

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

May 11, 2018

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

PSF No.: 18OD-039

OAHU

Issuance of Revocable Permit to Kirby Offshore Marine Hawaii, LLC for Docking Purposes, Sand Island, Honolulu, Oahu, identified by Tax Map Key:(1) 1-5-041: seaward of 333.

APPLICANT:

Kirby Offshore Marine Hawaii, LLC, a foreign limited liability company

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of submerged land located at Sand Island, Honolulu, Oahu, identified by Tax Map Key:(1) 1-5-041: seaward of 333, as shown on **Exhibits A1 and A2**.

AREA:

0.952 acre, 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: No

CURRENT USE STATUS:

Encumbered by Executive Order No. 4006 setting aside to the Department of Transportation for commercial, maritime, and associated purposes; and

Encumbered by General Lease No. S-5219, Tyco Electronics Subsea Communications LLC, Lessee, for docking purposes including the subject submerged land as the berthing easement. Lease to expire on November 20, 2021.

CHARACTER OF USE:

Docking purposes

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

MONTHLY RENTAL:

\$3,564 per month¹.

The rent is based on length of the vessel, “*DENE*B”, which is a 337-foot barge, to be docked at the subject location, further subject to the dockage rate set in §19-44-20, Hawaii Administrative Rules (“HAR”). Under the HAR, a daily rate of \$118.80 for any vessel with the length between 275 and 900 feet shall be charged.

Staff is recommending the same rate the DOT would charge for similar length of the vessel in the harbor.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land and Natural Resources, concurred and reviewed 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 47, which states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existing." See **Exhibit B**.

¹ For the purpose of this submittal, staff uses 30 days for a month in determining the monthly rental.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>x</u>	NO <u> </u>
Registered business name confirmed:	YES <u>x</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>x</u>	NO <u> </u>

JUSTIFICATION FOR REVOCABLE PERMIT:

The subject area is actually the berthing easement under General Lease No. S-5219 as described below, with its current expiration date falling in November 2021. The requested revocable permit is scheduled to last until the expiry of the lease, subject to approval by the Board. Therefore, it is a short-term disposition and staff believes issuance of a revocable permit is the prudent option for this request.

APPLICANT REQUIREMENTS:

1. Obtain the prior written consent of Tyco Electronics Subsea Communications, LLC to the issuance of the revocable permit.

REMARKS:

General Lease No. S-5219 was sold at a public auction to AT&T Submarine Systems, Inc., for a term of 30 years², commencing on November 21, 1991. It encumbers 1.615 acres of wharf area for ship depot purposes, which includes a warehouse and sheds for housing of equipment. In addition, the lease consists of 0.952 acre (“Subject Area”) of submerged lands used for docking a communication cable laying ship.

Tyco Electronics Subsea Communications, LLC (“TYCO”) became the current tenant in 2012 through assignment of the lease.

Applicant currently has a barge, *DENEB*, in the Honolulu Harbor, to provide support for oil spill response, if needed. Staff understands the presence of the barge is part of the government mandate for any emergency relating to oil spill. The Applicant is searching for an available berthing area inside the harbor that will allow it to quickly reach any incident site, if needed. Currently, the vessel is subject to frequent relocation around the harbor as required by the Department of Transportation, Harbors Division, due to the competing uses within the harbor.

TYCO and Applicant initially approached the State to inquire about the possibility of the Board consenting to a sublease from TYCO to Applicant. Upon review of the lease

² Staff understands the current lessee is contemplating of filing a request for lease extension. The Department will bring any request for extension to the Board for disposition when the request is submitted.

character of use, however, staff determined that a sublease for berthing and oil response barge was inconsistent with lease. The lease character of use is limited to:

12. Character of use. The Lessee shall use or allow the premises leased to be used solely for commercial and industrial purposes of establishing a cable ship berth and depot for maintenance, repair, and storage of transoceanic submarine telecommunications cables.

Staff then suggested to the parties that a revocable permit may be able to achieve the parties' objective.

According to TYCO, it has one or two vessels a year, on average, call at the facility to load/offload spares. Each call is usually less than a week in duration. Applicant can use the same facility during the rest of the year, subject to the Applicant agreeing to relocate its vessel on 7-days' notice by TYCO. The revocable permit will be drafted to include a signature block for TYCO's consent to the document. The revocable permit will include a provision that TYCO may withdraw its consent to the revocable permit at any time by providing written notice to the Department of Land and Natural Resources (DLNR), and that DLNR will thereafter terminate the revocable permit on 30 days' written notice to Applicant.

Staff understands that the Applicant and TYCO may need to enter some agreement, including cost-sharing arrangement, regarding the utilization of the latter's staff resources, for the purpose of meeting all the federal and state legal requirements for safety, when the Applicant needs to dock its vessel at the location.

Department of Transportation, Harbors Division has no objections/comments to the request. Department of Health, Conservation and Coastal Lands, and Office of Hawaiian Affairs have not responded before the suspense date of the solicitation for comment.

The proposed arrangement will help to maximize the limited docking facilities available in Honolulu Harbor. There are no other pertinent issues or concerns. Staff recommends the Board issue the requested revocable permit according to the terms and conditions discussed above.

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. Authorize the issuance of a revocable permit to Kirby Offshore Marine Hawaii, LLC covering the subject area for docking purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to

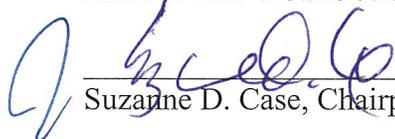
the following:

- A. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time; provided, however, that the revocable permit shall include: (i) a signature block for TYCO's consent to the document, (ii) a provision that Applicant shall relocate its barge and any other vessels out of the revocable permit area on seven (7) days' written notice from TYCO; and (iii) a provision that TYCO may withdraw its consent to the revocable permit at any time by providing written notice to the Department of Land and Natural Resources (DLNR), and that DLNR shall thereafter terminate the revocable permit on thirty (30) days' written notice to Applicant.
- B. Review and approval by the Department of the Attorney General; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Barry Cheung
District Land Agent

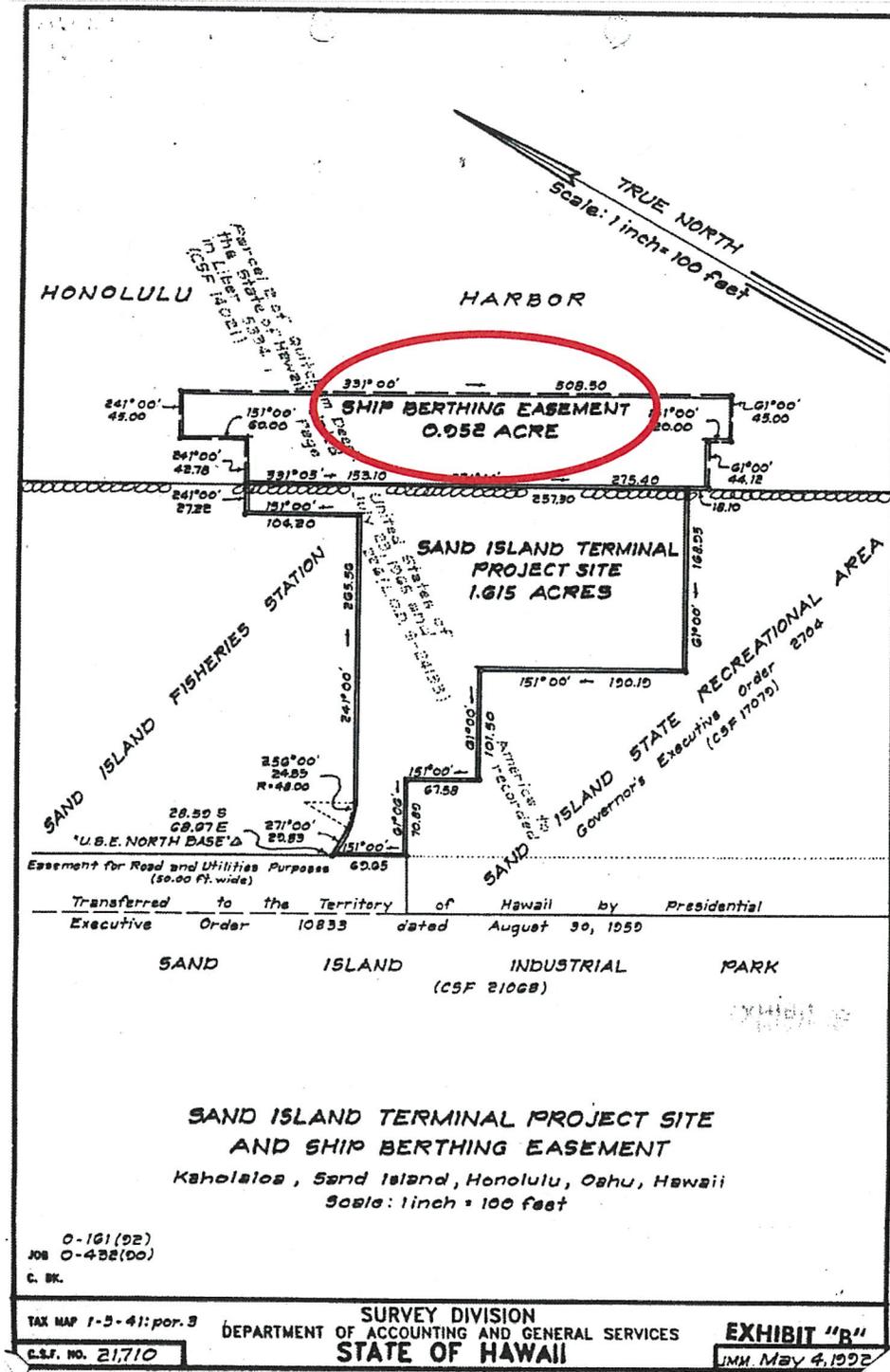
APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



TMK (1) 1-5-041: seaward of 333

EXHIBIT A1



TMK (1) 1-5-041: seaward of 333

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 Revocable Permit for Docking Purposes.

Project / Reference No.: PSF 18OD-039

Project Location: Sand Island, Honolulu, Oahu, Tax Map Key: (1) 1-5-041: seaward of 333

Project Description: Issuance of Revocable Permit for Docking Purposes.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with the Exemption List for the Department of Land and Natural Resources, concurred and reviewed 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 47, which states, "Leases of state land involving negligible or no expansion or change of use beyond that previously existing."

Cumulative Impact of Planned Successive Actions in Same Place Significant: No. The requested area is planned for docking under the lease.

Action May Have Significant Impact on Particularly Sensitive Environment: The subject area is a portion of Honolulu Harbor and the proposed use is a part of the operation of the harbor activities. Staff is not aware of any particularly sensitive environment that the request may have a significant impact on the environment.

Analysis: The request does not involve any change of use over the same area as allowed under the lease. Staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties: Oahu Harbors District Manager of the Department of Transportation, Harbors Division concurs to the proposed exemption.

EXHIBIT B

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.