

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

August 23, 2019

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

Land Board Members:

SUBJECT: AMEND PRIOR BOARD ACTION OF FEBRUARY 9, 2018, ITEM J-12, BOARD APPROVAL TO AUTHORIZE PUBLIC AUCTION OF A LEASE FOR PURPOSES OF LANDSCAPING, MAINTENANCE, STORAGE OF SMALL BOATS AND TRAILERS AND OTHER MARITIME RELATED ACTIVITIES AT MALA WHARF AND SURROUNDING AREAS, ALAMIHI, LAHAINA, MAUI, HAWAII, IDENTIFIED BY TAX MAP KEY (TMK): (2) 4-5-005:019 (POR)

THE PURPOSE OF THIS AMENDMENT IS TO SPECIFY THE TERM, THE UPSET BASE RENT AND GROSS PERCENTAGE RENT, RENT REOPENING'S; TO CLARIFY THERE WILL BE NO REQUIRED IMPROVEMENTS TO THE PROPERTY AND ALLOW CARETAKER TO RESIDE ON THE PREMISES.

BACKGROUND:

At its meeting February 9, 2018, under agenda Item J-12, the Board approved the Public Auction of a Lease for the purposes of landscaping, maintenance, storage of small boats and trailers and other maritime related activities at Mala Warf, and surroundings areas, located at Alamihi, Lahaina, Maui. A copy of the approved submittal is attached as Exhibit A.

Staff procured a survey of the lease area and an appraisal to determine the minimum upset rent, rent step ups and percentage rent. Then Staff sent the appraisal and C.S.F. Map generated from the survey with the Board action dated February 9, 2018, to the Office of the Attorney General ("AG") for the preparation of the auction lease.

The AG notified staff that the prior Board action was silent regarding the minimum upset rent, percentage rent, rent reopenings and required improvements. This information is required to prepare the auction lease.

The requested information is provided below.

TERM:

Twenty (20) years.

MINIMUM UPSET ANNUAL RENT; AND PERCENTAGE RENT

The minimum annual upset rent for years one through five (1-5/yr) of the lease has been appraised at \$49,580.00 or ten percent (10%) of gross receipts, whichever is greater. The stepped increase for years six through ten (6-10/yr) of the lease has been appraised at fifteen percent (15%) increase over the minimum upset annual rent for the immediately preceding 5-year period or ten percent (10%) of gross receipts, whichever is greater.

RENTAL REOPENINGS:

At the end of the 10th and 15th year of the lease term the annual minimum and percentage rents will be determined by staff or independent appraisal.

REQUIRED IMPROVEMENTS:

None. There are currently two (2) State-owned structures on the premises, the use of which will be included with the auction lease in their “AS IS” condition. The tenant may have a caretaker live on the premises.

RECOMMENDATION:

That the Board:

1. Amend its prior Board action of February 9, 2018, under agenda item J-12, by approving the following:
 - a. Approving a term of 20 years for the auction lease.
 - b. Approving minimum annual upset rent for years one through five (1-5/yr) of the lease which has been appraised at \$49,580.00 or ten percent (10%) of gross receipts, whichever is greater. The stepped increase for years six through ten (6-10/yr) of the lease has been appraised at fifteen percent (15%) increase over the minimum upset annual rent for the immediately preceding 5-year period or ten percent (10%) of gross receipts, whichever is greater.
 - c. Approving rent reopening’s following the 10th and 15th years of the auction lease in accordance with HRS 171-17.
 - d. Approve and specify no improvements are required; and allow for a caretaker to reside on the premises.


2. Except as amended hereby, all terms and conditions listed in its February 9, 2018, to remain unchanged.
3. 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. Prior Approved Board Action February 9, 2018, Item J-12

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

February 9, 2018

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 PURPOSES OF LANDSCAPING, MAINTENANCE, STORAGE OF SMALL BOATS AND TRAILERS AND OTHER MARITIME RELATED ACTIVITIES AT MALA WHARF AND SURROUNDING AREAS, ALAMIHI, LAHAINA, MAUI, HAWAII, IDENTIFIED BY TAX MAP KEY: (2) 4-5-005:019 (POR)

REQUEST:

Authorize Public Auction of a Lease for maritime related purposes.

LEGAL REFERENCE:

Hawaii Revised Statutes (HRS), Sections 171-14, 16, 17, as amended, and HRS Section 200-2.5, as amended.

LOCATION:

Portion of Government lands situated at Mala Wharf and Surrounding Areas, Alamihi, Lahaina, Maui, Hawaii, identified by TMK: (2) 4-5-005:019 (por.) hereinafter referred to as the "Premises" as shown on the map labeled EXHIBIT A and attached hereto.

AREA:

Approximate area of 18,644 square feet.

ZONING:

State Land Use District: Urban
County of Maui: CZO: R2 Residential

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
FEB 9 2018

Item J-12

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Division of Boating and Ocean Recreation (DOBOR), Revocable Permit No. 47, to A&K Ventures, LLC, Inc., which operates and maintains landscaping, maintenance, storage of small boats and trailers and other maritime related activities at Mala wharf and surrounding areas. The RP is issued on a month-to-month basis only.

CHARACTER OF USE:

For small boat harbor and maritime related purposes. The successful bidder shall occupy and use the Premises for the landscaping, maintenance, storage of small boats and trailers and other maritime related activities at Mala wharf and surrounding areas.

LEASE TERM:

Up to thirty-five (35) years depending on the amount of improvements made to the facility and as approved by the Chairperson.

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.

MINIMUM UPSET BASE ANNUAL RENT:

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

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, if applicable.

PERFORMANCE BOND:

Twice the base annual rental amount.

PROPERTY CHARACTERISTICS:

The Premises area is improved/paved land of approximate 18,644 square feet.

Utilities: Water, sewer and electricity

Slope: Level to street grade.

Legal Access: Regular access off the main road of the Mala Wharf for Small Boat Harbor access.

Subdivision: The Premises is a legally subdivided separate individual lot.

Encumbrances: The parcel is encumbered by Hawaii Executive Order (“EO”) No. 4315 which states it is for Mala Wharf and surrounding areas, to be under the control and management of the State of Hawai’i, Department of Land and Natural Resources, Division of Boating and Ocean Recreation.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is a request for the authorization to issue a lease for the Subject Property. This action does not, in and of itself, constitute a use of State lands or funds. Therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements.

However, the selected applicant shall be required to comply with all Chapter 343 environmental requirements regarding the applicant's proposed use of the Subject Property. The issuance of a lease shall be subject to the acceptance of an Environmental Assessment (“EA”) and issuance of a Finding of No Significant Impact (“FONSI”) or an Environmental Impact Statement (“EIS”). If a FONSI is not issued and an Environmental Impact Statement (“EIS”) is required, the issuance of a lease shall be subject to the Board's approval after the Board's review and acceptance of either an EA/FONSI or an EIS.

As a pre-condition to issuance of a lease, the applicant will be required to process any required environmental assessments or environmental impact statements and obtain all required land use entitlements and governmental permits (e.g., a special management area permit).

RECOMMENDATION:

That the Board of Land and Natural Resources:

- 1) 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. Arial map of Mala Wharf, Lahaina, Maui



Mala Wharf

Lahaina, Maui, Hawaii

Legend

Mala Wharf

