

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96813

January 8, 2021

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

Land Board Members:

**SUBJECT:** Sale of Lease at Public Auction of Submerged Lands for Recreational Boat Pier Purposes Subject to Concurrent Resolution from the Hawaii State Legislature, Kaneohe Bay, Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-022:032-A (Seaward of Parcel)

and

Declare the Project Exempt from Requirements of Chapter 343, HRS and Title 11, Chapter 200.1, Hawaii Administrative Rules.

REQUEST:

Sale of lease at public auction of submerged lands for non-commercial recreational boat pier purposes subject to a concurrent resolution from the Hawaii State Legislature.

LEGAL REFERENCE:

Sections 171-13, -14 -17, -53 (c) and other applicable sections of Chapters 171, Hawaii Revised Statutes, as amended.

LOCATION:

Kaneohe Bay, Kaneohe, Island of Oahu, Seaward of Tax Map Key: (1) 4-4-022:032, hereinafter referred to as the "Premises" as shown on the maps labeled **Exhibits A-1, A-2 and A-3** and attached hereto.

AREA:

Approximately 3.3648 Acres or 146,570 square feet, more or less, of submerged lands as depicted on **Exhibit A-3**.

ZONING:

State Land Use District: Conservation  
County of Honolulu CZO: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act: YES

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

CURRENT USE STATUS:

Encumbered by Revocable Permit (RP) No. S-5407, to Kaneohe Yacht Club (KYC) for recreational boat pier purposes.

CHARACTER OF USE:

Occupy and use the Premises for the following specified purposes only: For recreational boat pier purposes. Live aboard on vessels shall not be permitted.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson of the Board of Land and Natural Resources.

TERM:

Fifty-five (55) years

MINIMUM UPSET ANNUAL RENTAL AND PERCENTAGE RENT:

The minimum upset rent has been determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson. Subject to HRS §171-17, appraiser, Alan Conboy, of Hastings, Conboy and Associates, Inc., was procured to determine the upset rent and separately determine the percentage rent to be paid in excess of the minimum rent. The appraiser determined the upset rent at \$161,200 per annum or 5% of Gross Receipts, whichever is greater, for the first five (5) years of the lease, as well as a ten percent (10%) stepped increase over the base rent of the immediately preceding 5-year period for the second, third and fourth 5-year periods. This would provide the successful bidder with a known rent for the first twenty (20) years of the lease. The rent for the first 20 years is as follows:

	Annual Rent	Percentage Rent
1-5	\$161,200.00	5%
6-10	\$177,320.00	5%
11-15	\$195,052.00	5%
16-20	\$214,557.20	5%

METHOD OF PAYMENT:

The lessee’s rent shall be the base rent or percentage of gross receipts, whichever is greater. The minimum upset rent shall be paid quarterly, in advance, and the percentage rent shall be paid quarterly, in arrears.

RENTAL REOPENINGS:

Rent will be reopened pursuant to HRS §171-17(d) at the end of the 20<sup>th</sup>, 30<sup>th</sup>, 40<sup>th</sup> and 50<sup>th</sup> years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

HRS CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules § 11-200.1 and the Exemption List for the Department of Land and Natural Resources, approved by the Environmental Council and dated November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 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.”*

Item No. 9: *“Operations, repair, and maintenance of existing loading docks, piers, piles, boat launch ramps, offshore mooring facilities, and other similar support structures, as permitted by the U.S. Army Corps of Engineers, Honolulu District, under a Nationwide Permit.”*

Item No. 40: *“Leases of State land involving negligible or no expansion or change of use beyond that previously existing.”*

The following agencies were consulted on this action with the results indicated as follows:

<b>Consulted Agency</b>	<b>Comments</b>
Department of Transportation	No Comment/No Interest
Division of Aquatic Research (DAR)	No Response
Office of Hawaiian Affairs (OHA)	No Response
Land Division Oahu District (LD)	No Comment
Ocean Conservation of Coastal Lands (OCCL)	Concurs with proposed exemption pursuant to HAR, 11-200.1-14(c)(1) and DLNR exemptions 1-040
U.S. Coast Guard	No Response
Honolulu Fire Department	No Objections

**PROPERTY CHARACTERISTICS:**

Utilities — Not applicable

Existing Improvements – Approximately 1,740 linear feet of piers built on the submerged lands. A single sided pier measuring 923 linear feet was constructed in 1963. A double-sided pier measuring 817 linear feet was constructed in 3 segments from 1966 to 1987.

Legal access to property – Access to the submerged lands is either from the ocean or from Tax Map Key: (1) 4-4-022:032, which is owned by Kaneohe Yacht Club.

Encumbrances – Staff has verified that the premises are currently encumbered by the piers. KYC facilities have been used as a venue for the Coast Guard auxiliary training, inspection and education, which includes environmentally responsible and safe use of ocean waters.

**REMARKS:**

At its meeting January 11, 2019, under agenda Item D-7, DLNR Land Division staff requested the Board’s authorization to issue a non-exclusive easement to KYC at the subject location for the purposes of piers, boat, floating dock etc. The Board took no action regarding staff’s recommendation of issuing a 55-year term, non-exclusive easement, and instead directed the staff to look into the possibility of transferring the revocable permit to DOBOR. Notwithstanding the aforementioned, 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.

At its meeting July 26, 2019, under agenda Item D-6, the board approved the transfer of the revocable permit and set-aside of the subject submerged lands to DOBOR. The Board also approved the continuation of the RP in order to give staff time to pursue a long-term disposition. KYC had expressed interest in entering into direct negotiations for a direct lease for this area.

At its meeting December 13, 2019, under agenda Item J-4, the board approved the continuation of RP No. S-5407.

At its meeting June 26, 2020, under agenda Item J-1, the Board approved the continuation of RP No. S-5407 for one (1) year from July 1, 2020, to June 30, 2021 with a monthly rental of \$1,000 per month or 10% of gross revenues, whichever is greater. Staff assured the Board that it would submit a staff report for the sale of lease of the submerged lands by the end of the calendar year.

Kaneohe Yacht Club is a domestic non-profit 501(c)7 corporation originally registered in 1938 with the purpose of “yachting boating and other recreational activities.” Staff agrees with the conclusion reached by the Oahu District Land Office in its submittal dated January 11, 2019, under agenda item D-7, that KYC is not eligible for a direct lease under HRS §171-43.1.<sup>1</sup> Therefore, staff believes that the appropriate action is to sell the lease for said submerged lands at public auction. Staff will require that qualified bidders have permission to access the subject submerged lands from adjacent fast lands.

KYC requested that a four percent (4%) rate of return on the submerged land value be used to determine the upset rent. The rationale being that this same rate of return was applied to submerged lands underlying Kaneohe Bay piers to determine lease rents under Act 261, Hawaii Session Laws 2000 (Act 261)<sup>2</sup>.

Staff has procured the services of certified general appraiser Alan Conboy to conduct an appraisal to determine the upset rent for the submerged lands. The appraiser informed staff that under the Uniform Standards of Professional Appraisal Practice (“USPAP”), a four percent (4%) rate of return was the standard for residential land. Using the USPAP-specified rate of return (i.e. 4%), the appraiser has concluded an upset annual rental of \$161,200.

Staff will obtain a concurrent resolution from the Legislature pursuant to §171-53 (c), HRS for the sale of lease at public auction of the submerged lands.

#### RECOMMENDATION:

That the Board of Land and Natural Resources:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, 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.

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<sup>1</sup> **§171-43.1 Lease to eleemosynary organizations.** *The board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service.*

<sup>2</sup> Act 261 allowed the Board to lease, by direct negotiation and without recourse to public auction, state submerged lands or lands beneath tidal waters for private residential noncommercial piers on such terms and conditions as may be prescribed by the Board which sunset on June 30, 2007. See attached Exhibit B-1 and B-2.

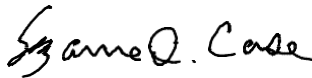
2. Authorize the sale a lease at public auction covering the subject area for recreational boat pier purposes under the terms and conditions cited above, which are by this reference, incorporated herein and further subject to the following:
  - a. The standard terms and conditions of the most current Boating Lease form, as may be amended from time to time;
  - b. The successful bidder will be responsible for compliance with Chapter 343, HRS, with respect to any increased development or change in use of the property from the previously existing use;
  - c. Approval by the Governor and concurrence from the Legislature pursuant to §171-53 (c), HRS;
  - d. Review and approval by the Department of the Attorney General; and
  - e. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



EDWARD R. UNDERWOOD, Administrator  
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:



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

Attachments:

- A-1 Location of Kaneohe Bay on Island of Oahu Map
- A-2 Aerial Map of Kaneohe Bay
- A-3 Aerial Map of KYC's location in Kaneohe Bay
- B-1 SLH 2000\_Act 261
- B-2 HB 1659 CD1\_Act 261 Extension

**Kaneohe Bay**  
Island of Oahu

**Exhibit A-1**



**Exhibit A-1**

Kaneohe Bay

Exhibit A-2



Kaneohe Bay  
Submerged Land Lease



Exhibit A-2

Data USGS



# Kaneohe Bay

# Exhibit A-3



# EXHIBIT B-1

ACT 261

ACT 261

H.B. NO. 3001

A Bill for an Act Relating to Noncommercial Piers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§171- Private residential noncommercial piers.** Notwithstanding any limitations to the contrary, the board of land and natural resources may lease, by direct negotiation and without recourse to public auction, state submerged lands or lands beneath tidal waters for private residential noncommercial piers on such terms and conditions as may be prescribed by the board."

SECTION 2. Section 171-36, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise provided[,], by law, the following restrictions shall apply to all leases:

- (1) Options for renewal of terms are prohibited;
- (2) No lease shall be for a longer term than sixty-five years, except in the case of a residential leasehold which may provide for an initial term of fifty-five years with the privilege of extension to meet the requirements of the Federal Housing Administration, Federal National Mortgage Association, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or Veterans Administration [requirements]; provided that the aggregate of the initial term and extension shall in no event exceed seventy-five years;
- (3) No lease shall be made for any land under a lease which has more than two years to run;
- (4) No lease shall be made to any person who is in arrears in the payment of taxes, rents, or other obligations owing the State or any county;
- (5) No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board of land and natural resources, the assignment and transfer of a lease or unit thereof may be made in accordance with current industry standards, as determined by the board; provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that with respect to state agricultural leases, in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid;
- (6) The lessee shall not sublet the whole or any part of the demised premises except with the approval of the board; provided that prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; provided further that in the case where the lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee shall be included as part of the lessee's gross receipts; provided further that the board shall have

- the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent may not be revised downward;
- (7) The lease shall be for a specific use or uses and shall not include waste lands, unless it is impractical to provide otherwise; and
  - (8) Mineral and metallic rights and surface and ground water shall be reserved to the State[; and
  - (9) No lease of public lands, including submerged lands, nor any extension of any such lease, shall be issued by the State to any person to construct, use, or maintain a sunbathing or swimming pier or to use the lands for such purposes, unless such lease, or any extension thereof, contains provisions permitting the general public to use the pier facilities on the public lands and requiring that a sign or signs be placed on the pier, clearly visible to the public, which indicates the public's right to the use of the pier. The board, at the earliest practicable date, and where legally possible, shall cause all existing leases to be amended to conform to this paragraph. The term "lease", for the purposes of this paragraph, includes month-to-month rental agreements and similar tenancies]."

SECTION 3. Section 171-53, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The board, with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution, may lease state submerged lands and lands beneath tidal waters under the terms, conditions, and restrictions provided in this chapter; provided that the authorization of the legislature shall not be required for leases issued under chapter 190D; and provided further that the approval of the governor and authorization of the legislature shall not be required for any grant of easement or lease of state submerged lands or lands beneath tidal waters used for moorings, cables, [or] pipelines[;], or noncommercial piers; provided further that this exemption shall not apply to easements for cables used for interisland electrical transmission or slurry pipelines used for transportive materials, mined at sea, or waste products from the processing of the same.

The lease shall provide that the lands shall be reclaimed at the expense of the lessee. Title to the reclaimed lands shall remain in the State."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval; provided that the authority granted to the department of land and natural resources to enter into lease agreements with owners of private residential noncommercial piers shall be repealed on June 30, 2005, and the amendments made by sections 1, 2, and 3 of this Act to the Hawaii Revised Statutes, shall be repealed as of that date and sections 171-36(a) and 171-53(c), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act; provided further that any lease agreement executed pursuant to this Act prior to June 30, 2005, or any lease extension executed thereon after the repeal of this Act, shall remain exempt from section 171-36(a)(9), Hawaii Revised Statutes, after the repeal of this Act.

(Approved June 20, 2000.)

**Note**

1. Edited pursuant to HRS §230-16.5.

**Report Title:**

Noncommercial Piers

**Description:**

Allows noncommercial pier owners more time to negotiate leases of state submerged lands or lands beneath tidal waters by extending the repeal date of Act 261, SLH 2000, from June 30, 2005 to June 30, 2007. (HB1659 CD1)

HOUSE OF REPRESENTATIVES

TWENTY-THIRD LEGISLATURE, 2005

STATE OF HAWAII

**H.B. NO.** 1659

H.D. 1

S.D. 1

C.D. 1

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# A BILL FOR AN ACT

relating to noncommercial piers.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. The legislature finds that in May of 1998, the board of land and natural resources approved a plan to address unauthorized piers in Kaneohe bay after several decades of non-enforcement. Nearly two hundred shorefront property owners in Kaneohe bay had piers, many of which were built before statehood. Many of the pier owners, as well as countless others statewide, were unaware that their piers lacked proper authorization from the State and were considered illegal.

As a result, the Governor signed Act 261, Session Laws of Hawaii (SLH) 2000, on June 20, 2000, which established a new section under chapter 171, Hawaii Revised Statutes, to read:

**"Private residential noncommercial piers.**

Notwithstanding any limitations to the contrary, the board of land and natural resources may lease, by direct negotiation and without recourse to public

auction, state submerged lands or lands beneath tidal waters for private residential non-commercial piers

on such terms and conditions as may be prescribed by

the board."

The legislature further finds that an amnesty program was therefore established in 2000 and 2001 to provide noncommercial pier owners with the appropriate permits for legal authorization and to resolve the illegal pier problem in Kaneohe bay. The legislature also finds that as of January 1, 2005, only twelve out of one hundred sixty Kaneohe bay pier owners had obtained a new lease, with an additional fifty cases in the process of approval with no guarantee of completion before the deadline of June 30, 2005, due to the difficulties and time constraints involved in obtaining all of the required surveys, appraisals, and additional documentation. The legislature further finds that additional time is needed to negotiate long-term leases with private noncommercial pier owners across the state, in areas such as Wailupe, Niuiki Circle, and Port Lock, given the disproportionate attention paid primarily to Kaneohe bay pier owners in the implementation of Act 261, SLH 2000.

The purpose of this Act is to:

(1) Allow noncommercial pier owners more time to negotiate leases of state submerged lands or lands beneath tidal waters by extending the repeal date of Act 261, SLH 2000, from June 30, 2005, to June 30, 2007; and

(2) Urge DLNR to commence using the prevailing real property tax assessment value of the fast land in determining the lease rent for the submerged land lease entered into after July 1, 2006, to prompt procrastinating pier owners who desire to enter into leases with the State.

SECTION 2. Act 261, Session Laws of Hawaii 2000, as amended by Act 68, Session Laws of Hawaii 2002, section 2, as amended by Act 103, Session Laws of Hawaii 2002, section 1, is amended by amending section 5 to read as follows:

"SECTION 5. This Act shall take effect upon its approval; provided that:

(1) The authority granted to the department of land and natural resources to enter into lease agreements with owners of private noncommercial piers shall be repealed on June 30, [~~2005~~] 2007;

(2) The amendments made by sections 1 and 3 of this Act to the Hawaii Revised Statutes, shall be repealed as of June 30, [~~2005~~] 2007, and section 171-53(c), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act;

(3) The amendment made by section 2 of this Act to section 171-36(a), which deleted paragraph (9), shall be repealed as of June 30, [~~2005~~] 2007, and paragraph (9) shall be reenacted in the form in which it read on June 19, 2000; and

(4) Any lease agreement executed pursuant to this Act prior to June 30, [~~2005~~] 2007, or any lease extension executed thereon after the repeal of this Act, shall remain exempt from section 171-36(a)(9), Hawaii Revised Statutes, after the repeal of this Act."

SECTION 3. To prompt procrastinating pier owners who desire to enter into leases with the State for their noncommercial piers, the department of land and natural resources is urged to commence using the prevailing real property tax assessment value of the fast land in determining lease rent for a lease of the state submerged land or land beneath tidal water entered into after July 1, 2006.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 29, 2005.