

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

September 27, 2024

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

Land Board Members:

SUBJECT: Mutual Cancellation of Revocable Permit No. 149, Issued to Pau Hana Yacht Charters LLC, Permittee, effective August 31, 2024, situated at Ala Wai Small Boat Harbor, Kalia, Honolulu, Oahu, Hawaii, Tax Map Key: (1) 2-3-037:020 (seaward of parcel)

APPLICANT:

Pau Hana Yacht Charters LLC, ("Pau Hana") a Hawaii limited liability company, whose mailing address is P.O. Box 8023, Honolulu, Hawaii 96830.

LEGAL REFERENCE:

Sections 171-55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Ala Wai Small Boat Harbor, Honolulu, Oahu, Hawaii, identified as Tax Map Key: (1) 2-3-037:020 (seaward of parcel), as shown on the map labeled **Exhibit A-1 and A-2** and attached hereto.

AREA:

Approximately 990 square feet, more or less.

ZONING:

State Land Use District: Urban
City & County of Honolulu: Public Precinct (Waikiki Special District)

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ___ NO X

CURRENT USE STATUS:

Encumbered by Revocable Permit No. 149, attached as **Exhibit B**.

CHARACTER OF USE:

Vessel mooring.

COMMENCEMENT DATE:

April 01, 2024.

MONTHLY RENTAL:

\$340 per month.

SECURITY DEPOSIT:

Twice the Monthly Rental.

REMARKS:

At its meeting on September 23, 2016, under agenda item J-2, the Board of Land and Natural Resources ("Board") approved the issuance of a revocable permit to HBM, LLC for the former fuel dock and adjacent submerged lands at the Ala Wai Small Boat Harbor ("AWSBH") for storage and mooring purposes following the cancellation of Honey Bee USA, Inc.'s lease.

Pau Hana subsequently rented a mooring from HBM, LLC for its vessel.

In early 2024, the Division of Conservation and Resources Enforcement ("DOCARE") requested a portion of the fuel dock to use as a field office. For security reasons, DOCARE prefers to limit the number of individuals allowed within the fuel dock.

At its meeting on February 23, 2024, under agenda item J-9, the Board approved the cancellation and reissuance of HBM, LLC's revocable permit to accommodate DOCARE's request.

At its meeting on March 8, 2024, under agenda item J-2, the Board approved the issuance of a revocable permit to Pau Hana to moor at the fuel dock.

Since initial issuance of the revocable permit, Division of Boating and Ocean Recreation ("DOBOR") staff has emphasized to Pau Hana that the mooring at the fuel dock was only temporary and stressed the need for Pau Hana to find a permanent location to moor its

vessel in the long-term. Due to the lengthy waitlist for double-hull moorings at AWSBH, it is unlikely a mooring would become available to Pau Hana in the near future.

The need to find a permanent mooring took on new urgency due to DOCARE's concerns regarding the number of Pau Hana's crew who were accessing the secured area at the fuel dock.

Pau Hana had proposed a new location on the mauka side of the fuel dock, but DOBOR requires this area to remain clear so that vessels can temporarily moor if/when needed. Additionally, Pau Hana raised concerns about mooring on the mauka side because of perceived inadequate security for Pau Hana's vessel due to absence of a restrictive fence line. The mauka area serves as the location of the vessel pump-out station, so the area remains accessible to all boaters, which limits DOBOR's ability to secure the space.

Pau Hana has since secured a mooring at Kewalo Basin Harbor, and DOBOR staff has advised Pau Hana to obtain a Vessel Moored Elsewhere permit from the AWSBH Harbor Master, which will allow Pau Hana to continue to load and unload passengers at AWSBH.

DOBOR's recommendation to cancel Revocable Permit No. 149 furthers DOCARE's goal to restrict foot traffic in the secured area of the fuel dock for security reasons.

RECOMMENDATIONS:

That the Board:

1. Authorize the cancellation of Revocable Permit No. 149 issued to Pau Hana Yacht Charters, LLC, effective August 31, 2024; and
2. Waive the requirement of Additional Conditions No. 13 regarding conducting a Phase I Environmental Site Assessment upon cancellation of Revocable Permit No. 149.

Respectfully Submitted,



MEGHAN L. STATTS, Administrator
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:



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

Attachments:

- A-1: Location on Oahu
- A-2: Location within Ala Wai Small Boat Harbor
- B: Current Revocable Permit No. 149

Exhibit A-1

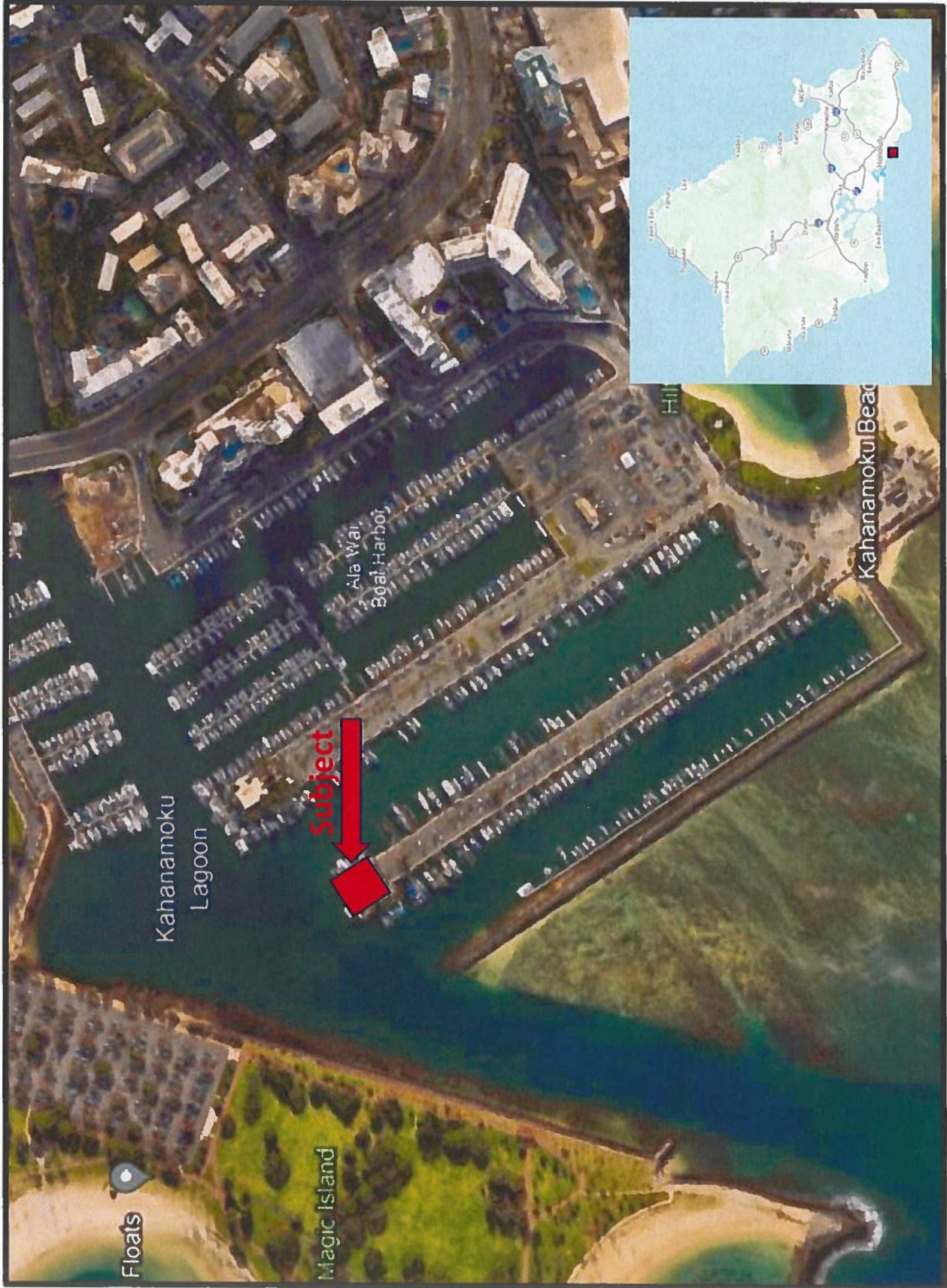


Exhibit A-1

Exhibit A-2

Ala Wai Small Boat Harbor – Fuel Dock



Exhibit B

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

REVOCABLE PERMIT NO. 149

KNOW ALL MEN BY THESE PRESENTS:

This Agreement (hereinafter referred to as the "Permit") is executed this 09 day of May, 20 24, by and between the STATE OF HAWAII, hereinafter referred to as the "State," by its Board of Land and Natural Resources, hereinafter called the "Board," and PAU HANA YACHT CHARTERS LLC, a Hawaii limited liability company, hereinafter called the "Permittee," whose mailing address is 1001 Bishop Street, Suite 2685A, Honolulu, Hawaii 96813. The Board and Permittee (collectively, the "Parties") agree that commencing on the 1st day of April, 2024, ("commencement date") through June 30, 2024, Permittee is permitted to enter and occupy, on a month-to-month basis only, pursuant to section 171-55, Hawaii Revised Statutes, that certain parcel of public land (and any improvements located thereupon) situate at Ala Wai Small Boat Harbor, Island of Oahu, Hawaii, tax map key no. (1) 2-3-037:020 seaward, as indicated on the maps attached hereto, if any, and made a part hereof, containing an approximate area of 990 square feet, more or less, of submerged land, which parcel is hereinafter referred to as the "Premises."

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The Permittee shall:

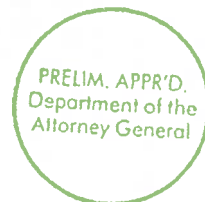
1. Occupy and use the Premises for the following specified purposes only: for vessel mooring.
2. Pay, at the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, 4 Sand Island Access Road, Honolulu, Hawai'i 96819, monthly rent in the sum of THREE HUNDRED FORTY AND NO/100 DOLLARS (\$340.00) payable in advance by the first day of each and every month.

The interest rate on any unpaid or delinquent rent shall be at one per cent (1%) per month.

If monthly rent is not received at the above address on or before the first day of the month for which it is due, then a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment shall be assessed and payable. The service charge is in addition to interest on unpaid or delinquent rent. Interest shall not accrue on the service charge.

Payment of such service charge shall not excuse or cure any default by Permittee under this Permit.

3. Upon execution of this Permit, deposit with the Board an amount equal to two times the monthly rent stated above in paragraph A.2, as security for the faithful performance of all of these terms, covenants, and conditions. The deposit will be returned to the Permittee upon termination or revocation of this Permit, if and only if all of the terms and conditions of this Permit have been observed and performed to the satisfaction of an authorized representative of the Department of Land and Natural Resources ("DLNR"). Otherwise, the deposit may, at the option of an authorized representative of the DLNR be applied toward payment of any amounts owed hereunder, without waiving any of the Board's other rights hereunder.
4. At the Permittee's own cost and expense, keep any government-owned improvements located on the Premises insured against loss by fire and other hazards, casualties, and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and loss payee and shall be filed with the DLNR. In the event of loss, damage, or destruction of those improvements, the DLNR shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the government-owned improvements and the balance of those proceeds, if any, shall be delivered to the Permittee.
5. Give the Board twenty-five (25) calendar days notice, in writing, before vacating the Premises.
6. Pay all real property taxes assessed against the Premises from the commencement date of this Permit.
7. At its own cost and expense, observe, perform and comply with all laws, ordinances, rules and regulations of all governmental authorities now or at any future time during the term of this Permit applicable to the Premises, including, without limiting the generality of the foregoing, the Americans with Disabilities Act of 1990 and all regulations promulgated with respect thereto, as well as any other laws, ordinances, rules and regulations imposing any requirements that the Premises be made accessible to persons with disabilities; and, release and indemnify the State of Hawaii against all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of said laws, ordinances, rules and regulations or of this covenant.
8. Repair and maintain all buildings or other improvements now or hereafter on the Premises.



9. Obtain the prior written consent of the Board before making any major improvements.
10. Keep the Premises and improvements in a clean, sanitary, and orderly condition.
11. Pay all charges, assessments, or payments for water, other utilities, and the collection of garbage as may be levied, charged, or be payable with respect to the Premises.
12. Not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises.
13. At all times with respect to the Premises, use due care for public safety.
14. Procure and maintain, at its own cost and expense, in full force and effect throughout the term of this Permit, 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 and a copy of the policy or other documentation required by the State shall be filed with the DLNR. 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 Permittee.

Prior to entry and use of the Premises or within fifteen (15) days after the commencement date of this Permit, whichever is sooner, furnish the State with a policy(s) or other documentation required by the State showing the policy(s) to be initially in force, keep the policy(s) or other documentation required by the State on deposit during the entire Permit term, and furnish a like policy(s) or other documentation required by the State 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 State. The State may at any time require the Permittee to provide the State with copies of the insurance policy(s) that are or were in effect during the permit period.

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

The procuring of the required policy(s) of insurance shall not be construed to limit Permittee's liability under this Permit nor to release or relieve the Permittee of the indemnification provisions and requirements of this Permit. Notwithstanding the policy(s) of insurance, Permittee shall be obligated for the full and total amount of any damage, injury, or loss caused by Permittee's or the Permittee's employees, agents, officers, or invitees' negligence or neglect connected with this Permit. It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance provided by Permittee's policy.

The insurance policy(s) or other documentation required by the State shall be mailed to:

State of Hawaii
Department of Land and Natural Resources
Division of Boating and Ocean Recreation
4 Sand Island Access Road
Honolulu, Hawaii 96819

15. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Permittee (other than condemnation proceedings), the Permittee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State.
16. The Permittee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of this Permit, in recovering possession of the Premises, or in the collection of delinquent rent, taxes, and any and all other charges.
17. The introduction of noxious, invasive, or exotic plant and animal species to the Premises shall not be permitted. The Permittee shall be solely responsible for the removal, at no cost to the State, of any and all noxious, invasive, or exotic plant and animal species on the Premises. This provision shall not apply to native species.

B. Additional Conditions:



1. This Permit is issued and effective on a month-to-month basis. The Permit shall automatically terminate one year from the commencement date, unless earlier revoked as provided below, provided further that the Board may allow the Permit to continue on a month-to-month basis for additional one year periods. Any such extension shall have the same terms and conditions as this Permit, except for the commencement date and any amendments to the terms, as reflected in the Board minutes of the meeting at which the Board acts. Permittee agrees to be bound by the terms and conditions of this Permit and any amendments to this Permit so long as Permittee continues to hold a permit for the Premises or continues to occupy or use the Premises.
2. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rent is delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) calendar days prior to the revocation.
3. If the Permittee fails to vacate the Premises upon expiration, revocation or termination of the Permit, the Permittee shall be liable for and shall pay the previously applicable monthly rent, computed and prorated on a daily basis, for each day the Permittee remains in possession.
4. If the Permittee fails to vacate the Premises upon expiration, revocation or termination of the Permit, the Board, by its agents, or representatives, may enter upon the Premises, without notice, and at Permittee's cost and expense remove and dispose of all vehicles, equipment, materials, or any personal property remaining on the Premises, and the Permittee agrees to pay for all costs and expenses of removal, disposition, or storage.
5. The Board may at any time increase or decrease the monthly rent by written notice at least thirty (30) business days prior to the date of change of rent. Upon such notice, the Permittee shall deposit with the Board any additional monies required to maintain an amount equal to two times the new monthly rent as security for the faithful performance of all of these terms and conditions.
6. Any major improvements, including but not limited to buildings and fences, erected on or moved onto the Premises by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the expiration, termination or revocation of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the Permittee shall fail to remove the improvements prior to the expiration, termination or revocation of this Permit or within an additional period the Board in its discretion may allow, the Board may, in its sole discretion,

elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.

7. The Board reserves the right for its agents or representatives to enter or cross any portion of the Premises at any time.
8. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
9. Permittee has inspected the Premises and knows the conditions thereof and fully assumes all risks incident to its use.
10. The acceptance of rent by the Board shall not be deemed a waiver of any breach by the Permittee of any term, covenant, or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option of this Permit.
11. The use and enjoyment of the Premises shall not be in support of any policy which discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.
12. Permittee shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. Permittee 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 Permittee's business, and then only after written notice is given to the Board of the identity of such materials and upon the Board's consent, which consent may be withheld at the Board'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 Permittee, then the Permittee shall be responsible for the costs thereof. In addition, Permittee shall execute affidavits, representations and the like from time to time at the Board's request concerning the Permittee's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by Permittee.

Permittee agrees to release, indemnify, defend, and hold the State of Hawaii, the Board, and their officers, employees, and agents harmless from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the use or release of hazardous materials on the Premises occurring while Permittee is in possession, or elsewhere if

caused by Permittee or persons acting under Permittee. These covenants shall survive the expiration, revocation, or termination of the Permit.

For the purpose of this Permit "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 bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

13. Prior to expiration, termination or revocation of the subject Permit, Permittee 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, the Department of Health, and the DLNR. Failure to comply with the provisions of this paragraph shall not extend the term of this Permit or automatically prevent expiration, termination or revocation of the Permit. The Board, at its sole option, may refuse to approve termination or revocation unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Permittee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Permittee.
14. Permittee shall release, indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the Permittee or the Permittee's employees, agents, officers, or invitees under this Permit. The provisions of this paragraph shall remain in full force and effect notwithstanding the revocation, expiration, or termination of this Permit. The purchase of liability insurance shall not relieve Permittee of the obligations described herein.
15. Unless otherwise agreed by the Board in its sole discretion, payments received will be applied first to attorneys' fees, costs, assessments, real property taxes, or other costs incurred or paid by the Board with respect to the Premises, next to service charges or interest, next to any other charges due or owing under the Permit, next to delinquent monthly rent, and next to current rent.
16. Any notice required or permitted to be given hereunder shall be in writing, given by personal delivery or by first class mail, postage prepaid. Notice to Permittee shall be delivered or addressed to the address stated above.

Notice to State of Hawai'i shall be delivered or addressed to the Chairperson of the Board at 1151 Punchbowl Street, Room 130, Honolulu, Hawai'i 96813 and to the Administrator of the Division of Boating and Ocean Recreation at 4 Sand Island Access Road, Honolulu, Hawai'i 96819. Mailed notices shall be deemed given upon actual receipt, or two business days following deposit in the mail, postage prepaid, whichever occurs first. Either party may by written notice to the other specify a different address for notice purposes, provided that Permittee's mailing address shall at all times be the same for both billing and notice. In the event there are multiple Permittees hereunder, notice to one Permittee shall be deemed notice to all Permittees.

17. Unless the text indicates otherwise, the use of any gender shall include all genders and, if the Permittee includes more than one person, the singular shall signify the plural and this Permit shall bind the persons, and each of them jointly and severally.



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 March 8, 2024.

By



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

APPROVED AS TO FORM:

STATE

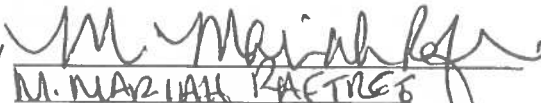


MIRANDA C. STEED
Deputy Attorney General

Dated: APR 19 2024

PAU HANA YACHT CHARTERS LLC, a
Hawaii limited liability company

By



M. MARIAN RAFTER
Its MANAGING MEMBER

PERMITTEE

STATE OF HAWAII)
City & COUNTY OF Honolulu) SS.

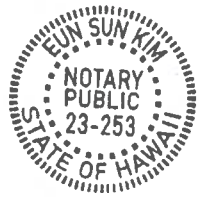
On this 07 day of May, 2024, before me personally appeared Margaret Mariah Raffree, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Eun Sun Kim

Notary Public, State of Hawaii

Eun Sun Kim

My commission expires: 10/01/2027



NOTARY CERTIFICATE
NOTARY NAME: Eun Sun Kim FIRST CIRCUIT
DOC DATE: Undated # PAGES: 13
DOC DESC: Revocable permit No. 149

Eun Sun Kim 05/07/2024 10/01/2027
SIGNATURE DATE COMM EXP

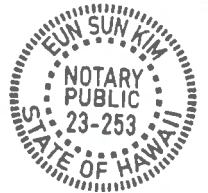
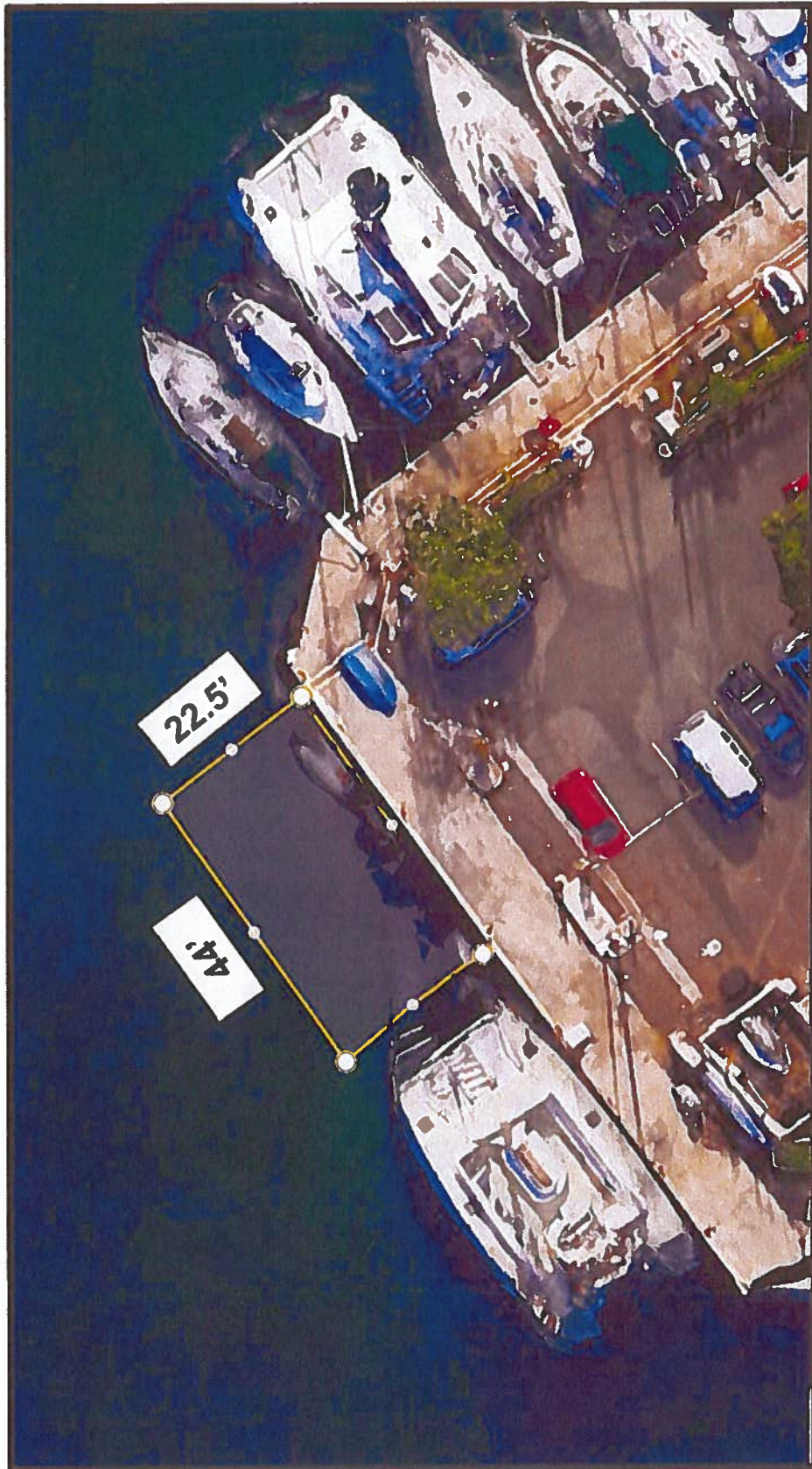


EXHIBIT A-1



EXHIBIT A-2

Ala Wai Small Boat Harbor – Fuel Dock



PRELIM. APPR'D.
Department of the
Attorney General



DROPPED PARCELS 3 2 5 8 11 14 16

DEPARTMENT OF PUBLIC WORKS
 DIVISION OF LAND AND NATURAL RESOURCES
 CITY & COUNTY OF HONOLULU
 LAND MANAGEMENT DIVISION

ZONE	SECTION	PLAT
2	3	037

SCALE: 1"=100' ±

COPYRIGHT CITY & COUNTY OF HONOLULU - ALL RIGHTS RESERVED 2022
 FOR PROPERTY ASSESSMENT PURPOSES, PARCELS MAY NOT BE LEGALLY SUBMITTED LOTS - SUBJECT TO CHANGE

PRELIM. APPR'D.
 Department of the
 Attorney General

ALAMOANA PARK AND AIEA MOANA STATE PARK, HONOLULU, OAHU, HAWAII