

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

November 30, 2012

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

PETITION OF GORDON LESLIE FOR THE ISSUANCE OF A REGULAR MOORING PERMIT FOR KEALAKEKUA BAY, HAWAII

BACKGROUND:

Hana Like, Inc. became incorporated in September 1979. Members cited in the Articles of Incorporation were Henry Andrew Leslie, Jr., Alfred Leslie, Charles Kealoha Leslie, and Henry Leslie III.

In 1991, the Board of Land and Natural Resources (Board) approved the request of the Division of State Parks to issue a Special Use (SUP) Permit to Hana Like, Inc. for the purpose of mooring two commercial fishing vessels in Kealakekua Bay. Section 13 of the SUP stated, "The word "PERMITTEE" as used herein shall include, whenever appropriate, the heirs, executors, administrators of the PERMITTEE. The PERMITTEE is not allowed to assign, transfer, or sell this permit under any condition whatsoever." (Exhibit A)

On July 1, 1991, the boating and coastal areas programs were transferred from the Department of Transportation to the Department of Land and Natural Resources. Act 272 provided that a management team be established to develop the appropriate transitional plans, rework position descriptions, review personnel classifications, develop an organizational structure, and attend to other administrative details so that the newly transferred functions and personnel can be initially operational on July 1, 1992. Subsequent to this action, the management jurisdiction for Kealakekua Bay, Hawaii, was transferred from the Division of State Parks to the newly created Division of Boating and Ocean Recreation (DOBOR). DOBOR then began to issue regular offshore mooring permits to Hana Like, Inc. based on the SUP that had previously been issued by the Board.

On April 13, 2007, the Hawaii District Manager, responded to a request from Michael J. Matsukawa, Attorney at Law, concerning the proposed transfer of the stock from Charles Leslie, Director of the Hana Like Inc., to Gordon Leslie. Mr. Matsukawa was informed that regular mooring permits were non-transferable and that the original SUP issued by the Board was also non-transferable. The request to transfer the regular mooring permit was denied.

Five years later, on May 9, 2012, Gordon Leslie submitted documents dated April 7, 2012 confirming the transfer of 100% of the stock of Hana Like, Inc. held by Charles Leslie to Gordon Leslie. On May 15, 2012, the Hawaii District Manager informed Charles Leslie, in writing, certified mail that Gordon Leslie had brought in documents regarding the transfer of stock of Hana Like, Inc. and that he was informed by harbor staff that the regular mooring permit could not be transferred. Charles Leslie was given an opportunity to rescind the transfer of stock in order to avoid the cancellation of the regular mooring permit. (Exhibit B).

On May 17, 2012, Charles Leslie informed the Hawaii District Manager by email that he had officially transferred all of the stock and ownership of Hana Like, Inc. to Gordon Leslie and had resigned his position as an officer of the company. He no longer had any involvement whatsoever with Hana Like, Inc. He stated that DOBOR do what they need to do with the mooring permit as he is no longer involved with it. (Exhibit C)

On May 21, 2012, the Hawaii District Manager informed Gordon Leslie, in writing, certified mail that based on the response of Charles Leslie the mooring permit which was assigned to Hana Like, Inc. would be terminated effective May 31, 2012 along with the cancellation of Charles Leslie's account. (Exhibit D)

A change of ownership resulted when Charles Leslie transferred 100% of the stock of Hana Like, Inc. to Gordon Leslie and based on the Hawaii Administrative Rules the mooring permit was terminated and the account cancelled. In addition, the SUP conditions initially approved by the Board prohibited the transfer of the permit. Furthermore, the Department of the Attorney General has previously advised in a case involving the transfer of ownership of a fishing corporation resulting in the recreational mooring permit expiring, that the new possessor, transferee, or owner had no right to use the space covered by the use permit. Mr. Gordon Leslie may assume ownership of Hana Like' Inc.; however, he is not entitled to the use of the recreational mooring permit.

RECOMMENDATIONS:

That the Board uphold the DOBOR's action to terminate the regular mooring permit and cancel the account assigned to Hana Like, Inc. for Kealakekua Bay, Hawaii, based on the facts that ownership of Hana Like, Inc. changed and assignment of the regular mooring permit would be contrary to Hawaii Administrative Rules, the SUP conditions initially issued by the Board, and the February 25, 2008 advice letter prepared by the Department of the Attorney General.

Respectfully submitted,



Edward R. Underwood
Administrator

Attachments

APPROVED FOR SUBMITTAL:



William J. Aila, Jr.
Chairperson and Member

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF STATE PARKS

SPECIAL USE PERMIT NO. SP-016

KNOW ALL MEN BY THESE PRESENTS:

THAT, effective this 1st day of June, 1991,
HANA LIKE, INC. whose address is R.R. 1, Box 180, Captain Cook, Hawaii
96704, County of Hawaii, State of Hawaii, hereinafter called the
"PERMITTEE", is permitted to have two (2) mooring sites within
Kealakekua Bay (Bay), South Kona, Island of Hawaii, State of Hawaii,
as delineated on Exhibit "A", attached hereto and made a part hereof,
which mooring sites are hereinafter referred to as the "PREMISES".

THIS SPECIAL USE PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

1. The term of this Special Use Permit is from June 1, 1991 up to and including May 31, 1992.
2. The PERMITTEE shall only use the PREMISES to moor two (2) company fishing vessels onto two (2) existing single point moorings; or if not approved by the Department of Transportation, to construct an approved mooring replacement(s).
3. The PERMITTEE shall pay to the Department of Land and Natural Resources, hereinafter called the "DEPARTMENT" as compensation for the use of the PREMISES, a monthly fee of \$1.00 per linear foot of vessel for each month's rent as set forth below. The compensation shall be paid within thirty (30) days after the end of the previous month of operation, and shall be paid at the office of the Division of State Parks, 75 Aupuni

EXHIBIT A

Street, Hilo, Hawaii 96720. Interest on any and all unpaid or delinquent rentals shall be at one percent (1%) per month.

Payments in arrears for more than a month may be cause to have the Permit cancelled. Mooring sites and/or vessels left at the site with arrears payments will be towed, stored, and/or disposed of in accordance with the law.

4. The PERMITTEE, upon the execution of this Permit, shall deposit with the DEPARTMENT, the sum of \$400.00 into an escrow fund to be used by the State in the event the PERMITTEE does not perform proper mooring maintenance. The whole or portion of this deposit will be returned to the PERMITTEE upon termination of this Permit.

The PERMITTEE shall also submit a performance bond of value equal to two (2) months rent.

5. The PERMITTEE shall observe and comply with all laws, ordinances, rules and regulations of the Federal, State, municipal or County governments relating to the operation of vessels and affecting the PREMISES or improvements thereon.
6. The PERMITTEE shall not make, permit or suffer, any waste, strip, spoil, nuisance or unlawful, improper or offensive use of the PREMISES.
7. The PERMITTEE at all times with respect to the PREMISES shall use due care for public safety and agrees to defend, hold harmless and indemnify the State of Hawaii from and against all claims or demands for damages, including claims for property damage, personal injury or death, arising on or about the PREMISES, or caused by any fire or explosion

- thereon, or growing out of, or caused by any failure on the part of the PERMITTEE to maintain the PREMISES in accordance with the terms and conditions of this Permit or caused by any act or omission of the PERMITTEE.
8. The DEPARTMENT does not warrant or represent that the PREMISES are safe or suitable for the purpose intended by the PERMITTEE.
 9. The PERMITTEE understands that there may be dangerous conditions existing in the area covered by this Permit and expressly agrees to assume the risk of personal injury, property damage, or for loss of life or property resulting from, or in any way connected with use of the PREMISES covered by the Permit.
 10. The PERMITTEE, at its own expense, shall procure a policy or policies of comprehensive public liability insurance in the sum of not less than Six Hundred Thousand Dollars (\$600,000) bodily injury and Five Hundred Thousand Dollars (\$500,000) for property damage per occurrence. The policy shall name the State of Hawaii as additional insured.

The PERMITTEE shall furnish the State of Hawaii with a certificate showing the policy to be initially in force and shall furnish a like certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the DEPARTMENT of any intention to cancel the policy sixty (60) days prior to the actual cancellation. The procuring of this policy shall not release or relieve the PERMITTEE of its responsibility under this Permit as set forth herein or limit the amount of its liability under this Permit.

11. The use and enjoyment of the PREMISES shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin or physical handicap.
12. In case the DEPARTMENT, the State of Hawaii, or any of its employees (herein collectively referred to as "PERMITTERS") shall, without any fault on their part, be made a party to any litigation commenced by or against the PERMITTEE, the PERMITTEE shall and will pay all costs and expenses incurred by or imposed on the PERMITTERS. Furthermore, the PERMITTEE shall and will pay all costs and expenses which may be incurred by or paid by the PERMITTERS in enforcing the covenants and agreements of this permit, in recovering possession of the PREMISES or in the collection of delinquent rental, taxes and any and all other charges.
13. The word "PERMITTEE" as used herein shall include, whenever appropriate, the heirs, executors, administrators of the PERMITTEE. The PERMITTEE is not allowed to assign, transfer, or sell this Permit under any conditions whatsoever.
14. Wherever used herein, the singular includes the plural, and the neuter gender includes the masculine and feminine genders, unless the context clearly requires otherwise.
15. The PERMITTEE agrees to present proof of Coast Guard certification for the vessels described in this permit to the DEPARTMENT, its officers or agents upon request.
16. No more than Two (2) commercial fishing vessels owned by the PERMITTEE will be moored at any one time under this Permit. The PERMITTEE shall assist the DEPARTMENT in monitoring any illegal moorings or anchorings within Kealahou Bay and report such unauthorized activities.
17. The PERMITTEE shall allow State personnel to board the vessels

- for inspection of the permit conditions.
18. The PERMITTEE shall maintain the moored vessels in a seaworthy and well-kept condition.
 19. The PERMITTEE shall obtain all permits from other government agencies as may be required. A copy of such permits to be sent to the Division of State Parks, 75 Aupuni Street, Hilo, Hawaii 96720 to be made part of the PERMITTEE's file.
 20. The PERMITTEE agrees that the mooring permit will automatically expire, if the vessel(s) is absent from its assigned site for more than fourteen (14) days, unless permission was obtained by the DEPARTMENT.
 21. The Permittee may surrender this Permit at any time upon giving the Department twenty-five (25) days' notice, in writing, prior to termination of this Permit.
 22. The Department may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) days prior to the revocation; provided, however, that in the event payment of rental is delinquent for a period of ten (10) days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) business days prior to the revocation.
 23. Should the PERMITTEE fail to vacate the premises upon the revocation of the permit, the DEPARTMENT may enter upon the PREMISES and remove and dispose of, at the PERMITTEE'S cost and expense, all vessels, equipment, materials, and/or personal property remaining on the PREMISES, and the PERMITTEE agrees to pay for all costs and expenses of removal and disposition.
 24. The PERMITTEE understands and agrees that this Permit is temporary in nature and shall not extend beyond May 31, 1992,

unless extended. The issuance of this Permit conveys no future rights or guarantees or in any way obligates the DEPARTMENT to issue future permits.

25. The PERMITTEE agrees to submit in writing two (2) months prior to the annual expiration of this Permit any extension request for consideration by the Board of Land and Natural Resources.
26. Prior to the issuance of the Permit, the PERMITTEE shall furnish the Division of State Parks, Hawaii District Office, with any documents as the Permit and Division may require.
27. The PERMITTEE shall not solicit business or customers within the Bay.
28. The PERMITTEE shall not permit its participants to possess, display, use/consume alcoholic beverages and illegal drugs within the Bay.
29. The PERMITTEE shall not discharge any waste of any kind into the waters of the Bay.
30. The PERMITTEE shall not repair or do maintenance work within the Bay, except for emergency repairs.
31. The PERMITTEE shall not allow any person or persons to occupy or to remain on board the vessels during the night hours or to allow other vessels to use the mooring sites, except during emergencies.
32. The PERMITTEE shall not obstruct or unreasonably interfere with the general public in their normal use of the Bay.

ANY VIOLATION of the conditions set forth hereinabove shall constitute cause for immediate termination of this Permit. This Permit does not give PERMITTEE any vested rights under this Permit other than for the period and under the conditions specified herein and the State expressly reserves the right not to renew this Permit for any reason whatsoever.

STATE OF HAWAII

Approved by the Board of
Land and Natural Resources
at its meeting held on

January 11, 1991

By W. P. Kelly
Chairperson and Member
Board of Land and Natural
Resources

And By T. C. Quinn
Member, Board of Land and
Natural Resources

The undersigned understands and agrees to the conditions of the Permit
as set forth hereinabove.

PERMITEE

By Elizabeth Leslie
Its Sec. - Lesons

APPROVED AS TO FORM

Alvin Watson
Deputy Attorney General

Dated: August 26, 1991

STATE OF HAWAII)
COUNTY OF HAWAII) ss

On this 13th day of Sept., 1991,
before me appeared Elizabeth Leslie

and _____ to me
personally known, who, being by me duly sworn, did say that they are
the Secretary and Treasurer
respectively of Hana-Like, Inc. and that the seal
affixed to the foregoing instrument is the corporate seal of said
corporation, and that said instrument was signed and sealed on behalf
of said corporation by authority of its Board of Directors, and the
said Secretary and
Treasurer

_____ acknowledged that they executed said
instrument as the free act and deed of said corporation.



Thomas G. Ahlers

Notary Public, State of Hawaii
My commission expires: 7/15/1995

WILLIAM ABERCROMBIE
GOVERNOR OF HAWAII



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

GUY KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

EDWARD S. UNDERWOOD
ADMINISTRATIVE
DIVISION OF BOATING AND OCEAN RECREATION

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

HAWAII DISTRICT OFFICE
74-380 KEALAKEHE PARKWAY
KAILUA-KONA, HAWAII 96740-2704

BOR-H 080.12

PHONE: (808) 327-3690

FACSIMILE: (808) 327-3675

May 15, 2012

Hana Like, Inc.
Mr. Charles K. Leslie
82-6276 Kahauloa Road
Captain Cook, HI 96704

COPY

Dear Mr. Leslie:

On May 9, 2012, Gordon Leslie brought in documents regarding the transfer of stock of Hana Like, Inc., from Charles Leslie to Gordon Leslie dated April 7, 2012.

Mr. Gordon Leslie was informed of the inability to do so since the permit is a recreational permit. If you refer to your Special Use Permit No. SP-016, number 13, it states: "The "PERMITTEE" is not allowed to assign, transfer, or sell this Permit under any conditions whatsoever." Please keep in mind that your Special Use Permit was for your fishing vessel and is not to be operated commercially.

In accordance with the Hawaii Administrative Rules, Section 13-231-13, whenever a permittee parts with possession or transfers the title to or interest in the vessel identified in the permit to another person by any arrangement, the use permit shall expire. We have attached a copy of the rules for your review.

Due to the amount of time that has lapsed since this transaction took place, we will not take any action in canceling your mooring permit today. You will need to provide us with a notarized letter from you that the intended transfer is null and void and reverts back to the original issuance no later than Friday, May 25, 2012. Please be aware that any further introduction of co-owners, transfers, etc., will result in termination of your mooring permit.

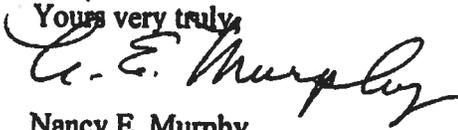
Enclosed you will find the documents Mr. Gordon Leslie left with our office.

Should you have any further questions please do not hesitate to contact our office. If you would like to meet with me to discuss further, please call to set up an appointment.

EXHIBIT B

Mr. Charles K. Leslie
May 15, 2012
Page 2

Yours very truly,



Nancy E. Murphy
Hawaii District Manager

Enc.

Cc: Gordon Leslie C/O Charles K. Leslie
Boating Administrator
Division of Conservation and Resource Enforcement
Harbor Agent
Account File

SENT BY CERTIFIED MAIL – RETURN RECEIPT REQUESTED



Hana Like Mooring Permit

Chuck Leslie

to:

nancy.e.murphy

05/17/2012 03:52 PM

Hide Details

From: Chuck Leslie <chuckleslie7@gmail.com>

To: nancy.e.murphy@hawaii.gov

Aloha Nancy -

Per our conversation of May 17, 2012, I am writing to let you know the status of my involvement with Hana Like, Inc.

I have officially transferred all of the stock and ownership of the company to Gordon Leslie, and have resigned my position as an officer of the company, too. I no longer have any involvement whatsoever with Hana Like, Inc.

Please do what you need to do with the mooring permit as I am no longer involved with it.

Please let me know if you have any questions. It has been a pleasure to work with you, Pat, Dan and all the staff for all of these years and I wish you the best.

**Mahalo nui loa,
Charles K. "Chuck" Leslie
82-6276 Kahauloa Rd.
Captain Cook, HI 96704
home (808) 328-0729
cell (808) 936-1620**

EXHIBIT C

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

GUY KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

EDWARD H. UNDERWOOD
ADMINISTRATOR
DIVISION OF BOATING AND OCEAN RECREATION

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

**HAWAII DISTRICT OFFICE
74-380 KEALAKEHE PARKWAY
KAILUA-KONA, HAWAII 96740-2704**

BOR-H 082.12

PHONE: (808) 327-3690 FACSIMILE: (808) 327-3675

May 21, 2012

Mr. Gordon Leslie
82-6012 Manini Beach Road
Ka'awaloa, Hawai'i 96704

Dear Mr. Gordon Leslie:

We have received a response from Mr. Charles Leslie of May 17, 2012, to our letter of May 15, 2012.

Mr. Charles Leslie has officially informed us that he no longer has any involvement whatsoever with Hana Like, Inc., as he has transferred all of the stock and ownership of the company to you, Gordon Leslie. Mr. Charles Leslie also resigned from his position as an officer of the company.

Please be advised that the mooring permit, H 6319, which was assigned to Hana Like, Inc., will be terminated effective May 31, 2012 along with the cancellation of Mr. Charles Leslie's account.

As stated in my letter of May 15, 2012, you were informed that you would not be able to take over the mooring permit. Also, the Special Use Permit No. SP-016 states: "The "PERMITTEE" is not allowed to assign, transfer, or sell this Permit under any conditions whatsoever.

In accordance with the Hawaii Administrative Rules, Section 13-231-13, whenever a permittee parts with possession or transfers the title to or interest in the vessel identified in the permit to another person by any arrangement, the use permit shall expire. We have attached a copy of the rules for your review.

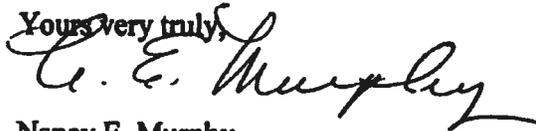
Please be advised that the vessel, HA 2616 CF, must be removed from Kealakekua Bay and relocated to private property as soon as possible. Failure to do so may result in impoundment of the vessel and fines. We hope this action will not be necessary.

EXHIBIT D

Mr. Gordon Leslie
May 21, 2012
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Should you have any further questions please do not hesitate to contact our office. If you would like to meet with me to discuss further, please call to set up an appointment.

Yours very truly,



Nancy E. Murphy
Hawaii District Manager

Enc.

Cc: Charles K. Leslie, 82-6276 Kahauloa Road, Captain Cook HI 96704
Boating Administrator
Division of Conservation and Resource Enforcement
Harbor Agent
Account File

SENT BY CERTIFIED MAIL – RETURN RECEIPT REQUESTED