

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

February 24, 2023

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

Land Board Members:

SUBJECT: Reissuance of Revocable Permit No. 25 to Outfitters Kauai, Ltd. for the Purpose of Clarifying Ownership of Permittees Improvements Upon Termination, Nawiliwili Small Boat Harbor, Lihue, Island of Kauai Tax Map Keys: (4) 3-2-003:043 (Portion)

and

Declare Project Exempt from requirements of Chapter 343, Hawaii Revised Statutes and Title 11, Chapter 200.1, Hawaii Administrative Rules.

APPLICANT:

Outfitters Kauai, Ltd. a Domestic Profit Corporation who's mailing address is P.O. Box 1149, Koloa, Hawaii 96756

LEGAL REFERENCE:

HRS §171-13 and 55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Nawiliwili Small Boat Harbor, Nawiliwili, Lihue, Island of Kauai, hereinafter referred to as the "Premises" as shown on the maps labeled **Exhibits A-1, A-2 and A-3** attached hereto.

AREA:

Approximately .07 Acres or 3,049 square feet, more or less.

Item J-2

ZONING:

State Land Use District: Urban
County of Kauai CZO: I-G General Industrial

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Currently encumbered by Revocable Permit No. 25 issued to Outfitters Kauai, Ltd

CHARACTER OF USE:

Portable storage, office structure, parking, staging, storage of kayaks, approved vessels and access to Hule'ia River for tours. The Permittee may also occupy and use the Premises for any other uses permitted under applicable county zoning, subject to the prior approval of the Chairperson of the Board and the Permittee's compliance with Chapter 343, Hawaii Revised Statutes.

COMMENCEMENT DATE:

July 1, 2022

MONTHLY RENT:

One thousand forty-six and no/100 dollars (\$1,046.00)

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with Section 11-200.1-15, Hawaii Administrative Rules (HAR) and the Exemption List for the Department of Land and Natural Resources, reviewed and concurred by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an Environmental Assessment pursuant to General Exemption Type 1, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," Part 1, Item No. 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."

DCCA VERIFICATION:

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

JUSTIFICATION FOR REVOCABLE PERMIT:

The revocable permit is temporary in nature. Staff anticipates the sale of a lease, of this area at public auction, to take place in the current calendar year.

REMARKS:

Outfitters Kauai Ltd. (Outfitters) has operated Hule'ia Stream tours since 1998 from Nawiliwili Harbor under various revocable permits.

At its meeting on June 24, 2022, under agenda item J-1, the Board approved the Continuation of Revocable Permit 25 from July 1, 2022, through June 30, 2023.

As with previous instances where staff has sought to convert a revocable permit to a long-term disposition by selling the lease at public auction, Outfitters Kauai, Ltd. (Outfitters) has constructed a wood structure ("improvements") on the premises and has the right under Revocable Permit No. 25 to remove the improvements from the premises prior to the termination of the revocable permit. In the event Outfitters fails to remove the improvements and the Board elects to retain them, then under the terms of the revocable permit, ownership of the piers will transfer to the state. The Department of the Attorney General has previously advised staff that if the permittee is the successful bidder at the upcoming public auction and wishes to retain ownership of the improvements, it must remove them prior to the termination of its permit because if left in place, the improvements will become the property of the state.

In the interest of fairness, staff is requesting the Board's authorization to revise the existing revocable permit to state that in the event the permittee is the successful bidder at public auction and becomes the lessee, Outfitters will own the improvements for the lease term and any extension of the lease.

Staff would also like to add language to the reissued revocable permit that in the event the permittee is not the successful bidder at public auction, the permittee shall have the option to: 1) sell the improvements to the successful bidder at the appraised fair market value prior to the start of the new lease; 2) remove the improvements to the satisfaction of the state within three (3) months of termination of the revocable permit and conduct a Phase I environmental site assessment of the Premises; or 3) do nothing and have the improvements become the property of the state.

RECOMMENDATION:

That the Board of Land and Natural Resources:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, Hawaii Administrative Rules, 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 reissuance of Revocable Permit 25 to Outfitters Kauai, Ltd., as of July 1, 2022, covering the subject area, for portable storage, office structure, parking, staging, storage of kayaks, approved vessels and access to Hule'ia River for tours. The Permittee may also occupy and use the Premises for any other uses permitted under applicable county zoning, subject to the prior approval of the Chairperson of the Board and the Permittee's compliance with Chapter 343, Hawaii Revised Statutes, under the terms and conditions cited above, specifically stating that, in the event the permittee is the successful bidder at public auction and becomes the lessee, Outfitters Kauai, Ltd. will own the improvements for the lease term and any extension of the lease. In the event the permittee is not the successful bidder, the permittee shall have the option to: 1) sell the improvements to the successful bidder at the appraised fair market value; 2) remove the improvements to the satisfaction of the state within three (3) months of termination of the revocable permit and conduct a Phase I environmental site assessment of the Premises; or 3) do nothing and have the improvements become the property of the state, at which time the state shall have the option of keeping the improvements or requiring the permittee to remove the improvements and conducting the Phase I at no cost to the state.
 - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. 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:

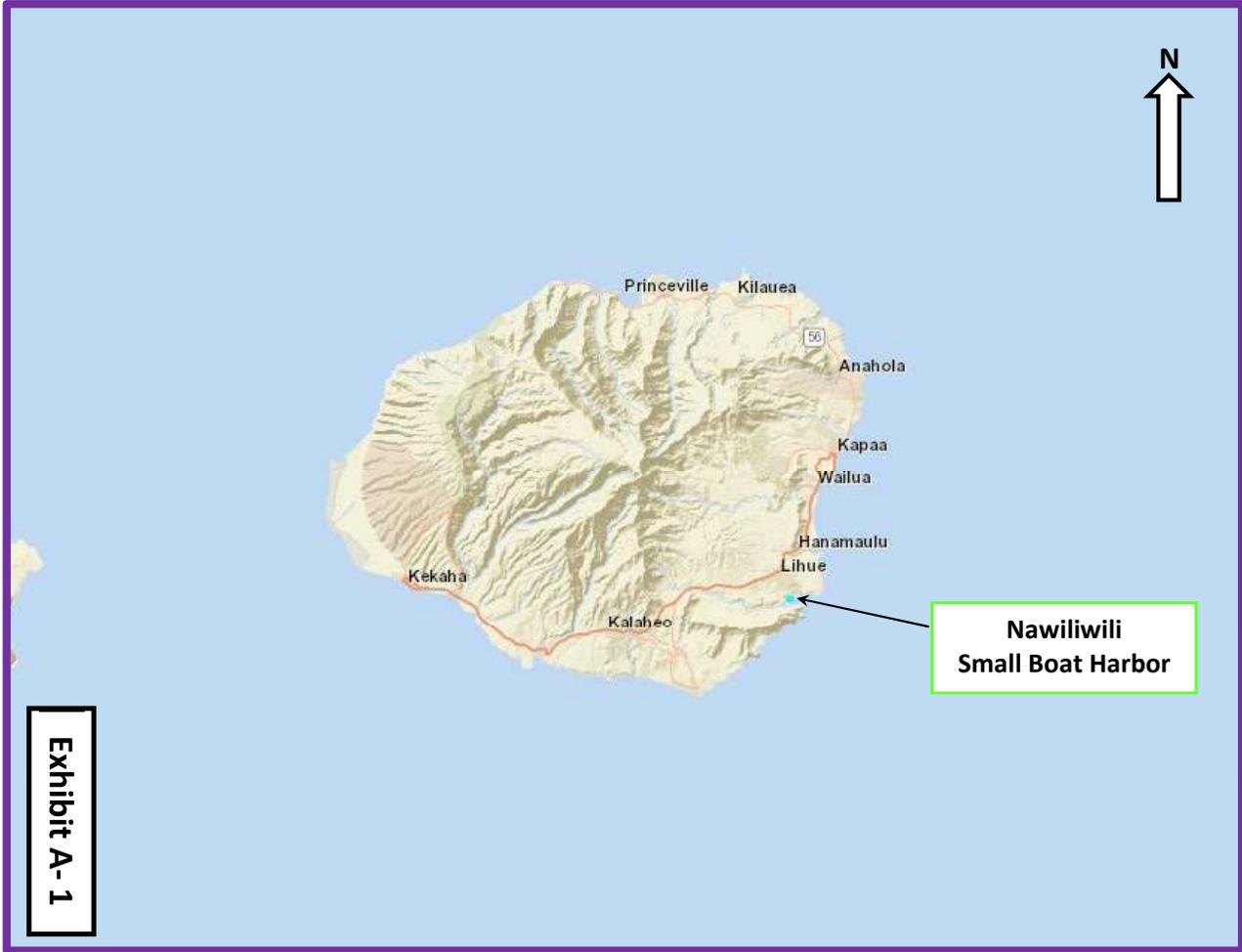


DAWN N. S. CHANG, Chairperson
Board of Land and Natural Resources

Attachment:

- A-1 Location of Nawiliwili Small Boat Harbor on the Island of Kauai
- A-2 Location of the Premises in Nawiliwili Small Boat Harbor
- A-3 Site Plan

ISLAND OF KAUAI
Nawiliwili Small Boat Harbor



Nawilwili Small Boat Harbor



Outfitters Kauai, Ltd.
Approximately
.07 Acres or 3,049 Sq. Ft.

Exhibit A-2

Nawilwili Small Boat Harbor

