

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

January 24, 2014

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

APPROVE PETITION FOR DECLARATORY RULING AND AUTHORIZE THE  
CHAIRPERSON TO ISSUE AN ORDER SETTING A DEADLINE FOR FURTHER  
BRIEFING AND A DATE FOR ORAL ARGUMENT REGARDING THE PETITION FOR A  
DECLARATORY RULING FROM VIRGIL H. KOEHNE, DULY AUTHORIZED  
REPRESENTATIVE OF THE ESTATE OF CAROL ANN MOORE FOR THE ISSUANCE OF  
A REGULAR MOORING PERMIT AND COMMERCIAL USE PERMIT

**BACKGROUND:**

The Department received a petition for declaratory ruling regarding the transfer of an offshore mooring permit and a vessel moored elsewhere (VME) commercial permit from Carol Ann Moore to Virgil H. Koehne, personal representative of Ms. Moore's estate. The petition requests that the Board of Land and Natural Resources (Board) direct DOBOR to process Mr. Koehne's pending application for a VME commercial permit, direct re-issuance<sup>1</sup> of the VME commercial permit and offshore mooring permit to Mr. Koehne in his representative capacity, and transfer the permits to an entity owned by Mr. Koehne for eventual sale.

Carol Ann Moore held a valid offshore mooring permit in the vicinity of the Lahaina small boat harbor and a VME commercial use permit for Lahaina small boat harbor in her personal capacity. It is our understanding that in 1998, Ms. Moore created a new business entity, Malia Kai Marine Services, Inc., in order to transfer her vessel from personal ownership to corporate or other business ownership according to Hawaii Administrative Rule (HAR), Section 13-231-13 (See Exhibit 1). For reasons unknown to the DOBOR, Ms. Moore did not transfer the offshore mooring permit and VME commercial permit to Malia Kai Marine Services, Inc. On November 2, 2012, Ms. Moore passed away. By letter dated May 6, 2013, Karen Temple, attorney for Ms. Moore's estate, requested that the VME commercial permit be transferred to a special administrator once one was appointed. Thereafter, Mr. Koehne was appointed personal representative of Ms. Moore's estate. Ms. Moore's estate also sought to transfer the offshore mooring permit that was issued to Ms. Moore. DOBOR denied the request to transfer the VME commercial permit and offshore permit to Mr. Koehne because the transfer is not permitted by DOBOR's rules. HAR Section 13-231-13 provides:

---

<sup>1</sup> We interpret the request for re-issuance of the permits as a request for transfer, since possession of the vessel associated with the permits went from Ms. Moore to her estate.

Approve Petition for Declaratory Ruling and Authorize the Chairperson to Issue an Order Setting a Deadline for Further Briefing and a Date for Oral Argument Regarding the Petition for a Declaratory Ruling from Virgil H. Koehne, Duly Authorized Representative of the Estate of Carol Ann Moore for the Issuance of a Regular Mooring Permit and Commercial Use Permit

January 24, 2014

Item J-2

No use permit shall be transferrable so that whenever a permittee parts with possession or transfers the title to or interest in the vessel identified in the permit to another person by any arrangement, the use permit shall expire except as provided herein with respect to the original permittee. The new possessor, transferee, or owner shall have no right to use the space covered by the use permit.

Since Ms. Moore held both permits in her personal capacity, the only way for the permits to be transferred upon her death would be according to HAR, Section 13-231-13(b)(4), which states, "Upon written application to and approval by the department: ... [t]he spouse of a permittee may retain all small boat harbor use permits held by the permittee upon the death of the permittee, provided that the permittee's will or a court decree states that the spouse shall be awarded ownership of the vessel identified in the mooring permit[.]" This provision is inapplicable to this transfer request.

The department did not receive a written application nor was a will or court decree received indicating that the spouse of Ms. Moore would assume ownership of the vessel. We informed the estate of Ms. Moore that the use permits were non-transferrable and would be offered to the next qualified applicants on the waitlist.

We then received the attached petition for a declaratory ruling from the law offices of ALSTON HUNT FLOYD & ING and KAREN TEMPLE stating that the personal representative of the estate of Carol Ann Moore has the ability to act on behalf of Ms. Moore according to the Hawaii Probate Code HRS §§560:3-711 and 560:3-715 (See Exhibit 2).

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

Approve Petition for Declaratory Ruling and Authorize the Chairperson to Issue an Order Setting a Deadline for Further Briefing and a Date for Oral Argument Regarding the Petition for a Declaratory Ruling from Virgil H. Koehne, Duly Authorized Representative of the Estate of Carol Ann Moore for the Issuance of a Regular Mooring Permit and Commercial Use Permit

January 24, 2014

Item J-2

**RECOMMENDATION:**

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

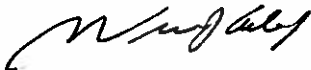
Respectfully submitted,



Edward R. Underwood  
Administrator

Attachments: Exhibit 1  
Exhibit 2

**APPROVED FOR SUBMITTAL:**



William J. Aila, Jr.  
Chairperson and Member