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DEPARTMENT OF TRANSPORTATION | KA 'OIHANA ALAKAU
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

January 23, 2025

Mr. Edwin H. Sniffen, Director
Department of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813

KAUAI

Request for Authorization to issue a Construction-Right-of-Entry (CROE) and Revocable Permit (RP), to the County of Kauai, Department of Public Works, for Niumalu Temporary Bridge, situated at Nawiliwili Harbor, island of Kauai, Tax Map Key (TMK) Nos. (4) 3-2-003:007 (Portion) and (4) 3-2-003:043 (Portion), Governor's Executive Order No. 3134

LEGAL REFERENCE:

Hawaii Revised Statutes (HRS), Sections 171-6, 171-11, 171-13, 171-17, 171-55, and 171-59, as amended.

APPLICANT:

The County of Kauai, Department of Public Works (Applicant) is an agency of the County of Kauai, whose mailing address is 4444 Rice Street, Lihue, Hawaii 96766.

CHARACTER OF USE:

To allow Applicant and its permitted agents (assignees, contractors, subcontractors, and agents) the Right-to-Enter upon and take possession of the premises to construct, operate, maintain, repair and remove the temporary bridge, for ancillary equipment and barriers, and together with the right from time to time, and at all reasonable times to enter upon the areas for the above-mentioned purposes and maintenance thereof, and also, the right of ingress, egress, and regress over all the Hawaii Department of Transportation (HDOT) roads leading to the areas.

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LOCATION:

Portion of Government lands at Nawiliwili Harbor, island of Kauai, TMK Nos. (4) 3-2-003:007 (Portion) and (4) 3-2-003:043 (Portion), as shown on enclosed Exhibit A.

ZONING:

State Land Use Commission:	Urban
County of Kauai:	General Industrial

AREA: See enclosed Exhibit A

Approximately 5,000 square feet as shown in Exhibit A.

TERMS AND CONSIDERATION, CONSTRUCTION RIGHT-OF-ENTRY:

Until the construction, operation, maintenance, repair and removal of the Niumalu temporary bridge as may be necessary for the completion of the replacement of Niumalu bridge as shown in Exhibit A, consideration to be gratis – pursuant to HRS, Section 171-95.

TERMS AND CONSIDERATION, REVOCABLE PERMIT:

Term to be determined by the Director of Transportation, consideration to be gratis - pursuant to HRS, Section 171-95.

LAND TITLE STATUS:

Governor's Executive Order No. 3411 for Harbor related purposes, to be under the control and management of the State of Hawaii, Department of Transportation.

TRUST LAND STATUS:

Subsection 5 (b).

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This use is exempt from the Office of Planning and Sustainable Development, and Environmental Review Program requirements pursuant to Hawaii Administrative Rules (HAR), Subchapter 11-200.1, which exempts the following:

“Exemption Type 3, Part 1: Modification of existing facilities or installation of new equipment.”

The HDOT deems the action as de minimis and exempts it from the preparation of an exemption notice in accordance with HAR, Subchapter 11-200.1-16 (b). The exemption declaration for the action described above, based on the Exemption List for the HDOT, reviewed and concurred to by the Environmental Advisory Council on February 1, 2022, is as follows:

Exemption Type 3, Part 1:

- No. 22. "Installation of temporary parking and temporary storage of construction equipment and materials on HDOT property."

APPLICANT REQUIREMENTS:

The Applicant shall:

1. Ensure that its Contractors and Subcontractors shall obtain the following insurance during the term of the CROE and include as additional insured:
 - a. Bodily injury or property damaged caused by Applicant's or its permitted agent's negligence in the form of a general liability insurance policy with a combined single limit of one million dollars (\$1,000,000.00) for bodily injury and damage per occurrence, and two million dollars (\$2,000,000.00) in the aggregate.
 - b. Automobile insurance for any vehicles used to access and that are on the Premises with a minimum limit of one million dollars (\$1,000,000.00) per occurrence.
 - c. All insurance required to be maintained by Applicant and its permitted agents hereunder shall be pursuant to policies in form and substance consistent with policies of a similar type issued to businesses similar to Applicant and its permitted agents and issued by companies of sound and adequate financial responsibility, who are allowed to do business in the State of Hawaii, all as reasonably satisfactory to the State.
 - d. The Applicant shall include the State as an additional insured on the policies or provide other assurances, reasonably acceptable to the State, that the Applicant's insurance policies shall be primary, not in excess of or pro rata and noncontributing as to add with any other insurance held or maintained by the State, for any injury or claim arising on the Premises due to Applicant's negligence or the negligence of its permitted agents. The "State" shall include the State's officers and employees acting within the scope of their duties.

- e. The Applicant shall provide proof of all required insurance to the State either by the production of an insurance certificate or some other written form reasonably acceptable to the State.
2. Use due care for public safety and agrees to defend, hold harmless, and indemnify the State, its officers, agents and employees, or any person acting for and on its behalf, from and against all claims or demands for damage, including claims for property damage, personal injury, or death, arising on, about or in connection with the exercise of the rights and privilege herein granted, caused directly or approximately by any failure on the part of the Applicant in its use of the Premises.
3. Take all necessary steps to ensure that any of its work involving the Premises will not cause any permanent damage to property or improvements situated on, adjacent to, or near the Premises.
4. Take all necessary steps to ensure that the work done on the Premises does not interfere with any of the operational activities of any adjacent property owners.
5. Coordinate all activities with the HDOT's Staff.
6. At all times during the term of the CROE, comply with all applicable laws, statutes, ordinances, rules and regulations, whether State, County, or Federal, which are now or hereafter may be in effect.
7. Adhere to other terms and conditions as may be prescribed by the Director of Transportation.

REMARKS:

Following the flooding event in April, County of Kauai consultants inspected county bridges across the island and determined that the Niumalu Bridge was unsafe for motorists, prompting an immediate shutdown. The bridge has permanent damage which will require a full replacement. During the construction of the replacement bridge, a temporary bridge will be constructed and used so Niumalu Road can be accessed. The temporary bridge will be removed when construction of the replacement bridge is completed.

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RECOMMENDATION:

Based on this submittal, testimony and facts presented, the HDOT recommends the issuance of a CROE and RP to the Applicant under the terms and conditions cited above and other terms and conditions as may be prescribed by the Director of Transportation to best serve the interest of the State.

Sincerely,



DREANALEE K. KALILI
Deputy Director of Transportation for Harbors

Enclosures

Area – Niumalu Temporary Bridge Work



Area – Approximately 5,000 square feet of unpaved, unimproved land.