

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

September 23, 2022

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

Land Board Members:

SUBJECT: Reissuance of Revocable Permit No. 121 to Kaneohe Yacht Club to
for the Purpose of Clarifying Recreational Boat Pier Ownership
Upon Termination, Kaneohe Bay, Kaneohe, Koolaupoko, Oahu,
Seaward of Tax Map Key: (1) 4-4-022:032

And

Request Authorization to Enter into a Memorandum of Agreement
with Kaneohe Yacht Club for an Access Easement Through Tax
Map Key: (1) 4-4-022:032

And

Declare the Project Exempt from Requirements of Chapter 343,
Hawaii Revised Statutes and Title 11, Chapter 200.1, Hawaii
Administrative Rules

APPLICANT:

Kaneohe Yacht Club ("KYC"), a Domestic Nonprofit Corporation, whose mailing address
is 44-503 Kaneohe Bay Dr., Kaneohe, Hawaii 96744

LEGAL REFERENCE:

HRS §171-13 and 55, Hawaii Revised Statutes, as amended.

LOCATION:

A portion of Government submerged lands situated in Kaneohe Bay, Kaneohe, Island of Oahu, Seaward of Tax Map Key: (1) 4-4-022:032, hereinafter referred to as the “Premises” as shown on the maps labeled **Exhibits A-1, A-2 and A-3** and attached hereto.

AREA:

Approximately 6.5 Acres or 283,140 square feet, more or less, of submerged lands as depicted on **Exhibit A-3**.

ZONING:

State Land Use District: Conservation
City & County of Honolulu LUO: Conservation

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Encumbered by Revocable Permit No. 121, to Kaneohe Yacht Club.

CHARACTER OF USE:

Recreational boat pier purposes, no liveaboards allowed.

COMMENCEMENT DATE:

July 1, 2022

MONTHLY RENTAL:

The greater of one thousand thirty and no/100 dollars (\$1,030.00) per month, or ten percent (10%) of gross receipts, whichever is greater. The minimum monthly rent shall be payable in advance by the first of each and every month. Gross receipt reports and any associated increased payments shall be due and payable ten (10) calendar days after the end of the preceding month.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

HRS CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Section 11-200.1-15, Hawaii Administrative Rules (HAR) and the Exemption List for the Department of Land and Natural Resources, reviewed and concurred by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an Environmental Assessment pursuant to General Exemption Type 1, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," Item No. 44, which states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

DCCA VERIFICATION:

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

JUSTIFICATION FOR REVOCABLE PERMIT:

The revocable permit is temporary in nature. Staff anticipates the sale of a lease, for the submerged lands, at public auction, to take place in the current calendar year.

REMARKS:

At its meeting on January 11, 2019, under agenda item D-7, the Board approved the change in the monthly rental, effective March 1, 2019, to \$1,000/mo. or 10% of gross revenues, whichever is greater. The Board also recommended that Land Division transfer the revocable permit to the Division of Boating and Ocean Recreation ("DOBOR"). At its meeting on July 26, 2019, under agenda Item D-6, the Board approved Set-Aside to DOBOR, issuance of a Management Right of Entry and transfer of Revocable Permit No. S-5407 to DOBOR.

At its meeting on December 13, 2019, under agenda item J-4, the Board approved the Continuation of the revocable permit from January 1, 2020, through June 30, 2020.

At its meeting on June 26, 2020, under agenda item J-1, the Board approved the Continuation of the revocable permit from July 1, 2020, through June 30, 2021.

At its meeting on June 25, 2021, under agenda item J-2, the Board approved the Continuation of Revocable Permit No. S-5407 from July 1, 2021, through June 30, 2022. Staff subsequently requested the most current version of the revocable permit from the Department of the Attorney General to ensure that it included the most up-to-date environmental language. Revocable Permit No. 121 was executed November 1, 2021.

At its meeting on June 24, 2022, under agenda item J-1, the Board approved the Continuation of the revocable permit from July 1, 2022, through June 30, 2023.

Kaneohe Yacht Club constructed the recreational boat piers (“improvements”) currently situated on the premises and has the right, under Revocable Permit No. 121, to remove the improvements from the premises **prior** to the termination of the revocable permit. In the event KYC fails to remove the improvements and the Board elects to retain them, then under the terms of the revocable permit, ownership of the piers will transfer to the state. The Department of the Attorney General has advised that if the permittee is the successful bidder at the upcoming public auction and wishes to retain ownership of the improvements, it must remove them prior to the termination of its permit because if left in place, the improvements will become the property of the state. Staff views this scenario as inequitable.

Staff is therefore requesting the Board’s authorization to revise the existing revocable permit to state that in the event the permittee is the successful bidder at public auction, and becomes the lessee, Kaneohe Yacht Club will own the improvements for the lease term and any extension of the lease.

Furthermore, staff would like to address the possible scenario that if the permittee is not the successful bidder by adding language to the reissued revocable permit that the permittee has the option to: 1) sell the improvements to the successful bidder at the appraised fair market value prior to the start of the new lease; 2) remove the improvements to the satisfaction of the state within six (6) months of termination of the revocable permit and conduct a Phase I environmental site assessment of the Premises; or 3) do nothing and have the improvements become the property of the state.

The Department of the Attorney General has also advised staff that the state requires access to the subject submerged lands for routine site inspections. Staff worked with its Deputy AG to draft a Memorandum of Agreement (“MOA”) to allow staff to enter and cross Kaneohe Yacht Club’s adjacent fast lands (TMK: (1) 4-4-022:032) for the purpose of performing any public or official duties or permitted lease purposes (**Exhibit B**). Kaneohe Yacht Club has indicated to staff that it has no objection to signing the MOA. Staff requests the Board’s authorization for the Chairperson to enter the MOA on behalf of the Board of Land and Natural Resources with Kaneohe Yacht Club.

Kaneohe Yacht Club has not had a lease, easement, or other disposition of state lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION:

That the Board of Land and Natural Resources:

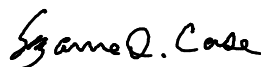
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the Chair to enter into a Memorandum of Agreement with Kaneohe Yacht Club for an access easement through their adjacent fast lands, identified as Tax Map Key: (1) 4-4-022:032, for maintenance and management purposes.
3. Authorize the reissuance of revocable permit 121 to Kaneohe Yacht Club, as of July 1, 2022, covering the subject area for recreational boat pier purposes, under the terms and conditions cited above, specifically stating that, in the event the permittee is the successful bidder at public auction and becomes the lessee, Kaneohe Yacht Club will own the improvements for the lease term and any extension of the lease. In the event the permittee is not the successful bidder, the permittee shall have the option to: 1) sell the improvements to the successful bidder at the appraised fair market value; 2) remove the improvements to the satisfaction of the state within six (6) months of termination of the revocable permit and conduct a Phase I environmental site assessment of the Premises; or 3) do nothing and have the improvements become the property of the state, at which time the state shall have the option of keeping the improvements or requiring the permittee to remove the improvements and conducting the Phase I at no cost to the state.
 - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



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

APPROVED FOR SUBMITTAL:



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

Attachment:

- A-1 Location of Kaneohe Bay on Island of Oahu Map
- A-2 Aerial Map of Kaneohe Bay
- A-3 Aerial Map of KYC's location in Kaneohe Bay
- B Memorandum of Agreement

Kaneohe Yacht Club
Island of Oahu

Exhibit A-1



Exhibit A-1

Kaneohe Bay

Exhibit A-2



Exhibit A-2

Kaneohe Bay

Exhibit A-3

Kaneohe Yacht Club
RP S-5407
(Approximately 6.5 Acres
or 283,140 sq. ft.)



Ruler

Line Path Polygon Circle 3D path 3D polygon

Measure the distance or area of a geometric shape on the ground

Perimeter: 2,573.37 Feet

Area: 283,140.60 Square Feet

☒ Mouse Navigation Save Clear

Exhibit A-3

Exhibit A-3

EXHIBIT B

MEMORANDUM OF AGREEMENT
BETWEEN
KANEEOHE YACHT CLUB, A HAWAII NONPROFIT CORPORATION
AND
THE STATE OF HAWAII, BY ITS BOARD OF LAND AND NATURAL RESOURCES
FOR THE DIVISION OF BOATING AND OCEAN RECREATION
FOR
DEPARTMENT OF LAND AND NATURAL RESOURCES ACCESS THROUGH
PREMISES (TAX MAP KEY: (1) 4-4-022:032)
TO THE SUBMERGED LANDS
SEAWARD OF TAX MAP KEY: (1) 4-4-022:032

This Memorandum of Agreement (MOA) is made and entered into on this _____ day of _____ 2022, by and between KANEEOHE YACHT CLUB, a Hawaii nonprofit corporation, whose address is 44-503 Kaneohe Bay Drive, Hawaii 96744, hereinafter referred to as ("KYC") and the STATE OF HAWAII, by its BOARD OF LAND AND NATURAL RESOURCES, whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter referred to as ("BLNR"), for the DIVISION OF BOATING AND OCEAN RECREATION, whose address is 4 Sand Island Access Road, Honolulu Hawaii 96819, hereinafter referred to as ("DLNR").

RECITALS

WHEREAS, KYC owns the fee simple title to the real property located at 44-503 Kaneohe Bay Drive, Kaneohe, Hawaii 96744, further identified as tax map key (1) 4-4-022:032 acquired by that certain Deed dated November 9, 1978, recorded in the State of Hawaii, Bureau of Conveyances in Book 13309, Page 478, and by that certain Deed dated September 11, 1985, recorded aforesaid in Book 18942, Page 116, as shown on map attached hereto and made a part hereof ("Premises");

WHEREAS, the Kaneohe Bay submerged lands located in Kaneohe on the Island of Oahu, Hawaii, seaward of Tax Map Key (1) 4-4-022:032 (Submerged Lands) are owned by the State of Hawaii and under the management and authority of DLNR by Executive Order No. 4664;

WHEREAS, the State of Hawaii by its Board of Land and Natural Resources has issued Revocable Permit #121 ("RP") to KYC to occupy and use the adjacent Submerged Lands for recreational boat pier purposes;

PRELIM. APPR'D.
Department of the
Attorney General

MOA - Kaneohe Yacht Club Access Easement

WHEREAS, DLNR intends to lease at public auction Submerged Lands for a term of fifty-five (55) years ("Lease"); and

WHEREAS, this MOA will provide DLNR access to the Submerged Lands from the Premises for the duration of the RP and any subsequently issued Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually agreed that both parties hereto will adhere to the following duties and obligations:

KYC shall:

Allow the DLNR, its agents or representatives, to enter and cross the Premises for the purpose of performing any public or official duties or permitted Lease purpose, with respect to the Submerged Lands. DLNR shall provide KYC with reasonable notice of its intent to enter and cross the Premises.

DLNR's Responsibilities:

The DLNR shall be responsible for injury caused by the DLNR's officers and employees in the course and scope of their employment to the extent that the DLNR's liability for such damage or injury has been determined by a court or otherwise agreed to by the DLNR. The DLNR shall pay for such damage and injury to the extent permitted by law provided that an appropriation is enacted for that purpose.

The DLNR shall not be liable or responsible for any loss or damage sustained by KYC or anyone claiming by, through or under KYC by reason of the act or omission of any lessee, tenant, licensee or other occupant of the surrounding lands of KYC.

The DLNR's financial obligation and commitment to make payments or reimbursements of any kind under this MOA shall be contingent upon the availability and allotment by the Director of the Department of Budget and Finance of public funds to the Department of Land and Natural Resources to make such payment or reimbursement.

Nonsubstantive amendments or amendments. Nonsubstantive amendments or amendments for management efficiencies may be made by mutual agreement of the parties and be executed by a written supplement approved by the BLNR Chairperson and KYC and attached hereto and made a part hereof.

MOA - Kaneohe Yacht Club Access Easement

Term. This MOA shall be coterminous with the revocable permit or Lease.

Termination. This MOA may not be terminated by KYC prior to the expiration of the term of the Lease, for any reason. KYC desires to further the DLNR interest in providing and facilitating DLNR access to the Submerged Lands through the Premises. DLNR shall have the right and option, for a period of twelve (12) months upon termination of the MOA, to enter the Premises to access the Submerged Lands.

KYC's Authority. KYC affirms that it has the full right, title, power, and legal authority to sign this MOA to affect the Premises in the capacities as shown and executed and as notarized.

Counterparts. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

MOA - Kaneohe Yacht Club Access Easement

IN WITNESS WHEREOF, KYC and the State of Hawaii, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have executed this MOA as of the date first above written.

STATE OF HAWAII

Approved by the Board
of Land and Natural
Resources at its
meeting held on
_____.

By _____
SUZANNE D. CASE
Chairperson
Board of Land
and Natural Resources

DLNR

APPROVED AS TO FORM:

JULIE H. CHINA
Deputy Attorney General

Dated: _____

KANEOHE YACHT CLUB, a Hawaii
non-profit corporation

By _____

Its _____

By _____

Its _____

KYC

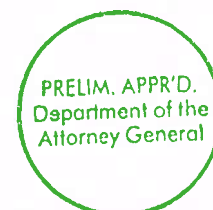
MOA - Kaneohe Yacht Club Access Easement

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

On this _____ day of _____, 20_____,
before me personally appeared _____,
to me personally known, who, being by me duly sworn or affirmed,
did say that such person executed the foregoing instrument as
the free act and deed of such person, and if applicable in the
capacity shown, having been duly authorized to execute such
instrument in such capacity.

Notary Public, State of Hawaii

My commission expires:



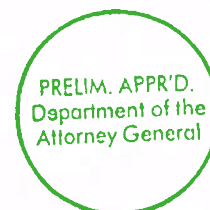
MOA - Kaneohe Yacht Club Access Easement

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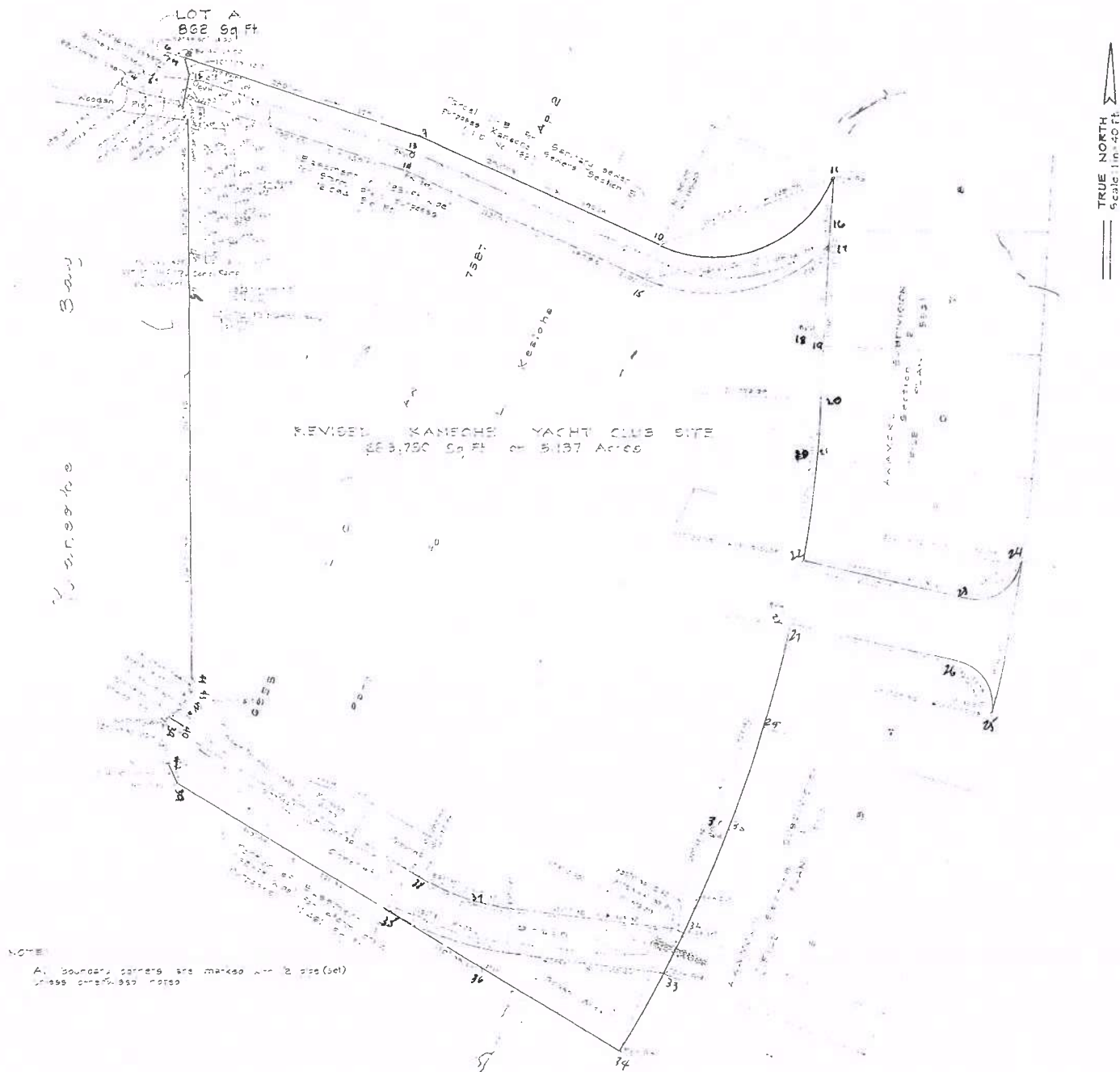
My commission expires:



MOA - Kaneohe Yacht Club Access Easement

ATTACHMENT

LOCATION OF PREMISES FOR DLNR ACCESS TO SUBMERGED LANDS
FOR
MEMORANDUM OF AGREEMENT ("MOA")



PRELIM. APPR'D.
Department of the
Attorney General