

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

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

STATEWIDE

DELEGATION OF AUTHORITY TO ISSUE RIGHT-OF-ENTRY PERMITS ON  
STATE LANDS AND FACILITIES UNDER THE JURISDICTION OF  
THE DIVISION OF BOATING AND OCEAN RECREATION

BACKGROUND:

As landowner, the Department of Land and Natural Resources, Division of Boating and Ocean Recreation (DOBOR) receives numerous requests for the short term temporary use of public lands for a variety of purposes. These requests range from a few hours to 30 days. These requests are for sites on lands encumbered by way of executive order under the jurisdiction of DOBOR. Some of these requests include but are not limited to the following uses:

- Beach activities - surf meets, beach weddings, beach Olympics, volleyball tournaments, swim races, triathlons, canoe races, fishing tournaments, special events, and funerals
- Scientific, engineering or archaeological studies, soils investigations or surveys
- Storage of construction materials or equipment for abutting property
- Land and building maintenance activities on State land or abutting private property
- Filming of movies or television shows
- Construction and management, maintenance, demolition, debris removal, tree trimming
- Salvage operations, temporary roadway access/pass through,
- Emergency operations, helicopter landing site for special events, service vehicles
- Miscellaneous - fireworks display, geography field trips

There are three main instances in which the Department issues Rights-of-Entry Permits (ROE):

- 1) ROE to enter public lands encumbered by a lease, executive order, or other encumbrance. Staff obtains approval from the Board of Land and Natural Resources (Board) for these requests.
- 2) ROE for construction and/or management that precede a land disposition, e. g., set aside, lease, or utility easement. Normally, these requests are approved at the same time the disposition is approved.

- 3) ROE unencumbered public lands for a minor, temporary use that does not involve a land disposition to enter. These ROE are issued by the Chairperson.

DEFINITIONS:

**A. Right-of-Entry Permit**

Staff would like to clarify the use of terminology. Staff is unsure as to where the term ROE first arose. There is no reference to ROE in either Hawaii Revised Statutes (HRS) Chapter 171, or real estate dictionaries. In standard real estate terminology, it would appear we are granting "licenses." According to "The Language of Real Estate" by John W. Reilly, a license is a "permission or authority to do a particular act on the land or property of another, usually on a nonexclusive basis. A license is a personal, revocable and nonassignable right, but unlike an easement, it is not considered an interest in the land itself."

In Chapter 171, HRS, however, a "license" specifically refers to granting a privilege to enter land to remove some sort of material (e.g., sand, timber, soil, rock, etc.). Furthermore, the authority to issue the right to temporarily use State land is established under Section 171-55, Permits. Therefore, staff is recommending that we clarify the terminology by calling them ROE and define this term as an expressed, temporary right to enter State land for a specified purpose that is in writing.

**B. "Activity" or "Use"**

A wide spectrum of activities occurs on DOBOR property. There are so many varying uses that the question arises of what uses or activities should require a ROE. For areas that the public is not allowed access to, it is clear that any temporary activity or use would require a ROE.

For lands where the public is invited, we have been advised by the Department of the Attorney General that ROE may be required only when an applicant desires to have exclusive use of a certain area or desired to engage in an activity that is otherwise restricted pursuant to rule. A ROE authorizes the permittee to exclude others from the designated area or engage in the restricted activity. If a person or organization does not obtain a permit from the Department, they have no right to keep others out of the area.

AUTHORITY:

Pursuant to HRS § 171-55, the Board of Land and Natural Resources (Board) may: "issue permits for the temporary occupancy of state lands or an interest therein on a month-to-month basis by direct negotiation without public auction, under conditions and rent which will serve the best interests of the State, subject, however, to those restrictions as may from time to time be expressly imposed by the Board."

Pursuant to HAR § 13-231-3 (a)(9), a Miscellaneous Permit is defined as: “A use Permit which authorizes use of a small boat harbor or an offshore mooring for other purposes as may be authorized by the department in its use permit and is consistent with these rules and applicable laws.”

## ANALYSIS:

### **A. Variables to Impact Delegation of Authority to Issue ROE’s:**

Taking into consideration the parameters under which ROE’s are issued, staff identified the following variables which may affect the delegation of authority:

1. Type of Activity: Temporary use permits are intended to grant permission to enter the premises to perform a particular activity, to exercise a certain privilege or to carry on a particular business. Activities with greater liability or risks to the State should be approved at higher levels.
2. Length of Use: Temporary use Permits are intended for temporary uses. The longer the duration of the activity, (e.g. in excess of 30 days) the more factors come into play, e.g. risk, liability. Therefore, we are recommending the longer the term of use, the higher the approval level.
3. Impact on Resource and on Public Access and the Enjoyment of Public Lands. The greater the impact on the resources and on public access, higher approval level should be obtained.
4. Emergency Nature of Activity: Public health and safety concerns should be accounted for in the delegation of authority to ensure that the Department can act promptly and appropriately in emergencies.

In certain cases the Chairperson may deem that a specific request may be of scale, type or impact on the public resources that the applicants request should be brought before the Board for approval.

DOBOR requests the Board delegate authority to the Chairperson, and to DOBOR at various levels, to issue ROE’s for the temporary uses as described above, pursuant to Section 171-55, HRS, for public lands under the management of the Division of Boating and Ocean Recreation. The levels of delegation of authorization are proposed and provided in the recommendations section below.

### **B. Rent**

Should there be a monetary gain from the use of state lands under the jurisdiction of DOBOR, the rent shall be \$.25 per square foot with a minimum rent of \$100.00 per day.

There are certain types of uses which may not warrant charging rent, including engineering, scientific, surveys, or possibly educational field trips or school sports events such as swimming or paddle sports. Staff is recommending that the Chairperson have the authority to waive the rent in these cases.

RECOMMENDATION:

That the Board:

1. Delegate authority to the Chairperson, DOBOR Administrator, DOBOR Planning and Coordination Office and DOBOR District Managers to issue ROE's on behalf of DOBOR pursuant to HRS § 171-55 for public lands under the jurisdiction and management of DOBOR:
  - a. The Chairperson shall have the authority to issue ROE's for uses that are:
    - 1) On encumbered State land to DOBOR;
    - 2) Any length in duration;
    - 3) Address an emergency situation; or
    - 4) Otherwise necessary to serve the best interests of the State.
  - b. The DOBOR Administrator shall have authority to issue ROE's permits for uses that are:
    - 1) Encumbered State land to DOBOR;
    - 2) Do not involve a land use in the Conservation District;\*\*\*
    - 3) No more than one month in duration;
    - 4) Pose minimal liability to the State; and
    - 5) Have minimal impact on resources and on public access and enjoyment of public lands.
  - c. Authority to issue temporary use permits shall be delegated to the DOBOR Property Management Section and District Managers for uses that are:
    - 1) On encumbered State lands to DOBOR; and
    - 2) No more than one week in duration; and
    - 3) Pose minimal liability to the State; and
    - 4) Have minimal impact on resources and on public access and enjoyment of public lands.

2. Establish the rent for ROE's at \$0.25 per square foot per day with a minimum of \$100.00, provided that the rent may be waived for:
  - a. Any government-related project;
  - b. Uses where no entity involved in the use intends to profit monetarily; or

Respectfully submitted,



Edward R. Underwood  
Administrator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr.  
Chairperson