

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

September 25, 2015

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

Oahu

Denial of Request for Consent to Assignment of Boating Lease No. BO-13120 dated December 6, 2013 between the State of Hawaii, Lessor, and Honey Bee USA, Inc., Lessee; Denial of Request for Consent to Mortgage; Termination of Boating Lease No. BO-13120; and Cancellation of the Board of Land and Natural Resources' Approval of Non-Exclusive Term Easement to Honey Bee USA, Inc., Honolulu, Oahu, Hawaii, Tax Map Keys (1) 2-3-037:012 (por) and 020; (1) 2-6-010:003 (por), 005 and 016

**APPLICANT**

Honey Bee USA, Inc. (“Honey Bee”).

**REQUEST**

1. Denial of Request for Consent to Assignment of Boating Lease No. BO-13120 dated December 6, 2013 (the “Lease”) between the State of Hawaii, Lessor, and Honey Bee USA, Inc., Lessee;
2. Denial of Request for Consent to Mortgage in favor of ICON Commercial Lending, Inc. (the “Mortgage”);
3. Termination of Boating Lease No. BO-13120; and
4. Cancellation of the Board of Land and Natural Resources' (the “Board”) Approval of Non-Exclusive Term Easement to Honey Bee USA, Inc. (the “Easement”) approved on November 9, 2012, under Agenda Item J-1.

**LEGAL REFERENCE**

Section 171-20, 21, 39, and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

**LOCATION**

Portion of Government lands, fast and submerged, situated at the Ala Wai Small Boat Harbor (“AWSBH”), Kalia, Honolulu, Oahu, Hawaii, identified as Tax Map Keys (1) 2-3-037:012 (por) and 020; (1) 2-6-010:003 (por), 005 and 016. The fast lands consist of the “Boatyard Repair Site”, the “Fuel Dock Site” and the “Easement Area”, which are shown on the attached Exhibit “A”.

**AREA**

Fast Lands:                    1.260 acres, more or less (0.973 acres at Boatyard Repair Site;  
   0.287 acres at Fuel Dock Site)

**Item J-1**

Submerged Lands: 1.035 acres, more or less (0.500 acres adjacent to Boatyard Repair Site; 0.535 acres adjacent to Fuel Dock Site)  
Easement (Fast): 0.121 acres, more or less

**TRUST LAND STATUS**

Sections 5(a) and 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

**CHARACTER OF USE**

Fast lands: Fuel dock facility, vessel haul-out/repair facility, commercial uses, wedding facilities, vessel storage facilities, training and support facilities, office space for DOBOR, parking, and any uses permitted under applicable laws, ordinances, rules.  
Submerged lands: Mooring purposes  
Easement: To be incorporated as part of the redevelopment of the adjacent Boatyard Repair Site.

**TERMS OF LEASE AND EASEMENT**

Lease: 65 years, commencing on January 1, 2014 and expiring on December 31, 2078.  
Easement: Not yet commenced, but approved for up to 65 years, to be co-terminus with the Lease

**ANNUAL RENTAL**

Lease: \$821,652.49 (fast lands: \$551,130.49; submerged lands \$270,522.00)<sup>1</sup>  
Easement: \$55,494.11

**REMARKS**

**Background History**

At its meeting on August 28, 2009, under Agenda Item J-1, the Board approved the selection of Honey Bee as the developer of the portions of the AWSBH described above. The selection of Honey Bee was based largely on the real estate development experience, expertise, and financial capacity of its principal, Hideaki Shimakura. At the time of the Board's approval, Mr. Shimakura was the sole shareholder of Honey Bee.<sup>2</sup>

On December 17, 2009, the Department of Land and Natural Resources, Division of Boating and Ocean Recreation (“DOBOR”) entered into a development agreement with Honey Bee for the redevelopment of two parcels at the AWSBH (the “Development Agreement”).<sup>3</sup> The

<sup>1</sup> This figure represents the annual lease rent from years two through six. The annual lease rent for the first year is \$682,614.35

<sup>2</sup> Mr. Shimakura's ownership interest in Honey Bee was reduced to 20% in 2012 and to 1% in 2013. Under the proposed financing arrangement with ICON, Mr. Shimakura's ownership interest would be further reduced to .056%.

<sup>3</sup> The Development Agreement resulted from DOBOR's selection of Honey Bee pursuant to a Request for

Development Agreement granted Honey Bee the right to conduct predevelopment activities in pursuit of its proposed redevelopment project known as "Waikiki Landing". In exchange, Honey Bee agreed to pay DOBOR a development fee of \$150,000.00 per year for the first year, and thereafter \$15,000.00 per month. The Development Agreement also provided for DOBOR to issue Honey Bee a long-term ground lease upon Honey Bee's satisfaction of all the Development Agreement conditions.

At its meeting on November 9, 2012, under Agenda Item J-1, the Board approved (1) a 65-year ground lease from DOBOR to Honey Bee for the redevelopment of the AWSBH's "Boatyard Repair Site", "Fuel Dock Site", and the submerged lands adjacent to the two sites ("Lease"); and (2) a 65-year term easement to Honey Bee for an adjacent parcel of fast lands ("Easement").

On December 6, 2013, the Lease was executed and requires Honey Bee pay an annual minimum base rent of \$821,652.49 (\$68,471.04 per month), with periodic rent increases through the first 30 years of the Lease. The effective date of the Lease is January 1, 2014.

The Easement has not yet been executed. The Easement Area is located adjacent to the Boatyard Repair Site, and includes an existing public restroom, which Honey Bee intends to demolish as part of its redevelopment of the property. Demolition of the restroom, however, is subject to Honey Bee first obtaining the consent of the Hawaii Prince Hotel, which is currently responsible for maintaining the restroom. To date, no such consent has been obtained from the Hawaii Prince Hotel.

In the third quarter of 2014, Honey Bee fell delinquent on its October and November 2014 lease rent payments. DOBOR issued a Notice of Default dated November 26, 2014 for failing to (1) keep lease rental payments current; (2) post the required \$938,605.15 performance bond; and (3) remain free of encumbrances (e.g., mechanic's liens, and judgments). The Notice of Default demanded that Honey Bee cure the delinquent rents within 30 days and all other defaults within 60 days. Honey Bee failed to cure any of the defaults within the cure periods.

At its meeting on March 13, 2015, under Agenda Item J-3, staff presented a recommendation to the Board to terminate the Lease. Honey Bee, however, informed the Board that it was negotiating with potential lenders and investors and believed it was close to securing the funding necessary to cure all defaults and commence construction. The Board elected to defer action for 60 days on staff's recommendation to terminate the Lease, subject to the following conditions:

1. Honey Bee shall submit a fully executed letter of intent for equity funding of \$5 million by no later than the close of business on March 13, 2015;
2. Honey Bee shall pay all past due rents, service charges, and interest by no later than March 18, 2015;
3. Honey Bee shall keep lease rent payments current; and
4. Honey Bee shall submit the required performance bond in the sum of \$938,605.15 and cure all defaults of the Lease within ninety (90) days.

Honey Bee subsequently partially complied with Conditions 1 and 2, but failed to comply with Conditions 3 and 4.

On May 7, 2015, DOBOR issued a second Notice of Default to Honey Bee for its failure to (1) keep its lease rent payments current in accordance with the Lease; and (2) comply with the conditions imposed by the Board at its meeting on March 13, 2015.

The Notice of Default gave Honey Bee 30 days to bring its lease rent current by remitting \$154,232.37 for the balance of its March 2015 rent payment, April and May 2015 rent payments, service charges, and interest. The 30-day cure period expired on June 10, 2015, and to date, Honey Bee has failed to make any lease payments since March 17, 2015.

### Current Status

At the Board meeting on July 10, 2015, under Agenda Item J-1, staff again presented a recommendation to terminate the Lease. Three days prior to the Board meeting, Honey Bee, by letter dated July 7, 2015, submitted to DOBOR an executed Funding Agreement effective June 12, 2015 (the “**Funding Agreement**”) with ICON Commercial Lending, Inc. (“**ICON**”) for \$35 million, and stated that the initial funding of \$11,950,000.00 was anticipated to occur on August 1, 2015. This funding ultimately did not take place.

At the July 10, 2015 Board meeting, Honey Bee notified the Board of the Funding Agreement with ICON and asked the Board to give Honey Bee until the end of August 2015 to finalize its funding. Honey Bee stated that if it was not able to finalize the deal and present it to the Board for approval by the end of August 2015, then Honey Bee would agree to terminate the Lease. The Board agreed and deferred action on terminating the Lease until the end of August 2015.

Under the Funding Agreement, ICON would provide Honey Bee with a 24-month, interest only, construction and development line of credit up to \$35 million secured by a first Mortgage and would receive a fifty percent (50%) equity ownership in Honey Bee.<sup>4</sup> Pursuant to Section 13 of the Lease, the transfer of more than 20% of Honey Bee’s ownership interest is considered an assignment of the lease that requires the Board’s consent. As such, it is necessary for DOBOR to evaluate the proposed new lessee and its proposed 50% owner.

On July 15, 2015, DOBOR submitted a written request to Honey Bee for information on Honey Bee and ICON that would be fundamental to DOBOR’s evaluation of the proposed assignment of the Lease. DOBOR requested essential information regarding Honey Bee’s and ICON’s background, experience, expertise, financial capacity, and financial projections for the Waikiki Landing Project. Since the Board had imposed a deadline that Honey Bee finalize its funding arrangement and present its request to the Board by the end of August, DOBOR requested Honey Bee submit the requested information by July 27, 2015. DOBOR’s timely receipt of the information from Honey Bee was necessary for DOBOR to evaluate the information and prepare a staff recommendation in time for the August 28, 2015 Board meeting. A copy of DOBOR’s letter is attached as **Exhibit “B”**.

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<sup>4</sup> The Funding Agreement and loan term sheet submitted by Honey Bee does not provide for the loan to be secured by a Mortgage, but Honey Bee has informed DOBOR the loan would, in fact, be secured by a first Mortgage. The sole shareholder of Honey Bee is Kalia Holdings, LLC., (“**Kalia**”) a Hawaii limited liability company. Under the Funding Agreement, ICON would receive 50% of the shares of the common stock in Honey Bee currently held by Kalia.

Honey Bee failed to submit the requested information by the July 27th deadline. Instead, Honey Bee provided a partial response on July 17, 2015 and indicated that much of the requested information was confidential. Honey Bee requested DOBOR execute a confidentiality agreement before providing such information. Honey Bee reiterated its request for a signed confidentiality agreement in a letter dated July 24, 2015. On July 31, 2015, DOBOR executed the confidentiality agreement requested by Honey Bee and ICON.

On August 6, 2015, ten (10) days after the July 27th deadline, Honey Bee submitted a cover letter and a brown expandable folder consisting of loose, unstapled/unbound, disorderly pages in response to DOBOR's request for information. Staff used its best efforts to sort through the clutter of loose pages and organize them in a manner that would facilitate a methodical and systematic evaluation. In its letter, Honey Bee indicated, among other things, that:

1. ICON's response with information about its background and prior experience (Exhibit "5" of Honey Bee's letter) would be provided upon receipt of the confidentiality agreement;
2. ICON would not submit its financial statements because they "would not accurately reflect [ICON's] present financial position"; and
3. ICON was expected to place the first funding draw of \$12 million into escrow "on about August 14, 2015". (This funding did not occur.)

On August 19, 2015, DOBOR met with Honey Bee to go over the information submitted by Honey Bee. During the meeting, DOBOR reiterated that Honey Bee's response to DOBOR's request for information was submitted in a piecemeal fashion and that the loose pages submitted were difficult to decipher and organize. Honey Bee disagreed and indicated the information submitted to DOBOR was the same due diligence package previously provided to prospective lenders and investors.

DOBOR also inquired about the status of ICON's funding. Honey Bee indicated ICON would have monetized assets of \$220 million by August 31, 2015 (\$35 million of which was earmarked for the Waikiki Landing project) and that \$12 million would be deposited into escrow by September 9, 2015. Honey Bee indicated it had no contingency plan if ICON was unable to monetize the assets, and if ICON doesn't have the funds by August 31<sup>st</sup>, "then they don't fund, it's a simple as that."

On September 2, 2015, DOBOR followed up with Honey Bee regarding the status of ICON monetizing its assets and funding escrow by September 9, 2015. ICON confirmed the funds were not yet available and that it anticipated its assets being monetized by the end of September or the first week of October, after which, it will close the loan and place the funds into escrow according to the Funding Agreement.

In sum, over the course of the past three months, Honey Bee has notified DOBOR on different occasions that ICON would deposit approximately \$12 million into escrow. Initially, Honey Bee notified DOBOR that the funding was to occur by August 1. When the funding did not occur, Honey Bee informed DOBOR that the funding would occur "on about August 14". When the funding again did not occur, Honey Bee provided a revised funding date of September 9<sup>th</sup>. That date has also passed, and ICON is now indicating that the earliest funding into escrow will take place is in October.

With respect to the current status of the Lease, Honey Bee has not made a lease payment since March 17, 2015 and currently owes a total of **\$425,889.45**, which total is comprised of lease rent and service charges for March (balance) through September 2015, plus interest. It is also worth noting that in addition to its lease rent delinquencies, Honey Bee has a history of delinquencies in the payment of fees required under the development agreement.<sup>5</sup>

### **Requests for Consent to Assignment of Lease and Consent to Mortgage**

Pursuant to the Funding Agreement and additional information provided by Honey Bee, ICON will provide a construction and development line of credit up to \$35 million to Honey Bee. The loan will be a 24-month, interest only loan, secured by a first Mortgage over Honey Bee's leasehold interest in the Lease and the Easement. ICON will receive a fifty percent (50%) equity ownership in Honey Bee.

Section 13 of the Lease provides that the transfer of more than 20% of Honey Bee's ownership interest is considered an assignment of the lease that requires the Board's consent. The complete text of Section 13 is attached as **Exhibit "C"**.

Section 20 of the Lease provides that Honey Bee shall not mortgage the leased premises or any interest in the Lease without the prior written consent of the Chairperson of the Board. While this provision only requires the consent of the Chairperson and not the full Board, the Chairperson has agreed to refer this matter to the Board. The complete text of Section 20 is attached as **Exhibit "C"**.

Pursuant to the Funding Agreement, ICON will receive a 50% equity interest in Honey Bee and will hold a first Mortgage and security interest in Honey Bee's leasehold interest and the Easement. The Funding Agreement and Mortgage include provisions that could result in ICON becoming the sole lessee under the Lease. For example:

- Section 11.10 of the Funding Agreement provides for ICON, Kalia, and Honey Bee to negotiate and execute a separate agreement prior to funding that would allow Kalia or ICON to buy out the other party and become the 100% shareholder of Honey Bee; and
- The Mortgage allows ICON to foreclose on the Mortgage and become the sole lessee in the event of a default on the loan, which could occur if Honey Bee defaults on any loan payments or is unable to secure permanent take-out financing when the loan is due in 24 months. The take-out financing would need to be for the entire outstanding principal balance, plus any accrued interest, which amount could exceed \$35 million.

As such, it is imperative that DOBOR properly evaluate ICON as the proposed 50% owner of Honey Bee, and also as a potential 100% owner of the leasehold interest in the property. In order for DOBOR to thoroughly evaluate the proposed (and potential) change in ownership, DOBOR requested ICON provide various information, including but not limited to (1) a description of ICON's prior experience in real estate development and financing (specifically ICON's prior experience in projects similar in size, type and scope to the Waikiki Landing project) and a detailed list of other projects developed, financed and/or owned by ICON (with emphasis on completed projects); and (2) audited financial statements for the past three (3) fiscal years and the most

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<sup>5</sup> Honey Bee's payment history shows a history of delinquent development fees from March through September 2012 (\$108,203), November through December 2012 (\$30,000), January through May 2013 (\$75,000), and June through December 2013 (\$105,000).

current year-to-date interim financial statements. The information submitted by ICON is summarized below:

1. ICON's Prior Experience and Projects. ICON provided very limited information about its experience in funding other projects. Most of the information provided was supplied by Honey Bee, not ICON, and was the result of Honey Bee's research on the internet.

ICON indicated it no longer provides borrower information for past projects on the advice of its attorneys. ICON has elected not to provide any such information notwithstanding DOBOR providing the confidentiality agreement requested by ICON.

The only two projects mentioned by either Honey Bee or ICON are (1) the funding of \$41 million for a resort project in Costa Rica, which was ultimately halted due to the developer's non-performance<sup>6</sup>; and (2) the funding of \$30.8 million for a student housing project in Utah, which has yet to be funded.

In sum, most of the information provided by ICON and Honey Bee regarding ICON's experience and expertise consist of statements from ICON and Honey Bee that are unsupported by any documentation. Neither ICON nor Honey Bee have provided any evidence of ICON providing funding for a single project that has been successfully completed. DOBOR is not questioning ICON's reasons for not providing the requested relevant information regarding prior projects financed and/or owned by ICON. However, in conducting its due diligence of ICON, DOBOR is constrained to the limited information provided by ICON, and it would not be prudent for DOBOR to rely simply on unsubstantiated statements, speculation, or hearsay.<sup>7</sup>

2. ICON's Financial Statements. DOBOR requested ICON's financial statements to evaluate ICON's financial capacity. ICON, however, did not submit its financial statements, instead stating that its financial statements would not accurately reflect its present financial position. ICON did not submit any alternate information or evidence of its present financial position.

It should be noted that DOBOR also requested current interim financial statements since those statements would reflect ICON's present financial position. ICON, however, did not provide the requested interim financial statements. Again, DOBOR is not questioning ICON's reasons for not submitting information regarding its financial position, but DOBOR can only evaluate the information it was provided. Given the past lease rent delinquencies and performance bond defaults DOBOR has endured due to Honey Bee's financial situation, DOBOR is extremely concerned that it has absolutely no financial information about ICON, who is the proposed 50% owner of the lessee and potential 100% owner.<sup>8</sup>

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<sup>6</sup> Based on written information provided by Honey Bee, it obtained this information from the internet which was subsequently confirmed by ICON. However, DOBOR has received conflicting information as to ICON's role in this project, including the possibility that ICON only brokered the deal.

<sup>7</sup> DOBOR has done some internet research on ICON. Interestingly, the only project listed on ICON's website is the Waikiki Landing project.

<sup>8</sup> ICON and Honey Bee have indicated that ICON would obtain the funding from monetizing its assets. However, DOBOR has not been able to verify any of ICON's assets.

DOBOR also reviewed various other information and documents provided by Honey Bee and ICON. Various documents raised concerns about the proposed funding arrangement, the viability of ICON, and the probability that the proposed funding would ever occur, let alone occur by the dates anticipated and provided by Honey Bee (especially, since the prior anticipated funding dates have not occurred). DOBOR's concerns are further supported by Honey Bee's past history of proposed funding dates that never materialized. Some of DOBOR's concerns are summarized below:

1. Lack of Full Site Control. As mentioned above, the Easement has not yet been executed. The Easement Area is located between the Boatyard Repair Site and the proposed waterfront promenade which is an integral feature of Honey Bee's proposed redevelopment plan. The Easement Area also includes an existing public restroom that was built by, and is currently maintained by the Hawaii Prince Hotel as a condition of its special management area permit. Honey Bee intends to demolish the restroom as part of its redevelopment of the property, but demolition of the restroom is subject to Honey Bee first obtaining the consent of the Hawaii Prince Hotel. To date, no such consent has been granted. The fact that ICON is willing to fund up to \$35 million prior to Honey Bee establishing full site control raises questions about ICON's due diligence practices. DOBOR's concerns about ICON's due diligence practices are supported by ICON's previous funding of a project in Costa Rica that was ultimately halted due to the developer's defaults.

2. Buy-Sell Agreement. Section 11.10 of the Funding Agreement provides for ICON and Honey Bee to negotiate and execute a separate agreement prior to funding that would allow Kalia or ICON to buy out the other party and become the 100% shareholder of Honey Bee. Staff has not been provided with a copy of the agreement, but the fact that ICON could become the sole shareholder of the lessee and that ICON has not provided DOBOR with any information regarding ICON's background and financial capacity is disconcerting.

3. Mortgage. Foreclosure of the proposed Mortgage could result in ICON becoming the sole lessee, which as stated above, is a concern given the lack of information about ICON provided to DOBOR.

Other concerns noted by staff include the lack of any mention of a mortgage or security interest in the Funding Agreement and loan term sheet; ICON's willingness to accept a Mortgage that includes the Easement (which has not yet been issued); and the representations in the Mortgage by Honey Bee that it has authority to issue the Mortgage over the Easement.

4. Escrow Instructions dated June 26, 2015. The Escrow Instructions are executed by Honey Bee, but not by ICON or the escrow company.

Moreover, the Escrow Instructions only apply to the escrow's holding and disbursement of Honey Bee's \$50,000.00 initial deposit. The instructions do not apply to the \$35 million funding contemplated by the Funding Agreement or to the Mortgage to be executed in favor of ICON.<sup>9</sup> There is no evidence that escrow has been opened for the funding that was to have occurred on August 1, 14, or September 9, 2015.

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<sup>9</sup> In fact, Section 6 of the Escrow Instructions states that Honey Bee and ICON will execute a separate escrow instructions relating to the Mortgage.



5. **Financial Projections.** The financial projections for the Waikiki Landing Project submitted by Honey Bee are based on subleases. However, some sublease areas and rents in the projections differ from information shown in other supporting documents submitted by Honey Bee which raises concerns regarding the credibility and accuracy of Honey Bee's financial projections.

In addition, during the meeting on August 19, 2015, Honey Bee stated that 80% of the project was "signed and monied", which is inconsistent with the written information provided by Honey Bee.

6. **Joint Venture Agreement.** Although the Funding Agreement references the Joint Venture Agreement, it was never provided to DOBOR until DOBOR requested it during the meeting on August 19, 2015. Upon reviewing the agreement, DOBOR noted the agreement is dated July 2, 2015, but the footer of the agreement is dated October 16, 2014. While not critical to the legality or enforceability of the agreement, these types of inconsistencies, coupled with other issues or inconsistencies found in other documents and ICON's reluctance to submit various supporting documentation raises serious concerns for DOBOR.

In sum, based on the lack of information provided regarding ICON, coupled with the concerns noted by DOBOR in reviewing some of the other documents submitted, staff recommends the Board deny consent to the proposed assignment of the Lease and to the Mortgage.

### **Summary**

At the July 10, 2015 Board meeting, Honey Bee requested the Board give Honey Bee until the end of August 2015 to finalize its funding arrangement with ICON. Moreover, Honey Bee agreed to terminate the Lease if it could not secure the funding and the Board's approval by the end of August 2015. Based on the representations made by Honey Bee, the Board agreed to defer action on DOBOR's recommendation to terminate the Lease until the end of August 2015.

As indicated above, DOBOR reviewed and evaluated the limited information provided by Honey Bee and ICON and recommends the Board deny consent to the proposed assignment of Lease and to the Mortgage.

By the time this matter is presented to the Board, it will be one month after the August 2015 deadline imposed by the Board and agreed to by Honey Bee, and there is still no firm commitment as to if and when the funding will occur. Furthermore, many of the documents and agreements necessary to close the loan (i.e., the execution of the Easement, consent from Hawaii Prince Hotel, Mortgage, Escrow Instructions) have not yet been prepared, finalized or executed. As such, DOBOR does not believe it is possible for funding to happen anytime soon, even if the Board were to approve the assignment of the Lease.

DOBOR also notes that Honey Bee has a history of informing DOBOR of potential financing/funding sources, and on several occasions, has provided DOBOR with copies of several different funding proposals.<sup>10</sup> However, Honey Bee was never able to secure the necessary

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<sup>10</sup> Over the past two years, Honey Bee has provided DOBOR with copies of at least six separate funding proposals from various entities, including one proposal in July 2013 (\$19.8 million), two proposals in November 2013 (both for \$21.5 million), two proposals in October 2014 (\$7 million and \$31 million) and one proposal in March 2014 (\$5 million). To DOBOR's knowledge, none of the proposals progressed beyond the initial proposal phase and no good faith deposits were ever made by Honey Bee towards obtaining the funding. DOBOR has never been contacted by any of

funding and cure the defaults, and based on Honey Bee's past performance, DOBOR is not confident the current funding proposal will materialize, or will materialize in a timely manner.

In sum, DOBOR has twice recommended the Lease be terminated, but action has been deferred in both instances. The most recent deferral was supposed to be until the end of August 2015. It is now the end of September and multiple funding deadlines provided by Honey Bee have elapsed. As a result of these delays and broken promises, Honey Bee currently owes DOBOR **\$425,889.45** in delinquent lease rent and service charges, plus accrued interest. A total of \$220,376.33 of this outstanding amount is over 60 days past due. Any further delays will increase the amount owed to DOBOR, which DOBOR believes it would unlikely be able to collect.

Furthermore, many economists are projecting the upturn in real estate market will last only 2 to 3 more years. DOBOR believes it has been extremely patient and accommodating to Honey Bee, but that the prudent course of action is to terminate the Lease and begin the process of seeking a new developer for this prime Waikiki property.

**RECOMMENDATION** That the Board:

1. Deny Honey Bee's request for Consent to Assignment of Boating Lease No. BO-13120 dated December 6, 2013 (the "Lease") between the State of Hawaii, Lessor, and Honey Bee USA, Inc., Lessee;
2. Deny Honey Bee's Request for Consent to Mortgage in favor of ICON Commercial Lending, Inc.;
3. Authorize the termination of Boating Lease No. BO-13120 in the manner specified by law;
4. Cancel the Board of Land and Natural Resources' Approval of Non-Exclusive Term Easement to Honey Bee USA, Inc. approved on November 9, 2012, under Agenda Item J-1;
5. Authorize the retention of all sums heretofore paid or pledged under Boating Lease No. BO-13120 to be applied to any past due amounts;
6. Terminate the Lease and all rights of Lessee and all obligations of the Lessor effective as of September 25, 2015, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law;
7. Require Honey Bee to deliver copies of all reports, studies, files, due diligence materials, permits and approvals, related to the Waikiki Landing project to DOBOR within thirty (30) days of the date of this Board meeting; and
8. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii

under Boating Lease No. BO-13120 and to pursue all other rights and remedies as appropriate.

Respectfully Submitted,



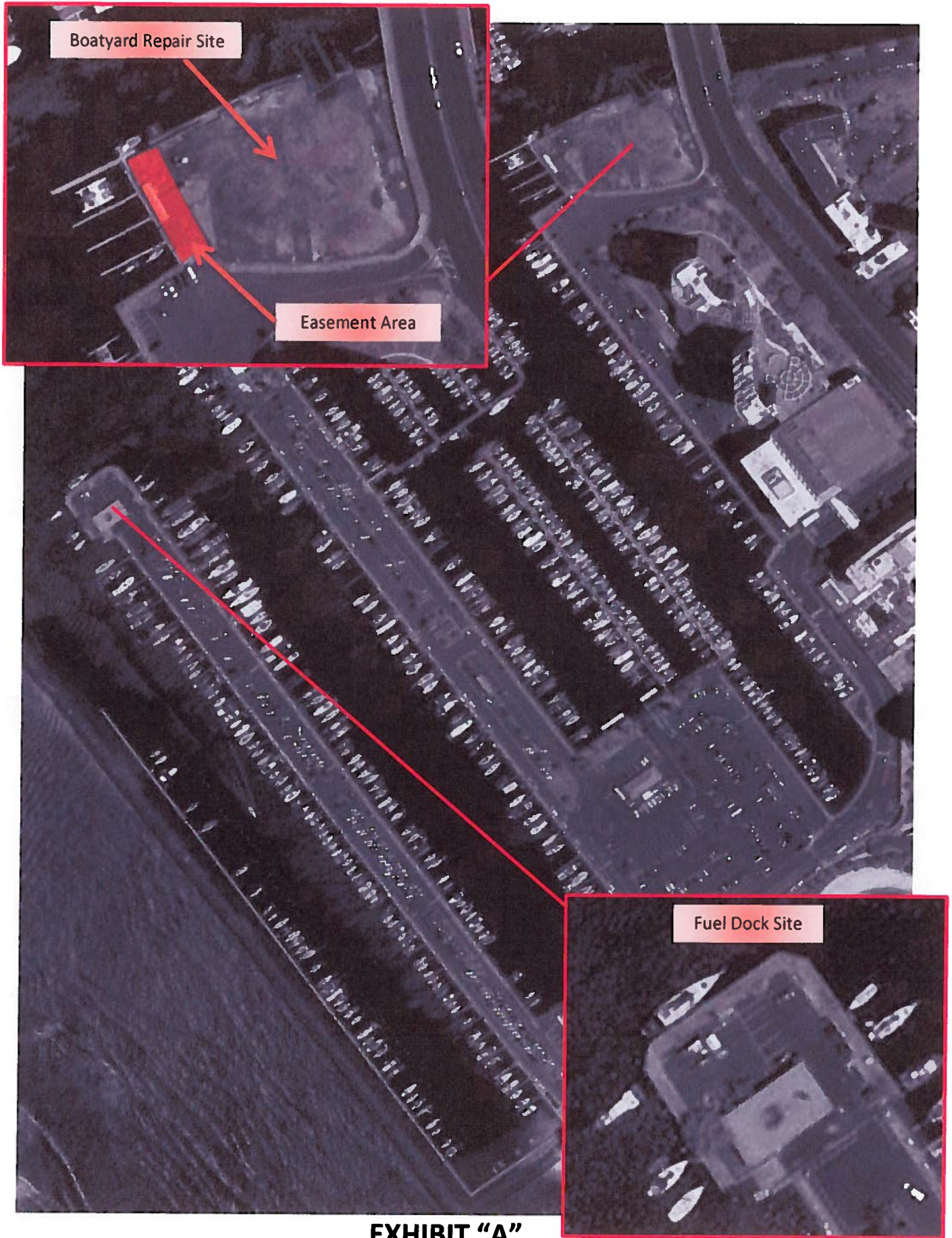
Edward R. Underwood  
Administrator

Attachments

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



**EXHIBIT "A"**

Boatyard Repair Site, Fuel Dock Site, and Easement Area



DAVID Y. IGE  
GOVERNOR OF HAWAII



CARTY S. CHANG  
DEPARTMENT CHAIRPERSON  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
1500 KALANIANAʻOHE MAHELE DRIVE, SUITE 100  
HONOLULU, HAWAII 96813  
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WWW.DLN.RH.HAWAII.GOV

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**DIVISION OF BOATING AND OCEAN RECREATION**  
333 QUEEN STREET, SUITE 300  
HONOLULU, HAWAII 96813

July 15, 2015

BOR 008.16

VIA EMAIL (kkiuchi106@cs.com) AND REGULAR MAIL

Mr. Keith Kiuchi  
Honey Bee USA, Inc.  
c/o Keith M. Kiuchi, A Law Corporation  
1001 Bishop Street  
ASB Tower, Suite 985  
Honolulu, Hawaii 96813

Re: Request for Consent to Assignment of Boating Lease No. BO-13120 (the "Lease")

Dear Mr. Kiuchi:

Honey Bee USA, Inc. ("Honey Bee") is proposing to transfer a fifty percent (50%) interest in Honey Bee to ICON Commercial Lending ("ICON"). Pursuant to Section 13 of the Lease, a transfer of twenty percent (20%) or more of ownership interest in the lessee is deemed an assignment of the Lease and is subject to the terms and conditions set forth in Section 13 of the Lease.

Pursuant to the discussions held before the Board of Land and Natural Resources ("BLNR") on July 10, 2015 on Agenda Item J-1, the Division of Boating and Ocean Recreation ("DOBOR") requests Honey Bee submit the following information, which information is necessary for DOBOR to properly evaluate Honey Bee's request for the BLNR's consent to the proposed assignment of the Lease:

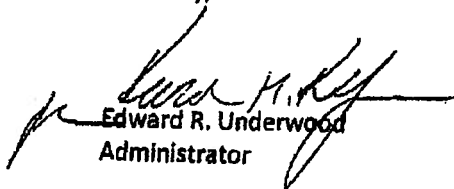
1. A copy of the written agreement between Honey Bee and ICON detailing the transfer of the 50% ownership interest to ICON. The agreement should provide details, including but not limited to: (a) whether existing stock will be transferred (and if so, how many shares, from whom and what percentage), (b) whether new stock is to be issued, and if so, then the type of stock to be issued (e.g., common, preferred, voting, non-voting, etc.) and how many shares, and (c) the consideration to be paid by ICON for the stock to be acquired.
2. A description of ICON (e.g., type of entity) and copies of ICON's origination documents (e.g., if ICON is a corporation, submit copies of its articles of incorporation and bylaws; if ICON is a limited liability company, then submit copies of its articles of organization and operating agreement).
3. A certificate of good standing or equivalent from the State in which ICON was formed.

**EXHIBIT "B"**

4. A description of ICON's prior experience in real estate development and financing, particularly its prior experience in projects similar in size, type and scope to Honey Bee's proposed Waikiki Landing project.
5. A detailed list of other projects developed, financed and/or owned by ICON, with emphasis on existing projects that have been completed (as opposed to projects that are currently in the process of being developed and/or funded) and projects similar in scope, location, size, and type the proposed Waikiki Landing project. Details should include, but not be limited to: (a) the project description, location and development status, (b) ICON's role (e.g., owner, lender, etc.), (c) a description of the funding vehicle (e.g., equity interest, construction loan, permanent or take-out loan), and (d) the loan terms (e.g., loan amount, term, interest rate, collateral, personal or corporate guaranties, etc).
6. Audited financial statements of ICON (e.g., balance sheet, income statement, statement of cash flow) for the past three (3) fiscal years, and the most current year-to-date interim financial statements.
7. Current pro-forma financial statements (e.g., balance sheet, income statement, statement of cash flow, etc.) for the first five (5) years of operation of the proposed Waikiki Landing project.
8. Honey Bee's tenant rent roll, including sublease area, tenant name, sublease rent (including base rent and percentage rent), description of Honey Bee's agreement with the tenant (e.g., letter of intent), and copies of each tenant agreement.
9. Honey Bee's calculation of the Assignment of Lease premium pursuant to Section 13 of the Lease and the Board's Assignment of Lease Evaluation Policy attached as Exhibit "G" to the Lease. If Honey Bee believes there should be no premium or the calculated premium is \$0, provide Honey Bee's rationale and calculations.

Pursuant to the BLNR's decision at the July 10, 2015 meeting, Honey Bee's request must be presented to the BLNR at its August 28, 2015 meeting or Honey Bee faces termination of the Lease. In order for DOBOR to evaluate Honey Bee's request and prepare its recommendations for the meeting, DOBOR requests that Honey Bee submit the requested information by no later than July 27, 2015. If Honey Bee fails to provide all of the requested information by this date or if the information is incomplete, DOBOR will be unable to properly evaluate Honey Bee's request and may be unable to make a favorable recommendation to the BLNR.

Sincerely,

  
Edward R. Underwood  
Administrator

cc: Land Board member  
DOBOR files

**EXHIBIT "B"**

**SECTIONS 13 AND 20 OF LEASE**

13. Assignments, etc. The Lessee shall not transfer, assign, or permit any other person to occupy or use the premises, or any portion, or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Board the assignment and transfer of this lease, or any portion, may be made in accordance with current industry standards, as determined by the Board; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the Assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the Assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the Board on December 15, 1989, as amended, a copy of which is attached hereto as Exhibit "I." The premium on any subsequent assignments shall be determined as specified in the above-mentioned Evaluation Policy.

If the Lessee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph and subject to the right of the Lessor to impose the foregoing premium as set forth in Exhibit "I."

\* \* \* \* \*

20. Mortgage. Except as provided in this lease, the Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease without the prior written approval of the Chairperson and any mortgage, hypothecation, or pledge without the approval shall be null and void.

Upon due application and with the written consent of the Chairperson, the Lessee may mortgage this lease, or any interest, or create a security interest in the leasehold of the public land. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, the consent may extend to foreclosure and sale of Lessee's interest at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to lease, own, or otherwise acquire and hold the land or any interest. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other Federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided, that the consent to mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of these Federal agencies.

**EXHIBIT "C"**