

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

May 22, 2015

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

GL No: S-3941

Kauai

Amend Prior Board Action of October 24, 2014, Item D-3, Mutual Cancellation of General Lease No. S-3941, Smith’s Motor Boat Service, Inc., Lessee; Issuance of a New Direct Lease to the Office of Hawaiian Affairs; and Consent In Concept to Sublease Between the Office of Hawaiian Affairs, as Sublessor, and Ho’omana, as Sublessee, Wailua, Kawaihau (Puna), Kauai, Tax Map Key: (4) 4-1-004:021.

The Purpose of the Amendment is to Extend the Deadline for the Office of Hawaiian Affairs (“OHA”) to Submit the Sublease between OHA and Ho’omana to Land Division, and to Expand an Easement reserved to the Division of State Parks over the Lease Premises to Include an Electrical Transmission Line.

BACKGROUND:

On October 24, 2014, under agenda item D-3, the Land Board approved the issuance of a new direct lease to OHA and consented in concept to a sublease between OHA, as sublessor, and Ho’omana, as sublessee. The Board approval required OHA to submit the proposed form of sublease between OHA and Ho’omana for Land Division’s review within six months of the Board approval date. The Board submittal also reserved a sewer easement across a portion of the property in favor of the Division of State Parks. A copy of the approved submittal is attached as **Exhibit 1**.

REMARKS:

On April 15, 2015, OHA requested a six (6) month extension of time to submit the sublease between OHA and Ho’omana to Land Division. See **Exhibit 2**. There have been delays in the negotiations between the Land Division and OHA on the terms and conditions of the new direct lease. The terms of that lease must be agreed upon before OHA can negotiate the sublease with Ho’omana. Staff has no objection to the time extension request and is proposing an amendment of the prior Board action to give OHA one year from the October 24, 2014 Board approval date to submit the proposed form of sublease to Land Division.

With respect to the sewer easement, the prior Board action should also have reserved an electrical transmission line easement in favor of the Division of State Parks over the same alignment as the sewer easement as shown in **Exhibit 3**. The underground electrical line powers the pumps used to move waste from the comfort stations to an aerobic tank and leach field. Accordingly, staff is seeking an amendment of the prior Board action to expand the reserved easement to cover both the sewer line and electrical line.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of October 24, 2014, under agenda item D-3, by:

- A. Replacing recommendation C.4 with the following

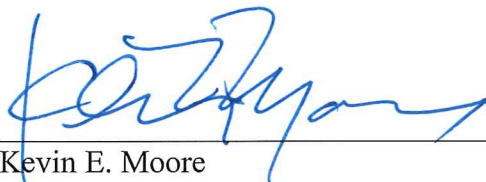
The reservation of a sewer line and electrical transmission line easement across the property at a location to be determined by survey at State Parks' expense;

- B. Replacing recommendation D.1 with the following:

OHA shall submit the proposed form of sublease to Land Division staff within one year of today's approval, and staff will present the terms and conditions of the sublease to the Board for review and approval.

2. Except as amended hereby, all terms and conditions listed in its October 24, 2014 approval are to remain the same.

Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

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

October 24, 2014

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

GLNo. S-3941
Kauai

Mutual Cancellation of General Lease No. S-3941, Smith's Motor Boat Service, Inc., Lessee; Issuance of a New Direct Lease to the Office of Hawaiian Affairs; and Consent In Concept to Sublease Between the Office of Hawaiian Affairs, as Sublessor, and Ho'omana, as Sublessee, Wailua, Kawaihau (Puna), Kauai, Tax Map Key: (4) 4-1-004:021

APPLICANT:

Office of Hawaiian Affairs (OHA)

LEGAL REFERENCE:

Section 171-95 and 36(a)(6), Hawaiian Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Wailua, Kawaihau (Puna), Kauai, identified by Tax Map Key: (4) 4-1-004:021, as shown on the attached map labeled **Exhibit A** (exhibit includes photos of improvements).

AREA:

0.813 acre, more or less

ZONING:

State Land Use District: Urban
County of Kauai CZO: Open

TRUST LAND STATUS:

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

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
October 24, 2014 uo

CURRENT USE STATUS:

Encumbered by General Lease No. S-3941 (GL No. S-3941), scheduled to expire on November 15, 2020. The lease character of use is the rehabilitation of the disabled and handicapped and related activities. Additionally, the Division of State Parks has a sewer line and pedestrian walkway across the southern end of the parcel.

NEW DIRECT LEASE TERMS AND CONDITIONS:

LEASE TERM:

Sixty-five (65) years.

COMMENCEMENT DATE:

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

ANNUAL RENT:

Gratis.

CHARACTER OF USE:

Uses consistent with zoning and applicable law.

SUBLEASE TERMS AND CONDITIONS:

The proposed sublease between OHA and Ho'omana has not yet been prepared, so the specific terms and conditions of the sublease are not yet known. However, staff understands that OHA intends to allow Ho'omana to continue its current operations on the premises. Upon receipt of the proposed sublease, staff will return to the Board of Land and Natural Resources to report on the specific terms and conditions and seek the Board's final consent to the sublease.

PROPERTY CHARACTERISTICS:

Staff has verified that legal access to the subject property is off Kuamoo Road, and that it is a legally subdivided lot. Based on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map, the entire property is located within Flood Zone AEF, the 100-year floodway with a base flood level between 14 and 15 feet above mean sea level.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Submit the proposed sublease between OHA and Ho'omana for Land Division's review within six months of this approval.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to 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." (**Exhibit B**).

DCCA VERIFICATION:

LESSEE:

Applicant, as a government agency, is not required to register with DCCA.

SUBLESSEE:

Place of business registration confirmed: YES X NO ___
Registered business name confirmed: YES X NO ___
Good standing confirmed: YES X NO ___

BACKGROUND:

At its meeting of August 14, 1964, Item F-17, the Board of Land and Natural Resources (Board), approved the sale of a 55-year lease to Rehabilitation Unlimited, Kauai (RUK) for the rehabilitation of the disabled and handicapped and related activities. The Kauai District Land Office conducted a public auction on November 16, 1965 at the State Office Building, Lihue, Kauai. The upset rent was \$220.00. GL No. S-3941 was issued to RUK for the specific use of rehabilitation of the disabled and handicapped and related activities, commencing on November 16, 1965 and ending on and including November 15, 2020.

On May 25, 1989, RUK wrote to the Department of Land and Natural Resources (Department) of its decision to cease operation by July 28, 1989. At its meeting of June 23, 1989, Item F-17, the Board approved the termination of GL No. S-3941 to RUK, and set aside to the Division of State Parks (State Parks), as an addition to the Wailua River State Park.

On August 1, 1989, Mr. Walter J. Smith, Jr., President of Smith's Motor Boat Service, Inc., wrote to the Department, expressing his interest to assume the lease to continue RUK's mission of providing jobs and job training for disabled and handicapped persons in an effort to give back to the community.

Upon receipt of Mr. Smith's letter expressing his interest in reviving work and training opportunities for Kauai's handicapped, staff was prompted to discuss the idea with State

Parks and the State Historic Preservation Division (SHPD), and in greater detail with Mr. Smith. Both State Parks and SHPD had no objection to relinquishing the use of the land, provided the property was used to benefit the mentally and physically handicapped.

On December 1, 1989, the Board, under agenda Item F-8, approved to reinstate GL No. S-3941 to RUK, and subsequently consent to an assignment of the lease, to Smith's Motor Boat Service, Inc. (Smith's), as assignee.

On February 13, 2014, OHA Chief Executive Officer, Kamana'opono M. Crabbe, Ph.D., wrote to the Board expressing OHA's interest in parcel TMK No. (4) 4-1-004:021, currently leased to Smith's. OHA expressed its desire to acquire the lease and sublease the premises to Ho'omana, a Kauai-based 501(c) 3 non-profit organization founded by Native Hawaiian parents of special needs children. A new lease and new sublease would allow Ho'omana to obtain grant monies and other funding to make much needed repairs and improvements to the premises. On March 24, 2014, Smith's wrote to the Department requesting a mutual cancellation of GL No. S-3941 to allow Ho'omana to utilize the property through an agreement with OHA.

On April 21, 2014, various government agencies and interest groups were solicited for comments. The Department's Division of Boating and Ocean Recreation and the County of Kauai's Department of Public Works responded with no objections or comments. State Parks supports this request and their comments are attached as **Exhibit C**. State Parks is concerned about preserving pedestrian access over portions of the lease premises, and consummating a disposition for an existing sewer line across the lease premises that services park facilities. Based on State Parks' comments, staff is recommending that pedestrian easements be reserved in favor of the public over portions of the lease premises to allow access to the Old Smith's Landing area, the boat ramp and park areas. Staff is further recommending that an easement for the sewer line be reserved in favor of State Parks. The easements will be located on the southern end of the parcel, generally in the area indicated in yellow on **Exhibit D** attached hereto. The exact location of the easements will need to be determined by survey at State Parks' expense.

OHA commissioned a Structural Due Diligence Report and a Civil Infrastructure Assessment as part of its due diligence in determining to acquire the lease. These reports showed that property has one or more cesspools on it that are not currently in use, likely due to their failure. The only restroom facility at the premises is a portable toilet, which is a violation of applicable Department of Health rules. The structural report found the building on the premises to be in "poor/extremely poor physical condition" with extensive termite damage and spalling of the perimeter CMU stem wall. The structural report concluded that the building has surpassed its useful life.

Despite the poor condition of the improvements, OHA wrote to the Department on September 30, 2014, reporting that the Board of Trustees approved securing a new lease as well as a sublease to Ho'omana. See **Exhibit E**. OHA requested that the allowed character of use under the lease be expanded to any use consistent with zoning and applicable law. OHA further requested that a ditch adjacent to the property not be made

a part of the leased premises. Staff reviewed the State Survey map and confirms that the ditch on the northwest boundary of the parcel is not a part of the lease premises.

Staff has no objection to the issuance of a new lease to OHA. Staff recommends, however, that the new lease contain a provision on subleasing to read substantially as follows:

Subletting. The 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 that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee or any subsequent sublessees shall be included as part of the Lessee's gross receipts, 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, if applicable, and provided, further, that the rent may not be revised downward. 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.

In the future, if OHA seeks the Board's consent to sublease the premises to a different sublessee or for a different use, staff will evaluate the request under this provision and the Board's sublease rent participation policy to determine whether the rent to OHA under the lease should be adjusted.¹

Due to the poor condition of the improvements on the property, staff is additionally including a recommendation below that the lease require OHA to accept the land and improvements in "as is, where is" condition with all defects, whether latent or patent.

The proposed use has continued since 1965 and will continue. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural environmental and/or cultural resources in the areas. As such, staff believes that the proposed use would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

RECOMMENDATION: That the Board:

- A. Find that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will

¹ Staff notes that the submittal to the OHA Board of Trustees, which recommended the acquisition of the lease, states that OHA is interested in supporting Ho'omana's program, as well as its possible relocation, and the potential commercial redevelopment of the property. A copy of the Action Item of the Land and Property Committee submitted to the OHA Board of Trustees for its September 11, 2014 meeting (less exhibits thereto) is attached as **Exhibit F**.

probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

- B. Authorize the mutual cancellation of General Lease No. S-3941, Smith's Motor Boat Service, Inc., covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
1. The standard terms and conditions of the most current mutual cancellation lease document form, as may be amended from time to time;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- C. Authorize the issuance of a new direct lease to the Office of Hawaiian Affairs, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
1. The standard terms and conditions of the most current lease to government agency form, as may be amended from time to time, but including a consent to sublease provision substantially in the form of that stated above;
 2. The lease shall include a provision requiring OHA to accept the land and improvements in "as is, where is" condition with all defects, whether latent or patent;
 3. The reservation of public access easements over portions of the property necessary to provide pedestrian access to the Old Smith's Landing area, boat ramp and park areas, to be determined by survey at State Parks' expense;
 4. The reservation of a sewer line easement across the property at a location to be determined by survey at State Parks' expense;
 5. Review and approval by the Department of the Attorney General; and
 6. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- D. Consent in concept to a sublease between the Office of Hawaiian Affairs, as Sublessor, and Ho'omana, as Sublessee, subject to any applicable conditions cited above which are by this reference incorporated herein, and further subject to the following terms and conditions:

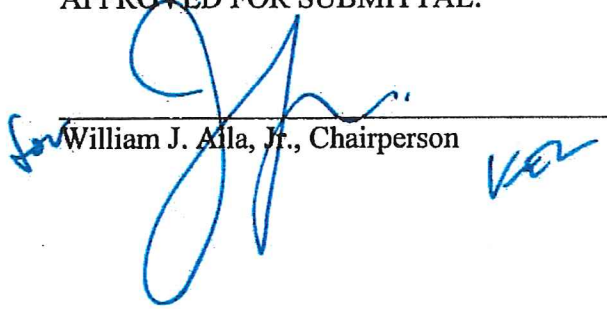
1. OHA shall submit the proposed form of sublease to Land Division staff within six months of today's approval, and staff will present the terms and conditions of the sublease to the Board for review and approval.

Respectfully Submitted,



Kevin E. Moore
Acting Administrator

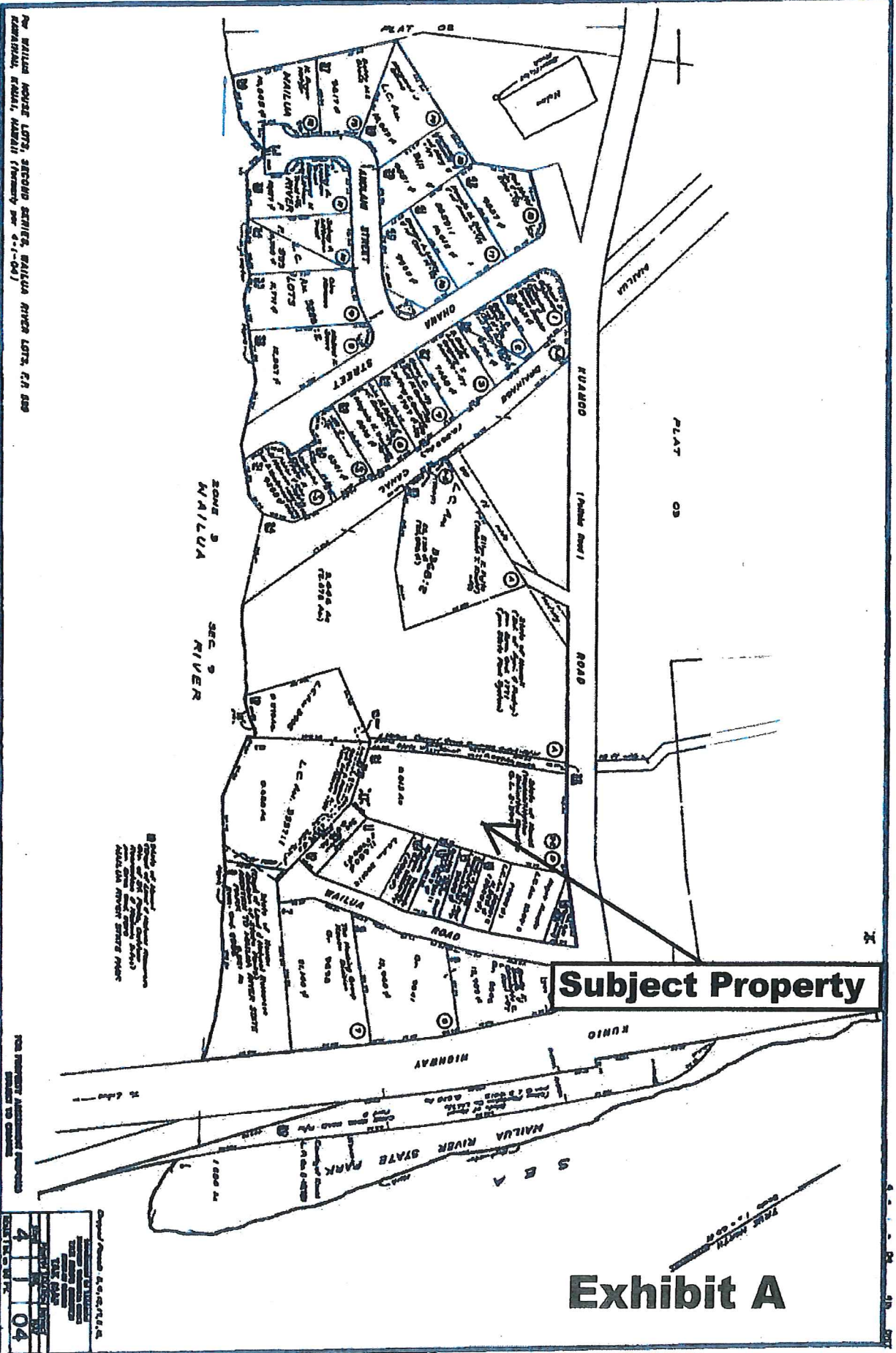
APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

for *KE*

THE WAILUA HOUSE LOTS, SECOND SERIES, WAILUA RIVER LOTS, ET AL
 KAMAHAN, HAWAII, TERRITORY (Plat No. 24-1-54)



Subject Property

Exhibit A

FOR FURTHER INFORMATION CONTACT
 THE REGISTER, HONOLULU, HAWAII

Original Record Located at

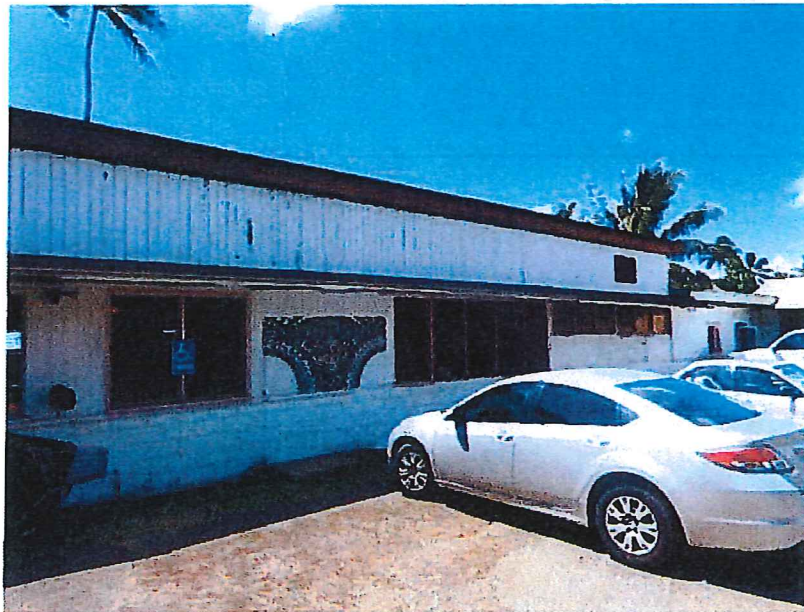
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Elevations / Plans



Entrance elevation



Elevation facing south

4531 Kuamoo Road Due Diligence



Elevation facing west



Elevation facing northwest

4531 Kuamoo Road Due Diligence



Elevation facing northwest



Elevation facing southeast

4531 Kuamoo Road Due Diligence

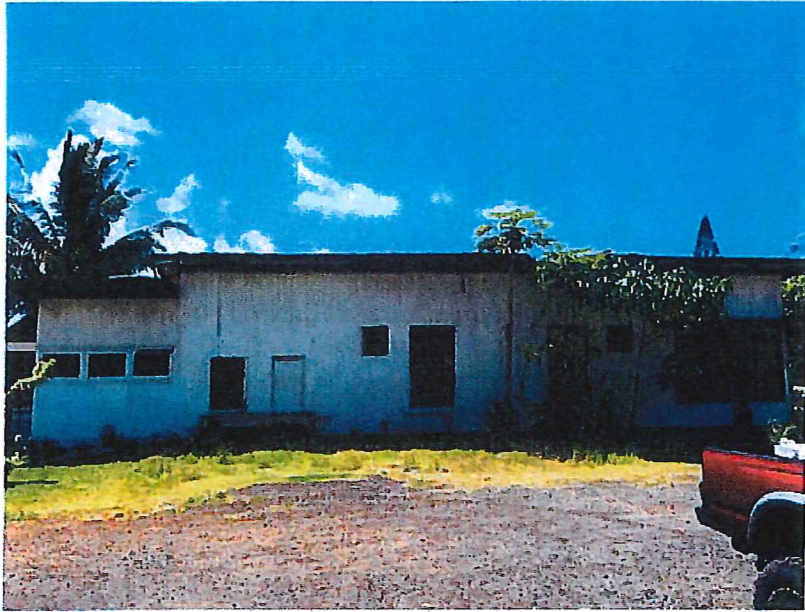


Elevation facing southeast



Elevation facing northeast

4531 Kuamoo Road Due Diligence



Elevation facing southeast



Elevation facing east

4531 Kuamoo Road Due Diligence

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

October 24, 2014

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

JESSE K. SOUKI
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

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Mutual Cancellation of General Lease No. S-3941, Smith's Motor Boat Service, Inc., Lessee; Issuance of a New Direct Lease to the Office of Hawaiian Affairs; and Consent In Concept to Sublease Between the Office of Hawaiian Affairs, as Sublessor, and Ho'omana, as Sublessee

Project / Reference No.: GL No. S-3941

Project Location: Wailua, Kawaihau (Puna), Kauai, Tax Map Key: (4) 4-1-004:021

Project Description: Mutual Cancellation of General Lease No. S-3941, Smith's Motor Boat Service, Inc., Lessee; Issuance of a New Direct Lease to the Office of Hawaiian Affairs; and Consent In Concept to Sublease Between the Office of Hawaiian Affairs, as Sublessor, and Ho'omana, as Sublessee

Chap. 343 Trigger(s) Use of State Land

Exemption Class No. and Description: In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to 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."

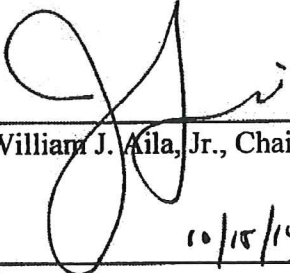
Consulted Parties: None. There will be no change in use from which previously existed.

Exhibit B

Exemption Notification
TMK: (4) 4-1-004:021
October 24, 2014

Recommendation:

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



William J. Kila, Jr., Chairperson

Date 10/15/14

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



400712 PM 0:03

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

JESSE K. SOVIKI
DEPUTY CHIEF

WILLIAM M. TAM
DEPUTY DIRECTOR FOR WATER

ADVISORY BOARD ON
WATER AND LAND RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND RESTORATION OF LAND AND
WATER RESOURCES
LAND AND WATER
HONOLULU, HAWAII
LAND
STATE PARKS


STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May 12, 2014

MEMORANDUM

TO: Lydia Morikawa, Special Projects and Development Specialist
DLNR/Land Division

FROM: Daniel S. Quinn, Administrator 
DLNR/Division of State Parks

RE: REQUEST FOR COMMENTS REGARDING THE MUTUAL
CANCELLATION OF GENERAL LEASE NO. S-3941; ISSUANCE OF A
NEW DIRECT LEASE TO THE OFFICE OF HAWAIIAN AFFAIRS AND
CONSENT TO SUBLEASE BETWEEN ATHE OFFICE OF HAWAIIAN
AFFAIRS, LESSEE, TO HO'OMANA, SUBLESSEE, TMK: (4) 4-1-004:021
(the "Subject Property")

The Division of State Parks is supportive of the cited request and notes the following:

1. Tax map key parcel (4) 4-1-004:010 is adjacent to the Subject Property and is under the jurisdiction of the Division of State Parks. There is a restroom facility on that parcel which is connected by an underground sewer line which cuts through the Subject Property to parcel number (4) 4-1-004:024, also under the jurisdiction of the Division of State Parks. That parcel also contains a bathroom facility as well as a septic system and leach field. The Division of State Parks requests this be taken into consideration with respect to the lease and sublease and if that if an easement or other instrument is warranted for this sewer line, that it be perfected. State Parks also notes that funds from the Land and Water Conservation Fund were used for these improvements and that any disposition related to the improvements be coordinated with the National Park Service to comply with LWCF requirements. State Parks will assist as necessary.
2. River recreation users including kayak and canoe paddlers use pedestrian access through the Southern end of the Subject Property to access the Old Smith's Landing area (TMK: (4) 4-1-004:008) and the boat ramp and park areas (TMK: (4) 4-1-004:-24). The Division of State Parks requests that this use of the Southern portion of the Subject Property continue to allow park users to continue to enjoy these facilities and that use be properly considered with respect to a lease/sublease.

If you have any questions, please contact Stephen Soares, Property Manager at the Division of State Parks at 808 587-0505.

Exhibit C

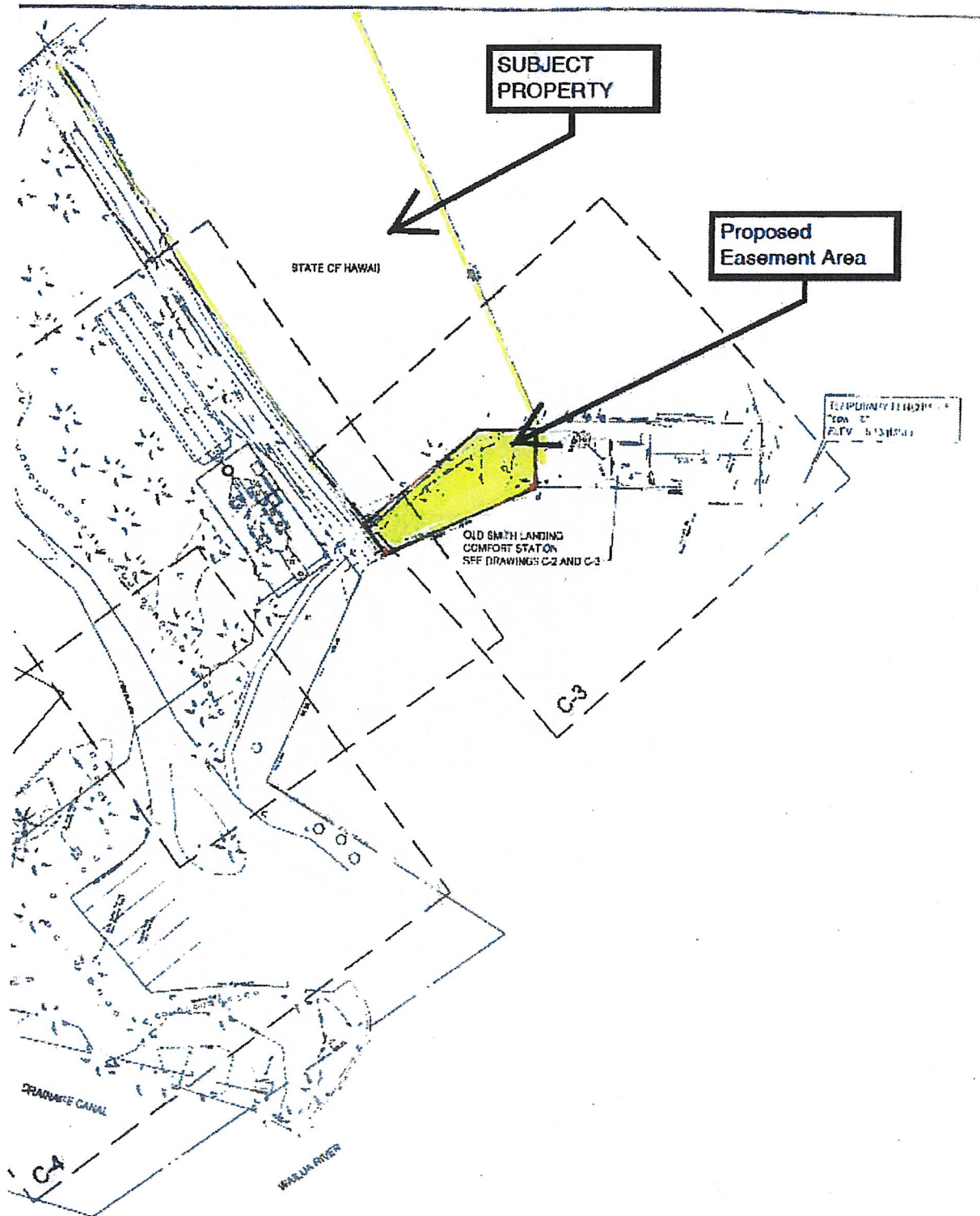


Exhibit D



RECEIVED
LAND DIVISION

2014 OCT -1 AM 10:41

STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
737 IWILEI ROAD, SUITE 200
HONOLULU, HAWAII 96817

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

RECEIVED
LAND & NATURAL RESOURCES
STATE OF HAWAII

2014 SEP 30 AM 10:23

RECEIVED

September 30, 2014

William Aila, Jr.,
Chairperson, Board of Land and Natural Resources
Department of Land and Natural Resources
Post Office Box 621
Honolulu, Hawaii 96809

Aloha Chairperson Aila,

Re: "Mutual Cancellation of General Lease No. S-3941; Issuance of a New Direct Lease to the Office of Hawaiian Affairs and Consent to Sublease Between the Office of Hawaiian Affairs, Lessee, to Ho'omana, Sublessee" Wailua Ahupua'a, Puna, Kaua'i (TMK: (4) 4-1-004:021)

I am pleased to report that at the September 11, 2014 OHA Board of Trustees' meeting, the Trustees approved 1) the execution of the sixty-five (65) year lease with the Department of Land and Natural Resources (DLNR) for land located at Wailua, Kawaihau (Puna) Kaua'i Tax Map Key (TMK): (4)4-1-004:021 and 2) the subletting of the subject parcel to Ho'omana Inc.

I would like to move forward with obtaining BLNR's approval to 1) authorize the mutual cancellation of General Lease S-3941 with Smith's Motor Boat Service, Inc.; 2) authorize the issuance of a new direct lease to OHA; and 3) consent to the sublease between OHA and Ho'omana Inc., subject to any applicable conditions cited in the April 21, 2014 Memorandum for this project.

I am requesting the following provisions be incorporated into the new direct lease:

1. Revise "Character of Use" - Change to - Uses consistent with zoning and applicable law;
2. Revise "Sublease Character of Use" - Change to - Uses consistent with zoning and applicable law;
3. Revise 3.D to remove - "but only to non-profit organizations"; and
4. That the ditch adjacent to the subject property is not made a part of the leased premises.

Exhibit E

William Aila, Jr.,
September 30, 2014
Page 2

Further, notwithstanding the foregoing modifications, upon review of the new proposed direct lease from DLNR, OHA may request additional changes as it deems appropriate.

With regard to the sublease to Ho'omana, the terms and conditions of the new executed lease will, to an extent, determine what terms and conditions will be included in the sublease. Suffice it to say at this point that the sublease will clearly state the condition of the property and will clearly delineate the responsibilities of Ho'omana to include but not necessarily limited to, the maintenance, repairs and upkeep of the property, the cost of utility services, and insurance.

Our intention is to include a provision in the cover letter accompanying the sublease to be executed by Ho'omana, a request that Ho'omana submit a plan within 60-days for renovations and repairs to bring the building up to code. Should any construction or work to be done to the structure require permitting or BLNR approval, I am requesting your assistance in obtaining or securing the required permits and approvals.

Please contact me at (808) 594-1890 if you have any questions.

'O wau iho nō,



Kamana'opono M. Crabbe, Ph.D.
Ka Pouhana, Chief Executive Officer

KMC:emk



Action Item
Land and Property Committee
September 11, 2014

LAP #14-05

Action Item Issue: Due Diligence for the new 65 year lease from the Department of Land and Natural Resources to OHA for land located at Wailua, Kawaihau (Puna), Kaua'i identified by Tax Map Key (TMK): (4)4-1-004:021 and Sublease to Ho'omana

Prepared by: *KKB* 9/04/14
Kāwika K. Burgess Date
Ka Pou Nui, Chief Operating Officer

Reviewed by: *Ernest M. Kimoto* 9-4-14
Ernest M. Kimoto Date
Ka Paepae, Corporate Counsel

Reviewed by: *Kamana'opono M. Crabbe* 9/4/14
Kamana'opono M. Crabbe, Ph.D. Date
Ka Pouhana, Chief Executive Officer

Approved by: *Hulu Lindsey* 9/5/14
Hulu Lindsey Date
Chairperson, Committee on Land and Property

I. ACTION ITEM

Whether the Land and Property Committee should authorize Ka Pouhana, OHA's CEO to:

- A. Work with Ho'omana to identify a more suitable location for the program; and
- B. Work with Ho'omana and the Asset and Resource Management Committee to identify potential funding for the relocation and support of the program.

Alternatively, whether the Land and Property Committee should authorize Ka Pouhana, OHA's CEO, to proceed with Alternative A. or Alternative B. as set forth under item V.

ALTERNATIVES.

II. ISSUE.

The Land and Property Committee is considering entering into a new 65 year lease for property located at Wailua, Kawaihau (Puna) Kaua'i at TMK: (4)4-1-004:021 and subleasing the property to Ho'omana Inc.

III. DISCUSSION

A. Initial Action Taken by Land and Property Committee. On June 12, 2014 the Land and Property Committee voted to "Enter into 65-year lease from the Department of Land and Natural Resources to OHA for land located at Wailua, Kawaihau (Puna), Kaua'i identified as Tax Map Key (TMK): (4)4-1-004:021 and Sublease to Ho'omana, Inc.

B. Board of Trustees Directive to OHA CEO. On June 19, 2014, the Board of Trustees instructed OHA's CEO:

1. To enter into a 65-year lease from the Department of Land and Natural Resources to OHA for land located at Wailua, Kawaihau (Puna), Kaua'i identified by Tax Map Key (TMK): 4-1-004:021 and sublease to Ho'omana subject to stipulations in item #2 of a memo from Administration dated May 30th, outlining a detailed due diligence process; and

2. Provided that final approval of the lease by OHA by subject to completion of additional due diligence on the property. OHA should request a minimum of 90 – 120 days to complete the additional due diligence. Administration estimates additional due diligence would cost up to \$20,000 to address each of the issues identified in the initial due diligence.

C. Intent of Acquisition. Discussions of the Land and Property Committee and BOT indicated that the intent of OHA in acquiring the 65-year lease to the property included:

1. Support of the Ho'omana program, and
2. Potential commercial redevelopment of the property

D. Due Diligence. Administration conducted the following due diligence to better understand the Ho'omana program and determine the condition of the building and structures and determine costs, risks, and liabilities associated with accepting a 65-year lease for the property.

1. Site Visit and Staff Inspection of the Property
2. Structural Assessment of the building, and (Exhibit A")
3. Civil infrastructure assessment of the property (Exhibit "B")

E. Summary of Findings

1. Ho'omana Program

a. Mission: Ho'omana assists the emotionally, mentally, physically challenged and those with disabilities with every opportunity to reach their maximum potential.

b. Ho'omana operates a thrift shop at the property and provides a training site for individuals with special needs to learn basic life and job skills. The program serves approximately 30 youth a year from 9th – 12th grade from Kapa'a High School and Kaua'i High Schools. The program also provides volunteer opportunities and job skills training for participants in programs such as the State Department of Human Services First to Work Program, the State Vocational Rehabilitation Program, and the Workforce Development Program.

c. Ho'omana is in good standing with the State of Hawai'i Department of Commerce and Consumer Affairs.

2. Building and Property

a. Condition of the Building: Poor/Extremely poor physical condition

b. Risks and Liabilities:

(1) Lack of adequate restroom facility

(2) Use of portable restroom is not legal

(3) Danger to customers, volunteers, and staff associated with the poor to extremely poor condition of the building

(4) Building does not meet current building code

(5) Building does not meet current fire code

(6) Property is located in the 100 year flood plain of the Wailua River and is subject to occasional flooding

(7) Site and building is in need of substantial repairs and renovations

(8) Permits and approvals for renovations may be difficult to obtain or may be denied

(9) Open space zoning limits future use and will trigger additional

permitting and approval

c. Potential Costs for Rebuild or Renovation: (See Exhibit "C")

Based on the findings of the due diligence, Administration recommends that the lease should not be pursued by OHA, but that alternative ways to support the Ho'omana program be explored.

IV. RECOMMENDATION

The Land and Property Committee authorize Ka Pouhana, OHA's CEO to:

- A. Work with Ho'omana to identify a more suitable location for the program
- B. Work with Ho'omana and the Asset and Resource Management Committee to identify potential funding for the relocation and support of the program

V. ALTERNATIVES

A. The Land and Property Committee can authorize Ka Pouhana, OHA's CEO to:

1. Pursue negotiations for the acquisition of a new 65 year lease for the property located at Wailua, Kawaihau (Puna), Kaua'i; TMK: (4) 4-1-004:021 from the DLNR; and
2. Accept the property understanding the current condition of the property and potential costs and liabilities associated with the property; and
3. Proceed with the design, planning, and permitting, to demolish and rebuild an adequate structure to sublease to Ho'omana to operate the existing thrift store and program assisting emotionally, mentally, physically challenged and those with disabilities.
4. Reallocate \$1,500,000 for the design, planning, permitting, and rebuilding
5. Acknowledge that because of the location in the flood plain and complications affecting the site, OHA may not be able to obtain all of the necessary permits and approvals to rebuild at the site.

B. The Land and Property Committee can authorize Ka Pouhana, OHA's CEO to:

1. Pursue negotiations for the acquisition of a new 65 year lease for the property located at Wailua, Kawaihau (Puna), Kaua'i; TMK: (4) 4-1-004:021 from the DLNR; and
2. Accept the property understanding the current condition of the property and potential costs and liabilities associated with the property; and

3. Proceed with planning, permitting, and necessary repairs and renovations to bring the property into an acceptable condition to operate the existing thrift store and Ho'omana program assisting emotionally, mentally, physically challenged and those with disabilities.

4. Reallocate \$750,000 for the planning, permitting and renovations

5. Acknowledge that because of the location in the flood plain and complications affecting the site, OHA may not be able to obtain all of the necessary permits and approvals to renovate the site.

VI. FUNDING. Recommendation: Subject to further approval from the Land and Property Committee.

Alternative A: Estimated minimum of \$1,500,000

Alternative B: Estimated minimum of \$750,000

VII. TIMEFRAME. Effective upon successful passage on second reading by the OHA Board of Trustees.

VIII. ATTACHMENTS:

EXHIBIT "A" - Structural Assessment of the Building

EXHIBIT "B" - Civil Infrastructure Assessment of the Property

EXHIBIT "C" - Potential Costs for Rebuild or Renovation



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 N. NIMITZ HWY., SUITE 200
HONOLULU, HAWAII 96817

April 15, 2015

Carty S. Chang
Interim Chairperson
Department of Land and Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809

Re: General Lease No. S-6074

Aloha e Interim Chairperson Chang,

In a letter dated October 29, 2014, from the Department of Land and Natural Resources (DLNR) to the Office of Hawaiian Affairs (OHA), the Board of Land and Natural Resources granted approval of an OHA request for the mutual cancellation of General Lease No. S-3941 for the land located at Wailua, Kawaihau (Puna) Kaua'i Tax Map Key (TMK): (4) 4-1-004: 021); and an issuance of a new direct lease with OHA and a Sub-Lease to Ho'omana. A requirement of the approval stipulated that OHA submit the Sub-Lease between OHA and Ho'omana within six (6) months of the Board approval. As the deadline approaches, we request a six (6) month extension of time to submit the Sub-Lease between OHA and Ho'omana for review and approval by the DLNR.

The Sub-Lease between OHA and Ho'omana is dependent upon the terms and conditions of the General Lease (No. S-6074) between DLNR and OHA. However, the lease is still being finalized between DLNR and OHA legal counsel. As such, OHA hereby requests an extension of time to submit the Ho'omana Sub-Lease for DLNR review and approval.

If you should have further questions regarding this matter, please contact OHA's Land Management Specialist, Brutus La Benz, at (808) 594-1944 or brutusl@oha.org.

Mahalo,

Kamana'opono M. Crabbe, Ph.D.
Ka Pouhana, Chief Executive Officer

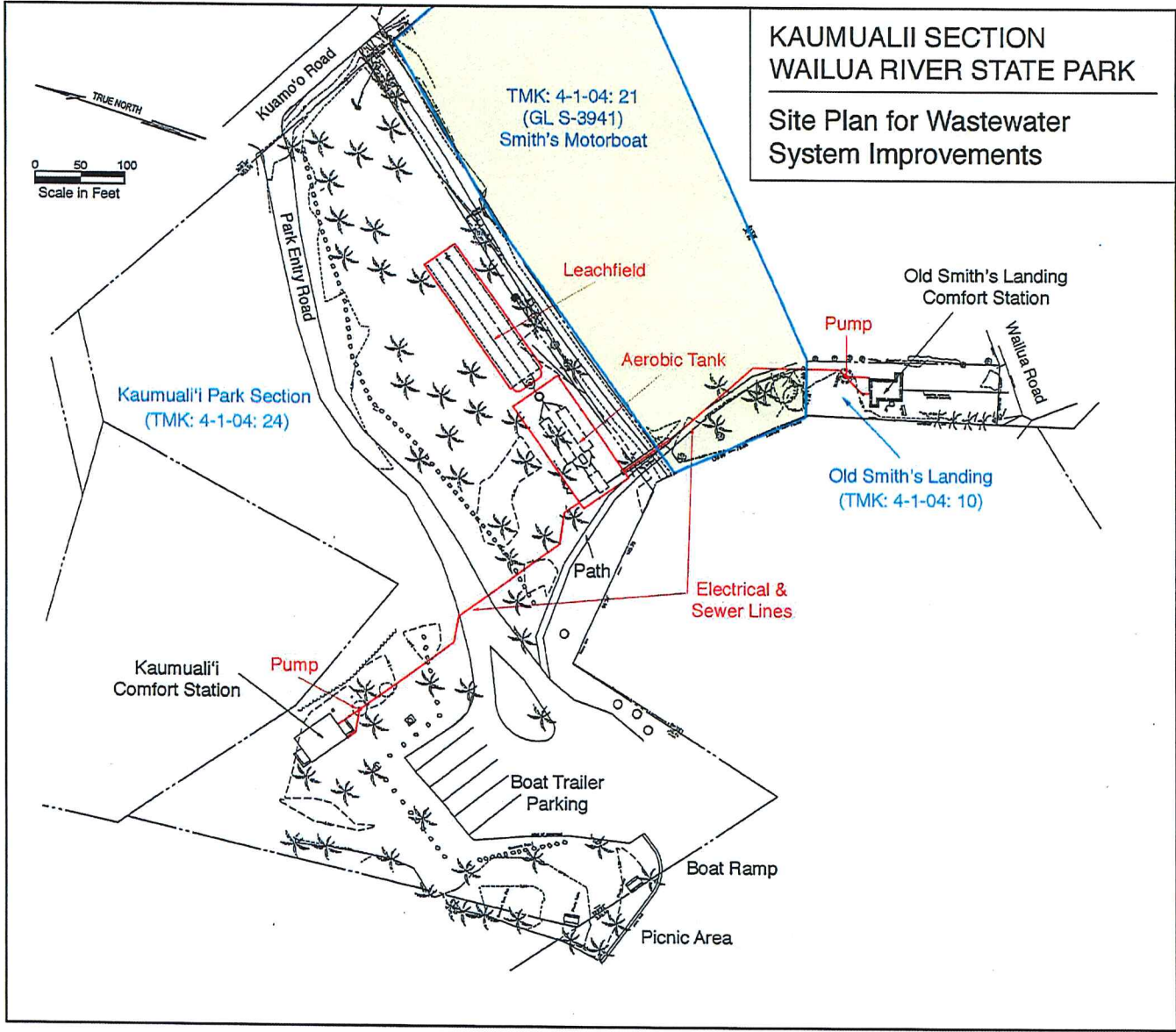
KMC:blb

4-23-15 cy: KDLO

c. Kevin E. Moore, State Lands Assistant Administrator
Department of Land and Natural Resources, Land Division

RECEIVED LAND DIVISION
2015 APR 20 PM 12:05
DEPT. OF LAND & NATURAL RESOURCES
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2015 APR 23 AM 10:43

Exhibit "2"



MAP 2

Kaumuali'i wastewater system and detail of electrical and sewer lines through parcels 21 and 22.