

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96813

November 9, 2012

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

Oahu

Approve Revised Development Plans for Waikiki Landing Project at Ala Wai Small Boat Harbor (AWSBH); Exempt Waikiki Landing Project from City and County of Honolulu Special Management Area Permit Requirements; Apply the State Preemption of City and County of Honolulu Land Use Ordinance; Approve Lease of Fast and Submerged Lands at AWSBH; Grant Non-Exclusive Term Easement of Adjacent Fast Land at AWSBH; Amend Development Agreement with Honey Bee USA, Inc. dated December 17, 2009; Extend Development Agreement; Authorize Subdivision; Grant Non-Exclusive Access Easements; Authorize Deregistration from State of Hawaii Land Court; Approve Right-of-Entry; Kalia, Honolulu, Oahu, Hawaii. Tax Map Key Nos: (1) 2-6-010:003 (por), 005 & 016; 2-3-37:020

Approve Amendments to Harbor Lease No. H-87-25 at AWSBH to Hawaii Prince Hotel Waikiki LLC as affecting Proposed Waikiki Landing Project; Approve Termination of Settlement Agreement and Indemnification Agreement with Hawaii Prince Hotel Waikiki LLC, Kalia, Honolulu, Oahu, Hawaii. Tax Map Key No. (1) 2-6-010:003 (por); 2-3-037:012.

The Board may go into Executive Session pursuant to Section 92-5 (a)(4), Hawaii Revised Statutes, in order to consult with its attorneys on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

**APPLICANT:**

Honey Bee USA, Inc. ("**Honey Bee**")

**REQUEST:**

Honey Bee, the developer of the Proposed Waikiki Landing Project at the Ala Wai Small Boat Harbor ("**AWSBH**"), is requesting the Board:

- Approve the revised development plans for the Waikiki Landing Project;
- Exempt the Waikiki Landing Project from special area management permit requirements pursuant to Act 153 (2011);
- Preempt the City and County of Honolulu Land Use Ordinance for the Waikiki Landing Project lands pursuant to Act 197 (2011) and the State's sovereign powers;
- Approve a 65-year lease of fast and submerged lands at the AWSBH;
- Grant a non-exclusive term easement for approximately 5,227.20 sq. ft. of adjacent fast lands at AWSBH;
- Approve amendments to Harbor Lease No. H-87-25 with Hawaii Prince Hotel Waikiki LLC and cancellation of related Settlement Agreement and Indemnification Agreement;

- Approve amendments to Development Agreement with Honey Bee dated December 17, 2009, including extending the term of the agreement to July 31, 2013;
- Approve Subdivision of Lands at AWSBH;
- Grant Non-Exclusive Access Easements;
- Authorize deregistration of lands at AWSBH from the State of Hawaii Land Court system; and
- Approve a Right of Entry to Honey Bee

## **BACKGROUND.**

On December 17, 2009, DLNR's Division of Boating and Ocean Recreation ("**DOBOR**") and Honey Bee entered into a development agreement (the "**Development Agreement**") that allows Honey Bee to pursue its proposed redevelopment plan for the boatyard repair and fuel dock sites at the AWSBH. An aerial photograph of the AWSBH is attached as **Exhibit "A"**. The working name of Honey Bee's proposed redevelopment project is "**Waikiki Landing**" and is referred to hereinafter as "**Waikiki Landing**" or the "**Project**".

The Development Agreement is the result of DOBOR's selection of Honey Bee pursuant to a Request for Qualifications / Request for Proposals ("**RFP**") issued on November 25, 2008.<sup>1</sup>

The Development Agreement allows Honey Bee to pursue various predevelopment activities and requires Honey Bee to satisfy various conditions in order for it to be issued a master lease (the "**Master Lease**") for the Waikiki Landing project. For example, the Development Agreement requires that Honey Bee obtain all of the land use entitlements, permits and approvals required for the Project.

The Development Agreement also requires Honey Bee to pay DOBOR development fees (currently \$15,000/month) during the term of the agreement. Honey Bee is current on these payments. The Development Agreement expires on December 31, 2012.

On September 14, 2012, as Agenda Item J-1, Honey Bee briefed the Board on the status of the Project, made a presentation of the revised development plans, and informed the Board of Honey Bee's intent to request the Board preempt/exempt the Project from the City and County of Honolulu's Land Use Ordinance and special management area permit requirements.

## **SUBJECT PROPERTIES.**

Honey Bee is requesting the Board's approval of a 65-year lease for the former boatyard repair site, the existing fuel dock site, and the submerged lands immediately adjacent to those sites, and a 65-year non-exclusive easement for certain lands adjacent to the boatyard repair site. These areas are described in further detail below:

- **Boatyard Repair Site:** The Boatyard Repair Site consists of approximately 38,369 square feet and is identified by Tax Map Key (TMK) Nos. (1) 2-6-010:003 (por), 005, and 016. (see **Exhibits "B-1" and "B-2"**). A boatyard/repair facility was previously operated on the site by Ala Wai Marine, Ltd. under License 74 and Revocable Permit No. B-93-39. The license and RP were both terminated in December, 2008, and the site has been vacant since

---

<sup>1</sup> The RFP sought a private developer to develop new and improved harbor facilities (new boat repair and fuel facilities) and increase the lease rent revenues to DOBOR.

approximately February 2009. DOBOR recently demolished the existing buildings and cleared the site since the buildings were in poor condition and posed liability issues.

- **Fuel Dock Site:** The Fuel Dock Site consists of approximately 15,199 square feet and is identified by TMK No. 2-3-037:020. (see **Exhibit "B-1"**). Magic Island Petroleum, Inc. currently operates a fuel facility and convenience store on this site under Revocable Permit No. B-03-06. The Board, on July 11, 2008 (Agenda Item J-1) approved termination of this RP effective on such date as determined by the Chairperson.
- **Submerged Lands:** Honey Bee is seeking to lease approximately 27,205 square feet of submerged lands located adjacent to the Boatyard Repair Site and Fuel Dock Site. The submerged lands are described below:
  - **Submerged Lands (Boatyard Repair Site).** 14,945 square feet of submerged lands located adjacent to the Boatyard Repair Site to moor vessels and for the boat lift that will be used to lift boats from the waterway onto the boat repair yard.<sup>2</sup> The approximate location and dimensions of the submerged lands are shown on **Exhibit "C"** and shall hereinafter be referred to as the "**Submerged Lands (Boatyard Repair Site)**".

The existing work docks were renovated using federal funds totaling \$500,000 and state funds of \$100,000, which must be reimbursed to the federal government in the event the work docks are not used for mooring for transient vessels. Honey Bee has agreed to pay DOBOR this sum to reimburse the federal government and the State, and this sum will be due on the same date that rent for the submerged lands commences. Honey Bee will use the work docks to dock commercial boats.
  - **Submerged Lands (Fuel Dock Site).** 12,260 square feet of submerged lands adjacent to the Fuel Dock Site to moor vessels (including transient vessels), which includes the 1,040 square foot area that will be set aside for the fueling of vessels. The approximate location and dimensions of the submerged lands are shown on **Exhibit "D"** and shall hereinafter be referred to as the "**Submerged Lands (Fuel Dock Site)**".
- **Easement Area:** Honey Bee is also requesting a non-exclusive easement over approximately 5,227.20 square feet, shown on **Exhibits "B-2" and "K"** and described in further detail below under "Grant of Non-Exclusive Term Easement and Approve Amendment of Harbor Lease H-87-25".

#### **LEGAL REFERENCES:**

Sections 171-6, 13, 16, 17, 18, 19, 35, 36, 41, 52, 53, 200-2.5, and other applicable sections of Chapters 171 and 200, Hawaii Revised Statutes, as amended; Acts 153 (2011 Haw. Sess. Laws 385) and 197 (2011 Haw. Sess. Laws 652).

#### **CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:**

On April 23, 2010, a Draft Environmental Assessment for the Waikiki Landing project was published in the State of Hawaii Office of Environmental Quality Control *The Environmental Notice*. On October 8, 2010, a Final Environmental Assessment and Finding of No Significant Impact ("FONSI") was published.

---

<sup>2</sup> The boat lift will be located on fast lands but will extend over a portion of the submerged lands.

**APPROVE REVISED DEVELOPMENT PLANS FOR WAIKIKI LANDING PROJECT.**

Honey Bee has revised the development plans for the Project from the plans originally submitted for the RFP. The revisions were made to address issues discovered during Honey Bee's due diligence, public and agency review comments to the draft EA, and consultations with stakeholders, community groups, government agencies, and potential tenants.

Honey Bee's community outreach efforts have included: (i) presentations to the Waikiki Neighborhood Board of the original Project and revised Project on May 11, 2010 and July 10, 2012, respectively; (ii) a presentation to the Hawaii Yacht Club in April, 2010; and (iii) individual meetings with community members and Councilmember Stanley Chang on March 29, 2012.

The revised development plans includes several changes to both the Boatyard Repair Site and the Fuel Dock Site, which are described below:

**Boatyard Repair Site.** The original plans for the site called for a 6,000 sq. ft. boat repair yard and two buildings (the "Boatyard Building" and a 20,000 sq. ft. building housing a wedding chapel and related wedding facilities). The plans have been revised to increase the size of the boat repair yard and number of parking spaces, reduce the size of the wedding facility, add a fourth floor to the Boatyard Building, and add a third building (the "Wharf Building").

The revised plan increases the boat repair yard by over 10,000 sq. ft. and reduces the wedding facility building (the "Canoe House") by over 15,000 sq. ft. The boat repair yard will sit on a concrete deck 16 ft. above the ground, located between the three buildings. The Boatyard Building will house commercial shops and restaurants and will be directly accessible to foot traffic from Ala Moana Boulevard via an entryway on the second floor as well as a courtyard on the first floor. The Wharf Building is a two-story building alongside a wide dock that borders the Ala Wai Channel. Honey Bee's plans call for the building to house restaurants on the first and second floor. The current design for both buildings incorporates a Hawaiian maritime design.

The revisions are summarized in the table below, and current site and elevation plans are attached as **Exhibits "E-1" to "E-4"**.<sup>3</sup>

ITEM	RFP PROPOSAL	FINAL EA PLAN	CURRENT PLAN
Boat Repair Yard	6,000 sf, 4-5 boats	16,400 sf, 11 boats	16,400 sf, 11 boats
Boatyard Bldg	16,300 sf, 3 floors	25,088 sf, 4 floors	21,765 sf, 4 floors
Canoe House (Wedding)	20,000 sf, 2 stories	4,094 sf, 2 stories	4,844 sf, 2 stories
Wharf Bldg	0	7,976 sf, 2 stories	6,785 sf, 2 stories
Commercial Space	36,300 sf	37,158 sf	33,434 sf
Customer Parking Stalls	30	47	50
Height of Tallest Building	Not Stated	58 ft	61 ft

**Fuel Dock Site.** The original plans for the site called for a 2-story building that included a nightclub and restaurant. The plans have been revised to reduce the height and size of the building and replace the nightclub and restaurant with a wedding facility and space for the U.S.

<sup>3</sup> The square footages were provided by Honey Bee and reflect the leaseable area.

National Kayak Team Training Center.<sup>4</sup> Honey Bee also plans to completely renovate the dock area by repairing the concrete apron surrounding the site and installing finger docks on two sides of the Fuel Dock property. The revisions are summarized in the table below, and current site and elevation plans are attached as **Exhibits “F-1” to “F-2”**.

ITEM	RFP PROPOSAL	FINAL EA PLAN	CURRENT PLAN
No. of Floors	2 floors plus roof	4 floors	2 floors plus roof
Square Footage	12,025 sq. ft.	11,404 sq. ft.	10,636 sq. ft.
Height	28 ft	45 ft	25.5 ft
Customer Parking	7	11	11

**SMP EXEMPTION & PREEMPTION OF LUO PURSUANT TO ACTS 153 AND 197 (2011)**<sup>5</sup>.

**Background.** In 2011, the State Legislature passed Acts 153 and 197 to facilitate the redevelopment of the AWSBH. The following is a brief explanation of the Acts, the Legislature’s directives, and the powers granted to the Board.

**Act 153.** Act 153 grants the Board the power, under HRS §171-6(19), to “plan, design, construct, operate, and maintain any lands or facilities under the jurisdiction of [DOBOR] without the need to obtain a special management area minor permit or special management area use permit” (“**SMP**”). The Board may elect to exercise this power and not require an SMP for construction of the Project.

**Act 197.** Act 197 expressly authorizes and directs DLNR to lease fast and submerged lands at the AWSBH and specifies the uses the Legislature determined are appropriate and permissible under any such lease, including but not limited to commercial uses (including restaurants and retail stores) and any uses described or referred to in the RFP issued by DOBOR on November 25, 2008 (which RFP referenced weddings). Excerpts of Act 197 (Pages 1-2; 15-18) are attached as **Exhibit “G”**.

**Honey Bee’s Request.** Honey Bee is requesting the Board implement the intent and directives of Acts 153 and 197 by (1) exercising the powers granted under Act 153 and not require an SMP for the Project; and (2) apply the state preemption of the City and County Land Use Ordinance (“**LUO**”) with respect to the Subject Properties pursuant to and authorized by Act 197 and the State’s sovereign powers.

**SMP Exemption.** In passing Act 153, the Legislature expressly granted the Board the power to not require an SMP for projects at DOBOR managed harbors to help facilitate much needed improvements to these facilities. Honey Bee requests the Board exercise this power and not require an SMP for the Project.

**Preemption of the LUO.** The purpose of the LUO is to allow the City to regulate land uses. The LUO regulates land uses via zoning classifications and specifying the permitted uses/structures and development standards for each zoning district/precinct.

Under the LUO, the Subject Properties are located within the Waikiki Special District. The Waikiki Special District includes almost all of the lands in Waikiki located makai of the Ala

<sup>4</sup> Honey Bee and the National Kayak Team have already entered a letter of intent for the training center area.

<sup>5</sup> Act 153, 2011 Haw. Sess. Laws 385 and Act 197, 2011 Haw. Sess. Laws 652.

Wai Canal, from the AWSBH to Kapahulu Avenue. A map showing the boundaries of the Waikiki Special District is attached as **Exhibit "H"**.

Within the Waikiki Special District, there are three types of zoning precincts: the Resort Mixed-Use Precinct, the Apartment Precinct, and the Public Precinct. The AWSBH is located within the Public Precinct, which includes other government-managed facilities such as the Ala Wai Canal, Jefferson Elementary School, Fort De Russy, and the public beaches. (see **Exhibit "H"**)

Staff believes the AWSBH is designated "Public Precinct" primarily, if not solely, because the harbor is a government-managed facility that is open to the general public. Staff notes that all privately-owned lands immediately adjacent to and in the vicinity of the AWSBH are designated "Resort Mixed Use Precinct" (e.g., the Hawaii Prince Hotel, Marina Apartments, The Modern, and the Ilikai). While the LUO allows a much wider range of uses and provides specific development standards for the Resort Mixed Use Precinct, the LUO does not provide any development standards for the Public Precinct, and instead grants wide discretion to the Director of the City Department of Planning and Permitting ("**DPP**") to administratively determine the applicable standards. The LUO Development Standards for the different Waikiki Special District precincts are attached as **Exhibit "I"**.

DPP previously indicated that Honey Bee's proposed retail and restaurant establishments and wedding facilities are not permitted uses under the LUO for the Public Precinct, and that a zoning or use variance would be required. However, the State Legislature, in passing Act 197, made the determination of what uses should be allowed within the State-owned and managed AWSBH.

DPP has confirmed that the Board, pursuant to Act 197 and the State's sovereign powers, may exempt the Project from the LUO. See DPP letter dated March 5, 2012 attached as **Exhibit "J"**. If the Board exercises the preemption power over the LUO for the Subject Properties as approved by the Legislature, DPP would no longer review the Project for compliance with County zoning and Waikiki Special District regulations. DPP will, however, process subdivision, sewer connection, and building permit applications, and Honey Bee intends to seek such approvals.

Honey Bee has agreed to release, defend, indemnify, and hold harmless the State, Board, DLNR, and their respective directors, officers, employees and agents from and against any and all actions, suits, damages, losses, liabilities and claims arising out of or resulting from the Board electing to not require an SMP for the Project and/or upon preempting the LUO for the Subject Properties. The Development Agreement should be amended to include a release and indemnity provision reflecting the above, and the Master Lease shall also include a similar provision.

#### **APPROVE LEASE OF FAST AND SUBMERGED LANDS.**

Honey Bee is requesting the Board's approval to lease the fast and submerged lands at the lease rents and subject to the conditions described below:

**Lease Term.** Sixty-five (65) years. The Development Agreement contemplates a 55-year lease. However, Act 197 authorizes the Board to lease fast and submerged lands at the AWSBH with a maximum lease term not to exceed 65 years. Based on Act 197, staff recommends the Board approve one 65-year lease that includes the fast and submerged lands.

**Lease Rent - Fast Lands (Boatyard Repair Site and Fuel Dock Site).** The Development Agreement provides for the lease rent for the first 30 years of the lease term to be negotiated, but also requires that the lease rents not be less than the rents in the development proposal submitted by Honey Bee in response to the RFP. Notwithstanding the above, Act 197 requires the lease provide a "three-year development period with a fixed reduced lease rent." Accordingly, Honey Bee is requesting (1) a reduced minimum base rent equal to \$15,000 per month until the first businesses open on the Boatyard Repair Site and Fuel Dock Site or until July 1, 2013 (whichever occurs first); and (2) rent credit not to exceed \$137,822.06 (amortized over Years 2-6 of the lease) for actual costs incurred by Honey Bee for environmental testing and remediation work.<sup>6</sup> These costs include: (a) soil tests, (b) fees paid to geological and environmental consultants, and (c) soil remediation measures.

Honey Bee's RFP rent proposal is summarized below:

Annual Minimum Rent: \$564,000.00/yr, or \$47,000/mo (Years 1-10)  
\$700,000.00/yr (Years 11-15)  
\$800,000.00/yr (Years 16-20)  
\$920,000.20/yr (Years 21-25)  
\$1,100,000.00/yr (Years 26-30)

Percentage Rent: Eight percent (8.0%) of total revenues generated from operations on the fast lands (to the extent such percentage rent exceeds the annual minimum rent); and  
\$.005 per gallon on all fuel sold.

Staff recommends the reduced rent and rent credit requested by Honey Bee, which would result in the following lease rents:<sup>7</sup>

Annual Minimum Rent: \$15,000/mo until business opens on the Boatyard Repair Site and Fuel Dock Site or 07/01/2013 (whichever occurs first); \$47,000/mo thereafter (Year 1)  
\$564,000.00/yr (Years 2-10); subject to rent credit of \$27,564.41/year for Years 2-6)  
\$700,000.00/yr (Years 11-15)  
\$800,000.00/yr (Years 16-20)  
\$920,000.20/yr (Years 21-25)  
\$1,100,000.00/yr (Years 26-30)

Percentage Rent: Eight percent (8.0%) of total revenues generated from operations on the fast lands (to the extent such percentage rent exceeds the annual minimum rent); and  
\$.005 per gallon on all fuel sold.

<sup>6</sup> The Development Agreement also acknowledges the possibility of the State allowing rent credits for costs incurred or to be incurred by Honey Bee.

<sup>7</sup> The reduced rent reflects the maximum rent credit of \$137,822.06. The actual reduced rent shall reflect the actual costs incurred by Honey Bee and confirmed by DOBOR, which shall not exceed \$137,822.06.

**Lease Rent - Submerged Lands.** Honey Bee's RFP development proposal included minimum and percentage lease rents for the submerged lands for the first 30 years of the Master Lease. Based on the rental rate per square footage in Honey Bee's proposal, rent for 27,205 sq. ft. of submerged lands would be as follows:

Annual Minimum Rent:     \$163,230.00/yr (Years 1-10, based on \$6.00/sq ft)  
                                      \$212,199.00/yr (Years 11-15, based on \$7.80/sq ft)  
                                      \$244,028.85/yr (Years 16-20, based on \$8.97/sq ft)  
                                      \$280,755.60/yr (Years 21-25, based on \$10.32/sq ft)  
                                      \$322,923.35/yr (Years 26-30, based on \$11.87/sq ft)

Percentage Rent:            Ten percent (10%) of gross mooring fees/revenues to the extent such percentage rent exceeds the annual minimum rent

As mentioned above, Act 197 authorizes the Board to lease submerged lands at the AWSBH, including the submerged lands requested by Honey Bee. Payment of rent for the submerged lands will commence on the date that the submerged lands are available for mooring or July 1, 2013 (whichever occurs first).

Staff recommends approval of a 65-year lease for the submerged lands described above and that any maps and descriptions of the submerged lands in the Development Agreement be amended to identify the submerged lands described above and approved for lease by the Board. Under the Development Agreement, the leasing of the submerged lands is already subject to the preconditions to issuance of the Master Lease, including the lease rents being determined by negotiation and the areas to be leased being identified by a mutually agreed upon survey.

**Building Restrictions.** As mentioned above, if the Board preempts the LUO for the Subject Properties, DPP would no longer be responsible for reviewing the Project for compliance with County zoning and Waikiki Special District regulations. If the Board preempts the LUO, staff recommends the Board impose (as the landowner/lessor and not as a regulatory body) lease terms and conditions that limit the uses and improvements Honey Bee may conduct and construct on the Subject Properties. Staff recommends the Board impose lease conditions that restrict the uses and scope of the improvements to the restrictions imposed on adjacent properties (e.g., the Hawaii Prince Hotel, Marina Apartments, The Modern, and the Ilikai), but with a substantially lower height limit of 75 feet.<sup>8</sup>

The lessor may periodically, at the lessee's sole expense, retain inspectors or consultants to review the plans for the Project and inspect the Project, to ensure the lessee's compliance with this condition and any other applicable federal, state, and county laws, statutes, ordinances, rules and regulations.

**Release and Indemnification.** The lessee shall release, defend, indemnify, and hold harmless the State, Board, DLNR, and their respective directors, officers, employees and agents from and against any and all actions, suits, damages, losses, liabilities and claims arising out of or

---

<sup>8</sup> The restrictions for the adjacent properties are set forth as development standards in the LUO for the Waikiki Special District, Resort Mixed Use Precinct, which include a 350' height limit. See **Exhibit "I"**.

resulting from the Board electing to not require an SMP for the Project and/or exercising the state preemption of the LUO for the Subject Properties.

**Public Restrooms.** The lessee shall construct and maintain two new public restrooms (one of which shall include showers) within the Project to replace the restroom currently within the Easement Area (see discussion below regarding Grant of Easement). The terms and conditions regarding the construction and maintenance of the restrooms shall be subject to negotiation between DLNR and Honey Bee, but shall at a minimum, include the same requirements imposed in the Grant of Easement, require the location, size, design, and construction timeline be acceptable to the Chairperson, require signage informing the public of the availability of the restrooms, specify the maintenance requirements (which shall be no less than what is currently required of Hawaii Prince for the existing restroom), and address maintenance of the current restroom during the period after the Master Lease and term easement are executed, but prior to completion of the replacement restrooms. In the event the City and the Hawaii Prince do not consent to the existing restroom being replaced with the new restrooms within the Project, this condition shall not be imposed in the Master Lease.

**Construction.** The Master Lease shall include provisions acceptable to the Chairperson addressing the construction of the improvements including: (a) limiting construction hours to times, (b) providing dust barriers on the perimeter of the site, (c) providing traffic control measures, and (d) mitigating construction noise.

**Changes in Development Rights.** If there are any changes in applicable laws, rules, or regulations in the future that allow for increased development opportunities (e.g. increased height, density, etc), the Board reserves right to allow the lessee to avail itself of such increased development opportunities, subject to the Board's approval and the right to adjust the lease rent to reflect the increased development opportunities. The Board also reserves the right to sell or transfer any increased development rights to a third party.

**Other.** Due to the unique nature of the Project and the Board authorizing the Project to proceed without requiring an SMP and compliance with the LUO, the Master Lease may include additional terms and conditions as the Chairperson may deem desirable, appropriate, prudent, or in the best interests of the State, including additional bonding and insurance requirements necessary to protect the State's interest.

**HONEY BEE'S COMPLIANCE WITH DEVELOPMENT AGREEMENT CONDITIONS REQUIRED FOR ISSUANCE OF MASTER LEASE; APPROVE AMENDMENTS TO DEVELOPMENT AGREEMENT CONDITIONS.**

Section 11 of the Development Agreement provides for the State to issue the Master Lease to Honey Bee if Honey Bee fully complies with each of the conditions described below. The conditions and Honey Bee's satisfaction of the conditions are detailed below, together with Honey Bee's request to amend certain conditions.

- a. **Final Approval of the Development Plan, if required under Section 8.c. of the Development Agreement.**

*Status.* Final approval of the Development Plan is not required under Section 8.c., which only requires the Board's approval of Honey Bee's development plan if a Finding of No

*Significant Impact is not issued in connection with Honey Bee's HRS Chapter 343 environmental assessment. A Final EA and FONSI were published in the State of Hawaii Office of Environmental Quality Control The Environmental Notice on October 8, 2010.*

b. Honey Bee obtaining all necessary federal, State and County land use entitlements and approvals to implement Honey Bee's development plan.

Sections 8 and 9 of the Development Agreement set forth the major land use entitlements/approvals required for Honey Bee to implement its Development Plan. The required entitlements/approvals and Honey Bee's status with respect to each required entitlement/approval are detailed below.<sup>9</sup>

- Draft EA and FONSI. Prepare/publish a draft EA and obtain a FONSI.  
*Status: Done. A draft EA was published on April 23, 2010 and the Final EA (along with the supplement to the Final EA) and FONSI were published on October 8, 2010.*
- Zoning/Use Variance. Obtain a zoning or use variance from DPP.  
*Status: DPP previously indicated that under the LUO, a zoning or use variance is required for the proposed retail and restaurant establishments and wedding facilities. As explained above, Honey Bee requests the Board apply the state preemption of the LUO for the Subject Properties pursuant to Act 197 and the State's sovereign powers and amend the Development Agreement accordingly.*
- Authorization to Lease Submerged Lands. Obtain Governor's approval and concurrent resolution from the State Legislature authorizing a lease of submerged lands.  
*Status: The requirement of obtaining a concurrent resolution from the State Legislature has been satisfied by the Legislature's passing of Act 197. Honey Bee must still obtain approval from the Governor.*
- Special Management Area permit ("SMP"). Obtain an SMP from Honolulu City Council.  
*Status: Act 153 grants the Board the power, under HRS §171-6, to plan, design, construct, operate, and maintain any lands or facilities under DOBOR's jurisdiction (including the AWSBH) without the need to obtain an SMP. Honey Bee requests the Board exercise this power and not require an SMP for the Waikiki Landing project. If the Board elects to do so, Honey Bee also requests the Development Agreement be amended to delete this condition.*
- Waikiki Special District ("WSD") permit. Obtain a WSD from DPP.  
*Status: A WSD is required pursuant to the City's LUO. Honey Bee requests the Board apply the state preemption of the LUO for the Subject Properties pursuant to Act 197 and the State's sovereign powers. If the Board does so, a WSD would no longer be required, and Honey Bee requests the Development Agreement be amended accordingly.*

<sup>9</sup> The Development Agreement imposes deadlines for Honey Bee to obtain each of the entitlements. On May 27, 2011 (Item J-1), the Board extended the deadlines to May 31, 2012. Honey Bee is requesting the Board amend the Development Agreement to delete certain entitlements.

- Army Corps of Engineers ("COE") Permit(s). Obtain COE permit(s) to: (a) renovate the work docks and the dock area at the Boatyard Repair Site, (b) to renovate the concrete apron and boat ramp at the Fuel Dock Site, and (c) to install pilings at the Fuel Dock.  
*Status.* Honey Bee is still evaluating which renovations it wishes to do within and adjacent to the submerged lands and will seek the required permits prior to commencing the work. However, Honey Bee will be proceeding with the Waikiki Landing project with or without any of these renovations within or adjacent to the submerged lands. Therefore, if any required COE permits are not obtained, Honey Bee will not do the renovations but will still proceed with the rest of the Waikiki Landing project.  
Honey Bee requests the Development Agreement be amended to afford Honey Bee the option of acquiring the required permits after issuance of the Master Lease but prior to any work being done.
- Clean Water Act ("CWA") compliance. Obtain all appropriate permits under the CWA to install pilings at the Fuel Dock.  
*Status.* Honey Bee no longer intends to install pilings at the Fuel Dock. However, if Honey Bee elects to later install such pilings or do any work that requires a CWA permit/approval, Honey Bee will obtain the required CWA permits/approvals prior to commencing the work.  
Honey Bee requests the Development Agreement be amended to afford Honey Bee the option of acquiring the required permits/approvals after issuance of the Master Lease but prior to any work being done.
- Subdivision Approval. Obtain final subdivision approval from the City to legally create separate lots for the Fuel Dock Site and the Boatyard Repair Site, or obtain a conditional use permit that allows joint development of the three parcels that constitute the Boatyard Repair Site.  
*Status.* Honey Bee has prepared a preliminary subdivision map for the Subject Properties to create separate lots for the Boatyard Repair Site, the Fuel Dock Site, and interior harbor roadway lots to provide access to and from the two sites to a public roadway, i.e., Ala Moana Boulevard. The subdivision map will be submitted to DPP for approval, and the Master Lease will not be issued until Honey Bee obtains final DPP subdivision approval (and Land Court approval if the lands are not deregistered. See discussion below regarding deregistration).
- Submit metes and bounds survey of the Boatyard Repair Site, Fuel Dock Site, Easement Area, and submerged lands to be leased to Honey Bee for approval by the State.  
*Status.* A metes and bounds survey has been completed and will be part of the required subdivision application.

**Remaining Conditions to Issuance of the Master Lease.** As detailed above, Honey Bee has satisfied almost all of the conditions in the Development Agreement required for issuance of the Master Lease. Accordingly, staff recommends the Board approve issuance of the Master Lease for the requested fast and submerged lands, at the lease rents described above, subject to Honey Bee completing the following outstanding conditions:

- Subdivision Approval. Prior to issuance of the Master Lease, Honey Bee shall obtain final subdivision approval from DPP and the State of Hawaii Land Court (if required) to legally create separate lots for the Boatyard Repair Site and Fuel Dock Site. If the Subject Properties (or applicable portions) are deregistered from the State of Hawaii Land Court, Land Court approval shall not be required for issuance of the Master Lease.
- Governor's Approval to Lease Submerged Lands. Prior to issuance of the Master Lease, Honey Bee shall obtain approval from the Governor of the State of Hawaii to lease the submerged lands described above.

**GRANT OF NON-EXCLUSIVE TERM EASEMENT & APPROVE AMENDMENTS TO HARBOR LEASE H-87-25.**

**Request for Easement**. Honey Bee is requesting a non-exclusive term easement for an approximately 5,227.20 square foot strip of fast land located adjacent to the Boatyard Repair Site, which it intends to incorporate into its redevelopment plans for the Boatyard Repair Site. Honey Bee presently does not plan to build any structures on the easement area but will landscape the area, provide some parking stalls, and build a "harbor walk" that will continue from the wharf on the Ewa side of the Boatyard Repair Site through the makai side of the easement area.

**Easement Area**: The requested easement area ("**Easement Area**") is described below:

Location:	Portion of Gov't lands situated at Kalia, Honolulu, Oahu, Hawaii, identified by Tax Map Key: (1) 2-6-010:003 (por)
Area:	5,227.20 sq. ft., more or less, as shown on <b>Exhibits "B-2" and "K"</b> , subject to confirmation by the Department of Accounting and General Services, Survey Division or by any survey required under the Development Agreement.
Trust Land Status:	Section 5 (a) lands of the Hawaii Admission Act DHHL 30% entitlement lands: No

**Current Use of the Easement Area and related Harbor Lease**: The Easement Area currently includes a public restroom and five parking stalls (shown in **Exhibit "K"**).

The construction of the nearby Hawaii Prince Hotel in the late 1980's resulted in the demolition of a public restroom. The Special Management Area Permit for the construction of the Hawaii Prince Hotel (the "**SMP**") included conditions that required the developer of the hotel to construct and maintain a replacement public restroom, which is the restroom that is currently located in the Easement Area.<sup>10</sup>

Hawaii Prince's obligation to construct and maintain the replacement public restroom is provided in Condition 11 of Harbor Lease No. H-87-25 between DOBOR and Hawaii Prince Hotel Waikiki

---

<sup>10</sup> The SMP was approved on September 25, 1985 by Honolulu City Council Resolution No. 85-324.

SMP Condition B states: "If displaced, public restrooms with showers shall be replaced at ground level on the ewa side of the project, directly accessible from the street, and shall bear signage welcoming public use. Provision shall be made by legal document for perpetual maintenance of the public restroom facility."

SMP Condition F states: "The Department of Land Utilization and the State Department of Transportation shall review and approve all plans for the public restroom facility, the public parking, the roadway design, and other improvements on harbor lands in the Public Precinct, to assure that they will not interfere with harbor operations."

LLC (“**Hawaii Prince**”) dated January 30, 1987 (the “**Harbor Lease**”).<sup>11</sup> This obligation was subsequently modified by a Settlement Agreement and an Indemnification Agreement, both agreements being between Seibu, the Hawaii Prince Hotel, and DOT, and both dated May 7, 1992 (the “**Settlement Agreement**” and “**Indemnification Agreement**”, respectively).

In sum, under the SMP and above agreements, Hawaii Prince is required, during the term of the Harbor Lease, to maintain the public restroom in a sanitary condition (including making repairs and providing electricity, water and paper goods), keep the restroom open to the public daily from 6:00 a.m. to 10:30 p.m., make restroom facilities in the Hawaii Prince Hotel available to public from 10:30 p.m. to 6:00 a.m., and provide signage informing the public of the availability of such restroom facilities. Hawaii Prince is also required to indemnify the State against claims arising from the restroom or Hawaii Prince’s failure to perform its obligations under the agreements and maintain liability insurance covering the public restroom.

In connection with its redevelopment of the Boatyard Repair Site, Honey Bee intends to remove the restroom at the Easement Area and replace it with two new public restrooms within the Waikiki Landing project. One restroom will be near the Ewa end of the Boatyard Repair Site in the Wharf Building, and the second one will be on the ground floor of the Boatyard Building (see locations outlined in red in **Exhibit “E-1”**). The restroom in the Wharf Building Site will include showers. Honey Bee will keep both restrooms open to the public daily from 6:00 a.m. to 11:00 p.m. or such other hours as mutually agreed upon by Honey Bee and the Chairperson, and Honey Bee will provide signage informing the public of the availability of the restroom. Honey Bee will not remove the existing restroom until both of the replacement restrooms are completed and open to the public.

Hawaii Prince has indicated that the restroom conditions imposed on Honey Bee in the grant of easement and Master Lease must be identical or substantially identical to the conditions imposed on Hawaii Prince under Hawaii Prince’s permits and approvals, and that the City must confirm, in writing, that Honey Bee’s proposal for the replacement restrooms is in compliance with the City permits and approvals for the Hawaii Prince or does not constitute a modification or amendment that would require approval from the Honolulu City Council. To address Hawaii Prince’s concerns, the grant of easement will be subject to: (1) the prior written consent of Hawaii Prince (which consent may be withheld if the City does not provide the written confirmation described above regarding Hawaii Prince’s permits and approvals from the City); and (2) the issuance of the Master Lease to Honey Bee, which shall include the same restroom conditions imposed in the grant of easement.

With respect to the five parking stalls within the Easement Area, those stalls are available for use by the public, but were primarily used by the former tenant of the Boatyard Repair Site and its customers. Although the parking stalls have not been used for the past two years when the prior tenant vacated the site and DOBOR secured the site, Honey Bee has agreed to provide four replacement parking stalls within its project.

---

<sup>11</sup> Hawaii Prince is owner of the Hawaii Prince Hotel. The Harbor Lease was issued by direct negotiation pursuant to HRS Chapter 171. The original parties to the lease were the State Department of Transportation (DOT) and Seibu Railway Company, Ltd. DOT’s interest was transferred to DOBOR when management of the State’s small boat harbors was transferred from DOT to DLNR pursuant to Act 272 (1991). Seibu Railway Company, Ltd. assigned its interest in the lease to Seibu, Inc. on June 20, 1988, which assigned its interest to Hawaii Prince Hotel Waikiki Corp. on October 17, 2001. Hawaii Prince Hotel Waikiki Corp. was converted to Hawaii Prince Hotel Waikiki LLC on December 31, 2007.

**Grant of Easement.** The proposed terms of the grant of easement are as follows:

- Easement Term: Sixty-five (65) years, to run concurrently and conditioned upon issuance of the Master Lease for the Waikiki Landing project
- Use/Purpose: To be incorporated as part of the redevelopment of the adjacent Boatyard Repair Site. No improvements may be constructed within the Easement Area, except with the prior approval of the Chairperson, which approval may be withheld in the Chairperson's sole discretion.
- Rent: Based on the same rental rate per square foot for the lease of the fast lands (before any discounts or rent credits), e.g., the fast lands lease rent for the first 10 years equals \$10.53 per sq. ft., which is the same rental rate proposed by Honey Bee for the adjacent fast lands at the Boatyard Repair Site. Therefore, total annual rent for a 5,227.20 sq. ft. easement would be \$55,042.42 per year. The rent will escalate at the same rate as the lease rent for the fast lands.
- Commencement and Payment Terms: To coincide with the commencement date and lease rent payment terms for the Master Lease.
- Additional Conditions: Prior to the grant of the easement, Honey Bee shall:
- a) Fulfill the Remaining Conditions to Issuance of the Master Lease described above.
  - b) Obtain the written consent of Hawaii Prince to amend Harbor Lease No. 87-25 as provided below.
  - c) Obtain subdivision approval from DPP for the Easement Area to the extent required under applicable statutes, ordinances and rules.

**Amendment of Harbor Lease No. H-87-25 and Cancellation of Settlement Agreement and Indemnification Agreement.** If Honey Bee successfully performs all its obligations under the Development Agreement and above necessary to obtain the Master Lease and an easement over the Easement Area, staff recommends Covenant 11 of the Harbor Lease be amended to delete the requirement that Hawaii Prince maintain the public restroom.<sup>12</sup>

The current public restroom shall only be removed and Harbor Lease amended after the Master Lease and grant of easement over the Easement Area are executed and the replacement restrooms are fully constructed and open to the public. The amendment to the Harbor Lease shall be reflected in a written agreement signed by Hawaii Prince and DLNR. Until the Harbor Lease is amended, Hawaii Prince shall continue to be responsible for its restroom obligations under the Master Lease, Settlement Agreement, and Indemnification Agreement.

---

<sup>12</sup> Harbor Lease Covenant 11 currently states: "Replacement Restroom and Shower Facilities. LESSEE shall construct replacement restroom facilities and grant the general public unrestricted access thereto. In addition, the LESSEE shall construct separate shower facilities for men and women. The restrooms and showers shall be constructed within the immediate proximity of the Ala Wai Boat Harbor. The shower facilities shall be locked and keys provided to the Ala Wai Boat Harbor Office by the LESSEE. The restroom and shower facilities shall be maintained by the LESSEE at no cost to the LESSOR for the duration of the Lease and signage shall be installed indicating that use of the restroom is open to the public. Final plans for the facilities and the signage shall be approved by the LESSOR, which approval shall not be unreasonably withheld."

Since the only obligations in the Settlement Agreement and Indemnification Agreement are Hawaii Prince's obligations regarding the existing restroom, staff also recommends both agreements be terminated concurrently with the amendment to the Harbor Lease.

#### **AUTHORIZE SUBDIVISION OF LANDS AT AWSBH.**

As required under the Development Agreement in part, Honey Bee has prepared a preliminary subdivision map for the Subject Properties to create separate lots for the Boatyard Repair Site and Fuel Dock Site. One of the subdivision requirements is that the lots have legal access to a public roadway. Therefore, the subdivision also creates interior harbor roadway lots to provide access to and from the two sites to a public roadway, i.e., Ala Moana Boulevard.

Honey Bee requests the Board authorize the subdivision of lands at AWSBH to create legal lots for the Boatyard Repair Site and Fuel Dock Site and roadway lots to provide access to and from such lots. Honey Bee also requests the Board delegate authority to the Chairperson to review and authorize submittal of the subdivision application and map to DPP.

#### **GRANT OF NON-EXCLUSIVE ACCESS EASEMENTS.**

As explained above, the proposed subdivision of the Boatyard Repair and Fuel Dock site will also create interior roadway lots within the AWSBH to provide legal access for the two sites to and from a public roadway, i.e., Ala Moana Boulevard.

Honey Bee requests the Board grant non-exclusive access easements over the roadway lots and delegate authority to the Chairperson to determine the terms and conditions of such easements.

#### **AUTHORIZE DEREGISTRATION FROM LAND COURT.**

A portion of the lands within the AWSBH (including a portion of the Boatyard Repair Site) are registered with the Land Court of the State of Hawaii. Land Court registration is intended to provide owners with greater assurances regarding the status of title to the lands. However, not all of the lands in the AWSBH are registered with the Land Court. This results in increasing the time and expense to process applications such as the proposed subdivision for the Project, while not providing any of the assurances or benefits associated with registered lands.

Staff recommends the Board authorize the deregistration of lands within the AWSBH from the Land Court, and delegate authority to the Chairperson to determine which lands should be deregistered and to execute and submit a request for deregistration.

#### **EXTEND TERM OF DEVELOPMENT AGREEMENT.**

On May 27, 2011 (as Agenda Item J-1), the Board extended the term of the Development Agreement to December 31, 2012, and authorized the Chairperson to extend the term for up to an additional 12 months. Since this matter is currently before the Board, staff recommends the Board extend the term until July 31, 2013, and authorize the Chairperson to grant further extensions to the term of the Development Agreement for up to an additional twelve (12 months).

#### **APPROVE RIGHT OF ENTRY.**

Honey Bee requests a right of entry to allow Honey Bee to conduct preliminary site work at the AWSBH prior to the issuance of the Master Lease.

Honey Bee intends to perform the following site work: (1) conduct an environmental assessment of the existing building on the Fuel Dock Site to determine the existence of lead paint, asbestos and fluorescent light fixtures with ballasts; (2) complete the environmental remediation at the Fuel Dock Site that was recommended to and approved by the Dept. of Health in December, 2012; (3) commence repair work on the concrete apron surrounding the Fuel Dock Site as recommended in a May, 2000 engineering report by Arnold T. Okubo & Associates; and (4) conduct preliminary exploratory work on the Boatyard Repair Site. The demolition of the old Ala Wai Marine building raised concerns about the integrity of the substructure, specifically the wall adjoining the Ala Wai Channel. Honey Bee proposes to do minimal exploratory work, which will be done by simply digging up concrete, on this site.

Honey Bee requests the Board approve a right-of-entry and delegate authority to the Chairperson to determine the terms and conditions, including the commencement date and any applicable fees, of the right-of-entry.

### **RECOMMENDATION.**

That the Board:

1. Approve Honey Bee's revised development plans.
2. Pursuant to Act 153, exempt the Project from special management area requirements and not require an SMP for the Project.
3. Pursuant to Act 197 and the State's sovereign powers, apply the state preemption of the LUO for the Subject Properties.
4. Approve a 65-year Master Lease to Honey Bee for the Boatyard Repair Site, the Fuel Dock Site, the Submerged Lands (Boatyard Repair Site) and Submerged Lands (Fuel Dock Site), subject to Honey Bee, subject to:
  - a. The terms and conditions set forth above;
  - b. The terms and conditions of the most current lease form approved by the Department of the Attorney General; and
  - c. Such other terms and conditions as the Chairperson may negotiate and deem necessary, desirable, or in the best interests of the State.
5. Approve a 65-year non-exclusive term easement over the Easement Area to Honey Bee by direct negotiation, subject to:
  - a. The terms and conditions set forth above;
  - b. The terms and conditions of the most current easement form approved by the Department of the Attorney General; and
  - c. Such other terms and conditions as the Chairperson may negotiate and deem necessary, desirable, or in the best interests of the State.
6. Approve amendments to Harbor Lease No. H-87-25 and termination of the Settlement Agreement and Indemnification Agreement, as set forth above.
7. Approve the removal of the existing public restroom within the Easement Area, subject to the terms and conditions set forth above.

8. Authorize the subdivision of lands at AWSBH to create legal lots for the Boatyard Repair Site and Fuel Dock Site and roadway lots to provide access to and from such lots, and delegate authority to the Chairperson to review and authorize the submittal of the subdivision application and map to the City Department of Planning and Permitting.
9. Approve non-exclusive access easements over the roadway lots created by the above-referenced subdivision to provide access to and from the Boatyard Repair Site and Fuel Dock Site to Ala Moana Boulevard, and delegate authority to the Chairperson to determine the terms and conditions of such easements.
10. Approve amendments to the Development Agreement as may be necessary, appropriate or desirable to effectuate the terms and conditions above, including but not limited to including the Submerged Lands (Boatyard Repair Site) and Submerged Lands (Fuel Dock Site) described above in the definition of "Subject Properties", amending the conditions regarding the required land use entitlements, extending the term of the Development Agreement to July 31, 2013, and authorizing the Chairperson to grant further extensions if the Chairperson, in his/her sole discretion, deems such further extensions to be in the best interests of the State; provided, however, that any such further extensions shall not exceed twelve (12) months from July 31, 2013.
11. Approve deregistration of lands within the AWSBH from the State of Hawaii Land Court, and delegate the authority to the Chairperson to determine the specific lands to be deregistered and execute and submit the deregistration request.
12. Approve a right of entry to Honey Bee to conduct preliminary site work prior to issuance of the Master Lease, and delegate authority to the Chairperson to determine the terms and conditions, including the commencement date and any applicable fees, for the right-of-entry.
13. Delegate authority to the Chairperson to negotiate or impose additional terms and conditions of the Master Lease and easements that the Chairperson determines are necessary or desirable to further or protect the best interests of DLNR and/or the State of Hawaii.
14. All the above shall be subject to review and approval by the Department of the Attorney General.

Respectfully Submitted,



Edward R. Underwood, Administrator

APPROVED FOR SUBMITTAL:



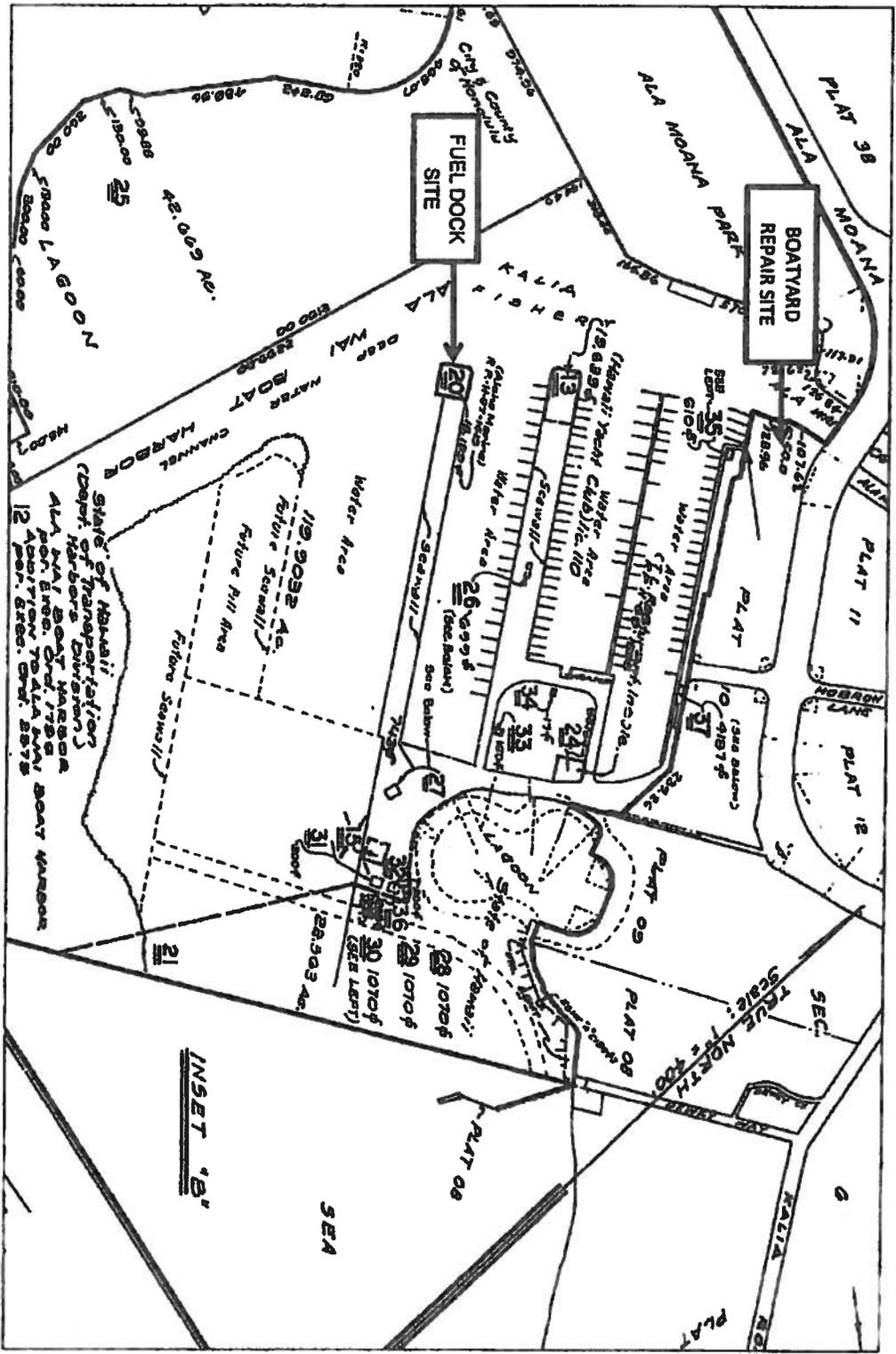
William J. Aila, Jr., Chairperson



**AERIAL PHOTO OF ALA WAI SMALL BOAT HARBOR**

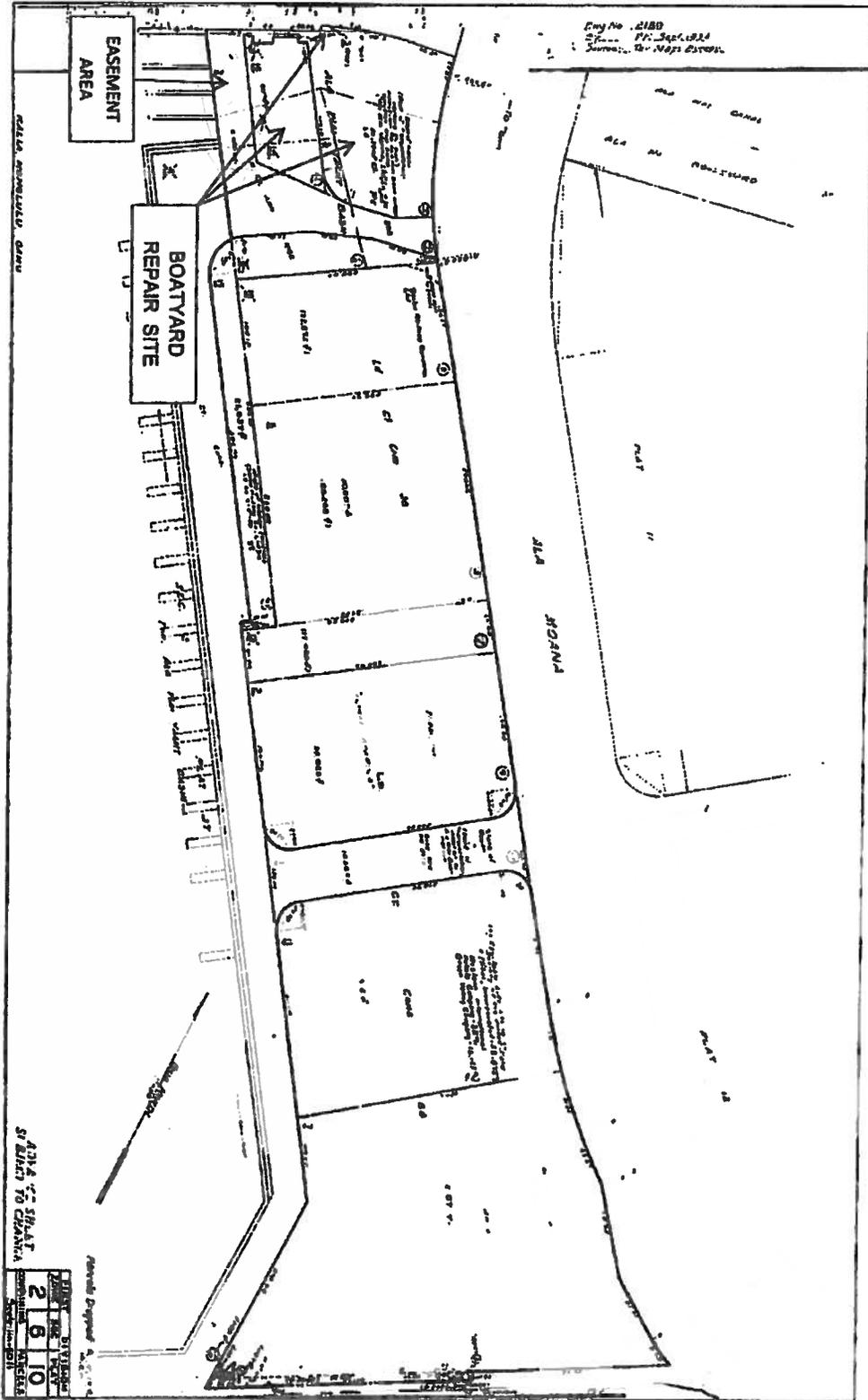
**EXHIBIT "A"**

**BOATYARD REPAIR SITE AND FUEL DOCK SITE**

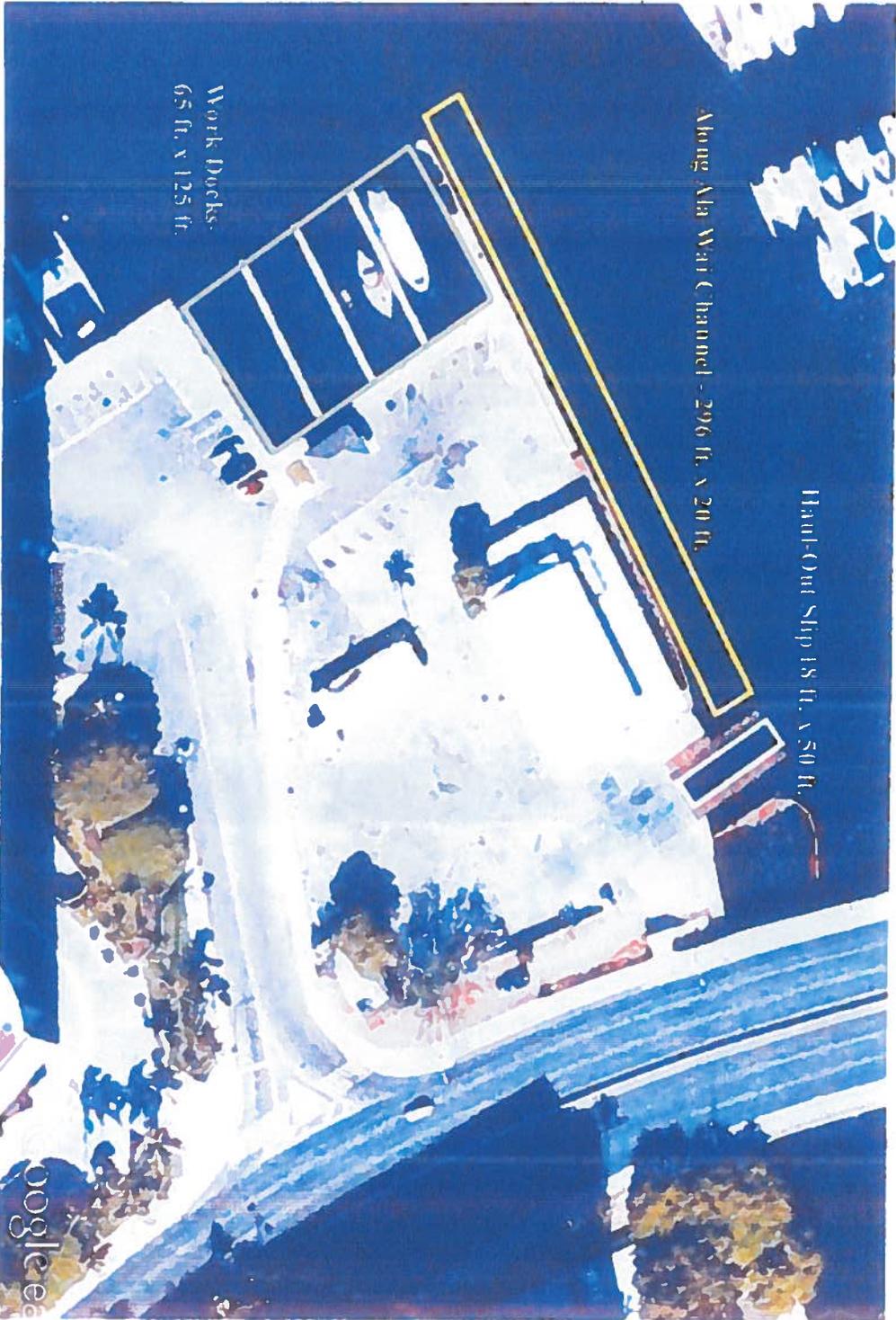


**EXHIBIT "B-1"**

**BOATYARD REPAIR SITE & EASEMENT AREA**



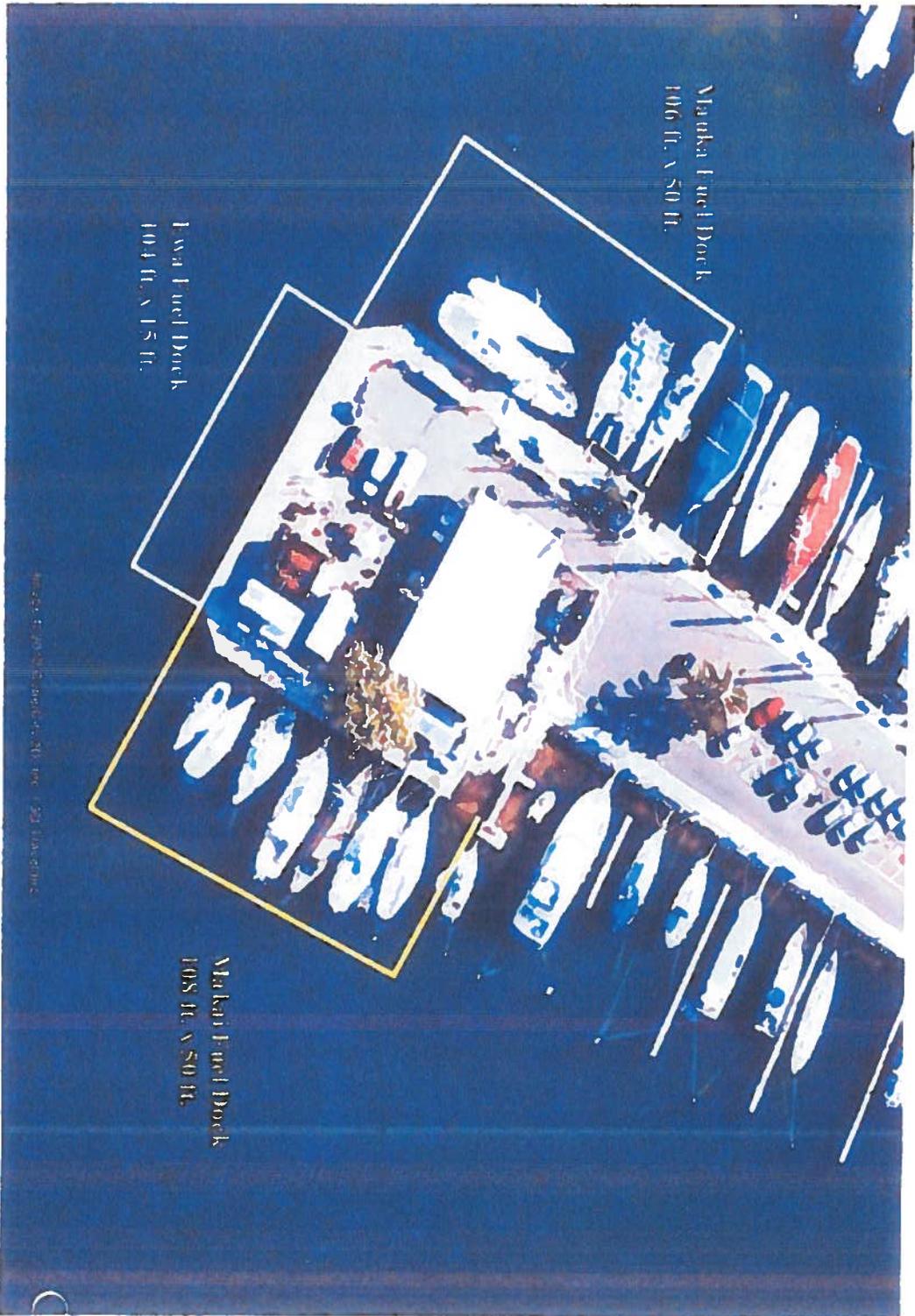
**EXHIBIT "B-2"**  
 TMKs 2-6-010:003 (por), 5 & 16



**SUBMERGED LANDS ADJACENT TO BOATYARD REPAIR SITE**

**Total: 14,945 sq ft (approx)**

**EXHIBIT "C"**



**SUBMERGED LANDS ADJACENT TO FUEL DOCK SITE**

**Total: 12,260 sq ft (approx)**

**EXHIBIT "D"**



BOATYARD - GROUND SITE PLAN

L 10

O'HOANA STREET

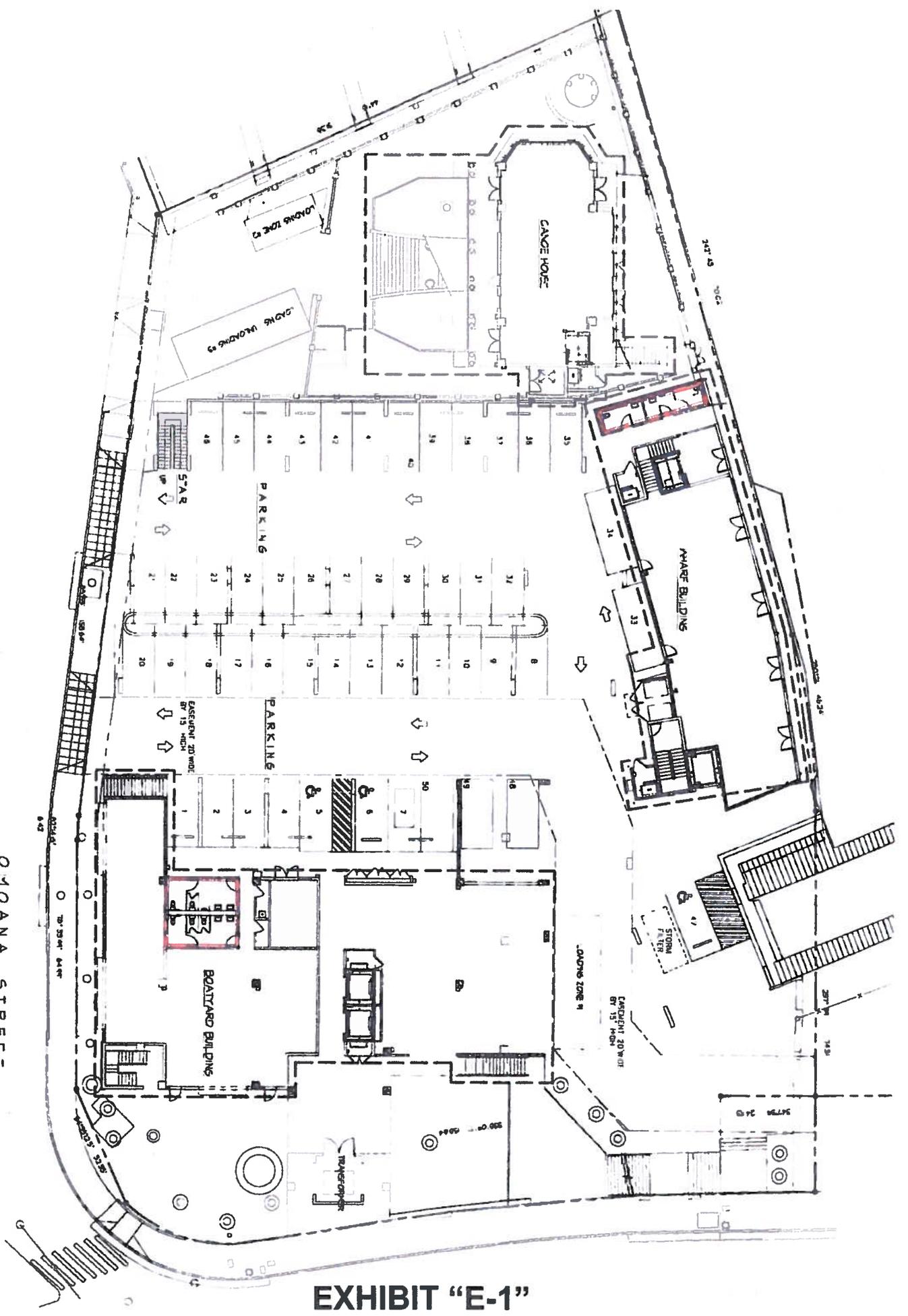
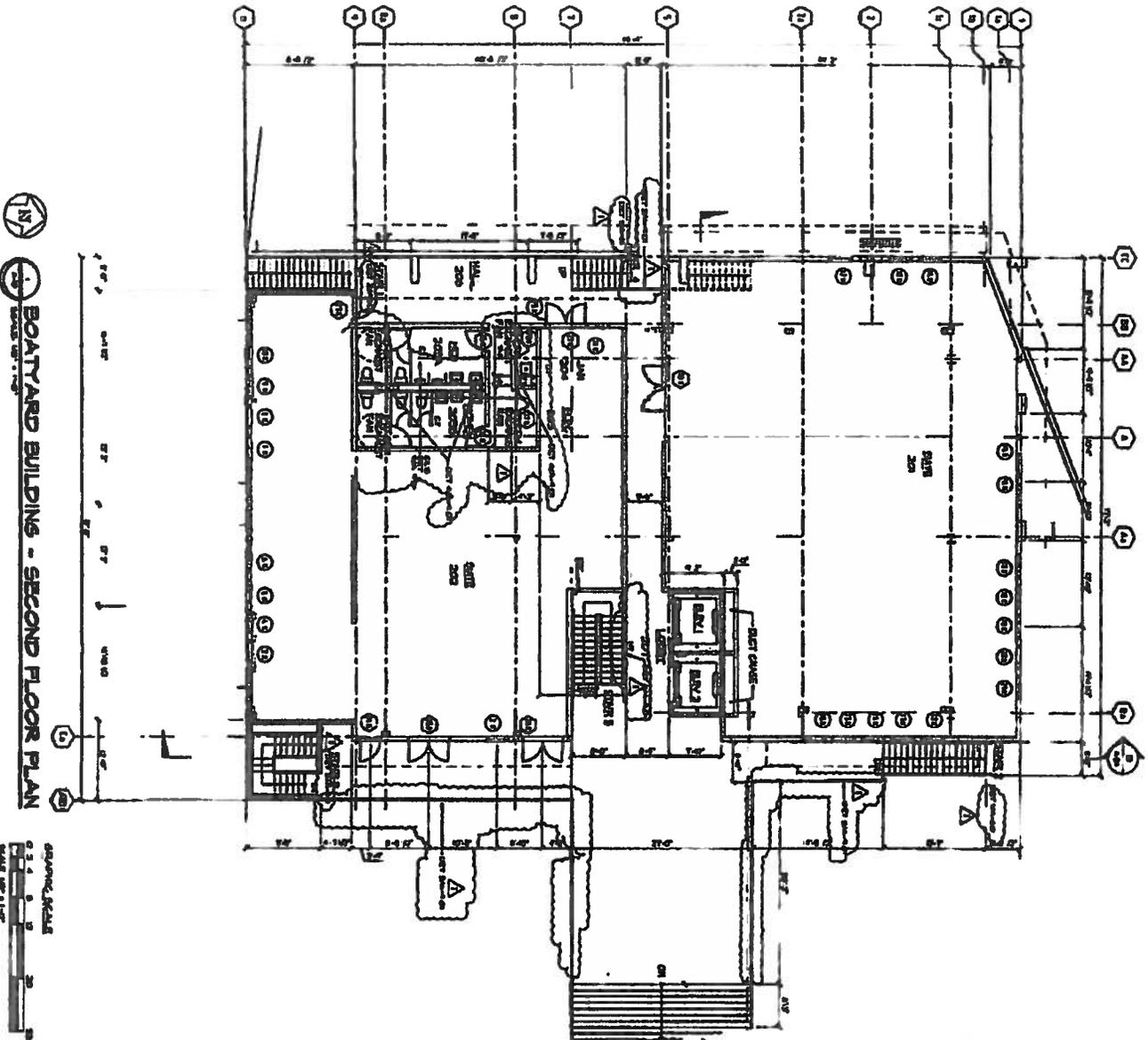


EXHIBIT "E-1"

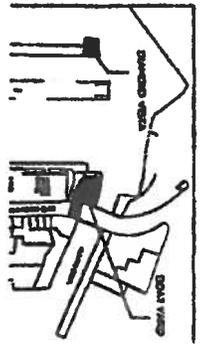
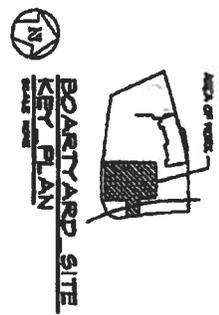




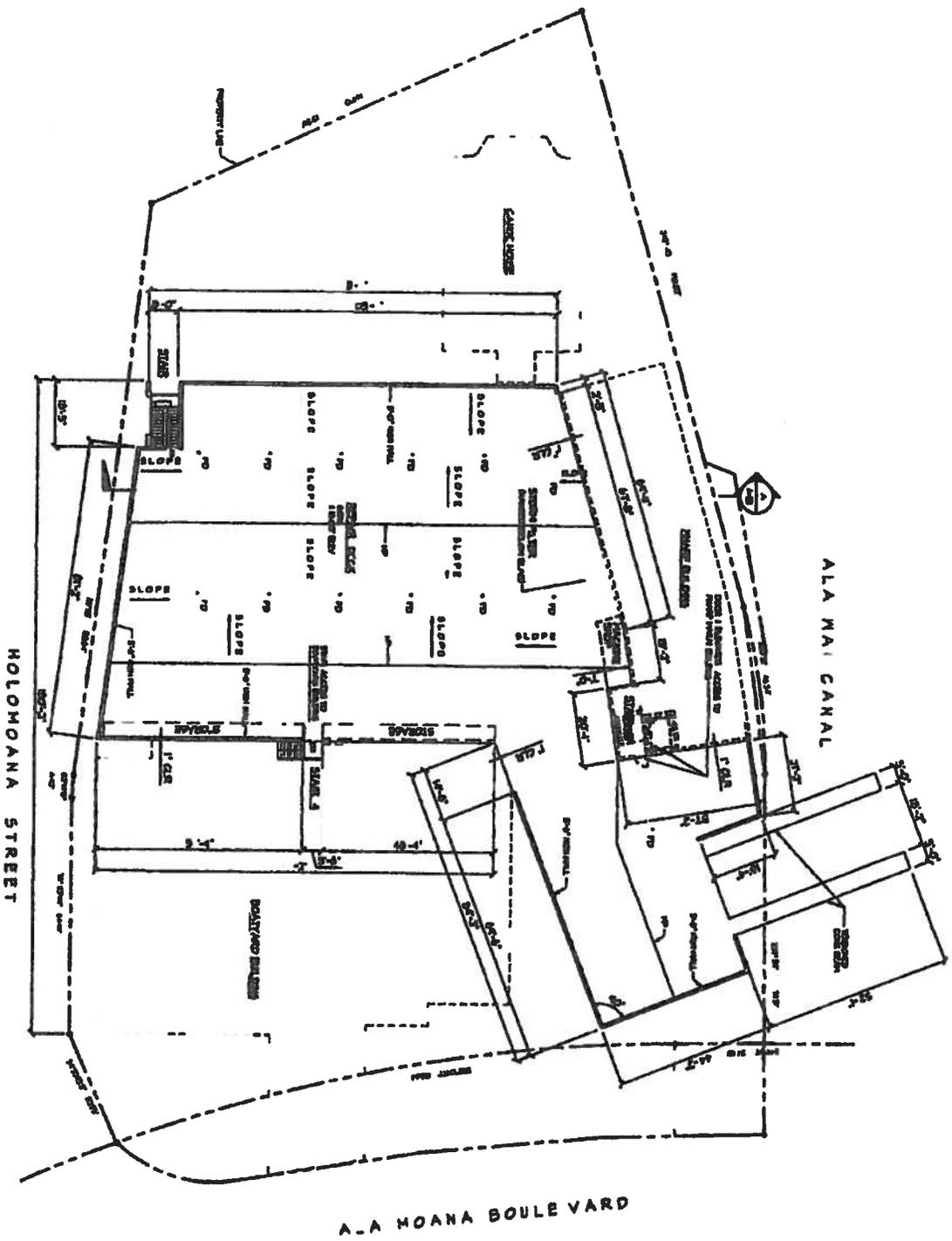
**BOATYARD BUILDING - SECOND FLOOR PLAN**



**WALL LEANED**  
 SEE SET FOR CONSTRUCTION  
 CONCRETE WALL  
 CONCRETE WALL  
 CONCRETE WALL  
 CONCRETE WALL



**EXHIBIT "E-2"**



**BOATYARD REPAIR DECK PLAN**



GRAPHIC SCALE

ALA MOANA BOULEVARD

ALA MAI CANAL

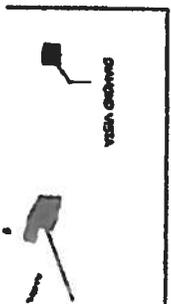
HOLOMOANA STREET

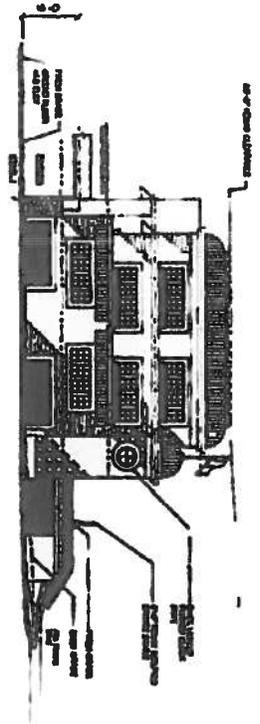
**BOATYARD ST. KEY PLAN**



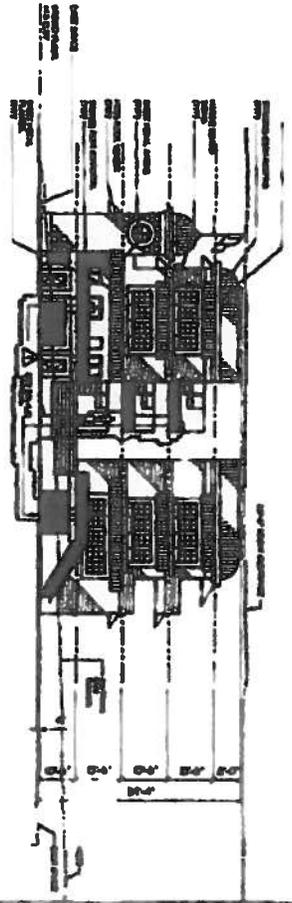
AREA OF WORK

**EXHIBIT "E-3"**

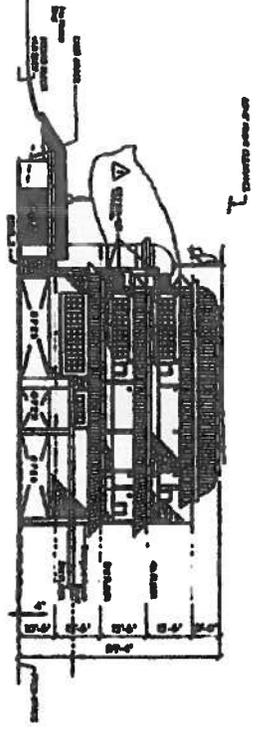




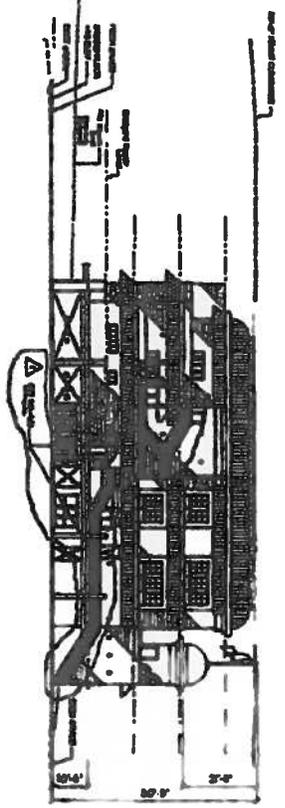
BOATYARD BUILDING - SOUTH ELEVATION



BOATYARD BUILDING - EAST ELEVATION



BOATYARD BUILDING - NORTH ELEVATION



BOATYARD BUILDING - WEST ELEVATION

EXHIBIT "E-4"





DIAMOND VISTA BUILDING

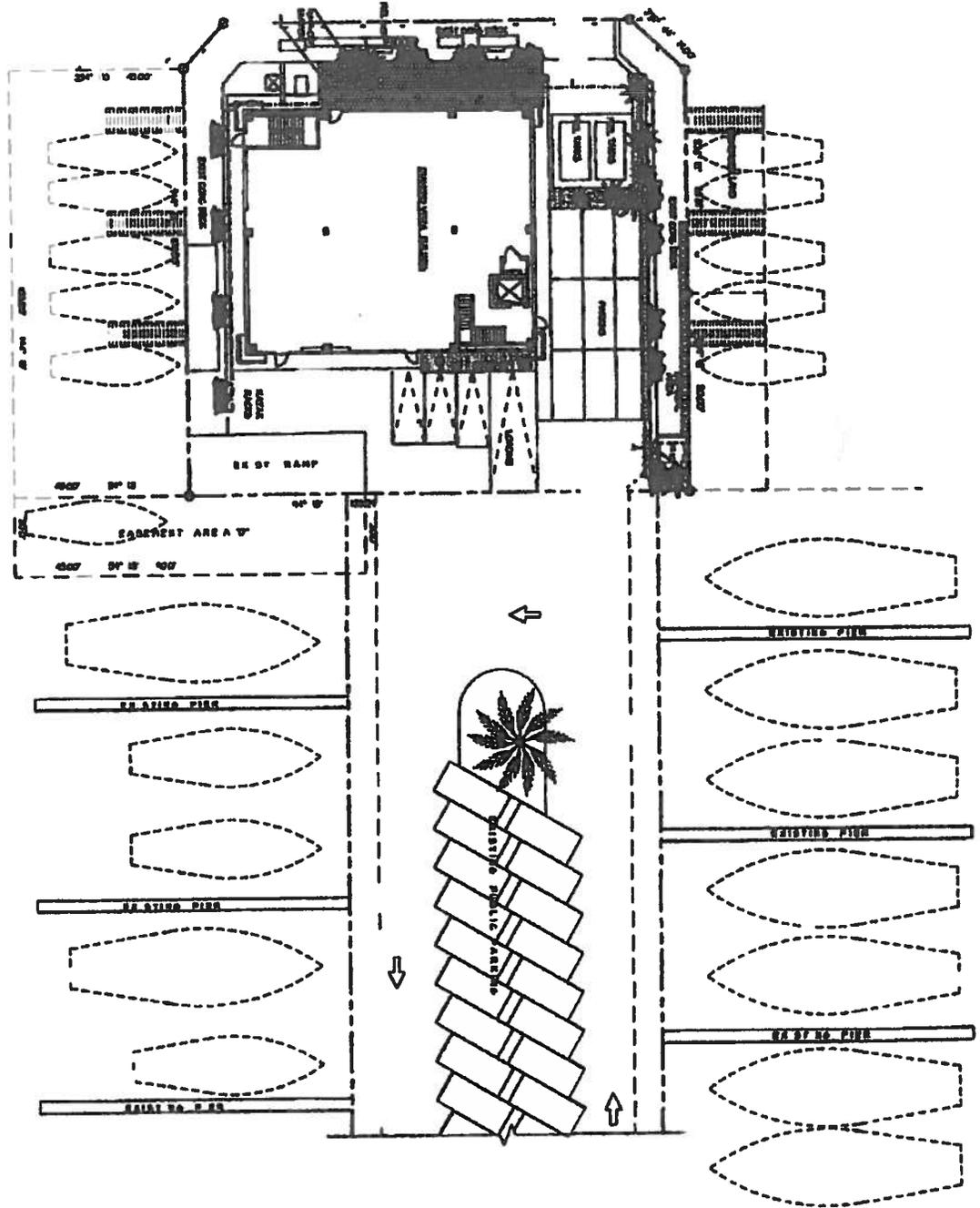
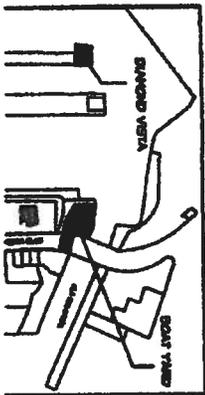
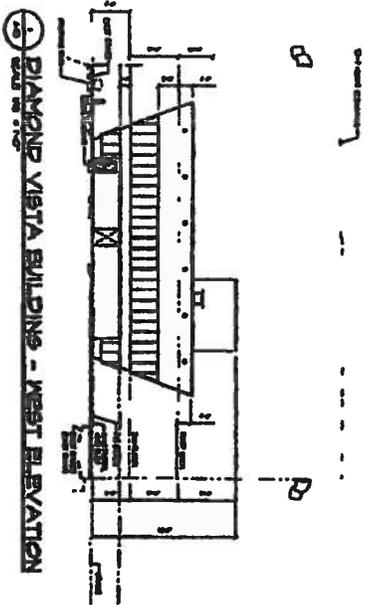
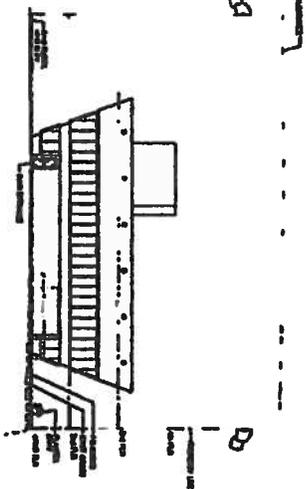


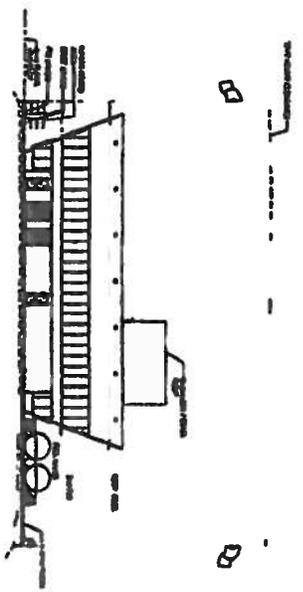
EXHIBIT "F-1"



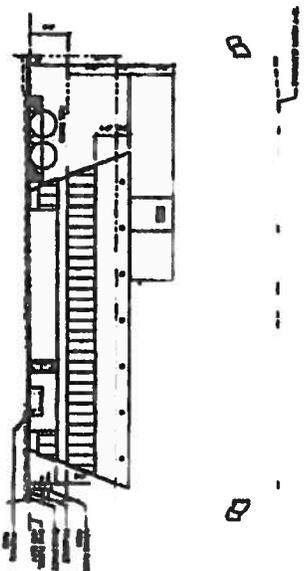
② PLAYONG VISTA BUILDING - WEST ELEVATION



③ PLAYONG VISTA BUILDING - EAST ELEVATION



④ PLAYONG VISTA BUILDING - SOUTH ELEVATION



⑤ PLAYONG VISTA BUILDING - NORTH ELEVATION

EXHIBIT "F-2"



ORIGINAL

Approved by the Governor  
on JUL 7 2011

HOUSE OF REPRESENTATIVES  
TWENTY-SIXTH LEGISLATURE, 2011  
STATE OF HAWAII

ACT 197  
H.B. NO. 1566  
H.D. 1  
S.D. 1  
C.D. 1

---

## A BILL FOR AN ACT

RELATING TO SMALL BOAT HARBORS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. The department of land and natural resources,  
2 through its division of boating and ocean recreation, operates  
3 and manages twenty-one harbors, fifty boat ramps, two thousand  
4 one hundred twenty-two moorings and berths, and nineteen piers  
5 spread throughout the various counties of the State. The  
6 legislature further finds that these ocean recreation facilities  
7 are in short supply and in many cases are in dire need of long  
8 overdue repair and maintenance. Some facilities are in such  
9 disrepair that they cannot be safely used.

10 One of these facilities, the Ala Wai boat harbor, has been  
11 a recent recipient of some badly needed repair and replacement  
12 of floating docks; however, the need for further maintenance at  
13 Ala Wai and other boat harbors remains unfulfilled. In spite of  
14 its needs, the Ala Wai boat harbor includes certain assets  
15 within its facilities that are underused and if properly  
16 developed could potentially generate revenues that would enable  
17 not only its own continued improvement and maintenance but the  
18 improvement and maintenance of the rest of the facilities now

HB1566 CD1 HMS 2011-4057

**EXHIBIT "G"**  
(Excerpts of Act 197)

1 operated by the division of boating and ocean recreation of the  
2 department of land and natural resources.

3 In these times of economic malaise and with the State  
4 facing a massive budget deficit over the next biennium, a  
5 further decline in the State's small boat harbors would be a  
6 huge loss that the State cannot allow.

7 The purpose of this Act is to:

- 8 (1) Allow the limited issuance of commercial use permits  
9 for vessels with assigned moorings in Ala Wai and  
10 Keehi boat harbors;
- 11 (2) Provide for future moorage fees to be established by  
12 appraisal by a state-licensed appraiser and assigned a  
13 schedule B rate, while existing mooring holders remain  
14 in a schedule A class that shall equal schedule B  
15 rates over a three-year period; and
- 16 (3) Direct the department of land and natural resources to  
17 use the request for proposals process to enter into a  
18 public-private partnership for the development of  
19 portions of Ala Wai boat harbor facilities that are  
20 presently underused to maximize the revenue potential  
21 from its facilities.

1 SECTION 8. (a) Pursuant to section 200-2.5, Hawaii  
2 Revised Statutes, the department of land and natural resources  
3 is directed to lease fast lands and submerged lands at the Ala  
4 Wai boat harbor using the request for proposals process for the  
5 public private development, management, and operation of areas  
6 of Ala Wai boat harbor.

7 (b) The fast lands and submerged lands of the Ala Wai boat  
8 harbor that may be leased include the lands described in section  
9 200- , Hawaii Revised Statutes.

10 (c) The permissible uses under the lease issued pursuant  
11 to subsection (a) shall include:

12 (1) A minimum of not less than one hundred twenty berths  
13 for vessels; provided that:

14 (A) Notwithstanding section 200-9(b), Hawaii Revised  
15 Statutes, not more than forty berths shall be  
16 available for vessels used for purposes of  
17 recreational boating activities that are also the  
18 principal habitation of the owners;

19 (B) Not more than thirty berths, including those  
20 allowed pursuant to section 200-9(c), Hawaii  
21 Revised Statutes, shall be available for vessels  
22 issued commercial use permits; and

- 1 (C) All berths provided under this paragraph shall be  
2 made available to the public pursuant to rules of  
3 the department of land and natural resources,  
4 with moorage fees to be determined by the  
5 developer;
- 6 (2) Office space for use by the division of boating and  
7 ocean recreation of the department of land and natural  
8 resources;
- 9 (3) Vehicular parking, including parking stalls for use by  
10 the division of boating and ocean recreation of the  
11 department of land and natural resources and for  
12 public metered parking;
- 13 (4) Commercial uses, including but not limited to  
14 restaurants, retail stores, marine-supplies stores,  
15 and sundry stores, to be made available to the public;
- 16 (5) Hotel, residential, and timeshare uses;
- 17 (6) Training facilities for ocean recreation and support  
18 facilities for ocean recreation;
- 19 (7) Any uses described or referred to in the request for  
20 qualifications or request for proposals issued by the  
21 division of boating and ocean recreation of the

1 department of land and natural resources on November  
2 25, 2008;

3 (8) Vessel-fueling facilities;

4 (9) Vessel haul-out, storage, and repair facilities; and

5 (10) Deep seawater air-conditioning plants.

6 (d) The lease shall not exceed a maximum term of sixty-  
7 five years and shall provide for:

8 (1) A minimum lease rent that is the greater of a  
9 commercially acceptable percentage of the gross  
10 receipts of the lessee from the developed leased  
11 premises or a fair return on the fair market value of  
12 the vacant leased premises, as determined by appraisal  
13 by a state-licensed appraiser approved by the  
14 department, with reasonable periodic step-ups in the  
15 minimum lease rent over the term of the lease; and

16 (2) A three-year development period with a fixed reduced  
17 lease rent.

18 (e) Notwithstanding chapter 171 and section 190D-33,  
19 Hawaii Revised Statutes, all revenues from the lease shall be  
20 deposited in the boating special fund.

21 (f) Notwithstanding chapters 171 and 190D, Hawaii Revised  
22 Statutes, the lease of fast lands and submerged lands of Ala Wai

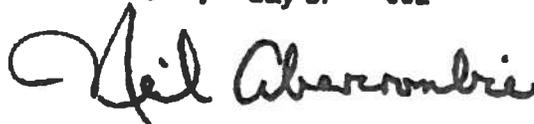
1 boat harbor shall be subject to section 200-2.5(a), Hawaii  
2 Revised Statutes.

3 (g) Notwithstanding section 171 53, Hawaii Revised  
4 Statutes, the prior authorization of the legislature by  
5 concurrent resolution shall not be required for the lease of  
6 submerged lands and lands beneath tidal waters at the Ala Wai  
7 boat harbor.

8 SECTION 9. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 10. This Act shall take effect on July 1, 2011.

APPROVED this 7 day of JUL , 2011



GOVERNOR OF THE STATE OF HAWAII



**Table 21-9.6(B)**  
**Waikiki Special District Precinct**  
**Development Standards**

Development standard		Precinct		
		Apartment	Resort Mixed use	Public
Minimum lot area (square feet)		10,000	10,000	n/a
Minimum lot width and depth (feet)		50	50	
Yards <sup>1</sup> (feet)	Front	15 <sup>2</sup>	15-20 <sup>2</sup>	As approved by director
	Side and rear	10 <sup>2</sup>	0-10 <sup>3</sup>	
Maximum density (FAR) apartment precinct only <sup>4,5</sup>		Lot Area (sq. ft.) Less than 20,000 20,000 or more	FAR calculation FAR = (.00003 x lot area) + 1.3 FAR = 1.9	
Maximum density (FAR) other precincts		n/a	1.0 <sup>5</sup>	As approved by director
Minimum open space (percent of zoning lot)		FAR less than 1.5 = 35% of lot FAR 1.5 or more = 50% of lot	0.00	n/a
Open space bonus	Available	No	Yes – See Sec. 21-9.80-6(c)(1)	
	Max FAR	n/a	3.5 <sup>5</sup>	
Maximum height (feet)		Per zoning map and Exhibit 21-9.15 or as provided in Sec. 21-9.80-4(g)(3)		As approved by director
Transitional height setbacks		Per Sec. 21-9.80-5(c)(2)	Per Sec. 21-9.80-6(c)(2)	

n/a = Not applicable

<sup>1</sup> Except for necessary access drives and walkways, all yards shall be landscaped.

<sup>2</sup> An average of 20 feet for zoning lots fronting Kuhio Avenue, Kalakaua Avenue, Ala Moana and Ala Wai Boulevard within the resort mixed use and resort commercial precincts, and an average of 15 feet for all other zoning lots, provided:

(1) The average yard may vary between the front property line and twice the minimum front yard so long as the yard area street-side of the required yard is equal to the yard area behind the required yard, (2) the yard configuration shall be integrated to the extent feasible with yards and open spaces provided by adjoining lots, and (3) the undulation of the setback line shall result in a design acceptable by the director (see Figure 21-9.1).

<sup>3</sup> Except for zoning lots adjoining an apartment precinct, side and rear yards shall not be required. Ten feet where a zoning lot adjoins an apartment precinct, unless there is a parking structure or lot on the adjacent apartment precinct zoning lot located within 10 feet of the common property line for more than 75 percent of the length of the common property line. In this case, there shall not be a required yard.

<sup>4</sup> See Sec. 21-9.80-5(c)(1) for commercial use location standards within the apartment mixed use subprecinct.

<sup>5</sup> In computing the permissible floor area, the FAR may be applied to the zoning lot area, plus one-half the abutting right-of-way area of any public street or alley. Portions of buildings devoted to lanais and balconies shall not count as floor area. (Added by Ord. 99-12; Am. Ord. 03-38, 12-1)

**EXHIBIT "I"**

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813  
TELEPHONE (808) 768 8000 • FAX (808) 768 6041  
DEPT WEB SITE [www.honolulu.gov](http://www.honolulu.gov) • CITY WEB SITE [www.honolulu.gov](http://www.honolulu.gov)



PETER B CARLISLE  
MAYOR

DAVID K TANOUÉ  
DIRECTOR

JIRO A SUMADA  
DEPUTY DIRECTOR

2012/ELOG-31(JS)

March 5, 2012

Mr. Edward R. Underwood, Administrator  
Department of Land and Natural Resources  
Division of Boating and Ocean Recreation  
333 Queen Street, Suite 300  
Honolulu, Hawaii 96813

Dear Mr. Underwood:

Subject: Waikiki Landing Project, Honey Bee USA, Inc.  
1651 and 1671 Ala Moana Boulevard and  
Ala Wai Yacht Harbor- Waikiki/Kalia  
Tax Map Key 2-6-10: 5, 16, and Portion of 3 (Boatyard Repair Site)  
2-3-37: 20 (Fuel Dock Site)

Thank you for your letter (received February 24, 2012) affirming that Act 197 authorizes the Board of Land and Natural Resources (BLNR) to exempt itself from the Land Use Ordinance (LUO), and claiming immunity from County zoning regulations through the State's sovereign powers.

In our meeting of November 23, 2011, we agreed that the Waikiki Landing Project (Project) would not be required to comply with the development standards of the Waikiki Special District Public Precinct if we receive such affirmation. We understand that the Project will be reviewed by the BLNR based on the development standards of the Waikiki Special District Resort Mixed Use Precinct and the BLNR will allow similar uses.

Please be advised that exemption from the LUO means exemption from a zoning review. The Department of Planning and Permitting will not review building plans for compliance with the development standards of the Waikiki Special District, Resort Mixed Use Precinct, or any other zoning district. Therefore, we confirm that a Special District Permit will not be required. Development plans for the Project, including sewer connection, subdivision and building permit plans, will be reviewed for compliance with all applicable standards and regulations.

If you have any questions, please contact me at 768-8000.

Very truly yours,

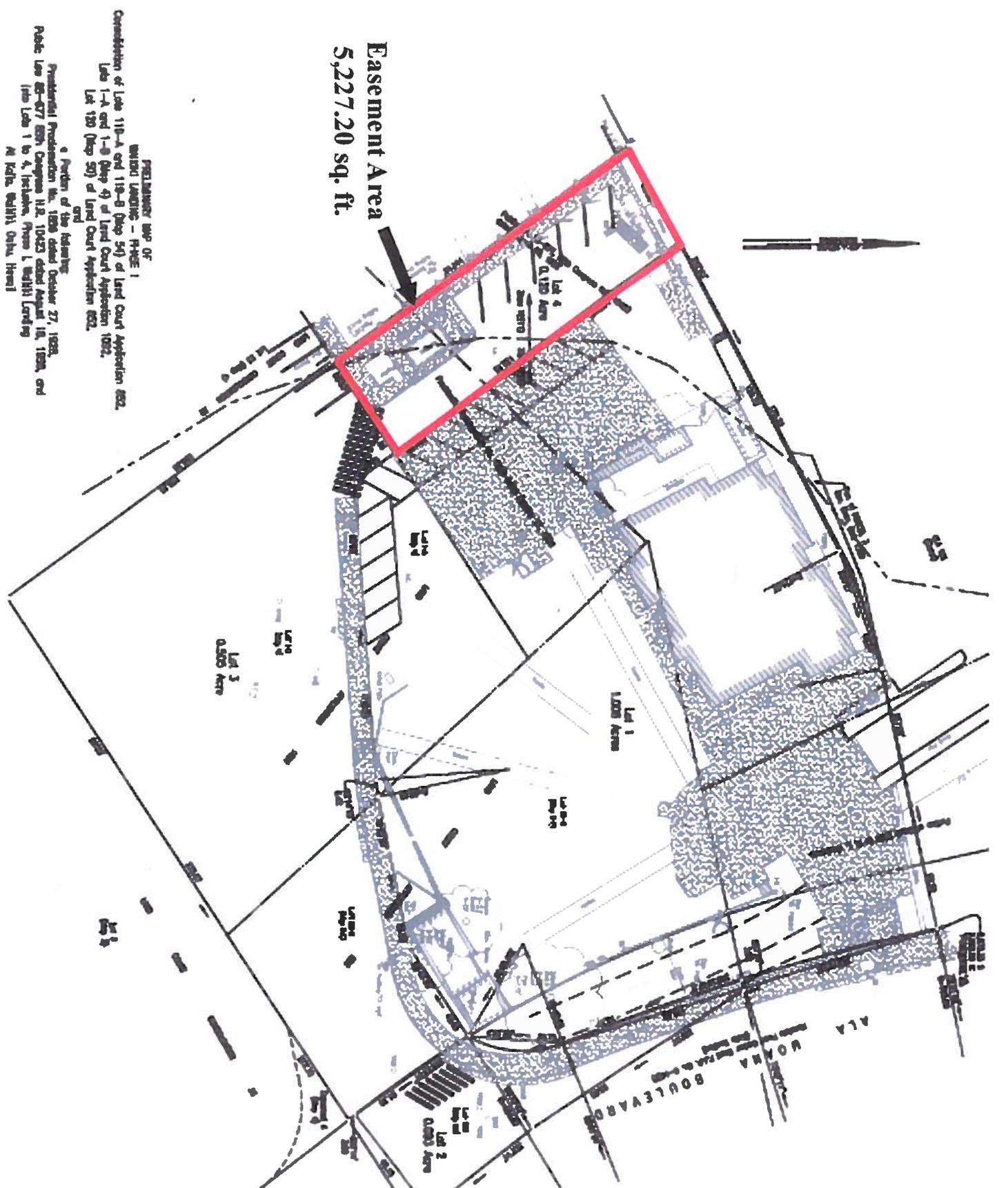
A handwritten signature in black ink, appearing to read "David K. Tanoue", is written over a horizontal line.

David K. Tanoue, Director  
Department of Planning and Permitting

DKT:nw  
Doc. 905303

MnR i"12H 1-14BOR DIU

**EXHIBIT "J"**



**Easement Area**  
**5,227.20 sq. ft.**

**PRELIMINARY MAP OF  
 UNDIVIDED LANDS - PHASE 1**

Consolidation of Lots 11B-4 and 11B-8 (Map 50) of Land Court Application 802,  
 Lots 1-4 and 1-9 (Map 4) of Land Court Application 1002,  
 Lot 120 (Map 50) of Land Court Application 802,  
 and

a Portion of the following:  
 Presidential Proclamation No. 1828 dated October 27, 1928,  
 Public Law 85-677 85th Congress H.R. 10423 dated August 16, 1958, and  
 (the Lots 1 to 4, Sections, Phase 1, UNDIVIDED Lands  
 at Kaha, OAHU, Oahu, Hawaii)

**EXHIBIT "K"**