

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96819

December 9, 2016

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

Maui

Authorize the Revocation of Revocable Permit (RP) No. 33 (formerly Referred to as RP No. S-5867), Executed July 21, 2016, to Wilson Keahi for Boat Storage, Public Boat Trailer Parking and Other Activities at Mala Wharf and Surrounding Areas, Alamihi, Lahaina, Maui, Hawaii, Identified by Tax Map Key: (2) 4-5-005: portion of 001

PERMITEE:

Wilson Keahi, whose business and mailing address is 640 Front Street, Lahaina, Hawaii 96761, hereinafter referred to as "Permittee".

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Mala Wharf and Surrounding Areas, Alamihi, Lahaina, Maui, Hawaii, identified by Tax Map Key: (2) 4-5-005: portion of 001, as shown on the attached map labeled Exhibit A.

AREA:

Approximate area of 0.428 acre, which parcel is hereinafter referred to as "Premises".

CURRENT USE STATUS:

Encumbered by RP No. 33, Wilson Keahi, Permittee, for purposes of landscaping, maintenance and storage of small boats and trailers. RP issued on a month-to-month basis.

REMARKS:

On September 1, 1981, the Board of Land and Natural Resources ("Board"), issued RP No. S-5867 (currently referred to as RP No. 33, continuation of a RP No. S-5867), to Permittee to use the Premises for small boat storage and other uses. The RP contained the following provision regarding revocation: "The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) days prior to such revocation."

On July 24, 2015, Item J-3 the Board authorized the Division of Boating and Ocean Recreation ("DOBOR") the continuance of RP No. 33, on a month-to-month basis for up to a one-year period, retroactively from July 1, 2015 through June 30, 2016, subject to full compliance of the RP. The Board delegated to the Chairperson the authority to adjust the rent for any RP in accordance with the terms of the RP and authorized DOBOR to procure the services of one or more licensed appraisers to assist in establishing fair market rents as necessary or prudent to facilitate said rent adjustment.

On August 12, 2016, Item J-1, the Board authorized continuance of RP No. 33, on a month-to-month basis for four months, retroactively from July 1, 2016 through October 31, 2016, subject to full compliance with the RP. The Board affirmed delegation to the Chairperson the authority to adjust the rent for any RP in accordance with the rents determined by independent appraisal and the terms of the RP. Further, Item J-1 was amended for DOBOR to report back to the Board in November 2016 to report on the status of RP No. 33 and adjustment of rent.

In letter a dated October 19, 2016, DOBOR informed the Permittee and other parties expressing interest in rental of the Premises, that the projected rent pursuant to the anticipated appraisal would be approximately \$40,000.00 per year, attached Exhibit B.

In a letter dated October 24, 2016, Alvin T. Pelayo, President, A&K Ventures LLC, proposed a rent of \$42,000.00 per year, attached Exhibit C.

In a letter dated October 27, 2016, Lawrence Ing, Attorney for Permittee, proposed a rent of \$10,200.00 per year, attached Exhibit D.

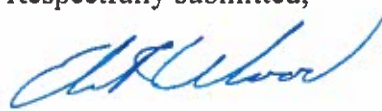
Subsequently, DOBOR received the draft appraisal report, dated October 31, 2016. The draft was approved by DOBOR for finalization as submitted, on November 9, 2016. The report indicated that the market rent for the Premises is at a base rent of \$43,360.00 per year (or \$3,614.00 per month rounded) and that a percentage rent of ten percent (10%) of gross sales against the base rent is supported.

When informed of the appraised value, Alvin T. Pelayo agreed to the pay appraised market rent for the Premises of \$43,360.00 per year or 10% of gross sales against base rent.

RECOMMENDATIONS: That the Board:

1. Authorize the revocation of RP No. 33 and terminate all rights of the Permittee effective upon 30 calendar days after written notification to the Permittee, provided that any and all obligations of the Permittee which have accrued up to said effective date or which are stated in the RP to survive termination shall endure past such termination date until duly fulfilled, and further provided that DOBOR reserves all other rights and claims allowed by law;
2. Authorize the retention of all sums heretofore paid or pledged under RP No. 33 be applied to any past due amounts; and
3. 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 RP No. 33 and to pursue all other rights and remedies as appropriate.

Respectfully submitted,



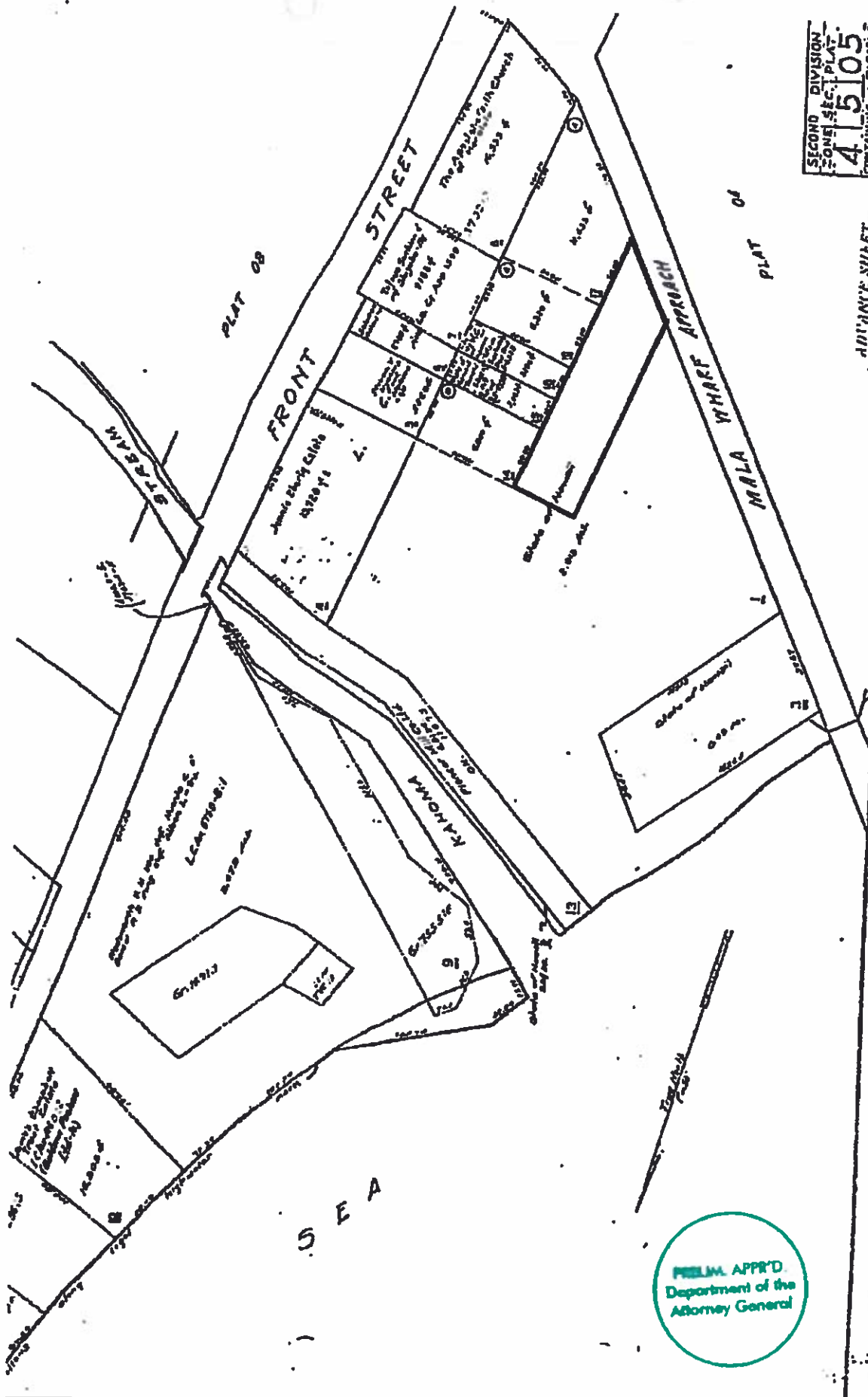
Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL:



Susanne D. Case
Chairperson

Attachments



SECOND DIVISION
 ONE SEC. 1 PLAT
 45105
 CONTAINING PARCELS
 Scale 1" = 50 FT
 202110

ADVANCE SHEET
 SUBJECT TO CHANGE

PRELIM. APPR'D
 Department of the
 Attorney General

Exhibit A

DAVID Y. JUE
GOVERNOR OF HAWAII



SUZANNE D. CANE
CHAIRMAN
BOARD OF LAND AND NATURAL RESOURCES
COMMISSIONER OF WATER RESOURCES
KEKOA KALUOHA
DIRECTOR
JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER
EDWARD R. UNDERWOOD
ADMINISTRATOR
DIVISION OF BOATING AND OCEAN RECREATION

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION
4 SAND ISLAND ACCESS ROAD
HONOLULU, HAWAII 96819

October 19, 2016

BOR

Wilson Keahi
P.O. Box 956
Lahaina, Maui, Hawaii 96761

Dear Mr. Keahi:

On August 12, 2016, we went before the Board of Land and Natural Resources (Board), Item J-1, to request to continue the Revocable Permits (RP) issued by the Division of Boating and Ocean Recreation (Division). The Board authorized the continuance of the RP's; however, they only authorized the continuance of the RP issued to you for four months and directed the Division to report back to them in three months with the status of the RP as well as inform them of the new appraised rent for the property.

The current rent for RP No. 33 issued to you is \$709.54 per month which is approximately \$8,514.48 per year. We expect to receive the new appraised rent for the property by the end of this month and the new rent is expected to be approximately \$40,000 per year.

We have received a request from other interested parties to lease the property. In order to stay in compliance with the new Board directives for issuing RP's, we will be requesting proposals from you as well as the other interested parties to operate a boat storage and dry dock facility meeting EPA standards.

The minimum upset rent will be based on the new appraised rent for the property but for planning purposes you can use \$40,000 per year as the base rent. The primary factor for selecting the new lessee will be the amount of proposed annual rent to be paid on a monthly basis. We will notify you of the final appraised rent once we receive it. If you are still interested in leasing the property, please provide us with your new proposal by October 31, 2016. We will notify you whether your proposal was selected or not.

Sincerely,

Edward R. Underwood
Administrator

Exhibit B

DANIEL S. HUI
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
BY APPOINTMENT OF THE GOVERNOR
KEEO KAUHUA
FIRST DISTRICT
JEFFREY T. PEARMAN, D.D.
DEPUTY DIRECTOR - WATER
EDWARD R. UNDERWOOD
ADMINISTRATOR
HONOLULU BOARD OF HONOLULU DISTRICT 1

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION
4 SAND ISLAND ACCESS ROAD
HONOLULU, HAWAII 96819**

October 19, 2016

BOR

Al Pelayo
A & K Ventures, LLC
2191 Kolepa Street
Lahaina, Hawaii 96761

Dear Mr. Pelayo:

Thank you for your interest in leasing the property located at Mala Wharf, Maui, that is currently under a Revocable Permit to another individual. In order to stay in compliance with the new Board directives for issuing RP's, we will be requesting proposals from you as well as the other interested parties to operate a boat storage and dry dock facility meeting EPA standards.

The minimum upset rent will be based on the new appraised rent for the property but for planning purposes you can use \$40,000 per year as the base rent. We will notify you of the final appraised rent once we receive it. The primary factor for selecting the new lessee will be the amount of proposed annual rent to be paid on a monthly basis. Please provide us with your proposal by October 31, 2016. We will notify you whether your proposal was selected or not.

Sincerely,

Edward R. Underwood
Administrator

C. Maui Land Board Member

Exhibit B

**A & K Ventures LLC
2191 Kolepa Street
Lahaina, HI 96761**

**Edward Underwood
DOBAR Administrator
Dept. of Land and Natural Resources
Division of Boating and Ocean Recreation
4 Sand Island Access Road
Honolulu, HI 96819**

October 24, 2016

Dear Mr. Underwood,

Thank you for your time this afternoon to speak to Lisa and I regarding this great venture.

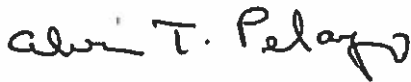
The following is A&K Ventures LLC's proposal to manage the Mala Wharf at Mala, Lahaina, Maui.

A&K Ventures LLC is a Domestic Limited Liability Company whose business and mailing address is 2191 Kolepa Street, Lahaina, Hawaii 96761.

A&K Ventures LLC is proposing to manage the boat storage, public boat trailer parking and other activities at Mala Harbor, Lahaina.

A&K Ventures LLC is proposing to pay \$42,000 per year as a base rent or \$3,500.00 per month.

Respectfully Submitted,



**Alvin T. Pelayo
President
A & K Ventures LLC**

Exhibit C

LAWRENCE N. C. ING
BRADFORD R. ING

2145 WELLS STREET, SUITE 204
WELLS STREET PROFESSIONAL CENTER
WAILUKU, MAUI, HI 96793-2225
(808) 242-4555 • FAX (808) 244-6964
office@theinglawfirm.com

THE ING LAW FIRM

October 27, 2016

Edward R. Underwood, Administrator
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
4 Sand Island Access Road
Honolulu, Hawaii 96818

Re: Revocable Permit No. 33

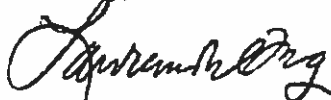
Dear Mr. Underwood:

This is in response to your letter dated October 19, 2016 to my client Wilson Keahi which was received on October 24, 2016.

It is our position that to request a proposal by October 31, 2016 is unreasonable. However, assuming your statement that a new appraisal will be made by the end of this month please provide to me a copy as soon as possible. In the meantime my client proposes a rent of \$850.00 a month for a term of five (5) years and \$1,000.00 a month for a second 5-year term..

Please note that the subject property is zoned residential district and the County of Maui ordinances prohibits the leasing of an unsubdivided lot. My client has spent almost \$1,000,000.00 in improving the property. Provision #6 on page 5 allows the permittee to remove all of his improvements.

Sincerely,



LAWRENCE N. C. ING

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cc: Wilson Keahi

OCT30 16PM 2:50:00R ADM