

Coon Brothers, Inc in Strong Support of the Continuation of RP 38 at Manele Small Boat Harbor, TMK (2) 4-9-017:006 (Por.): AND Notice of Exemption from Preparation of an EA under Chapter 343, HRS Title 11, Chapter 200.1 HRS.

October 25, 2019

Suzanne Case, Chairperson
Board of Land and Natural Resources
1151 Punchbowl Street; Room 131
Honolulu, HI 96813

RE: Coon Brothers, Inc. Testimony on Item J-1

Dear Chair Case and Members of the Board of Land and Natural Resources (the “Board”):

Coon Brothers, Inc. kindly asks that the Board approve this six month Continuance of Revocable Permit No. 38, and Notice of Exemption Under Chapter 343. This should provide enough time to finalize the lease negotiations or undertake arbitration proceedings as required under HRS 171-17,

The further purpose of this testimony is to provide an update to the Board regarding the status of negotiations with DOBOR regarding the lease. Keith Hunter of Dispute Prevention and Mediation was selected as a mediator and mediation was held on April 2, 2019. Since that time, Mr. Hunter has continued to facilitate negotiations.

During the mediation on April 2nd, the parties agreed that Sanford D. Goto of Sanford D. Goto, Inc. would provide a neutral appraisal, and Sanford Goto produced this report on May 6, 2019 (the “Neutral Appraisal”). The Neutral Appraisal concluded the annual market rent for fast land and submerged land is “a base rent of \$2,220 or a percentage rent of 3.0 percent, whichever is greater.” The Neutral Appraisal also concluded that “no additional rent is applicable to the loading dock.” The Neutral Appraisal stands in sharp contrast to the appraisal prepared for DOBOR by Brian Goto¹ of CBRE on May 2, 2017, as updated on December 10, 2019 (“CBRE Appraisal”). The CBRE Appraisal concluded that Coon Bros’ annual rent should be \$105,246 (\$3,996 for the land, and \$101,250 for the dock). Following the Neutral Appraisal, the parties have continued to exchange offers.

¹ Although Sanford Goto and Brian Goto have the same last name, it is Coon Bros’ understanding that they are not related.

On September 12, 2019, Coon Bros' authorized Mr. Hunter to convey an offer to DOBOR in an annual amount substantially more than the Neutral Appraisal. Coon Brothers also requested the following terms, each of which is explained in more detail below:

Escalation	15% increase every 10 years
Area	Loading dock, including 1,055 SF of fast land (portion of loading dock) and 4,225 SF of submerged land (adjacent to loading dock)
Term	35 years
Time of Use	Non-exclusive 24/7 use, with Coon Bros. making reasonable accommodation for other harbor users at its discretion.
First-Boat-In Provision	The first boat into the slip must be able to use Slip 24, and not be required to use the dock. (See HAR § 13-231-69)
Standard Terms and Conditions	Subject to review by Coon Bros.

To date, Coon Bros. has not received a response to this offer.

We want to resolve our negotiations with DOBOR as soon as possible. We have found it very difficult to get DOBOR to give us the assurances of the expected Terms of our proposed lease. It is impossible for us to come to a dollar amount settlement when we are not sure that the use terms will address our historical and current needs. We need DOBOR assurance that we are in fact negotiating for a 35 year lease and maintaining our historical vessel access to Slip 24. Once we have this assurance we can quickly come to settlement terms. We believe the Board could help with this.

Lease term.

With regard to the lease term, Coon Bros. takes strong exception to the DOBOR's proposal that the length of the lease be limited to the length of the Manele pavilion lease (B-93-02). The legislature specified a 35 year lease in its resolution, and BLNR also specified a 35 year lease by amending DOBOR's recommendation that the lease be limited to the term of the pavilion lease.

Trilogy Excursions has run multiple vessels loading and unloading passengers and supplies to and from Slip 24 since 1977. We expanded Slip 24 to include a loading dock at the entrance to Slip 24 in 1985. This entire area in RP38 was considered part of Slip 24 until quite recently when the FTA rebuilt the Trilogy Loading Dock. Subsequently the BLNR and the 2013 Legislature authorized the 35 year lease to Coon Brothers, Inc. of this area. The legislature specified and approved a thirty-five (35) year lease to Coon Brothers, Inc. in its Concurrent Resolution (S.C.R. NO. 158 S.D.2). Also, the Board stated in its March 22, 2013 meeting that the lease term should reflect the legislation.

Time of Use.

It is extremely important for us that the method of access to Slip 24 that we have historically used be maintained. We need 24/7 access and will continue to accommodate other vessels when they don't interfere with our operations.

Coon Bros. objects to DOBOR's continued efforts in the lease negotiations to limit its use of the dock from 6 am to 6 pm. This use limitation is nowhere included in the Neutral Appraisal. Current arrangements for dock use, where Coon Bros. allows reasonable use of the dock by others, are working well to facilitate efficient use of Manele Harbor. Coon Bros. infrequently uses the dock from 8 pm to 8 am, since commercial tour operations are generally during daytime hours, but there are rare occasions when Coon Bros. may need to make use of the dock during evening hours. Occasionally commercial tours require nighttime use of the dock for weddings or special events. Most importantly, though, the dock needs to be available to Coon Bros. during overnight hours because it is the only location where Coon Bros. has safe harbor for its vessels during storm events.

First-Boat-In Provision.

It is extremely important to Coon Bros. that the first boat to arrive at the harbor be able to use Slip 24, since this will facilitate efficient use of Slip 24 and the dock. Currently, DOBOR's Commercial Use Permit for Trilogy IV assigns that vessel to Slip 24. Previous iterations of DOBOR's use permits contained addendums that assigned particular Coon Bros. vessels to Slip 24, but allowed other Coon Bros. vessels to use that slip. DOBOR no longer includes those addendums. The restriction of Trilogy IV to use of Slip 24 presents operational issues for Coon Bros. when one of its other vessels is first to arrive in the harbor. If that other vessel is allowed to use Slip 24 and Trilogy IV can use the dock, operations can run smoothly. If the lease does not allow the first-arriving vessel the option of using Slip 24, when one of Coon Bros. other vessels is first to arrive in the harbor it must use the dock. Because the dock blocks access to Slip 24, when Trilogy IV arrives, Coon Bros. has to undock the first-arriving vessel, put Trilogy IV into Slip 24, then re-dock the first-arriving vessel. This undocking requirement presents unnecessary efficiency problems for Coon Bros.

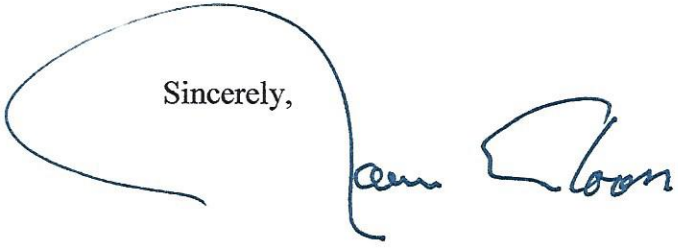
From its inception over 40 years ago until today access to Slip 24 has always been given the first Trilogy Vessel to arrive used Slip 24 and the other Vessels tie up behind that vessel on the Trilogy Loading Dock. Previous iterations of DOBOR's Use Permits accommodated this via addendums that assigned particular Coon Bros. Vessels access to Slip 24 when the Primary Slip Holder was absent from that berth. (13-231-69). This may be DOBOR's intent, but we need to see it in writing.

Standard Terms and Conditions.

Regarding standard terms and conditions, Coon Bros' offer subject to our review of standard terms and conditions. As requested on multiple occasions from DOBOR and its counsel, even before mediation began, we need to see a copy of what the state is proposing. A firm

offer cannot be conveyed not knowing what terms and conditions will apply, and it is our observation that those terms and conditions vary from lease to lease. That said, we are comfortable that if the standard terms and conditions are similar to those in the pavilion lease, Coon Bros. will be able to accept them.

Sincerely,

A handwritten signature in blue ink, appearing to read "James E. Coon". The signature is written in a cursive style with a large, sweeping initial "J" that loops back to the left.

James E. Coon, President