

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

October 23, 2020

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Land Board Members:

SUBJECT: Issuance of a Right-of-Entry Permit to Healy Tibbitts Builders, Inc. for Fast Lands to be Used for Parking Vehicles and Submerged Lands for the Mooring of a Tug Boat and up to Two (2) Skiffs, Situated at Ala Wai Small Boat Harbor, Honolulu, Island of Oahu, Hawaii, Identified by Tax Map Key (1) 1-2-3-037:012 (por.) and (1) 2-6-010:003 (por.)

and

Declare Project Exempt from Requirements of chapter 343, HRS and Title 11, chapter 200.1, Hawaii Administrative Rules.

APPLICANT:

Healy Tibbitts Builders, Inc., a Foreign Profit Corporation ("Healy Tibbitts") 99-994 Iwaena Street, Suite A, Aiea, Hawaii 96701

LEGAL REFERENCE:

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

LOCATION:

Portions of Government fast lands and submerged lands situated at Ala Wai Small Boat Harbor, Honolulu, Island of Oahu, Hawaii, identified by Tax Map Key (1) 1-2-3-037:012 (por.) and (1) 2-6-010:003 (por.) hereinafter referred to as the "Premises" as shown on the site maps labeled Exhibits A-1, A-2 and A-3 and attached hereto.

AREA

862 Sq. Ft. of fast lands and 1,828 Sq. Ft. of submerged lands, more or less.

Item J-1

ZONING:

State Land Use District: Urban
County of Honolulu: Public Precinct Waikiki Special District

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act: YES

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Encumbered by a Right-of-Entry (“ROE”) issued to Healy Tibbitts from July 15, 2020, to October 31, 2020, for the same purpose.

CHARACTER OF USE:

For the mooring of a tugboat and up to two (2) skiffs to service the Ala Wai Canal dredging project and vehicle parking.

TERM OF RIGHT OF ENTRY:

From November 1, 2020, to October 31, 2021.

CONSIDERATION:

\$26,749.68 of rent (\$2,229.14 per month) to be paid in advance.

The monthly rent was determined using an appraisal done by CBRE for revocable permits as of July 1, 2016. The appraiser recommends an appreciation rate of 3% per year. The appraised monthly rent for fast land at Ala Wai Small Boat Harbor is \$1.25/Sq. Ft./Month. The associated submerged lands were adjusted by applying a 50% discount. Therefore, 862 Sq. Ft. of fast land x \$1.25/Sq. Ft. + 1,828 Sq. Ft. of submerged land x \$.63/Sq. Ft. = \$2,229.14/month.

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>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule §11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred with by the Environmental Council on March 3, 2020, the subject request is exempt from the preparation of an

environmental assessment pursuant to Exemption Class No. 1, Part 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 44 which states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

REMARKS:

In support of the Ala Wai dredging project, Healy Tibbitts requested and received a 6-month ROE, from DLNR-DOBOR, commencing January 15, 2020, and ending July 14, 2020. The Chairperson approved the ROE pursuant to the Board action dated December 12, 2014, agenda item J-2. (See Exhibit B and C).

The applicant requested an extension of the ROE through October 31, 2020. At its July 24, 2020, meeting under agenda item J-1, the Board authorized issuance of an ROE from July 15, 2020, through October 31, 2020. (See Exhibit D)

The dredging project is taking longer than expected and Healy Tibbitts is requesting another extension. The applicant estimates that the project could take from 4 to 11 months to complete. Therefore, staff is recommending that Healy Tibbitts be granted an additional twelve (12) month ROE.

Healy Tibbitts has agreed to pay the total twelve (12) months' rent in advance. In the event of an early termination, the rent will be prorated, with the unused portion refunded to Healy Tibbitts.

Healy Tibbitts has not had a lease, permit, easement or other disposition of State lands terminated within the past five (5) years due to non-compliance with such terms and conditions.

RECOMMENDATION:

That the Board of Land and Natural Resources:

1. Declare that, after considering the potential effects of the proposed project as provided by Chapter 343, HRS, and Chapter 11-200.1, 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.

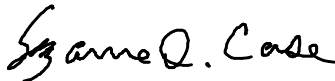
2. Authorize the issuance of a ROE to Healy Tibbitts covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current ROE permit form, as may be amended from time to time; and
 - b. 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 and Ocean Recreation

APPROVED FOR SUBMITTAL:



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

Attachments:

- A-1 Map of Oahu
- A-2 Map of Ala Wai Small Boat Harbor
- A-3 Site Map
- B Board action dated 12-12-14, item J-2 – Delegation of Authority to Issue ROE
- C Six (6) Month ROE – January 15, 2020, to July 14, 2020
- D ROE from July 15, 2020, to October 31, 2020

Exhibit A-1

Healy Tibbitts Builders, Inc. at Ala Wai Small Boat Harbor

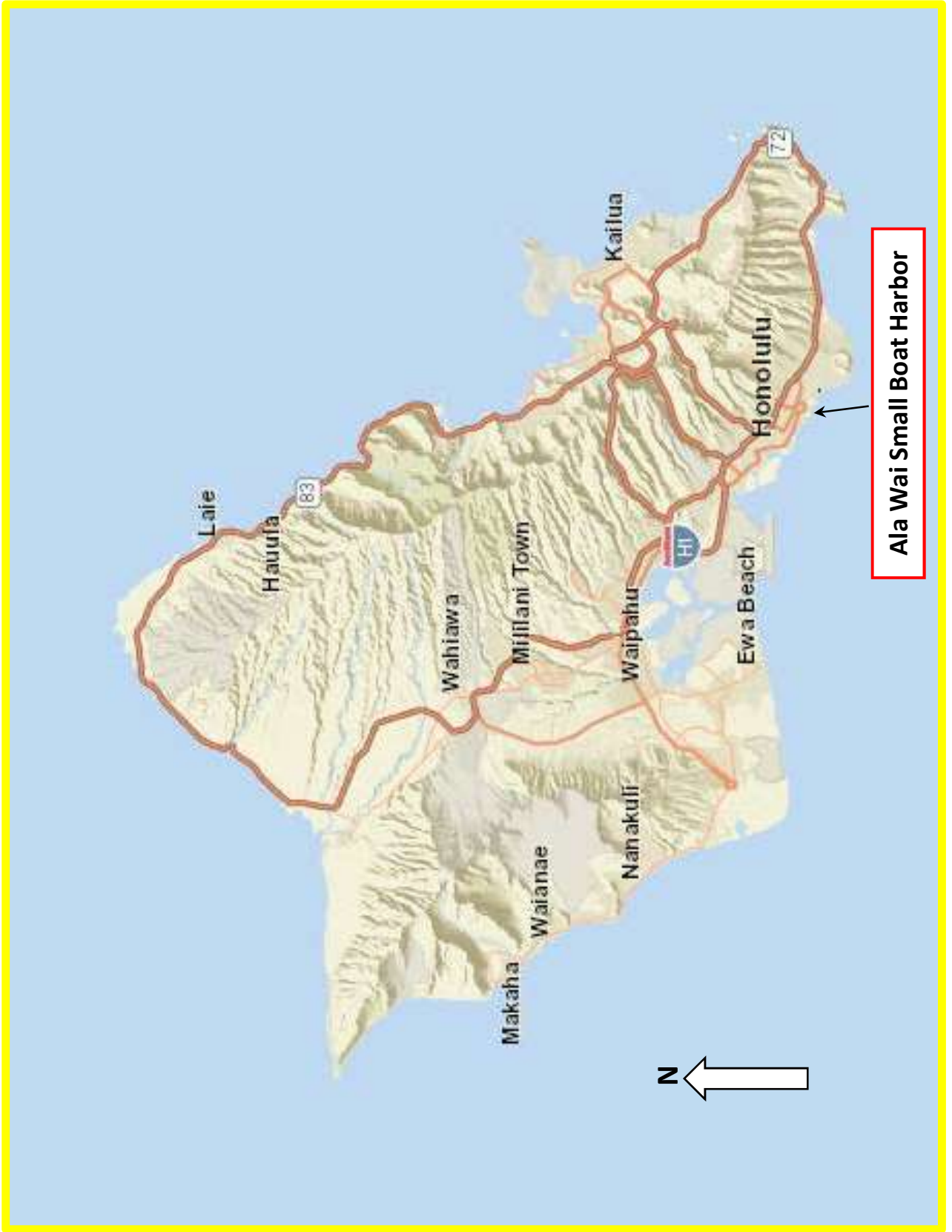


Exhibit A-1

Ala Wai Small Boat Harbor

Healy Tibbitts Builders, Inc. at Ala Wai Small Boat Harbor



Exhibit A-3

Healy Tibbitts Builders, Inc. Right-of-Entry at Ala Wai Small Boat Harbor



EXHIBIT "B"

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii

December 12, 2014

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

STATEWIDE

DELEGATION OF AUTHORITY TO ISSUE RIGHT-OF-ENTRY PERMITS ON STATE LANDS AND FACILITIES UNDER THE JURISDICTION OF THE DIVISION OF BOATING AND OCEAN RECREATION

BACKGROUND:

As landowner, the Department of Land and Natural Resources, Division of Boating and Ocean Recreation (DOBOR) receives numerous requests for the short term temporary use of public lands for a variety of purposes. These requests range from a few hours to 30 days. These requests are for sites on lands encumbered by way of executive order under the jurisdiction of DOBOR. Some of these requests include but are not limited to the following uses:

- Beach activities - surf meets, beach weddings, beach Olympics, volleyball tournaments, swim races, triathlons, canoe races, fishing tournaments, special events, and funerals
- Scientific, engineering or archaeological studies, soils investigations or surveys
- Storage of construction materials or equipment for abutting property
- Land and building maintenance activities on State land or abutting private property
- Filming of movies or television shows
- Construction and management, maintenance, demolition, debris removal, tree trimming
- Salvage operations, temporary roadway access/pass through,
- Emergency operations, helicopter landing site for special events, service vehicles
- Miscellaneous - fireworks display, geography field trips

There are three main instances in which the Department issues Rights-of-Entry Permits (ROE):

- 1) ROE to enter public lands encumbered by a lease, executive order, or other encumbrance. Staff obtains approval from the Board of Land and Natural Resources (Board) for these requests.
- 2) ROE for construction and/or management that precede a land disposition, e. g., set aside, lease, or utility easement. Normally, these requests are approved at the same time the disposition is approved.

EXHIBIT "B"

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES DEC 12 2014
AT ITS MEETING HELD ON

See amendments in recommendations
Item J-2

- 3) ROE unencumbered public lands for a minor, temporary use that does not involve a land disposition to enter. These ROE are issued by the Chairperson.

DEFINITIONS:

A. Right-of-Entry Permit

Staff would like to clarify the use of terminology. Staff is unsure as to where the term ROE first arose. There is no reference to ROE in either Hawaii Revised Statutes (HRS) Chapter 171, or real estate dictionaries. In standard real estate terminology, it would appear we are granting "licenses." According to "The Language of Real Estate" by John W. Reilly, a license is a "permission or authority to do a particular act on the land or property of another, usually on a nonexclusive basis. A license is a personal, revocable and nonassignable right, but unlike an easement, it is not considered an interest in the land itself."

In Chapter 171, HRS, however, a "license" specifically refers to granting a privilege to enter land to remove some sort of material (e.g., sand, timber, soil, rock, etc.). Furthermore, the authority to issue the right to temporarily use State land is established under Section 171-55, Permits. Therefore, staff is recommending that we clarify the terminology by calling them ROE and define this term as an expressed, temporary right to enter State land for a specified purpose that is in writing.

B. "Activity" or "Use"

A wide spectrum of activities occurs on DOBOR property. There are so many varying uses that the question arises of what uses or activities should require a ROE. For areas that the public is not allowed access to, it is clear that any temporary activity or use would require a ROE.

For lands where the public is invited, we have been advised by the Department of the Attorney General that ROE may be required only when an applicant desires to have exclusive use of a certain area or desired to engage in an activity that is otherwise restricted pursuant to rule. A ROE authorizes the permittee to exclude others from the designated area or engage in the restricted activity. If a person or organization does not obtain a permit from the Department, they have no right to keep others out of the area.

AUTHORITY:

Pursuant to HRS § 171-55, the Board of Land and Natural Resources (Board) may: "issue permits for the temporary occupancy of state lands or an interest therein on a month-to-month basis by direct negotiation without public auction, under conditions and rent which will serve the best interests of the State, subject, however, to those restrictions as may from time to time be expressly imposed by the Board."

Pursuant to HAR § 13-231-3 (a)(9), a Miscellaneous Permit is defined as: “A use Permit which authorizes use of a small boat harbor or an offshore mooring for other purposes as may be authorized by the department in its use permit and is consistent with these rules and applicable laws.”

ANALYSIS:

A. Variables to Impact Delegation of Authority to Issue ROE's:

Taking into consideration the parameters under which ROE's are issued, staff identified the following variables which may affect the delegation of authority:

1. Type of Activity: Temporary use permits are intended to grant permission to enter the premises to perform a particular activity, to exercise a certain privilege or to carry on a particular business. Activities with greater liability or risks to the State should be approved at higher levels.
2. Length of Use: Temporary use Permits are intended for temporary uses. The longer the duration of the activity, (e.g. in excess of 30 days) the more factors come into play, e.g. risk, liability. Therefore, we are recommending the longer the term of use, the higher the approval level.
3. Impact on Resource and on Public Access and the Enjoyment of Public Lands. The greater the impact on the resources and on public access, higher approval level should be obtained.
4. Emergency Nature of Activity: Public health and safety concerns should be accounted for in the delegation of authority to ensure that the Department can act promptly and appropriately in emergencies.

In certain cases the Chairperson may deem that a specific request may be of scale, type or impact on the public resources that the applicants request should be brought before the Board for approval.

DOBOR requests the Board delegate authority to the Chairperson, and to DOBOR at various levels, to issue ROE's for the temporary uses as described above, pursuant to Section 171-55, HRS, for public lands under the management of the Division of Boating and Ocean Recreation. The levels of delegation of authorization are proposed and provided in the recommendations section below.

B. Rent

Should there be a monetary gain from the use of state lands under the jurisdiction of DOBOR, the rent shall be \$.25 per square foot with a minimum rent of \$100.00 per day.

There are certain types of uses which may not warrant charging rent, including engineering, scientific, surveys, or possibly educational field trips or school sports events such as swimming or paddle sports. Staff is recommending that the Chairperson have the authority to waive the rent in these cases.

RECOMMENDATION:

That the Board:

1. Delegate authority to the Chairperson, DOBOR Administrator, DOBOR Planning and Coordination Office and DOBOR District Managers to issue ROE's on behalf of DOBOR pursuant to HRS § 171-55 for public lands under the jurisdiction and management of DOBOR:

- a. The Chairperson shall have the authority to issue ROE's for uses that are:

- 1) On encumbered State land to DOBOR;
- 2) ~~Any length in duration;~~ *No more than six months in duration;*
- 3) Address an emergency situation; or
- 4) Otherwise necessary to serve the best interests of the State.

- b. The DOBOR Administrator shall have authority to issue ROE's permits for uses that are:

- 1) Encumbered State land to DOBOR;
- 2) Do not involve a land use in the Conservation District;***
- 3) No more than one month in duration;
- 4) Pose minimal liability to the State; and
- 5) Have minimal impact on resources and on public access and enjoyment of public lands.

- c. Authority to issue temporary use permits shall be delegated to the DOBOR Property Management Section and District Managers for uses that are:

- 1) On encumbered State lands to DOBOR; and
- 2) No more than one week in duration; and
- 3) Pose minimal liability to the State; and
- 4) Have minimal impact on resources and on public access and enjoyment of public lands.

2. Establish the rent for ROE's at \$0.25 per square foot per day with a minimum of \$100.00, provided that the rent may be waived for:
 - a. Any government-related project;
 - b. Uses where no entity involved in the use intends to profit monetarily; or

Respectfully submitted,



Edward R. Underwood
Administrator

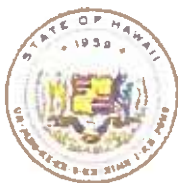
APPROVED FOR SUBMITTAL:



William J. Aila, Jr.
Chairperson

Exhibit C

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

January 10, 2019

Healy Tibbitts Builders, Inc.
99-994 Iwaena Street Suite A
Aiea, Hawaii 96701

Dear Mr. Richard Weeks:

Subject: Issuance of a six (6) month Right-Of-Entry to Healy Tibbitts Builders, Inc. for fast lands to be used for parking vehicles and submerged lands for the mooring of a tug boat and up to two (2) skiffs, situated at Ala Wai Small Boat Harbor, Honolulu, Island of Oahu, Hawaii, identified by Tax Map Key (1) 1-2-3-037:012 (Por.) and (1) 2-6-010:003 (Por.)

Healy Tibbitts Builders, Inc., herein after referred to as ("HTBI") and/or persons acting for or on its behalf are hereby granted a right-of-entry onto State lands situated at Ala Wai Small Boat Harbor, Honolulu, Island of Oahu, Hawaii, identified as tax map key (1) 1-2-3-037:012 (Por.) and (1) 2-6-010:003 (Por.) and further shown on Exhibits A-1, A-2 and A-3. You have requested this six (6) month period from January 15, 2020, to July 14, 2020, or until the project is completed, whichever occurs first.

1. Payment \$13,374.84 for six (6) months of rent (\$2,229.14 per month)
2. Upon acceptance of the terms herein and the provision of the liability insurance required in paragraph 3, this right-of-entry permit shall be effective during the periods as shown on the attached Board submittal.
3. "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall procure at its own expense, and maintain during the entire period of this right-of-entry, from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A- VIII" or other comparable and equivalent industry rating, a policy or policies of comprehensive public liability insurance or its equivalent, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Board.

The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of "HTBI", its consultants, contractors and/or persons acting for or on its behalf. "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall furnish the Department with a certificate(s) showing the policy(s) to be initially in force, keep certificate(s) on deposit during the entire period and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited to scope of coverage, or nonrenewed until written notice has been given to the Department. The Department shall retain the right at any time to review the coverage, form, and amount of the insurance required. If, in the opinion of the Department, the insurance provisions in this right-of-entry do not provide adequate protection for the Department, the Department may require "HTBI", its consultants, contractors and/or persons acting for or on its behalf to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Department's requirements shall be reasonable but be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Department shall notify "HTBI", its consultants, contractors and/or persons acting for or on its behalf in writing of changes in the insurance requirements and "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Department incorporating the changes within receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit "HTBI", its consultants, contractors and/or persons acting for or on its behalf, liability under this right-of-entry nor to release or relieve "HTBI", its consultants, contractors and/or persons acting for or on its behalf of the indemnification provisions and requirements of this right-of-entry. Notwithstanding the policy(s) of insurance, "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall be obligated for the full and total amount of any damage, injury, or loss caused by "HTBI", its consultants, contractors and/or persons acting for or on its behalf negligence or neglect connected with this right-of-entry.

4. At all times herein, "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall keep the right-of-entry area or premises in a strictly clean, sanitary and orderly condition.
5. "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the right-of-entry area or premises, now in force or which may be in force.
6. "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall indemnify, defend, and hold the State of Hawaii, Department of Land and Natural Resources harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage,

arising out of or resulting from: (1) any act or omission on the part of "HTBI", its consultants, contractors and/or persons acting for or on its behalf relating to "HTBI", its consultants, contractors and/or persons acting for or on its behalf use, occupancy, maintenance, or enjoyment of the right-of-entry area or premises; (2) any failure on the part of "HTBI", its consultants, contractors and/or persons acting for or on its behalf to maintain the right-of-entry area or premises and areas adjacent thereto in "HTBI", its consultants, contractors and/or persons acting for or on its behalf use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of "HTBI", its consultants, contractors and/or persons acting for or on its behalf to maintain the area or premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of "HTBI", its consultants, contractors and/or persons acting for or on its behalf non-observance or non-performance of any of the terms, covenants, and conditions of this right-of-entry or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

7. All equipment shall be placed within the right-of-entry area or premises described and shown on the attached exhibits herewith.
8. "HTBI" shall be responsible for providing security for the right-of-entry area or premises during this ROE six (6) month time period.
9. "HTBI" shall supply to the Division of Boating and Ocean Recreation a name and local telephone number of the contact person who can be reached at any time around the clock during this ROE time period.
10. "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. "HTBI" its consultants, contractors and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area or premises any such materials except to use in the ordinary course of "HTBI", its consultants, contractors and/or persons acting for or on its behalf business, and then only after written notice is given to the State of Hawaii, Department of Land and Natural Resources of the identity of such materials and upon the Department's consent which consent may be withheld at the Department's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by "HTBI", its consultants, contractors and/or persons acting for or on its behalf, then the "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall be responsible for the cost thereof. In addition, "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall execute affidavits, representations and the like from time to time at the Department's request concerning "HTBI", its consultants, contractors and/or persons acting for or on its behalf best knowledge and belief regarding the presence of hazardous materials on the right-of-entry area or premises placed or released by "HTBI", its consultants, contractors and/or persons acting for or

on its behalf.

11. "HTBI", its consultants, contractors and/or persons acting for or on its behalf agree to indemnify, defend and hold the State of Hawaii, Department of Land and Natural Resources harmless, from any damages and claims resulting from the release of hazardous materials on the right-of-entry area or premises occurring while "HTBI", its consultants, contractors and/or persons acting for or on its behalf is/are in possession, or elsewhere if caused by "HTBI", its consultants, contractors and/or persons acting for or on its behalf. These covenants shall survive the expiration or earlier termination of this right-of-entry.

For purposes of this right-of-entry, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.


12. "HTBI", its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general.
13. All costs associated with the construction within the right-of-entry area or premises shall be the sole responsibility of the "HTBI", its consultants, contractors and/or persons acting for or on its behalf.
14. "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from "HTBI", its consultants, contractors and/or persons acting for or on its behalf use, maintenance, repair and operation of the right-of-entry area or premises, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the right-of-entry area or premises and its surrounding waters of such pollutant or contaminant and restore to the State of Hawaii, Department of Land and Natural Resources satisfaction the areas affected by such pollution or contamination, all at "HTBI", its consultants, contractors and/or persons acting for or on its behalf own cost and expense.
15. Excavation, removal, and disposal of any/all material, vegetation, etc., shall be subject to all State and local agencies. "HTBI" is responsible for contacting any/all agencies to include but not limited to Department of Health, Clean Water Branch <http://health.hawaii.gov/cwb/> and Clean Air Branch, <http://health.hawaii.gov/cab/>. To establish best practice and adherence.
16. Best management practices shall be employed to avoid having silt or dirt enter the

ocean.

17. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in Kapolei at (808) 692-8015 immediately in compliance with chapter 6E, Hawaii Revised Statutes.
18. This right-of-entry is revocable and terminable for any breach of terms and conditions herein at the sole and absolute discretion of the Chairperson.
19. This right-of-entry or any rights hereunder shall not be sold, assigned, conveyed, leased, let, mortgaged or otherwise transferred or disposed.
20. The Department of Land and Natural Resources reserves the right to impose additional, but reasonable terms and conditions as it deems necessary while this right-of-entry is in force.
21. All disputes or questions arising under this right-of-entry shall be referred to the Chairperson of the Board of Land and Natural Resources for a determination and resolution of the dispute or question. The Chairperson's decision shall be final and binding on the parties herein.
22. In the event the project is completed prior to July 14, 2020, the remaining balance of the prepaid rent shall be prorated and refunded to HTBI.

Should you concur with the above terms and conditions, please acknowledge and return a signed copy of this letter together with the required liability insurance policy and payment to DOBOR, 4 Sand Island Access Road, Honolulu, HI 96819. If you have any questions, please feel free to contact my staff Richard Howard at 587-1964.

Sincerely,



Suzanne D. Case
Chairperson

Enclosures: Exhibits A-1, A-2 and A-3

ACCEPT:
Healy Tibbitts Builders, Inc.



Emmett J. Kinney HTBI, VP

Jan 23, 2020

Date

Exhibit D

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

July 15, 2020

Healy Tibbitts Builders, Inc.
99-994 Iwaena Street Suite A
Aiea, Hawaii 96701

Dear Mr. Richard Weeks:

Subject: Issuance of a Right-Of-Entry to Healy Tibbitts Builders, Inc. for fast lands to be used for parking vehicles and submerged lands for the mooring of a tug boat and up to two (2) skiffs, situated at Ala Wai Small Boat Harbor, Honolulu, Island of Oahu, Hawaii, identified by Tax Map Key (1) 1-2-3-037:012 (Por.) and (1) 2-6-010:003 (Por.)

Healy Tibbitts Builders, Inc., herein after referred to as ("HTBI") and/or persons acting for or on its behalf are hereby granted a right-of-entry onto State lands situated at Ala Wai Small Boat Harbor, Honolulu, Island of Oahu, Hawaii, identified as tax map key (1) 1-2-3-037:012 (Por.) and (1) 2-6-010:003 (Por.) and further shown on Exhibits A-1, A-2 and A-3. You have requested the period from July 15, 2020, to October 31, 2020, or until the project is completed, whichever occurs first.

1. Payment \$7,909.85 for rent from July 15, 2020, to October 31, 2020 (\$2,229.14 per month)
2. Upon acceptance of the terms herein and the provision of the liability insurance required in paragraph 3, this right-of-entry permit shall be effective during the periods as shown on the attached Board submittal.
3. "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall procure at its own expense, and maintain during the entire period of this right-of-entry, from an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A- VIII" or other comparable and equivalent industry rating, a policy or policies of comprehensive public liability insurance or its equivalent, in an amount of at least \$1,000,000 for each occurrence and \$2,000,000 aggregate, and with coverage terms acceptable to the Chairperson of the Board.

The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the State of Hawaii, Department of Land and Natural Resources. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of "HTBI", its consultants, contractors and/or persons acting for or on its behalf. "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall furnish the Department with a certificate(s) showing the policy(s) to be initially in force, keep certificate(s) on deposit during the entire period and furnish a like certificate(s) upon each renewal of the policy(s). This insurance shall not be cancelled, limited to scope of coverage, or nonrenewed until written notice has been given to the Department. The Department shall retain the right at any time to review the coverage, form, and amount of the insurance required. If, in the opinion of the Department, the insurance provisions in this right-of-entry do not provide adequate protection for the Department, the Department may require "HTBI", its consultants, contractors and/or persons acting for or on its behalf to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Department's requirements shall be reasonable but be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Department shall notify "HTBI", its consultants, contractors and/or persons acting for or on its behalf in writing of changes in the insurance requirements and "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Department incorporating the changes within receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit "HTBI", its consultants, contractors and/or persons acting for or on its behalf, liability under this right-of-entry nor to release or relieve "HTBI", its consultants, contractors and/or persons acting for or on its behalf of the indemnification provisions and requirements of this right-of-entry. Notwithstanding the policy(s) of insurance, "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall be obligated for the full and total amount of any damage, injury, or loss caused by "HTBI", its consultants, contractors and/or persons acting for or on its behalf negligence or neglect connected with this right-of-entry.

4. At all times herein, "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall keep the right-of-entry area or premises in a strictly clean, sanitary and orderly condition.
5. "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the right-of-entry area or premises, now in force or which may be in force.
6. "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall indemnify, defend, and hold the State of Hawaii, Department of Land and Natural Resources harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage,

arising out of or resulting from: (1) any act or omission on the part of "HTBI", its consultants, contractors and/or persons acting for or on its behalf relating to "HTBI", its consultants, contractors and/or persons acting for or on its behalf use, occupancy, maintenance, or enjoyment of the right-of-entry area or premises; (2) any failure on the part of "HTBI", its consultants, contractors and/or persons acting for or on its behalf to maintain the right-of-entry area or premises and areas adjacent thereto in "HTBI", its consultants, contractors and/or persons acting for or on its behalf use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of "HTBI", its consultants, contractors and/or persons acting for or on its behalf to maintain the area or premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of "HTBI", its consultants, contractors and/or persons acting for or on its behalf non-observance or non-performance of any of the terms, covenants, and conditions of this right-of-entry or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

7. All equipment shall be placed within the right-of-entry area or premises described and shown on the attached exhibits herewith.
8. "HTBI" shall be responsible for providing security for the right-of-entry area or premises from July 15, 2020, to October 31, 2020.
9. "HTBI" shall supply to the Division of Boating and Ocean Recreation a name and local telephone number of the contact person who can be reached at any time around the clock during this ROE time period.
10. "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. "HTBI" its consultants, contractors and/or persons acting for or on its behalf shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the right-of-entry area or premises any such materials except to use in the ordinary course of "HTBI", its consultants, contractors and/or persons acting for or on its behalf business, and then only after written notice is given to the State of Hawaii, Department of Land and Natural Resources of the identity of such materials and upon the Department's consent which consent may be withheld at the Department's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by "HTBI", its consultants, contractors and/or persons acting for or on its behalf, then the "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall be responsible for the cost thereof. In addition, "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall execute affidavits, representations and the like from time to time at the Department's request concerning "HTBI", its consultants, contractors and/or persons acting for or on its behalf best knowledge and belief regarding the presence of hazardous materials on the right-of-entry area or premises placed or released by "HTBI", its consultants, contractors and/or persons acting for or

on its behalf.

11. "HTBI", its consultants, contractors and/or persons acting for or on its behalf agree to indemnify, defend and hold the State of Hawaii, Department of Land and Natural Resources harmless, from any damages and claims resulting from the release of hazardous materials on the right-of-entry area or premises occurring while "HTBI", its consultants, contractors and/or persons acting for or on its behalf is/are in possession, or elsewhere if caused by "HTBI", its consultants, contractors and/or persons acting for or on its behalf. These covenants shall survive the expiration or earlier termination of this right-of-entry.

For purposes of this right-of-entry, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

12. "HTBI", its consultants, contractors and/or persons acting for or on its behalf in the exercise of this right-of-entry shall use appropriate precautions and measures to minimize inconveniences to surrounding residents, landowners, and the public in general.
13. All costs associated with the construction within the right-of-entry area or premises shall be the sole responsibility of the "HTBI", its consultants, contractors and/or persons acting for or on its behalf.
14. "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from "HTBI", its consultants, contractors and/or persons acting for or on its behalf use, maintenance, repair and operation of the right-of-entry area or premises, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the right-of-entry area or premises and its surrounding waters of such pollutant or contaminant and restore to the State of Hawaii, Department of Land and Natural Resources satisfaction the areas affected by such pollution or contamination, all at "HTBI", its consultants, contractors and/or persons acting for or on its behalf own cost and expense.
15. Excavation, removal, and disposal of any/all material, vegetation, etc., shall be subject to all State and local agencies. "HTBI" is responsible for contacting any/all agencies to include but not limited to Department of Health, Clean Water Branch <http://health.hawaii.gov/cwb/> and Clean Air Branch, <http://health.hawaii.gov/cab/>. To establish best practice and adherence.
16. Best management practices shall be employed to avoid having silt or dirt enter the

ocean.

17. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, "HTBI", its consultants, contractors and/or persons acting for or on its behalf shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in Kapolei at (808) 692-8015 immediately in compliance with chapter 6E, Hawaii Revised Statutes.
18. This right-of-entry is revocable and terminable for any breach of terms and conditions herein at the sole and absolute discretion of the Chairperson.
19. This right-of-entry or any rights hereunder shall not be sold, assigned, conveyed, leased, let, mortgaged or otherwise transferred or disposed.
20. The Department of Land and Natural Resources reserves the right to impose additional, but reasonable terms and conditions as it deems necessary while this right-of-entry is in force.
21. All disputes or questions arising under this right-of-entry shall be referred to the Chairperson of the Board of Land and Natural Resources for a determination and resolution of the dispute or question. The Chairperson's decision shall be final and binding on the parties herein.
22. In the event the project is completed prior to October 31, 2020, the remaining balance of the prepaid rent shall be prorated and refunded to HTBI.

Should you concur with the above terms and conditions, please acknowledge and return a signed copy of this letter together with the required liability insurance policy and payment to DOBOR, 4 Sand Island Access Road, Honolulu, HI 96819. If you have any questions, please feel free to contact my staff Richard Howard at 587-1964.

Sincerely,



Suzanne D. Case
Chairperson

Enclosures: Exhibits A-1, A-2 and A-3

ACCEPT:
Healy Tibbitts Builders, Inc.



Emmett J. Kinney HTBI, VP

Aug 26, 2020

Date