

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

November 8, 2013

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

Lana'i

Authorize the Termination of General Lease No. B-00-1 and Easement to Lana'i Company, Inc., Castle & Cooke Resorts, LLC; and the Issuance of New Lease and Easement by way of Direct Negotiation to Lana'i Resorts, LLC, DBA Pulama Lana'i, Manele Small Boat Harbor, Manele, County of Maui, Island of Lana'i, Tax Map Key (2) 4-9-17:06

APPLICANT:

Formerly:

Lana'i Company Inc. ("Lana'i Co.") was purchased and merged into Castle & Cooke Resorts, LLC ("CCR"), a Hawaii limited liability company, whose business and mailing address is 100 Kahelu Avenue, Floor 2, Mililani, Hawaii 96879.

Now:

Lana'i Resorts, LLC ("Lana'i Resorts"), a Hawaii limited liability company, doing business as Pulama Lana'i, whose business and mailing address is 733 Bishop St. Suite 2000, Honolulu, Hawaii 96813.

LEGAL REFERENCE:

Sections 171-59, 171-17 and 171-53(c), Hawaii Revised Statutes, as amended. Section 171-53(c) requires approval of the Governor and authorization of the Legislature by concurrent resolution for the leasing of state submerged land. Section 171-59(b) allows for the disposition of leases by negotiation for specific operations, including maritime and maritime-related operations.

LOCATION AND AREA:

Portion of Government owned lands situated at Manele Small Boat Harbor ("Harbor"), Island of Lana'i, identified by Tax Map Key: (2) 4-9-17:06, consisting of 28,625 sq. ft., more or less, of submerged lands and 21,527 sq. ft., more or less, of fast lands, being a portion of Governor's Executive Order Nos. 2422, 3111, and 4348, please see "EXHIBIT A."

TRUST STATUS:

Section 5 (b) lands of the Hawaiian Admissions Act: YES: X NO: \_\_\_

DHHL 30% entitlement lands pursuant to the Hawaii State

Constitution: YES\_\_\_ NO X

Authorize the Termination of General Lease No. B-00-1 and Easement to Lana'i Company, Inc., Castle & Cooke Resorts, LLC; and the Issuance of New Lease and Easement by way of Direct Negotiation to Lana'i Resorts, LLC, DBA Pulama Lana'i, Manele Small Boat Harbor, Manele, County of Maui, Island of Lana'i, Tax Map Key (2) 4-9-17:06

November 8, 2013

Item J-2

ZONING:

State Land Use District: Urban  
County of Maui CZO: Open, Lana'i Project District 1 (Manele)

CHARACTER OF USE:

Under General Lease No. B-00-1:

Development, construction use and maintenance of twenty four (24) boat slips within the lease area, and utilities, paving, landscaping other associated improvements within the non-exclusive easement area.

Under New Lease:

1. For construction, maintenance and use of submerged lands for a loading dock, and mooring as approved by the department.
2. Lessee agrees to pay all costs and expenses for the floating dock to be constructed and installed by the Department of Land and Natural Resources, Division of Boating and Ocean Recreation ("DOBOR"). The floating dock will be used during the period of tsunami restoration at the harbor.
3. Lessee agrees to complete at its sole cost and expense, a topographical map of the Harbor's submerged floor, with ocean species indicated.
4. Lessee agrees to complete at its sole cost and expense, a cultural resource survey of the surrounding land areas of the Harbor to determine possibility of Harbor expansion.
5. A non-exclusive easement for use of portion of the adjacent fast lands for utilities, landscaping, maintenance, as well as maintenance, and landscaping at specified portions within the harbor.

LEASE TERM:

Under General Lease No. B-00-1:

35 years, commencing on October 1, 2000, up to and including September 30, 2036.

Under New Lease:

55 years, commencement date to be determined by the Chairperson.

Lana'i Resorts is a separate entity from CCR. It was formed to hold the assets and liabilities of what was formerly CCR and became Lana'i Resorts on September 14, 2012.

RENTAL:

Under General Lease No. B-00-1:

Minimum Annual Rental of \$4,140.00 or 15% of mooring fees, whichever is greater, payable quarterly.

Under New Lease:

The Lessee shall pay the Annual Base Rent as well as pay ten percent (10%) of revenues derived from commercial activities. The Annual Base Rent and any percentage rents shall be paid quarterly. The Annual Base Rent will be determined by the Appraiser, pursuant to Section 171-17, Hawaii Revised Statutes, as amended, and approved by the Chairperson.

Authorize the Termination of General Lease No. B-00-1 and Easement to Lana'i Company, Inc., Castle & Cooke Resorts, LLC; and the Issuance of New Lease and Easement by way of Direct Negotiation to Lana'i Resorts, LLC, DBA Pulama Lana'i, Manele Small Boat Harbor, Manele, County of Maui, Island of Lana'i, Tax Map Key (2) 4-9-17:06

November 8, 2013

Item J-2

RENT AND INSURANCE:

The Lessee, CCR is current with both obligations.

REMARKS

In 1996, Approval was provided by the Legislature in 1996 and with Senate Concurrent Resolution S.C.R. 16 S.D. ("S.C.R. 16 S.D.") which authorized the Board of Land and Natural Resources ("Board") to Lease certain fast lands and submerged lands at Manele Bay for marina purposes. S.C.R. 16 S.D. was very specific as to the design and allocation of slips in the marina. The Board at its regular meeting on October 11, 1996, under J-1, authorized the issuance of the lease and non-exclusive easement. General Lease No. B-00-1 ("Prior Lease") was entered into on October 1, 2000, by way of a direct negotiation, and between the Board and the Lana'i Co. and on December 31, 2000, Lana'i Co. and CCR merged with CCR becoming the successor entity, herein referred to as the Lessee.

The Prior Lease requires that the Lessee obtain permits and approvals for design and construction of certain improvements in the submerged and fast lands and that full utilization of the property occur within the first year of the lease term. CCR, the Lessee was still in non-compliance with this provision of the Prior Lease in 2007. At the time, CCR had not begun to obtain the necessary Federal, State or County permits and clearances for the proposed improvements of the marina, boat slips, and additional improvements that were to have been built within the time period specified. During this period, it was also discovered that although merged, consent was required by the Board for an assignment of lease from Lana'i Co. to CCR. Accordingly, the State issued a Notice of Default on December 12, 2007. Also during this point in time, the State was in the process of completing substantial improvements for the Maui-Lana'i ferry at Manele.

A settlement was finalized between the State and CCR, in which proposed amendments to the Prior Lease were discussed and agreed upon in principle at the time by Mr. Harry Saunders, President of CCR, and Laura Thielen, Chairperson of the Department of Land and Natural Resources.

The Board approved an extension of the cure period in the Notice of Default at its regular meeting on February 27, 2009, under Item J-1; in addition, the Board authorized the Amendment of the Lease on the agreed upon terms and approved the after-the-fact Consent of Assignment from Lana'i Co. to CCR. Within the remarks section of this submittal on pages 3-4, there are two tables and supporting information providing the additional requirements and improvements that CCR was to carry out as part of its agreement and lease. Please see EXHIBIT B.

The Lessee agreed to move ahead and secure the permits and construct the marina improvements of 24 slips as prescribed in the Prior Lease, as well as perform the repair and maintenance requirements as identified and described in the Settlement Agreement between the State and CCR. Shortly thereafter the Lessee, began maintenance of certain improvements constructed by the State and other improvements installed by the Lessee throughout the harbor. These maintenance activities continue today and are ongoing at this time. The Lessee agreed that they would continue to move ahead with the agreement and those requirements of the Prior Lease on the condition that its default of the lease obligations stated in this submittal were cured or resolved by way of the agreement settlement. At that point in time, it was believed that the proposed settlement which involved amendments to the CCR Lease was consistent with the original approval provided by the Legislature in S.C.R. 16 (S.D. 1). The Board approved the six (6) year

Authorize the Termination of General Lease No. B-00-1 and Easement to Lana'i Company, Inc., Castle & Cooke Resorts, LLC; and the Issuance of New Lease and Easement by way of Direct Negotiation to Lana'i Resorts, LLC, DBA Pulama Lana'i, Manele Small Boat Harbor, Manele, County of Maui, Island of Lana'i, Tax Map Key (2) 4-9-17:06

November 8, 2013

Item J-2

time extension to construct the marina of 24 boat slips and related improvements in both the submerged leased area and non-exclusive easement area.

Since the Board's approval, the State has experienced two Tsunami events, the first on February 27, 2010, and the second on March 11, 2011. During these events, certain locations throughout the State were impacted in varying degrees. Manele sustained substantial damage in the March 11, 2011 event. A contract of \$1,890,386.00 was recently awarded by DOBOR to repair damage of the existing loading docks and rock groins at the harbor as a result of this event. This contract will start shortly and take place over the next two years. With the help of FEMA funding, DOBOR's contractor will be rebuilding the ferry dock, a temporary loading dock and those preexisting portions of the harbor that were damaged. As space in this harbor is very limited, the temporary loading dock will need to be placed in the only available site directly adjacent the Ferry Terminal and within the vacant leased area. Temporary use of this site will allow for continuity and continued service by the Ferry to access Lana'i, and vessels needing access to transient mooring.

The Lana'i assets of CCR were purchased by Lana'i Resorts in 2012. After close review by DOBOR and discussion with Lana'i Resorts (the new owner/applicant), it was acknowledged and determined that as a result of the tsunami events, the originally planned marina design approved for the submerged land lease area was not practical, unfeasible and its design would most likely not withstand another future tsunami event. Consideration was also given to the fact that the submerged area of the lease often experiences heavy cross surge regularly throughout the year. The originally planned marina as designed and detailed in both the Prior Lease as well as S.C.R. 16 S.D. as previously approved would not hold up in the long run. Closer investigation found that had the marina been built as planned, may impede safe navigation within the channel.

Considering today's growth with Lana'i as a destination point, DOBOR feels a loading dock is much needed, and could be built to potentially withstand another tsunami of moderate impact. This could be accomplished with substantial redesign, the use of modern materials and a new plan for configuration of a narrow dock running along the shoreline. Lana'i Resorts would not build the project as originally designed, but purchase the fully constructed ferry pier from DOBOR with an estimated cost between \$500,000 to \$600,000, take responsibility for its maintenance, and it would be allowed to remain throughout the lease.

Recognizing the previous owners default, the complexity of the specifications and approvals of both the legislature and the Board of Land and Natural Resources, DOBOR recommends that the best course of action would be to terminate General Lease No. B-00-1 to CCR and issue a new lease by direct negotiation to the new owner Lana'i Resorts, LLC, incorporating the purchase of the new dock, and those items described and agreed upon between the State and Lana'i Resorts, as described in letter dated May 28, 2013, from Ms. Lynn P. McCrory, Senior Vice President, Government Affairs, of Lana'i Resorts, to Mr. Edward R. Underwood, Administrator, DOBOR, please see EXHIBIT C.

Should the Board concur, DOBOR would recommend that Lana'i Resorts seek legislative approval to authorize the Board to rescind the original authorization and specifications of S.C.R. 16 (S.D. 1) and request approval of the Board to authorize a lease of the submerged lands and an easement of the fast land under terms and conditions allowing for the loading dock and those items as identified in the Character of Use, under the new lease.

Authorize the Termination of General Lease No. B-00-1 and Easement to Lana'i Company, Inc., Castle & Cooke Resorts, LLC; and the Issuance of New Lease and Easement by way of Direct Negotiation to Lana'i Resorts, LLC, DBA Pulama Lana'i, Manele Small Boat Harbor, Manele, County of Maui, Island of Lana'i, Tax Map Key (2) 4-9-17:06

November 8, 2013

Item J-2

DOBOR requests that the Board authorize the Chairperson to execute all documents, required professional service contracts and rights of entry which may be necessary.

RECOMMENDATION: That the Board authorize and approve:

1. The termination of General Lease No. B-00-1 and Easement to Lana'i Company, Inc., Castle & Cooke Resorts, LLC;
2. The Chairperson to execute a new Lease and Easement by way of direct negotiation to Lana'i Resorts, LLC, DBA Pulama Lana'i to be consistent with the new terms for the dock and those maintenance items of the harbor as described above;
3. As a condition to the above, the Lessee shall allow for the loading dock to be used by the Lahaina-Lana'i Ferry during the construction period and immediately commence repair and maintenance activity upon the pier's completion;
4. Such other terms and conditions as prescribed by the Chairperson to best serve the interests of the State; and;
5. Subject to review and approval by the Attorney General.

Respectfully submitted,

Edward R. Underwood  
Administrator

Attachments Exhibit A  
Exhibit B  
Exhibit C

APPROVED FOR SUBMITTAL:

William J. Aila, Jr.  
Chairperson



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96813  
February 27, 2009

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

Lanai

Extension of cure period in Notice of Default, Authorize and Allow for Amendment of General Lease No.B-00-1, and after-the-fact approval of Assignment of Lease by Lanai Company, Inc. to Castle & Cooke Resorts, LLC, Manele Small Boat Harbor, Manele, County of Maui, Island of Lanai, Tax Map Key (2) 4-9-17:02

APPLICANT:

Castle & Cooke Resorts, LLC (CCR), a Domestic Limited Liability Company whose business and mailing address is 100 Kahelu Avenue, Floor 2, Mililani, Hawaii 96879.

LEGAL REFERENCE:

Sections 171-20, 36, and 53, Hawaii Revised Statutes, as amended.

LOCATION AND AREA:

Portion of Government owned lands situated at Manele Small Boat Harbor, Island of Lana'i, identified by Tax Map Key: (2)4-9-17:06, consisting of 28,625 sq. ft., more or less, of submerged lands and 21,527 sq. ft., more or less, of fast lands, being portion of Governors Executive Order Nos. 2422 and 3111.

TRUST STATUS:

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

ZONING:

State Land Use District: Urban  
County of Maui CZO: Open, Lanai Project District 1 (Manele)

J-1

**EXHIBIT B**

CHARACTER OF USE:

Development, construction use and maintenance of twenty four (24) boat slips within the lease area, and utilities, paving, landscaping other associated improvements within the non-exclusive easement area.

LEASE TERM:

35 years, commencing on October 1, 2000, up to and including September 30, 2036.

RENTAL:

Minimum Annual Rental of \$4,140.00 or 15% of mooring fees, whichever is greater, payable quarterly.

RENT AND INSURANCE:

The Lessee is current with both obligations.

REMARKS

To address the increased need for more boat slips on Lanai, the 1996 Legislature adopted Senate Concurrent Resolution No. 16 which authorized the Board of Land and Natural Resources to lease certain submerged lands and to grant a non-exclusive easement over certain fast lands at Manele Small Boat Harbor to Lanai Company, Inc. for marina purposes. By way of a direct negotiation, General Lease No. B-00-1 ("Lease") was entered into on October 1, 2000, by and between the Board of Land and Natural Resources (Board) and the Lanai Company, Inc. (Lanai Co.) The Lease is provided as EXHIBIT # 1. Please also reference EXHIBIT # 2, the October 11, 1996 Land Board submittal J-1 which includes, the Senate Concurrent Resolution S.C.R. 16 (S.D. 1) and approved minutes. S.C.R. 16 (S.D. 1) provides the BLNR with general authority to lease land at Manele Small Boat Harbor "for the purposes of reclamation, development, construction, use, and maintenance of at least twenty-four berthing facilities for water craft and other improvements, approximately one acre of submerged land, and such other acreage as may be necessary for development and maintenance of other ancillary facilities and improvements."

On December 31, 2000, Lanai Company, Inc. and Castle & Cooke Resorts, LLC ("CCR") merged, with CCR becoming the successor entity, herein referred to as the Lessee. Lanai Co. did not obtain approval of the assignment of this lease at that time. CCR now requests an after-the-fact approval of the assignment. Please see EXHIBIT #3

General Lease B-00-1 requires that the Lessee obtain permits and approvals for design and construction of certain improvements in the submerged and fast lands and that full utilization of the property to occur within the first year of the lease term. The Lessee had not complied with this provision. The Lessee had not obtained the necessary Federal, State or County permits and clearances for their proposed improvements. Further, the Lessee did not build the marina, boat slips, and additional improvements within the time period specified. Accordingly, the State issued a Notice of Default on December 12, 2007, please see attached EXHIBIT # 4.

TABLE I below, provides a list of the original additional improvements that were to be built by the Lessee along with the new marina as provided in the Lease (§52. Additional Improvements and §53. Non-exclusive easement area). The Lessee was required to provide and maintain utilities, pay for electricity, water and sewer charges based on usage within the submerged lease area and non-exclusive easement area. TABLE I also shows the improvements that are incomplete, and those that have been completed by the State as part of its Federal Ferry Project.

**TABLE I**

Lease requirements for CCRL to build additional improvements within the Easement area	Completed by Lessee	Completed by State/FTA
Paved parking area	No	Yes
Landscaping Picnic area	No	Yes
Utilities- Electrical	No	Yes
-Water	No	Yes
-Telephone	No	Yes
Improvements to Rock Groin	No	No
Improved Boat Wash Pad	No	Yes

Subsequent to the execution of the Lease, the State, with assistance from the Federal Transit Administration, made the improvements listed above. As noted previously, these improvements were to be constructed by the Lessee under the terms and conditions of the Lease. At this time, the Lessee is agreeable to move ahead to construct the boat marina in the submerged leased area in accordance with the Lease and is also agreeable to repair and maintain certain improvements constructed by the State and other improvements installed by the Lessee, if its default of the Lease obligations stated in this submittal are cured or resolved by settlement. It is believed that the proposed settlement that involves amendments to the Lease is consistent with the approval provided by the Legislature in S.C.R. 16 (S.D. 1). Please reference the proposed settlement letter dated May 15, 2008 shown as EXHIBIT # 5, which proposes amendments to the Lease that were discussed and agreed upon in principle by Mr. Harry Saunders, President of CCR, and Laura Thielen, Chairperson of the Department of Land and Natural Resources. The Lessee has requested a six (6) year time extension to construct the marina boat slips and related improvements in both the submerged leased area and non-exclusive easement. CCR shall be expected to be actively engaged in building the improvements during this time, and staff recommends that CCR provide regular annual updates to the Chairperson as to its progress by December 31st of each year.

In addition, as part of the settlement, the State has requested that the Lessee repair and maintain certain improvements made by the State in an area adjacent to the non-exclusive easement. CCR is willing to complete all improvements not later than December 31, 2014 (calculated at the time of the letter) and assume the repair and maintenance duties set forth in TABLE II, below, upon execution of the Lease amendment. As reflected in the May 15, 2008 settlement letter, TABLE II below summarizes the negotiated Lessee's and the State's repair and maintenance obligations for improvements made by the State in and adjacent to the non-exclusive easement.

TABLE II

<b>Newly Constructed Improvements at Manele Small Boat Harbor</b>	<b>Responsible Party</b>
New comfort station, maintenance, custodial/janitorial services (i.e., cleaning, the stocking of adequate supplies, such as paper towels, bath tissue, etc.) In addition, perform nonstructural repairs up to \$1,000 maximum per individual repair, with annual limit not to exceed \$5,000 for repairs. See Exhibit 5-A. Lessee shall not be obligated to repair damages resulting from defects in the State's original design or construction of the new comfort station, nor shall Lessee be obligated to repair damages resulting from the willful misconduct of others (such as an act of vandalism).	Lessee
New comfort station, repair costs that exceed \$1,000 maximum per individual repair; costs paid for by the State, repairs performed by Lessee.	State
Ferry Boarding Shelter. See Exhibit 5-A.	Lessee
Roads "A", "B". See Exhibit 5-A.	Lessee
Road "F". See Exhibit 5-A.	Lessee
Ferry parking area	State
Accessible and bus parking in non-exclusive easement. See Exhibit 5-A.	Lessee
Ferry Boarding/station shelter	Lessee
Water line "A" and "C", including fire hydrants, valves, laterals and appurtenances. See Exhibits 5-C & 5-D.	Lessee
All other water lines, including fire hydrants, valves, laterals and appurtenances	State
Sewer line "B", including sewer manholes and appurtenance. See Exhibit 5-B.	Lessee
Sewer pump station, sewer lines from the sewer pump station to the Hulupoe Pump Station, including sewer manholes and appurtenances	State
Electrical conduits and lines, including lighting and outlets within the Premises and Easement area, from the new Administration building to the mini-park. See Exhibit 5-E.	Lessee
Telephone conduits and lines from the new Administration building to the mini-park.	Lessee
Mini-park. See Exhibit 5-F.	Lessee

Map Exhibits 5-A through 5-F referenced in TABLE II above may be found within EXHIBIT # 5.

In addition to the items listed in TABLE II, above, and as part of the settlement, the Lessee is also agreeable to constructing, operating and maintaining additional improvements, including but not limited to a new fuel dock, dispensers, fuel lines, fuel tanks, appurtenances, related improvements within the premises. Furthermore the Lessee shall also move ahead to install and maintain landscaping along the entry roadway as well as within the non-exclusive easement area. Please see page three of EXHIBIT #5 which States, "In addition, CCR will be required to install sub-meters and pay for electricity, water and sewer charges based on usage within the Premises, Non-exclusive easement area and areas maintained by CCR, including the new comfort station, unless CCR can submeter the new comfort station separately and in that case the State will pay the electrical & water for the new comfort station". CCR will install at their cost all submeters.

Staff supports in concept Lessee's proposal to install, maintain, and operate fuel facilities at Manele Small Boat Harbor. However, because the proposed fuel tanks would be located outside of the non-exclusive easement area and the location of which has not yet been identified, a separate lease agreement would be needed. DOBOR will return to the Board at a later date to pursue Board approval for a lease by direct negotiation for additional space for these improvements.

The majority of the people entering and leaving the Island of Lanai do so by way of the new ferry facility, utilizing the new improvements within Manele Small Boat Harbor. The Division of Boating and Ocean Recreation does not have the staff and means to immediately maintain these new improvements at present. As part of this settlement, CCR has agreed to the repair and maintenance of certain improvements made by the State, in and adjacent, to the non-exclusive easement. Staff recommends the Board authorize the Department to approve the settlement and amend the conditions of Lease B-00-1 to include the agreed upon repair and maintenance of certain improvements made by the State in an area adjacent to the non-exclusive easement area. Should the Board concur, DOBOR shall work with the Attorney General's office to prepare an amendment to the Lease that would include the items listed above to be executed by the Chairperson.

**RECOMMENDATION:** That the Board authorize and approve:

1. The six (6) year time extension to December 31, 2015 to cure the default and construct boat slips and related improvements as set forth in the Lease;
2. The Chairperson to execute an Amendment to the Lease consistent with the proposed settlement described above;
3. Assignment of the Lease to Castle and Cooke Resorts, LLC;
4. As a condition to the above, the Lessee shall immediately commence repair and maintenance activity as described above;
5. Such other terms and conditions as prescribed by the Chairperson to best serve the interests of the State; and;
7. Subject to review and approval by the Attorney General.

Respectfully submitted,

  
\_\_\_\_\_  
Edward R. Underwood  
Administrator

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Laura H. Thielon  
Chairperson

**EXHIBIT # 2**

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
333 Queen Street, Suite 300  
Honolulu, Hawaii 96813

October 11, 1996

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

MAUI

RESUBMITTAL

ISSUANCE OF LEASE BY DIRECT NEGOTIATION,  
MANELE BOAT HARBOR, ISLAND OF LANA'I

**STATUTE:** Section 171-11, 16 and 53(c), Hawaii Revised Statutes

**APPLICANT:** Lanai Company, Inc.

**AREA:** Lease area of 28,625 square feet and non-exclusive easement area of 21,527 square feet

**LOCATION:** Manele Boat Harbor, Island of Lana'i, Tax Map Key No. 4-9-17:06, being a portion of Governor's Executive Order Nos. 2422 and 3111, as shown on the attached Exhibit "A".

**PURPOSE:** Development, construction, use and maintenance of at least twenty-four (24) boat slips within the lease area, and utilities, paving, landscaping other associated improvements within the easement area.

**EFFECTIVE DATE:** To commence on a date to be determined and approved by the Chairperson.

**RENTAL:** To be determined by independent appraisal.

**REMARKS:** The Senate of the Eighteenth Legislature, State of Hawaii, recognized the demand for additional boat slips and related facilities on the Island of Lana'i. The Division of Boating and Ocean Recreation does not have

ITEM J-1

October 11, 1996

any immediate plans to develop additional slips at this boat harbor. As such, Senate Concurrent Resolution (SCR) No. 16, Session Laws of Hawaii (SLH) 1996, attached hereto as Exhibit "B", resolved to authorize the Board of Land and Natural Resources to lease certain fast and submerged lands at Manele Bay to the Applicant for marina purposes.

In its testimony before the Eighteenth Legislature dated March 26, 1996, attached hereto as Exhibit "C", the Lanai Company stated its intent to provide additional improvements including paved roadway and parking, landscaping, utilities (including electricity, telephone and water), a picnic area, improved fishing pier, and improved trailer boat wash-down area. These additional improvements are considered to be an additional public benefit to the State and the residents of Lanai.

The lease document will be submitted to the Department of the Attorney General for review and approval as to form.

**RECOMMENDATION:**

That the Board authorize the issuance of a lease and non-exclusive easement by direct negotiation, subject to the following terms and conditions:

1. Use of the boat slips shall be in accordance with the provisions of SCR No. 16, SLH 1996.
2. Lanai Company, Inc. shall provide the additional improvements as proposed in Exhibit "C".
3. Rental may be in the form of fixed annual rental, a percentage of mooring fees, or a combination of both.
4. All other standard terms, covenants and conditions applicable to a lease issued by direct negotiation.
5. Such other terms and conditions as may be prescribed by the Chairperson.

October 11, 1996

Respectfully submitted,

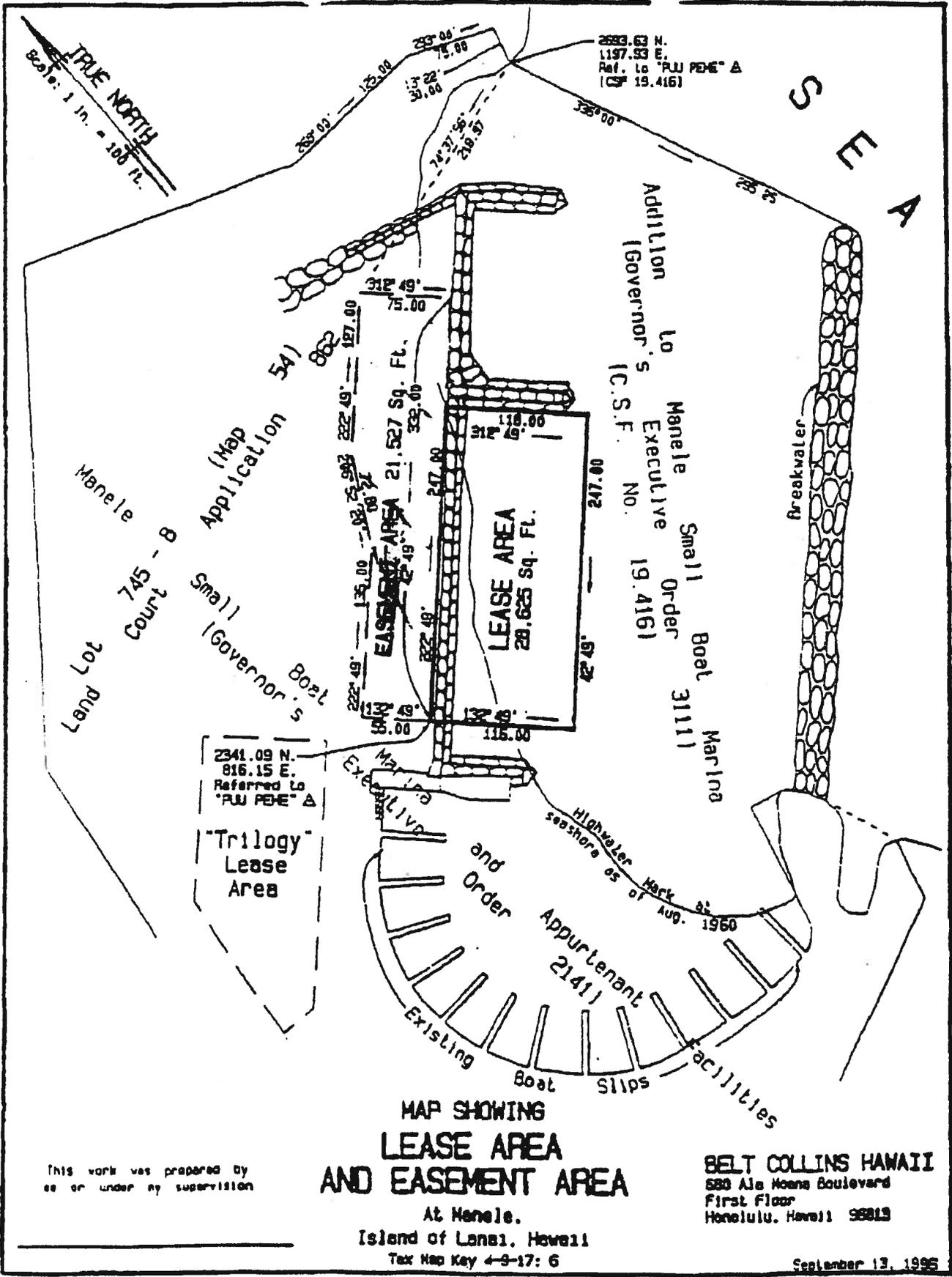
  
David E. Parsons  
State Boating Administrator

Attachment

APPROVED FOR SUBMITTAL:



MICHAEL D. WILSON, Chairperson



MAP SHOWING  
**LEASE AREA  
 AND EASEMENT AREA**

At Manele.  
 Island of Lanai, Hawaii  
 Tax Map Key 4-9-17: 6

**BELT COLLINS HAWAII**  
 580 Ala Moana Boulevard  
 First Floor  
 Honolulu, Hawaii 96813

This work was prepared by  
 ee or under my supervision

September 13, 1995

SCHEIDT & HAWAII



## SENATE CONCURRENT RESOLUTION

AUTHORIZING THE BOARD OF LAND AND NATURAL RESOURCES TO LEASE  
CERTAIN SUBMERGED LANDS AT MANELE BAY, HAWAII, TO LANAI  
COMPANY, INC., FOR MARINA PURPOSES.

1           WHEREAS, the number of registered boats in the State has  
2 grown from 6,000 in 1960 to over 13,000 in 1989, an increase of  
3 130 per cent, and by the year 2000 over 20,000 boats are  
4 expected to be registered; and

5  
6           WHEREAS, the island of Lanai has 59 registered boats,  
7 with a waiting list of approximately 20 boats for the 24 slips  
8 presently at Manele Bay; and

9  
10          WHEREAS, the Manele Small Boat Harbor is a shallow draft  
11 harbor on the southern coast of Lanai, and the island's only  
12 small boat harbor; and

13  
14          WHEREAS, Lanai is growing rapidly, and an expanded small  
15 boat harbor is needed because the existing boat moorings within  
16 the harbor are inadequate to meet the demand for additional  
17 commercial services such as tours, day trips and charters, as  
18 well as private boaters and fishermen; and

19  
20          WHEREAS, during certain times of the year and during  
21 special events, numerous boats must anchor in the bay due to  
22 the shortage of space; and

23  
24          WHEREAS, a number of slips in the Manele Small Boat  
25 Harbor are utilized by persons residing on neighboring islands,  
26 due to the shortage of slips there; and

27  
28          WHEREAS, as there are no commercial facilities,  
29 telephones, or other facilities existing at the Manele Small  
30 Boat Harbor, visitors from other islands are left stranded at  
31 the harbor unless they have made prior arrangements to be  
32 picked up there upon arrival; and

33

1           WHEREAS, possessing only limited improvements, the  
2 Manele Small Boat Harbor has no lights, telephone, or improved  
3 water system, and a lack of these improvements may result in  
4 hazardous situations in the event of emergency situations; and

5  
6           WHEREAS, the development of additional boat slips is an  
7 integral part of a master plan for the development of adjacent  
8 commercial property which will provide facilities for small  
9 retail shops and businesses to greet people upon arrival at the  
10 harbor; and

11  
12           WHEREAS, the construction of an attractive, safe, and  
13 functional harbor area, including landscaped parking,  
14 utilities, and a picnic area will be a great benefit to the  
15 State; and

16  
17           WHEREAS, a group of Lanai boaters, fishermen,  
18 businessmen, and commercial operators formed the Manele Harbor  
19 Advisory Committee, which prepared a Draft Manele Small Boat  
20 Harbor Master Plan, reflecting input from people who use the  
21 facilities or are directly related to the development of the  
22 facilities; and

23  
24           WHEREAS, the factors which influenced the Draft Manele  
25 Small Boat Harbor Master Plan were:

- 26           (1) The rapidly changing base of the island's economy;  
27  
28           (2) The rapid growth and changing demographics of the  
29 island's population;  
30  
31           (3) The very limited area available for the expansion  
32 of boating facilities; and  
33  
34           (4) The growing financial demands on the Department of  
35 Land and Natural Resources to improve and maintain  
36 small boat harbor facilities statewide;  
37

38  
39 and

40  
41           WHEREAS, one of the recommendations of the Draft Manele  
42 Small Boat Harbor Master Plan is that the number of berths for  
43 vessels be increased by the construction of additional piers,  
44 together with public parking adjacent thereto; and  
45

1           WHEREAS, the report "Statewide Planning for Marina  
2 Facilities" indicated an ongoing demand for additional berths  
3 and related facilities on Lanai; and  
4

5           WHEREAS, the Department of Land and Natural Resources  
6 encourages private development of marina facilities to help  
7 meet the demand for berthing space; and  
8

9           WHEREAS, a lessee of an improved harbor area would be  
10 responsible for the maintenance and upkeep of that area and  
11 also pay lease rent to the State for land that is presently  
12 undeveloped and badly in need of repair; and  
13

14           WHEREAS, Section 171-53(c), Hawaii Revised Statutes,  
15 authorizes the Board of Land and Natural Resources, with the  
16 prior approval of the Governor and prior authorization of the  
17 Legislature by concurrent resolution, to lease submerged public  
18 lands under the terms, conditions, and restrictions provided in  
19 Chapter 171, Hawaii Revised Statutes; and  
20

21           WHEREAS, the Legislature desires to provide prior  
22 authorization to the Board of Land and Natural Resources to  
23 lease certain submerged lands described herein for the  
24 development of marina facilities; and  
25

26           WHEREAS, in order to process the lease of these lands,  
27 all appropriate authorizations are required; now, therefore,  
28

29           BE IT RESOLVED by the Senate of the Eighteenth  
30 Legislature of the State of Hawaii, Regular Session of 1996,  
31 the House of Representatives concurring, that the Board of Land  
32 and Natural Resources, in conformance with Section 171-53,  
33 Hawaii Revised Statutes, is authorized to lease to Lanai  
34 Company, Inc. for the purposes of reclamation, development,  
35 construction, use, and maintenance of at least twenty-four  
36 berthing facilities for water craft and other improvements,  
37 approximately one acre of submerged land, and such other  
38 acreage as may be necessary for development and maintenance of  
39 other ancillary facilities and improvements, being a portion of  
40 Tax Map Key No. 4-9-1706 of Governor's Executive Orders  
41 No. 2411 and 3111 situated at Manele Bay, Lanai; provided that  
42 Lanai Company, Inc. shall utilize the berthing facilities  
43 (slips) in the manner provided in Exhibit "A" attached hereto  
44 and by reference made a part hereof; and  
45

1           BE IT FURTHER RESOLVED that this Concurrent Resolution  
2 is neither an implied approval of the decisions that must be  
3 independently made by the Board or Department in acting on any  
4 Conservation District Use Application nor implied intent to  
5 include other submerged land leases; and  
6

7           BE IT FURTHER RESOLVED that prior to executing the lease  
8 the Board or Department must independently conclude that this  
9 project will be economically feasible, environmentally sound,  
10 and in compliance with Chapter 343, Hawaii Revised Statutes,  
11 and that environmental concerns relating to all phases of the  
12 project's construction shall be addressed and resolved; and  
13

14           BE IT FURTHER RESOLVED that certified copies of this  
15 Concurrent Resolution be transmitted to the Governor and the  
16 Chairperson of the Board of Land and Natural Resources.  
17

## EXHIBIT A

Lanai Company, Inc. hereby acknowledges and agrees that in consideration of the approval of the resolution to which this exhibit is attached, and the execution of a mutually acceptable lease with the Board of Land and Natural Resources, Lanai Company, Inc. ("Lessee") shall:

1. Develop and adopt terms and conditions for the leasing of the nineteen (19) slips not subject to dedication as set forth below ("Leasing Program");
2. Dedicate five (5) slips to the State of Hawaii without any compensation payable by the State ("Dedicated Slips"); provided that Lessee shall not be liable to pay lease rent to the State for the Dedicated Slips; and
3. Reserve and make available seven (7) slips ("Reserved Slips") to be offered to individuals on the waiting list compiled by the Department of Land and Natural Resources Division of Boating and Ocean Recreation ("DBOR") for slips at the Manele Bay Harbor determined as of the date the initial offer to lease is made to the person holding the highest priority ("Waiting List"). DBOR shall offer the Reserved Slips to persons on its Waiting List according to priority and pursuant to its customary practice; subject, however, to the terms of Lessee's Leasing Program. Within 120 days from the date that the initial offer to lease was made to the person holding the highest priority on the Waiting List, the DBOR shall provide Lessee with a written list of the names of the persons from its Waiting List who will lease the Reserved Slips ("Reservation List"), as well as a written certification that all persons on the Waiting List had been given an opportunity to lease one of the Reserved Slips. Upon receiving said certification from DBOR, or, if Lessee does not receive the Reservation List and Written certification from DBOR within said 120 day time period, Lessee, in its discretion, may then lease any unleased Reserved Slips to any person pursuant to its Leasing Program; provided, however, that if any Reserved Slip shall subsequently become vacant at any time, the Reserved Slip shall be offered first to persons on DBOR's Waiting List according to the procedures and terms set forth above such that there will always exist the opportunity to have seven (7) slips leased to those on DBOR's Waiting List.

**CARLSMITH BALL WICHMAN CASE & IOHIKI**

ATTORNEYS AT LAW  
A PARTNERSHIP INCLUDING LAW CORPORATIONS  
ONE MAIN PLAZA  
SUITE 400, 2200 MAIN STREET  
POST OFFICE BOX 1086  
WAILUKU, MAUI, HAWAII 96793-1086

TELEPHONE (808) 242-6835  
FAX (808) 244-4974

March 26, 1996

by Facsimile 586-6441/Hand Delivery

The Honorable Dwight Y. Takamine  
Chairman  
Committee on Planning,  
Land & Water Use Management  
House Representatives  
State Capitol, Room 420  
Honolulu, HI 96813

by Facsimile 586-6381/Hand Delivery

The Honorable Alexander C. Santiago  
Chairman  
Committee on Ocean Recreation and  
Marine Resources  
House of Representatives  
State Capitol, Room 418  
Honolulu, HI 96813

Re: House Concurrent Resolution No. 47

Dear Representative Takamine, Representative Santiago  
and Committee Members:

Our office represents Lanai Co., with respect to  
House Concurrent Resolution No. 47, authorizing the Board of  
Land and Natural Resources to lease land at Manele Bay to Lanai  
Co., for improvements to the harbor.

In its continuing efforts to create new jobs and  
insure job security for Lanai residents, Lanai Co. is  
proposing major improvements to the Manele Bay Small Boat  
Harbor.

Exhibit "C"

The Honorable Dwight Y. Takamine  
The Honorable Alexander C. Santiago  
March 26, 1996  
Page -2-

Originally a small, undeveloped bay, Manele was used as an area for off-loading lumber, goods and equipment during the early 1900's and later, a loading site for Lanai Ranch's cattle. When the pineapple plantation was built, Manele was considered for a commercial barge harbor, but Kaunalapau Bay was chosen instead, as it was an hour closer to the canneries on Oahu. Today, Kaunalapau Harbor is still primarily used as a commercial facility and it remains privately owned by Lanai Co., although negotiations are ongoing to transfer the harbor to the State.

The present Manele Bay Harbor was constructed in 1966, and is a shallow draft harbor with an average depth of seven feet. In 1988, a short rock breakwall was constructed, providing additional protection for the harbor.

The present facilities include 24 permanent berths along wooden piers and a mooring dock. There is a small restroom, but no electrical outlets or telephone service. Access to the harbor is by way of a rutted road in disrepair, to a dirt lot that serves as a parking area. (See aerial photograph attached hereto). The harbor is used for both recreational boating and commercial use and the present facilities are becoming overcrowded and inadequate.

Residents and guests thus presently have the use of a facility with limited improvements and amenities. Besides the inconvenience and unappealing nature of the harbor, the limited improvements have left the door open to potential liability for the State. For example, a person was recently injured diving off a pier. When taken out of the water, there was no telephone available to call an ambulance. Visitors are also surprised at the lack of services available at the harbor. With no facilities of any kind, one cannot even buy a cold drink, much less be able to arrange a day tour, transportation or other services.

Lanai Co.'s overall development plan includes a retail/commercial area at the entry to the harbor, to provide much needed services to the increased number of visitors to the island, as well as business opportunities and jobs for the

The Honorable Dwight Y. Takamine  
The Honorable Alexander C. Santiago  
March 26, 1996  
Page -3-

island's residents. This commercial area will be built on property owned by Lanai Co.

Within the harbor, the company is proposing to construct 24 additional berths and general improvements, including a paved and landscaped parking lot, serviced by utilities such as electricity, telephone and water, a picnic area, walkable surface on the existing fishing pier and an improved boat wash area. These additions will turn the Manele Small Boat Harbor into an attractive facility to be enjoyed by residents and guests alike and are substantially based on the recommendations of the Manele Harbor Advisory Committee, in the Draft Master Plan for the Manele Small Boat Harbor. (See overlay and attachments).

Because the additional berths and adjacent improvements will be on State land, Lanai Co. will need to lease certain submerged and surface land from the State, through the Department of Land and Natural Resources. This requires the authorization of the legislature by concurrent resolution, pursuant to Statute. If this authorization is given, Lanai Co. will still need to obtain various land use permits for its proposed facilities, and to negotiate with the Department of Land and Natural Resources for the lease of the space. Generally, such leases have been based on the State's appraisal of the value of the property. However, early discussions between Lanai Co. and the Department of Land and Natural Resources have also included the possibility of a percentage rent payment. Lanai Co. will retain the management of the leased area, as well as the responsibility of maintenance and upkeep. Thus, besides the value of the permanent improvements to the land and the benefit to the community of the new harbor area, the State will also be paid lease rent for what is now an undeveloped area.

In summary, the following significant benefits will be provided to the State in return for the lease of a portion of the Manele Bay Harbor to the Lanai Co.:

The Honorable Dwight Y. Takamine  
The Honorable Alexander C. Santiago  
March 26, 1996  
Page -4-

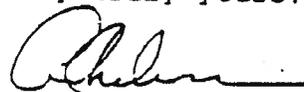
- the construction of permanent, additional berths to meet the ongoing demand for increased mooring facilities;
- the construction of an attractive, safe and functional harbor area, including landscaped parking, utilities, picnic area and improved fishing pier and boat wash area;
- Lanai Co. will manage the area and be responsible for the maintenance and upkeep of the new facilities;
- the payment of lease rent for land that is now unimproved, undeveloped and badly in need to repair;
- the opportunity to Lanai residents and other State residents, who have been on a waiting list with the State, to finally obtain a slip at the Manele Bay Harbor;
- an increase in revenues to visitor industry based businesses, due to the improvements in the overall appearance and utility of the harbor and increased revenue to the State, as a result; and
- greater business opportunities and jobs for Lanai residents, due to improved commercial facilities and increased number of tourists.

A companion resolution, S.C.R. No. 16, has recently been passed out of the Senate Committee on Planning, Land & Water Use Management. Certain revisions were made to the original proposal, and H.C.R. No. 47, with the revisions requested by the Senate in S.C.R. No. 16 underscored, is enclosed. Lanai Company, Inc. is in agreement with the revisions and respectfully requests your approval of this resolution.

The Honorable Dwight Y. Takamine  
The Honorable Alexander C. Santiago  
March 26, 1996  
Page -5-

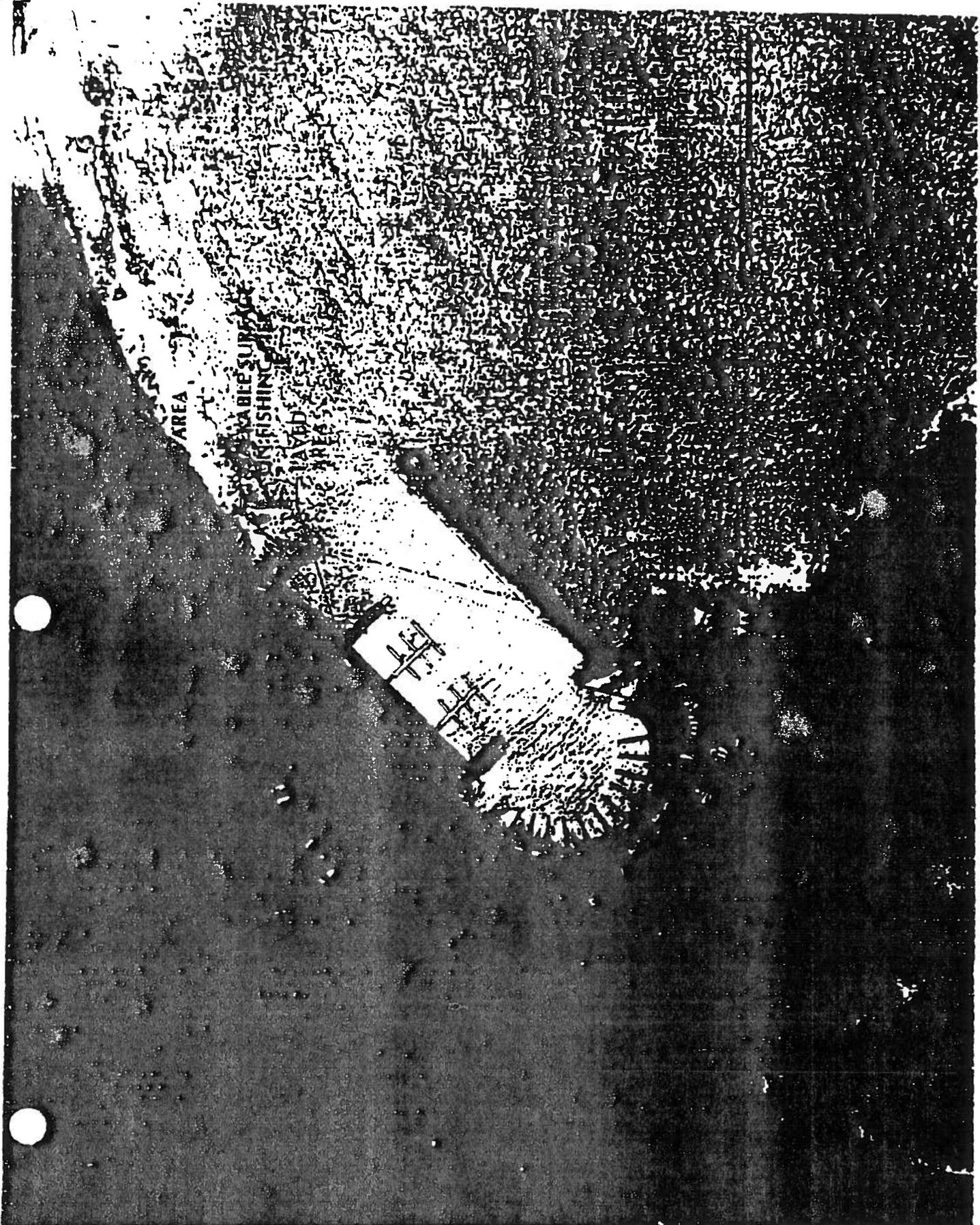
We thank you for the opportunity to provide this  
testimony and we would be happy to respond to any questions.

Very truly yours,

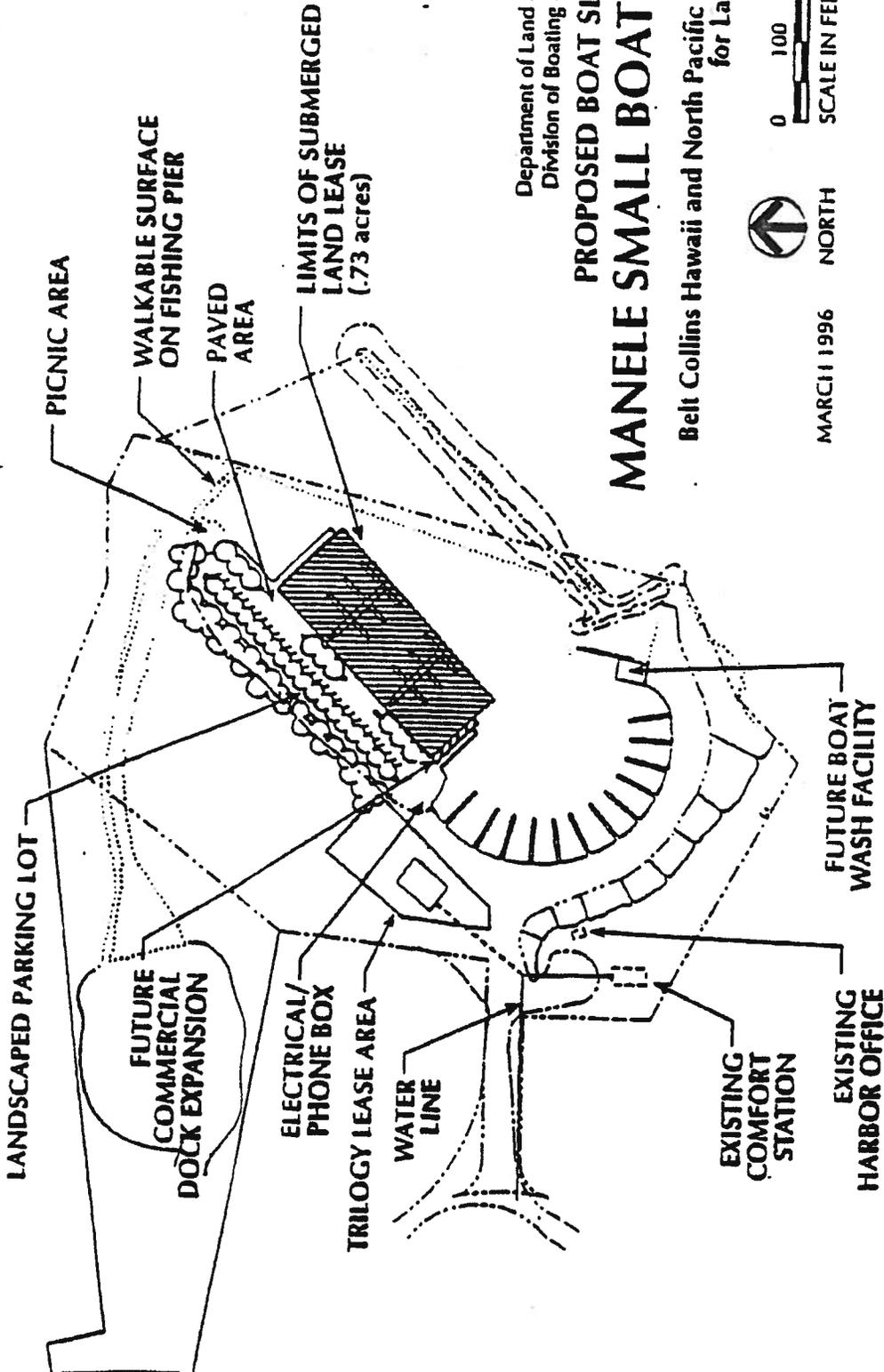


CRAIG G. NAKAMURA

CGN/fn  
Encs.  
1172682







Department of Land and Natural Resources  
Division of Boating and Ocean Recreation

# PROPOSED BOAT SLIP EXPANSION MANELE SMALL BOAT HARBOR

Belt Collins Hawaii and North Pacific Construction, Inc.  
for Lanai Company, Inc.



NORTH

MARCH 1996



## SENATE CONCURRENT RESOLUTION

AUTHORIZING THE BOARD OF LAND AND NATURAL RESOURCES TO LEASE  
CERTAIN SUBMERGED LANDS AT MANELE BAY, HAWAII, TO LANAI  
COMPANY, INC., FOR MARINA PURPOSES.

1           WHEREAS, the number of registered boats in the State has  
2 grown from 6,000 in 1960 to over 13,000 in 1989, an increase of  
3 130 per cent, and by the year 2000 over 20,000 boats are  
4 expected to be registered; and

5  
6           WHEREAS, the island of Lanai has 59 registered boats,  
7 with a waiting list of approximately 20 boats for the 24 slips  
8 presently at Manele Bay; and

9  
10          WHEREAS, the Manele Small Boat Harbor is a shallow draft  
11 harbor on the southern coast of Lanai, and the island's only  
12 small boat harbor; and

13  
14          WHEREAS, Lanai is growing rapidly, and an expanded small  
15 boat harbor is needed because the existing boat moorings within  
16 the harbor are inadequate to meet the demand for additional  
17 commercial services such as tours, day trips and charters, as  
18 well as private boaters and fishermen; and

19  
20          WHEREAS, during certain times of the year and during  
21 special events, numerous boats must anchor in the bay due to  
22 the shortage of space; and

23  
24          WHEREAS, a number of slips in the Manele Small Boat  
25 Harbor are utilized by persons residing on neighboring islands,  
26 due to the shortage of slips there; and

27  
28          WHEREAS, as there are no commercial facilities,  
29 telephones, or other facilities existing at the Manele Small  
30 Boat Harbor, visitors from other islands are left stranded at  
31 the harbor unless they have made prior arrangements to be  
32 picked up there upon arrival; and

33

1           WHEREAS, possessing only limited improvements, the  
2 Manele Small Boat Harbor has no lights, telephone, or improved  
3 water system, and a lack of these improvements may result in  
4 hazardous situations in the event of emergency situations; and  
5

6           WHEREAS, the development of additional boat slips is an  
7 integral part of a master plan for the development of adjacent  
8 commercial property which will provide facilities for small  
9 retail shops and businesses to greet people upon arrival at the  
10 harbor; and  
11

12           WHEREAS, the construction of an attractive, safe, and  
13 functional harbor area, including landscaped parking,  
14 utilities, and a picnic area will be a great benefit to the  
15 State; and  
16

17           WHEREAS, a group of Lanai boaters, fishermen,  
18 businessmen, and commercial operators formed the Manele Harbor  
19 Advisory Committee, which prepared a Draft Manele Small Boat  
20 Harbor Master Plan, reflecting input from people who use the  
21 facilities or are directly related to the development of the  
22 facilities; and  
23

24           WHEREAS, the factors which influenced the Draft Manele  
25 Small Boat Harbor Master Plan were:  
26

- 27           (1) The rapidly changing base of the island's economy;
- 28           (2) The rapid growth and changing demographics of the  
29 island's population;
- 30           (3) The very limited area available for the expansion  
31 of boating facilities; and
- 32           (4) The growing financial demands on the Department of  
33 Land and Natural Resources to improve and maintain  
34 small boat harbor facilities statewide;
- 35
- 36
- 37
- 38

39 and  
40

41           WHEREAS, one of the recommendations of the Draft Manele  
42 Small Boat Harbor Master Plan is that the number of berths for  
43 vessels be increased by the construction of additional piers,  
44 together with public parking adjacent thereto; and  
45

1 WHEREAS, the report "Statewide Planning for Marina  
2 Facilities" indicated an ongoing demand for additional berths  
3 and related facilities on Lanai; and  
4

5 WHEREAS, the Department of Land and Natural Resources  
6 encourages private development of marina facilities to help  
7 meet the demand for berthing space; and  
8

9 WHEREAS, a lessee of an improved harbor area would be  
10 responsible for the maintenance and upkeep of that area and  
11 also pay lease rent to the State for land that is presently  
12 undeveloped and badly in need of repair; and  
13

14 WHEREAS, Section 171-53(c), Hawaii Revised Statutes,  
15 authorizes the Board of Land and Natural Resources, with the  
16 prior approval of the Governor and prior authorization of the  
17 Legislature by concurrent resolution, to lease submerged public  
18 lands under the terms, conditions, and restrictions provided in  
19 Chapter 171, Hawaii Revised Statutes; and  
20

21 WHEREAS, the Legislature desires to provide prior  
22 authorization to the Board of Land and Natural Resources to  
23 lease certain submerged lands described herein for the  
24 development of marina facilities; and  
25

26 WHEREAS, in order to process the lease of these lands,  
27 all appropriate authorizations are required; now, therefore,  
28

29 BE IT RESOLVED by the Senate of the Eighteenth  
30 Legislature of the State of Hawaii, Regular Session of 1996,  
31 the House of Representatives concurring, that the Board of Land  
32 and Natural Resources, in conformance with Section 171-53,  
33 Hawaii Revised Statutes, is authorized to lease to Lanai  
34 Company, Inc. for the purposes of reclamation, development,  
35 construction, use, and maintenance of at least twenty-four  
36 berthing facilities for water craft and other improvements,  
37 approximately one acre of submerged land, and such other  
38 acreage as may be necessary for development and maintenance of  
39 other ancillary facilities and improvements, being a portion of  
40 Tax Map Key No. 4-9-1706 of Governor's Executive Orders  
41 No. 2411 and 3111 situated at Manele Bay, Lanai; provided that  
42 Lanai Company, Inc. shall utilize the berthing facilities  
43 (slips) in the manner provided in Exhibit "A" attached hereto  
44 and by reference made a part hereof; and  
45

1           BE IT FURTHER RESOLVED that this Concurrent Resolution  
2 is neither an implied approval of the decisions that must be  
3 independently made by the Board or Department in acting on any  
4 Conservation District Use Application nor implied intent to  
5 include other submerged land leases; and  
6

7           BE IT FURTHER RESOLVED that prior to executing the lease  
8 the Board or Department must independently conclude that this  
9 project will be economically feasible, environmentally sound,  
10 and in compliance with Chapter 343, Hawaii Revised Statutes,  
11 and that environmental concerns relating to all phases of the  
12 project's construction shall be addressed and resolved; and  
13

14           BE IT FURTHER RESOLVED that certified copies of this  
15 Concurrent Resolution be transmitted to the Governor and the  
16 Chairperson of the Board of Land and Natural Resources.  
17

## EXHIBIT A

Lanai Company, Inc. hereby acknowledges and agrees that in consideration of the approval of the resolution to which this exhibit is attached, and the execution of a mutually acceptable lease with the Board of Land and Natural Resources, Lanai Company, Inc. ("Lessee") shall:

1. Develop and adopt terms and conditions for the leasing of the nineteen (19) slips not subject to dedication as set forth below ("Leasing Program");
2. Dedicate five (5) slips to the State of Hawaii without any compensation payable by the State ("Dedicated Slips"); provided that Lessee shall not be liable to pay lease rent to the State for the Dedicated Slips; and
3. Reserve and make available seven (7) slips ("Reserved Slips") to be offered to individuals on the waiting list compiled by the Department of Land and Natural Resources Division of Boating and Ocean Recreation ("DBOR") for slips at the Manele Bay Harbor determined as of the date the initial offer to lease is made to the person holding the highest priority ("Waiting List"). DBOR shall offer the Reserved Slips to persons on its Waiting List according to priority and pursuant to its customary practice; subject, however, to the terms of Lessee's Leasing Program. Within 120 days from the date that the initial offer to lease was made to the person holding the highest priority on the Waiting List, the DBOR shall provide Lessee with a written list of the names of the persons from its Waiting List who will lease the Reserved Slips ("Reservation List"), as well as a written certification that all persons on the Waiting List had been given an opportunity to lease one of the Reserved Slips. Upon receiving said certification from DBOR, or, if Lessee does not receive the Reservation List and Written certification from DBOR within said 120 day time period, Lessee, in its discretion, may then lease any unleased Reserved Slips to any person pursuant to its Leasing Program; provided, however, that if any Reserved Slip shall subsequently become vacant at any time, the Reserved Slip shall be offered first to persons on DBOR's Waiting List according to the procedures and terms set forth above such that there will always exist the opportunity to have seven (7) slips leased to those on DBOR's Waiting List.

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WAILUKU, MAUI, HAWAII 96793-1086

TELEPHONE (808) 242-4838  
FAX (808) 244-4974

March 26, 1996

by Facsimile 586-6441/Hand Delivery

The Honorable Dwight Y. Takamine  
Chairman  
Committee on Planning,  
Land & Water Use Management  
House Representatives  
State Capitol, Room 420  
Honolulu, HI 96813

by Facsimile 586-6381/Hand Delivery

The Honorable Alexander C. Santiago  
Chairman  
Committee on Ocean Recreation and  
Marine Resources  
House of Representatives  
State Capitol, Room 418  
Honolulu, HI 96813

Re: House Concurrent Resolution No. 47

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Exhibit "C"

The Honorable Dwight Y. Takamine  
The Honorable Alexander C. Santiago  
March 26, 1996  
Page -2-

Originally a small, undeveloped bay, Manele was used as an area for off-loading lumber, goods and equipment during the early 1900's and later, a loading site for Lanai Ranch's cattle. When the pineapple plantation was built, Manele was considered for a commercial barge harbor, but Kaunalapau Bay was chosen instead, as it was an hour closer to the canneries on Oahu. Today, Kaunalapau Harbor is still primarily used as a commercial facility and it remains privately owned by Lanai Co., although negotiations are ongoing to transfer the harbor to the State.

The present Manele Bay Harbor was constructed in 1966, and is a shallow draft harbor with an average depth of seven feet. In 1988, a short rock breakwall was constructed, providing additional protection for the harbor.

The present facilities include 24 permanent berths along wooden piers and a mooring dock. There is a small restroom, but no electrical outlets or telephone service. Access to the harbor is by way of a rutted road in disrepair, to a dirt lot that serves as a parking area. (See aerial photograph attached hereto). The harbor is used for both recreational boating and commercial use and the present facilities are becoming overcrowded and inadequate.

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The Honorable Dwight Y. Takamine  
The Honorable Alexander C. Santiago  
March 26, 1996  
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Within the harbor, the company is proposing to construct 24 additional berths and general improvements, including a paved and landscaped parking lot, serviced by utilities such as electricity, telephone and water, a picnic area, walkable surface on the existing fishing pier and an improved boat wash area. These additions will turn the Manele Small Boat Harbor into an attractive facility to be enjoyed by residents and guests alike and are substantially based on the recommendations of the Manele Harbor Advisory Committee, in the Draft Master Plan for the Manele Small Boat Harbor. (See overlay and attachments).

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The Honorable Dwight Y. Takamine  
The Honorable Alexander C. Santiago  
March 26, 1996  
Page -4-

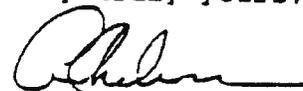
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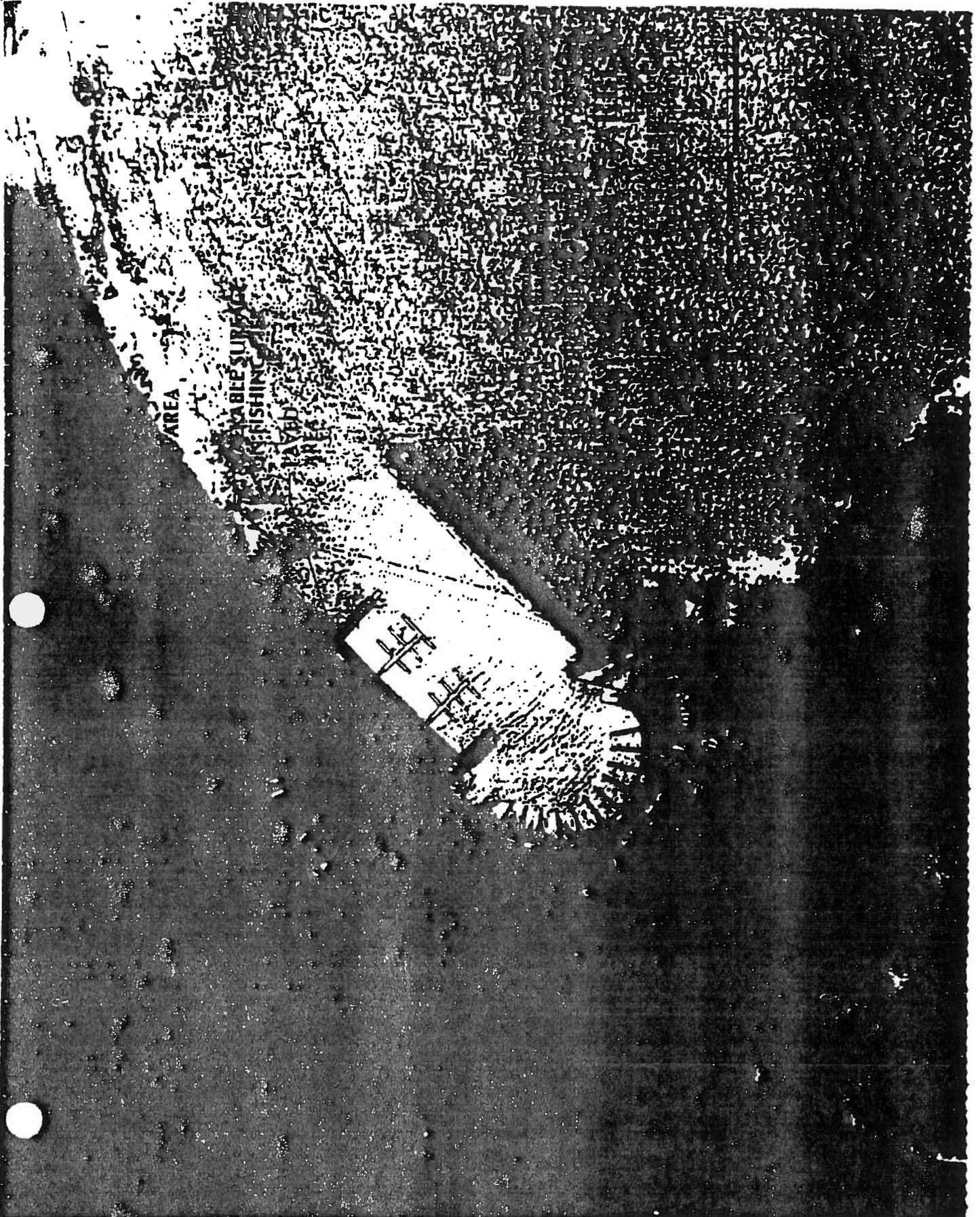
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Very truly yours,



CRAIG G. NAKAMURA

CGN/fn  
Encs.  
117/2682



AREA

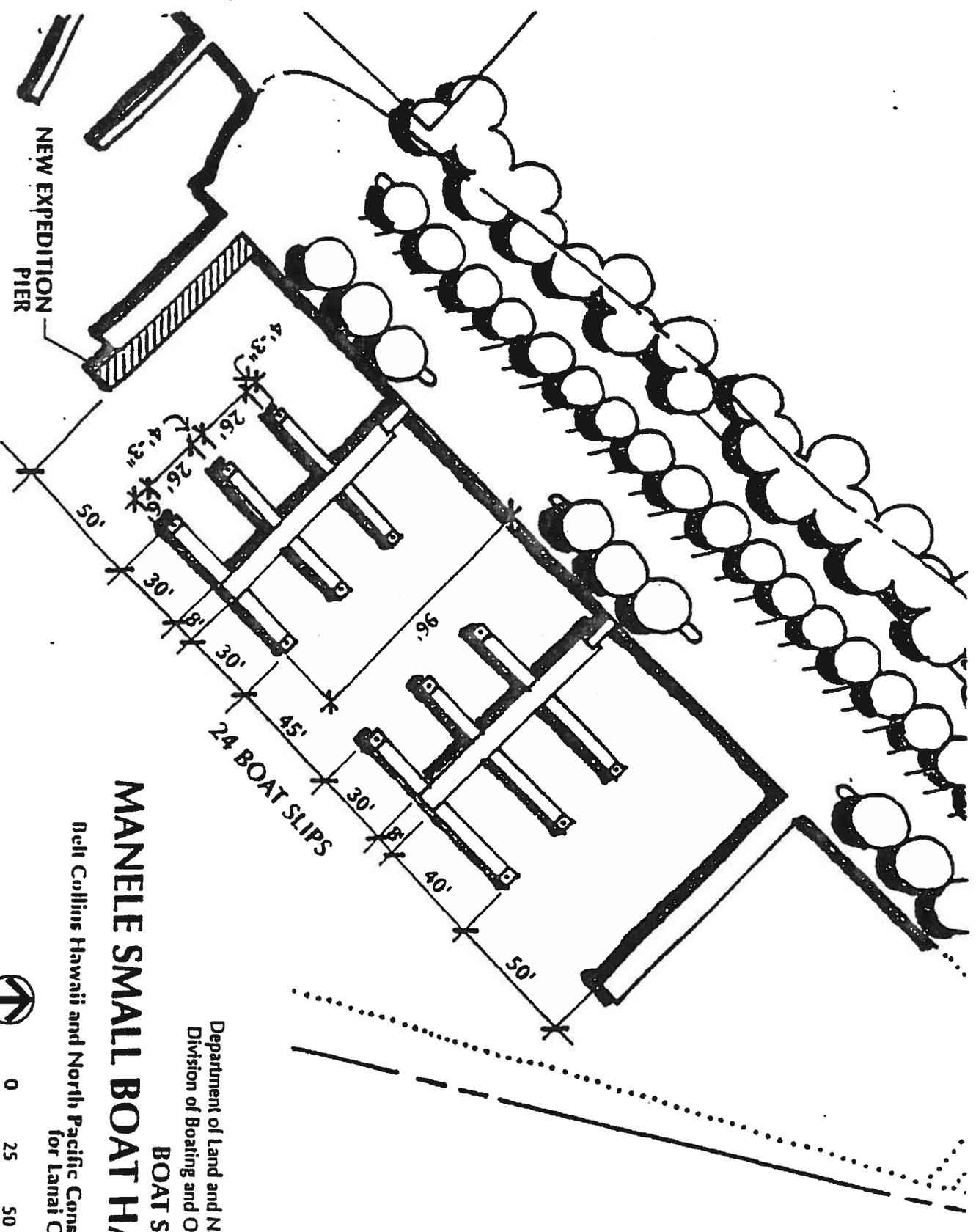
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**MANELE SMALL BOAT HARBOR**  
**BOAT SLIP DETAIL**

Bell Collins Hawaii and North Pacific Construction, Inc.  
 Division of Boating and Ocean Recreation  
 for Lanai Company, Inc.



MARCH 11 1996 NORTH

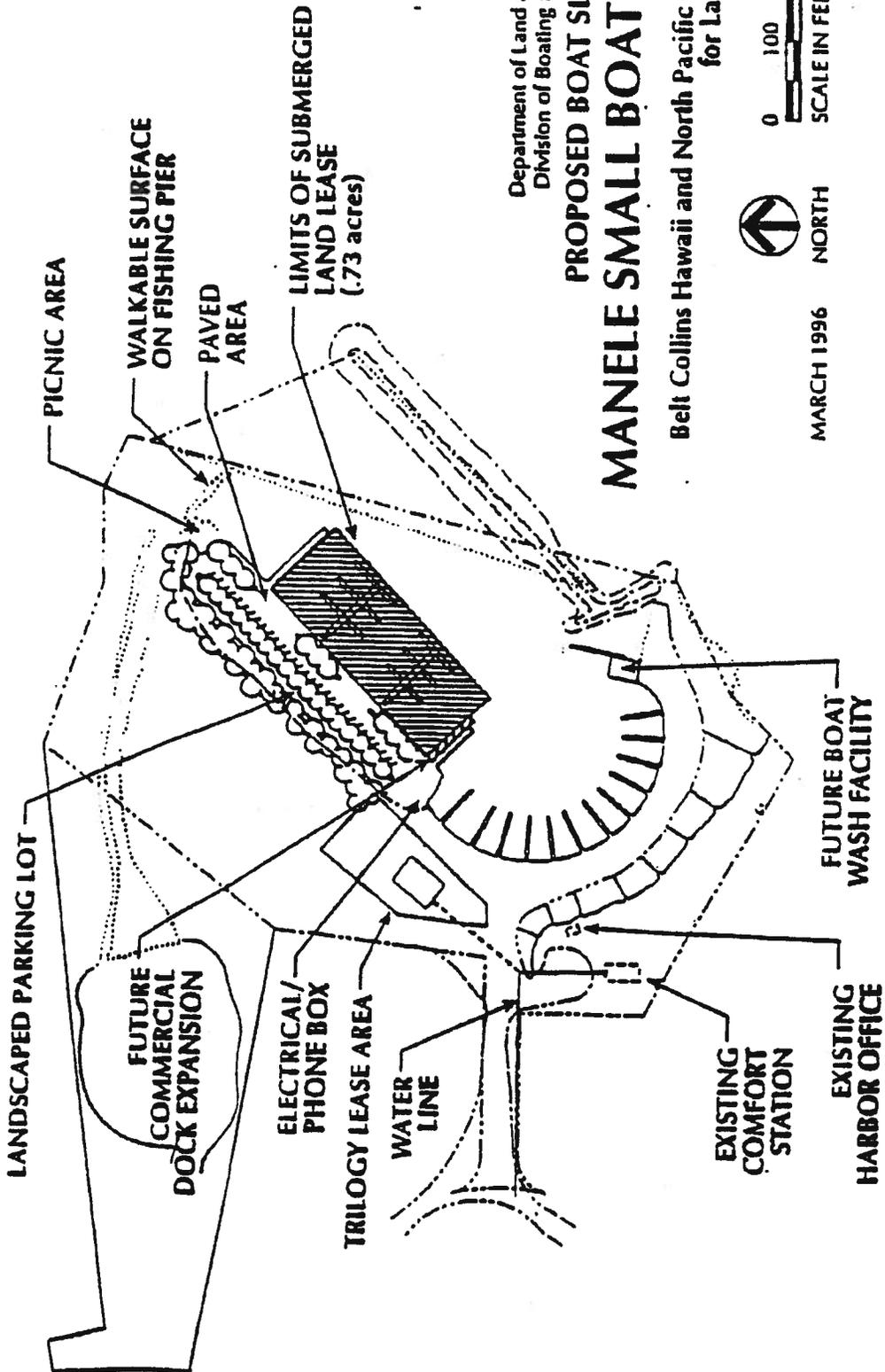


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Department of Land and Natural Resources  
 Division of Boating and Ocean Recreation

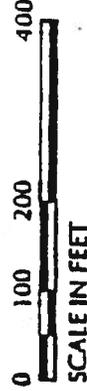
# PROPOSED BOAT SLIP EXPANSION MANELE SMALL BOAT HARBOR

Belt Collins Hawaii and North Pacific Construction, Inc.  
 for Lanai Company, Inc.



NORTH

MARCH 1996



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

**DATE:** October 11, 1996  
**TIME:** 9:00 a.m.  
**PLACE:** Lanai Public and School Library  
Lanai Library Meeting Room  
Fraser Avenue  
Lanai City, Lanai

**PRESENT:**

**MEMBERS:** Michael Wilson  
Chris Yuen  
William Kennison  
Colbert Matsumoto  
Michael Nekoba  
Lynn McCrory

**STAFF:** Dean Uchida  
Dave Parsons  
Michelle Bradley  
Sherrie Mendez

**GUESTS:** Linnel Nishioka, Peter Garcia, Juliet Begley, Cindy Arisa, Ron McOmber, Craig Nakamura, Bob Donovan, Steve Knight, Ken Saben, Everett Kaneshige, Andrew Daymude, and Mike Elroy

All written testimony and tapes of 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 persons present. A copy of the agenda is attached for reference.

Chair Michael Wilson commenced the meeting of the Board and Land and Natural Resources at 9:10 a.m.

***Approval of the minutes of September 13, 1996:***

The minutes of the meeting of September 13, 1996 was unanimously approved as submitted (Matsumoto/Kennison)

**Motion to add on items E-1 and E-2 (Yuen/Kennison)**  
**Vote: all in favor.**

***ITEM J-1 Issuance of lease by direct negotiation, Manele Boat Harbor, Island of Lanai***

Dave Parsons briefed the Board and gave the staff recommendation that the Board authorize the issuance of a lease and non-exclusive easement by direct negotiation subject to terms and conditions.

Craig Nakamura introduced himself as the attorney representing Lanai Company. He said the proposed addition to the boat harbor is the result of a master plan that's been deemed the best use of the harbor by the Manele Small Boat Harbor Advisory Committee. Lanai Company proposes to develop as well as make improvements to the site by installing utility lines for water, telephone and electricity to help address safety issues. Nakamura said there will be a paved and landscaped parking lot, a picnic area, a walkable surface on the pier and improved boat wash area. He said Lanai Company will dedicate five (5) slips to the State and seven (7) slips to be offered to individuals on the waiting list at market rates.

Bob Donovan clarified different areas on a map that was displayed. He said that since some of the land is submerged State lands, Lanai Company was required by statute to go to the legislature for authorization by concurrent resolution. They expect the project to be completed in May or June. Member Matsumoto was concerned about the timing of the anticipated improvements. Donovan assured him that it would be completed and said the preliminary engineering work has been completed.

There was a discussion about the boundaries of the property between the State land and the Lanai Company. It was confirmed that the area that is subject to a lease is the submerged land and the easement is for the access to go in and out. Lanai Company would not have any kind of land title except for access easement. Donovan said the company will be responsible for the long term maintenance of the area. He said the roadway is not within the State Executive Order but that it will be realigned and put within the State boundary.

Cindy Arisa testified the project would be beneficial to the tourist and residents of Lanai. She felt it was an opportunity for new businesses and job opportunities for the residents. Arisa felt the new marina would be a significant economic benefit for the entire island.

Ron McOmber testified his concern was that "the 2-1/2 years of work on the master plan was for naught". He talked about the Kuhn family who obtained a 35 year lease to build a building, completely against what the harbor advisory committee understood was going to happen. McOmber could not understand how the 35 year lease was signed as it had not come before the Land Board.

McOmber said Lanai Company is going to control 19 of the 24 slips and that it will be a commercial operation for them. He said the Lanai people will not benefit from this and what Lanai needs is a secured boat storage area. McOmber said if Lanai Company wants to do something for the people of Lanai, they should do something positive and commit to do some of the things the advisory committee came up with in the master plan.

There was a discussion about the demand for a trailer boat area and whether the boaters could form an association to lease land from the State and build their own trailer area. McOmber said there would probably be enough interest but talked about the cost. Member Matsumoto felt that Lanai Company is proposing to meet many of the objectives in terms of roads and utilities. McOmber said there is an access corner [of land] that is not being used for anything, why not plan for a boat storage area?

McOmber said he was not here to stop the project but to let the Board know that the boaters have concerns. He said that after working on the master plan for 2-1/2 years and worked on it as a community, someone should listen. McOmber stated that, "as long as the big bucks are going to step in here to do this, can we have some help with that?" He said the Lanai people "are not getting a fair shake on this" and it is not equitable.

Steve Knight introduced himself as Vice-President of Punihiki Corporation which has run the Expedition passenger ferry for the past 8 years. He said the harbor has been in dire need of improvements for a long time and they installed a solar powered lighting system for the safety of their passengers. Knight testified that the project is a positive one and that he supports it. He said the present condition of the harbor is a liability to the State and felt with all of the improvements that are proposed, it would be a "tremendous benefit for the local people".

Ken Saben, a boat owner, testified in favor of the project.

There was a discussion about the 5 slips designated for people on the waiting list and the question was whether the residents of Lanai could have first preference. Parsons said this issue was raised in the CDUA hearing and at that time, it was determined to be unconstitutional to direct priority use by geographic residents.

A discussion took place regarding parking stalls. It was not certain how many stalls would be available and whether the County would require a certain amount of parking.

Parsons said as far as future dock expansion plans, the Expeditions has proposed to construct a dock at their expense. He said under the administrative rules, the Boating Division can approve the construction of a berthing facility which would give them preferential use of it for the term of their permit and there would be a reduced fee based on the cost of the dock. Parsons said within boating's own development plans, a proposal to offer it as a concession was made but at the time, it was believed that the cost was not financially acceptable. He estimates the "bare bones" minimum cost to develop a trailer storage area would be approximately \$50,000.

Donovan approximates the cost of the whole project to be \$800,000 to 825,000. Member Matsumoto asked if any consideration was given to incorporate the trailer storage area. Donovan explained that it was discussed at advisory meetings and it was estimated to cost \$80,000 for approximately 26 to 30 spaces. He said Lanai Company could not see spending \$80,000 and not have any return on their investment although he agrees there is a need for it. He saw it as an opportunity for someone else to do it. Member Matsumoto felt that if the grading was done at the same time it was being developed, it would keep the cost down. Donovan said the bulk of the cost would not be the grading but in the preparation and the paving materials.

Unanimously approved as submitted (Kennison/Nekoba).

**ITEM D-10 Conservation District Use application (KA-2819) for a radio tower at Haupu Ridge, Koloa, Kauai, TMK: 3-4-6: 1**

Uchida briefed the Board. He said the Division of Forestry and Wildlife's concern was the potential impact of the possible night time aerial collisions of the threatened and endangered birds with the tower or its guy wires. The District Wildlife Manager does not believe it to be a significant problem. The other concern was the nesting burrows on the project site but the manager feels confident that the proposed tower would not pose a significant problem. The U.S. Fish and Wildlife Service had concerns about the quality of the environmental assessments which were done. Since then, the applicants have done additional work to address the concerns. The Wildlife Service believes that the project will not affect any federal endangered or threatened plants. Uchida said a public hearing was held on August 22, 1996. No one other than the applicant and his agents were present at the hearing. University of Hawaii and Brigham Young University investigators concluded that if the project is constructed with mitigative measures to prevent erosion, it would be consistent with the objective of the Protective subzone.

Uchida said comments and concerns from the Sierra Club on Kauai were the aesthetic impact of the 250 foot tower on the ridge and the availability of the draft EIS on Kauai. They also asked why a decision that would affect Kauai was held on Lanai. He said 6 individuals sent letters indicating their concern for the aesthetic impact of the tower.

Uchida stated the staff's recommendation that the Board approve Stangl Broadcasting's CDDA for a radio tower at Haupu Ridge subject to conditions.



*Castle & Cooke*

LĀNA'I

February 4, 2009

**Via Email & U.S. Mail**

Ms. Laura H. Thielen, Chairperson  
Board Of Land And Natural Resources  
State of Hawaii  
Post Office Box 621  
Honolulu, Hawaii 96809

Re: Boating Lease No. B-00-1  
Manele Small Boat Harbor, Lanai - TMK No. (2)4-9-17:06

Dear Ms. Thielen:

In December of 2000, Lanai Company, Inc., a Hawaii corporation and the lessee under the above-referenced boating lease ("Lease") with the State of Hawaii, duly merged with Castle & Cooke Resorts, LLC, a Hawaii limited liability company, as provided under Hawaii law. Both entities were wholly-owned subsidiaries of Castle & Cooke, Inc. at the time of merger. Under the Articles of Merger filed with the Department of Commerce and Consumer Affairs on December 28, 2000, Castle & Cooke Resorts, LLC was the surviving entity. A copy of the Article of Merger is enclosed herewith.

Under Paragraph 12 of the Lease, a merger is deemed to be an assignment of the Lease requiring the Board's approval. Accordingly, Castle & Cooke Resorts, LLC, hereby requests the Board's after-the-fact approval of this assignment.

Should you have any questions, please do not hesitate to call me. Thank you for your consideration of this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Gary M. Yokoyama', written over a horizontal line.

Gary M. Yokoyama  
Vice President & Corporate Counsel

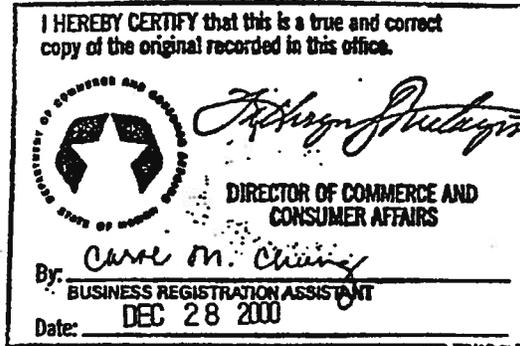
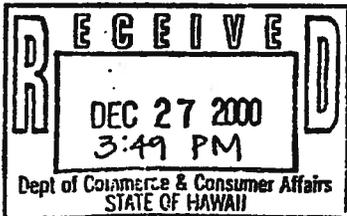
Encl.

STATE OF HAWAII  
IN THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Business Registration Division  
1010 Richards Street  
Honolulu, Hawaii 96813

In the Matter of the Merger )  
 )  
 of )  
 )  
 Lanai Company, Inc., )  
 a Hawaii corporation, )  
 )  
 into )  
 )  
 Castle & Cooke Resorts, LLC, )  
 a Hawaii limited liability company )  
 \_\_\_\_\_ )

ARTICLES OF MERGER



Richard K. Mirikitani, Esq.  
Castle & Cooke, Inc.  
100 Kahelu Avenue  
Mililani, HI 96789  
Telephone No. (808) 548-4890

**STATE OF HAWAII**  
**IN THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

**Business Registration Division**  
**1010 Richards Street**  
**Honolulu, Hawaii 96813**

**In the Matter of the Merger** )  
 )  
 **of** )  
 )  
 **Lanai Company, Inc.,** )  
 **a Hawaii corporation,** )  
 )  
 **into** )  
 )  
 **Castle & Cooke Resorts, LLC,** )  
 **a Hawaii limited liability company** )  
 \_\_\_\_\_ )

**ARTICLES OF MERGER**

(Section 428-905 and Section 415-75.6, Hawaii Revised Statutes)

The undersigned, duly authorized officers of the entities submitting these Articles of Merger, certify as follows:

1. The name and state of formation of each entity proposing to merge is:

Lanai Company, Inc., a Hawaii corporation; and  
Castle & Cooke Resorts, LLC, a Hawaii limited liability company

2. The name, state of formation and address of the surviving limited liability company is:

Castle & Cooke Resorts, LLC, a Hawaii limited liability company  
Address: 100 Kahelu Avenue, Second Floor, Mililani, Hawaii 96789

3. The Plan of Merger has been approved by each entity involved in this merger.
4. Vote of the member of the surviving limited liability company:

<u>Percentage Interests Voting For Merger</u>	<u>Percentage Interests Voting Against Merger</u>
100%	0%

5. Vote of the shareholders of the merging corporation:

<u>Number of Shares Outstanding</u>	<u>Class/Series</u>	<u>Number of Shares Voting For Merger</u>	<u>Number of Shares Voting Against Merger</u>
1,000	Common	1,000	0

6. The Articles of Organization of the surviving entity are not being amended in connection with the Merger.
7. This Merger is effective as of 12:00 o'clock midnight, Hawaii Standard Time, on December 31, 2000.

*[remainder of page intentionally left blank]*

I certify, under the penalties set forth in the Hawaii Uniform Limited Liability Company Act, that I have read the above statements and that they are true and correct.

Signed this 27th day of December, 2000.

**SURVIVING ENTITY:**

**Castle & Cooke Resorts, LLC,**  
a Hawaii limited liability company

By Castle & Cooke, Inc.  
Its Sole Member.

By

  
\_\_\_\_\_  
Patrick J. Birmingham  
Its Senior Vice President

12/27/00

13:31

808 565 3881

Lanai Co., Inc.

002

I certify, under the penalties set forth in the Hawaii Uniform Limited Liability Company Act, that I have read the above statements and that they are true and correct.

Signed this 27th day of December, 2000.

**SURVIVING ENTITY:**

**Castle & Cooke Resorts, LLC,**  
a Hawaii limited liability company

By Castle & Cooke, Inc.,  
Its Sole Member

By

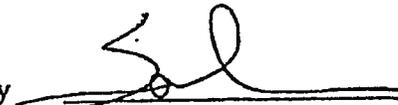
  
\_\_\_\_\_  
Harry A. Saunders  
Its Senior Vice President

I certify, under the penalties of Section 415-136 and Section 428-1302, Hawaii Revised Statutes, that I have read the above statements and that they are true and correct.

Signed this 27th day of December, 2000.

**NONSURVIVING ENTITY:**

**Lanai Company, Inc.,**  
a Hawaii corporation

By 

Harry A. Saunders  
Its Executive Vice President and Chief Operating Officer

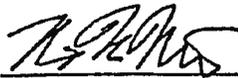
I certify, under the penalties of Section 415-136 and Section 428-1302, Hawaii Revised Statutes, that I have read the above statements and that they are true and correct.

Signed this 27th day of December, 2000.

**NONSURVIVING ENTITY:**

**Lanai Company, Inc.,**  
a Hawaii corporation

By



\_\_\_\_\_  
Richard K. Mirikitani  
Its Vice President and Secretary

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

December 12, 2007

LAURA H. CHASE  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
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

BOR-PH 0206.08

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Gary Yokoyama, Vice-President  
Corporate Counsel  
Castle and Cooke Resorts  
P.O. Box 630310  
Lanai City, Hawaii 96793

Dear Mr. Yokoyama,

NOTICE OF DEFAULT

Pursuant to the authority granted me by the Board of Land and Natural Resources at its meeting of January 11, 1980, and the breach provision contained in General Lease B-00-01 (the Lease) you are hereby served a Notice of Default on said lease for failure to do the following:

1. Item 41, page 14 of the Lease states the following: Full utilization of the land. The Lessee shall, within the first year of the lease term, utilize the land under lease for the purposes for which this lease is sold, all in accordance with a plan of development and utilization which shall be submitted by the Lessee within six (6) months of the lease commencement date for approval by the Chairperson. The Lessee shall not commence any improvement work prior to approval of the plan; provided, however, that should the Chairperson fail to render a decision either for or against the plan within sixty (60) days following receipt of the plan, the Lessee may proceed with the work.

As of this date, no such plan has been submitted to the Chairperson for approval, and the land has not been utilized for the purposes set forth in this lease as more specifically set forth below.

You are hereby given sixty (60) days from the date of the receipt of this letter to cure the above-described Breach.

2. Item 51, page 16 of BOATING LEASE NO. B-00-1 states the following: Boating slip leasing provisions. The Lessee shall develop and build approximately twenty-four (24) slips as shown in Exhibit "D" and adopt terms and conditions for the leasing of approximately nineteen (19) slips not subject to dedication as set forth below ("Leasing Program"):

- a. Dedicate five (5) slips to the State of Hawaii, the locations of which shall be determined by Lessee, without any compensation payable by the State (Dedicated Slips"); provided that Lessee shall not be liable to pay lease rent to the State for the Dedicated Slips; and
- b. Lessee shall develop and adopt terms and conditions for the leasing of slips not subject to dedication ("Leasing Program"). Seven (7) of these slips (Reserved Slips") shall be reserved and made available to be offered to individuals on the waiting list compiled by the Department of Land and Natural Resources; Division of Boating and Ocean Recreation ("DOBOR") for slips at the Manele Bay Harbor determined as of the date the initial offer to lease is made to the person holding the highest priority ("Waiting List"). DOBOR shall offer the Reserved Slips to persons on its Waiting List according to priority and pursuant to its customary practice; subject, however, to the terms of Lessee's Leasing Program. Within 120 days from the date that the initial offer to lease was made to the person holding the highest priority on the Waiting List, DOBOR shall provide lessee with a written list of names of the persons from its Waiting List who will lease the Reserved Slips ("Reservation List"), as well as a written certification that all persons on the Waiting List had been given an opportunity to lease one of the Reserved Slips and upon receiving said certification from DOBOR, or, if Lessee does not receive the Reservation List and Written certification from DOBOR within said 120 day time period, Lessee, in its discretion, may then lease any unleased Reserved Slips to any person pursuant to its Leasing Program; provided, however, that if any Reserved Slip shall subsequently become vacant at any time, the Reserved Slip shall be offered first to persons on DOBOR's Waiting List according to the procedures and terms set forth above such that there will always exist the opportunity to have seven (7) slips leased to those on DOBOR's Waiting List.

No slips have been developed, built, or made available within the leased area as required by the lease, aside from a single slip that is being utilized by the Lessee. Thus no slips have been made available to the State.

You are hereby given sixty (60) days from the date of the receipt of this letter to cure the above-described Breach.

3. Item 52, page 17 states the following: Additional improvements. The lessee shall at its own cost and expense, construct, manage, and maintain the following improvements to the Manele Bay Harbor:
  - a. Pave a 15' x 50' pad for a Boat wash down area on the south side of the harbor by the boat launch ramp.
  - b. Install a 100' x 2' walkable surface on the rock groin on the north side of the harbor adjacent to the Premise (sic); and

- c. Provide and maintain utilities, including but not limited to conduits, mains and other facilities necessary to provide adequate telephone, electrical and water lines that Lessee will be bringing to the Premises, at such locations and in such manner as Lessee will designate; provided however, that should Lessor require increased capacity for any of these utilities to provide services to the Manele Bay Harbor, any and all expenses related to the increased capacity shall be at the sole cost and expense of Lessor.

As of this date, none of the additional improvements have been constructed.

You are hereby given sixty (60) days from the date of the receipt of this letter to cure the above-described Breach.

- 4. Item 53, page 18 states the following: The non-exclusive easement area. For the purpose of accessing leased area, and within easement area construct, and maintain a paved parking lot, landscaped picnic area, and installing utilities to this area, more particularly described in Exhibit "C" (Exhibit "C" is for planning and depiction purposes only, is non-binding and subject to change.) and shall be subject to the following:

- a. These easement rights shall cease, and terminate and the easement area shall automatically be forfeited to the Lessor, without any action on the part of the Lessor, in the event of non-use or abandonment by the Lessee of the easement area, or any portion thereof, for a consecutive period of one (1) year.

....

- g. The Lessee shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from the Lessee's, its invitee's, or its agent's use, maintenance, repair and operation of the easement area, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the easement area and its surrounding waters of such pollutant or contaminant and restore to the Lessor's satisfaction the areas affected by such pollution or contamination, all at the Lessee's own cost and expense.

As of this date, none of the specified improvements to be located in the non-exclusive easement area have been constructed. Further there have been instances where storm waters have flowed through the non-exclusive easement area depositing silt and debris into the Manele Bay Small Boat Harbor.

You are hereby given sixty (60) days from the date of the receipt of this letter to cure the above-described Breach.

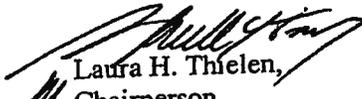
Your failure to act on the above matter may result in one or more of the following:

Gary Yokoyama, Vice-President  
December 12, 2007  
Page 4 of 4

1. Cancellation of BOATING LEASE NO. B-00-1.
2. Retention of all sums heretofore paid under BOATING LEASE NO. B-00-1 as liquidated damages.
3. Termination of all your rights and obligations under BOATING LEASE NO. B-00-1.
4. Retention of all buildings and improvements constructed by Lessee.
5. Forfeiture of your lease performance bond.

We therefore urge your fullest cooperation. Should you have any questions, please contact William R. Andrews, at our Division of Boating and Ocean Recreation at (808) 587-1978.

Sincerely,

  
Laura H. Thielen,  
Chairperson

cc: Land Board Member  
Central Office  
Fiscal Office  
Security Interest Holder  
Bond Holder  
Division of Boating and Ocean Recreation

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA I  
CHAFFERTON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
  
RUSSELL Y. TSUN  
FIRST DEPUTY  
  
KEN C. KAWABARA  
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

May 15, 2008

Mr. Harry A. Saunders, President  
Castle and Cooke Resorts, LLC  
P.O. Box 630310  
Lanai City, Hawaii 96763

BOR-E 0428.08

Re: Boating Lease No. B-00-1  
Manele Small Boat Harbor, Lanai  
TMK No. (2)4-9-17:06

Dear Mr. Saunders:

Thank you for your letter dated March 25, 2008, which we take is a response to the draft letter we sent to your office in or about March 3, 2008, seeking your review and comments, mainly about the amount of time needed to complete certain improvements at the harbor. We do acknowledge and appreciate your willingness to work towards a constructive solution and effective partnership in this important facility.

As to your bullet points, we respond as follows:

- We believe your suggestion of completing the improvements within 3 years after obtaining all discretionary permits is too open-ended. We need to have a date certain, especially since someone looking from the outside may question why the improvements were never completed within the 1 year time period provided for in paragraph 41 of the Lease. As such, we again invite you to discuss the timing issue with your consultants and come up with a reasonable period for the completion of the improvements. Otherwise, we have inserted a drop-dead date of 6 years--which we think is more than reasonable to complete the improvements.<sup>1</sup>

<sup>1</sup> We came up with 6 years since your letter indicated that CCR could complete construction within 3 years of obtaining all entitlements. We believe CCR ought to clearly obtain all entitlements and permits at least in 3 years, if not earlier.

- We are agreeable to limiting the repairs to the new comfort station to nonstructural repairs not to exceed \$1,000 per repair, with an annual limit of \$5,000. And we agree that CCR will not be obligated to repair damages resulting from the State's original design or construction of the new comfort station, or the willful misconduct of others. We believe CCR ought to repair damages that may result from mere negligence or abuse, especially since we anticipate one of the main users will likely be guests or patrons of CCR's Manele Bay Hotel.

As such, we summarize as follows:

We will allow Castle & Cooke Resorts (CCR) additional time to complete the improvements (i.e., the 24 slips) as long as the improvements required under the Boating Lease are constructed no later than December 31, 2014, and CCR agrees to take on the repair and maintenance of certain improvements made by the State at the Manele Small Boat Harbor as listed below. We do understand the entitlement process and believe that six (6) years is more than reasonably sufficient to obtain the necessary permits, design and construct the required improvements.

The table below summarizes CCR and the State's repair and maintenance obligations as indicated in your March 25, 2008 letter.

Repair and Maintenance of the New Improvements:

Newly Constructed Improvements at Manele Small Boat Harbor	CCR Letter 3/25/08
New comfort station, maintenance, custodial/janitorial (i.e., cleaning, the stocking of adequate supplies, such as paper towels, bath tissue, etc. In addition, nonstructural repairs up to \$1,000 maximum per individual repair, with annual limit not to exceed \$5,000 for repairs. See Exhibit A. CCR shall not be obligated to repair damages resulting from the State's original design or construction of the new comfort station, nor shall CCR be obligated to repair damages resulting from the willful misconduct of others (such as an act of vandalism).	CCR
New comfort station, repair costs that exceed the \$1,000 maximum per individual repair; costs paid for by the State, repairs performed by CCR.	State
Ferry Boarding Shelter. See Exhibit A.	CCR
Road "A", "B". See Exhibit A.	CCR
Road "F". See Exhibit A.	CCR
Ferry parking area	State
Accessible and bus parking in Non-exclusive easement. See Exhibit A.	CCR
Ferry Boarding/station shelter	CCR
Water line "A" and "C", including fire hydrants, valves,	CCR

laterals and appurtenances. See Exhibits C & D.	
All other water lines, including fire hydrants, valves, laterals and appurtenances	State
Sewer line "B", including sewer manholes and appurtenance. See Exhibit B.	CCR
Sewer pump station, sewer lines from the sewer pump station to the Hulupoe Pump Station, including sewer manholes and appurtenances	State
Electrical conduits and lines, including lighting and outlets within the Premises and Easement area, from the new Administration building to the mini-park. See Exhibit E.	CCR
Telephone conduits and lines from the new Administration building to the mini-park.	CCR
Mini-park. See Exhibit F.	CCR

In addition, CCR will be required to install sub-meters and pay for electricity, water and sewer charges based on usage within the Premises, Non-exclusive easement area and areas maintained by CCR, including the new comfort station.

*ST*  
 Unless CCR can sub meter the new comfort station separately and in that case the State will pay the electrical & water for the new comfort station

Moreover, below are items we understood had been previously agreed to by the parties:<sup>2</sup>

1. CCR will be responsible to construct, operate and maintain previously proposed CCR Improvements, including but not limited to:
  - Fuel dock, dispensers, fuel lines and related improvements in the Premises;
  - Docks/piers, utilities and related improvements in the Premises;
  - Fuel tanks, fuel lines and appurtenances;
  - Landscaping along Road "A" and in the Non-exclusive easement.
  
2. In addition, CCR will be responsible to construct the following additional improvements in accordance with the subject Lease:
  - 15' X 50' pad for boat washdown or equivalent paved area;
  - 100' X 2' walkable surface on the rock groin or equivalent paved area.

Please note that we support in concept CCR's proposal to install, maintain and operate fuel facilities at Manele Small Boat Harbor. However, because the proposed fuel tanks are located outside of the Non-exclusive easement area, a separate lease agreement will be needed.

Please be aware that at least the Land Board will need to ratify the terms of our agreement as stated above; and we may need other approvals as required by law.<sup>3</sup>

<sup>2</sup> See, CCR's letter dated January 3, 2008, and the State's letter dated October 18, 2007.

Mr. Harry A. Saunders  
BOR-E 0428.08  
May 15, 2008  
Page 4 of 4

We thank you for your cooperation on this important matter and shared vision to make the Manele Small Boat Harbor into an attractive and hospitable entry point for the island of Lanai. Should you have any questions or comments, please do not hesitate to call me.

Sincerely,

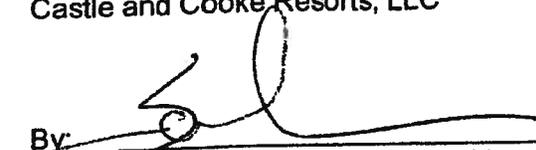


Laura H. Thielen,  
Chairperson

Agreed And Accepted:

Castle and Cooke Resorts, LLC

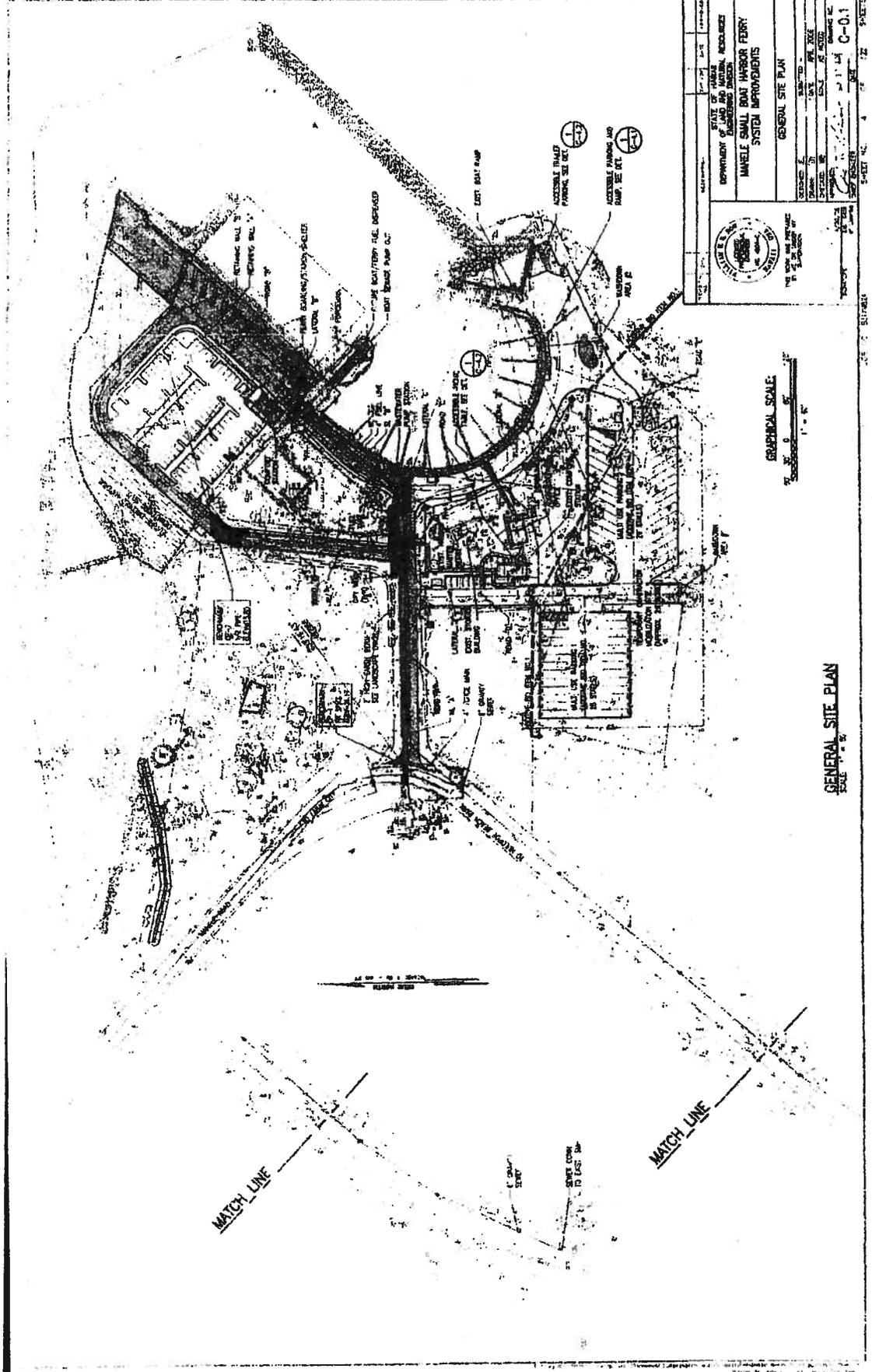
By

  
Harry A. Saunders, Its President

Timothy Hill Its Executive Vice President

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<sup>3</sup> We are still evaluating whether the agreed upon terms and conditions contained in this letter would require approvals under HRS 171-53.

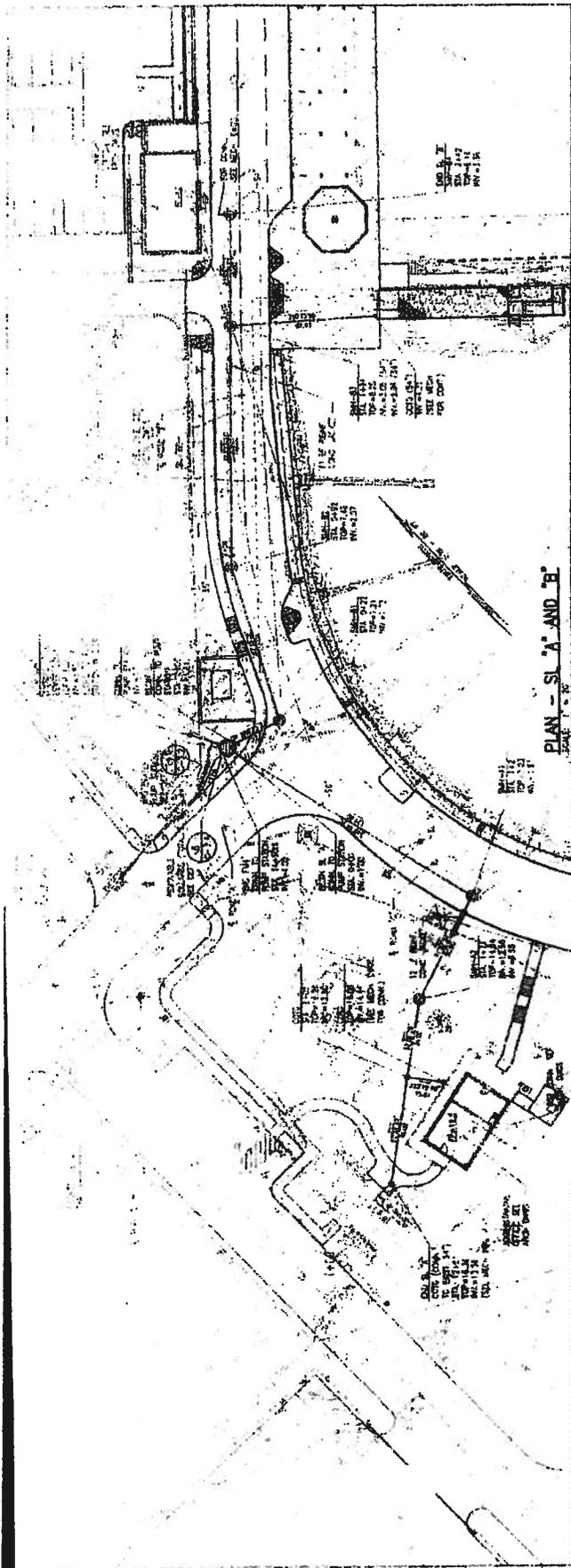


STATE OF MAINE DEPARTMENT OF TRANSPORTATION	
WAVELLE SMALL BOAT HARBOR FERRY SYSTEM IMPROVEMENTS	
GENERAL SITE PLAN	
DATE	NOV 19 1972
SCALE	1/8" = 1'-0"
PROJECT NO.	114 C-0.1
SHEET NO.	4 OF 72

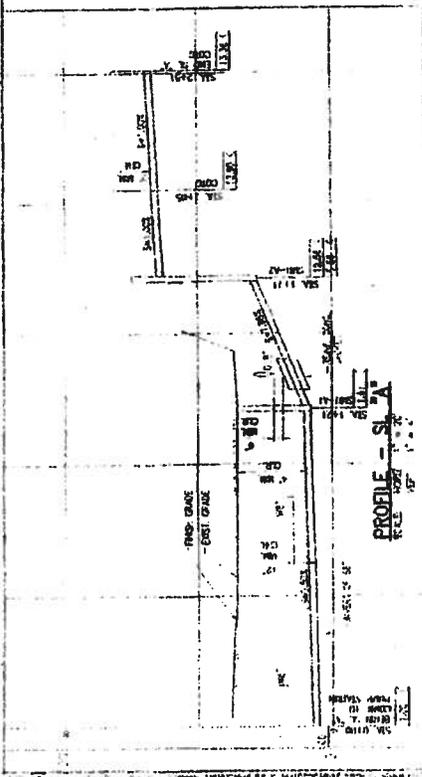
EXHIBIT A  
SCALE 1/8" = 1'-0"

EXHIBIT A

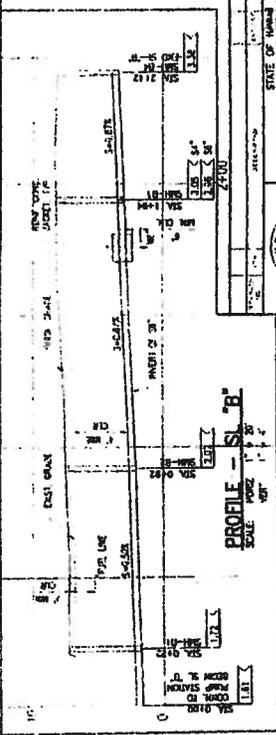
EXHIBIT A, General Site Plan, including sections of the dock, pier, green  
staging and Comfort Station, orange shading



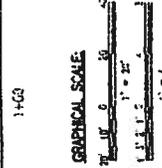
PLAN - S. A. AND B.



PROFILE - S. A.



PROFILE - S. B.



1:400

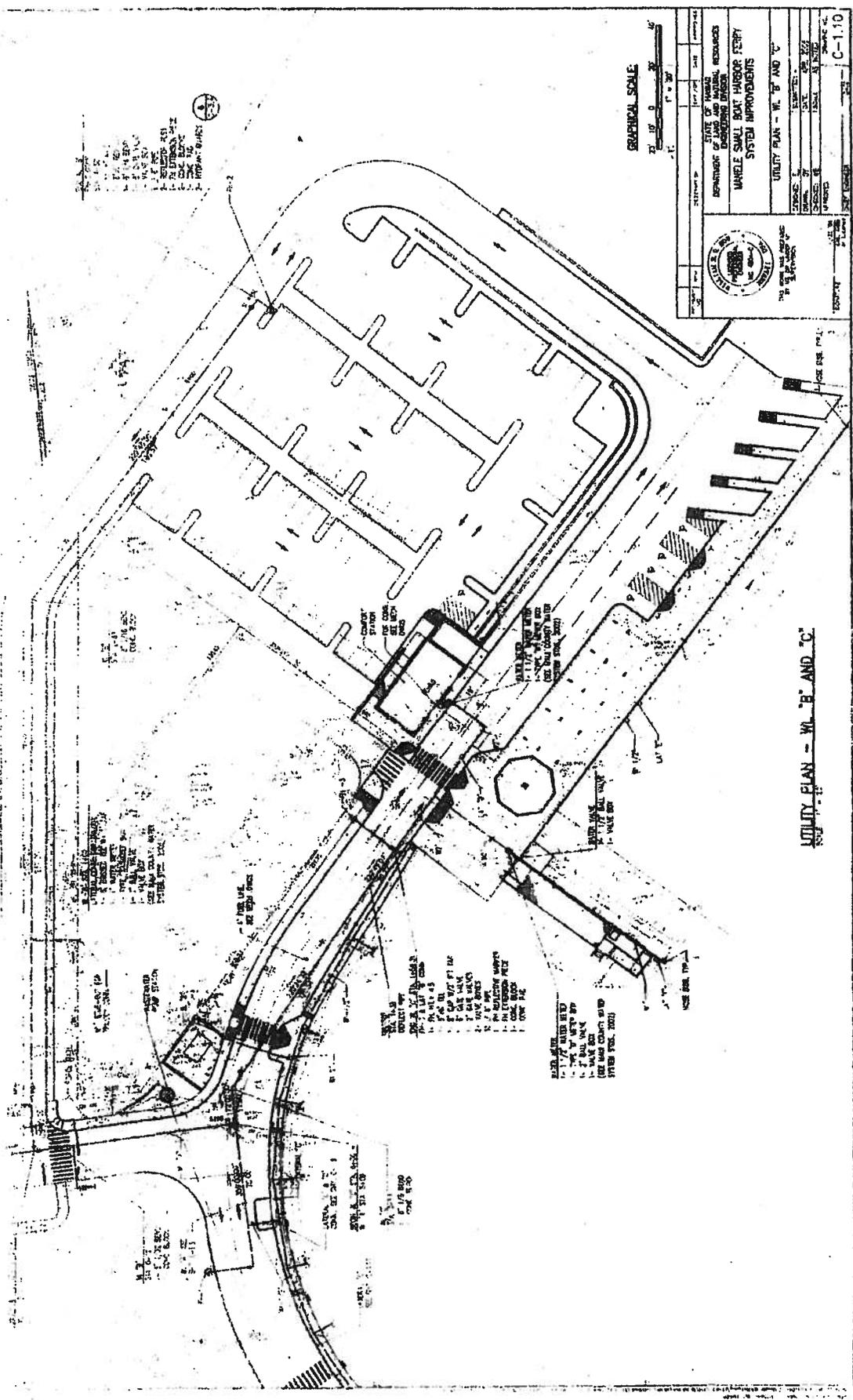
5-00

STATE OF MASSACHUSETTS DEPARTMENT OF PUBLIC WORKS MANVILLE SHARL BOAT HARBOR FERRY SYSTEM IMPROVEMENTS	
PLANS AND PROFILES - S. A. AND B.	DATE: 1925
DESIGNED BY: [Name]	CHECKED BY: [Name]
DRAWN BY: [Name]	APPROVED BY: [Name]
SCALE: AS SHOWN	SHEET NO. 12 OF 22
PROJECT NO. 1025-3	DATE: 1925

EX-275 Plan and Profile S. A. and B.  
 The drawing is a reproduction of the original drawing and is not to be used for construction purposes without the approval of the State of Massachusetts Department of Public Works.

EXHIBIT B





GRAPHICAL SCALE  
 1" = 20'

STATE OF NORTH CAROLINA DEPARTMENT OF LAND AND NATURAL RESOURCES MARINE SMALL BOAT HARBOR FERRY SYSTEM IMPROVEMENTS	
PROJECT NO.	10
DATE	10/22
SCALE	C-1.10
UTILITY PLAN - W. B. AND CO.	

UTILITY PLAN - W. B. AND CO.

Shows utility lines - W. B. and Co. indicating extent of  
 utility lines and other structures as shown in green shading

EXHIBIT D

NOTES:

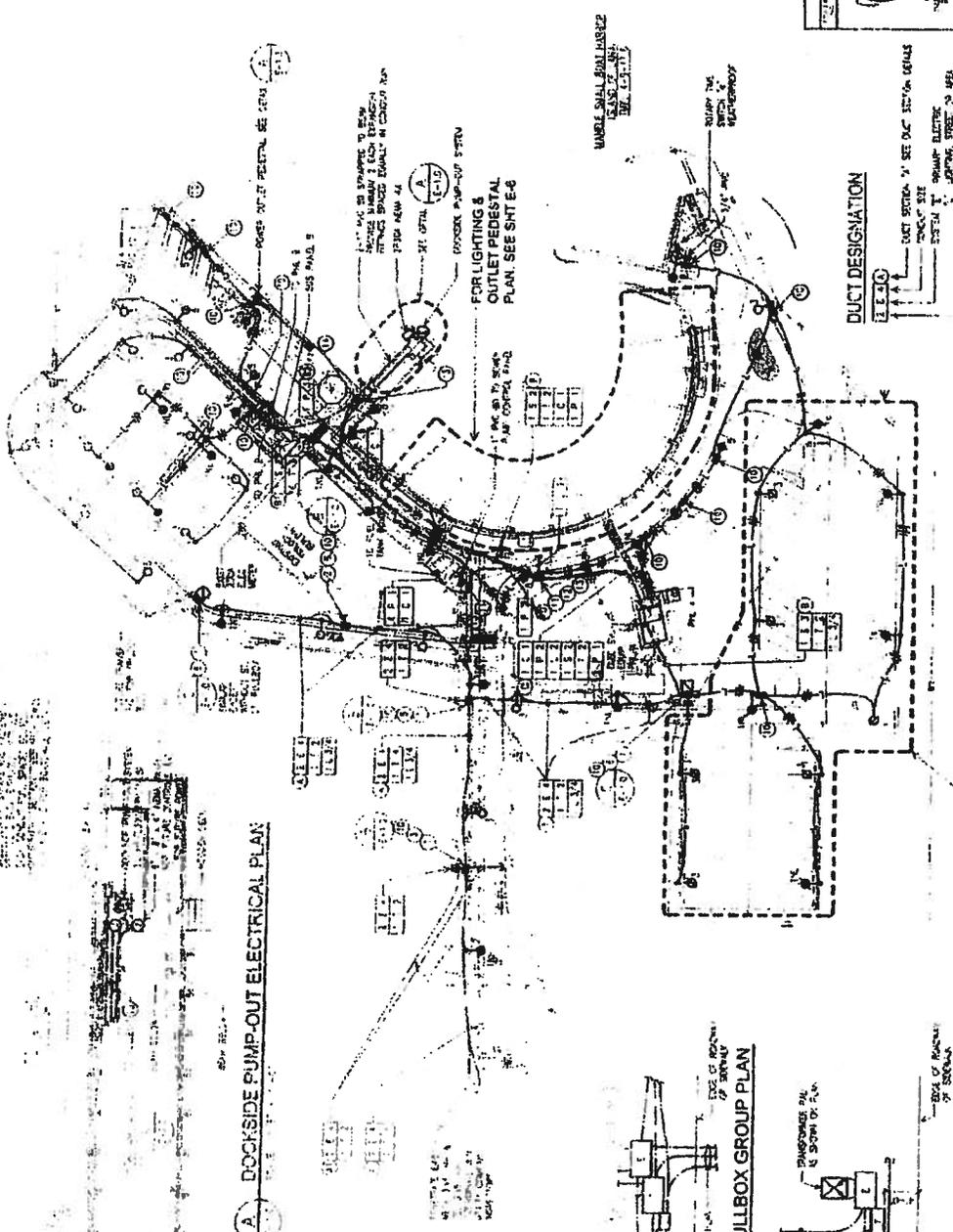
- 1. ALL ELECTRICAL WORK SHALL BE IN ACCORDANCE WITH THE NATIONAL ELECTRICAL CODE AS AMENDED BY THE STATE OF MARYLAND.
- 2. ALL ELECTRICAL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE STATE DEPARTMENT OF GENERAL SERVICES.
- 3. ALL ELECTRICAL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE STATE DEPARTMENT OF GENERAL SERVICES.
- 4. ALL ELECTRICAL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE STATE DEPARTMENT OF GENERAL SERVICES.
- 5. ALL ELECTRICAL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE STATE DEPARTMENT OF GENERAL SERVICES.
- 6. ALL ELECTRICAL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE STATE DEPARTMENT OF GENERAL SERVICES.
- 7. ALL ELECTRICAL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE STATE DEPARTMENT OF GENERAL SERVICES.
- 8. ALL ELECTRICAL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE STATE DEPARTMENT OF GENERAL SERVICES.
- 9. ALL ELECTRICAL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE STATE DEPARTMENT OF GENERAL SERVICES.
- 10. ALL ELECTRICAL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE STATE DEPARTMENT OF GENERAL SERVICES.

**PULLBOX SCHEDULE**

- 1. MEN 2 1/2" x 4"
- 2. MEN 2 1/2" x 4"
- 3. MEN 2 1/2" x 4"
- 4. MEN 2 1/2" x 4"
- 5. MEN 2 1/2" x 4"
- 6. MEN 2 1/2" x 4"
- 7. MEN 2 1/2" x 4"
- 8. MEN 2 1/2" x 4"
- 9. MEN 2 1/2" x 4"
- 10. MEN 2 1/2" x 4"

STATE OF MARYLAND  
 DEPARTMENT OF GENERAL SERVICES  
 MANELET SMALL BOAT HARBOUR  
 IMPROVEMENTS

PROJECT NO. 1  
 SHEET NO. 1  
 DATE: 10/1/78  
 DRAWN BY: J. L. BROWN  
 CHECKED BY: J. L. BROWN  
 APPROVED BY: J. L. BROWN



**A DOCKSIDE PUMP-OUT ELECTRICAL PLAN**

**B PULLBOX GROUP PLAN**

**C PULLBOX GROUP PLAN**

**DUCT DESIGNATION**

- 1. DUCT SYSTEM - SEE DUCT SECTION DETAILS
- 2. TRUCK SITE
- 3. SHAMP. ELECTRIC
- 4. OFFICE ELECTRIC
- 5. RECREATION ELECTRIC
- 6. POWER ELECTRIC
- 7. COMMUNICATIONS
- 8. OTHER

**SITE ELECTRICAL PLAN**

APPENDIX B TO THE ELECTRICAL SPECIFICATIONS FOR THE MANELET SMALL BOAT HARBOUR IMPROVEMENTS

EXHIBIT E



**Lānaʻi**  
RESORTS, LLC

May 28, 2013

Mr. Edward R. Underwood, Administrator  
Division of Boating and Ocean Recreation  
Department of Land & Natural Resources  
333 Queen Street, Room 300  
Honolulu, HI 96813

Re: General Boating Lease No. B-00-1 Default Rescission  
Manele Small Boat Harbor, Lanaʻi  
TMK No. (2) 4-9-17:06

Dear Mr. Underwood:

First let me thank you for the meetings and conversations to discuss the options for the reinstatement of General Boating Lease B-00-1 with DLNR/Division of Boating and Ocean Recreation (DOBOR). This lease was originally with Castle and Cooke Resorts (C&C). The Lanaʻi assets were subsequently purchased by Lanaʻi Resorts, LLC in 2012. Lanaʻi Resorts, LLC would like to reinstate the lease to good standing by rescinding the default that was noticed in December 2007.

The initial attempt to bring the lease back into compliance had as part of the terms to add twenty-four (24) boating slips to the Manele Small Boat Harbor, of which approximately nineteen (19) slips would be available to the Leasing Program and five (5) slips would be dedicated to the State of Hawaii for their use. There were further restrictions on who could lease the nineteen slips and the priority of who had first option.

Also included in the terms for compliance were the following for the Manele Small Boat Harbor (Premise):

1. Pave a 15' x 50' pad for a Boat wash down area on the south side of the harbor by the boat launch ramp;
2. Install a 100' x 2' walkable surface on the rock groin on the north side of the harbor adjacent to the Manele Small Boat Harbor;
3. Provide and maintain utilities, including but not limited to conduits, mains and other facilities necessary to provide the adequate telephone, electrical and water lines that C&C will designate; provided that should DOBOR require increased capacity for any of the utilities, all expenses related to the increased capacity will be at the sole cost of DOBOR;
4. Construct the following:
  - a. A comfort station, with all ongoing maintenance and supplies, and nonstructural repairs up to \$5K/year or \$1K/repair. If over \$1K/repair, the difference would be paid by DOBOR;
  - b. Ferry Boarding Shelter;
  - c. Roadways from main entrance road to ferry dock, along dock, and to/from elevated parking area;

- d. All water lines including fire hydrants, valves, laterals, and appurtenances;
  - e. All sewer lines, manholes and appurtenances, and sewer pump station to the Hulupoe Pump Station;
  - f. All electrical conduits and lines, lighting and outlets from the new Administrative building to the mini-park (which is the parking area and area at the end of the ferry passenger waiting area); and
  - g. All telephone conduits and lines, lighting and outlets from the new Administrative building to the mini-park.
5. Construct, operate, and maintain the following improvements:
- a. Fuel dock, dispensers, fuel lines and related improvements to the Premises;
  - b. Docks/piers, utilities and related improvements to the Premises;
  - c. Fuel tanks, fuel lines and appurtenances, and
  - d. Landscaping along roadways and along the ferry passenger waiting area.

All items listed in sections 1 through 5 have been completed, except for the fuel dock, tanks, lines, etc. that were not completed as there was negative reaction from the community. The community preferred to not have any fueling facilities at the harbor. We would want to have the communication with the community as to whether this fueling activity should be included, at a later date.

The twenty-four slips were also not put in place at the Manele Small Boat Harbor. In looking at the facilities over the last several months, this inclusion is not possible for two reasons. The first being that in laying out the space, it does not appear that twenty-four slips could be included. The second is that over the next two years, the 2011 Tsunami damage will be repaired in the harbor. The lease area will be used for the ferry service to/from Maui (Expeditions), the commercial tours by Trilogy, and the repair work. This is possible as DOBOR will be installing a floating dock system that is approximately one hundred fifty (150) feet in length and four (4) feet in width, that will be attached to the permanent dock.

Lana`i Resorts, LLC would like to move forward with bringing into compliance General Boating Lease B-00-1 by offering the following to remove the default:

1. We will pay the cost of the floating dock that will be used during the period of tsunami restoration at the harbor. The estimated cost is between Five Hundred and Six Hundred Thousand and 00/100 Dollars (\$500,000 to \$600,000);
2. We will continue to maintain the utilities (telephone, electrical, and water lines), docks/piers, related improvements to the Premise, and landscaping along the roadways and ferry passenger waiting area.
3. We will complete a topographical map of the harbor submerged floor with ocean species being indicated.
4. We will complete a cultural resource survey of the surrounding land areas of the harbor to determine if there are areas in which the harbor may be expanded by removing land mass. If the harbor can be expanded, we would come back to discuss the options with DOBOR and the approximate number of slips that could be available.
5. We would ask that any determination of slip availability at the harbor be finalized upon completion of the ocean species and topographical map, cultural resources survey, harbor expansion determination, and tsunami repairs.

Letter to Edward R. Underwood, DOBOR Administrator  
Rescission of Default for General Boating Lease B-00-1 Manele Small Boat Harbor, Lana'i  
May 28, 2013  
Page Three

We would ask that you accept this plan for reinstatement of General Boat Lease B-00-1 default, and that you schedule this plan for acceptance by the Board of Land & Natural Resources at your earliest convenience.

Thank you again for your assistance and that of Sherry Menze, Manele Small Boat Harbor Agent. Sherry has answered many questions and been very helpful in our understanding of the harbor issues and harbor community. Mahalo!

Me ke aloha pumehana  
With warm aloha,



Lynn P. McCrory  
VP of Government Affairs

C: Kurt Matsumoto, Lana'i Resorts  
Tamsen McCracken