

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

May 14, 2021

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

Land Board Members:

SUBJECT: Approve Mediated Settlement of Rent Reopening Dispute in Harbor Lease No. H-78-5, La Mariana Sailing Club, Inc. Lessee, Ke'ehi Small Boat Harbor, Kalihi-Kai, Honolulu, Island of Oahu, Hawaii, Tax Map Key (1) 1-2-023:052

APPLICANT:

La Mariana Sailing Club, Inc.

LEGAL REFERENCE:

Section 171-6, -7 and -17 Hawaii Revised Statutes, as amended.

LOCATION:

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

AREA:

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

ZONING:

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

Item J-1

TRUST LAND STATUS:

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

CHARACTER OF USE:

For the construction of certain improvements which are to be used primarily for a private sailing club for sailboats only. Liveboards are not permitted. The improvements to be constructed shall include suitable piers and may include a clubhouse with a snack bar and bar for members, bathroom showers for men and women and a building to house an office, recreation room, bathroom and kitchenette, workshop, lockers and a caretaker’s quarters. The premises may also be used for such other purposes related to the private sailing club, as may be approved in writing by the lessor.

TERM OF LEASE:

Original 35-year term:	May 1, 1979, to April 30, 2014
5-year extension:	May 1, 2014, to April 30, 2019
20-year extension:	May 1, 2019, to April 30, 2039

ANNUAL RENTAL UNDER LEASE:

Original Lease Term (35-Years)

May 1, 1979, to April 31, 1980:	Waived
May 1, 1980, to April 31, 1994:	\$58,500/year
May 1, 1994, to April 31, 2004:	\$74,200/year (Reopened)
May 1, 2004, to April 31, 2014:	\$75,600/year (Reopened)

Extended Lease Term (5-Years):

May 1, 2014, to April 31, 2019:	\$75,600/year
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Extended Lease Term (20-Years):

May 1, 2019, to April 31, 2029:	\$249,000/year (Pending Board Approval)
May 1, 2029, to April 31, 2039:	Rent Reopens

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

A rental reopening is not an “action” under HRS, Chapter 343, and does not trigger the requirement of the preparation of an environmental assessment.

DCCA VERIFICATION:

Place of business registration confirmed: YES X NO _
Registered business name confirmed: YES X NO _
Good standing confirmed: YES X NO _

HISTORY:

Lease No. H-78-5 (“Lease”) was awarded to Annette L. Nahinu dba La Mariana Sailing Club on July 14, 1978 for a period of thirty-five (35) years, from May 1, 1979, to April 30, 2014.

At its meeting on April 9, 1999, the Board approved the assignment of Lease from Annette L. Nahinu, dba La Mariana Sailing Club to La Mariana Sailing Club, Inc. (“Lessee”).

On March 11, 2011, a tsunami triggered by the Tohoku earthquake hit the Hawaiian Islands causing approximately \$400,000.00 in damages to the Lessee’s floating docks. In order to recover the cost of these repairs, the Lessee requested an extension of its Lease for an additional five (5) years. Staff confirmed the tsunami repair costs by inspecting invoices, check stubs and receipts provided by the Lessee.

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

At its meeting on April 26, 2019, under agenda item J-2, the Board approved a twenty (20) year extension of the Lease, from May 1, 2019 through April 30, 2039, with rent re-openings on May 1, 2019, and May 1, 2029. The extension was conditioned on the Lessee completing leasehold improvements costing no less than \$467,750.00. The Lessee has fulfilled this requirement and has provided staff with receipts and cancelled checks confirming its expenditures.

At its meeting on October 11, 2019, under agenda item J-1, the Board approved an encroachment settlement for the Lessee’s floating docks that extended outside of its Lease area. The Lessee was given 12 months to remove the encroachment and pay the back rent on the area the occupied by the floating docks. The Lessee removed the encroachment and paid the back rent in full within the allotted period of time.

REMARKS:

Following the Board’s approval to extend the Lease, staff procured the services of appraiser Alan Conboy, of Hastings Conboy and Associates Ltd., to prepare an appraisal report to determine the rent for the period beginning May 1, 2019, and ending April 31, 2029. On July 3, 2019, DOBOR sent the Lessee a rent reopening offer letter confirming that the state’s appraiser concluded the fair market annual rental of \$387,600.

On July 16, 2019, the Lessee returned the reopening offer letter indicating that it rejected the state’s appraised rent and named Shelly Tanaka, of John Child & Company, as its appraiser. Ms. Tanaka’s September 10, 2019, appraisal report concluded a rent of \$158,000 per annum.

On June 4, 2020, the Lessee sent a letter requesting non-binding mediation to settle the rent reopening impasse.


On January 13, 2021, staff and its attorney, Deputy AG Daniel Morris, participated in a mediation with the Lessee and Judge Karl Sakamoto (retired) as mediator.

On April 1, 2021, the mediator informed the state that the Lessee accepted its final rent reopening offer of \$249,000 per annum for the period beginning May 1, 2019 and ending April 30, 2029.

RECOMMENDATION:

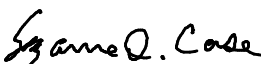
1. That the Board approve the mediated settlement of \$249,000 per year for the reopened rent in Harbor Lease No. H-78-5 for the period of May 1, 2019, to April 31, 2029.

Respectfully Submitted,



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

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

Attachment:

- A. Aerial Map of La Mariana Site Location

Exhibit A-1

La Mariana Sailing Club, Inc. at Ke'ehi Small Boat Harbor



Exhibit A-1

Exhibit A-2

**La Mariana Sailing Club, Inc.
In Ke'ehi Small Boat Harbor**



Exhibit A-2

Exhibit A-3

La Mariana Sailing Club, Inc. Lease Area



Exhibit A-3