

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 ARGUMENTS FROM THE PETITIONER
REGARDING THE PETITION FOR A DECLARATORY RULING FROM MARGARET E.
BROWN FOR THE ISSUANCE OF A REGULAR MOORING PERMIT AND
COMMERCIAL USE PERMIT

BACKGROUND:

The Department received a petition for a declaratory ruling regarding the issuance of a regular mooring permit and commercial use permit to Ms. Margaret E. Brown. The petition for declaratory ruling is requesting that the regular mooring and commercial use permits be issued pursuant to offer letters that were issued to Ms. Brown based on her priority on the waitlists for each type of permit. (The Petition for Declaratory Ruling is attached as Exhibit "1.")

On April 10, 1995, Kanoa, Inc. applied for a regular mooring permit at Honokohau harbor. Because no permits were available at that time, Kanoa, Inc. was placed on the waitlist for a regular mooring permit. In 2003, Kanoa, Inc. similarly applied for and was put on the waitlist for a commercial use permit for Honokohau harbor. Since the date of initial application, the applications for a regular mooring permit and a commercial use permit has been renewed annually by Kanoa, Inc.

Between at least 2007 and 2009, it appears that the applicant, Kanoa, Inc., would submit a mooring permit application that did not contain the date of the original application and the name of the applicant. It appears that the original date of application and the name of the applicant would be filled in separately, possibly by harbor staff. Exhibit "2." At the same time, the applications for a commercial use permit appears to have followed the same process as the mooring permit applications. Exhibit "3."

In April, 2010, the mooring permit application was again submitted without the name of the applicant, Kanoa, Inc., filled in. The application was merely signed by Ms. Brown. The original mooring request date was indicated as "April 20, 2010," but the number "2010" was lined out and "1995" was handwritten in, apparently referring to the prior applications submitted by Kanoa, Inc. (See Exhibit "F" attached to the Petition for Declaratory Ruling.)

Haw. Admin. Rules (HAR) § 12-231-81 provides that a "person desiring to moor a vessel in a small boat harbor where no berths are available for allocation...may apply for and be allocated a berth." A person is defined as an "individual, firm, partnership, corporation, trust, association, joint venture, organization, institution or any other legal entity." HAR § 13-230-8. An "unassigned berth shall be promptly offered to the senior applicant for a regular mooring permit subject to the limitations contained in these rules promoting maximum, safe, convenient, and efficient utilization of facilities." HAR § 13-231-85.

The change to the mooring permit application to exclude the name of the applicant, Kanoa, Inc., should have been considered to be a new mooring permit application, resulting in the previous applications being void and the application of Ms. Brown, in her individual capacity, should have been placed at the bottom of the waitlist.

Similar to the mooring permit application, in November, 2010, on the application for a commercial use permit, the name of the applicant, Kanoa Inc., was crossed out and the name "Maggie Brown" was written above it. The initial date of the application was still indicated as "12/12/03." (See Exhibit G attached to the Petition for Declaratory Ruling.) It is unknown who made these changes in 2010. Ms. Brown states in her petition that harbor staff instructed her to change the name of the applicant from Kanoa, Inc. into her personal name but we have no way to verify that because the staff member no longer works for the department.

Regardless of who made the change, the change of the applicant from Kanoa, Inc. to Maggie Brown constituted a new application and Ms. Brown's application for a commercial use permit should have been placed at the bottom of the waitlist.¹

In an attempt to resolve this issue, DOBOR offered to issue both the regular mooring permit and commercial use permit in the original applicant's name, Kanoa, Inc. Ms. Brown disagreed and we received the attached petition for a declaratory ruling from Ms. Browns Attorney, Joseph Fagundes, III.

Although DOBOR disagrees with the position taken in the petition, we support the request that the matter be decided by the Board. We therefore are requesting that the Board of Land and Natural Resources (Board) authorize the Chairperson to set a deadline for further briefing from the petitioner and a date for oral argument before the Board.

¹ Commercial use permits are issued under procedures similar to those for regular mooring permits. "Commercial permits shall be issued to qualified applicants in the order in which applications are received by the department. Seniority begins on the date an application is received and accepted by the department. The allocation procedures specified in subchapter 5, Allocation of berths, shall also govern the allocation of commercial permits under this section; provided that waiting lists for commercial permits shall be established and maintained separately from waiting lists for berth assignment." HAR § 13-231-60.

Approve Petition for Declaratory Ruling and Authorize
The Chairperson to Issue an Order Setting a Deadline for
Further Briefing and a Date for Oral Arguments from the
Petitioner Regarding the Petition for a Declaratory Ruling from
Margaret E. Brown for the Issuance of a Regular Mooring
Permit and Commercial Use Permit

January 24, 2014

Item J-1

RECOMMENDATION:

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

Respectfully submitted,



Edward R. Underwood
Administrator

Attachments: Exhibit 1 – Petition for Declaratory Ruling
Exhibit 2 – Kanoa Inc. Mooring Application
Exhibit 3 – Kanoa Inc. Commercial Application

APPROVED FOR SUBMITTAL:



William J. Aila, Jr.
Chairperson and Member