

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 25, 2017

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

PSF No.: 04OD-069

OAHU

Grant of Term, Non-Exclusive Easement to University of Hawaii for Pier Purposes, Kaneohe, Koolaupoko, Oahu, Tax Map Key (1) 4-6-001: seaward of 015

Amend Prior Board Actions of July 30, 2004, Item D-28, as amended by Action of February 25, 2005, Item D-4, *Set Aside to University of Hawaii for Pier Purposes, Kaneohe, Koolaupoko, Oahu TMK (1) 4-6-001:015 seaward*. The amendment is to remove all reference to either set aside or direct lease.

APPLICANT:

University of Hawaii (UH).

LEGAL REFERENCE:

Sections 171-13, and 95(a)(2) Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government submerged lands situated at Kaneohe, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-6-001: seaward of 015, as shown on **Exhibits A1 and A2**.

AREA:

8,271 square feet, more or less.

ZONING:

State Land Use District: Conservation
City & County of Honolulu LUO: R-10 [for the abutting private property]

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to use, repair, and maintain existing pier over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Gratis rent.

TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and item 46, which states, "Creation or termination of easement, covenants, or other rights in structures or land." See **Exhibit B**.

DCCA VERIFICATION:

Not applicable.

APPLICANT REQUIREMENTS:

None.

REMARKS:

The University of Hawaii Foundation (UHF) acquired TMK (1) 4-6-001:001 (Coconut

Island) and Parcels 015, 016, and 017 as shown on Exhibits A1 and A2, pursuant to a foreclosure proceeding in 1995. UH leased the lands from UHF until 2094 and operates the Hawaii Institute of Marine Biology on Coconut Island. Parcel 15 has an abutting pier used for transporting personnel and supplies to Coconut (Moku O Loe) Island.

During the process of the Kaneohe piers amnesty program commencing from 2001, staff noticed that the subject pier did not have any land disposition, notwithstanding it is sitting on State submerged lands. On July 30, 2004, under agenda item D-28, the Board authorized and recommended to the Governor the issuance of an executive order setting aside the subject lands to UH for pier purposes (see **Exhibit C**). Also, an immediate right-of-entry permit was issued to UH in 2004 pending finalization of the document.

On February 25, 2005, under agenda item D-4, the Board approved staff's recommendation of changing the land disposition manner from set aside to a direct lease for 65 years (see **Exhibit D**). However, the lease was never consummated due to delay caused by ongoing discussion on the lease conditions by both sides.

Meanwhile, subsequent to the February 2005 Board's approval granting the issuance of the direct lease, it has been the division's policy to resolve shoreline encroachments via the issuance of 55-year term, non-exclusive easements. Staff feels that consistency in handling dispositions should be maintained; and, as such, staff recommends the Board grant the issuance of a 55-year term, non-exclusive easement.

Staff did not solicit comments from other agencies other than the Office of Conservation and Coastal Lands, which indicated no objection/comment on the subject request. There are no other pertinent issues or concerns.

For housekeeping purposes, staff recommends the Board amend its prior action of July 30, 2004 (Item D-28) and February 25, 2005 (Item D-4) by removing all references to either set aside or direct lease.¹

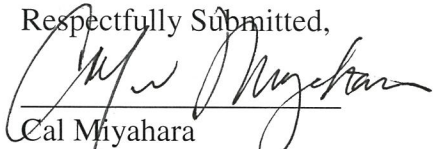
RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to the University of Hawaii covering the subject area for pier purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline

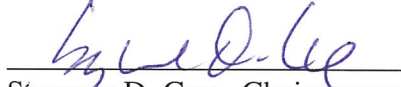
¹ The proposed amendment will leave the right-of-entry intact.

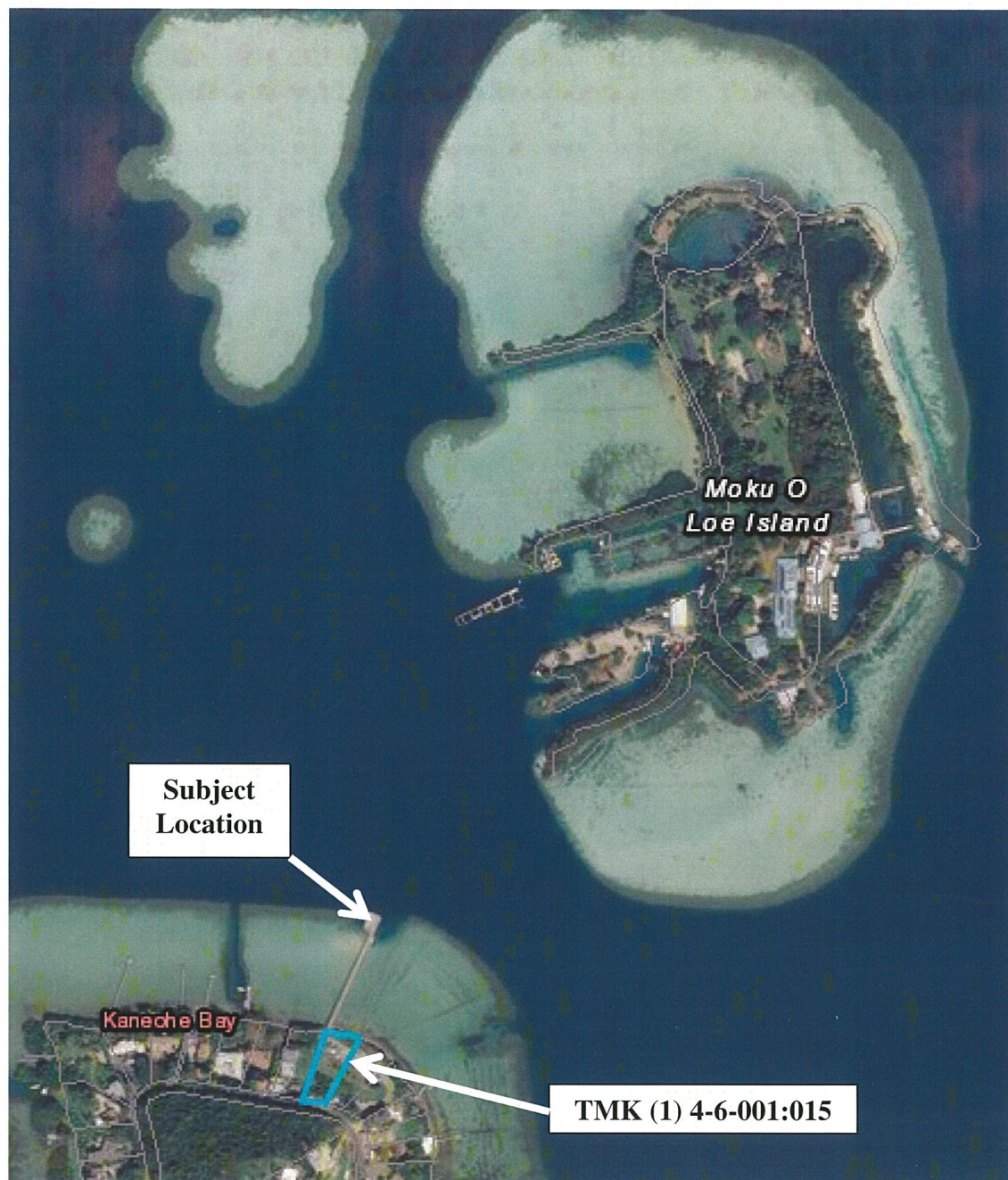
- encroachment easement document form, as may be amended from time to time;
- B. Review and approval by the Department of the Attorney General;
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
 - D. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.
3. Amend its prior action of July 30, 2004 (Item D-28) and February 25, 2005 (Item D-4) by removing all references to either set aside or direct lease.

Respectfully Submitted,


Cal Miyahara
Shoreline Disposition Specialist

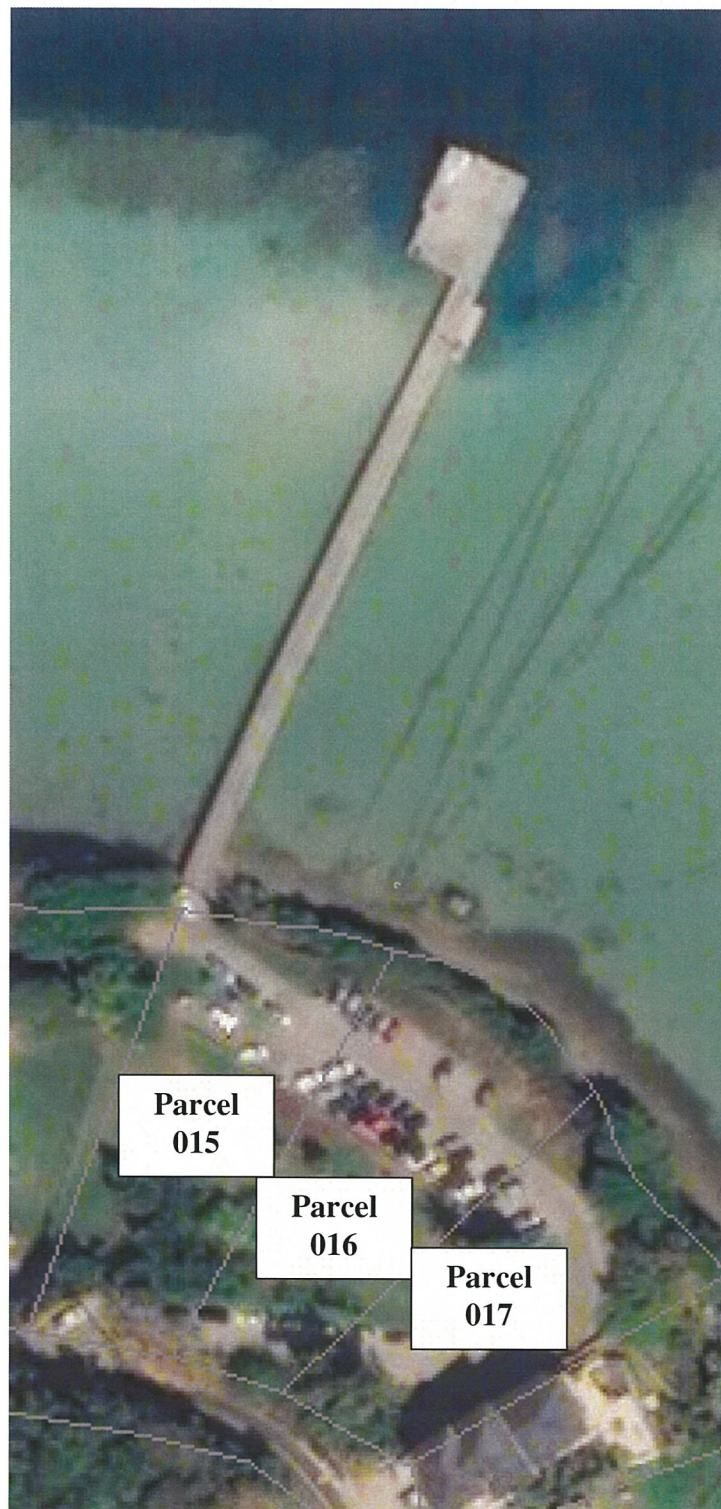
APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



TMK (1) 4-6-001: seaward of 015

EXHIBIT A1



TMK (1) 4-6-001: seaward of 015

EXHIBIT A2

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title:	Issuance of Term, Non-Exclusive Easement for Pier Purposes
Project / Reference No.:	PSF 04OD-069
Project Location:	Kaneohe, Koolaupoko, Oahu, TMK (1) 4-6-001: seaward of 015.
Project Description:	Issuance of term, non-exclusive easement for pier purposes.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	<p>In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and item 46, which states, "Creation or termination of easement, covenants, or other rights in structures or land."</p> <p>The applicant is not planning to have any new improvement to the existing pier. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.</p>
Consulted Parties:	Consulted with OCCL who had no objections/comments.
Recommendation:	It is recommended that the Board find that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

EXHIBIT B

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

July 30, 2004

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

PSF No.: 04OD-069

OAHU

Set Aside to University of Hawaii for Pier Purposes,
Kaneohe, Koolaupoko, Oahu TMK (1) 4-6-001:015 seaward.

APPLICANT:

University of Hawaii (UH)

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government submerged lands situated at Kaneohe,
Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-6-001:015
seaward, as shown on the attached map labeled Exhibit A.

AREA:

8,245 square feet, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

Vacant and unencumbered.

PURPOSE:

Pier purposes.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

July 30, 2004 *K*

ITEM D-28

EXHIBIT C

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University of Hawaii

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CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

Applicant shall be required to provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost (Note: Applicant already submitted the map and description.)

REMARKS:

University of Hawaii Foundation (UHF) acquired TMK (1) 4-6-1:1 (Coconut Island), 15 (subject property), 16 and 17 pursuant to a foreclosure proceeding in 1995. University of Hawaii (UH) leases the lands until 2094 from UHF and operates the Hawaii Institute of Marine Biology (HIMB) on Coconut Island. The subject parcel 15 is located among the residential lots of Kaneohe Bay. There is a pier abutting parcel 15 which is used for transporting personnel and supply between Kaneohe and Coconut Island.

UH plans to realign the parking and driveway connected to the pier. The City and County of Honolulu requires a shoreline certification before processing the building permit application for such construction work. Since the subject pier does not have authorization from the State and is considered an encroachment, UH understands that the application for shoreline certification for Parcel 15 would be denied. UH wants to resolve the encroachment issue by obtaining a land disposition for the pier.

Staff notes that there have been Conservation District violations on Coconut Island that have not been resolved. On April 23, 1999, the Board found HIMB in violation of the Conservation District regulations by establishing uses (11 unauthorized structures) without first obtaining the approval of the Board or Department. The violation was subject to a fine of \$2,000 which was paid in June 1999. Further, UH was to submit an after-the-fact CDUA for the unauthorized structures. Further, any improvements built after the 1999 violation are also subject to approval by the Board. Since that time, UH/HIMB has continued to submit site plan approval requests. Office of Conservation and Coastal Lands (OCCL) continues to reject them due to the outstanding violations.

Although Coconut Island is a separate property from the subject parcel, the subject pier relates to the operations of HIMB on Coconut Island. Staff had concerns about allowing the shoreline

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University of Hawaii

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certification to proceed due to the pending violations on Coconut Island and the lack of response by UH/HIMB.

Staff recently met with the Director of Capital Improvements of UH, Ms. Jan Yokota and her staff. At the meeting, UH said they will resolve the outstanding violations on Coconut Island. They also told staff that they recently awarded a contract for the repair work which would require building permit and shoreline certification. So UH is requesting an authorization for the subject pier as soon as possible to proceed with the repair. On July 22, 2004, the Director of Office of Procurement of UH wrote in his letter that UH will continue to work diligently to resolve all Conservation District Use violations on Coconut Island as identified by the Department.

Staff notes the urgency of the repair work in view of the possible liability issue for an authorized but highly used pier on State land. Therefore, staff recommends the Board authorize the issuance of Governor's Executive Order for the pier subject to UH resolving all outstanding violations. Meanwhile, staff will coordinate the processing of the shoreline certification. OCCL will bring the violations to the Board if no effort is shown by UH as determined by the Department.

Staff did not solicit comments from agencies other than OCCL on the request as such comments were obtained when the department prepared the master CDUP for the Kaneohe Bay Piers Amnesty Program which covers the subject area.

Pursuant to Article X, Section 5 of the Hawaii State Constitution, the UH shall have title to all the real property set aside to it. Staff does not believe this provision was intended to apply to submerged lands as the Board has public trust duties and should not be conveying submerged lands in fee. Therefore, staff recommends language be incorporated in the document stating that the subject Executive Order shall not transfer fee title of the subject land to UH. The UH is amenable to this condition. This condition would represent an agreement between two State agencies.

RECOMMENDATION:

That the Board, subject to Applicant fulfilling the Applicant Requirements above:

- A. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to University of Hawaii under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 1. The standard terms and conditions of the most current executive order form, as may be amended from time to time;

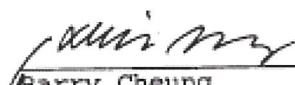
BLNR - Set Aside to
University of Hawaii

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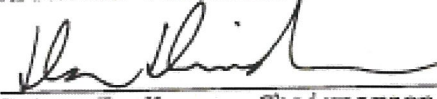
July 30, 2004

2. Notwithstanding Article X, Section 5 of the Hawaii State Constitution, the subject executive order shall not transfer fee title of the submerged lands to UH;
 3. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 4. Review and approval by the Department of the Attorney General; and
 5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Authorize the issuance of a construction and management right-of-entry over subject area to University of Hawaii under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
1. The standard terms and conditions of the most current right-of-entry form, as may be amended from time to time;
 2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Barry Cheung
Acting Supervising Land Agent

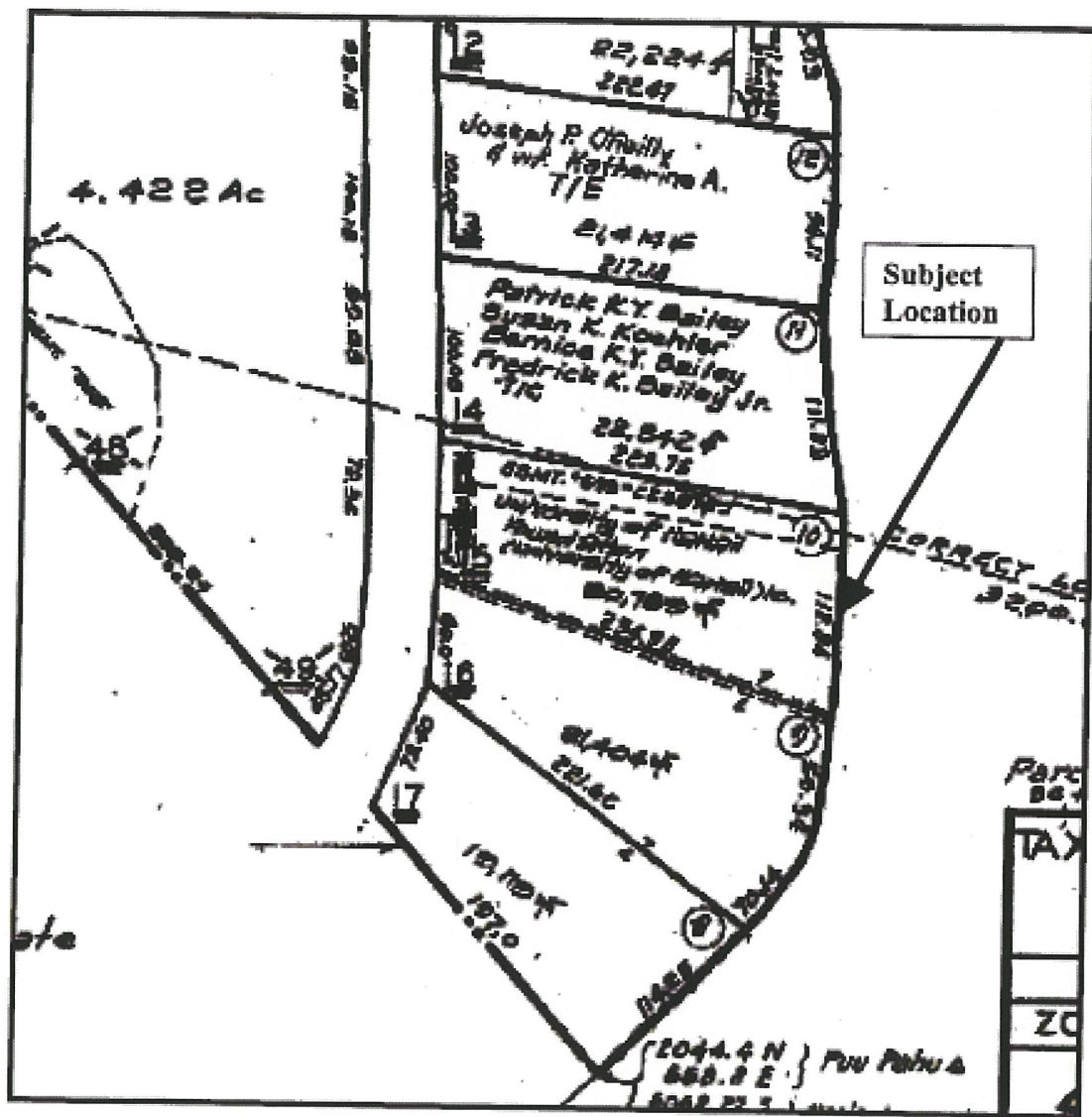
APPROVED FOR SUBMITTAL:


for Peter T. Young, Chairperson

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University of Hawaii

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July 30, 2004



TMK (1) 4-6-001:015 seaward

EXHIBIT A

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 25, 2005

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

PSF No.: 04OD-069

OAHU

Amend Prior Board Action of July 30, 2004, Agenda Item D-28,
Set Aside to University of Hawaii for Pier Purposes,
Kaneche, Koolaupoko, Oahu TMK (1) 4-6-001:015 seaward.

BACKGROUND:

On July 30, 2004, under agenda item D-28, the Board authorized and recommended to the Governor the issuance of an executive order setting aside the subject lands to University of Hawaii (UH) for pier purposes. Recommendation A.2 of July 30, 2004 action stipulated that "Notwithstanding Article X, Section 5 of the Hawaii State Constitution, the subject executive order shall not transfer fee title of the submerged land to UH."

Discussion with the Department of the Attorney General raises the issue of legality for such recommendation. To authorize the UH's pier, staff recommends the Board amend its prior action of July 30, 2004, under agenda item D-28 by replacing the disposition from an executive order to general lease pursuant to 171-95(a)(2), Hawaii Revised Statutes. Staff recommends the lease is for 65 years and the rent is gratis.

RECOMMENDATION:

Amend prior action of July 30, 2004, agenda item D-28 by replacing the Recommendation A with the following:

- "A. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to University of Hawaii covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
1. The standard terms and conditions of the most current pier lease document form, as may be amended from time to time;

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

February 25, 2005

ITEM D-4

EXHIBIT D

BLNR - Pier - UH

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2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State."

Respectfully Submitted,

Barry Cheung

Barry Cheung
Acting Supervising Land Agent *sa*

APPROVED FOR SUBMITTAL:

Peter T. Young
Peter T. Young, Chairperson