

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, Approved Vessels, Access to Hule'ia Stream, Approved Ancillary Structure and Approved Activities on Adjacent Waters; and Other Marine, Maritime, Harbor Related Light Industrial, Commercial Storage and Uses Allowed by Kauai County, 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, storage of authorized vessels, approved ancillary structure, access to 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, -36 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. Said premises are within a portion of Governor's Executive Order No. 3134.

Item J-4

AREA:

Approximately 2,000 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 X

CURRENT USE STATUS:

Currently encumbered by Revocable Permit No. 31 to True Blue, Inc.

CHARACTER OF USE:

Commercial use, tours, equipment rental, parking, staging, portable storage of water sports equipment, approved vessels, approved ancillary structure, access to Hule'ia Stream, and approved activities on adjacent waters; and other marine or maritime or harbor related light industrial business, commercial storage and other uses allowed by 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 for activities 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, 25th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual base rental amount.

PROPERTY CHARACTERISTICS:

Existing Improvements – There is a one-story wood shed structure measuring approximately 144 square feet. There is a 6' high chain link fenced enclosure used to store paddle boards and kayaks. In an area measuring approximately 48 square feet.

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 Niunalu Road and Waapa Road.

Encumbrances - Revocable Permit 31 issued to True Blue, Inc.

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:

Island Adventures, Inc. began operating Hule'ia Stream tours in 1993 and later changed their name to True Blue Ltd. (True Blue). True Blue also has a Commercial Use Permits (CUP) that grants them the right to conduct commercial tours of Hule'ia Stream. The Division of Boating and Ocean Recreation (DOBOR) Kauai District office issues the CUP, which outlines specific commercial 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 is unpaved land with an old one-story wood shed, used for storage, with little to no remaining value. There is also a small chain link fenced storage area for water sports equipment. The improvements were built by True Blue. True Blue shall have the right, prior to the termination or revocation of the permit, or within an additional period allowed by the state, to remove the improvements from the Premises. However, if True Blue fails to remove the improvements prior to termination or revocation of the permit, the state may elect to retain the improvements or charge True Blue for the removal of the improvements at True Blue's cost.

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, 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, parking, staging, portable storage of water sports equipment, approved vessels, approved ancillary structure, access to Hule'ia Stream, and approved activities on adjacent waters; and other marine or maritime or harbor related light industrial business, commercial storage and other uses allowed by 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:



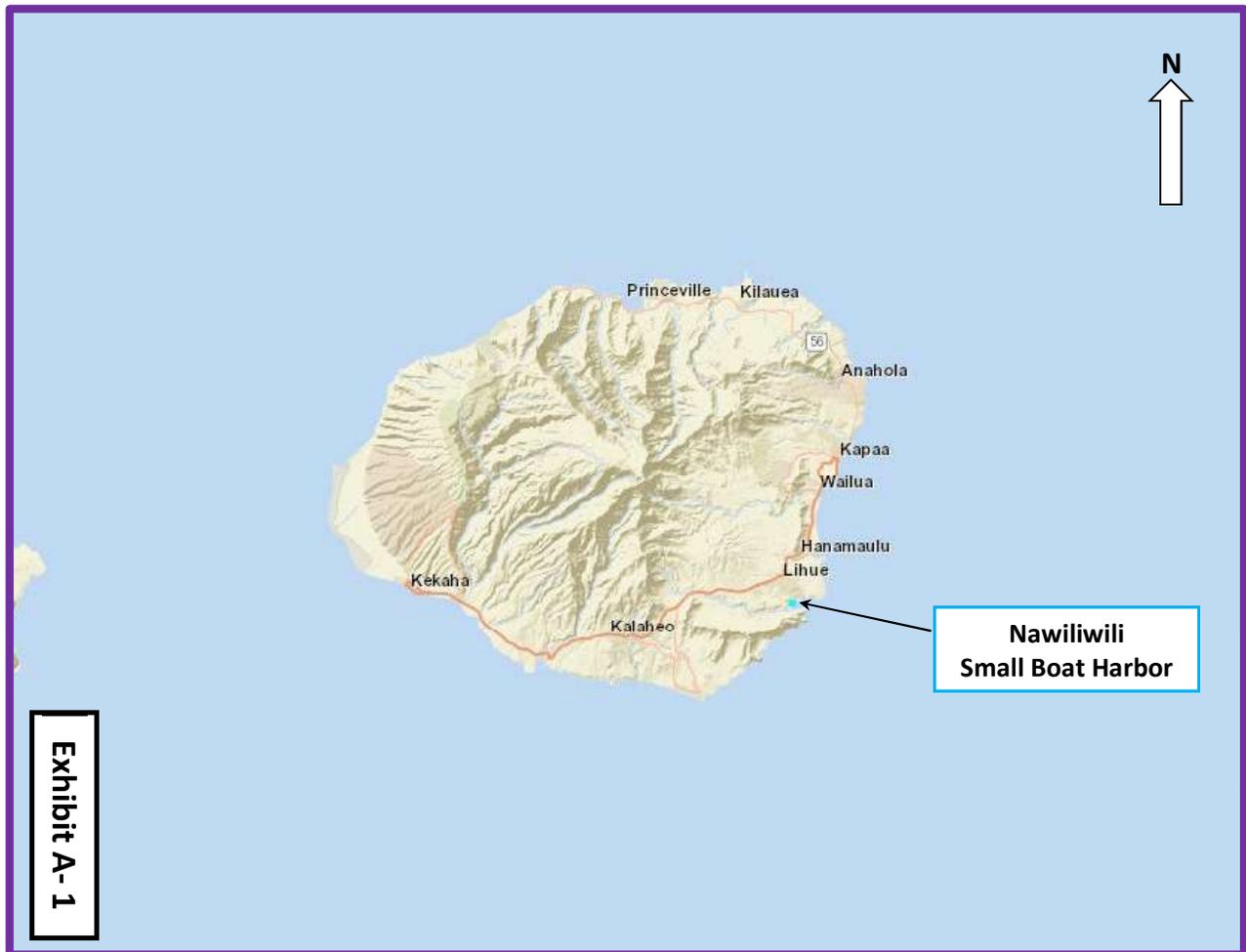
DAWN N. S. CHANG, Chairperson
Board of Land and Natural Resources

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

KAUAI

Nawiliwili Small Boat Harbor Makai Lease



Nawilwili Small Boat Harbor



Exhibit A-2

**Makai Lease Area
Approximately
2,000 Sq. Ft.**

Nawilwili Small Boat Harbor



Exhibit A-3

**Makai Lease Area
Approximately
2,000 Sq. Ft.**