from the Lessor granting permission to conduct fuel sales. DOBOR has yet to receive any evidence from GKM Inc. granting permission to conduct fuel sales.

GKM Response

GKM, Inc’s Attorney responded by letter on June 25, 2018 which stated that GKM, Inc. was granted rights to conduct fuel by assignment of lease recorded October 16, 2002 (see attached EXHIBIT F). GKM, Inc. also stated that fuel sales were initially conducted by Honokohau Fuel, Inc./Honokohau Partnership, Inc. and they consider the on-going fueling activities permitted under said lease.

Ms. Prettyman’s letter also alluded to selling fuel to the general public – “There is currently no way for the Honokohau trailer-boating community to procure fuel unless they drive all the way around to the other end of Honokohau Small Boat Harbor where vehicles are fueled (no launch ramps located there), then drive back around to the launch ramps on our (North) side of the harbor. Very challenging and not safe.”

Note: Honokohau Fuel, Inc. filed for bankruptcy and Honokohau Partnership, Inc. permitted lease use was for the sale of ice, fish, and photography only.

GKM, Inc.’s Attorney states that “At a hearing on March 24, 2006, the DLNR approved the relocation of the fuel dispensers and the convenience store-fueling station improvements and consented to Gentry’s Kona Marina’s mortgaging of its lease to secure the \$1,000,000.00.” They further contend that “the approval of the loan and the extension and mortgaging of the Lease for the express written purpose of relocating and improving an ongoing fueling operation at Honokohau Harbor is all the written approval that should be required.” Item J-1 of the March 24, 2006 Board of Land and Natural Resources meeting does not contemplate the relocation of the fuel dispensers and the convenience store-fueling station improvements. In fact, the submittal states “Loan proceeds will be used to renovate the existing steel building and add additional square footage. Plans were approved by DLNR on December 29, 2004. GKM, Inc. also proposes to renovate the haul-out slip and travel lift to accommodate larger vessels and make repairs to existing buildings, parking lot, and fencing.” Nowhere in the submittal or minutes does it mention fueling facilities. (see attached EXHIBIT G).

Gentry Pacific Ltd. History of Selling Fuel to the General Public

Gentry Pacific Ltd. has continuously disregarded instructions over the years from both the Department of Transportation and the Division of Boating & Ocean Recreation to cease offering fuel sales to the general public. (see attached EXHIBIT B).

On July 17, 2017, Tina Prettyman sent a letter to DOBOR stating the following regarding the fuel sales at Gentry’s Kona Marine “With regards to the sales of fuel, GKM, Inc. has correspondence on file with your department and board approval for a convenience store-gas station” (see attached EXHIBIT H). DOBOR has requested this documentation from GKM, Inc. several times but DOBOR has yet to receive any such documentation. Furthermore, during the sublease period, GKM, Inc. requested several times to amend their lease to sell fuel to “outside vehicles and vessels.” The Department of Transportation denied each request (see attached EXHIBIT I).

DOBOR is seeking to amend GKM Inc. lease to include fuel sales at a rental rate of five percent (5%) of Gross Fuel Receipts. DOBOR is also seeking to honor the original sublease terms that limited fuel sales to GKM, Inc.’s tenants only.

RECOMMENDATION:

That the Board of Land and Natural Resources:


1. Authorize GKM, Inc. to conduct fuel sales, under the terms and conditions cited above, which are by this reference, incorporated herein and further subject to the following:
 - a. Update Boating Lease No. H-82-4 “Character of Use” to include fuel sales at a rental rate of five percent (5%) of Gross Fuel Receipts.
 - b. Restrict fuel sales to GKM, Inc. tenants only.

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

Respectfully Submitted,


for 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 Honokohau Small Boat Harbor: GKM, Inc. and Kona Marine Holdings, Inc. Fuel Facility Locations
- B. DOT & DOBOR and GKM, Inc. Fuel Sale History
- C. Honokohau Fuel Inc., dba Honokohau Gas & Oil Co., Sublease No. GKM-011
- D. Honokohau Fuel Inc., dba Honokohau Gas & Oil Co. Bankruptcy Filing
- E. Sublease No. GKM-011 Termination
- F. 6/25/18 Response Letter from GKM, Inc.'s Attorney
- G. BLNR March 24, 2006 Meeting Minutes & Land Board Submittal
- H. 7/17/2017 GKM, Inc. Letter
- I. GKM, Inc. Request's to Amend sublease & DOT Denial

Honokohau Small Boat Harbor

GKM Inc. and Kona Marina Holdings Fuel Locations

Legend

Fuel Locations

GKM Inc. Fuel Location

Kona Marina Holdings Fuel Location

EXHIBIT A

Google Earth

400 ft



History

SUMMARY OF COMMUNICATIONS RE UNAUTHORIZED SALE OF FUEL FROM
THE GENTRY PROPERTY'S LEASE AT HONOKOHAU HARBOR

Lease
4/8/1983

Date	Communication	Content
Nov. 19, 1984	Colin L. Love to Harbors Division, Adam Vincent	First written complaint about Gentry's sale of fuel
Nov. 30, 1984	Adam Vincent to Colin L. Love	Gentry was given approval to sell fuel to its tenants only, and is not intended to be a retail fuel facility to service the general public.
Sept. 6, 1985	Jack Hall to Harbors Division, Adam Vincent	Gentry's fueling facility is now a full service facility selling fuel to the general public.
Dec. 4, 1985	Colin L. Love to Harbors Division, Adam Vincent	The sale of fuel to motorists and boat owners coming in off of the highway on the way to the launch ramp appears to be a consistent pattern.
Feb. 9, 1987	Jack Hall to Edward Hirata, Director of Dept. of Transportation	Summarizes the communications between Kona Fuel and Marine, or its officers, or attorney, during 1985 through December 1986. Reference to various telephone calls on a number of problems, including the illegal sale of fuel. Copies of letters were attached as exhibits.
Mar. 3, 1987	Edward Hirata to Jack Hall	Robbie Holmes advised to stop fueling vehicles that are not users of the Gentry facility.
Mar. 9, 1987	Robert Garcia, Esq., to David Higa, Harbors Division	Garcia represents Hawaii Petroleum, the fuel supplier for the Fuel Dock. Garcia informs Higa that Holmes & Sawyer, Gentry's sublessee, have been selling fuel to the public, and advertising the sale of fuel. Ian Birnie (Harbors) has agreed that Gentry's actions are a flagrant violation of the lease.
May 5, 1987	David Higa, Chief of Harbors Division to Robert Garcia	Holmes has been told to stop selling fuel to the general public. Harbors does not condone the continued unauthorized use of the lease premises.
Dec. 8, 1987	Jack Hall to Wendy E. Oda, Harbors Division	The department has given notice to Gentry to stop the unauthorized sale of fuel, but nothing happens. Hall is interested in knowing how the department plans on correcting the situation.

Sub-Lease GMK-oil Honokohau Fuel Inc.

Aug. 5, 1988	Colin L. Love to Dan Kochi, Deputy Director for Harbors	Recites past problems, and references a real estate ad for the sale of Holmes' fueling operation. The listing says they have two Chevron pumps, and that the sale of gas and diesel fuel is permitted. It indicates \$541,451.00 in annual income, (most of which was fuel). Points out that the State gets no part of this income.
Feb. 1, 1989	Edward Hirata to Jack Hall	The State is satisfied that the KF&M fuel facility meets the present and projected future demands for a fueling facility.
Feb. 28, 1989	Jack Hall to Ian Birnie, Harbors Division	Request for a reduction in rent because of lost profit caused by: 1. The unfair and unauthorized competition in the sale of fuel from the Gentry lease; 2. Delays in the State approving subleases. 3. The State left us no alternative but to sell or sue.
June 2, 1989 and June 6, 1989	Colin L. Love to John Uchima, Deputy Director, Harbors Division	Settlement letters regarding the sale of Harbor Lease H-83-2 to the Dahlbergs. The letter recites past problems. The settlement includes Harbors agreeing that if there is a foreclosure and if KF&M takes the lease back, KF&M can re-sell with no consent fee. \$75,000 was paid for this agreement that KF&M would not have to fight over the consent fee again. Timing was critical, and KF&M was forced to this settlement.
Jan 17, 1990	WIIT article	Complaints about Dahlberg at the harbor have resulted in plans for a new fueling facility.
Jan. 18, 1990	Colin L. Love to Edward Hirata, Director of DOT	Transmitted the news paper article (above). Again the history of the unauthorized sale of fuel is presented, and the department is asked for help.
Apr 16, 1993	Jack Hall to Larry Cobb, Harbors Division	Inquiry into the status of Dahlberg's payment of rent.
Apr. 21, 1993	David Parsons, Harbors Division, to Jack Hall	Dahlberg has not paid percentage rent for 1990, 1991 and 1992.
Apr. 24, 1993	Jack Hall to David Parsons, Harbor Division	Reference to the continued illegal sale of fuel from the Gentry Lease and the failure of Harbors to take any action. Videos of the illegal activities

		were taken and given to the State, then lost by the State.
Apr. 29, 1993	Transcript of a meeting between Dahlberg, Larry Cobb, Ian Birnie and Jack Hall	Dahlberg says he withheld the percentage rent for three years because the State did not put a stop to the illegal sale of fuel from the Gentry lease. The State did not know they were not being paid the lease rent.
June 4, 1993	David Parsons, Harbors Division to Dahlberg	Acknowledges the unauthorized sale of fuel, but does not agree that it justified the withholding of Statements of Gross Receipts for three years. Parsons says that the statements should have been sent to them, and they should have been afforded the chance to correct the situation (unauthorized sale of fuel)
Mar. 7, 1994	Jack Hall to David Parsons, Harbors Division	This letter addressed: <ol style="list-style-type: none"> 1. The failure of the State to address lease violations by Gentry; 2. Harbor lease H-83-2 is the only authorized fuel facility; 3. If the State wants an additional facility, put it out to bid; 4. The history of the problems with Gentry, the State's promises and the State's lack of performance; 5. The State's attempt to legitimize the illegal sale of fuel from the Gentry lease; 6. KF&M's security interest is jeopardized by the State's failure to prevent the illegal sale of fuel, and KF&M demands action.
May 17, 1994	Jack Hall to Larry Cobb, Property Management Division, DLNR-Boating	Provided Larry Cobb with a complete package of correspondence since 1983, and asked him to take action to prevent the illegal sale of fuel from the Gentry lease.
June 13, 1994	David Parsons, Boating Division to Jack Hall	The State has no objection to Gentry selling fuel to vessels stored on their premises. They do not admit that the previous administration made any mistakes. (No reference to the ongoing problem with the illegal sale of fuel.)
June 24, 1994	Jack Hall to David Parsons	The letter addresses: <ol style="list-style-type: none"> 1. KF&M never agreed that Gentry could fuel boats stored at its facility. KF&M is the only authorized facility; 2. Changes that will be made in the facility to

		increase income:
		3. Loss of income to the State because Harbors allows the illegal sale of fuel from the Gentry lease;
		4. Gentry is fueling boats at will, many of them charter boats and commercial vessels; and
		5. A list of illegal fueling operations, names of boats and dates is attached.
Sept. 15, 1994	Colin L. Love to John Keppeler, Deputy Director	Reference to a massive fuel spill at the Gentry fueling operation, and the continued illegal sale of fuel from the Gentry lease.
Nov. 30, 1994	Keith W. Ahue, Chairperson, Board of Land and Natural Resources, to Jack Hall	The alleged illegal fueling activities at the Gentry lease has been the subject of investigation. The State has determined that the lessee may be in violation of its lease, and is taking appropriate action to demand that the matters be resolved.
Nov. 30, 1994	Keith W. Ahue, Chairperson, Board of Land and Natural Resources to Gentry Properties	Notice to stop the unauthorized sale of fuel or their lease will be terminated. Given 60 days to comply.
Jan. 20, 1995	Michael D. Wilson, chairperson of Board of Land and Natural Resources to Jack Hall	Edward Hirata did not have the authority to bind the Board of Land and Natural Resources to a settlement agreement whereby KF&M paid \$75,000 in return an agreement whereby they could take the harbor lease back from the Dhalbergs in the event of their default, and re-assign it to a new buyer, without having to pay a consent fee.
Jan. 23, 1995	Colin L. Love to Dawn Chang, Office of the Attorney General	The failure of the State to prevent the unauthorized sale of fuel by Gentry may have caused Dahlberg to fail. The department has made demands on Gentry before, but that has not stopped them from the unauthorized sale of fuel.
March 9, 1995	Colin L. Love to Dawn Chang, Office of the Attorney General	One of the conditions for KF&M paying the delinquent rent is that DLNR will stop the unauthorized sale of fuel from the Gentry Properties lease.
March 14, 1995	Dawn Chang, Office of the Attorney General, to Colin L. Love	The DLNR has conducted its own investigation, and will continue to monitor the fueling activities of Gentry Properties, and if a violation has occurred, the State will take action against the Gentry lease.

Dec. 1, 1995	Jack Hall to David Parsons, State Boating Administrator	Requests credit for the \$75,000 paid to the State for an agreement that Edward Hirata did not have the authority to make.
February 27, 1996	Jack Hall to Kazu Hayashida, Director, DOT	Letter explaining the background of the \$75,000 payment to DOT, attaching a copy of the settlement agreement and asking that the funds be applied to the Dahlberg delinquent rent.
Mar. 9, 1996	Jack Hall to David Parsons, State Boating Administrator	Notification of objections to the State's efforts to increase the unauthorized sale of fuel from the Gentry lease by moving the pumps so that it will be easier for cars coming in from the highway to get fuel.
April 1, 1996	Thomas T. Fujikawa, Chief of the Harbors Division of DOT to Jack Hall	A letter from DOT responding to KF&M's letter of Feb. 27, 1996 requesting money paid to DOT be applied to the Dahlberg rent delinquency. KF&M is referred to DLNR-DBOR and Larry Cobb.
June 1 - 6, 1996	List	List of illegal fuel transactions at the Gentry facility, statement by John White that he stopped surveillance because he was threatened by Holmes.
June 12, 1996	Colin L. Love to Gilbert Coloma-Aguran, Deputy Director DLNR	The letter explains the full background of the problems with the unauthorized sale of fuel from the Gentry lease, and described the efforts of Gentry (Gary Lambert, their manager) and Larry Cobb from Harbors to expand the Gentry fueling facility to make it easier for cars coming in from the street to buy fuel.
July 10, 1996	KF&M to DLNR-DBOR	Check for \$50,000, paid to DLNR without DLNR-DBOR providing an accounting of the amount due.
July 11, 1996	Colin L. Love to Michael Wilson, Chairperson, BLNR	A five page letter summarizing the thirteen years of problems in dealing with DOT and BLNR and their failure to collect rent from the Dahlbergs and their failure to prevent the illegal sale of fuel at the harbor, etc. A copy of all of the foregoing letters were attached, and a copy of the letter to Mr. Wilson and all of the attachments was given to each member of the board.

July 16, 1996	Colin L. Love to Kona Fuel & Marine, Inc	The letter summarizes the July 12, 1996 BLNR meeting and the demands made upon KF&M.
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Documents Recently Obtained

May 29, 1987	Norman Gentry, V.P. Gentry-Pacific, Ltd. to David Higa, Chief, Harbors Division, DOT	Letter acknowledging a complaint about Robbie Holmes selling fuel and referring David Higa to Gary Lambert.
June 3, 1987	Gary Lambert, General Manager for Gentry's Kona Marina to Robbie Holmes	Memo to Holmes telling him that he can only sell fuel in accordance with his sublease.
June 8, 1987	Harvey Jay Migdal, Corporate Counsel for Gentry to David Higa, Chief, Harbors Division, DOT	Letter taking the position that there are no limitations to the sale of fuel in the Holmes <u>sublease</u> .
January 25, 1989	Ian Birnie, Harbors District Manager to Dep-K	Memorandum to Honolulu office of Harbors division reporting: <ul style="list-style-type: none"> 1. He was told by Gentry's Kona attorney that Holmes had ignored a notice to cease selling fuel to automobiles. 2. Gentry was filing for summary possession. 3. The Kona attorney had been threatened by Holmes. 4. Ian Birnie was going to seek police protection.
May 10, 1989	Gentry-Pacific, Ltd., Robert K. Holmes and Steven Sawyer	Stipulated settlement of a summary possession action that had been filed by Gentry-Pacific against Holmes for violating his sublease by selling fuel to automobiles. Holmes agrees to not sell fuel to automobiles. Gentry is to seek an amendment of the sublease that will allow Holmes to sell fuel to automobiles.
June 17, 1993	S.V. Quitiquit, Esq., to David E. Parsons, DLNR-DBOR	Letter denying any knowledge of Holmes selling fuel to automobiles and contending that the Gentry's lease allows them to sell fuel to vessels on the water.

JOHN WAIMEE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P.O. BOX 821
HONOLULU, HAWAII 96809

KEITH W. AHUE, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

DEPUTIES

JOHN P. KEPPELER, II
DONAL L. HANAIE

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN
RECREATION
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
PROGRAM
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

REF: BOR-PM/LC

November 30, 1994

Gentry Properties
P. O. Box 295
Honolulu, HI 96809

Gentlemen:

Subject: Harbor Lease No. H-82-4, Honokohau Boat Harbor,
Island of Hawaii

This is to officially notify you that the Department of Land and Natural Resources, upon consultation with the Attorney General's office, has determined that certain activities of your subleasee, Honokohau Fuel, Inc., GMK-011, has violated the terms of Harbor Lease No. H-82-4.

An investigation has recently been completed in conjunction with the Department of the Attorney General, Investigations Division. The investigation indicates that your sublessee, Honokohau Fuel, Inc., GMK-011, has violated the terms of the sublease and your lease. Specifically, occurrences of fueling vehicles, trailer boats not stored on the premises, and fueling of vessels in the haul out slip have been observed and documented. You have been notified on previous occasions that these practices violate the terms of the Harbor Lease No. H-82-4 and applicable Hawaii Administrative Rules.

You are hereby notified that the above mentioned violations constitutes a breach of Harbor Lease No. H-82-4. Under the terms of Paragraph 23 of the lease, you have sixty (60) days from receipt of this notice to cure the breach.

You are required to provide the Department with evidence of corrective action to satisfy the breach. Mere assurances or promises of compliance will not suffice. As a minimum, it will be necessary to remove the fuel truck (Hawaii State License No. 313 MCC registered to Honokohau Marine Ice House, Inc.) from the premises.

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION
4 Sand Island Access Road
Honolulu, Hawaii 96819

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 INFORMATION
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FORESTRY AND WILDLIFE
HISTORY PRESERVATION
KAIROHAWI ISLAND RESERVE COMMISSION
LAND
STATE PARKS

BOR-PM-204-18

GKM, Inc.
c/o Tina Prettyman
74-425 Kealakehe Parkway
Kailua-Kona, HI 96740

Dear: Tina Prettyman,

On May 25, 2018, Item J-7, the Board of Land and Natural Resources authorized the continuation of your revocable permit #5, retroactively for one year from July 1, 2018 to June 30, 2019. During the RP #5 submittal process, DOBOR was informed of ongoing fuel sale operations being conducted at the Honokohau Small Boat Harbor location (Lease # H-82-4).

According to the GKM INC., lease (Lease # H-82-4) the Character of Use does not include fuel sales. DOBOR has no records or lease addendums granting permission to conduct fuel sales at this location. However, fuel sales may be conducted within the demised premises upon prior written approval by the Lessor per GKM INC. lease.

The Division of Boating and Ocean Recreation (DOBOR) will be going before the Board of Land and Natural Resources (the BLNR) tentatively July 13th, 2018 to request authorization to allow GKM INC. to offer fuel sales. DOBOR is seeking to add fuel sales to GKM INC. "Character of Use" at a rate of five percent (5%) of gross fuel receipts.

If you have any documentation granting permission to conduct fuel sales please forward a copy to Kenyatta.russell@hawaii.com and or the address above attention Kenya Russell prior to July 1st, 2018.

Should you have any questions, please contact Property Management, at (808) 587-1978.

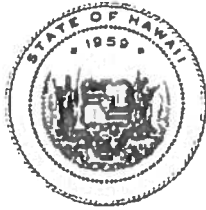
Sincerely,

A handwritten signature in black ink, appearing to read "Kenyatta Russell".

Kenyatta Russell
Property Manager

Sent by regular and
Certified Mail:
7017 0530 0001 0150 5454

DAVID Y. IGE
GOVERNOR OF HAWAII



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

4 Sand Island Access Road
Honolulu, Hawaii 96819

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

ROBERT K. MASUDA
FIRST DEPUTY

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

EDWARD R. UNDERWOOD
ADMINISTRATOR
DIVISION OF BOATING AND OCEAN RECREATION

BOR.PM-101.18

November 17, 2017

Certified Mail
7017 0530 0001 0153 3600

GKM, Inc.
c/o Ms. Tina Prettyman
74-425 Kealakehe Parkway
Kailua-Kona, HI 96740

Dear Ms. Prettyman,

On July 13, 2017, the Division of Boating and Ocean Recreation (DOBOR) requested your assistance with providing any documentation of approval given by the Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR), regarding the fuel operations at GKM, Inc.

Upon our review of your tenant files, DOBOR currently has no evidence of an agreement made between GKM, Inc. and DLNR-DOBOR for fuel operations. Please provide copies of all documents you may have pertaining to this matter. Should you not have written approval from the Board of Land and Natural Resources, we will prepare a submittal requesting that the Board approve fuel operations to occur at the GKM, Inc. facility.

Please contact our Property Management office at (808) 587-1964 if you have any questions regarding this matter.

Regards,

A handwritten signature in black ink, appearing to read "Keiki E. Kipapa".

Keiki, E. Kipapa
Property Manager III



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HARBORS DIVISION

79 SO NIMITZ HWY • HONOLULU, HAWAII 96813

12-21-88 C. H. ref.
EDWARD Y. HIRATA
DIRECTOR

DEPUTY DIRECTORS
JOHN K. UCHIMA
RONALD N. HIRANO
DAN T. KOCHI
JEANNE K. SCHULTZ

IN REPLY REFER TO:

December 23, 1988

Dawn Suyenaga Candon, Esq.
Associate Corporate Counsel
Gentry-Pacific, Ltd.
P. O. Box 295
Honolulu, Hawaii 96809

Dear Ms. Candon:

Thank you for your letter of December 8, 1988,
regarding Harbor Lease No. H-82-4, to Gentry-Pacific, Ltd.,
and Sublease No. GKM-011, to Honokohau Fuel, Inc.

Given the physical location of your Gentry Kona Marina
office and Honokohau Fuel, Inc.,'s fuel pumps, it is
inconceivable your management was not aware of fuel sales to
private vehicles. Your letter to the sublessee in fact
state "...warnings have been given to you to halt such
sales." Additionally, departmental records indicate that
Gentry-Pacific, Ltd., was notified of illegal fuel sales by
then Deputy Director Adam Vincent as long ago as March 20,
1985.

We appreciate your stated intention to halt the
unauthorized sale of fuel by Mr. Holmes. The status of
lease No. H-82-4 depends entirely upon your actions.

Please call me if you have any questions.

Yours very truly,

Dan T. Kochi
Deputy Director

bcc. Dir, Chief, Har-H

Mr. Robert Holmes
February 11, 1987
Page 2

HAR-PM 2658

We understand that the sign is now at your gas pumps and that you continue to sell gasoline to anyone who drives in. You must cease such sales and operate within the uses permitted under your sublease.

Please call Mr. Artemio Delos Reyes, Harbors Division Property Manager, at 548-2525, if you have any questions.

Very truly yours,

IS/ John Uehara

for Edward Y. Hirata
Director of Transportation.

ADR:jls

bcc: HAR-H
HAR-B

November 23, 1988

HAR-PM 1966

Gentry-Pacific, Ltd.
P. O. Box 295
Honolulu, Hawaii 96809

Gentlemen:

We have been informed by Mr. Ian Birnie, Hawaii District Manager, that Mr. Robert Holmes, Honokohau Fuel, Inc. (Sublease No. GKM-011), continue to sell fuel to private vehicles. This is in violation of the purpose set forth in Item D, Page 2, of the sublease by Gentry-Pacific, Ltd. to Honokohau Fuel, Inc. and Honokohau Gas and Oil Company now Honokohau Fuel, Inc., dated February 12, 1985, pursuant to the terms of Harbor Lease No. H-82-4.

The permitted use under Sublease No. GKM-011 states in Item D: "The premises shall be used by the Sublessee solely for the following and for no other purpose(s): selling of gas, diesel and oil to commercial, charter and pleasure boats within the leased area."

Mr. Holmes continue to sell fuel to private vehicles in breach of the terms and conditions of the sublease consented by the State on December 5, 1984.

You are hereby notified to remedy the breach within sixty (60) days from the date of receipt of this letter. This notice is pursuant to Paragraph 23, Page 18, of your lease and Sections 171-20, HRS. Failure to remedy the illegal fueling of private vehicles within the 60-day period will subject your lease to termination pursuant to the provisions of Section 171-21, HRS. This notice is also being sent to First Hawaiian Bank, mortgagee of your property as required under Section 171, HRS and Paragraph 23 of the lease.

Your cooperation in resolving this matter is requested.

Very truly yours,

Dan T. Kochi
Dan T. Kochi
Deputy Director for Harbors

ADR:jls

cc: First Hawaiian Bank

bcc: HAR-H

Seen
CH, HAR

C.O.
HAR-S

APR 88 7:16
HAR-PM

B

CONSENT TO SUBLEASE

KNOW ALL MEN BY THESE PRESENTS:

That the STATE OF HAWAII, Lessor in Harbor Lease No. H-82-4, does hereby consent to the Sublease by GENTRY-PACIFIC, LTD. of a portion of the premises demised under said Lease, to wit: An area containing approximately N/A square feet to Honokohau Fuel, Inc., dba Honokohau Gas & Oil Co., whose principal place of business and post office address is P.O. Box 2078, Kailua-Kona, HI 96745 .

This Consent shall (1) neither authorize nor be deemed to authorize any further or other sublease of said portion or any other portion or portions of the premises demised under said Lease; (2) not be deemed a waiver of any terms, covenants, provisions or conditions in said Lease contained and on the part of the Lessee to be observed or performed; (3) not be construed as a waiver by the STATE of any legal rights it may have under or in connection with said Lease; (4) not be deemed to estop the STATE from pursuing any cause of action it may have against Lessee either legal or equitable.

This Consent is further subject to the condition that the STATE does not hereby incur any additional liability, either direct or implied.

DATED: Honolulu, Hawaii, 12/5/84.

APPROVED AS TO FORM:

Bethia K. Dawson
Deputy Attorney General

STATE OF HAWAII

By [Signature]
Its Director of Transportation

APPROVED:

BOARD OF LAND AND NATURAL RESOURCES

By [Signature]
Chairman and Member

By [Signature]
Member

Approved by the Board
at its meeting held on

10/12/84, J-8 [Signature]

EXHIBIT C

GENTRY KONA MARINA SUBLEASE

GENTRY-PACIFIC, LTD.

to

Honokohau Fuel, Inc. and

Arthur M. Barnes and Steven Sawyer

Sublease No. GKM-011

at 23

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GENTRY KONA MARINA SUBLEASE

THIS SUBLEASE made and entered into this 12TH day of FEBRUARY, 1985, by and between GENTRY-PACIFIC, LTD., a Hawaii corporation, hereinafter called "Sublessor", and Honokohau Fuel Inc, and Honokohau Gas and Oil Company, whose principal place of business and post office address is P.O. Box 2078, Kailua-Kona, -
Hi. 96745, hereinafter called "Sublessee",

WITNESSETH:

In consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Sublessee to be kept, observed and performed, the Sublessor does hereby demise and lease unto the Sublessee, and the Sublessee does hereby lease and hire from the Sublessor, the Premises hereinafter described in the Basic Provisions and Exhibits.

BASIC PROVISIONS AND EXHIBITS

Item A -- PREMISES: Premises is defined in this Sublease as the area outlined on Exhibit A which is attached hereto and made a part hereof. The Premises is located in the Honokohau Boat Harbor, and, is specifically in the area of property leased by Gentry-Pacific, Ltd. from the State of Hawaii.

Item B -- LEASED AREA: For all purposes under this Sublease, the Leased Area of the Premises shall be deemed to contain approximately na square feet.

Item C -- SUBLEASE TERM; SUBLEASE YEAR; EXTENSIONS AND RENEWALS:

The Sublease Term is 20 years, and no months and no days, commencing 30 days after issuance of Certificate of Occupancy, or date, ("the Commencement Date"), and ending no later than midnight on 20 years hence., ("the Termination Date"). A Sublease Year shall mean a period of

twelve (12) consecutive full calendar months. The first Sublease Year shall begin on the Commencement Date if such Commencement Date shall occur on the first day of a calendar month. If such Commencement Date shall not fall on the first day of a calendar month, the first Sublease Year shall commence on the first day of the calendar month immediately following the month in which the term would otherwise have commenced. Each succeeding Sublease year shall commence on the anniversary date of the first Sublease Year. The Sublease Term includes all extensions and renewals of the original Sublease term herein set forth.

Item D -- PERMITTED USE: The Premises shall be used by the Sublessee solely for the following and for no other purpose(s): selling of gas, diesel and oil to commercial, charter and pleasure boats, within the Leased area.

The Sublessee is aware that the Sublessor does not guarantee that the Permitted Use listed above shall be for the exclusive use of the Sublessee within the area of the Honokohau Boat Harbor and/or within the area of Gentry's Kona Marina.

Item E -- TRADE NAME: Sublessee shall operate and do business on the Premises with all signs and advertising under the trade name: Honokohau Gas & Oil Company

Item F -- FIXED MINIMUM RENT:

(1) From the Commencement Date through year three, inclusive, a minimum annual rent of \$ 2,400.00, in monthly installments of \$ 200.00

(2) For Sublease Year 4, through 5, inclusive, a minimum annual rent of \$ 2,760.00 in monthly installments of \$ 230.00.

(3) For Sublease Year na, through na, inclusive, a minimum annual rent of \$ na in monthly installments of \$ na.

(4) For Sublease Year na, through na, inclusive, a minimum annual rent of \$ na in monthly installments of \$ na.

Rent for the remaining 3 five-year rental periods will be renegotiated in accordance with Covenant Number 3, entitled Rental Redetermination, but in no event will the rent for each new rental period be less than the rent for the immediately preceding rental period.

Item G -- PERCENTAGE RENT: none percent (---%) In the event this Sublease provides that the percentage rent is to be renegotiated, then the parties shall mutually agree to the new percentage rent not less than 90 days prior to the expiration of the last Sublease Year for which the percentage rent is fixed; and, in the event Sublessor and Sublessee fail to so agree on a new percentage rent, then such percentage rent shall be redetermined by an arbitrator or arbitrators in the same manner as they are appointed and used under paragraph no. 3 entitled Rental Redetermination, hereinafter. In no event shall the redetermined percentage rent be less than the percentage rent for the immediately preceding period.

Item H -- SECURITY DEPOSIT: \$ 200.00 . This Security Deposit shall be held by Sublessor as security for the faithful performance by Sublessee of all of the terms, covenants and conditions of this Sublease by Sublessee. This deposit bears no interest, may be comingled with Sublessor's other funds, shall be increased by Sublessee if the Fixed Minimum Rent increases and shall be returned at the termination of this Sublease if Sublessee has complied with all of the terms, covenants and conditions of this Sublease, including the payment of rent, and Sublessee has vacated the Premises.

Item I -- GUARANTOR(S): Arthur M. Barnes and Steven Sawyer

Item J -- SUBLESSEE'S SHARE OF TAXES AND ASSESSMENTS: three and 47/100 percent (3.47 %) for the land and na percent (na %) for the buildings and improvements. (16)
93

Said percentage has been calculated as shown in Exhibit "C" attached hereto and made a part hereof, and Sublessee hereby acknowledges that Sublessor may use any other method of weighted proration which reasonably allocates such charges among the leased areas, as solely determined by Sublessor. Sublessee also acknowledges that the square footages of the various classes of leaseable space and of the common area space as estimated in Exhibit "C" may materially change as solely determined by Sublessor, as the Gentry Kona Marina is developed and subsequently operated.

Item K -- COMMON AREA EXPENSES: Sublessee's percentage of common area expenses which Sublessee must bear is one 14/100 percent (1.14 %). Said percentage of common area expenses shall be paid by Sublessee monthly within 5 days after Sublessor notifies Sublessee of the monthly amount due. Sublessee agrees that Sublessor may adjust once per each Sublease Year the above percentage of common area expenses which Sublessee must bear. (16)
93

Said percentage has been calculated as shown in Exhibit "C" attached hereto and made a part hereof, and Sublessee hereby acknowledges that Sublessor may use any other method of weighted proration, which reasonably allocates such charges among the leased areas, as solely determined by Sublessor. Sublessee also acknowledges that the square footages of the various classes of leaseable space and of the common area space as estimated in Exhibit "C" may materially change as solely determined by Sublessor, as the Gentry Kona Marina is developed and subsequently operated.

Item L -- BROKER(S): NONE.

Item M -- STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION HARBOR LEASE NO, H-82-4:

Notwithstanding anything contained to the contrary in this Sublease, in any and all events, the State of Hawaii, Department of Transportation Harbor Lease No. H-82-4 between the State of Hawaii and Gentry-Pacific, Ltd. controls and is paramount, which includes the required consent of the State of Hawaii, otherwise this Sublease will be of no force and effect. (Lease No. H-82-4 is herein sometimes referred to as the "Lease".) The property subject to said Lease No. H-82-4 is depicted in Exhibit "A", and legally described in Exhibit "B", of which the Premises is a part.

Sublessee hereby acknowledges and represents that Sublessee has received a copy of the Lease, and has reviewed the Lease.

Item N -- SUBLESSOR'S ADDRESS FOR RENTAL PAYMENTS AND NOTICE: Gentry-Pacific, Ltd., P. O. Box 295, Honolulu, Hawaii 96809, and at such other place as Sublessor may designate in writing to Sublessee from time to time.

Item O -- EXHIBITS: The following drawings and special provisions are attached hereto as exhibits and are expressly incorporated in this Lease for all purposes:

Exhibit "A" -- Plan outlining the Premises and Site plan of Gentry Kona Marina.

Exhibit "B" -- Legal description of Gentry Kona Marina.

Exhibits "C" -- Projected Allocation Estimates for Sublessee's Percentage Liability of Real Property Taxes and Assessments (Item J) and Common Area Expenses (Item K)

Note: Although Gentry-Pacific, Ltd. may lease additional land in the Honokohau Boat Harbor, those additional lands will not be included in computing the percentages in Items J and K.

Item P -- OTHER CONDITIONS:

1. Additional rent of one cent (\$.01) per gallon for every gallon sold which exceeds 20,000 gallons per month shall be paid by sublessee. Sublessee to report total gallons sold by the 10th day of each month in accordance with Covenant Number 4, entitled Percentage Rent.
2. Sublessee shall maintain fuel tankwalls and foundation, and fuel lines.
3. Sublessee is hereby permitted to use sublessor's three (3) fuel lines already in place during the term of this Sublease. Sublessee shall fully maintain said fuel lines during the term of this sublease.
4. ~~Sublessor has provided Sublessee with full access of one of the only four inch electric service ducts for the purpose of conducting business. Said ducts terminate in Sublessee's Space Number 22. Sublessee may, at Sublessor's sole discretion and with written approval from Sublessor, use any excess electrical capacity available in the said second four inch electric service duct which is owned by Sublessor.~~

THE SUBLESSEE COVENANTS AND AGREES WITH THE SUBLESSOR AS FOLLOWS:

1. **Payment of Rent.** Beginning with the Commencement Date, monthly in advance throughout the term of this Sublease, without demand or notice, Sublessee shall pay said rent in legal tender of the United States of America to Gentry Kona Marina at the time, in the manner and form set forth in the Basic Provisions and Exhibits, and at the place specified above, or at such other place and to such other nominee as Sublessor may from time to time designate. In the event the Commencement Date falls on other than the first day of the month, the rental for the first fractional month shall be computed on a daily basis from the Commencement Date to the end of the month by multiplying the Fixed Monthly Minimum Rent by a fraction, the numerator of which is the number of days from the Commencement Date to the end of the month and the denominator of which is the number of days in the month.

2. **Service Charge and Default Rate of Interest.** Without prejudice to any other remedy available to Sublessor, a service charge of four (4) cents for each dollar of each rental payment owed for the particular month which is not made on time shall be assessed against Sublessee if the rental is paid more than 5 days after the due date to cover the extra expense involved in handling delinquent payments, and, any amounts owing by Sublessee to Sublessor under the terms of this Sublease shall bear interest from the date same becomes due until paid at the specified maximum rate, if any, then allowed by applicable law or if there is no such specified maximum rate, at a floating rate equal to three (3) percentage points over the large business prime rate then being charged by Bank of Hawaii. Said interest shall be considered as a part of the rental payable in this Sublease.

3. **Rental Redetermination.** Rental Redetermination means that a new Fixed Minimum Rent must be renegotiated. In the event this Sublease requires a reopening of the Fixed Minimum Rent, then such Fixed Minimum Rent shall be the rental for the immediately preceding Sublease Year, or 100% of the fair market rental at the time of the redetermination, whichever is higher.

In determining the fair market rental, the land, buildings and Permitted Use of the Premises as set forth herein in this Sublease shall be considered. The value of Sublessee's

equipment and furnishings shall not be considered in determining the said rental rate.

At the time of redetermination, the fair market rental shall be determined by mutual agreement of Sublessor and Sublessee not less than ninety (90) days prior to the expiration of the period for which minimum rent is fixed. If Sublessor and Sublessee fail to agree upon such fair market rental not less than ninety (90) days prior to the expiration of said fixed period, the fair market rental shall be determined by an arbitrator or arbitrators appointed as hereinafter provided.

Either party may give to the other written notice of its desire to fix such fair market rental by arbitration. If, within ten (10) days after the receipt of such notice, Sublessor and Sublessee are able to agree upon a single arbitrator, then said arbitrator alone shall determine said fair market rental. The decision and award of such arbitrator shall be final, conclusive and binding upon both parties for the period of redetermined rent, unless the same shall be vacated, modified or corrected, as provided in Chapter 658, Hawaii Revised Statutes, as the same may be amended. If Sublessor and Sublessee have not agreed upon one (1) such arbitrator within ten (10) days after said receipt of such notice, then such determination shall be made by two (2) arbitrators, each of whom must be a member of the American Institute of Real Estate Appraisers, and either party may give to the other party a written notice naming one (1) of the two (2) arbitrators. Thereupon, the other party shall, within ten (10) days after receipt of such notice, name a second arbitrator, and in case of failure so to do, the party who has already named an arbitrator may have the second arbitrator selected or appointed by any judge of the First Circuit Court of the State of Hawaii. With forty-five (45) days of their respective appointments, each arbitrator shall determine said fair market rental and submit their reports to the Sublessor and Sublessee. If the fair market rental determined by each of the arbitrators varies by five percent (5%) or less between them, the average of the two shall be controlling, unless the same shall be vacated, modified or corrected, as provided in said Chapter 658. If the fair market rental determined by each arbitrator varies by more than five percent (5%) between them, then, within ten (10) calendar days of the submission of the last fair market rental determination, both arbitrators shall appoint a third arbitrator who shall be a member of the American Institute of Real Estate Appraisers, and in case of failure so to do, either party may have the third arbitrator selected or appointed by any

judge of the First Circuit Court of the State of Hawaii. Said third arbitrator shall, within thirty (30) calendar days of his appointment, determine said fair market rental and submit his report to the Sublessor and Sublessee. The fair market rental determined by the third arbitrator shall be controlling unless it is less than that set forth in the lower fair market rental report previously obtained, in which case the fair market rental set forth in said lower report shall be controlling, or unless it is greater than that set forth in the higher fair market rental report previously obtained, in which case the fair market rental set forth in said higher report shall be controlling, and, unless the determination as herein provided with respect to the third arbitrator shall be vacated, modified or corrected, as provided in said Chapter 658. The arbitrator or arbitrators shall have all the powers and duties prescribed by said Chapter 658, and judgment may be entered upon any such decision and award as provided in said Chapter 658. All costs and expenses of the arbitration shall be borne equally by Sublessor and Sublessee except that each party shall bear the fees and costs of the arbitrator appointed by it, or by the Court on its behalf in lieu of appointment, and shall bear its own attorneys' and witnesses' fees and costs of court if the arbitration becomes the subject of litigation. If and whenever the fixing of such fair market rental is under arbitration, Sublessee, pending the determination thereof, shall continue to pay the then monthly rental which it had been paying during the period of fixed rent and shall promptly pay without any prior demand therefor and without any deduction or set off whatsoever, the deficiency, if any, upon the conclusion of the arbitration proceedings together with interest thereon at the rate of twelve percent (12%) per annum from the commencement of the period of rental redetermination until the date upon which said deficiency and interest are actually paid to Sublessor.

4. **Percentage Rent.** For each and every calendar month or fraction thereof during the term of this Sublease, Sublessee shall pay to Sublessor, on or before the tenth (10th) day of the next succeeding month, as additional rent, a sum of money determined by deducting the Fixed Minimum monthly or fractional monthly rent from the percentage rent for such preceding calendar month or fractional month. The percentage rent shall be determined by multiplying the percentage as set forth in Item G of the Basic Provisions hereinabove by Sublessee's gross sales for each month. In no event, however, shall the monthly rent to be paid by Sublessee to Sublessor be less than the Fixed Minimum Rent herein specified.

5. **Gross Sales and Reports.** The term "gross sales," means the entire amount of the actual sales price, whether for cash or otherwise, of all sales of merchandise or services, and all other receipts whatsoever of all business conducted at, in, from or upon the Premises, less any Hawaii State General Excise Taxes. Sublessee shall submit to Sublessor on or before the tenth (10th) day of each and every calendar month (excluding the 10th day of the first month of the first Sublease Year but including the 10th day of the month following the end of the term) at the place then fixed for the payment of rent, together with the remittance of monthly percentage rent, a written statement signed by Sublessee or by a person duly authorized by Sublessee showing in detail the amount of gross sales of the preceding calendar month or fractional month, if any.

6. **Gross Income Tax.** Sublessee shall also pay to Sublessor as additional rent, together with each payment of rental, real property taxes, and other charges payable by Sublessee hereunder, including but not limited to, the State of Hawaii General Excise Tax (the payment for which under this Sublease would presently be 4.167%).

7. **Preservation and Disclosure of Records.** For the purpose of ascertaining the amount of rent, Sublessee agrees to prepare and keep on the Premises for a period of not less than two (2) years following the end of each Sublease Year, or until Sublessor's auditors have had reasonable opportunity to audit the same, whichever is later, adequate records which shall show inventories and receipts of merchandise at the Premises and daily receipts from all sales and other transactions on the Premises by Sublessee and any other persons conducting any business upon said Premises.

8. **Audits.** Sublessee grants unto Sublessor and its agents the right at all reasonable times to have access to all books, accounts, records and reports, including, without limitation, gross income tax reports and purchase orders, which must be kept by Sublessee with respect to its business on the Premises for at least three (3) years following the end of a calendar year.

9. **Taxes, Assessments, etc.** Sublessee shall pay or cause to be paid, when due, as additional rent, its prorated amount, which is the percentage set forth in the Basic Provisions and Exhibits (Item J, and as set forth in Exhibit "C"), of all taxes, rates, assessments and other charges of every description to which said Premises are subject, including any improvements thereon and the parcel of land of which the Premises is a

part, which taxes, rates, assessments and other charges are now or may hereafter be assessed against the Sublessor or Sublessee by authority of law during the term of this Sublease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Sublessee shall be required to pay proratably only such installments, together with interest, as shall become due and payable during the term of this Sublease.

10. **Minerals and Waters.** Pursuant to the Lease, the State of Hawaii has reserved the right to all minerals as hereinafter defined, in, on or under the demised premises therein and the Premises herein, and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and the removal of such minerals by any means whatsoever, including strip mining. "Minerals," as used herein shall mean any or all oil, gas, coal, phosphate, sodium, sulfur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, in, on or under the land.

11. **Prehistoric and Historic Remains.** All prehistoric and historic remains found on the premises demised herein shall be and remain the property of the State of Hawaii and shall not be disturbed or removed by Sublessee, its employees, agents or contractors, without the express approval of the Director of Transportation of the State of Hawaii.

12. **Easements.** Sublessor and the State of Hawaii reserve the right to establish, or to sell or grant to others, easements required for maritime or utility purposes, provided that such easements shall not, in any substantial way, interfere with Sublessee's use of the Premises.

13. **Construction of Improvements; Environmental Impact Assessment.** In the construction of any improvements by Sublessee, if required by the State of Hawaii, Sublessee shall, within sixty (60) days of the issuance of the building permit, prior to constructing any improvements on the Premises, submit an Environmental Impact Assessment to the Department of Transportation of the State of Hawaii. Within thirty (30) days after the approval of any such required Environmental Impact Statement or

Negative Declaration, whichever is necessary to comply with Chapter 343, Hawaii Revised Statutes, as amended, and the Regulations of the State of Hawaii's Environmental Quality Commission, Sublessee will submit completed building plans to the Harbors Division and Sublessor for approval.

If required by the State of Hawaii or County of Hawaii, prior to construction, Sublessee must obtain Department of Health approval for disposal of sewage, Hawaii County approval of a shoreline management permit, and Hawaii County approval for shoreline setback requirements and a building permit from Hawaii County. All costs associated with meeting the requirements hereinabove will be borne by Sublessee. Sublessee must also file and receive, if required by the State of Hawaii and/or County of Hawaii, approval of a Conservation District Use Application from the Department of Land and Natural Resources.

During the term of this Sublease, no improvements, alterations or additions will be constructed on or under the Premises unless Sublessee first submits its plans and specifications to Sublessor for its approval (and to the State of Hawaii if required) and approval is granted by Sublessor in writing (and the State of Hawaii, if so required). The plans and specifications must be in full compliance with all statutes, ordinances, and rules and regulations applicable thereto.

14. Improvement Bond. Sublessee will, at the time of the issuance of any building permit to Sublessee procure and deposit with Sublessor a surety bond in the amount of the construction costs, which bond shall (1) name the State of Hawaii and Sublessor as obligees, (2) be conditioned upon the faithful observance and performance of the building plans submitted to and approved by Sublessor (and the State of Hawaii, if required) and (3) save and hold the State of Hawaii and Sublessor harmless from all liens, suits, actions or damages arising out of, caused by or attributable to such work performed under the building permit.

15. Contractor's Insurance. Before commencing the construction or installation of any improvements, equipment or fixtures on the Premises, Sublessee shall require that all contractors and subcontractors employed on the Premises by Sublessee or Sublessee's contractor procure and maintain in full force and effect during the course of construction and installation the following insurance:

a. **Workmen's Compensation as required by law.**

b. **Contractor's Comprehensive General Liability and Property Damage** with a combined minimum single limit of \$1,000,000.00 for bodily injury and property damage per occurrence.

c. **Contractor's Automobile General Liability and Protective Property** with a combined minimum single limit of \$500,000.00 for bodily injury and property damage per occurrence.

16. **Utilities.** Water, sewer, and electricity are available at the approximate locations depicted on Exhibit "A".

17. **Utility Services; Rubbish Disposal.** Sublessee shall pay when due, all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which said Premises, or any part thereof, or any improvements thereon or Sublessor or Sublessee in respect thereof may during the term of this Sublease become liable, whether assessed to or payable by Sublessor or Sublessee. If such utility services are furnished by Sublessor, the charges to Sublessee will be the greater of Sublessor's actual costs for the furnishing of said services or the rate which would be payable if the Tenant were to purchase the same services from the public utility involved.

18. **Covenant Against Discrimination.** The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, sex, color, religion or ancestry.

19. **Sanitation, etc.** Sublessee shall keep the Premises and improvements in a strictly clean, sanitary and orderly condition.

20. **Waste and Unlawful, Improper or Offensive Use of Premises.** Sublessee shall not commit, suffer or permit to be committed any waste, nuisance, strip, loud or offensive noise, or unlawful, improper or offensive use of the Premises, or any part thereof.

21. **Compliance with Laws.** Sublessee shall comply with all of the requirements of all municipal, state and federal authorities and observe all municipal ordinances and state and federal statutes pertaining to the Premises, now in force or which may hereinafter be in force.

22. **Inspection of Premises.** Sublessee will permit Sublessor and the State of Hawaii

and their agents, at all reasonable times during the said term, to enter the Premises and examine the state of repair and condition thereof.

23. **Improvements.** Sublessee shall not at any time during the term of this Sublease construct, place, maintain and/or install on the Premises any building, structure and/or improvement of any kind and description whatsoever except with the prior approval of Sublessor and the prior approval of the Director of Transportation of the State of Hawaii, if required by the Director, and Sublessor and upon such conditions as said Director and Sublessor may impose.

24. **Repairs to Improvements.** Sublessee shall, at its own expense, keep, repair and maintain the Premises and improvements thereon now existing or hereafter constructed or installed on the Premises in good order, condition and repair, reasonable wear and tear excepted.

25. **Common Area; Rules and Regulations.** The term "common area," as used in this Sublease, shall be deemed to include those portions of the Gentry Kona Marina as are designated by Sublessor for the non-exclusive use of Sublessee in common with other authorized users, including but not limited to, roadways, service areas, driveways, areas of ingress and egress, landscaped and planted areas, sidewalks and other pedestrian ways, corridors, courts, public washrooms, drinking fountains, community rooms, toilets, stairs, ramps, areas containing buildings or structures used in connection with the maintenance of said common area, together with the buildings and structures constructed thereon, and all other similar facilities from time to time provided for the joint use and convenience of such authorized users.

Sublessee shall pay to Sublessor during the term of this Sublease, as additional rent, its pro rata share which is the percentage set forth in the Basic Provisions and Exhibits at Item K, and as set forth in Exhibit "C", of the cost and expenses which are incurred by or on behalf of Sublessor each calendar year, or part thereof, in maintaining and operating the common area (as hereinabove defined), including insurance premiums for the common areas, and the utility systems, lines, conduits, appurtenances thereto and security services serving the Gentry Kona Marina.

Sublessor shall have the exclusive right to police, regulate traffic in and otherwise control the use of parking, sidewalks, and all other portions of the common areas of the

Gentry Kona Marina. In furtherance of such right, Sublessor may from time to time promulgate and amend reasonable rules and regulations with respect to the common area, including hours of operation, which shall be binding upon Sublessee on reasonable notice. For the enforcement of said rules and regulations, Sublessor shall have all remedies in this Sublease provided for a breach of the term of this Sublease, as if said rules and regulations were expressly incorporated herein, and all other legal or equitable remedies whether or not provided for in this Sublease.

26. **Encumbrances, Rights Reserved to Sublessor.** Sublessor reserves the following rights:

(a) The right to grant or relocate all easements now or hereafter required by Sublessor for the construction, installation, operation, maintenance, repair and replacement of rights of way, underground lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewage, drainage and other public services and utilities; and

(b) The exclusive right to the use of the roof, exterior walls and area beneath the Premises, together with the right, from time to time, to install, maintain, use, repair and replace utility mains and other facilities serving other premises within the Gentry Kona Marina, when such location is dictated by necessities of engineering design, good practice and/or code requirements.

27. **Right to Change.** Sublessor reserves the absolute right at any time and from time to time to increase, reduce, change, or alter the size, height, layout, or location of any buildings, driveways, entrances and exits, automobile parking areas, and other circulation areas now or at any time hereafter forming a part of the Gentry Kona Marina.

28. **Right to Enter.** The agents and representatives of the State of Hawaii and the County of Hawaii may enter and cross any portion of the Premises for the purpose of performing any public or official duties; provided, however, in the exercise of such duties, the rights of the Sublessee to the use and enjoyment of the Premises shall not be unreasonably interfered with.

Sublessee will permit Sublessor and its agents to enter into and upon said premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining the building in which said Premises are situated, or for the purpose of making

repairs, alterations or additions to any other portion of said building, including the erection and maintenance of such scaffolding, canopies, fences and props as may be required, without any rebate of rent and without any liability to Sublessee for any loss of occupation or quiet enjoyment of the Premises thereby occasioned; provided, that except in case of emergencies, Sublessor shall make such entry for the purpose of repairing and maintaining the building only during non-business hours, and all such work shall be done in such manner as to cause as little interference as reasonably possible.

29. **Liens.** Sublessee will not commit or suffer any act or neglect whereby the Premises or any improvement thereon or the estate of the State of Hawaii or Sublessor or Sublessee become subject to any attachment, lien, charge or encumbrance whatsoever, and shall indemnify and hold harmless the Sublessor and the State of Hawaii from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

30. **Assignments and Subletting.** Sublessee shall not transfer or assign this Sublease or any interest herein. Sublessee shall not rent nor further sublet the whole or any portion of the Premises, without the prior written approval of Sublessor and the Director of Transportation of the State of Hawaii, which written approval each may unilaterally and arbitrarily withhold. Sublessee understands that said Director and Sublessor also have the right to deny uses contrary to the primary purpose of this Sublease.

31. **Rental Revisions under the Lease.** Sublessee understands that the Board (as it is defined in the Lease) has the right to review and approve the rent to be charged to Sublessee herein and, if necessary, to revise the rent and rent structure charged to the Lessee by the State of Hawaii in the Lease in light of the rental rate to be charged to the Sublessee herein by Sublessor. In the event such revision takes place under the Lease, then Sublessor may revise the rent and rent structure charged to Sublessee herein by passing onto Sublessee the share of such revision attributed to the increase of the rent charged by the State of Hawaii in the Lease to Lessee therein. Likewise, Sublessee understands that this same procedure and rental revision right applies to any assignment or subletting which may be approved under paragraph no. 30 entitled, Assignments and Subletting, above.

32. **Mortgage.** Upon due application and with the written consent of Sublessor and

the State of Hawaii, Sublessee may mortgage this lease or any interest herein or create a security interest in the Premises. Any such mortgage, hypothecation or pledge given by Sublessee without the prior written approval of the Sublessor and said Director shall be null and void. If the mortgage or security interest is to a recognized lending institution, authorized to do business as a lending institution, in either the State of Hawaii or elsewhere in the United States, such consent may extend to foreclosure and sale of Sublessee's interest at such foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified under Chapter 171, Hawaii Revised Statutes, as amended, to lease, own or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder of this Sublease shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of such mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers on the holder than those conferred with respect to any of the aforementioned Federal agencies.

Sublessee shall upon execution of any such mortgage promptly deliver a true copy of such mortgage or written notice thereof to Sublessor. The mortgagee or its assigns may enforce such mortgage and acquire title to the leasehold estate in any lawful way, and pending foreclosure of such mortgage may take possession of and rent the Premises, and upon foreclosure thereof may without further consent of Sublessor sell and assign the leasehold estate by assignment in which the assignee shall expressly assume and agree to observe and perform all the covenants of the Sublessee contained in the mortgaged lease, and such assignee may make a purchase money mortgage thereof to the assignor, provided that upon execution of any such assignment or mortgage a true copy thereof shall be delivered promptly to Sublessor and that no other or further assignment of this Sublease for which any provision hereof requires written consent of Sublessor shall be made without such consent. The mortgagee or its assigns of such mortgage shall be liable to perform

the obligations of the Sublessee under such mortgaged Lease only during the period such person has possession or ownership of the leasehold estate. Nothing contained in such mortgage shall release or be deemed to relieve Sublessee from the full and faithful observance and performance of Sublessee's covenants herein contained or from any liability for the nonobservance or nonperformance thereof, nor be deemed to constitute a waiver of any rights of Sublessor hereunder, and the terms, covenants and conditions of this Sublease shall control in case of any conflict with the provisions of such mortgage.

33. **Protection of Mortgagee.** During the continuance in effect of any authorized mortgage of this Sublease, Sublessor will not terminate this Sublease because of any default on the part of Sublessee to observe or perform any of the covenants or conditions herein contained if the mortgagee or its assigns, within sixty (60) days after Sublessor has mailed to the mortgagee or its assigns at the last known address thereof a written notice of intention to terminate this Sublease for such cause, shall cure such default, if the same can be cured by the payment of money, or, if such is not the case, shall undertake in writing to perform and shall thereafter perform all the covenants of this Sublease capable of performance by the mortgagee or its assigns until such time as the leasehold estate shall be sold upon foreclosure of such mortgage, and any default consisting of Sublessee's failure promptly to discharge any lien, charge or encumbrance against the leasehold estate junior in priority to such mortgage shall be deemed to be duly cured if such mortgage shall be foreclosed by appropriate action instituted within said 60-day period and thereafter prosecuted in diligent and timely manner.

34. **Subordination and Attornment.** Sublessee agrees upon request of Sublessor to subordinate this Sublease and Sublessee's rights hereunder to the loans and mortgages now or hereafter placed, charged or enforced against Sublessor's interest in this Sublease and the leasehold estate hereby created, the Premises or the land, building or improvements included therein or of which the Premises are a part, and execute and deliver (but without cost to Sublessee) at any time and from time to time upon demand by Sublessor such documents as may be required to effectuate such subordination, and in the event that Sublessee shall fail, neglect or refuse to execute and deliver any such document within ten (10) days after receipt of written notice so to do and the receipt by Sublessee of the documents to be executed by it, Sublessee hereby appoints Sublessor, its successors and

assigns, the attorney in fact of Sublessee irrevocably to execute and deliver any and all such documents for and on behalf of Sublessee, provided that such holder of a mortgage shall agree that Sublessee may attorn to it or to any purchaser on foreclosure and this Sublease shall continue in effect if Sublessee is not then in default hereunder. In the event that the mortgagee or beneficiary of any such mortgage or deed of trust elects to have this Sublease a prior lien to its mortgage or deed of trust, then and in such event upon such mortgagee or beneficiary giving written notice to Sublessee to that effect, this Lease shall be deemed a prior lien to such mortgage or deed of trust whether this Sublease is dated or recorded prior to or subsequent to the date of filing of such mortgage or deed of trust.

35. **Financial Statements.** Should a lender advancing funds to Sublessor for the purpose of financing the construction of the Premises, or should the Sublessor require financial statements relating to Sublessee, Sublessee shall submit to such lender or to the Sublessor the required balance sheets and profit and loss statements and financial statements, and shall keep such reports, in the case of a lender, current so long as such lender shall require.

36. **Indemnity.** Sublessee will indemnify, defend and hold Sublessor and the State of Hawaii harmless (1) from and against any claim or demand by third persons for loss, liability or damage, including claim for property damage, personal injury or wrongful death, arising out of any accident in or about the Premises, sidewalks and roadways adjacent thereto or occasioned by any act or nuisance made or suffered on the Premises, or by any fire thereon or growing out of or caused by any failure on the part of Sublessee to maintain the premises in a safe condition; and will reimburse Sublessor and the State of Hawaii for all costs and expenses in connection with the defense of such claims; (2) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, municipal or county governments.

37. **Costs of Litigation.** In case Sublessor or the State of Hawaii shall, without any fault on their part, be made a party to any litigation commenced by or against Sublessee (other than condemnation proceedings), Sublessee shall and will pay all costs and expenses

incurred by or imposed on Sublessor and/or the State of Hawaii; furthermore, Sublessee shall and will pay all costs and expenses which may be incurred or paid by Sublessor or the State of Hawaii in enforcing the covenants and agreements of this Sublease, in recovering possession of the Premises or in the collection of delinquent rental, taxes and any and all other charges. In the event Sublessee brings an action or proceeding against Sublessor arising out of any breach of the terms and conditions hereof, and prevails against Sublessor, Sublessee shall be entitled to recover its costs and reasonable attorneys' fees from Sublessor.

38. Insurance.

A. **Liability Insurance.** Sublessee shall procure, at its own cost and expense, and keep in force during the entire term of this Sublease, with an insurance company or companies acceptable to Sublessor, a policy or policies of comprehensive general liability insurance in a combined single limit amount of not less than \$1,000,000.00 for bodily injury and property damage per occurrence; that said policy or policies shall cover the Premises, including all buildings, improvements and grounds and all roadways and sidewalks on or adjacent to the Premises in the control of Sublessee. Sublessee shall furnish Sublessor with a certificate showing such policy to be in force and shall furnish a like certificate upon each renewal of such policy, each such certificate to contain or be accompanied by an assurance of the insurer that Sublessor and the State of Hawaii, through its Director of Transportation, shall be notified at least thirty (30) days prior to any termination or cancellation of, or material change in said policy. The procuring of this policy shall not release or relieve Sublessee of its responsibility under this Sublease. The policy or policies required under this provision shall name Sublessor and the State of Hawaii as additional insureds.

The minimum limits of insurance recited herein may be increased by such amounts as Sublessor and/or the Director of Transportation, in the exercise of sound and prudent judgment, may require.

B. **Fire Insurance.** Sublessee will, at its own expense, at all times during the term of this Sublease, keep the Premises insured in the names of Sublessor, the State of Hawaii, Sublessee and all Mortgagees, if any, as their interests may appear, against loss or damage by fire including perils specified in the extended coverage endorsement and in an

amount equal to the maximum insurable value thereof, in a company or companies approved by Sublessor, and will pay the premiums thereon at the time and place the same are payable; that the policy or policies of insurance shall be made payable in case of loss to Sublessor, the State of Hawaii, Sublessee, and the Mortgagees, if any, as their interests may appear, and shall be deposited with the Mortgagee, if any, otherwise with Sublessor; and that any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible, be used by Sublessee for rebuilding, repairing, or otherwise reinstating the buildings in a good and substantial manner according to the plans and specifications approved in writing by Sublessor, and the Director of Transportation; provided, however, that with the approval of Sublessor, Sublessee may surrender this lease and pay the balance owing on any mortgage and Sublessee shall then receive that portion of said proceeds which the unexpired term of this sublease at the time of said loss or damage bears to the whole of said term, Sublessor to retain the balance of said proceeds.

Sublessee shall furnish to Sublessor, the State of Hawaii, and the Mortgagees, if any, a certificate showing such policy or policies to be initially in force and shall furnish a like certificate upon each renewal of such policy or policies, each such certificate to contain or be accompanied by an assurance of the insurer to notify Sublessor, the State of Hawaii, and the Mortgagees, if any, of any intention to cancel or materially change any such policy or policies, 30 days prior to actual cancellation.

39. **Surrender.** Sublessee shall and will at the expiration or sooner termination of this sublease, peaceably and quietly surrender and deliver possession of the Premises to Sublessor, together with all improvements constructed thereon by Sublessee of whatever nature or description, in good order and condition, reasonable wear and tear excepted; provided, that trade fixtures, equipment and personal property may be removed by Sublessee prior to such expiration or termination; and provided further, that within sixty (60) days after the termination or expiration of this Sublease, Sublessor may, at its option and upon written notice to Sublessee, require Sublessee to remove all or any portion of any improvement constructed by Sublessee on the Premises, and its equipment, fixtures, trade or otherwise, and/or personal property all at Sublessee's sole expense and cost.

Sublessee shall, in the removal of any of its improvements, equipment, trade fixtures

and/or personal property from the Premises, conduct such removal in such a manner as to cause no damage to the Premises, and in the event of such damage, Sublessee shall, at its own cost and expense, repair or replace the same.

If Sublessee fails or neglects, when so required by Sublessor, to remove all or any portion of any improvement constructed on the Premises by Sublessee of whatever nature or description, equipment, fixtures, trade or otherwise, and/or personal property within sixty (60) days after receipt of written notice to so remove, Sublessor may remove and dispose of the same and charge the cost of such removal and disposal to Sublessee, which costs Sublessee hereby agrees to pay.

40. Breach. Time is of the essence of this Sublease and if Sublessee shall fail to yield or pay such rent, costs, charges, assessments, or the like, as required of Sublessee in this Sublease, or any part thereof at the times and in the manner aforesaid, or shall become bankrupt, or shall abandon the Premises, or if this Sublease and the Premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of Sublessee's property for the benefit of creditors, or if Sublessee shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and such failure shall continue for a period of more than ten (10) days with respect to the payment of rent with no written notice required, and for a period of more than thirty (30) days after delivery by Sublessor of a written notice of any other breach or default by personal service, registered mail or certified mail to the Sublessee at its last known address and to each mortgagee or holder of record having a security interest in the Premises, if any, Sublessor may, at once re-enter the Premises or any part thereof, and upon or without such entry, at its option, terminate this Sublease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of such termination, all buildings and improvements constructed thereon by Sublessee shall become the property of the Sublessor, or at Sublessor's option, be removed by Sublessee as provided in paragraph 38 hereinabove.

In the case of the non-payment of rent during the term of this Sublease, Sublessor may re-enter the Premises and terminate the Sublease. Sublessee shall be liable for subsequently accruing rent during the term of the Sublease when the Premises are not

re-let and for any deficiency resulting from a re-letting of such Premises plus expenses for the re-letting.

In the event Sublessee discontinues using the Premises for 15 consecutive days for the uses enumerated herein and activities related thereto, without the consent of Sublessor from the date hereof, Sublessor reserves the right to terminate the Sublease on 10 days' written notice.

41. **Condemnation.** In the event that at any time during the term of this Sublease, the Premises or any part thereof shall be required, taken or condemned for any public use, by any condemning authority, the estate and interest of Sublessee in the property taken shall at once terminate, and all compensation payable or to be paid by reason of the taking of any land shall be payable to and be the sole property of Sublessor, and Sublessee shall not by reason of the taking be entitled to any claim against Sublessor for compensation or indemnity for its leasehold interest; that such compensation as shall represent the value of any buildings or improvements erected or owned by Sublessee upon the land shall be divided between Sublessor and Sublessee in the ratios that the expired and unexpired portions of the term of this Sublease, respectively, shall bear to the whole term hereby created, and that in case only a part of the buildings or improvements constructed or owned by Sublessee are taken, Sublessee may claim and receive from the condemning authority but not from Sublessor, any expense incurred by Sublessee in repairing any damage thereto; provided that, in case a part of the Premises shall be required, taken or condemned, the rent thereafter payable for the remainder of the term shall be reduced in the proportion that the area of land so taken shall bear to the area hereby subleased; provided, further, that in case such condemnation and taking shall by mutual agreement of the parties hereto be held to render the remainder of the Premises unfit for the purposes of Sublessee, Sublessee shall have the option to surrender this Sublease within 15 days of such condemnation and taking.

42. **Inspection by Prospective Sublessees.** Sublessor shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following a published notice for the proposed sale or other disposition of the Premises for purposes of informing and apprising such person or persons of the condition of the Premises preparatory to such proposed disposition; provided, however, that any

such entry and inspection shall be conducted during reasonable hours after notice to enter is first given to Sublessee, and shall, if Sublessee so requires, be made in the company of Sublessee or designated agents of Sublessee; provided, further, that no such authorization shall be given more than one year before the expiration of the term of this Sublease.

43. **Sale or Assignment by Sublessor.** Sublessor may at any time assign or transfer its interest as Sublessor in and to this Sublease, or any part thereof, and may at any time sell or transfer its interest in and to the whole or any portion of the Premises.

44. **Attornment.** Sublessee hereby agrees to attorn to the assignee, transferee, or purchaser of Sublessor from and after the date of notice to Sublessee of such assignment, transfer or sale, in the same manner and with the same force and effect as though this Sublease were made, in the first instance, by and between Sublessee and such assignee, transferee or purchaser.

45. **Transfer of Sublessor's Obligations.** In the event of any transfer or conveyance of the Sublessor's interest hereunder other than by way of security only, the Sublessor herein named, except as hereinafter provided (and in case of any subsequent transfers or conveyances, except by way of security only, the then Grantor) shall be automatically free and relieved from and after the date of such transfer or conveyance of all personal liability with respect to the performance of any covenants or obligations on the part of Sublessor contained in this Sublease thereafter to be performed, provided that any funds in the hands of such Sublessor, or the then Grantor, at the time of such transfer or conveyance in which Sublessee has interest shall be turned over to the Transferee or Grantee, and any amount then due and payable to Sublessee by Sublessor, or by the then Grantor, under any provisions of this Sublease shall be paid to Sublessee, it being intended hereby that the covenants and obligations contained in this Sublease on the part of the Sublessor to be kept and performed by it shall, subject as aforesaid, be binding on Sublessor, its successors and assigns only during and in respect to their respective successive periods of ownership.

46. **Extension of Time.** Notwithstanding any provision contained herein to the contrary, wherever applicable, Sublessor may for good cause shown, and in its sole discretion, allow additional time beyond the time or times specified herein to Sublessee, in which to comply with, observe or perform any of the terms, conditions and covenants

contained herein.

47. **Quiet Enjoyment.** Sublessor hereby covenants and agrees with Sublessee that upon payment of said rent at the times and in the manner aforesaid and the observance and performance of the covenants, terms and conditions hereof on the part Sublessee to be observed and performed, Sublessee shall and may have, hold, possess and enjoy the demised premises for the term hereby demised, without hindrance or interruption by Sublessor or any other person or persons lawfully claiming by, through or under it.

48. **Short Form Lease.** This Sublease shall not be recorded by either Sublessor or Sublessee, provided, that Sublessor may, at its discretion, permit Sublessee to record a short-form counterpart of this Sublease, setting forth only the date of commencement and the date of termination of this Sublease and describing the Premises.

49. **Waiver of Jury Trial and Counterclaims.** The parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on matters relating to the payment of rent in this Sublease and matters relating to the proper use of the Premises.

50. **Signs.** All exterior signs, installed or painted, advertising the business or activity conducted on the Premises, shall be restricted to the appurtenant equipment or any improvements constructed by Sublessee and are subject to the approval of the Sublessor. All signs installed or painted shall be done in good aesthetic taste and shall strictly conform to the sign ordinance of Hawaii County.

51. **Non-Waiver.** The waiver by Sublessor of any breach of any term, covenant or condition herein contained, including the acceptance of rent, shall not be deemed to be a waiver of the term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained, and the exercise of one right or remedy by Sublessor shall not impair Sublessor's right to any other remedy.

52. **Brokerage Commissions.** Sublessee represents that Sublessee has dealt directly with (and only with) the broker(s) identified in Item L of the above Basic Provisions and Exhibits in connection with this Sublease, and that no other broker negotiated this Sublease or is entitled to any commission in connection herewith. Sublessee agrees to indemnify Sublessor against, and hold Sublessor harmless from, all liabilities arising from

the claims of any other broker based upon acts of Sublessee (including, without limitation, attorneys' fees incurred by Sublessor in connection therewith).

IN WITNESS WHEREOF, the State of Hawaii, Sublessor, and Sublessee herein have caused these presents to be executed this 12th day of February, ¹⁹⁸⁵~~1984~~, both ^{at}~~in~~ effective on the day and year hereinabove set forth.

GENTRY-PACIFIC, LTD.

By

Its

By

Its

Sublessor

HONOKOHAU FUEL, INC.

By

Its

PRESIDENT

Sublessee

Arthur M. Barnes

Sublessee

Steven Sawyer

Sublessee

at
n.p.

STATE OF HAWAII)
) : SS:
CITY AND COUNTY OF HONOLULU)

On this 28th. day of May, 1985, before
me appeared NORMAN GENTRY and _____
to me personally known, who, being by me duly sworn, did say that
he is
they are the Vice President and _____,
respectively, of GENTRY-PACIFIC, LTD.
a Hawaii corporation, and that the seal affixed to the foregoing
instrument is the corporate seal of said corporation, and that said
instrument was signed and sealed in behalf of said corporation by
authority of its Board of Directors, and the said NORMAN GENTRY
and _____ acknowledged said instrument to be the
free act and deed of said corporation.

Smith L. L.
Notary Public, First Judicial Circuit,
State of Hawaii

My commission expires: 25 December 1986

STATE OF HAWAII)
 : SS:
CITY AND COUNTY OF HONOLULU)

On this ____ day of _____, 19____, before
me appeared _____ and _____
to me personally known, who, being by me duly sworn, did say that
they are the _____ and _____,
respectively, of _____ GENTRY-PACIFIC, LTD.,
a Hawaii corporation, and that the seal affixed to the foregoing
instrument is the corporate seal of said corporation, and that said
instrument was signed and sealed in behalf of said corporation by
authority of its Board of Directors, and the said _____
and _____ acknowledged said instrument to be the
free act and deed of said corporation.

Notary Public, First Judicial Circuit,
State of Hawaii

My commission expires: _____

STATE OF HAWAII
CITY AND COUNTY OF HONOLULU)
Hawaii) SS:

On this 20th day of November, 1984, before
me appeared Arthur M. Barnes and -
to me personally known, who, being by me duly sworn, did say that
they are the President and -,
respectively, of Honokahau Fuel, Inc.,
a Hawaii corporation, and that the seal affixed to the foregoing
instrument is the corporate seal of said corporation, and that said
instrument was signed and sealed in behalf of said corporation by
authority of its Board of Directors, and the said President
and - acknowledged said instrument to be the
free act and deed of said corporation.

Edna M. Shepherd
Notary Public, First Judicial Circuit,
State of Hawaii

My commission expires: 10-29-85

L.S.

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)
: SS:
)

On this 5th day of December, 1984,
before me personally appeared STEVEN SAWYER

to me known to be the person__ described in and who executed the
foregoing instrument and acknowledged that he executed the same
as his free act and deed.

Annette L. Clemmer
Notary Public, State of Hawaii

My commission expires: 9/1/85

REPAIR YARD
HONOKOHAU BOAT HARBOR

Being a portion of Government Land of Kealakehe

Being also a portion of submerged land of Honokohau Boat Harbor

Land situated at Kealakehe, North Kona, Island of Hawaii, State of Hawaii

Beginning at the northwest corner of the Repair Yard, on the northwest side of Access Road, the coordinates of said point of beginning referred to "HAWAII PLANE COORDINATE GRID SYSTEM, ZONE 1" (Central Meridian 155° 30' 00.00") being 305,540.20 feet north and 319,530.41 feet east and running by azimuths measured clockwise from Grid South of said Hawaii Plane Coordinate Grid System, Zone 1:

1. 307° 52' 49" 425.78 feet along on a curve to the right with a radius of 485.00 feet;
2. 333° 55' 233.09 feet along Access Road;
3. 63° 55' 156.33 feet along the southeast boundary of the Repair Yard;
4. 96° 03' 238.34 feet along the southern boundary of the Repair Yard;
5. 6° 03' 40.00 feet along a portion of the Repair Yard, walkway and submerged land of the boat harbor;
6. 96° 03' 115.00 feet along submerged land of the boat harbor;
7. 186° 03' 545.09 feet along a portion of submerged land of the boat harbor and western boundary of the Repair Yard to the point of beginning and containing an area of 177,860 square feet or 4.083 acres.

EXHIBIT B

EXHIBIT "C"

GENTRY KONA MARINA
PROJECTED ALLOCATION ESTIMATES FOR
SUBLESSEE'S PERCENTAGE LIABILITY OF REAL PROPERTY TAXES
AND ASSESSMENTS (ITEM J) AND COMMON AREA EXPENSES (ITEM K)

I. APPROXIMATE SQUARE FOOTAGE OF AREAS IN GENTRY KONA MARINA (GKM):

"Class I", which is Improved, Enclosed Space	23,383 sf
"Class II", which is Partially Improved, Roofed Space	14,556 sf
"Class III", which is Open Space	34,156 sf

Approximate total leasable sf in GKM	72,095 sf
Approximate common area square feet	102,145 sf

Approximate total area sf of GKM	174,240 sf
	=====

II. COMPUTATION OF REAL PROPERTY TAXES AND ASSESSMENTS FOR SUBLESSEE:

A. Computation on land - Sublessee's pro rata share of taxes and assessments for land is computed as follows:

2,500 sq. ft. (Sublessee's space) : 72,095 sq. ft. (Approximate total leaseable square feet in Gentry Kona Marina) = 3.47 % (Sublessee's percentage of liability for real property taxes and assessments on all land in GKM)

B. Computation on buildings and improvements - Sublessee's weighted pro rata share of taxes and assessments for buildings and improvements is computed as follows:

Class I, which is 23,383 sq. ft. (and is to be weighted 6.7) x 6.7 = 156,666 sf
(which is the weighted amount of Class I improvements)
Class II, which is 14,556 sq. ft. (and is to be weighted 2.0) x 2.0 = 29,112 sf
(which is the weighted amount of Class II improvements)

Total weighted amount of Class I and II improvements = 185,778 sf

2,500 sq. ft. of Class III (Sublessee's Premises x na, which is na weight = na (Sublessee's weighted space) na (total weighted space) = na % (Sublessee's percentage of liability for real property taxes and assessments on all buildings and improvements in GKM)

III. COMPUTATION OF COMMON AREA MAINTENANCE CHARGE FOR SUBLESSEE:

Sublessee's weighted pro rata share of common area maintenance charges is computed as follows:

Class I, which is <u>23,383</u> sf (and is to be weighted 6.7) x <u>6.7</u>	= <u>156,666</u> sf
Class II, which is <u>14,556</u> sf (and is to be weighted 2.0) x <u>2.0</u>	= <u>29,112</u> sf
Class III, which is <u>34,156</u> sf (and is to be weighted 1.0) x <u>1.0</u>	= <u>34,156</u> sf

Total weighted amount of Class I, II, and III space = 219,934 sf

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
MEMORANDUM

HAR-H
81

DOT 1027
(Rev. 11/68)
Bik

TO: Ch, HAR

DATE: August 27, 1986

FROM: HAR-H

SUBJECT: HONOKOHAU FUEL, INC. *< Gentry - Pacific Sublease*

On August 26, we received the enclosed copy of Honokohau Fuel's request to their landlord, Gentry, that their lease be amended to allow fuel sales to outside vehicles and vessels. Note that the request is dated 8/22.

Also enclosed is an excerpt from the 8/25 issue of Pacific Business News, stating that Honokohau Fuel filed for bankruptcy, under Chapter 11, between August 15 and 22.

The dates of these separate actions indicate that the bankruptcy filing took place on or before the request to amend the lease. It appears that the amendment request was not written in good faith. Furthermore, Gentry's manager, Gary Lambert, stated (on August 25) that the bankruptcy filing voids the sublease. Mr. Lambert further stated that Gentry would probably not put the fuel facility out for sub-lease again, but would manage it themselves. He implied that they would abide by the permitted use statement and not sell fuel to autos.

If the sublease to Honokohau Fuel was not voided by the bankruptcy, I would strongly oppose approval of the requested amendment as being unfair to the successful bidder (Jack Hall) at public auction for that service.

The demise of Honokohau Fuel probably has no bearing on Honokohau Partnership (ice, fish and photography), which recently opened. The same principals, Steven Sawyer and Skip Barnes, were in both, and I believe Rob Holmes bought both companies. On August 14, Holmes telephone me and asked if I was going to shut down all other fish handlers in Honokohau (referring to Jack Hall's sub-lessee, Flying Seafoods) now that he was open for business. I told him to take it up with his landlord - Gentry.


IAN BIRNIE

Enc

EXHIBIT D

FORECLOSURES

Filed Aug. 14-22

C-86-3147—First Hawaiian Bank vs. Robert S. Mist et al. Suit to foreclose mortgage on 2747 Puuhonua St., Manoa Valley, Oahu, for alleged non-payment of principal sum of \$85,128. Atty. for plaintiff: Barry K. Tagawa.

C-86-3157—Hawaii Housing Authority vs. Derrick T. Trukuda, Brenda Calero, Rita Brenda Trukuda, et al. Suit for foreclose mortgage on Apt. D-114 of Waikele condominium at Waikele, Oahu, for alleged default. Atty. for plaintiff: Stephen K.C. Nui.

Kaonohi, Ewa, Oahu, for alleged default. Atty. for plaintiff: Ronald V. Grant.

C-86-3186—First Hawaiian Bank vs. Kenneth W. and Jeranne E. Johnson, et al. Suit to foreclose mortgage on 75-5719 Alahou St., North Kona, Hawaii, for alleged non-payment of principal sum of \$35,000. Atty. for plaintiff: Michael L. Biehl.

C-86-3189—Territorial S&L Assn. vs. Shu W. Chun, Omel I. Turk, et al. Suit to foreclose mortgage on Apt. 710 of Pacific Grand condominium at Honolulu, Oahu, for alleged non-payment of principal sum of \$41,351. Atty. for plaintiff: Phyllis Spradlin.

C-86-3191—Assn. of Apt. Owners of Canterbury Place vs. Lori F. and Laurie M. Zaccaria, et al. Suit to foreclose mortgage on Apt. 203 of Canterbury Place condominium at Waikele, Oahu, for alleged non-payment of principal sum of \$1,397. Atty. for plaintiff: J. Eric Pustinen.

ML-86-0078—J.M. Sueda Inc. vs. Dynamic Industries Corp., Pauahi Realty Inc., City & County of Honolulu, et al.; \$10,144; 167 N. Pauahi St., Honolulu, Oahu; Kenneth K.S. Lau.

BANKRUPTCIES

The following debtors' petitions were filed Aug. 15-22

Chapter 7

• 86-00509—Charles K. Whitsell, aka Charles Whitsell Photography, 581 Kamoku St., Suite 3004. Debts: \$20,166. Assets: \$5,500.

• 86-00519—Alan Tucker, 1099 Green St., Suite 211. Debts and assets not listed.

• 86-00520—Shannon M.I. Manaois, 955 Ala Lilikoi St., Suite 604. Debts: \$18,880. Assets: \$1,050.

• 86-00521—Glenn T. Kawachi, 990 Ala Nanala Pl., Suite 16-C. Debts and assets not listed.

• 86-00522—Daryl E. Wallace, 94-1044 Mahua Rd., Waipahu. Debts and assets not listed.

• 86-00523—John M. Moore, 4300 Waiatae Ave., Suite 706-A. Debts and assets not listed.

• 86-00524—James A. Sr. and Betty J. Lidia, P.O. Box 4341, Hilo, Hawaii. Debts: \$38,267. Assets: \$1,850.

• 86-00525—Edward Jr. and Marie H. Balaj, 84-838-A Hanalei St., Wai-anae. Debts and assets not listed.

• 86-00527—Lester L. Pertz, P.O. Box 3534, Honolulu. Debts and assets not listed.

• 86-00528—Debra D. Figueroa, aka Debra D. Frigillana, 1720 Poki St., Suite 212. Debts: \$23,193. Assets: \$5,670.

• 86-00529—La Paloma Numero Cinco Inc., by its trustees in dissolution, Joseph G. Jr. and Laura R. Martinez, c/o 324 Awini Pl. Debts and assets not listed.

• 86-00531—Rosemary S. Antcliff, 2365-D Gemini Ave., Hickam Air Force Base. Debts: \$12,671. Assets: \$1,250.

• 86-00532—Sabina K. Milan, 3137

George St. Debts: \$20,201. Assets: \$3,119.

• 86-00533—John P. and Sherry L. Barnett, 1351-C Dorey St., Wahiawa. Debts: \$9,301. Assets: \$2,209.

• 86-00535—Michael A. Pope, 2030 Ahualani Pl. Debts and assets not listed.

Chapter 11

• 86-00510—(INVOLUNTARY)—Buena Vista #2ABC Partnership, 1580 Makaloa St., Suite 1177. Petitioner: Roy Y. Awaya. Debts and assets not listed.

• 86-00511—(INVOLUNTARY)—Buena Vista #6 Partnership, 1580 Makaloa St., Suite 1177. Petitioner: John W. Nakao. Debts and assets not listed.

• 86-00512—(INVOLUNTARY)—Buena Vista #3 Partnership, 1580 Makaloa St., Suite 1177. Petitioner: Michael Katsumoto. Debts and assets not listed.

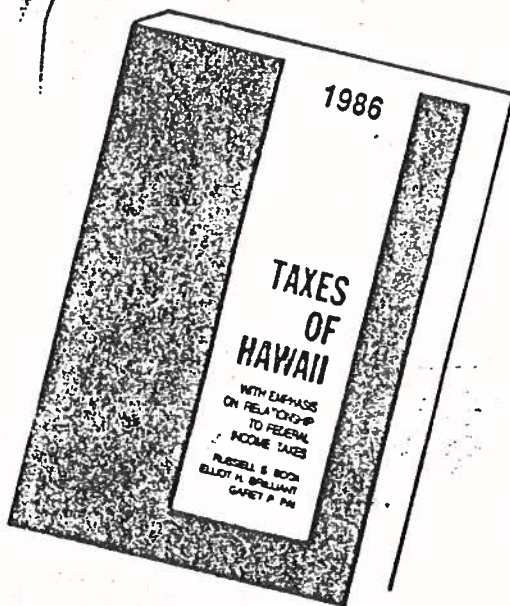
• 86-00513—(INVOLUNTARY)—Buena Vista #4 Partnership, 1580 Makaloa St., Suite 1177. Petitioner: Paul S. Haraguchi. Debts and assets not listed.

• 86-00514—(INVOLUNTARY)—Buena Vista #1-K Partnership, 1580 Makaloa St., Suite 1177. Petitioner: Stewart A. Green. Debts and assets not listed.

• 86-00526—JCSY Inc., Kailua Shopping Center, Kailua. Debts: \$357,196. Assets: \$35,000.

• 86-00530—Honokohau Fuel Inc., P.O. Box 5111, Kailua-Kona, Hawaii. Debts: \$81,642. Assets: \$62,804.

• 86-00534—Dochia A. Gonzalez, aka Dochia Gonzalez, Joseph A. Gonzalez Jr., aka Joe Gonzalez, DJ's Ceramics, and DJ's Ceramics Ltd., 96-1417 Waihona Pl., Pearl City. Debts and assets not listed.



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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

MEMORANDUM

HAR-H
355

TO: HAR-PM *pm 3/8/88*
THRU: DEP-K *K*
FROM: HAR-H

DATE: February 2, 1989

SUBJECT: SUBLEASE GKM-OIL, GENTRY AND HONOKOHAU FUEL, INC., R/S 2559

It is interesting that Gentry's attorney is acting on Holmes' bankruptcy, using that as grounds for termination of the sublease.

I notified you by memo (HAR-H 81, 8/27/86) two and a half years ago that Honokohau Fuel, Inc., had filed for bankruptcy under Chapter 11 between August 15-22, 1986. I also advised you that I had discussed the bankruptcy petition with Gentry's Kona manager, Gary Lambert, on 8/25/86, and he had informed me that it was cause for automatically voiding the sublease. Gentry and we have taken two and a half years to follow up on this matter.

The 1/31/89 hearing in Kona was postponed because Gentry's attorney has been unable to serve Rob Holmes. Maybe his friend Derrick Lining can provide information as to his whereabouts.



IAN BIRNIE

Enc.

IAN -

TRY SOUTH AMERICA !

Of Counsel:
CASE & LYNCH

SYLVESTER V. QUITIQUIT
DAVID C. FARMER
Suites 2500 and 2600
Grosvenor Center, Mauka Tower
737 Bishop Street
Honolulu, Hawaii 96813
Telephone No. 547-5400

Attorneys for GENTRY PACIFIC, LTD.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re	)	CASE NO. 86-000530
	)	(Chapter 11)
HONOKOHAU FUEL, INC.)	
	)	ORDER CONFIRMING REJECTION AND
	)	TERMINATION OF DEBTOR'S
Debtor.	)	INTEREST IN LEASE
	)	DATE: January 27, 1989
	)	TIME: 9:30 a.m.
	)	JUDGE: Jon J. Chinen
)	

3435U/13048-16

ORDER CONFIRMING REJECTION AND
TERMINATION OF DEBTOR'S INTEREST IN LEASE

Gentry Pacific, Ltd.'s ("Gentry Pacific") Motion for Order Confirming Rejection and Termination of Lease was heard before the Honorable Jon J. Chinen on Friday, January 27, 1989, at 9:30 a.m. David C. Farmer, Esq. appeared on behalf of Gentry Pacific, and Mark D. Bernstein, Esq. appeared on behalf of Steven Sawyer, Sublessee.

The Court, having considered the motion, the files and records in the case, and the representations of counsel, and no objections having been filed;

R 92784

UNITED STATES BANKRUPTCY COURT
DISTRICT OF HAWAII

1989 FEB -8 AM 11:14

DOROTHY A. FERNALD CLERK

FEB - 8 1989


IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Gentry Pacific's Motion for Order Confirming Rejection and Termination of Lease is hereby granted, and the Debtor's interest in Sublease No. GKM-011 is deemed rejected and terminated.

DATED: Honolulu, Hawaii, FEB - 3 1989.

JON A. CHINEN

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:



MARK D. BERNSTEIN, ESQ.
Attorney for Steven Sawyer

In re Honokohau Fuel, Inc., Case No. 86-000530 United States Bankruptcy Court for the District of Hawaii (Chapter 11) "ORDER CONFIRMING REJECTION AND TERMINATION OF DEBTOR'S INTEREST IN LEASE"

STEPHEN D. WHITTAKER

Attorney at Law, A Limited Liability Law Company

Post Office Box 964, Kailua-Kona, Hawaii 96745-0964
73-1459 Kaloko Drive, Kailua-Kona, Hawaii 96740-0916
Telephone: (808) 960-4536 Facsimile: (808) 325-7530
e-mail: stephen@whittakerlawkona.com

June 25, 2018

State of Hawaii
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
Attention: Kenyatta Russell, Property Manager
4 Sand Island Access Road
Honolulu, Hawaii 96819

By email, also, to Kenyatta.russell@hawaii.com

Re: *Your Letter to GKM, Inc., c/o Tina Prettyman Received June 8, 2018*

Dear Mr. Russell:

I have been retained by GKM, Inc. (1) to respond in answer to your letter, referenced above, with the history of fuel sales at Honokohau Harbor and (2) to rebut the suggestion in your letter that the "Character of Use" for GKM, Inc. under Lease # H-82-4 ("Lease") does not include fuel sales. You have invited my client to provide "documentation granting permission to conduct fuel sales" to you at the above addresses prior to July 1, 2018. This letter includes a brief history of fuel operations at Gentry's Kona Marina and provides the requested documentation.

Fuel Sales at Honokohau Harbor

Pursuant to Lease # H-82-4 and the authority therein granted the Lessee (initially Gentry-Pacific, Ltd. and by Assignment of Lease recorded October 16, 2002, now GKM, Inc.) fuel sales have been a permitted use at Gentry's Kona Marina since 1985. Fuel sales were initially conducted by Honokohau Fuel, Inc./Honokohau Partnership, Inc. and there is, or should be, substantial documentation in your office establishing such use. We have incomplete records as not all files and correspondence were "assigned" with the Lease, but among the records is a June 28, 1991, letter from Bruce Shimokawa, Property Manager with the State of Hawaii Department of Transportation, directed to GKM, Inc.'s Gary Lambert, requesting a new insurance policy for the fuel operators, Honokohau Fuel, Inc. and Honokohau Partnership, Inc. (Copy 1 enclosed.) We provide this as the earliest evidence in our files documenting fuel operations at Gentry's Kona Marina.

In the summer of 1994 Gary Lambert, then General Manager for Gentry's Kona Marina, at the request of Larry Cobb of the State of Hawaii DLNR, DOBOR, prepared a "status report of all subleases and Sub-Subleases" as Mr. Cobb had reported that some of the leases "were

EXHIBIT F

JUL 2'18AM 7:18BOR ADM

State of Hawaii
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
Attention: Kenyatta Russell, Property Manager
June 25, 2018
Page 2

possibly misplaced or [had] 'disappeared' or been sent to [the] legal department." Mr. Lambert's letter and the status report show Honokohau Fuel, Inc. and Honokohau Partnership, Inc. as having "Approved" existing subleases in June of 1994. (Copy of letter and status report enclosed as 2).

On February 12, 1996, Gary Lambert again had occasion to write to the DLNR, this time to Mr. Boniface Espinda, District Manager, in connection with a request "to make alterations to the now exiting fuel station." Mr. Lambert included in his letter a Site Plan and a Building Plan and he copied the letter to David Parsons. (Copy of letter and Site Plan and Building Plan enclosed as 3). This letter was answered, we believe, on May 7, 1996, in a letter which approved the alterations to the fueling station, though Gentry's Kona Marina has not been able to locate a copy of the May 7, 1996, letter.

Though we do not have the May 7, 1996, letter, we have an October 9, 1996, letter to Mr. Lambert on the subject of the fueling station which states unqualifiedly "This will acknowledge receipt of the 107 names submitted on the petition, "to allow the continuation of fueling of all boats and trailers at Gentry's Kona Marina that was mailed to me on October 3, 1996." (Emphasis in original)(Copy 4 enclosed).

In July of 2004, in a continuing pattern of cooperation with the DLNR and its property managers, Gentry's Kona Marina prepared and sent to Steve Molmen a tenant roster which, again, showed Honokohau Fuel, Inc. as a tenant. At this point in time it was known that Gentry's Kona Marina would not renew the sublease to Honokohau Fuel, Inc. and that fact was made known to Mr. Molmen and to DLNR in Mr. Lambert's summary. (Copy 5 enclosed). Gentry's Kona Marina needed to make plans for the continuation of the services that had been provided by Honokohau Fuel, Inc. and Honokohau Partnership, Inc.

Gas Station-Convenience Store Improvements, Lease Extension and Mortgage

In late 2004, coinciding with the expiration of the sublease to Honokohau Fuel, Inc./Honokohau Partnership, Inc., and in response to the ongoing needs of the boating community at Honokohau Harbor, Gentry's Kona Marina developed a plan to relocate the fueling operations to the north boundary of Lease # H-82-4. In connection with the plan Mr. Lambert wrote to First Hawaiian Bank on November 30, 2004, with a rough outline of the company's needs and received a letter in answer on December 21, 2004, expressing the bank's interest in the business. The bank cautioned that a lease extension would be required for the substantial ONE MILLION DOLLAR (\$1,000,000.00) loan under discussion. (Copies of letters are Enclosure 6).

On December 29, 2004, Steven M. Molmen, in his capacity as Property Manager for

State of Hawaii
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
Attention: Kenyatta Russell, Property Manager
June 25, 2018
Page 3

DLNR and its DOBOR, wrote with approval of the plan for the investment in the improvements and the construction of the improvements, including a convenience store and fueling station. While Mr. Molmen cautioned that "nothing contained [in his letter] shall be deemed to alter, expand or otherwise amend the marine or marine-related activities specified in the subject lease," as shown above (see, e.g. Enclosure 4), the fueling activities were an ongoing permitted use under the Lease. (Copy of approval is Enclosure 7).

In response to Mr. Molmen, and in reliance on the continuing approvals of the DLNR and DOBOR, Mr. Lambert wrote for Gentry's Kona Marina on January 6, 2005, providing Mr. Molmen with a copy of First Hawaiian Bank's letter on the proposed \$1,000,000.00 loan for the improvements (Enclosure 6) and requesting the DLNR/DOBOR agree to an extension of the Lease so that the loan under discussion with First Hawaiian Bank could be amortized as the bank required. (Enclosure 8). The matter was still under consideration when Mr. Lambert wrote again on October 24, 2005, outlining the steps that Gentry's Kona Marina had taken to that point to facilitate the construction of the improvements, including the fueling station and convenience store (Copy is Enclosure 9):

- 1. On November 18, 2004, I provided Nancy Murphy, Hawaii District Manager-DLNR-BOR, with our capital improvement plans (over \$1,000,000).*
- 2. These plans were approved on December 29, 2004 - see enclosure "A".*
- 3. On January 6, 2005, we requested a twenty (20) year extension on our lease- see enclosure "B". Our bank, First Hawaiian, is requiring the twenty (20) year extension in order to approve \$1,000,000 in capital improvement financing - please see enclosed correspondence "C".*
- 4. The fueling operation at our business was shut down on February 12, 2005.*
- 5. Our DLNR-approved capital improvement plans included new, safer fuel dispensers and location.*
- 6. There is currently no way for the Honokohau trailer-boating community to procure fuel unless they drive all the way around to the other end of Honokohau Small Boat Harbor where vehicles are fueled (no launch ramps located there), then drive back around to the launch ramps on our (north) side of the harbor. Very challenging and not safe.*

State of Hawaii
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
Attention: Kenyatta Russell, Property Manager
June 25, 2018
Page 4

- 7. We currently have a slightly hostile environment due to the inability of fisherman to obtain fuel.*
- 8. Our buildings are home to twenty-two (22) small businesses, and an additional 60 plus small businesses depend upon our marina for their survival. .. and this does not include the 120 plus marine activity and charter fishing boats and 80 plus commercial fishermen that rely on our services.*
- 9. Letter from Peter Yong stating DLNR cannot commit to any such extension until the negotiations with JOI have concluded.*
- 10. Board of Land and Natural Resources meeting on September 23, 2005 - Approval of set aside to Department of Land and Natural Resources 68.55 acres of public lands at Honokohau (Gentry's Kona Marina land lease is no longer in the JOI negotiations).*
- 11. It is in the public's best interest that Gentry's Kana Marina be granted the twenty-year lease extension to allow for improvements and continued maintenance of their boating facility.*

At a hearing on March 24, 2006, the DLNR approved the relocation of the fuel dispensers and the convenience store-fueling station improvements and consented to Gentry's Kona Marina's mortgaging of its Lease to secure the \$1,000,000.00. In reliance on such approval Gentry's Kona Marina proceeded to with its plans and made a request of the County of Hawaii for approval of a plan to "Convert warehouse to retail office and relocation of existing fuel facilities" and got appropriate approval. (Copy is Enclosure 10).

While our files don't include a letter or minutes of the March 24, 2006, hearing and approval, I enclose a June 28, 2007, letter directed to Ms. Janice A. Pakele at the Department of Liquor Control, County of Hawaii, signed by Allan A. Smith as Interim Director of the Department of Land and Natural Resources. While the subject of the letter is the GKM, Inc. Liquor License, the letter recites, "This correspondence shall formally serve as the Letter of Consent to the County of Hawaii **approving the improvement plans by GKM, Inc., for a convenience store-gas station** that may provide Prepackaged Beer and Wine for sale." (Emphasis added)(Copy is Enclosure 11).

Fulfilling its promise to consent to an extension of the Lease to facilitate the loan and improvements, the DLNR entered into an Extension Of Harbor Lease No. H-82-4 on May 12,

State of Hawaii
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
Attention: Kenyatta Russell, Property Manager
June 25, 2018
Page 5

2006, and the Extension was duly recorded with the Bureau of Conveyances of the State of Hawaii. The Extension (Copy is Enclosure 12) provides, in part:

2. The annual rental shall be reopened and redetermined on March 31, 2019, March 31, 2024, March 31, 2029, and March 31, 2034.
....
3. The proceeds of the ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) loan shall be used as indicated on the Board submittal approved by the Board of Land and Natural Resources for purposes of leasehold improvements.

In the event the parties do not agree on a new rental at reopening, there are detailed provisions in the Extension on how an appraisal process would proceed. There are no provisions for a unilateral increase in rent by DLNR.

The Lease, with the Extension, allows for the Lessee, among other things, to offer as "Services", "11. Other related activities as approved in writing by the Lessor". See Lease at Page 3. GKM, Inc. contends that the enclosures, the record of the March 24, 2006, hearing, the approval of the loan and the extension and mortgaging of the Lease for the express, written purpose of relocating and improving an ongoing fueling operation at Honokohau Harbor is all the written approval that should be required. The DLNR and DOBOR are estopped from claiming that GKM, Inc. does not have "written" authority to conduct fuel sales at Gentry's Kona Marina.

The Extra-Contractual Fuel Charge

Against this background the letter which Keiki E. Kipapa, then Property Manager, wrote for the DLNR on July 13, 2017, a decade after the deal was done, feigning surprise at the fact that GKM, Inc. was conducting fuel sales, came as a shock to GKM, Inc. (Copy is Enclosure 13). The July 13, 2017, letter recited that, "Our records do not indicate previous approval from the BLNR and we kindly request your assistance in resolving this matter."¹ Tina Prettyman, General Manager for GKM, Inc. wrote on July 17, 2018, in answer, referencing some of the correspondence which is enclosed with this letter and, additionally, protesting the arbitrary and unfair decision of the DLNR to put the boat yard developed by GKM, Inc. out to auction. (Copy is Enclosure 14). Ms. Prettyman's made the point this letter does, to wit, the DLNR has long known and long approved the fuel operations of, first, Honokohau Fuel, Inc./Honokohau Partnership, Inc. and, by succession and written consent, GKM, Inc.

¹ We would point out that the record demonstrates a poor history of accurately maintaining records at the DLNR/DOBOR and that the Department has turned to GKM, Inc. and its predecessor entities in the past for "help" in replacing lost or "disappeared" records.

State of Hawaii
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
Attention: Kenyatta Russell, Property Manager
June 25, 2018
Page 6

The undated letter you wrote which was received June 8, 2018, states, "The Division of Boating and Ocean Recreation (DOBOR) will be going before the Board of Land and Natural Resources (the BLNR) tentatively July 13th, 2018 to request authorization to allow GKM INC. to offer fuel sales. DOBOR is seeking to add fuel sales to GKM INC. "Character of Use" at a rate of five percent (5%) of gross fuel receipts." This is an anticipatory breach of Lease # H-82-4 and the Extension Of Harbor Lease No. H-82-4 made May 12, 2006.

On behalf of GKM, Inc., we are expressing our strong objection to your threat to change the terms of the Lease and unilaterally impose on GKM, Inc. an extra-contractual charge on operations that have been approved and ongoing for decades. Nothing in the Lease or the Extension authorizes such unilateral action, and the general law certainly does not sanction such behavior in breach of lease. Obviously, GKM, Inc. has a huge reliance interest in the improved premises. GKM, Inc. made those improvements for the continued operation of a fueling station with the written consent of the DLNR more than a decade ago. To suggest, as your letter does, that the DLNR has the right to impose a five percent (5%) charge on GKM, Inc.'s fuel sales just because it wants to, is not the law.² GKM, Inc. has the right to enforce the Lease and Extension as written.

We respectfully request that you consider the enclosures and withdraw your planned request to the BLNR to impose a surcharge on Lease # H-82-4. Changing financial needs of the DOBOR or whatever incentives may be at play in this matter do not give the DLNR the legal right to change the terms of Lease No. H-82-4. Of course, should you decline our invitation to withdraw your request and proceed to hearing, we will ask to appear and be heard for GKM, Inc. In this connection GKM, Inc. reserves all of its legal rights and remedies under the Lease, the Extension and applicable law.

Very truly yours,


Stephen D. Whittaker

Enclosures

cc: GKM, Inc. c/o Tina Prettyman

² It hardly seems necessary to point out that a rent increase that is not allowed by the parties' agreement or is fraudulently or improperly assessed or charged can expose the landlord to legal liability. See, e.g. *Molokai Services Inc. v. Hodgins*, 142 Hawai'i 150, 414 P.3d 202 (Ct. App. 2018).

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, MARCH 24, 2006
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:00 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young (left at 9:02 am)
Mr. Ted Yamamura
Mr. Ron Agor (arrived at 9:20 am)

Mr. Tim Johns
Mr. Gerald DeMello
Ms. Taryn Schuman

STAFF

Mr. Sam Lemmo, OCCL
Mr. Dan Quinn, Parks
Ms. Christen Mitchell, DOFAW
Mr. Ross Smith, DOT

Ms. Charlene Unoki, Land
Mr. Glen Abe, DOT
Mr. Richard Rice, DOBOR
Ms. Athline Clark, DAR

OTHERS

Mr. Randy Ishikawa, Deputy Attorney General
Mr. Douglas Chin, D-3
Ms. Diana Bertsch, E-1
Mr. Gary Lambert, J-1
Mr. Mike Tousad, F-3
Mr. Don Palawski, F-3
Mr. Robert Braun, F-3

Mr. William Moore, D-2
Mr. John Sakaguchi, K-1
Mr. Phil Hauret, D-7
Dr. Bud Antonelis, F-3
Ms. Cha Smith, F-3

{Note: language for deletion is [bracketed], new/added is underlined}

Motion made to amended the title of item F-2 to read

“The Division of Aquatic Resources Requests BLNR Authorization/Approval to Issue two (2) Northwestern Hawaiian Islands (NWHI) Access permits to the National Marine Fisheries Service: 1) A Research, Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring Cetaceans, Enhancing Monk Seal Pup Survival and Small Boat Operations); and 2) Special Activity Permit (Allowing entry to State Waters Surrounding the NWHI).”

Unanimously approved to amend the title of Item F-2 (Johns/Schuman).

Item A-2: Minutes of February 24, 2006 briefing.

Deferred due to lack of quorum.

Item A-4: Minutes of March 10, 2006

The Board made the following changes:

1) Page 3, first sentence

“[Kauai] Kali Watson, attorney for All Tree Service, Inc., appeared before the Board and together with Dave Kendrick and Terry Rodriguez conducted a power point presentation showing the subject site and their operation.”

Unanimously approved as amended (Yamamura/DeMello).

Item D-3: Consent to Assign Grant of Easement Identified as General Lease No. S-4227, SWVP Keauhou L.L.C., Assignor, to KBH, Inc., Assignee, Kahaluu, North Kona, Hawaii, TMK: (3) 7-8-13:42.

Charlene Unoki, Acting Assistant Administrator of the Land Division let it be known that the current tenant SWVP Keauhou LLC is in the process of selling their hotel and would like to transfer the subject easement to the new owner. Ms. Unoki recommended the Board consent to the assignment of the existing Grant of Easement identified as General Lease No. S-4227, from Keauhou L.L.C., as Assignor to KBH Inc., as Assignee subject to the terms and conditions listed in staff's submittal.

Douglas Chin of Carlsmith Ball LLP was present and noted his agreement with staff's recommendation.

Unanimously approved as submitted (DeMello/Schuman).

Item D-2: Conveyance By Land Patent Grant of Addition to Hilo Medical Center, Hawaii Health Systems Corporation, Piihonua, South Hilo, Hawaii, TMK; (3) 2-3-032:portion of 001.

Ms. Unoki is seeking the Board's permission to convey a piece of property (10 acres) that is currently being used as a parking lot. She reminded the Board Act 262, SLH 1996 created the Hawaii Health Systems Corporation (HHSC) for the purpose of operating the community hospitals statewide. Ms. Unoki also noted that HHSC is asking that the rent be waived although staff is not in agreement. Ms. Unoki recommended the Board authorize the fee simple conveyance by land patent grant of an approximate 10-acre portion of TMK: 2-3-032: 001 to HHSC and grant an immediate right of entry to HHSC to allow planning and construction of the parking lot and related improvements.

William Moore, a Planning Consultant representing Hilo Medical Center and Ron Terry, the chief author of the Environmental Assessment project were present to answer any questions. The Board asked Mr. Terry if an agreement was made on a rent amount to be paid starting in 1997, why has his organization failed to make payments. Mr. Moore noted that the State is subsidizing the hospital and they are willing to pay the back rent as well as the agreed upon rent.

Unanimously approved as submitted (DeMello/Schuman).

Item E-1: Request from the World Triathlon Corporation to use the Hapuna Beach State Recreation Area in South Kohala, Hawaii for the 2006 Ford Ironman 70.3 Honu Half Triathlon (70.3).

Dan Quinn, Administrator of State Parks mentioned that the World Triathlon Corporation is seeking permission to use the Hapuna Beach State Park to stage the 2006 Ford Ironman 70.3 Honu Half Triathlon. Mr. Quinn conveyed the swim portion of the Triathlon will be based out of the park. Race organizers are asking to begin set up on Thursday, June 1, 2006. Mr. Quinn recommended the Board approve the issuance of a Special Use Permit to the World Triathlon Corporation to utilize the Hapuna Beach State Recreation Area for the 2006 Ford Ironman Honu Half Triathlon subject to the four conditions listed in staff's submittal.

Diana Bertsch representing the World Triathlon Corporation was present.

Unanimously approved as submitted (DeMello/Yamamura).

Item K-1: State Civil Defense Warning and Communications Device Installation at Haena Beach Park, Haena, Halele'a, Kauai, TMK: (4) 5-9-005:019.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands noted that the County of Kauai is requesting placement of a warning and communication device at Haena Beach Park. Mr. Lemmo recommended the Board approve this application to install a State Civil Defense Disaster Warning and Communication Device subject to the terms and conditions listed in staff's submittal.

John Sakaguchi representing the agent Wilson Okamoto announced that he has read staff's submittal and is in agreement with the terms and conditions.

Unanimously approved as submitted (Agor/DeMello).

Item K-2: Amendment to Condition 7 & 9 of Conservation District Enforcement File No. HA-05-19 located at Hokukano, Ka'u, Island of Hawaii, TMK: (3) 9-5-016:036.

Motion to Withdraw.

Unanimously approved to withdraw (DeMello/Agor).

Item J-1: Consent to Mortgage and Amendment for Extension of Lease Term, General Lease No. H-82-4, GKM, Inc., Lessee, Kailua-Kona, North Kona, Hawaii, Tax Map Key: 7-4-008-042.

Richard Rice, Administrator of the Division of Boating and Ocean Recreation (DOBOR) communicated that GKM, Inc. dba Gentry's Kona Marina would like to acquire a mortgage from First Hawaiian Bank for \$1,000,000 to make improvements at the subject site. As a requirement of the mortgage Gentry is seeking to extend the term of the lease for an additional twenty years. Mr. Rice recommended the Board consent to the mortgage between GKM, Inc., Mortgagor and First Hawaiian Bank Mortgagee subject to the terms and conditions listed in staff's submittal.

Gary Lambert, General Manager of Gentry's Kona Marina and Vice President of GKM, Inc., appeared before the Board seeking their approval of staff's recommendation. Mr. Lambert let it be known the proceeds from the mortgage will be used to renovate the haul out slip, travel lift and an existing steel building on the property. They estimate these improvements to cost \$1,000,000.

Unanimously approved as submitted (DeMello/Yamamura).

Item M-3: Amendment to Issuance of a Direct Lease Together with a Construction Right-of-Entry to Sause Bros., Inc., Kalaeloa Barbers Point Harbor, Honouliuli, Ewa, Oahu, Tax Map Key Nos. (1) 9-1-14:24 (Por) and (1) 9-1-74:37 & 38 (Pors).

Item M-4: Issuance of an Inconsistent Revocable Permit A Tom Moffatt Production, Inc. Pier 19 Ferry Terminal Building, Honolulu Harbor.

Unanimously approved as submitted (Yamamura/DeMello).

Item M-1: Issuance of Revocable Permit Ground Transport, Inc. for Inconsistent Use Honolulu International Airport.

Item M-2: Consent to Sublease Retail Concession DFS Group L.P. to Maui Divers of Hawaii, Ltd Honolulu International Airport.

Unanimously approved as submitted (Yamamura/DeMello).

Item D-7: Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. for Access and Utility Purposes, Sunset Beach Elementary School, Pupukea, Oahu, TMK: 5-9-05:18 portion.3

Member Johns recused himself.

Ms. Unoki announced that the state acquired the property from the James Campbell Estate in 1975 and with the property came an encumbrance by Hawaiian Electric Company for a term easement. Ms. Unoki recommended the Board authorize the issuance of a perpetual non-exclusive easement to Hawaiian Electric Company, Inc. covering the subject area for access and utility purposes.

Phil Hauret representing Hawaiian Electric was present.

Unanimously approved as submitted by the remaining Board members (Yamamura/DeMello).

Item F-3: The Division of Aquatic Resources Requests BLNR Authorization/Approval to Issue two (2) Northwestern Hawaiian Islands (NWHI) Access permits to the National Marine Fisheries Service: 1) A Research, Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring & Education Permit for Assessment of Refuge Resources (Monitoring Cetaceans, Enhancing Monk Seal Pup Survival and Small Boat Operations); and 2) Special Activity Permit (Allowing entry to State Waters Surrounding the NWHI).

Athline Clark, a Planner with the Division of Aquatic Resources (DAR) noted this is the first access permit to the Northwestern Hawaiian Islands (NWHI) being issued. This permit would allow access for the National Marine Fisheries Service to conduct three different types of activities – setting up a monk seal recovering camp and recovering work, conducting green sea turtle research and conducting a research project on sharks and shark incidents involving monk seal pups at the French Frigate Shoals. The second permit which is a supplemental permit would allow access for the research vessel. Due to the timing of the project, Ms. Clark noted that the review process has to be cut short but noted that it is their intention to go through the entire review process on future permits. With regards to the permit review process, Ms. Clark noted that three staff members were asked to review the permit and went through each of their recommendations. Ms. Clark recommended the Board authorize and approve with stated conditions, a Research, Monitoring and Education Permit and Special Activity Permit to the National Marine Fisheries Service and the Oscar Elton Sette, for activities and access within the NWHI.

The Board asked Ms. Clark to update them on the formulization of the permit review committee. Ms. Clark communicated they are in the process of putting together a permit

review committee that will be made up of someone from the Kahoolawe Island Reserve Commission (KIRC), a staff member from the Division of Forestry and Wildlife (DOFAW) that works at Kure Atoll, staff from DAR, individuals from the Office of Hawaiian Affairs (OHA), staff from Fish and Wildlife Service, the National Fisheries Service and NWHI Ecosystems Reserve. Ms. Clark informed the Board the next set of permits will be reviewed by the committee.

Mike Tousad, Deputy Regional Administrator for the Pacific Islands regional office of the NOAA Fisheries Service came forward to provide testimony. Mr. Tousad let it be known that they hope to address some of staff's recommendation but agrees with the need to work with the State and the Fish and Wildlife Service to regulate these activities. He feels there is a need to slow the decline in the population of monk seals.

Dr. Bud Antonelis conducted a power point presentation that dealt with a shark removal Experiment at French Frigate Shoals. Mr. Antonelis believes the Hawaiian monk seal is a national and international treasure and is one of only two endemic mammals in Hawaii. He went on to say the Hawaiian monk seal population is at its lowest level in recorded history and is in a crisis situation. At present through mitigation efforts the decline in the populations has slowed to about 4% per year. Mr. Antonelis believes the number of seals will probably fall below 1000 within the next five years. A large factor contributing to this decline is the juvenile mortality rate of the monk seals due to attacks by sharks. He went on to say a discrete number of Galapagos sharks have learned to predate on young pup seals and this shark behavior likely stems from such factors as loss of habitat, access to pups and easy access into the atoll via previously dredged channels. Dr. Antonelis went over the results of the shark removal experiment at French Frigate Shoals. The results showed that the removal of sharks preying on young pups before or near the time of weaning is one of the most successful and measurable actions taken to enhance juvenile survival. Predation on pre-weaned pups has dropped significantly from 37 in 1997 to an average of about 10 per year since the study began in 2000.

Don Palawski, who works for the US Fish and Wildlife Service and manages eight (8) national wildlife refuges in the central Pacific, testified. He spoke of the Hawaiian Islands refuge that was established in 1909 by Teddy Roosevelt which extends from Nihoa to the Pearl and Hermes. He spoke of their work at the French Frigate Shoals and working with the National Marine Fisheries Service to monitor and inventory monk seals and green sea turtles. With regards to staff recommendation, Mr. Palawski agrees with and supports monitoring and inventorying of the monk seal and sea turtle population. Mr. Palawski noted they started this project five years ago in which they researched if sharks were getting pups before being weaned from their mothers and what techniques through research would be used in the future to protect these young seals. In closing, Mr. Palawski agrees with staff's recommendation to monitor the monk seal and turtle population but would like other actions to hold until various organizations will be able to meet and discuss if this is the best way to proceed.

Cha Smith, Director of Kahea read comments supplied by Stephanie Fried. Ms. Fried had four impressions upon reading staff's submittal 1) The first permit application for the

new NWHI State Refuge is notable for what it does say as well as what it doesn't say; 2) the permit request is for the killing of apex predators in this apex-predator dominated ecosystem; 3) there have been only very limited consultation with the Native Hawaiian community and 4) the realization that it is the Department's first attempt and although somewhat bumpy will be worked out once protocols are established. Ms. Fried's letter expressed significant concern that there is no recognized panel of ecosystem scientists to evaluate the impact to the ecosystem. She also noted that there is no mention made by NMFS of the fact that juvenile seals are also found emaciated and starving and that lack of prey may play an important role. Ms. Fried believes it would be important to learn what measures could be taken to reduce competition for monk seal prey.

Bob Braun, a veterinarian in Hawaii for twenty years and a contractor to NOAA Fishers provided testimony. Mr. Braun spoke of their efforts in 2001 to haze the aggressive sharks then deter the sharks prior to attacking the pups. At that time the take requirement for the sharks was that the shark would need to attack a pup while staff maintained visual contact of the shark only after the second attack could they take down the shark. Mr. Braun feels the opportunity for public input is more than adequate. Lastly, Mr. Braun communicated that there is a mixing of two types of issues – the overall decline in the population of juvenile monk seals being attributed solely to sharks and secondly the taking of sharks to prove this theory.

The Board amended the Recommendation Section by deferring the recommendation dealing with sharks and instructed staff and the permit applicant to work with US Fish and Wildlife Service and the Native Hawaiian community to come up with some protocols.

Unanimously approved as amended (Yamamura/Schuman).

Item F-1: Request for Approval to Amend/Extend a DLNR/UH Contract (No 47471 – Hawaii Fish Aggregating Device System) to Provide Additional Funds (\$320,000) for the Period of July 1, 2006 Through June 30, 2007.

Item F-2: Request for Approval to Amend/Extend Eight (8) Project Agreements with the Research Corporation of the University of Hawaii for FY07 for the Following Projects: Coral Reef Initiative (Contract No. 49090), Coastal Stock Enhancement (Contract No. 49820), Public Fishing Areas (Contract No. 50027), Stream/Estuarine Studies (Contract No. 51059), Marine Population Survey (Contract No. 51058), Ulua Tagging (Contract No. 52851), and Finfish Broodstock and Larvae Culture (Contract No. 52994), and Hawaii Marine Recreational Fishing Survey (Contract No. 48518).

Unanimously approved as submitted (Yamamura/DeMello).

Item C-1: Request approval of Contract with Ms. Denise Laitinen to Coordinate the Federally Funded Assistance Function of the Hawaii Firewise Program for the Division of Forestry and Wildlife.

Item C-2: Authority to Conduct a Public Hearing to Add the Land of Wao Kele O Puna (Tax Map Keys: (3) 1-2-010:002 and (3) 1-2-010:003) to the Forest Reserve System.

Unanimously approved as submitted (DeMello/Yamamura).

Item D-5: Forfeiture of Duke Kahanamoku Beach Concession Contract Filed as General Lease No. S-5801, C & K Beach Service, Inc., Concessionaire, Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, TMK: 2-3-037:021.

Motion to defer.

Unanimously approved to defer (Yamamura/Agor).

Item D-1: Grant of Term, Non-Exclusive Easement to Brendan McNamara for Access and Utility Purposes, Wailua, Kawaihau, Kauai, TMK: (4) 4-1-06:within 53 & 54.

Item D-4: Grant of Perpetual, Non-Exclusive Easement to John Ellis and Claudia Johnson-Ellis for Access and Utility Purposes, Makawao, Maui, TMK: (2) 2-9-05:portion 20.

Item D-6: Withdrawal from Governor's Executive Order No. 1786 to the Board of Harbor Commissioners for Beach Control Purposes, Waikiki, Honolulu, Oahu, TMK: (1) 2-3-37:21, 2-6-8:29.

Item D-8: Rescind Prior Board Action of January 28, 2000 (Item D-22), Department of Agriculture Requests for Designation, Set Aside for Addition to the Kalaeloa Agricultural Park and a Management Right-of-Entry at Honouliuli, Oahu, TMK: (1) 9-1-31:portion of 1.

Item D-9: Set Aside to the City and County of Honolulu Department of Parks and Recreation for Park Purposes, Waiawa, Oahu, TMK: (1) 9-7-68:4.

Item D-10: Amend Prior Board Action of January 13, 2006 (Agenda Item D-16), After-the-fact Approval of Lease of Federal Property with the Secretary of the Air Force on behalf of the Department of Education, for Public School Purposes, Hickam Air Force Base, Oahu, TMK: (1) 9-9-01:13 (Portion).

Unanimously approved as submitted (DeMello/Agor).

Item L-1: Approval for Award of Construction Contract – Job No. J00CF11A, Iolani Palace State Monument ADA Barrier Removal, Honolulu, Oahu, Hawaii.

Unanimously approved as submitted (Yamamura/DeMello).

Item E-2: Briefing to the Board on the Status of the Diamond Head Crater Celebration at Diamond Head State Monument, Oahu.

Mr. Quinn went over the set up on the grounds of Diamond Head as well as the line up of entertainers. He indicated the organizers of the event will be setting up throughout the week leading up to the event. Mr. Quinn informed the Board staff would be present beginning on Friday and through the end of the event.

The Board instructed staff to report to the Board at the completion of the event.

No Action.

Item E-3: Update to the Board of Land and Natural Resources on action taken at the September 23, 2005 BLNR meeting relating to Kealakekua Bay.

Member Johns made it known that he is still receiving calls and emails from members of the community stating that there has been insufficient time for input prior to this report coming before the Board.

The Board instructed staff to re-double their efforts in working with the community.

No Action.

Item A-1: Supplement to January 13, 2006.

Member Yamamura recused himself.

Unanimously approved by the remaining Board members (Schuman/Agor).

Item A-3: March 9, 2006

Member DeMello recused himself.

Unanimously approved as submitted by the remaining Board members (Yamamura/Schuman).

Item A-5: Minutes of March 16, 2006.

Member Johns and Yamamura recused themselves.

The Board made a change on page 2, third paragraph to read

“Board Member Agor asked the Attorney General if a situation occurs in which an agent of the state inspects a private dam and a decision is made that immediate [~~mediation~~] action needs to happen will the state take responsibility for that dam or do we instruct the private owners to do something about that situation.”

Unanimously approved as amended by the remaining Board members (DeMello/Schuman).

There being no further business, Chairperson Young adjourned the meeting at 10:55 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Terry Crowell

Approved for submittal:



PETER T. YOUNG

Chairperson

Department of Land and Natural Resources

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

March 24, 2006

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

ISLAND OF HAWAII

Consent to Mortgage and Amendment for Extension of Lease Term,
General Lease No. H-82-4, GKM, Inc., Lessee, Kailua-Kona, North Kona,
Hawaii, Tax Map Key: 7-4-008-042.

APPLICANT AND REQUEST:

Consent to Mortgage from First Hawaiian Bank, Mortgagee, to GKM, Inc., in an amount not to exceed \$1,000,000.00.

For Mortgagor to qualify for this mortgage, Mortgagee requires extension of General Lease No. H-82-4 of 20 years, commencing on April 1, 1984 and expiring on March 31, 2039 for an aggregate term (initial term plus all extensions) of 55 years.

LEGAL REFERENCE:

Sections 171-22 and 36(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Honokohau Harbor situated at Kailua-Kona, North Kona, Hawaii, identified by Tax Map Key: 7-4-008-042, as shown on the attached map labeled Exhibit A, and A-1.

AREA:

4.083 acres, more or less.

TRUST LAND STATUS:

Section 5(B) Lands of the Hawaii Admission Act
YES x NO

ITEM J-I

CHARACTER OF USE:

Haul-out and repair facility for small marine vessels.

TERM OF LEASE:

Original term of 35 years, commencing on April 1, 1984 and expiring on March 31, 2019.

Requested extension of 20 years, commencing on April 1, 2019 and expiring on March 31, 2039.

ANNUAL RENTAL:

Current rent is \$60,000.00, due in quarterly installments of \$15,000.00 on January 1st, April 1st, July 1st, and October 1st of each year.

RENTAL REOPENINGS:

Rental reopenings in the original term were scheduled at the end of the 5th, 10th, 15th, 20th, 25th, and 30th years of the term, or on March 31, 1989, March 31, 1994, March 31, 1999, March 31, 2004, March 31, 2009, and March 31, 2014. The last rental reopening occurred on March 31, 2004.

Reopening for the extended term shall continue on the same schedule every five years, reopening on March 31, 2019, March 31, 2024, March 31, 2029, and March 31, 2034 with the next scheduled reopening to be March 31, 2039.

Note: An appraisal is in progress for the reopening scheduled on March 31, 2004 and pending final collaboration of three appraisers on the rental value.

USE OF LOAN PROCEEDS:

Loan proceeds will be used to renovate the existing steel building and add additional square footage. Plans were approved by DLNR on December 29, 2004. GKM, Inc. also proposes to renovate the haul-out slip and travel lift to accommodate larger vessels and make repairs to existing buildings, parking lot, and fencing.

Use of funds as follows:

Foundation	\$ 150,000.00
Steel Frame	\$ 445,500.00
Rough Frame	\$ 86,000.00
Exterior shell, siding, windows and doors	\$ 100,000.00
Electric	\$ 150,000.00

Plumbing	\$ 50,000.00
Paint	\$ 18,500.00
TOTAL COST OF IMPROVEMENTS:	\$1,000,000.00

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for an appraisal for the immediate rental reopening.

REMARKS:

GKM, Inc. dba Gentry's Kona Marina operates the only marina/haul-out facility at Honokohau Harbor located on the Big Island. Harbor Lease No. H-82-4 was publicly auctioned in 1982 and executed on April 8, 1983. The term of the lease began on April 1, 1984, and runs for thirty-five years. It is a commercial-industrial lease issued for marine or marine related purposes. Currently GKM, Inc. has, and continues to operate in compliance with its lease terms and conditions. They have consistently made on-time lease payments and maintained the bond and insurance required by the lease agreement. They are current with rent payments, and have no history of default.

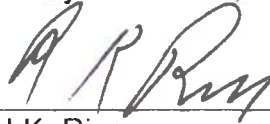
Currently Kona has seen a considerable amount of development, and growth. In addition, recently Jacoby Development, Inc. (JDI) has been selected by the State to develop a portion of land adjacent to Honokohau Harbor. As part of this proposal, JDI is planning construct a harbor alongside the existing Honokohau Harbor with an approximately 800 slips planned. Currently Honokohau has approximately 270 slips. The requested twenty year extension will allow GKM, Inc. an opportunity to secure a loan for the necessary funds to improve its facilities and enhance existing services to accommodate this growth.

RECOMMENDATION:

That the Board, subject to the Applicant fulfilling the Applicant requirement listed above:

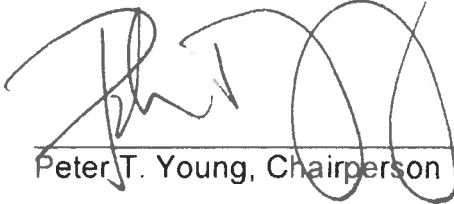
1. Consent to the mortgage between GKM, Inc., Mortgagor, and First Hawaiian Bank, Mortgagee, subject to the following:
 - A. The loan proceeds shall be used solely for the operations or improvements of the leased premises as identified in the "Use of Loan Proceeds" section above. The Lessee shall maintain records of loan expenditures, which may be inspected by the Department;
 - B. The standard terms and conditions of the most current consent to mortgage form, as may be amended from time to time.
 - 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. Authorize the extension of General Lease No. H-82-4 under the terms and conditions cited above, which are by this reference incorporated herein.
 - A. The standard terms and conditions of the most current lease extension form, as may be amended from time to time.
 - B. Review and approval by the Department of the Attorney General.
 - C. Such other conditions as may be prescribed by the Chairperson which are in the best interests of the State.

Respectfully Submitted,



Richard K. Rice
Administrator

APPROVED FOR SUBMITTAL


Peter T. Young, Chairperson

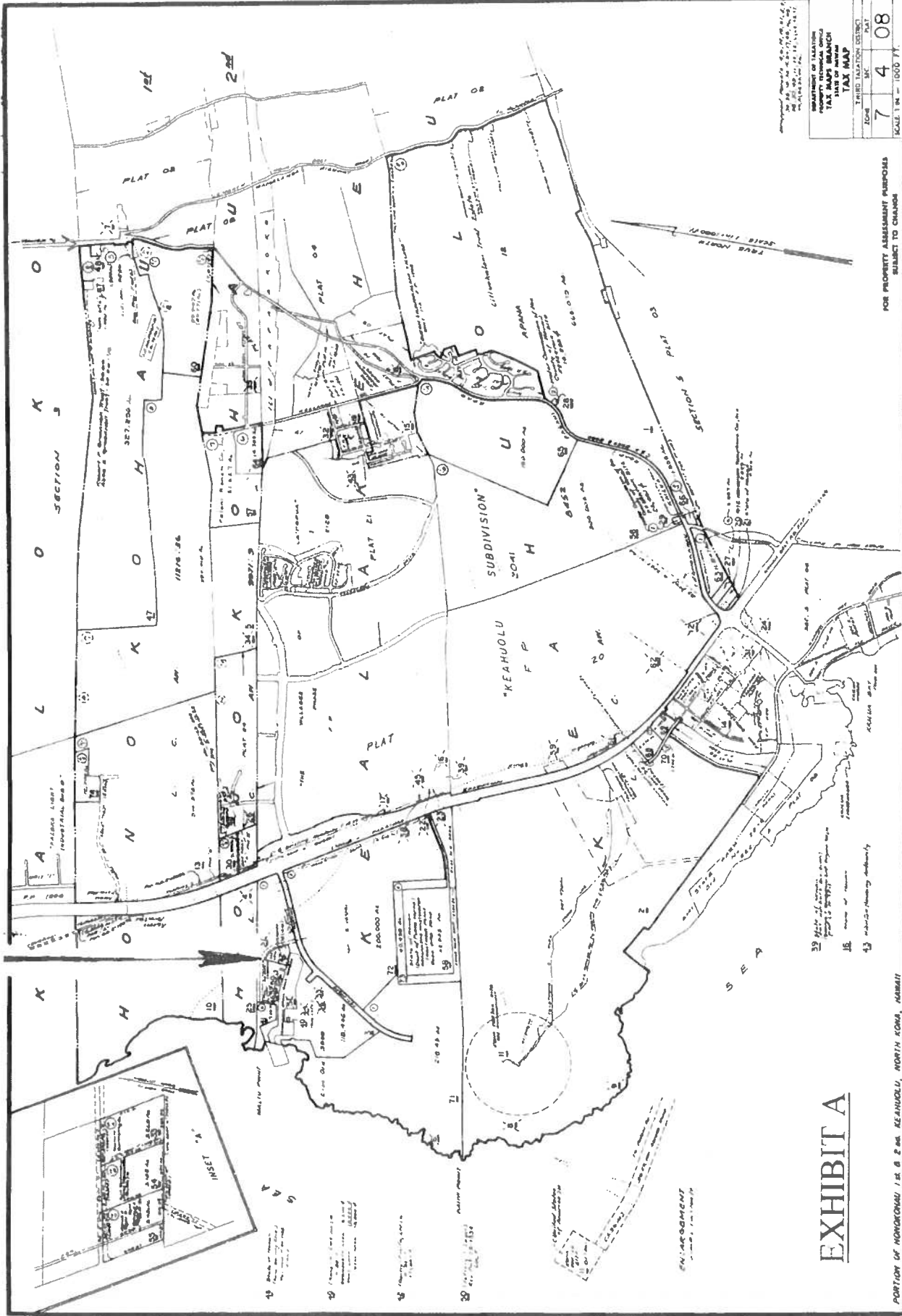


EXHIBIT A

PORTION OF HONOLULU 1/4 & 2 MI. KEANULU, NORTH KONA, HAWAII

OFFICE OF THE TAX MAPS BRANCH			
TAX MAP			
ZONE	MC	PLAT	
7	4	08	
SCALE 1" = 1000 FT.			

FOR PROPERTY ASSESSMENT PURPOSES
SUBJECT TO CHANGE



MAP OF PARCEL 42
HONOKIAU MARINA
T.M.K. 3-7-4-008-042
ISLAND & COUNTY OF HAWAII
STATE OF HAWAII
SHOWING EXISTING FEATURES

TO THE TRINITY 7-4-00

GENTRY'S KONA MARINA
T.M.K. 7-4-008 : 042
KAHUA - KONA, HAWAII

EXHIBIT A-1

GENTRY'S
KONA MARINA
HONOKOHAU HARBOR

74-425 Kealahou Parkway, Kailua-Kona, Hawaii 96740 • Phone 808.329.7896 Fax 808.329.7372 • Toll Free 888.458.7896

July 17, 2017

JUL20'17PM 1:41BDR ADM

Ms. Keiki E. Kipapa
Property Manager
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
4 Sand Island Access Road
Honolulu, HI 96819

via Certified Mail
7016 0750 0000 3284 3406

Re: Letter dated July 13, 2017 regarding a Notice of Intent for Public Auction of Lands at Honokohau Harbor of nine acres and Fuel Sales at Gentry's Kona Marina

Dear Ms. Kipapa:

Did you receive my letter dated June 6, 2017 regarding our request for a Sublease for additional land (West) of Gentry's Kona Marina? I am still waiting for your department's response to our request.

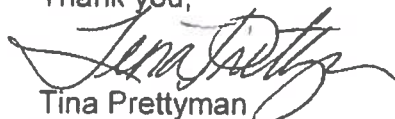
[With regards to the sales of fuel, GKM, Inc. has correspondence on file with your department and board approval for a convenience store-gas station.]

In the last 15 years we have written numerous times requesting an extension of the original five-year lease, or a new lease, for the nine acres you are proposing to now put out to public auction. To date, we haven't received a response to any of our requests. Is this your answer?

By the hostile tone of your letter - telling us you are putting a property we have developed after 21 years out to bid and erroneously indicating that we are operating without approval for fuel sales - this feels a lot like harassment. Under our lease we are entitled to "quiet enjoyment" of the leased property.

Please send us copies of any and all correspondence and any bid information, and Request for Proposals for the nine acres you intend to put out to bid at Honokohau Harbor.

Thank you,


Tina Prettyman
General Manager

August 22, 1986

HARBORS DIVISION
HAWAII
DEPT. OF TRANS.

'86 AUG 26 AM 11 54

Honokohau Fuel Inc.
74-425 Kealakehe Parkway
Kailua-Kona, HI. 96740

Gentry-Pacific Ltd.
Kona Marina
POBox 1928
Kailua-Kona, HI. 96745-1928

RECEIVED

Dear Sirs.

Honokohau Fuel Inc. would like an amendment to our Sublease No. GKM-011.

Item D -- Permitted Use states that Honokohau Fuel Inc. can sell gas, diesel and oil to commercial, charter and pleasure boats, within the Leased area.

Honokohau Fuel Inc. would like it amended to state that we can sell to
OUTSIDE VEHICLES AND VESSELS.

I hope this will comply with your request of August 6, 1986.

Sincerely,


Robert Holmes, Pres.

Honokohau Fuel, Inc.

c/c State of Hawaii-Harbors Division

EXHIBIT I

12-20-89

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
M E M O R A N D U M

TO: HAR-PM *[Handwritten initials]*

DATE: December 14, 1989

THRU: DEP-K ✓

FROM: HAR-H

SUBJECT: Gentry Companies Letter to DEP-K, re Holmes & Sawyer, Log #5286

I was not aware that Holmes and Sawyer had "initiated a lawsuit to determine the extent of the permitted uses" at the Gentry Kona Marina.

My comments and recommendations have remained consistent for several years. They are:

1. We should not consider the fueling of vehicles and boats in the water until there is a demonstrated need for that service.
2. If we allow the fueling, we should require no less than what we receive from The Fuel Dock, i.e., five per cent of the gross.

Our collective failure to terminate Holmes' illegal activity for several years resulted in his feeling he had the right to continue, and led to an assault on my person by friends of his.

IAN BIRNIE

IB: acm



August 31, 1989

74-425 KEALAKEHE PARKWAY KAILUA-KONA, HAWAII 96740
(808) 329-1181

Mr. Gary Lambert
Gentry's Kona Marina
Honokohau Harobor, HI. 96740

Dear Gary:

We have been informed repeatedly by not only your head attorney, Harvey Migdal in Honolulu, and by your attorney, Bud Quitiquit, and by Dede Dawson of the State of Hawaii's Attorney General's Office, that any request for modification of the lease between Gentry and the State must come directly from Gentry and not by way of any letter that my attorney, Jim Sogi, may have drafted. A major point has been made of this, and I find it incomprehensible that the State is now acting upon a letter as you have represented in your letter dated August 28, 1989.

The Settlement Agreement between Marina Oil & Fuel and Gentry requires that Gentry use its best good faith efforts to request an amendment from the State to allow me to pump fuel to vehicles at the fuel pump area.

I request that you provide me a copy of Gentry's letter to the State evidencing your good faith compliance with the terms of the Settlement Agreement by requesting the permission of the State to amend the lease to allow vehicular fueling. It has been seven months now since the Settlement Agreement has been in effect, and unless I shortly receive confirmation of your good faith efforts to comply with it, I will have no other alternative but to instruct my attorney to seek court assistance to enforce the terms of the Settlement Agreement over which the Court retains jurisdiction. I have complied with my side of the Settlement Agreement by paying your attorney's fees, and feel it would be only proper for you to comply with your side of the bargain as well. You must also realize that your failure to comply in good faith with the request for the change to allow vehicular fueling from the State has resulted in my continuing damages by way of lost sales in a substantial amount.

In view of the fact that I have complied with my side of the Settlement Agreement by paying your attorney's fees, I request that you comply with yours. I look forward to your prompt response in not only supplying me with a copy of the letter which you have sent to the State.

Truly yours,

A handwritten signature in dark ink, appearing to read "Robert Holmes".

Robert Holmes
President, Marina Oil & Fuel

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

MEMORANDUM

HAR-PM 1117

MAY 7 5 01 PM '90

DATE: MAY 3, 1990

DEPT. OF
TRANSPORTATION

TO: DIR
THRU: PMN *AK*
FROM: DEP-T *Olson* DEP-K *V*

SUBJECT: HONOKOHAU FUEL, INC. (ROBERT K. HOLMES), SUBLEASE NO. GKM-011,
HARBOR LEASE NO. H-82-4, GENTRY PROPERTIES

QUESTION:

Should sublease be amended to allow fueling of outside vehicles?

FACTS:

Sublease No. GKM-011 dated 2-12-85 was approved by BLNR on 10-12-84 and consented by the State on 12-5-84 for a fueling facility for the sale of gas, diesel and oil to commercial charter and pleasure boats within the leased area (4.083 acres). The sale of fuel to others is prohibited.

Shortly after the sublease was approved by the State, the sale of fuel to outside vehicles was observed by our HAR-H personnel. Although letters were sent to the lessee, Gentry Properties (Gentry), to advise Mr. Holmes to cease the illegal fueling, the activity continued. Fliers were circulated in Kona advertising lowest prices for super, regular and diesel fuels at the facility. An ice/gas sign was observed at the entrance into Gentry's leased area. The sign was subsequently removed by the Harbor Agent due to nonremoval by the sublessee and/or lessee.

Mr. Norman Gentry was reminded by letter that the fueling facility was for the purpose of providing fuel to commercial charter and pleasure boats within the leased area. However, our HAR-H personnel continued to observe the illegal sale of fuels to the general public.

We received a request dated August 22, 1986 from Mr. Holmes to have the sublease amended to allow fueling of outside vehicles. The request was denied based on our decision that the existing fueling facility operated by Mr. Jack Hall, under Harbor Lease No. H-83-2, was sufficient to satisfy the fuel demand at the harbor.

Due to continued fueling of outside vehicles by Mr. Holmes, Gentry was put on notice that the State would initiate legal process to have Harbor Lease No. H-82-4 terminated.

Gentry subsequently filed a court action against Mr. Holmes to have him cease the illegal fueling. The court action succeeded in stopping the illegal fueling by Mr. Holmes. In accordance with the court action, Gentry submitted to the State a formal request to have the sublease amended to allow Mr. Holmes to fuel outside vehicles and to allow the fueling of commercial charter and pleasure boats, and loading of ice and other supplies at a new dockside facility.

Mr. Holmes followed with a letter submitting a petition signed by boaters and the general public to use Mr. Holmes' fueling facility. The names on the petition were analyzed and only a small percentage were boaters in Honokohau Boat Harbor. A majority of the petitioners were nonboat owners.

Harbor Lease No. H-82-4 was leased through public auction for specific uses (Attachment A) of which fueling was not a permitted use. Gentry was the only bidder during the auction.

Harbor Lease No. H-83-2 was leased through public auction primarily for a fueling facility (Attachment B). Mr. Hall was the successful bidder. The lease was subsequently assigned to James and Diane Dahlberg, dba Honokohau Fuel Dock.

DISCUSSION:

Based on staff review, we conclude that the Department cannot amend Gentry's sublease to permit an additional marine fueling facility to serve other than Gentry boat repair customers for the following reasons:

1. Safety:

- a. Fire Safety. The marine fuel facility must be able to develop a contingency plan that will provide a safe evacuation route for vessels in case of accident or other emergency. Gentry's location in the corner of Basin No. 2 would preclude safe evacuation of vessels moored along the end of the basin and on the inside of the "T" pier in case of a fire or explosion involving burning fuel floating on the surface. We also believe the fuel facility would be located too close to the existing snack bar and would expose customers to unnecessary risk, as the snack bar is not enclosed by any protective structure.
- b. Operational Safety. Unnecessary congestion is expected to result from vessels having to "back track" to

Gentry's location for fuel. The fairway width was designed to handle only two-way traffic past that location and there is no additional maneuvering room to accommodate vessels waiting in line for fuel. Standard marina design criteria usually calls for a fueling facility to be located as close to the entrance channel and turning basin as possible to allow the fueling of vessels upon entering or leaving the harbor to eliminate unnecessary vessel traffic through the mooring areas. (Reference: U.S. Army Corps of Engineers Special Report No. 2, "Small Craft Harbors: Design, Construction and Operation")

2. Basic Lease Provisions. The primary purpose of Gentry's lease is for a vessel repair facility and related activities. From previous discussion with LEG on this subject, we have been cautioned that all activities within the premises must be related to that function, and that the terms of the lease cannot be expanded to fuel any boats other than those being stored or repaired at that location, nor expanded to include the sale of fuel to automobiles belonging to the general public.
3. Legal Issues. LEG has advised orally that expansion of Gentry's lease to include a marine fueling facility may raise the constitutional issue of "impairment of contract" with respect to Dahlberg's lease (H-83-2), in that the Constitution prevents any person with a contract with another party from taking any action which may subvert that contract. Before a second retail fueling facility would be permitted, we would have to show a demonstrated need based on an investigative finding that the existing fueling facility is unable to satisfy the daily demand. If the need was clearly there, we would have to put the new fuel facility lease out for public auction which would not be part of Gentry's lease (H-82-4).
4. Fuel Dock as Proposed by Mr. Holmes. Drawing shows the construction of a fueling pier outside the lease area. This will affect five existing berths which we cannot afford to delete. We cannot legally amend the Gentry lease to add this additional facility since it was leased through public auction and for specific uses of which a fueling facility was excluded.

A lawsuit by the current fuel dock facility lessee, James and Diane Dahlberg, may occur if we consent to the proposed

DIR
MAY 3, 1990
Page 4

HAR-PM 1117

amendment since his attorney has already sent us a letter indicating that legal action was contemplated.

The public was properly informed by conducting informational meetings prior to the disposition of the fuel facility lease and the boat repair lease. We made it clear that we would be issuing one fuel facility lease. Under the provisions of the existing fuel facility lease, the State may issue a second fueling facility lease. However, we would have to show a demonstrated need based on an investigative finding that the existing fueling facility is unable to satisfy the daily demand. Currently, the existing fuel dock is open twelve hours per day and it has been observed that there is seldom a wait for fuel except during large tournaments.

CONCLUSION:

We do not see the need for a second fueling facility at the present time. The existing fueling facility operated by the Dahlberg's is satisfactorily providing the necessary fuel for all the vessels currently at Honokohau Boat Harbor.

RECOMMENDATION:

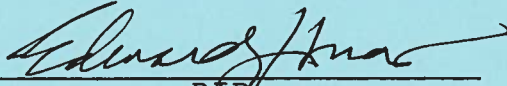
Deny the request to amend Sublease No. GKM-011 (Robert K. Holmes) to allow fueling of outside vehicles.

ADR:jls

Att. (2)

c: HAR-H

APPROVED/~~DISAPPROVED~~:



DIR



Date

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

MEMORANDUM

HAR-PM 1117

TO: DIR
THRU: PMN
FROM: DEP-T  DEP-K

DATE: MAY 3, 1990

SUBJECT: HONOKOHAU FUEL, INC. (ROBERT K. HOLMES), SUBLEASE NO. GKM-011,
HARBOR LEASE NO. H-82-4, GENTRY PROPERTIES

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CONCLUSION:

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RECOMMENDATION:

Deny the request to amend Sublease No. GKM-011 (Robert K. Holmes) to allow fueling of outside vehicles.

ADR:jls

Att. (2)

c: HAR-H

APPROVED/~~DISAPPROVED~~:



DIR

5/14/90


Date



CH. HAR

C. O.

HAR-S



HAR-PM

November 30, 1984

HAR-PM 2132

Mr. Colin L. Love
Attorney at Law
77-6400 Nalani Street
Kailua-Kona, Hawaii 96740

Dear Mr. Love:

Harbor Lease No. H-83-2, Honokohau
Boat Harbor, Hawaii (Kona U-Cart, Inc.)

This is in response to your letter dated November 9, 1984
pertaining to Gentry's fueling of trailer boats.

The fueling facility within Gentry's leased area was
approved by the State with the condition that fuel will be sold
only to its tenants and not intended as a retail fuel facility
to service the general public.

Kona U-Cart, Inc. is expected to provide the fuel retail
sales to the general public, other than Gentry's tenants. It
is our conclusion that there is no conflict between the two
activities.

Very truly yours,



Adam D. Vincent
Deputy Director

ADR:jls

bcc: HAR-B
HAR-H

HAR-B —

C.O.

R.S.

W.S. M

R.P.

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
Harbors Division

11/29/84 DOT 3-1
(HAR 110)

DATE: 11/28 19 84

FROM: HAR. B SUBJECT: LEASE No H-83-2, HONOKOHAU SBH (KONA U-CART, INC)

TO: ☐ DIR..... ☐ HAR.....
☐ DEP-S..... ☐ HAR-S.....
☐ DEP-H..... ☐ HAR-SE.....
☐ DEP-P..... ☐ HAR-SF.....
☐ DEP-A..... ☐ HAR-SP.....
☐ DIR-P..... ☒ HAR-PM.....
☐ BUS..... ☐ HAR-SO.....
☐ CSS..... ☐ HAR-B.....
☐ INF..... ☐ HAR-BA.....
☐ LEG..... ☐ HAR-BO.....
☐ MVS..... ☐ HAR-E.....
☐ PER..... ☐ HAR-EP.....
☐ PMN..... ☐ HAR-ED.....
☐ PPB..... ☐ HAR-EC.....
☐ PRO..... ☐ HAR-EM.....
☐ STP..... ☐ HAR-O.....
☐ VIP..... ☐ HAR-OC.....
☐ OFC..... ☐ HAR-OM.....
☐ AIR..... ☐ HAR-OO.....
☐ HWY..... ☐ HAR-H.....
☐ ☐ HAR-M.....
☐ ☐ HAR-K.....
☐ ☐ Secretary.....

FOR: ☐ Appropriate Attention & Action
☐ Arrange Meeting
☐ Comments & Recommendations
☐ Draft Reply
☐ For Your Direct Action/Reply
☐ Information
☐ See Me
☐ Signature
☐ File
☐
☐
☐

SUSPENSE DATE _____

GENTRY'S LEASE INCLUDES A FUEL FACILITY FOR USE
BY THEIR TENANTS, AND WAS NOT INTENDED AS A
RETAIL FUEL FACILITY TO SERVICE THE GENERAL
PUBLIC. THE SALE OF FUEL TO TRAILER BOATERS
USING THE RAMP IS NOT ANTICIPATED, ALTHOUGH THE
FUELING OF BOATS WHICH MAY BE STORED IN THE
DRY STACK-STORAGE FACILITY IS PERMISSIBLE.
KONA U-CART, INC. IS EXPECTED TO PREPARE THE
FUEL RETAIL SALES TO THE GENERAL PUBLIC, OTHER
THAN GENTRY TENANTS. NO CONFLICT IS CONSIDERED TO EXIST

[Signature]

