

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

July 26, 2019

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

PSF No.: 16OD-162

OAHU

Set-Aside to Department of Land and Natural Resources, Division of Boating and Ocean Recreation (DOBOR) for Small Boat Harbor Purposes; Issuance of Management Right-of-Entry Permit; Transfer of Revocable Permit No. S-5407; Kaneohe, Koolau-poko, Oahu, Tax Map Key: (1) 4-4-022: seaward of 032

APPLICANT:

Department of Land and Natural Resources, Division of Boating and Ocean Recreation ("DOBOR").

LEGAL REFERENCE:

Sections 171-11 and -55, Hawaii Revised Statutes ("HRS"), as amended.

LOCATION:

Portion of submerged land located in Kaneohe, Koolau-poko Oahu, identified by Tax Map Key: (1) 4-4-022: seaward of 032, as shown on the maps attached as **Exhibit 1A and 1B**.

AREA:

6.500 acres, more or less (see **Exhibit 2**), subject to review and approval by the Department of Accounting and General Services, Survey Division ("DAGS").

Staff is working with DAGS, DOBOR, and Kaneohe Yacht Club regarding the feasibility of generating a map and legal description for the proposed set aside by using the coordinates collected in the field. The approach will save time and cost over the normal approach of field surveying.

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:

Encumbered by Revocable Permit (RP) No. 5407 to the Kaneohe Yacht Club (“KYC”) for recreational boat pier purposes since August 1, 1977, at a current monthly rent of \$1,000.00 or 10% of the gross revenues, whichever is greater (effective since March 1, 2019).

PURPOSES OF SET-ASIDE:

Small Boat Harbor purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Section 11-200-8, Hawaii Administrative Rules (“HAR”), and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated 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." Item No. 43 that states "transfer of management authority over state-owned land, such as setting aside of state lands to or from other government agencies through a Governor’s executive order”. See **Exhibit 3**.

REMARKS:

At its meeting January 11, 2019, under agenda Item D-7 (see **Exhibit 4**), staff requested the Board’s authorization to issue a term, non-exclusive easement to KYC at the subject location for the purposes of piers, boat, floating dock etc. However, the Board took no action regarding staff’s recommendation of issuing a 55 year term, non-exclusive easement. Instead, the Board directed the staff to delve into the possibility of transferring managerial responsibility of the subject facility to DOBOR. Notwithstanding the above, the Board approved the change in the monthly rent, effective March 1, 2019, to \$1,000 or 10% of the gross revenues, whichever is greater.

Currently, KYC has paid the total rent for March (\$2,043.90), April (\$2,020.48), May (\$2,029.48), and June (\$2,004.09) as authorized by the Board in January 2019.

There were some discussions at the January 2019 Board meeting regarding the area between the individual finger piers connected to the dock, and the possibility of imposing rental obligation over such areas. Staff understands the area varies at different locations of the dock, depending on the size of the boats. Land Division does not possess the knowledge

or experience to assess rent under this scenario. The lack of knowledge reinforces the Land Division's justification of the requested transfer to DOBOR.

Subsequent meetings were held with DOBOR and KYC, in which DOBOR did not have any objections in accepting oversight of the KYC boat docking facility and related areas as shown in Exhibit 2. As reported in the January 11, 2019 Board submittal, additional improvements including "two narrow wooden piers, a boat ramp, a metal floating pier, and a wooden walking plank" are noted during staff's site visit within the proposed set aside area. Upon approval of today's request, staff will continue working with DOBOR's staff regarding the land disposition for these additional improvements.

The Division of Aquatic Resources provided a comment that they request the opportunity to review and comment on any changes to the project plan; and, they have no objections to this project since it will have minimal or no significant impact on the environment.

The Board of Water Supply has no objections and no comments to the proposed set-aside and the proposed environmental assessment exemption declaration.

The Office of Conservation and Coastal Lands, the Department of Planning and Permitting, the Department of Facility Maintenance, and the Office of Hawaiian Affairs did not respond to the request for comments.

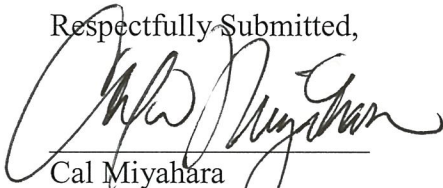
Staff requests the Board authorize the set-aside of the subject area identified in Exhibit 2 and the transfer of RP No. S-5407 to DOBOR. Staff understands DOBOR is ready to start working on the conversion of the subject revocable permit into a long-term disposition.

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. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject State land to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. 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;

- C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of a management right-of-entry permit to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation covering the subject area 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 right-of-entry form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the transfer of Revocable Permit No. S-5407 to DOBOR as of the Board date.

Respectfully Submitted,



Cal Miyahara
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:

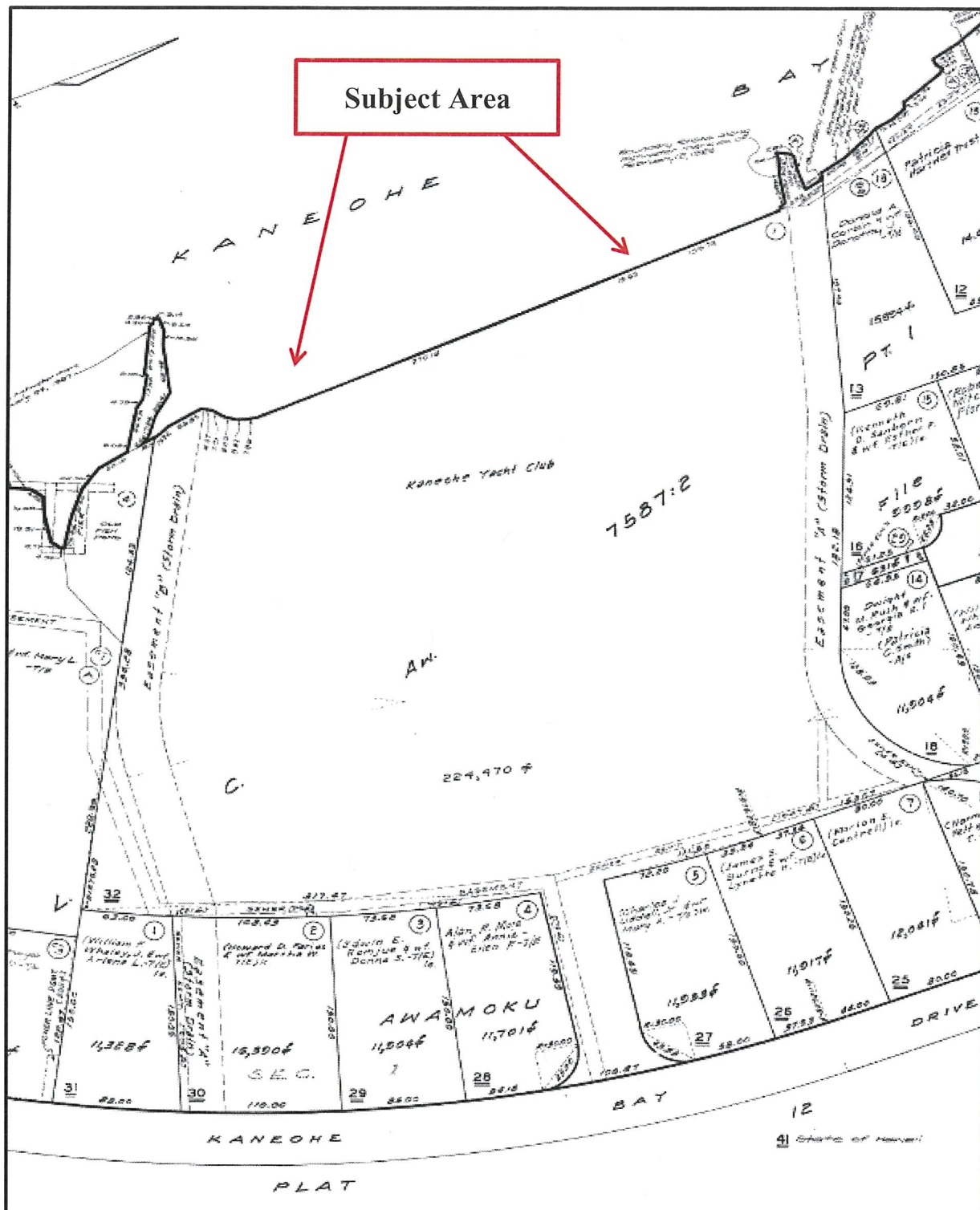


Suzanne D. Case, Chairperson



Note: The property is located in the south southeast corner of Kaneohe Bay.

EXHIBIT 1A



TMK: (1) 4-4-022:seaward of 032

EXHIBIT 1B



TMK (1) 4-4-022: seaward of 032

Approximate 6.500 acres

EXHIBIT 2

EXEMPTION NOTIFICATION

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

Project Title:	Set-Aside to Department of Land and Natural Resources, Division of Boating and Ocean Recreation (DOBOR) for Small Boat Harbor Purposes; Issuance of Management Right-of-Entry Permit; Transfer of Revocable Permit No. S-5407; Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-022: seaward of 032
Reference No.:	16OD-162
Project Location:	Kaneohe, Koolaupoko, Oahu, TMK (1) 4-4-022:seaward of 032.
Project Description:	Set-aside submerged land to Department of Land and Natural Resources, Division of Boating and Ocean Recreation.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	In accordance with Section 11-200-8, HAR, and 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." Item No. 43 that states "transfer of management authority over state-owned land, such as setting aside of state lands to or from other government agencies through a Governor's executive order".
Cumulative Impact of Planned Successive Actions in Same Place Significant?	No, since this request is pertaining to a transfer of controlling and management authority, staff believes all currently existing improvements are permanently constructed so there would be no successive or repetitive action in the same place. As such, staff believes that there would be no significant cumulative impact.
Action May Have Significant Impact on Particularly Sensitive Environment?	The requested area is a portion of shoreline State lands that contains improvements, some of which have been in place for 50+ years. Based on the analysis below, staff believes there would be no significant impact to sensitive environmental or

ecological receptors.

Consulted Parties:

Agencies as noted in the submittal.

Analysis:

Staff believes that the proposed transfer of controlling and management authority to Department of Land and Natural Resources, Division of Boating and Ocean Recreation would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Recommendation:

That the Board finds 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.