

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

May 13, 2022

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-70-14, Keehi Marine, Inc. Lessee, Ke'ehi Small Boat  
Harbor, Kalihi-Kai, Honolulu, Island of Oahu, Hawaii,  
Tax Map Key (1) 1-2-023:030

APPLICANT:

Keehi Marine, Inc. dba Keehi Marine Center ("Keehi Marine")

LEGAL REFERENCE:

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

LOCATION:

Portion of Governor's Executive Order No. 2636 and 1458 consisting of fast lands and submerged lands situated in Kalihi-Kai, Honolulu, Oahu, identified by Tax Map Key: (1) 1-2-023:030, hereinafter referred to as the "Premises" as shown generally on the depictions labeled **Exhibits A-1 thru A-3** and attached hereto.

AREA:

Total area of 8.141 acres, consisting of 3.726 acres of fast land and 4.415 acres of submerged land, more or less.

ZONING:

State Land Use District: Urban  
City and County of Honolulu Zoning: I-2, Intensive Industrial District

TRUST LAND STATUS:

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

CHARACTER OF USE:

The Lessee shall use or allow the premises to be used solely for:  
The construction, operation and maintenance of:

- (1) marine railway for boat repairs;
- (2) marine retail store for the sale and servicing of marine equipment;
- (3) a marina;
- (4) clubhouse for boat clubs.

Other related activities as approved in writing by the Lessor.

TERM OF LEASE:

Original 45-year term:	February 1, 1971, to January 31, 2016
10-year extension:	February 1, 2016, to January 31, 2026

ANNUAL RENTAL UNDER LEASE:

Original Lease Term (45-Years):

February 1, 1971, to January 31, 1986	Yrs. 1-15	\$39,600
February 1, 1986, to January 31, 1991	Yrs. 16-20	\$105,280
February 1, 1991, to January 31, 1996	Yrs. 21-25	\$162,500
February 1, 1996, to January 31, 2001	Yrs. 26-30	\$260,000
February 1, 2001, to January 31, 2006	Yrs. 31-35	\$295,000
February 1, 2006, to January 31, 2016	Yrs. 36-45	\$330,000

Extended Lease Term (10-Years):

February 1, 2016, to January 31, 2026: Rental Reopening

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

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

DCCA VERIFICATION:

Place of business registration confirmed:	YES	<u>X</u>	NO
Registered business name confirmed:	YES	<u>X</u>	NO
Good standing confirmed:	YES	<u>X</u>	NO

HISTORY:

At its meeting on December 12, 1969, under agenda item J-7, the Board approved the sale of lease at public auction for 3.726 acres of fast land and 4.415 acres of submerged land, more or less, Keehi Drydock Corporation won the auction and was issued a 45-year lease.

In 1977, Keehi Dry Dock Corporation was purchased by Amfac Distribution Co. Ltd. At its meeting on April 13, 1984, under agenda item J-14, the Board consented to the assignment of the lease to Amfac Marine Supply, Inc.

On April 24, 1984, Amfac Marine Supply, Inc. assigned the lease to Keehi Marine, Inc. dba Keehi Marine Center. On April 26, 1984, the State of Hawaii, Department of Transportation consented to the assignment.

At its meeting on March 24, 2000, under agenda item J-1, the Board approved a 10-year lease extension for the period beginning February 1, 2016, to January 31, 2026.

REMARKS:

Staff discovered that the appraisal for the 10-year lease extension had not been done.

On May 21, 2020, staff procured the services of Alan Conboy, of Hastings Conboy and Associates Ltd., to prepare an appraisal to determine the fair market rent for the period beginning February 1, 2016 and ending January 31, 2026. The appraiser concluded a fair market rental of \$1,148,000 per annum for the 10-year period.

On August 20, 2020, the Division of Boating and Ocean Recreation (DOBOR) sent the lessee a rent reopening offer letter stating the appraised rent.

On September 14, 2020, the lessee rejected the state's appraised rent and named Medusky & Company, Inc., as its appraiser. The lessee's appraisal report concluded a rent of \$470,000 per annum.

On February 2, 2021, the lessee sent a letter requesting non-binding mediation to settle the rent reopening impasse.

The parties appointed Ponsar Valuation, LLC as mediator to assist with the negotiation of a fair market rental for the demised premises. The mediation took place on March 15, 2022, with the parties agreeing to an aggregate rental of \$6,767,500.00 for the 10-year period. The mediated rent, subject to the approval of the Board, is retroactively effective from February 1, 2016, through January 31, 2026. The lessee has continued to pay the same rental amount as it did for the period immediately preceding the rent reopening (i.e. \$330,000 per annum). Following the Board's approval of the mediated settlement, staff will invoice the lessee for the difference between the amount paid and the reopened rent.

The lessee requested the following rent schedule, which will allow it to promptly repay the approximately \$1.867 million in back rent (for the period beginning February 1, 2016, through April 30, 2022):

<b>Years</b>	<b>Lease Year</b>	<b>Annual Rent</b>
1	2/1/16-1/31/17	\$576,750.00
2	2/1/17-1/31/18	\$576,750.00
3	2/1/18-1/31/19	\$576,750.00
4	2/1/19-1/31/20	\$676,750.00
5	2/1/20-1/31/21	\$676,750.00
6	2/1/21-1/31/22	\$676,750.00
7	2/1/22-1/31/23	\$676,750.00
8	2/1/23-1/31/24	\$776,750.00
9	2/1/24-1/31/25	\$776,750.00
10	2/1/25-1/31/26	\$776,750.00
		\$6,767,500.00

Keehi Marine proposes to pay the back rent with a \$1,200,000.00 payment within two (2) weeks of the Board's approval of the mediated settlement and the remaining balance of approximately \$667,187.50, up to and including April 30, 2022, within thirty (30) days of the same. As of May 1, 2022, Keehi Marine agrees to make monthly payments based upon the rent schedule above.

As part of the negotiated settlement, staff agreed not to seek participation in the lessee's sublease rents for the ten years covered under this agreement. This decision is informed by the amount of sublease rents the lessee collects in relation to its ground rent, and the back rent due and owing resulting from the six-year after-the-fact rent reopening. In the event the lessee seeks to further extend its lease past January 31, 2026, DOBOR reserves its right to request sublease rent participation.


**RECOMMENDATION:**

1. That the Board approve the mediated settlement of \$6,767,500.00 for the reopened rent, in Harbor Lease No. H-70-14, for the period beginning February 1, 2016, and ending January 31, 2026, as stated above.
2. That the Board approve the payment plan of \$1,200,000.00 within 2 weeks of receiving approval and \$667,187.50 within 30 days of receiving approval for rent due up to April 30, 2022.
3. That for the purposes of this rent reopening, the Board approve the waiver of sublease rent participation for Keehi Marine, Inc. sublease consents until January 31, 2026, when the lease extension expires, specific sublease consents to be addressed at a future date.

Respectfully Submitted,

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

APPROVED FOR SUBMITTAL:

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

Attachment:

- A-1 Oahu Map and Location of Keehi Lagoon
- A-2 Keehi Marine, Inc in Keehi Lagoon
- A-3 Keehi Marine, Inc. Lease area

## Exhibit A-1

Keehi Marine, Inc.



Exhibit A-1

Exhibit A-1

**Exhibit A-2**





Exhibit A-3



Keehi Marine, Inc.

Exhibit A-3