

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: Sale of Lease at Public Auction for Commercial Use, Tours, Equipment Rental, Parking, Staging, Storage of Water Sports Equipment or Vessels, Ancillary Office Use, Access to the Hule'ia Stream, and Approved Activities on Adjacent Waters; and Other Marine, Maritime, Harbor Related Light Industrial, Commercial Storage and Uses Allowed by Kauai County at 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.

REQUEST:

Sale of lease at public auction for commercial use, tours, equipment rental, parking, staging, storage of water sports equipment or vessels, ancillary office use, access to the Hule'ia Stream, and approved activities on adjacent waters; and other marine, maritime, harbor related light industrial, commercial storage and uses allowed by Kauai County.

LEGAL REFERENCE:

171-14, -16, -17, -41 and other applicable sections of Chapters 171, Hawaii Revised Statutes, and 13-234-25(e), Hawaii Administrative Rules, 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 4,000 square feet, more or less.

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

CURRENT USE STATUS:

Currently encumbered by Revocable Permit No. 25 issued to Outfitters Kauai, Ltd. for .07 Acres or 3,049 square feet.

CHARACTER OF USE:

Commercial use, tours, equipment rental, portable storage, ancillary office, parking, staging, storage of kayaks, approved vessels, access to Huleia Stream, and approved activities on adjacent waters. 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. Subleasing shall not be allowed.

LEASE TERM:

Thirty-five (35) years from the commencement date of the lease.

COMMENCEMENT DATE:

To be determined by the Chairperson.

MINIMUM UPSET ANNUAL RENTAL AND PERCENTAGE RENT:

To be determined by independent appraisal, subject to review and approval by the Chairperson. The appraisal shall determine the upset rent for the premises for the first five (5) years of the lease, as well as an appropriate stepped increase (as a percentage increase over the base rent of the immediately preceding 5-year period) for the second and third 5-year periods to provide the successful bidder with a known rent for fifteen (15) years of the lease. The appraiser procured to determine the upset rent shall also separately determine the percentage rent to be paid in excess of the minimum rent.

METHOD OF PAYMENT:

The minimum upset rent shall be paid monthly, in advance, and the percentage rent shall be paid monthly, in arrears.

For lessees that use the lease premises as a base of operations that require a Conditional Use Permit (CUP), the base fee for the CUP shall be required. However, the percentage of gross receipt fees for the CUP shall not be required.

RENTAL REOPENINGS:

At the end of the 15th, 20th and 25th years of the lease term, by qualified staff or independent appraiser.

PERFORMANCE BOND:

Twice the annual base rental amount.

PROPERTY CHARACTERISTICS:

Existing Improvements - One story wood structure, owned by the permittee, measuring approximately 400 square feet. Approximately 200 square feet is enclosed, and the remaining 200 square feet is an open lanai.

Utilities - Water, electricity and telephone are available. Sewer is not available.

Legal Access to the Property - Staff has verified that there is legal access to the premises from Niumalu Road and Waapa Road.

Encumbrances - Revocable Permit No. 25 issued to Outfitters Kauai, Ltd.

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. 40, which states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existing."

REMARKS:

Outfitters Kauai Ltd. (Outfitters) has operated Hule'ia Stream tours since 1998. Outfitters also has a Commercial Use Permits (CUP) that grants them the right to conduct commercial tours of the Hule'ia Stream. The Division of Boating and Ocean Recreation (DOBOR) Kauai District office issues the CUP which outlines specific activities. The CUP fee is \$300 or 3% of gross receipts, whichever is greater. The permittee is required to be in full compliance with both the revocable permit and the CUP to operate at this site. To avoid double-dipping, the revocable permit encumbering the premises incorporates a base rent, but contains no provision for percentage rent.

The winning bidder will be required to apply for a CUP in order to conduct activities on the Hule'ia Stream or the adjacent ocean waters.

The premises consist of a one-story wood structure that is currently being used to service kayak tours of the Hule'ia Stream. The structure was built and is owned by Outfitters.

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.

If the Outfitters is not the successful bidder Outfitters has 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.

The winning bidder will apply for a CUP if its use of the premises requires one (i.e. for a use in which the winning bidder operates a commercial vessel to engage in commercial activities). Because the lease contains a percentage rent provision, the CUP – if required – will consist only of the base fee, currently \$300 per month.

Staff will procure an appraisal to determine the upset rent for the fast land and improvements, together with the appropriate percentage of rent. The cost of the appraisal, survey and other lease auction costs will be payable by the winning bidder.

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 Sale of lease at public auction for commercial use, tours, equipment rental, portable storage, ancillary office, parking, staging, storage of kayaks, approved vessels, access to Huleia Stream, and approved activities on adjacent waters. 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, which are by this reference, incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current Boating Lease 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

Attachments:

- 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 Mauka Lease

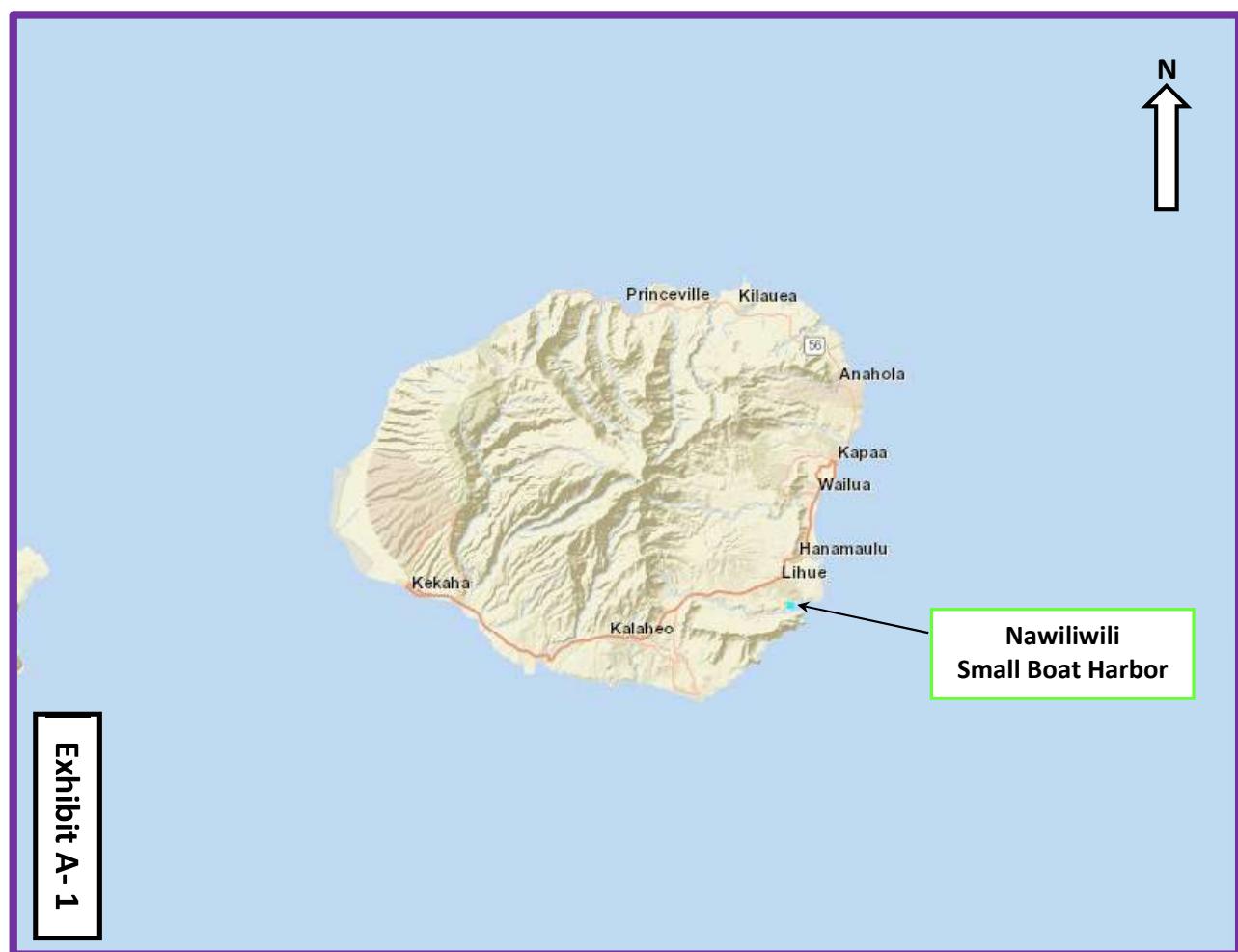


Exhibit A-1

Nawilwili Small Boat Harbor



Exhibit A-2

Nawilwili Small Boat Harbor



Exhibit A-3