

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Waianae, Hawaii 96819

October 28, 2022

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

Land Board Members:

SUBJECT: Grant of a Non-Exclusive Term Easement to the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service for the Installation of an Automated Meteorological Observing Station at the Waianae Small Boat Harbor, Waianae-Kai, Waianae, Island of Oahu, Hawaii Tax Map Key: (1) 8-5-002:044 (Portion)

And

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

APPLICANT:

U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Weather Service Pacific Region (NWS).

LEGAL REFERENCE:

Sections 171-13, -55 and -95 Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waianae Small Boat Harbor, Waianae, Oahu, hereinafter referred to as the "Premises" as shown on the attached maps labeled **Exhibits A-1 and A-2**. Said premises are a portion of Governor's Executive Order No. 4385.

Item J-3

AREA:

64 square feet, more or less.

ZONING:

State Land Use District: Urban
County of Honolulu LUO: P-2 General Preservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ☐ NO ☒

CURRENT USE STATUS:

NOAA NWS weather station.

CHARACTER OF USE:

Install, operate and maintain an automated meteorological observing station.

COMMENCEMENT DATE:

December 4, 2010

RENT:

Gratis (Government Agency)

TERM:

20 Years, beginning December 4, 2010, through December 3, 2030

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Section 11-200.1-15, Hawaii Administrative Rules and the Exemption List for the Department of Land and Natural Resources, reviewed and concurred by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an Environmental Assessment pursuant to General Exemption Type 1, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," Item No. 44, which states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature,

involving negligible impacts beyond that previously existing.”

APPLICANT REQUIREMENT:

Applicant shall be required to:

Provide, at its sole expense, a survey map with metes and bounds descriptions of the proposed easement area according to State Department of Accounting and General Services standards.

REMARKS:

At its meeting held on February 11, 2000, under agenda item J-1 (**Exhibit C**) the Board authorized the issuance of a ten (10) year non-exclusive easement to the NWS for the installation of a meteorological observing station on 20 square feet of land at the Waianae Boat Harbor. The station's location is shown in **Exhibits A-1 and A-2**. The existing station is shown in **Exhibit B**. The non-exclusive easement was effective from December 4, 2000, through December 3, 2010 (**Exhibit D**). The easement facility has been on state property without a disposition since December 4, 2010. This is a housekeeping matter requesting authority to issue a new grant of non-exclusive easement to NOAA NWS from December 4, 2010, through December 3, 2030.

The Premises consists of a 20-foot tower with sensors mounted near the top. Power is provided by a solar panel and communications is by a telephone link. The Board previously approved an area of 20 square feet. The actual area constructed is within a 6-foot high chain link fence measuring 8 feet by 8 feet for a total area of 64 square feet. Since December 3, 2010, there have been technical upgrades to the weather monitoring equipment. However, no major changes have been made to the tower facility.

The National Weather Service anticipates upgrading the facility within the next 8 years and will be requesting a new easement agreement once funding and a final design are approved. At that time, the size of the tower and footprint are expected to increase. A 20-year term that expires on December 3, 2030, is adequate for their needs at this time.

The existing meteorological station provides valuable information to the NWS for forecasting and warnings for the general public, boaters, fishermen and recreational users.

RECOMMENDATION:

That the Board of Land and Natural Resources:

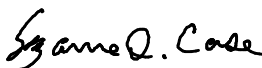
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize a Grant of a Non-Exclusive Easement to the U.S. National Oceanic and Atmospheric Administration, National Weather Service 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 grant of non-exclusive easement form, as may be amended from time-to-time;
 - 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,



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

APPROVED FOR SUBMITTAL:



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

Attachments:

- A-1 Waianae Small Boat Harbor Location on Oahu
- A-2 Proposed Location in relation to Waianae Small Boat Harbor
- B Photo of Facility

- C 2-11-00_J-2 Initial Grant of Non-Exclusive Easement
- D Grant of Non-Exclusive Easement December 4, 2000, thru December 3, 2010

OAHU

Exhibit A-1

National Weather Service Non-Exclusive Easement



Exhibit A-1

Exhibit A-2

Waianae Small Boat Harbor



Exhibit A-2

OAHU

National Weather Service Non-Exclusive Easement

Exhibit B



Exhibit B

EXHIBIT C

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION
333 Queen Street, Suite 300
Honolulu, Hawaii 96813

February 11, 2000

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

OAHU

ISSUANCE OF AN NON-EXCLUSIVE EASEMENT
TO THE U.S. NATIONAL WEATHER SERVICE
(NWS) FOR THE INSTALLATION OF AN
AUTOMATED METEOROLOGICAL OBSERVING
STATION AT THE WAIANAE BOAT HARBOR,
ISLAND OF OAHU

STATUTE: Section 171-95, Hawaii Revised Statutes.

APPLICANT: U.S. Department of Commerce, National Oceanic and
Atmospheric Administration, National Weather
Service Pacific Region.

LOCATION: Waianae Small Boat Harbor, TMK: 8-5-02:11,
Governor's Executive Order No. 3178.

AREA: Approximately 20 square feet of land as shown in
attached Exhibit "A".

PURPOSE: Install, operate and maintain an automated
meteorological observing station (AMOS).

RENT: Gratis (Government Agency)

TERM: 10 years

REMARKS: The National Weather Service desires to install,
operate and maintain an automatic meteorological
station at the Waianae Boat Harbor. This station

ITEM J-2

EXHIBIT C

February 11, 2000

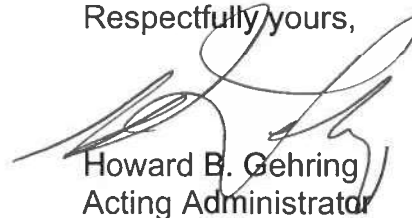
would be very beneficial in that it would provide valuable information to the NWS for use in forecasting and warnings for the general public, boaters, fishermen and recreational users. The public would have access to the data over continuous NOAA Weather Radio broadcasts and telephone recordings. The station would provide various weather parameters including wind direction and speed especially useful in severe weather episodes (e.g. hurricanes).

The station would consist of a 20-foot tower with sensors mounted near the top. The tower would be attached to a concrete pad, approximately 4 feet square and enclosed by a 6-foot chain link fence for security purposes. Power would be provided by a solar panel and communications by a telephone link.

RECOMMENDATIONS: That the Board approve the Non-Exclusive easement as requested, subject to the following conditions:

1. That the Non-exclusive document be submitted to the Attorney General for review and approval as to form.
2. Other terms and conditions as may be required by the Chairperson.

Respectfully yours,



Howard B. Gehring
Acting Administrator

Attachment

APPROVED FOR SUBMITTAL:



Chairperson and Member

ITEM J-2



WAIANAE BOAT HARBOR



MAINE BOAT HARBOR LAND OF OCEAN
TAX MAP KEY: 0-5-0211

EXHIBIT D



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL WEATHER SERVICE PACIFIC REGION
GROSVENOR CENTER, MAUKA TOWER
737 BISHOP STREET, SUITE 2200
HONOLULU, HAWAII 96813-3213

December 14, 2000

W/PR5:PDJ

Mr. John Hino
State of Hawaii
Division of Boating and Ocean Recreation
333 Queen Street, Suite 300
Honolulu, Hawaii 96813

Dear Mr. Hino:

Enclosed for your documentation is the original signed Grant of Non-Exclusive Easement for the National Weather Service to install, operate, and maintain an automated meteorological observing station at the Waianae Small Boat Harbor. Thank you for your support on this Easement that will allow the NWS to install this automated weather observing system at the Waianae Small Boat Harbor.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Donald Jiron", written over a horizontal line.

P. Donald Jiron
Chief, Administrative
Management Division

Enclosure

cc:

W/PR12 - Karl Turner
W/PR13 - Herman Chan

EXHIBIT D



EXHIBIT D

GRANT OF NON-EXCLUSIVE EASEMENT

THIS INDENTURE, made and entered into this 4th day of Dec., 2000 by and between the STATE OF HAWAII, by its Board of Land and Natural Resources, hereinafter referred to as the "Grantor," and the U.S. DEPARTMENT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NATIONAL WEATHER SERVICE PACIFIC REGION, whose address is 737 BISHOP STREET SUITE 2200, HONOLULU HAWAII 96813, hereinafter referred to as the "Grantee,"

WITNESSETH THAT:

The Grantor, pursuant to section 171-95 (a)(3), Hawaii Revised Statutes, and for good and valuable consideration and of the terms, conditions, and covenants herein contained, all on the part of the Grantee to be kept, observed, and performed, does hereby grant unto the Grantee, the following non-exclusive and term easement rights:

Right, privilege, and authority to install, operate, and maintain an automated meteorological observing station.

in, over, under and across that certain parcel of land ("area") situate at WAIANAE SMALL BOAT HARBOR, under Governor's Executive Order No. 3178, said easement containing an area of TWENTY (20) SQUARE FEET delineated on Exhibit "A," which is attached hereto and made a part hereof, said exhibit being, a depiction of said easement area, TOGETHER WITH the rights of ingress and egress to and from the easement area for all purposes in connection with the rights hereby granted.

TO HAVE AND TO HOLD the easement rights unto the Grantee, its successors and assigns, SUBJECT, HOWEVER, to the following terms, conditions and covenants:

1. The term of this easement shall be ten (10) years, commencing on the 4 th day of Dec., 2000, up to and including the 3 th day of Dec, 2010, unless sooner terminated as hereinafter provided.

THE GRANTEE CONVENANTS AND AGREES WITH THE GRANTOR AS FOLLOWS:

1. The Grantee shall at all times with respect to the easement area use due care for public safety and agrees, to the extent allowed by law, to indemnify, defend, and hold the Grantor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of the Grantee relating to the Grantee's use, occupancy, maintenance, or enjoyment of the easement area; 2) any failure on the part of the Grantee to

maintain the easement area and sidewalks, roadways and parking areas adjacent thereto in the Grantee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Grantee to maintain the easement area in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomsoever brought or made by reason of the Grantee's non-observance or non-performance of any of the terms, covenants, and conditions of this grant of non-exclusive easement or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

2. The Grantor reserves unto itself, its successors and assigns, the full use and enjoyment of the easement area and to grant to others rights and privileges for any and all purposes affecting the easement area, provided, however, that the rights herein reserved shall not be exercised by the Grantor and similar grantee(s) in any manner which interferes unreasonably with the herein Grantee in the use of the easement area for the purposes for which this easement is granted.

3. All improvements placed in or upon the easement area by the Grantee shall be done without cost or expense to the Grantor and shall remain the property of the Grantee and may be removed or otherwise disposed of by the Grantee at any time; provided, that the removal shall be accomplished with minimum disturbance to the easement area which shall be restored to its original condition, or as close thereto as possible, within a reasonable time after removal. Prior to construction of any improvements, Grantee shall submit plans for said improvements to Grantor for review and approval by Grantor. Improvements may be constructed by Grantee only upon the approval of the plans by the Grantor.

4. Upon completion of any work performed in or upon the easement area, the Grantee shall remove therefrom all equipment and unused or surplus materials, if any, and shall leave the easement area in a clean and sanitary condition satisfactory to the Grantor.

5. This easement or any rights granted herein shall not be sold, assigned, conveyed, granted, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, except with the prior written consent of the Grantor.

6. The Grantee shall keep the easement area and the improvements thereon in a safe, clean, sanitary, and orderly condition, and shall not make, permit or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the easement area.

7. The Grantee covenants, for itself, its successors and assigns, that the use and enjoyment of the land herein



granted shall not be in support of any policy which discriminates against anyone based upon race, creed, color, sex, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

8. The Grantee, in the exercise of the rights granted herein, shall comply with all of the applicable requirements of the federal, state, and county authorities and shall observe all applicable county ordinances and state and federal statutes, rules and regulations, now in force or which may hereinafter be in force.

9. These easement rights shall cease and terminate, and the easement area shall automatically be forfeited to the Grantor, without any action on the part of the Grantor, in the event of non-use or abandonment by the Grantee of the easement area, or any portion thereof, for a consecutive period of one (1) year.

10. The Grantee shall, at the end of the term or other sooner termination of this easement, peaceably deliver unto the Grantor possession of the premises, together with all improvements existing or constructed thereon or Grantee shall remove such improvements and shall restore the premises to its original state, or as close thereto as possible, within a reasonable time and at the expense of the Grantee, at the option of the Grantor. Furthermore, upon the expiration, termination, and/or revocation of this easement, should the Grantee fail to remove any and all of Grantee's personal property from the premises, after notice thereof, the Board may remove any and all of Grantee's personal property from the premises, and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Grantee and the Grantee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the easement.

11. The Grantee, as an agency of the federal government, is self-insured.

12. The Grantor reserves the right to withdraw the easement for public use or purposes, at any time during the term of this grant of easement upon the giving of reasonable notice by the Grantor and without compensation.

13. In case the Grantor shall, without any fault on its part, be made a party to any litigation commenced by or against the Grantee as a result of this grant of non-exclusive easement (other than condemnation proceedings), the Grantee shall pay all costs, including reasonable attorney's fees and expenses incurred by or imposed on the Grantor; furthermore, the Grantee



shall pay all costs, including reasonable attorney's fees and expenses, which may be incurred by or paid by the Grantor in enforcing the covenants and conditions of this grant of non-exclusive easement, or in the collection of any and all applicable charges attributed to said easement area.

14. The Grantee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Grantee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the easement area any such materials except to use in the ordinary course of Grantee business, and then only after written notice is given to Grantor of the identity of such materials and upon Grantor's consent which consent may be withheld at Grantor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Grantee, then the Grantee shall be responsible for the reasonable costs thereof. In addition, Grantee shall execute affidavits, representations and the like from time to time at Grantor's request concerning Grantee's best knowledge and belief regarding the presence of hazardous materials on the easement area placed or released by Grantee.

The Grantee agrees, to the extent allowed by law, to indemnify, defend, and hold Grantor harmless, from any damages and claims resulting from the release of hazardous materials on the easement area occurring while Grantee is in possession, or elsewhere if caused by Grantee or persons acting under Grantee. These covenants shall survive the expiration or earlier termination of this easement.

For the purpose of this easement "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

15. Nothing in this agreement shall constitute an obligation of funds of the United States in advance of an appropriation of those funds.

16. The Grantee shall comply with all applicable federal and state environmental impact regulations.



17. The Grantee shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to the ocean waters, streams or waterways resulting from the Grantee's, its invitee's, or its agent's use, maintenance, repair and operation of the easement area, and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination, and shall immediately clean the easement area and its surrounding waters of such pollutant or contaminant and restore to the Grantor's satisfaction the areas affected by such pollution or contamination, all at the Grantee's own cost and expense.



IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused this Indenture to be executed as of the day, month, and year first above written.

STATE OF HAWAII

By *Janet E. Kawada* *for*
Its Chairperson and Member
Board of Land and
Natural Resources

GRANTOR

Approved by the Board of
Land and Natural Resources
at its meeting held on
FEBRUARY 11, 2000 (Item J-2)

U.S. DEPARTMENT OF COMMERCE,
NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION, NATIONAL WEATHER
SERVICE PACIFIC REGION

By *Peter Oll*
Its Administrative Officer

GRANTEE

APPROVED AS TO FORM:

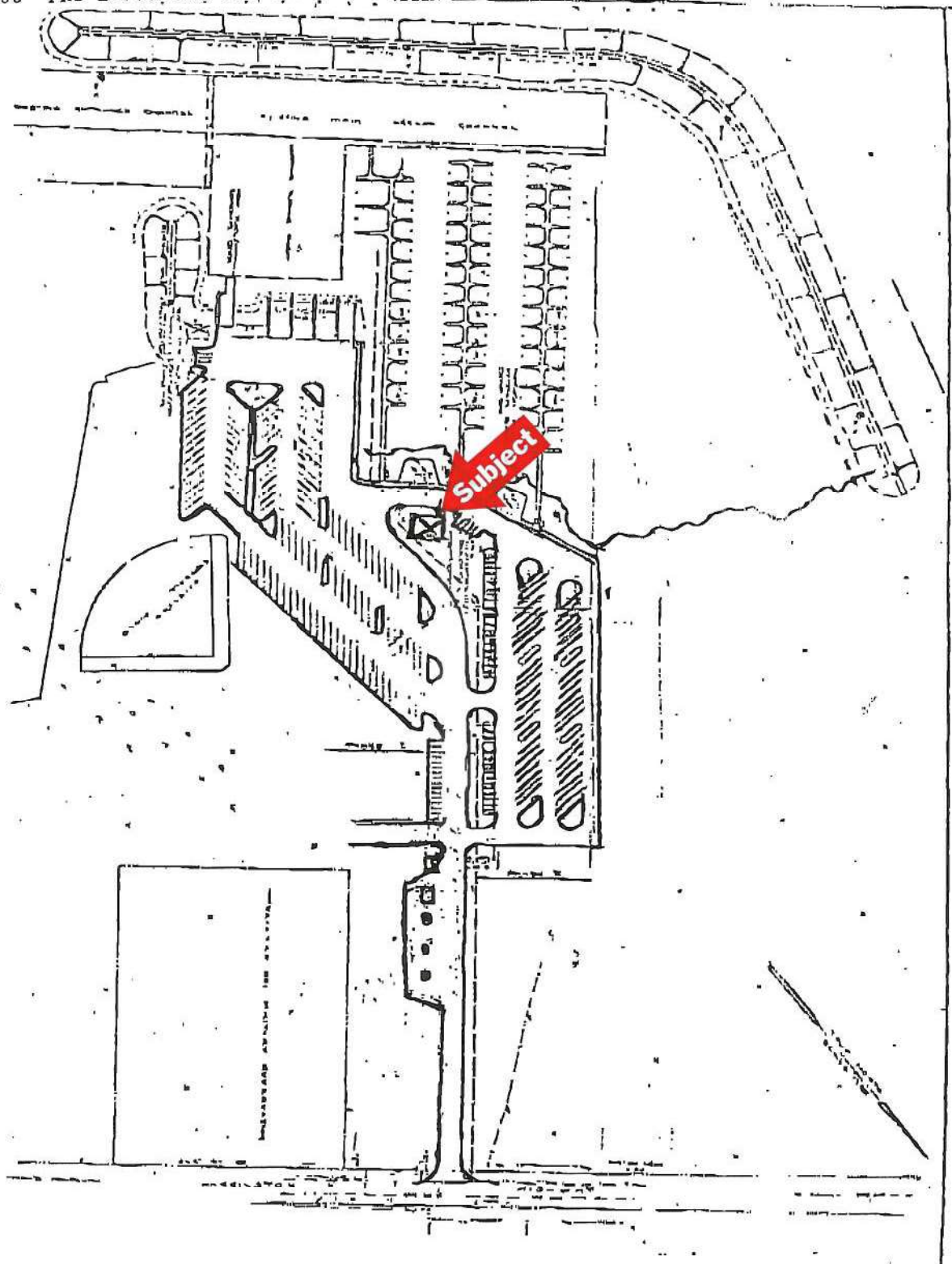
Carole K. Matukawa
Deputy Attorney General

Dated: *Dec. 4, 2000*



WAIANA
GENERAL SITE PLAN

APPROXIMATE LOCATION OF SUBJECT BUILDING



PRELIM. APPR'D.
Department of the
Attorney General