

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

January 24, 2014

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

APPROVE PETITION FOR DECLARATORY RULING AND AUTHORIZE THE  
CHAIRPERSON TO ISSUE AN ORDER SETTING A DEADLINE FOR FURTHER  
BRIEFING AND A DATE FOR ORAL ARGUMENT REGARDING THE PETITION  
FOR A DECLARATORY RULING FROM SARAH M. MACINNES FOR THE  
TRANSFER OF AN OFFSHORE MOORING PERMIT FOR KAILUA BAY, HAWAII  
AND VESSEL MOORED ELSEWHERE COMMERCIAL USE PERMIT FOR  
KEAUHOU BAY, HAWAII

**BACKGROUND:**

The Department received a petition for declaratory ruling regarding the transfer of a vessel moored elsewhere (VME) commercial permit and offshore mooring permit (Exhibit A). The petition for declaratory ruling is requesting that the VME commercial permit and offshore mooring permit be transferred from EKA LLC to Sarah M. MacInnes.

Ms. MacInnes has been issued an offshore mooring permit for a 14-ft. runabout in the Keauhou Bay small boat harbor (KBSBH) in her personal capacity. Ms. MacInnes also owns the corporation EKA, LLC. EKA LLC has been issued an offshore mooring permit for Kailua Bay as well as VME commercial permit for the use of the KBSBH loading dock for a vessel known as the "KINI KINI".

Ms. MacInnes, through her attorney, Joseph Fagundes, III, requested to transfer the offshore mooring permit for Kailua Bay, Hawaii, from EKA, LLC into Ms. MacInnes' personal name, transfer the VME commercial use permit for KBSBH from EKA, LLC into Ms. MacInnes's personal name, and change the vessel currently assigned to Ms. MacInnes's offshore mooring in KBSBH from a 14-ft. runabout to a 44-ft. outrigger sailing canoe.<sup>1</sup> The division denied the requests to transfer permits from EKA to Ms. MacInnes because the DOBOR rules do not allow a transfer of use permits from a corporation or other business entity to an individual. HAR § 13-231-62(b)(2)(B).

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<sup>1</sup> The declaratory petition does not request to change the vessel associated with Ms. MacInnes' s offshore mooring permit in KBSBH from the runabout to the canoe.

Approve Petition For Declaratory Ruling And  
Authorize The Chairperson To Issue An Order Setting A  
Deadline For Further Briefing And A Date For Oral  
Argument Regarding The Petition For A Declaratory Ruling  
From Sarah M. MacInnes For The Transfer Of An Offshore  
Mooring Permit For Kailua Bay, Hawaii And Vessel Moored  
Elsewhere Commercial Use Permit For Keauhou Bay, Hawaii

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The division also denied the request to change the vessel assigned to Ms. MacInnes's offshore mooring in KBSBH. The division is in the process of engineering, permitting and installing new offshore moorings for the KBSBH. The division is not approving new offshore moorings or amendments to the existing offshore moorings until such time as the new offshore moorings are installed. The design for the new moorings is complete. The division has applied for the Army Corps of Engineers permit. Upon receipt the project will go to bid and may be done by later in 2014.

The division also notes that the end result of Ms. MacInnes's requests would be to relocate the commercial vessel "KINI KINI" from offshore mooring in Kailua Bay (on EKA's permit) to offshore mooring in KBSBH (on Ms. MacInnes's permit). DOBOR rules currently limit the number of vessels that are permanently moored in KBSBH to six. HAR § 13-231-58(b). There are already six commercial vessels at KBSBH.

Although DOBOR disagrees with the position taken in the petition, the division agrees that the matter may be decided by the Board. Staff, therefore, requests that the Board approve the petition and authorize the Chairperson to set a deadline for further briefing from the petitioner and a date for oral argument before the Board.

RECOMMENDATION:

That the Board approve the petition and authorize the Chairperson to set a deadline for further briefing and a date for oral arguments from the petitioner.

Respectfully submitted,



Edward R. Underwood  
Administrator

Attachment: Exhibit A

APPROVED FOR SUBMITTAL:



William J. Aila, Jr.  
Chairperson and Member