



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

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

OAHU

ISSUANCE OF A MONTH-TO-MONTH PERMIT AND LEASE FOR SUBMERGED LANDS HONOLULU HARBOR, OAHU, TAX MAP KEY NO. (1) 1-5-038: 78 (POR.); AND LEASE TO ATLANTIS SUBMARINES HAWAII, LLC. OF FAST LANDS AND SUBMERGED LANDS AT PIER 27, HONOLULU HARBOR, OAHU, TAX MAP KEY NO. (1) 1-5-038: 78 (POR.)

LEGAL REFERENCE:

Sections 171-6, 171-13, 171-17, 171-35, 171-36, 171-53, 171-55, and 171-59, Hawaii Revised Statutes, as amended.

APPLICANT:

Atlantis Submarines Hawaii, LLC. ("ATLANTIS") is a Delaware limited liability company, whose mailing address is 1600 Kapiolani Boulevard, Suite 1630, Honolulu, Hawaii 96814.

CHARACTER OF USE:

"To provide a berthing facility for commercial dinner/tour cruise and commercial tour submarines, support vessels, maintenance and repair of Atlantis vessels or affiliated company vessels, and other commercial vessels, and office and maintenance facility and related use."

LOCATION:

Portion of Government submerged lands situated at Pier 27, Honolulu Harbor, Oahu, Tax Map Key No. (1) 1-5-038: 78 (por.); and fast lands situated at Pier 27, Honolulu Harbor, Oahu, Tax Map Key No. (1) 1-5-038: 78 (POR.)

AREA:

The area comprises of three areas: a) approximately 44,054 square feet of fast lands; b) approximately 360 square feet of pier improvements; and, c) approximately 36,868 square feet of submerged lands.

CONSIDERATION:

The Department of Transportation (DOT) through its Harbors Division (“DOTH”), agreed with ATLANTIS during the mediation process as provided in HRS §171-17, that ATLANTIS would be treated similar to Pacific Shipyard, Inc. (PSI) which the State relocated from Pier 41 to Piers 24-25 within Honolulu Harbor to make way for the development of the DOTH’s Kapalama Container Terminal.

The DOTH and ATLANTIS agreed that the appraised rent for the: a) approximately 44,054 square feet of fast lands, b) approximately 360 square feet of pier improvements, and c) approximately 94,000 square feet of submerged lands is based on appraised rents for the fast lands less the extraordinary relocation costs of \$2,661,756 amortized over 15 years to construct, install its own utility improvements, and relocate its operations. Except for PSI and ATLANTIS, no other tenant has had to relocate to accommodate the construction of the Kapalama Container Terminal.

Until the Hawaii State Legislature by concurrent resolution pursuant to HRS §171-53 authorizes a submerged lands lease, and the governor approves the leasing of the submerged lands, the DOTH requests ATLANTIS be issued a month-to-month permit.

The fast lands and submerged lands rent are as follows:

First year to Fifth (5 th) year	\$235,900 ^{1/ & 2/}
Six (6 th) year to Tenth (10 th) year	\$260,440
Eleventh year to Fifteen (15 th) year	\$294,290
Sixteenth (16 th) year to Twentieth (20 th) year	Reopener determined by Appraisal
Twenty-first (21 st) year to Twenty-fifth (25 th)	Step up on 21 st year
Twenty-sixth (26 th) year to Thirtieth (30 th)	Reopener determined by Appraisal
Thirty-first (31 st) year to Thirty-fifth (35 th)	Step up on 31 st year

^{1/} Included in the fast lands rent is rent for the submerged lands based on fifty-eight percent (58%) of the amortized fast land rents for the first through the fifteen years as provided below.

^{2/} Included in the annual rent is the value of the pier improvements for which floating docks are attached to the pier structure.

First year to Fifth (5 th) year	\$38,054
Six (6 th) year to Tenth (10 th) year	\$41,859
Eleventh year to Fifteen (15 th) year	\$46,045
Sixteenth (16 th) year to Twentieth (20 th) year	Reopener determined by Appraisal
Twenty-first (21 st) year to Twenty-fifth (25 th)	Step up on 21 st year
Twenty-sixth (26 th) year to Thirtieth (30 th)	Reopener determined by Appraisal
Thirty-first (31 st) year to Thirty-fifth (35 th)	Step up on 31 st year

DOTH and ATLANTIS agree that the annual lease rent for the first year shall be gratis pursuant to §171-6 (7), HRS, which provides that the Board of Land and Natural Resources ("Board") may:

(7) Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural or pastoral use, or for resort, commercial, industrial, or other business use where the land being leased requires substantial improvements to be placed thereon; provided that such reduction or waiver shall not exceed two years for land to be used for any agricultural or pastoral use, or exceed one year for land to be used for resort, commercial, industrial, or other business use;

DOTH and ATLANTIS agree that ATLANTIS has made substantial improvements to the fast lands and berthing facilities by investing a minimum total of \$800,000 that is not included in the amortization of the relocation costs.

ZONING:

State of Land Use Commission: Urban
City and County of Honolulu: I-3, Waterfront Industrial

TERM OF LEASE:

Thirty-five (35) years. Fifteen (years) fixed rent, with rent reopeners at the 16th and 26th years.

COMMENCEMENT DATE:

On the first day of the month upon execution of the lease between the Director of Transportation and duly authorized ATLANTIS officer.

CURRENT USE STATUS:

With the development of the Kapalama Container Terminal as part of the Honolulu Harbor Master Plan, the DOT ordered the relocation of ATLANTIS from Pier 41 to Pier 27 during May of 2015. ATLANTIS was the first to relocate from Pier 41 to another pier (Pier 27) for the Kapalama Container Terminal project.

ATLANTIS uses the property to maintain the submarines and provide shore power to re-energize the batteries of its submarines docked at Pier 27. Maintenance and administrative offices are also located on the property. At the time of relocation, ATLANTIS had no access to electrical power or water and sewer to connections at the lot and therefore installed their own utilities.

During June 2020, the DOTH awarded a \$13.99 million contract to install utility lines and stub outs for the area including Pier 27, with a projected completion date of December 2021. ATLANTIS relocated prior to receiving the benefit of the DOTH's infrastructure improvements.

LAND TITLE STATUS:

Owned by State of Hawaii; management and control of the property was transferred to the Department of Transportation by Executive Order No. 2903.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The DOTH included the relocation of the Atlantis in its Kapalama Container Terminal and Tenant Relocations Final Environmental Impact Statement (August 2014.)

APPLICANT REQUIREMENTS:

ATLANTIS shall:

- a. Proceed with any and all requirements attendant to the completion of the lease terms and provisions, including but not limited to, providing DOTH with its development plans for the subject property as soon as practicable;
- b. Invest a minimum of \$800,000 into the premises. The tenant has made the minimum investment of \$800,000 by expending \$849,553.99.
- c. Comply with any other restrictions and/or conditions that may be imposed by the Board of Land and Natural Resources, as it may deem necessary.

REMARKS:

Applicant's Background

Since 1989, Atlantis Submarines began operating 48 passenger undersea adventures. During 1998, Atlantis introduced its 64 passenger semi-submersible and island tours providing passengers with a view of the ocean from large windows placed opposite seats located below the ocean surface. The semi-submarine does not submerge and dive. The vessels are direct current battery-powered electric thrusters with speeds up to 2.5 knots and therefore escorted/towed with support vessels from Pier 27, Honolulu Harbor to Waikiki and back.

The relocation of Atlantis Submarines was contemplated with the development of the Kapalama Container Terminal and the tenant relocation was addressed in the DOT's Kapalama Container Terminal and Tenant Relocations Final Environmental Impact Statement (August 2014.)

The DOT ordered ATLANTIS to relocate from Pier 41 to Pier 27 and issued a month-to-month permit effective September 1, 2014. At that time, ATLANTIS did not have access to electrical or water and sewer lines connections to the lot and as such, was required to install its own utilities. The relocation was ordered ahead of the Department's utility infrastructure project to service and as such, was required to insure project to service this area of Honolulu Harbor and a construction contract was awarded on June 17, 2020 for \$13.99 million. The estimated date of the project completion is December 2021.

As ATLANTIS could not benefit from the Department's utility infrastructure project (planned to be completed by December 2021), in order to relocate and operate its business, ATLANTIS planned, designed, and constructed its own electrical transformers, water, and sewer line connections under a month to month permit.

Although the DOT ordered ATLANTIS to relocate, the DOT Phase I project did not utilize the space. The DOT, instead, allocated the space vacated by ATLANTIS to Young Brothers for auto storage and most recently for the transfer of livestock.

In total, ATLANTIS spent \$3.5 million to relocate of which \$2.6 million was expended to improve the utility infrastructure in order to occupy the Pier 27 space fast and submerged lands.) While the DOTH could have issued a construction right of entry, with Board approval, to avoid ATLANTIS having to pay rent at both locations (Pier 41 and Pier 27), the DOTH did not offer ATLANTIS this accommodation. Thus, ATLANTIS expended \$230,000 on having to continue to pay rent at Pier 41 (in addition to the rent being paid for Pier 27) while ATLANTIS designed, planned, and constructed the installation of its utilities to ready Pier 27 to relocate and resume operations at Pier 27.

The DOTH reviewed the remaining expenditures determined that \$849,553.99 was expended as tenant improvements. ATLANTIS could not amortize the costs of the improvements over its month-to-month permit. ATLANTIS also is not benefiting from the DOTH's June 2020 utility infrastructure project.

The appraisal valued the annual rent of the fast lands at \$308,000. During mediation, the Department and ATLANTIS agreed to the appraised value. However, in order to adjust the rent for its relocation costs, the DOTH and ATLANTIS agreed during mediation to allow ATLANTIS to amortize the cost of their cost of infrastructure improvements over 15 years against the rent or \$235,900 per year up to year 6 and increase at 10.4% at the end of the 5th year and 13% from the eleventh year to the end of year 15. The DOTH addressed the relocation of ATLANTIS in similar manner to Pacific Shipyards Industries (PSI) where the rent was offset to amortize the costs of the relocation of PSI's entire shipyard.

At the end of the 15 years, the amortization of infrastructure improvements is removed. Effective the 16th year lease reopener and forward, lease rents for ATLANTIS will be based on market rents without regard to the past amortization of relocation costs. Similarly, submerged lands will be adjusted to be 50% of the fast lands.

Direct Negotiation

The DOTH determined that ATLANTIS is a maritime related purpose providing services of the maritime industry as provided by the provisions of §171-59(b), HRS, and entered direct negotiation and resolution of the lease during the mediation process as provided in HRS §171-17.

Appraisal and Reductions

The DOTH conducted its appraisal in establishing the lease rental in accordance with the provisions of §171-17(b), HRS. ATLANTIS reviewed the appraisal and disagreed to the lease rental rates. During the dispute resolution process, the DOTH and ATLANTIS resolved the dispute as described above.

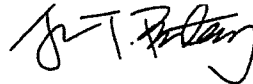
Lease Terms

The specific terms and conditions of the lease are under ongoing negotiation in accordance with the direct negotiation provisions of §171-59(b). The issue of a current condition, subsidence behind Pier 26 was found, and the DOTH will repair the subsidence as a pre-existing condition.

RECOMMENDATION:

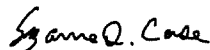
That the Board authorizes the issuance of a Lease to the Applicant covering the subject area for the purposes cited above, subject to the terms and conditions outlined above and incorporated herein by reference, and such terms and conditions as may be prescribed by the Director of Transportation.

Respectfully submitted,



JADE T. BUTAY
Director of Transportation

APPROVED FOR SUBMITTAL:



SUZANNE CASE
Chairperson and Member
Board of Land and Natural Resources

Board of Land and Natural Resources
 Issuance of Lease to Atlantis Submarines, LLC.
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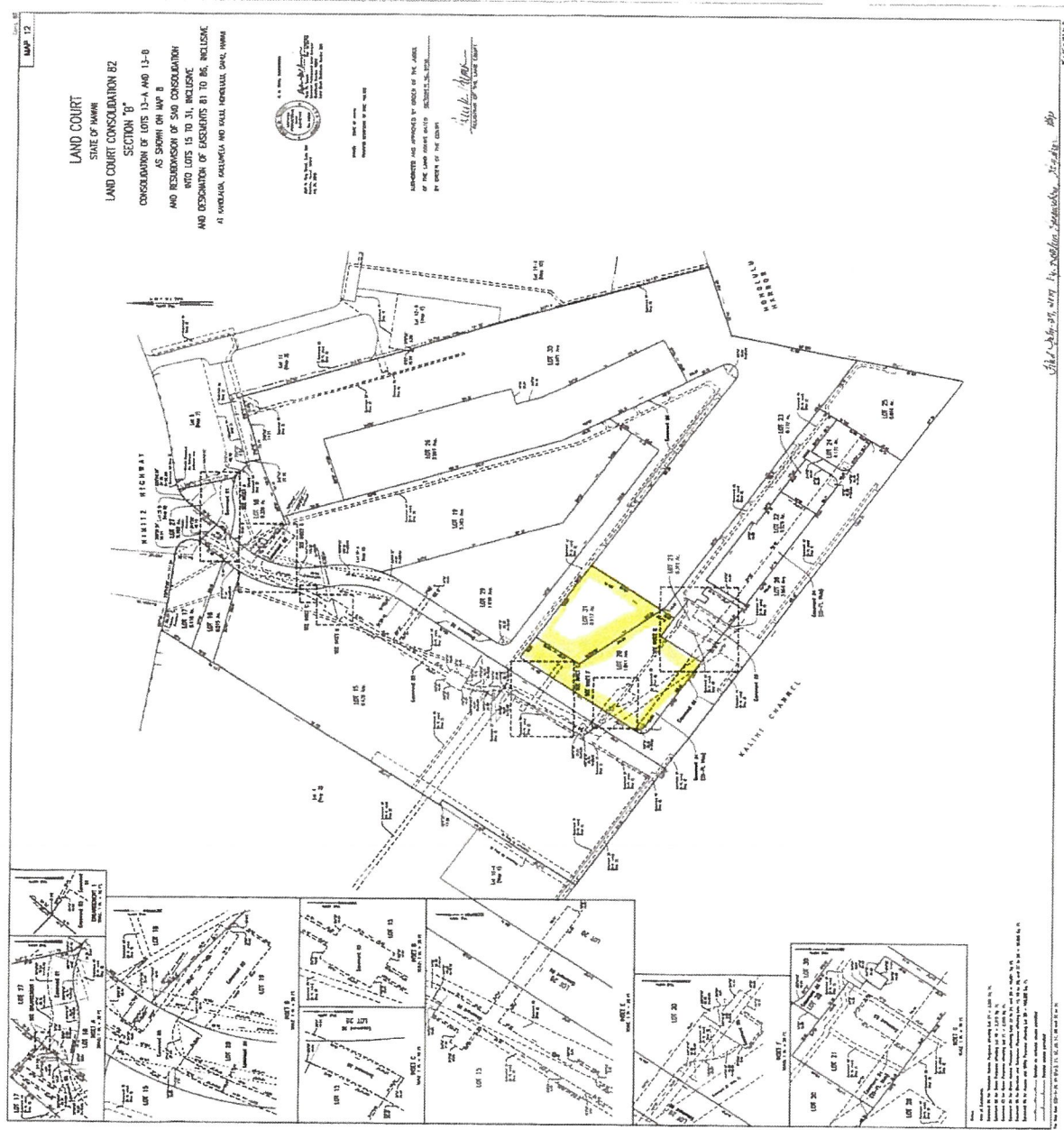


EXHIBIT A



EXHIBIT B