

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

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

OAHU

ISSUANCE OF A CONSTRUCTION RIGHT-OF-ENTRY TO CAPSTAR RADIO OPERATING COMPANY FOR THE SAND ISLAND CARGO YARD ANNEX HONOLULU HARBOR, OAHU, TAX MAP KEY NO. (1) 1-5-041:041 022 (POR.); AND PIER 19, HONOLULU HARBOR, OAHU, TAX MAP KEY NO. (1) 1-5-039:007 (POR.)

LEGAL REFERENCE:

Sections 171-6, 171-13, 171-17, 171-35, 171-36, and 171-59, Hawaii Revised Statutes, as amended.

APPLICANT:

Capstar Radio Operating Company ("CAPSTAR"), a foreign profit corporation, whose mailing address is 20880 Stone Oak Parkway, San Antonio, Texas 78258.

CHARACTER OF USE:

To allow Applicant and its Permitted Agents (assignees, contractors, sub-contractors, and agents) the right to enter upon and take possession of (a) the Sand Island cargo yard annex Honolulu Harbor, Oahu, and Pier 19, Honolulu Harbor, Oahu, all as shown on Exhibit "A" (collectively, the "Premises"), for the purposes of erecting a temporary AM broadcast transmission and communications system including, without limitation, towers, radials, shelters, antennas, dishes, backup generators, and supporting infrastructure, and for the installation, repair, maintenance and servicing of such equipment, together with nonexclusive rights for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, for pedestrian or motor vehicle access, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes, over, under, or along one or more rights-of-way to the Premises.

LOCATION:

Portion of Government lands situated at the Sand Island cargo yard annex Honolulu Harbor, Oahu, Tax Map Key No. (1) 1-5-041:041 022 (por.); and Pier 19, Honolulu Harbor, Oahu, Tax Map Key No. (1) 1-5-039:007 (Por.), all as shown on Exhibit "A."

AREA:

The area comprises two areas: approximately 78,050 square feet for Sand Island cargo yard annex and 95,900 square feet for Honolulu Harbor, Oahu, and Pier 19, Honolulu Harbor, Oahu.

CONSIDERATION:

Gratis. CAPSTAR's temporary use of the Premises is to the benefit of the Harbors Division which requires that the 447-foot tower be lowered to 315 feet. The harbor users will be installing newer and taller gantry cranes at Sand Island, Honolulu Harbor, arriving during April 2019. The newer gantry cranes will result in obstructions within the current flight path designated for one-engine inoperative ("OEI") emergency flights for aircraft operating from Runway 8L-26R at the Daniel K. Inouye International Airport (the "Airport") over Honolulu Harbor. The alternate OEI flight path would be over the existing CAPSTAR antenna that, at its current 447-foot height, would be an obstruction of the airspace needed for a safer OEI flight path operating from Runway 8L-26R at the Airport. Reducing the height of the radio tower to 315 feet would support a safer alternate OEI flight path for airlines operating from the Airport. Thus, the reduction of the KC Tower is in the public interest of the State of Hawaii.

ZONING:

State Land Use Commission:	Urban
City and County of Honolulu:	I-3 Waterfront Industrial

TERM OF RIGHT-OF-ENTRY:

Entry will commence upon the execution of the right-of-entry agreement and terminate after the completion of reducing the height of the radio tower to 315 feet. The project includes erecting temporary AM antennas at the Sand Island Annex and Pier 19 to ensure continuous AM radio operations, and to continue through the end of construction and operation of a lower AM CAPSTAR radio antenna from 447 feet to 315 feet. Subject to CAPSTAR obtaining Federal Communications Commission approvals, and receipt of other governmental approvals, testing of the AM system, and reducing the height of the

antennas, project construction and related work are estimated to end August or September 2019.

COMMENCEMENT DATE:

To be determined by the Director of Transportation

CURRENT USE STATUS:

Encumbered under Executive Order No. 1188 (Sand Island cargo yard annex) and Executive Order No. 454, Pier 19, Honolulu Harbor, Oahu, issued to the Department of Transportation (“DOT”) for Harbors purposes.

LAND TITLE STATUS:

Owned by State of Hawaii; management and control of the property was transferred to the Department of Transportation encumbered under Executive Order No. 1188 (Sand Island cargo yard annex) and Executive Order No. 454, Pier 19, Honolulu Harbor, Oahu, issued to the Department of Transportation for Harbors purposes. Lands are non-ceded.

CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

The Exemption Declaration for the action described below is based on the consultation process prescribed by HAR 11-200-B(a), Exemption Classes 1, 2, 3 and 8.

1. Exemption Class 1: 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.
2. Exemption Class 2: Replacement or reconstruction of existing structures and facilities where the new structures will be located, generally on the same site, and will have substantially the same purpose, capacity, density, height and dimensions as the structure replaced.
3. Exemption Class 3: Construction and location of single, new, small facilities or structures and the alteration and modification of the same and installation of new, small equipment and facilities and the alteration and modification of same.

4. Exemption Class 8: Demolition of structures, except those structures located on any historical site as designated in the National Register or Hawaii Register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, or Chapter 6E, Hawaii Revised Statutes.

DOT requested the Office of Environmental Quality Control to publish the Director of Transportation's December 11, 2018, determination for exemption.

APPLICANT REQUIREMENTS:

The APPLICANT and its Permitted Agents shall, at all times with respect to the Premises, and the ingress and egress thereto, use due care for public safety and agrees to release, 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 privileges herein granted, caused directly or approximately by any failure on the part of the APPLICANT or its Permitted Agents in their use of the Premises, and the ingress and egress thereto, in accordance with the terms and conditions of this AGREEMENT.

The APPLICANT shall take all necessary steps to ensure that any of its work on, under, over, within or involving the Premises will not cause any permanent damage to property or improvements situated on or adjacent to or near the Premises, and the ingress and egress thereto.

Upon expiration or termination of this AGREEMENT, the APPLICANT shall, at its sole cost and expense, remove all tools, equipment, temporary buildings and improvement, machinery and unused or surplus materials, if any, and other property stored or placed upon the Premises, and the ingress and egress thereto, and restore the Premises, and the ingress and egress thereto to the condition it was in immediately prior to commencement of the APPLICANT's work and construction thereon and thereunder, to the satisfaction of the STATE within a reasonable time after such expiration or termination. If the APPLICANT fails to so complete such removal and/or restore the Premises upon thirty (30) days' notice to the APPLICANT to a condition satisfactory to the STATE, the STATE shall have the right to charge the APPLICANT, and the APPLICANT shall pay any and all costs and expenses incurred by the STATE in completing and accomplishing such removal and/or restoration, including, but not limited to, any costs the STATE incurs in removing and disposing of the APPLICANT's property. With respect to any contamination brought to the Premises, and the ingress and egress thereto, by the APPLICANT and its Permitted Agents, the APPLICANT shall, at no cost to the STATE, be responsible for compliance with all Federal and State laws relating to oil pollution and

the cleanup and disposal of hazardous materials, including contaminated soil. Upon termination of occupancy or this AGREEMENT, whichever shall occur first, the APPLICANT will decontaminate the Premises from all contaminants brought to the Premises by the APPLICANT and its Permitted Agents.

The APPLICANT shall take all necessary steps to ensure that the APPLICANT's use of the Premises does not interfere with any of the operational activities of any adjacent property owners or operations.

The APPLICANT shall maintain the Premises, including all equipment and improvements thereon, in good condition and in compliance with all Federal Aviation Administration and Federal Communications Commission rules and regulations, and shall promptly perform all necessary maintenance and repairs in a good and workmanlike manner and in compliance with standards of good engineering practice. In accordance with law, the APPLICANT may make any and all installations and alterations as the APPLICANT shall require for its intended use. The APPLICANT shall also have the right to install fencing and locked gates around either or both Premises. The APPLICANT shall have the right to replace, repair, add or otherwise modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates.

The APPLICANT shall purchase and maintain for itself for the duration of this AGREEMENT, and ensure that its Permitted Agents shall have for the period they are on the Premises, the following insurance policies at the prescribed minimum limits, under the following conditions:

(a) Bodily injury or property damage caused by the APPLICANT's or its Permitted Agents' negligence in the form of a general liability insurance policy with a combined single limit of not less than One Million and No/100 Dollars (\$1,000,000.00) for bodily injury and damage to property per occurrence, and Two Million and No/100 Dollars (\$2,000,000.00) in the aggregate.

(b) Contractor's Automobile Liability Insurance with a minimum combined single limit of Two Million and No/100 Dollars (\$2,000,000.00) per accident, or One Million and No/100 Dollars (\$1,000,000.00) for bodily injury per person, and One Million and No/100 Dollars (\$1,000,000.00) for property damage per accident.

(c) Workers' Compensation Insurance as required by applicable law.

(d) All insurance required to be maintained by the APPLICANT and its Permitted Agents hereunder shall be pursuant to policies in form and substance consistent with policies of similar type issued to businesses similar to the APPLICANT and its Permitted Agents and issued by companies of sound and adequate financial

responsibility, who are authorized to do business in the State of Hawaii, all as reasonably satisfactory to the STATE.

(e) The APPLICANT shall name 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 and with any other insurance held or maintained by the STATE, for any injury or claim arising on the Premises due to the APPLICANT's negligence or the negligence of its Permitted Agents. For purposes of this Paragraph 11, the "STATE" shall include the STATE's officers and employees acting within the scope of their duties.

(f) The APPLICANT shall provide proof of all required insurance to the STATE either by production of the actual insurance policies or by an insurance certificate on an ACORD form or some other written form reasonably acceptable to the STATE, together with appropriate written evidence, reasonably satisfactory to the STATE, that the insurance premiums have been paid. The procuring of the required policy(ies) of insurance shall not be construed to limit the APPLICANT's liability under this AGREEMENT nor to release or relieve the APPLICANT of the indemnification provisions and requirements of this AGREEMENT. Notwithstanding the policy(ies) of insurance, the APPLICANT shall be obligated for the full and total amount of any damage, injury, or loss caused by the APPLICANT's or its Permitted Agents' negligence or neglect connected with this AGREEMENT. It is agreed that any insurance maintained by the STATE will apply in excess of, and not contribute with, insurance provided by the APPLICANT's policy(ies).

REMARKS:

CAPSTAR has a certain unrecorded lease agreement dated February 12, 1985 (as amended, the "**KC Lease**"), and constructed a 447-foot AM/FM radio antenna at 1111 Dillingham Boulevard, Kapalama, Honolulu, Hawaii (and also identified by Tax Map Key No. [1] 05-020-003).

CAPSTAR is an affiliate of iHeartMedia, Inc., and operates radio stations broadcasting AM and FM radio programs.

The harbor users will be installing newer and taller gantry cranes at Sand Island, Honolulu Harbor, proposed to occur by April 30, 2019. The newer gantry cranes will result in obstructions within the current flight path designated for one-engine inoperative ("**OEI**") emergency flights for aircraft operating from Runway 8L-26R at the Daniel K. Inouye International Airport (the "**Airport**") over Honolulu Harbor. The alternate OEI flight path would be over the KC Tower that, at its current 447-foot height, would be an obstruction of the airspace needed for a safer OEI flight path operating from Runway

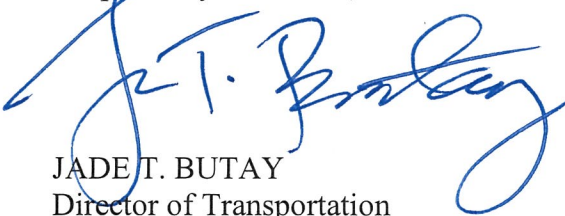
8L-26R at the Airport. Reducing the height of the radio tower by approximately one hundred thirty-two feet (132') from its current four hundred forty-seven-foot (447') height to a height of approximately three hundred fifteen feet (315') from the base of the tower at existing ground level would support a safer alternate OEI flight path for airlines operating from the Airport – thus the reduction of the KC Tower is in the public interest of the State of Hawaii.

The State received approval from the State of Hawaii Procurement Office to award a sole source contract to CAPSTAR, having Reference Sole Source No. SS19-010S, to perform the requisite Project work for the aforementioned reduction of the height of the KC Tower and is entering into this Contract on a “not-to-exceed” basis based on the Project Costs and the Project Costs Cap.

RECOMMENDATION:

That the Board authorizes the issuance of a Right-of-Entry to the Applicant and its Permitted Agents covering the subject area for the purposes cited above, subject to the terms and conditions outlined above and incorporated herein by reference, and such terms and conditions as may be prescribed by the Director of Transportation.

Respectfully submitted,



JADE T. BUTAY
Director of Transportation

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson and Member
Board of Land and Natural Resources

EXHIBIT A TEMPORARY AM ANTENNA SITES

FIGURE 1 – Location at Sand Island Annex Yard, Sand Island, Oahu

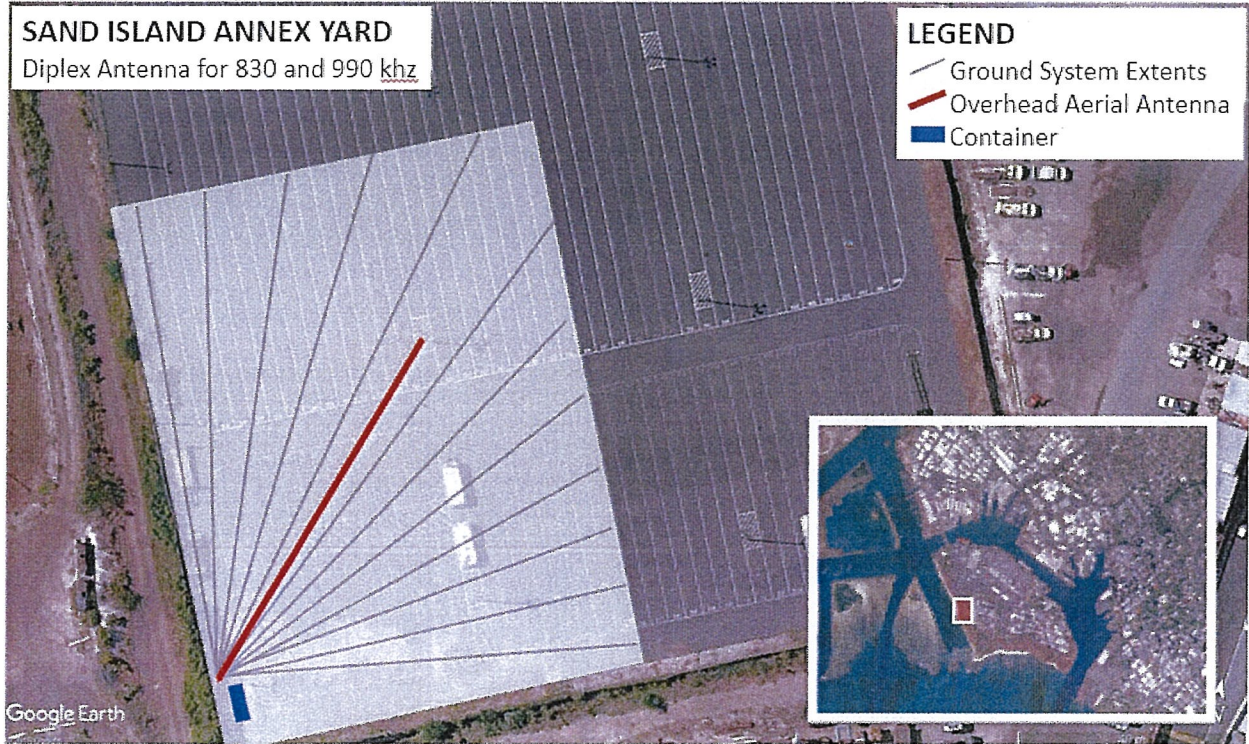


FIGURE 2 – Location at Piers 19 and 20 Cargo Yard, Honolulu Harbor, Oahu

