

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 28, 2013

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

PSF No.: 04HD-070

HAWAII

Approve Lease Form for Issuance of Direct Lease to the University of Hawaii for Marine Research and Educational Purposes, Lalamilo, South Kohala, Hawaii, Tax Map Key: (3) 6-6-02:45 (formerly known as 6-9-01: por. of 01). The Proposed Lease Includes Non-Standard Provisions Relating to Compliance with Laws, Improvements, Liens, Indemnity, Lessee Limitations, Lessor Limitations, Breach, Condemnation, Right to Enter, Surrender or Termination, and Hazardous Materials.

BACKGROUND:

At its meeting of April 8, 2004, Item D-14, as amended, the Board of Land and Natural Resources approved the issuance of direct lease to the University of Hawaii (UH) for marine research and educational purposes on coastal lands situated at Puako, Lalamilo, South Kohala, Hawaii. At recommendation 2.A of the submittal, the Board authorized the issuance of the lease subject to the “standard terms and conditions of the most current lease document form, as may be amended from time to time and appropriately amended for the University of Hawaii as a body of the State.” The Board included additional recommendations to require UH to subdivide its lease premises from the larger State parcel, subdivide the Division of Boating and Ocean Recreation’s Puako Boat Ramp, and to cooperate with the Na Ala Hele Program for the establishment and maintenance of the Ala Kahakai Trail that traverses the area of the proposed lease. A copy of the approved Board submittal is attached as Exhibit 1.

At its meeting of March 28, 2008, Item D-7, the Board amended its prior approval of the lease to UH by extending the periods in which UH is required to submit plans for the project to the Chairperson for approval (extended from four to six years after lease commencement), and to construct and develop facilities on the premises (extended from seven to nine years after lease commencement). A copy of the approved submittal (without its exhibits) is attached as Exhibit 2.

A finding of no significant impact was published for the project on March 23, 2009.

Final subdivision approval for the UH lease parcel was obtained on May 26, 2010.¹

Subsequently, the Department of the Attorney General (DAG) prepared the lease document and it was mailed to UH for execution on July 10, 2010. To date, however, the document has not been signed due to UH's request for changes to the standard terms of DAG's lease form.

REMARKS:

Staff has been working with UH since 2010 to determine whether a compromise could be reached on the lease language. Staff is now prepared to present the current version of the negotiated lease to the Board. Attached as Exhibit 3 is a redlined version of the draft lease document showing additions proposed to the standard lease form in double-underscored green font, and deletions by strikethrough.² Many of UH's requested changes are technical but others are substantive. After consulting with DAG, staff is recommending that the requested changes be accepted. The substantive changes are summarized below.

Page 4, section 8, "Improvements." The standard lease form used by DAG requires the lessee, at the termination or earlier expiration of the lease, to remove all improvements if desired by the lessor and restore the premises to condition satisfactory to lessor. UH is seeking a qualification of this requirement that permits it to "restore the Premises to a condition reasonably satisfactory to the Lessor, reasonable wear and tear and damage due to any casualty not caused by the Lessee, excepted." Staff believes that the requested qualifications do not impose significant additional burdens on the Department.

Page 5, section 10, "Liens." The standard provision obligates the lessee to keep the premises free of any liens or encumbrances, and requires the lessee to indemnify the Board against such liens and encumbrances. However, as a State agency, UH cannot indemnify the Board. Its proposed language for this paragraph deletes the indemnity language and sets forth an alternative provision describing the efforts it must undertake to remove liens and encumbrances. See Exhibit 3 attached at page 5. Staff believes the alternate language is acceptable under the circumstances.

Pages 5-7, section 13, "Indemnity." Again, the standard lease provision imposes a general indemnity obligation on the lessee that UH cannot agree to as a State agency. UH proposes to delete the standard provision in its entirety and replace it with a detailed provision entitled "Lessee Limitations" describing its responsibility for damage or injury caused by its officers, clarifying that UH is not authorized to indemnify the Board, and specifying that any monetary obligations under the lease are subject to the appropriation

¹ The Puako Boat Ramp was subdivided and set-aside to the Division of Boating and Ocean Recreation by Governor's Executive Order No. 4171 dated August 24, 2006.

² In the text of this submittal, additions and deletions are shown in black and white.

and allotment of funds necessary to cover the obligation. Under UH's proposed language for this section, UH is required to notify the Board if it will be unable to satisfy any monetary obligations under the lease, and the Board can immediately issue a notice of default. See Exhibit 3. This provision saw many revisions during the negotiation of the lease terms, and staff believes that the final version represents a fair compromise between two State agencies.³

Pages 8-10, section 14, "Lessor's Limitations." This is a new provision that staff requested as part of the compromise on section 13 discussed immediately above. It is a counterpart to the "Lessee Limitations" provision, and qualifies the Board's responsibility for any monetary obligations that might arise on its part under the lease. However, there is a carve-out for obligations to pay just compensation in the event the Board exercises its reserved rights to extract minerals or water from the lease premises under section 1(b), or withdrawal or taking rights under section 28. Staff believes that the carve-out is acceptable because the Board generally does not exercise mineral or withdrawal rights under a lease unless at the request of another agency or a division within DLNR. If such a request is ever made with respect to this lease, staff will include a recommendation to the Board that the requesting agency or division pay any compensation that may be required under the UH lease.

Pages 10-13, section 15, "Lessee to require contractors to comply with obligations to Lessor." This is a new, non-standard provision that requires UH's contractors to indemnify the Board even though UH itself cannot indemnify. The indemnity language was proposed by staff and derived from the template used for rights-of-entry that are issued to State agencies on lands under the Board's jurisdiction. Additionally, this section requires UH's contractors to carry comprehensive general liability insurance that names the State as an additional insured.

Pages 10-11, section 14, "Costs of litigation." The standard lease provision requires the lessee to pay all costs the State incurs, including attorneys' fees, when it is made a party to litigation, or when action is needed to enforce the covenants of the lease, recover possession of the premises, or collect delinquent charges. These obligations are akin to an indemnity that UH explains it is not authorized to undertake. UH therefore proposes the deletion of this section in its entirety.

Pages 13-14, section 16, "Breach." The standard lease provision states that if the lessee becomes bankrupt, abandons the premises, or if the premises shall be attached or taken by operation of law, the lease is subject to termination upon issuance of a notice of default and running of the cure period. UH proposes the deletion of the provisions relating to bankruptcy, attachment or taking of the premises. Staff does not object to the deletion because the risk of any of the listed contingencies occurring is minimal for a State agency

³ UH will pay no rent under the lease; the Board approved the issuance of the lease on a gratis basis at its meeting of April 8, 2004, Item D-14, as amended. See Exhibit 1.

on State land. UH additionally requests that the following language be added at the end of the breach provision:

Upon the Lessee's receipt of the Lessor's Default Notice, the Lessor and the Lessee acknowledge and agree that the Lessor and the Lessee shall enter into good faith discussions (not to exceed sixty (60) days from the Lessee's receipt of the Lessor's Default Notice) to address and resolve any issues relating to the Lessee's breach or default hereunder before the Lessor takes any further action against the Lessee for breach of or default under the lease.

This is again non-standard language. However, the standard lease and the proposed UH lease give the lessee a 60-day cure period for non-monetary defaults. Accordingly, staff does not view the proposed language regarding good faith discussions as imposing an onerous obligation on the Board or the Department.

Page 14, section 17, "Condemnation." The standard lease provision on condemnation includes language that allows for a taking of a portion of the lease premises for any county purpose, as long as the rent is reduced accordingly. UH's proposed revisions delete the authority of the Board to take the lease premises for county purposes, but at the same time, recognizes that the lease is subject to eminent domain exercised by a federal condemning authority. The condemnation provision in the attached proposed lease reflects these changes. Staff's understanding is that a county government cannot condemn State land in Hawaii. Accordingly, staff does not object to the requested changes.

Pages 15-16, section 21. "Surrender or termination." As with section 8 of the lease on "Improvements", discussed above, UH is requesting that the standard lease provision on "Surrender or termination" be amended to allow UH to return the lease premises in "clean and orderly condition, reasonable wear and tear and damage due to any casualty not caused by the Lessee, excepted." The standard lease provision also requires lessee to remove the improvements on the premises at the option of the Board. But UH is requesting an amendment to this language so that the removal of the improvements is a decision to be made by the mutual agreement of the Board and UH. With respect to UH's personal property to be removed from the premises, UH's proposed version of this provision requires the Board to comply with applicable laws in dealing with any personal property remaining on the premises after surrender or termination. See Exhibit 3 attached.

Pages 16-17, section 23. "Hazardous materials." In this section, UH is requesting qualifications of the obligations imposed on it with respect to hazardous materials. For example, the modified lease language would require UH to handle such materials in accordance with "the highest reasonable standards prevailing in the industry." Further, the standard provision requires the lessee to obtain the prior consent of the Board before

bringing identified hazardous materials onto the premises, and consent can be withheld in the Board's absolute discretion. UH's proposed version tempers the Board's authority in this regard, providing that Lessor's consent to hazardous materials on the premises "shall not be unreasonably withheld."

The standard hazardous material provision includes a requirement that the lessee indemnify the Board for any damages or claims that might arise from the use or storage of hazardous materials on the premises. For the reasons discussed above, UH cannot indemnify the Board in accordance with the standard lease provision. UH has therefore proposed a version that omits the covenant of indemnity. At the same time, UH's version includes new language that offers some protection to the Board from damages or claims arising from hazardous materials:

Lessee responsibility. To the extent that it can be proven or established that the presence, discharge, or release of hazardous materials on or within the Premises is or can be attributable or attributed to actions of the Lessee, the Lessee's responsibility for such hazardous materials on or within the Premises, including any clean-up and remediation, shall be subject to and governed and limited by the Lessee's Limitations.

In summary, some of the requested changes restrict the Board's rights under the lease in a way that would never be acceptable in a lease to a private entity. But because the lease is to another State agency, staff believes the parties should be able to cooperate under the proposed modified lease in a way that protects the State's overall best interests. Accordingly, staff recommends below that the Board approve the requested changes to the lease form so that this matter may be concluded.

RECOMMENDATION: That the Board:

1. Approve the form of lease attached hereto as Exhibit 3 and authorize the finalization of the lease and its execution by the Chairperson.

Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 8, 2004

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

PSF No.: 04HD-070

Island of Hawaii

Rescind Prior Board Action; Issuance of Direct Lease to the University of Hawaii
for Marine Research and Educational Purposes, Lalamilo, South Kohala, Hawaii,
Tax Map Key: 3rd/ 6-9-01: Portion of 1

APPLICANT:

University of Hawaii, whose business and mailing address is 2444 Dole Street, Honolulu,
Hawaii 96813.

LEGAL REFERENCE:

Section 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Lalamilo, South Kohala, Hawaii, identified by
Tax Map Key: 3rd/ 6-9-01: portion of 1, as shown on the attached map labeled Exhibit A.

AREA:

5 acres, more or less (Exhibit B). The exact acreage will be determined upon an actual
survey and subdivision of the University's lot subject to review by DOBOR, State Parks
and approval by the Chairperson.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: V-1.25 and Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON *KIK*
April 8, 2004

ITEM D-14
EXHIBIT 1

CURRENT USE STATUS:

Although there are no completed encumbrances on the property, the parcel does contain the existing Puako Boat Ramp managed by our Division of Boating and Ocean Recreation (DOBOR). DOBOR has been unable to complete mapping and subdivision of the site for the purposes of an EO.

CHARACTER OF USE:

Marine Education and Research Purposes.

LEASE TERM:

Sixty-Five (65) years

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The University of Hawaii will be responsible for any further Chapter 343, HRS compliance in connection with their development of the property.

DCCA VERIFICATION:

Place of business registration confirmed:	N/A
Registered business name confirmed:	N/A
Applicant in good standing confirmed:	N/A

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Process and obtain subdivision approval with the County of Hawaii, Planning Department, at Applicant's own cost;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost; and
- 3) At Applicant's own cost, comply with all requirements of Chapter 343, HRS, as applicable.

REMARKS:

At its meeting of September 14, 1990, under Agenda Item F-5, the Board approved a direct lease of 5 acres of land adjacent to the existing Puako Boat Ramp to the University of Hawaii at Hilo for the purposes of establishing the Kalakaua Marine Education Center. The proposed center was to specialize in teaching marine science with priority given to undergraduate students and teachers from Hawaii. The University has indicated that they may have a need for a larger area in the long term but feel that the 5 acres is sufficient for now.

The proposed facility included the proposed development of laboratories, classrooms, dormitory and dining facilities. Students would be able to study a wide variety of marine life ranging from coral reefs to marine mammals. A residential marine laboratory would allow for undergraduate students to meet informally with graduate students, postdoctoral fellows, and scientists from the University of Hawaii as well as visiting professors/scientists from other institutions and countries. The UH feels that the site is ideally suited for such a world class marine educational facility.

Due to the amount of time that has lapsed and the failure of the University to find the funding, complete the lease and develop the property, staff is recommending that the prior approval be rescinded and a new approval be granted for the proposed lease. The University has indicated that they have renewed interest and possible private funding for the facility. Staff is recommending a number of benchmarks for the lease to insure that should the University fail to obtain private or public funding commitments for the project, the lease may be terminated by the Board.

The existing State owned parcel also contains the Puako Boat Ramp facility managed by DOBOR. DOBOR has not been able to complete the Governor's Executive Order due to the lack of subdivision and maps for their ramp facility. Given that the University will have to subdivide their area from the larger State owned property, staff is recommending that the University be required to also subdivide the DOBOR boat ramp parcel. Staff is also recommending that the University plan for subdivision be subject to review by State Parks, DOBOR and approved by the Chairperson.

Staff is recommending that the University be required to preserve public access to the shoreline areas and cooperate with Na Ala Hele on the establishment, operation and maintenance of the Ala Kahakai trail alignment that traverses the area of the parcel.

The University of Hawaii is a State educational institution and qualifies for a direct lease under Chapter 171-95, HRS, as amended as a government agency. As an educational institution, the University of Hawaii and its purpose is a beneficiary under the public land trust as described in the Admission Act, the State Constitution and Chapter 171, HRS.

The University of Hawaii has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

April 8, 2004

RECOMMENDATION: That the Board:

1. Rescind its action taken at its meeting of September 14, 1990, under Agenda Item F-5;
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to the University of Hawaii covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current lease document form, as may be amended from time to time and appropriately amended for the University of Hawaii as a body of the State;
 - B. The University of Hawaii shall be required to cooperate with the Na Ala Hele Program with our Division of Forestry and Wildlife on the establishment, operation and maintenance of the proposed Ala Kahakai Trail that traverses the area of the proposed lease;
 - C. Should the University fail to meet any of the following deadlines, the Board will have to right to terminate the lease with 90 days written notice:
 - a. Submission of plans for approved by the Chairperson within 4 years of the commencement of the lease; or
 - b. Construction and development of the facilities within 7 years of the commencement of the lease.
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Harry M. Yada
District Land Agent

APPROVED FOR SUBMITTAL



Peter T. Young, Chairperson

April 8, 2004 – Land Board Meeting:

D-14 Rescind Prior Board Action; Issuance of Direct Lease to the University of Hawaii for Marine Research and Educational Purposes, Lalamilo, South Kohala, Hawaii, TMK: (3) 6-9-01: por. 01.

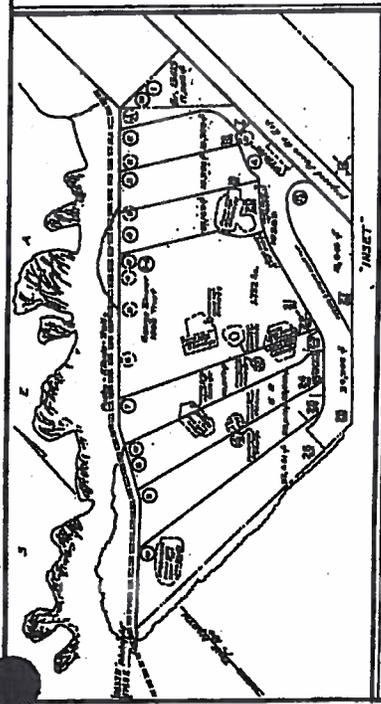
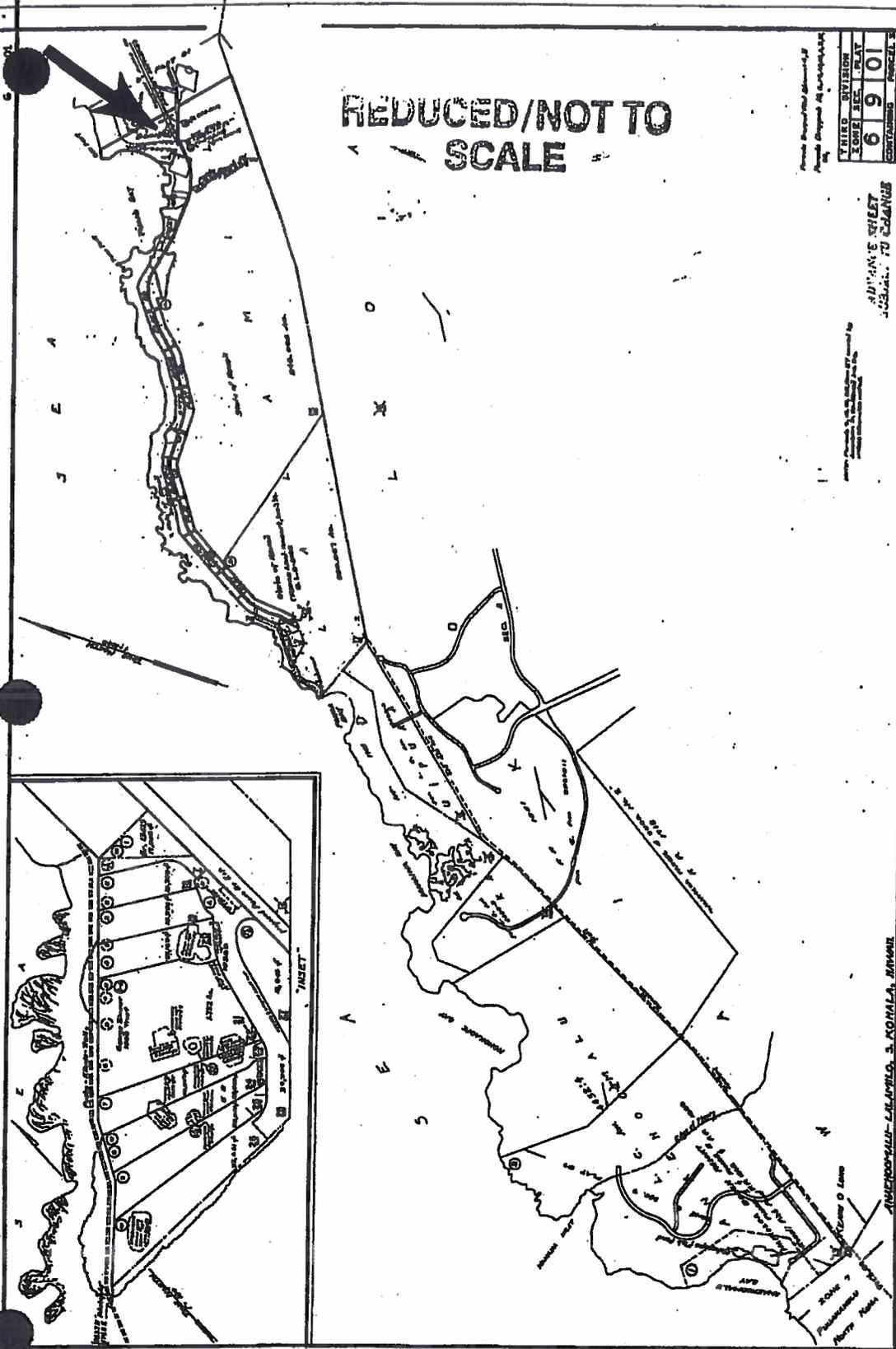
Approved as amended. The Board amended:

- 1) **The Applicant Requirements Section by amending paragraph 1) to read as follows:**
 - "1) **Process and obtain subdivision approval with the County of Hawaii Planning Department, at Applicant's own cost, including subdividing DOBOR's Puako Boat Ramp;"**
- 2) **The Recommendation Section by amending subparagraph 2.B. to read as follows:**
 - "2.B. **The University of Hawaii shall be required to cooperate with the Na Ala Hele Program with our Division of Forestry and Wildlife on the establishment, operation and maintenance of the proposed Ala Kahakai Trail that traverses the area of the proposed lease and shall preserve public access to the shoreline;"**

REDUCED/NOT TO SCALE

FIELD DIVISION	6
ENGINE SEC.	9
PLAT	01
CONTRACT NO.	
PROJECT NO.	

ADVANCE SHEET
SUBJECT TO CHANGE



DATE: 10/1/54
BY: [Signature]
CHECKED: [Signature]
APPROVED: [Signature]

AMERICAN LUMBER CO., KOKOMO, INDIANA

EXHIBIT A

REDUCED/NOT TO SCALE

LALAMILO

STATE OF HAWAII
DEPARTMENT OF TRANSPORTS
HARBORS DIVISION

PUAKO BOAT LAUNCH

ENGINEERING: A. C. ...

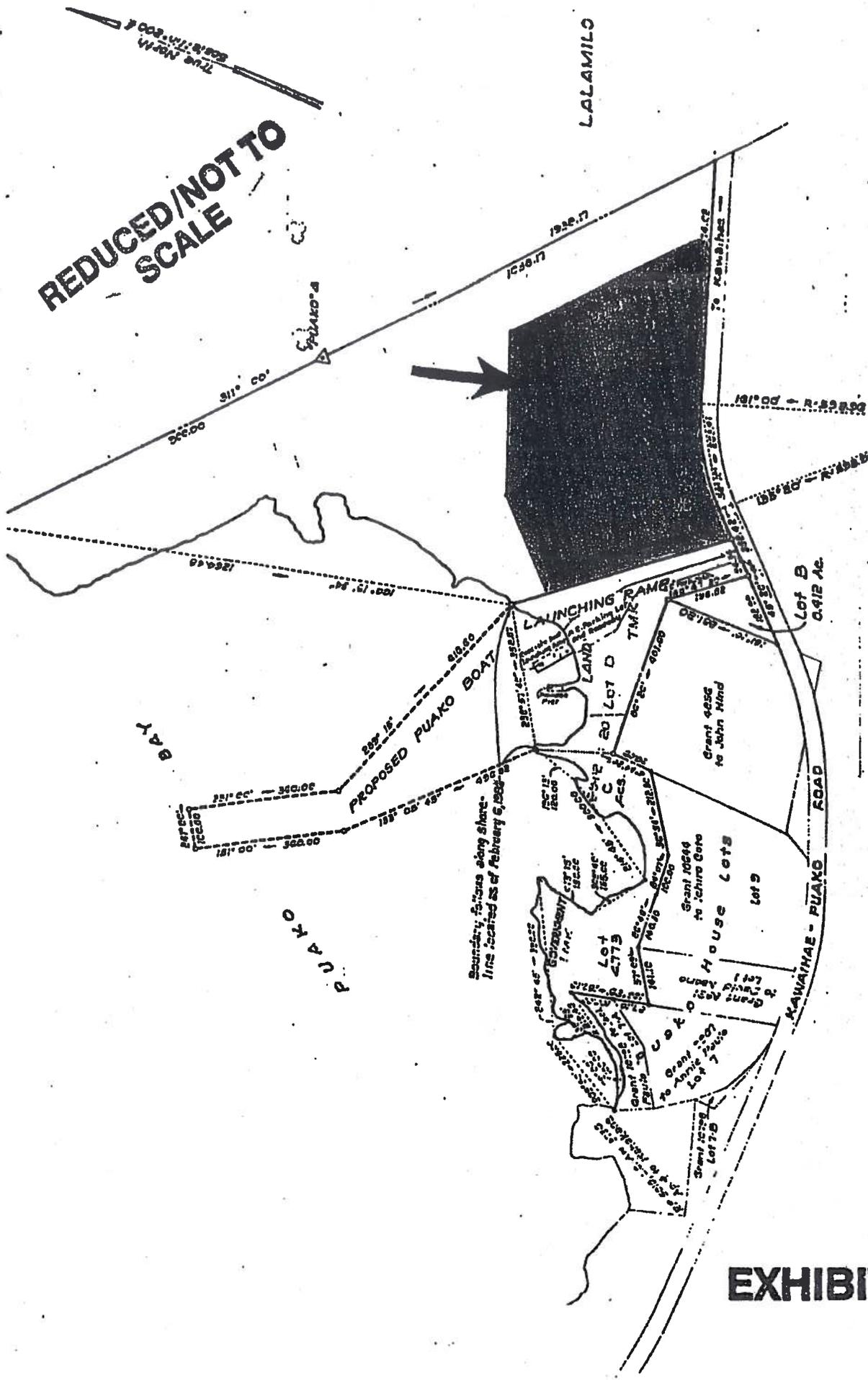


EXHIBIT B

The Environmental Notice

A SEMI-MONTHLY BULLETIN OF THE OFFICE OF ENVIRONMENTAL QUALITY CONTROL

JUNE 23, 2001

Ehime Maru Environmental Assessment

A Navy Environmental Assessment, prepared in close coordination with federal and State of Hawai'i agencies, concludes that moving *Ehime Maru* to shallow water will not result in significant environmental impacts. The "Finding of No Significant Impact" explains the Navy's proposal to attempt recovery of *Ehime Maru's* missing crewmembers, personal effects and selected parts of the ship. It also summarizes the potential impacts and how they will be overcome.

With the determination the proposed action will have no significant impact on the environment, the Navy will now contract with Smit-Tak, a Dutch recovery company, and Crowley Maritime Corp., headquartered in Washington State, to design, engineer and execute the plan to lift *Ehime Maru* off the ocean floor, transport it to shallow water, and relocate it to deep water upon completion of the recovery operation.

Smit-Tak, the prime contractor for the deep-water rigging and lift to shallow water, has sub-contracted with Halliburton Co., a Texas-based engineering and construction company, for the lease of Rockwater 2, scheduled to arrive in Hawai'i in July.

In August, a construction support vessel will lift *Ehime Maru* off the ocean floor at its current

2,000-foot depth with specially designed equipment and lifting mechanisms. Rockwater 2 will then transport *Ehime Maru* while suspended about 100 feet above the ocean floor to a location roughly a mile south of Honolulu International Airport's Reef Runway, where the water depth is approximately 115-feet, and then place it on the ocean bottom. Before it is moved, *Ehime Maru's* deck will be cleared to the extent possible of cargo nets, fishing hooks and long lines, rafts and other obstacles that might impact the marine environment. After it is lifted and the entire vessel can be viewed, engineers will evaluate its condition to ensure it can safely and successfully be moved.

Once *Ehime Maru* is stabilized at the shallow-water site, a team of U.S. Navy and U.S. Navy-trained Japanese divers will thoroughly search all safely accessible areas of the vessel to recover the missing crewmembers, other personal effects and certain unique characteristics of the ship, such as its nameplate and anchors. Japanese government officials have asked for unique parts of the ship for a possible memorial. The Navy will also try to remove to the maximum extent possible the diesel fuel, lubricating oil and other materials that could adversely affect the marine environment. For more information, see page 5.

Waia'ala'e Golf Course Improvements FONSI Withdrawn by City

After considering public comments from the applicant, the public and residents adjacent to the Wai'ala'e Country Club, the City's Department of Planning and Permitting has withdrawn its finding of no significant impact (but not the draft environmental assessment) for the Wai'ala'e Golf Course Improvements Project (published in the June 8 issue of the *Environmental Notice*). See page 7.

*Hapuna Beach Expansion

The State is proposing to expand its existing Hapuna Beach State Recreation Area from 62 acres to approximately 846 acres. The expansion area will include new picnic areas with comfort stations, family and group camping areas, hiking trails and shoreline paths, parking areas, improved access to Wailea Bay, and an 18-hole public golf course. See page 12.

DHHL Communications Cable in Highway Right-of-Way

The DOT issued FONSI's for cables within the highway rights-of-way on Hawai'i, Kaua'i and O'ahu by Sandwich Isles Communications to link up various DHHL sites. A determination for Maui has not yet been made. Each cable will eventually be networked statewide via underwater cables at various landings. See pages 4, 12 and 14 for more.



BENJAMIN J. CAYETANO
GOVERNOR

OFFICE OF
ENVIRONMENTAL
QUALITY CONTROL
GENEVIEVE SALMONSON
DIRECTOR

The Environmental Notice
reviews the environmental impacts of
projects proposed in Hawaii

Other Resources
available at OEQC . . .

- *Guidebook for Hawai'i's Environmental Review Process*
- *Environmental Impact Study Resource Library*
- *Environmental Council Annual Reports*
- *Rules and Policies*
- *"How to Plant a Native Hawaiian Garden"*

OEQC

235 S. BERETANIA STREET
LEIOPAPA A KAMEHAMEHA
SUITE 702
HONOLULU, HAWAII 96813

Tel. (808) 586-4185
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Moloka'i & Lanai: 1-800-468-4644 ext. 6415
Kaua'i: 274-3141 ext. 64185
Maui: 984-2400 ext. 64185
Hawai'i: 974-4000 ext. 64185

EXHIBIT C

Hawai'i Notices

JUNE 23, 2001

Final Environmental Assessments/Findings of No Significant Impacts (FONSI)

(1) Hawai'i Rural Fiber Optic Duct Lines Project

District: All districts
TMK: various
Applicant: Sandwich Isles Communications, Inc.
1001 Bishop St., Pauahi Tower, 27th Floor
Honolulu, Hawai'i 96813
Contact: Larry Fukunaga (524-8400)

Approving Agency/Accepting Authority: Department of Transportation
Highways Division
601 Kamokila Blvd., Suite 691
Kapolei, Hawai'i 06707
Contact: Michael Amuro (692-7332)

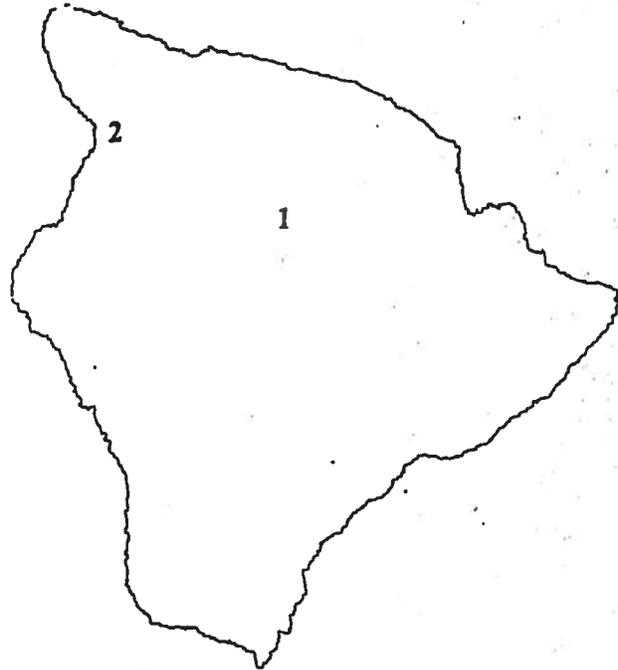
Consultant: Ron Terry (982-5831)
HC 2 Box 9575
Keaau, Hawai'i 96749

Status: FEA/FONSI issued, project may proceed.
Permits Required: ROW, possible COE, SMA, 401 WQC, CZM, SCAP

Sandwich Isles Communications, Inc. (SIC) has a license agreement from the State Department of Hawaiian Home Lands (DHHL) to provide essential communications services to DHHL homestead areas within the island of Hawaii. As a major component of its mission, SIC plans to construct underground fiber optic telecommunication cables within State highways, Hawai'i County, and DHHL roadway right-of-ways in order to provide service to homestead areas.

The project consists of the installation of a system of about 330 miles of fiber optic duct lines within the shoulder, sidewalk, or paved travel lanes of the right-of-way of various State, County and private roads around the island.

Cable installation would be done primarily through the open trench method, or using trenchless technology where necessary. Bridge crossing methods would be determined on a case-by-case basis, and may include either bridge attachments or directional drilling under streams or gulches if practicable to avoid impacts to streams or sensitive environmental resources.



The project benefits DHHL residents by providing high quality, essential telecommunication services at a cost regulated by the PUC's tariff, which is competitive with comparable outside telecommunication services, with the installation of fiber optic duct line at no cost to DHHL. The project will create several positive benefits to residents of Hawaiian Home Lands, including high quality, essential telecommunication services at a reasonable cost and employment and educational opportunities. It is scheduled for construction between June 2001 and February 2005, and will cost an estimated \$100,000,000.

Final Environmental Impact Statements

(2) Hapuna Beach State Recreation Area Expansion

District: South Kohala
TMK: 6-6-01:por. 2; 6-9-01:por. 1; 6-2-02:1; 6-6-02:2, 6, 7, 31, 32, 34, 35, 40, 41, & 42

Hawai'i Notices

JUNE 23, 2001

Applicant: Department of Land and Natural Resources
State Parks Division
P.O. Box 621
Honolulu, Hawai'i 96809
Contact: Daniel Quinn (587-0290)

Approving Agency/Accepting Authority: Governor, State of Hawai'i
c/o Office of Environmental Quality Control
235 S. Beretania Street, Suite 702
Honolulu, Hawai'i 96813

Consultant: Belt Collins Hawai'i
680 Ala Moana Boulevard, First Floor
Honolulu, Hawai'i 96813
Contact: Glen Koyama (521-5361)

Status: FEIS currently being review by OEQC.

The State Parks Division of the Department of Land and Natural Resources is proposing to expand its existing Hapuna Beach State Recreation Area (previously known as Hapuna Beach State Park) from 62 acres to approximately 846 acres. This expansion will include the area between Hapuna Bay and Puako Bay from the shoreline to a distance of approximately 5,080 feet inland. Traversing the mauka section of this area is the Queen Ka'ahumanu Highway, a State right-of-way serving the South Kohala coastal region. Behind Wailea Bay are 19 privately-owned lots which had previously been considered for acquisition by the State and included within the Park expansion area, but is now not part of the plan.

The State Parks division has identified long-term recreational needs for West Hawai'i and opportunities to use and manage recreation resources at Hapuna. A master plan for the park expansion has been prepared and calls for long-

term improvements. The expansion area will include new picnic areas with comfort stations, family and group camping areas, hiking trails and shoreline paths, parking areas, improved access to Wailea Bay, and an 18-hole public golf course. Upon securing all necessary permits and approvals, construction will occur in phases over a period of about ten years.

Required permits and approvals for the expansion project will include a Conservation District Use Permit, County Use Permit, Special Management Area, Building and Grading Permits, and National Pollutant Discharge Elimination Systems Permit.

Previously Published Projects Pending Public Comments

Draft Environmental Assessments

► Humu'ula Koa Salvage-Reforestation and Gorse Control

Applicant: Department of Hawaiian Home Lands
P.O. Box 1879
Honolulu, Hawai'i 96805
Contact: Mike McElroy (586-3823)

Approving Agency/Accepting

Authority: Same as above.

Public Comment

Deadline: July 9, 2001

DOH Seeking Public Input on Proposed Changes to Water Quality Rules

The Department of Health has revised the initial informal proposed amendments (draft #1) to the Hawai'i Administrative Rules, Chapter 11-54, Water Quality Standards (WQS), and is seeking a second round of informal public comments on draft #2 (dated June, 2001). To help you review these proposals again, each informal proposed amendment contains an introductory "update" paragraph summarizing the differences between the first and second drafts.

The proposed revisions add criteria to classify perennial streams; change the indicator bacteria criterion for inland waters and restrict applicability of criteria to locations where human sewage is highly likely to contribute to high enterococcus counts; modify the ammonium criteria for open coastal waters on the basis of new data; update Hawai'i's antidegradation policy to conform it to federal policy; and make the definition of state waters consistent with State law.

The Water Quality Standards Technical Advisory Group will hold another informal meeting to discuss these proposed changes on 13 July 2001, from 10am-12pm in Room 300 of the 919 Ala Moana building. This meeting will be hosted by the Department of Health's Environmental Planning Office. The text of the proposed amendments and rationale documents is available on the Internet at <http://www.state.hi.us/health/eh/epo/index.htm>, or paper copies can be obtained from the DOH Environmental Planning Office, located at 919 Ala Moana, Room 312, telephone 586-4337.

The park expansion area is predominantly undeveloped. It is barren and covered with sparse vegetation. The developed portion consists of the existing 62-acre beach park at Hapuna Bay (Figure 3-3), 19 privately-owned residential lots behind Wailea Beach, Hapuna Beach Road, Puako Spur Road, and the old Kawaihae-Puako Road. These facilities comprise less than 14 percent of the property.

Existing land uses adjacent to the Hapuna Beach State Recreation Area are diverse in type and intensity of use. They consist of resort projects, beachfront residential homes, and open undeveloped lands. Makai and to the north of Queen Ka'ahumanu Highway is the Mauna Kea Resort which includes the world-famous Mauna Kea Beach Hotel, an 18-hole golf course, and a number of resort-residential units. A second 18-hole golf course, a 10-lot residential subdivision, and a new 350-room hotel, named the Hapuna Beach Prince Hotel, have been added to the resort. These recent facilities are part of a major expansion program at the Mauna Kea Resort that began in 1992. A portion of the resort expansion extends mauka of the Queen Ka'ahumanu Highway into a 390-acre area that is long-term planned for approximately 550 resort-residential units.

To the south is the Puako Boat Ramp and Puako Beach Lots residential community, comprising of approximately 170 developed and undeveloped lots. In addition to single-family homes, the community includes a four-story residential condominium, a general store and two churches. Access to this community is provided by Puako Beach Road from Queen Ka'ahumanu Highway.

On an approximately 5-acre site adjacent to the Puako Boat Ramp within the park expansion area, the University of Hawaii at Hilo plans to establish a marine education and research field station. It will be operated as part of the Kalakaua Marine Education Center and serve students at UH-Hilo and the West Hawaii Educational Facility as well as those of the UH-Manoa through the Hawaii Institute of Marine Biology and School for Ocean and Earth Sciences and Technology. Planning funds have been granted for the project and the University is now in the process of defining the project scope and initiating the planning work.

Two other major master-planned resorts, Mauna Lani Resort and Waikoloa Beach Resort, are located farther to the south. These resorts contain planned multiple hotels and golf courses with a large number of residential units and commercial facilities. A major portion of these resorts have already been completed.

Mauka of the highway is a large tract of undeveloped land owned by the State of Hawaii. Occupying a portion of this land are the County's Lalamilo well system, Lalamilo Ventures, Inc's wind-generated power plant (identified as Lalamilo Wells Windfarm), and Hawaii Electric Light Co.'s (HELCO) Mauna Lani substation. The Lalamilo well system is a source of water for most of the Kohala Coast Resort Region.

Lalamilo Venture's facility consists of 122 wind turbines that generate up to approximately 2.3 megawatts of electrical power (under ideal wind conditions). This power is sold to the County to energize its Lalamilo wells' electrical system. Any remaining power is then sold to HELCO for its use.

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

March 28, 2008

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

PSF No.: 04HD-070
HAWAII

Amend Prior Board Action of April 8, 2004 (D-14), Rescind Prior Land Board Approval and Issuance of Direct Lease to the University of Hawaii for Marine Research and Educational Purposes, Lalamilo, Hawaii, Tax Map Key: (3) 6-9-1:portion of 1

BACKGROUND:

The Land Board at its April 8, 2004 meeting, under agenda item D-14, approved and amended staff's recommendation to: (1) rescind the approval of September 14, 1990, Item F-5 and (2) issue a direct lease to the University of Hawaii for marine research and educational purposes, subject to the University meeting deadlines (a) submission of plans for approval by the Chairperson within 4 years of the commencement of the lease or (b) construction and development of the facilities within 7 years of the commencement of the lease. Should the University fail to meet the deadlines, the Board will have the right to terminate the lease with 90 days written notice. The Board amendments were: University was to process and obtain subdivision approval with the County of Hawaii Planning Department including subdividing DOBOR's Puako Boat Ramp and the University shall be required to cooperate with the Na Ala Hele Program with our Division of Forestry and Wildlife on the establishment, operation and maintenance of the proposed Ala Kahakai Trail that traverses the area of the proposed lease and shall preserve public access to the shoreline.

By letter dated February 29, 2008, Ms. Debra Fitzsimons, Vice Chancellor for Administrative Affairs is requesting the Land Board amend the deadlines due to unexpected delays in the subdivision process. The County Planning Department determined that the finalization of the subdivision action would require Chapter 343, HRS compliance and SMA permitting. (EXHIBIT B) The University is moving forward with its planning consultant Tsukazaki, Yeh & Moore and Helbert Hastert & Fee Planners, Inc. in the preparation of an environmental assessment and SMA permitting.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON MB
March 28, 2008

EXHIBIT 2

D-7

REMARKS:

Based on the information provided, staff is recommending changes to the deadlines. For the submission of plans delete 4 years and replace with 6 years. For the construction and development of the facilities delete 7 years and replace with 9 years.

This will allow sufficient time for the University to comply with the County of Hawaii, Planning Department subdivision requirements.

RECOMMENDATION: That the Board

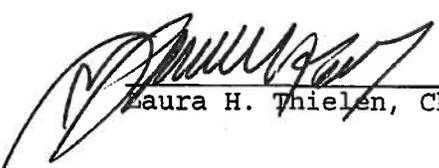
1. Amend its prior action of April 8, 2004, under agenda Item D-14, by:
 - A. Recommendation 2.C.a. Submission of plans for approval by the Chairperson within 4 years of the commencement of the lease. Delete 4 years and replace with 6 years.
 - B. Recommendation 2.C.b. Construction and development of the facilities within 7 years of the commencement of the lease. Delete 7 years and replace with 9 years.
2. All terms and conditions listed in its April 8, 2004 approval to remain the same.

Respectfully Submitted,



Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

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STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5993

THIS LEASE, made this _____ day of _____, 20____, by and between the STATE OF HAWAII, ~~hereinafter referred to as the "Lessor,"~~ by its Board of Land and Natural Resources, ~~called the "Board,"~~ whose address is Kalanimoku Building, Room 102, 1151 Punchbowl Street, Honolulu, Hawaii 96813 (hereafter the "Lessor") and the UNIVERSITY OF HAWAII, a body corporate, whose address is 2444 Dole Street, Honolulu, Hawaii 96822, ~~hereinafter referred to as~~ (hereafter the "Lessee."

WITNESSETH:

The Lessor, pursuant to Section 171-95(a)(2), Hawaii Revised Statutes, and for and in consideration of the terms, covenants, and conditions herein contained, all on the part of the Lessee to be kept, observed, and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises identified as "UH-Hilo Kalakaua Marine Education Center," more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B," both of which are attached hereto and made parts hereof. (hereafter the "Premises").

TO HAVE AND TO HOLD the ~~leased premises~~ Premises unto the Lessee for the term of sixty-five (65) years, commencing on the _____ day of _____, 20____, up to and including the _____ day of _____, _____, unless sooner terminated as hereinafter provided.

The annual rent shall be gratis.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters.

(a) Minerals reserved. All minerals as ~~hereinafter~~ hereafter defined, in, on, or under the ~~premises~~ Premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine, and remove the

minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diasporc, boehmite, laterite, gibbsite,

alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous, or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock, or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the ~~premises~~ Premises and not for sale to others.

(b)

(b) Water rights reserved. All surface and ground waters appurtenant to the ~~premises~~ Premises and the right on its own behalf or through persons authorized by it, to capture, divert, or impound the same and to occupy and use so much of the ~~premises~~ Premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of ~~Lessee's~~ Lessee's improvements taken.-

Forn

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to, fences and stockwater system(s) located on the ~~land~~ Premises prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law, including Chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the ~~land~~ Premises.

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THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the ~~premises~~Premises or any part, or any improvements, or the Lessor or the Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, the Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this lease.

2. Utility services. The Lessee shall be responsible for obtaining any utility services and shall pay when due all charges, duties, and rates of every description, including water, sewer, gas, refuse collection, or any other charges, as to which the ~~premises~~Premises or any part, or any improvements, or the Lessor or the Lessee may become liable for during the term, whether assessed to or payable by the Lessor or the Lessee.

3. Covenant against discrimination. The use and enjoyment of the ~~premises~~Premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age, or HIV (human immunodeficiency virus) infection.

4. Sanitation. The Lessee shall keep the ~~premises~~Premises and improvements in a strictly clean, sanitary, and orderly condition.

5. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer, or permit to be committed any waste, nuisance, strip, or unlawful, improper, or offensive use of the ~~premises~~Premises or any part thereof, nor, without the prior written consent of the Lessor, cut down, remove, or destroy, or suffer to be cut down, removed, or destroyed, any trees now growing on the ~~premises~~Premises.

6. Compliance with laws. The Lessee and the Lessor shall comply with all ~~of the requirements of~~Applicable Laws. "Applicable Laws" mean all ~~municipal~~federal, state, and ~~federal~~county, and ~~observe all municipal, state~~local laws, statutes, ordinances, codes, rules, regulations, standards, directives, interpretations and federal laws conditions of approval, permits, and all legislative, administrative or judicial orders, decrees, requirements, rulings, or judgments, which now or in the future may be applicable to the premises, now in force or which may be in force.Premises, the conduct of any business therein, to the Lessor or the Lessee, and to any possession, occupancy, and use relating to the Premises.

7. Inspection of ~~premises~~Premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the ~~premises~~Premises and examine the state of its repair and condition.

Form

8. Improvements. The Lessee shall not at any time during the term construct, place, maintain, and install on the ~~premises~~Premises any building, structure, or improvement of any kind and description, except with the prior written approval of the Lessor, through the Board of Land and Natural Resources (hereafter the "Land Board") and upon those conditions the Land Board may impose, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or other termination of the lease, at which time the ownership shall at the option of the Lessor, remain and become the property of the Lessor or shall be removed by the Lessee at the Lessee's sole cost and expense.

Upon termination and/or expiration of the lease and if desired by the Lessor, the Lessee, at its expense, shall remove any and all improvements installed or constructed upon the ~~premises~~Premises and restore ~~said premises~~the Premises to a condition reasonably satisfactory to the Lessor, reasonable wear and tear and damage due to any casualty not caused by the

Lessee, excepted.

9. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the ~~premises~~Premises in good order, condition, and repair, reasonable wear and tear excepted.

10. Liens. The Lessee shall not commit or suffer any act or neglect which results in the ~~premises~~Premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease. The Lessee will, subject to and limited by the Lessee Limitations (as defined in Section 13 herein) and as may be authorized by the Lessee's Board of Regents, initiate proceedings or take action to discharge or have released or removed any liens that may be filed against the Property, including the Lessee's interest therein, resulting from any act or neglect by the Lessee, all within a reasonable time of the Lessee learning or becoming aware of the existence of such liens.
~~this lease, and shall indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.~~

11. Character of use. The Lessee shall use or allow the ~~premises leased~~Premises to be used solely for marine education and research purposes.

12. Assignments, etc. and transfers. The Lessee shall not sublease, ~~subrent,~~ transfer, assign, or permit any other person to occupy or use the ~~premises~~Premises or any portion or transfer or assign this lease or any interest therein, either voluntarily or by operation of law, without the prior written approval of the Land Board.

13. Indemnity.Lessee Limitations.

a. Lessee's Responsibility. The Lessee shall ~~indemnify, defend,~~ be responsible for damage or injury caused by the Lessee's officers and ~~hold~~ employees in the course of their employment to the extent that the Lessee's liability for such damage or injury has been determined by a court or otherwise agreed to by the Lessee. The Lessee shall pay for such damage or injury to the extent permitted by law and provided that funds

are appropriated, allotted or otherwise properly made available for that purpose. In each instance in this lease (including, without limitation, any applicable rules and regulations adopted or implemented by the Lessor-) where the Lessee is or may be obligated to assume responsibility or liability of any type or nature for damages or injuries, including, without limitation, any obligation to perform, be responsible for failure to perform, or pay monies, such obligation shall be subject to and limited by the provisions of this Subsection 13a (Lessee's Responsibility). The Lessor acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense, or hold harmless obligation of the Lessee. The Lessee's obligations under this Subsection 13a shall survive the expiration or earlier termination of this lease.

b. Lessee not authorized to indemnify. The Lessor and the Lessee acknowledge and agree that the Lessee, as an agency of the State of Hawaii, is not authorized to indemnify the Lessor in any way, including, without limitation, against any claims for bodily injury, wrongful death and/or property damage by any persons. Notwithstanding anything to the contrary contained in this lease, the Lessee shall have no contractual duty to indemnify, defend, or hold harmless the Lessor or any other persons under any circumstances arising out of or related to this lease and the Lessee's occupancy of the Premises under the terms of this lease. In each instance in this lease (including, without limitation, any applicable rules and regulations adopted or implemented by the Lessor) where the Lessee is or may be obligated to indemnify, defend, or hold harmless the Lessor or any other persons, such obligations shall be deemed null and void and such contrary indemnity or defense obligations and provisions shall be deemed to be superseded by this provision, and of no force or effect.

c. Subject to funding. To the extent that the Lessee is or may be: (1) obligated to perform under this lease, (2) obligated to make any payments under this lease, or (3) deemed liable under this lease, the Lessee's ability to satisfy such obligations or liabilities, particularly any obligations requiring the payment of any amount of monies, is limited to that which is permitted by law and is subject to the condition that funds are properly appropriated, allotted, or otherwise properly made available for the purpose of satisfying such obligations or liabilities. At a minimum, the following conditions must be satisfied in order for funding to be made

properly available: (a) the Hawaii State Legislature shall have appropriated sufficient funding to satisfy such obligations or liabilities; (b) the Governor of the State of Hawaii shall have authorized the use of such funds for satisfying such obligations or liabilities; and (c) the satisfaction of conditions, if any, imposed by the Hawaii State Legislature and/or the Governor on the use of such funds. The Lessee shall use reasonable good faith efforts to have funds properly appropriated, allotted, or made available for such purposes (including, without limitation, obtaining legislative and Governor's authorizations for use of such funds) and to satisfy such conditions in a timely manner.

(1) Applies to all of Lessee's obligations. Notwithstanding anything to the contrary contained in this lease, this provision shall apply to and qualify each and every Lessee's obligation to perform under this lease, including, without limitation, any obligation of the Lessee to pay or reimburse the Lessor for any work performed by the Lessor due to the Lessee's failure or refusal to perform under this lease and any obligation of the Lessee to perform under the rules and regulations adopted or implemented by the Lessor.

(2) Lessor's right to notice. As an inducement to the Lessor to agree to the Lessee Limitations (as defined herein), the Lessee hereby agrees that for any obligations or liabilities of the Lessee which are subject to the Lessee obtaining funding or satisfying other conditions prior to the Lessee being able to fulfill such obligations or liabilities, as specified in the Lessee Limitations (as defined herein), if the Lessee knows, in advance, that it will not obtain such funding or not be able to fulfill such an obligation or liability, then the Lessee shall provide the Lessor with written notice thereof within thirty (30) days of the Lessee obtaining such knowledge, and the Lessor may immediately issue to the Lessee a notice of breach or default pursuant to Section 15 of this lease.

d. Subject to Lessee Limitations. The Lessor and the Lessee acknowledge and agree that Subsections 13a (Lessee's Responsibility), 13b (Lessee not authorized to indemnify), and 13c (Subject to funding) are hereafter collectively the "Lessee Limitations." Notwithstanding and superseding anything to the contrary contained in this lease (and any exhibits attached to this lease), any and all obligations, duties, responsibilities, and liabilities of the Lessee under this lease (including, without limitation, the

Lessee's obligations to comply with any provisions of any of the Lessor's rules and regulations) are expressly subject to and limited by the Lessee Limitations set forth and defined in Section 13 of this lease.

14. Lessor Limitations.

a. Lessor's Responsibility. The Lessor shall be responsible for damage or injury caused by the Lessor's officers and employees in the course of their employment to the extent that the Lessor's liability for such damage or injury has been determined by a court or otherwise agreed to by the Lessor. The Lessor shall pay for such damage or injury to the extent permitted by law and provided that funds are appropriated, allotted or otherwise properly made available for that purpose. In each instance in this lease where the Lessor is or may be obligated to assume responsibility or liability of any type or nature for damages or injuries, including, without limitation, any obligation to perform, be responsible for failure to perform, or pay monies, such obligation shall be subject to and limited by the provisions of this Subsection 14a (Lessor's Responsibility). The Lessee acknowledges that this provision, in itself, shall not constitute or be interpreted to be any type of indemnification, defense, or hold harmless obligation of the Lessor. The Lessor's obligations under this Subsection 14a shall survive the expiration or earlier termination of this lease.

b. Lessor not authorized to indemnify. The Lessor and the Lessee acknowledge and agree that the Lessor, as an agency of the State of Hawaii, is not authorized to indemnify the Lessee in any way, including, without limitation, against any claims for bodily injury, wrongful death and/or property damage by any persons. Notwithstanding anything to the contrary contained in this lease, the Lessor shall have no contractual duty to indemnify, defend, or hold harmless the Lessee or any other persons under any circumstances arising out of or related to this lease or the Lessor's leasing of the Premises to the Lessee under the terms of this lease. In each instance in this lease where the Lessor is or may be obligated to indemnify, defend, or hold harmless the Lessee or any other persons, such obligations shall be deemed null and void and such contrary indemnity or defense obligations and provisions shall be deemed to be superseded by this provision, and of no force or effect.

c. Subject to funding. To the extent that the Lessor is or may be: (1) obligated to perform under this lease, (2) obligated to make any payments under this lease, or (3) deemed liable under this lease, the Lessor's ability to satisfy such obligations or liabilities, particularly any obligations requiring the payment of any amount of monies, is limited to that which is permitted by law and is subject to the condition that funds are properly appropriated, allotted, or otherwise properly made available for the purpose of satisfying such obligations or liabilities. At a minimum, the following conditions must be satisfied in order for funding to be made properly available: (a) the Hawaii State Legislature shall have appropriated sufficient funding to satisfy such obligations or liabilities; (b) the Governor of the State of Hawaii shall have authorized the use of such funds for satisfying such obligations or liabilities; and (c) the satisfaction of conditions, if any, imposed by the Hawaii State Legislature and/or the Governor on the use of such funds. The Lessor shall use reasonable good faith efforts to have funds properly appropriated, allotted, or made available for such purposes (including, without limitation, obtaining legislative and Governor's authorizations for use of such funds) and to satisfy such conditions in a timely manner.

(1) Applies to all of Lessor's obligations. Notwithstanding anything to the contrary contained in this lease (except for the Lessor's obligation to pay just compensation in the event the Lessor exercises its reserved rights under Subsection 1b (Water rights reserved) and/or its withdrawal and taking rights under Section 28 (Withdrawal), this provision shall apply to and qualify each and every Lessor's obligation to perform under this lease, including, without limitation, any obligation of the Lessor to pay or reimburse the Lessee for any work performed by the Lessee due to the Lessor's failure or refusal to perform under this lease.

(2) Lessee's right to notice. As an inducement to the Lessee to agree to the Lessor Limitations (as defined herein), the Lessor hereby agrees that for any obligations or liabilities of the Lessor which are subject to the Lessor obtaining funding or satisfying other conditions prior to the Lessor being able to fulfill such obligations or liabilities, as specified in the Lessor Limitations (as defined herein), if the Lessor knows, in advance, that it will not obtain such funding or not be able to fulfill such an obligation or liability, then the Lessor shall provide the Lessee with written notice thereof within thirty (30) days of the Lessor

obtaining such knowledge.

d. Subject to Lessor Limitations. The Lessor and the Lessee acknowledge and agree that Subsections 14a (Lessor's Responsibility), 14b (Lessor not authorized to indemnify), and 14c (Subject to funding) are hereafter collectively the "Lessor Limitations." Notwithstanding and superseding anything to the contrary contained in this lease (and any exhibits attached to this lease), except for the Lessor's obligation to pay just compensation in the event the Lessor exercises its reserved rights under Subsection 1b (Water rights reserved) and/or its withdrawal and taking rights under Section 28 (Withdrawal), any and all obligations, duties, responsibilities, and liabilities of the Lessor under this lease are expressly subject to and limited by the Lessor Limitations set forth and defined in Section 14 of this lease.

15. Lessee to require contractors to comply with obligations to Lessor. The Lessee shall require the Lessee's contractors and consultants (hereafter collectively the "Lessee's Contractors") to comply with the following obligations to the Lessor:

a. Indemnify Lessor and Lessee. The Lessee shall require the Lessee's Contractors to indemnify, defend, and hold harmless the Lessor and the Lessee from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) ~~any act or omission on the part of Lessee relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises;~~ 2) ~~any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition;~~ and 3) ~~from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.~~

~~14. Costs of litigation. In case the Lessor shall, without any fault on Lessor's part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs,~~

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~~including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.~~

15(1) Lessee's Contractors' acts or omissions. Any act or omission on the part of the Lessee's Contractors relating to the use, occupancy, maintenance, or enjoyment of the Premises.

(2) Failure to maintain. Any failure on the part of the Lessee's Contractors to maintain or keep in a safe condition the Premises or any portions thereof that are involved with or affected by the work being performed or the services provided by the Lessee's Contractors (hereafter the "Work Areas"), including any death, accident, fire, or nuisance growing out of or caused by any such failure to maintain.

(3) Non-performance of terms or conditions. All actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's Contractors' non-observance or non-performance of any of the obligations being required of the Lessee's Contractors under this lease, including failure to comply with applicable rules, regulations, ordinances, and laws of the federal, state, municipal, or county governments.

b. Obtain insurance. The Lessee shall require that the Lessee's Contractors procure, at their own cost and expense, and maintain during the entire period during which the Lessee's Contractors are performing work or providing services in relation to the Premises (hereafter the ("Work Period")), from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A-" or other comparable and equivalent industry rating, a policy or policies of comprehensive general liability insurance or its equivalent, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Land Board.

(1) State as additional insured. The policy or policies of insurance shall name the State of Hawaii and the University of Hawaii as additional insureds and a copy shall be filed with the Lessor.

(2) Insurance to cover entire Premises. The insurance shall cover the entire Premises, including all Work Areas and any buildings, improvements, grounds, roadways, and/or sidewalks located therein.

(3) Lessee's Contractors to furnish insurance certificates. The Lessee's Contractors shall furnish the Lessor with a certificate(s) showing the policy(s) to be initially in force, keep certificate(s) on deposit during the Work Period and furnish a like certificate(s) upon each renewal of the policy(s).

(4) No cancellation without notice. This insurance shall not be cancelled, limited in scope of coverage, or not renewed unless and until written notice has been given to the Lessor and the Lessee.

(5) Lessor right to review coverage. The Lessor may at any time review the coverage, form, and amount of the insurance required hereunder, by requiring the Lessee to produce from Lessee's Contractors, copies of the insurance policy(s) that are or were in effect during the Work Period. If, in the opinion of the Lessor, the insurance provided hereunder does not provide adequate protection for the Lessor or the Lessee, the Lessor may require the Lessee to require the Lessee's Contractors to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required.

(6) Lessor to notify Lessee of insurance changes. The Lessor shall notify the Lessee in writing of changes in the insurance requirements and the Lessee shall require the Lessee's Contractors to deposit with the Lessor copies of acceptable insurance policy(s) or certificate(s) thereof incorporating the written changes reasonably requested by the Lessor.

(7) No limit on Lessee's Contractors' liability. The procuring of the required policy(s) of insurance shall not be construed to limit the liability of the Lessee's Contractors under this lease nor to release or relieve the Lessee's Contractors of the indemnification obligations being required of the Lessee's Contractors under this lease.

Notwithstanding the policy(s) of insurance, the Lessee shall require that the Lessee's Contractors shall be obligated for the full and total amount of any damage, injury, or loss caused by the negligence or neglect of the Lessee's Contractors in connection with the Premises.

It is further agreed that any insurance maintained by the Lessor and Lessee will apply in excess of, and not contribute with, insurance provided by Lessee's Contractors' policy(s).

c. Maintain the Premises. The Lessee shall require the Lessee's Contractors to keep the Work Areas in a strictly clean, sanitary, and orderly condition.

d. Restoration after work completed. The Lessee shall require that the Lessee's Contractors be responsible for cleaning and restoring the Work Areas to its original condition or a condition satisfactory to the Lessor and the Lessee upon completion of the work performed or services provided in connection with the Premises. The Lessee shall require the Lessee's Contractors to remove and properly dispose off-site all trash generated or brought onto the Premises and/or Work Areas by the Lessee's Contractors.

e. Compliance with Applicable Laws. The Lessee shall require that the Lessee's Contractors comply with all Applicable Laws in relation to the Premises and the Work Areas.

16. Breach. Time is of the essence in this agreement~~lease~~ and if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if Lessee shall or fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default (hereafter the "Lessor's Default Notice") and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the ~~premises~~ Premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the ~~premises~~ Premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action

for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by the Lessee; furthermore, the Lessor shall retain all rent paid in advance to be applied to any damages. Upon the Lessee's receipt of the Lessor's Default Notice, the Lessor and the Lessee acknowledge and agree that the Lessor and the Lessee shall enter into good faith discussions (not to exceed sixty (60) days from the Lessee's receipt of the Lessor's Default Notice) to address and resolve any issues relating to the Lessee's breach or default hereunder before the Lessor takes any further action against the Lessee for breach of or default under the lease.

1617. Condemnation. -If at any time, during the term of this lease, any portion of the ~~premises~~Premises should be condemned, or required for public purposes by ~~any county or city and county,~~the federal government (hereafter the "federal condemning authority"), the rental shall be reduced in proportion to the value of the portion of the ~~premises~~Premises condemned. The Lessee shall be entitled to receive from the federal condemning authority (a) the value of growing crops, if any, which the Lessee is not permitted to harvest and (b) the ~~proportionate~~ value of the Lessee's ~~permanent~~ improvements so taken in the proportion that ~~it~~the unexpired term of the lease bears to the ~~unexpired~~total term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the ~~lands~~Premises occupied by the Lessee. The Lessee shall not by reason of the condemnation by the federal condemning authority be entitled to any claim against the Lessor for condemnation or indemnity for the leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation by the federal condemning authority shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other rights to which the Lessee may be entitled by law. Where the portion ~~taken~~of the Premises taken by the federal condemning authority renders the remainder unsuitable for the use or uses for which the ~~premises~~was Lessee leased the Premises, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that the Lessee may remove the permanent improvements constructed, erected, and/or placed by ~~it~~the Lessee within or upon the Premises before the expiration of any reasonable period allowed by the Lessor.-

~~17~~18. Right to enter. The Lessor ~~or~~ and the County of Hawaii and their respective agents or representatives shall have the right to enter and cross any portion of the ~~premises~~Premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Lessor ~~or~~ and the County of Hawaii and their respective agents and representatives shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the ~~premises~~Premises.

~~18~~19. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Land Board may for good cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

~~19~~20. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the ~~premises~~Premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under ~~it~~the Lessor.

~~20~~

~~21~~21. Surrender or termination. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the ~~premises~~Premises in a clean and orderly condition, reasonable wear and tear and damage due to casualty not caused by the Lessee excepted, together with all improvements existing or constructed thereon or the Lessee shall remove such improvements, at the option of as mutually determined by the Lessor and the Lessee. Furthermore, upon the expiration, termination, and/or revocation of this lease, should the Lessee fail to remove any and all of Lessee's fixtures, furnishings, equipment, and other personal property (hereafter collectively the "Lessee's Personal Property") from the ~~premises~~Premises, after notice thereof, the Land Board may, subject to the Lessor's compliance with all Applicable Laws, remove any and all personal property of the Lessee's Personal Property from the premisesPremises and either deem the ~~property~~Lessee's Personal

Property abandoned and dispose of the ~~property~~Lessee's Personal Property or place the ~~property~~Lessee's Personal Property in storage at the cost and expense of the Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the ~~personal property~~Lessee's Personal Property. This provision shall survive the termination of the lease.

21.—

22. Non-warranty. The Lessor does not warrant the conditions of the ~~premises~~Premises, as the same are being leased as is.

23.

~~22.~~ Hazardous materials.

a. No disposal or release within the Premises. The Lessee shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law.—

b. Lessee must obtain Lessor consent to bring hazardous materials onto the Premises. The Lessee shall not allow the storage or use of such hazardous materials in any manner not sanctioned by law or by the highest reasonable standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the ~~premises~~Premises any such materials except to use in the ordinary course of the Lessee's business, and then only after written notice is given to the Lessor of the identity of such hazardous materials and upon the Lessor's consent which consent ~~may shall not be unreasonably withheld at Lessor's sole and absolute discretion.~~

c. If testing is required. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by the Lessee, then the Lessee shall be responsible for the reasonable costs thereof. ~~In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.~~

d. Lessee agrees to indemnify, defend ~~attest to~~ presence of hazardous materials. In addition, the Lessee shall execute affidavits, representations, and hold Lessor harmless, the like from any damages time to time at the Lessor's

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request concerning the Lessee's best knowledge and claims—
resulting from belief regarding the release presence of hazardous
materials on the premises occurring while Lessee is in—
possession, Premises placed or elsewhere if caused released by the
Lessee or persons acting under Lessee. These covenants shall—
survive the expiration or earlier termination of the lease.

e. “Hazardous materials” definition. For the purpose of this lease, “hazardous material materials” shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

23.—f. Lessee responsibility. To the extent that it can be proven or established that the presence, discharge, or release of hazardous materials on or within the Premises is or can be attributable or attributed to actions of the Lessee, the Lessee's responsibility for such hazardous materials on or within the Premises, including any clean-up and remediation, shall be subject to and governed and limited by the Lessee Limitations.

24. Hawaii law. This lease shall be construed, in accordance with and interpreted, enforced, and governed by the laws of the State of Hawaii.

25.

24.—Exhibits - Incorporation in lease. All exhibits referred to in this lease are attached ~~to this lease~~ and hereby ~~are~~ deemed incorporated by reference.

2526. Headings. The article and paragraph headings herein are inserted only for convenience and reference only and shall in no way define, describe, or limit the scope or intent of any provision of this lease.

2627. Partial invalidity. If any term, provision, covenant, or condition of this lease should be held to be invalid, void, or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

2728. Withdrawal. The Lessor shall have the right to withdraw the ~~premises~~Premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock, or gravel as may be necessary for the construction of roads and rights of way within or without the ~~premises~~Premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the lease.—

2829. Termination by either party. The Lessor and Lessee, by mutual agreement, may terminate this lease at any time without cause, provided that the Lessor and the Lessee are not in breach of any term, covenant, or condition herein at the time of the mutual agreement to terminate. This provision can be waived by the parties provided such waiver is in writing and signed by both parties.

2930. Non-use and abandonment. If the Lessee shall, at any time for a continuous period of one (1) year, fail-
~~or,~~ cease to use, or abandon all or any portion of ~~said-~~
~~premises~~the Premises, this lease shall cease and terminate.

3031. Building construction. All building construction shall be in full compliance with all ~~laws, rules-~~
~~and regulations of the federal, state, and county-~~
~~governments~~Applicable Laws and in accordance with plans and specifications submitted to ~~an~~and approved by the Land Board Chairperson prior to commencement of construction.

~~31. Clearances.~~ The Lessee shall be responsible for obtaining all necessary federal, state, or county clearances for
such construction.

32. Time of essence. Time is of the essence in all

provisions of this lease.

33. Historic preservation. In the event any historic properties or burial sites, as defined in ~~section~~Section 6E-2, Hawaii Revised Statutes, are found on the ~~premises~~Premises during any ground disturbance or construction, the Lessee and the Lessee's agents, employees, and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office in compliance with Chapter 6E, Hawaii Revised Statutes.

34. Removal of trash. The Lessee shall be responsible for the removal of all illegally dumped trash upon the ~~premises~~Premises within ninety (90) days from the date of execution of the lease and shall so notify the Lessor in writing at the end of said ninety (90) days.

35. Phase I environmental site assessment. Prior to ~~the termination or revocation of this~~the subject lease or the assignment of the leasehold, the Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the State Department of Health, and the State Department of Land and Natural Resources. ~~Any assignment or voluntary~~ (hereafter the "DLNR"). Failure to comply with the provisions of this section shall not extend the term of this lease or automatically prevent termination by the Lessee will not be approved by the Board of or revocation of the lease. The Land and Natural Resources Board, at its sole option, may refuse to approve termination, revocation, or assignment unless this evaluation and abatement provision has been executed. performed. In addition or in the alternative, the Land Board may, at its sole option if Lessee does not do so, arrange for performance of the obligations under this section 35, with all costs and expenses of such performance to be charged to and payable by the Lessee. This provision shall survive and continue in effect after termination of this lease until the obligations hereunder are satisfied or performed by or on behalf of the Lessee.

36. Survey and boundary stakeout. The Lessee shall be solely responsible for any survey and boundary stakeout of the ~~leased premises~~Premises.

37. Cooperation with the Department of Land and Natural Resources, DLNR Division of Forestry and Wildlife and Na

Ala Hele. The Lessee shall be required to cooperate with the Department of Land and Natural Resources, DLNR Division of Forestry and Wildlife and the Na Ala Hele Program on the establishment, operation, and maintenance of the Ala Kahakai Trail that traverses the ~~leased premises~~ Premises.

38. Submissions of plans. The Lessor will have the right to terminate the lease with ninety (90) days written notice for the Lessee's failure to submit plans for approval by the Land Board Chairperson ~~of the Board~~ within six (6) years of the commencement of the lease and for the Lessee's failure to construct and develop the facilities within nine (9) years of the commencement of the lease. _____

39. Improvements. The Lessee shall, at its own cost and expense, within nine (9) years ~~as off from~~ the date of lease commencement, complete the construction of a facility to include development of the Lessee's planned marine education and research center, which presently includes laboratories, classrooms, and dormitory and dining facilities, in accordance with plans and specifications submitted by the Lessee to and approved in writing by the Land Board Chairperson and in full compliance with all ~~applicable laws, ordinances, rules and regulations.~~ Applicable Laws.

40. Environmental regulations. The Lessee shall comply with all ~~applicable federal, state and county~~ Applicable Laws relating to environmental impact regulations, including but not limited to, chapter 343, Hawaii Revised Statutes, as amended, and the regulations governing historic preservation.

~~41. Phase I environmental site assessment. Prior to termination or revocation of the subject lease or the assignment of the leasehold, Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. Failure to comply with the provisions of this paragraph shall not extend the term of this lease or automatically prevent termination or revocation of the lease. The Board, at its sole option, may refuse to approve termination, revocation, or assignment unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Lessee does not do so, arrange for performance of the provisions of this paragraph, all costs and~~

~~expenses of such performance to be charged to and paid by Lessee.~~

Definitions.

1.—41. Compliance with the CDUP conditions. The Lessor and the Lessee acknowledge and agree that the Land Board, at its meeting held on October 28, 2011, approved the issuance of a Conservation District Use Permit, which was subsequently issued by the Department of Land and Natural Resources as CDUP HA-3589 on November 1, 2011, covering the University's proposed development of the Kalakaua Marine Education Center on and within the Premises ("Marine Center CDUP"). The Lessee shall comply with all conditions contained in the Marine Center CDUP.

DEFINITIONS:

1. Use of genders. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.

2. List of definitions. As used in this lease, unless clearly repugnant to the context:

~~(a).~~ "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor.

~~(b).~~ "Lessee" means and includes the Lessee, University of Hawaii and its ~~officers, employees, invitees,~~ successors or permitted assigns.

~~(c).~~ "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

~~(d).~~ "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

~~(e).~~ "Waste" includes, but is not limited to, (1)

permitting the ~~premises~~Premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the ~~premises~~Premises; and (3) failure to employ all of the usable portions of the ~~premises~~Premises.

~~(f)~~. "Days" shall mean calendar days unless otherwise specified.

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from

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meetings held on April 8, 2004 and March 28, 2008.

By _____
Chairperson
Board of Land and
Natural Resources

LESSOR

UNIVERSITY OF HAWAII, a body
corporate

By _____

Its _____

_____ And by _____

By _____

Its _____

LESSEE

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____

APPROVED AS TO FORM:

Office of the University General Counsel

Dated: _____

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STATE OF HAWAII

)
+) SS.
)

CITY AND COUNTY OF HONOLULU

On this _____ day of _____, 20____
I _____ before me personally appeared _____
and _____,
_____ , who are the

_____ and _____
_____ of the UNIVERSITY OF
HAWAI'I, a body corporate, to me personally known, who, being by me duly
sworn or affirmed, did say that they are the
_____ and _____, respectively, of the
UNIVERSITY OF HAWAII, a body corporate, —

_____ and that the seal affixed
to _____ executed the foregoing
instrument is the corporate seal of said University and that the foregoing
~~instrument was signed and sealed in~~ on behalf of said University by the
UNIVERSITY OF HAWAI'I, by or under the authority of its Board of Regents, and
such _____ and _____
_____ executed the said _____
and _____ acknowledged said instrument to be same as the
free act and deed of ~~said University~~ such persons on behalf of the UNIVERSITY
OF HAWAI'I.

Print Name: _____

_____ Notary
Public, for above-noted State of
Hawaii and County

_____ My ~~commission~~ Commission expires: _____

Document Date: _____ Number of Pages: _____

Notary Name: _____ Judicial Circuit _____

Document Description: _____

Notary Signature _____ Date _____

NOTARY CERTIFICATION

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Form 0.5"

Form Tables 1.5"

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