

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

April 10, 2015

RESUBMITTAL: JACQUELINE GARDNER'S REQUEST FOR TRANSFER OF AN OFFSHORE MOORING PERMIT (PERMIT NO. RMO10837) HELD BY EARL EDWARDS (DECEASED) AT NAWILIWILI SMALL BOAT HARBOR, ISLAND OF KAUAI

This submittal is in addition to and supplements the February 27, 2015 submittal, and takes into account the arguments presented in a letter dated March 27, 2015 from Kristi L. Arakaki, attorney for Jacqueline Gardner, to Cindy Y. Young.

First, the permit expired on May 31, 2014. § 13-231-5(a), Hawaii Administrative Rules (HAR), provides:

The department may issue or reissue a use permit of all types ... for any period up to, but not exceeding one year. Upon expiration of the period stated therein, the use permit and all rights of the permittee thereunder shall automatically terminate. No type of use permit shall be renewed unless all the conditions or covenants of the original issuance, including the requirement of prompt monthly payment of charges in advance, have been met and the rules governing small boat harbors and navigable waters managed of the department of land and natural resources have been fully complied with.

Emphasis added.

No request to renew the permit was made. The permit was not renewed on or prior to May, 31, 2014, and therefore, the permit expired.

Second, Ms. Gardner is not entitled to a grace period for reissuance of the permit under HAR § 13-231-5(b). By letter dated June 27, 2014 from Ms. Arakaki to Joseph Borden, Kauai District Manager, DOBOR, Ms. Arakaki requested only a transfer of the permit to Ms. Gardner. See June 27, 2014 letter (with attachment). Even if the June 27, 2014 letter could be construed as a permit reissuance request, Ms. Gardner is not entitled to have the permit "reissued" to her because she is not the permittee. DOBOR's rules allow a grace period for regular permits, including offshore mooring permits, to be reissued to a permittee if certain requirements are met. However, Ms. Gardner was not entitled to a grace period.

HAR § 13-231-5(b) provides:

If a permittee fails to renew a use permit on or before the date on which it expires, that person [i.e. the permittee] may be granted a thirty (30) calendar day period to

reinstate the regular mooring permit as long as all the conditions or covenants of the original issuance, including the requirement of prompt monthly payment of charges in advance, have been met and the rules governing small boat harbors of the department of land and natural resources have been fully complied with. The person shall pay a one-time penalty fee of \$250.00 as well as all other applicable fees. Impoundment of the vessel shall be stayed only until the grace period has expired.

Under HAR § 13-231-5(b), only the permittee may be granted a grace period to renew the permit. Ms. Gardner is not the permittee and, therefore, she is not entitled to a transfer of the permit under DOBOR's rules as discussed further below.

Third, a transfer of the offshore mooring permit, Permit No. RMO10837 (permit) for a vessel, RAVE, from Earl Edwards to Ms. Gardner, is not permitted by DOBOR's rules. Ms. Arakaki cites HAR § 13-231-13(b)(2) as authority for her proposition that Ms. Gardner is entitled to a transfer of the permit. HAR § 13-231-13(b)(2) provides in part:

(b) Upon written application to and approval by the department:

(2) A principal owner of a vessel may retain a berth or mooring space if that owner acquires the interest of one or more co-owners because a co-owner has died or moved out of the State[.]

Emphasis added.

HAR §13-230-8 provides in relevant part the definition of the term "principal owner":

When used in these rules promulgated pursuant to chapter 200, Hawaii Revised Statutes, unless otherwise specifically provided or the context clearly indicates otherwise:

* * *

"Principal owner" means a person whose name appears on a certificate of number or who is named as a managing owner of a Coast Guard documented vessel.

Ms. Gardner is not listed as a managing owner of the RAVE on the Coast Guard registration. Ms. Arakaki admits in the June 27, 2014 letter that "[d]ue to oversight of vessel co-owner Mr. Edwards, Ms. Gardner is not currently listed as an owner on registration documents for the [RAVE]." There is no certificate of number for the RAVE because the RAVE is not registered with the DOBOR. At the time the permit transfer was requested, Ms. Gardner was not a principal owner of the RAVE, and therefore, HAR § 13-231-13(b)(2) is inapplicable. Ms. Arakaki cites no other provision as a basis to argue that Ms. Gardner is entitled to have the permit transferred to her, and we cannot find any provision that allows the transfer.

Lastly, DOBOR is not estopped from informing the Board that DOBOR's rules do not allow the transfer of the permit. DOBOR consistently informed Ms. Arakaki and Ms. Gardner that Ms. Gardner was not entitled to have the permit transferred to her. Moreover, estoppel is an equitable doctrine, and the Board does not have equitable powers. See HRS Chapter 171.

Recommendation: That the Board:

Deny Ms. Gardner's request for a transfer of an offshore mooring permit, Permit No. RMO10837.

Respectfully Submitted,



Edward R. Underwood
Administrator

Attachments: Exhibit A: February 27, 2015 Land Board submittal
Exhibit B: March 27, 2015 letter from Kristi L. Arakaki, attorney for Jacqueline Gardner
Exhibit C: June 27, 2014 letter from Ms. Arakaki to Joseph Borden, Kauai District Manager

APPROVED FOR SUBMITTAL:



for Carty S. Chang, Interim Chairperson
Board of Land and Natural Resources

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

February 27, 2015

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

DENIAL OF JACQUELINE GARDNER'S REQUEST FOR TRANSFER OF AN OFFSHORE
MOORING PERMIT (PERMIT NO. RMO10837) HELD BY EARL EDWARDS (DECEASED)

BACKGROUND:

Earl Edwards held an offshore mooring permit, Permit No. RMO10837 (permit), at the Nawiliwili Small Boat Harbor (Nawiliwili SBH) on the Island of Kauai. Mr. Edwards moored his vessel, known as "RAVE," at the Nawiliwili SBH.

Mr. Edwards passed away on April 14, 2014. After Mr. Edward's' passing, Ms. Gardner expressed to DOBOR that she wanted to keep the RAVE at the Nawiliwili Small Boat Harbor and have the permit transferred to her. She claims that he transferred a 50% interest in the vessel to her prior to his death; however, the only documents Ms. Gardner provided to DOBOR were her affidavit stating that that Mr. Edwards had transferred 50% ownership of the vessel to her in 2011 and an insurance document showing that she and Mr. Edwards were both named as insureds for a vessel that is presumably the RAVE.

DOBOR informed Ms. Gardner that the requested transfer of the permit was not allowed by DOBOR's rules.

DISCUSSION:

The permit held by Mr. Edwards expired on May 31, 2014. The permit was not renewed prior to its expiration and an extension was not requested.¹ Permits have to be timely renewed. § 13-231-5(a), Hawaii Administrative Rules, provides:

The department may issue or reissue a use permit of all types, including but not limited to commercial use permits, catamaran registration certificates, and mooring permits, for any period up to, by not exceeding one year. Upon expiration of the period stated therein, the use permit and all rights of the permittee shall automatically terminate. No type of use permit shall be renewed unless all the conditions or covenants of the original issuance, including he

¹ Mr. Edwards paid his offshore mooring fees monthly. No permit fees have been paid to DOBOR for the offshore mooring permit since Mr. Edwards' death. Consequently, the requirement of prompt monthly payment offshore mooring fees was not met, and would be an additional basis for the permit not being renewed.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

2/27/15, DeLoraine

Item J-2

Exhibit A

February 27, 2015
Item J-2

requirement of prompt monthly payment of charges in advance, have been met and the rules governing small boat harbors and navigable waters managed of the department of land and natural resources have been fully complied with.

There is currently a wait list for offshore moorings at the Nawiliwili SBH. If an offshore mooring permit for Nawiliwili SBH is not renewed in a timely manner, the permit expires and the offshore mooring is offered to the next person on the wait list. The RAVE is currently moored in a Nawiliwili SBH offshore mooring berth without a permit.²

Even if the permit had not expired, DOBOR's rules do not allow the permit to be transferred to Ms. Gardner. Transfers of use permits (including offshore mooring permits) are generally prohibited unless there is an applicable extension. HAR § 13-231-13(a) provides, in relevant part:

No use permit shall be transferable, so that whenever a permittee parts with possession or transfers 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.

Ms. Gardner cites HAR § 13-231-13(b)(2) in asking for the permit to be transferred. HAR § 13-231-13(b)(2) provides:

A principal owner of a vessel may retain a berth or mooring space if that owner acquires the interest of one or more co-owners because a co-owner has died or moved out of the State[.]

Ms. Gardner claims that she is a co-owner of the RAVE, and that in 2011, Mr. Edwards transferred a 50% interest in the vessel to her. However, there are no documents that show that ownership of the vessel was ever properly transferred to Ms. Edwards prior to the passing of Mr. Edwards. The vessel was registered as a United States Coast Guard (USCG) documented vessel and a review of the USCG documented vessel database showed that the vessel was registered to only Mr. Edwards. Ms. Gardner's name was not present in the database as a co-owner. She admits that she is not currently listed as an owner of the RAVE on any vessel registration documents.

Ms. Gardner offers her affidavit and an insurance certificate as "proof" of her ownership of the RAVE. However, the insurance certificate was issued in May 30, 2014, more than a month after Mr. Edwards' death. It only refers to Mr. Edwards and Ms. Gardner as the insureds, but does not explain if or how Ms. Gardner owns an interest in the RAVE. The only other "proof" of Ms. Gardner's ownership of the RAVE is her affidavit, wherein she states:

² DOBOR notified Ms. Gardner that the RAVE is moored at the Nawiliwili SBH without a permit. Fees for mooring without a permit continue to accrue.

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Item J-2

Earl Edward ("Mr. Edwards"), co-owner of the [RAVE], transferred a 50% interest in the [RAVE] to me in 2011 in exchange for maintenance and upgrading work I performed for the [RAVE]. ... Due to oversight by Mr. Edwards, I am not currently listed as an owner of the [RAVE] on registration documents associated therewith.

A self-serving statement, without more, is insufficient evidence of ownership of the RAVE.

No other exception in HAR §13-231-13 applies to allow the permit transfer that Ms. Gardner is seeking.

Moreover, assuming for the sake of discussion that Mr. Edwards transferred a 50% interest in the vessel to Ms. Gardner and the permit had not expired, she is still not entitled to the permit because a permit may be immediately terminated if a change in ownership of a vessel moored in a DOBOR offshore mooring area was not timely communicated to DOBOR. HAR § 13-231-15. HAR § 13-231-15 provides in part:

(a) The owner of any vessel moored, stored, or left in a small boat harbor or offshore mooring area shall notify the department in writing within seven days if:

* * * *

(2) All or any interest in the vessel is transferred to another person or persons
....

(b) The new possessor or owner of any interest in any vessel moored in a small boat

Evidence of any wilful misstatement or omission of fact regarding the ownership of a vessel moored in a state boat harbor or offshore mooring area, or regarding transfer of ownership of a corporation or other business entity to which a mooring permit, commercial use permit, catamaran registration certificate, or other permit has been issued, including failure to notify the department of a change of ownership, shall be cause for immediate termination of all permits and catamaran registration certificates held by the parties involved, and may be a bar against the issuance of any permit or catamaran registration certificates in the future.

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COUNSEL
Dennis J. Hwang

March 27, 2015

VIA E-MAIL AND U.S. MAIL

Cindy Y. Young, Esq.
Department of the Attorney General
465 South King Street, Suite 300
Honolulu, Hawaii 96813

Re: Application for Transfer of Permit/Berth
from Earl Edwards to Jacqueline "Jodi" Gardner
POSITION STATEMENT

Dear Ms. Young:

The following is the written position statement of Jacqueline "Jodi" Gardner in the above-listed matter

Jacqueline ("Jodie") Gardner appeals to the Board for reversal of the Department's denial of her application for transfer of Permit # RMO10837 from the original permittee, Earl Edwards to herself.

I. RELEVANT FACTS

Permit #RMO10837 was issued by the Department to Earl Edwards, authorizing Mr. Edwards to moor the vessel The RAVE in mooring space located at Nawiliwili Harbor.

Mr. Edwards and Ms. Gardner were companions and business partners for over 20 years prior until his death on April 14, 2014.

Mr. Edwards was the sole owner of The RAVE until 2011 when he transferred a 50% ownership interest in the vessel to Ms. Gardner in exchange for her performing substantial repair, maintenance, and upgrade work to the vessel.

Under his last will and testament submitted to probate in Civ No. 5LP14-1-000050, Mr. Edwards bequeathed and devised all of his property, including his 50% ownership in the vessel to Ms. Gardner.

On June 27, 2014, Ms. Gardner, via her legal counsel, submitted to the Department her application for transfer of the Permit held by Mr. Edwards. See Exhibit "A" attached to Exhibit "1". Ms. Gardner explained in her Application that she had acquired a 50% interest in the vessel in 2011 and was entitled to retain the mooring space described in the Permit pursuant to HAR § 13-231-13(b)(2).

On July 2, 2014, the Department responded by stating that it could not transfer the Permit based on the information provided in Ms. Gardner's letter of June 27, 2014. See Exhibit "B" attached to Exhibit "1". The Department stated that if Ms. Gardner could provide proof of co-ownership of the vessel and that a proceeding had begun prior to Mr. Edwards passing to add her as a co-owner, the Department would consider the request.

On July 23, 2014, Ms. Gardner responded to the Department's letter of July 2, 2014 by including the proof of ownership requested by the Department, in the form of an attached affidavit. See Exhibit "C" attached to Exhibit "1". Ms. Gardner's affidavit explained that she acquired a 50% ownership in the vessel in 2011. Ms. Gardner's letter of July 23, 2014 also explained to the Department that under HAR § 13-241-5(c), proof of boat ownership may be proven by "an affidavit executed by the applicant fully setting forth the facts to support applicant's claim of ownership in the vessel."

On August 11, 2014 the Department responded to Ms. Gardner's letter of July 23, 2014, stating that it was denying Ms. Gardner's application for transfer of the Permit because "is not the spouse of Mr. Edwards, nor was she ever an owner of any part of the vessel 'RAVE'". See Exhibit "D" attached to Exhibit "1". In its letter, the Department states that it "do[es] not dispute that [Ms. Gardner] is now the owner of the vessel 'RAVE'." Id.

On August 21, 2014, Ms. Gardner submitted her Petition Requesting a Contested Case Hearing Before the Board of Land & Natural Resources.

On February 27, 2014, a hearing was held before the Board of Land and Natural Resources. The Board deferred decision on the matter and requested submission of written briefs from the parties.

II. DISCUSSION

A. Ms. Gardner is Entitled to the Permit Under HAR § 13-231-13(b)(2).

Ms. Gardner is entitled to the transfer of Permit #RMO10837 from Earl Edwards to herself pursuant to HAR § 13-231-13(b)(2). That Rule provides in relevant part as follows:

(b) Upon written application to and approval by the department:

• • •

(2) A principal owner of a vessel may retain a berth or mooring space if that owner acquires the interest of one or more co-owners because a co-owner has died or moved out of the State;

HAR § 13-231-13(b)(2).

Ms. Gardner is a principal owner of the vessel, RAVE, because she has held at least a 50% ownership interest in said vessel since 2011. Ms. Gardner acquired a 50% ownership interest from Mr. Edwards in 2011 in exchange for performing substantial maintenance, repair, and upgrading work to the vessel. Following Mr. Edwards' death in April 2014, Ms. Gardner acquired Mr. Edwards' 50% ownership interest as a beneficiary under his will, thus resulting in Ms. Gardner becoming the sole owner of the vessel.

The Department incorrectly contends that HAR § 13-231-13(b)(2) is inapplicable because Ms. Gardner is not and/or was never the principal owner of the vessel. The Department argues that the term "principal owner" is defined in HAR § 13-230-8 which states that "[p]rincipal owner" means a person whose name appears on a certificate of number or who is named as managing owner of a Coast Guard documented vessel." Thus, the Department contends that because only Mr. Edwards was a principal owner because his name was listed as managing owner on Coast Guard documentation.

However, this definition cited by the Department is only applicable to administrative rules contained in Title 13, Subtitle 11, Part 1 - Small Boat Harbors. See HAR § 13-230-8 (stating that the definitions provided in that section are applicable to terms "used in this part," i.e. Title 13, Subtitle 11, Part 1 - Small Boat Harbors) of the Hawaii Administrative Rules. The term "principal owner" as used in HAR § 13-231-13(b)(2) is not required to have the same definition as that used in HAR § 13-230-8 because HAR § 13-231-13(b)(2) is not in the same Part. HAR § 13-231-13(b)(2) is located in Title 13, Subtitle 11, Part 1 - Small Boat Facilities and Provisions Generally Applicable to All State Navigable Waters.

Because the term "principal owner" as used in HAR § 13-231-13(b)(2) is not defined under the Hawaii Administrative Rules, the plain and ordinary meaning should be accorded that term. See In re Hawaiian Telephone Co., 61 Haw. 572, 584,

608 P.2d 383, 391 (Haw. 1980) (holding that terms used in state tax statute must be read “according to their ordinary and popular meaning”). The plain, ordinary, and popular meaning of the term “principal owner” means the person(s) having the primary or greatest ownership interest in an item. See Webster’s Third New International Dictionary 1802 (1961) (defining principal as “most important, consequential or influential” or “a person who has controlling authority or is in a position to act independently”). Ms. Gardner is the principal owner of the vessel because she has at all pertinent times held at least a 50% ownership interest in the vessel. Accordingly, under HAR § 13-231-13(b)(2), Ms. Gardner is allowed to retain the mooring space described in Permit #RMO10837.

Furthermore, it would be illogical and nonsensical to read HAR § 13-231-13(b)(2) as allowing only “a person whose name appears on a certificate of number or who is named as managing owner of a Coast Guard documented vessel” to retain a mooring space. The managing owner designated on Coast Guard documentation bears no relationship to the size or percentage of his/her ownership interest in the vessel. As the Coast Guard itself recognizes, the managing owner designation requirement is simply to enable the Coast Guard to have a single point of contact for correspondence by mail. See United States Coast Guard - National Vessel Documentation Center - Frequently Asked Questions (explaining that the Coast Guard requires designation of a managing owner because “[m]any vessels have more than one owner” and therefore, “[t]o make sure that the right person gets mail concerning the vessel, one must be designated as the managing owner”), attached hereto as Exhibit “2”. Thus, the managing owner designated on Coast Guard documents might only have a minority interest in the vessel. It does not make sense that HAR § 13-231-13(b)(2) would enable the minority owner with perhaps only a small fractional interest in the vessel to retain mooring space while a person with a large controlling interest in the vessel would be denied that privilege.

Finally, even if it could be argued that the definition of “principal owner” as used in HAR § 13-230-8 were applicable, Ms. Gardner meets the definition as her name appears and has appeared on the insurance certificate for the vessel which is a “certificate of number” described in that section.

B. It Is Irrelevant that the Permit Expired Prior to the Application for Transfer.

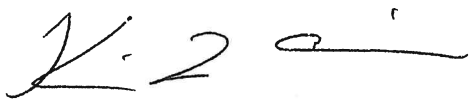
The Department incorrectly argues that the Permit cannot be transferred to Ms. Gardner because it expired prior to the transfer. There is no legal authority to support this contention by the Department.

C. The Department Has Waived the New Arguments it Currently Seeks to Assert.

The Department is estopped from raising arguments against the transfer of the Permit to Ms. Gardner on the grounds that (1) Ms. Gardner is not a “principal owner” of the vessel under HAR § 13-230-8 and (2) that the Permit had expired prior to renewal. The Department waived these arguments long ago as it failed to state them in its letter of July 2, 2014 and August 11, 2014, denying Ms. Gardner’s request to transfer the Permit. As shown in Exhibit “B” attached to Exhibit “1”, nowhere in the Department’s written denials does it state that denial is based on either HAR § 13-230-8 or the allegation that the Permit expired prior to renewal. It is patently unfair for the Department to raise these arguments for the first time at the hearing before the Board on February 27, 2015, approximately 8 months after Ms. Gardner first submitted her application for transfer of Permit. Department denials of applications must set forth the legal bases and authority for denial in writing, not in a piecemeal fashion spread out over numerous months. Allowing the Department to make incomplete/partial arguments in a piecemeal manner wastes the time and resources of applicants and this Board. Ms. Gardner spent considerable time and expense in traveling from Kauai to Honolulu and in instructing her legal counsel to draft the application for transfer letters of June 27 and July 23, 2014. It is neither fair nor reasonable to allow the Department to ambush applicants for the first time at hearing with arguments that it has never once presented to the applicant in the past. Such conduct is not allowed in court or in the administrative appeal process.

III. CONCLUSION

Based on the foregoing, Ms. Gardner respectfully requests the Board’s reversal of the Department’s denial of her application for transfer of the Permit.



KRISTI L. ARAKAKI
Attorney for Jacqueline Gardner

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Dennis J. Hwang

August 21, 2014

VIA HAND DELIVERY AND U.S. MAIL

Mr. William J. Aila, Jr.
Chairperson
Board of Land and Natural Resources
Department of Land and Natural Resources
Kalanimoku Bldg.
1151 Punchbowl Street
Honolulu, Hawaii 96813

Re: Application for Transfer of Permit/Berth
from Earl Edwards to Jacqueline "Jodi" Gardner

Dear Mr. Aila:

This letter is in response to the DLNR's letter of August 11, 2014 regarding Jacqueline "Jodi" Gardner's application for transfer of the permit held by Earl Edwards (Permit # RMO10837) to Ms. Gardner, pursuant to Section 13-231-13 of the Hawaii Administrative Rules ("HAR").


Due process requires that Ms. Gardner be provided a hearing regarding her application for transfer of the permit in which she has acquired and vested rights. See Brown v. Thompson, 91 Haw. 1, 11, 979 P.2d 586, 596 (explaining that mooring permits are "considered property for due process purposes"). Ms. Gardner hereby requests that a contested case hearing be held by the Board on this issue pursuant to HRS Chapter 91 for the reasons described in the attached Petition for a Contested Case Hearing Before the Board of Land & Natural Resources.

Based on the facts set forth and the exhibits included in the attached Petition, Ms. Gardner has established proof of boat ownership and is entitled to transfer of the aforesaid permit in accordance with HAR § 13-231-13.

Please contact me should you have any questions or comments.

Mr. William J. Aila, Jr.
August 21, 2014
Page 2

Very truly yours,

A handwritten signature in black ink, appearing to read 'K. L. Arakaki', with a long horizontal flourish extending to the right.

Kristi L. Arakaki

KLA/tl
Enclosures

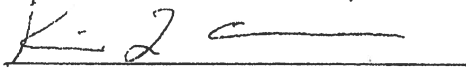
PETITION REQUESTING A CONTESTED CASE HEARING BEFORE THE BOARD OF
LAND & NATURAL RESOURCES

1. Name: Jacqueline Gardner
2. Address: 2500 Niunalu Road, Lihue, Hawaii 96766; Phone Number: 808-246-4828
3. Attorney: Kristi Arakaki, O'Connor Playdon & Guben LLP
4. Address: O'Connor Playdon & Guben LLP, 733 Bishop Street, 24th Floor – Makai Tower, Honolulu, Hawaii 96813. Phone: 808-524-8350. Fax: 808-531-8628.
5. Subject Matter: Application for Transfer of Permit/Berth under HAR § 12-231-13
6. Date of Public Hearing/Commission Meeting: None Held
7. Legal Authority: Due process requirements of Article I, Section 5 of the Hawaii Constitution and the Fifth and Fourteenth Amendment of the United States Constitution require that a hearing be afforded Ms. Gardner on her application. The instant petition is submitted pursuant to HAR § 13-1-29.
8. Nature and Extent of Interest : Ms. Gardner is entitled to transfer of Permit #RMO10837 from Earl Edwards to her pursuant to HAR § 13-231-13(b)(2) because Ms. Gardner held a 50% ownership in the boat for which the Permit was issued prior to the death of Mr. Edwards on April 14, 2014. Ms. Gardner informed the DLNR of her aforesaid right by letter dated June 27, 2014, attached hereto as Exhibit "A".
9. Dispute: The DLNR contends that Ms. Gardner's application for transfer cannot be granted unless she shows (1) proof that she is the co-owner of the vessel and (2) "that a process was in motion to add Ms. Gardner as a co-owner" of the vessel. See DLNR letter of July 2, 2014, attached hereto as Exhibit "B". The DLNR is incorrect in its statement that Ms. Gardner must show that a "process was in motion" to add her as co-owner of the vessel prior to Mr. Edwards's death because there is no such statutory or regulatory authority for this alleged requirement. With respect to the DLNR's request that Ms. Gardner submit proof of her ownership of the vessel, Ms. Gardner submitted the documentation of vessel ownership required by HAR §§ 13-230-8 and 13-241-5(c) in the form of affidavits attached to her letter of July 23, 2014 and attached hereto as Exhibit "C". The DLNR reviewed the aforesaid documentation and proof of ownership submitted by Ms. Gardner but the DLNR nonetheless concluded that although Ms. Gardner is currently the undisputed owner of the vessel, she was previously not an owner of any part of the vessel. See DLNR letter of August 11, 2014, attached hereto as Exhibit "D".
10. Relief Requested: Ms. Gardner requests that her application for transfer of permit be granted.

Mr. William J. Aila, Jr.
August 21, 2014
Page 4

11. Public Interest: A hearing on this issue would serve the public interest as there is currently a discrepancy regarding the transferability of a mooring permit under HAR § 13-231-13(b)(2) even where the applicant has provided all of the proof of ownership and documentation required by HAR §§ 13-230-8 and 13-241-5(c).

Dated: August 21, 2014, Honolulu, Hawaii

A handwritten signature in black ink, appearing to read "K. L. Arakaki", is written over a horizontal line.

Kristi L. Arakaki
Attorney for Jacqueline Gardner

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COUNSEL
Dennis J. Hwang

June 27, 2014

VIA U.S. MAIL AND FACSIMILE

Mr. Joseph Borden
Kauai District Manager
DLNR – Kauai Division of Boating
and Ocean Recreation
2494 Niunalu Road
Lihue, Hawaii 96766
Fax: 808-241-3117

Re: Application for Transfer of Permit/Berth
from Earl Edwards to Jacqueline "Jodi" Gardner

Dear Mr. Borden:

We are the attorneys for Jacqueline "Jodi" Gardner". We hereby respectfully submit this application for transfer of the permit held by Earl Edwards (Permit # RMO10837) to Ms. Gardner, pursuant to Section 13-231-13 of the Hawaii Administrative Rules ("HAR"). Mr. Edwards recently passed away on April 14, 2014. Ms. Gardner is a co-owner of the vessel, The RAVE, that occupies the berth relating to the aforesaid permit. Due to oversight of vessel co-owner, Mr. Edwards, Ms. Gardner is not currently listed as an owner on registration documents for the vessel. However, Mr. Edwards had transferred a 50% interest in the vessel to Ms. Gardner in 2011. Indeed, Mr. Edwards and Ms. Gardner have openly represented to this office for several years that they are co-owners of the boat and both were insureds under an insurance policy issued for the vessel. See Exhibit "A". Ms. Gardner therefore requests that the permit be transferred to her under HAR § 13-231-13(b)(2).

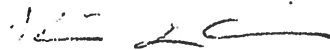
A probate matter is in the process of being opened for Mr. Edwards's estate. If you require further proof of Ms. Gardner's ownership of the vessel for purposes of this application, please contact me at 808-544-8606. Upon receipt of your request, Ms. Gardner will seek an order from the probate court determining ownership of the vessel.

Mr. Joseph Borden
June 27, 2014
Page 2

Based on the foregoing, we request that the Department grant this application for permit transfer. Alternatively, if the Department requires determination from the Court regarding ownership of the vessel, we request that the Department permit the Estate of Mr. Edwards to retain the permit until the Court issues its order determining ownership of the vessel.

Please contact me should you have any questions or comments.

Very truly yours,



Kristi L. Arakaki

KLA/tl
Enclosure

MARKEL AMERICAN INSURANCE COMPANY

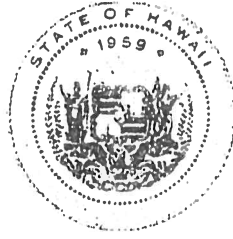
GLEN ALLEN, VIRGINIA

WATERCRAFT DECLARATIONS PAGE

Page 1 of 1

Policy Number: MHY00000133742	Agency Number: 10206 - 000001	Effective Date/Transaction: 05/30/2014	Endorse
Policy Period: From 01/01/2014 To 01/01/2015 Insured Name and Mailing Address: EARL G EDWARDS JACQUELINE GARDNER 2500 NIUMALU RD Lihue, HI 96766		12:01 A.M. Standard Time at Your Mailing Address Your Agent: 805-640-3970 AMERICAN MARINE INS. SERVICES 410 BRYANT CIRCLE, STE B OJAI, CA 93023	
Yacht Description: 118' 1998 EDWARDS BOAT COMPANY TRIMARAN Tender:		HIN:HQZ00100G898	
Yacht Mooring Location: Lihue, HI 96766 Navigation Limits: The waters of the seven (7) major Hawaiian Islands, not to exceed fifty (50) miles offshore any one island. Additional navigation at restriction in endorsement MHY5074.			
Lay-Up: None From: To:			
COVERAGE			
Protection and Indemnity	Limit	Deductible	Premium
Uninsured Watercraft	\$500,000		\$931
Medical Payments	\$500,000	\$0	incl.
Oil Pollution Liability	\$10,000	\$0	incl.
Longshore and Harbor Workers' Compensation	\$854,400	\$0	incl.
	Incl.		Incl.
Minimum Earned Premium: \$250.00 Amend Insured Information		Endorsement Premium Total: \$75.00 Unit Premium: \$1,006.00	
Loss Payee		Policy Taxes/Fees: \$0.00 TOTAL ANNUAL PREMIUM: \$1,006.00	
Producer		Customer Ref# 32920	
Forms and Endorsements:		MHY5001-0108 MHY5072-0108 MHY5074-0108 MHY5090-0412 MHY5089-0412	
Signed on: 2014-05-30 at OJAI, CA		[Signature]	
MHY5000-0108		Insured	

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



WILLIAM J. AH V. JIG
COMMISSIONER
BOARD OF LAND AND NATURAL RESOURCES
COMMISSIONER OF WATER RESOURCE ADMINISTRATION

JESSE SOUKI
DIRECTOR

WILLIAM M. TAM
DEPUTY DIRECTOR

EDWARD R. UNDERWOOD
COMMISSIONER
DEPARTMENT OF BOATING AND OCEAN RECREATION



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

2494 NIUMALU ROAD
LIHUE, HAWAII 96766

Phone 808-241-3111 Fax 808-241-3117

July 2, 2014

O'Conner Playdon & Guben LLP
Pacific Guardian Center, Maki Tower
733 Bishop St. 24th Floor
Honolulu, HI. 96813-4070

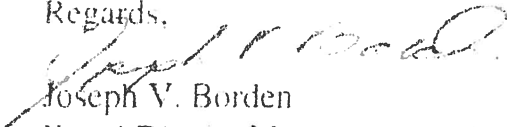
Dear Ms. Arakaki

We are in receipt of your June 24th 2014 letter regarding the transfer of permit/berth from Mr. Edwards (deceased) to Ms. Gardner.

We cannot transfer the permit based on the information you have provided. If Ms. Gardner can show proof that she is the co-owner of the vessel, and if she can show proof prior to Mr. Edwards passing, that a process was in motion to add Ms. Gardner as a co-owner, the department may consider the request.

Should you have any questions, please feel free to call me at 241-3113

Regards,


Joseph V. Borden
Kauai District Manager

Cc File

EXHIBIT "B"

O'CONNOR PLAYDON & GUBEN LLP

Dennis E. W. O'Connor
George W. Playdon, Jr.
Jerrod K. Guben
Michael J. McGulgan
James A. Kawachika*
Cid H. Inouye
Kelvin H. Kaneshiro
Jeffre W. Juliano, LL.M.
Dennis E. W. O'Connor Jr.
Peter B. Carlisle

W. Thomas Fagan
(1945 - 2013)

* A Law Corporation

A LIMITED LIABILITY LAW PARTNERSHIP
ATTORNEYS AT LAW *Since 1876*

Pacific Guardian Center • Makai Tower • 733 Bishop Street • 24th Floor
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www.opglaw.com

Charles S. O'Neill, Jr., LL.M.
Jeffery S. Flores
Miranda F. Tsai
Kristi L. Arakaki
Lahela M. F. Hite
H. Maxwell Kopper

COUNSEL
Dennis J. Hwang

July 23, 2014

VIA U.S. MAIL AND FACSIMILE

Mr. Joseph Borden
Kauai District Manager
DLNR – Kauai Division of Boating
and Ocean Recreation
2494 Niumalu Road
Lihue, Hawaii 96766
Fax: 808-241-3117

Re: Application for Transfer of Permit/Berth
from Earl Edwards to Jacqueline "Jodi" Gardner

Dear Mr. Borden:

This letter is in response to your letter of July 2, 2014 regarding Jacqueline "Jodi" Gardner's application for transfer of the permit held by Earl Edwards (Permit # RMO10837) to Ms. Gardner, pursuant to Section 13-231-13 of the Hawaii Administrative Rules ("HAR").

Your letter states that additional proof of ownership of the boat in question is required in order to consider Ms. Gardner's application. Pursuant to the definition of "boatowner" under HAR § 13-230-8, documentation of ownership must meet the requirements of HAR § 13-241-5(c). That section provides that proof of boat ownership may be proven by "an affidavit executed by the applicant fully setting forth the facts to support applicant's claim of ownership in the vessel." Enclosed, please find Ms. Gardner's affidavit supporting her claim of ownership of the boat.

We believe that this affidavit satisfies Ms. Gardner's obligation to provide proof of boat ownership. Nonetheless, although by no means required, Ms. Gardner is in the process of securing an order from the Circuit Court to establish her ownership in the boat as of 2011.

Mr. Joseph Borden
July 23, 2014
Page 2

Based on Ms. Gardner's application and the enclosed affidavit, we believe that Ms. Gardner has established proof of boat ownership and is entitled to transfer of the aforesaid permit in accordance with HAR § 13-231-13.

Please contact me should you have any questions or comments.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kristi L. Arakaki', with a long horizontal flourish extending to the right.

Kristi L. Arakaki

KLA/tl
Enclosures

AFFIDAVIT OF JACQUELINE JAYE GARDNER

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

JACQUELINE JAYE GARDNER, being first duly sworn on oath,
deposes and says:

1. I am one of the owners of the boat, The RAVE (hereinafter the "Boat"), occupying the mooring space in Nawiliwili Harbor, under Permit #RMO10837.

2. Earl Edwards ("Mr. Edwards"), co-owner of the Boat, transferred a 50% interest in the Boat to me in 2011 in exchange for maintenance and upgrading work I performed for the Boat.

3. Due to oversight by Mr. Edwards, I am not currently listed as an owner of the Boat on registration documents associated therewith.

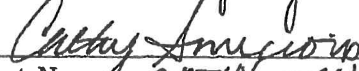
4. Mr. Edwards passed away on APRIL 14th 2014, and a probate matter for his estate is currently pending in the Circuit Court of the Fifth Circuit, State of Hawaii (Civ. No. 5LP14-1-000050).

5. I have recently been appointed as the personal representative of the estate of Mr. Edwards by Letters Testamentary issued June 30th 2014.

Further Affiant sayeth naught.

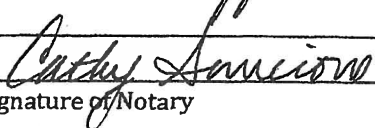

JACQUELINE JAYE GARDNER

Subscribed and sworn to before me
this 15 day of July, 2014.


Print Name: CATHY SANCIOUS
Notary Public, State of _____

LS

My Commission Expires: 10 Apr 2015

NOTARY CERTIFICATION	
Doc. Date: <u>7-15-14</u>	or <input type="checkbox"/> Undated at time of notarization.
No. of Pages: <u>2</u>	<u>5th</u> Circuit
Doc. Description: <u>aff.</u>	
 Signature of Notary	<u>7-15-14</u> Date
(Official Stamp or Seal)	

LS

KAUAI ESTATE LAW, LLLC
CYNTHIA HANNAH-WHITE, #8977
2970 Kele Street, Suite 205
Lihue, Hawaii 96766
Phone: (808) 245-9991
E-mail: info@kauaiestatelaw.com

Attorney for Applicant
JACQUELINE JAYE GARDNER

CLERK OF THE COURT
STATE OF HAWAII
ISSUED AT

2014 JUL 30 PM 3: 22

DANETTE FUJII
CLERK

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

_____	}	
THE ESTATE	}	P. NO. 14-1- <u>0050</u>
	}	(Informal)
OF	}	
	}	
EARL GEORGE EDWARDS,	}	LETTERS TESTAMENTARY
	}	
	}	
Deceased.	}	
_____	}	

LETTERS TESTAMENTARY

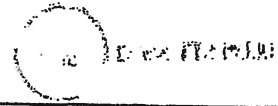
The Last Will and Testament of the decedent having been duly admitted to informal probate by the Registrar of this Court, JACQUELINE JAYE GARDNER is hereby authorized to perform the duties of Personal Representative and to administer the estate according to law.

Limitations on powers: *[None.]*


These Letters Testamentary shall expire three years from the date hereof, unless renewed by the Court for good cause.

DATED: _____
 at Lihue, Hawaii

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in this office, in full force and effect



Clerk of the Above-Entitled Court

on _____

Clerk, Circuit Court, Fifth Circuit

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

JESSE SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

EDWARD R. UNDERWOOD
ADMINISTRATOR
DIVISION OF BOATING AND OCEAN RECREATION

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

2494 NIUMALU ROAD
LIHUE, HAWAII 96766

Phone 808-241-3111 Fax 808-241-3117

August 11, 2014

O'Connor Playdon & Guben LLP.
Pacific Garden Center, Makai Tower
733 Bishop St., Suite 2400
Honolulu, HI. 96813-4070

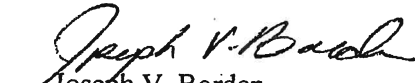
Dear Ms. Arakaki

We have reviewed the affidavit submitted by Ms. Gardner, we do not dispute that she is now the owner of the vessel "RAVE". However, Ms. Gardner is not the spouse of Mr. Edwards, nor was she ever an owner of any part of the vessel "RAVE". Therefore, the request to reissue the offshore mooring permit in her name is denied since it will be contrary to the Hawaii Administrative Rules.

The vessel "RAVE" USCG Doc. No. 1227350 has been mooring without a permit since July 1, 2014, and is accruing mooring without permit fees daily. Ms. Gardner may apply for a temporary mooring permit for up to ninety days in a calendar year for the facility, but will need to relocate the vessel once the time limit expires.

Should you have any questions, please call the Kauai District Office at 241-3111

Regards,


Joseph V. Borden
Kauai District Manager

Cc. File

SEARCHED "D"

O'CONNOR PLAYDON & GUBEN LLP

Dennis E. W. O'Connor
George W. Playdon, Jr.
Jerrold K. Guben
Michael J. McGulgan
James A. Kawachilka*
Cid H. Inouye
Kelvin H. Kaneshiro
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Charles S. O'Neill, Jr., LL.M.
Jeffery S. Flores
Miranda F. Tsai
Kristi L. Arakaki
Lahela H. F. Hite
H. Maxwell Kopper

COUNSEL
Dennis J. Hwang

June 27, 2014

VIA U.S. MAIL AND FACSIMILE

Mr. Joseph Borden
Kauai District Manager
DLNR – Kauai Division of Boating
and Ocean Recreation
2494 Niunalu Road
Lihue, Hawaii 96766
Fax: 808-241-3117

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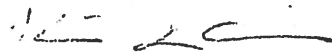
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Mr. Joseph Borden
June 27, 2014
Page 2

Based on the foregoing, we request that the Department grant this application for permit transfer. Alternatively, if the Department requires determination from the Court regarding ownership of the vessel, we request that the Department permit the Estate of Mr. Edwards to retain the permit until the Court issues its order determining ownership of the vessel.

Please contact me should you have any questions or comments.

Very truly yours,



Kristi L. Arakaki

KLA/tl
Enclosure

MARKEL AMERICAN INSURANCE COMPANY

GLEN ALLEN, VIRGINIA



MARKEL

WATERCRAFT DECLARATIONS PAGE

Policy Number: MHY00000133742	Agency Number: 10206 - 000001	Effective Date/Transaction: 05/30/2014	Endorse
Policy Period: From 01/01/2014 To 01/01/2015		12:01 A.M. Standard Time at Your Mailing Address	
Insured Name and Mailing Address EARL G EDWARDS JACQUELINE GARDNER 2500 NIUMALU RD Lihue, HI 96766		Your Agent 805-640-3970 AMERICAN MARINE INS. SERVICES 410 BRYANT CIRCLE, STE B OJAI, CA 93023	
Yacht Description: 118' 1998 EDWARDS BOAT COMPANY TRIMARAN		HIN: HQZ00100G898	
Tender:			
Yacht Mooring Location: Lihue, HI 96766			
Navigation Limits: The waters of the seven (7) major Hawaiian Islands, not to exceed fifty (50) miles offshore any one island. Additional navigation or restriction to endorsement MHY5074.			
Lay-Up: None	From:	To:	
COVERAGE			
Protection and Indemnity	LIMIT	DEDUCTIBLE	PREMIUM
Uninsured Watercraft	\$500,000		\$931
Medical Payments	\$500,000	\$0	incl.
Oil Pollution Liability	\$10,000	\$0	incl.
Longshore and Harbor Workers' Compensation	\$854,400	\$0	incl.
	Incl.		incl.
Minimum Earned Premium: \$250.00		Endorsement Premium Total: \$75.00	Unit Premium: \$1,006.00
Amend Insured Information		Policy Taxes/Fees: \$0.00	TOTAL ANNUAL PREMIUM: \$1,006.00
Loss Payee			
Producer		Customer Ref# 32920	
Forms and Endorsements:		MHY5001-0108	MHY5072-0108
Signed on: 2014-05-30		MHY5030-0412	MHY5089-0412
at OJAI, CA		<i>James C. King</i>	
MHY5000-0108		Inured	