

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

September 13, 2013

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

Oahu

Authorize Issuance of Tenant Subleases at the Waikiki Landing Project; Confirm Refined Boundaries of Submerged Lands to be Leased; Request Approval of Declaration of Exemption pursuant to HRS chapter 343 for use of Submerged Lands; Grant Non-Exclusive Access Easement; Approve Construction Right-of-Entry Permit; Delegation of Authority to Chairperson; Honolulu, Oahu, Hawaii. Tax Map Key Nos: (1) 2-6-010:003 (por), 005 & 016; 2-3-37:020

APPLICANT:

Honey Bee USA, Inc. ("**Honey Bee**")

REQUEST:

Honey Bee, the developer of the Proposed Waikiki Landing Project at the Ala Wai Small Boat Harbor ("**AWSBH**"), is requesting that the Board:

- Authorize issuance of tenant subleases within Honey Bee's improvements;
- Confirm the refined boundaries of the submerged lands to be leased for moorings and a boat haul-out ramp;
- Declare and determine the use of submerged lands as exempt from the preparation of an environmental assessment
- Grant non-exclusive access easements over a portion of Hobron Lane
- Approve a construction right-of-entry permit
- Renew and extend the delegation of authority to the Chairperson previously issued by the Board on November 9, 2012 (item J-1) to effectuate the above matters and continued negotiation of terms of the Master Lease

BACKGROUND.

On December 17, 2009, DLNR's Division of Boating and Ocean Recreation ("**DOBOR**") and Honey Bee entered into a development agreement (the "**Development Agreement**") that allows Honey Bee to pursue its proposed redevelopment plan for the "Boatyard Repair Site" and "Fuel Dock Site" at the AWSBH, including the submerged lands adjacent to the two sites.¹ The Boatyard Repair Site and Fuel Dock Site are shown on **Exhibit "A"**. Honey Bee's proposed redevelopment project is known as "**Waikiki Landing**" and shall be referred to hereinafter as "**Waikiki Landing**" or the "**Project**".

¹ The Development Agreement is the result of DOBOR's selection of Honey Bee pursuant to a Request for Qualifications / Request for Proposals ("**RFP**") issued on November 25, 2008. DOBOR issued the RFP to seek a private developer to develop new and improved harbor facilities (new boat repair and fuel facilities) and increase the lease rent revenues to DOBOR.

The Development Agreement sets forth various terms and conditions that Honey Bee must satisfy in order for it to be issued a master lease (the "**Master Lease**") for the Waikiki Landing project, and requires Honey Bee pay DOBOR a monthly fee of \$15,000.00.

On November 9, 2012, as Agenda Item J-1, the Board approved a 65-year lease to Honey Bee for the Boatyard Repair Site, the Fuel Dock Site, and the submerged lands adjacent to the two sites, subject to Honey Bee satisfying the remaining conditions of the Development Agreement.

PROGRESS REPORT.

Since the Board's approval on November 9, 2012, Honey Bee has:

- Obtained tentative subdivision approval from the City Department of Planning and Permitting ("DPP"), which included refining the boundaries of the fast and submerged lands to be leased;
- Conducted environmental assessments and remediation work at the Fuel Dock Site under the right of entry permit approved by the Board and obtained a permit from DPP to demolish the existing building;
- Obtained a grading permit from DPP for preliminary site work at the Boatyard Repair Site and conducted preliminary exploratory work under the right of entry permit approved by the Board (which included drilling a piling to test the stability of the site); and
- Obtained a sewer connection permit from DPP.
- Honey Bee has indicated it also recently obtained a Foundation A and Foundation B permit from DPP to do pilings, foundation work and construct retaining walls and has also received a conditional financing commitment, which staff has yet to confirm.

AUTHORIZE TENANT SUBLEASES.

Honey Bee is requesting the Board authorize the issuance of tenant subleases within Honey Bee's improvements and waive the requirement that Honey Bee obtain the prior approval of the Board before issuing such tenant subleases.

The Board previously approved the Master Lease to Honey Bee, subject to the terms and conditions of the most current lease form approved by the Department of the Attorney General (the "AG"). The most current lease form approved by the AG provides that "[t]he Lessee shall not rent or sublet the whole or any portion of the premises, without the prior written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee . . . , and the Board shall have the right to revise the rent for the premises based upon the rental rate charged to the sublessee including the percentage rent,..." It further provides that "for good cause, the Board may waive the requirement that the Lessee obtain prior written approval to rent or sublet all or any portion of the premises."

Honey Bee plans to construct the boatyard repair, haul-out, and fuel dock facilities required in DOBOR's Request for Proposals and several buildings with commercial/retail space. In order to fill the commercial/retail spaces, Honey Bee needs the ability to negotiate and enter into subleases with prospective tenants in a timely manner. As such, Honey Bee is requesting the

Board authorize Honey Bee to enter into such tenant subleases and waive the requirement that Honey Bee obtain the Board's prior written approval of such tenant subleases. The Board's waiver of the prior approval requirement shall apply to tenant subleases within the lessee's improvements, except that the Board's prior approval shall be required for subleases of the boatyard repair, haul-out, and fuel dock facilities and for any telecommunication facilities.

Waiving the Board consent requirement for tenant subleases within Honey Bee's improvements is consistent with the rationale underlying the Board's Sublease Rent Participation Policy, which provides that the State shall not participate in any sublease rents received by a lessee for subleases of space within improvements not owned by the State (e.g., improvements constructed and owned by the lessee). The rationale is that the lessee constructed the improvements at its own cost and assumed the risks of constructing such improvements, and therefore the lessee should receive the entire benefit from any subleases within the improvements.²

Staff believes the Board's prior approval requirement for tenant subleases would unnecessarily hamper Honey Bee's ability to attract tenants for the commercial/retail spaces within the Project and that in lieu of the Board's prior approval, the Master Lease could include certain terms and conditions that protect DOBOR's interests. For example, the Master Lease could include conditions that require (1) the lessee submit to DOBOR copies of all executed subleases; (2) all subleases be subject and subordinate to the terms and conditions of the Master Lease; (3) all sublease be subject to all applicable federal, State, and county laws, ordinances, rules, and regulations (including HRS Chapters 171, 200 and 343); (4) all sublessees provide releases, indemnities and procure insurance coverage necessary and appropriate to protect DOBOR and the State; (5) all sublessees submit financial statements/reports necessary for DOBOR to confirm percentage rent payment amounts; and (6) any such other terms and conditions that the Chairperson or the Department of the Attorney General deems to be in the best interests of the State. Such conditions would also apply to any sub-subleases.

CONFIRM SUBMERGED LANDS BOUNDARIES.

Honey Bee is requesting the Board confirm and approve the refined areas, boundaries, and configuration of the submerged lands to be leased to Honey Bee, which total approximately 46,480 square feet more or less, subject to confirmation by the Department of Accounting and General Services, Survey Division. The submerged lands adjacent to the Boatyard Repair Site total approximately 22,905 square feet more or less (see area outlined in red on **Exhibit "B"**), and the submerged lands adjacent to the Fuel Dock Site total approximately 23,575 square feet more or less (see area outlined in red on **Exhibit "C"**).

The Board previously approved the Master Lease to Honey Bee for fast lands and approximately 27,205 square feet of submerged lands. At the time of the Board approval, the final boundaries and dimensions of the submerged lands had not yet been determined. As such, the exhibits to the staff submittal provided only approximate, preliminary boundaries and dimensions of the submerged lands. Since then, Honey Bee and DOBOR have refined the boundaries to: (1) ensure the lease of submerged lands to Honey Bee will not adversely impact harbor operations and the navigability of the channel; (2) allow proper mooring of the types and sizes of vessels

² See Board approval of August 24, 2012 (Item D-14), which modified the Board approval of January 26, 2001 (Item D-8) as amended.

expected to moor at the Boatyard Repair Site and Fuel Dock Site; (3) include as submerged lands certain overhangs of existing piers and walkways that were previously believed to constitute or be included within the boundaries to fast lands; and (4) allow DOBOR to enforce the boundaries (i.e., make it easy for DOBOR to determine if and when there are encroachments).

The revised boundaries provide for more submerged lands to be leased than previously depicted. However, the inclusion of these additional areas are necessary to address the issues mentioned above. For example, if the additional areas were not included in the Master Lease, encroachments would likely occur on a regular basis, and DOBOR would not be able to prohibit such encroachments or enforce the Master Lease (e.g., vessels could moor within submerged lands not covered by the Master Lease or vessels wider than the area previously depicted would encroach onto unauthorized submerged lands, but would be easily moved before DOBOR could take any enforcement action).³ Increasing the area of the submerged lands not only addresses these concerns, but also ensures that DOBOR is paid lease rent for the use of the submerged lands.

The annual minimum lease rent for the submerged lands will be based on the rental rate per square foot previously approved by the Board on November 9, 2012 (Agenda Item J-1).⁴

CHAPTER 343 COMPLIANCE.

On April 23, 2010, a Draft Environmental Assessment for the Waikiki Landing project was published in the State of Hawaii Office of Environmental Quality Control *The Environmental Notice*. On October 8, 2010, a Final Environmental Assessment and Finding of No Significant Impact ("FONSI") was published.

Honey Bee and DOBOR have since refined the boundaries of the submerged lands to be leased at both the fuel dock, along the work docks and channel-side of the Waikiki Landing project, and at the boat haul-out facility; and are subject to verification by the Department of Accounting and General Services (DAGS) Survey Division. The submerged lands to be leased are to be used for moorings, for an upgraded/renovated boat haul-out ramp, and include portions of the existing piers and walkways as occurring over submerged lands, which are continuations of the prior uses of these lands. As such, Honey Bee is requesting that the Board find the proposed use of the submerged lands will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment (see attached Declaration of Exemption).

GRANT NON-EXCLUSIVE ACCESS EASEMENTS OVER PORTION OF HOBRON LANE.

In connection with the subdivision application, it was determined that the portion of Hobron Lane between Ala Moana Boulevard and Holomoana Street (identified as Lot 1-C) is not a public road under the jurisdiction of either the State Department of Transportation or the City Department of

³ Since DOBOR does not have the ability to directly assess fines, DOBOR's only recourse would be to issue a Notice of Default to the lessee. However, the lessee would simply cure the default by moving the vessel.

⁴ \$6.00 per square foot per year for the first ten years, increasing every five years for the first 30 years of the lease at predetermined rates, with a percentage rent of 10% of gross mooring fees/revenues to the extent the percentage rent exceeds the minimum base rent. The base and percentage rents will be redetermined after the initial 30 year period and every 10 years thereafter.

Transportation Services. Instead, staff believes this portion of Hobron Lane remains under the jurisdiction of DOBOR as part of the AWSBH interior roadway system.

Staff recommends the Board grant non-exclusive access easements over this portion of Hobron Lane in favor of the Boatyard Repair Site, Fuel Dock Site, and Easement Area to ensure such lots have legal access to and from a public road (i.e., Ala Moana Boulevard) and are not landlocked.

CONSTRUCTION RIGHT-OF-ENTRY PERMIT.

Honey Bee requests a construction right-of-entry permit to allow Honey Bee to conduct initial site work at the AWSBH prior to the issuance of the Master Lease. Honey Bee has conducted environmental studies and performed the remediation work recommended by the Department of Health on the Project site, and conducted preliminary exploratory work on the Boatyard Repair Site to test the integrity of the substructure. The exploratory work determined the substructure to be satisfactory, and Honey Bee now wishes to commence foundation work on the Boatyard Site, which will primarily entail installing pilings for the foundation.

Staff recommends the Board approve a construction right-of-entry to allow Honey Bee to pour concrete slabs, install auger piles and pile caps, and construct a retaining wall, subject to Honey Bee first obtaining the applicable foundation permits from the City and County of Honolulu. Since Honey Bee will continue to pay the monthly development agreement fee of \$15,000.00, staff recommends no fee be charged for the right-of-entry permit. However, Honey Bee is entitled to a reduced lease rent of \$15,000.00/per month for the first six months of the Master Lease, and since the right-of-entry will allow Honey Bee to perform construction work that would otherwise have been done during the initial month(s) of the Master Lease, staff recommends the six month reduced rent period be reduced accordingly.

To effectuate the above, and as an extension of the prior delegation of authority previously granted to the Chairperson on November 12, 2012 under item J-1, Staff further recommends the Board delegate authority to the Chairperson to determine any additional terms and conditions, including the commencement date and term of the permit, of the construction right-of-entry permit, and also authorize any additional work that may be performed by Honey Bee under the right-of-entry permit.

RECOMMENDATION.

That the Board:

1. Authorize the issuance of tenant subleases within the lessee's improvements and waive the requirement that the lessee obtain the prior approval of the Board before issuing such tenant subleases, subject to the terms and conditions described above.
2. Confirm the revised boundaries of the submerged lands to be leased for moorings and a boat haul-out ramp, subject to confirmation by the Department of Accounting and General Services, Survey Division.
3. Find the proposed lease of the submerged lands will probably have minimal or no significant effect on the environment and declare the lease and use of the submerged lands as revised to be exempt from the preparation of an environmental assessment.

4. Grant non-exclusive access easements over the portion of Hobron Lane described above in favor of the Boatyard Repair Site, Fuel Dock Site, and Easement Area.
5. Approve a construction right-of-entry permit, subject to the terms and conditions described above.
6. Delegate the authority to the Chairperson to negotiate, modify, or impose additional terms and conditions of the Master Lease and easements (including but not limited to terms and conditions related to the fast and submerged lands, insurance requirements, commencement dates, and lease rent payment schedules) that the Chairperson determines are necessary or desirable to further or protect the best interests of DLNR and/or the State of Hawaii.
7. All the above shall be subject to review and approval by the Department of the Attorney General.

Respectfully Submitted,

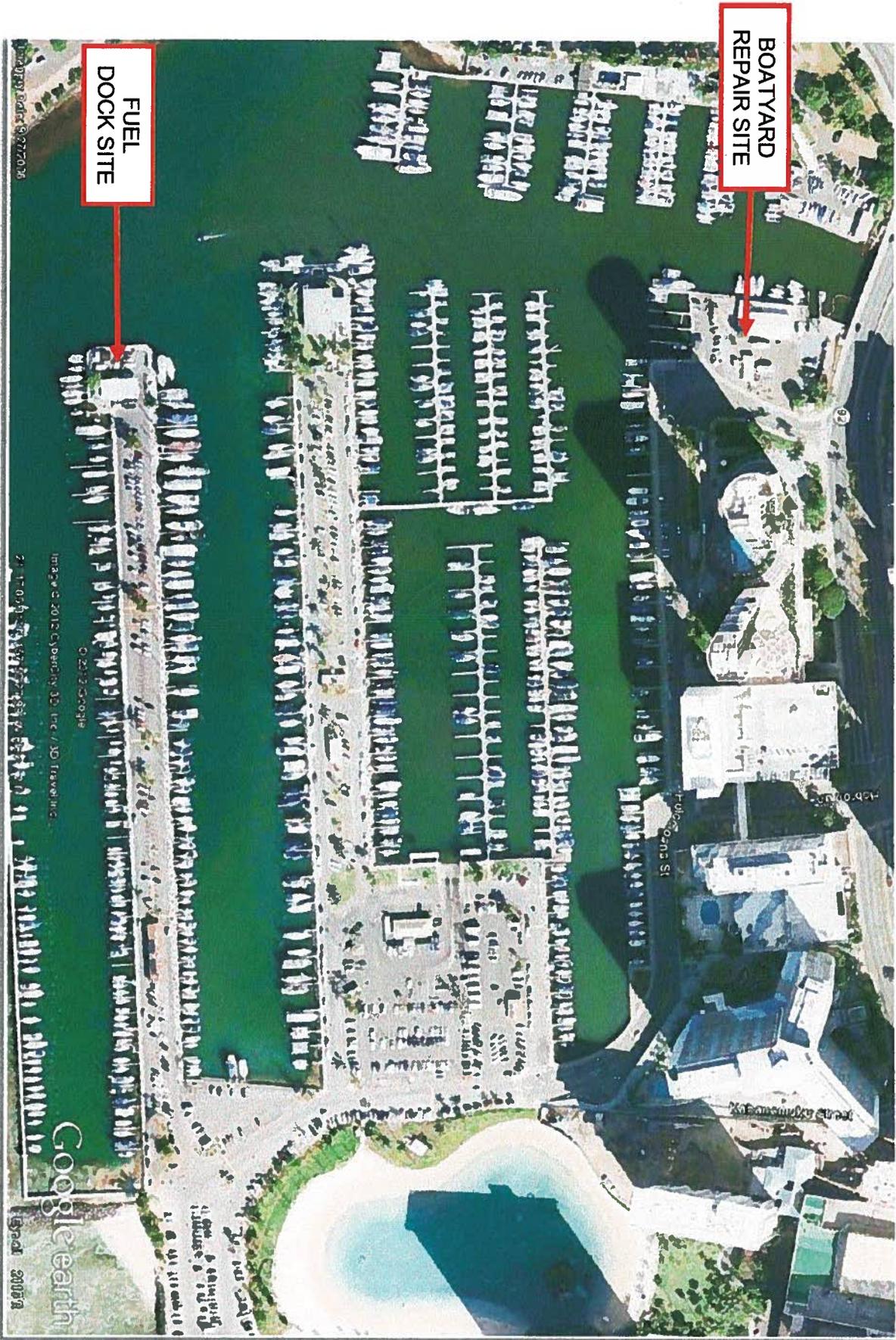


Edward R. Underwood, Administrator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



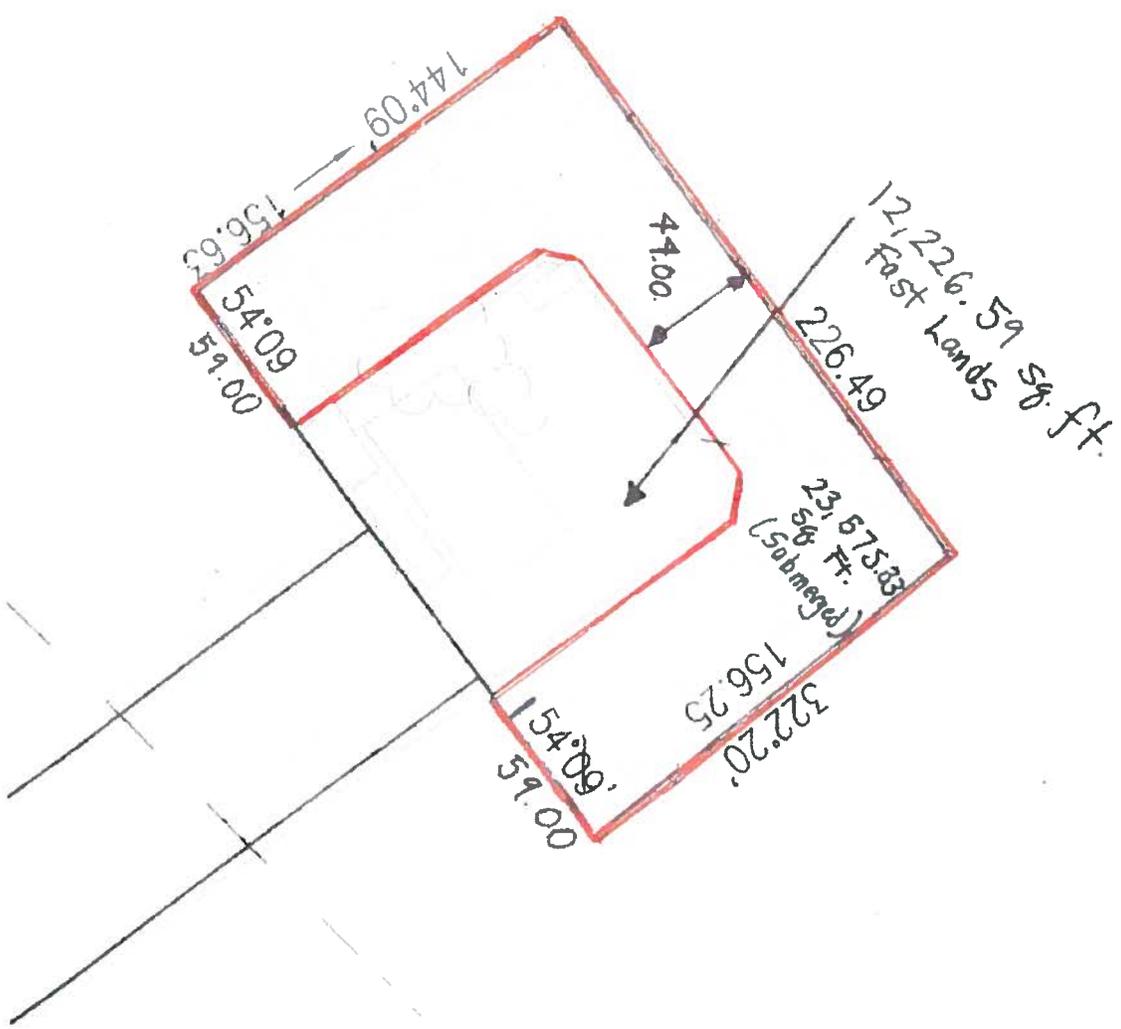
BOATYARD
REPAIR SITE

FUEL
DOCK SITE

AERIAL PHOTO OF ALA WAI SMALL BOAT HARBOR

EXHIBIT "A"

6777



SUBMERGED LANDS ADJACENT TO FUEL DOCK SITE
Total: 23,575 sq ft (approx)

EXHIBIT "C"

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

September 13, 2013

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

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DECLARATION OF EXEMPTION

from the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR. This exempted action is an applicant action as defined by Section 343-5(c), HRS, and Section 11-200-6, HAR.

Project Title: Issuance of 65-year Lease of Submerged Lands at the Ala Wai Small Boat Harbor ("AWSBH") for Honey Bee USA, Inc.'s ("Honey Bee") proposed Waikiki Landing Project

Project Location: Kalia, Honolulu, Oahu, Hawaii. Submerged lands adjacent to fast lands identified by Tax Map Key Nos: (1) 2-6-010:003 (por), 005 & 016; 2-3-37:020

Project Description: 65-year lease of submerged lands adjacent to the Boatyard Repair and Fuel Dock sites at the AWSBH for moorings and to renovate/upgrade the existing boat haul-out facility.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8(A)(1) & (4) and the Comprehensive Exemption List for the Division of Boating and Ocean Recreation, Department of Land and Natural Resources approved by the Environmental Council March, 1995, the subject request is exempt from the preparation of an environmental assessment pursuant to the general Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Exemption Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." Within the March 1995 Division of Boating and Ocean Recreation Exemption List, the contemplated action(s) fall within Exemption Class 1, Item 1, operations (mooring) at existing signs, buoys, and markers.

Consulted Parties: N/A

Remarks: Mooring operations within the Ala Wai Small Boat Harbor have occurred within the Ala Wai Boat Harbor channel and fuel dock site since the Territorial Governor's Executive Order No. 1795 set aside lands for that purpose on August 13, 1957. Various lessees and permittees have operated the marine fuel facility associated with the fuel dock since at least the 1960's. License No. 74 was also issued

to Ala Wai Boat Works, Limited for boat repair operations, including mooring of boats in the Ala Wai Boat Harbor, signed April 27, 1953 and effective to April 30, 2004 by the Territorial Board of Harbor Commissioners.

The submerged lands to be leased are depicted in Exhibits "1" and "2" and were previously used for moorings and a boat haul-out ramp/facility by the prior lessees/operators of the Boatyard Repair and Fuel Dock sites.¹ Those lessees have since ceased operations, and DOBOR has entered into a development agreement with Honey Bee for the redevelopment of those sites. The redevelopment project is called the Waikiki Landing Project and includes the use of the adjacent submerged lands for moorings and a boat haul-out facility.

A Final Environmental Assessment ("FEA") and Finding of No Significant Impact ("FONSI") for the Waikiki Landing Project was previously published in the State of Hawaii Office of Environmental Quality Control's *The Environmental Notice* on October 8, 2010. The FEA described Honey Bee's anticipated use of submerged lands for moorings and renovation of the existing boat haul-out facility, but did not provide specific areas and dimensions of the submerged lands.

The Board of Land and Natural Resources ("Board"), on November 9, 2012 (Agenda Item J-1), subsequently approved the issuance of a 65-year lease for fast lands at the AWSBH and adjacent submerged lands. No other actions aside from those mentioned in November 9, 2012 submittal are anticipated within the submerged lands area to be leased.

DLNR's Division of Boating and Ocean Recreation and Honey Bee have since refined the boundaries of the submerged lands to be leased and had a survey prepared of the submerged lands. As explained above, the submerged lands to be leased will be used for moorings and renovation of the existing boat haul-out facility, which involves: (1) negligible or no expansion or change of use beyond that previously existing, and (2) minor alterations in the conditions of land and water.

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

William J. Aila, Jr., Chairperson

Date

¹ Exhibit "3" includes a 2009 aerial photo that depicts the prior uses of the submerged lands adjacent to the Boatyard Repair site by the previous boatyard operator, i.e., the moorings and boat haul-out ramp/facility and a 2013 aerial photo that depicts the use of the submerged lands adjacent to the Fuel Dock site for moorings.

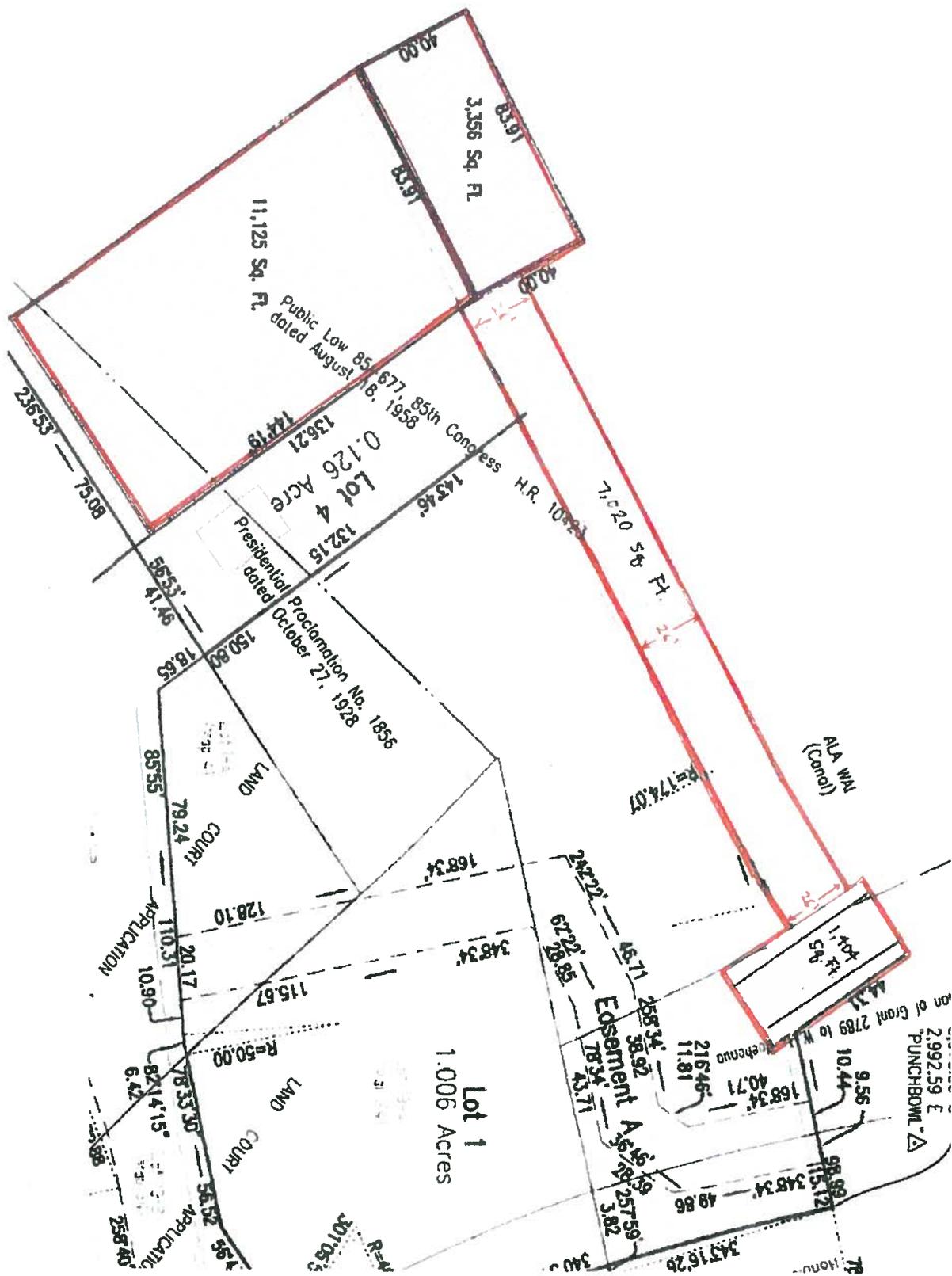


EXHIBIT "1"
 (Submerged Lands – Boatyard Repair Site)

6777

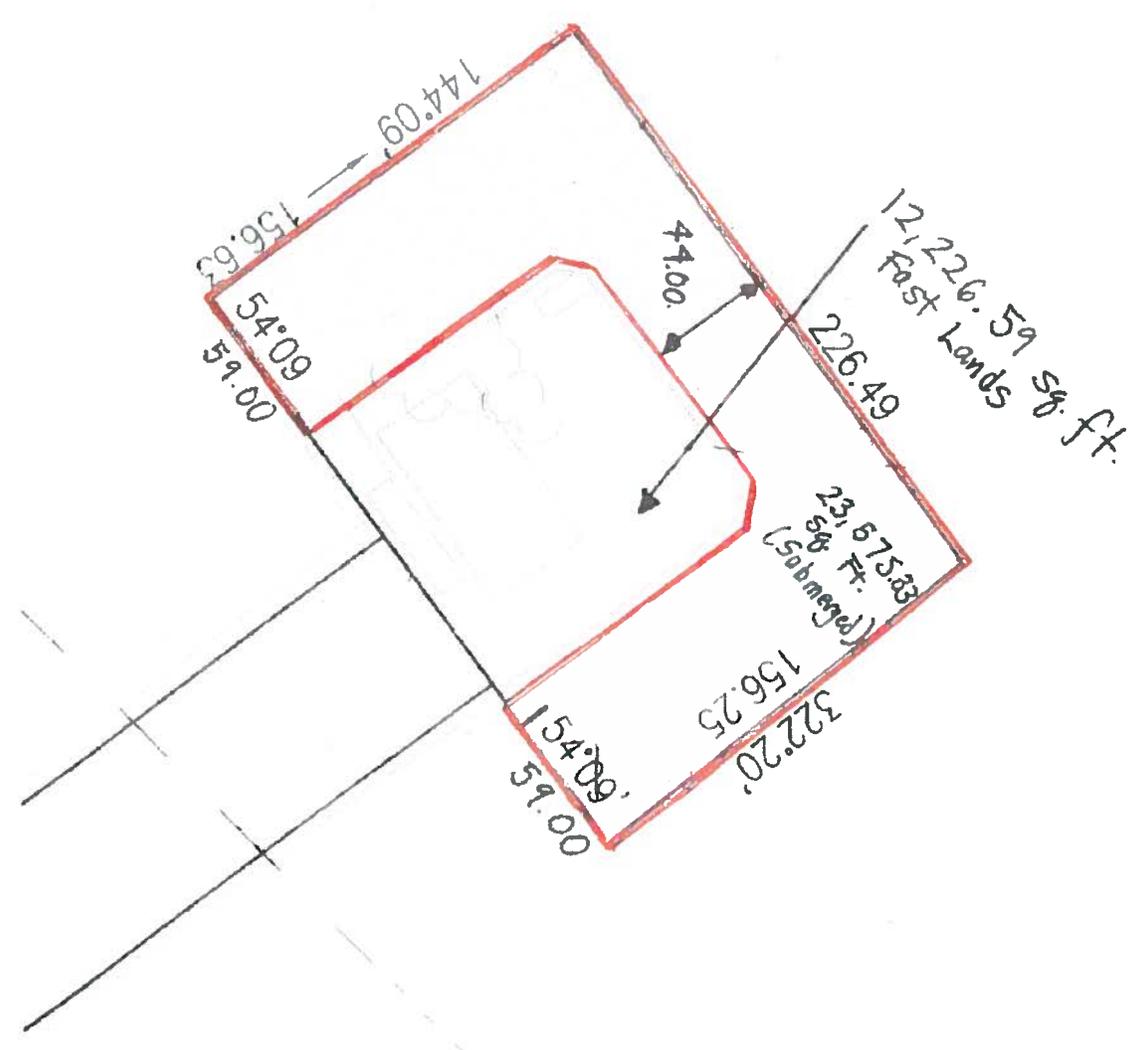
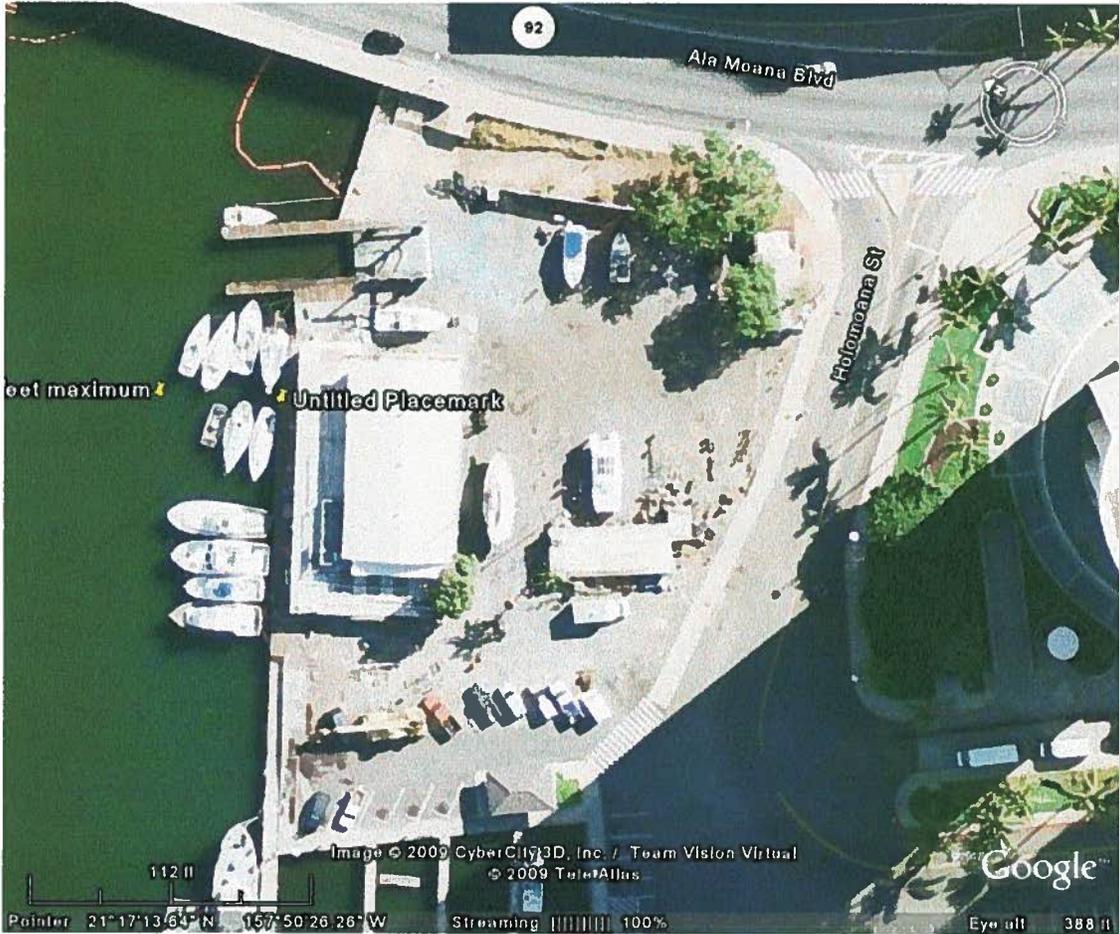
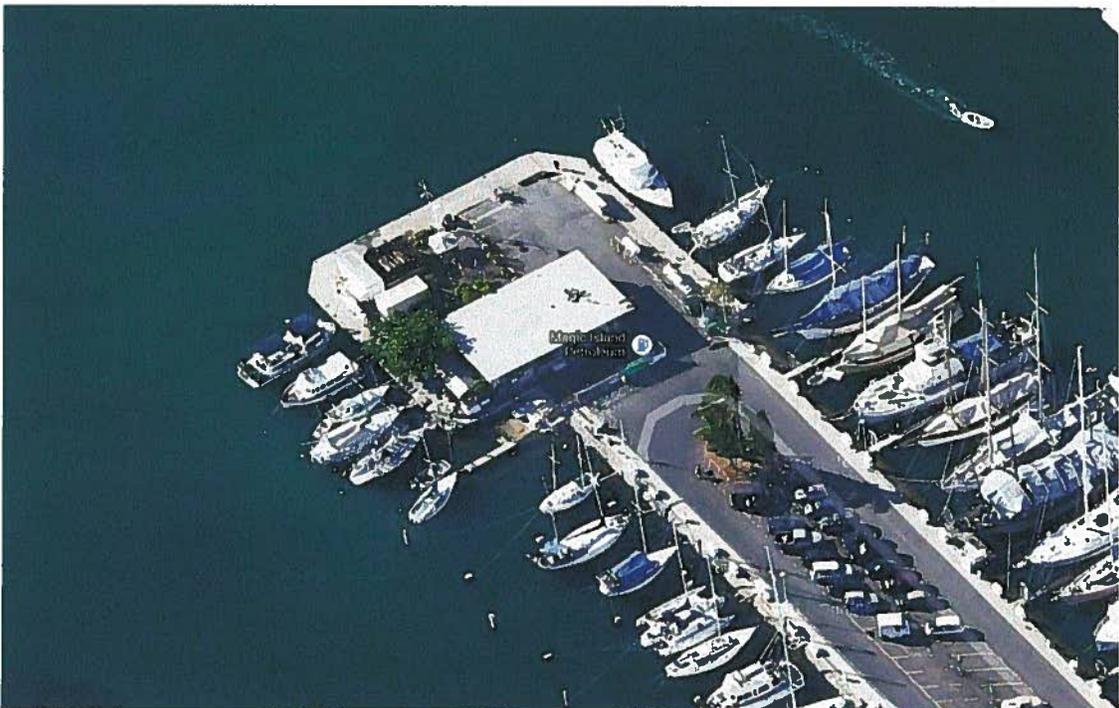


EXHIBIT "2"
(Submerged Lands - Fuel Dock Site)



Boatyard Repair Site



Fuel Dock Site

EXHIBIT "3"

(Previously Existing Uses of Submerged Lands)