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FIRST CIRCUIT
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16-JAN-2020
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

CIVIL NO. 1CCV NO. 20-0000016

Plaintiff,

v.

VERIFIED AMENDED COMPLAINT;
EXHIBITS "A" THROUGH "Z";
VERIFICATION OF COMPLAINT AND
CERTIFICATION; SUMMONS

DEPARTMENT OF LAND AND NATURAL
RESOURCES, STATE OF HAWAII; BOARD
OF LAND AND NATURAL RESOURCES,
STATE OF HAWAII; SUZANNE CASE,
DIRECTOR OF THE DEPARTMENT OF
LAND AND NATURAL RESOURCES AND
CHAIRPERSON OF THE BOARD OF LAND
AND NATURAL RESOURCES, STATE OF
HAWAII; DIVISION OF BOATING AND
OCEAN RECREATION, STATE OF
HAWAII; ED UNDERWOOD,
ADMINISTRATOR, DIVISION OF
BOATING AND OCEAN RECREATION,
STATE OF HAWAII; MEGHAN STATTS,
OAHU DISTRICT MANAGER, DIVISION
OF BOATING AND OCEAN RECREATION,
STATE OF HAWAII; CLIFFORD INN,
PROGRAM SPECIALIST, DIVISION OF
BOATING AND OCEAN RECREATION,
STATE OF HAWAII,

Defendants.

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FIRST CIRCUIT COURT
STATE OF HAWAII
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VERIFIED AMENDED COMPLAINT

Plaintiff Erik Rask ("Plaintiff"), proceeding *pro se*, for his Verified Amended Complaint against Defendants DEPARTMENT OF LAND AND NATURAL RESOURCES, et al.

(collectively, “Defendants”), alleges and avers as follows:

PARTIES AND JURISDICTION

1. Defendant DEPARTMENT OF LAND AND NATURAL RESOURCES (“DLNR”) is a Department of the State of Hawaii.
2. Defendant BOARD OF LAND AND NATURAL RESOURCES (“BLNR”) is a Board that reviews and takes action on DLNR submittals.
3. Defendant SUZANNE CASE is, and at all relevant times was, Director of DLNR and Chairperson of BLNR, and is sued in her official capacities.
4. Defendant DIVISION OF BOATING AND OCEAN RECREATION (“DOBOR”) is a division of the DLNR responsible for managing public small boat harbors in Hawaii, including the Ala Wai Small Boat Harbor in Honolulu (“AWSBH”).
5. Defendant ED UNDERWOOD is, and at all relevant times was, Administrator of DOBOR, and is sued in his official capacity.
6. Defendant MEGHAN STATTS is, and at all relevant times was, the Oahu District Manager for DOBOR, and is sued in her official capacity.
7. Defendant CLIFFORD INN is, and at relevant times was, Program Specialist for DOBOR, and is sued in his official capacity.
8. Plaintiff is a resident of Honolulu, Hawaii, owns a sailing vessel, and holds valid mooring and principal-habitation permits issued by Defendants for a permanent mooring at the AWSBH.
9. This is a civil action seeking, *inter alia*, a judicial declaration as to the validity of certain agency rules promulgated and adopted by Defendants. Plaintiff is also seeking to compel the Defendants’ disclosure of certain public records pursuant to the Uniform Information Practices Act, Haw. Rev. Stats. (“HRS”) Chapter 92F (“UIPA”). The Court has jurisdiction over this matter pursuant to HRS §§ 91-7, 92F-15(a) and 601-21.5(3).
10. Venue is proper pursuant to HRS § 91-7(a) because Plaintiff resides in Honolulu, Hawaii. Venue is proper pursuant to HRS §§ 92F-15(e) and 601-21.5(5) for the following reasons: the request for records was made in this circuit; upon information and belief, the

requested records are maintained in this circuit; the Defendants are headquartered in this circuit; the claim for relief arose in this circuit; and the Defendants are domiciled in this circuit.

BACKGROUND

11. DOBOR's authority to set mooring fees at small boat harbors in Hawaii is found in HRS § 200-10 (2016).

12. When it was enacted, HRS 200-10(c)(1) provided that "[m]oorage fees shall be established by the department and shall be higher for nonresidents." *See* 1991 Hawaii Laws Act 272 (H.B. 917). This language was not changed until 2011.

13. In or around 2011, the Hawaii legislature passed Act 197 (House Bill No. 1566), which removed certain legislative oversight necessary for DOBOR to enter into a public-private partnership for the development of portions of AWSBH, enabling DOBOR to maximize the revenue potential of those parcels.

14. While Act 197 broadened DOBOR's redevelopment options with respect to certain portions of the AWSBH, it also imposed new limitations on DOBOR's rule-making authority with respect to future mooring fee increases.

15. Act 197 amended HRS 200-10(c)(1) to require that "moorage fees shall be established by appraisal by a state-licensed appraiser approved by the department and shall be higher for nonresidents than for residents. The moorage fees shall be set by appraisal categories schedule A and schedule B, to be determined by the department, and **may be increased annually by the department, to reflect a cost-of-living index increase[.]**" (emphasis added).

16. Act 197 required that DOBOR obtain a one-time appraisal for the purpose of setting a new basis for mooring fees based on an appraisal by a third party. Thereafter, the Act provided that DOBOR could increase mooring fees "annually . . . , to reflect a cost-of-living index increase."

17. HRS § 200-10 does not allow DOBOR to circumvent the "cost-of-living" language of the statute by simply obtaining another appraisal any time that it wishes to set an entirely new basis for mooring fees, as it has tried to do via its latest rule amendments.

18. The 2011 amendments to HRS 200-10(c) indicate legislative intent to avoid sudden, drastic increases in fees charged for existing permit-holders, because Act 197 provided

for a phased-in grandfathering period via the “appraisal category schedule A[,]” with gradual increases to the fees for those in that category over a period of three years.

19. Further indicating legislative intent to avoid drastic increases in years beyond 2011, the language of HRS 200-10(c) provides that slip fees could be increased only “annually by the department, to reflect a cost-of-living index increase”—language which did not exist prior to 2011.

DOBOR HAS IMPOSED UNAUTHORIZED MOORING FEE INCREASES

20. The plain language of HRS 200-10(c) as of the date of the filing of this complaint does not authorize the mooring fee increases which DOBOR has attempted to impose via its newly amended administrative rules—Haw. Admin. R. (“HAR”) Chapter 13-234 (2019).

21. DOBOR’s purportedly-amended HAR § 13-234-3 (2019) provides as follows: “The mooring rate schedule in this subsection shall be per foot of vessel length overall or maximum length of berth or mooring, whichever is greater. All mooring rates shall be determined by a state-licensed appraiser in accordance with section 200-10, Hawaii Revised Statutes.”

22. Contrary to DOBOR’s new rules, HRS § 200-10, as amended by Act 197, required DOBOR to obtain a one-time appraisal for the purpose of establishing a new basis for mooring fees, and thereafter, the legislature provided that mooring fees could be increased only “annually . . . , to reflect a cost-of-living index increase[.]”

23. DOBOR’s purportedly amended HAR § 13-234-3 (2019) then sets forth a table of new mooring rates at all Hawaii small boat harbors, all of which do not “reflect a cost-of-living index increase[,]” in violation of HRS § 200-10.

24. To show the effects DOBOR’s fee increase, what follows is a table with the prior, Schedule B mooring rate for moorage “along catwalk” at harbors in Hawaii, next to the purported new rate set forth in HAR § 13-234-3 (2019), as well as the percentage increase:

Harbor	Prior mooring rate along catwalk, as set forth in Schedule B.	New mooring rate along catwalk.	Percentage increase.
Nawiliwili	\$7.52	\$12.00	59.57%
Port Allen	\$7.52	\$11.00	46.27%

Ala Wai	\$9.14	\$13.00	42.23%
Keehi	\$7.79	\$13.00	66.88%
Haleiwa	\$7.52	\$10.00	32.97%
Heeia Kea	\$7.52	\$10.00	32.97%
Waianae	\$7.52	\$11.00	46.27%
Manele (Lanai)	\$7.52	\$10.00	32.97%
Lahaina	\$7.79	\$11.00	41.20%
Maalaea	\$7.79	\$10.00	28.36%
Manele (Maui)	\$7.52	\$10.00	32.97%
Kaunakakai	\$7.25	\$9.00	24.13%
Honokohau	\$7.79	\$10.00	28.36%
Kawaihae, South	\$5.09	\$10.00	96.46%
Wailoa	\$7.25	\$9.00	24.13%

25. Thus, HAR § 13-234-3 (2019) imposes crippling, unauthorized fee increases at all harbors in Hawaii, and increases the base mooring rate at the AWSBH by approximately 42%.

26. In addition to increasing the base mooring rate, DOBOR’s amended rules impose fee increases across the board. For electricity furnished by DOBOR, the monthly fee increased from \$5.75 per month to \$50.00 per month (for non-liveaboard tenants), and from \$5.75 per month to \$125.00 per month (for liveaboard tenants), regardless of actual usage by any particular tenant.

27. DOBOR’s amended rules also increase the “shower fee” for access to “[s]howers with hot water” from \$6.00 per month to \$15.00 per month.

28. Notably, while still collecting shower fees from tenants, DOBOR has closed certain shower facilities in the AWSBH for years at a time as a purported solution to deal with trespassers. The facilities that have remained open – private and public bathroom facilities alike – are routinely invaded by individuals who engage in illicit activities therein, including but not limited to prostitution and drug dealing, with total impunity. Boaters, and especially liveaboards who see and hear what is going on at night, regularly contact the Honolulu Police Department to report criminal activity in the harbor, and HPD does a great deal to assist. However, HPD lacks jurisdiction to trespass violators on State property, and DOBOR has refused to provide a 24-hour security guard who could complete necessary HPD paperwork to press charges on behalf of the State. DOBOR has refused to provide any form of security measures in the AWSBH at night time, at all. A basic level of lawlessness in the AWSBH is therefore the status quo.

29. Further, the 600-700 row bathroom was without hot water from November 14, 2019 to December 6, 2019, or 24 consecutive days of cold showers, with no refunds.

30. DOBOR also increased the fees charged for use of “gear lockers” (*i.e.*, dock boxes) from \$5.50 per month to \$10.00 per month.

31. Upon information and belief, DOBOR has no intention of using revenue generated from increased AWSBH slip fees to actually perform any deferred maintenance at the AWSBH.

32. Instead, DOBOR has increased fees across the board for the purpose of clearing out the AWSBH for private development.

33. Upon information and belief, for the past several years Defendants have been engaging in a disinformation campaign to sway the public into believing that: 1) boaters, and especially liveaboards, are to blame for problems related to the AWSBH, and 2) privatization is the only viable solution to address problems concerning the AWSBH.

34. In public statements, Ed Underwood has shown callousness towards the effects of DOBOR’s drastic fee increases within our ocean-based state.

35. When asked by Civil Beat whether the mooring fee increases could drive boaters out of public harbors, Ed Underwood responded, “It’s going to be hard to tell off the bat ... We don’t know if this is going to cause people to leave.” **Exhibit A.**

36. Despite the fact that he is in charge of the Division of “boating” and “ocean recreation,” Ed Underwood has displayed no regard for, and oftentimes animosity toward, members of the public affected by his policy of handing public lands to private corporations.

37. Based on information provided by Defendants, media outlets have published misleading or false statements such as: “Past fee increases were minimal. At the Ala Wai Boat Harbor, for example, fees for boats went up from \$5.25 a foot to \$5.67 a foot between 2006 and 2011. The new per-foot fee will be \$13” (*see* Exhibit A). Contrary to this misleading information, AWSBH mooring rates were increased by over sixty percent (60%) in 2011, from \$5.67 to \$9.14, based on the one-time-appraisal-based fee increase pursuant to Act 197.

38. In or around November 2019, Plaintiff received a billing statement from DOBOR that put into effect DOBOR's purported amendments to HAR § 13-234-3, raising Plaintiff's base mooring rate alone from \$319.90 per month, to \$455.00 per month, a 42% increase. **Exhibit B.**

39. DOBOR's own administrative rules provide useful guidance as to whether a 42% increase "reflect[s] a cost-of-living index increase".

40. The "cost-of-living" index language contained in HRS § 200-10(c)(1) appears elsewhere in that same section, namely HRS § 200-10(c)(4), which states that the principal habitation or "liveaboard" fee "may be increased by the department at the rate of the annual cost-of-living index, but not more than five per cent in any one year[.]"

41. DOBOR's administrative rule implementing the "cost-of-living" requirement in HRS § 200-10(c)(4) provides that DOBOR is to derive "cost-of-living" index information by reference to "the increase in the annual cost of living index (U.S. Department of Labor, U.S. City Average Urban Consumer Price Index for 'all items')[.]" HAR § 13-234-8(a)(2).

42. On November 4, 2019, Plaintiff requested that Defendants produce the cost-of-living index information that DOBOR presumably would have referenced when implementing the principal habitation fee increase that also took effect in 2019, and has received no response. **Exhibit C.**

43. Publicly-available information from the U.S. Bureau of Labor Statistics, however, indicates that the increase in "U.S. Department of Labor, U.S. City Average Urban Consumer Price Index for 'all items'" from November 2018 to November 2019 was 2.1%. **Exhibit D.**

44. The mooring fee increases provided for in the purportedly-amended HAR § 13-234-3, ranging from 24% to 96%, do not "reflect" the 2.1% increase in the "U.S. Department of Labor, U.S. City Average Urban Consumer Price Index for 'all items'" during the relevant time period. *See* HAR § 13-234-8(a)(2); HRS § 200-10(c)(1).

45. Upon information and belief, the mooring fee increases provided for in the purportedly-amended HAR § 13-234-3 do not "reflect" any potentially-relevant "cost-of-living index increase" within any relevant time period.

46. DOBOR's mooring fee increases in the revised HAR § 13-234-3 are unauthorized as to all harbors affected, and should therefore be declared invalid and not enforceable.

DOBOR ARBITRARILY AND CAPRICIOUSLY PRESENTED FOR PUBLIC COMMENT AND BLNR APPROVAL FEE INCREASES THAT IT HAS NO AUTHORITY TO IMPLEMENT

47. On March 2, 2019, DOBOR held a public meeting on its then-proposed revisions to HAR Chapter 13-234. A copy of DOBOR's proposed rule amendments that were the subject of the March 2, 2019 meeting, with DOBOR's proposed changes shown in Ramseyer formatting, is attached hereto as **Exhibit E**.

48. Public meetings on DOBOR's unauthorized HAR Chapter 13-234 amendments were held on all islands, except Lanai and Molokai where only informational meetings were held.

49. The March 2, 2019 meeting on Oahu was attended by over 120 people, with 46 people testifying orally in opposition to the proposed fee-increase.

50. At no point prior to or during the March 2, 2019 public meeting on its proposed revisions to HAR Chapter 13-234 did DOBOR disclose to the public that HRS 200-10(c)(1) does not actually authorize the mooring fee increases that DOBOR was seeking in its rules package.

51. On June 14, 2019, DOBOR presented the final proposed revisions to HAR Chapter 13-234 to the BLNR, and requested BLNR approval.

52. During the June 14, 2019 BLNR meeting, Ed Underwood misled the BLNR when he stated that "[w]e do have the statute now that requires us to set mooring fees by appraisal. An appraisal was done. Based on that appraisal, the proposed mooring fees are in this package."

53. Contrary to Ed Underwood's statements to the BLNR on June 14, 2019, HRS § 200-10(c) does not provide that DOBOR may impose further, sudden, drastic increases to mooring fees based on subsequent appraisals.

54. Rather, HRS § 200-10 limits fee increases in years subsequent to 2011 as follows: "annually . . . , to reflect a cost-of-living index increase."

55. During the June 14, 2019 meeting, a BLNR board member raised questions about DOBOR's intent in raising the slip fees so drastically, as follows: "if you raise the rates how you plan to, all the senior citizens, retirees, on fixed income in Wailoa—they're all gone. Now, if that's your intent, to get the local guys out, that are retirees, that paid their dues, they did their

work, they went through the workforce, so that in their twilight years, they [can] have a good time socializing down here, and if you raise the rate . . . **you're going to chase them all out. That's the way you have designed it.**"

56. Ed Underwood responded to the BLNR board member's comment with a blatant misrepresentation of both the legislative intent behind Act 197, as well as the express language of HRS § 200-10, stating, "the legislature mandated, that fees be set via appraisal. Now if they want a subsidized harbor program, I will follow whatever the legislature tells me to do, and that's exactly what I'm doing here."

57. In reality, Ed Underwood was not doing what the legislature was telling him to do, because the legislature never authorized DOBOR to circumvent the "cost-of-living" provision of HRS § 200-10(c)(1) – added only in 2011 – by having further fee-increasing appraisal(s) done anytime that DOBOR wished to impose drastic fee increases in the future. Such an interpretation of the statute would render the "cost-of-living index" language therein meaningless.

58. Also contrary to Ed Underwood's statements to the BLNR, the legislature never authorized (much less "mandated," as Underwood claimed), that DOBOR could increase fees by anything beyond the annual "cost-of-living index increase" after the 2011 appraisal.

59. At no point in time during Ed Underwood's "explanation" of DOBOR's authority under HRS § 200-10(c)(1) did Underwood mention to the Board the "cost-of-living index increase" language in the statute he was citing to, much less explain the ramifications and legislative intent behind that language.

60. Instead, Ed Underwood incorrectly stated that "[w]e have a mandate in the statute to set the mooring fees by appraisal, which we are doing." BLNR Meetings 2019, June 14, 2019, Audio File 1 of 2, at 00:59:00, available at: <https://dlnr.hawaii.gov/meetings/blnr-meetings-2019/>.

61. The BLNR, possibly misled by Ed Underwood's testimony, approved DOBOR's rules package, rejecting requests from three individuals and two separate entities for contested case hearings on the ground that "[r]ulemaking is not subject to contested case action." BLNR Minutes, June 14, 2019.

62. On August 13, 2019, DOBOR's proposed amendments to HAR Chapter 13-234 were signed by Governor Ige.

63. The unauthorized slip fee increases set forth in HAR § 13-234-3 (2019) mean that Hawaii recreational boaters are currently being forced to pay higher rates than those charged at private marinas, and in exchange are getting run-down docks, unsafe and unclean restrooms, zero security, and no fuel or sanitary pump out.

64. Aside from the insult of having to pay drastically-increased mooring fees for third-world facilities, the slip fee increases set forth in HAR § 13-234-3 (2019) are having an immediate, detrimental effect on the boating and ocean recreation community, as many boaters have been left with no choice but to give up their moorings as the rates become unaffordable—the precise effect that DOBOR appears to have intended.

DOBOR KNEW THAT ITS FEE INCREASES WERE NOT AUTHORIZED

65. Senate Bill No. 1257 was introduced in the Spring 2019 legislative session at DOBOR's request. A copy of SB1257 is attached hereto as **Exhibit F**.

66. During the 2019 legislative session, Hawaii State Senator Sharon Moriwaki advocated for the passage of SB1257, although the bill was introduced by someone else.

67. If it had passed, SB1257 would have removed the “cost-of-living index” language of HRS 200-10(c)(1) prior to the passage of DOBOR's new administrative rules.

68. Specifically, SB1257 would have amended the base-mooring rate provision of HRS § 200-10(c)(1) as follows:

[M]oorage fees shall be established by appraisal by a state-licensed appraiser approved by the department [~~and shall be higher for nonresidents than for residents. The moorage fees shall be set by appraisal categories schedule A and schedule B, to be determined by the department, and may be increased annually by the department, to reflect a cost-of-living index increase. . . .~~] (bold emphasis added).

69. Via SB1257, DOBOR also sought the authority to impose exponential increases (instead of “annual cost-of-living index” increases) to the principal habitation fee, aka “liveaboard” fee, provided for in HRS § 200-10(c)(4).

70. DOBOR initially sought authority to impose an approximately 100% increase to the liveaboard fee based on appraisal at fair market value. SB1257 (providing that liveaboard fee would be established “by a state-licensed appraiser approved by the department[.]”). As SB1257 proceeded through committee hearings, Ed Underwood abandoned appraisal-based fee increases and instead sought amended language that would have allowed DOBOR to increase the liveaboard fee by **50% per year, indefinitely**, at DOBOR’s sole and unfettered discretion. SB1257 HD2 proposed to amend HRS § 200-10(c)(4) as follows: “[T]he liveaboard fees established by this paragraph may be increased by the department [~~at the rate of the annual cost-of-living index, but~~] by not more than [five] fifty per cent in any one year. . . .”].

71. Upon information and belief, DOBOR’s legislative efforts in 2019 were designed to prepare the AWSBH for private development by clearing the harbor of its current tenants by increasing the fees beyond what any average boater in the community can afford.

72. At the same time that DOBOR was testifying before the 2019 Legislature that it needed authority via SB1257 to impose further fee increases ostensibly so that it could perform deferred maintenance in the AWSBH, DOBOR was also trying to rid itself of its AWSBH responsibilities altogether, via House Bill No. 1032. HB1032 would have allowed DOBOR to lease out the AWSBH “in its entirety” for private development, management and operation.

Exhibit G.

73. Ed Underwood testified in support of both SB1257 and HB1032 at multiple legislative committee hearings in Spring 2019.

74. Suzanne Case also submitted letters in support of both SB1257 and HB1032 to various House and Senate committees.

75. SB1257 failed to pass after the bill was opposed by hundreds in the boating and ocean recreation community.

76. HB1032 was passed by the legislature in Spring 2019 in a highly amended form only allowing DOBOR to implement a five-year privatization “pilot program” in Manele Bay, Lanai. However, HB1032 was subsequently vetoed by Governor Ige.

77. Thus, in 2019, DOBOR failed to expand its rule making authority with respect to mooring fees charged at small boat harbors in Hawaii.

78. DOBOR's current authority to promulgate rules governing mooring and principal habitation fee increases is the same as it was following the passage of Act 197 in 2011.

79. Yet, DOBOR went ahead and implemented mooring fee increases far beyond what is allowed under the current version of HRS § 200-10(c)(1).

80. Defendants knew that the mooring fee increases proposed and enacted in 2019 were not authorized, because during their rule making process Defendants were simultaneously seeking to delete the "cost-of-living index" language from HRS § 200-10(c).

81. A Civil Beat article dated March 25, 2019, containing information provided by DOBOR, demonstrates that DOBOR clearly knew that the mooring fee increases it had already presented to the public were not authorized, and would not become authorized unless SB1257 became law.

82. The March 25, 2019 Civil Beat article states, "Senate Bill 1257 would change the rent amount that boat owners pay for their slips at harbors around Hawaii. [. . .]. Instead of a set, stable price, the fees charged are likely to climb because they will be set by an appraiser based on market rates. The exact prices are still under negotiation in the legislature." **Exhibit H.**

83. In Defendants' written testimony to the House Committee on Finance, Suzanne Case stated that SB1257 "proposes to clarify that mooring and liveaboard fees for state small boat harbors and certain boating facilities be set by appraisal by a state-licensed appraiser at fair market value[.]" **Exhibit I.**

84. Defendants would not have sought purported "clarification" that mooring and liveaboard fees are to be set by appraisal at fair market value if they already held a good-faith belief that HRS § 200-10(c) gave them the authority to set mooring and liveaboard fees by further appraisal(s) at fair market value. They sought such "clarification" because they *knew* that the statute did not give them that authority.

85. Notably, although Suzanne Case's DLNR testimony stated that SB1257 "proposes to clarify that . . . **liveaboard fees** . . . be set by a state-licensed appraiser . . . [,]" the statute governing liveaboard fees, HRS § 200-10(c)(4), is entirely devoid of any language concerning appraisal(s) that could be so-clarified. *See* HRS § 200-10(c)(4).

86. In moving forward with its rulemaking process in 2019, it appears that DOBOR expected that the proposed mooring fee increases set forth in HAR § 13-234-3 *would become authorized* with the passage of SB1257, but that never happened.

87. The failure of SB1257 did not prevent the leadership of DOBOR from moving forward with unauthorized, double-digit mooring fee increases at all Hawaii small boat harbors **based upon a new appraisal at fair market value**.

88. In other words, DOBOR sought legislative authority to impose fee increases based on a further appraisal, presented unauthorized rule revisions to the public for commenting, arbitrarily and capriciously failed to disclose to the public that its proposed rule revisions were in fact not authorized, failed to disclose at public meetings the existence of its concurrent legislative efforts to drastically expand its mooring fee rule-making authority, then ultimately failed in those legislative efforts, but arbitrarily and capriciously presented the same, unauthorized rules package to the BLNR, which, by reading the statute, should have known it was approving an administrative rules package that exceeded the authority granted to DOBOR by the legislature.

DOBOR'S 2019 REQUEST FOR PROPOSALS

89. DOBOR's operations are funded primarily by the "Boating Special Fund."

90. The Boating Special Fund was established by the Hawaii State Legislature in the early 1970s.

91. The sources of revenue for the Boating Special Fund include harbor fees, mooring fees, commercial fees, a portion of the State's fuel tax, and lease rent from property under DOBOR's jurisdiction.

92. HRS § 200-8 requires that any fees collected within small boat harbors shall be expended only for costs related to the operation, upkeep, maintenance, and improvement of the small boat harbors.

93. Upon information and belief, DOBOR has been operating under the expectation that a private developer will eventually take over the AWSBH, and will become responsible for performing any and all needed improvements, transforming the AWSBH into a privatized, "world-class" facility for the rich, providing a "windfall" of revenue to DOBOR.

94. Consistent with DOBOR's expectation that private developer(s) will eventually be responsible for performing all maintenance and repairs at the AWSBH, DOBOR has essentially stopped performing any maintenance or repairs, as docks fall into the water one by one, and hundreds of slips are currently left empty and abandoned.

95. In or around 2018, DOBOR provided members of the Hawaii legislature with its "Strategic Action Plan" advocating a "public-private partnership" approach to management of all small boat harbors within DOBOR's jurisdiction. **Exhibit J** (the "2019 Strategic Plain").

96. The 2019 Strategic Plan proposes a public-private partnership model similar that used at Kewalo Basin, where the Hawaii Community Development Authority in 2015 granted a 35-year lease to the Howard Hughes Corporation.

97. Demonstrating DOBOR's lack of motive to expend Boating Special Funds to perform deferred maintenance with mooring fee revenues as the law requires, DOBOR's 2019 Strategic Plan states that the public-private partnership model "presents a far more efficient means to yield significant revenue than expending resources on deferred maintenance. . . ." *Id.* at 19.

98. Demonstrating one of DOBOR's motives with respect to drastically increasing slip fees in 2019, and the true motives of DOBOR's 2019 legislative efforts, the 2019 Strategic Plan states that the "understanding" with respect to leveraging public-private monies is that "fair market rent set by appraisal will attract a business entity, such as [Howard Hughes Corporation]." *Id.* at 16.

99. Upon information and belief, DOBOR views a dysfunctional, unmaintained, languishing AWSBH as advancing, not hindering, its privatization agenda, and therefore DOBOR has no incentive to invest Boating Special Funds into the harbor, as the law requires, for this reason also.

100. DOBOR's own 2019 Strategic Plan points to the fact that the AWSBH "languishes in disrepair" and argues that the "core of the problem lies [in] an inefficient harbor management model[,]" which would allegedly be addressed by allowing DOBOR, the agency guilty of inefficient harbor management, to hand over harbors for private development. *Id.* at 7.

101. The 2019 Strategic Plan targets the AWSBH in particular, noting that the AWSBH is “[s]ituated in a key tourism area” (*id.* at 5) and has “immense commercial development potential” that DOBOR wishes to exploit. *Id.* at 11.

102. Although Act 197 had already given DOBOR the authority to subsidize harbor operations by leasing out of large parcels of the AWSBH via public-private partnerships (“PPPs”), in 2019 DOBOR returned to the legislature seeking to lease out the AWSBH “in its entirety” for private development, management, and operation.

103. The 2019 Strategic Plan states that during the plan’s initial phase, “DOBOR will make all necessary preparations to implement PPPs at its boating facilities. Currently, HRS Chapter 200 authorizes DOBOR to lease fast and submerged lands at the [AWSBH]. DOBOR will seek to clarify its authority to enter into PPPs at small boat harbors statewide through legislative action.” Strategic Plan at 20.

104. Hence HB1032, introduced in the Spring 2019 legislative session at DOBOR’s request, and supported by Senator Sharon Moriwaki. HB1032 would have done more than merely “clarify” DOBOR’s authority. Rather, HB1032 would have given DOBOR the authority to lease *any existing state boating facility in its entirety*. Exhibit G.

105. HB1032 was met with stiff public opposition. A petition with over five-hundred signatures against HB1032 and SB1257 was submitted to members of the Hawaii legislature. Although HB1032 passed in a highly-amended form that would not have immediately affected the AWSBH, it was ultimately vetoed following the Spring 2019 legislative session.

106. While DOBOR’s Spring 2019 legislative efforts to obtain authority to lease out the AWSBH “in its entirety” were ongoing, DOBOR simultaneously put out a request for proposals to redevelop, in piecemeal fashion, portions of the AWSBH.

107. On April 5, 2019, DOBOR issued its Request for Proposals for Development of the Ala Wai Small Boat Harbor, revised April 10, 2019 (the “2019 RFP”) for the private development, management and operation of four separate parcels of land in the AWSBH to their “highest and best use to the extent permitted under applicable laws.”

108. The total area that DOBOR sought to develop via its 2019 RFP is approximately 11 acres, identified mainly by four parcels (Parcels A, B, C and D), and two “moles” which are

long roads with hundreds of public parking stalls separating the various rows of boats (Moles 1 and 2).

109. Parcel A identified for development in the 2019 RFP is 3.47 acres. Currently, Parcel A holds trailered-boat storage, paid-public parking, and the AWSBH harbormaster's office.

110. Parcel B identified for development in the 2019 RFP is 1.12 acres of vacant land that was previously an active boat haul-out facility where boaters could pull their boats from the water for essential maintenance and repairs. The haul-out facility was razed after Underwood took over, under the expectation that the land would be developed by a private entity pursuant to Act 197.

111. Parcel C identified for development in the 2019 RFP is 0.37 acres. Until Underwood took over, Parcel C had a fuel-dock/store, known as "Poor Boy's Yacht Club," or simply "The Store." The Store was a one-stop shop for boaters, as it offered fuel, a sanitary pump-out station, laundry facilities, internet, a book exchange, home-cooked food, drinks, ice, etc. The Store was used by both boaters and the general public as a place to meet friends, talk story, and rendezvous for sailing trips.

112. After Ed Underwood took over DOBOR in 2007, The Store's long-term lease was terminated, The Store property was closed off to boaters and the public by a barbed-wire fence, and the property on which The Store sat was re-let to an individual for \$6,000/month with a 30-day cancellation provision, until such time as DOBOR is able to secure an agreement with a private developer to develop the land on which The Store previously operated.

113. Parcel D identified for development in the 2019 RFP is a triangular, permit-only parking lot totaling 0.49 acres. Since Ed Underwood took over DOBOR, Hawaiian Parasail, Inc. has been issued a revocable permit for a ticketing kiosk adjacent to Parcel D to support its commercial parasail operations.

114. On April 10, 2019, DOBOR revised the 2019 RFP because the version issued April 5, 2019 "inadvertently contained a requirement for improved or upgraded public fuel dock and haul-out/boat repair facilities. Neither is actually required."

115. Thus, DOBOR's 2019 RFP was *corrected to make clear that essential, boating-related facilities need not be provided for in proposals*, even though the land sought to be leased held such facilities previously, until Underwood took over.

116. The Star-Advertiser on April 9, 2019 reported that, prior to DOBOR publishing its 2019 RFP, interested parties offered up mixed use ideas for, *inter alia*, residences, hospitality towers, an entertainment venue with a Ferris wheel, and theater for customers to go on a virtual reality flyover of Hawaii. **Exhibit K.**

117. It is unclear what proposals were ultimately submitted in response to the 2019 RFP, and by what entities, because the entire process has been cloaked in secrecy.

118. On or about April 11, 2019, Senator Moriwaki held a meeting at the Hawaii Yacht Club to give an update to the business community on her Spring 2019 legislative efforts relating to the AWSBH. Boaters and the general public were not informed of this meeting.

119. The invitee list for Senator Moriwaki's meeting on or about April 11, 2019 listed representatives of business interests located in and around the AWSBH, including the Vice President of the Ilikai Board of Directors, the Commodore of the Waikiki Yacht Club, the Commodore of the Hawaii Yacht Club, the Secretary of the Waikiki Neighborhood Board, the General Manager of the Ilikai Hotel, the "Current Landlord at Fuel Dock," and the Resort Manager of The Modern Hotel, among others.

120. At the meeting held by Senator Moriwaki on or about April 11, 2019, Ed Underwood personally presented the status of DOBOR's Spring 2019 legislative efforts and the status of the 2019 RFP that DOBOR published days before.

121. At the meeting held by Senator Moriwaki on or about April 11, 2019, Ed Underwood disclosed that the winning proposal submitted in response to the 2019 RFP would be determined by a "Selection Committee."

122. At the meeting held by Senator Moriwaki on or about April 11, 2019, Ed Underwood stated that the members of the "Selection Committee" had not yet been determined, but he stated that DOBOR would disclose the identity of the members once they were determined.

123. Since then, DOBOR has refused to provide any information about the “Selection Committee,” such as the identities of its members, how its members were chosen, or what the Selection Committee’s criteria is with respect to choosing a winning proposal to develop the AWSBH.

124. Thus, the winner of the 2019 RFP process, and the use of 11 acres of public lands within the AWSBH for the next generation, were decisions to be made by a “Selection Committee” that no one in the general public had any information about.

125. In addition to refusing to disclose the person(s) and/or entities choosing the winning proposal submitted in response to the 2019 RFP, DOBOR has refused to disclose the identities of parties submitting proposals, as well as the substance of any proposal that was submitted.

126. Upon information and belief, DOBOR has refused to disclose any information about the proposals that have been considered and/or rejected vis-à-vis the 2019 RFP because doing so would give the public an opportunity to express its opinion on such matters, a situation DOBOR wishes to avoid as it maintains complete control and total secrecy over the entire 2019 RFP process.

PLAINTIFF’S MAY 23, 2019 UIPA REQUEST

127. HRS § 92F-11(a) provides: “All government records are open to public inspection unless access is restricted or closed by law.”

128. On May 23, 2019, Plaintiff issued to DOBOR a request to access government records pursuant to UIPA (**Exhibit L**, the “May 23, 2019 UIPA request”), requesting as follows:

(a) For the time period from January 1, 2018 to the present, all internal and external communications, including but not limited to e-mails, relating to DOBOR’s “Request for Proposals for Development of the Ala Wai Small Boat Harbor, Kalia, Honolulu, Island of Oahu, Hawaii” issued April 10, 2019 (hereinafter, “RFP”), sent to or received by Ed Underwood or Meghan Statts.

(b) Minutes of any meetings relating to DOBOR’s RFP issued April 10, 2019, without regard to when such meeting(s) were held.

(c) All documents and communications relating to the “Selection Committee” with respect to DOBOR’s RFP, without regard to when such documents and communications were created, sent or received.

129. On June 24, 2019, DOBOR issued to Plaintiff a “Notice to Requester” asserting baseless privilege claims, but nevertheless promised that the May 23, 2019 UIPA request would be granted in part. The June 24, 2019 Notice to Requester requested pre-payment of \$32.65 for searching and copying costs. **Exhibit P.**

130. DOBOR’s June 24, 2019 Notice to Requester was accompanied by a June 24, 2019 letter to Plaintiff requesting clarification of the documents and communications sought in Plaintiff’s May 23, 2019 UIPA request, and notified Plaintiff that the searching and copying costs set forth in the June 24, 2019 Notice would likely change based upon Plaintiff’s clarification of the documents and communications sought. **Exhibit Q.**

131. Although there is nothing ambiguous about the May 23, 2019 UIPA request, on June 25, 2019, Plaintiff responded to DOBOR’s June 24, 2019 letter, providing the requested clarification. **Exhibit R.**

132. On July 10, 2019, DOBOR issued a revised “Notice to Requester” again asserting baseless privilege claims, and again stating that Plaintiff’s May 23, 2019 UIPA request would be granted in part. **Exhibit S.**

133. The July 10, 2019 revised Notice to Requester requested a revised pre-payment of \$34.75 for searching and copying costs.

134. On July 26, 2019, Plaintiff mailed DOBOR a check for pre-payment of \$34.75 for searching and copying costs, pursuant to DOBOR’s July 10, 2019 revised Notice to Requester. The check cleared on August 8, 2019. **Exhibit T.**

135. As of September 2019, four months after Plaintiff submitted the May 23, 2019 UIPA request, and almost a month after DOBOR deposited Plaintiff’s pre-payment of \$34.75 for searching and copying costs, DOBOR had not produced a single document or communication in response to the May 23, 2019 UIPA request.

136. On September 3, 2019, Plaintiff e-mailed Defendants to find out why no documents had been disclosed, stating as follows:

I still have not received a single document in response to [the] UIPA request referenced in the e-mails below, despite my having tendered the payment of thirty-some dollars for the searching/copying fee over a month ago. Please provide all responsive documents immediately. Feel free to call if you wish to discuss further.

137. In response to Plaintiff's September 3, 2019 e-mail demanding that DOBOR comply with its disclosure obligations, on September 13, 2019, DOBOR e-mailed Plaintiff portions of a "DTL Community Engagement Plan" and appendices thereto created by its consultant, DTL LLC. The plan and appendices thereto are publicly available on DOBOR's website, <https://dlnr.hawaii.gov/dobor/ala-wai-rfp/> (last visited January 11, 2020). Said documents are not attached hereto due to their length.

138. DTL LLC ("DTL") is a self-described "Hawaiian strategy studio" that, according to its website, "helps businesses, governments, organizations, and communities navigate change. [DTL's] unique approach, moves clients from where they are to where they need to be."

139. On or about April 4, 2017, DOBOR awarded DTL a contract for just under \$100,000 to conduct "outreach services" on the AWSBH redevelopment.

140. In an article entitled "*Conflicts arise over harbor contract*" dated December 26, 2017, the Honolulu Star-Advertiser quoted Ed Underwood as saying that DTL was chosen for the contract "because of their experience with working with [Hawaii Community Development Authority] . . . on their Kakaako development plans that included Kewalo Small Boat Harbor." **Exhibit Y.**

141. In the same article dated December 26, 2017, the Star-Advertiser reported that "[a] legislator as well as a member of the [BLNR] have ties to the public relations firm hired by the state to help determine redevelopment of the Ala Wai Small Boat Harbor." *Id.*

142. The December 26, 2017 Star-Advertiser article reported that, at the time the DOBOR awarded DTL a \$99,885 no-bid contract to conduct "outreach services" with respect to the AWSBH, Hawaii Senator Donovan Dela Cruz was DTL's "vice president for communications and a 10 percent owner[.]" *Id.*

143. The Star-Advertiser also reported in December 2017 that "Dela Cruz is paid between \$50,000 and \$100,000 annually for his work as DTL's vice president for

communications. He is also compensated between \$10,000 and \$25,000 annually for his minority ownership stake in DTL.” *Id.*

144. The Star-Advertiser reported further that, Kirra Downing, daughter of BLNR member Keone Downing, joined DTL’s payroll in September 2015 and serves as communications director. *Id.*

145. In or around 2017, DTL held two public “envisioning” meetings at McCoy Pavilion in Ala Moana Park. DTL’s community “envisioning” meetings were highly-proctored events where the subjects of discourse were closely controlled. The logistics plan for DTL’s “envisioning” meetings states that “[i]f people try to derail the conversation and talk about things outside the prompt – write it on the parking lot sheet. Explain outside the scope of this project. . . .” DTL’s report from the meeting indicates that topics raised by attendees of the meeting that were deemed “outside the prompt” and placed on the list of “parking lot issues” included concerns such as: 1) “no wedding chapel,” 2) “keep harbor a harbor,” 3) “bring back dry dock,” 4) “upset with DLNR capitalizing on the harbor trying to maximize revenue,” 5) “no hotel” 6) “lacking basic facilities,” 7) “protect and improve/maintain the boat ramp,” 8) “use dock fees for maintenance and to enforce safety rules.” *These topics were considered inappropriate for DTL’s “envisioning” meeting about the AWSBH.* In short, the DTL meetings were highly publicized and closely managed to give the impression of meaningful public input, but public input was severely curtailed.

146. Based on the “outreach services” conducted by DTL, DTL created the “DTL Community Engagement Plan” and appendices thereto that are available on DOBOR’s website at <https://dlnr.hawaii.gov/dobor/ala-wai-rfp/>.

147. The publicly-available “DTL Community Engagement Plan” that DOBOR sent to Plaintiff on September 13, 2019, created by DOBOR’s conflicted consultant for public consumption, is in no way responsive to Plaintiff’s May 23, 2019 UIPA request (Exhibit L).

148. After receiving portions of the “DTL Community Engagement Plan” from DOBOR on September 13, 2019, Plaintiff e-mailed DOBOR’s Clifford Inn on September 14, 2019, asking whether more documents were forthcoming in response to the May 23, 2019 UIPA request. Clifford Inn responded on September 16, 2019 that “yes” more documents were forthcoming.

149. As of October 15, 2019 – five months after Plaintiff submitted the May 23, 2019 UIPA request and over two months after DOBOR deposited Plaintiff’s check for searching and copying – the only document Plaintiff had received from DOBOR was the publicly-available “DTL Community Engagement Plan” created by DOBOR’s consultant to advance DOBOR’s plan for private development of the AWSBH.

150. On October 15, 2019, Plaintiff notified DOBOR that Plaintiff would file a lawsuit unless DOBOR produced all documents and communications responsive to Plaintiff’s May 23, 2019 UIPA request.

151. On October 16, 2019, Plaintiff notified the Office of Information Practice (“OIP”) that DOBOR had failed to comply with Plaintiff’s May 23, 2019 UIPA request, and requested assistance.

152. On October 22, 2019 – after Plaintiff threatened to file suit and after Plaintiff requested assistance from OIP – DOBOR finally produced an additional approximately fifty-seven (57) pages of documents. The documents that DOBOR produced to Plaintiff on October 22, 2019 are attached hereto as **Exhibit U**.

153. In a letter to Suzanne Case dated October 23, 2019, attached hereto as **Exhibit O**, the OIP notified Defendants of, *inter alia*, the following:

Dear Chair Case:

The Office of Information Practices (OIP) received a request for assistance from Mr. Erik Rask with respect to his request made under Part II of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA), for access to records[.]

...

[Mr. Rask] indicated that he made a written request to [DLNR-DOBOR] date May 23, 2019. There were various communications between DLNR-DOBOR and Mr. Rask. On June 24, 2019, there was a memorandum from DLNR-DOBOR to Mr. Rask requesting clarification of the record request. Mr. Rask provided clarification on June 25, 2019. In addition, in a Notice to Requester dated June 24, 2019, DLNR-DOBOR requested prepayment of \$32.65. Mr. Rask sent a check to “DLNR Boating” for \$34.75 and it appears that the check was deposited by DLNR-DOBOR on August 8, 2019. Mr. Rask states that he has not yet received a copy of the records from DLNR-DOBOR. Copies of [Mr. Rask’s] request to OIP and his

record request to DLNR-DOBOR and his check are enclosed for your information.

Since Mr. Rask's prepayment check cleared on August 8, 2019, the deadline for the agency to have provided Mr. Rask with the first increment of records was August 15, 2019. If DLNR-DOBOR does not disclose the records to Mr. Rask within five business days of the date of this letter or October 30, 2019[,] DLNR-DOBOR's failure to disclose by the deadline will be considered a constructive denial and OIP will open an appeal file.

The UIPA places the burden on the agency to establish justification for the nondisclosure of government records. HRS § 92F-15(c) (2012). In the absence of an explanation by DLNR-DOBOR for the denial, it seems unlikely that DLNR-DOBOR will meet that burden. It is always OIP's preference to give full consideration to an agency's arguments for withholding access to a requested record before issuing an opinion. We therefore ask that DLNR-DOBOR respond to Mr. Rask's request and, if denying the request, provide a detailed explanation of the basis for doing so within five business days from the date of this letter.

154. The OIP provided Plaintiff with a copy of the OIP's October 23, 2019 letter on the day it was sent to Defendants. Plaintiff responded to OIP as follows:

Thank you very much for your assistance. FYI, I did receive a batch of documents (10 total) from DOBOR yesterday, some of which were responsive to my request. I will continue to follow up with DOBOR and I plan to file a lawsuit if they do not fully comply. I will keep your office apprised moving forward.

155. On November 26, 2019, the OIP issued a letter to Plaintiff stating in pertinent part that:

OIP has been advised by DLNR-DOBOR that it made its first incremental disclosure of the records on September 13, 2019. Because DLNR-DOBOR did begin incremental disclosure to you, OIP will close this Request for Assistance file.

156. Although OIP's letter indicates that it received a response from Defendants concerning Plaintiff's request for assistance to OIP, Plaintiff was not copied on such communication(s).

157. Upon information and belief, the "first incremental disclosure of the records on September 13, 2019" referenced in OIP's November 26, 2019 letter refers to the publicly

available “DTL Community Engagement Plan” and appendices thereto, portions of which Defendants e-mailed to Plaintiff on September 13, 2019.

158. Notwithstanding OIP’s closing of its review, Defendant’s September 13, 2019 production of portions of the “DTL Community Engagement Plan” and appendices thereto does not constitute compliance with the May 23, 2019 UIPA request. Exhibit L; *see also* DTL Community Engagement Plan and appendices thereto, *available at*: <https://dlnr.hawaii.gov/dobor/ala-wai-rfp/>.

159. The additional fifty-seven (57) pages of documents produced on October 22, 2019 (Exhibit U) also does not constitute compliance with Plaintiff’s May 23, 2019 UIPA request. Further, almost all of the documents in Exhibit U are completely unresponsive to the request.

160. Plaintiff is not the only individual attempting to obtain information relating to DOBOR’s 2019 RFP.

161. The Honolulu Star-Advertiser on October 19, 2019 reported that “DOBOR declined . . . to provide the Honolulu Star-Advertiser with the proposals [received in response to the 2019 RFP], which are being reviewed by a team of individuals from government agencies and the community. DLNR also declined to release the names of the committee members.” **Exhibit M** (bracketed material added).

162. In separate article dated October 26, 2019, the Honolulu Star-Advertiser reported further that “DLNR refused to provide the Honolulu Star-Advertiser with the names of the applicants or their proposals during the process. *The Star-Advertiser’s formal public-records request is pending.*” **Exhibit N** (emphasis added).

163. Notably, the 2019 RFP expressly provides that DOBOR would not treat information about prospective developers as confidential, and would not treat information contained within prospective proposals as confidential, unless information requested to be kept confidential is “clearly marked” and “readily separable from the submission or proposal in order to facilitate eventual public inspection of the nonconfidential portion of the submission or proposal.”

164. The 2019 RFP further provides that “[i]f an applicant believes that any portion of a submission or proposal contains information that should be withheld as confidential, the

applicant shall request in writing nondisclosure of designated trade secrets or other proprietary data to be held as confidential business information.”

165. The 2019 RFP provides that, if an applicant requests that certain information be withheld from the public as confidential, “DOBOR shall consult with the office of the Attorney General and may also consult with the Office of Information Practices (“OIP”) to make any necessary determinations of confidentiality in accordance with HRS Chapter 92F. If the applicant’s request for confidentiality is denied, such information shall be subject to disclosure as a public record unless the applicant appeals the denial.”

166. Notwithstanding that DOBOR’s own 2019 RFP explicitly provides that proposals “shall be subject to disclosure as a public record” and places the burden on the applicant to designate any trade secrets or other proprietary information as confidential, DOBOR has refused to provide any information about the proposals that it received in response to the 2019 RFP.

167. DOBOR has gone so far as to hide the *identities* of applicants that submitted proposals, as well as the identities of the members of the “Selection Committee” that is empowered to choose the winning proposal—information that is clearly not confidential under HRS Chapter 92F, nor under the standards set forth in DOBOR’s own 2019 RFP.

168. Under the UIPA, the public has the right to know what proposals have been presented in response to DOBOR’s 2019 RFP, and has a right to know what proposals DOBOR has considered or rejected with respect to DOBOR’s disposal of **public** lands.

169. Under the UIPA, the public also has a right to know *who* is on the “Selection Committee” that is empowered with determining uses of public lands for years to come, how and why those individuals were selected, *who* they are accountable to, and what are the Selection Committee’s criteria are for selecting a winning proposal—information likely to be revealed if Defendants would comply with Plaintiff’s May 23, 2019 UIPA request.

170. The only documents Plaintiff has received from Defendants in response to the May 23, 2019 UIPA request are those contained in Exhibits U, as well as portions of the “DTL Community Engagement Plan” and appendices thereto which are available on DOBOR’s website at <https://dlnr.hawaii.gov/dobor/ala-wai-rfp/>.

171. Based on the lack of documents produced by DOBOR in response to Plaintiff's May 23, 2019 UIPA request, it appears that DOBOR is attempting to conceal information that is required to be made public pursuant to UIPA and pursuant to Plaintiff's May 23, 2019 UIPA request.

172. Upon information and belief, there are thousands of documents and communications responsive to Plaintiff's May 23, 2019 UIPA request that are in Defendants' custody or control that Defendants are required to produce in accordance with UIPA and pursuant to Plaintiff's May 23, 2019 UIPA request, that Defendants have refused to disclose.

PLAINTIFF'S OCTOBER 26, 2019 UIPA REQUEST

173. On October 25, 2019, DOBOR announced that it had received two (2) proposals in response to 2019 RFP, and that neither of the proposals was selected. The announcement stated that DOBOR "has concluded the Request for Proposals (RFP) process and it expects a new and potentially revised RFP will be reissued at a later date."

174. In its official announcement that its 2019 RFP process had concluded with no winning proposal chosen, DOBOR admitted that certain applicants in the 2019 RFP process were being given the right to decide what a future RFP should include.

175. DOBOR's October 25, 2019 announcement states as follows: "DOBOR leadership is in the process of speaking to the qualified applicants to determine what challenges they faced in the RFP process and what recommendations they might propose to ensure a viable project . . . DOBOR will offer a new RFP for harbor development after these discussions conclude."

176. Thus, certain undisclosed "qualified applicants" are currently engaging in communications with DOBOR's leadership and are currently shaping the requirements and substance of a future RFP related to the AWSBH.

177. Therefore, on October 26, 2019, Plaintiff issued a further and/or supplemental UIPA request to DOBOR, seeking "all communications with 'qualified applicants' as referenced in DOBOR's public announcement dated October 25, 2019." **Exhibit V.**

178. On October 30, 2019, DOBOR issued another, revised Notice to Requester, which included as line item four "communications with 'qualified applicants' as referenced in

DOBOR's public announcement dated October 25, 2019, notes, minutes or any other documents related to any meetings with 'qualified applicants[.]'" **Exhibit W.**

179. The October 30, 2019 Notice to Requestor asked that Plaintiff submit the remaining estimated searching and copying fees relating to the May 23, 2019 UIPA request, despite that DOBOR had produced almost no responsive documents after Plaintiff submitted the first payment in July.

180. On October 30, 2019 Plaintiff sent DOBOR another check for the unpaid balance of \$38.05 for searching and copying costs related to the May 23, 2019 UIPA requests, which included costs relating to the additional and/or supplemental October 26, 2019 UIPA request, and said check was deposited into DOBOR's bank account on November 12, 2019. **Exhibit X.**

181. As of the filing of this amended complaint, DOBOR has not produced a single document to Plaintiff after depositing Plaintiff's \$38.05 check on November 12, 2019.

182. As of filing this complaint, it is now more than seven months since Plaintiff submitted the May 23, 2019 UIPA request, and nearly three months since the additional and/or supplemental October 26, 2019 UIPA request was submitted.

183. DOBOR has collected in full the estimated costs of searching and copying related to (1) Plaintiff's May 23, 2019 UIPA request and (2) Plaintiff's October 26, 2019 UIPA request.

184. Even though DOBOR accepted full payment for searching and copying charges, upon information and belief, there are volumes of responsive documents, emails, and other communications that have not been produced and which are not privileged, despite DOBOR's frivolous assertions to the contrary. *See, e.g.*, Ex. U at purported privilege redactions.

185. Any purported privilege claim asserted by DOBOR with respect to the 2019 RFP has been extinguished by DOBOR's announcement stating that the 2019 RFP process has concluded.

186. Although OIP's letter to Suzanne Case dated October 23, 2019 instructed Defendants to "respond to [Plaintiff's] request and, if denying the request, provide a detailed explanation of the basis for doing so within five business days from the date of this letter[.]" Defendants have not provided Plaintiff with any such explanation via letter or otherwise.

187. On November 22, 2019, Plaintiff e-mailed Defendants requesting to know the status of Plaintiff's UIPA requests. As of the filing of this complaint, Defendants have not responded.

DEFENDANTS' OCTOBER 25, 2019 LETTER TO THE OFFICE OF INFORMATION PRACTICES

188. The day after the original complaint herein was filed, the OIP provided Plaintiff with a copy of a letter that Defendants sent to OIP in October, through Defendants' attorney, which reveals some of the mechanics of Defendants' stonewalling for the past eight months.

189. On December 20, 2019, Plaintiff e-mailed OIP requesting to know whether OIP ever received any letter from Defendants providing a "detailed explanation of the basis" for their denial of Plaintiff's May 23, 2019 UIPA request, noting that Plaintiff had not received any such explanation directly from Defendants.

190. On January 7, 2020, the OIP responded to Plaintiff's December 20, 2019 e-mail, providing a copy of a letter dated October 25, 2019, from the State of Hawaii Office of Attorney General (on behalf of Defendants) to the Office of Information Practices. A copy of Defendants' October 25, 2019 letter to OIP, as received by Plaintiff from OIP on January 7, 2020, is attached hereto as **Exhibit Z**.

191. Although OIP specifically instructed Defendants to provide Plaintiff with a "detailed explanation of the basis" for Defendants' failure to comply with Plaintiff's UIPA requests, Defendants did not do so, nor did they provide Plaintiff with a copy of their October 25, 2019 letter to the OIP.

192. Instead, Defendants sent the OIP a letter without copying Plaintiff, and in that letter made misleading statements concerning Defendants' purported compliance with UIPA.

193. Defendants' October 25, 2019 letter to OIP emphasizes that DOBOR e-mailed Plaintiff portions (206 pages) of the "DTL Community Engagement Plan" and appendices thereto, although production of portions of that publicly-available document created by DOBOR's hired consultant DTL for public consumption clearly does not constitute compliance with Plaintiff's May 23, 2019 UIPA request. *See* DTL Community Engagement Plan, *available at* <https://dlnr.hawaii.gov/dobor/ala-wai-rfp/> (last visited January 11, 2020).

194. Defendants' October 25, 2019 letter to OIP also implicitly and/or expressly accuses Plaintiff of lying to the OIP in Plaintiff's October 16, 2019 request for assistance.

195. Defendants' October 25, 2019 letter to OIP states that DOBOR produced "[a]n additional 50 pages of email records and attachments ... on October 22, 2019, prior to [OIP's] letter requesting response to [Plaintiff's] complaint that DOBOR 'completely failed to comply' with his UIPA request"—implying that Plaintiff had somehow hidden from OIP that DOBOR produced those 50-plus pages of documents, which he clearly did not. This statement also fails to note that DOBOR sent the documents attached hereto as Exhibit U only after Plaintiff threatened to sue DOBOR on October 15, 2019, one week after. Yet, Defendants tried to distort these facts so that OIP would close its review of the matter.

196. Defendants' October 25, 2019 letter to OIP complains about the time spent on "correspondence with" Plaintiff, and criticizes Plaintiff's UIPA request "due to the lack of drafted preciseness in the scope and nature of records sought" although in reality there was nothing imprecise or ambiguous about the request, and although Plaintiff immediately responded to Defendants' June 24, 2019 letter with purported requests for clarification. Exhibit Q.

197. Defendants' October 25, 2019 letter makes the completely bad faith argument that "if taken literally, no records were responsive to [Plaintiff's] original request as the RFP was actually issued on April 5, 2019." (underlined emphasis in original). However, DOBOR's own website states that the 2019 RFP was issued April 5, 2019, and revised April 10, 2019. By referencing April 10, 2019, it was clear what RFP Plaintiff referred to. It is also clear that Defendants are confusing themselves by their own stonewalling tactics.

198. Defendants have engaged in such dilatory behavior via bad faith requests for clarification of the documents and communications requested, they have tried to unilaterally alter Plaintiff's document requests, they have produced almost no documents, the documents that have been produced are almost uniformly non-responsive, they charged plaintiff for e-mailing non-responsive documents that are publicly available, they have used incremental disclosure of non-responsive public documents to stall and to get the OIP to close its review, and the redactions applied to the 57 pages of documents and communications that were produced are based upon frivolous privilege assertions, which their letter to OIP admits (*see* Exhibit Z, n. 4; *see also* Exhibit U at redactions).

199. Despite Defendants' ignoring of their obligations under the law and their flagrant disregard for the public's right to obtain publicly-owned documents and communications, Defendants' October 25, 2019 letter tries to blame Plaintiff for the "significant time spent on correspondence with" Plaintiff concerning Defendants' bad-faith and dilatory requests for purported clarification.

200. Defendants' October 25, 2019 letter to OIP makes no attempt to provide any legitimate explanation of the basis of Defendants' vague privilege claims made in various Notices to Requestor, fails to explain why DOBOR failed to produce any documents to Plaintiff until four months after Plaintiff submitted the May 23, 2019 UIPA request, fails to explain how the documents that were produced are responsive to Plaintiff's requests, and fails to explain why Defendants have not simply produced the documents that were requested.

201. As of the filing of this complaint, the only documents Plaintiff has received from Defendants relating to the May 23, 2019 UIPA request are those contained in Exhibit U hereto, and portions of the "DTL Community Engagement Plan" and appendices thereto available on DOBOR's website at <https://dlnr.hawaii.gov/dobor/ala-wai-rfp/>.

202. Plaintiff has not received any documents from DOBOR in response to the additional and/or supplemental October 26, 2019 UIPA request regarding "communications with qualified applicants." Exhibit V.

203. Plaintiff has also received no documents in response to the November 4, 2019 UIPA request attached hereto as Exhibit C.

204. Defendants have failed and/or refused to adhere to their disclosure obligations with respect to Plaintiff's UIPA requests submitted May 23, 2019 (Exhibit L), October 26, 2019 (Exhibit V), and November 4, 2019 (Exhibit C).

DEMAND FOR RELIEF

Based on the foregoing, Plaintiff respectfully requests that this Court:

1. Give precedence, in accordance with HRS § 92f-15(f), to this case on the docket over all other cases, assign it for hearing and trial or for argument at the earliest practicable date, and expedite it in every way;

2. Enter an order declaring that the mooring fee increases set forth in HAR § 13-234-3 (2019) exceed Defendants' statutory authority under HRS § 200-10 (2016);
3. Enter an order declaring that HAR § 13-234-3 (2019) was adopted without compliance with statutory rulemaking procedures;
4. Enter an order declaring that HAR § 13-234-3 (2019) is unenforceable;
5. Enter a preliminary injunction and permanent injunction enjoining Defendants from enforcing any provision of HAR § 13-234-3 (2019);
6. Enter an order requiring that Defendants publicly announce that HAR § 13-234-3 (2019) is invalid and will not be enforced;
7. Enter an order requiring Defendants to disclose the following pursuant to Plaintiff's May 23, 2019 UIPA request: For the time period from January 1, 2018 to the present, all internal and external communications, including but not limited to e-mails, relating to DOBOR's 2019 RFP, sent to or received by Ed Underwood or Meghan Statts;
8. Enter an order requiring Defendants to disclose the following pursuant to Plaintiff's May 23, 2019 UIPA request: Minutes of any meetings relating to DOBOR's 2019 RFP, without regard to when such meeting(s) were held;
9. Enter an order requiring Defendants to disclose the following pursuant to Plaintiff's May 23, 2019 UIPA request: All documents and communications relating to the "Selection Committee" with respect to DOBOR's 2019 RFP, without regard to when such documents and communications were created, sent or received;
10. Enter an order requiring Defendants to disclose the following pursuant to Plaintiff's May 23, 2019 and/or October 26, 2019 UIPA requests: All communications with "qualified applicants" as referenced in DOBOR's public announcement dated October 25, 2019;
11. Enter an order requiring Defendants disclose the documents requested in Plaintiff's UIPA request dated November 4, 2019, attached hereto as Exhibit C;
12. Enter an order requiring an *in camera* inspection of any and all purportedly privileged documents or communications responsive to Plaintiff's UIPA requests dated May 23, 2019, October 26, 2019, and November 4, 2019, attached as Exhibits L, V, and C, respectively;

13. Enter an order requiring that Defendants pay Plaintiff's reasonable attorneys' fees and costs and all other expenses reasonably incurred in the litigation of this action;

14. Grant such other and further relief as the Court deems reasonable and just.

DATED: Honolulu, Hawaii, January 16, 2020.

A handwritten signature in black ink, appearing to read 'ERIK RASK', written over a horizontal line.

ERIK RASK
Plaintiff, pro se

Exhibit A

Hawaii

Hawaii Boaters Upset About Steep Fee Increase At State-Run Harbors

It's unknown whether the increase will cover a backlog of maintenance and improvements at the 16 small boat harbors.

 14

By Blaze Lovell   / October 14, 2019

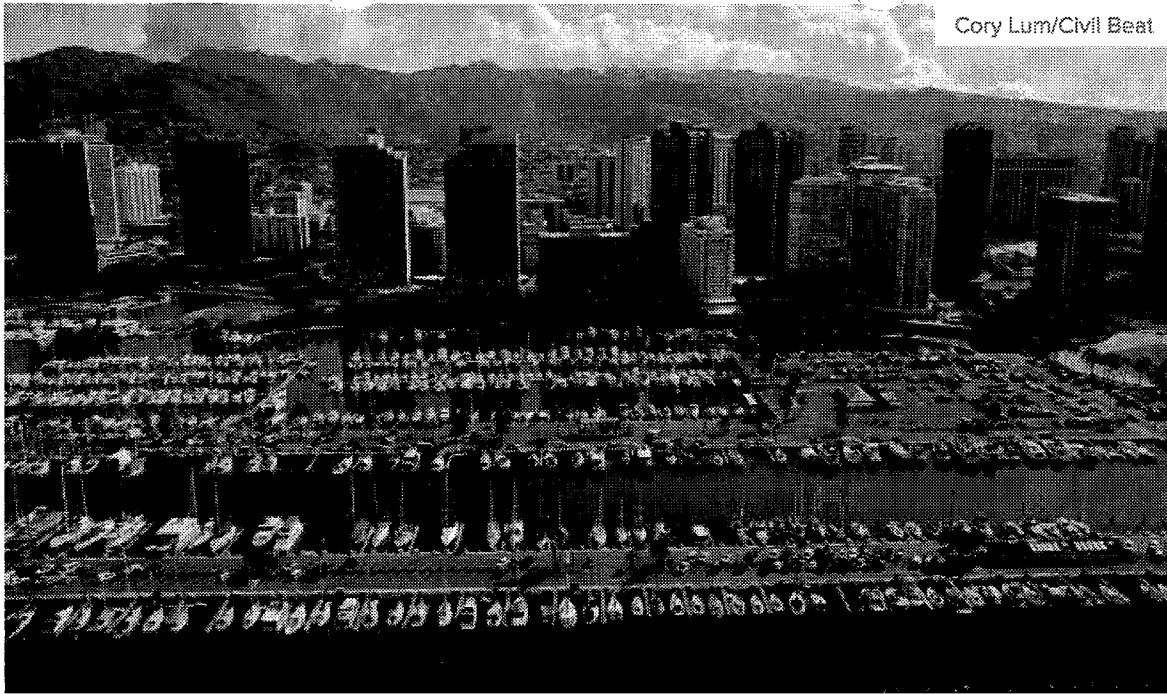
 Reading time: 5 minutes.



Boaters across the state face fee hikes come Nov. 1, with some renters looking at paying nearly double.

That's drawn the ire of boat owners who moor in some of the state's 16 small boat harbors, managed by the Department of Land and Natural Resources Division of Boating and Ocean Recreation.

Meanwhile, DLNR has been unable to keep up with maintenance projects at its harbors. The department has identified about \$310 million of capital improvement and maintenance costs around the islands, many of which have not been funded.



Ala Wai Boat Harbor is one of more than a dozen statewide where boat owners face steep fee increases.

Last fiscal year, the harbor fund, which was meant to be self-sufficient, ended \$2 million in the hole. Boating division administrator Ed Underwood said that the previous fee schedule, approved in 2011, was not enough to keep the fund afloat.

Some boaters think the new rates are too steep, and would rather have them phased in. A group of local boaters at the Ala Wai Boat Harbor held a protest last week and plan to do more in the coming weeks, said organizer Kate Thompson.

“They’re pricing out a lot of kamaaina boaters, just by making it out of reach of middle-income people,” Thompson said.

Thompson criticized the department for the steep fee increases and how DLNR has implemented them. She suggested that the department phase the rates in over a period of several years. She also took issue with the boating division’s new appraisal process for setting fees.

The department needs more money to deal with mounting expenses. But it's still not clear how much revenue the fee increases will generate if they drive people away.

"It's going to be hard to tell off the bat," Underwood said. "We don't know if this is going to cause people to leave."

Past fee increases were minimal. At the Ala Wai Boat Harbor, for example, fees for boats went up from \$5.25 a foot to \$5.67 a foot between 2006 and 2011. The new per-foot fee will be \$13.

New Mooring Fees

The new fee schedule will charge boaters for each foot of dock space or their vessel, whichever is greater.

Small Boat Harbor	New Fees
Nawiliwili	\$12
Port Allen	\$11
Ala Wai	\$13
Keehi	\$13
Haleiwa	\$10
Heeia Kea	\$10
Waianae	\$11
Manele	\$10
Lahaina	\$11
Maalea	\$10
Manele	\$10
Kaunakakai	\$9
Honokohau	\$10
Kawaihae, South	\$10
Wailoa	\$9

For years, boaters have paid based on the length of their vessels. But under new rules approved in August, they'll need to pay based on either the length

of their boats or the docks, whichever is greater. That means some boaters will pay for space they aren't using.

Both the steep fee increase and the new rules for calculating fees originated in a 2017 appraisal report.

The boating division got approval from the Legislature in 2011 to contract with an appraiser that could set new rates.

"In the past we did everything in-house, and we weren't the professionals at the time to determine (docking fees)," Underwood said. "The appraiser is ensuring we come up with a fair return for the use of our resources."

The use of an appraiser was meant to avoid resistance from the boating community, Underwood said. The appraiser, CBRE Inc. Hawaii, recommended fees based on similar private harbors around the state such as Kewalo Basin, Keehi Marine Center and La Mariana. The appraisal report also found that most of the private harbors charge for the greater of either the vessel or the slip.

The fees would have been even higher if they had been based on fair market value, Underwood said.

Even though the new fees take effect in a few weeks, boaters such as Thompson may still not know how much they need to pay. She said she's still waiting on dock measurements from the harbormaster.

Thompson is one of the boaters who will end up paying for dock space the boat doesn't occupy. Her 36-foot O'Day 35 currently sits in a slip meant for boats up to 45 feet. She could shave about a foot off her bowsprit to fit into a smaller dock category, but then she would have to go back on a waiting list.

She said the department should have abolished the size categories before putting the new rules in place.

Boaters worry they could be priced out of the harbor, and for some who live aboard their vessels, forced out of their homes. On top of the higher mooring rates, boaters who live on their vessels will need to start paying \$10 per person each night, an increase from \$2.

Thompson has heard from several boaters who say they will have to give up their slips.

They're also concerned that a private entity will eventually come in to manage the harbor, part of the boating division's strategic plan for its small boat harbors across the state.

Underwood said that plan may require approval by the Legislature because it could affect the department's civil service employees.

"We have to make sure we don't affect their jobs by doing this," Underwood said. "Anytime you outsource the work that could be done by a civil service employee, you have to justify it."

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About the Author



Blaze Lovell [envelope icon] [RSS icon]

Blaze Lovell is a reporter for Civil Beat and a graduate of the University of Nevada, Las Vegas. He was born and raised on Oahu. You can reach him at blovell@civilbeat.org or follow him on Twitter at [@blaze_lovell](https://twitter.com/blaze_lovell)

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No links, please.

Click on Sign In To Comment, below. Your old account should still work. If you don't already have an account you need to create one (where it says "Need an account? Register").

Need help? Email membership@civilbeat.org.

Sign in to comment

All Comments 14

Viewing Options ▾

CatManapua 2 months ago

The Ala Wai Boat Harbor should be a crown jewel of the south shore, instead it is an embarrassment. There is no shortage of examples of boat harbors that are run extremely well. Copy them. Charge accordingly.

Respect 🙏 2 Reply ↩

Share 📄 Report 🚩

CaptainKT 2 months ago

Yes, it is a crown jewel. Let's not give a cooperation a 55 lease on it.

Search Ala Wai RFP

Keep Public Recreational Lands in Public Hands.

Report 🚩

Share 📄 Report 🚩

Respect 4 Reply

Share Report

HuliOpu 2 months ago

I'm not sure if many in Hawaii have sympathy for boat owner/tenant occupiers at our harbors. It's curious how boats are allowed to be defacto residences with open-ended periods of tenancy for a select few. It seems that many have just parked a boat, seaworthy or not, set up residence and rarely, if ever, leaving port.

According to HAR 234, the new fee at Ala Wai is \$13 per ft and includes: mooring; unlimited electricity; hot shower facility; dry storage and gear locker. If the vessel is used for principal habitation, the fee is an additional \$5.25 per ft of vessel. If you have a 50ft vessel your total live-aboard rent with electricity is just over \$900.00. A great deal.

Despite the state's woeful history of mismanaging everything, the primary reason for harbor fees is for the purposes of providing public recreational facilities, and its upkeep, for residents. That includes trailered fishing and recreational boats at ramps and the associated maintenance costs.

Respect 4 Reply

Share Report

hoipolloi 2 months ago

All this. Why the state continues to allow the "live-aboards" to occupy its harbors is indeed a mystery. These folks should have been moved along many years ago.

People using their boats for cheap housing shouldn't be taking up harbor space and they certainly should NOT be subsidized by taxpayers while doing so.

Respect 1 Reply

Share Report

AA 2 months ago

All states that border the oceans or lakes have beautiful marinas, public, and private for recreational purposes, as well as business, and guess what? Most also allow liveaboards. For the same cost as ours! They are beautiful, and well maintained, and add to the values of the property around them. The question is not cheap rent (the maintenance of boats brings up the cost, add a couple hundred a month). The question is why everyone else on the planet can do this, but not Hawaii. Is it because our leaders are intellectually feeble? Are they crooked? Is all the rental and mooring fees going into the "the black hole" of the general fund? Why at the same price can most marinas be beautiful, and a public asset, yet Hawaii's marinas look in terrible shape. Before Hawaii finger points, they should do the slightest research, and look at public, and private marinas in other states, and countries. I think they would be surprised.

Respect 1 Reply

Share Report

Leeward_Voice 2 months ago

Leadership is the issue. Here, nobody can make a decision or make a stand at the DLNR level. Budget constraints leave leaders of these State organizations with no resources to do anything so they just show up to work. Once an overhaul starting at the Legislative level begins, these State agencies may become self sufficient and improvements can occur.

Respect 2 Reply



Share Report


Hibc 2 months ago

Leadership can always be better, but before you compare any endeavor built here in Hawaii versus any of the continental 48 states in terms of cost, there are certain factors that come into play before there's even any possibility of misgovernment

factors that come into play before there's even any possibility of misgovernment. For one over 80% of all consumable goods in Hawaii come in thru our ports. We simply don't have the advantage of trucking stuff to the state, and that alone jacks the cost up. That's really the main reason why the cost of living here is commensurable to NY, Seattle, and San Francisco, all cities with economies a lot stronger than Hawaii's.

Like the question on having a Visitor Tax, our harbors like the rest of Hawaii do need help in maintenance and here we simply have to find a way to pay for it.

Respect  1 Reply 

Share  Report 

WhatMeWorry 2 months ago

"People using their boats for cheap housing shouldn't be taking up harbor space and they certainly should NOT be subsidized by taxpayers while doing so."

Why not? Isn't this a de facto "affordable housing" initiative that actually works?? It keeps people off the streets (boaters) and frees up housing on land for people that are looking for it.

Respect  1 Reply 

Share  Report 

nmanson 2 months ago

Why can't people live aboard their boats? This sentiment is a great contribution to the homeless problem occurring on the island. Many of the live aboards are retirees living on social security. Where do you suggest they live other than on their personal property which they own, parked at the dock space they are paying to rent? You clearly have a one sided and biased view of the issue. Liveaboards are people too (I am not one of them).

Respect  Reply 

Share  Report 

AA 2 months ago

Actually I did an across the board look at fee's that are charged in California, Oregon and Washington. Strange how the fees (the old fees not the new) are comparable, yet they have beautiful boat harbors, all live aboards, all with great amenities, all kept in pristine condition. Some are private, some are run by the state. I was talking to a boater moored at the Ala Wai, and he said " Hawaii has a problem, that unless you have something to do with tourism, you are virtually ignored, that's why the Ala Wai is the way it is". Funny I always thought that marinas add to the property values of those living around it. Looks to me that the state is proving this mans point. This is a sad story that's also affecting our schools, parks, people and everything else "unless you have something to do with tourism, you are virtually ignored". Someone forgot to tell our fearless leaders we are a Democracy first If you let everything else go, no one ever visits a third world nation.

Respect  2 Reply 


Share  Report 

meldensis 2 months ago

Parking for boats, parking for cars, it's real estate and the people are subsidizing both. It's really got to stop or we'll ALL be priced out of homes quite soon.



A shortfall of \$2million seems to indicate under-pricing, that's why it's called subsidies.

Respect  5 Reply 



Share  Report 

islanderguy 2 months ago

Boating for years has been charging way below the market rate for boat slips. Many boaters, almost never use their boats and instead use the harbors as storage yards. Almost every harbor across the state needs major refurbishment, yet the legislature and the governor are unwilling to provide the funds necessary to repair the harbors. I find it ridiculous how the legislators fail to take care of this situation. This State's economy is completely dependent on tourism, yet most of our harbors look like something you would find in a Third World Country.

Respect  5 Reply Share  Report **Concernedtaxpayer** 2 months ago

Ala Wai harbor is an embarrassing mess with obvious oil leaking & garbage strewn from dubiously seaworthy, derelict looking vessels. There should be stricter joint oversight & fees should include regular cleaning of the harbor. Fees were too low for too long and likely went into the State's general fund. Compare that to Kewalo's new redesign and maybe it's not such a bad idea to have a responsible private company like Howard Hughes take charge. Doubt they would but somebody other than our lame state & city who have demonstrated their inability to manage projects efficiently.

Respect  6 Reply Share  Report **Leeward_Voice** 2 months ago

That is the problem with the State. We could have. A world class marina on par with Miami and San Diego yet we continue to cater to what looks like a homeless flotilla. This is Hawai'i. Why not have the appraiser evaluate at market value and have enough not to break even but to be able to make improvements? I and others have refused to buy a boat and sit on a waiting list for a space while so many are UNUSABLE so some guys can park all of shopping carts at his POS boat and smoke meth? Our marinas are a black eye on Honolulu and doesn't match the skyline. The price should be by dock length or even a flat fee based on a group of dock lengths. Accounting will be more transparent. And if you can't afford it? Get a boat you can trailer and go

THIS IS YOUR WAKE UP CALL.

Sign up for our FREE morning newsletter and face each day more informed.

And don't worry, we hate spam too! You can unsubscribe any time.

Exhibit B



DEPARTMENT OF LAND AND NATURAL RESOURCES
 Division of Boating and Ocean Recreation
 Ala Wai Small Boat Harbor, 1651 Ala Moana Blvd
 Honolulu, HI 96815

Billing Statement

Statement Date: 11/01/2019
 Permit Expiration: 07/31/2020
 Amount Paid: \$

Cost Center: 0832 Account: 00010570

ERIK A RASK
 1741 ALA MOANA BLVD., #19
 HONOLULU, HI 96815, US

DO NOT SEND CASH
 Mail check/money order payable to: **DLNR BOATING**

Please remember to submit your statement of gross receipts to your district or harbor office.

PAYMENT MADE AFTER THE STATEMENT DATE WILL BE REFLECTED ON YOUR NEXT BILLING STATEMENT.

Please cut and return above portion with your payment for proper credit.



DEPARTMENT OF LAND AND NATURAL RESOURCES
 Division of Boating and Ocean Recreation
 Ala Wai Small Boat Harbor, 1651 Ala Moana Blvd
 Honolulu, HI 96815

BILLING STATEMENT

Statement Date: 11/01/2019
 Permit Expiration: 07/31/2020

Account: 00010570
 Customer Name: ERIK A RASK

Pay online at dobor.chawaii.gov/makepayment
 Submit your statement of gross receipts to your district or harbor office.

Date	Description	Past Due	Charges	Credits	Balance
	Beginning Balance		1480.95	0.00	1480.95
10/29/2019	Payment on Account			1994.60	(513.65)

To avoid late fees and interest charges, we must receive your payment for the outstanding balance on or before: **November 30, 2019**

OUTSTANDING BALANCE SUBTOTAL \$ (513.65)

11/01/2019	Mooring - 12/2019		319.90		319.90
11/01/2019	State Gear Locker - Wood - Std x 1 - 12/2019		5.50		325.40
11/01/2019	Harbor Resident - 12/2019		173.25		498.65
11/01/2019	State Gear Locker - Wood - Std x 1 - 12/2019 - Fee Adjustment		4.50		503.15
11/01/2019	Mooring - 12/2019 - Fee Adjustment		135.10		638.25

Current balance is due on or before: **December 01, 2019**

CURRENT BALANCE SUBTOTAL \$ 638.25

TERMS AND CONDITIONS: Interest at the rate of one percent (1%) per month, simple interest, and a late charge as set forth in the Hawaii Administrative Rules, DLNR, shall be assessed on any delinquent account and shall continue to be assessed until the delinquent sum, is paid in full.
 SEE HAWAII ADMINISTRATIVE RULES S13-234-2

TOTAL DUE \$ 124.60

Exhibit C

REQUEST TO ACCESS A GOVERNMENT RECORD

DATE OF REQUEST:

November 4, 2019

TO:

State of Hawai'i
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
(hereinafter, "DOBOR")

[Via e-mail dated November 4, 2019 to the following agency representatives:

Clifford G. Inn Clifford.g.inn@hawaii.gov;

Bill J. Wynhoff bill.j.wynhoff@hawaii.gov]

FROM:

Erik A. Rask
earask@gmail.com
(808) 286-1577

Waiver of fees in the public interest is requested

DOCUMENTS AND COMMUNICATIONS REQUESTED:

1. Haw. Rev. Stats. § 200-10(c)(4) provides that "liveaboard fees established by this paragraph may be increased by the department at the rate of the annual cost-of-living index, but not more than five per cent in any one year, beginning July 1 of each year[.]" Produce all documents containing or relating to any cost-of-living index data used to determine the increase in the principal habitation fee referenced in the letter dated October 21, 2019, attached hereto as Exhibit "A."
2. Haw. Admin. R. § 13-234-8 states that "for any calendar year beginning after January 1, 1987 upon thirty days prior written notice from the department, the principal habitation fees established by this subsection shall be increased based on this increase in the annual cost of living index (U. S. Department of Labor, U. S. City Average Urban Consumer Price Index for "all items"), but the increase for any calendar year shall not exceed five per cent." Produce all documents containing or relating to the "U. S. Department of Labor, U. S. City Average Urban

Consumer Price Index for ‘all items’” used to determine the increase in the principal habitation fee referenced in the letter dated October 21, 2019, attached hereto as Exhibit “A.”

3. If no cost-of-living index data was referenced to determine the increase in the principal habitation fee referenced in the letter attached hereto as Exhibit “A,” please produce all documents and/or communications evidencing the methodology used to determine the increase in the principal habitation fee referenced in the letter dated October 21, 2019, attached hereto as Exhibit “A.”
4. Any and all documents indicating the method used to determine the increase in the principal habitation fee referenced in the letter dated October 21, 2019, attached hereto as Exhibit “A.”

EXHIBIT A

DAVID I. IGE
GOVERNOR OF HAWAII



SI ZANNE D. CASE
COMMISSIONER
DIVISION OF LAND AND NATURAL RESOURCES
1651 ALA MOANA BOULEVARD, HONOLULU, HAWAII 96815

ROBERT K. MASUDA
PRESIDENT

HI KALEOMANU'ELI
PRESIDENT

EDWARD R. UNDERWOOD
PRESIDENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION
ALA WAI SMALL BOAT HARBOR
1651 ALA MOANA BOULEVARD
HONOLULU, HAWAII 96815

BOR-OA 0070.20

October 21, 2019

To: Ala Wai Small Boat Harbor Live Aboard Tenant

Subject: **Principal Habitation Fee Increase**

Pursuant to Hawaii Administrative Rules Section 13-234-8(a), written notice is hereby given that effective **December 1, 2019**, the principal habitation fee will be increasing to \$5.51 per foot of vessel length per month for Hawai'i residents and \$8.19 per foot of vessel length per month for non-Hawai'i residents. The increased principal habitation fee will be reflected on your billing statement closing December 31, 2019.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey Fujioka".

for Corey Fujioka
Ala Wai Small Boat Harbor Master

c: Tenant File

Exhibit D

Table 5. Chained Consumer Price Index for All Urban Consumers (C-CPI-U) and the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items index, November 2019
 [Percent changes]

Month Year	Unadjusted 1-month percent change		Unadjusted 12-month percent change	
	C-CPI-U ¹	CPI-U	C-CPI-U ¹	CPI-U
December 2000.....			2.6	3.4
December 2001.....			1.3	1.6
December 2002.....			2.0	2.4
December 2003.....			1.7	1.9
December 2004.....			3.2	3.3
December 2005.....			2.9	3.4
December 2006.....			2.3	2.5
December 2007.....			3.7	4.1
December 2008.....			0.2	0.1
December 2009.....			2.5	2.7
December 2010.....			1.3	1.5
December 2011.....			2.9	3.0
December 2012.....			1.5	1.7
December 2013.....			1.3	1.5
December 2014.....			0.5	0.8
December 2015.....			0.4	0.7
December 2016.....			1.8	2.1
January 2017.....	0.6	0.6	2.3	2.5
February 2017.....	0.3	0.3	2.6	2.7
March 2017.....	0.0	0.1	2.1	2.4
April 2017.....	0.3	0.3	1.8	2.2
May 2017.....	0.1	0.1	1.5	1.9
June 2017.....	0.0	0.1	1.2	1.6
July 2017.....	-0.2	-0.1	1.3	1.7
August 2017.....	0.3	0.3	1.5	1.9
September 2017.....	0.5	0.5	1.9	2.2
October 2017.....	-0.1	-0.1	1.6	2.0
November 2017.....	0.0	0.0	1.8	2.2
December 2017.....	-0.1	-0.1	1.7	2.1
January 2018.....	0.5	0.5	1.6	2.1
February 2018.....	0.4	0.5	1.7	2.2
March 2018.....	0.2	0.2	1.9	2.4
April 2018.....	0.4	0.4	2.1	2.5
May 2018.....	0.3	0.4	2.3	2.8
June 2018.....	0.1	0.2	2.4	2.9
July 2018.....	0.0	0.0	2.6	2.9
August 2018.....	0.0	0.1	2.3	2.7
September 2018.....	0.1	0.1	1.9	2.3
October 2018.....	0.1	0.2	2.1	2.5
November 2018.....	-0.3	-0.3	1.8	2.2
December 2018.....	-0.4	-0.3	1.5	1.9
January 2019.....	0.2	0.2	1.2	1.6
February 2019.....	0.4	0.4	1.3	1.5
March 2019.....	0.6	0.6	1.6	1.9
April 2019.....	0.5	0.5	1.7	2.0
May 2019.....	0.2	0.2	1.6	1.8
June 2019.....	0.0	0.0	1.4	1.6
July 2019.....	0.2	0.2	1.6	1.8
August 2019.....	0.0	0.0	1.6	1.7
September 2019.....	0.1	0.1	1.6	1.7
October 2019.....	0.2	0.2	1.6	1.8
November 2019.....	-0.1	-0.1	1.9	2.1

¹ The C-CPI-U is designed to be a closer approximation to a cost-of-living index in that it, in its final form, accounts for any substitution that consumers make across item categories in response to changes in relative prices. Since the expenditure data required for the calculation of the C-CPI-U are available only with a time lag, the C-CPI-U is issued first in preliminary form using the latest available expenditure data at that time and is subject to four revisions.

Indexes are issued as initial estimates. Indexes are revised each quarter with the publication of January, April, July, and October data as updated

Exhibit E

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to and compilation of chapters 13-234 and
13-253

Hawaii Administrative Rules

DRAFT RULES AS OF 9/18/18

[Date of adoption by agency]

1. Chapter 13-234, Hawaii Administrative Rules,
is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART 1

SMALL BOAT HARBORS

CHAPTER 234

FEEES AND CHARGES

Historical note

\$13-234-1	General statement
\$13-234-2	Payment [7] <u>and</u> delinquency [and liens]
\$13-234-3	Mooring rates
\$13-234-4	Mooring rates for offshore mooring and anchoring
\$13-234-5	Mooring fees for vessels assigned temporary moorings or occupying moorings without permission

§13-234-6 Fees for vessel absent for more than
fourteen days
 §13-234-7 Mooring fee for vessels owned by
nonresident
 §13-234-8 Stay aboard or principal habitation fee
 §13-234-9 Stay-aboard or principal habitation fee
for offshore mooring or anchoring
 §13-234-10 Electricity fee
 §13-234-11 Shower fee
 §13-234-12 Dry storage
 §13-234-13 Gear locker fee
 §13-234-14 Mooring fees - facilities constructed by
others
 §13-234-15 Waiver or return of fees
 §13-234-16 Permit processing fees
 §13-234-17 Fees for vessels moored at yacht club
berths and other areas covered by
specific agreements
 §13-234-18 Excessive water usage fee
 §13-234-19 [~~Parking fees - reserved stall~~] Repealed
 §13-234-20 Salvage fee
 §13-234-21 Principal habitation application fee
 §13-234-22 Exemption from fee differential
 §13-234-23 Application fee for moorage
 §13-234-24 Fee for residency status appeal; refund
if status determination reversed
 §13-234-25 Fees for commercial [~~vessels using state
boating facilities, Kaneohe Bay ocean
waters, and beaches of the State~~] use
permits
 §13-234-26 Passenger fees; anchorage, dockage, and
station keeping fees
 §13-234-27 [~~Fees for copies of rules~~] Repealed
 §13-234-28 Negotiable instruments; service charge
 §13-234-29 Marine inspection fee
 §13-234-30 Application fee for approved marine
surveyor
 §13-234-31 Fees for commercial use of boat launching
ramps and other boating facilities
 §13-234-32 Small boat harbor facility [-] key
deposits
 §13-234-33 Business transfer fee

- §13-234-34 [User] Fee for [recreational] use of
state boat launching ramps
§13-234-35 Fees for signs and ticket booths

Historical note: [~~This chapter is based on the schedule of fees and charges of the small boat harbors rules, effective November 5, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division.~~] The administrative jurisdiction for recreational boating and related vessel activities were transferred from the Department of Transportation, Harbors Division to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94, am and comp]

§13-234-1 General statement. (a) The fees and charges relative to the use of state property and facilities at a small boat harbor are:

- (1) Calculated to produce an amount [~~at least~~] sufficient to pay the expenses of operating, maintaining, and managing the facilities and services and the cost including interest, of amortizing capital improvements for boating facilities [~~appropriated after July 1, 1975,~~] including, but not limited to, berths, slips, launch ramps, [~~and~~] related accommodations, [~~exclusive of the costs of constructing, operating, and maintaining~~] general navigation channels, [~~protective~~] breakwaters, aids to navigation, and other harbor structures [~~, and aids to navigation~~]; and
- (2) Fixed with due regard to the primary purposes of providing public recreational facilities [~~and promoting the fishing industry. See sections 200-2 and 200-08, Hawaii Revised Statutes~~].

~~[(3) The mooring fees shall be set by categories, schedule A and schedule B, to be determined by the department, provided that:~~

~~(A) Schedule A shall include existing mooring holders with an annual increase toward schedule B rates of twenty per cent per year; and~~

~~(B) Schedule B shall apply to all new mooring applicants and transient slips on or after the effective date of these 2010 rule amendments.]~~

(b) Nothing contained in this subchapter shall be construed to limit the authority and power of the department to waive any late fees [7] and related interest, or to assess any reasonable fees and charges in addition to those specifically provided in this subchapter for trivial or infrequent uses of state property, facilities, or services [7] if fees for the uses are not contained herein [7] or as the circumstances may warrant.

(c) The acceptance of payment, or billings therefor, shall not waive the nature of trespass or ratify or permit illegal mooring, docking, storage, or parking. [Eff 2/24/94; am 1/22/10; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-8, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-8, 200-10)

§13-234-2 Payment [7] and delinquency [and liens]. (a) Security deposit and method of payment:

(1) Security deposit. A permittee upon being issued a use permit [7] shall, in addition to paying fees and charges as they become due, deposit with the State in legal tender or in such other form as may be acceptable to the State, an amount equal to two months' fees and charges at the rate prescribed in the rules in effect on the date of issuance of the permit as security for the faithful performance on the permittee's part of all the terms and conditions, specified therein.

On the effective date of any increase in fees and charges, the permittee shall deposit such additional amount to cover the increase. The State shall refund any excess deposit if the fees and charges are reduced. The deposit will be returned, without interest, to the permittee upon the termination of the permit only if the terms and conditions have been faithfully performed to the satisfaction of the department. In the event the permittee does not so perform, the department may declare the deposit forfeited or apply it as an offset to any amounts owed by the permittee to the State under the use permit, or to any damages or loss caused to the State by the permittee. The exercise of the permittee's option is without prejudice to the right of the State to institute action for debt or damages against the permittee or to take any other or further action against the permittee as may be provided by law or these rules for the enforcement of the rights of the State under the use permit.

- (2) [~~Advance payment required.~~] As a prerequisite to the issuance of a use permit the permittee shall make a security deposit pursuant to section 13-234-2, pay the permit processing fee, one month's fees and charges, and any other fees and charges that may be due and payable to the State; provided that if the effective date of the use permit is other than the first day of the month, charges shall be properly prorated for the balance of the month and these prorated charges shall be paid.
- (3) Method of payment of fees and charges. The following fees and charges shall be paid [~~in advance~~] without notice or demand on the [~~first~~] last day of each and every month during the life of the use permit, except that the amounts due for the first month

shall be paid prior to the issuance of the permit as described in section 13-234-2:

- (A) Mooring;
- (B) Residence;
- (C) Electricity;
- (D) Shower;
- (E) Dry storage;
- (F) Gear locker; and
- (G) ~~[Facilities constructed by others; and~~
- ~~(H)]~~ Rent and other fixed recurring fees and charges.

(b) Permit processing fees are due and payable in advance.

(c) All ~~[other]~~ fees and charges are due and payable on ~~[the first]~~ or before the last day of the month ~~[after]~~ in which they are incurred.

(d) Fees and charges for the last month shall be properly prorated. If the termination is at the owner's option, unless a written notice of intent to vacate has been received by the department from the boat owner at least thirty calendar days in advance of the termination date as prescribed in section 13-231-9 the owner shall be liable for the full amount of the monthly fees and charges.

(e) All fees and charges shall become delinquent ~~[thirty]~~ four calendar days after they become due and payable. All delinquent accounts will be referred to the Credit Bureau Services if they remain unpaid ~~[on]~~ twenty-five calendar days from the day the account becomes ~~[delinquent.]~~ delinquent.

(f) ~~[Without prejudice to any other remedy available to the State, interest and, regardless of the amount of the delinquency, a \$25.00 per month service charge shall be assessed on all delinquencies. The interest shall be computed at a rate of one per cent per month, annual percentage rate of twelve per cent, on the the delinquent amount. The interest and service charges shall continue to be assessed until the delinquency is paid in full.]~~ For all delinquent payments due to the department, interest shall be charged at the rate of one per cent per month on the unpaid balance, including prior interest charges and

delinquent account service charges, beginning on the first day payment is delinquent and continuing monthly thereafter until the amount due is paid.

Additionally, regardless of the delinquency amount and without prejudice to any other remedy available to the department, a delinquent account service charge of the greater of five per cent of the amount owed or \$100 per month shall be assessed on any delinquency. The interest charge and delinquent account service charge shall continue to be assessed until the delinquency is paid in full.

(g) In the event the fees and charges which ~~[shall]~~ have accrued in favor of the department ~~[shall not be]~~ have not been paid as provided in these rules, the department may, after reasonable notice, take possession of the vessel, its tackle, apparel, fixtures, equipment, and furnishings, and may retain such possession until all charges then ~~[owing]~~ owed and any charges which ~~[shall]~~ thereafter accrue are fully paid. The remedy ~~[thus]~~ provided in this section ~~[is]~~ shall be in addition to and not in lieu of any other remedies which the department may ~~[have]~~ pursue by ~~[virtue of]~~ statute or otherwise. [Eff 2/24/94; am and comp] (Auth HRS §§200-2, 200-3, 200-4, 200-10) (Imp HRS §§200-2, 200-3, 200-4, 200-10)

§13-234-3 Mooring rates. (a) ~~[The mooring fees shall be set by categories, schedule A and schedule B, provided that:~~

- ~~(1) Schedule A shall include existing mooring holders with an annual increase toward schedule B rates of twenty per cent per fiscal year; and~~
- ~~(2) Schedule B shall apply to all new mooring applicants and transient slips on or after the effective date of these 2010 rule amendments.]~~

The mooring rate schedule in this subsection ~~[is]~~ shall be per foot of vessel length overall ~~[per month effective upon the applicant's acceptance of the offer~~

~~of an available berth.] or maximum length of berth or mooring, whichever is greater. All mooring rates shall be determined by a state-licensed appraiser in accordance with section 200-10, Hawaii Revised Statutes. [Mooring rates shall apply to the harbor facilities in the following categories: Category "A," Ala Wai; Category "B," Kechi Lagoon, Honokohau, Maalaea, & Lahaina; Category "C," Haleiwa, Heeia Kea, Waianae, Nawiliwili, Port Allen, Kailua-Kona, Keauhou, and Manele; Category "D," Wailoa, Kikiaola, Kaunakakai, North Kawaihae, and Kukuiula; Category "E," South Kawaihae, Hana, & Hale O Lono.~~

~~TYPE OF MOORING AND STATE BOATING FACILITIES~~

~~A = Ala Wai~~

~~B = Kechi Lagoon, Honokohau, Maalaea, & Lahaina~~

~~C = Haleiwa, Heeia Kea, Waianae, Nawiliwili, Port Allen, Kailua-Kona, Keauhou, North Kawaihae & Manele~~

~~D = Wailoa, Kikiaola, Kaunakakai, North Kawaihae, & Kukuiula~~

~~E = South Kawaihae, Hana, Hale O Lono~~

Schedule A Mooring Rates:					
Category	A	B	C	D	E
Along catwalk:	\$5.67	\$4.32	\$4.05	\$3.78	\$1.62
Bow-stern mooring:	\$4.67	\$3.82	\$3.55	\$3.28	\$1.62
On state buoy, anchor or cable					
Minimum fee per month:	\$56.00	\$47.00	\$41.00	\$39.00	\$21.00
On owner's buoy or anchor:	\$2.97	\$2.48	\$2.16	\$2.00	\$1.62
Minimum fee per month:	\$39.00	\$36.20	\$33.50	\$31.30	\$21.00
In harbor basin:	\$4.32	\$3.68	\$3.24	\$3.00	\$1.62
On state cable, buoy or anchor					
Minimum fee per month:	\$52.00	\$43.00	\$38.00	\$35.00	\$21.00
On owner's buoy or anchor:	\$2.92	\$2.27	\$2.10	\$2.05	\$1.62
Minimum fee per	\$35.60	\$27.00	\$25.40	\$23.70	\$21.00

month:					
Skiff and dinghy moorings fore and aft, all types:	\$1.95	\$1.84	\$1.68	\$1.57	\$0.55
—Minimum fee per month:	\$26.00	23.20	21.35	18.80	\$5.25
Work docks (per foot/vessel length/day):	\$0.60	\$0.55	\$0.43	\$0.38	\$0.32
—Minimum fee per month:]	\$7.50	\$6.50	\$5.40	\$4.30	\$3.25

[Schedule B Mooring Rates:					
Category	A	B	C	D	E
Along catwalk:	\$9.14	\$7.79	\$7.52	\$7.25	\$5.09
Bow-stern mooring:	\$5.12	\$4.17	\$3.87	\$3.58	\$1.75
—On state buoy, anchor or cable					
—Minimum fee per month:	\$60.00	\$50.00	\$45.00	\$42.00	\$22.00
On owner's buoy or anchor:	\$3.20	\$2.68	\$2.33	\$2.16	\$1.75
—Minimum fee per month:	\$42.00	\$39.00	\$36.00	\$33.00	\$22.00
In harbor basin:	\$4.67	\$4.00	\$3.50	\$3.25	\$1.75
—On state cable, buoy or anchor					
—Minimum fee per month:	\$56.00	\$46.00	\$42.00	\$38.00	\$22.00
On owner's buoy or anchor:	\$3.15	\$2.45	\$2.27	\$2.21	\$1.75
—Minimum fee per month:	\$38.50	\$29.00	\$27.00	\$25.00	\$22.00
Skiff and dinghy moorings fore and aft, all types:	\$2.10	\$2.00	\$1.81	\$1.70	\$0.60
—Minimum fee per month:	\$28.00	\$25.00	\$23.00	\$20.00	\$5.50
Work docks (per foot/vessel length/day):	\$0.65	\$0.60	\$0.46	\$0.41	\$0.35
—Minimum fee per month:]	\$8.00	\$7.00	\$6.00	\$5.00	\$3.50

<u>Small Boat Harbor</u>	<u>District</u>	<u>Catwalk (\$/foot)</u>	<u>Tahiti Moor (\$/foot)</u>
<u>Nawiliwili</u>	<u>Kauai</u>	<u>12.00</u>	<u>N/A</u>
<u>Port Allen</u>	<u>Kauai</u>	<u>11.00</u>	<u>N/A</u>
<u>Ala Wai</u>	<u>Oahu</u>	<u>13.00</u>	<u>8.00</u>
<u>Keehi</u>	<u>Oahu</u>	<u>13.00</u>	<u>N/A</u>
<u>Haleiwa</u>	<u>Oahu</u>	<u>10.00</u>	<u>6.00</u>
<u>Heeia Kea</u>	<u>Oahu</u>	<u>10.00</u>	<u>6.00</u>
<u>Waianae</u>	<u>Oahu</u>	<u>11.00</u>	<u>N/A</u>
<u>Manele</u>	<u>Lanai</u>	<u>10.00</u>	<u>N/A</u>
<u>Lahaina</u>	<u>Maui</u>	<u>11.00</u>	<u>7.00</u>
<u>Maalaea</u>	<u>Maui</u>	<u>10.00</u>	<u>6.00</u>
<u>Manele</u>	<u>Maui</u>	<u>10.00</u>	<u>N/A</u>
<u>Kaunakakai</u>	<u>Molokai</u>	<u>9.00</u>	<u>5.00</u>
<u>Honokohau</u>	<u>Hawaii</u>	<u>10.00</u>	<u>6.00</u>
<u>Kailua-Kona</u>	<u>Hawaii</u>	<u>N/A</u>	<u>6.00</u>
<u>Kawaihae, North</u>	<u>Hawaii</u>	<u>N/A</u>	<u>5.00</u>
<u>Kawaihae, South</u>	<u>Hawaii</u>	<u>10.00</u>	<u>6.00</u>
<u>Wailoa</u>	<u>Hawaii</u>	<u>9.00</u>	<u>5.00</u>

(b) The mooring rate schedule in subsection (a) shall apply to single-hulled vessels, except as otherwise provided in this section, or in sections 13-234-5, 13-234-7, and 13-234-25. The fees for a vessel moored in any state small boat harbor not listed in the mooring rate schedule in subsection (a) shall be a flat rate of ten dollars per foot for catwalks and six dollars per foot for tahiti moorings, until such time as an appraisal can be completed.

(c) A multi-hulled vessel shall be charged mooring fees in proportion to berths used in increments of one, one and one-half, or two times the fee prescribed in ~~[subsection (a)]~~ subsection (a) or subsection (b) for a single-hulled vessel of equal length.

(d) ~~[When more than one vessel occupies a single berth end to end, the charge shall be computed at the rate provided in subsection (a).]~~

~~(e) Except for fees for work docks, which set out the minimum charges per day, the] The amounts set out in the mooring rate schedules in [subsection (a)]~~

subsections (a) through (c) are the minimum charges per month. [Eff 2/24/94; am 12/16/06; am 1/22/10; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-12, 200-22, 200-24)

§13-234-4 Mooring rates for offshore mooring and anchoring. (a) [~~The following mooring rate schedule set forth in paragraph (1) shall become effective on the first day of the first full month occurring after the effective date of the 2006 amendments to this section and shall be increased twice thereafter, as set forth in (2) and (3) on the first day of the fiscal year(s) in which a CIP bond issue is to be funded for the small boat facilities.~~] The mooring rate schedule is per foot of vessel length overall or maximum mooring capacity of the mooring system, whichever is greater, per month:

[(1) Offshore mooring and anchoring rates as of the first day of the first full month occurring after the effective date of the 2006 amendments to this section:		
Vessel Length Overall	On State Buoy, Anchor or Cable	On Owner's Own Buoy, or at Anchor
0 — 30'	\$1.31	\$0.88
31 — 40'	\$1.44	\$1.00
41 — 50'	\$1.56	\$1.13
51 — 60'	\$1.69	\$1.25
61 — 70'	\$1.81	\$1.38
71 — 80'	\$1.94	\$1.50
81 — 90'	\$2.06	\$1.63
over 90'	\$2.19	\$1.75
Minimum monthly fee:	\$31.25	\$20.63

[(2) Offshore mooring and anchoring rates that will become effective on the first day of the first financial year, after the rates in paragraph (1)

~~become effective, in which a CIP bond issue is funded for the small boat facilities:~~

[Vessel Length Overall	On State Buoy, Anchor or Cable	On Owner's Own Buoy, or at Anchor
0 - 30'	\$1.41	\$0.95
31 - 40'	\$1.56	\$1.08
41 - 50'	\$1.68	\$1.22
51 - 60'	\$1.83	\$1.35
61 - 70'	\$1.95	\$1.49
71 - 80'	\$2.10	\$1.62
81 - 90'	\$2.22	\$1.76
over 90'	\$2.37	\$1.89
Minimum monthly fee:	\$33.75	\$22.28

~~(3) Offshore mooring and anchoring rates that will become effective on the first day of the second financial year, after the rates in paragraph (1) become effective, in which a CIP bond issue is funded for the small boat facilities:~~

Vessel Length Overall	On State Buoy, Anchor or Cable	On Owner's Own Buoy, or at Anchor
0 - 30'	\$1.52	\$1.03
31 - 40'	\$1.68	\$1.17
41 - 50'	\$1.82	\$1.32
51 - 60'	\$1.97	\$1.46
61 - 70'	\$2.11	\$1.61
71 - 80'	\$2.26	\$1.75
81 - 90'	\$2.40	\$1.90
over 90'	\$2.56	\$2.04
Minimum monthly fee:]	\$36.45	\$24.06

Offshore mooring and anchoring rates shall be as follows:

<u>On state Buoy, Anchor, or Cable</u>	<u>On Permittee's Own Buoy or Anchor</u>
<u>\$5.00/foot</u>	<u>\$3.00/foot</u>

(b) The fee for barges, platforms, and commercial vessels having no operating means of propulsion shall be two times the rate listed in subsection (a).

(c) The fee for vessels anchored or moored without a permit issued by the department shall be at the rate as provided in section 13-234-5.

(d) Persons issued a mooring permit under this section shall be entitled to the use of any designated dinghy mooring area at no charge.

(e) The fee for vessels moored offshore within the confines of a state small boat harbor shall be the same as the rate listed in subsection (a). [Eff 2/24/94; am 12/16/06; am and comp]
(Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)
(Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-5 Mooring fees for vessels assigned temporary moorings or occupying moorings without permission. (a) Persons assigned a mooring for a temporary period shall make the security deposit and pay mooring fees as prescribed in this chapter.

(b) [~~These~~] Persons assigned a mooring for a period of thirty calendar days or less shall not be required to make the security deposit as provided in section 13-234-2[~~7~~] but shall be required to pay fees in advance.

(c) The fees prescribed in subsection (d) shall apply for the entire period [~~the~~] that a vessel is in [~~the~~] a state boating facility.

(d) The mooring fees for a vessel assigned a mooring for thirty calendar days or less shall be as provided in section 13-234-3 or 13-234-4, plus thirty per cent for each twenty-four [~~hours~~] hour period or any fraction [~~of that time.~~] thereof.

(e) The mooring fees for a vessel moored in a state boating facility without written permission [ef] from the department or in violation of section 13-231-17 shall be as follows:

Length of stay	Fee
(1) 30 days or less	[1-1/2] <u>1.5</u> times the fees stated in subsection (d);
(2) 31-60 days	2 times the fees stated in subsection (d) for the period over 30 days;
(3) More than 60 days	3 times the fees stated in subsection (d) for the period over 60 days.

(f) [~~The fees for a vessel moored in a state boating facility work dock area in violation of this section or section 13-231-17 shall be:~~

Length of stay	Fee
(1) 30 days or less	1-1/2 times the fees stated in subsection (d);
(2) 31-60 days	2 times the fees stated in subsection (d) for the period over 30 days;
(3) More than 60 days	3 times the fees stated in subsection (d) for the period over 60 days.

~~(g)]~~ In addition to any civil remedy or criminal action available to the department, vessels moored without permission shall be liable for the payment of fees chargeable to the moorage. The department's acceptance of [~~the~~] such a payment shall not waive the nature of trespass, or ratify or permit the unlawful or illegal mooring. [Eff 2/24/94; am 12/16/06; am 1/22/10; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-12, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-6 Fees for vessel absent for more than fourteen days. Any holder of a use permit who has

applied as prescribed in section 13-231-11 to retain the permit to use the assigned berthing space and any other related use permits upon the permittee's return, and whose application has been approved by the department[7] shall continue, during any absence of thirty calendar days or less from the assigned berth, to pay fees for the berthing space and any other use permits designated in the application at the rate established in section 13-234-3 and any other applicable sections of these rules. Where the absence permitted under section 13-231-11 exceeds thirty calendar days, then for the period in excess of thirty calendar days, the mooring fees for the berth retained[7] and the fees prescribed in these rules for any facilities or services actually utilized by the permittee during the permittee's absence[7] shall be due and payable to the department. During such absence, the department may issue a temporary use permit for the use of the berthing space by another vessel and charge mooring fees from the temporary permittee at the rate prescribed in these rules [~~and credit a portion of such fees collected to the account of the permanent permittee amounting to fifty per cent of the regular mooring fee, prorated on a daily basis, for the period that temporary mooring fees are collected for the use of the berth~~]. [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-7 Mooring fee for vessels owned by nonresident. The mooring fee for vessels assigned a permanent berth in any state small boat harbor and owned by nonresidents[~~assigned a permanent berth in any state small boat harbor,~~] shall be ten per cent higher than the mooring rate schedule in section 13-234-3[~~(a) and (b)(1)~~]. [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-8 Stay-aboard or principal habitation fee. (a) The owner of a vessel moored in a state small boat harbor and authorized to be used as a place of principal habitation[7] shall pay, in addition to mooring or any other applicable fee or charge, a principal habitation fee computed according to vessel length [~~not vessel length overall~~] which is: as follows:

- (1) \$5.25 per foot of vessel length per month if the owner is a state resident; and
- (2) \$7.80 per foot of vessel length per month if the owner is a non-resident;

provided that for any calendar year beginning after January 1, 1987, upon thirty calendar days prior written notice from the department, the principal habitation fees established by this subsection shall be increased based on [~~this~~] the increase in the annual cost of living index ([~~U.S.~~] U.S. Department of Labor, [~~U.S.~~] U.S. City Average Urban Consumer Price Index for "all items"), but the increase for any calendar year shall not exceed five per cent.

(b) The owner or operator of a transient vessel[7] or visiting vessel[7] shall pay a stay-aboard fee of [~~\$2.00~~] \$10.00 per person staying aboard a vessel, in addition to mooring or any other fees and charges, for each and every night that any person remains on board the vessel while the vessel is moored in a state small boat harbor. [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-9 Stay-aboard or principal habitation fee for offshore mooring or anchoring. The owner of a vessel or houseboat moored or anchored outside a small boat harbor and authorized to be used as a principal place of habitation or for staying aboard shall pay, in addition to any other applicable fee or charge, a principal habitation fee, or a stay-aboard fee as appropriate, which shall be [~~one-half~~] the same as the

rate specified in section [~~13-234-7.~~] 13-234-8. [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-10 Electricity fee. The monthly fee for the use of electricity when furnished by the State at a small boat harbor shall be as follows:

- (1) When no person lives aboard... [~~\$5.75~~] \$50.00
- (2) When persons live aboard\$125.00
- (3) Commercial vessels\$150.00
- ~~[-(2) When no person lives aboard but electricity is used for refrigeration..... \$11.00]~~
- ~~[-(3) When persons live aboard but electricity is not used for cooking or refrigeration.....\$11.00]~~
- ~~[-(4) When persons live aboard and use electricity for cooking or refrigeration.....\$25.00]~~

[Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-11 Shower fee. (a) Showers with hot water, when provided, are [~~intended primarily~~] for [~~the~~] use [~~of~~] by persons having properly permitted vessels moored in the Ala Wai and Keehi state small boat [~~harbor.] harbors only.~~ [~~If sufficient shower facilities are available, the department may permit, if reasonable under the circumstances, persons who are authorized to conduct business on small boat harbor premises pursuant to section 13-231-51 to utilize such facilities.]~~

(b) A monthly fee of [~~\$6.00~~] \$15.00 shall be assessed for each such persons using [~~the showers, except those under the age of four and those paying residence service fees. No persons shall utilize the aforementioned shower facilities unless that person has secured a use permit from the department authorizing use of the facilities.]~~ shower facilities.

Shower facility keys shall be connected to mooring permits. Each person having a properly permitted vessel moored in the Ala Wai or Keehi state small boat harbor and authorized by the department to utilize [the] shower facilities, except those under the age of [four,] eighteen, may secure [one shower facility key.] no more than one male shower facility key and one female shower facility key per mooring permit.

(c) [The] Each person shall deposit the [following] amount set by section 13-234-32 with the [State] department prior to receiving [the] a shower key, as security for the prompt return of the key upon termination of the use permit[+]

- ~~(1) \$20 if the use permit is valid for a period of more than ninety days.~~
- ~~(2) \$30 if the use permit is valid for a period of ninety days or less].~~

This deposit shall be forfeited in the event the permittee does not return the shower key to the department on or before the date of termination of the use permit. [Eff 2/24/94; am and comp

] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-12 Dry storage [and vessel repair]. (a) [A person, holding] No person shall use any location on land under the jurisdiction of the division of boating and ocean recreation for dry storage of vessels, vessels upon trailers, empty trailers, or any other equipment or items used in connection with vessels or trailers without written authorization from the department. In order for a person's vessel or trailer, or both, to be eligible for dry storage, the following must be met:

- (1) The person holds a valid use permit allowing [the] that person to moor [a] the vessel in a state small boat harbor[τ] ;
- (2) The vessel to be stored is properly registered with the department;

- (3) Any trailer to be stored, whether holding a vessel or not, is properly registered and has a valid safety inspection; and
- (4) The vessel or trailer, or both, to be stored are properly insured, as required by section 13-231-2.

(b) If the requirements of subsection (a) are met, the department may [be authorized by the department] authorize the permittee to use a designated location on land within [such harbor] the harbor for which their use permit applies, subject to the exception in subsection (h), [for a period not to exceed ten days in any calendar year] to refurbish or repair [such] the permittee's vessel [without payment of a dry storage fee; provided that suitable space is available and any such storage will not unduly interfere with maximum and efficient public utilization of a small boat harbor facilities.—The] .

(c) If a vessel, trailer, or other items are stored for a period exceeding seven calendar days per calendar year, the permittee shall be required to pay a dry storage fee, as specified in this section. State holidays shall not count towards the seven-day limit on free dry storage.

(d) A permittee whose vessel is utilizing dry storage facilities shall [however,] not be entitled to a reduction in the mooring fees applicable to [the] the permittee's temporarily vacated berth. [Saturdays, Sundays, and state holidays shall be excluded in the computation of the ten days free time.]

~~[(b) Vessels, vessels upon trailers, or empty boat trailers may, upon approval of the department be stored on land at a small boat harbor; provided that suitable space is available and such storage will not unduly interfere with maximum and efficient public utilization of small boat harbor facilities.— Except as provided in subsection (a),]~~ (e) Subject to any additional fees pursuant to subsection (g), the fee for the storage of vessels [or boat] and trailers on land at a state small boat harbor shall be as follows:

[Ala-Wai and
Kechi Boat
Harbors All others]

- (1) Vessels stored on land,
per foot of vessel
length, cradle length,
or trailer length,
whichever is greater,
per month.....\$3.00;
 [~~paved area \$1.25~~ ~~\$1.15~~
 ~~unpaved area \$1.15~~ ~~\$1.00]~~
- (2) Empty boat trailer per
month[~~\$20.00~~ ~~\$15.00~~].....\$100.00;
[-(3) ~~Minimum~~] The minimum monthly charge
for vessel storage shall be \$100. [~~\$20.00~~
~~\$15.00~~

~~(4)]~~ The [charges] charge for [one-half month or less] a storage period of less than sixteen calendar days shall be one-half of the monthly rate, with a minimum monthly charge of \$50.

~~[-(c) Boating equipment or other items used in connection with boats moored in small boat harbors, upon approval of the department, may be stored at such harbors if it can be done without unduly interfering with small boat harbor operations. The] (f) Subject to additional fees pursuant to subsection (g), the charges for use of [such] storage [space] for other equipment or items used in connection with vessels or trailers shall be[+] \$1.50 per month, per square foot. The minimum charge per month shall be \$25. The charge for a storage period of less than sixteen calendar days shall be one half the monthly rate, with a minimum charge of \$12.50.~~

[Ala-Wai and
Kechi Boat
Harbors All others]

- ~~[-(1) Open storage on paved areas, per square foot per~~

area. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)
(Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-13 Gear locker fee. (a) The charge for the use of a gear [~~lockers~~] locker provided by the [State] department shall be [+

- (1) ~~Standard wood..\$5.50 per month~~
- (2) ~~Triangular fiberglass locker\$3.00 per month~~ \$10.00 per month.

(b) [~~In the event that~~] If the department gives written permission [is given by the department] for a boat owner to [provide] construct a personal gear locker pursuant to section 13-232-44, the charge, while the owner's permit remains in effect, shall be [thirty per cent of] the same as the rate established in [subsection (a).] section 13-234-12(f). [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-14 Mooring fees - facilities constructed by others. Where a mooring facility is constructed by others pursuant to section 13-232-43 [~~the mooring rate shall be thirty per cent of the fee established in section 13-234-3 for a period of time as established by the department which will allow the permittee to amortize the capital most of the improvements.] , reimbursement of costs may be authorized by the department pursuant to section 200-19, Hawaii Revised Statutes. [Eff 2/24/94; am and comp~~

] (Auth: HRS §§200-4, 200-6, 200-10, 200-19, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-19, 200-22, 200-24)

§13-234-15 Waiver or return of fees. (a) The department reserves the right to waive or reduce any late fees [or charges] and related interest contained in this chapter.

(b) Whenever the department, through error, collects any fee not required to be paid by this chapter, the fee shall be refunded to the person paying the fee upon written application made to the department within thirty calendar days after the date of the payment. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-16 Permit processing fees. (a) The charge for the ~~[processing]~~ issuance, re-issuance, and revision of a use permit shall be as follows:

- ~~(1) Initial issuance of permanent permit for docking, mooring, or anchoring a vessel (see section 13-231-3) - \$5; initial issuance of commercial permit - \$25;~~
- ~~(2) Renewal of permanent permit for docking, mooring, or anchoring a vessel (see section 13-231-5) - \$5; renewal of commercial permit - \$15;~~
- ~~(3) Revision of permit:

 - ~~(A) At owner's request - \$5; or~~
 - ~~(B) By department's action (see section 13-231-7) - no charge; and~~~~
- ~~(4) All other use permits listed in section 13-231-3:

 - ~~(A) Initial issuance - \$5;~~
 - ~~and~~
 - ~~(B) Renewal of permit - \$3.~~~~

~~If a permittee utilizing any property or facility fails to renew a use permit on or before the date on which it expires, the applicable renewal fee plus a penalty fee of \$1 per month shall be collected from the permittee for each month or fraction of a month the permittee is late in applying for renewal of a permit and any other penalty fees provided by these rules.]~~

- (1) Issuance and re-issuance of a regular mooring permit as defined in section 13-231-3.....\$10.00;

- (2) Issuance and re-issuance of a commercial permit.....\$25.00;
- (3) Issuance and re-issuance of all other permits listed in section 13-231-3...\$10.00;
- (4) Revision of a use permit at an owner's request.....\$10.00.
 [Eff 2/24/94; am and comp
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-17 Fees for vessels moored at yacht club berths and other areas covered by specific agreements. Owners of vessels moored or anchored in areas or portions of state small boat harbors covered by specific agreements or other arrangements with the State, as in the case of yacht clubs and the like, and who are paying mooring charges to the lessees or other parties of such agreements or arrangements, shall be exempt from the mooring fees set out in section 13-234-3; provided that the owners shall enter into an agreement and obtain use permits as required in section 13-231-3 and all fees and charges other than mooring fees shall be assessed as the same shall properly apply. [Eff 2/24/94; comp
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-18 Excessive water usage fee. (a) A fee of [~~\$10~~] ten dollars per day for each day or fraction thereof will be charged for excessive use or waste of fresh water[~~, such as the~~] at all state small boat harbor and launch ramp facilities, which includes, but is not limited to, use of water for the prolonged operation of ejectors to pump water out of vessels and permitting hoses to run unattended.

(b) Fresh water made available by the department at boating facilities shall only be consumed or used at the state small boat harbor or other boating facility where it is provided or while engaged in an

activity on navigable waters from that harbor or boating facility, and such consumption or use must be related to proper activities at small boat harbors and other boating facilities.

(c) Persons violating this section may be subject to penalties under Section 200-25, Hawaii Revised Statutes. [Eff 2/24/94; am and comp

] (Auth: §§200-4, 200-6, 200-10, 200-22, 200-24, 200-25) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24, 200-25)

~~[\$13-234-19 Parking fees - reserved space. (a) The fee for parking a vehicle in a space reserved by the department for the exclusive use of any person shall be as follows:~~

- ~~(1) Reserved parking, covered \$30 per month.~~
- ~~(2) Reserved parking, uncovered \$20 per month.~~

~~(b) The establishment of reserved parking spaces normally does not permit maximum efficient public utilization of parking facilities. Therefore, parking spaces shall not be designated for the exclusive use of any person, other than when necessary for the parking of government or other official vehicles, unless suitable space is available and such use will not interfere with maximum and efficient public utilization of small boat harbor facilities. Any reserved spaces established shall be assigned on a "first-come, first-served" priority system. The following shall be eligible for assignment to any reserved parking space that is established for use by the public:~~

- ~~(1) A person holding a valid use permit authorizing the person to moor that person's vessel at the small boat harbor, the vessel owner, co-owner, and master; and~~
- ~~(2) An owner or employee of a business or organization operating under the provisions of a lease or other agreement authorizing the owner or employee or the business or organization to engage in a business or~~

~~commercial activity at the small boat harbor.~~

~~(c) No person shall park a vehicle in a reserved parking space so designated by a posted sign unless authorized by the department.] [Eff 2/24/94; R
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)~~

§13-234-20 Salvage fee. The owner of a vessel in danger that is saved, rescued, or secured pursuant to section 13-231-19 shall be charged a fee for services and materials based on prevailing commercial rates plus ten per cent. [Eff 2/24/94; comp
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-21 Principal habitation application fee. Prior to filing or renewing an application for the issuance of a principal habitation permit ~~[as provided in]~~ pursuant to section 13-231-27(a)(2), [the] an applicant shall pay to the department [an] a non-refundable application fee of [\$15. The fee is not refundable.] fifteen dollars. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-22 Exemption from fee differential. Nonresident members of the United States Armed Forces on active duty who are stationed in Hawaii, or on order to be stationed in Hawaii and their dependents ~~[are exempted]~~ shall be exempt from payment of the nonresident fee differential prescribed in this subchapter during the period ~~[they are]~~ that the Armed Forces member is on active duty and stationed in Hawaii [if they] ; provided that they submit relevant proof to the department ~~[as may be necessary to the determination of such status as prescribed in section~~

~~13-230-16.~~] of such status. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-4, 200-6, 200-10,
200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-
22, 200-24)

§13-234-23 Application fee for moorage. If all suitable berths in a small boat harbor have been allocated to others, a person may apply, subject to the payment of application fees, for a future vacancy or to move in the future to another berth in the same harbor~~[, as prescribed in section 13-231-5].~~ In small boat harbors where categories of berths have been established ~~[pursuant to section 13-231-5 only a single application fee or fee for renewal of an existing application shall be levied if any applicant applies for or renews applications for more than one category of berth, provided that all applications were submitted on the same date.]~~ , if any applicant applies for or renews applications for more than one category of berth, a separate application fee or fee for renewal of an existing application shall be charged for each additional category.

- (1) The application fee or fee for renewal of an existing application for a regular mooring permit shall be ~~[\$15]~~ fifteen dollars for any person who is a Hawaii resident and ~~[\$100]~~ one hundred dollars for all other persons.
- (2) The application fee or fee for renewal of an existing application for a temporary mooring permit or an application to transfer in the future to another berth with the same characteristics in the same harbor shall be ~~[\$5.]~~ fifteen dollars.
- (3) No application for moorage, renewal of such application, or for berth transfer shall be accepted until the applicant has paid the prescribed fee. The fee is not refundable~~[, provided the application for moorage fee paid, less a \$5 service charge, shall be returned to an applicant]~~ if the department

rejects the applicant's application or a renewal thereof pursuant to section 13-231-82. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-24 Fee for residency status appeal; refund if status determination reversed. The fee for filing an appeal concerning classification as a nonresident as [~~provided~~] defined in section [~~13-230-2~~] 13-230-8 shall be [~~\$15.~~] fifteen dollars. No petition shall be accepted until the prescribed fee has been paid. This fee shall be promptly refunded if, as a result of the appeal, the department reverses its original determination that the petitioner was a nonresident. In addition, in such instances any nonresident fee and charge differential paid by the petitioner shall be promptly refunded for the appropriate period. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-25 Fees for [~~commercial vessels using state boating facilities, Kaneohe Bay ocean waters, and beaches of the State~~] commercial use permits. (a) Notwithstanding the provisions of section 13-234-3, the following fees and charges shall be assessed for services provided by the department relating to commercial use of [~~mooring in or using~~] state boating facilities, [~~Kaneohe Bay ocean waters, and beaches of the State~~] waters of the State, and navigable streams:

- (1) The fee per month per vessel for a permittee with a commercial [~~activity~~] use permit and regular mooring permit who moors in and uses a small boat harbor or any of the facilities in the harbor shall be the greater of two times the mooring fees as provided in

section 13-234-3 or three per cent of the monthly gross receipts. In addition to the mooring fee as provided in this section and section 13-234-3, the permittee shall also pay fees and charges in the amounts prescribed in these rules for any other facilities and services utilized in the small boat harbor.

- (2) The fee per month for a permittee with a commercial ~~[activity]~~ use permit for a boat ramp, wharf, or other state boating facility, except a state small boat harbor, or a catamaran registration certificate shall be the greater of ~~[\$200]~~ three hundred dollars per month or three per cent of the monthly gross receipts, ~~[as of the first day of the first full month occurring after the effective date of the 2006 amendments to this section.]~~ payable to the department each month in advance. The single fee assessed for the use of a state boat ramp shall entitle the permittee to use any other state boat ramp on the same island without an additional charge, except for those boat ramps listed in section 13-231-67. The department shall provide, upon issuance of a commercial ~~[activity]~~ use permit for a state boat ramp, a set of trailer decals that shall be displayed on each side of the forward end of the trailer tongue.
- (3) For permittees with a commercial ~~[activity]~~ use permit only, the fee per month ~~[, for the use of a state boating facility, Kaneohe Bay ocean waters or beaches of the State, shall be the greater of \$200 or three per cent of the monthly gross receipts as of the first day of the first full month occurring after the effective date of the 2006 amendments to this section.]~~ shall be the same as prescribed in section 13-234-25(a)(2).
- (4) No commercial use permit shall be reissued unless the permittee meets the minimum gross

receipts requirements pursuant to section 13-231-61. The report of gross receipts shall be received by the department not later than the end of the month following the reported month and shall be submitted on a form acceptable to the department. Unless otherwise provided by [~~statutes~~] Hawaii Revised Statutes, failure to submit the report of gross receipts as required for a period in excess of sixty calendar days shall [~~be cause~~] constitute grounds for [~~automatic revocation~~] termination of the commercial [~~activity~~] use permit.

- (5) For permittees who have been issued a valid commercial [~~activity~~] use permit for the use of more than one small boat harbor, the permittee shall designate the state small boat harbor of principal use, and the percentage of monthly gross receipts described in this section shall be paid to that account. The fees for commercial [~~activity~~] use permits issued for the other state small boat harbors shall be the minimum amount specified in paragraph (2) or paragraph (1) of this subsection for those permittees with state small boat harbor mooring permits.
- (6) For permittees issued a temporary mooring permit and a commercial [~~activity~~] use permit, the fee per month shall be the greater of the temporary mooring fees required by section 13-234-5 or three per cent of the monthly gross receipts [~~as of the first day of the first full month occurring after the effective date of the 2006 amendments to this section~~].
- [~~(7) For the purpose of this section, until the first day of the first full month occurring after the effective date of the 2006 amendments to this section, the fees existing prior to the effective date shall remain in full force and effect.~~]

(b) When the commercial [~~activity~~] use permit is issued, the department shall also provide a set of commercial trailer decals for commercial trailered vessels [~~, at no charge, which~~] that shall be displayed on each side of the forward end of the trailer tongue. The fee for each commercial trailer decal shall be as prescribed in section 13-234-34.

(c) Vessels that moor at a state boating facility and which are used by a commercial [~~activity~~] use permittee for shuttle operations [~~transporting~~] to transport passengers to and from the commercial [~~activity~~] use permittee's primary operating vessel [~~and vessels~~] or which are under contracts to perform shuttle operations for passenger cruises [~~, which moor at a state boating facility,~~] shall be required to have a designated state boating facility of principal use, and the fee charged under this section shall be paid to the principal use account.

(d) The department may conduct a financial audit of the records of any commercial [~~activity~~] use permit account to determine the accuracy of reported gross receipts, or to inspect any other financial information, [~~to and~~] including Gross Excise Tax records directly related to the enforcement of these rules after providing notice, as described in section 13-230-6, not less than thirty calendar days prior to the audit.

(e) The department may, by lease, permit, or mooring permit, in accordance with [~~state statutes~~] Hawaii Revised Statutes, grant the use or possession of state boating facilities. The leases and permits shall provide for payments of rental, fees and charges, and other conditions in accordance with [~~law,~~] applicable statutes and administrative rules, in lieu of and notwithstanding the provisions for fees specified in [~~these rules,~~] this chapter. [Eff 2/24/94; am 12/16/06; am and comp]
(Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24, 200-39)

§13-234-26 Passenger fees; anchorage, dockage, and station keeping fees. (a) Any passenger or cruise vessel which is used for private gain and does not have a valid mooring permit or commercial permit and which uses state small boat harbors, property, or facilities shall pay the following passenger fees in addition to any ~~other~~ anchorage, dockage, or station keeping fees required by this ~~chapter~~ section:

- (1) Per passenger (includes in transit) ~~---~~ embarking ~~to or~~ from shore to ship..... ~~[\$2]~~ \$2.00
- (2) ~~[Passengers in transit on]~~ Per passenger embarking and disembarking a vessel on a continuous trip whose point of origin and termination is a state small boat harbor ~~[, a total of disembarking and embarking at each port per passenger]~~.....\$1.50
- (3) ~~[Passengers]~~ Per passenger embarking and disembarking on occasional and infrequent use on special charter when approved in advance of voyage ~~[as provided in]~~ pursuant to section 13-231-57(c) (3).....\$1.50

(b) ~~[Any]~~ For one year after the effective date of the amendments to this chapter, any passenger or cruise vessel using a dock, pier, or wharf in a state small boat harbor for ~~[disembarking and embarking passengers]~~ private gain by means of any boat or ~~[lighter]~~ tender while moored offshore, and when not for a continuous trip whose point of origin and termination is a state small boat harbor, shall pay a fee per passenger ~~[for disembarking and embarking at each small boat harbor]~~ as follows:

- (1) ~~[Passenger vessels engaging only in interisland commerce:]~~ For Lahaina small boat harbor..... \$.30 per day
- (2) ~~[Passenger vessels engaging in international or inter-state commerce:]~~ For all other small boat harbors or facilities..... \$1.00 per day

~~[Vessels operated by a federal or state agency are exempt from the provisions of this subsection.]~~

(c) Beginning on the first anniversary of the effective date of the amendments to this chapter:

(1) Any passenger or cruise vessel which uses a dock, pier, or wharf in a state small boat harbor for private gain by means of any boat or tender while moored offshore, and when not for a continuous trip whose point of origin and termination is a state small boat harbor, shall pay a fee per passenger as follows:

(i) For Lahaina small boat harbor.....\$3.00 per day

(ii) For all other small boat harbors or facilities.....\$2.00 per day

(2) The anchorage, dockage, or station keeping fee for any passenger or cruise vessel being used for private gain, without a valid mooring permit or commercial permit and which uses state small boat harbors, properties, or facilities, shall be, per pre-arranged schedule, by vessel length overall, the same as prescribed in section 13-234-5.

Unless otherwise provided, anchorage, dockage, and station keeping fees shall be in addition to any other fees required by this section.

(d) Within thirty calendar days after a passenger or cruise vessel departs a state small boat harbor or state boating facility, [A] a report shall be filed with the department on a form acceptable to the department, [~~within thirty days after the date of embarking or disembarking of passengers over state facilities~~] and [the] any charges due shall be remitted along with the report. Passenger counts shall be determined by a vessel's passenger list.

(e) For the purposes of this section:

"Anchorage fee" means the fee charged for a passenger or cruise vessel maintaining its position offshore by means of an anchor when the vessel is using a dock, pier, or wharf in a state small boat

harbor for private gain by means of any boat or tender.

"Dockage fee" means the fee charged for a passenger or cruise vessel mooring at a dock, pier, or wharf in a state small boat harbor for private gain.

"Station keeping fee" means the fee charged for a passenger or cruise vessel maintaining its position offshore by means other than anchoring or mooring, including, but not limited to, use of a vessel's propellers, thrusters, or both, when the vessel is using a dock, pier, or wharf in a state small boat harbor for private gain by means of any boat or tender.

(f) Vessels operated by a federal or state agency in an official capacity shall be exempt from the provisions of this section. [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

~~§13-234-27 Fees for copies of rules. The fee per copy of these rules shall be \$5. A copy of these rules shall be furnished to any person applying for the same upon payment of the prescribed fee, except no fee shall be charged for copies furnished to federal, state, or local governmental agencies or organizations, or for revisions to these rules. The fee may be waived in other instances at the discretion of the chairperson when a waiver is in the public interest.] [Eff 2/24/94; R] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)~~

§13-234-28 Negotiable instruments; service charge. (a) The service charge for any dishonored check, draft, certificate of deposit, or other negotiable instrument is [~~\$12~~] twenty-five dollars.

(b) Payment to and acceptance by the department of the service charge for a check, draft, certificate of deposit, or other negotiable instrument[~~7~~] shall

not be construed as a waiver of any violation of the Hawaii Penal Code, chapters 701 to ~~[713]~~ 712A, Hawaii Revised Statutes, or of these rules. [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-29 Vessel inspection fee. ~~[The fee for]~~ For a vessel inspection performed by the department prior to the issuance or reissuance of a regular mooring permit ~~[shall be \$15. The fee is not refundable.]~~ , there shall be a non-refundable fee of forty dollars for each vessel to be inspected. The inspection shall be valid for two years. A vessel owner shall make an appointment with ~~[the]~~ a harbor agent of the department not less than five working days prior to ~~[having the vessel]~~ the date that the vessel is to be inspected. A fee of ~~[\$10]~~ twenty dollars shall be charged if notice of cancellation by the vessel owner is not given to the harbor agent ~~[not less than two working days]~~ prior to the scheduled inspection. The inspection fee for vessels ~~[exempted]~~ exempt from numbering ~~[in]~~ pursuant to section ~~[13-231-2, Hawaii Administrative Rules,]~~ 13-241-2 and for open skiffs and dinghies less than thirteen feet in length shall be ~~[\$5.]~~ ten dollars. [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-30 Application fee for approved marine surveyor. Prior to filing or renewing an application for recognition as an approved marine surveyor by the department as provided in section 13-231-45, the applicant shall pay to the department ~~[an]~~ a non-refundable application fee of ~~[\$15]~~ fifty dollars. ~~[The fee is not refundable.]~~ [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-31 Fee for commercial use of boat launching ramps and other boating facilities. The fee for ~~[the]~~ commercial use of state launching ramps, wharves, or other state boating facilities, except state small boat harbors, shall be ~~[\$75 per month or two per cent of gross receipts, whichever is greater.]~~ the same as prescribed in section 13-234-25(a)(2). The single fee assessed for the use of a state launching ramp shall entitle the permittee to use any other state launching ramp on the same island without additional charge, except for those launching ramps listed in section 13-231-67. [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-32 Small boat harbor facility key deposits. (a) Each ~~[person]~~ permittee with a valid regular mooring permit or temporary mooring permit authorized to secure a shower facility key shall deposit ~~[the following amount]~~ fifty dollars with the ~~[State]~~ department as security for prompt return of the key upon termination ~~[of]~~ or expiration of ~~[the]~~ their use permit.

- ~~[(1) \$30 if the use permit is valid for a period of more than thirty days; or
(2) \$50 if the use permit is valid for a period of thirty days or less;]~~

(b) Each person authorized to secure a key for other harbor facilities, such as security gates or restrooms, shall deposit the following ~~[amounts]~~ amount with the department prior to receiving the key:

- ~~(1) [\$10 if the use permit is valid for more than thirty days]~~ Twenty-five dollars for a permittee with a valid regular mooring permit; or
(2) ~~[\$25 if the use permit is valid for thirty days or less]~~ One hundred dollars for a

permittee with a valid temporary mooring permit.

(c) Payment for fees assessed under this section shall be made only in the form of cash or credit card.

(d) [The key deposit] Payments of key deposits under this section shall be forfeited in the event the permittee does not return the key to the department on or before the termination of [the] permittee's use permit[7] or when the permittee is required to replace a key which has been lost or stolen. [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-33 Business transfer fee. (a) Whenever a stockholder or owner of an interest in a corporation or other business which has been issued a commercial use permit sells or transfers ten per cent or more of the stock or interest in the firm, either as a single transaction or an aggregate of several transactions, to any person who is not a stockholder or owner of record, except for transfers between spouses or first generation lineal descendants, on the effective date of these rules, the seller or person transferring such stock or interest shall pay to the department a business transfer fee based on the passenger-carrying capacity of the vessel, and shall be as follows:

- (1) Vessels used for bare boat (demise) and sailing charters carrying six or less passengers..... [~~\$ 2,500~~] \$2,500
- (2) Vessels registered by the State or documented by the [~~U.S.~~] U.S. Coast Guard to carry six passengers or less, used for charter fishing or other commercial purpose..... [~~\$ 5,000~~] \$5,000
- (3) Vessels certified by the [~~U.S.~~] U.S. Coast Guard to carry seven to twenty-~~[five]~~ four passengers.....\$10,000
- (4) Vessels certified by the [~~U.S.~~] U.S. Coast Guard to carry twenty-five to forty-nine passengers.....\$15,000

- (5) Vessels certified by the [~~U.S.~~] U.S. Coast Guard to carry fifty to seventy-four passengers.....\$25,000
 - (6) Vessels certified by the [~~U.S.~~] U.S. Coast Guard to carry seventy-five to ninety-nine passengers.....\$40,000
 - (7) Vessels certified by the [~~U.S.~~] U.S. Coast Guard to carry one hundred to one hundred forty nine passengers.....\$75,000
- (b) When less than one hundred per cent of the interest in the corporation is transferred, the business transfer fee shall be based upon a like percentage of the business transfer fee provided in subsection (a). [Eff 2/24/94; am and comp] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

§13-234-34 [~~User~~] Fee for [recreational] use of state boat launching ramps. (a) An annual boat ramp decal user fee of [~~\$40~~] seventy-five dollars shall be paid by owners of trailered vessels using [~~state boating~~] facilities under the jurisdiction of the division of boating and ocean recreation for recreational and fishing purposes to gain access to the waters of the State. This fee is charged for the purpose of defraying costs of maintenance of [the] state boating facilities [and use of fresh water. ~~The \$40 boat ramp decal fee shall become effective on the first day of the first full month occurring after the effective date of the 2006 amendments to this section and shall increase to \$45 effective on the first day of the twelfth calendar month following the effective date of the \$40 fee, and shall again increase to \$50 effective on the first day of the twelfth calendar month following the effective date of the \$45 fee. Until the effective date of the \$40 fee, the fee provided in this section prior to the effective date of the 2006 amendments to this section shall remain in full force and effect].~~

(b) In addition to the vessel registration fee, the annual boat ramp decal fee described in subsection

(a) shall be paid in full at the time of registration or registration renewal.

(c) The department shall provide an ~~[recreational]~~ owner ~~[shall be furnished]~~ with a set of decals for the trailer ~~[by the department]~~ upon payment of ~~[this]~~ the fee required by this section. Current boat ramp decals shall be affixed to each side of the forward end of the trailer tongue whenever the vessel trailer is operated or stored at a state boating facility.

(d) Notwithstanding subsection (c), a boat dealer or manufacturer shall be allowed to place ~~[the]~~ a ramp decal on the dashboard of the vehicle used to transport ~~[the]~~ a demonstration vessel. [Eff 2/24/94; am 12/16/06; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-234-35 Fees for signs and ticket booths.

(a) The fee for commercial signs posted in state small boat harbors shall be ~~[\$1 per square foot per month with a minimum fee of \$5 per month]~~ assessed monthly as follows:

- (1) Five dollars for each sign five square feet in size or smaller; and
- (2) One dollar per square foot for signs larger than five square feet, rounded to the nearest whole number.

(b) The fee for ticket booths in small boat harbors shall be ~~[\$250]~~ two hundred fifty dollars per month. [Eff 2/24/94; am and comp]

(Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

(Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

2. Chapter 13-253, Hawaii Administrative Rules, is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART III

OCEAN WATERS, NAVIGABLE STREAMS AND BEACHES

CHAPTER 253

CATAMARAN REGISTRATION CERTIFICATE, OTHER REGISTRATION, AND COMMERCIAL USE PERMIT FEES

- \$13-253-1 Registration fees for canoes, surfboards, and water sports equipment
- \$13-253-1.1 Commercial use permit and catamaran registration certificate fees
- \$13-253-1.2 No additional fees
- \$13-253-1.3 Gross receipts
- \$13-253-2 [~~Permit and registration certificate Fees~~] Repealed
- \$13-253-3 [~~Duplicate permit or certificate fee~~] Repealed
- \$13-253-4 [~~When fees returnable~~] Repealed
- \$13-253-5 Repealed

Historical note. [~~This chapter is based on registration and permit fees of the Hawaii Shore Waters Rules, dated November 6, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division.~~] The

administrative jurisdiction for recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94; comp 9/25/14; am and comp]

§13-253-1 Registration fees for canoes, surfboards, and water sports equipment. The following registration fees shall be paid to the department for the registration of canoes, surfboards, and watersports equipment that are used in a commercial operation:

	<u>Original</u>	<u>Renewals</u>
[Canoes,] <u>All vessels</u> , each vessel	\$5.00	\$3.50
Surfboards, each board	\$1.00	\$1.00
Watersports equipment	\$1.00	\$1.00

The minimum fee for surfboards shall be ~~[\$1.]~~ one dollar. [Eff 2/24/94; am and comp 9/25/14; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-253-1.1 Commercial use permit and catamaran registration certificate fees. [A] The monthly fee for a commercial use permit or a catamaran registration certificate shall be the ~~[greater of \$200.00 or 3% of the gross receipts per month.]~~ same as prescribed in section 13-234-25(a)(2). The monthly fee shall be payable to the department each month in advance. This fee shall be applicable to all commercial use permits and all catamaran registration certificates for ~~[state ocean waters]~~ waters of the State or navigable streams. [Eff and comp 9/25/14; am and comp] (Auth: HRS §§ 200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-253-1.2 No additional fees. (a) Fees required to be paid to the department for commercial activities in [~~state ocean waters,~~] waters of the State including but not limited to ocean recreation management areas, shall be reported and paid in the following manner:

- (1) The report of gross receipts shall be submitted to and received by the department not later than the end of the month following the month covered by the report and shall be submitted on a form acceptable to the department.
- (2) A permittee possessing a harbor commercial use permit and a commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate, who is paying [~~3~~] three per cent of gross receipts per month under the harbor commercial use permit, shall not be required to pay an additional [~~3~~] three per cent of gross receipts per month under the commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate, provided that the payment made to the department is based on the total of gross receipts acquired under the harbor commercial use permit and the commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate.
- (3) A permittee possessing a commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate who is operating from a private or County facility or land and said operation does not involve the use of state fast land or land within a shoreline area, shall be required to pay \$200 per month by the first day of each month under the commercial use permit or registration certificate, but shall be exempt from paying

[3] three per cent of gross receipts per month under the commercial use permit or registration certificate.

(b) Delinquency in the payment of any fees owed to the department may result in revocation of the commercial use permit or catamaran registration certificate. [Eff and comp 9/25/14; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-253-1.3 Gross receipts. [~~(a) "Gross receipts" as used in this chapter means all moneys paid or payable to the account of the commercial use permittee or catamaran registration certificate holder, for services rendered, or resulting from trade, business, commerce, or sales by the vessel or water sports equipment owner when the services, trade, business, commerce, or sales has a direct relationship to the vessel.~~

~~(b)~~] Each commercial permittee or catamaran registration certificate holder shall be responsible for submitting to the department a monthly statement of its gross receipts. [Eff and comp 9/25/14; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRSS§200-2, 200-3, 200-4, 200-22, 200-24)

§13-253-2 Permit and registration certificate fees. A \$10.00 fee shall be paid to the department for the issuance or re-issuance of any commercial use permit or catamaran registration certificate pursuant to these rules. [Eff 2/24/94; am and comp 9/25/14; comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

~~[§13-253-3 Duplicate permit or certificate fee. A \$10.00 fee shall be paid to the department for a~~

~~duplicate permit or registration certificate if such is lost or destroyed, provided that the duplicating fee for evidence of registration of surfboards will be \$1 for each board with a minimum of \$1 and \$1 for evidence of registration of canoes.] [Eff 2/24/94; am and comp 9/25/14; R] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)~~

~~[§13-253-4 When fees returnable. Whenever the department, through error, collects any fee not required to be paid by these rules, the fee shall be refunded to the person paying the fee upon application made within a month after the date of the payment.] [Eff 2/24/94; am and comp 9/25/14; R] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)~~

§13-253-5 REPEALED." [Eff 2/24/94; R 9/25/14]

3. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

4. The amendments to and compilation of chapters 13-234 and 13-253 Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

SUZANNE D. CASE,
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

/s/ Cindy Y. Young
Deputy Attorney General

Exhibit F

A BILL FOR AN ACT

RELATING TO USE PERMITS FOR SMALL BOAT HARBOR FACILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 200-10, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) The permittee shall pay moorage fees to the
4 department for the use permit that shall be based on but not
5 limited to the use of the vessel, its effect on the harbor, use
6 of facilities, and the cost of administering this mooring
7 program; ~~and,~~ furthermore:

8 (1) Except for commercial maritime activities where there
9 is a tariff established by the department of
10 transportation, moorage fees shall be established by
11 appraisal by a state-licensed appraiser approved by
12 the department ~~[and shall be higher for nonresidents
13 than for residents. The moorage fees shall be set by
14 appraisal categories schedule A and schedule B, to be
15 determined by the department, and may be increased
16 annually by the department, to reflect a cost of
17 living index increase, provided that:~~



~~(B) Not less than \$100 for nonresidents;~~

(4) If a recreational vessel is used as a place of principal habitation, the permittee shall pay, in addition to the moorage fee, a liveaboard fee that shall be calculated at a rate of:

(A) \$5.20 a foot of vessel length a month if the permittee is a state resident; and

(B) \$7.80 a foot of vessel length a month if the permittee is a nonresident;

provided that the liveaboard fees established by this paragraph may be increased by the department ~~[at the rate of the annual cost of living index, but]~~ by not more than ~~[five]~~ fifty per cent in any one year, beginning July 1 of each year;

(5) If a vessel is used for commercial purposes from its permitted mooring, the permittee shall pay, in lieu of the moorage and liveaboard fee, ~~[a fee based on three]~~ a fee that shall be the greater of:

(A) Three per cent of the gross revenues derived from the use of the vessel; or ~~[two]~~



1 (B) Two times the moorage fee that would be assessed
 2 for a recreational vessel of the same size[-
 3 ~~whichever is greater; and~~]; provided that if a
 4 vessel is also used as a place of principal
 5 habitation, the vessel permittee shall also pay a
 6 liveaboard fee established by appraisal by a
 7 state-licensed appraiser approved by the
 8 department;

9 (6) The department is authorized to assess and collect
 10 utility fees, including electrical and water charges,
 11 and common-area maintenance fees in small boat
 12 harbors [-]; and

13 (7) All fees established by appraisal pursuant to this
 14 subsection shall be set at fair market value."

15 SECTION 2. This Act does not affect rights and duties that
 16 matured, penalties that were incurred, and proceedings that were
 17 begun before its effective date.

18 SECTION 3. Statutory material to be repealed is bracketed
 19 and stricken. New statutory material is underscored.

20 SECTION 4. This Act shall take effect upon its approval.



Report Title:

DLNR; Mooring Fees; Liveaboard Fees; State Small Boat Harbors

Description:

Amends the various fees the Department of Land and Natural Resources may charge for the usage of state small boat harbors. Amends the manner in which those fees are applied. (SB1257 HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



Exhibit G

A BILL FOR AN ACT

RELATING TO STATE BOATING FACILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 200-2.5, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:
3 "(a) Notwithstanding any law to the contrary, the board
4 may lease any existing state boating facility in its entirety,
5 and fast lands and submerged lands within [an] any existing
6 state boating facility, by public auction, a request for
7 proposals, or by direct negotiation pursuant to section 171-
8 59 and chapter 190D, for private development, management, and
9 operation; provided that ~~[any lease of fast lands or submerged~~
10 ~~lands pursuant to a request for proposals shall be subject~~
11 ~~to section 200-2.6, regardless to which state boating facility~~
12 ~~the fast or submerged lands are attached.]~~ no lease shall be
13 approved by the board unless the board has first found that:
14 (1) The lessee has considered the risk of sea level rise
15 on the area of the land to be leased; and

H.B. NO. 1032

1 (2) The effect of sea level rise on the area of the land
2 to be leased will be minimal during the term of the
3 lease;
4 provided further that prior authorization from the legislature
5 shall not be required for a lease pursuant to this subsection,
6 except that the board may request authorization from the
7 legislature of, and the legislature may authorize by concurrent
8 resolution, a lease that does not satisfy the criteria under
9 paragraphs (1) and (2) where the board demonstrates the existence
10 of extraordinary circumstances necessitating the lease.

11 As used in this section, the term "state boating facility"
12 means a state small boat harbor, launching ramp, offshore
13 mooring, pier, wharf, landing, or any other area under the
14 jurisdiction of the department pursuant to this chapter."

15 SECTION 2. Section 200-2.6, Hawaii Revised Statutes, is
16 repealed.

17 ~~["§200-2.6] Ala Wai boat harbor, leases. The fast lands~~
18 ~~and submerged lands of the Ala Wai boat harbor that may be~~
19 ~~leased include the following:~~

20 ~~(1) All fast lands and submerged lands described in the~~
21 ~~request for qualifications or request for proposals~~

H. B. NO. 1032

1 ~~issued by the division of boating and ocean recreation~~
2 ~~of the department on November 25, 2008;~~

3 ~~(2) The fast land described as a portion of tax map key:~~

4 ~~(1) 2-3-37-12, composed of approximately 112,580~~

5 ~~square feet, presently used for harbor offices and~~

6 ~~permitted vehicular parking; and~~

7 ~~(3) The fast land described as a portion of tax map key:~~

8 ~~(1) 2-3-37-12, which is a triangular area located~~

9 ~~Diamond Head of Mole B, presently used for permitted~~

10 ~~vehicular parking."]~~

11 SECTION 3. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 4. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect upon its approval.

17
18 INTRODUCED BY: _____

Sam

BY REQUEST

JAN 22 2019

H. B. NO. 1032

Report Title:

State Boating Facilities; Disposition

Description:

Allows the Board of Land and Natural Resources (Board) to lease any existing state boating facility in its entirety, and fast lands and submerged lands within any existing state boating facility, by public auction, request for proposals, or direct negotiation for private development, management, and operation. Requires the Board to make a finding regarding certain sea level rise factors before awarding any such lease. Clarifies that legislative approval is not required to award a lease, except that the Board may request approval from the Legislature in extraordinary circumstances, by concurrent resolution, where the Board has not made findings regarding sea level rise factors. Repeals fast lands and submerged lands lease requirements specific to Ala Wai Boat Harbor.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO STATE BOATING FACILITIES.

PURPOSE: To allow the Board of Land and Natural Resources (Board) to lease any existing state boating facility in its entirety, and fast lands and submerged lands within any existing state boating facility, by public auction, request for proposals, or direct negotiation for private development, management, and operation; to require the Board to make a finding regarding certain sea level rise factors before awarding any such lease; to clarify that legislative approval is not required to award a lease, except that the Board may request approval from the Legislature in extraordinary circumstances, by concurrent resolution, where the Board has not made findings regarding sea level rise factors; and to repeal fast lands and submerged lands lease requirements specific to Ala Wai Boat Harbor.

MEANS: Amend section 200-2.5(a) and repeal section 200-2.6, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Climate change and sea level rise are not only real phenomena but are also two of the most preeminent challenges of the twenty-first century and are pivotal issues for the State. Recognizing that shorelines are one of the State's most dynamic and important cultural and economic resources, the Legislature in 2017 created the Hawaii Climate Change Mitigation and Adaptation Commission (Commission) and tasked the Commission, as a first step, to focus on sea level rise and develop a report identifying vulnerabilities and recommending adaptations. The Commission subsequently recommended that state and county departments and agencies review approval

processes for new developments in areas susceptible to sea level rise; update design standards to limit urban growth and increase flood resiliency; develop guidance to help developers cope with climate change; encourage the purchase of flood insurance; incorporate sea level rise into hazard mitigation planning; develop pre-disaster recovery frameworks; prioritize the preservation of coral reefs; inventory and assess the vulnerability of critical infrastructure; develop a financing strategy to deal with the expected costs of sea level rise; and explore potential public-private partnerships as a way to preserve coastal resources. This bill seeks to require that the applicant for a lease of fast land or submerged land within an existing state boating facility has considered the risk of sea level rise on the area of the land to be leased and the effect of sea level rise on the area of the land to be leased will be minimal during the term of the lease. This bill also seeks to provide that the Legislature may authorize the lease of any fast lands and submerged lands within any existing state boating facility, by concurrent resolution, for extraordinary circumstances

Currently, section 200-2.5(a), HRS, authorizes the Board to lease "fast lands and submerged lands within an existing state boating facility" by public auction, a request for proposals, or by direct negotiation pursuant to section 171-59, HRS, and chapter 190D, HRS, for private development, management, and operation, provided that any lease of fast lands or submerged lands pursuant to a request for proposals shall be subject to section 200-2.6, HRS, regardless to which state boating facility the fast or submerged lands are attached. In turn, however, section 200-2.6, HRS, only addresses leases of the Ala Wai Boat Harbor. The reference to section 200-2.6, HRS, within section 200-2.5(a),

HRS, is ambiguous and confusing. This proposal seeks to remove the reference to section 200-2.6, HRS, within section 200-2.5, HRS, to not limit the fast lands and submerged lands of the Ala Wai Boat Harbor that may be leased.

Impact on the public: This bill would provide the Department with more flexibility and options to upgrade and improve state boating facilities to the benefit of boaters.

Impact on the department and other agencies: This bill would provide the Department with more flexibility and options in managing, maintaining, and improving state boating facilities.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: LNR 801.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.

Exhibit H

Hawaii

The Boat People Of The Ala Wai Fear They're Getting Forced Out

For years a lucky few have lived aboard their vessels at the gateway to Waikiki. But a bill in the Legislature portends big changes.



43

By Kirstin Downey    / March 25, 2019

 Reading time: 9 minutes.

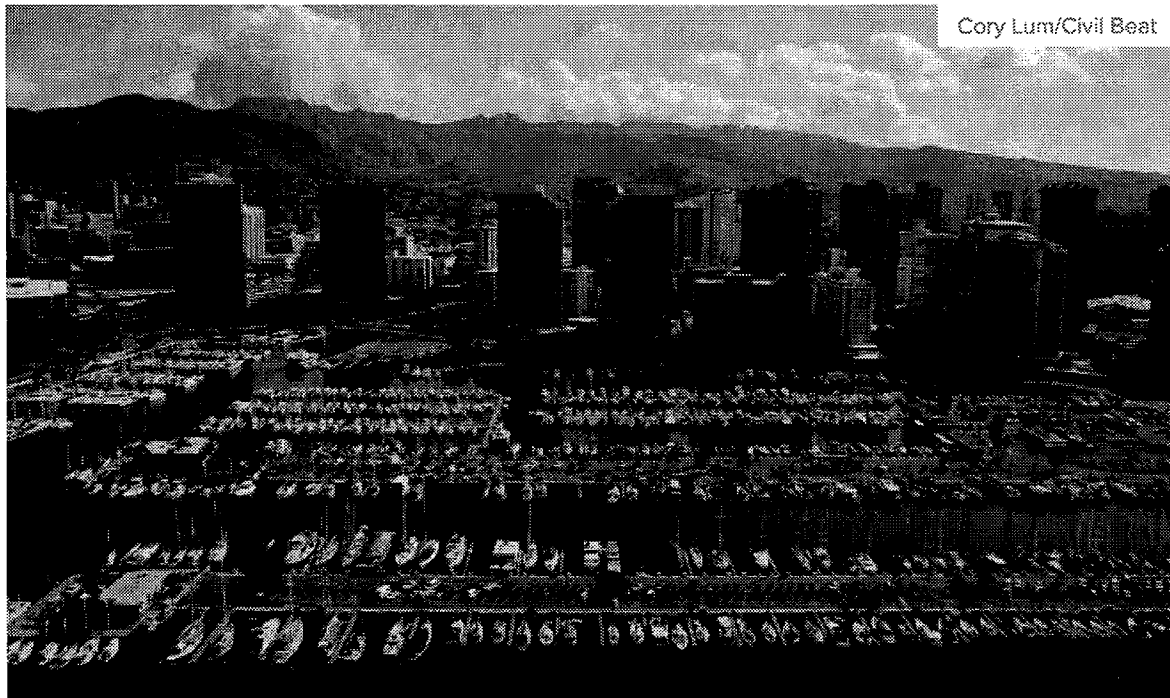


Gentrification is coming to one of the last remaining pockets of affordable housing in Waikiki on the Ala Moana waterfront.

Proposed legislation that would raise slip rental fees could have sweeping effects on the eccentric and eclectic community of boat owners — including those who live aboard their vessels full time — clustered at the [Ala Wai Harbor](#), a decaying 11-acre parcel of docks, slips, vacant land and pockmarked parking lots.

The harbor entrance off Ala Moana Boulevard is dwarfed by massive resort hotel complexes. Wedged behind the Ilikai Marina and Hilton Hawaiian

Village, it's a surviving fragment of a time when even an itinerant boater could have a view of the sea.



Ala Wai Harbor in Waikiki is home to a tight-knit community of liveaboard boaters.

Under a bill proposed by the governor and moving ahead in the Legislature, the cost of maintaining a boat in the Ala Wai is likely to substantially rise.

Senate Bill 1257 would change the rent amount that boat owners pay for their slips at harbors around Hawaii, including the two state-owned marinas on Oahu where people are permitted to live aboard their boats. Instead of a set, stable price, the fees charged are likely to climb because they will be set by an appraiser based on market rates. The exact prices are still under negotiation in the legislature.

The Department of Land and Natural Resources supports the legislation, which would set new rules for how its Division of Boating and Ocean Recreation manages those two marinas.

The largest is Ala Wai, where monthly rental fees would rise from \$9 to \$13 per linear foot if the bill passes in the form he expects, the governor signs it

and two regulatory boards affirm the action, said DOBOR administrator Ed Underwood.

**“A town grew up around the harbor here. Now the state is saying, ‘You guys — no more.’”
— Boat owner James Callahan**

The state says the rent increases are overdue and that the money will help pay for improvement of harbor facilities. Harbors built in the 1950s and 1960s have deteriorated to the point that they have been called a public embarrassment. State officials have estimated the cost of deferred maintenance at \$310 million.

The legislation comes in the wake of a new strategic plan issued by DOBOR this year that would seek to convert the Ala Wai property from a funky water-based community into a profit-making opportunity for the state. It explicitly identifies the Ala Wai marina as ripe for redevelopment because of its proximity to Ala Moana Center and location at the gateway to Waikiki.

“Although Ala Wai stands out as the highest net-income-generating harbor, its earning potential remains untapped,” the agency said in the plan.

‘Not Supposed To Be Floating Condos’

The Ala Wai boat harbor, Underwood said, was never intended to house people permanently but as a location where they could live aboard vessels when they weren’t at sea.

“They’re not supposed to be floating condos, which is what it has turned into,” Underwood said, noting that rental rates have not risen since 1991.

“People don’t use the boats. They use it for housing and that was never the intent at the Ala Wai.”

As housing prices have risen, more and more people have made the marina their permanent home, and now they say they could be forced to move.

Cory Lum/Civil Beat

Ala Wai harbor has more liveaboards than any harbor in the state, but also a lot of deferred maintenance.

“I’m very worried,” said Troy Lynch, a handyman who has lived on a power fishing boat at the harbor for nine years. “I don’t know what I’d have to do. I would just sell my boat and go share a room, or something drastic like that.”

Others who are more able to afford a rent increase worry the changes would disrupt a vibrant community they love.

“Some people are wealthy; others aren’t able to afford it,” said Christa Arrabito, a retired public school teacher who lives at the marina and has found a new career as a diver who cleans the bottoms of boats, including those of her neighbors at Ala Wai. “Some people have said they are selling their boats immediately. A lot of people have said their plans are on hold as they don’t know what will happen.”

For James Callahan, living on his own boat has been a dream since young adulthood when he worked on a boat in Fiji. He moved to Hawaii, attended the university, and found a job and a boat of his own.

James Callahan in the galley of his 38-foot boat at Ala Wai Harbor.

Now he is anxious about the proposed changes. He currently pays \$515 a month to rent a slip for his power boat, a 38-foot coastal cruiser he calls Solar System, plus about \$70 a month for electricity.

"I don't think I will be forced out," he said, acknowledging the current rent is "very cheap." But the other costs of owning a boat, including maintenance of at least \$2,000 a year, make the prospect of future rent hikes more troubling as prices rise.

"I'm not sure how they will calculate it," Callahan said. "It could really change my game plan."

And he wonders how things will change if his neighbors move.

“A town grew up around the harbor here,” Callahan said. “Now the state is saying, ‘You guys — no more.’”

‘The Simple Life’

Yumi Booth, who lives at the Ala Wai with her husband, Clarence, and 15-year-old dog, Rascal, worries that not just a living space but a more relaxed way of life is under assault. They own few possessions and work at beach concessions in Waikiki.

“We love living on a boat,” she said. “It’s the simple life. We save money, we don’t need to drive, we bicycle to work.”

Only two state-owned marinas on Oahu allow liveaboards. Ala Wai has 129 slips and the Keehi Lagoon harbor has 35. Many boaters also live in both places illegally, coming and going at night and trying to avoid attention.

“Why are we subsidizing those guys? They’re boaters. C’mon. That’s recreation.” — Honolulu resident Darren Okino

People who live there legally signed up on waiting lists and in many cases waited years before getting one of the coveted permits. The average wait for a liveaboard slip is five to 10 years, Underwood said at a Waikiki Neighborhood Board meeting in August.

Callahan was among those who waited a long time, checking regularly to make sure his application was up to date.

“The list is very long and it doesn’t move,” he said. “By an act of God, I got one three years later.”

For Ala Wai residents, the tone of the debate over the proposed changes has grown poisonous.

They believe the state has purposely mismanaged the harbor to improve the case for turning to a “private partnership” that they believe will lead to for-profit management.

Cory Lum/Civil Beat

A sunken boat at Ala Wai Small Boat Harbor. Locals say there’s a second vessel below this one, a sign of a lack of harbor maintenance.

They also fear being displaced by rich people with expensive yachts who can afford higher rents.

At a public meeting crowded with boat owners in Waikiki where Underwood spoke, Ala Wai boat owner Bruce Baxter said the state was behaving heartlessly.

“You want to abandon the people who are currently living there ... you would prefer to throw us to the sharks and let some private company, some corporation, make the money?” he heatedly asked Underwood.

Others are enraged by what they see as the incompetence of state officials managing the marinas, pointing out that many slips that fall into disrepair are left vacant, generating no income.

At the meeting, Ala Wai boat owner Les Parsons lashed out at Underwood, criticizing the poor conditions of marina facilities and suggesting he should be fired.

“Why do you have the job you have, really I want to know,” Parsons said to Underwood.

Underwood responded mildly, “You’d have to ask my boss, Les, I don’t know.”

Parsons pressed on: “Is any work being done at Ala Wai at the present time?”

Underwood offered a list of projects he said were underway.

Later, Parsons backtracked, saying, “I hope I didn’t get too rough with you.”

“I’m used to it, Les,” Underwood said.

Underwood told Civil Beat that some people are upset because they don’t want to pay higher rent. Others, he said, accuse the agency of

mismanagement because they don't understand it operates according to complicated rules for how maintenance can be managed and funded.

'No Place For The Local People'

Some people have little sympathy for boat owners who they believe have benefited from artificially low rental rates and facility charges.

At the Waikiki meeting, Underwood said they have been paying only \$5 a month for electricity. Boat owners quickly countered that they would pay more if the state had ever installed electricity meters as other marinas have. (Some boaters also pay more because their boats are moored in parts of the harbor where they can connect to power on their own.)

Darren Okino, a Honolulu resident, grew irate as he listened to the boaters' complaints at the meeting.

"Five dollars electric? My 600-square-foot apartment in Makiki is \$180 a month," said Okino. "Why are we subsidizing those guys? They're boaters. C'mon. That's recreation. That's not a community requirement."

Booth, who has lived at the marina since 2000, says she understands if she and her husband have to pay more, and considers herself very fortunate to live there at all. But she said the changes underway at Ala Wai represent an unsettling transition for Hawaii.

"There's no place for the local people to hang out anymore," she said. "It makes me so sad. Now everything is so fancy, it's all about money. It's everywhere."

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About the Author



Kirstin Downey [✈](#) [✉](#) [📶](#)

Kirstin Downey is a reporter for Honolulu Civil Beat. A former Washington Post reporter and author of several books, she splits her time between Hawaii and Washington, D.C. You can reach her by email at kdowney@civilbeat.org

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PezVela 8 months ago

Fails to mention SB1258, which, IF PASSED, will affect not only boaters, but generations of locals who come hang out in one of the last places in Waikiki not solely designed to extract money from tourists. SB1258 allows for lease of the Harbor "in [its] entirety" so the State can seize the "immense commercial development potential" of the Harbor (see "Strategic Plan" for 2019, link in Article). Instead of focusing on this larger issue affecting the whole community, this Article quotes people who say that the public should not have to "subsidize" boaters, although the opposite is true, as all of the facilities in the Harbor, including the public bathrooms, public surfing showers, rubbish removal, lighting, etc. is paid for out of the Special Boating Fund, which is funded by—slip fees. Regardless, boaters care about the harbor as much as the general public, and we are all on the same side here, getting screwed by the State, and Ed Underwood, purported public servant.

Respect 🙏 2 Reply ↩

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CappyAL 8 months ago

I am amazed by the number of people who assume the cost of living aboard your own vessel should be comparable to the cost of renting an apartment. Boat owners pay for their boats and all they are "renting" is a 1000 SF parking space on the water. Most boats use very little electricity because they are designed to be off grid. The value they receive from DOBOR is more akin to common area maintenance than to apartment rental.

in 2018 DOBOR payroll was over \$6.5M whereas the total they spent on Maintenance & Repair was just \$2.3M statewide. I have a boat in Keehi harbor and if DOBOR gets its way, my fees will go from \$333 to \$710/mo. NON-LIVEABOARD. Imagine, \$8,500 a year for a floating parking stall. I'll have to sail it to California and sell it, because there will be no market here for anything short of million dollar yachts.

Respect 🙏 3 Reply ↩

Share ↗ Report 🚩

Keala_Kaanui 8 months ago

The article literally says the slips were never deigned to be function as condos, yet that is exactly what its turned into. Maybe if so many boaters weren't ignoring the purpose and living full time on their boat without ever moving the boat, we wouldn't be here.

Respect 🙏 2 Reply ↩

Share ↗ Report 🚩

Diverdave 8 months ago

It's ironic that these same Dem talking heads always speak of "affordable housing" and then continue to raise property taxes, fees, surcharges, and permit fees and force them out of housing into the streets.



Respect 🙏 3 Reply ↩

Share ↗ Report 🚩

CatManapua 8 months ago

Once again it's not like this is an "only in Hawaii" kind of issue. Here's an approach: review the rates charged by other "trophy level" harbors and set rates accordingly along with a clear program to bring up the quality of the facility. Rv "trophy" harbors I mean those that are is the

program to bring up the quality of the facility. By trophy harbors I mean those that are the most desirable places across the world. Marina Del Rey in LA, Presidio Yacht Club, Bell Harbor Seattle, Singapore, Hong Kong...you get the idea. Clearly one can draw reasonable comparisons and set rates. We need to maximize the benefit to the public from this public asset. Of course those who get super bargain deals now will scream but what do you expect?

Respect  1 Reply 

Share  Report 

CKMsurf 8 months ago



I'm not seeing why there are still set fees for utilities. Wireless revenue grade electric and water metering is cheap these days. I've done wireless condo electric (that was years ago and included the wireless backbone to internet. I'll have to look up the cost data). Water can be problematic for condos because there are vertical stacks with hot and cold, but relatively simple for boats with only one tap. There are even contract services that take the wireless data and send monthly bills. Users can look up charge online and read outs on local equipment to check against. No excuses anymore for not monitoring at least that. End the free ride please.

Respect  Reply 

Share  Report 

CaptainAloha808 8 months ago

I have a boat in the Ala Wai Harbor but more importantly i am a Hawaii resident and have a stake in the way our government operates. If any segment of government seeks to significantly raise fees beyond those leagally permissabe by the statues without an audit or transparency then this is an issue for all of us. In response to statements that an increase from \$550 to \$760 per month is affordable rent, what is it you think we are renting? For \$550 per month we rent a 600 sq.ft waterway with 1 water spigot and 1 electrical outlet that many of us, me included, pay for through HECO. Comparing it to apartment rent is not relevant, maybe to maintenance fees but it's closer to stall rent for an RV. In response to the boats being "floating homeless shacks" perhaps you should look a little closer before making such a sweeping negative statement. I personally budget \$500 per month to maintain my boat and i sail it weekly. Please judge based on research and facts as opposed to quick assumptions.



Respect  2 Reply 

Share  Report 

Nuu_Faasofa 8 months ago

"Not Supposed To Be Floating Condos." The revenue that could (and should) be generated at the big facilities like Ala Wai, Honokohau, Maalaea, etc. goes towards maintaining harbor facilities throughout the state, including tiny, one-ramp-with-no-pavement-and-a-port-a-potty out on the neighbor islands. Sure, the state could do a better job of managing the facilities, but that's no excuse to continue subsidizing folks' life style choices via lower-than-market fees. My ramp sticker just went up 88% and my commercial fishing license (I'm a weekend warrior with a skiff) tripled in two years. I ain't feeling a whole lot of sympathy for them floating condos.



Respect  2 Reply 

Share  Report 

8alana8 8 months ago



I'm still confused as to why our boats are being called floating condos.... they do not have running water, bathrooms, ovens, microwaves. And the rhetoric that live aboards are being "subsidized" is just flat out not true. The Ala Wai revenue should be going back into the small boat harbors, and it isn't. The entire sum is going into dobor's payroll.

Respect  2 Reply 

Share  Report 

8alana8 8 months ago

I guess what I'm saying is that it's unfortunate this article pits members of the public against each other when the real problem is DOBOR and its misuse of fees.

Respect  2 Reply 

Share  Report 

Nuu_Faasofa 8 months ago

I can agree with that. :)



Respect  Reply 



Share  Report 

8alana8 8 months ago

DOBOR has always statutory authority to raise slip fees by up to 5% per year and has chosen not to since 1991.

The harbor generates approximately \$630,000 per month, all of which goes to DOBOR's dozens of employees' payrolls-- who do what? This is blatant mismanagement of a harbor. Glut of government. The public always loses

Respect  2 Reply 

Share  Report 

Keala_Kaanui 8 months ago

Your math is clearly off. 120 slips times an average monthly fee of \$15 is \$66,000 a month. Enough to pay maybe 10 employees.

Respect  Reply 

Share  Report 

CaptainAloha808 8 months ago

120 liveaboard slips. There are about 700 total boat slips just in the Ala Wai Small Boat Harbor alone. Again, please, a little research goes a long way. Let's have intelligent discussion.

Respect  3 Reply 

Share  Report 

HuliOpu 8 months ago

Whoa bra, how you figgah? Before calling out anyone with your criticism you should use what's called a calculator. Your numbers are ridiculous.

Respect  Reply 

Share  Report 

8alana8 8 months ago

It is ridiculous, and it comes straight out of DOBOR's December 2018 revenue spreadsheet.

Respect  1 Reply 

Share  Report 

8alana8 8 months ago

DOBOR has a systemic management issue that has been documented since the 1990s, and boaters should not be penalized by giving DOBOR an unchecked authority to raise fees and privatize.

The last management audit of DOBOR, done almost 2 decades ago:



"Inadequate management of state boating facilities has been a recurring problem. Our prior audits in 1993 and 1998 reported on these deficiencies. In our prior audit, we found that little had changed in the poor conditions of these state boating facilities. The boating program's



MANAGEMENT and NEGLECT have demonstrated facilities to the extent that their

MISMANAGEMENT and NEGLIGENCE have deteriorated facilities to the point where their continued use threatens public safety."

and

"the boating division lacks adequate controls to ensure the accuracy and integrity of its financial affairs. The boating division is still unable to accurately determine the cost of operating its boating facilities . . . delinquent user fees (now totaling approximately \$500,000) continue to increase."



Respect  1 Reply 



Share  Report 

JohnnyG 8 months ago

It's all about something for nothing everybody tries to game the system. Kinda hard to believe these folks pay \$2k a year to maintain their boats.



Surf there just offshore and see their boats. Look like floating homeless shacks.

Respect  1 Reply 

Share  Report 

8alana8 8 months ago


It's honestly DOBOR's fault that so many of the boats look like that... DOBOR is supposed to impound unusable boats, or evict people who don't pay fees, but it lets them sit for YEARS, not generating revenue. It is one of the reasons that harbor residents are so upset -- DOBOR is not managing the harbor and is saddling the resulting loss of revenue on fee-paying owners.


Respect  1 Reply 

Share  Report 

msteeln 8 months ago

funny how some criticize others as gaming the system and wish hardships upon them yet will condemn them when they end up in the streets... the Harbors Div. has been a boater's nightmare for decades, in Hawaii of all places lol in the '90s I spent 5yrs on the 800 row / transition dock, prime beachfront view of the waves, the minimal Harbors Office was hamstrung and everything moved at a glacial pace. which is the only reason this whole class warfare issue at the harbors didn't blow up a long time ago, total mismanagement (at best) kept them preoccupied, I've heard it's just gotten worse and now they of course want to blame and hurt the boating community, some of the most responsible and respectful members in society.

Respect  1 Reply 

Share  Report 

Keala_Kaanui 8 months ago

So if the average boater currently pays \$515 and the rent is going yo about 50 percent, that means their new rent will be about \$760? That is still by far the cheapest thing you can find in Honolulu. Even if you add in \$200 a month for maintenance.

Respect  1 Reply 

Share  Report 

hecdiver 8 months ago

Keala, you have to realize that when you rent an apartment you have renters rights. These people are paying rent on water and have no rights. You can call a landlord to fix your leaking roof. Boat owners cannot. It comes out of pocket and becomes very expensive at times. And you say \$760 is the cheapest you can find in Honolulu. What you don't realize is people are not renting these boats, they either own them or are buying them. If you consider the fact that these boaters cannot call a landlord to fix their problems, or have their falling apart dock fixed, \$760 is not cheap.

Respect 3 Reply

Share Report

Keala_Kaanui 8 months ago

I included the maintenance costs in the estimate. And if you own an apartment you pay for repairs also. The boaters have it better, as they can always move the boat somewhere else or sell it, so they have an asset a renter does not. But bottom line if even with the raise their monthly housing, utilities and maintenance costs will be vastly below what anyone else is paying in the area. My cousin rents a one bedroom nearby in workforce housing and pays close to three times what they would be.

Respect 1 Reply

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Exhibit I

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
FINANCE

Friday, March 29, 2019
3:30 P.M.
State Capitol, Conference Room 308

In consideration of
SENATE BILL 1257, SENATE DRAFT 2, HOUSE DRAFT 1
RELATING TO USE PERMITS FOR SMALL BOAT HARBOR FACILITIES

Senate Bill 1257, Senate Draft 2, House Draft 1 proposes to clarify that mooring and liveboard fees for state small boat harbors and certain boating facilities be set by appraisal by a state-licensed appraiser at fair market value; and to amend the calculation of the liveboard fee for persons using their principal habitation vessel for commercial purposes. **The Department of Land and Natural Resources (Department) strongly supports this measure and recommends an amendment.**

The Department's Division of Boating and Ocean Recreation (DOBOR) is responsible for operating and maintaining 16 small boat harbors; 14 boat launch ramps; 5 piers, wharves, and docks; 3 anchoring and offshore mooring facilities; portions of Kā'anapali Beach; portions of Waikīkī Beach; and a portion of the Waika'ea Canal. DOBOR is also responsible for regulating all ocean recreation activity occurring in and on ocean waters out to three nautical miles from shore.

The State currently has a total of 164 liveboard slips located in the Ala Wai small boat harbor (129 slips) and Ke'ehi Lagoon small boat harbor (35 slips). Liveboard permittees pay an additional fee to reside on their vessels. This liveboard fee has not been increased since 1991. The additional fee charged to liveboard tenants is intended to offset the cost of providing additional services such as increased use of utilities, showers and restrooms, security, and other administrative costs.

To date, DOBOR has identified \$310 million in deferred maintenance at small boat harbors and boating facilities statewide. Being able to assess fair market value at small boat harbors and

boating facilities will allow DOBOR to maximize its revenue generating potential and perform much needed repairs and maintenance on these facilities.

This measure is a much-needed first step in reducing DOBOR's deferred maintenance backlog. The Department recognizes that it is appropriate to maximize revenue generation in small boat harbors and boating facilities before making any additional funding requests to the Legislature, and DOBOR intends to use increased fee revenues to improve sanitation, maintenance, and cleanliness of boat harbor facilities.

The Department notes that in House Standing Committee Report Number 1520, the Committee intended to allow the Department to increase liveaboard fees by up to 50% each year. The language in Senate Bill 1257, Senate Draft 2, House Draft 1 regarding this authority appears ambiguous because of the reference to the cost of living index, and the Department therefore recommends that paragraph (4) on page 3 be amended to read as follows:

- (4) If a recreational vessel is used as a place of principal habitation, the permittee shall pay, in addition to the moorage fee, a liveaboard fee that shall be calculated at a rate of:
- (A) \$5.20 a foot of vessel length a month if the permittee is a state resident; and
 - (B) \$7.80 a foot of vessel length a month if the permittee is a non resident;
- provided that the liveaboard fees established by this paragraph may be increased by the department [~~at the rate of the annual cost of living index, but~~] by not more than [~~five~~] fifty per cent in any one year, beginning July 1 of each year;

Thank you for the opportunity to comment on this measure.

Exhibit J

Modernizing Ocean Recreation Management in Hawai`i

Strategic Action Plan - 2019

Department of Land
and Natural Resources

Division of Boating
and Ocean Recreation

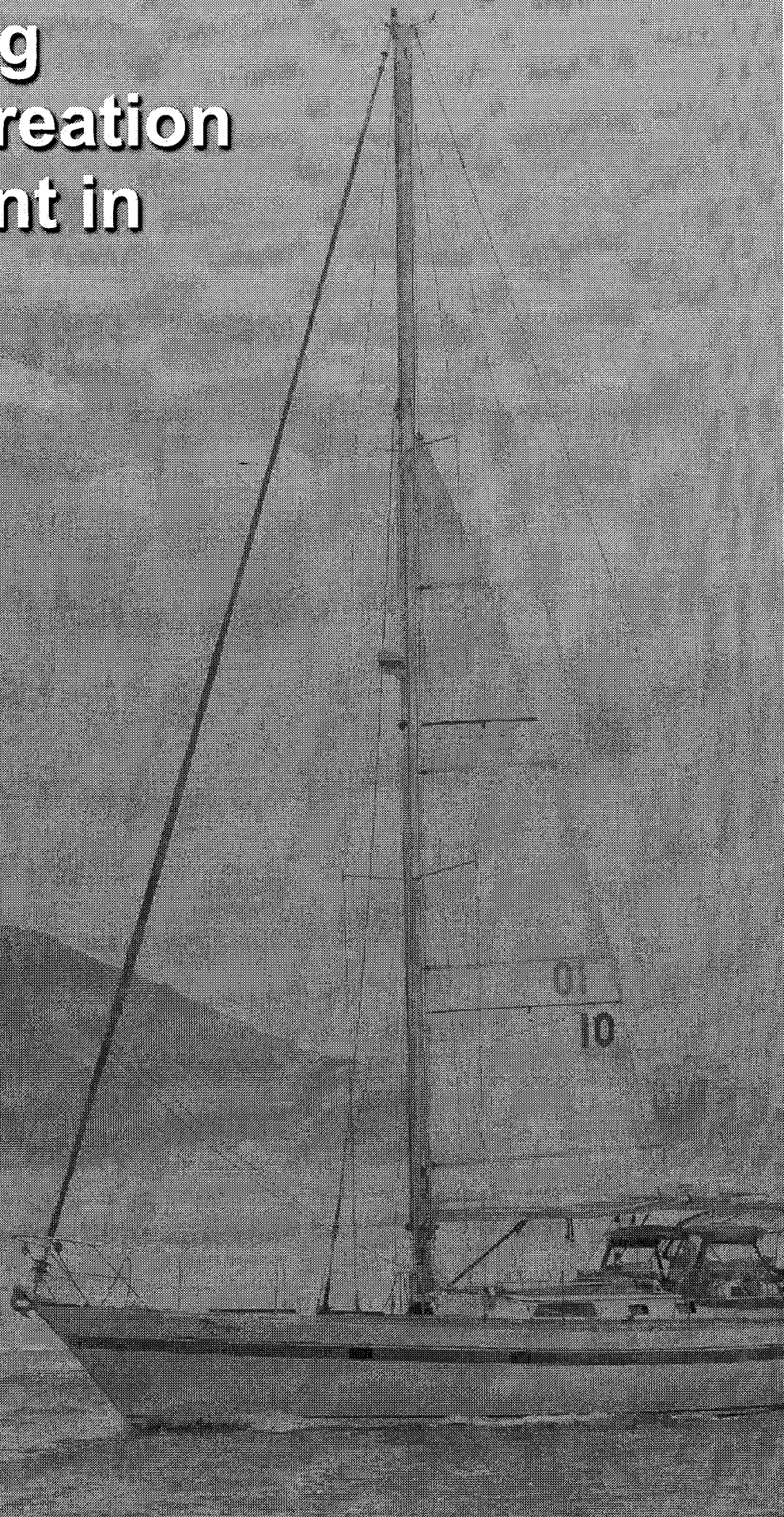




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Message from the Administrator

When I assumed control over the Department of Land and Natural Resources' Division of Boating and Ocean Recreation (DOBOR) in 2007, I immediately made changes to improve its service and efficiency. At first the changes were incremental. In recent years the changes have grown in scope, influence, and impact to address statewide issues and needs.

Now I feel it is time for the most sweeping, significant set of changes we have ever pursued, which will change the entire character of DOBOR. This strategic plan lays out an ambitious course we have chosen for the foreseeable future. There are opportunities for everyone to play a part in the transformation about to take place. We invite you to join us in partnership.

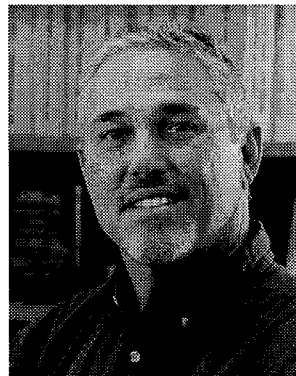
So, to offer a preview of what is to follow, the Division of Boating and Ocean Recreation (DOBOR) proposes a win-win strategy to ensure that the small boat harbors are operated at their maximum potential and at the same time dedicate much needed staff and resources to the coastal areas program.

As the popularity of ocean recreation has grown, so too has the need to ensure the safety of users. In recent years, boating accidents have decreased nationwide, accidents involving ocean-based activities, such as paddle sports, have increased. Hawai'i is not an exception to this national trend.

In order to provide state-of-the-art services to our ocean enthusiast and recreational boating communities, DOBOR must devote greater attention to managing ocean recreation. This is a shift that demands a new, multifaceted, responsive

strategy. The division's first strategic action plan is an effort that will help make the transition over the next five years towards managing ocean recreation more efficiently and effectively. The plan confronts challenges to making this vital shift and lays out the critical actions DOBOR will take to achieve its goal. We welcome input and discussion as we implement this strategic plan.

Each year, progress towards our goal will be measured and evaluated. The strategic plan will help the division prioritize achievable and specific tasks that contribute to the strategic objectives. In this way, we plan to make ocean recreation in Hawai'i, in a myriad of forms, safe and enjoyable for all.



Edward R. Underwood
Administrator
Division of Boating and Ocean Recreation
Department of Land and Natural Resources

DOBOR's strategic plan advocates a public-private partnership (PPP) approach to harbor management. The plan is divided into three sections: The introductory section presents a brief overview and history of DOBOR, the current state of the division, and an overview of the strategic plan. The following section, "Where We Are Going," provides a closer look at the public-private partnership strategy and how it would enable the division to achieve key goals. Finally, the third section, "The Roadmap to Getting There," lays out the path to implementation.

The Early Years

During the 1991 legislative session, via Act 272, Session Laws of Hawai'i, the Legislature transferred the boating and coastal areas program from the Department of Transportation (DOT) to the Department of Land and Natural Resources (DLNR). Out of necessity, the Division of Boating and Ocean Recreation (DOBOR) was born within DLNR.

DOBOR was made responsible for regulating recreational and commercial use of State small boat harbors, moorings, and facilities as well as most activities occurring in and on State waters. DOBOR's regulatory scope covers a wide range of ocean-related matters, from issuance of use permits for harbors and ocean recreation management areas to regulation of ocean activities, such as diving, kayaking, surfing, and jet skiing. These governmental regulatory functions are contained in thirteen mandates (Hawai'i Revised Statutes §200-3), which act as guidelines for serving the State:

1. Managing and administering the ocean-based recreation and coastal areas programs of the State;
2. Planning, developing, operating, administering, and maintaining small boat harbors, launching ramps, and other boating facilities and associated aids to navigation throughout the State;
3. Developing and administering an ocean recreation management plan;
4. Administering and operating a vessel registration system for the State;
5. Regulating the commercial use of State waters and marine resources, including operations originating from private marinas;
6. Regulating boat regattas and other ocean water events;
7. Administering a marine casualty and investigation program;
8. Assisting in abating air, water, and noise pollution;
9. Conducting public education in boating safety;
10. Administering the boating special fund;
11. Assisting in controlling shoreline erosion;
12. Repairing seawalls and other existing coastal protective structures under the jurisdiction of the State; and
13. Removing non-natural obstructions and public safety hazards from the shoreline, navigable streams, harbors, channels, and coastal areas of the State.

DOBOR operations have been funded primarily by the Boating Special Fund. The Boating Special Fund was established by the Hawai'i State Legislature in the early 1970s. The sources of revenue for the Boating Special Fund include harbor fees, mooring fees, commercial fees, a portion of the State's fuel tax, and lease rent from property under DOBOR's jurisdiction. DOBOR also receives a federal grant through the U.S. Coast Guard (USCG) for the State's boating safety campaign. The federal funds are a 50/50 match. Capital improvement projects are funded through bonds authorized by the Legislature when possible.

At the time of the division's transfer from DOT to DLNR, there was approximately \$300 million dollars in deferred maintenance in the recreational small boat harbors, launch ramps, and other related facilities. Some progress has been made, but this list continues to grow as the facilities age.

The management and operation of the State's boating facilities is only one of the thirteen mandates associated with the boating and coastal areas program. Running small boat harbors has always consumed the majority of DOBOR's personnel hours and resources, yet the thirteen statutory mandates require an equal allocation of resources between boating and ocean recreation management.



Where We Are Now

Revenue generated through DOBOR's funding sources, has never been sufficient to keep pace with ever-increasing demands for maintenance and services.

Ala Wai Small Boat Harbor has undergone substantial improvements since DLNR assumed management. But it is always in need of repairs and maintenance. The waters of the harbor also collect marine debris from the densely populated community. Damaged infrastructure and polluted waters detract greatly from the harbor's appeal. Situated in a key tourism area, it could offer more to Hawai'i's people and visitors.

The Ala Wai Small Boat Harbor is just one example of a State small boat harbor that can be better managed in order to protect the resource sustainably and serve the people of Hawai'i. Situated near Ala Moana Center, a premier retail complex that draws 48 million shopping visitations annually, the Ala Wai should offer safe and aesthetically pleasing facilities. Yet, the harbor languishes in disrepair.

Although the Ala Wai stands out as the highest net income-generating harbor, its earning potential remains untapped. Like other State harbors, the harbor itself underperforms in revenue; it is the parking revenues that account for Ala Wai Small Boat Harbor's comparative "success." Transforming the facility requires a revision of management strategy to enable the asset to generate greater revenues, a change that is possible through public-private partnerships.



At the core of the problem lies an inefficient harbor management model. Although harbor management represents just a single statutory mandate, it depletes a disproportionate share of DOBOR's personnel resources. Furthermore, investing substantial funds and staff into the harbors has not produced a commensurate return.

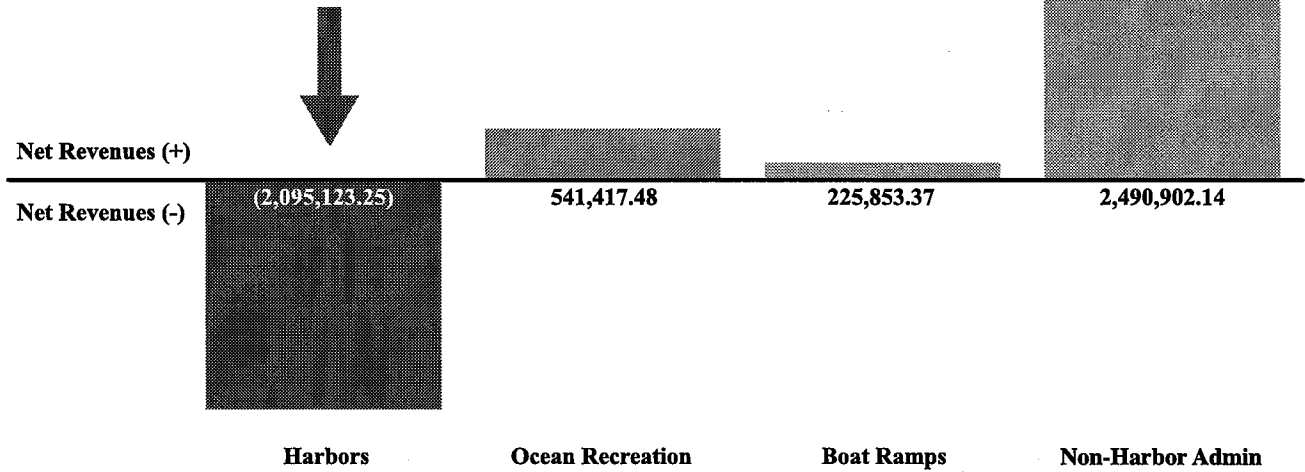
Revenue generated by the harbors does not even begin to offset management and maintenance costs. For the past several years, harbor management as a whole operated at a net loss. In fiscal year (FY) 2018, for example, Hawai'i's small boat harbors incurred a net loss of nearly \$2 million while consuming 69% of staff resources.

In fact, over the past five years, an average of as much as 84.2% of staff resources were allocated towards harbor management.

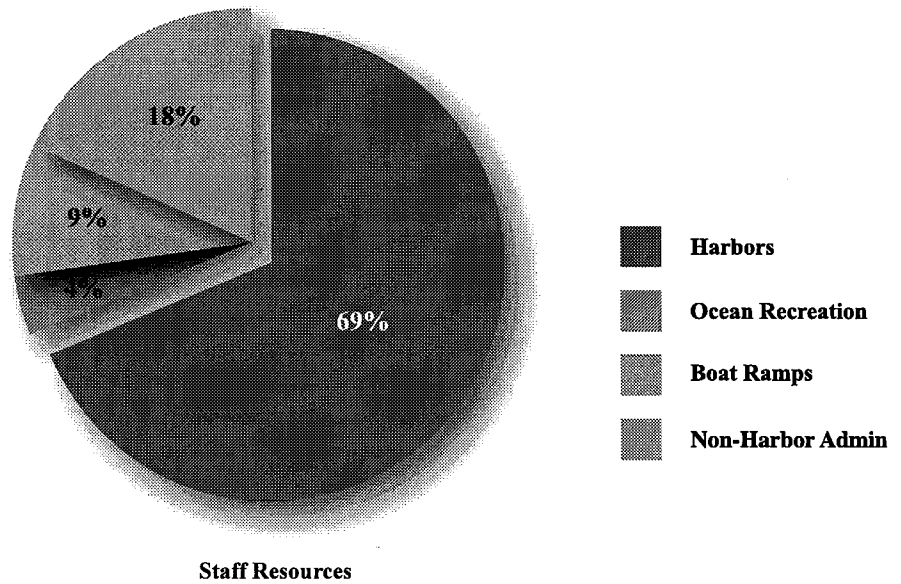
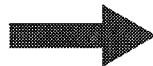
This drain on staff and funding underlies root causes of the division's inability to adequately execute its statutory mandates.

The coastal areas program has grown immensely over the years, continually adding to DOBOR's list of responsibilities even though DOBOR has no dedicated staff or dedicated funding to address this mandate.

In FY 2018, harbors made a net loss...



... Yet consumed most of staff resources



Correcting Course

In Hawai‘i, on every island, we are never more than an hour from the ocean. Hawai‘i’s residents and more than nine million visitors each year use the nearshore waters for swimming, recreational fishing, surfing, snorkeling and more. Our boating community is small but diverse. Our nearshore waters are rich with marine life. Above and below the water, and on the shores, millions of people use and enjoy Hawai‘i’s oceans. Almost monthly, a new type of device is being introduced to our waters or an already present device is being used in a different way. But the boom in ocean recreation, the weather, and Hawai‘i’s landscape and culture - the engine that keeps Hawai‘i’s economy healthy - does not result in a windfall in funding for DLNR or DOBOR.

By seizing opportunities and changing the way it does business, DOBOR has slowly adapted and evolved. By 2019, with good leadership, DOBOR has built a financial base to meet many, but not all, of its needs. This is quite an achievement in itself, taking into account DOBOR’s history and origins, but that is only a small piece of the puzzle compared with what is to come. The management model that DOBOR inherited at its inception does not allow the division to fulfill its statutory mandates and meet its needs – it was and continues to be a system that shackles the division. But, this failing system also presents a challenge and an opportunity to embrace change.



Strategic Plan Overview

In the absence of increased funding and staff, DOBOR is working smarter, and more efficiently, to fulfill its mandates and reach its potential. *The division is proposing to shift to public-private partnership small boat harbor management, moving staff away from day-to-day direct harbor management, allowing staff to prioritize the exclusive governmental functions of ocean recreation management, rulemaking, oversight, and enforcement.* To do this, DOBOR has developed a Strategic Plan for modernizing and revitalizing Ocean Recreation Management in Hawai'i.

The plan will:

- Serve as a forward-looking roadmap that will guide DOBOR in developing an effective management model, sustainably managing the State's assets, and protecting the natural resources in the face of a growing visitor economy and changing environment.
- Communicate DOBOR's strategic priorities to decision-makers, staff, and partners effectively, so that they can gain a clear understanding of these priorities and can assist with implementation efforts.
- Identify strategic plan priorities in the State's annual budget for DOBOR and DLNR.
- Detail a critical shift in management practices and philosophy that will help DOBOR fulfill its intended purpose.

Strategic Plan Direction

The strategic plan presents a future-oriented vision for the division: to modernize and revitalize *ocean recreation management* in Hawai‘i through a strategic redesign of DOBOR’s system for small boat harbor, staff, resource, and asset management.

DOBOR’s vision is aligned with its mission and calls for a shift away from its current practice of directly managing harbors achieved through a public-private partnership (PPP) asset management strategy. The PPP approach is a proven model that has demonstrated success for harbors in almost every other jurisdiction in the nation. This shift will allow DOBOR to execute its State functions more effectively and facilitate efforts to accomplish three main goals:

Goal 1: Expand ocean recreation management to meet DOBOR’s statutory mandate

Ocean recreation plays a substantial role in Hawai‘i’s economy, community, and culture. DOBOR needs to balance its focus between boating and ocean recreation management by shifting greater attention towards the latter. Expanding ocean recreation management will allow DOBOR to provide a safe and enjoyable experience for all residents and visitors on all State waters, not just within boating harbors and facilities.

Goal 2: Provide world-class boating facilities and services

As a State with a significant number of ocean recreation enthusiasts and millions of residents and visitors alike who participate in ocean-based activities, Hawai‘i should have the facilities and services required to meet the needs of these populations. State harbors are in desperate need of maintenance, improvements, and other developments necessary to adequately meet the expectations of the public.

Goal 3: Effectively manage DOBOR’s real property

The State is underutilizing the opportunity to generate revenue from State-owned fast lands. Fast lands have immense commercial development potential to attract greater foot traffic in harbor areas and yield higher income to the State. Through this strategic plan, DOBOR can realize a more efficient management and development scheme that takes advantage of this opportunity.

Where We Are Going - Fixing the System

DOBOR's plan fully leverages the advantages of public-private partnerships to empower DOBOR to fulfill its statutory mandates and its ambitions for Hawai'i's small boat harbors and ocean recreation management.

The plan entails achieving balance between boating and ocean recreation mandates by allocating more resources to developing excellent and effective ocean recreation

management while continuing to streamline core boating functions. The division aims to establish a robust public-private partnership-based system statewide to transform its recreational harbors into world-class marinas that meet the needs of millions of residents and visitors. At the same time, optimization enabled by public-private partnerships will free DOBOR staff to provide much-needed safety, education and enforcement for the State's ocean enthusiasts.





The Solution: A Public-Private Partnership Approach

Public-private partnerships hold the key to a strategic redesign that enables harbors to operate at their maximum potential while staff engage in managing ocean recreation.

Public-private harbor management, a proven approach that has demonstrated success for jurisdictions across the country, offers the optimal approach.

States that have partnered with private entities have found that private organizations can conduct harbor management successfully and efficiently. For these states, partnerships have brought in capital for much-needed infrastructure development, optimized revenue to honor the public interest, and freed up resources to allocate towards other needs, advantages that Hawai'i direly needs.

Public-private partnerships allow the State access to the advantages private companies offer WITHOUT privatization.

Public-private partnerships allow the State to access key advantages private companies have without diminishing the State's regulatory authority. In a public-private partnership, the State contracts harbor management or leases its assets to a private entity while retaining ownership, governmental oversight, and control of fees. Public-private partnerships are different from privatization, in which the State sells its assets, transferring ownership to a private entity. DOBOR already has demonstrated the economic viability of the concept on a small scale with Waikīkī Yacht Club, Hawai'i Yacht Club, La Mariana Sailing Club and Ke'ehi Marine Center. These four operations pay DOBOR just under \$825,000 per year through long-term leases of fast lands, and manage their own boating operations on those lands. Now we will attempt implementation on a larger scale encompassing entire harbor facilities.

DOBOR is prohibited from privatizing by selling its assets by State law. Instead, it recognizes that private companies offer crucial advantages over State government. Since private firms can seek funding from sources the government may not be able to access, maintenance, renovations, and other improvements can be performed more cost effectively. Moreover, because firms aim to increase their customer base, they are adept at making business decisions that satisfy consumer needs and can respond more quickly to change as needs arise. Private firms can find the most cost-effective and efficient way to manage a harbor as a business while simultaneously prioritizing customer satisfaction.

Private companies provide successful harbor management solutions across the US.

Across the United States, governments have connected with private entities to increase revenue, provide improved management and infrastructure, and ensure that State resources remain focused on critical governmental functions. While Hawai'i is unique in that it has not fully embraced this proven strategy, it has recognized the potential benefits of allying with private companies. Harbor management by private entities is not a new idea: in 1993, the Office of State Planning pointed out that “[p]rivate enterprise can play a large role in providing necessary capital” for boating infrastructure.

The benefits of managing harbor assets in conjunction with private entities were highlighted in a recent survey. In 2017, the Hawai'i Coral Reef Initiative (HCRI) conducted a national survey on harbor management practices, consulting and interviewing ten governments in seven states. The survey found that *only 1% of the harbors surveyed nationally were*

state-owned. States contracted harbor management out to private companies either fully or piecemeal, by service or function. These government entities have found working with private companies to be the best way to:

- Manage harbor assets efficiently in terms of revenue;
- Shift limited staff resources to areas where they are really needed (i.e. for rule-making, oversight, enforcement, and safety education);
- Develop infrastructure by partnering with private entities.

Interviewees included Chicago Park District, Illinois; New York; Titusville, Florida; and Kewalo Basin, Hawai'i.

Chicago Park District, IL

Chicago Park District first turned to a private company to manage its ten harbors and 6,000 boat accommodations in 1995. Since partnering with Westrec Marinas of Encino, California, Chicago Park District has not looked back. The largest municipal system of harbors in the U.S., Chicago Park District Harbors offers sophisticated amenities for locals and visitors, including fueling facilities and floating docks. Over the past few years, these popular harbors have had occupancy rates greater than 98%. In the two decades following Chicago Park District's implementation of this management strategy, net revenues increased from \$0 to \$13.5 million.

New York

Like Chicago Park District, New York State has enjoyed greater revenues through partnering with a private management company. New York has the ninth highest boating community in the US, with over 400,000 registered motorized vessels and roughly 300,000 non-motorized vessels. The State has always bid out management of its harbors to private companies. One of its marinas plans to bring in as much as \$10 million over the 25-year rental period. The harbor development company that operates and maintains New York's Buffalo River Marina Complex will invest that revenue in harbor development.



Titusville, FL

After contracting a private company to manage its harbors, the City of Titusville also experienced a dramatic increase in revenues. Occupancy increased from 50% to 60% to 96%. This partnership enabled Titusville to overcome its debt of \$300,000 and generate \$120,000 in positive working capital. Managed and operated by F3 Marina, an industry leader, Titusville Marina provides full-service amenities that cater to boaters' needs. Among its many sophisticated features are fixed and floating docks, a store that sells boating equipment and cleaning gear, a fuel dispensing station, a laundry area, and WiFi throughout the facility.

Kewalo Basin, HI

Through its successful implementation of a public-private partnership (PPP) strategy, Kewalo Harbor on O'ahu has demonstrated that this approach can provide successful, effective harbor management solutions and infrastructure development to Hawai'i's harbors. Under the Hawai'i Community Development Authority's (HCDA) jurisdiction, Kewalo Basin is leased to the Howard Hughes Corporation (HHC) which contracts harbor management to Almar Marina Management Company. The former brings in capital for infrastructure development, while the latter manages the facilities.

HCDA has a very different mandate from that of DLNR/DOBOR. HRS §206E granted HCDA the power to develop areas of Honolulu and leverage public-private monies. In the case of Kewalo Basin, this authority allowed HCDA to attract a private funder (HHC) to propose capital improvements. The understanding at work here is that fair market rent set by appraisal will attract a business entity, such as HHC, to conduct the improvements. Currently, much of Kewalo Basin is slated for or undergoing planned improvements that will be funded by HHC. In these types of partnerships, because capital improvement funds come from private partners, State funds requested from the Legislature can stretch further.



A model of successful public-private partnership in Hawai'i, beautiful Kewalo Harbor will enjoy streamlined management while offering world-class facilities through partnership with Howard Hughes Corporation.

Kewalo Harbor fronts the Ward Village area, an integrated commercial and residential setting not far from Ala Moana Shopping Center. Selected by HCDA in 2014 for a lease agreement through a competitive process, the Howard Hughes Corporation (HHC) embarked on its improvement and modernization project for Kewalo Basin in 2015. Howard Hughes Corporation is improving harbor facilities, providing better safety and security services, and upgrading docks. Howard Hughes Corporation also aims to increase foot traffic to Kewalo Harbor via strategic marketing.

In the years to come, boaters can look forward to state-of-the-art infrastructure and services. Other objectives include greater management efficiency and higher numbers of moored vessels. The future-oriented improvement plan also supports fishing, recreational vessel and tour activities while recognizing the importance of Kewalo as a valuable resource and aiming to maintain Kewalo Basin for the community.

Through the PPP strategy, Kewalo Harbor benefits from investments to improve infrastructure while the State retains regulatory oversight of the asset. This management model serves all parties: the State is free to focus on providing exclusive governmental functions, boaters gain improved facilities and services, and the resource is responsibly stewarded, maintaining the public trust.

Kewalo Basin demonstrates that the PPP model can work in Hawai'i applied to an entire harbor facility and that large corporations are interested in investing in the islands.

As the HCRI national survey and the success of Kewalo Basin clearly indicate, public-private partnerships offer the optimal harbor management solution Hawai'i needs. For this reason, PPPs form the crux of DOBOR's plan to revitalize a dysfunctional harbor system. These collaborative arrangements will allow DOBOR to replace outmoded, ineffective practices with modern, proven approaches, while the Boating and Ocean Recreation Division preserves ownership of its assets and the Board of Land and Natural Resources (BLNR) retains control over fees.

When DOBOR enters into partnerships with private companies on a larger scale than it has in the past, its small boat harbors can be brought up to par with world-class marinas and other successful harbors throughout the country. This management scheme will produce better services, a more satisfied boating community, increased services, and increased capital and revenue for improvements, and, most importantly, enable the State to responsibly steward its assets and resources.

Through leveraging the advantages of public-private partnerships, DOBOR's new management model supports the division in fulfilling its duty to better serve its ocean recreation management and boating purposes. The vision for DOBOR set forth in this strategic plan supports three goals:

1. Expand ocean recreation management to meet DOBOR's statutory mandate;
2. Provide world-class boating facilities and services;
3. Effectively manage DOBOR's real property.

Each goal translates the main vision into specific actions that move this plan forward.

Goal 1: Expand ocean recreation management to meet DOBOR's statutory mandate

Through implementing the PPP strategy, DOBOR will free existing staff that it will then shift toward ocean recreation management tasks to balance its allocation of resources between its two primary statutory mandates. Contracting resource-intensive harbor management responsibilities to private partners will enable DOBOR to expand ocean recreation management and fulfill the mandate without needing to increase staff numbers. This rebalancing will empower staff to provide critical State functions for the broader ocean-user community. DOBOR will be able to serve more ocean enthusiasts through greater ocean recreation management planning, oversight, education, and enforcement, as well as meet the needs of more ocean users and recreational boaters in the State.

Goal 2: Provide world-class boating

By implementing the public-private partnership strategy and transitioning to more of an asset management model, DOBOR will not only perform necessary repairs and improvements to its small boat harbors, but again, transform them into world-class marinas. By maintaining a degree of engineering oversight in the development process, the harbors can be transformed in a way that is sensitive to community needs and concerns.

Goal 3: Effectively manage DOBOR's real property

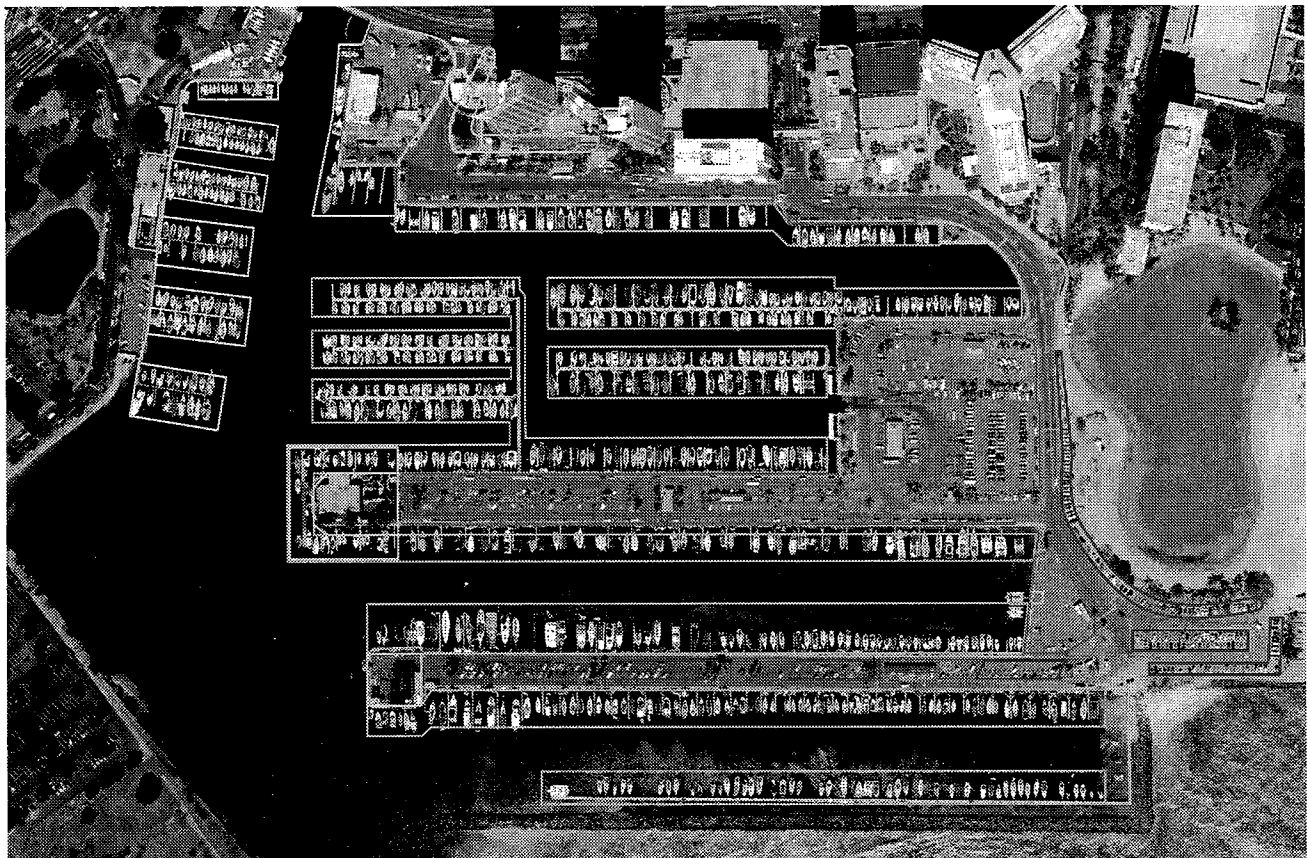
Through the PPP model, DOBOR will streamline current operations and effectively manage its real property. DOBOR aims to transfer duties irrelevant to primary State functions to private partners, allowing the division to more fully utilize its assets by further developing its fast lands to generate revenue. Because the fast lands could bring in substantive financial resources, capitalizing on the potential of these assets presents a significant opportunity to increase revenue for core operations.

Within its fast lands, DOBOR has identified two areas with considerable revenue potential, pictured in the figure below. The figure shows an overhead view of the Ala Wai Small Boat Harbor and highlights the areas where the State generates money. The fast lands are outlined in yellow and are accompanied by a text indicator detailing the amount of revenue the land generated, based on DOBOR income statements for FY 2018. One opportunity is to enhance the fast lands that are currently under-utilized. Since these parcels can potentially generate substantial income for the State, cultivating the commercial development of these assets can

add greater value. Another is to take advantage of the vacant lot next to the Hawaii Prince Hotel. This site presents an important opportunity to attract businesses that will draw more foot traffic and encourage greater economic activity.

Once harbors under its jurisdiction are leased to companies in the partnership model, DOBOR will be able to work on optimizing revenue to the State by making the best use of its fast lands. This strategy presents a far more efficient means to yield significant revenue than expending resources on deferred maintenance for harbors operating at a net loss.

Ala Wai Small Boat Harbor Revenue Sources



**Total Revenue generated from
Fast Lands in FY2018 = \$1,914,816**

- Legend**
- Free Parking
 - Paid Parking
 - Fast Lands
(includes submerged parcels)
 - Slip Fees

The Roadmap to Getting There

DOBOR's strategic plan is divided into four phases. It begins with a preparatory stage, continues with an initial implementation phase followed by rigorous assessment, and culminates with full implementation of the PPP strategy and the achievement of all three of DOBOR's goals. DOBOR looks forward to establishing a well-designed system that enables effective harbor management and developing balanced staff allocation between boating and ocean recreation management, providing world-class boating services, and optimizing asset revenues by 2025.

Phase 1 (2019-2020): Setting the groundwork

During the initial phase, DOBOR will make all necessary preparations to implement PPPs at its boating facilities. Currently, HRS Chapter 200 authorizes DOBOR to lease fast and submerged lands at the Ala Wai Small Boat Harbor. DOBOR will seek to clarify its authority to enter into PPPs at small boat harbors statewide through legislative action. DOBOR will then be able to move forward with a statewide PPP plan. DOBOR will identify criteria and management candidates and determine metrics to gauge performance. DOBOR will also identify revenue-generating services to be contracted out and outline tasks associated with contracting these services to private companies. At this time, DOBOR will also release requests for proposals (RFPs) for management of each of its harbors. Initial groundwork to rebalance staff between boating and ocean recreation management by apportioning greater staff resources toward the latter will also commence during this stage. The division will develop a staffing plan for adjusting staff duties to achieve a balance between harbor management and ocean recreation management tasks. DOBOR will determine prioritization of ocean recreation management tasks.

Phase 2 (2020-2021): Initiating PPP at the first harbors

Once the groundwork has been laid, DOBOR will begin implementing its newly designed public-private partnership strategy. Through the RFP process initiated in 2019, DOBOR will select private entities with which to partner and issue them long-term leases to attract funds for improvement projects. The selected companies will perform harbor management, maintenance, and improvement project tasks under the division's supervision. During this phase, DOBOR will also formulate plans to optimize any remaining harbor revenue-generating services. This process will continue until all of DOBOR's facilities are being managed through a PPP and are optimized to maximize returns. DOBOR will submit a report on its progress to the Legislature by the end of 2021.

Phase 3 (2022-2024): Assessing the program and building on progress

In 2022, DOBOR will begin evaluating the PPP program, assess services, revenue, cost, and maintenance. Assessment data will guide adjustments that will be made to the PPP-based management strategy in the future. At the close of 2024, DOBOR will submit a report on progress to the Legislature.

Phase 4 (2025): Implementing the partnership strategy at all DOBOR harbors

Following careful preparation and assessment during the first three phases, the fourth stage calls for establishment of a rigorously evaluated, robust public-private partnership-based management system across all harbors under DOBOR's jurisdiction. DOBOR will advance progress toward its goal of statewide PPP harbor management by continually adding any remaining facilities and fast lands to the program, performing assessment, and making adjustments aimed at optimization. During this phase, DOBOR will complete optimization of all relevant services. DOBOR will finalize staffing and finish equally allocating staff between boating and ocean recreation management duties and attend to real property management tasks to optimize revenue from fast lands.

The course charted by this strategic plan culminates with this concluding phase, at which point maximum advantages of the partnership-based system are realized, maintained, and improved upon as necessary.

Developed after extensive dialog with marina management companies to obtain feedback, the proposed system adapts strategies that have been used successfully in other, similar programs to address the constraints DOBOR must grapple with. DOBOR proposes this public-private partnership-based harbor management program with full confidence that it will be successful, bringing the division closer to its goal of modernizing and revitalizing ocean recreation management in Hawai'i.

2019

- Clarify statutory authority to give DOBOR ability to enter into public-private partnerships (PPP)

2020

- Legislature approves PPP at first harbor(s)
- Release requests for proposals (RFPs)

2020-2021

- Initiate PPP at first harbor(s)
- Submit report to Legislature on progress

2022-2024

- Assess first PPP harbors; services, revenue, cost, maintenance
- Submit report to Legislature on progress

2025

- Modify PPP program as necessary
- Implement PPP at all DOBOR harbors

Conclusion

DOBOR's harbors of tomorrow should be clean, modern and well-maintained. They should serve as true community centers of boating and ocean recreation activity in the islands and gateways to access a rich resource for residents and visitors alike. We have an opportunity to create a space where people congregate, meet friends and family, enjoy the ocean waters and watch the sun rise and set. When sailors arrive in Hawai'i and when residents visit our facilities, our harbors must meet or exceed expectations, offer world-class amenities, activities and resources. They should be, and can be, inviting.

The path to developing world-class facilities is very long and uncertain with DOBOR's current system of direct governmental harbor management. The current management strategy for the State small boat harbors that has been in place since they were first constructed has proven to be ineffective and is now outdated. In order to accomplish our goal to offer better services and modernize the facilities, DOBOR needs to enter into collaborations with the private sector and the community to make this vision a reality.

The coastal areas program requires DOBOR to manage all activities taking place in state waters from the shoreline and three miles out to sea. This includes regulating commercial and recreational vessel activities, maintaining aids to navigation, and assisting with protecting marine resources. However, DOBOR does not have a dedicated funding source or dedicated staff to carry out this mandate.

A win-win situation is created by entering into different management scenarios that will allow for more resources and staff time to be allocated to the coastal areas program while ensuring that the small boat harbors are maintained and by offering quality service to the community and visitors alike.

We invite you all to join in this important transition for Hawai'i's ocean community to rejuvenate our harbors and coastal areas program in Hawai'i.

It is up to us all to build on the rich and colorful ocean-going tradition of our host culture and re-establish Hawai'i as a place where our people can safely enjoy and thrive in our ocean, a magnet for international boat traffic and a hub for adventurers crisscrossing the Pacific.

— Mahalo —

Exhibit K

Star Advertiser

Tuesday, December 24, 2019 | Today's Paper | 82°

HAWAII NEWS

Hawaii officials are seeking new proposals for redeveloping Ala Wai Small Boat Harbor in Waikiki

By [Andrew Gomes](#) * April 9, 2019

The state is soliciting developers again to revitalize its run-down Ala Wai Small Boat Harbor in Waikiki 11 years after making a similar attempt that failed amid much public criticism.

Most of the land around the harbor is being offered for lease to a developer for up to 55 years in a competitive bidding process that some harbor users have called inappropriate privatization of public lands.

The state Department of Land and Natural Resources published a request for proposals Friday seeking competitive bids to redevelop 11 acres that include parking areas, public restrooms, a former fuel dock, a former boat repair site and submerged lands extending off the fuel dock and boat repair sites.

DLNR had been considering and planning for the invitation since 2016 when a prior lease with a developer was voided.

The agency is attempting to improve the property at little cost to taxpayers after decades of substandard maintenance, in part due to low user fees.

DLNR's Division of Boating and Ocean Recreation said in a statement that rental income sought in the lease will pay for much-needed repairs to the harbor and other recreational boating facilities in Hawaii.

"A significant reason for DOBOR's (request) is to make the Ala Wai a more attractive and inviting destination for visitors and locals, both boaters and non-boaters alike," the statement said. "DOBOR understands that this cannot be achieved solely with state resources, so it is seeking to partner with a private developer to realize this goal."

Yet many community members have said the state should be the one improving its own asset, and fear that private developers will pursue inappropriate plans for the site in the name of profits.

DLNR's invitation said plans should promote maritime activities, include green space, maintain public access, maximize financial returns to the state in a timely manner and redevelop the parcels to their "highest and best uses consistent with harbor uses."

DLNR first tried to obtain competitive development proposals for two underutilized sites at the harbor in 2008. Two qualified bidders expressed interest, but only one submitted a proposal. The \$24 million plan dubbed Waikiki Landing was made by Kyoto-based developer and yacht racer Hideaki Shimakura, heading the firm Honey Bee USA. Shimakura's plan included three buildings with retail, restaurants and two wedding chapels along with a new fuel dock and boat repair facility.

Honey Bee obtained an environmental approval in 2010, a zoning waiver from the Legislature in 2011 and a 65-year lease from DLNR in 2013. Demolition of a fuel dock facility and boat repair yard were completed, but financial backing fizzled and Honey Bee defaulted on rent.

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Keith Kiuchi, a local attorney who once represented a boat repair operator at the harbor and was a minor investor in Honey Bee, unsuccessfully tried to find new investors during a bankruptcy proceeding initiated in 2015. The lease with DLNR was finally voided in 2016. DLNR claimed \$1 million in unpaid rent and fees but did receive \$3.5 million in the ordeal.

Since then 27 different parties expressed interest to DLNR about the harbor redevelopment opportunity, the agency said in November. Ideas for projects included residential use, hospitality towers, a seawater air-conditioning plant and an entertainment venue with a Ferris wheel and a theater for customers to go on a virtual reality flyover of Hawaii.

DLNR said bidders should "take into consideration" community feedback summarized in a 2017 report produced under a \$100,000 contract with consulting firm DTL Hawaii. This report said there was almost total opposition to housing and hotel uses. The report also said there is consensus that a fuel dock and boat repair facilities need to be restored and that most commentators want buildings no higher than two stories.

DTL's report said there is a split in community views as to whether redevelopment should be focused on serving harbor tenants or making the area more of a general attraction with recreation uses including food and beverage establishments.

"There are a wide range of views on what should happen," the report said.

Entities interested in submitting bids must notify DLNR of such intent by April 22. The tentative deadline for bids is July 8. The agency plans to hold an informational briefing for interested parties on Friday.

Selection of a winning bidder is subject to approval by DLNR's board.

REDEVELOPMENT OPPORTUNITY

Previous developer ideas for Ala Wai harbor additions:

>> Wedding chapels

>> Restaurants

>> Housing

>> Resort

Online:

To see the state's request for proposals, visit dlnr.hawaii.gov/dobor/ala-wai-rfp.

BY THE NUMBERS

11

Acres up for

redevelopment

55

Years on the lease



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By The Cincinnati Insurance Companies - Take the measures to prepare your property for winter and minimize damage from frozen pipes.

TOP STORIES





Exhibit L

REQUEST TO ACCESS A GOVERNMENT RECORD

DATE OF REQUEST:

May 23, 2019

TO:

State of Hawai'i
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
(hereinafter, "DOBOR")

[Via e-mail dated May 23, 2019 to the following agency representatives:

Clifford G. Inn Clifford.g.inn@hawaii.gov;

Bill J. Wynhoff bill.j.wynhoff@hawaii.gov]

FROM:

Erik A. Rask
earask@gmail.com
(808) 286-1577

Waiver of fees in the public interest is requested

DOCUMENTS AND COMMUNICATIONS REQUESTED:

1. For the time period from January 1, 2018 to the present, all internal and external communications, including but not limited to e-mails, relating to DOBOR's "Request for Proposals for Development of the Ala Wai Small Boat Harbor, Kalia, Honolulu, Island of Oahu, Hawaii" issued April 10, 2019 (hereinafter, "RFP"), sent to or received by Ed Underwood or Meghan Statts.
2. Minutes of any meetings relating to DOBOR's RFP issued April 10, 2019, without regard to when such meeting(s) were held.
3. All documents and communications relating to the "Selection Committee" with respect to DOBOR's RFP, without regard to when such documents and communications were created, sent or received.

Exhibit M

Star Advertiser

Tuesday, December 24, 2019 | Today's Paper | 82°

HAWAII NEWS

Boat owners protest Ala Wai harbor fee increases

By Allison Schaefer • Oct. 19, 2019

Some Hawaii residents who own boats gathered Friday at the Ala Wai Small Boat Harbor to protest higher slip and mooring fees and the coming privatization of public areas at the state's largest recreational harbor.

The protest comes as the state Department of Land and Natural Resources' Division of Boating and Ocean Recreation prepares next month to submit its preferred plan to redevelop the Ala Wai harbor to the Board of Land and Natural Resources, which in April 2018 gave DOBOR permission to seek proposals under a long-term lease arrangement.

DOBOR has been taking requests for proposals to redevelop Ala Wai Small Boat Harbor sites, including the current harbormaster's office, the adjacent parking lot, the old fuel dock, the triangle parking lot and the former haul-out area. It's also gotten approval for a 100% or so jump in boat slip fees to begin Nov. 1. While mooring fees are increasing statewide, they're rising the most at the Ala Wai harbor.

Protesters say the rent increase and the redevelopment work together to privatize the harbor and limit public access. However, Ed Underwood, DOBOR administrator, has said the goal is to develop the harbor into a world-class marina that meets the needs of residents and visitors who use the ocean for a myriad of activities. DOBOR also has said the fee increase, which the state Legislature wanted in 2014, is past due.

This stance has drawn ire from some protesters, including Kate Thompson, a retired nurse, who plans to submit two petitions to Gov. David Ige on Monday. She's asking him to base the fee increase on boat size rather than dock size and to reduce the fee increase at the less developed Keehi to \$10 instead of \$13 a foot. She said a reduction at Keehi would give boaters who need relief from higher Ala Wai harbor costs the option to move to a more affordable harbor.

Thompson, who has had a boat at the Ala Wai harbor for 23 years, says she's been paying about \$253 monthly. Under the new system, she said, her monthly costs will rise to at least \$468 but could go as high as \$585 depending on how DOBOR decides to measure the dock.

"I'm 61. I was planning on keeping my boat another five years; now I'll probably only get to keep it another two," Thompson said. "But it's not just me that's affected by this."

Scott Allen, an urban planning student at the University of Hawaii who lives aboard at Keehi, said the state should consider a lower increase for Keehi since the increase from the approximate \$8 a foot it is now to \$13 was based on a hypothetical assumption that Keehi already would have had upgrades in place from a \$300 million statewide harbor improvement plan.

"The appraisal was not based on actual conditions," said Allen, who lives on a 36-foot sailboat moored at Keehi. "The increases are going to force some people to move or leave the state, but first they'll have to sell their boats and that could take 2-1/2 to three years."

The changes also are frustrating for Sam Monet, a longtime live-aboard at the Ala Wai harbor and chairman of Kumulipo Studios, a nonprofit that recently mounted a failed attempt to get DOBOR to consider its harbor redevelopment proposal. Over the years, the nonprofit's volunteers have maintained landscaping at the Ala Wai harbor and planted trees that are nesting sites for seabirds.

In the wake of the state's failed first attempt at a public-private partnership at the Ala Wai harbor, Kumulipo wants to expand its role there. Honey Bee USA, the state's first redevelopment attempt, went bankrupt in 2016 and still owes the state \$500,000. Also, the state hasn't restored the boating amenities that were removed to make way for Honey Bee USA. Without more oversight, some Waikiki residents, including Kumulipo members, fear DOBOR's second attempt at a public-private partnership will end just as badly.

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That's why Kumulipo Studios' desire to restore the harbor to its pre-Honey Bee USA status is getting some traction with boaters. Kumulipo wants restoration of a full-service haul-out and to bring back the harbor's fuel dock along with ice and laundry services. They'll also designate a canoe paddling reserve area on the site.

There are a few catches, though. For starters, Kumulipo wants the state to release to the nonprofit about \$19 million — the net income it says that the state collected at the Ala Wai harbor from 2011 to 2017 — to fund its plan. It also wants the state's Hawaii Yacht Club revenue for its community-based plan. Monet said the redistribution of funds is only fitting since "the state has put the Ala Wai Small Boat Harbor under strain and created deferred maintenance by distributing its net income throughout state harbors."

Another major catch is that DOBOR said Thursday that it won't accept Kumulipo's proposal. "They failed to follow requirements," DOBOR said in an email.

According to DOBOR's legal advertisement, to be eligible for consideration, interested parties had to have completed and submitted a notice of intent by 4 p.m. April 22. Kumulipo submitted its proposal by an extended Sept. 30 date, but it didn't go through the notice-of-intent process.

DOBOR declined Thursday to provide the Honolulu Star-Advertiser with the proposals, which are being reviewed by a team of individuals from government agencies and the community. DLNR also declined to release the names of the committee members.

However, the agency had told the Star-Advertiser earlier that four applicants were going through a vetting process — that's three more than last time, when Honey Bee USA was the only applicant.

At this juncture the process is shrouded in secrecy, but by this time last year, 27 interested parties already had approached the state about redeveloping the Ala Wai harbor. One contender, Dynamic Entertainment Group Ltd., even was interested in building a Ferris wheel and a movie theater with a virtual flyover Hawaii ride.



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TOP STORIES







Exhibit N

Star Advertiser

Tuesday, December 24, 2019 | Today's Paper | 82

HAWAII NEWS

Ala Wai harbor redevelopment effort falls short — again

By Allison Schaefer • Oct. 26, 2019

The Department of Land and Natural Resources' Division of Boating and Ocean Recreation has come up empty-handed after a committee reviewed proposals for redevelopment of the Ala Wai Small Boat Harbor — rankling some Waikiki residents and boaters who fear the state will never get it right.

DOBOR began trying to redevelop Ala Wai Small Boat Harbor sites, including the current harbormaster's office, the adjacent parking lot and the old fuel dock, more than a decade ago. Anxiety about the future of the public recreational area has been heightened since the state broadened the harbor's redevelopment options through Act 197 and HRS 171-6(19), paving the way for a public-private partnership.

It didn't help that its first attempt at a partnership failed after Honey Bee USA went bankrupt in 2016, leaving a wake of creditors, including the state, which is still owed \$500,000. Without more oversight, some Waikiki residents feared DOBOR's second attempt at a public-private partnership at the Small Boat Harbor would end just as badly.

It just did. The state's latest attempt at redevelopment is dead in the water despite the fact that DOBOR spent nearly \$100,000 at the start of the process to hire DTL Hawaii to insert public input into the request-for-proposals process.

Ed Underwood, DOBOR administrator, told the Waikiki Neighborhood Board in August 2018 that the goal is to develop the harbor into a world-class marina that meets the needs of residents and visitors who use the ocean for a myriad of activities. He said developers would be expected to "learn from our past lessons" and incorporate elements collected by DTL Hawaii.

Many participants in the DTL process, such as Waikiki Neighborhood Board Chairman Bob Finley, were skeptical — especially since DTL had ties to state Sen. Donovan Dela Cruz, the state Senate's Ways and Means chairman, and Keone Downing, who was serving as a member of the Board of Land and Natural Resources at the time the contract was awarded.

"All of us holding hands, singing 'Kumbaya' and eating pizza was about all that got accomplished," Finley said. "It's terrible that we have a less-than-quality harbor that gets serious complaints about the lack of amenities and security. I've sent letters to two governors. It seems all the boaters want is a place to fuel their boats, buy stuff, conduct boat maintenance and have a management team that will control the harbor."

Despite community doubts, DOBOR did get four qualified applicants instead of only one like it did when Honey Bee came to the table. Still, that was a far cry from the 27 interested parties that DOBOR claimed had expressed interest in November some months before the request for proposals went out.

In an interesting twist, one of them was Dynamic Entertainment Group Ltd., a company whose legal representative was Keith Kiuchi, who was financially involved in the failed Honey Bee redevelopment. It's not known whether Dynamic ever submitted its plan to build a Ferris wheel and a movie theater that offers a virtual reality flyover Hawaii ride. But the company did discuss its concept with state Sen. Sharon Moriawaki, whose district spans from Kakaako to Waikiki.

DLNR refused to provide the Honolulu Star-Advertiser with the names of the applicants or their proposals during the process. The Star-Advertiser's formal public-records request is pending.

However, DLNR did say that only two applicants submitted proposals by a Sept. 30 deadline. DLNR acknowledged that Kumulipo Studios, a nonprofit, also submitted a proposal, but said it wasn't considered by the committee because it did not follow requirements.

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"Residents and visitors deserve a facility that serves everyone, is inviting, and offers amenities that are in demand," DLNR Chairwoman Suzanne Case said in a statement. "I fully support the committee's decision to take a step back, study the process and come up with a new plan."

DOBOR is expected to reissue another request for proposals, but a new date has not been set.

"DOBOR remains committed to harbor projects to maintain and improve all of its boating and ocean recreation facilities across Hawaii," Underwood said. "We want to do this right, and we're looking for a win-win proposal."

Finley said he wasn't upset by the delay since he fears the worst.

"No proposal is better than a bad proposal like one with a 350-foot tower like people feared," Finley said.

Waikiki Neighborhood Board member Jeff Merz, an urban planner, said if the state is serious about redeveloping the Ala Wai harbor, it needs to consider hiring professionals to shepherd it through the RFP process.

"Staying in-house doesn't get us anywhere if the end result is failure," Merz said. "If they had four interested parties this time and they fell out, that tells me something is wrong with the process. This is twice now. Honey Bee was the only applicant and it wasn't even viable."

Merz said maybe the state should even consider setting up an entity, kind of like the Hawaii Community Development Authority, which the Legislature created to establish development plans in community districts like Kakaako. The public corporation works to bring together private enterprise and government to make Kakaako redevelopment happen and to establish Kakaako as a viable community that provides a range of public benefits.

"Obviously, the way that the state has gone about redeveloping the Ala Wai harbor isn't working," Merz said. "The front door of Waikiki should have a gorgeous harbor that's a draw, but there's none of that. It's not a pleasant place to go for residents and visitors."

Merz said further delays mean that the gateway to Waikiki will continue to be marred by a construction site, which was cleared to make way for the failed Honey Bee project. Boaters also will have to continue to make do without amenities like a fuel dock boat repair facility, store and laundry, which were demolished to make way for Honey Bee's odd plan, which included a retail complex and wedding chapel.

Les Parsons, a boater who has lived at the Ala Wai harbor for more than 20 years, said what's worse is that the most recent redevelopment failure coincides with the state's plan for a 100% or so jump in boat slip fees to begin Friday. While mooring fees are increasing statewide, they're rising the most at the Ala Wai harbor.

"My rates are going to go up substantially when there are fewer amenities than ever," [redacted]ns said. "As someone on a fixed income, I'm very worried. I still don't know what I'm going to be charged or if I can afford it. What happens if people can't afford

TOP STORIES



Exhibit O



DAVID Y. IGE
GOVERNOR

STATE OF HAWAII
OFFICE OF INFORMATION PRACTICES
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
E-MAIL: oiip@hawaii.gov
www.oiip.hawaii.gov

CHERYL KAKAZU PARK
DIRECTOR

October 23, 2019

VIA EMAIL

The Honorable Suzanne Case
Chairperson
Department of Land and Natural Resources

Re: Request for Assistance to Access Records (U RFA-P 20-25)

Dear Chair Case:

The Office of Information Practices (OIP) received a request for assistance from Mr. Erik Rask with respect to his request made under Part II of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS) (the UIPA), for access to records

1. For the time period from January 1, 2018 to the present, all internal and external communications, including but not limited to e-mails, relating to DOBOR'S "Request for Proposals for Development of the Ala Wai Small Boat Harbor, Kalia, Honolulu, Island of Oahu, Hawaii" issued April 10, 2019 (hereinafter, "RFP"), sent to or received by Ed Underwood or Meghan Statts.
2. Minutes of any meeting relating to DOBOR's RFP issued April 10, 2019, without regard to when such meeting(s) were held.
3. All documents and communications relating to the "Selection Committee" with respect to DOBOR's RFP, without regard to when such documents and communications were created, sent or received.

[requester] indicated that he made a written request to the [agency]creation (DLNR-DOBOR) dated May 23, 2019. There were various communications between DLNR-DOBOR and Mr. Rask. On June 24, 2019, there was a memorandum from DLNR-DOBOR to Mr. Rask requesting clarification of the record request. Mr. Rask provided clarification on June 25, 2019. In addition, in a Notice to Requester dated June 24, 2019, DLNR-DOBOR requested prepayment of \$32.65. Mr. Rask sent a check to "DLNR Boating" for \$34.75 and it appears that the check was deposited by DLNR-DOBOR on August 8, 2019. Mr. Rask states that he has not yet received a copy of the records from DLNR-DOBOR. Copies of [requester]'s request to OIP and his record request to DLNR-DOBOR and his check are enclosed for your information.

Since Mr. Rask's prepayment check cleared on August 8, 2019, the deadline for the agency to have provided Mr. Rask with the first increment of records was August 15, 2019. If DLNR-DOBOR does not disclose the records to Mr. Rask within five business days of the date of this letter or October 30, 2019. DLNR-DOBOR'S failure to disclose by the deadline will be considered a constructive denial and OIP will open an appeal file.

The UIPA places the burden on the agency to establish justification for the nondisclosure of government records. HRS § 92F-15(c) (2012). In the absence of an explanation by DLNR-DOBOR for the denial, it seems unlikely that DLNR-DOBOR will meet that burden. It is always OIP's preference to give full consideration to an agency's arguments for withholding access to a requested record before issuing an opinion. We therefore ask that DLNR-DOBOR respond to Mr. Rask's request and, if denying the request, provide a detailed explanation of the basis for doing so within five business days from the date of this letter.

Please also provide OIP with notice of the action taken by DLNR-DOBOR so that this issue can be resolved promptly.

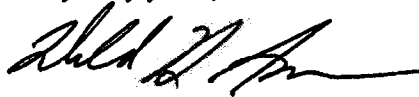
By copy of this letter Mr. Rask is also informed that a record requester is entitled to file a lawsuit for access within two years of a denial of access to government records. HRS §§ 92F-15, 92F-42(1) (2012). If the requester decides to file a lawsuit, the requester must notify OIP in writing at the time the action is filed. HRS § 92F-15.3 (2012). An action for access to records is heard on an expedited basis, and, if the requester is the prevailing party, the requester is entitled to recover reasonable attorney's fees and costs. HRS §§ 92F 15(d), (f).

Alternatively, if the agency denies access to the requested records, the requester may file an appeal to OIP in accordance with chapter 2-73, HAR. HRS § 92F-15.5 (2012).

This letter also serves as notice that OIP is not representing anyone in this request for assistance. OIP's role herein is as a neutral third party.

Thank you in advance for your cooperation and assistance in this matter. Please do not hesitate to contact OIP if you have any questions or require assistance.

Very truly yours,



Donald H. Amano
Staff Attorney

DHA:za
Enclosures

cc: Mr. Erik Rask (without enclosures)

Exhibit P

NOTICE TO REQUESTER

TO: Erik A. Rask, earask@gmail.com
(Requester's name)

FROM: State of Hawaii, DLNR, Division of Boating and Ocean Recreation
Contact Person: Clifford Inn, 587-1966, Clifford.G. Inn.@Hawaii.gov
(Agency, and agency contact person's name, telephone number, & email address)

DATE THAT THE RECORD REQUEST WAS RECEIVED BY AGENCY: May 23, 2019

DATE OF THIS NOTICE: June 24, 2019

GOVERNMENT RECORDS YOU REQUESTED (attach copy of request or provide brief description below):

1. Communications to Ed Underwood or Meghan Statts Jan. 1, 2018 to May 23, 2019 re: Request for Proposals for Development of Ala Wai Small Boat Harbor issued April 10, 2019 ("RFP")
2. Minutes of any meetings relating to DOBOR's RFP issued April 10, 2019, without regard to when held
3. All documents relating to RFP Selection Committee, all dates, sent or received
4. _____ [copy of request attached]

THIS NOTICE IS TO INFORM YOU THAT YOUR RECORD REQUEST:

- Will be granted in its entirety.
- Cannot be granted. Agency is unable to disclose the requested records for the following reason:
- Agency does not maintain the records. (HRS § 92F-3)
Other agency that is believed to maintain records: _____
 - Agency needs further clarification or description of the records requested. Please contact the agency and provide the following information: _____
 - Request requires agency to create a summary or compilation from records, but requested information is not readily retrievable. (HRS § 92F-11(c))
- Will be granted in part and denied in part, **OR** Is denied in its entirety
Although the agency maintains the requested records, it is not disclosing all or part of them based on the exemptions provided in HRS § 92F-13 and/or § 92F-22 or other laws cited below.
(Describe the portions of records that the agency will not disclose.)

<u>RECORDS OR INFORMATION WITHHELD</u>	<u>APPLICABLE STATUTES</u>	<u>AGENCY JUSTIFICATION</u>
<u>Attorney-Client Communications (e.g., RFP (emails, meeting notes to Ed Underwood or Meghan Statts - Jan. 1, 2018 to May 23, 2019; & re: RFP Selection Committee to DOBOR</u>	<u>HRS ch. 626, Rule 503; § 92F-13(3) & (4)</u>	<u>Privileged confidential communications between Attorney General's office and DOBOR</u>
<u>Redacted personal information & CBI from all emails, telephone messages, applications, contact information (incl. RFP selection committee)</u>	<u>HRS § 92F-14 § 92F-13(3)</u>	<u>Significant privacy interests incl. those contained in potentially unsuccessful proposers' confidential business information (CBI)</u>
<u>Meeting minutes re: RFP</u>	<u>HRS § 92F-3</u>	<u>DOBOR generally does not maintain meeting minutes aside from any minutes that may be sent to it</u>

Communications re: prospective or actual entities/persons with interest in RFP including communications re: RFP selection committee; confidential info re: selection committee members	HRS § 92F-13(3); § 103D-303(d); § 92F-14	Frustration of legitimate government function. Disclosure of offerors allows access to/between offerors interfering with and jeopardizing the integrity of the selection process.
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

REQUESTER'S RESPONSIBILITIES:

You are required to (1) pay any lawful fees and costs assessed; (2) make any necessary arrangements with the agency to inspect, copy or receive copies as instructed below; and (3) provide the agency any additional information requested. If you do not comply with the requirements set forth in this notice within 20 business days after the postmark date of this notice or the date the agency makes the records available, you will be presumed to have abandoned your request and the agency shall have no further duty to process your request. Once the agency begins to process your request, you may be liable for any fees and costs incurred. If you wish to cancel or modify your request, you must advise the agency upon receipt of this notice.

METHOD & TIMING OF DISCLOSURE:

Records available for public access in their entireties must be disclosed within a reasonable time, not to exceed 10 business days from the date the request was received, or after receipt of any prepayment required. Records not available in their entireties must be disclosed within 5 business days after this notice or after receipt of any prepayment required. HAR § 2-71-13(c). If incremental disclosure is authorized by HAR § 2-71-15, the first increment must be disclosed within 5 business days of this notice or after receipt of any prepayment required.

Method of Disclosure:

- Inspection at the following location: _____
- As requested, a copy of the record(s) will be provided in the following manner:
 - Available for pick-up at the following location: _____
 - Will be mailed to you.
 - Will be transmitted to you by other means requested: _____

Timing of Disclosure: All records, or the first increment if applicable, will be made available or provided to you:

- On _____, 20____.
- After prepayment of 50% of fees and 100% of costs, as estimated below.

For incremental disclosures, each subsequent increment will be disclosed within 20 business days after:

- The prior increment (if one prepayment of fees is required and received), or
- Receipt of each incremental prepayment, if prepayment for each increment is required.

Records will be disclosed in increments because the records are voluminous and the following extenuating circumstances exist:

- Agency must consult with another person to determine whether the record is exempt from disclosure under HRS chapter 92F.
- Request requires extensive agency efforts to search, review, or segregate the records or otherwise prepare the records for inspection or copying.
- Agency requires additional time to respond to the request in order to avoid an unreasonable interference with its other statutory duties and functions.
- A natural disaster or other situation beyond agency's control prevents agency from responding to the request within 10 business days.

ESTIMATED FEES & COSTS AND PAYMENT:

FEES: For personal record requests under Part III of chapter 92F, HRS, the agency may charge you for its costs only, and fee waivers do not apply.

For public record requests under Part II of chapter 92F, HRS, the agency is authorized to charge you fees to search for, review, and segregate your request (even if a record is subsequently found to not exist or will not be disclosed in its entirety). The agency must waive the first \$30 in fees assessed for general requesters, OR in the alternative, the first \$60 in fees when the agency finds that the request is made in the public interest. Only one waiver is provided for each request. See HAR §§ 2-71-19, -31 and -32.

COSTS: For either personal or public record requests, the agency may charge you for the costs of copying and delivering records in response to your request, and other lawful fees and costs.

PREPAYMENT: The agency may require prepayment of 50% of the total estimated fees and 100% of the total estimated costs prior to processing your request. If a prepayment is required, the agency may wait to start any search for or review of the records until the prepayment is received by the agency. Additionally, if you have outstanding fees or costs from previous requests, including abandoned requests, the agency may require prepayment of 100% of the unpaid balance from prior requests before it begins any search or review for the records you are now seeking.

The following is an itemization of what you must pay, based on the estimated fees and costs that the agency will charge you and the applicable waiver amount that will be deducted:

For public record requests only:

Fees: Search	Estimate of time to be spent: <u>2.03</u> hours (\$2.50 for each 15-minute period)	\$ <u>20.33</u>
Review & segregation	Estimate of time to be spent: <u>3.75</u> hours (\$5.00 for each 15-minute period)	\$ <u>75.00</u>
Fees waived	<input type="checkbox"/> general (\$30), OR <input type="checkbox"/> public interest (\$60) (Only one waiver per request)	< \$ <u>30.00</u> >
Other	_____	\$
	(Pursuant to HAR §§ 2-71-19 & 2-71-31)	
Total Estimated Fees:		\$ 65.33

For public or personal record requests:

Costs: Copying	Estimate of # of pages to be copied: <u>40</u> (@ \$ <u>0.05</u> per page, pursuant to HRS § 92-21)	\$ <u>2.00</u>
Delivery	Postage	\$
Other	_____	\$
Total Estimated Costs:		\$ 2.00

TOTAL ESTIMATED FEES AND COSTS from above: \$ 67.65

The estimated fees and costs above are for the first incremental disclosure only. Additional fees and costs, and no further fee waivers, will apply to future incremental disclosures.

PREPAYMENT IS REQUIRED (50% of fees + 100% of costs, as estimated above) \$ 32.65

UNPAID BALANCE FROM PRIOR REQUESTS (100% must be paid before work begins) \$

TOTAL AMOUNT DUE AT THIS TIME

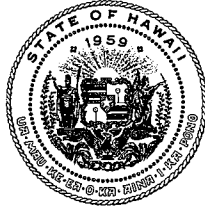
\$ 32.65

Payment may be made by: cash
 personal check payable to _____
 other _____

For questions about this notice or the records being sought, please contact the agency person named at the beginning of this form. Please note that the Office of Information Practices (OIP) does not maintain the records of other agencies, and a requester must seek records directly from the agency it believes maintains the records. If the agency denies or fails to respond to your written request for records or if you have other questions regarding compliance with the UIPA, then you may contact OIP at (808) 586-1400, oiip@hawaii.gov, or 250 South Hotel Street, Suite 107, Honolulu, Hawaii 96813.

Exhibit Q

DAVID Y. IGE



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
4 SAND ISLAND ACCESS ROAD
HONOLULU, HAWAII 96819

June 24, 2019

TO: Mr. Erik Rask
earask@gmail.com

FROM: Clifford Inn (587-1966)
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

SUBJECT: "Documents and Communications" requested in Request to Access A
Government Record, dated May 23, 2019:

We are seeking your cooperation in clarifying the documents and communications sought in your records request to the Division of Boating and Ocean Recreation. In the event we are unable to ascertain the specific nature of your request, search and segregation times, as well as copying costs could be substantially greater.

1. For the time period from January 1, 2018 to the present, all internal and external communications, including but not limited to e-mails, relating to DOBOR's "Request for Proposals for Development of the Ala Wai Small Boat Harbor, Kalia, Honolulu, Island of Oahu, Hawaii" issued April 10, 2019 (hereinafter, "RFP"), sent to or received by Ed Underwood or Meghan Statts.

Comment:

Please confirm whether the "RFP" stated in #1 is the same as the "Request for Proposals (RFP) for Development of the Ala Wai Small Boat Harbor, Kalia, Honolulu, Island of Oahu, Hawaii, State of Hawaii, Department of Land and Natural Resources, Division of Boating and Ocean Recreation" issued April 5, 2019.

2. Minutes of any meetings relating to DOBOR's RFP issued April 10, 2019, without regard to when such meeting(s) were held.

Comment:

Please specify what "any meetings" means in the context of this request.

June 24, 2019

Request to Access A Government Record

Page 2 of 2

3. All documents and communications relating to the "Selection Committee" with respect to DOBOR's RFP, without regard to when such documents and communications were created, sent or received.

Comment:

Is there any limitation whether such documents and communications are for any particular person with respect to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation?

In the event we receive your responses to these questions, the estimated fees and costs in the Notice to Requester form will likely change.

Thank you.

Exhibit R

Erik Rask
1741 Ala Moana Blvd., No. 19
Honolulu, Hawaii 96815
Tel 808-286-1577
earask@gmail.com

June 25, 2019

State of Hawaii
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
4 Sand Island Access Road
Honolulu, Hawaii 96819

Re: Response to Clifford Inn letter dated June 24, 2019 with subject “‘Documents and Communications’ requested in Request to Access A Government Record, dated May 23, 2019”

Dear Mr. Inn,

Your June 24, 2019 letter seeks certain clarification regarding the Uniform Information Practices Act (“UIPA”) request that was submitted to your office on May 23, 2019 (hereinafter the “May 23, 2019 UIPA Request”). This letter is sent to provide the requested clarification.

With respect to Request No. 1 of the May 23, 2019 UIPA Request, your letter requests the following: “[p]lease confirm whether the “RFP” stated in #1 [of the May 23, 2019 Request] is the same as the “Request for Proposals (RFP) for Development of the Ala Wai Small Boat Harbor, Kalia, Honolulu, Island of Oahu, Hawaii, State of Hawaii, Department of Land and Natural Resources, Division of Boating and Ocean Recreation” issued April 5, 2019.” (underlining in original). Response—yes, please treat the defined term “RFP” as use throughout the May 23, 2019 UIPA Request as pertaining to the RFP DOBOR issued on April 5, 2019, which is the same RFP that is referenced at <https://dlnr.hawaii.gov/dobor/ala-wai-rfp/>.

With respect to Request No. 2 of the May 23, 2019 UIPA Request, your letter asks “what ‘any meetings’ means in the context of this request.” “Meetings” in the context of Request No. 2 pertains to any meetings facilitated, conducted and/or attended by DOBOR officials (e.g., Ed Underwood, Meghan Statts) or DOBOR’s hired consultants (e.g., DTL, LLC) during which any strategies, plans, proposals, or ideas for the RFP or the parcels of land that are the subject of the

RFP were discussed. For example, DTL's "Ala Wai Small Boat Harbor Community Engagement Findings & Conceptual Plan, Final Report" dated December 2017 states that "[a] total of 52 individuals and thirteen organizations participated in eight stakeholder meetings" and specifically references meetings with the following entities/organizations: Waikiki Neighborhood Board, Waikiki Improvement Association, Waikiki Yacht Club, Hawaii Yacht Club, Waikiki Beach Activities Hilton, Illikai AOA, Illikai Marina, Makai Society, the Hilton, the Modern Honolulu, Prince Hawaii, Illikai Hotel, Save Our Surf. Please produce the notes from all of these meetings that DTL held on behalf of DOBOR, **including but not limited to the summaries and/or notes that are attached to the December 2017 DTL Final Report as Exhibit "E" through "O"** and listed in the below screenshot from DTL's Final Report.

APPENDIX

- Appendix A – Historic & Cultural Brief
- Appendix B – Site Analysis
- Appendix C – Cultural Themes
- Appendix D – Community Engagement Plan
- Appendix E – Public Visioning Meeting #1 Summary
- Appendix F – Public Visioning Meeting #2 Summary
- Appendix G – Waikiki Neighborhood Board Presentation & Notes
- Appendix H – Waikiki Improvement Association Notes
- Appendix I – Stakeholder Presentation
- Appendix J – User Group Notes
- Appendix K – Condo Owner Notes
- Appendix L – Makai Society Notes
- Appendix M – Modern & Hilton Notes
- Appendix N – Illikai Hotel & Hawaii Prince Notes
- Appendix O – Save Our Surf
- Appendix P – Digital Comments
- Appendix Q – Letter from Waikiki Yacht Club

Please produce the foregoing appendices. Further, although the "Notice to Requester" received from DOBOR yesterday states that "DOBOR generally does not maintain meeting minutes aside from any minutes that may be sent to it[.]" please produce any notes or summaries of any other meetings that relate to the RFP (in addition to those specifically referenced above), even if no formal "minutes" are available.

With respect to Request No. 3 of the May 23, 2019 UIPA Request, your letter asks whether "there [is] any limitation whether such documents and communications are for any particular person with respect to [DOBOR.]" The answer to your question here is no, because this limiting information is not in the possession of the Requestor. DOBOR knows who was tasked with determining which individuals or entities would act as the members of "Selection Committee" charged with selection of developer(s), and DOBOR can therefore limit its search for responsive documents based on its own knowledge of where responsive documents and communications are likely to be found. Please produce all documents and communications concerning the process by which members of the committee were selected.

Warm regards,

Erik Rask

Exhibit S

NOTICE TO REQUESTER (Revised)

TO: Erik A. Rask, earask@gmail.com
(Requester's name)

FROM: State of Hawaii, DLNR, Division of Boating and Ocean Recreation
Contact Person: Clifford Inn, 587-1972, Clifford.G. Inn.@Hawaii.gov
(Agency, and agency contact person's name, telephone number, & email address)

DATE THAT THE RECORD REQUEST WAS RECEIVED BY AGENCY: May 23, 2019,
June 25, 2019 (clarification)

DATE OF THIS NOTICE: July 10, 2019

GOVERNMENT RECORDS YOU REQUESTED (attach copy of request or provide brief description below):

1. Communications to Ed Underwood or Meghan Statts Jan. 1, 2018 to May 23, 2019 re: Request for Proposals for Development of Ala Wai Small Boat Harbor issued April 10, 2019 ("RFP")
2. Minutes (inclusive of all resultant notes) of any meetings relating to DOBOR's RFP issued April 10, 2019, without regard to when held, including consultant DTL and meetings held with entities/organizations: Waikiki Neighborhood Board, Waikiki Improvement Association, Waikiki Yacht Club, Hawaii Yacht Club, Waikiki Beach Activities Hilton, Illikai [sic] AOA, Illikai [sic] Marina, Makai Society, the Hilton, the Modern Honolulu, Prince Hawaii, Illikai [sic] Hotel, Save Our Surf, including summaries and/or notes attache to December 2017 DTL Final Report as Exhibit "E" through "O", any notes or summaries of any other meetings that relate to the RFP whether or not any formal "minutes" are available.
3. All documents relating to RFP Selection Committee, all dates, sent or received - without limitation to DOBOR personnel involved, and concerning the process by which members of the committee were selected.
4. [copy of clarification letter attached]

THIS NOTICE IS TO INFORM YOU THAT YOUR RECORD REQUEST:

- Will be granted in its entirety.
- Cannot be granted. Agency is unable to disclose the requested records for the following reason:
- Agency does not maintain the records. (HRS § 92F-3)
Other agency that is believed to maintain records: _____
 - Agency needs further clarification or description of the records requested. Please contact the agency and provide the following information: _____
 - Request requires agency to create a summary or compilation from records, but requested information is not readily retrievable. (HRS § 92F-11(c))
- Will be granted in part and denied in part, OR Is denied in its entirety
Although the agency maintains the requested records, it is not disclosing all or part of them based on the exemptions provided in HRS § 92F-13 and/or § 92F-22 or other laws cited below.
(Describe the portions of records that the agency will not disclose.)

<u>RECORDS OR INFORMATION WITHHELD</u>	<u>APPLICABLE STATUTES</u>	<u>AGENCY JUSTIFICATION</u>
<u>Attorney-Client Communications (e.g., RFP (emails, meeting notes to Ed Underwood or Meghan Statts - Jan. 1, 2018 to May 23, 2019; & re: RFP Selection Committee to DOBOR</u>	<u>HRS ch. 626, Rule 503; HRS § 92F-13(3) & (4)</u>	<u>Privileged confidential communications between Attorney General's office & DOBOR</u>
<u>Redacted personal information & CBI from</u>	<u>HRS § 92F-14</u>	<u>Significant privacy interests incl. those</u>

all emails, telephone messages, applications, § 92F-13(3) contained in potentially unsuccessful
information (incl. RFP selection committee) proposer's confidential business information (CBI)

Meeting minutes, notes, etc. re: RFP HRS § 92F-3 DOBOR generally does not maintain meeting minutes re: sunshine meetings nor DTL's meetings nor have a contractual relationship allowing DOBOR access to meeting minutes, notes, etc. held by contractor DTL re: Ala Wai RFP

Appendices E-O of DTL report fr. meetings with stakeholders Appendices E-O are available on DOBOR's website. If hard copies are still requested, we can revise this Notice to include those costs/fees.

Communications re: prospective or actual entities/persons with interest in RFP including communications re: RFP selection committee; confidential info re: selection committee members HRS § 92F-13(3); § 103D-303(d); § 92F-14 Frustration of legitimate government function. Disclosure of offerors allows access to/ between offerors, interfering with and jeopardizing the integrity of the selection process. Also, please note that certain submittals and other documents that fit this description have been made available on the DOBOR website. If hard copies are required, please inform us.

REQUESTER'S RESPONSIBILITIES:

You are required to (1) pay any lawful fees and costs assessed; (2) make any necessary arrangements with the agency to inspect, copy or receive copies as instructed below; and (3) provide the agency any additional information requested. If you do not comply with the requirements set forth in this notice within 20 business days after the postmark date of this notice or the date the agency makes the records available, you will be presumed to have abandoned your request and the agency shall have no further duty to process your request. Once the agency begins to process your request, you may be liable for any fees and costs incurred. If you wish to cancel or modify your request, you must advise the agency upon receipt of this notice.

METHOD & TIMING OF DISCLOSURE:

Records available for public access in their entireties must be disclosed within a reasonable time, not to exceed 10 business days from the date the request was received, or after receipt of any prepayment required. Records not available in their entireties must be disclosed within 5 business days after this notice or after receipt of any prepayment required. HAR § 2-71-13(c). If incremental disclosure is authorized by HAR § 2-71-15, the first increment must be disclosed within 5 business days of this notice or after receipt of any prepayment required.

Method of Disclosure:

- Inspection at the following location: _____
- As requested, a copy of the record(s) will be provided in the following manner:
- Available for pick-up at the following location: _____
 - Will be mailed to you.
 - Will be transmitted to you by other means requested: _____

Timing of Disclosure: All records, or the first increment if applicable, will be made available or provided to you:

- On _____, 20____.
- After prepayment of 50% of fees and 100% of costs, as estimated below.

For incremental disclosures, each subsequent increment will be disclosed within 20 business days after:

- The prior increment (if one prepayment of fees is required and received), or
- Receipt of each incremental prepayment, if prepayment for each increment is required.

Records will be disclosed in increments because the records are voluminous and the following extenuating circumstances exist:

- Agency must consult with another person to determine whether the record is exempt from disclosure under HRS chapter 92F.
- Request requires extensive agency efforts to search, review, or segregate the records or otherwise prepare the records for inspection or copying.
- Agency requires additional time to respond to the request in order to avoid an unreasonable interference with its other statutory duties and functions.
- A natural disaster or other situation beyond agency's control prevents agency from responding to the request within 10 business days.

ESTIMATED FEES & COSTS AND PAYMENT:

FEES: For personal record requests under Part III of chapter 92F, HRS, the agency may charge you for its costs only, and fee waivers do not apply.

For public record requests under Part II of chapter 92F, HRS, the agency is authorized to charge you fees to search for, review, and segregate your request (even if a record is subsequently found to not exist or will not be disclosed in its entirety). The agency must waive the first \$30 in fees assessed for general requesters, OR in the alternative, the first \$60 in fees when the agency finds that the request is made in the public interest. Only one waiver is provided for each request. See HAR §§ 2-71-19, -31 and -32.

COSTS: For either personal or public record requests, the agency may charge you for the costs of copying and delivering records in response to your request, and other lawful fees and costs.

PREPAYMENT: The agency may require prepayment of 50% of the total estimated fees and 100% of the total estimated costs prior to processing your request. If a prepayment is required, the agency may wait to start any search for or review of the records until the prepayment is received by the agency. Additionally, if you have outstanding fees or costs from previous requests, including abandoned requests, the agency may require prepayment of 100% of the unpaid balance from prior requests before it begins any search or review for the records you are now seeking.

The following is an itemization of what you must pay, based on the estimated fees and costs that the agency will charge you and the applicable waiver amount that will be deducted:

For public record requests only:

Fees: Search	Estimate of time to be spent: <u>2.20</u> hours (\$2.50 for each 15-minute period)	\$ <u>22.00</u>
Review & segregation	Estimate of time to be spent: <u>3.75</u> hours (\$5.00 for each 15-minute period)	\$ <u>75.00</u>
Fees waived	<input type="checkbox"/> general (\$30), OR <input type="checkbox"/> public interest (\$60) (Only one waiver per request)	<\$ <u>30.00</u> >
Other	_____	\$
	(Pursuant to HAR §§ 2-71-19 & 2-71-31)	
Total Estimated Fees:		\$ 67.00

For public or personal record requests:

Costs: Copying	Estimate of # of pages to be copied: <u>50</u> (@ \$ <u>0.05</u> per page, pursuant to HRS § 92-21)	\$ <u>2.50</u>
Delivery	Postage	\$
Other	_____	\$
Total Estimated Costs:		\$ 2.50

TOTAL ESTIMATED FEES AND COSTS from above: \$ 69.50

The estimated fees and costs above are for the first incremental disclosure only. Additional fees and costs, and no further fee waivers, will apply to future incremental disclosures.

PREPAYMENT IS REQUIRED (50% of fees + 100% of costs, as estimated above) **\$ 34.75**

UNPAID BALANCE FROM PRIOR REQUESTS (100% must be paid before work begins) **\$**

TOTAL AMOUNT DUE AT THIS TIME \$ 34.75

Payment may be made by:

cash

personal check payable to DLNR Boating and sent to Clifford Inn, DLNR/DOBOR, 4 Sand Island Access Road, Honolulu, HI 96819. Please indicate the payment is for your UIPA request re: Ala Wai RFP

other _____

For questions about this notice or the records being sought, please contact the agency person named at the beginning of this form. Please note that the Office of Information Practices (OIP) does not maintain the records of other agencies, and a requester must seek records directly from the agency it believes maintains the records. If the agency denies or fails to respond to your written request for records or if you have other questions regarding compliance with the UIPA, then you may contact OIP at (808) 586-1400, ois@hawaii.gov, or 250 South Hotel Street, Suite 107, Honolulu, Hawaii 96813.

Exhibit T

View Check: #1058

Amount: \$34.75

Date: 8/8/2019

Check Front:

ERIK BASK
4318 FRANCIS STREET
HONOLULU, HI 96822

1058

7-26-19

Pay To The Order Of DLUR Basking \$34.75

twenty four and 75/100 Dollars

TO: UNIVERSITY OF HAWAII FEDERAL CREDIT UNION
P.O. Box 22670, Honolulu, Hawaii, 96823-2670
2119 S. King Street, Honolulu, Hawaii 96826

7-16-19 NTR

1058

Check Back:

FOR DEPOSIT ONLY
FIRST HAWAIIAN BANK
STATE DIRECTOR OF FINANCE
DLNR-DBOR/OAHU
Loc #8316 Acct #01-000497
00-2020-014

⑆121301015< FHB 08072019 046004005283960

Exhibit U

Division of Boating and Ocean Recreation

Charting the Course to Ocean Recreation

Update to the BLNR

January 12, 2018

DOBOR has a big mandate

§ 200-3 Ocean recreation and coastal areas programs. The board shall assume the following functions of the department of transportation:

- (1) Managing and administering the ocean-based recreation and coastal areas programs of the State;
- (2) Planning, developing, operating, administering, and maintaining small boat harbors, launching ramps, and other boating facilities and associated aids to navigation throughout the State;
- (3) Developing and administering an ocean recreation management plan;
- (4) Administering and operating a vessel registration system for the State;
- (5) Regulating the commercial use of state waters and marine resources, including operations originating from private marinas;
- (6) Regulating boat regattas and other ocean water events;
- (7) Administering a marine casualty and investigation program;
- (8) Assisting in abating air, water, and noise pollution;
- (9) Conducting public education in boating safety;
- (10) Administering the boating special fund;
- (11) Assisting in controlling shoreline erosion;
- (12) Repairing seawalls and other existing coastal protective structures under the jurisdiction of the State; and
- (13) Removing nonnatural obstructions and public safety hazards from the shoreline, navigable streams, harbors, channels, and coastal areas of the State. [L 1991, c 272, pt of §2; am L 2012, c 289, §2]

Ocean Recreation has increased since DOBOR was created

While Boating accidents/fatalities have decreased, Paddlesport accidents/fatalities have risen since 1987

- The American Canoe Association reports a doubling in paddlesport accident/fatalities between 1987 and 2015

Current DOBOR focus on boaters reaches only 9% of Hawaii's households

- 30% is national average for boat owning households

Hawaii has a large, underserved ocean recreation community which needs DOBOR's attention

- 66% of households report at least one ocean recreationist
- Most of the 8.6 million visitors to Hawaii engage in some form of ocean recreation

**Act 100:
Ocean Recreation Management is a stated priority for
DOBOR**

2016:

Policy D: Develop more resources for ocean recreation planning and oversight.

2017:

Policy A: Expand Ocean Recreation planning, oversight, education and enforcement to more accurately reflect DOBOR's dual mandate.

DOBOR proposes to:

1. **Make ocean waters safer and more enjoyable for all, and**
2. **Make Hawaii's harbor system beautiful and accessible by all**

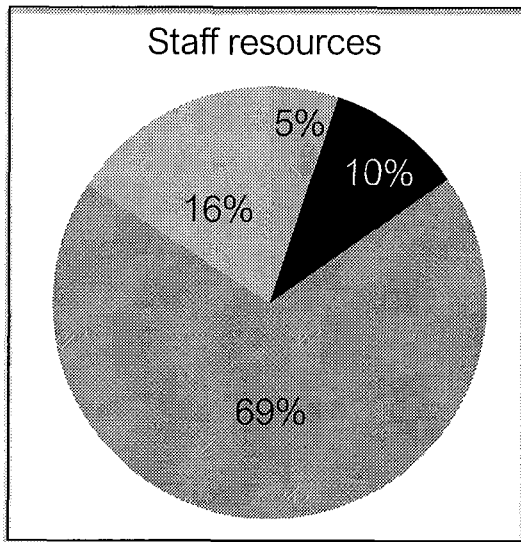
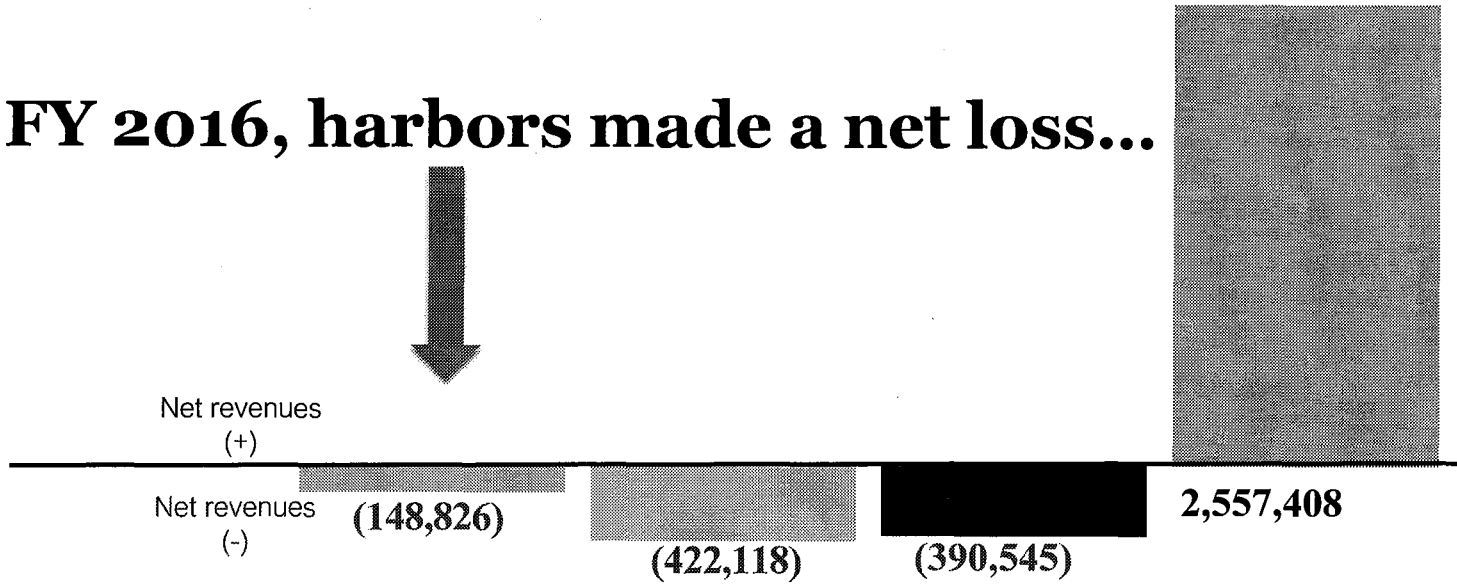
By:

1. **Moving more staff to Ocean Recreation Management, and**
2. **Partnering with third parties to streamline harbor management**

My research focused on:

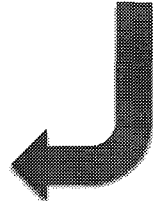
- 1. The money**
- 2. The harbor conditions at DOBOR harbors, especially Ala Wai**
- 3. How other states manage their harbors**

In FY 2016, harbors made a net loss...



Harbors Ocean Recreation Boat Ramps Property Management, Etc.

...Yet consumed most of staff resources

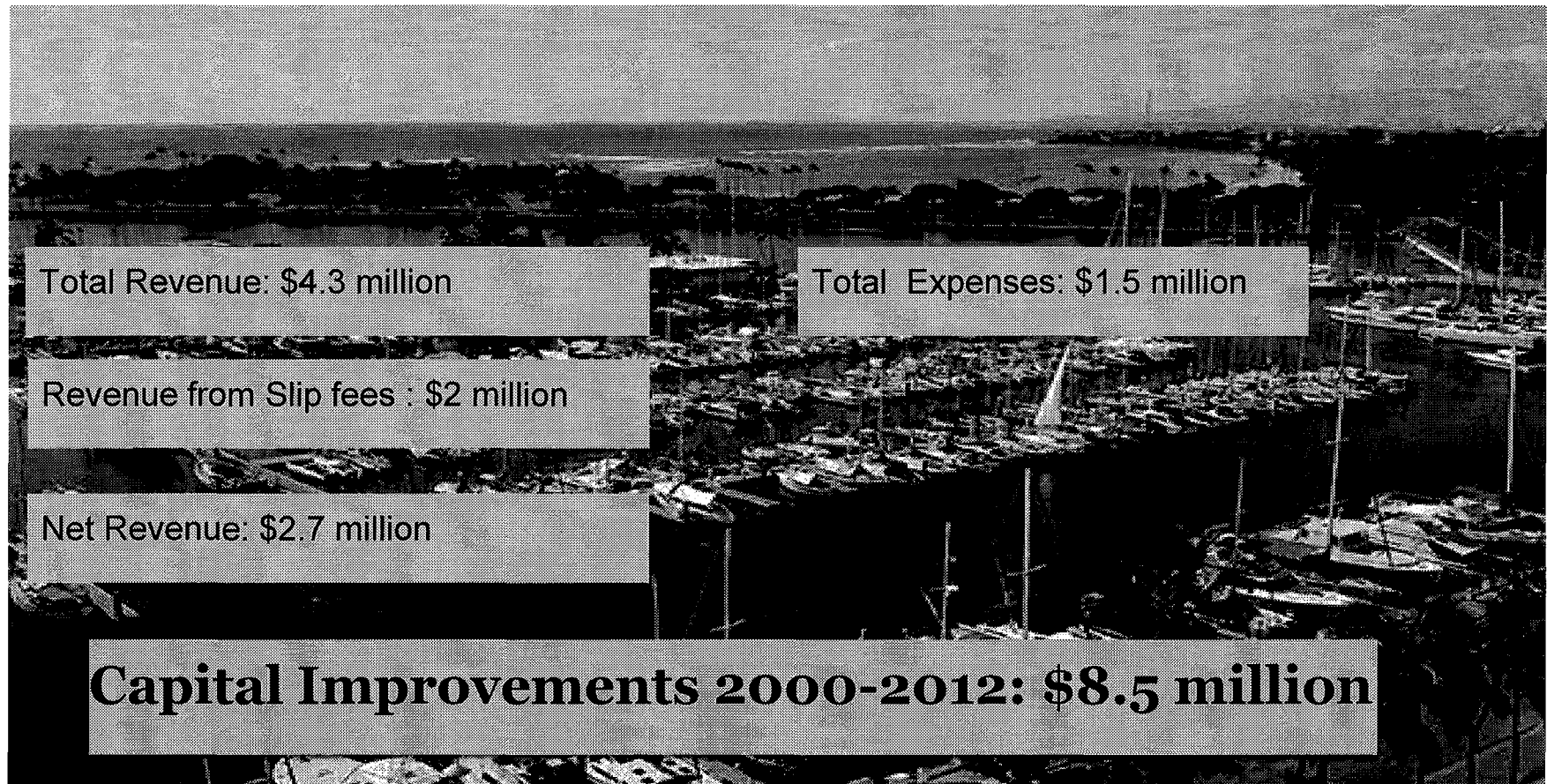


DOBOR is Short of Capital Improvement Funds

	Requested	Received
FY 16-17	\$34.1 million	\$5.8 million +\$17 million add-ons
FY 18-19	\$68 million	\$4 million +\$23 million add-ons

Ala Wai SBH Quick Facts

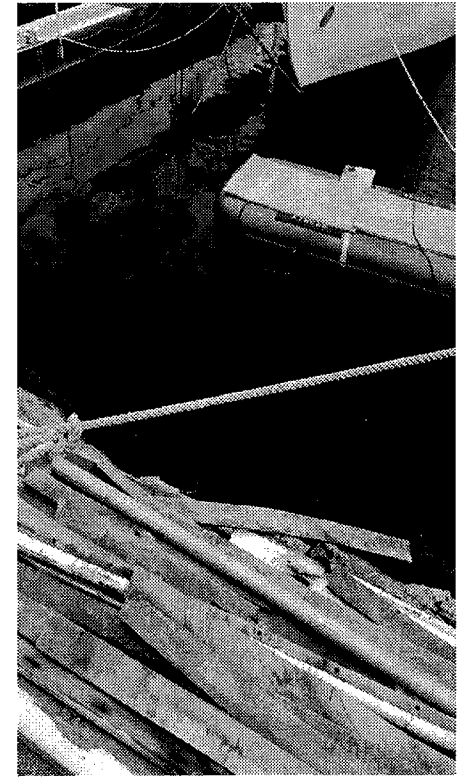
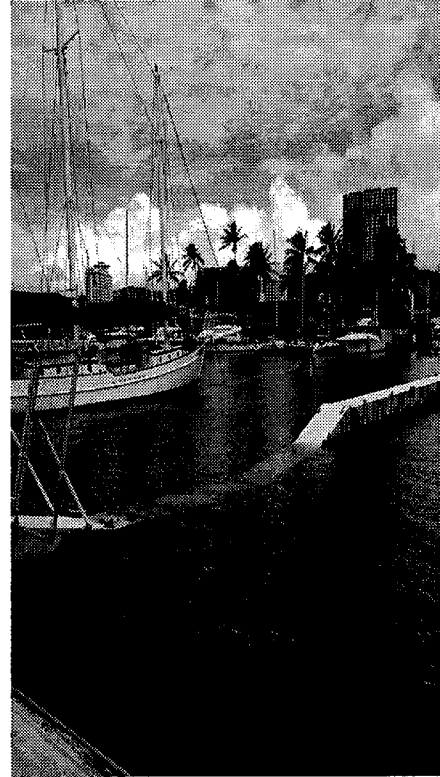
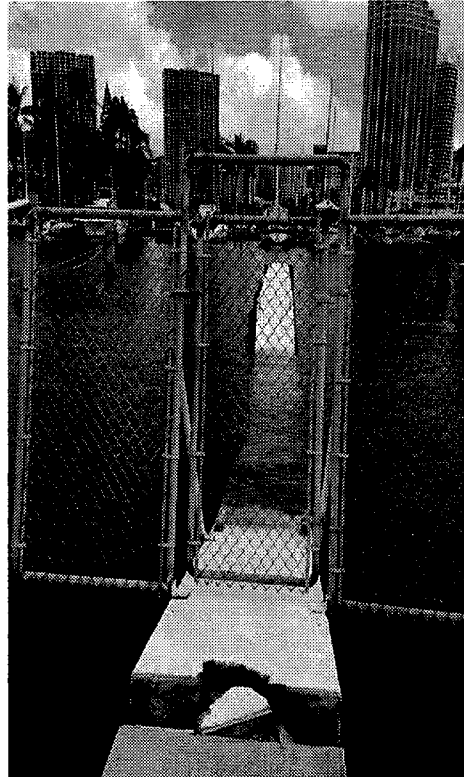
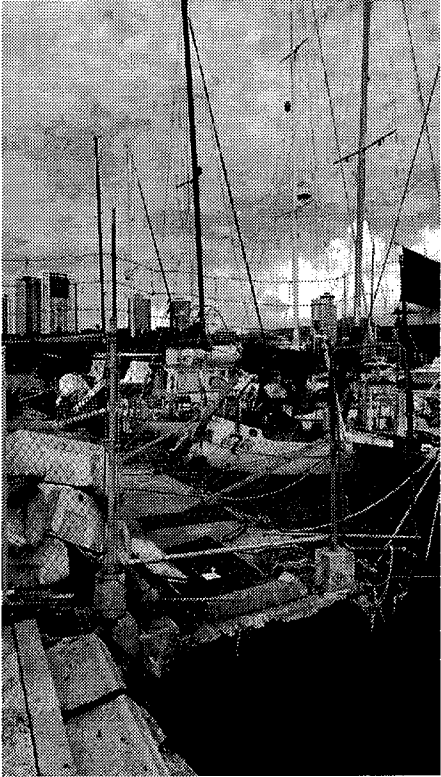
- 699 berths, 85 moorings, one boat ramp, and 22 dry storage spaces



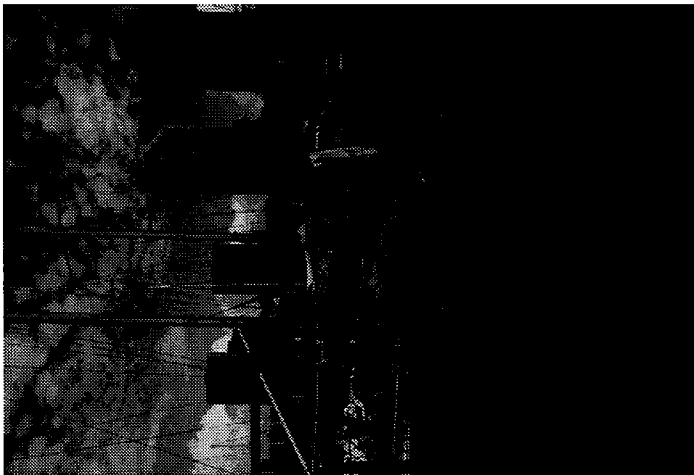
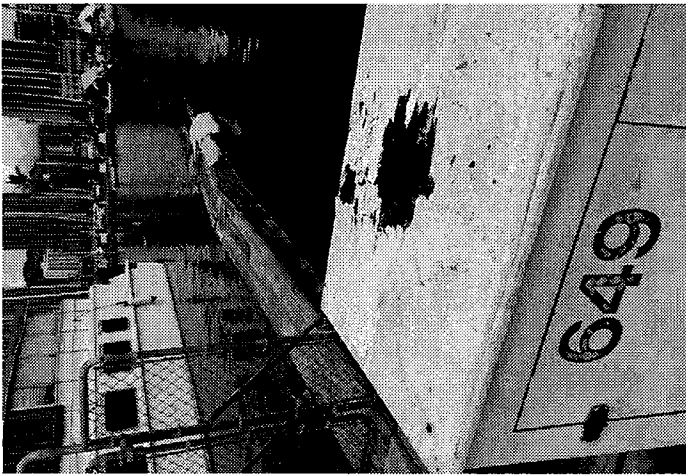
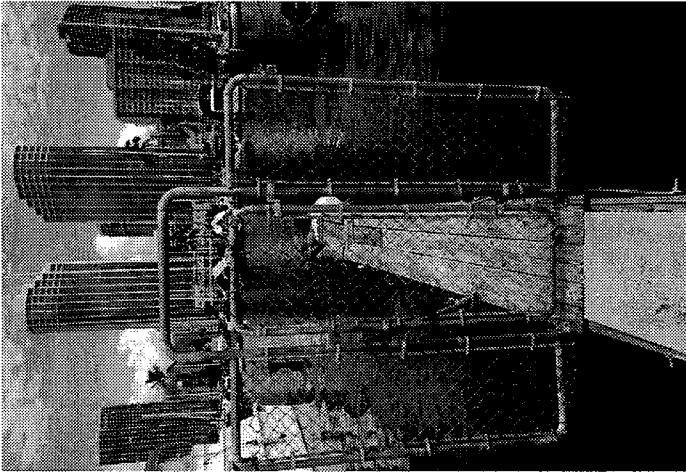
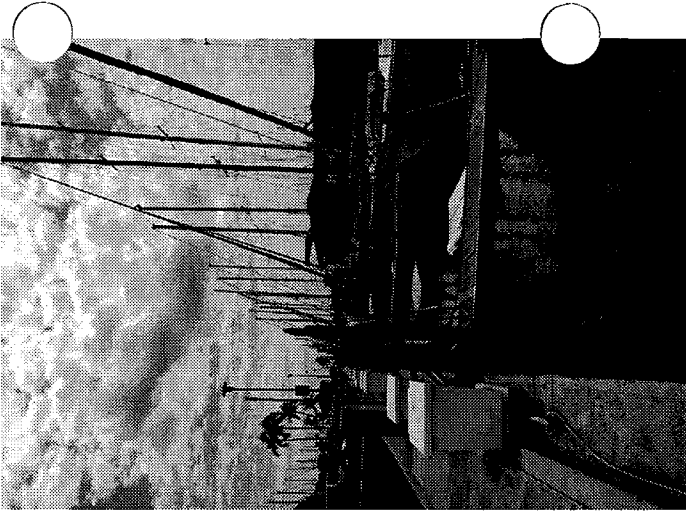
4.4 million people visit the Ala Moana Center.
Many pass by Ala Wai Small Boat Harbor

- These visitors spend \$6.3 billion each year in that area
- Waikiki generates 42% of the State's visitor industry revenue
- 8% of GSP (\$5 billion)

On their way from Waikiki to Ala Moana Center, they see this

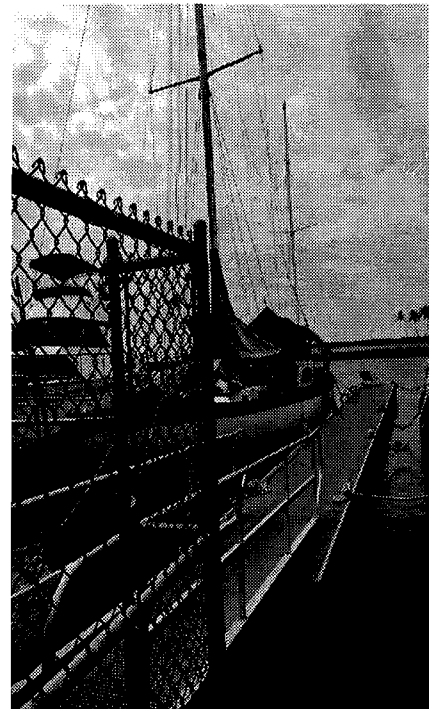
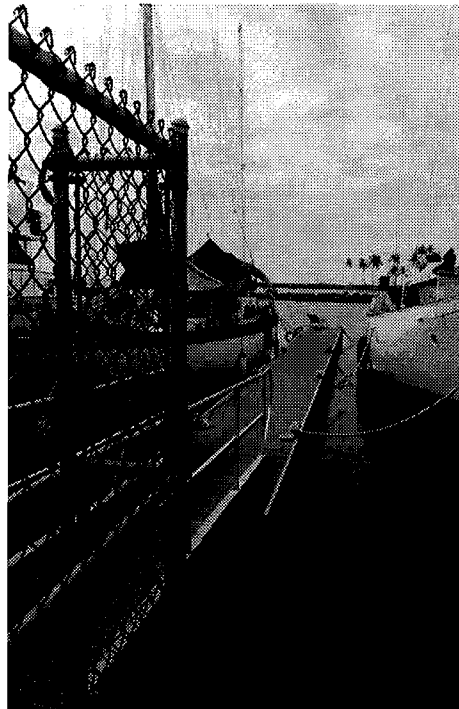
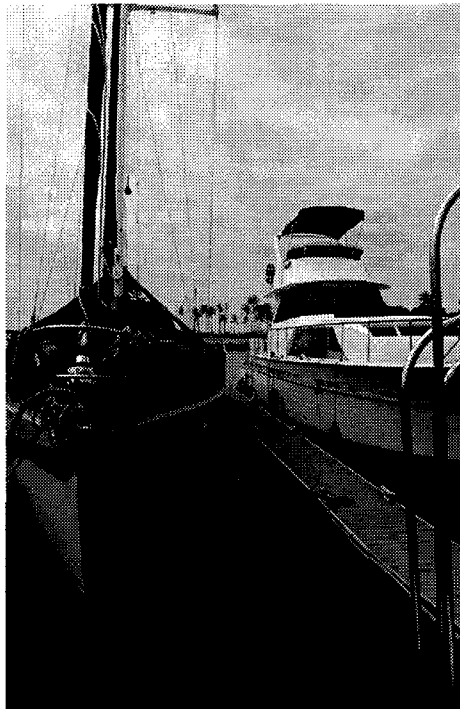
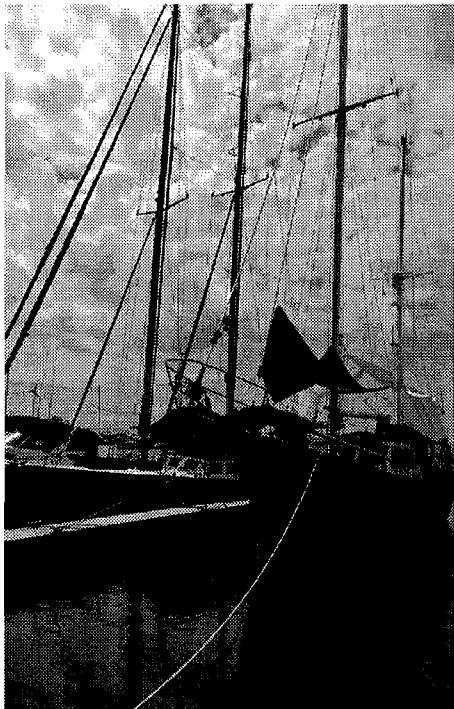


600 row



Harbor docks: 600 row

**Not all of what they see is dilapidated,
Harbor docks: 700 row looks spiffy.**



DOBOR's small boat harbors are State assets

"Ala Wai Sbh is falling into the ocean!"

- Deferred maintenance is **not** a good thing. A dollar not spent on maintenance now, means much more spent later.

Dobor must steward these responsibly.

- This is the public trust – the State must look after its assets responsibly for current and future generations.

Other parts of the country have faced the same problem....and solved it!

- By optimizing their revenues, and partnering with third parties

10 Governments in 7 states consulted/interviewed

City of Oceanside, CA

Dana Point Harbor, Orange County, CA

City of Redondo Beach, CA

City of Titusville marina, Titusville, FL

Kewalo Basin (HCDA), HI

City of Chicago (Chicago Park District)--all ten municipal harbors, IL

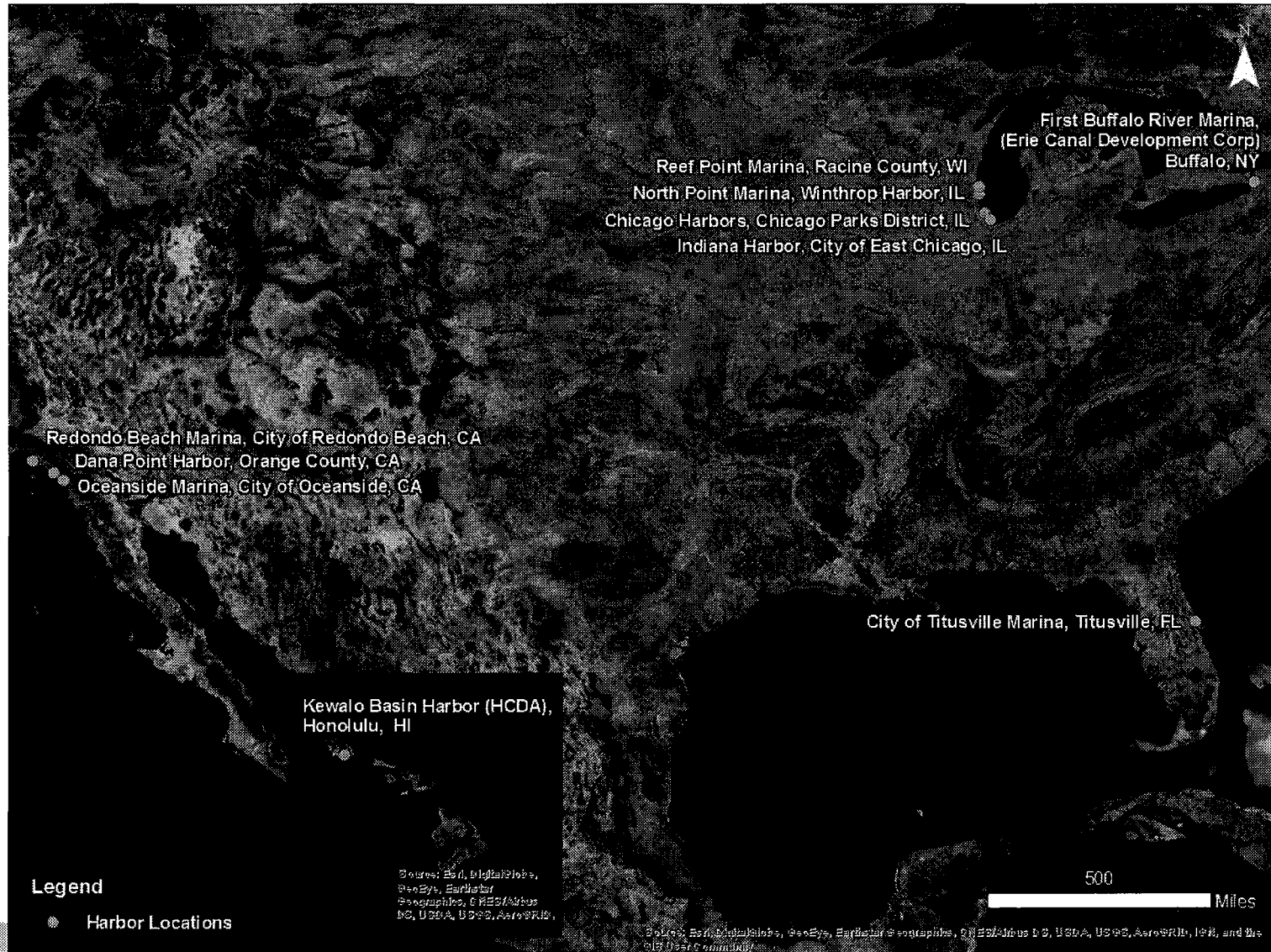
North Point Marina, IL

North Harbor, City of East Chicago, IN

First Buffalo River Marina, (Erie Canal Development Corp), NY

Reef Point Marina, Racine County, WI

10 Governments in 7 states consulted/interviewed



HCDA

Went to third party management in 2009



Kewalo Basin, Oahu, HI

HCDA's net revenues have increased since using third party management (Almar)

Kewalo Basin Operating Results

	2009 HCDA Budget	2009 Actual	2013 Actual
Revenue	695,475	1,039,828	1,332,611
Expenses	969,928	540,892	692,816
Net Income	(274,453)	498,936	639,796



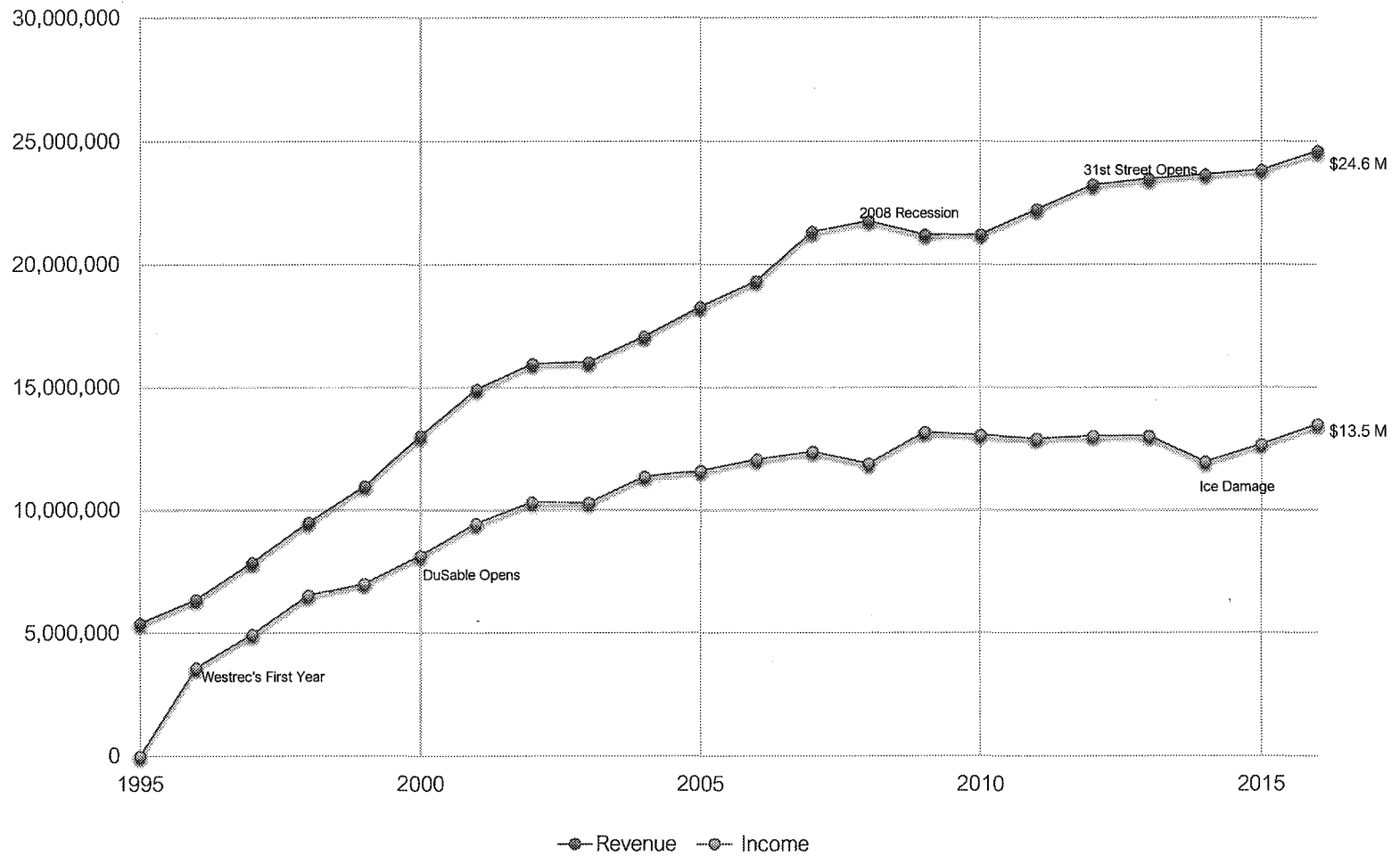
31st Street Harbor, Chicago, IL

**Chicago Parks District
went to third party
management of its 10
harbors and 6,000
slips in 1995.**

**It has never looked
back.**

Chicago Parks District net revenues increased from \$0 to \$13.5 million

CHICAGO HARBORS 1995-2016



City of Titusville went to third party management
in 2015.



Titusville Municipal Marina, Titusville, FL

Since going to third party management, City of Titusville:

- Went from \$300,000 in debt to \$120,000 in positive working capital
- Went from 50-60% occupancy to 96% occupancy*

* Fees have remained within the City's control

What are these governments telling us?

Better Services

- Keep your boaters happy
- Provide more services to your community

Increase in capital for improvements

- Increase your revenues
- Attract more capital—to maintain and improve your harbors
- Get innovation in your harbors

Guard the Public Trust

- Optimize your assets by getting a third party to partner*!!! And go do what the State should really be doing---defending the public trust, stewarding the resources to perpetuity, and enforcing rules and regulations.

* State Planning and Evaluation Guidelines for Private Sector Marina Development (draft). OSP, 1993. Private marina development is not a new idea in Hawaii. This report points out “Private enterprise can play a large role in providing necessary capital” for boating infrastructure.

Testimonials:

- “It’s a win-win situation”
- “What’s not to like? We don’t have to have a large staff for marina management, and we can get professionals to run the marina, certified marina managers”
- “We’ve never done it any other way—it just makes sense for us.”

31st Street Harbor, 1000 slips, parking lot.



Ala Wai Small Boat Harbor, ~800 slips, parking lot



DOBOR's vision is to:

1. **Make ocean waters safer and more enjoyable for all,
and**
2. **Make Hawaii's harbor system beautiful and
accessible by all**

By:

1. **Moving more staff to Ocean Recreation Management, and**
2. **Partnering with third parties to streamline harbor
management, starting with Ala Wai SBH**

Community outreach

Dobor sought community outreach & stakeholder engagement for the Ala Wai redevelopment:

- Waikiki Neighborhood Board
- Ilikai, Prince, Hilton and Modern Hotels
- Waikiki Improvement Association
- Condo owners
- Users
- Two Public Workshops (300 attendees)

DTL report analytics results here

Next Steps

- DOBOR is preparing to publish a RFP document for AWsbh
- It will provide the results and concept plans that evolved from community meeting to the developer
- It will look to developers to propose highest and best use, in keeping with DLNR's mission...
- ...And in keeping with permitting & zoning requirements, and feasibility studies

Fin

From: [Hittle, Anukriti S](#)
To: [Underwood, Ed R](#)
Subject: Briefing presentation to the BLNR--please review
Date: Tuesday, January 2, 2018 2:19:56 PM
Attachments: [Briefing BLNR Jan 2.pptx](#)

Ed,

attaching the briefing to the Board on January 12. Please advise if you want any changes, and feel free to send on to the Chair and deputy Chair, as you see fit. As you can see, still waiting on analytics from DTL...

Am also prepping additional materials, to field questions, happy to share these with you as well, as soon as they are ready:

1. Map of AWSBH with revenues
2. CIP info --more details for AWSBH
3. Live aboard fees compared to other states and to land rents in the area
4. Slip fees and Parking fees at AWSBH as compared to other places
5. Boat Haulout facilities (with map)

Let me know if anything else comes to mind.

A

Anukriti (Anu) Hittle
Policy Research Specialist for
DLNR-Division of Boating and Ocean Recreation
4 Sand Island Access Road
Honolulu, HI 96819

From: [Hittle, Anukriti S](#)
To: [Underwood, Ed R](#)
Subject: Lead: national search for AWSBH developer
Date: Wednesday, January 3, 2018 9:57:33 AM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

FYI.

Anukriti (Anu) Hittle
Policy Research Specialist for
DLNR-Division of Boating and Ocean Recreation
4 Sand Island Access Road
Honolulu, HI 96819

From: Lanzdorf, Michael <Michael.Lanzdorf@racinecounty.com>
Sent: Wednesday, January 3, 2018 4:51 AM
To: Hittle, Anukriti S
Subject: RE: Link to Ala Wai RFP mailing list

If you're interest in a truly national search, you may consider reaching out to Marina Dock Age, a magazine dedicated to marina & boatyard management (www.marinadockage.com), to advertise the post.

Marina Dock Age | Dedicated to marina & boatyard management.

www.marinadockage.com

The magazine dedicated to marina and boatyard management for more than 25 years.
News, product and service information for the marina industry.

Kind regards and happy new year!

-Michael



Michael J. Lanzdorf | Corporation Counsel
730 Wisconsin Avenue, Racine, WI 53403
Phone: (262) 636.3874
Fax: (262) 636-3549



This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not

authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

From: Hittle, Anukriti S [mailto:anukriti.s.hittle@hawaii.gov]

Sent: Friday, December 29, 2017 4:31 PM

To: Lanzdorf, Michael <Michael.Lanzdorf@racinecounty.com>

Subject: Link to Ala Wai RFP mailing list

Dear Michael,

Hope you're well!

On this last working day of 2017, I am sending you this link the Division of Boating and Ocean Recreation has set up for interested parties wishing to be kept informed of RFP publication for development and management of Hawaii's Ala Wai Small Boat Harbor:

https://dlnr.hawaii.gov/dobor/files/2017/12/Ala-Wai-RFP-Mailing-List_2.pdf

If you know any marina developers who are interested, or other places where we might advertise, please let me know! Thank you for all your help in bringing us this far!

Have a very happy New Year!

Best,

Anu

Anukriti (Anu) Hittle

Policy Research Specialist for

DLNR-Division of Boating and Ocean Recreation

4 Sand Island Access Road

Honolulu, HI 96819

From: Hittle, Anukriti S

Sent: Wednesday, December 20, 2017 1:54 PM

To: Lanzdorf, Michael

Subject: Re: RFP Materials for our discussion

Dear Michael,

Thank you so much for your insights and your time today, discussing the RFP process, and Racine County's experience with third party management. Thank you, also, for the RFP document you sent me, I will read it with interest. I hope to keep you updated with our process, and again, really appreciate the time you spent on the phone today.

Best wishes for a happy holiday season!

Anu

Anukriti (Anu) Hittle

Policy Research Specialist for

DLNR-Division of Boating and Ocean Recreation

4 Sand Island Access Road

Honolulu, HI 96819

From: Lanzdorf, Michael <Michael.Lanzdorf@racinecounty.com>

Sent: Wednesday, December 20, 2017 9:28:25 AM

To: Hittle, Anukriti S

Subject: RFP Materials for our discussion



Michael J. Lanzdorf | Corporation Counsel
730 Wisconsin Avenue, Racine, WI 53403
Phone: (262) 636.3874
Fax: (262) 636-3549



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From: September Man
To: Underwood, Ed R
Subject: [REDACTED]
Date: Wednesday, January 10, 2018 11:07:01 AM

Mr. Underwood,

[REDACTED]

I would appreciate an acknowledgement of this letter. I recognize some of the following will take more time than others, so I encourage partial replies covering the easier questions first.

[REDACTED]

2.) Ala Wai harbor has issued an RFP for what is referred to as DLNR's "master plan" for upgrading(?) the harbor. I am encouraged by the existence of such a plan for Ala Wai, and wonder if Keehi Harbor or any of the other harbors have such a master plan in the works. It would seem beneficial to first build a "master plan" for the entire state-owned harbor facilities and (using it as a guide) drill down to each specific harbor. Does a state-wide master plan exist for DOBOR as a whole? If so, where can it be viewed? If not, is one contemplated any time soon?

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

Regards,

Alan McConnell

[Redacted]

From: [Underwood, Ed R](#)
To: [Hittle, Anukriti S](#)
Subject: Re: Lead: national search for AWSBH developer
Date: Wednesday, January 3, 2018 11:51:25 AM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Let's do it.

Sent from my iPad

On Jan 3, 2018, at 9:57 AM, Hittle, Anukriti S <anukriti.s.hittle@hawaii.gov> wrote:

FYI.

Anukriti (Anu) Hittle
Policy Research Specialist for
DLNR-Division of Boating and Ocean Recreation
4 Sand Island Access Road
Honolulu, HI 96819

From: Lanzdorf, Michael <Michael.Lanzdorf@racinecounty.com>
Sent: Wednesday, January 3, 2018 4:51 AM
To: Hittle, Anukriti S
Subject: RE: Link to Ala Wai RFP mailing list

If you're interest in a truly national search, you may consider reaching out to Marina Dock Age, a magazine dedicated to marina & boatyard management (www.marinadockage.com), to advertise the post.

Marina Dock Age | Dedicated to marina & boatyard management.

www.marinadockage.com

The magazine dedicated to marina and boatyard management for more than 25 years. News, product and service information for the marina industry.

Kind regards and happy new year!

-Michael

<image006.png> <image002.png> Michael J. Lanzdorf | Corporation Counsel
730 Wisconsin Avenue, Racine, WI 53403
Phone: (262) 636.3874

Fax: (262) 636-3549

<image003.png> <image004.png>

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From: Hittle, Anukriti S [<mailto:anukriti.s.hittle@hawaii.gov>]

Sent: Friday, December 29, 2017 4:31 PM

To: Lanzdorf, Michael <Michael.Lanzdorf@racinecounty.com>

Subject: Link to Ala Wai RFP mailing list

Dear Michael,

Hope you're well!

On this last working day of 2017, I am sending you this link the Division of Boating and Ocean Recreation has set up for interested parties wishing to be kept informed of RFP publication for development and management of Hawaii's Ala Wai Small Boat Harbor:

https://dlnr.hawaii.gov/dobor/files/2017/12/Ala-Wai-RFP-Mailing-List_2.pdf

If you know any marina developers who are interested, or other places where we might advertise, please let me know! Thank you for all your help in bringing us this far!

Have a very happy New Year!

Best,

Anu

Anukriti (Anu) Hittle

Policy Research Specialist for

DLNR-Division of Boating and Ocean Recreation

4 Sand Island Access Road

Honolulu, HI 96819

From: Hittle, Anukriti S

Sent: Wednesday, December 20, 2017 1:54 PM

To: Lanzdorf, Michael

Subject: Re: RFP Materials for our discussion

Dear Michael,

Thank you so much for your insights and your time today, discussing the RFP process, and Racine County's experience with third party management. Thank you, also, for the RFP document you sent me, I will read it with interest. I hope to keep you updated with our process, and again, really appreciate the time you spent on the phone today.

Best wishes for a happy holiday season!

Anu

Anukriti (Anu) Hittle

Policy Research Specialist for

DLNR-Division of Boating and Ocean Recreation

4 Sand Island Access Road

Honolulu, HI 96819

From: Lanzdorf, Michael <Michael.Lanzdorf@racinecounty.com>

Sent: Wednesday, December 20, 2017 9:28:25 AM

To: Hittle, Anukriti S

Subject: RFP Materials for our discussion

<image005.png> <image002.png> Michael J. Lanzdorf | Corporation
Counsel
730 Wisconsin Avenue, Racine, WI
53403
Phone: (262) 636.3874

Fax: (262) 636-3549
<image003.png> <image004.png>

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From: [September Man](#)
To: [Underwood, Ed R](#)
Cc: [Tashima, Todd H](#)
Subject: Re: [REDACTED]
Date: Thursday, January 11, 2018 11:10:37 AM

Thank you, Mr. Underwood. Your prompt reply is sincerely appreciated as is the invitation to ask other relevant questions. I do have follow-up questions... I'll note them in red below:

[REDACTED]

[REDACTED]

2.) Ala Wai harbor has issued an RFP for what is referred to as DLNR's "master plan" for upgrading(?) the harbor. I am encouraged by the existence of such a plan for Ala Wai, and wonder if Keehi Harbor or any of the other harbors have such a master plan in the works. It would seem beneficial to first build a "master plan" for the entire state-owned harbor facilities and (using it as a guide) drill down to each specific harbor. Does a state-wide master plan exist for DOBOR as a whole? If so, where can it be viewed? If not, is one contemplated any time soon?

There have been numerous master plans done over the years. There is no state-wide master plan and we are not contemplating doing one. Each harbor is different so we are addressing them on a case by case basis.

Forgive me, but the "the squeaky wheel approach" seems unlikely. If not a master plan, surely there is at least a list (or flow chart) of anticipated CIP in some order of importance? Would this list fall into the same category as the appraisal? If so, how would I make a formal request for this prioritized list and anticipated CIP?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Regards,
Alan McConnell

From: Underwood, Ed R <ed.r.underwood@hawaii.gov>
Sent: Wednesday, January 10, 2018 7:49 PM
To: September Man
Cc: Tashima, Todd H
Subject: RE: [REDACTED]

Aloha Mr. McConnell,

I did not receive a letter forwarded by Chairperson regarding your concerns [REDACTED]
[REDACTED] I am more than happy to respond to your questions below and in the future please feel free to contact us with any other concerns or questions you may have. I will respond below in blue.

Thank you,
Ed Underwood

From: September Man [REDACTED]
Sent: Wednesday, January 10, 2018 11:07 AM
To: Underwood, Ed R <ed.r.underwood@hawaii.gov>
Subject: [REDACTED]

Mr. Underwood,

[REDACTED]

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[REDACTED]

Regards,
Alan McConnell
[REDACTED]

From: [Underwood, Ed R](#)
To: [Hittle, Anukriti S](#)
Subject: RE: Sea Level Rise and Ala Wai Sbh
Date: Tuesday, January 2, 2018 8:03:00 AM

I have it on my calendar. I will call their office to confirm.

From: Hittle, Anukriti S
Sent: Tuesday, January 2, 2018 7:57 AM
To: Underwood, Ed R <ed.r.underwood@hawaii.gov>
Subject: Re: Sea Level Rise and Ala Wai Sbh

Seriously? No we changed it to last week and then the talk was uncertain as to when next because he didn't have time last week. Okay I'll be there directly.

Get [Outlook for iOS](#)

From: Underwood, Ed R
Sent: Tuesday, January 2, 2018 7:54:49 AM
To: Hittle, Anukriti S
Subject: RE: Sea Level Rise and Ala Wai Sbh
Yes, 10:00am with Rep. Yamane. Remember, we changed it at his office.

From: Hittle, Anukriti S
Sent: Tuesday, January 2, 2018 7:49 AM
To: Underwood, Ed R <ed.r.underwood@hawaii.gov>
Subject: Re: Sea Level Rise and Ala Wai Sbh

Yes I think all we need to do is let developers know that this study exists. You can retreat or elevate generally— there is no beach at awsbh so no erosion concerns.

I'll add it to the rfp.

We don't have any meetings today, do we? Just confirming you haven't snuck any in.

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From: Underwood, Ed R
Sent: Tuesday, January 2, 2018 7:43:13 AM
To: Hittle, Anukriti S
Subject: RE: Sea Level Rise and Ala Wai Sbh

Not sure what we can do. We can let the Developer know and they can plan accordingly. We can always put in floating docks.

From: Hittle, Anukriti S
Sent: Friday, December 29, 2017 5:15 PM
To: Underwood, Ed R <ed.r.underwood@hawaii.gov>
Subject: Fw: Sea Level Rise and Ala Wai Sbh

Hah. You'd better take a look at this: <http://www.pacioos.hawaii.edu/shoreline/slr-hawaii/>

It looks like AWSBH will be under water in the future. We should talk about how to address this.

A

Anukriti (Anu) Hittle
Policy Research Specialist for
DLNR-Division of Boating and Ocean Recreation
4 Sand Island Access Road
Honolulu, HI 96819

From: Lemmo, Sam J
Sent: Friday, December 29, 2017 4:43 PM
To: Hittle, Anukriti S
Cc: Underwood, Ed R
Subject: Re: Sea Level Rise and Ala Wai Sbh
Nothing specific to the Harbor but take a look at the SLR Viewer on our webpage
Hawaii Climate Adaptation Portal.

Sent from my iPad

On Dec 29, 2017, at 11:52 AM, Hittle, Anukriti S <anukriti.s.hittle@hawaii.gov> wrote:

Hi Sam,

As you may know, I am working on characterizing some of the basic features (financial, land use, etc) features of Ala Wai Small Boat Harbor for DOBOR. One of the questions that has come up is what do we know about how Sea Level Rise will affect the harbor. I know you have been working on a report on this topic, and wondered if there is any information specific to the harbor that we could get from you? Please let me know what is possible.

Thanks,

Anu

Anukriti (Anu) Hittle
Policy Research Specialist for
DLNR-Division of Boating and Ocean Recreation
4 Sand Island Access Road
Honolulu, HI 96819

From: [Hittle, Anukriti S](#)
To: [Underwood, Ed R](#)
Subject: Sea Level Rise and DOBOR
Date: Tuesday, January 2, 2018 4:01:17 PM
Attachments: [Ala Wai 3.2 feet SLR.png](#)
[Ala Wai 2 feet SLR.png](#)

Dear Ed,

Regarding the question of whether/how Sea Level Rise will impact DOBOR properties, and how DOBOR plans to address this impact, I looked at what the harbor would look like with projected 2 feet and 3.2 feet rise. See attached maps for results. Mostly, it seems DOBOR would need to continue to use floating docks as these are replaced, and on the land side, work with guidance from City and County and other DLNR divisions (such as OCCL) to address the issues of SLR.

The Report outlines recommendations for dealing with SLR issues. The main ones are: Avoidance, Protection, Accommodation, Retreat, and Preservation (p. 215). I recommend DOBOR include this report in its RFP for AWSBH, so that the developer can address issues of Sea Level Rise, especially those of protection and accommodation.

Sources:

1. Hawaii Sea Level Rise Vulnerability and Adaptation Report:
https://climateadaptation.hawaii.gov/wp-content/uploads/2017/12/SLR-Report_Dec2017.pdf
2. Sea Level Rise Viewer: <http://www.pacioos.hawaii.edu/shoreline/slr-hawaii/>

I hope this helps. Let me know if you would like any further aspect of this researched.

Best,
Anu

Anukriti (Anu) Hittle
Policy Research Specialist for
DLNR-Division of Boating and Ocean Recreation
4 Sand Island Access Road
Honolulu, HI 96819

Anukriti (Anu) Hittle
Policy Research Specialist for
DLNR-Division of Boating and Ocean Recreation
4 Sand Island Access Road
Honolulu, HI 96819

From: September Man
To: Underwood, Ed R
Subject: Proposed 13-234 Rule Changes
Date: Wednesday, January 10, 2018 11:07:01 AM

Mr. Underwood,

I am given to understand Ms. Case (and others) forwarded to you a letter (mid-November, 2017) that I composed expressing some concerns and asking four specific questions regarding the 13-234 rule changes. I was advised to employ patience in my expectations for a reply. As it has been nearly 2 months since my previous letter, circumstances have changed somewhat along with my questions.

I would appreciate an acknowledgement of this letter. I recognize some of the following will take more time than others, so I encourage partial replies covering the easier questions first.

1.) A recent reply from Governor Ige's office states that a new law requires fees associated with State Assets be evaluated based on their appraised value. This has a certain appeal as it will presumably compare State harbors to other harbors (both municipal and for-profit) and set fees accordingly. The proposed harbor fee changes presumably abide by this new law and are informed by a current official appraisal performed by an experienced and independent third party. In addition, this appraisal will almost certainly contain a direct comparison of amenities and services offered at the marinas sited in the appraisal. My question is, how can I read and/or get a copy of this appraisal?

2.) Ala Wai harbor has issued an RFP for what is referred to as DLNR's "master plan" for upgrading(?) the harbor. I am encouraged by the existence of such a plan for Ala Wai, and wonder if Keehi Harbor or any of the other harbors have such a master plan in the works. It would seem beneficial to first build a "master plan" for the entire state-owned harbor facilities and (using it as a guide) drill down to each specific harbor. Does a state-wide master plan exist for DOBOR as a whole? If so, where can it be viewed? If not, is one contemplated any time soon?

3.) Does DOBOR's revenue projections anticipate increases consistent with the various fee increases? If so, do these "cash-flow projections" anticipate a "ramping up" of the harbor fees over time? If so, how long do you expect it to take for the fees to top out at the figures specified in your proposed rule changes?

4.) Does DOBOR anticipate repair and maintenance operations (and harbor budgets) to be dramatically increased beyond what they have been for the last several decades?

5.) Given that the state employees have had a new modern parking lot for many months now

at Keehi harbor, When, IN THE NAME OF NEPTUNE, will the work begin to repair the road and parking facilities at Keehi harbor? Was the periodic flooding of the parking facility included in the aforementioned appraisal? Ignore the last question... it is clearly sarcasm.

Regards,

Alan McConnell



From: [September Man](#)
To: [Underwood, Ed R](#)
Cc: [Tashima, Todd H](#)
Subject: Re: Proposed 13-234 Rule Changes
Date: Thursday, January 11, 2018 11:10:37 AM

Thank you, Mr. Underwood. Your prompt reply is sincerely appreciated as is the invitation to ask other relevant questions. I do have follow-up questions... I'll note them in red below:

1.) A recent reply from Governor Ige's office states that a new law requires fees associated with State Assets be evaluated based on their appraised value. This has a certain appeal as it will presumably compare State harbors to other harbors (both municipal and for-profit) and set fees accordingly. The proposed harbor fee changes presumably abide by this new law and are informed by a current official appraisal performed by an experienced and independent third party. In addition, this appraisal will almost certainly contain a direct comparison of amenities and services offered at the marinas sited in the appraisal. My question is, how can I read and/or get a copy of this appraisal?

You can make an official request and we will provide you with the fee, if applicable, and send you a copy of the appraisal report.

Can you consider this "an official request"? If not, what is (or where do I find) the procedure for such a request?

2.) Ala Wai harbor has issued an RFP for what is referred to as DLNR's "master plan" for upgrading(?) the harbor. I am encouraged by the existence of such a plan for Ala Wai, and wonder if Keehi Harbor or any of the other harbors have such a master plan in the works. It would seem beneficial to first build a "master plan" for the entire state-owned harbor facilities and (using it as a guide) drill down to each specific harbor. Does a state-wide master plan exist for DOBOR as a whole? If so, where can it be viewed? If not, is one contemplated any time soon?

There have been numerous master plans done over the years. There is no state-wide master plan and we are not contemplating doing one. Each harbor is different so we are addressing them on a case by case basis.

Forgive me, but the "the squeaky wheel approach" seems unlikely. If not a master plan, surely there is at least a list (or flow chart) of anticipated CIP in some order of importance? Would this list fall into the same category as the appraisal? If so, how would I make a formal request for this prioritized list and anticipated CIP?

3.) Does DOBOR's revenue projections anticipate increases consistent with the various fee increases? If so, do these "cash-flow projections" anticipate a "ramping up" of the harbor fees over time? If so, how long do you expect it to take for the fees to top out at the figures specified in your proposed rule changes?

The majority of the fees have not been amended since 1994 and have not kept up with inflation. The mooring fees will be set by appraisal according to the Hawaii Revised Statutes. Currently, the majority of the harbors operate at a deficit and we anticipate that the new fees will at least get the harbor program to breakeven.

So, as I understand it, no such anticipated cash-flow (or revenue/expense) projections exist? Can you imagine a hotel (even with an appraisal) suddenly raising rates by 200-300% without doing any financial impact projections?

Allow me to point out that (years before the tsunami) nearly half of the state's slips had been condemned do to lack of maintenance. The implication that the fees should have kept up with inflation invokes the counter argument that the decline in asset value over the previous 25 years was likely the cause of relatively static fees. The fees were in line with the horrible condition of the harbors. (Tour Keehi pier 400 for a refresher.)

Now, as the asset value increases a rate increase is not only justified, but anticipated. Few question that. Inflation has increased some 40-50% over the last 25 years. But your proposed rate increase is MUCH larger than that. So, getting back to the original question, do you anticipate a gradual "ramping up" of fees to the appraised value, or a sudden increase? Have you clearly identified and sought input from harbor customers on what impact such a large fee increase would have on an already depressed boating market in general and specifically the individuals affected? I recall your televised interview about cats and scuba flags. There was little (if any) mention of doubling harbor fees.

4.) Does DOBOR anticipate repair and maintenance operations (and harbor budgets) to be dramatically increased beyond what they have been for the last several decades?

We do expect to increase R&M depending on revenue generation;

Good. I'd hate to see the newly renovated harbors fall victim to insufficient R&M funding in the same way they have, historically.

The rest of your answer appears to address a different question than asked and brings up other questions:

however, all capital improvement projects have to be approved by the Legislature. For the last several years the Legislature has provided CIP using general funds. Should they decide to change the method of funding to reimbursable bonds, then DOBOR will be responsible for the debt service on those bonds. Also, we have a 34% vacancy rate at this time which creates a vacancy savings and those funds can be used for other expenses i.e. R&M. Once the positions are filled and depending on the funding source for CIP, DOBOR may need to adjust the fees again to cover debt service.

4A,) The 34% vacancy you mention is not reflected in the 2017 Supplemental Operating Budget. It shows a staffing level of 117 and personnel expenses are similar to 2016 levels. Does that mean DOBOR currently HAS 70 or so employees, OR anticipates hiring approximately 35 new employees? If so, and if successful in staffing these vacancies, will the "personal expenses" listed in the budget raise from \$7.3 million to around \$9.8 million in 2017-2018? And you mention potentially raising rates again "to cover debt service" on special revenue bonds. Will the fees be set according to "appraised value" or "debt service" requirements? At some point, increasing staff levels from 117 to 156 becomes a key element. Is DOBOR adding an entirely new department or is this increase in staffing merely to spread the existing work load among 34% more people? Forgive my topical ignorance, but so far I read three different metrics for determining the rate increase. 1.) break-even (which can mean almost anything), 2.) appraised value, and 3.) debt service.

5.) Given that the state employees have had a new modern parking lot for many months now at Keehi harbor, When, IN THE NAME OF NEPTUNE, will the work begin to repair the road and parking facilities at Keehi harbor? Was the periodic flooding of the parking facility included in the aforementioned appraisal? Ignore the last question... it is clearly sarcasm. We have engaged in numerous CIP projects recently at the Keehi small boat harbor that includes road repairs. We recently repaved the access road and we are in design to pave the remaining parking areas within the harbor.

So, the answer is "no"? There is still no time line for fixing the parking lot and roadway from DLNR's state-of-the-art parking facilities to the end of the harbor where the rest of us must park? Since April, 2016 we have endured periodic flooding (made much worse on Ewa side by the partial sea wall erected earlier in the year and periodic King Tides) while waiting for the 3-phase project to resume. At the time, Eric Yuasa told Jim Mendoza, utilities had to be run first and that work could begin by the end of 2016. Twenty months after YOUR end was paved, there is still not a single construction vehicle in sight, not a single surveyor, and we are still in "design".

I'm not trying to be difficult, but those who live, work, or recreate here continue to be frustrated as they wade through a foot or more of water just to check on their vessels. I suspect if harbor employees had to wade through a foot of brine to get to work, the project would have been completed 18 months ago. May I inquire as to who, specifically, is "in design"? Would this person/group have a better idea about when the design will be completed so actual work can begin? Is this "design plan" available for public viewing? Has the remaining work already been authorized as a CIP? Funded? Or will it be further delayed once the "design phase" is complete? And finally, will repaving be considered R&M or a capital improvement by the appraiser? In other words, will the "appraised value" increase when we are consistently able to park on dry land?

Regards,
Alan McConnell

From: Underwood, Ed R <ed.r.underwood@hawaii.gov>
Sent: Wednesday, January 10, 2018 7:49 PM
To: September Man
Cc: Tashima, Todd H
Subject: RE: Proposed 13-234 Rule Changes

Aloha Mr. McConnell,

I did not receive a letter forwarded by Chairperson regarding your concerns with our proposed amendments to Chapter 13-234 as it pertains to fees. I am more than happy to respond to your questions below and in the future please feel free to contact us with any other concerns or questions you may have. I will respond below in blue.

Thank you,
Ed Underwood

From: September Man [REDACTED]
Sent: Wednesday, January 10, 2018 11:07 AM
To: Underwood, Ed R <ed.r.underwood@hawaii.gov>
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Mr. Underwood,

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Regards,
Alan McConnell



Exhibit V



Erik Rask <earask@gmail.com>

UIPA

Erik Rask <earask@gmail.com>

Sat, Oct 26, 2019 at 4:41 PM

To: "Inn, Clifford G" <clifford.g.inn@hawaii.gov>, "Underwood, Ed R" <Ed.R.Underwood@hawaii.gov>, "Case, Suzanne D" <suzanne.case@hawaii.gov>

Bcc: REDACTED

Mr. Inn,

Please consider this e-mail an addendum to my UIPA request dated April 10, 2019 attached hereto.

Requesting in unredacted form all communications with "qualified applicants" as referenced in DOBOR's public announcement dated October 25, 2019. (see below highlighted admission that DOBOR is conspiring with certain developers).

This specific request is in no way meant to narrow the scope of the original request submitted five months ago and which DOBOR has failed to comply with.

As stated in my previous emails, we will seek a Court order compelling production of all of these documents if DOBOR fails to do so voluntarily or produces redacted documents based on groundless objections.

Best,
ErikFOR IMMEDIATE RELEASE
Oct. 25, 2019**BACK TO THE DRAWING BOARD FOR DEVELOPMENT OF PARCELS AT ALA WAI SMALL BOAT HARBOR**

(Honolulu) - Two proposals were received for the development of parcels of land at the Ala Wai Small Boat Harbor on O'ahu. After review, neither of the proposals was selected.

For now, the DLNR Division of Boating and Ocean Recreation (DOBOR), has concluded the Request for Proposals (RFP) process and it expects a new and potentially revised RFP will be reissued at a later date.

The original RFP was published in April of this year, making available four parcels of land, consisting of approximately 5.65 acres, and two moles (a manmade pier). Four applicants qualified to submit proposals, but by the Sept. 30 RFP deadline, DOBOR had only received two proposals.

The Ala Wai RFP Selection Committee, composed of individuals from the public and private sector, declined to approve either. The first proposal did not follow the process outlined in the RFP, making it ineligible for consideration. The other proposal did not meet DOBOR's or the Selection Committee's development objectives.

"Residents and visitors deserve a facility that serves everyone, is inviting, and offers amenities that are in demand," said DLNR Chair Suzanne Case. "I fully support the committee's decision to take a step back, study the process and come up with a new plan."

DOBOR leadership is in the process of speaking to the qualified applicants to determine what challenges they faced in the RFP process and what recommendations they might propose to ensure a viable project that meets the goals of both DLNR/DOBOR and the public. DOBOR will offer a new RFP for harbor development after these discussions conclude.

"DOBOR remains committed to harbor projects to maintain and improve all of its boating and ocean recreation facilities across Hawai'i," said Ed Underwood, DOBOR Administrator. "We want to do this right and we're looking for a win-win proposal."

There is no set date for when DOBOR will petition the Board of Land and Natural Resources for approval to issue a new RFP.

**UIPA Re_April 10 2019 Request for Proposals.pdf**
205K

Exhibit W

NOTICE TO REQUESTER (Revised)

TO: Erik A. Rask, earask@gmail.com
(Requester's name)

FROM: State of Hawaii, DLNR, Division of Boating and Ocean Recreation
Contact Person: Clifford Inn, 587-1966, Clifford.G.Inn.@hawaii.gov
(Agency, and agency contact person's name, telephone number, & email address)

DATE THAT THE RECORD REQUEST WAS RECEIVED BY AGENCY: May 23, 2019,
June 25, 2019 (clarification)
October 26, 2019 (addendum)

DATE OF THIS NOTICE: October 30, 2019

GOVERNMENT RECORDS YOU REQUESTED (attach copy of request or provide brief description below):

1. Communications to Ed Underwood or Meghan Statts Jan. 1, 2018 to May 23, 2019 re: Request for Proposals for Development of Ala Wai Small Boat Harbor issued April 10, 2019 ("RFP")
2. Minutes (inclusive of all resultant notes) of any meetings relating to DOBOR's RFP issued April 10, 2019, without regard to when held, including consultant DTL and meetings held with entities/organizations: Waikiki Neighborhood Board, Waikiki Improvement Association, Waikiki Yacht Club, Hawaii Yacht Club, Waikiki Beach Activities Hilton, Illikai [sic] AOA, Illikai [sic] Marina, Makai Society, the Hilton, the Modern Honolulu, Prince Hawaii, Illikai [sic] Hotel, Save Our Surf, including summaries and/or notes attache to December 2017 DTL Final Report as Exhibit "E" through "O", any notes or summaries of any other meetings that relate to the RFP whether or not any formal "minutes" are available.
3. All documents relating to RFP Selection Committee, all dates, sent or received - without limitation to DOBOR personnel involved, and concerning the process by which members of the committee were selected.
4. unredacted communications with "qualified applicants" as referenced in DOBOR's public announcement dated October 25, 2019, notes, minutes or any other documents related to any meetings with "qualified applicants" (added 10/26/19)

THIS NOTICE IS TO INFORM YOU THAT YOUR RECORD REQUEST:

- Will be granted in its entirety.
- Cannot be granted. Agency is unable to disclose the requested records for the following reason:
- Agency does not maintain the records. (HRS § 92F-3)
Other agency that is believed to maintain records: _____
 - Agency needs further clarification or description of the records requested. Please contact the agency and provide the following information: _____
 - Request requires agency to create a summary or compilation from records, but requested information is not readily retrievable. (HRS § 92F-11(c))
- Will be granted in part and denied in part, OR Is denied in its entirety
Although the agency maintains the requested records, it is not disclosing all or part of them based on the exemptions provided in HRS § 92F-13 and/or § 92F-22 or other laws cited below.
(Describe the portions of records that the agency will not disclose.)

RECORDS OR
INFORMATION WITHHELD

APPLICABLE
STATUTES

AGENCY
JUSTIFICATION

Attorney-Client Communications (e.g., RFP
(emails, meeting notes to Ed Underwood or
Meghan Statts - Jan. 1, 2018 to May 23, 2019;
& re: RFP Selection Committee to DOBOR

HRS ch. 626,
Rule 503; HRS
§ 92F-13(3) & (4)

Privileged confidential communications
between Attorney General's office & DOBOR

Redacted personal information & CBI from all emails, telephone messages, applications, information (incl. RFP selection committee)	HRS § 92F-14 § 92F-13(3)	Significant privacy interests incl. those contained in potentially unsuccessful proposer's confidential business information (CBI)
Meeting minutes, notes, etc. re: RFP	HRS § 92F-3	DOBOR generally does not maintain meeting minutes re: sunshine meetings nor DTL's meetings nor have a contractual relationship allowing DOBOR access to meeting minutes, notes, etc. held by contractor DTL re: Ala Wai RFP
Appendices E-O of DTL report fr. meetings with stakeholders		Appendices E-O are available on DOBOR's website. If hard copies are still requested, we can revise this Notice to include those costs/fees.
Communications re: prospective or actual entities/persons with interest in RFP including communications re: RFP selection committee; confidential info re: selection committee members	HRS § 92F-13(3); § 103D-303(d); § 92F-14	Frustration of legitimate government function. Disclosure of offerors allows access to/ between offerors, interfering with and jeopardizing the integrity of the selection process. Also, please note that certain submittals and other documents that fit this description have been made available on the DOBOR website. If hard copies are required, please inform us.

REQUESTER'S RESPONSIBILITIES:

You are required to (1) pay any lawful fees and costs assessed; (2) make any necessary arrangements with the agency to inspect, copy or receive copies as instructed below; and (3) provide the agency any additional information requested. If you do not comply with the requirements set forth in this notice within 20 business days after the postmark date of this notice or the date the agency makes the records available, you will be presumed to have abandoned your request and the agency shall have no further duty to process your request. Once the agency begins to process your request, you may be liable for any fees and costs incurred. If you wish to cancel or modify your request, you must advise the agency upon receipt of this notice.

METHOD & TIMING OF DISCLOSURE:

Records available for public access in their entireties must be disclosed within a reasonable time, not to exceed 10 business days from the date the request was received, or after receipt of any prepayment required. Records not available in their entireties must be disclosed within 5 business days after this notice or after receipt of any prepayment required. HAR § 2-71-13(c). If incremental disclosure is authorized by HAR § 2-71-15, the first increment must be disclosed within 5 business days of this notice or after receipt of any prepayment required.

Method of Disclosure:

- Inspection at the following location: _____
- As requested, a copy of the record(s) will be provided in the following manner:
 - Available for pick-up at the following location: _____
 - Will be mailed to you.
 - Will be transmitted to you by other means requested: _____

Timing of Disclosure: All records, or the first increment if applicable, will be made available or provided to you:

- On _____, 20____.

After prepayment of 50% of fees and 100% of costs, as estimated below.

For incremental disclosures, each subsequent increment will be disclosed within 20 business days after:

- The prior increment (if one prepayment of fees is required and received), or
 Receipt of each incremental prepayment, if prepayment for each increment is required.

Records will be disclosed in increments because the records are voluminous and the following extenuating circumstances exist:

- Agency must consult with another person to determine whether the record is exempt from disclosure under HRS chapter 92F.
 Request requires extensive agency efforts to search, review, or segregate the records or otherwise prepare the records for inspection or copying.
 Agency requires additional time to respond to the request in order to avoid an unreasonable interference with its other statutory duties and functions.
 A natural disaster or other situation beyond agency's control prevents agency from responding to the request within 10 business days.

ESTIMATED FEES & COSTS AND PAYMENT:

FEES: For personal record requests under Part III of chapter 92F, HRS, the agency may charge you for its costs only, and fee waivers do not apply.

For public record requests under Part II of chapter 92F, HRS, the agency is authorized to charge you fees to search for, review, and segregate your request (even if a record is subsequently found to not exist or will not be disclosed in its entirety). The agency must waive the first \$30 in fees assessed for general requesters, OR in the alternative, the first \$60 in fees when the agency finds that the request is made in the public interest. Only one waiver is provided for each request. See HAR §§ 2-71-19, -31 and -32.

COSTS: For either personal or public record requests, the agency may charge you for the costs of copying and delivering records in response to your request, and other lawful fees and costs.

PREPAYMENT: The agency may require prepayment of 50% of the total estimated fees and 100% of the total estimated costs prior to processing your request. If a prepayment is required, the agency may wait to start any search for or review of the records until the prepayment is received by the agency. Additionally, if you have outstanding fees or costs from previous requests, including abandoned requests, the agency may require prepayment of 100% of the unpaid balance from prior requests before it begins any search or review for the records you are now seeking.

The following is an itemization of what you must pay, based on the fees and costs, before the agency will continue to fulfil your request.

For public record requests only:

Fees: Search	Estimate of time to be spent: <u>1</u> hours (\$2.50 for each 15-minute period)	<u>\$10.00</u>
Review & segregation	Estimate of time to be spent: <u>4</u> hours (\$5.00 for each 15-minute period)	<u>\$80.00</u>
Fees waived	<input checked="" type="checkbox"/> general (\$30), OR <input type="checkbox"/> public interest (\$60) (Only one waiver per request)	< <u>\$30.00</u> >
Other	<hr/>	\$
	(Pursuant to HAR §§ 2-71-19 & 2-71-31)	
Total Estimated Fees:		\$ 60.00

For public or personal record requests:

Costs: Copying	# of pages to be copied: <u>256</u> (@ \$ <u>0.05</u> per page, pursuant to HRS § 92-21)	\$ <u>12.80</u>
Delivery		\$
Other		\$
Total Estimated Cost:		\$0
TOTAL ESTIMATED FEES AND COSTS from above:		\$72.80

- The estimated fees and costs above are for the first incremental disclosure only. Additional fees and costs, and no further fee waivers, will apply to future incremental disclosures.
- PREPAYMENT RECEIVED \$34.75
- UNPAID BALANCE FROM PRIOR REQUESTS \$38.05

TOTAL AMOUNT DUE AT THIS TIME \$ 38.05

Payment may be made by: cash
 personal check payable to "DLNR Boating" and sent or delivered to Clifford Inn, DLNR/DOBOR, 4 Sand Island Access Road, Honolulu, HI 96819. When making payment, please note it is "For UIPA Request - 2019 Ala Wai Development RFP"
 other _____

For questions about this notice or the records being sought, please contact the agency person named at the beginning of this form. Please note that the Office of Information Practices (OIP) does not maintain the records of other agencies, and a requester must seek records directly from the agency it believes maintains the records. If the agency denies or fails to respond to your written request for records or if you have other questions regarding compliance with the UIPA, then you may contact OIP at (808) 586-1400, oip@hawaii.gov, or 250 South Hotel Street, Suite 107, Honolulu, Hawaii 96813.

Exhibit X

View Check: #1067

Amount: \$38.05

Date: 11/12/2019

Check Front:

ERIK RASK
4319 FRANCIS STREET
HONOLULU, HI 96822

1067

10-30-2019 Date

Pay To The Order of: DLNR Boating \$ 38.05

thirty eight and 05/100 Dollars

TO: UNIVERSITY OF HAWAII FEDERAL CREDIT UNION
P.O. Box 22070, Honolulu, Hawaii, 96822-2070
2219 S. King Street, Honolulu, Hawaii 96822

Payment on 10-30-2019 NTR

For For UIFA Re: 2019 Alawa RFP

1067

Check Back:

>121301015< FHB 11082019 046004000535070

FOR DEPOSIT ONLY
FIRST HAWAIIAN BANK
STATE DIRECTOR OF FINANCE
DLNR-DBOR/OAHU
Loc #0315 Acct #01-000497

1067-1067-018

Exhibit Y

Star Advertiser

Saturday, January 11, 2020 | Today's Paper | 74

HAWAII NEWS

Conflicts arise over harbor contract

By [Allison Schaefer](#) • Dec. 26, 2017

A legislator as well as a member of the Board of Land and Natural Resources have ties to the public relations firm hired by the state to help determine redevelopment of the Ala Wai Small Boat Harbor.

DTL Hawaii, a self-billed "Hawaiian strategy studio," where state Sen. Donovan Dela Cruz (D, Wahiawa-Whitmore-Mililani Mauka) is vice president for communications and a 10 percent owner, received \$99,885 from the state Department of Land and Natural Resources' (DLNR) Division of Boating and Ocean Recreation (DOBOR) for outreach services on the Ala Wai Small Boat Harbor redevelopment.

Kirra Downing, daughter of Board of Land and Natural Resources (BLNR) member Keone Downing, joined DTL's payroll in September 2015 and serves as communications director.

DTL Hawaii is an offshoot of Rob Iopa's firm WCIT Architecture, where Dela Cruz began working as communications director in July 2011, midway through his first year as a state senator and just after his nearly eight-year stint on the Honolulu City Council, which ended in November 2010.

WCIT's portfolio, which is listed on its website, includes several large government projects including the Kewalo Harbor redevelopment, Blaisdell redevelopment, the Ala Moana Beach Park master plan and the Honolulu rail project. Some of its other major commercial projects include Kakaako Makai, Salt at Our Kakaako, Turtle Bay Resort, Sheraton Waikiki, the Royal Hawaiian hotel, Hilton Grand Vacations Club and Top of Waikiki.

Senator's second job

Dela Cruz transitioned from WCIT to DTL in January 2015. According to his financial disclosures to the state Ethics Commission, Dela Cruz is paid between \$50,000 and \$100,000 annually for his work as DTL's vice president for communications. He also is compensated between \$10,000 and \$25,000 annually for his minority ownership stake in DTL, the form said.

Despite his compensation, Dela Cruz described his role at DTL as part time and denied being involved in the company's day-to-day operations.

"Did you not hear? I'm now the Ways and Means chair. I'm busy at the Capitol," he told the Honolulu Star-Advertiser on Dec. 19.

Kirra Downing, who is associated with the DTL's Ala Wai Small Boat Harbor outreach, declined to comment. Her father, Keone Downing, who as a BLNR member has oversight over DOBOR, also declined to comment.

Dela Cruz denied working on DTL's Ala Wai Small Boat Harbor project and said he was only informed of its existence when DTL President Malia Ka'aihue called to tell him that his connections to the firm had been raised as an issue during a recent community "envisioning meeting."

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Dela Cruz is a minority shareholder for DTL but said he doesn't "dictate what accounts they chase."

Dela Cruz said he thinks it's "healthy" for legislators to hold outside jobs so they "understand the plights of making a living wage in Hawaii." He said his outside job is in public relations because he studied the field in college and was employed by McNeil Wilson Communications and Stryker Weiner & Yokota Public Relations prior to getting elected to the Honolulu City Council and the state Senate.

"I don't know any public relations firm that doesn't have a government program," he said. "I believe DTL gets work because they are a good company and they produce quality work."

He said he has been transparent about his ties to DTL and that he doesn't view them as conflicting with his Senate duties.

"The Legislature's role is to pass legislation and to pass a balanced budget. We aren't in charge of contracts or releasing funds. We don't dictate to the departments who they hire," Dela Cruz said.

Rising influence

Rick Egged, Waikiki Improvement Association president, said he's unaware of any improprieties concerning DTL and the DOBOR contract.

"As far as I could tell, the company was doing a good job assisting with the envisioning process," Egged said. "I have no reason to question their competence."

But several members of Hawaii's planning, engineering and development industries who spoke on condition of anonymity said DTL has enjoyed a swift growth trajectory. At the same time, they point out that Dela Cruz's influence also has steadily grown at the Senate. He became chairman of the powerful Ways and Means Committee in the spring after the ouster of Sen. Jill Tokuda (D, Kailua-Kaneohe). There Dela Cruz has a pivotal say in all measures dealing with appropriations and taxes.

Also, DOBOR Administrator Ed Underwood said Tuesday that DLNR and DOBOR did not know at the time of selection "that there were any alleged ties to Senator Dela Cruz or Board Member Downing."


Underwood said the selection committee considered three firms, and DTL Hawaii was chosen "because of their experience with working with HCDA (Hawaii Community Development Authority) on their Kakaako development plans that included the Kewalo Small Boat Harbor."

DOBOR would not immediately release the contract, which was awarded April 4. But DTL advertises that it "helps businesses, governments, organizations, and communities navigate change" and "moves clients from where they are to where they need to be."

Community concerned

DTL's ties to WCIT and that company's involvement in the Kewalo Harbor redevelopment has exacerbated fear from some community members about DOBOR's latest attempt at a public-private partnership.

"Frankly, I find this appalling," said Waikiki Neighborhood Board Chairman Bob Finley. "For the community's sake, this deserves a deeper look."

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Community skepticism about the future of the public recreational area already had been heightened since the state broadened the harbor's redevelopment options through Act 197 and HRS 171-6(19), making it possible for a public-private partnership to build virtually anything that is allowed in densely populated Waikiki.

"Way back then I couldn't figure out why Donovan Dela Cruz, a senator from Wahiawa, would be so interested in our harbor," said Ilikai resident Nancy Mueeting. "Just recently I learned that he's involved with DTL. It certainly looks like he's using the bill to promote his own company."

Similar frustration caused some attendees to walk out of DTL's Dec. 7 community meeting. Some left without leaving feedback on what redevelopment they'd like to see for the Ala Wai Small Boat Harbor, including on a 112,580-square-foot tract where the harbor office and a triangular paid parking lot now sit; a 38,369-square-foot tract that fronts Ala Moana Boulevard near the Waikiki Prince Hotel; and on a 15,199-square-foot tract where a fuel dock once stood.

A few skeptical attendees said they still had lingering distrust over the passage of Act 197, which was supported by Dela Cruz and passed despite a plethora of largely negative public testimony. Others pointed to dissatisfaction with the state's first attempt at a public-private partnership with Honey Bee USA, which fell apart last year. The developer went bankrupt and shorted the state at least \$500,000 in uncollected rent and fees, leaving the community without harbor services.

Sam Monet, who has lived in the Ala Wai Small Boat Harbor for more than 20 years, said he didn't support the Honey Bee USA project and has grown increasingly disenchanted as new revelations about potential conflicts of interest with DTL employees and the tie-in to Kakaako developers have surfaced.

"Every place you look, you see all these ties. Basically, DTL got paid nearly \$100,000 of our money to sell us a bill of goods,"

TOP STORIES



i Our Privacy Policy has been updated. By continuing to use our site, you are acknowledging and agreeing to our updated [Privacy Policy](#) and our [Terms of Service](#). I Agree **X**

Exhibit Z

DAVID Y. IGE
GOVERNOR



CLARE E. CONNORS
ATTORNEY GENERAL

DANA O. VIOLA
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
Land and Transportation Division
Kekuanaoa Building, Room 300
465 S. KING STREET
HONOLULU, HAWAII 96813
(808) 587-2992

October 25, 2019

Donald H. Amano, Esq.
Office of Information Practices
No. 1 Capitol District Building
250 S. Hotel St., Suite 107
Honolulu, HI 96813

Re: Request for Assistance to Access Records (U RFA-P 20-25)

Dear Mr. Amano:

My office received a request for assistance from DLNR's Division of Boating and Ocean Recreation ("Boating") to a complaint made by Mr. Erik Rask to the Office of Information Practices (OIP) regarding a UIPA request ("Request") that he made to the Boating Division on May 23, 2019 and initially acknowledged by Boating on June 7, 2019.

A. Actions taken by Boating in Response to Erik Rask's UIPA Request

In accordance with his request, 206 pages of the DTL Community Engagement Plan containing interactions between Boating consultant DTL, LLC and Ala Wai Small Boat Harbor stakeholders were provided to Mr. Rask on September 13, 2019. The pages were provided by creating a SharePoint Online link to a State Microsoft OneDrive directory containing the file requested Bates stamped material. See attached email fr. Meghan Statts dated 10/16/19 (Clifford Inn provided folder to Rask on September 13, 2019; acknowledged by Rask on September 14, 2019).

The original 256 publication from which the 206 pages was extracted was printed to pdf form, separated and Bates stamped, before uploading to a OneDrive directory. A further 45-page report that contained the substantial findings of community engagement was already on the Boating website, and was not requested by Mr. Rask.

An additional 50 pages of email records and attachments were reviewed, segregated, and partly redacted¹ and provided to Mr. Rask on October 22, 2019, prior to your letter

¹ Before our office received your October 23, 2019 letter, Mr. Rask (also on October 22, 2019) asked for an unredacted copy of two email records contained in the additional 50 pages sent to him on October 22, 2019. We reconsidered and provided him with copies with only redacted personal contact information on October 24, 2019.

RECEIVED BY
OFF OF INFORMATION PRACTICES
OCT 25 2019

Mr. Donald H. Amano
Re: Erik Rask UIPA Request (U RFA-P 20-25)
October 25, 2019
Page 2

requesting response to Mr. Rask's complaint that DOBOR "completely failed to comply" with his UIPA request. See emails dated 10/22/19 fr. no-reply@sharepointonline.com indicating a link was shared with Rask; dated 10/23/19 fr. Clifford Inn with Rask's request for unredacted records.

At this stage of the increment, the actual time of review and segregation (approximately 3 hours and 42 minutes) is in line with the Revised Notice to Requester which estimated 3.75 hours. The number of copies supplied (256 pages) exceeds the 50 pages initially estimated in the revised notice. The Revised Notice to Requester noted that "Appendices E-O are available on DOBOR's website. If hard copies are still requested, we can revise this Notice to include those costs/fees." No response was received from Mr. Rask, so the 206 pages containing stakeholder statements was provided to Mr. Rask via OneDrive directory.

By our estimate, Mr. Rask presently owes Boating a balance of the amount stated in the Revised Notice to Requester before a further increment is worked on.

B. Time Spent in Correspondence with Requester Erik Rask

A substantial amount of time and effort was consumed in correspondence with Mr. Rask about his Request due to the lack of drafted preciseness in the scope and nature of records sought. Later emails from him included requests to speak with an Attorney General, and then threats of lawsuit.

After acknowledging his Request, on June 24, 2019, Boating sent its initial Notice to Requester indicating that incremental disclosure would occur because of extenuating circumstances requiring consultation, extensive agency efforts, and additional time required to avoid unreasonable interference with other statutory duties and functions. The initial Notice stated that prepayment of \$32.65 was required.

1. Time Spent in Clarification of Request

Although a "waiver of fees in the public interest" was requested by Mr. Rask, no explanation justifying the waiver was given so a one-time fee waiver of \$30 was given.

In order to effectively answer the request for records, Boating (via Clifford Inn) sent, an accompanying letter to the Notice which asked Mr. Rask for further clarification because:

- 1) his request erroneously stated he wished documents related to a request for proposals (RFP) regarding the Ala Wai Small Boat Harbor issued "April 10, 2019;"
- 2) his request referred to "minutes" of "any meetings relating to ... RFP issued April 10, 2019, without regard to when such meeting(s) were held;

- 3) he requested all documents and communications re: the selection committee related to the RFP, without regard to when "created, sent or received."

First, if taken literally, no records were responsive to Mr. Rask's original request as the RFP was actually issued on April 5, 2019. But to facilitate the request, clarification was sought with the caveat that an amended notice to requester would likely follow to reflect any changes in estimated fees and costs.

Second, while the Request expressly stated that "**minutes**" were sought from any Boating meetings, meetings in which meeting minutes are kept are largely limited to Sunshine meetings of the Land Board in which Boating participates but generally is not a record kept by Boating Division. Instead Mr. Rask's clarification significantly expanded the scope of the Request to any "notes" or "summaries" re: the RFP from any interaction (meeting) whether between Boating staff or with third parties; and any Boating "hired consultant" (i.e., inclusive of agents or independent contractors) with either Boating or third parties, apparently without regard to whether Boating Division maintains such records. The clarification included a list of particular documents sought from the appendices of a report prepared by Boating consultant DTL, LLC.

Finally, Mr. Rask's clarification of the third portion to his request first stated that records were sought without limitation as to person or time as long as in regard to DOBOR's RFP "Selection Committee" and sought all documents and communications on the committee selection process but then admonished Boating that

DOBOR knows who was tasked with determining which individuals or entities would act as the members of "Selection Committee" charged with selection of developer(s), and DOBOR can therefore limit its search for responsive documents based on its own knowledge of where responsive documents and communications are likely to be found.

2. Revision of Search Parameters and Estimation of Fees/Costs

Based on Mr. Rask's June 25, 2019 clarification, Boating addressed and revised the scope and analysis of records withheld; sought out and reassessed Boating staff's estimates of search time and parameters; again indicated that incremental disclosure is appropriate due to extenuating circumstances and recalculated the estimated fees and costs of the first increment. The revised estimated prepayment requested in the July 10, 2019 Revised Notice to Requester was \$34.75.

Checks were periodically made on whether Mr. Rask had made the required prepayment. Three weeks later, after speculation that he may have abandoned the Request, a

Mr. Donald H. Amano
Re: Erik Rask UIPA Request (U RFA-P 20-25)
October 25, 2019
Page 4

check from Mr. Rask was received on July 31, 2019. In the interim, several key staff became unavailable due to vacation plans or other off-island commitments, such that Boating could not immediately respond to accommodate the required search.

B. Multiple UIPA Requests Submitted

1. Requester Rask submitted a prior UIPA request

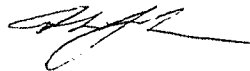
Mr. Rask is apparently an Ala Wai harbor tenant. At the time this three-part UIPA request was made, Boating had also received and a UIPA request from Erik Rask regarding records for a failed electrical contract in the Ala Wai Small Boat Harbor. The request for electrical contract records pre-dated this UIPA request, and Boating was also processing that request.

2. Other Requesters for Related Ala Wai RFP Documents

At the same time as Mr. Rask's request, Boating was also processing multiple UIPA requests for similar materials about the Ala Wai Small Boat Harbor Request for Proposals (RFP) which process had been ongoing to date. At least one UIPA request involving the Ilikai AOAQ was multi-incremental for RFP materials. That request predated Mr. Rask's request by several months. Another contemporaneous UIPA request was from "Scott Murdoch" also for Ala Wai Small Boat Harbor RFP materials.

If you require additional information regarding Boating Division's compliance with Mr. Rask's UIPA request, please feel free to contact me at 587-2992.

Sincerely,



Colin J. Lau
Deputy Attorney General

Enclosures:

- Notice to Requester (Revised) – highlighted
- Oct. 16, 2019 email chain fr. Meghan Statts – highlighted
- Oct. 22, 2019 email fr. sharepointonline link to OneDrive Directory [with Rask]
- Oct. 22, 2019 email to Clifford Inn re: accounting of time spent
- Oct. 23, 2019 email fr. Clifford Inn with email fr. Rask, redacted attachment

NOTICE TO REQUESTER (Revised)

TO: Erik A. Rask, earask@gmail.com
(Requester's name)

FROM: State of Hawaii, DLNR, Division of Boating and Ocean Recreation
Contact Person: Clifford Inn, 587-1966, Clifford.G. Inn.@Hawaii.gov
(Agency, and agency contact person's name, telephone number, & email address)

DATE THAT THE RECORD REQUEST WAS RECEIVED BY AGENCY: May 23, 2019,
June 25, 2019 (clarification)

DATE OF THIS NOTICE: July 10, 2019

GOVERNMENT RECORDS YOU REQUESTED (attach copy of request or provide brief description below):

1. Communications to Ed Underwood or Meghan Statts Jan. 1, 2018 to May 23, 2019 re: Request for Proposals for Development of Ala Wai Small Boat Harbor issued April 10, 2019 ("RFP")
2. Minutes (inclusive of all resultant notes) of any meetings relating to DOBOR's RFP issued April 10, 2019, without regard to when held, including consultant DTL and meetings held with entities/organizations: Waikiki Neighborhood Board, Waikiki Improvement Association, Waikiki Yacht Club, Hawaii Yacht Club, Waikiki Beach Activities Hilton, Illikai [sic] AOA, Illikai [sic] Marina, Makai Society, the Hilton, the Modern Honolulu, Prince Hawaii, Illikai [sic] Hotel, Save Our Surf, including summaries and/or notes attache to December 2017 DTL Final Report as Exhibit "E" through "O", any notes or summaries of any other meetings that relate to the RFP whether or not any formal "minutes" are available.
3. All documents relating to RFP Selection Committee, all dates, sent or received - without limitation to DOBOR personnel involved, and concerning the process by which members of the committee were selected.
4. [copy of clarification letter attached]

THIS NOTICE IS TO INFORM YOU THAT YOUR RECORD REQUEST:

- Will be granted in its entirety.
- Cannot be granted. Agency is unable to disclose the requested records for the following reason:
- Agency does not maintain the records. (HRS § 92F-3)
 - Other agency that is believed to maintain records: _____
 - Agency needs further clarification or description of the records requested. Please contact the agency and provide the following information: _____
 - Request requires agency to create a summary or compilation from records, but requested information is not readily retrievable. (HRS § 92F-11(c))
- Will be granted in part and denied in part, **OR** Is denied in its entirety
- Although the agency maintains the requested records, it is not disclosing all or part of them based on the exemptions provided in HRS § 92F-13 and/or § 92F-22 or other laws cited below.
(Describe the portions of records that the agency will not disclose.)

<u>RECORDS OR INFORMATION WITHHELD</u>	<u>APPLICABLE STATUTES</u>	<u>AGENCY JUSTIFICATION</u>
<u>Attorney-Client Communications (e.g., RFP (emails, meeting notes to Ed Underwood or Meghan Statts - Jan. 1, 2018 to May 23, 2019; & re: RFP Selection Committee to DOBOR</u>	<u>HRS ch. 626, Rule 503; HRS § 92F-13(3) & (4)</u>	<u>Privileged confidential communications between Attorney General's office & DOBOR</u>
<u>Redacted personal information & CBI from</u>	<u>HRS § 92F-14</u>	<u>Significant privacy interests incl. those</u>

all emails, telephone messages, applications, information (incl. RFP selection committee)	§ 92F-13(3)	contained in potentially unsuccessful proposer's confidential business information (CBI)
Meeting minutes, notes, etc. re: RFP	HRS § 92F-3	DOBOR generally does not maintain meeting minutes re: sunshine meetings nor DTL's meetings nor have a contractual relationship allowing DOBOR access to meeting minutes, notes, etc. held by contractor DTL re: Ala Wai RFP
Appendices E-O of DTL report fr. meetings with stakeholders		Appendices E-O are available on DOBOR's website. If hard copies are still requested, we can revise this Notice to include those costs/fees.
Communications re: prospective or actual entities/persons with interest in RFP including communications re: RFP selection committee; confidential info re: selection committee members	HRS § 92F-13(3); § 103D-303(d); § 92F-14	Frustration of legitimate government function. Disclosure of offerors allows access to/ between offerors, interfering with and jeopardizing the integrity of the selection process. Also, please note that certain submittals and other documents that fit this description have been made available on the DOBOR website. If hard copies are required, please inform us.

REQUESTER'S RESPONSIBILITIES:

You are required to (1) pay any lawful fees and costs assessed; (2) make any necessary arrangements with the agency to inspect, copy or receive copies as instructed below; and (3) provide the agency any additional information requested. If you do not comply with the requirements set forth in this notice within 20 business days after the postmark date of this notice or the date the agency makes the records available, you will be presumed to have abandoned your request and the agency shall have no further duty to process your request. Once the agency begins to process your request, you may be liable for any fees and costs incurred. If you wish to cancel or modify your request, you must advise the agency upon receipt of this notice.

METHOD & TIMING OF DISCLOSURE:

Records available for public access in their entireties must be disclosed within a reasonable time, not to exceed 10 business days from the date the request was received, or after receipt of any prepayment required. Records not available in their entireties must be disclosed within 5 business days after this notice or after receipt of any prepayment required. HAR § 2-71-13(c). If incremental disclosure is authorized by HAR § 2-71-15, the first increment must be disclosed within 5 business days of this notice or after receipt of any prepayment required.

Method of Disclosure:

- Inspection at the following location: _____
- As requested, a copy of the record(s) will be provided in the following manner:
 - Available for pick-up at the following location: _____
 - Will be mailed to you.
 - Will be transmitted to you by other means requested: _____

Timing of Disclosure: All records, or the first increment if applicable, will be made available or provided to you:

- On _____, 20____.
- After prepayment of 50% of fees and 100% of costs, as estimated below.

For incremental disclosures, each subsequent increment will be disclosed within 20 business days after:

- The prior increment (if one prepayment of fees is required and received), or
 Receipt of each incremental prepayment, if prepayment for each increment is required.

Records will be disclosed in increments because the records are voluminous and the following extenuating circumstances exist:

- Agency must consult with another person to determine whether the record is exempt from disclosure under HRS chapter 92F.
 Request requires extensive agency efforts to search, review, or segregate the records or otherwise prepare the records for inspection or copying.
 Agency requires additional time to respond to the request in order to avoid an unreasonable interference with its other statutory duties and functions.
 A natural disaster or other situation beyond agency's control prevents agency from responding to the request within 10 business days.

ESTIMATED FEES & COSTS AND PAYMENT:

FEES: For personal record requests under Part III of chapter 92F, HRS, the agency may charge you for its costs only, and fee waivers do not apply.

For public record requests under Part II of chapter 92F, HRS, the agency is authorized to charge you fees to search for, review, and segregate your request (even if a record is subsequently found to not exist or will not be disclosed in its entirety). The agency must waive the first \$30 in fees assessed for general requesters, OR in the alternative, the first \$60 in fees when the agency finds that the request is made in the public interest. Only one waiver is provided for each request. See HAR §§ 2-71-19, -31 and -32.

COSTS: For either personal or public record requests, the agency may charge you for the costs of copying and delivering records in response to your request, and other lawful fees and costs.

PREPAYMENT: The agency may require prepayment of 50% of the total estimated fees and 100% of the total estimated costs prior to processing your request. If a prepayment is required, the agency may wait to start any search for or review of the records until the prepayment is received by the agency. Additionally, if you have outstanding fees or costs from previous requests, including abandoned requests, the agency may require prepayment of 100% of the unpaid balance from prior requests before it begins any search or review for the records you are now seeking.

The following is an itemization of what you must pay, based on the estimated fees and costs that the agency will charge you and the applicable waiver amount that will be deducted:

For public record requests only:

Fees: Search	Estimate of time to be spent: <u>2.20</u> hours (\$2.50 for each 15-minute period)	\$ <u>22.00</u>
Review & segregation	Estimate of time to be spent: <u>3.75</u> hours (\$5.00 for each 15-minute period)	\$ <u>75.00</u>
Fees waived	<input type="checkbox"/> general (\$30), OR <input type="checkbox"/> public interest (\$60) (Only one waiver per request)	<\$ <u>30.00</u> >
Other	_____	\$ _____
	(Pursuant to HAR §§ 2-71-19 & 2-71-31)	
Total Estimated Fees:		\$ 67.00

For public or personal record requests:

Costs: Copying	Estimate of # of pages to be copied: <u>50</u>	\$ <u>2.50</u>
	(@ \$ <u>0.05</u> per page, pursuant to HRS § 92-21)	
Delivery	Postage	\$
Other	_____	\$
Total Estimated Costs:		\$ 2.50

TOTAL ESTIMATED FEES AND COSTS from above: \$ 69.50

The estimated fees and costs above are for the first incremental disclosure only. Additional fees and costs, and no further fee waivers, will apply to future incremental disclosures.

PREPAYMENT IS REQUIRED (50% of fees + 100% of costs, as estimated above) \$ 34.75

UNPAID BALANCE FROM PRIOR REQUESTS (100% must be paid before work begins) \$

TOTAL AMOUNT DUE AT THIS TIME \$ 34.75

Payment may be made by: cash
 personal check payable to _____
 other _____

For questions about this notice or the records being sought, please contact the agency person named at the beginning of this form. Please note that the Office of Information Practices (OIP) does not maintain the records of other agencies, and a requester must seek records directly from the agency it believes maintains the records. If the agency denies or fails to respond to your written request for records or if you have other questions regarding compliance with the UIPA, then you may contact OIP at (808) 586-1400, oiip@hawaii.gov, or 250 South Hotel Street, Suite 107, Honolulu, Hawaii 96813.

Lau, Colin J

From: Statts, Meghan L
Sent: Wednesday, October 16, 2019 6:28 AM
To: Inn, Clifford G; Underwood, Ed R; Lau, Colin J
Subject: FW: RFP UIPA—Inn, Clifford G shared the folder "RASK 091019" with you.

Cliff and Colin,

What other documents is he waiting for?

Meghan

From: Erik Rask <earask@gmail.com>
Sent: Tuesday, October 15, 2019 7:48 PM
To: Inn, Clifford G <clifford.g.inn@hawaii.gov>
Cc: Underwood, Ed R <ed.r.underwood@hawaii.gov>; Statts, Meghan L <meghan.l.statts@hawaii.gov>; Case, Suzanne D <suzanne.case@hawaii.gov>
Subject: Re: RFP UIPA—Inn, Clifford G shared the folder "RASK 091019" with you.

Clifford,

Be advised that this complete disregard for the UIPA request submitted many months ago and for which DOBOR has already cashed the check is not going to go on much longer. I will file a law suit to compel DOBOR's UIPA compliance if it does not produce all responsive documents by October 29, 2019. If you wish to discuss over the phone, my number is 286-1577.

Best,
Erik

On Mon, Sep 16, 2019 at 11:43 AM Inn, Clifford G <clifford.g.inn@hawaii.gov> wrote:
yes

From: Erik Rask <earask@gmail.com>
Date: Saturday, September 14, 2019 at 8:24 AM
To: Clifford Inn <Clifford.G.Inn@hawaii.gov>
Subject: Re: RFP UIPA—Inn, Clifford G shared the folder "RASK 091019" with you.

Received the document "community engagement plan." Are there more docs forthcoming for the RFP UIPA?

On Sep 13, 2019, at 15:12, Inn, Clifford G <clifford.g.inn@hawaii.gov> wrote:

Here's the folder that Inn, Clifford G shared with you.

<AttachedImage> This link only works for the direct recipients of this message.

<AttachedImage> RASK 091019

Open

<AttachedImage>

<AttachedImage>

Sender will be notified when you open this link for the first time.

Microsoft respects your privacy. To learn more, please read our [Privacy Statement](#).
Microsoft Corporation, One Microsoft Way, Redmond, WA 98052

Lau, Colin J

From: no-reply@sharepointonline.com
Sent: Tuesday, October 22, 2019 10:57 AM
To: Lau, Colin J
Subject: Inn, Clifford G (clifford.g.inn@hawaii.gov) has created a sharing link to "Rask 00207-00256"

Inn, Clifford G (clifford.g.inn@hawaii.gov) has created a sharing link to "Rask 00207-00256"

 Rask 00207-00256
Last modified 10/22/2019

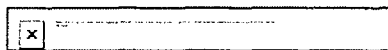
[Open in OneDrive](#)

[Remove Access](#)

When and where did this happen

Date: Tuesday, October 22, 2019 1:57 PM
Browser: Firefox
Operating System: Macintosh

You are receiving this information because someone shared a file from your OneDrive. If you don't want people to be able to access this item, remove the link.



Privacy Statement
Microsoft Corporation, One Microsoft Way, Redmond, WA 98052

Lau, Colin J

From: Lau, Colin J
Sent: Tuesday, October 22, 2019 11:55 AM
To: Inn, Clifford G
Subject: timesheet for Rask UIPA request

So far I've logged 222 minutes in segregation time for this first increment (256 pp provided), which translates to 3:42 to date.

According to our billing estimate in the Notice to Requester (Revised), we anticipated 3.75 hours of segregation time, 2.20 hours of search time, and 50 pages to be copied. Prepayment was \$34.75 for an anticipated bill of \$69.50.

I don't know how much time was spent on search time by DOBOR, but suspect it might not have been the full 2.20 hours.

Should we stop here for the increment to allow him to pay the balance, or should I keep going? I have maybe 130 more files to review from "Rask 190822". We would need to inform him of the estimate for the next increment (or don't charge him if it's being provided to AOAO Ilikai).

Colin J. Lau
Dept. of the Attorney General, Land/Trans Division
465 S. King St., Suite 300
Honolulu, Hawaii 96813
Phone: 808 587-2991 Fax: 808 587-2999

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure, or distribution by unintended recipients is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Lau, Colin J

From: Inn, Clifford G
Sent: Wednesday, October 23, 2019 1:14 PM
To: Lau, Colin J
Subject: FW: Inn, Clifford G shared the folder "Rask 00207-00256" with you.
Attachments: Re_ Proposed 13-234 Rule Changes.pdf

Here's what he sent in response. How do you want to proceed?

c

From: Erik Rask <earask@gmail.com>
Date: Tuesday, October 22, 2019 at 11:38 AM
To: Clifford Inn <Clifford.G.Inn@hawaii.gov>
Subject: Re: Inn, Clifford G shared the folder "Rask 00207-00256" with you.

Clifford,

Received, thank you. I have questions below.

First, who is the person responsible for applying redactions to the documents you are producing?


Second, what is the basis for the redactions to the attached document? Attorney client privilege applies only to communications between a client and attorney for the purpose of obtaining legal advice. That is not the case here. The privilege is also waived if the communication is disclosed to a third party, which is the case here. Therefore, please produce this document in unredacted form, and do the same with all non-privileged documents going forward. Communications should not be redacted simply to hide information that DOBOR does not wish to have public.

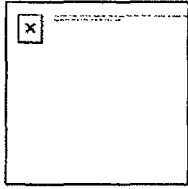
Please have your attorney call me if you cannot comply with the above.

Best,
Erik
808-286-1577

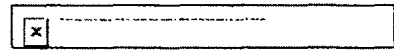
On Tue, Oct 22, 2019 at 10:57 AM Inn, Clifford G <clifford.g.inn@hawaii.gov> wrote:

This is another incremental installment. There are more to come.

 This link only works for the direct recipients of this message.



Rask 00207-00256



Sender will be notified when you open this link for the first time.

Microsoft respects your privacy. To learn more, please read our [Privacy Statement](#).
Microsoft Corporation, One Microsoft Way, Redmond, WA 98052

From: [September Man](#)
To: [Underwood, Ed R](#)
Cc: [Tashima, Todd H](#)
Subject: Re: [REDACTED]
Date: Thursday, January 11, 2018 11:10:37 AM

Thank you, Mr. Underwood. Your prompt reply is sincerely appreciated as is the invitation to ask other relevant questions. I do have follow-up questions... I'll note them in red below:

[REDACTED]

[REDACTED]

2.) Ala Wai harbor has issued an RFP for what is referred to as DLNR's "master plan" for upgrading(?) the harbor. I am encouraged by the existence of such a plan for Ala Wai, and wonder if Keehi Harbor or any of the other harbors have such a master plan in the works. It would seem beneficial to first build a "master plan" for the entire state-owned harbor facilities and (using it as a guide) drill down to each specific harbor. Does a state-wide master plan exist for DOBOR as a whole? If so, where can it be viewed? If not, is one contemplated any time soon?

There have been numerous master plans done over the years. There is no state-wide master plan and we are not contemplating doing one. Each harbor is different so we are addressing them on a case by case basis.

Forgive me, but the "the squeaky wheel approach" seems unlikely. If not a master plan, surely there is at least a list (or flow chart) of anticipated CIP in some order of importance? Would this list fall into the same category as the appraisal? If so, how would I make a formal request for this prioritized list and anticipated CIP?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Regards,
Alan McConnell

From: Underwood, Ed R <ed.r.underwood@hawaii.gov>
Sent: Wednesday, January 10, 2018 7:49 PM
To: September Man
Cc: Tashima, Todd H
Subject: RE: [REDACTED]

Aloha Mr. McConnell,

I did not receive a letter forwarded by Chairperson regarding your concerns [REDACTED]
[REDACTED] I am more than happy to respond to your questions below and in the future please feel free to contact us with any other concerns or questions you may have. I will respond below in blue.

Thank you,
Ed Underwood

From: September Man [REDACTED]
Sent: Wednesday, January 10, 2018 11:07 AM
To: Underwood, Ed R <ed.r.underwood@hawaii.gov>
Subject: [REDACTED]

Mr. Underwood,

[REDACTED]

2.) Ala Wai harbor has issued an RFP for what is referred to as DLNR's "master plan" for upgrading(?) the harbor. I am encouraged by the existence of such a plan for Ala Wai, and wonder if Keehi Harbor or any of the other harbors have such a master plan in the works. It would seem beneficial to first build a "master plan" for the entire state-owned harbor facilities

and (using it as a guide) drill down to each specific harbor. Does a state-wide master plan exist for DOBOR as a whole? If so, where can it be viewed? If not, is one contemplated any time soon?

There have been numerous master plans done over the years. There is no state-wide master plan and we are not contemplating doing one. Each harbor is different so we are addressing them on a case by case basis.

[REDACTED]

Regards,
Alan McConnell
[REDACTED]

VERIFICATION OF COMPLAINT AND CERTIFICATION

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

I, ERIK RASK, proceeding *pro se*, verify, certify, and declare, under penalty of perjury under the laws of the State of Hawaii, as follows:

1. I am the Plaintiff in this civil proceeding, 1CCV NO. 20-0000016.
2. I drafted the above-entitled civil Verified Amended Complaint in its entirety and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief after a reasonable inquiry.
3. I believe that this civil Verified Amended Complaint is well grounded in fact and law.
4. This civil Verified Amended Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s) named in the Verified Amended Complaint.
5. I have filed this civil Verified Amended Complaint in good faith and solely for the purposes set forth in it.
6. Exhibits "A" through "Z" attached to the Verified Amended Complaint are true and correct copies of the original documents.
7. Except for clearly indicated redactions where appropriate, I have not altered, changed, modified, or fabricated any exhibit to the Verified Amended Complaint.
8. If called to testify to the facts set forth in the Verified Amended Complaint and the authenticity of the exhibits thereto, I could and would competently do so.

DATED: Honolulu, Hawaii, January 16, 2020.



ERIK RASK
Plaintiff, pro se

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ERIK RASK,

Plaintiff,

v.

DEPARTMENT OF LAND AND NATURAL
RESOURCES, STATE OF HAWAII; BOARD
OF LAND AND NATURAL RESOURCES,
STATE OF HAWAII; SUZANNE CASE,
DIRECTOR OF THE DEPARTMENT OF
LAND AND NATURAL RESOURCES AND
CHAIRPERSON OF THE BOARD OF LAND
AND NATURAL RESOURCES, STATE OF
HAWAII; DIVISION OF BOATING AND
OCEAN RECREATION, STATE OF
HAWAII; ED UNDERWOOD,
ADMINISTRATOR, DIVISION OF
BOATING AND OCEAN RECREATION,
STATE OF HAWAII; MEGHAN STATTS,
OAHU DISTRICT MANAGER, DIVISION
OF BOATING AND OCEAN RECREATION,
STATE OF HAWAII; CLIFFORD INN,
PROGRAM SPECIALIST, DIVISION OF
BOATING AND OCEAN RECREATION,
STATE OF HAWAII,

Defendants.

CIVIL NO. 1CCV NO. 20-0000016

SUMMONS

SUMMONS

To the above-named Defendants:

YOU ARE HEREBY SUMMONED and required to file with the Court and serve upon Plaintiff, whose mailing address is 1741 Ala Moana Boulevard, #19, Honolulu, Hawaii 96815, an answer to the Verified Amended Complaint which is herewith served upon you. This action must be taken within twenty (20) days after service of this Summons upon you, exclusive of the date of service.

Pursuant to Rule 4(b) of the Hawaii Rules of Civil Procedure, this Summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general

public, unless a Judge of the District of Circuit Courts permits, in writing on the Summons, personal delivery during those hours.

A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.

DATE ISSUED JAN 16 2020	CLERK <i>n. Aray</i>	
I do hereby certify that this is a full, true, and correct copy of the original on file in this office.	CIRCUIT COURT CLERK	

