

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

December 9, 2022

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

Land Board Members:

SUBJECT: Mutual Cancellation of Lease LH-20-003 to The Jupiter Research Foundation, Situated at Kawaihae Small Boat Harbor South, Kawaihae, Island of Hawaii, Hawaii Tax Map Key: (3) 6-1-003:026 (por).

APPLICANT:

The Jupiter Research Foundation, Lessee (Lessee or Jupiter), a 501(c)(3) Nonprofit Corporation, whose mailing address is P.O. Box 1825, Mirage, CA 92270.

LEGAL REFERENCE:

Sections 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kawaihae Small Boat Harbor South ("KSBHS"), Kawaihae, Island of Hawaii, Hawaii, identified as Tax Map Key: (3) 6-1-003:026 (por.), hereinafter referred to as the "Premises" as shown on the map labeled **EXHIBIT A-1 and A-2** and attached hereto.

AREA:

1.5 acres, or 65,340 square feet, more or less.

ZONING:

State Land Use District: Urban & Conservation

County of Hawaii: MG-1a, Open, RM-1.5

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act: YES ☒ NO ☐

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

CURRENT USE STATUS:

Currently encumbered under Lease LH-20-003 to The Jupiter Research Foundation.

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.

TERM OF LEASE:

Sixty-Five (65) years, commencing on July 1, 2020, and expiring on June 30, 2085.

CANCELLATION DATE:

December 31, 2022.

ANNUAL RENTAL:

The appraised annual rental of \$32,200 for the first ten (10) year period. Payments are due quarterly. Step ups in the 11th and 16th years to \$41,200 and \$46,600 per annum, respectively.

REMARKS:

At its meeting held on July 26, 2019, under Item J-1, see **EXHIBIT B**, the Board approved the issuance of a direct lease to The Jupiter Research Foundation, a nonprofit 501(c)(3) corporation based in California and Hawaii, for a marine science center in a vacant area at KSBHS. Due to unforeseen circumstances, such as funding and the COVID-19 pandemic which started to impact Hawaii in 2020, Jupiter faced challenges which has prevented them from proceeding with their plans of creating a space for environmental research.

Pursuant to its lease, attached hereto as **EXHIBIT C**, Jupiter had 3 years from the commencement date to make improvements, but due to the circumstances, was unable to. Despite not being able to make any improvements to the premises, Jupiter deposited an amount equal to 2 years rent in lieu of a performance bond and is current with all rent obligations. The Lessee is not in default in any way. The Lessee is requesting the lease to be terminated.¹

The applicant has not had a lease, permit, easement, or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Staff recommends the Board authorize the mutual cancellation of Lease LH-20-003 to The Jupiter Research Foundation.

RECOMMENDATION:

That the Board of Land and Natural Resources:

1. Authorize the mutual cancellation of Lease LH-20-003 to The Jupiter Research Foundation, Lessee, 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 mutual cancellation lease document form, as may be amended from time to time;
 - b. The effective date of cancellation shall be December 31, 2022;
 - c. Review and approval by the Department of 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

¹ Par.43. Termination by either party. The Lessor and Lessee, by mutual agreement, may terminate this lease at any time without cause, provided that the Lessor and the Lessee are not in breach of any condition herein at the time of the mutual agreement to terminate. This provision can be waived by the parties, provided such waiver is in writing and signed by both parties.

APPROVED FOR SUBMITTAL:

Suzanne D. Case

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

Attachment:

- A-1. Location Map
- A-2. Location Map
- B. Approved Board Submittal Dated July 26, 2019, Item J-1
- C. Boating Lease No. LH-20-003

Exhibit A-1
Kawaihae Small Boat Harbor South



Exhibit A-2
Kawaihae Small Boat Harbor South



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.

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

7/26/19

Item J-1

Exhibit B

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 X NO ___
Registered business name confirmed: YES X NO ___
Applicant in good standing confirmed: YES X NO ___

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:

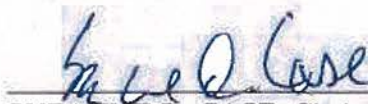
1. Approve the Final Environmental Assessment (FEA) for The Jupiter Foundation Marine Research Center at Kawaihae Small Boat Harbor South.
2. Authorize a Finding of No Significant Impact (FONSI) for this project.
3. Authorize the issuance of a direct lease to The Jupiter Research Foundation for a marine 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

Kawaihāe South Small Boat Harbor

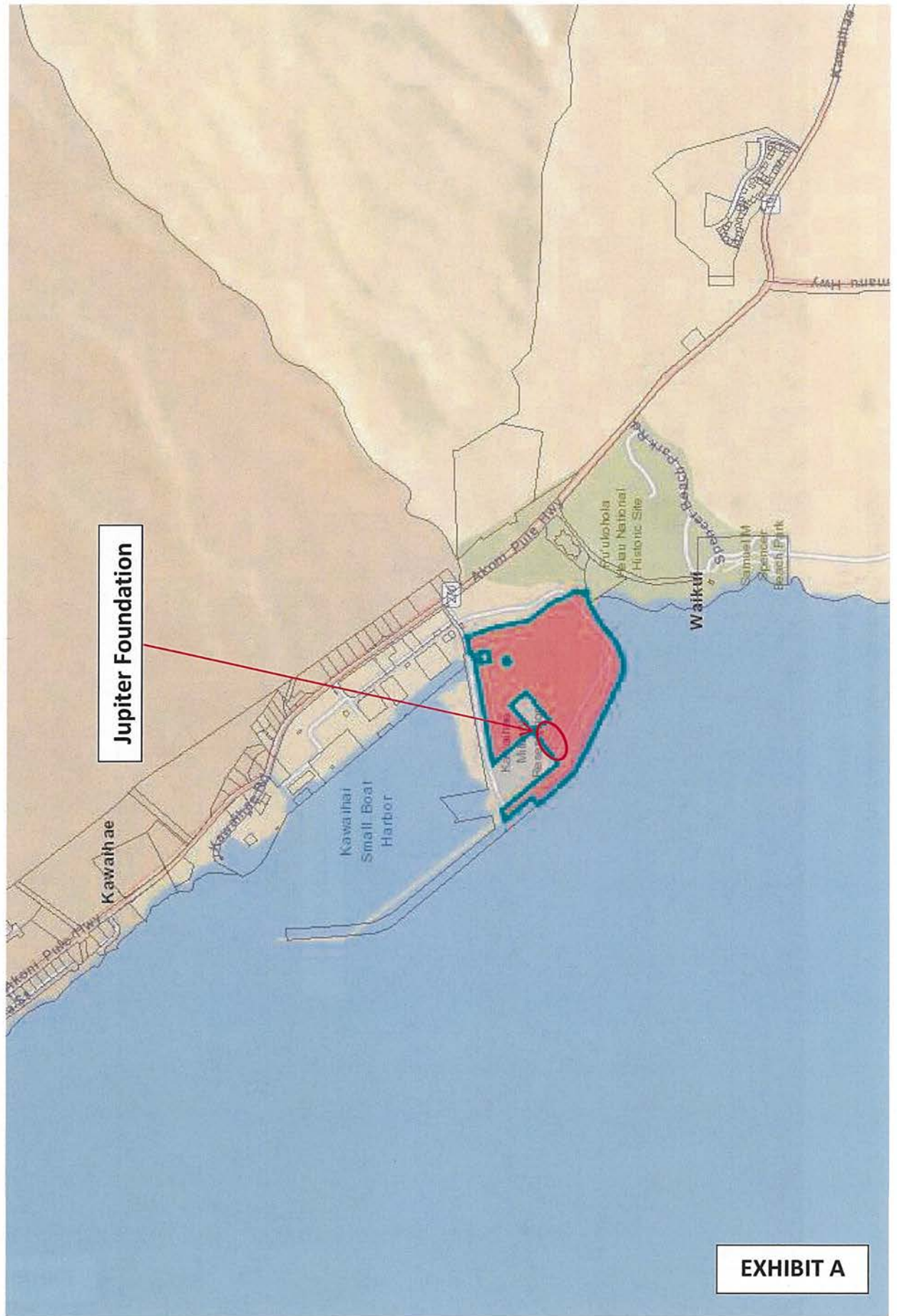


EXHIBIT A

The Jupiter Research Foundation
Kawaihae South Small Boat Harbor

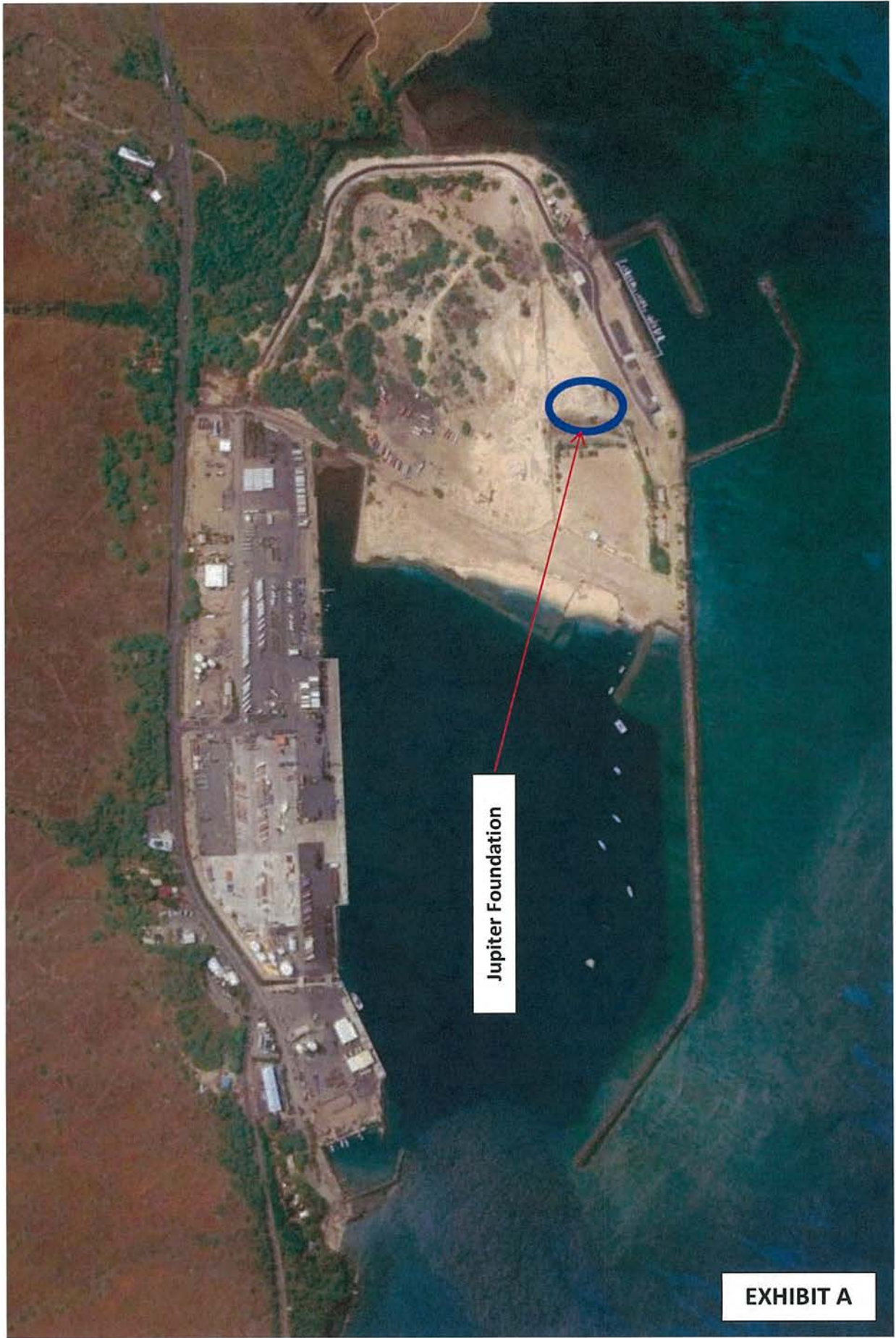


EXHIBIT A

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 ...

1539 Kanapu'u Drive
Kailua, Hawai'i 96734
(808) 226-3567
www.Hookuleana.com
Info@Hookuleana.com

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)

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Tax Map Key No. (3) 6-1-003:026 (portion)



TABLE OF CONTENTS

	<u>Page</u>
TERM OF LEASE	1
ANNUAL RENTAL	1
REOPENING OF ANNUAL RENTAL	2
INTEREST RATE/SERVICE CHARGE	3
RESERVATIONS:	
1. Minerals and waters	4
2. Ownership of improvements	4
AGREEMENTS AND COVENANTS BETWEEN PARTIES:	
1. Payment of rent	5
2. Taxes, assessments, etc.....	5
3. Utility services	5
4. Covenant against discrimination	5
5. Sanitation	5
6. Waste and unlawful, improper or offensive use of premises	5
7. Compliance with laws	5
8. Inspection of premises	6
9. Improvements	6
10. Repairs to improvements	6
11. Liens	6
12. Character of use	6
13. Assignments, etc.	7
14. Subletting	7
15. Release and indemnity	7
16. Costs of litigation	7
17. Liability insurance	7
18. Bond, performance	9
19. Lessor's lien	9
20. Mortgage	9
21. Breach	9
22. Condemnation	10
23. Right to enter	10
24. Inspection by prospective bidders	11
25. Acceptance of rent not a waiver	11
26. Extension of time	11

TABLE OF CONTENTS (cont'd)

	<u>Page</u>
27. Justification of sureties	11
28. Waiver, modification, reimposition of bond and liability insurance provisions .	12
29. Quiet enjoyment	12
30. Surrender	12
31. Non-warranty	13
32. Hazardous materials.....	13
33. Hawaii law	13
34. Exhibits - Incorporation in lease	13
35. Headings	14
36. Partial invalidity	14

SPECIAL CONDITIONS:

37. Withdrawal	14
38. Improvements	14
39. Bond, improvement	14
40. Fire and extended coverage insurance	15
41. Non-use and abandonment	15
42. Audit and examination of books, etc.	16
43. Termination by either party	16
44. Clearances	16
45. Certification of tax exemption	16
46. Time of essence	16
47. Historic preservation	16
48. Removal of trash	16
49. Phase I environmental site assessment.....	17
50. Survey and boundary stakeout	17
51. Additional liability insurance	17
52. Pollution control safeguards	18
53. Hazardous materials remediation	19
54. Environmental regulations	19

DEFINITIONS	20
SIGNATURE PAGE	21
ACKNOWLEDGMENT PAGE	22

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

BOATING LEASE NO. LH-20-003

THIS LEASE, made this 22nd day of June, 20 20, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," and THE JUPITER RESEARCH FOUNDATION, a California nonprofit corporation, whose address is P.O. Box 1825, Rancho Mirage, California 92270, hereinafter referred to as the "Lessee."

WITNESSETH:

The Lessor, pursuant to Section 171-43.1, Hawaii Revised Statutes, and for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises situate at Kawaihae 1st and 2nd, South Kohala, Island of Hawaii, Hawaii, identified as "Portion of the Filled Land of Kawaihae Bay," as depicted on Exhibit A-1, Exhibit A-2, Exhibit A-3, and Exhibit A-4, and more particularly described in Exhibit B-1, all attached hereto and made parts hereof.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of sixty-five (65) years, commencing on the 1st day of July, 20 20, up to and including the 30th day of June, 1085, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, an annual rental as provided hereinbelow, payable in advance, without notice or demand, in equal quarterly installments on the 1st day of Jul. Oct. Jan + Apr of each and every year during the term as follows:

A. For years one (1) through ten (10), the sum of THIRTY TWO THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$32,200.00) per annum.

For the first year, the annual rent may be waived for a maximum period of twelve (12) calendar months.

For years eleven (11) through fifteen (15), the sum of FORTY ONE THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$41,200.00) per annum.

For years sixteen (16) through twenty (20), the sum of FORTY SIX THOUSAND SIX HUNDRED AND NO/100 DOLLARS (\$46,600.00) per annum.

B. The annual rental reserved shall be reopened and redetermined at the end of the twentieth (20th), thirtieth (30th), fortieth (40th), fiftieth (50th) and sixtieth (60th) years of the lease term.

C. Determination of rent upon reopening. No more than one (1) year and no less than eight (8) months prior to a reopening date, the Board may determine the rental for an ensuing period to be discounted rent value attributable to the Lessee's nonprofit corporate status. If the Board has not made such a determination by eight (8) months prior to the reopening date, then the rental shall be the fair market rental at the time of reopening.

At least six months prior to the time of reopening, the fair market rental shall be determined by:

(1) An employee of the Department of Land and Natural Resources qualified to appraise lands; or

(2) A disinterested appraiser whose services shall be contracted for by the Board. Lessee shall be promptly notified of the determination by certified mail, return receipt requested, and provided with the complete appraisal prepared by the Board or the Board's appraiser. The determination shall be deemed received by Lessee on the date the Lessee signs the return receipt or three (3) days after mailing, whichever occurs first. Provided that if the Lessee does not agree upon the fair market rental as determined by the Board's appraiser, the Lessee must notify the Lessor in writing within thirty (30) days after receipt of the determination, and the Lessee shall appoint the Lessee's own appraiser whose name and address shall be stated in the notice. The Lessee shall provide the Board with the complete appraisal prepared by the Lessee's appraiser. Each party shall pay for its own appraiser. If the Board's and the Lessee's appraisers do not agree upon the lease rental, the Lessee and the Board shall, subject to section 171-17, Hawaii Revised Statutes, as may be amended from time to time, resolve the matter. The costs of mediation and arbitration shall be borne equally by the Lessee and the Board.

In the event that the fair market rental is not finally determined before the reopening date, the Lessee shall pay the rental as determined by the Board's appraiser until the new rent is determined, and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate.

Should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees with the fair market rental as determined by the Board's appraiser and that Lessee has appointed its own appraiser, then the fair market rental as determined by the Board's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening.

D. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this lease.

3. Utility services. The Lessee shall be responsible for obtaining any utility services and shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful, improper or offensive use of the premises or any part, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.

7. Compliance with laws. The Lessee 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 premises, now in force or which may be in force.

8. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the premises and examine the state of its repair and condition.

9. Improvements. The Lessee shall not at any time during the term construct, place, maintain and install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Chairperson and upon those conditions the Chairperson may impose, including any adjustment of rent, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or other termination of the lease, at which time the ownership shall at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at Lessee's sole cost and expense.

Upon termination and/or expiration of the lease and if desired by the Lessor, the Lessee at its expense, shall remove any and all improvements installed or constructed upon the premises and restore said premises to a condition satisfactory to the Lessor.

10. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall release, indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

12. Character of use. The Lessee shall use or allow the premises leased to be used solely for marine science center with an office building, conference room, small kitchen, restrooms, machine/electronics workshop, storage area and garage for research vessel (14,000 square feet main building and 2,400 square feet boat garage).

13. Assignments, etc. The Lessee shall not transfer, assign, or permit any other person to occupy or use the premises or any portion or transfer or assign this lease or any interest, either voluntarily or by operation of law, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Board the assignment and transfer of this lease or any portion may be made only if it is to a non-profit corporate successor of the Lessee.

14. Subletting. The Lessee shall not rent or sublet the whole or any portion of the premises.

15. Release and indemnity. The Lessee shall release, indemnify, defend, and hold the Lessor 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 Lessee relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

16. Costs of litigation. In case the Lessor shall, without any fault on Lessor's part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

17. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, general liability insurance, or its equivalent, with 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, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 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. A copy of the policy or other documentation required by the Lessor 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 the Lessee.

The Lessee, prior to entry and use of the premises or within fifteen (15) days from the effective date of this lease, whichever is sooner, shall furnish the Lessor with a policy(s) or other documentation required by the Lessor showing the policy(s) to be initially in force, keep the policy(s) or other documentation required by the Lessor on deposit during the entire lease term, and furnish a like policy(s) or other documentation required by the Lessor upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Lessor. The Lessor may at any time require the Lessee to provide Lessor with copies of the insurance policy(s) that are or were in effect during the lease period or other documentation required by the Lessor.

The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but shall 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 Lessor shall notify Lessee in writing of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or other documentation required by the Lessor thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Lessee's liability under this lease nor to release or relieve the Lessee of the indemnification provisions and requirements of this lease. Notwithstanding the policy(s) of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by

Lessee's negligence or neglect connected with this lease.

It is agreed that any insurance maintained by the Lessor will apply in excess of, and not contribute with, insurance provided by Lessee's policy.

18. Bond, performance. The Lessee shall, at its own cost and expense, within fifteen (15) days from the effective date of this lease, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount equal to two times the annual rental then payable. This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

19. Lessor's lien. The Lessor shall have a lien on all the buildings and improvements placed on the premises by the Lessee, on all property kept or used on the premises, whether the same is exempt from execution or not and on the rents of all improvements and buildings located on the premises for all Lessor's costs, attorney's fees, rent reserved, for all taxes and assessments paid by the Lessor on behalf of the Lessee, and for the payment of all money provided in this lease to be paid by the Lessee, and this lien shall continue until the amounts due are paid.

20. Mortgage. Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this lease.

21. Breach. Time is of the essence in this agreement. If the Lessee shall fail to pay the rent, or any part thereof, at the times and in the manner provided in this lease and this failure shall continue for a period of more than thirty (30) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee and to each holder of record having a security interest in the premises, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this

failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

22. Condemnation. If at any time, during the term of this lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rental shall be reduced in proportion to the value of the portion of the premises condemned. The Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the premises occupied by the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

23. Right to enter. The Lessor or the County and their agents or representatives shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, in the exercise of these rights, the Lessor or the County shall not interfere unreasonably with the Lessee or Lessee's use and enjoyment of the

premises.

24. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the premises at all reasonable times following a published notice for its proposed disposition for purposes of informing and apprising that person or persons of the condition of the lands preparatory to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Lessee, and shall, if the Lessee so requires, be made in the company of the Lessee or designated agents of the Lessee; provided, further, that no authorization shall be given more than two years before the expiration of the term of this lease.

25. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

26. Extension of time. Notwithstanding any provision contained in this lease, when applicable, the Board may for good cause shown, allow additional time beyond the time or times specified in this lease for the Lessee to comply, observe, and perform any of the lease terms, conditions, and covenants.

27. Justification of sureties. Any bonds required by this lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in Section 78-20, Hawaii Revised Statutes; provided, however, the Lessee may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after a period the Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the

aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

28. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee with the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond or improvement bond requirements or both or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to reactivate the bonds or reimpose the bond(s) or liability insurance in and to their original tenor and form at any time throughout the term of this lease.

29. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

30. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Lessor may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the

personal property. This provision shall survive the termination of the lease.

31. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased as is.

32. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee 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 premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor'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 Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

Lessee agrees to release, indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. These covenants shall survive the expiration or earlier termination of the lease.

For the purpose of this lease "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.

33. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

34. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

35. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this lease.

36. Partial invalidity. If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

SPECIAL CONDITIONS:

37. Withdrawal. The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the lease.

38. Improvements. The Lessee shall, at its own cost and expense, within three (3) years after the date of the lease, substantially complete the construction of a research facility at a cost of not less than TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00), in accordance with plans and specifications submitted by the Lessee to and approved in writing by the Chairperson and in full compliance with all applicable laws, ordinances, rules and regulations.

39. Bond, improvement. The Lessee, upon submittal and written approval of the construction plan shall within sixty (60) days procure and deposit with the Lessor a surety bond in the amount equal to the cost of the improvements, acceptable to the Chairperson, which bond shall name the State of Hawaii as obligee, conditioned upon the faithful observance and performance

of the building requirement contained in this lease, the completion of the building and improvements on or before the specified date of completion free from all liens and claims, and that the Lessee shall hold the State of Hawaii harmless from all liens, suits, actions or damages arising out of, caused from or attributable to the work performed pursuant to the building requirement.

40. Fire and extended coverage insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the leased land in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities, and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may instead surrender this lease and pay the balance owing on any mortgage. Upon surrender of the lease, the Lessee shall then receive that portion of the insurance proceeds which the unexpired term of this lease, at the time of the loss or damage, bears to the whole of the term, with the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the commencement date of this lease, a policy or other documentation required by the Lessor showing the policy(s) or other documentation required by the Lessor to be in full force and effect and shall furnish a like policy or other documentation required by the Lessor upon each renewal of the policy(s). Each policy(s) or other documentation required by the Lessor shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

41. Non-use and abandonment. If the Lessee shall, at

any time for a continuous period of one (1) year, fail or cease to use said premises for the purposes stated in Paragraph 12 herein, or abandon all or any portion of said premises, this lease shall cease and terminate.

42. Audit and examination of books, etc. Lessee shall at all times maintain full and accurate records relating to Lessee's operations and activities upon and in connection with said leased premises. Lessor reserves the right to audit, examine, and to make copies of all Lessee's books, accounts, records, and receipts, during regular working hours upon reasonable notice given by Lessor.

43. Termination by either party. The Lessor and Lessee, by mutual agreement, may terminate this lease at any time without cause, provided that the Lessor and the Lessee are not in breach of any condition herein at the time of the mutual agreement to terminate. This provision can be waived by the parties, provided such waiver is in writing and signed by both parties.

44. Clearances. The Lessee shall be responsible for obtaining all necessary federal, state or county clearances.

45. Certification of tax exemption. The Lessee shall be certified to be tax exempt under Sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The premises shall be used by the Lessee for the purposes for which its charter was issued and for which it was certified by the Internal Revenue Service.

46. Time of essence. Time is of the essence in all provisions of this lease.

47. Historic preservation. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in compliance with chapter 6E, Hawaii Revised Statutes.

48. Removal of trash. The Lessee shall be responsible for the removal of all illegally dumped trash upon the premises within ninety (90) days from the date of execution of the lease and shall so notify the Lessor in writing at the end of ninety (90) days.

49. Phase I environmental site assessment. Prior to the termination of this lease or the assignment of the leasehold, Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency and the Department of Land and Natural Resources. Any assignment or voluntary termination by the Lessee will not be approved by the Board of Land and Natural Resources unless this evaluation and abatement provision has been executed. This provision shall survive and continue in effect after termination of this lease.

50. Survey and boundary stakeout. The Lessee shall be solely responsible for any survey and boundary stakeout of the leased premises.

51. Additional liability insurance.

(a) Pollution Legal Liability Insurance.

Pollution liability insurance to cover claims for property damage, personal injury, and cleanup costs associated with environmental contamination shall be written on a "claims made" basis with a limit of liability of not less than TWO MILLION DOLLARS (\$2,000,000.00) per claim and a self-insured retention or deductible no greater than TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00). LESSEE shall maintain in full force and effect the following insurance coverage with minimum limits as follows:

Each Incident Limit	\$2,000,000.00
Aggregate Limit	\$2,000,000.00

(b) Workers' compensation and employers' liability insurance. Workers' Compensation and Employers' Liability insurance as required by current Hawaii law and regulations thereunder, as the same may be amended from time to time, for all employees, if any, of Lessee. Lessee shall maintain in force and effect the following insurance coverages with minimum limits as follows (but only in the event Lessee has employees, otherwise Lessee will require its contractors to maintain):

<u>Workers' Compensation</u>	<u>Hawaii statutory limits</u>
<u>Employer's Liability</u>	
Bodily Injury By Accident	\$2,000,000.00
Bodily Injury By Disease	\$2,000,000.00
Bodily Injury By Disease	\$2,000,000.00
	Each Accident
	Policy Limit
	Each Employee

(c) Business automobile liability insurance.
Insurance covering owned, non-owned, leased, and hired vehicles, including contractual liability, written on a current ISO Business Auto Policy form or its equivalent. Lessee shall maintain in full force and effect the following insurance coverages with minimum limits as follows (but only in the event Lessee has employees, otherwise Lessee will require its contractors to maintain):

Bodily Injury each person	\$2,000,000.00
Bodily Injury each accident	\$2,000,000.00
Property Damage each accident	\$2,000,000.00
Personal Injury Protection	Hawaii statutory limits or
/No-Fault	\$2,000,000.00
Combined Single Limit	

(d) Umbrella/excess liability insurance.
Umbrella/excess liability insurance providing excess coverage over Commercial General Liability limits, Liquor Liability (if applicable), Employer's Liability limits, and Automobile Liability Insurance limits. The Umbrella/Excess Liability policy shall be written on an "occurrence" basis with a limit of liability of not less than FIVE MILLION DOLLARS (\$5,000,000.00) per policy year and a self-insured retention or deductible no greater than TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00). The umbrella/excess insurance coverage shall, at a minimum, "follow form" over Commercial General Liability Coverage, Business Automobile Policy Coverage, and Employers' Liability Coverage. Additionally, it shall specifically provide excess coverage for the same coverage and limits listed under the above subsections relating to Commercial General Liability Insurance, Employers' Liability (but not Workers' Compensation), and Business Automobile Liability Insurance. Lessee shall maintain in full force and effect the following insurance coverage with minimum limits as follows:

Each Occurrence Limit	\$5,000,000.00
Aggregate Limit	\$5,000,000.00

52. Pollution control safeguards. The Lessee 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 the Lessee's, its invitee's and its agent's use, maintenance, repair and operation of the 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 premises,

contain and take remedial action on the premises and its surrounding waters of such pollutant or contaminant and restore to the Lessor's reasonable satisfaction the area affected by such pollution or contamination, all at the Lessee's own cost and expense.

53. Hazardous materials remediation. Lessee shall be responsible to clean up and take any other reasonable remedial action if any hazardous materials is found on or within the premises, when the environmental site assessment required by paragraph 49 of this lease is done, or sooner if required by a governmental regulatory agency.

54. Environmental regulations. Lessee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.

Definitions.

1. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.

2. As used in this lease, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor.

(b) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.

(c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

(e) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the premises; and (3) failure to employ all of the usable portions of the premises.


(f) "Days" shall mean calendar days, unless otherwise specified.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources, to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

Approved by the Board
of Land and Natural
Resources at its
meeting held on
July 26, 2019.

By


SUZANNE D. CASE
Chairperson
Board of Land and
Natural Resources

LESSOR

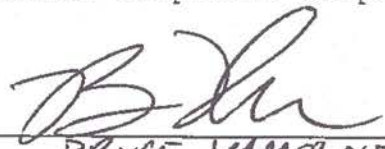
APPROVED AS TO FORM:


DANIEL A. MORRIS
Deputy Attorney General

Dated: MAY 19 2020

THE JUPITER RESEARCH FOUNDATION, a
California nonprofit corporation

By


BRUCE RAMOLNICK
Its CFO, SECRETARY

By

Its

LESSEE

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of RIVERSIDE

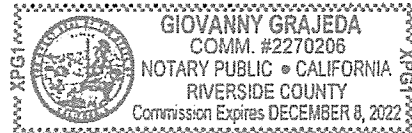
On June 11, 2020 before me, GIOVANNY GRAJEDA, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared Bruce Kamolnick
who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~
subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in
his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(~~s~~) on the instrument the
person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)



STATE OF

COUNTY OF

)
) SS.
)

On this 11 day of June, 2020,
before me appeared _____ and
_____ to me personally known, who,
being by me duly sworn, did say that they are the _____
and _____, respectively of THE JUPITER RESEARCH
FOUNDATION, a California nonprofit corporation, and that said
instrument was signed in behalf of said corporation by authority
of its Board of Directors, and the said _____ and
_____ acknowledged said instrument to be the free
act and deed of said corporation.

Giovanny Grageda California
Notary Public, State of _____

My commission expires: 12-8-2022

**Jupiter Research Foundation
Island of Hawaii**

Exhibit A-1

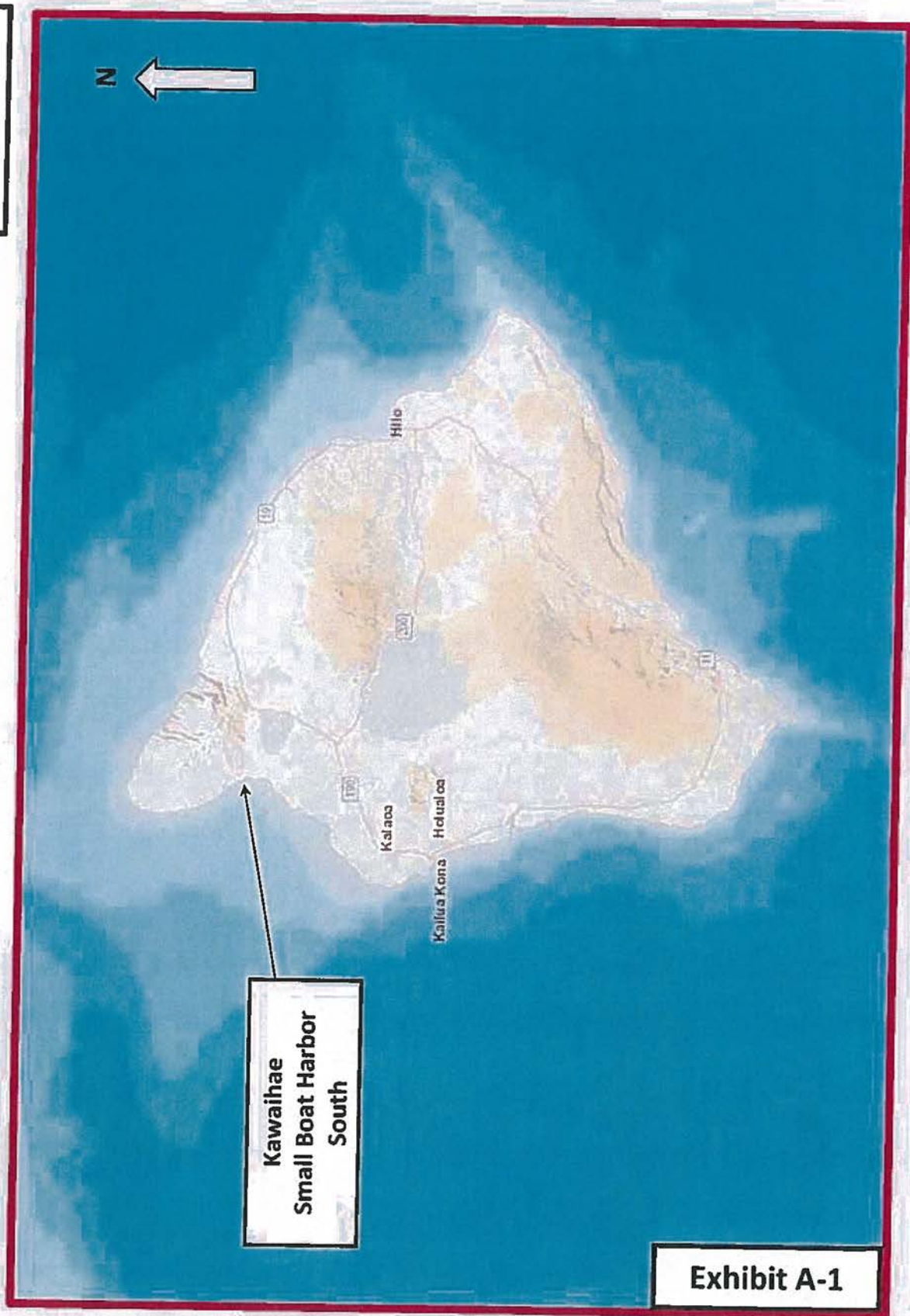


Exhibit A-1

ELIM. APPR'D.
Department of the
Attorney General

Exhibit A-2

Kawaihae Small Boat Harbor South

PRELIM. APPR'D.
Department of the
Attorney General

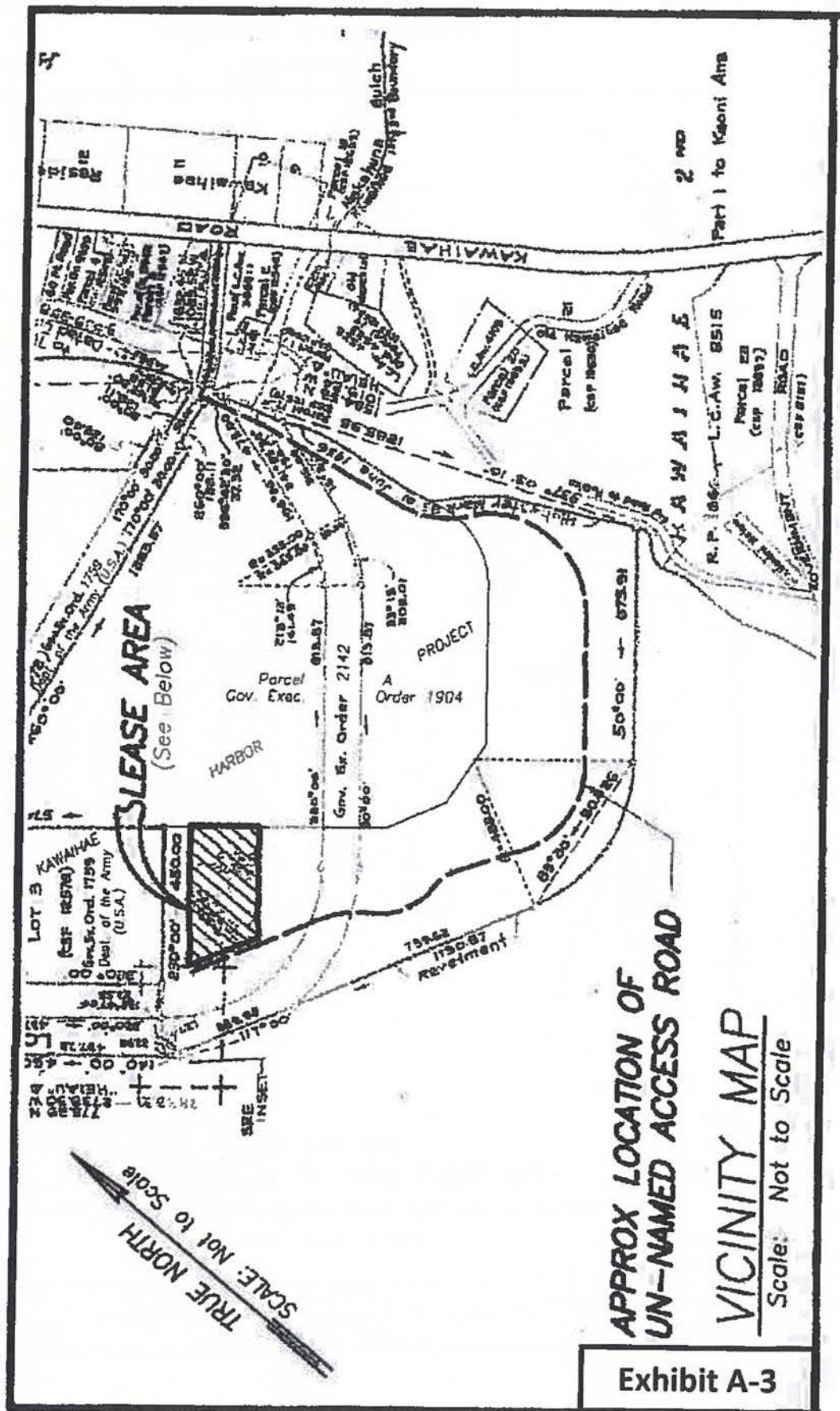


Jupiter Research Foundation
Lease Area & Access
Kawaihae Small Boat Harbor South

APPROX LOCATION OF
UN-NAMED ACCESS ROAD

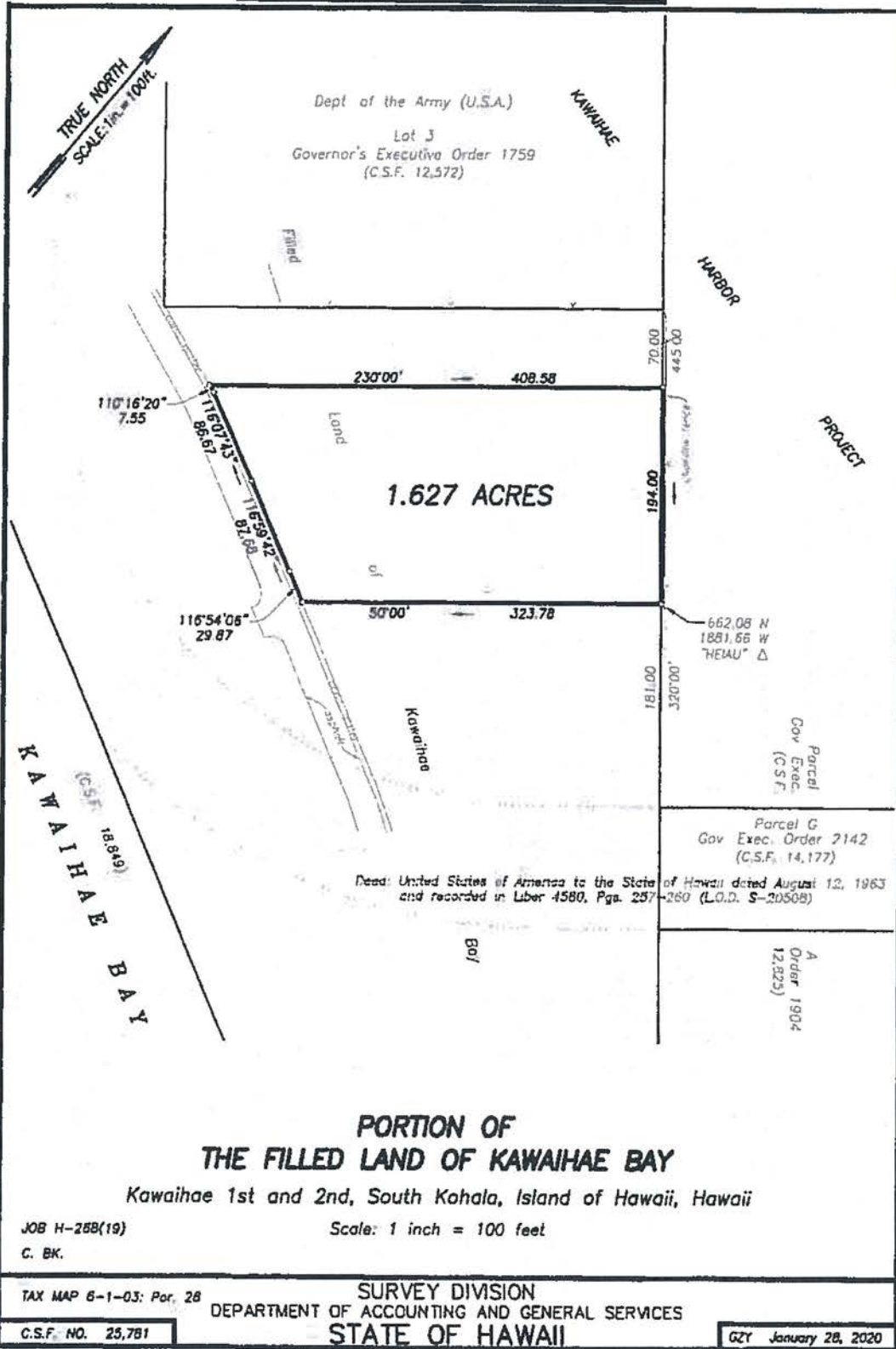
VICINITY MAP

Scale: Not to Scale

Exhibit A-3

**Jupiter Research Foundation
Lease Area Map**

Exhibit A-4



PRELIM. APPR'D.
Department of the
Attorney General

Exhibit A-4

**Jupiter Research Foundation
Lease Area Description Page 1 of 2**

Exhibit B-1



**STATE OF HAWAII
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
HONOLULU**

C.S.F. No. 25,781

January 28, 2020

**PORTION OF
THE FILLED LAND OF KAWAIHAE BAY**

Kawaihae 1st and 2nd, South Kohala, Island of Hawaii, Hawaii

Beginning at the east corner of this parcel of land and on the southwest boundary of Parcel A of Kawaihae Harbor Project, Governor's Executive Order 1904, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HEIAU" being 662.08 feet North and 1881.66 feet West, thence running by azimuths measured clockwise from True South;

1. 50° 00' 323.78 feet along the remainder of the filled land of Kawaihae Bay;
2. 116° 54' 06" 29.87 feet along the remainder of the filled land of Kawaihae Bay;
3. 116° 59' 42" 87.68 feet along the remainder of the filled land of Kawaihae Bay;
4. 116° 07' 43" 86.67 feet along the remainder of the filled land of Kawaihae Bay;
5. 110° 16' 20" 7.55 feet along the remainder of the filled land of Kawaihae Bay;

PRELIM. APPR'D.
Department of the
Attorney General

Exhibit B-1

**Jupiter Research Foundation
Lease Area Description Page 2 of 2**

Exhibit B-1

C.S.F. No. 25,781

January 28, 2020

6. 230° 00' 408.58 feet along the remainder of the filled land of Kawaihae Bay;
7. 320° 00' 194.00 feet along Parcel A of Kawaihae Harbor Project, Governor's Executive Order 1904 to the point of beginning and containing an AREA OF 1.627 ACRES.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: *Gerald Z. Yonashiro*

Gerald Z. Yonashiro
Land Surveyor

rk

Compiled from map and desc.
furn. by Engineering Partners.
Said map and desc. have been
examined and checked as to form
and mathematical correctness but
not on the ground by the Survey
Division.

PRELIM. APPR'D.
Department of the
Attorney General

Exhibit B-1