



## **I. EXECUTIVE SUMMARY AND STATEMENT OF FACTS**

This matter arises out of a dispute existing between Petitioner and the DEPARTMENT over a Refusal to issue the commercial and mooring permits offered to Petitioner by letters of January 28<sup>th</sup> and 29<sup>th</sup>, 2013.

Petitioner was offered a mooring permit from the waiting list for slip number 31 in Honokohau Small boat Harbor by letter dated January 28, 2013. See Exhibit "A" to the Declaration of Petitioner Margaret E. Brown ("Declaration"). On January 29, 2013 by separate letter, Petitioner was offered a commercial permit to conduct commercial activities from Honokohau Slip number 31. See Exhibit "B" to the Declaration. Petitioner accepted the offered permits by letter dated February 4, 2013. See Exhibit "C" to the Declaration. An extension of time to obtain the permits was granted to Petitioner by the Department's Hawaii District Manager, Nancy Murphy, by separate letters dated February 5, 2013. See Exhibit "D" to the Declaration.

Thereafter, Petitioner submitted applications for issuance of the offered mooring and commercial permits together with the additional substantiating documents. See Exhibit "E" to the Declaration.

On May 25, 2013, Petitioner received a telephone message from Harbor Attendant William Nahele, advising that Petitioner needed to provide a copy of the Articles of Organization of her wholly owned limited liability Company, Maggie B, LLC, and to come into the Honokohau office to sign her new permits for slip 31. See Declaration at paragraph 10.

Thereafter Petitioner was informed that the Department would not issue the commercial and mooring permits offered. See Declaration at paragraphs 11 and 12.

Petitioner seeks BLNR approval and mandate to have the Department issue the permits offered to and timely accepted by Petitioner.

## **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.

The offer of Petitioner's mooring permit in Honokohau was made pursuant to HAR 13-231-88(a) and Petitioner accepted the offer pursuant to HAR 13-231-88(b). A mooring permit was timely applied for. See Declaration, paragraphs 4-6. The other pertinent rules concerning this dispute are as follows:

**13-231-80 (c)**

(c) Since each berth and each vessel presents unique ship handling and other peculiar berthing problems in relation to the small boat harbor, **the department reserves the right to utilize its fair and impartial judgment, flexibility, and discretionary authority to allocate berths based upon its knowledge** of available facilities, prevailing small boat harbor conditions, safe boating practices, effective harbor management procedures, and other factors which must be thoroughly considered prior to acceptance of an application and allocating a berth to a vessel...

**13-231-81(b)(2)**

(2) An application **shall continue in full force and effect for a period ending one year from the effective date of the application** except as provided in paragraph (3), unless sooner terminated in accordance with these rules. An application is void after the date of expiration indicated thereon.

**13-231-82**

(a) The department shall examine and determine the genuineness and regularity of each application for a mooring or other small boat harbor use permit and may conduct any investigation as may be deemed necessary for its examination and determination; and it may require additional information from the applicant as may be necessary to determine the genuineness and regularity of the application.

(d) Upon rejection of an application, **the department shall inform the applicant, in writing within a reasonable time, that the person's application has not been accepted for consideration and has been rejected and the reasons therefor.** The applicant shall be afforded the opportunity to submit a new application upon the correction of deficiencies cited in the notification of rejection of the original application.

13-231-87

(a) When an offer of a regular mooring permit to use a berth, as provided for in this subchapter, the department shall deliver the offer or send it by certified mail, return receipt requested, **addressed to the applicant eligible to receive the offer pursuant to this subchapter** at the post office address furnished to the department in writing by the applicant.

It is relevant to note that although priority is discussed in HAR 13-281-81(b)(1), there is no rule which specifically discusses or mandates how waiting lists are handled or whether an applicant for a mooring and/or commercial permit can have their identity changed, as here, at the discretion of the Department.

### III. HISTORICAL BACKGROUND OF THE DISPUTE

Petitioner is an individual resident of Kailua-Kona, District of North Kona, Island County and State of Hawaii. Petitioner has been involved in commercial maritime activities for decades in Kona through Kailua Bay permittee Kanoa, Inc. ("Kanoa"). She is the sole member and manager of Maggie B, LLC, a Hawaii Limited Liability Company ("LLC") which was formed in consultation with the Department to serve as the permittee of the permits in this dispute before the Board.

Since approximately 1995, Petitioner has been an applicant for a mooring and commercial permit in Honokohau Small boat harbor. Initially she applied under Kanoa. In 2010, upon applying to renew her mooring and commercial permit applications, Petitioner was informed by the Department's harbor agent that she had to be listed on the waiting list in her individual name, not under Kanoa. See Declaration at paragraphs 16-17. On the April 7, 2010 Mooring Request Application, the harbor agent revised the date of the original mooring request to April 10, 1995. See yellow highlighted portion of Exhibit "F" attached to the Declaration. On the November 18, 2010 Commercial Use Permit application, the harbor agent revised the name of the applicant from Kanoa Inc. to **Maggie Brown** in his own handwriting. See yellow highlighted portion of Exhibit "G" to the Declaration and paragraph 17 of the Declaration. Thereafter Petitioner continued to submit her annual renewal

applications as she had been directed. Each such application from 2010 through 2013 was accepted by the department, receipted and noted on the Honokohau waiting list. There has never been a rejection of an application from Petitioner pursuant to HAR 13-231-82(d).

The process of being offered and accepting the offer of the permits became a binding agreement or contract between the Department and the Petitioner. In reliance on that contract Petitioner went on to spend thousands of dollars forming the LLC, obtaining a vessel, obtaining commercial charter insurance, and preparing to move the vessel into the slip. The elements of a binding contract in the State of Hawaii are: (1) an offer and (2) an acceptance Earl M. Jorgensen Co. v. Mark Constr., 56 Haw. 466, 540 P.2d 978, 1975 Haw. LEXIS 121, 17 U.C.C. Rep. Serv. (Callaghan) 1126 (Haw. 1975) The terms of a mooring and commercial permit are very well known and clear to both the Petitioner and to the Department, as they are defined by Statute and Rule; there was clearly a meeting of the minds as to the matters covered by the offered and accepted permits.

The offer is clearly made in Exhibits "A" and "B". The acceptance is clearly made in Exhibit "C". The consideration on the part of the Petitioner was the payment of the permit fees and the expenditure of thousands of dollars in reliance upon the contract.

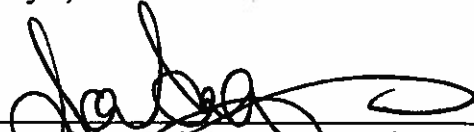
Apparently the dispute began when a Honokohau Harbor DLNR staff member reported the District Manager to the Honolulu Boating office, complaining that the Manager had mishandled the Petitioner's permit situation. At that point the District Manager notified Petitioner that the Department was not going to issue her the permits. See Declaration at paragraph 12. No one from the public, including Petitioner, should not be a pawn in any dispute among and between the Department's staff.

Petitioner engaged the undersigned counsel to look into the matter and to seek the permits first through the District Manager then through Deputy Director Ed Underwood. In response to telephone discussions and letter of June 6, 2013, the Department offered to (1) not enforce the June 4, 2013 deadline to obtain the permits and put the vessel in the slip and (2) to issue the permits in the name of Kanoa, which was no longer on the waiting list. See Declaration of Joseph Fagundes, III and Exhibits 1 and 2 thereof.

**IV. CONCLUSION**

It is respectfully requested that the requests of Petitioner for issuance of her commercial and mooring permits for slip 31 in Honokohau Harbor be granted as offered and as accepted.

Dated: Kailua-Kona, Hawaii July 9, 2013



Joseph Fagundes, III Attorney for Petitioner  
MARGARET E. BROWN

APPROVED AND RATIFIED:



MARGARET E. BROWN, PETITIONER

## **DECLARATION OF MARGARET E. BROWN**

I, MARGARET E. BROWN, 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: 77-6372 Halawai Street, Kailua-Kona, Hawaii 96740 and my phone number is: 808-895-5959.
3. I am the sole member and owner of the membership interest of Maggie B, LLC, a Hawaii Limited Liability Company ("LLC").
4. On or about January 30, 2013 I received an offer for a mooring in Honokohau Small Boat harbor from the waiting list. A true and correct copy of said offer is attached hereto, marked Exhibit "A" and is incorporated herein by this reference.
5. On or about January 30, 2013 I received an offer for a commercial permit in Honokohau Small Boat harbor from the waiting list. A true and correct copy of said offer is attached hereto, marked Exhibit "B" and is incorporated herein by this reference.
6. By letter dated February 4, 2013 I accepted the offered mooring and commercial permit. A true and correct copy of said acceptance is attached hereto, marked Exhibit "C" and is incorporated herein by this reference.
7. By letter dated February 5, 2013 I was granted my requested extension of time to obtain permits and place the vessel in the slip. A true and correct copy of said February 5, 2013 letter is attached hereto, marked Exhibit "D" and is incorporated herein by this reference.
8. Thereafter I proceeded to obtain a vessel by lease, make arrangements for insurance and paid the permit fees to submit to DLNR-DOBOR. In consultation with the Department I undertook to form Maggie B, LLC to take title to the permits.
9. On or about May 13, 2013 I submitted the package of applications and supportive documentation to the Department. A true and correct copy of documents submitted (not including my checks) are attached hereto, marked Exhibit "E" and is incorporated herein by this reference.
10. While I was off island during the month of May, 2013, I received a phone message from DLNR Harbor Agent William Nahale informing me that the Department needed a copy

- of the Articles of Organization for my Maggie B, LLC and asking that I come into the Honokohau office to sign the mooring permit for slip 31 and the commercial permit.
11. Thereafter I received a phone call telling me that there was a problem with issuing my permits.
  12. I was told by Nancy Murphy that one of the Honokohau DLNR Staff members had called the Honolulu DLNR office to report that the District Manager had mishandled my offer of permits from the waiting list and that now the permits cannot be issued in my name as offered.
  13. I asked counsel to follow up on and attempt to obtain my permits.
  14. I was informed that because my other company, Kanoa, Inc. had originally been on the waiting list that it was not proper to issue the permits to me in my personal or in my LLC's name.
  15. I informed DLNR that the change in the permittee on the applications was done by DLNR's harbor agent in 2010, of his own volition and that he had told me Kanoa, Inc. couldn't be listed on the waiting list.
  16. On April 7, 2010 DLNR Harbor Agent Pat Ryan had me make revisions to the renewal application for my mooring permit. He explained to me that I had no choice and that due to a new law the applicant on a waiting list had to be in an individual's name and couldn't be in company name. A true and correct copy of said April 7, 2010 application, with a highlighted change in the handwriting of the harbor agent is attached hereto, marked Exhibit "F" and is incorporated herein by this reference.
  17. On November 18, 2010 a similar thing happened when I went to the Honokohau DLNR office to renew my annual commercial permit application. This time the harbor agent actually changed the name of the applicant from Kanoa to Maggie Brown in his handwriting and accepted the application together with my application fee. A true and correct copy of said November 18, 2010 application, with a highlighted change in the handwriting of the harbor agent is attached hereto, marked Exhibit "G" and is incorporated herein by this reference.
  18. From that year forward, I have continued to file my mooring and commercial permit wait list applications in accordance with the instructions from the Harbor Agent who made the handwritten changes.



19. Each annual renewal application and the fees thereon have been accepted by the Department. I have never received notice of any rejection of any of my applications—except as described above in paragraphs 16 and 17—pursuant to HAR 12-231-82.

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 9, 2013

  
Margaret E. Brown

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

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

PHONE: (808) 329-4997

FACSIMILE: (808) 326-7896

WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA  
FIRST DEPUTY

WILLIAM M. TANI  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
LOADING 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-H 088.13**

January 28, 2013

Ms. Maggie E. Brown  
77-6372 Halawai Street  
Kailua-Kona, HI 96740

**RE: CONDITIONAL OFFER OF AVAILABLE BERTH – HONOKOHAU HARBOR**

We are happy to inform you that slip 31 (outer basin) is available for your use at the Honokohau small boat harbor.

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 A**

Page 2

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 slip is not to be occupied until the vessel inspection and all paperwork have been completed.

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

Yours very truly,



Nancy E. Murphy  
Hawai'i District Manager

cc: Applicant's File

**SENT BY CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCES MANAGEMENT

ESTHER KIA'A'INA  
FIRST DEPUTY

WILLIAM M. TAM  
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AQUATIC RESOURCES  
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FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAIKOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

BOR-H 087.13  
January 29, 2013

Ms. Maggie E. Brown  
77-6372 Halawai Street  
Kailua-Kona, Hawaii'i 96740

Subject: ~~Offer of Commercial Permit, Honokohau Small Boat Harbor~~

This is to advise you that a Commercial Permit at Honokohau small boat harbor is available for your use. Our policies for allocation of a commercial permit require that the applicant:

- 1) Deliver a written notice of intention to accept this offer to this office within fourteen days of receipt of the offer; submit the necessary requirements for a commercial use permit and commence commercial operations within fourteen days after applicant delivers the acceptance to this office, or;
- 2) Decline the offer to take first refusal in writing, to this office within fourteen days of receipt of the offer. In the event of the taking of first refusal, applicants may retain their seniority on the wait list, but shall not be considered for a second offer until six months have elapsed from the date of the first refusal. A second such refusal will result in the cancellation of the application.

Your failure to follow these instructions will result in this offer being rescinded and your name will be removed from the waiting list. 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. It is recommended that you review the Hawaii'i Administrative Rules (HAR) Title 13 governing Boating and Ocean Recreation. Of particular importance is 13-231-50 through 13-231-70, which govern commercial activities; 13-231-88 for extensions; and 13-234-25 regarding fees. Should you have any questions or need further assistance, please contact our office.

Yours very truly,

Nancy E. Murphy  
Hawaii'i District Manager

SENT BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED

**EXHIBIT B**

Maggie E. Brown  
77-6372 Halawai Street  
Kailua Kona, HI 96740  
808-895-5959

DATE: February 4, 2013

TO: Nancy Murphy  
State of Hawaii, DLNR  
Hawaii District Manager

FROM: Maggie E. Brown

RE: Offer of Commercial Permit, Honokohau Small Boat Harbor 02/29/13  
Conditional Offer of Available Berth #31, Honokohau Harbor 02/28/13

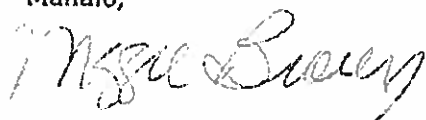
Pursuant to the both letters dated January 28<sup>th</sup> and 29<sup>th</sup> as mentioned above, this letter shall serve as written notice that I, Maggie E. Brown accept both offers for the following:

1. Commercial Permit, Honokohau Small Boat Harbor
2. Available Berth #31, Honokohau Harbor

In addition to accepting this offer, I am requesting an extension of time to place a vessel on the mooring. It was not feasible for me to purchase a boat without a permit or mooring therefore I am now actively pursuing my vessel.

Please advise me on the extension procedures and time frames. If you have any questions please don't hesitate to call me.

Mahalo,



Maggie E. Brown

**EXHIBIT C**

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

February 5, 2013

Ms. Maggie E. Brown  
77-6372 Halawai Street  
Kailua-Kona, HI 96740

Dear Ms. Brown:

On January 29, 2013, a conditional offer of available berth was mailed to you advising berth 31 (outer basin) was available for your use at the Honokohau small boat harbor. Our office received your letter of acceptance on February 5, 2013, along with your request for an extension of time to occupy berth 31.

In accordance with Section 13-231-88 (c), of the Hawaii Administrative Rules, the department may extend the deadline for acceptance prescribed in subsection (b) if the applicant presents conclusive evidence to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time for compliance shall not exceed a period of one hundred twenty days (120) from the date the department received from the applicant a written notice of intention to accept the offer of a use permit. This exception is only applicable to an applicant who has been offered a regular mooring permit.

We have granted the extension of time to occupy the slip; however, your one hundred twenty day deadline is **June 4, 2013**. There can be no further extensions. **Appropriate slip fees are in effect since your acceptance of the slip on February 5, 2013.**

Prior to placing your vessel in the slip, you are advised that a satisfactory marine safety inspection must be completed before a Use Permit can be issued to ensure that your vessel meets the safety, maneuverability and sanitation requirements of the Small Boat Harbors' Regulations. You may either submit a Vessel Inspection Report, on our vessel inspection form, conducted by a State approved Marine Surveyor, or schedule an inspection through the Honokohau harbor office. This must be accomplished prior to **June 4, 2013**.

Should you not be able to comply with the above by **June 4, 2013**, your name will be dropped from the waitlist and the next eligible person will be offered the slip. In the event it does not look like you will be able to comply, please feel free to place your name on the waitlist once again. This can be done at any time.

WILLIAM J. AHA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KAJIYAMA  
FIRST DEPUTY

WILLIAM M. TAM  
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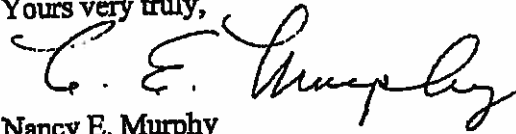
AQUATIC RESOURCES  
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ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

EXHIBIT D

Page 2

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

Yours very truly,

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

Nancy E. Murphy  
Hawai'i District Manager

Cc: Applicant's File

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



WILLIAM I. AILA, JR.  
CHAIRPERSON  
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COMMISSION ON WATER RESOURCE MANAGEMENT  
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EDWARD B. ENDERWOOD  
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

Ms. Maggie E. Brown  
77-6372 Halawai Street  
Kailua-Kona, Hawai'i 96740

February 5, 2013

Dear Ms. Brown:

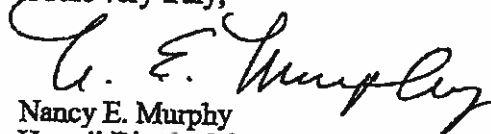
On January 28, 2013, we offered you a Commercial Permit for Honokohau Harbor. Our office received your letter of acceptance on February 5, 2013, also requesting an extension of time to prepare your vessel for commercial operations.

In accordance with Section 13-231-88 (c), of the Hawaii Administrative Rules, the department may extend the deadline for acceptance prescribed in subsection (b) if the applicant presents conclusive evidence to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time for compliance shall not exceed a period of one hundred twenty days (120) from the date the department received from the applicant a written notice of intention to accept the offer of a use permit.

We have granted the extension of time for you to prepare for your commercial permit; however, your one hundred twenty day deadline is June 4, 2013. There can be no further extensions. Appropriate fees are in effect since your acceptance of the commercial permit on February 5, 2013.

Should you not be able to comply with the above by June 4, 2013, your name will be dropped from the commercial waitlist and the next eligible person will be offered the permit. In the event it does not look like you will be able to comply, please feel free to place your name on the waitlist once again. This can be done at any time. Should you have any questions, please contact our office.

Yours very truly,

  
Nancy E. Murphy  
Hawaii District Manager

Cc: Applicant's file





**APPLICATION FOR  
COMMERCIAL USE PERMIT**  
Division of Boating and Ocean Recreation  
Department of Land and Natural Resources, State of Hawai'i

Honokohau Harbor, State of Hawaii  
74-380 Kealahou Parkway  
Kailua-Kona, HI 96740  
Phone: (808) 327-3685  
Fax: (808) 327-3675



**1. PERMIT INFORMATION**

Island (✓one):  Hawaii  Kauai  Lanai  Maui  Molokai  Oahu

Location: HONOKOHAU Mooring Account #:

Usage Type (✓one):  Ramp  Operational Area Use  Vessel Moored Elsewhere  Revocable  
 Inter-Island Passenger vessel  Charter Bare Bottom Boat  Charter Sail  
 Mooring  Underwater Film/Photo

<b>OFFICE USE ONLY</b>
Date Received:
Received By:

**2. APPLICANT INFORMATION (Responsible Party)**

Name (Last): BROWN (First): MAGGIE (M.I.): E Suffix: \_\_\_\_\_

Date of Birth: 10/27/53 Gender:  Female  Male Occupation: \_\_\_\_\_

Employer: MAGGIE B

Phone (business): 808-895-5959 (mobile):  Email: toolgirl53@gmail.com

Mailing Address: 77-6372 HALAWAI ST Apt #:   
City: KAILUA KONA State: HI Zip Code: 96740

Billing Address (if different than as Mailing Address): \_\_\_\_\_ Apt #:   
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code:

**3. BUSINESS INFORMATION**

Business Name: MAGGIE B LLC Website: \_\_\_\_\_

Business Role of Contact Person:  Owner  Co-owner  Corporate Officer

Contact Name (Last): BROWN (First): MAGGIE (M.I.): E Suffix: \_\_\_\_\_

Date of Birth: 10/27/53 Phone (business): 808-895-5959 Phone (mobile): 895-5959

Business Address: 77-6372 HALAWAI ST. Apt #:   
Address Line 2: \_\_\_\_\_  
City: KAILUA KONA State: HI Zip Code: 96740

**4. VESSEL OWNER INFORMATION**

check if same as Applicant

Owner's Name (Last): NEWPORT PARTNERS MANAGEMENT, CORP (First): \_\_\_\_\_ (M.I.): \_\_\_\_\_ Suffix: \_\_\_\_\_

Date of Birth: 1/1 Phone: 808-896-2711

Owner Address: 9 CUSHING, SUITE 200 Apt #:   
Address Line 2: \_\_\_\_\_  
City: IRVINE State: CA Zip Code: 92618

**EXHIBIT E**



### APPLICATION FOR COMMERCIAL USE PERMIT (Continued)

#### 5. VESSEL INFORMATION

Vessel Name: KILA KILA Port of Registry: KAILUA KONA

Documentation Type:  Registration  Coast Guard Documentation

Registration / Doc. #: 601042 Expiration Date: 06302013

Hull Manufacturer: MERRITT Year Built: 1978 Length Overall:  (feet)  (inches)

Hull ID#: 31 Number of Hulls: 1 Length Over Deck:  (feet)  (inches)

Hull Color: WHITE Cabin Color: WHITE Draft of Vessel:  (feet)  (inches)

Top Deck Color: WHITE Trim Color: GREEN Beam of Vessel:  (feet)  (inches)

Master of Vessel: GABE HEFLIN Tonnage License #:

Passenger Capacity: 6 Re-Certification Due Date: 6/30/13

This vessel is currently located (✓ one and complete):

In a Berth at (Harbor): \_\_\_\_\_ in (Berth Number):

Moored / Anchored on (Island): \_\_\_\_\_ at (Location): \_\_\_\_\_

On a Trailer on (Island): \_\_\_\_\_ at (Location): \_\_\_\_\_

#### 6. VESSEL TYPE AND PROPULSION

Vessel Type (✓ one):  Open Motorboat  Motor Vessel (more than 65)  Sailing Vessel  Houseboat  Runabout  
 Auxiliary Powered Sailing Vessel  Cabin Motorboat  Thrillcraft  Dinghy or Skiff  
 Barge  Platform  Other: \_\_\_\_\_

Principle Use (✓ one):  Pleasure  Charter Fishing  Commercial Fishing  Commercial Passenger  Charter Bare Boat  
 Dealer  Manufacturer  Charter Sail  Water Taxi  Other Commercial: \_\_\_\_\_

Primary Propulsion Type (✓ one):  Power  Sail  None  Other: \_\_\_\_\_

If Power: Engine Type(s) (✓ one):  Outboard  Inboard  Outboard / Inboard  Manual  None  Other: STRAIGHT DRIVE

Engine Manufacturer: CUMMINS Horsepower: 500 Number of Engines: 2

If Sail: Rigging Type:  Sloop  Schooner  Three-Masted Schooner  Four-Masted Schooner  Ketch  Brig  
 Brigantine  Barque  Barquentine  Fully Rigged Ship  Snow  Yawl  Cutter  Clipper

Auxiliary Propulsion for Sail:

Engine Type(s) (✓ one):  Outboard  Inboard  Outboard / Inboard  None

Engine Manufacturer: \_\_\_\_\_ Horsepower:  Number of Engines:

Fuel Type (✓ one):  Gasoline  Diesel  Electric  Other (specify): \_\_\_\_\_

#### 7. AGREEMENT & SIGNATURE

I agree to comply with the provisions of the Hawaii Administrative Rules as promulgated by the Division of Boating and Ocean Recreation applicable to this permit.

Maggie Brown  
 Signature of Applicant

11  
 Date

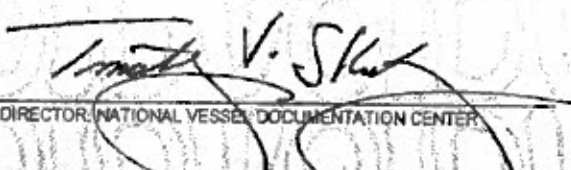



# UNITED STATES OF AMERICA

DEPARTMENT OF HOMELAND SECURITY  
UNITED STATES COAST GUARD

NATIONAL VESSEL DOCUMENTATION CENTER

## CERTIFICATE OF DOCUMENTATION

VESSEL NAME KILA KILA		OFFICIAL NUMBER 601042	IMO OR OTHER NUMBER 31	YEAR COMPLETED 1978	
HAILING PORT KAILUA-KONA, HI		HULL MATERIAL WOOD		MECHANICAL PROPULSION YES	
GROSS TONNAGE 59 GRT	NET TONNAGE 47 NRT	LENGTH 53.0	BREADTH 15.7	DEPTH 10.6	
PLACE BUILT POMPANO BEACH, FL					
OWNERS NEWPORT PARTNERS MANAGEMENT CORP			OPERATIONAL ENDORSEMENTS COASTWISE		
MANAGING OWNER NEWPORT PARTNERS MANAGEMENT CORP 9 CUSHING, SUITE 200 IRVINE, CA 92618					
RESTRICTIONS NONE					
ENTITLEMENTS NONE					
REMARKS NONE					
ISSUE DATE JUNE 27, 2012		 DIRECTOR, NATIONAL VESSEL DOCUMENTATION CENTER			
THIS CERTIFICATE EXPIRES JUNE 30, 2013					
JVT <small>25364210</small>					



3

The holder of this document  
**GABRIEL ANDREW HEFLIN**  
is licensed below, in accordance with Title 46 (Shipping) U.S. Code  
to serve in the capacity of skipper specified (Domestic Only),  
subject to any limitations imposed.

CAPACITY	RESTRICTIONS APPLYING (IF ANY)
Skipper	Of Steam or Motor Vessels Of Not More Than 100 Gross Registered Tons (Domestic Tonnage) Upon Near Coast Voyages. For domestic voyages only, the holder of this certificate meets the STCW 1995 requirements with a further endorsement. Authorized to engage in Commercial Ambulance Towing.

Ref Num 2029607      Serial Num 000053453

*D.C. Stalport*  
D.C. STALFORT, CAPT, USCG

Ref Num 2029607      Serial Num 000053453



Jong Limb  
Newport Partners Mgmt Corp  
9 Cushing Suite 200  
Irvine, CA 92618

Your insurance carrier has requested confirmation that the survey recommendations from the current survey have been completed. Enclosed is a "Survey Recommendation Compliance Letter" that has to be completed, signed and returned to our office prior to: 9/28/2012. A copy of the recommendations is also attached.

If you have any questions or concerns, please do not hesitate to call our office. You may fax the signed form back to our office (619) 222-0777.

Thank you,  
Oversea Insurance Agency

---

**SURVEY RECOMMENDATION - COMPLIANCE LETTER**

Insured: Jong Limb  
Insurance Company: US Fire  
Vessel Name: KILA KILA  
Vessel Description: 1978, 53, Merritt

A condition and valuation survey has been completed on your vessel by George Jarvie on 8/16/12. An inspection of this kind should be a part of your normal maintenance program and is designed to improve the quality of your vessel.

Completion of the survey recommendations will provide safety, seaworthiness and efficient marine performance. Coverage agreed upon is subject to completion of the marine survey recommendation and/or surveyor comments designated by the insurer or agent. This policy may be voided for failure to complete these items by the date specified.

All Recommendations Completed.

Recommendation(s) Number \_\_\_\_\_ Completed.  
(If there are any recommendations that have not been completed please indicate the reason below.)

Comments: \_\_\_\_\_

---

**I certify as owner of the vessel that I have complied with the survey items referenced above. I understand that if any of the representations herein are not true, then the coverage provided under this Policy may be voided by the company.**

\_\_\_\_\_  
Insured's Signature

\_\_\_\_\_  
Date

**Named Insured: Newport Partners Management Corp**

**Policy # 896-100578-1**

**Vessel Name: Kila Kila**

**Surveyor: George Jarvie**

**Survey Date: 08/16/12**

**Recommendations for compliance**

### **RECOMMENDATIONS**

- 1. Access the port aft underside of the cockpit decking plywood in the lazarette, inspect for extent of deterioration and repair or replace decking as required to assure integrity.**
- 2. Service the forward bilge pump automatic float switch to be functional.**
- 3. Service the high water alarm to be functional.**
- 4. Replace the aft head's discharge hose due to deterioration and corroded hose clamps at the pump.**
- 5. Service the port engine's heat exchanger for apparent leak and corrosion about the drain plug.**
- 6. Clean external salt build up on the port engine's transmission cooler, monitor for any leaks and service if/as required.**
- 7. Service or replace the generator's exhaust mixing elbow for corrosion spots and minor leaking.**
- 8. Assure the power supply wires for the utility room forced air blower are not connected to power sources or repair and reconnect wiring.**





**THE MARITIME CONSORTIUM, INC.**

P.O. BOX 4070 • ANNAPOLIS, MD 21403-6070

TOLL FREE TELEPHONE: 1-800-775-6985

TOLL FREE FAX: 1-800-764-2350

WEBSITE: WWW.DRUGFREEVESSEL.COM

INFO@DRUGFREEVESSEL.COM

December 12, 2012

**CONFIRMATION OF ENROLLMENT  
Certificate of Compliance**

**NOTE: THIS CERTIFICATE IS NOT TO BE USED FOR USCG LICENSE RENEWALS OR UPGRADES.**

Kila Kila Sportfishing  
Gabe Heffin  
PO Box 390894  
Keauhou, HI 96739

**Expires:** 12/31/2013  
**Telephone:** 808-896-2711  
**Account #:** 19018

This confirms the below listed individuals are enrolled in The Maritime Consortium, Inc. a random drug testing program expiring on the above date. This letter of enrollment certifies that the company and the individuals listed below are in compliance with the Coast Guard mandatory drug testing regulation, as contained in 46 CFR part 16, and that all testing procedures and chain of custody regulations are followed by The Maritime Consortium, Inc. as contained in 49 CFR part 40.

The Coast Guard Marine Safety Office Headquarters has reviewed The Maritime Consortium, Inc.'s program and found it to be: "In substantial compliance with the regulation." Should any questions arise about this company's compliance with the Coast Guard drug testing regulation, please contact The Maritime Consortium, Inc. at 1-800-775-6985.

<u>Crewmember Name</u>	<u>MID #</u>	<u>Date of Birth</u>	<u>License Info</u>	<u>Status of Enrollment*</u>
Gabriel Heffin	50489	3/17/1978	Licensed	Full Compliance

Sincerely,

Heather Sparlock  
Membership Coordinator

*\*Enrollment Status Key*  
*Full Compliance:* individual is in full compliance with 46 CFR Part 16

*HOLD Test Pending:* individual has been scheduled for a pre-employment drug test, but is not in full compliance because the test has not been taken. A new Letter of Compliance will be issued upon receipt of outstanding negative test result. If new paperwork is needed, please contact The Maritime Consortium, Inc. (\$55 per test)

*HOLD No Proof:* to be in compliance, individual has been requested to show proof that he/she has passed a drug test within the last 6 months or has been subject to testing for at least 60 days within the last 6 months. A new Letter of Compliance will be issued upon receipt of proof. If no proof is available a test must be set-up. (\$55 per test)



PROVIDING OVER 9,000 MEMBERS OF THE MARITIME INDUSTRY, COMPREHENSIVE COMPLIANCE WITH THE DOT AND USCG REGULATIONS 49 CFR 40 AND 46 CFR PARTS 4, 5, AND 16, SINCE 1989.  
NATIONALLY ACCREDITED FOR THE ADMINISTRATION OF DRUG AND ALCOHOL PROGRAMS.







## INSURANCE BINDER

**Insured:**

Newport Partners Mgmt Corp  
9 Cushing., Suite 200  
Irvine, CA 92618

Company: US Fire Insurance Company  
Binder #: 6.42  
Effective: 06/10/12 – 07/10/12  
Description: 1978 53' Merritt  
Hull ID: #Offical 601042  
Yacht Name: KILA KILA

<u>Coverage</u>	<u>Limit of Coverage</u>	<u>Deductible</u>
Hull & Machinery	\$280,000.	\$5,600.
Protection & Indemnity	\$1,000,000.	\$1,000.BI/\$5600.PD
Medical	\$5000.	
Towing	\$500.	
Personal Effects	\$1,000	\$250.
Pollution	\$854,400.	
Crew	(2) Full time Included	
Fishing Gear	\$20,000.	\$250.
Swim/Snorkel Endorsement	300,000.	\$1000.

**Navigation Limits:**

The waters of the Kona Coast, HI-not to exceed fifty (50) miles offshore or as mandated by the U.S.C.G., whichever less. Permission granted for one way trip from Honolulu for delivery purposes.

**Special Conditions:**

Company to order a new survey during policy term at their expense.

Claims Free Bonus earned: \$728. To be applied effective 10/10/12 warranted no late reported claims.

**Additional Insured:**

Per File.

Signature of Authorized Representative

Conditions: The Insurance is subject to the terms, conditions and limitations of the policy(ies) in current use by the Company. This binder may be canceled by the Insured by surrender of this binder or by written notice to the Company stating when cancellation will be effective. This binder may be canceled by the Company by notice to the Insured in accordance with the policy conditions. This binder is canceled when replaced by a policy. If this binder is not replaced by a policy, the Company is entitled to charge a premium for the binder according to the Rules & Rates in use by the Company. Applicable in California: When this form is used to provide insurance in the amount of one million dollars (\$1,000,000.) or more, the title is changed from "Insurance Binder" to Cover Note". Applicable in Delaware: The mortgagee or Obligee of any mortgage or other instrument given for the purpose of creating a lien on real property shall accept as evidence of insurance a written binder issued by an authorized insurer or its agent of the binder includes or is accompanied by: the name and address of the borrower; the name and address of the lender as loss payee; a description of the insured real property; a provision that the binder may not be canceled within the term of the binder unless the lender and the insured borrower receive written notice of cancellation at least ten(10) days prior to the cancellation; except in the case of a renewal of a policy subsequent to the closing of the loan, a paid receipt of the full amount of the applicable premium, and the amount of the insurance coverage.(Chapter 21, Title 25, Paragraph 2119) Applicable in Nevada: any person who refuses to accept a binder which provides coverage of less than \$1,000,000. when proof is required: (A) Shall be fined not more than \$500.00, and (B) is liable to the party presenting the binder as proof of insurance for actual damages sustained there from.

1274 SCOTT STREET – SAN DIEGO, CA 92106 –PHONE (619) 222-1111 (800) 266-2662 –FAX (619) 222-0777  
801 SEABREEZE BLVD., FT. LAUDERDALE, FL 33316 – P: (954) 522-2262



# CERTIFICATE OF LIABILITY INSURANCE

LIMBJ01

OP ID: KD

DATE (MM/DD/YYYY)

10/12/12

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Oversea Insurance Agency 1274 Scott Street San Diego, CA 92106 Scott Jarvie	Phone: 619-222-1111 Fax: 619-222-0777	<b>CONTACT NAME:</b> Oversea Insurance Agency <b>PHONE (A/C, No, Ext):</b> 619-222-1111 <b>FAX (A/C, No):</b> 619-222-0777 <b>E-MAIL ADDRESS:</b> service@overseainurance.com
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Jong Limb Newport Partners Mgmt Corp 9 Cushing Suite 200 Irvine, CA 92618	<b>INSURER A:</b> US Fire	
	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	BUSH	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COM/POP AGG \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Watercraft			896-100578-1	06/10/12	06/10/13	Liability      1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Description: 1978 53' Merritt KILA KILA Charter as Per Policy Limits

It is hereby understood and agreed that the named certificate holder below is added as an additional insured. All other terms and conditions remain unchanged.

**CERTIFICATE HOLDER****CANCELLATION**

STATE01

State of Hawaii  
 DLNR  
 74-380 Kealahou Pkwy  
 Kailua-Kona, HI 96740

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE  
 Scott Jarvie

9 - Adult . 4 Kids -

**REQUIREMENTS FOR AN UNINSPECTED PASSENGER VESSEL (continued)**

Page	Subject	Regulation	YES	NO	N/A
13	<b>Intoxicated Operation</b>				
	Aware of prohibition against operating a vessel while intoxicated	33 CFR 95.020	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14	<b>Marine Casualty Reporting</b>				
	Operator aware of marine casualty reporting requirements	46 CFR 4.05-1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Does the Employer have the required testing devices on board or proof of an arrangement with a service agent	46 CFR 4.06-3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16	<b>Lifesaving Equipment</b>				
	Approved Type I PFD or approved hybrid PFD for each person aboard	46 CFR 25.25-5(c) & (f)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Retro reflective material on each life preserver	46 CFR 25.25-15	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	PFD light (Oceans, Coastwise, Coastal & Great Lakes Service Only)	46 CFR 25.25-13	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Throw-able life ring (vessels > 26 ft)	46 CFR 25.25-5(d)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Wearable lifesaving equipment readily accessible	46 CFR 25.25-9(a)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Throw-able lifesaving equipment immediately available	46 CFR 25.25-9(b)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Lifesaving equipment in serviceable condition	46 CFR 25.25-11	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Lifesaving equipment marked showing USCG approval numbers	46 CFR 25.25-7	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18	<b>Distress Signals</b>				
	Day & Night Visual Distress Signals, number required, readily accessible	33 CFR 175.110 & 120	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
19	<b>Fire Fighting Equipment</b>				
	Fire extinguisher(s) USCG approved or UL listed for marine use	46 CFR 25.30-5(b)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Fire extinguisher(s) name plate attached	46 CFR 25.30-10(d)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Minimum number portable fire extinguishers	46 CFR 25.30-20(a)(1)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
20	<b>Engineering Safety Equipment</b>				
	Backfire flame control properly installed	46 CFR 25.35-1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Proper ventilation for fuel tanks	46 CFR 25.40	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Cooking, heating and lighting systems must be approved	46 CFR 25.45	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21	<b>Oil Pollution Prevention</b>				
	Prohibited Discharge Warning Placard (5" X 8") posted in machinery space or at bilge pump control station	33 CFR 155.450	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Proper retention of bilge slops practiced	33 CFR 155.330 & .350	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Oily mixtures retained on board then discharged at reception facility	33 CFR 155.330 & .350	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22	<b>Marine Sanitation Device (MSD)</b>				
	Is installed device a Certified Type I, II or III MSD	33 CFR 159.7(a)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	MSD overboard shut-off valve for Type III (Holding tank), closed when vessel is within three miles of shore	33 CFR 159.7(c)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	If Type I or II device, does the device have identification placard attached	33 CFR 159.55	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
23	<b>Garbage Pollution Prevention</b>				
	Garbage placard(s) posted for vessels > 26 ft	33 CFR 151.59	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Waste management plan for vessels > 40 ft	33 CFR 151.57	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

BUSINESS START DATE: 7/1/2011

STATE OF HAWAII  
DEPARTMENT OF TAXATION

FORM D-44A  
(REV. 2001)

LICENSE ISSUED FOR THE PRIVILEGE OF ENGAGING IN BUSINESS AND OTHER ACTIVITIES UPON THE CONDITION THAT THE LICENSEE SHALL PAY THE TAXES ACCRUING TO THE STATE OF HAWAII UNDER THE PROVISIONS OF CHAPTER 237, HRS, AS AMENDED. LICENSEE'S ACTIVITIES ARE LISTED ON THE APPLICATION ON FILE WITH THE DIRECTOR OF TAXATION.

**GENERAL EXCISE TAX LICENSE**

HAWAII TAX ID NUMBER: W07391689-01

THIS LICENSE IS NOT TRANSFERABLE.  
TO BE DISPLAYED CONSPICUOUSLY AT THE  
PLACE OF BUSINESS FOR WHICH ISSUED.

GABRIEL HELFIN  
DBA KILA KILA SPORT FISHING  
74-425 KEALAKEHE PKWY STE 24C  
KAILUA KONA HI 96740-2708

  
Frederick D. Pabis, DIRECTOR OF TAXATION

BUSINESS START DATE: 2/15/2019

STATE OF HAWAII  
DEPARTMENT OF TAXATION

FORM G-44A  
(REV. 2011)

LICENSE ISSUED FOR THE PRIVILEGE OF ENGAGING IN BUSINESS AND OTHER ACTIVITIES UPON THE CONDITION THAT THE LICENSEE SHALL PAY THE TAXES ACCORDING TO THE STATE OF HAWAII UNDER THE PROVISIONS OF CHAPTER 237, HRS. AS AMENDED. LICENSEE'S ACTIVITIES ARE LISTED ON THE APPLICATION ON FILE WITH THE DIRECTOR OF TAXATION.

**GENERAL EXCISE TAX LICENSE**

HAWAII TAX ID NUMBER W35522989-01

THIS LICENSE IS NOT TRANSFERABLE.  
TO BE DISPLAYED CONSPICUOUSLY AT THE  
PLACE OF BUSINESS FOR WHICH ISSUED.

MAGGIE B LLC  
77-6372 HALAWAI ST  
KAILUA KONA HI 96740-2295

Frederick D. Pabb, DIRECTOR OF TAXATION

**SEE REVERSE SIDE FOR OPENING INSTRUCTIONS**

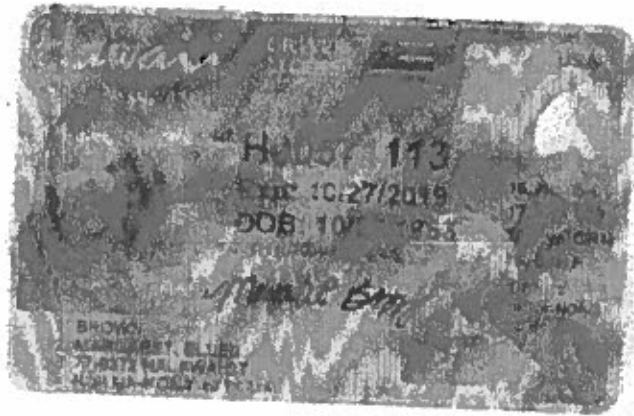
STATE OF HAWAII  
DEPARTMENT OF TAXATION  
P.O. BOX 1425  
HONOLULU, HAWAII 96806-1425

PRESORTED  
FIRST-CLASS MAIL  
US POSTAGE PAID  
HONOLULU, HI  
PERMIT NO 481

CONTAINS: YOUR GENERAL EXCISE TAX LICENSE (FORM G-44A)

|||||  
\*\*\*\*\*AUTO\*\*3-DIGIT 967

151  
MAGGIE B LLC  
77-6372 HALAWAI ST  
KAILUA KONA HI 96740-2295



RENEWAL APPLICATION  
DEPARTMENT OF LAND & NATURAL RESOURCES  
DIVISION OF BOATING & OCEAN RECREATION

LNR 3-039

Renewal #15

TO: DEPARTMENT OF LAND & NATURAL RESOURCES,  
DIVISION OF BOATING & OCEAN RECREATION

SUBJECT: MOORING REQUEST

- FOR USE BY BOATING DIVISION STAFF -	
Receipt Number:	<u>HNW9114</u>
Date Rec'd:	<u>- 4/7/10</u>
Rec'd By:	<u>WLN</u>
Expiration Date:	<u><del>4/1/11</del> 4/10/11</u>

- I hereby request the following: (complete a, b, or c)
  - A renewal of my mooring request dated APRIL 10, 2010 1995
  - A mooring at (name of harbor) HONOKOHAU SMALL BOAT HARBOR
  - To move within (name of harbor) \_\_\_\_\_ to the following type mooring in the same harbor \_\_\_\_\_
- Vessel is presently moored at GENTRYS
- The vessel is described as follows:
 

Vessel Name KHIL'OA II Registration/Documentation # 1202101  
 Length in feet (end to end over deck) 66.5 Number of hulls 2  
 Overall length (end to end over deck including extensions such as bowsprit) \_\_\_\_\_  
 Beam (feet) 30 Draft (feet) 7.5 Type of vessel CATAMARAN
- Vessel's principal source of propulsion is:
 

Machinery X Sail \_\_\_\_\_ Other (Specify) \_\_\_\_\_
- Vessel's auxiliary source of propulsion (check a, b, or c)
  - No auxiliary source of propulsion \_\_\_\_\_
  - Machinery \_\_\_\_\_
  - Other (Specify) \_\_\_\_\_
- Remarks: \_\_\_\_\_

Date: 4/7/10 Signature: Maggie Booy  
 Name (typed or printed) \_\_\_\_\_  
 Home Phone: 895-5959 Address: 75-5629 KUAKINI HWY #0  
 Business Phone: 326-7122 Address: KAILUA-KONA HI 96740

**EXHIBIT E**

**RENEWALS WILL NOT BE ACCEPTED AFTER EXPIRATION DATE**  
 STATE OF HAWAII  
 DEPT. OF LAND & NATURAL RESOURCES  
 DEPT. OF LAND & NATURAL RESOURCES  
 DIVISION OF BOATS & CLEAN RECREATION  
 Initial date: 12/12/03

Date Received: 11-18-10  
 Received By: PK  
 Expiration Date: 12-12-2011

Application for Commercial Use Permit  
 at HONOLULU

**PLEASE TYPE OR PRINT**

1. Name: MAGGIE BROWN  
~~KAWAIA FISH~~ Social Security No.: \_\_\_\_\_  
 Mailing Address: P.O. BOX 4523 KAILUA KONA  
 Telephone No.: (R) 329-4807 (B) 895-5959

2. Name of Vessel: TBA Reg. Or Doc. Expiration Date: \_\_\_\_\_  
 Registration Number: \_\_\_\_\_ Documentation Number: \_\_\_\_\_  
 Ownership of Vessel: (Proof of ownership must be presented at time of application.)  
 Principal Owner: \_\_\_\_\_ Phone No. \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Co-owner: \_\_\_\_\_ Phone No. \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 (If more than one co-owner, use back of sheet)

3. Vessel Size: L.O.D. 40' L.O.A. 40'-6 7/8' Beam 8' Draft 2'  
 Commercial Activity Vessel used for: SNORKELING  
 Coast Guard Certificate: Passenger Capacity 119 Re-Cert. Date Due: \_\_\_\_\_  
 Master of Vessel: 1. \_\_\_\_\_ Tonnage Lic. \_\_\_\_\_ Type: \_\_\_\_\_  
 2. \_\_\_\_\_ Tonnage Lic. \_\_\_\_\_ Type: \_\_\_\_\_  
 (For additional Masters, full or part-time, use back of sheet)

4. This vessel: 1. Has a berth, No. \_\_\_\_\_ at \_\_\_\_\_ Harbor.  
 2. Is Moored/Anchored at \_\_\_\_\_ at \_\_\_\_\_  
 (Island) (Location)  
 3. Is kept on a trailer at \_\_\_\_\_

5. I purchased \_\_\_\_\_ Leased \_\_\_\_\_ Other \_\_\_\_\_ the aforementioned vessel on \_\_\_\_\_ from \_\_\_\_\_

6. The vessel described on this application is free of all liens, mortgages or other encumbrances except as follows (person/institution holding security interests):  
 Name: \_\_\_\_\_ Address: \_\_\_\_\_

7. I understand that pursuant to the Small Boat Harbors Rules, I must inform the Harbor Attendant within seven (7) days of any sale or lease of the vessel described in this application. I also understand that if I violate any of the provisions of the aforementioned rules, in addition to any fines or penalties a court of law may impose, my permit to operate a vessel commercially in \_\_\_\_\_ Harbor may be revoked.

The information given by me, the applicant, is true, correct and completed to the best of my knowledge and belief.

Date: 12-18-10

Maggie Brown  
 (Signature of Applicant)

Date: \_\_\_\_\_  
**EXHIBIT G**

\_\_\_\_\_  
 (Signature of Harbor Agent)



## DECLARATION OF JOSEPH FAGUNDES, III

I, JOSEPH FAGUNDES, III do hereby make this Declaration in support of MARGARET E. BROWN'S 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 attorney licensed to practice in the State of Hawaii.
3. During June, 2013 I had contact with both Hawaii District Manager Nancy Murphy and with DLNR Deputy Director Ed Underwood concerning Petitioner's commercial and mooring permits in Honokohau Small Boat Harbor.
4. On June 6, 2013 I sent a letter to District Manager Murphy regarding the matter and Petitioner's position. A correct copy of said letter is attached hereto, marked Exhibit "1" and is incorporated herein.
4. On June 19, 2013 I received an email response regarding various inquiries I had made on behalf of clients to the Deputy Director.
5. Attached hereto, marked Exhibit "2" and incorporated herein by this reference is a copy of the email response dated June 19, 2013 I received from the Deputy Director regarding Petitioner's request for issuance of the offered permits. I have redacted from said email portions which refer to other client matters in the interest of fairness and out of a respect for the privacy of such unrelated matters and parties.
6. Upon request I am happy to provide an original, unredacted copy of said email for the Chairman's review and consideration.

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 9, 2013

  
\_\_\_\_\_  
Joseph Fagundes, III

# 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](http://www.konalaw.com)

June 6, 2013

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

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

Re: Our Client: Margaret Brown and Maggie B, LLC

Dear Nancy:

I have been informed that your office has declined to issue the commercial mooring permit for slip number 31 in Honokohau Harbor to my client. The stated reason is that apparently my client's position on the wait list for a mooring and commercial permit had previously been occupied by her other company, Kanoa, Inc.

I personally reviewed the records and files of the waiting list and applications submitted by my client at your offices on Monday. It appears to me, and I have confirmed with staff, that in 2010 your harbor agent changed the applicant's name on the commercial and mooring permit applications submitted by my client to remain on the waiting list. It is apparent that the revisions to the accepted applications are in your harbor agent's handwriting. In reviewing the matter with my client, she is clear that at no time had she requested such change, but she was informed that she "had to" do it based upon the harbor agent's understanding of the rules.

In any case, your office accepted applications for the 2010, 2011 and 2012 waiting list in my client's personal name and the official DLNR record of the waiting lists reflect Ms. Brown on the list, not her company Kanoa, Inc.

On January 28, 2013 your office made a conditional offer of mooring berth number 31 at Honokohau Small Boat Harbor to Ms. Brown. The commercial permit was offered on January 29<sup>th</sup>. On February 4, 2013 Ms. Brown accepted the offer and requested an extension of time to obtain the permits. Also on February 5, 2013 you granted the extension of time up to June 4, 2013 within which to apply for the permits. After that date, in consultation with your office, my client formed Maggie B, LLC, obtained a leased vessel, obtained commercial charter insurance, and submitted all required paperwork and documentation and fees for the issuance of the permits. In late May, while on vacation, my client received a phone message from your staff informing her that upon submission of a copy of the Articles of Organization of Maggie B, LLC that your office was prepared to issue the

**EXHIBIT 1**

Nancy E. Murphy, District Manager  
June 6, 2013  
Page Two

permits for slip 31 in the name of the LLC. Upon her return from the mainland, Ms. Brown submitted the requested articles. Thereafter Ms. Brown was

informed that there was a problem concerning the name stated on the waiting lists. It is relevant to note that the waiting list identification had once before been the subject of a discussion between you and Ms. Brown, but in the appropriate exercise of your discretion my client was instructed to proceed with the applications and to obtain the permits in the name of Maggie B, LLC.

This matter appears to be fairly clear. Ms. Brown, as the applicant on the waiting list was offered the mooring berth and timely accepted the same. The relevant rule provides:

**13-231-87 (a)** When an offer of a regular mooring permit to use a berth, as provided for in this subchapter, the department shall deliver the offer or send it by certified mail, return receipt requested, addressed to the applicant eligible to receive the offer pursuant to this subchapter at the post office address furnished to the department in writing by the applicant.

There is no question that Margaret E. Brown's applications for the mooring and commercial permit waiting list and the appropriate fees therefor had been accepted by DLNR for years. Upon acceptance of each application, especially that one in which the Agent made revisions as to the name of the applicant, the application and waiting list positions became binding upon both the Department and upon my client. The applicable rule reads:

**12-231-82 (a)** The department shall examine and determine the genuineness and regularity of each application for a mooring or other small boat harbor use permit and may conduct any investigation as may be deemed necessary for its examination and determination; and it may require additional information from the applicant as may be necessary to determine the genuineness and regularity of the application.

**(d)** Upon rejection of an application, the department shall inform the applicant, in writing within a reasonable time, that the person's application has not been accepted for consideration and has been rejected and the reasons therefor. The applicant shall be afforded the opportunity to submit a new application upon the correction of deficiencies cited in the notification of rejection of the original application.

There is no question that Ms. Brown was the applicant on the waiting list and the slip was offered to her pursuant to the rules. I have attached the correspondence between your office and Ms. Brown for your ready reference. There is also no question that there has never been a rejection of Ms. Brown's applications, as is amply demonstrated in the attached correspondence to the "applicant eligible to receive the offer".

The Hawaii Administrative Rules governing the Department's operation of small boat harbors reserves a great deal of discretion to the Department and its staff in its day to day operations concerning permits.

Nancy E. Murphy, District Manager  
June 6, 2013  
Page Three

**13-231-80 (c) Since each berth and each vessel presents unique ship handling and other peculiar berthing problems in relation to the small boat harbor, the department reserves the right to utilize its fair and impartial judgment, flexibility, and discretionary authority to allocate berths based upon its knowledge of available facilities, prevailing small boat harbor conditions, safe boating practices, effective harbor management procedures, and other factors which must be thoroughly considered prior to acceptance of an application and allocating a berth to a vessel...**

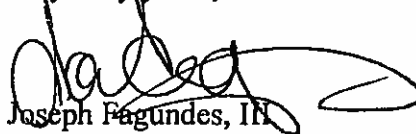
I strongly suspect that it was precisely this discretionary authority which was exercised by your harbor agent when he informed Ms. Brown of the need to change the name of the applicant, then took it upon himself to make such change in his own handwriting.

It appears clear that in 2009 or 2010 the authorized harbor agent advised the applicant that a change needed to be made in the application information and said agent actually wrote the changes into the application in his hand writing. The application was then received and noted as well as the fee therefor. The agent explained to the applicant that the corporate entity was not able to be on the Honokohau list and that the spot on the list needed to be occupied by the individual. Maggie had no say in the revision nor was such change her request. As a result she has relied upon the notification letter and has expended thousands of dollars to form a new entity, obtain expensive charter insurance, and to obtain a vessel lease which will require tens of thousands of dollars in payments per year.

Ms. Brown timely submitted all appropriate applications, fees, supportive documentation and met the Department's deadlines. Now, the failure of the Department to honor its commitment and offer does not appear to be in good faith. By copy of this letter demand is hereby made for issuance of the permits to Maggie B, LLC forthwith.

Should you have any questions regarding the above, please do not hesitate to contact me. I remain,

Very truly yours,



Joseph Fagundes, III

Encl.

Cc: client

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

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

PHONE: (808) 329-1997

FACSIMILE: (808) 326-7896

WILLIAM J. AHA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'ALANA  
FIRST DEPUTY

WILLIAM N. TAM  
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  
HERITAGE PRESERVATION  
KAIKOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**BOR-H 088.13**

January 28, 2013

Ms. Maggie E. Brown  
77-6372 Halawai Street  
Kailua-Kona, HI 96740

**RE: CONDITIONAL OFFER OF AVAILABLE BERTH – HONOKOHAU HARBOR**

We are happy to inform you that slip 31 (outer basin) is available for your use at the Honokohau small boat harbor.

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.

Page 2

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 slip is not to be occupied until the vessel inspection and all paperwork have been completed.

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

Yours very truly,

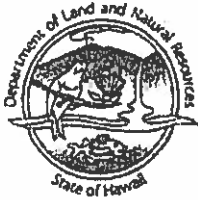
A handwritten signature in cursive script, appearing to read "Nancy E. Murphy".

Nancy E. Murphy  
Hawai'i District Manager

cc: Applicant's File

**SENT BY CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

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

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  
KAIKOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

BOR-H 087.13  
January 29, 2013

Ms. Maggie E. Brown  
77-6372 Halawai Street  
Kailua-Kona, Hawaii 96740

**Subject: Offer of Commercial Permit, Honokohau Small Boat Harbor**

This is to advise you that a Commercial Permit at Honokohau small boat harbor is available for your use. Our policies for allocation of a commercial permit require that the applicant:

- 1) Deliver a written notice of intention to accept this offer to this office within fourteen days of receipt of the offer; submit the necessary requirements for a commercial use permit and commence commercial operations within fourteen days after applicant delivers the acceptance to this office, or;
- 2) Decline the offer to take first refusal in writing, to this office within fourteen days of receipt of the offer. In the event of the taking of first refusal, applicants may retain their seniority on the wait list, but shall not be considered for a second offer until six months have elapsed from the date of the first refusal. A second such refusal will result in the cancellation of the application.

Your failure to follow these instructions will result in this offer being rescinded and your name will be removed from the waiting list. 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. It is recommended that you review the Hawaii Administrative Rules (HAR) Title 13 governing Boating and Ocean Recreation. Of particular importance is 13-231-50 through 13-231-70, which govern commercial activities; 13-231-88 for extensions; and 13-234-25 regarding fees. Should you have any questions or need further assistance, please contact our office.

Yours very truly,

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

Nancy E. Murphy  
Hawaii District Manager

SENT BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Maggie E. Brown  
77-6372 Halawai Street  
Kailua Kona, HI 96740  
808-895-5959

DATE: February 4, 2013

TO: Nancy Murphy  
State of Hawaii, DLNR  
Hawaii District Manager

FROM: Maggie E. Brown

RE: Offer of Commercial Permit, Honokohau Small Boat Harbor 02/29/13  
Conditional Offer of Available Berth #31, Honokohau Harbor 02/28/13

Pursuant to the both letters dated January 28<sup>th</sup> and 29<sup>th</sup> as mentioned above, this letter shall serve as written notice that I, Maggie E. Brown accept both offers for the following:

1. Commercial Permit, Honokohau Small Boat Harbor
2. Available Berth #31, Honokohau Harbor

In addition to accepting this offer, I am requesting an extension of time to place a vessel on the mooring. It was not feasible for me to purchase a boat without a permit or mooring therefore I am now actively pursuing my vessel.

Please advise me on the extension procedures and time frames. If you have any questions please don't hesitate to call me.

Mahalo,



Maggie E. Brown

DLNR  
HAWAII  
FEB 5 11 19 33



NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

February 5, 2013

WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KAI'AINA  
FIRST DEPUTY

WILLIAM M. TAM  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
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ENGINEERING

FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAIKOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Ms. Maggie E. Brown  
77-6372 Halawai Street  
Kailua-Kona, HI 96740

Dear Ms. Brown:

On January 29, 2013, a conditional offer of available berth was mailed to you advising berth 31 (outer basin) was available for your use at the Honokohau small boat harbor. Our office received your letter of acceptance on February 5, 2013, along with your request for an extension of time to occupy berth 31.

In accordance with Section 13-231-88 (c), of the Hawaii Administrative Rules, the department may extend the deadline for acceptance prescribed in subsection (b) if the applicant presents conclusive evidence to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time for compliance shall not exceed a period of one hundred twenty days (120) from the date the department received from the applicant a written notice of intention to accept the offer of a use permit. This exception is only applicable to an applicant who has been offered a regular mooring permit.

We have granted the extension of time to occupy the slip; however, your one hundred twenty day deadline is June 4, 2013. There can be no further extensions. Appropriate slip fees are in effect since your acceptance of the slip on February 5, 2013.

Prior to placing your vessel in the slip, you are advised that a satisfactory marine safety inspection must be completed before a Use Permit can be issued to ensure that your vessel meets the safety, maneuverability and sanitation requirements of the Small Boat Harbors' Regulations. You may either submit a Vessel Inspection Report, on our vessel inspection form, conducted by a State approved Marine Surveyor, or schedule an inspection through the Honokohau harbor office. This must be accomplished prior to June 4, 2013.

Should you not be able to comply with the above by June 4, 2013, your name will be dropped from the waitlist and the next eligible person will be offered the slip. In the event it does not look like you will be able to comply, please feel free to place your name on the waitlist once again. This can be done at any time.

NEIL ABLENCROMBIE  
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
  
ESTHER KIA'AINA  
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WILLIAM M. TAMI  
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

Ms. Maggie E. Brown  
77-6372 Halawai Street  
Kailua-Kona, Hawaii'i 96740

February 5, 2013

Dear Ms. Brown:

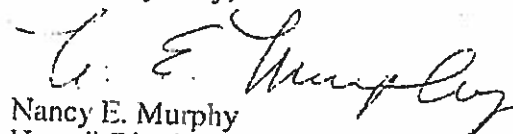
On January 28, 2013, we offered you a Commercial Permit for Honokohau Harbor. Our office received your letter of acceptance on February 5, 2013, also requesting an extension of time to prepare your vessel for commercial operations.

In accordance with Section 13-231-88 (c), of the Hawaii Administrative Rules, the department may extend the deadline for acceptance prescribed in subsection (b) if the applicant presents conclusive evidence to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time for compliance shall not exceed a period of one hundred twenty days (120) from the date the department received from the applicant a written notice of intention to accept the offer of a use permit.

We have granted the extension of time for you to prepare for your commercial permit; however, your one hundred twenty day deadline is June 4, 2013. There can be no further extensions. Appropriate fees are in effect since your acceptance of the commercial permit on February 5, 2013.

Should you not be able to comply with the above by June 4, 2013, your name will be dropped from the commercial waitlist and the next eligible person will be offered the permit. In the event it does not look like you will be able to comply, please feel free to place your name on the waitlist once again. This can be done at any time. Should you have any questions, please contact our office.

Yours very truly,

  
Nancy E. Murphy  
Hawaii District Manager

Cc: Applicant's file

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## Hawaii District Issues

9 messages

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Ed.R.Underwood@hawaii.gov <Ed.R.Underwood@hawaii.gov>

Wed, Jun 19, 2013 at 9:01 AM

To: Joseph Fagundes <joe@konalaw.com>

Cc: Nancy.E.Murphy@hawaii.gov, Daniel.K.Mersburgh@hawaii.gov

Aloha Mr. Fagundes,

We have reviewed the three issues that you brought to our attention regarding Hawaii District matters and our responses are as follows:

- 

- Kanoa Inc./Maggie Brown - We reviewed this matter and it is apparent that mistakes were made on the part of our staff as well as Ms. Brown. In 2010, Ms. Brown substituted her name in the place of Kanoa Inc. on the waitlist application for a regular mooring permit and this should have been treated as a new application and she should have been placed at the bottom of the waitlist and Kanoa, Inc. should have been dropped. Approximately at the same time period, Ms. Brown submitted her application for a commercial use permit in the name of Kanoa, Inc. and it is alleged that our staff crossed out Kanoa, Inc. and substituted the name Maggie Brown in its place. This also should have been treated as a new application and Ms. Brown should have been placed at the bottom of the waitlist. In order to rectify this situation, we are willing to reinstate Kanoa, Inc. onto the regular mooring permit waitlist as well as the commercial use permit waitlist and maintain their seniority. We will offer the regular mooring permit as well as the commercial use permit to Kanoa, Inc. .

- 

If you have any questions, please let me know.

Thanks,

Ed

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**EXHIBIT 2**

PROOF OF SERVICE

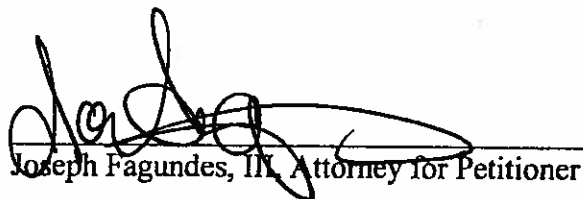
I hereby certify that a full copy of the within **PETITIONER MARGARET E. BROWN'S PETITION FOR ISSUANCE OF ACCEPTED MOORING AND COMMERCIAL PERMITS: DECLARATION OF MARGARET BROWN; EXHIBITS "A" – "G"; DECLARATION OF JOSEPH FAGUNDES, III; EXHIBIT "1" – "2";** was duly served by U.S. Mail, postage prepaid on July 9, 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 9, 2013

  
Joseph Fagundes, III, Attorney for Petitioner