

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF STATE PARKS
Kalanimoku Building, Room 310
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96809

March 17, 2021

Mr. Jade T. Butay, Director
Hawaii Department of Transportation
Aliiimoku Building, Room 509
869 Punchbowl Street
Honolulu, Hawaii 96813

Dear Mr. Butay:

Subject: Right-of-Entry Permit to Hawaii Department of Transportation, Highways Division to use a portion of the Wailua River State Park in conjunction with the Wailua River Bridge proposal project at Wailua River State Park, Kapa'a, Kauai, Hawaii.

We are in receipt of your request for the issuance of a Right-of-Entry Permit (ROE) to the State of Hawaii, Department of Land and Natural Resources, Division of State Parks (Department) property located at Wailua River State Park (WRSP), Kapa'a, Kauai, Hawaii, which is further identified by Tax Map Keys: (4)3-9-006:012, -006:029, 004:006, 002:021, and (4)1-004:008 (Portions).

The Division of State Parks Administrator, Curt A. Cottrell, hereby grants a non-exclusive ROE to Hawaii Department of Transportation, Highways Division (HDOT), its consultants, contractors and/or persons acting for or on its behalf, to utilize the subject property identified by Tax Map Keys: (4)3-9-006:012, -006:029, 004:006, 002:021, and (4)1-004:008 (Portions) as shown in **Exhibit A**, attached hereto and made a part hereof, and known as the Premises, to use a portion of WRSP in conjunction with the Wailua River Bridge proposal project, subject to the following terms and conditions:

1. The ROE shall be effective upon the signed acceptance of the terms and conditions herein and expire twelve (12) months thereafter or upon completion to replacing the piers and piles while protecting the existing bridge deck and retaining the deck in place during the construction project, if earlier than twelve (12) months, whichever occurs sooner.

2. HDOT shall ensure its consultants, contractors and/or persons acting for or on its behalf, shall procure at their own cost and expense, and maintain during the entire period of this ROE, from an insurance company or companies licensed or authorized to do business in the State of Hawai'i with an AM Best rating of not less than "A-VIII" or other comparable and equivalent industry rating, a policy or policies of general liability insurance or its equivalent, 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 Hawai'i as an additional insured and a copy of the policy or other documentation required by the State of Hawai'i shall be filed with the Department. The insurance shall cover the entire premises, including all buildings, improvements, grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of by the HDOT and its consultants, contractors and/or persons acting for or on its behalf. HDOT shall ensure its consultants, contractors and/or persons acting for or on its behalf shall furnish the Department with a certificate(s) showing the policy(s) to be initially in force, keep certificate(s) or other documentation required by the Department on deposit during the entire ROE period and furnish a like certificate(s) or other documentation required by the Department 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 Department. The Department shall retain the right at any time to review the coverage, form and amount of the insurance required. If, in the opinion of the Department, the insurance provisions in this ROE do not provide adequate protection for the Department, the Department may require HDOT's consultants, contractors and/or persons acting for or on its behalf to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Department's requirements shall be reasonable but 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 Department shall notify HDOT in writing of changes in the insurance requirements and HDOT consultants, contractors and/or persons acting for or on HDOT's behalf shall deposit with the Department, copies of acceptable insurance policy(s) or other documentation required by the Department thereof with the Department incorporating the changes within thirty (30) days receipt of the notice. The procuring of the required policy(s) of insurance shall not be construed to limit HDOT consultants, contractors and/or persons acting for or on HDOT's behalf, liability under this ROE nor to release or relieve HDOT consultants, contractors and/or persons acting for or on its behalf of the indemnification provisions and requirements of this ROE. Notwithstanding the policy(s) of insurance, HDOT consultants, contractors and/or persons acting for or on its behalf shall be obligated for the full and total amount of any damage, injury, or loss caused by HDOT consultants, contractors and/or persons acting for or on its behalf, negligence or neglect connected with this ROE.

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

State of Hawai'i, Department of Land and Natural Resources
Division of State Parks - Kalanimoku Building

Attn.: Property Management
1151 Punchbowl Street, Room 310
Honolulu, HI 96809

3. At all times herein, HDOT, its consultants, contractors and/or persons acting for or on its behalf shall keep the ROE area or premises in a strictly clean, sanitary and orderly condition. Trash and construction materials shall be disposed of at a landfill or appropriate disposal site located off the premises, at HDOT's sole cost and expense.
4. HDOT, its consultants, contractors and/or persons acting for or on its behalf shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the ROE premises, now in force or which may be in force.
5. HDOT, its consultants, contractors and/or persons acting for or on its behalf shall indemnify, defend, and hold the State of Hawai'i and the Department harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: (1) any act or omission on the part of HDOT, its consultants, contractors invitees, and/or persons acting for or on its behalf relating to HDOT, its consultants, contractors invitees, and/or persons acting for or on its behalf use, occupancy, maintenance, or enjoyment of the ROE area or premises; (2) any failure on the part of HDOT, its consultants, contractors and/or persons acting for or on its behalf to maintain the ROE premises and areas adjacent thereto in HDOT, its consultants, contractors and/or persons acting for or on its behalf use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of HDOT, its consultants, contractors and/or persons acting for or on its behalf, to maintain the premises in a safe condition; and (3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of HDOT, its consultants, contractors and/or persons acting for or on its behalf, non-observance or non-performance of any of the terms, covenants, and conditions of this ROE or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.
6. HDOT, its consultants, contractors and/or persons acting for or on its behalf shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. HDOT, its consultants, consultants, and/or persons acting for or on its behalf 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 ROE premises any such materials except to use in the ordinary course of the activities of HDOT, its consultants, contractors and/or persons acting for or on its behalf, and then only after written notice is given to the Department of the identity of such materials and upon the Department's consent which consent may be withheld at the Department'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 HDOT, its consultants, contractors and/or persons acting for or on its behalf, then the HDOT, its

consultants, contractors and/or persons acting for or on its behalf shall be responsible for the cost thereof. In addition, HDOT, its consultants, contractors and/or persons acting for or on its behalf shall execute affidavits, representations and the like from time to time at the Department's request concerning HDOT, its consultants, contractors and/or persons acting for or on its behalf best knowledge and belief regarding the presence of hazardous materials on the ROE premises placed or released by HDOT, its consultants, contractors and/or persons acting for or on its behalf.

7. HDOT, its consultants, and/or persons acting for or on its behalf agree to release, indemnify, defend and hold the State of Hawai'i harmless, from any damages and claims resulting from the release of hazardous materials on the ROE premises occurring while HDOT, its consultants, contractors and/or persons acting for or on its behalf is in possession, or elsewhere if caused by HDOT, its consultants, contractors and/or persons acting for and on its behalf. These covenants shall survive the expiration or earlier termination of this ROE.


For purposes of this ROE, "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 by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

8. HDOT, its consultants, contractors and/or persons acting for or on its behalf in the exercise of this ROE shall use appropriate precautions and best practice management and measures to minimize inconveniences to surrounding residents, landowners, and the public in general.
9. HDOT, its consultants, contractors and/or persons acting for or on its behalf shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination resulting from HDOT, its consultants, contractors and/or persons acting for or on its behalf, use, maintenance, repair and operation of the ROE premises, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the ROE premises and its surroundings of such pollutant or contaminant and restore to the Department satisfaction the areas affected by such pollution or contamination and notify the Department per the address found in paragraph 2., all at HDOT, its consultants, contractors and/or persons acting for or on its behalf, own cost and expense.
10. In the event any unanticipated sites or remains such as bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls are encountered HDOT, its consultants, contractors and/or persons acting for or on its behalf shall stop work and contact the State Historic Preservation Division in Kapolei at (808) 692-8015 immediately.

11. This ROE or any rights hereunder shall not be sold, assigned, conveyed, leased, sublet, mortgaged or otherwise transferred or disposed.
12. The Department reserves the right to impose additional, but reasonable terms and conditions as it deems necessary while this ROE is in force.
13. This ROE is revocable and terminable at any time for any reason in the sole and absolute discretion of the Chairperson.
14. HDOT shall comply with all conditions in the Temporary Non-Conforming Use (TNCU) issued by the National Park Service for the non-recreational use of portions of Wailua River State Park protected under the Land and Water Conservation Fund Act of 1965. No use of any one area of the park shall exceed 180 days as stipulated in the TNCU.
15. HDOT is allowed to remove vegetation in access and staging areas located within the park in consultation with and the approved of State Parks. Mitigation measures shall be implemented to stabilize the riverbank for the duration of the project. Upon completion of work, cleared areas shall be restored to their pre-existing condition with a period of maintenance sufficient to ensure vegetation growth and ground coverage.

Should you have no objections to the above terms and conditions, kindly submit a signed copy of this signed ROE to us. If you have any other questions, please feel free to contact Mr. Sang P. Kim, property manager at 808-587-0505. Thank you.

Sincerely,

: 

Curt A. Cottrell
Administrator

WE CONCUR AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS ROE:

Jade T. Butay, DIR



By: HDOT
Its: Director
Date: Mar 22, 2021



EXHIBIT A