

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

July 26, 2019

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

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL OF THE FINAL ENVIRONMENTAL
ASSESSMENT FOR THE JUPITER RESEARCH FOUNDATION MARINE
SCIENCE CENTER

AND

REQUEST FOR AUTHORIZATION FOR THE BOARD TO ISSUE A
FINDING OF NO SIGNIFICANT IMPACT (FONSI) FOUND ON THE OEQC
WEB SITE LABELED: 2019-03-23-HA-DEA-MARINE-SCIENCE-CENTER-
AT-KAWAIHAE-HARBOR

http://oeqc2.doh.hawaii.gov/layouts/15/start.aspx#/EA_EIS_Library/Forms/AllItems.aspx

AND

AUTHORIZE ISSUANCE OF A DIRECT LEASE WITH THE JUPITER
RESEARCH FOUNDATION, FOR PURPOSES OF A MARINE SCIENCE
CENTER, SITUATED AT KAWAIHAE SMALL BOAT HARBOR SOUTH,
KAWAIHAE, ISLAND OF HAWAII, HAWAII, IDENTIFIED BY TAX MAP
KEY: (3) 6-1-003:026 (PORTION)

APPLICANT:

The Jupiter Research Foundation ("Jupiter"), a Nonprofit Corporation, 501(c)(3)
Non-Profit Operations Foundation formed in 2003.

LEGAL REFERENCE:

Hawai'i Revised Statutes (HRS) § 171-6(7), 171-13, 171-17(b), 171-35(1), 171-36 and 171-43.1, as amended.

LOCATION:

Portion of Government fast lands at Kawaihae Small Boat Harbor South ("KSBHS"), situated in Kawaihae, Island of Hawaii, Hawaii, identified by Tax Map Key: (3) 6-1-3:026 (portion), as shown on the attached map labeled **Exhibit A**.

AREA:

Approximate area of 1.50 acres, or 65,340 square feet, which area is hereinafter referred to as the "Premises". The area is located on vacant raw land as depicted in **Exhibit "A"**.

ZONING:

State Land Use District: Conservation, Urbans
County of Hawaii Zoning: MG-1a, Open, RM-1.5

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

An approximately 16,400 square foot Marine Science Center with an office building, conference room small kitchen, restrooms, machine/electronics workshop, storage area and garage for research vessel (14,000 sq. ft. main building and 2,400 sq. ft. boat garage).

LEASE TERM:

Sixty-Five (65) years from the commencement date of the lease.

COMMENCEMENT DATE:

To be determined by the Chairperson of the Board of Land and Natural Resources.

ANNUAL RENTAL:

To be determined through direct negotiations. Staff has procured a contract with Alan Conboy of Hastings, Conboy and Associates for appraisal services to assist in valuing the rent to charge for the use of State lands underlying this proposed lease valued as of May 1, 2019.

The appraised annual rental for the first ten (10) year period is \$32,200 with step ups in the 11th and 16th years, to \$41,200 and \$46,600 per annum, respectively. The step-up rents were determined, assuming an appreciation rate of 2.5% per year.

The Jupiter Research Foundation has accepted the appraised rent and proposed business terms.

METHOD OF PAYMENT:

Quarterly payments, in advance.

RENTAL REOPENING:

At the end of the 20th, 30th, 40th, 50th and 60th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

CONSTRUCTION BOND:

Equal to the cost of the proposed improvements.

RENT WAIVER:

The rent may be waived for a maximum period of twelve (12) calendar months upon the issuance of a certificate of occupancy or the commencement of operations, whichever comes first.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Draft Environmental Assessment (DEA) Anticipated Finding of No Significant Impact for the subject project was published in the Office of Environmental Quality Control's (OEQC) Environmental Notice on March 23, 2019. The comment period has been completed and staff seeks the Board's concurrence with the FONSI, see **EXHIBIT B**. Once staff obtains the Board's concurrence, it will resubmit the Final EA for publication in OEQC's Environmental Notice.

The complete DEA can be found on the OEQC web site labeled:

"2019-03-23-HA-DEA-Marine-Science-Center-at-Kawaihae-Harbor"

http://oeqc2.doh.hawaii.gov/_layouts/15/start.aspx#/EA_EIS_Library/Forms/AllItems.aspx

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

APPLICANT REQUIREMENTS:

Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

BACKGROUND:

In the 2008 EA FONSI for Kawaihae Small Boat Harbor South ("KSBHS"), the rationale for the development of this harbor was to remove light draft vessels from the Kawaihae Deep Draft Commercial Harbor, for the safety of smaller vessels and to improve the efficiency of the commercial operations. The Kawaihae boating community supported this concept.

At its meeting on October 26, 2018, under agenda item D-3, the Board of Land and Natural Resources ("Board") approved the set aside and immediate management right-of-entry to the Division of Boating and Ocean Recreation ("DOBOR") for the 38.102 acres, more or less, of fast and submerged lands comprising the "KSBHS".

Prior to the set aside, DOBOR completed the construction of a 25-slip floating dock, ADA gangway, comfort station, boat wash down area, site grading, and gravel parking areas in November 2014. Construction of an asphalt roadway from Kawaihae Road into the harbor and the installation of domestic and fire protection waterlines was partially completed in August 2016, pending an easement from DOT Harbors to hook up to the County water main. The water main hook up project is underway and projected to be completed by November 2019. A forty-five (45) foot wide boat launch ramp and loading docks, with connections to the existing asphalt access road, are ongoing and are projected to be completed by December 2019. Asphalt pavement, for trailer and vehicle parking, is projected to be completed by 2020.

REMARKS:

The Jupiter Research Foundation is a 501(c)(3) Non-Profit Operating Foundation formed in 2003 based in California and Hawaii. Their research includes Marine Science, Oceanic Environment, Communications, and Electro-Biology, Humpback Whales, Global Warming, Climate Change and Dissolved Plastics. Their research is projected to have direct relevance to Hawai'i's very fragile ecosystem as well as to the global environment. The Use shall be limited to marine science research activities associated with these activities.

DOBOR's primary objective is to provide coastal recreational opportunities accessible to the public. Planning for Kawaihae Small Boat Harbor South facilities includes expansion areas for complementary uses. A Marine Science Center at Kawaihae Small Boat Harbor South would not interfere with recreational users and would complement anticipated uses proposed for the harbor.

The Jupiter facility would join Pua Ka 'Ilima O Kawaihae Cultural Surf Park, YMCA, and Na Kalai Wa'a Moku 'O Hawai'i as a complimentary neighbor in the responsible growth of this fledgling harbor community.

Jupiter would be employing wave gliders, research gathering equipment that are the size of a surfboard, which would be consistent with the intent of having smaller crafts operate from Kawaihae Small Boat Harbor South. The 2008 EA proposed a "Boat Club" for the area requested by Jupiter. The recommended master plan has ample future expansion areas for a Boat Club. Therefore, locating the marine research center in the proposed location would not hinder the future development of a Boat Club. Comments from the Army (for the Jupiter EA) indicated that there would be dust from activities adjacent to the proposed location. This circumstance is arguably less desirable for a Boat Club and more tenable for a research center. A facility and landscaping in this area would enhance the aesthetics of KSBHS, reduce air borne sand and coral debris from the Coral Flats area and encourage the responsible development of future marine related facilities.

Chapter 11-200-12, Hawai 'i Administrative Rules, outlines those factors agencies must consider when determining whether an Action has significant effects:

1. *The proposed project will not involve an irrevocable commitment or loss or destruction of any natural or cultural resources.* Natural or cultural resources would not be committed or lost, and the project would promote protection, interpretation and responsible enjoyment of the ocean resources.
2. *The proposed project will not curtail the range of beneficial uses of the environment.* The proposed project does not curtail beneficial uses of the environment. On the contrary the intent of the project will promote awareness of the Ocean Environment, Humpback Whales, Global Warming, Climate Change and Dissolved Plastics.
3. *The proposed project will not conflict with the State's long-term environmental policies.* The State's long-term environmental policies are set forth in Chapter 344, HRS. The broad goals of this policy are to conserve natural resources and enhance the quality of life. The project has a minor footprint, has been designed to avoid environmental impacts and fulfills aspects of these policies calling for protection of the natural environment. It is thus consistent with all elements of the State's long-term environmental policies.
4. *The proposed project will not substantially affect the economic or social welfare of the community or State.* The project will benefit the economic and social welfare of the community by enhancing recreation, provide jobs and promote the goal of protecting our environment.
5. *The proposed project does not substantially affect public health in any detrimental way.* The proposed project will benefit public health through marine research aimed at understanding human impact on the ocean environment.
6. *The proposed project will not involve substantial secondary impacts, such as population changes or effects on public facilities.* No adverse secondary effects are expected to result from the proposed action. The project will not enable development or cause in-migration.

7. *The proposed project will not involve a substantial degradation of environmental quality.* The project will not degrade the environment in any substantial way.
8. *The proposed project will not substantially affect any rare, threatened or endangered species of flora or fauna or habitat.* The project is meant primarily to promote marine research of Oceanic Environment, Communications, and Electro-Biology, Humpback Whales, Global Warming, Climate Change and Dissolved Plastics. The area has been inspected and no endangered plant species are present.
9. *The proposed project is not one which is individually limited but cumulatively may have considerable effect upon the environment or involves a commitment for larger actions.* The project is not related to additional activities in the region in such a way as to produce adverse cumulative effects or involve a commitment for larger actions.
10. *The proposed project will not detrimentally affect air or water quality or ambient noise levels.* No adverse effects on these resources would occur. Ambient noise impacts due to construction will be extremely minor.
11. *The project does not affect nor would it likely to be damaged as a result of being located in environmentally sensitive area such as a flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal area.* Kawaihae Small Boat Harbor South was constructed with coast impact in mind. Therefore, the project should not be damaged due to coastal impact. The entrance to Kawaihae Harbor Coral Flats has a history of flooding. However, the project would not be in an area that historically has experienced flooding.
12. *The project will not substantially affect scenic vistas and view planes identified in county or state plans or studies.* No scenic vistas or view planes identified in the Hawai'i County General Plan will be adversely affected by the project, and visual impacts will be negligible.
13. *The project will not require substantial energy consumption.* The project involves only minor energy use and no adverse effects are expected.

For the reasons above, the proposed action is not expected to have any significant effect in the context of Chapter 343, Hawai'i Revised Statutes and section 11-200-12 of the State Administrative Rules.

DOBOR staff believes that the applicant has adequately responded to letters from the public that oppose the project and agrees with the Finding of No Significant Impact conclusion. DOBOR believes that the proposed project is consistent with the rationale and justification for the development of the Kawaihae Small Boat Harbor South to support small vessels and provide complimentary uses. The presence of the marine research center would complement small boat users by promoting the welfare of ocean resources. DOBOR also believes that a harbor presence of an organization with a mission that values our natural resources, could act as a stabilizing presence for responsible development and promote environmentally sensitive behavior of current and future tenants at Kawaihae Small Boat Harbor South.

RECOMMENDATION:

That the Board of Land and Natural Resources:

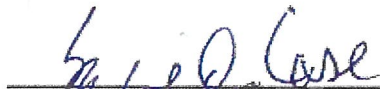
1. Approve the Final Environmental Assessment (FEA) for The Jupiter Foundation Marine Research Center at Kawaihae Small Boat Harbor South.
2. Authorize a Finding of No Significant Impact (FONSI) for this project.
3. Authorize the issuance of a direct lease to The Jupiter Research Foundation for a marine research center and vessel storage 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 lease form, as may be amended from time to time;
 - b. The rent may be waived for a maximum of twelve (12) months upon the issuance of a certificate of occupancy or the commencement of operations, whichever comes first;
 - 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:

Exhibit A – Location Map

Exhibit B – Environmental Assessment Summary

EXHIBIT A
The Jupiter Research Foundation
Kawaihae South Small Boat Harbor
(3) 6-1-003:026

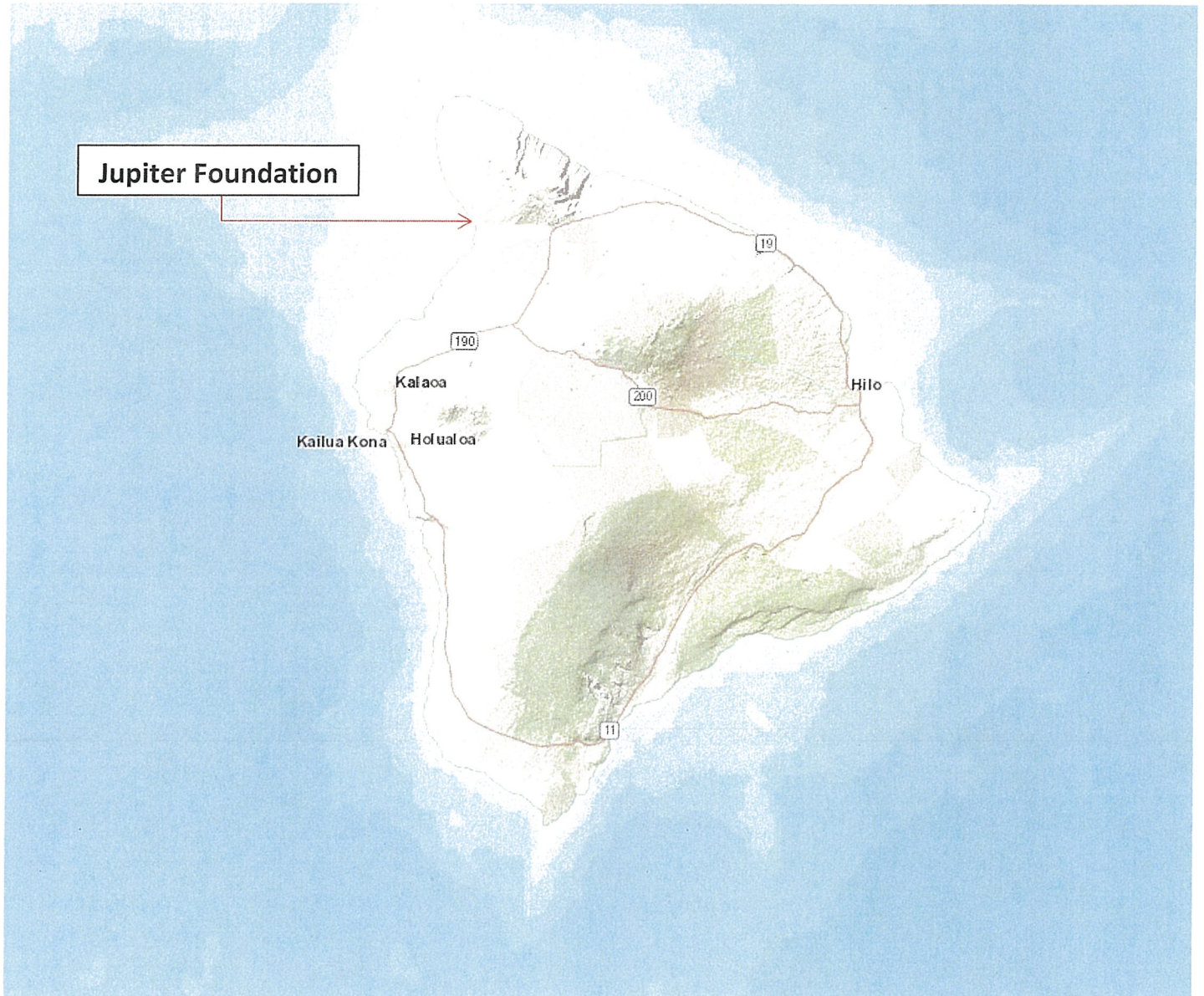


EXHIBIT A

The Jupiter Research Foundation
Kawaihae South Small Boat Harbor

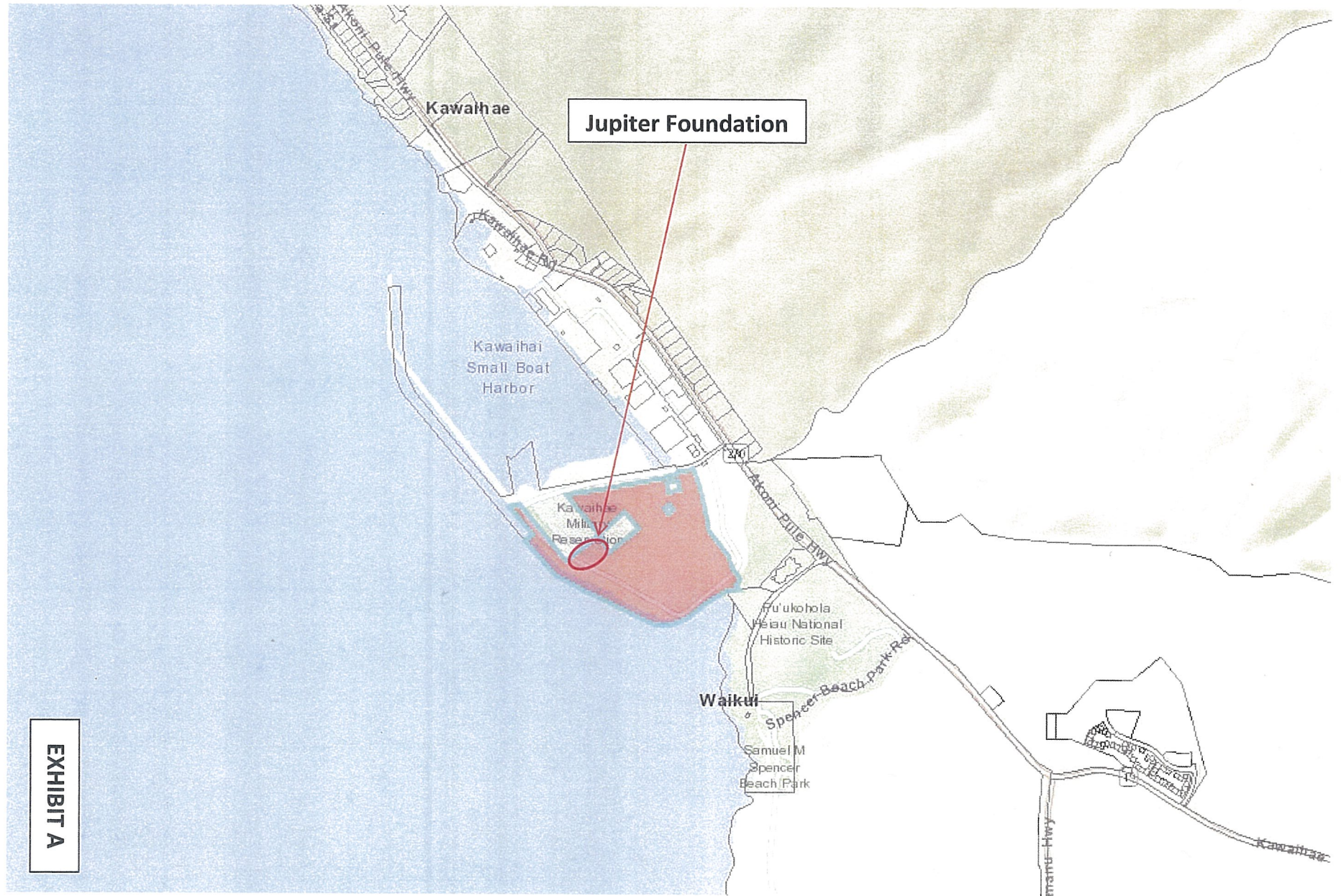


EXHIBIT A

The Jupiter Research Foundation
Kawaihae South Small Boat Harbor

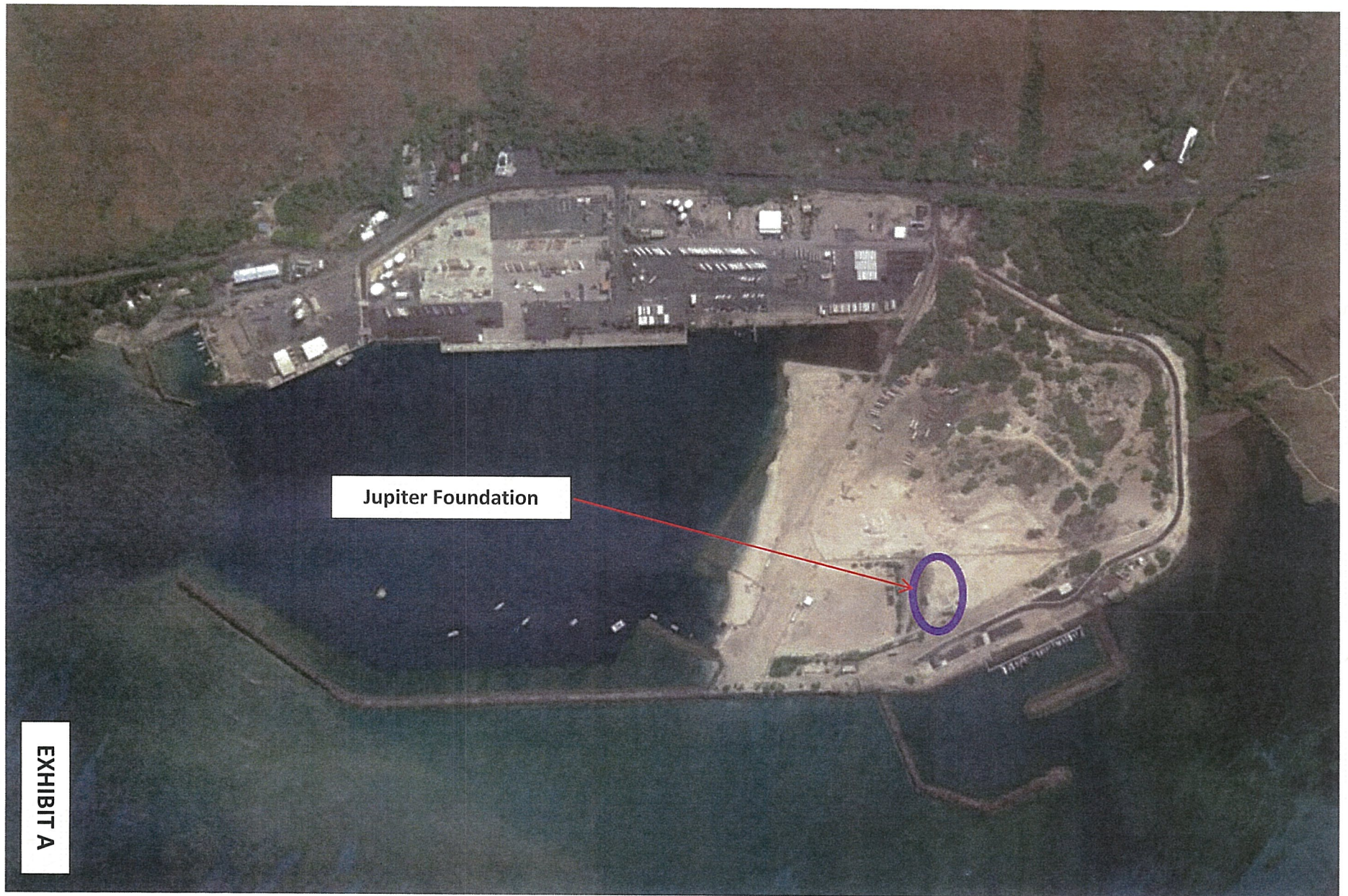


EXHIBIT A

Exhibit B

Marine Science Center At Kawaihae Small Boat Harbor - South Final Environmental Assessment



Prepared for:
Approving Agency
State Department of Land and Natural Resources
&
Applicant
Jupiter Research Foundation

Prepared by:
Ho'okuleana LLC
... to take responsibility ...

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May 2019

Project Name: Marine Science Center at Kawaihae Harbor

Applicant & Property Owner: Jupiter Research Foundation (Jupiter)
41 Puako Beach Drive
Kamuela, HI 96743

Approving Agency: State of Hawai'i Department of Land and Natural Resources (DLNR)

Anticipated Determination: Finding of No Significant Impact (FONSI)

Project Location: Kawaihae Small Boat Harbor, South; South Kohala, Hawai'i

TMK: (3) 6-1-003:026 (portion)

Land Use Classification: Urban

Land Area: 1.5-acres (approximately)

EA Trigger: Use of State Lands

Approvals Required: Approval of long-term lease from DLNR-DOBOR, associated subdivision and construction permits, including permits for development in the SMA

Summary:

The Jupiter Research Foundation (Jupiter) is a 501(c)(3) Non-Profit Operating Foundation formed in 2003. Since its inception facilities and operations have been based in California and the Island of Hawai'i.

Jupiter was established in part as a way to stream the humpback whale song in high quality live to the worldwide public from Jupiter's website while the humpbacks are off Puako, Hawai'i during their winter breeding season. Jupiter has been the only organization in Hawai'i that has maintained a live whale stream for many consecutive years.

Jupiter is planning an expansion of the Foundation to accommodate increased basic research in the broad areas of Marine Science, Oceanic Environment, Communications, and Electro-Biology, in keeping with its 15-years of study. Operations in both Hawai'i and California will be affected. For Hawai'i this expansion will require a new facility.

Jupiter is seeking to establish a Marine Science Center in West Hawai'i at Kawaihae Small Boat Harbor South. The property is under the control of DLNR's Boating and Ocean Recreation Division. Jupiter Research Foundation is seeking direct negotiation for a long-term lease over the property and intends to build the Marine Science Center on the site. Jupiter intends to pay market rent.

Jupiter plans to construct a state-of-the-art Marine Science Center with an office building, with a conference room, a small kitchen, restrooms, a machine/electronics workshop, a storage area, and an attached garage for its research vessel, the May Maru. Jupiter will install fencing, landscaping, and the necessary underground utility extensions. The main building would be approximately 14,000-square feet. The attached boat garage would be approximately 2,400-square feet.

Jupiter's ongoing research focus is on global warming and climate change as well as on dissolved plastics in the ocean, which may be entering our food chain. These studies will have direct relevance to Hawai'i's very fragile ecosystem as well as to the global environment.

Agencies and Organizations who were sent the Draft EA for comments:

State of Hawai'i

Department of Land and Natural Resources
Hawai'i State Office of Planning
Department of Hawaiian Home Lands
Department of Health - Environmental Health Administration
Department of Health - OEQC
Department of Land & Natural Resources
Department of Transportation
Office of Hawaiian Affairs
Thelma Parker Memorial Public and School Library
Regional Library

County of Hawai'i

Department of Planning
Department of Public Works
Department of Water Supply
Department of Research and Development
Department of Environmental Management

Federal

U.S. Department of the Interior, Fish & Wildlife Service
U.S. NOAA National Marine Fisheries Service
U.S. Army Corps of Engineers, Pacific Ocean Division
U.S. Army (Pōhakuloa Training Area)