

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

August 11, 2017

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

Land Board Members:

**SUBJECT: AUTHORIZE PUBLIC AUCTION OF A LEASE FOR A
 BOAT/TRAILER STORAGE FACILITY AND PARKING, SITUATED
 AT HONOKOHAU SMALL BOAT HARBOR, NORTH KONA,
 ISLAND OF HAWAI'I, HAWAI'I, TAX MAP KEY: (3) 7-4-008:003
 (PORTION)**

REQUEST:

Authorize Public Auction of a Lease for maritime related purposes.

LEGAL REFERENCE:

Hawai'i Revised Statutes ("HRS"), Sections 171-14, 16, 17, as amended, and HRS Section 200-2.5, as amended. ¹

LOCATION:

Portion of Government lands situated at Honokohau Small Boat Harbor, North Kona, Island of Hawai'i, identified by Tax Map Key ("TMK") No.: (3) 7-4-008:003 (Portion), as shown on the attached maps labeled EXHIBIT A and EXHIBIT B, hereinafter referred to as the "Premises."

AREA:

The Premises consists of approximately nine (9) acres, more or less, of fast lands, unimproved graded-gravel land, fenced with chain link fencing.

¹ HRS section 200-2.5(a), states that, "...the board may lease fast lands and submerged lands within an existing state boating facility by public auction, a request for proposals, or by direct negotiation...for private development, management, and operation;" and (b): "...Permissible uses ... shall be consistent with the purpose for which the land was set aside ... [and] may include any use that will complement or support the ocean-recreation or maritime activities of state boating facilities."

BLNR – Authorize Public Auction of a Lease
For Small Boat Harbor Purposes,
Honokohau Small Boat Harbor, North Kona, Hawai‘i,
TMK: (3) 7-4-008:003 (por.)

August 11, 2017
Item J-1

ZONING:

State Land Use District: Urban
County of Hawai‘i CZO: Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawai‘i Admission Act: YES
DHHL 30% entitlement lands pursuant to the Hawai‘i Constitution: NO

CURRENT USE STATUS:

Division of Boating and Ocean Recreation (“DOBOR”), Revocable Permit (“RP”) No. 5, to GKM, Inc., a Hawai‘i corporation, (“GKM”), which operates and maintains a boat/trailer storage facility and employee parking. The RP is issued on a month-to-month basis only.

CHARACTER OF USE:

For small boat harbor purposes. The successful bidder shall occupy and use the Premises for the operation of a boat/trailer storage facility and vehicle parking. The Lease shall be subject to "Boat Storage Facility Additional Conditions," as further described in EXHIBIT C.

LEASE TERM:

Ten (10) years.

COMMENCEMENT DATE:

The date of auction if the current occupant is the successful bidder, otherwise, sixty (60) days after the date of auction; provided if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; furthermore, the Chairperson may amend the commencement date for good cause.

BASE ANNUAL RENT:

Base annual rent shall be determined by independent appraisal, establishing fair market value rent, subject to review and approval by the Chairperson.

PERCENTAGE ANNUAL RENT:

Percentage annual rent shall be a percentage of gross revenue from all sources within the leased Premises, including parking, excluding State excise tax. Percentage shall be established by winning bid at public auction, 50% minimum upset percentage, highest percentage winning bid, subject to approval by the Chairperson.

EFFECTIVE RENT:

The rent shall be determined by either, the base annual rent, or the percentage of gross revenue, whichever is greater.

METHOD OF PAYMENT:

Base rent shall be payable in advance, without notice or demand, in equal monthly installments on the first (1st) day of each and every month. Percentage rent shall be payable on the fifteenth (15th) day of the month, as appropriate.

PERFORMANCE BOND:

Twice the base annual rental amount.

PROPERTY CHARACTERISTICS:

The Premises is graded gravel land and fenced with chain link fencing surrounding the area of approximate nine (9) acres, more or less.

Utilities: None noted.

Slope: Level to street grade.

Legal Access: Regular access off the main road of the Honokohau Small Boat Harbor access.

Subdivision: The Premises is not a legally subdivided separate individual lot. Winning bidder may be required to submit a subdivision parcel map for the Premises, as set by the Chairperson. All costs associated with the production of the subdivision map will be paid by the winning bidder.

Encumbrances: The parcel is encumbered by Hawaii Executive Order (“EO”) No. 3858 which states it is for small boat harbor purposes; and EO No. 4334 respectively, with vehicle access restrictions, and subject to easements.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Exemption List for the Department of Land and Natural Resources," approved by the Environmental Council and dated, June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, “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.” Item No. 47, that states, "Leases of State land involving negligible or no expansion or change of use beyond that previously existing.", and Item No. 48, that states, “Subdivision or consolidation of lots not previously subdivided.”

REMARKS:

Gentry Properties, a Hawai‘i corporation, held the original six (6) acre portion of the Premises on a five (5) year lease from the State of Hawai‘i. The original term ran from January 1, 1994, until December 31, 1998, and then continued under an RP, for purposes of operating a boat/trailer storage facility and vehicle parking.

On January 24, 2003, Item J-4, the Board approved the assignment of Harbor Lease No. H-82-4, from Gentry Properties, assignor, to GKM, Inc., a Hawai‘i corporation, assignee, for the adjacent marina property.

On March 14, 2003, Item J-3, the Board approved the cancellation of the RP to Gentry Properties, and the issuance of an RP to GKM, Inc., for the six (6) acre portion of the Premises. Subsequently, GKM, Inc. had expressed interest in an additional three (3) acres for expanding the site and securing a long-term lease for the property.

On July 8, 2012, Item J-1, the Board approved the issuance of a revised RP No. BH-010-07, to GKM, Inc. to allow for the expansion of the three (3) additional acres to the Premises, and acceptance of the final environmental assessment for the expansion project.

On July 24, 2015, Item J-3, the Board approved the continuation of RP No. BH-010-07, to GKM, Inc., for the one year period, retroactively from July 1, 2015, through June 30, 2016, subject to increase in rent and execution of a new RP. Under Item J-3, three (3) permittees testified before the Board that they had previously requested long-term leases for their respective parcels, but that DOBOR had not addressed their requests. Subsequently, the Board amended the submittal, requiring that DOBOR report to the Board in six (6) months, on the status of long-term leases and whether DOBOR would be able to replace the existing RPs with long-term leases.

On March 24, 2016, Item J-1, DOBOR provided its findings to the Board. Subdivision: The RPs are for lands that are not legally subdivided lots. Character of Use: Use may be non-conforming with current County standards. Consequently, staff recommended that the Board defer long term disposition for the parcels, until a reasonable and appropriate approach to address the land use issues could be developed.

On August 12, 2016, Item J-1, the Board approved the continuation of RP No. BH-010-07, now RP No. 5, to GKM, Inc., retroactively from July 1, 2016, through June 30, 2017, on a month-to-month basis only. The Board amended that submittal to six (6) months for the Honokohau RP’s, to December 31, 2016.

On January 27, 2017, Item J-1, the Board approved the continuation of the RP’s, at Honokohau, inclusive of RP No. 5, to GKM, Inc., retroactively from January 1, 2017, through June 30, 2017, on a month-to-month basis only, subject to new rent set at appraised value.

DOBOR had intended to consolidate RP No. 5 into the GKM, Inc. lease, so an appraisal was not done for the Premises, and rent for GKM, Inc. could not be adjusted to fair market value. Ultimately, DOBOR was advised against the consolidation of the RP by direct negotiation pursuant to HRS Section 171-59, as it cannot be demonstrated that competition is encouraged by negotiating, and that public auction would be the appropriate method to offer the property.²

On May 26, 2017, Item J-2, the Board approved to continue the RP from July 1, 2017, to June 30, 2018, on month-to-month basis. The Board requested that DOBOR expedite the offering of the lease at public auction at fair market value.

On June 28, 2017, representatives of the Department of Land and Natural Resources (“DLNR”) and the County of Hawai‘i Planning Department (“County”), held a meeting to discuss DOBOR’s intent to claim exemption from County land use restrictions to facilitate immediate plans to offer the Honokohau property for lease at public auction. Additionally, staff wished to initiate a productive discussion of the ways that the State and County can work together to fulfill their respective responsibilities for lands held in the public interest.

County representatives asked that the DLNR provide, in writing, the legal basis and scope for the exemptions from County-enforced land use requirements which DLNR may claim for lands under the jurisdiction of DOBOR. Consequently, DLNR/DOBOR has been working with the Attorney General’s Office in documenting the scope of the exemption from County approvals, while developing a process to apply the exemption that would work in practice.

DOBOR suggests a process that follows the way the State and County have historically interacted within the harbors. Despite the overall exemption, the State has, and will continue to have its tenants seek County building permits and plan approvals. Review of the County’s files on the State’s leased harbor areas show that tenants with harbor leases have obtained building permits, plan approvals, and Special Management Area clearances for various structures over the years. It also appears that tax map key numbers were issued without there being a formal County subdivision.

RECOMMENDATION:

That the Board of Land and Natural Resources:

- 1) Find the area to be an economic unit in terms of the intended use.

² 171-59 Disposition by negotiation. (b) Disposition of public lands for airline, aircraft, airport-related, agricultural processing, cattle feed production, aquaculture, marine, maritime, and maritime-related operations may be negotiated without regard to the limitations set forth in subsection (a) and section 171-16(c); provided that: (1) The disposition encourages competition within the aeronautical, airport-related, agricultural, aquaculture, maritime, and maritime-related operations

- 2) Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
- 3) Authorize the Public Auction of a Lease covering the subject area for maritime purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current boating general lease form, as may be amended from time to time;
 - b. Residential use shall not be allowed on the Premises;
 - c. Review and approval by the Department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



EDWARD R. UNDERWOOD, Administrator
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:



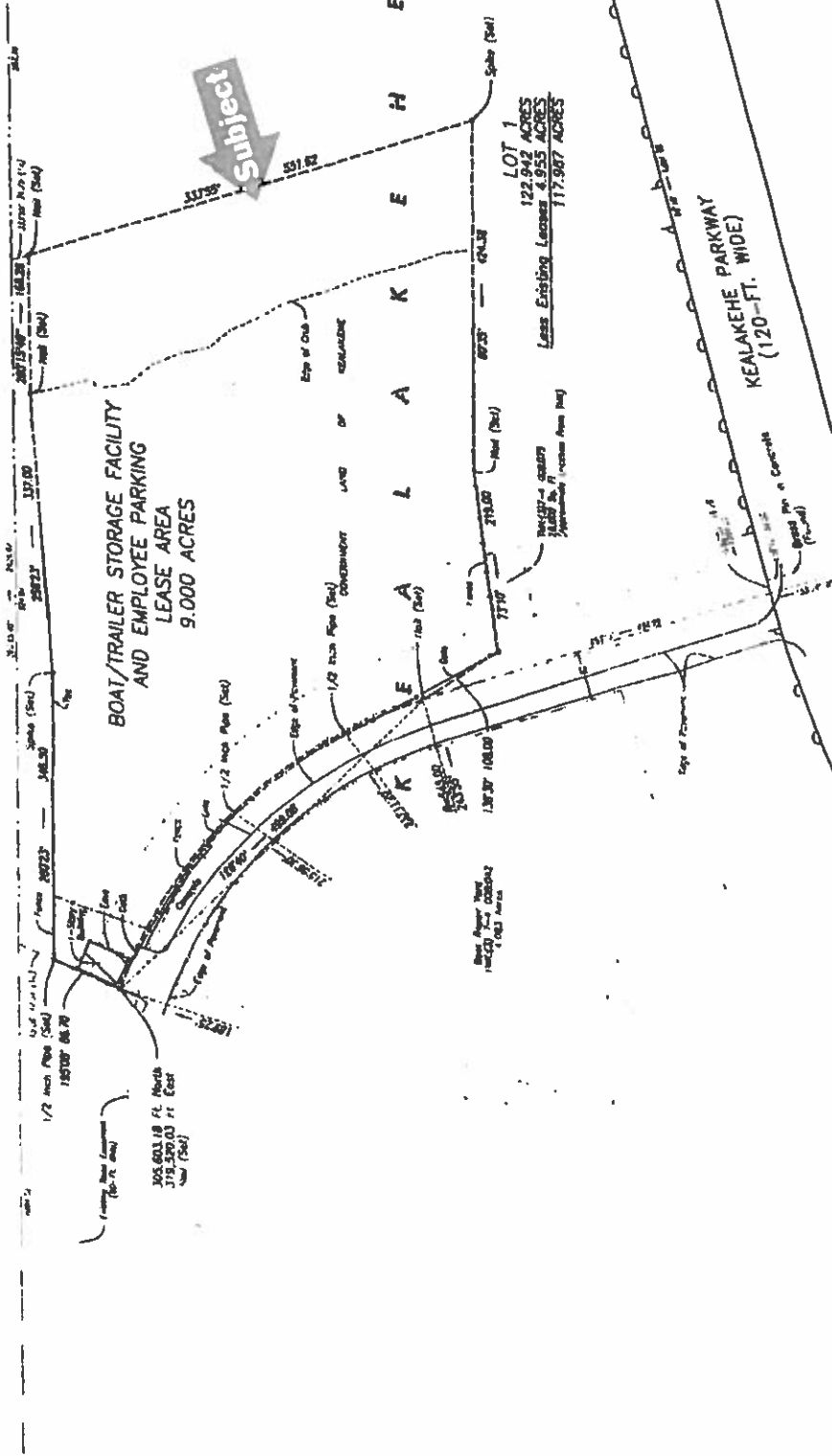
SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

Attachment:

- A. Map of Honokohau Small Boat Harbor
- B. Boat/Trailer Storage Area
- C. Boat Storage Facility Additional Conditions

H O N O K O H A U N U

TRUE NORTH
SCALE 1 inch = 100 feet



**MAP SHOWING
LEASE AREA FOR BOAT/TRAILER STORAGE FACILITY
AND EMPLOYEE PARKING
AFFECTING LOT 1**

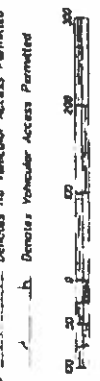
**Being a Portion of Government Land of Kealahou
at Kealahou, North Kona
Island and County of Hawaii, State of Hawaii**

This work was prepared by me or under my direct supervision.

Thomas Thomas
THOMAS THOMAS ASSOCIATES
 LICENSED PROFESSIONAL LAND SURVEYOR
 No. 9337
 Licensee Professional Land Surveyor, State of Hawaii
 Expiration Date: April 2012



- NOTES**
1. Aerials and Computations referred to "Hawaii State Plane Coordinate System (Zone 1)".
 2. The lease parcel shown hereon does not constitute a County of Hawaii approved Subdivision.
 3. The features, shown hereon, were located by an actual survey on the ground done between September 28, 2010 and October 14, 2010.
 4. Denotes Vehicle Access Permitted



Prepared By:
WEBB THOMAS ASSOCIATES
 72-2725 Kailua Road
 Kailua, Hawaii 96734
 PH: (808) 269-3534 FAX: (808) 269-3534
 www.thomasassociates.com

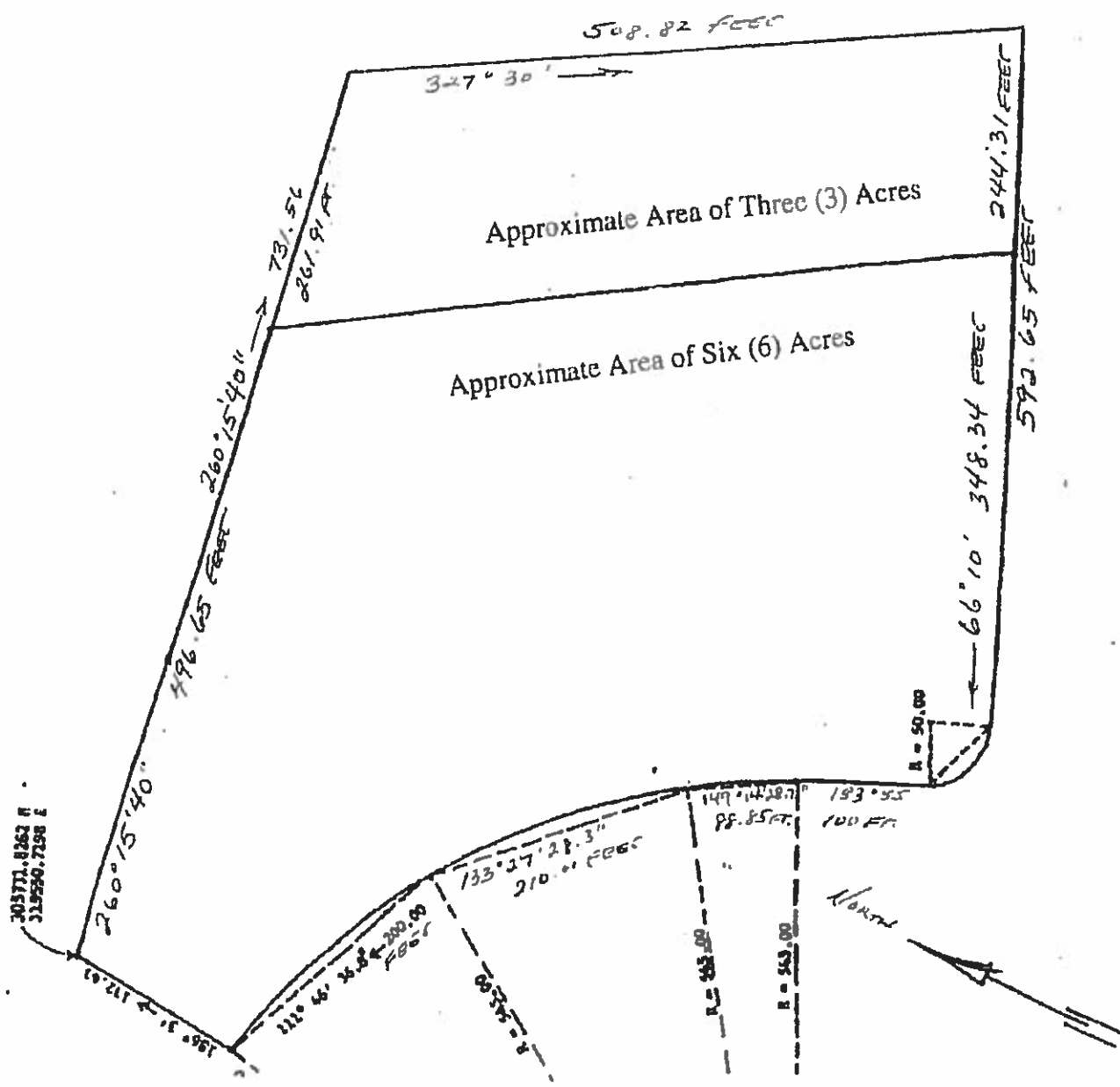


Approved For:
GENYRYA ROMA MAHEA
 71-443 Aulanihale Parkway
 Kailua, Hawaii, North Kona

PROJECT NO.: 15727.2
 DATE: OCTOBER 20, 2010
 FIELD BOOK NO.: 7-6-008 POR 003 (3RD LUNGSOM)
 TAX MAP KEY:

EXHIBIT A

Exhibit A



BOAT/TRAILER STORAGE AREA

EXHIBIT B

PRELIM. APPR'D.
 Department of the
 Attorney General

0

Boat Storage Facility Additional Conditions

The LESSEE shall have the right to have and to hold the said premises with any appurtenances for activities of a boat/trailer storage facility and offering such sales and services that would be normally associated with operating a storage facility. The following conditions shall describe the allowable use and restrictions as follows:

- 1. The right to conduct all activities reasonably necessary and incidental to the operation of a boat/trailer storage facility, and for portion to be used for employee parking.**
- 2. The right to clear, level and add gravel to the premises as necessary to make suitable for the purposes allowed under the terms of the LEASE.**
- 3. The right to install perimeter fencing, gates, and to provide security measures.**
- 4. Any construction of structures incidental to the operation of a boat/trailer storage facility, shall require the Chairperson's prior written approval.**
- 5. The rights to construct, install, or otherwise provide lockers, as well as other secure areas for the storage of tools, equipment and supplies incidental to the operation of the Boat storage facility. Any plans shall require the Chairperson's written approval.**
- 6. The right to plant and continue to maintain landscaping as well as improve the aesthetics of the premises.**
- 7. The right to provide storage areas for yacht clubs, boating clubs, and other ocean recreation related organizations upon approval of the Chairperson.**
- 8. All plans and the design of all improvements in any newly expanded area shall require the written approval of the Chairperson prior to construction. Any additional improvements to be made in the present nine (9) acre portions above existing, shall also require the written approval of the Chairperson.**
- 9. All vessel construction, painting or vessel engine, or hull repairs shall be done within the confines of the Haul-out facility only; except that the LESSEE may perform or allow to perform minor repairs or routine maintenance to vessels under the terms and conditions of a valid storage agreement.**
- 10. The LESSEE is prohibited from an illegal activity, or to perform any act which may result in the creation or commission of a nuisance on said premises or LEASE to be caused or produced upon the premises, or emanate there from, any unusually offensive sounds, or any noxious fumes, smoke, gasses, vapors or odors.**
- 11. The LESSEE shall comply with all Federal, State and County laws and requirements.**
- 12. The LESSEE shall maintain insurance for the entire term of the LEASE.**
- 13. The LESSEE shall provide statement of gross receipts, with rental payment.**

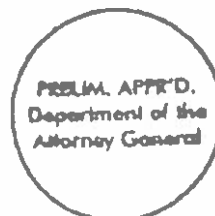


EXHIBIT C