

JOSEPH FAGUNDES, III 2701
Attorney at Law, A Law Corporation
P.O. Box 2609
Kailua-Kona, Hawaii 96745
Telephone: (808) 326-9831
Facsimile: (808) 326-9821

Attorney for PETITIONER

IN THE BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

In re: SARAH M. MACINNES

Petitioner

) CASE NO. _____
)
) **PETITIONER SARAH MACINNES'**
) **PETITION FOR ISSUANCE OF**
) **OFFSHORE MOORING PERMIT,**
) **VME AND KEAUHOU BAY**
) **MOORING PERMIT: DECLARATION**
) **OF SARAH M. MACINNES;**
) **EXHIBITS "A" - "F"; PROOF OF**
) **SERVICE**
)

**PETITIONER SARAH MACINNES' PETITION FOR ISSUANCE OF
OFFSHORE MOORING PERMIT, VME AND
KEAUHOU BAY MOORING PERMIT**

To: William Aila, Chairman and the Board of Land and Natural Resources:

COMES NOW PETITIONER SARAH M. MACINNES, by and through her undersigned attorney, Joseph Fagundes, III, Attorney at Law, A Law Corporation and respectfully petitions Chairman William Aila and this Honorable Board of Land and Natural Resources for relief from the adverse decisions of the Deputy Director Ed Underwood and to enforce the agreement made with Hawaii County District Manager Nancy Murphy, more particularly described below.

I. EXECUTIVE SUMMARY

This matter arises out of a dispute existing between Petitioner and the DLNR over:

- (1) Refusal to transfer title to the 38 foot vessel Kini Kini, registration number HA 1705 CP from EKA, LLC (owned by Petitioner) to Petitioner; and
- (2) Refusal to grant an offshore mooring and VME to Petitioner; and
- (3) Refusal to allow Petitioner a mooring permit for her vessel in Keauhou Small Boat Harbor.

Petitioner is the sole owner and manager of EKA, LLC, present owner of the Hawaiian Sailing canoe Kini Kini and permittee of an off shore mooring permit and VME in Kailua Bay, Kailua-Kona, Hawaii.

Petitioner was offered an offshore mooring in Keauhou Bay on September 7, 2012. Petitioner accepted the offer of mooring and proceeded to obtain a mooring permit for Kini Kini September 28, 2012. See copy of permits collectively attached as Exhibit "A" to the Declaration of Sarah M. MacInnes ("Declaration") appended hereto.

Thereafter, on advice of DLNR and, more particularly Deputy Director Ed Underwood, Petitioner obtained an off shore mooring in Kailua Bay, a Vessel Moored Elsewhere ("VME") permit and transferred the vessel Kini Kini to her wholly owned Limited Liability Company, EKA, LLC.

The Kailua Bay mooring is unprotected, while Keauhou Bay is a safe harbor. Petitioner must also burn fuel and hours of time unnecessarily to travel from Kailua Bay to Keauhou Bay each day to pick up passengers.

Petitioner seeks BLNR approval and mandate to (1) transfer the vessel Kini Kini from EKA, LLC to Petitioner, (2) to grant an offshore mooring permit to Petitioner to utilize EKA's surrendered offshore mooring in Kailua Bay, (3) issue a VME to Petitioner to operate commercially out of Keauhou Bay, and (4) to issue a mooring permit for Kini Kini to moor at Petitioner's Keauhou Bay offshore mooring while retaining her VME.

II. AUTHORITY FOR ISSUANCE OF REQUESTED RELIEF

The Hawaii Administrative Rules ("HAR") provide authority for issuing the requested relief to Petitioner. This petition is brought before the Chairman and BLNR

pursuant to HAR 13-1-11(e) and 13-1-27(a) and (k) seeking a declaratory order to terminate the controversy currently existing between DLNR (the "Department") and Petitioner as to the Department's refusal to issue the above described permits.

HAR 13-231-2 allows for issuance by the Department of an offshore mooring permit. HAR 13-235 which defines off shore mooring areas does not address Kailua Bay or Keauhou Bay. HAR 13-235-3(c) requires that a mooring permit be obtained from the Department in order to moor a vessel offshore.

The offer of Petitioner's mooring permit in Keauhou Bay was made pursuant to HAR 13-231-88(a) and Petitioner accepted the offer pursuant to HAR 13-231-88(b). A mooring permit for Kini Kini was issued. See Exhibit "A" to Declaration.

There are no limits on the number of off shore moorings in Kailua Bay. Likewise, there are no limits on VME permits for Kailua Bay. HAR 13-231-59(c) (4).

HAR 12-231-58(d) provides for a permittee holding a VME to continue to utilize such permit from a regular recreational mooring in the affected mooring area without the need to obtain a separate commercial permit for such mooring.

III. HISTORICAL BACKGROUND OF THE DISPUTE

Petitioner is the sole member and manager of EKA, LLC, a Hawaii Limited Liability Company ("EKA"). Petitioner is also the permittee of a regular offshore mooring in Keauhou Bay, County of Hawaii. EKA is the current owner of the 38 foot Hawaiian Sailing Canoe vessel Kini Kini, Hawaii Registration number HA 1705 CP. EKA holds an offshore mooring permit for Kailua Bay, Kona, Hawaii and a VME for the commercial operation of the vessel in Keauhou Bay. Petitioner's Keauhou Bay mooring is presently occupied by the tender for the Kini Kini.

On April 29, 2013 the undersigned counsel met with Hawaii District Manager, Nancy Murphy, to discuss Petitioner's plans for her vessel and operation. A letter dated April 29, 2013 was sent to the District Manager, per her request, outlining the Petitioner's desire and proposal. A true and correct copy of the April 29th letter from counsel to Ms. Murphy is attached to the Declaration as Exhibit "B". In response, counsel received a letter dated May

22, 2013 from Ms. Murphy, a copy of which is attached as Exhibit "C" to the Declaration.

As is shown on the response (Exhibit "C") Ms. Murphy either misunderstood the request (as there was no request for a transfer of membership interest—which Petitioner already owns—or of assets from EKA to MacInnes, nor was there a request for a commercial permit to be issued for Keauhou Bay). Given the apparent misunderstanding, a further meeting was held on May 29, 2013 with Petitioner, Ms. Murphy, and DLNR employees William Nahale and Daniel Mersburgh at the Honokohau Small Boat Harbor DLNR office. As a result of that meeting, an agreement was reached and as requested, the terms of that agreement were commemorated in a letter from counsel to Ms. Murphy dated May 30, 2013. A copy of said May 30th letter is attached as Exhibit "D" to the Declaration.

As is evident from the May 30th letter, a compromise transaction was struck between the Petitioner and the District Manager and her staff concerning the requests. On June 3, 2013, District Manager Murphy and on June 4, 2013 Deputy Director Underwood ("Underwood") explained their rationale for rescinding the agreement made between the parties on May 29th. A copy of the June 3-4, 2013 email thread is attached as Exhibit "E" to the Declaration.

Underwood has taken firm, unsupported positions and was:

- (1) unwilling to come back before this Board to approve Petitioner as one of the nine offshore permittees in Kailua Bay (note: such redesignation would not have increased the number of already permitted, permanent offshore moorings in Kailua Bay as Petitioner would be surrendering her existing mooring permit for Kini Kini under her company EKA);
- (2) unwilling to issue the VME to Petitioner and attempted to characterize the issuance of such VME as a corporate asset transfer, an inappropriate characterization (again, there are no limit to VME permits available for Kailua Bay and Keauhou Bay and since Petitioner would be surrendering EKA's existing VME, there would be no increase in traffic or congestion whatsoever);
- (3) trying to inappropriately question the size difference between Petitioner's tender which is holding her Keauhou Bay mooring and the Kini Kini. Underwood ignores the fact that Kini Kini is the same boat which was originally issued Petitioner's mooring in Keauhou Bay in September 2012 (see Exhibit "A" to the Declaration);

- (4) ignoring the specific rule which allows Petitioner's request by failing to acknowledge HAR 13-231-58(d) as the governing and relevant rule concerning VMEs being retained while the permittee is offered a regular mooring permit for the same harbor; and
- (5) Causing Murphy and her staff to rescind their agreement to meet the Petitioner's needs.

All in all, the Department, through the Deputy Director is shirking its responsibility to the boating public and to Petitioner in particular by failing to allow her the benefit of utilizing her mooring and permits in a manner which is both efficient and convenient. It defies logic that the Deputy Director would deny a commercially permitted operation from carrying out its business where there is absolutely no increased burden upon the Department or upon the resources of the State.

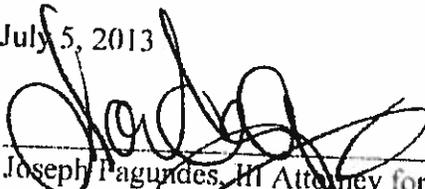
As a result, Petitioner is being forced to unnecessarily burn fuel and time to transit from Kailua Bay to Keauhou Bay each day to pick up passengers.

IV. CONCLUSION

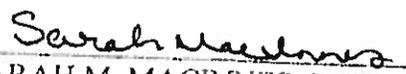
It is respectfully requested that the requests of Petitioner for the (1) transfer of her vessel from her LLC to her individually be granted, (2) that the Kailua Bay mooring permit presently issued to her LLC be surrendered and reissued to her personally, (3) that the VME presently issued to her LLC be surrendered and be issued to her personally, (4) and that she be allowed to move her vessel from the unprotected mooring in Kailua Bay to her assigned mooring in Keauhou Bay, on which mooring her vessel was originally placed.

There is no logical, logistical, safety, welfare or other reason for denying Petitioner's reasonable and legal requests.

Dated: Kailua-Kona, Hawaii July 5, 2013


Joseph Pagundes, HI Attorney for Petitioner
SARAH M. MACINNES

APPROVED AND RATIFIED:


SARAH M. MACINNES, PETITIONER

DECLARATION OF SARAH M. MACINNES

I, SARAH M. MACINNES, do hereby make this Declaration in support of my petition to the Chairman and Board of Land and Natural Resources of the State of Hawaii, and declare as follows:

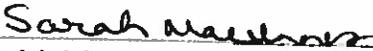
1. I have personal knowledge of and am competent to testify to the matters declared herein.
2. I am an individual resident of the District of North Kona, Island, County and State of Hawaii and my address is: 77-6559 Seaview Circle, Kailua-Kona, Hawaii 96740 and my phone number is: 808-756-2305.
3. I am the sole member and owner of the membership interest of EKA, LLC, a Hawaii Limited Liability Company ("EKA").
4. I am the permittee of a recreational mooring in Keauhou Bay since September, 2012.
5. Currently I have the tender for the vessel Kini Kini utilizing my mooring in Keauhou Bay.
6. On September 7, 2012 I was offered the mooring in Keauhou Bay. A correct copy of the letter offering me such mooring off the waiting list is attached hereto, marked Exhibit "F".
7. I accepted said offer of mooring and upon application for my vessel Kini Kini, a 38 foot Hawaiian Sailing Canoe holding current State of Hawaii registration number HA 1705 CP ("Kini Kini"), was granted a mooring permit effective September 28, 2012. A true and correct copy of the mooring permits issued to me and to EKA are attached hereto, collectively marked Exhibit "A".
8. On April 29, 2013 my attorney, Joseph Fagundes, III, and I met with Hawaii District Manager Nancy Murphy ("Murphy") to discuss my plans for Kini Kini and my operation. After said meeting my attorney sent a letter outlining those plans to Murphy, a true and correct copy of which is attached hereto, marked Exhibit "B".
9. By letter dated May 22, 2013 I received Ms. Murphy's response to our April 29th meeting, a copy of which letter is attached hereto, marked Exhibit "C".
10. On May 29, 2013 another meeting was held with Ms. Murphy at the Honokohau harbor office, attended by me, my attorney, my boyfriend Kalani Nakoa, Ms. Murphy, Harbormaster Daniel Mersburgh and Harbor Agent William Nahale.
11. During the May 29th meeting we reached an agreement with Ms. Murphy which was

commemorated in a letter from my attorney dated May 30, 2013, a copy of which is attached hereto as Exhibit "D".

12. Thereafter by emails dated June 3-4, 2013 my attorney received a response and rescission of the agreement struck on May 29th. A true and correct copy of the email thread dated June 3-4, 2013 is attached hereto, marked Exhibit "E".
13. I am currently burning fuel and spending many unnecessary hours traveling from Kailua Bay each day to pick up and drop off passengers at Keauhou Bay, where I already have a protected mooring.
14. Kailua Bay is an unprotected mooring and boats are lost each year from weather and wave action.
15. Granting the requested relief contained in this petition will not increase traffic or congestion in Keauhou Bay as my operation will remain the same within the bay.
16. If traffic and congestion in Keauhou Bay is truly a concern of DLNR, then why does the Department continue to issue unlimited ramp permits to all applicants for the use of Keauhou Bay launching ramp?

I make this Declaration under penalty of perjury and state that the contents hereof are true and correct to the best of my knowledge, belief and information.

Dated: Kailua-Kona, Hawaii July 5, 2013



Sarah M. MacInnes

PROOF OF SERVICE

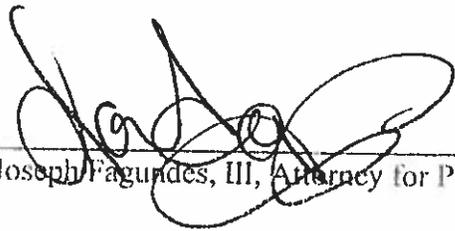
I hereby certify that a full copy of the within **PETITIONER SARAH MACINNES' PETITION FOR ISSUANCE OF OFFSHORE MOORING PERMIT, VME AND KEAUHOU BAY MOORING PERMIT: DECLARATION OF SARAH M. MACINNES; EXHIBITS "A" – "F"** was duly served by U.S. Mail, postage prepaid on July 5, 2013 to the following persons:

William Aila, Chairman
Board of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii 96813
(original and one copy)

Ed Underwood, Deputy Director
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
333 Queen Street, Suite 300
Honolulu, Hawaii 96813

Nancy Murphy
Hawaii District Manager
Honokohau Small Boat Harbor
74-380 Kealakehe Parkway
Kailua-Kona, Hawaii 96740

Dated: Kailua-Kona, Hawaii July 5, 2013



Joseph Fagundes, III, Attorney for Petitioner



DIVISION OF BOATING AND OCEAN RECREATION

Department of Land and Natural Resources, State of Hawaii
Honokohau Harbor

74-380 Kealahou Parkway, Kailua-Kona, HI 96740
Phone: (808) 327-3685 • Fax: (808) 327-3675



Effective Date: 09/28/2012

Permit Number: RM005908

Account Number: 00012370

PERMIT

MOORING

Keauhou, Hawaii

Permittee: MacInnes, Sarah M

Initial Issuance Date: 09/28/2012

Vessel Name: Kini Kini

Permit Expiration Date: 08/31/2013

Vessel Type: Other

Vessel Doc Type: Registration

Vessel Doc #: HA 9170 G

Vessel Use Type: Pleasure

Vessel Length Overall: 38 feet 0 inches

Mooring Type: Offshore mooring and anchoring on
Owner's own Buoy, or anchor

Berth Mooring #: OFFSHORE

Hull Multiplier: 1

Barge Rate: no

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

Daniel K. Mersburgh
HARBOR AGENT
Ph: (808) 327-3685
Fx: (808) 327-3675

Permittee Signature

EXHIBIT A



DIVISION OF BOATING AND OCEAN RECREATION

Department of Land and Natural Resources, State of Hawaii
Honokohau Harbor

74-380 Kealahou Parkway, Kailua-Kona, HI 96740
Phone: (808) 327-3685 • Fax: (808) 327-3675



Effective Date:

Permit Number:

Account Number:

PERMIT

MOORING

Keauhou, Hawaii

Permittee: Eka, LLC

Vessel Name: Kini Kini

Vessel Type: Other

Vessel Doc Type: Registration

Vessel Doc #: HA 9170 G

Vessel Use Type: Pleasure

Vessel Length Overall: 38 feet 0 inches

Mooring Type: Offshore mooring and anchoring on
Owner's own Buoy, or anchor

Berth Mooring #: OFFSHORE

Hull Multiplier: 1

Barge Rate: no

Initial Issuance Date:

Permit Expiration Date:

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

Daniel K. Mersburgh
HARBOR AGENT
Ph: (808) 327-3685
Fx: (808) 327-3675

Sarah K. ...
Permittee Signature

KONALAW

Joseph Fagundes, III Attorney at Law, A Law Corporation

P.O. Box 2609, Kailua-Kona, HI 96745-2609
P: 808-326-9831 F: 808-326-9821
E: joe@konalaw.com www.konalaw.com

April 29, 2013

VIA EMAIL AND HAND DELIVERY
nancy.e.murphy@hawaii.gov

Nancy E. Murphy, District Manager
DLNR-DOBOR
74-380 Kealahou Pkwy
Kailua-Kona, HI 96740

Re: Our client: Sarah MacInnes

Dear Nancy:

This is in follow-up to our meeting this morning with you and William Nahale of your office regarding our client's Keauhou Bay mooring and related issues. Thank you for the opportunity to get the permit straight on the Keauhou Bay mooring this morning, which is now in Sarah's name.

Attached to the hard copy of this letter are the original applications for a Mooring Permit and VME commercial permit in Kailua Bay for our client and her vessel Kini Kini, Registration No. HA 1705 CP. Also attached is the Certificate of Sale and Vessel Registration form transferring ownership of the SV Kini Kini from EKA, LLC to Ms. MacInnes together with her \$25 check for the fees. As I explained earlier, it is our desire to have the vessel, Kailua Bay mooring and Kailua Bay VME all issued in the name of Ms. MacInnes.

As you know, Ms. MacInnes also has a recreational mooring permit for Keauhou Bay. It is our intent to apply for the Kini Kini to be placed on the Keauhou Bay Mooring. At that point in time we request that the VME for Kini Kini in Kailua Bay follow the vessel to its mooring in Keauhou Bay pursuant to HAR 13-231-58 (d). Clearly under the cited rule, Ms. MacInnes' VME for Kailua Bay may still be used for operation of the Kini Kini from its anticipated mooring in Keauhou Bay irrespective of the limitation of 6 commercial permits for that harbor. As the rule explicitly states:

“(d) Except for Lahaina Harbor, the provisions of subsection (b) limiting the number of commercial permits which may be issued for vessels moored in a small boat harbor shall not preclude the owner of a vessel moored elsewhere holding a commercial permit for that small boat harbor from being issued a regular mooring permit for the small boat harbor (in this case Keauhou) and retaining the [Kailua Bay VME] commercial permit...” (bold emphasis added, bracketed geographical information included for clarity).

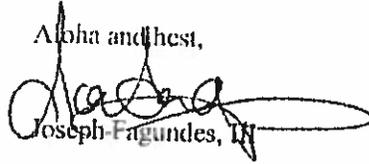
EXHIBIT B

Nancy E. Murphy
April 29, 2013
Page Two

I am of the opinion that the situation of Ms. MacInnes is precisely the reason for HAR 13-231-58 (d). This is not a situation where the rules **do not prohibit** issuance of the permits, rather this is a circumstance where the rule **specifically provides for granting the requested and intended result.**

By copy of this letter we are informing Mr. Nabale of this communication and requesting that he issue the permits and process the vessel transfer contemplated by the attached applications and documents. Further we respectfully request that your department issue a response consenting to and approving the methodology laid out above; (1) issuing the mooring permit for Kini Kini in Keauhou Bay and (2) allowing Ms. MacInnes to continue to operate the Kini Kini under the VME from its mooring in Keauhou Bay. While I am aware that you expressed reservations about the proposed methodology, I am confident we can agree that the plain, ordinary language of any rule which has existed since 1994 can, and must, be respected and followed.

Your prompt response and kind consideration to these requests will be greatly appreciated.

Aloha and hest,

Joseph Fagundes, III

cc: client

Mr. William Nabale william.k.nabale@hawaii.gov

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
ESTHER KIA'AINA
FIRST DEPUTY
WILLIAM M. TAM
DEPUTY DIRECTOR - WATER
EDWARD R. UNDERWOOD
ADMINISTRATOR
DIVISION OF BOATING AND OCEAN RECREATION

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

HAWAII DISTRICT OFFICE
74-380 KEALAKEHE PARKWAY
KAILUA-KONA, HAWAII 96740-2704

PHONE: (808) 327-3690 FACSIMILE: (808) 327-3675

May 22, 2013

Joseph Fagundes, III
Attorney at Law
P. O. Box 2609
Kailua-Kona, HI 96745-2609

Dear Mr. Fagundes:

We are in receipt of your April 29, 2013 correspondence concerning your client, Sarah MacInnes. We have reviewed your letter and your proposed changes concerning Ms. MacInnes and EKA, LLC and present the following:

Request: Transfer ownership from EKA, LLC, to Sarah MacInnes for the vessel, "Kini Kini", HA 1705 CP, along with the VME for same vessel presently moored in Kailua Bay offshore mooring area.

Response: Hawaii Administrative Rules, Part I, Section 13-231-61 (3)(c): A corporation must have been in continuous commercial operation as evidenced by the submission of monthly reports of gross receipts for a minimum of twelve months in order to retain use permits upon the transfer of any interest in that corporation. Eka, LLC, has only been in business since October 31, 2012; therefore, we are unable to approve any of the requests for transfer.

Request: Apply for the "Kini Kini", HA 1705 CP, a commercial registered vessel to be placed on the Keauhou Bay mooring.

Response: The Keauhou Bay offshore recreational mooring is held by Sarah MacInnes. The mooring in Keauhou is recreational so it cannot be used for commercial purposes. Keauhou Bay has reached its maximum commercial permits (6) and there is an existing waitlist.

Enclosed you will find Mc. MacInnes's check #1100 in the amount of \$25.00 along with the various applications attached to your letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nancy Murphy".

Nancy Murphy
Hawaii District Manager

Encs.

EXHIBIT **C**

KONALAW

Joseph Fagundes, III Attorney at Law, A Law Corporation

P.O. Box 2609, Kailua-Kona, HI, 96745-2609

P: 808-326-9831 F: 808-326-9821

E: joe@konalaw.com

www.konalaw.com

May 30, 2013

VIA EMAIL AND REGULAR U.S. MAIL
nancy.e.murphy@hawaii.gov

Nancy E. Murphy, District Manager
DLNR-DOBOR
74-380 Kealahou Parkway
Kailua-Kona, HI 96740

Dear Nancy:

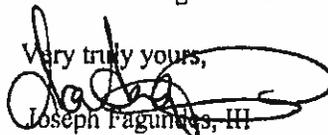
This is in follow up to our meeting yesterday at your conference room. In attendance were my client, Sarah MacInnes, her husband and skipper, Kalani Nakoa, Harbor Agent William Nahale and Harbor Master Daniel Mersburgh. We discussed Sarah's applications to: (1) register Kini Kini in her personal name, (2) apply for a mooring in Kailua Bay, and (3) apply for a VME from the Kailua Bay mooring to pick up passengers for charter in Keauhou Bay. William and Daniel verified that the issuance of the permits and the cancellation of the EKA, LLC permits would not increase the number of VMEs or offshore moorings over those currently existing. After our discussion you agreed to accept the applications and to issue the requested permits. We left the applications with you along with a \$20 check for fees. William noted that an additional \$10 fee would be necessary and Sarah agreed to pay that when she returns to sign and pick up the permits.

There had been a typographical error in the original permit issued for Kini Kini in EKA LLC's name so you asked that Sarah execute the revised permit, which she did. This permit is to be cancelled upon the issuance of the new permits in Sarah's personal name.

You inquired of Sarah if she understood that as a personal permittee (as opposed to a business entity) and owner of the vessel she is not currently able to sell the permits. Sarah replied that she did understand.

At this point we are waiting for William to notify Sarah of the preparation of the permits for her counter signature and issuance. As I mentioned, William should feel free to contact Sarah directly and not have to work through my office for that matter.

I believe this accurately recaps and confirms the discussions and agreements during our meeting yesterday. If any portion of the above conflicts with your understanding or memory, please notify me immediately. Thank you for your cooperation in moving this matter toward resolution.

Very truly yours,

Joseph Fagundes, III

Cc: client, William Nahale and Daniel Mersburgh (via email)

EXHIBIT D

Sarah Ferro

From: "Joseph Fagundes" <joe@konalaw.com>
To: "Sarah Ferro" <sarah@konalaw.com>
Sent: Wednesday, June 12, 2013 3:13 PM
Subject: Fwd: Eka, LLC - Sarah MacInnes
 For file

----- Forwarded message -----

From: <Ed.R.Underwood@hawaii.gov>
Date: Tue, Jun 4, 2013 at 12:24 PM
Subject: Re: Eka, LLC - Sarah MacInnes
To: Joseph Fagundes <joe@konalaw.com>
Cc: Sarah MacInnes <ekallic@hotmail.com>, joekonaiiii@gmail.com, Nancy Murphy <Nancy.L.Murphy@hawaii.gov>, William.K.Nahale@hawaii.gov, Daniel.K.Mersburgh@hawaii.gov

Aloha Mr. Fagundes,

We apologize for the delay in responding to your April 29, 2013 letter regarding the transfer of ownership of the vessel "KINI KINI" from EKA, LLC to Sarah MacInnes. We are working through several issues regarding Keauhou Bay and the new offshore moorings that will be installed in the Keauhou Bay small boat harbor. We were also working on formalizing the offshore moorings that are currently located within Kailua Bay.

In your letter, you requested to change the ownership of the vessel "KINI KINI" from EKA, LLC to Sarah MacInnes and cancel the offshore mooring permit and vessel moored elsewhere (VME) commercial permit currently issued to EKA, LLC for Kailua Bay and reissue the permits in Sarah MacInnes name. You state in your letter that your clients intent is to then relocate the vessel "KINI KINI" to Keauhou Bay and apply to place the vessel on her current mooring permit. You also request to transfer the VME permit currently issued to EKA, LLC to Ms. MacInnes for the vessel "KINI KINI" to be used from the offshore mooring in the Keauhou Bay small boat harbor.

As Nancy stated in her email, we have already gone before the Board of Land and Natural Resources (Board) to request to establish permanent offshore moorings in Kailua Bay and Ms. MacInnes was not on the list at the time the request was submitted to the Board. We do not plan on returning to the Board until the offshore mooring design for Keauhou is completed and implemented.

We have only issued one VME commercial permit for the Keauhou small boat harbor. We do not plan on issuing any new VME commercial permits for the harbor due to current congestion and vehicle parking issues. In order to transfer the VME commercial permit from EKA, LLC to Sarah MacInnes, EKA, LLC would have to have been in continuous operation for one year as evidenced by the submission of monthly gross receipts statements. See 13-231-61(c).

Sarah MacInnes offshore mooring permit for Keauhou is for a 14' motor boat. The vessel "KINI KINI" is a 38' double hulled sailing canoe with axillary power. According to 13-235-3(c), assignment to moor or anchor a vessel shall be in accordance with Chapter 13-231. 13-231-13(b)(1) states that a permittee can replace a vessel of appropriate characteristics. These two vessels are completely different and not of similar characteristics. We will not permit the transfer of vessels until such time as the offshore mooring design is completed and implemented and determine whether the vessel can be safely moored within the harbor..

13-231-58(b) limits the number of commercial permits assigned to vessels with permanent moorings to six for Keauhou Bay small boat harbor. All six commercial permits have been issued. Issuing a VME permit to Ms. MacInnes for her vessel moored within the Keauhou Bay small boat harbor would be in violation of the Hawaii Administrative Rules.

In your May 30, 2013 letter, you state that staff gave their approval to transfer the permits in question from EKA, LLC to Sarah MacInnes based on the information provided. However, I have instructed staff to deny this request until such time as the new offshore moorings are installed in the Keauhou Bay small boat harbor and the existing offshore mooring permits for Kailua Bay have been properly permitted with the Army Corp of Engineers.

Should you want to discuss this matter further, I can be reached at (808) 587-1966.

EXHIBIT E

Should you fail to renew your mooring request prior to the renewal date during this time your name will be dropped from the waiting list.

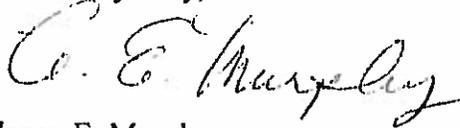
You are further advised that a satisfactory marine safety inspection must be completed before an annual mooring permit can be issued to ensure that your vessel meets the safety, maneuverability and sanitation requirements of the small boat harbor regulations.

Should you accept this offer, the mooring is not to be occupied until the vessel inspection, paperwork completed, and the following has been complied with:

- our office will work with you for the assignment of the location of the mooring;
- establish the longitude/latitude of the mooring;
- provide our office with the specs on the anchor type to be used;
- provide mooring-buoy-to-anchor schematic;
- BMP (Best Management Plan) you will implement before and during installation;
- use and maintenance activity

Should you have any questions, please feel free to contact our office.

Yours very truly,



Nancy E. Murphy
Hawai'i District Manager

Cc: Harbor Agent
Applicant's File

SENT BY CERTIFIED MAIL – RETURN RECEIPT REQUESTED



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

HAWAII DISTRICT OFFICE
74-380 KEALAKEHIE PARKWAY
KAILUA-KONA, HAWAII 96740-2704

PHONE: (808) 327-3690 FACSIMILE: (808) 327-3675

BOR-H 026.13

September 7, 2012

Ms. Sarah M. MacInnes
77-6559 Sea View Circle
Kailua-Kona, HI 96740

Dear Ms. MacInnes:

**RE: CONDITIONAL OFFER OF AVAILABLE MOORING PERMIT –
KEAUHOU BAY**

We are happy to inform you that an available location for an offshore mooring is available for your use in Keauhou Bay, which will accommodate your 20'-40' single hull vessel.

You are advised that Section 13-231-88, Small Boat Harbors Rules and Regulations, provides for the following:

- a) Intent to accept this conditional offer must be received by this office in writing within fourteen (14) days of your receipt of this offer;
- b) You must secure an annual mooring permit and your vessel must occupy the slip within fourteen (14) days after your acceptance of this offer;
- c) Your failure to follow these instructions will result in this conditional offer being rescinded and your name will be removed from the waiting list;
- d) An extension of time to comply may be granted upon presentation of evidence that such an extension is reasonable and essential to prevent undue hardship;
- e) If you refuse this offer, or do not respond, your name will be removed from the waitlist.

Just as information, each applicant is allowed one refusal when a berth is offered without jeopardizing his seniority on the waiting list. Refusal shall be made in writing to this office, and a second offer will be made not less than six (6) months later. If the second offer is refused, your name will be dropped from the waiting list. In addition, should your mooring request renewal date expire during this period, be sure to submit your renewal form along with the renewal fee.

EXHIBIT **E**

