

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

April 26, 2024

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

OAHU

After-the-Fact Authorization for Issuance of Right-of-Entry Permit to Norton Lilly International, Inc., for Temporary Berthing of a Wave Energy Device for the periods from August 25, 2023 to September 10, 2023 and April 15, 2024 to May 14, 2024 at an Unencumbered Pier, Sand Island, Honolulu, Oahu; TMK: (1) 1-5-041: seaward of 333.

APPLICANT:

Norton Lilly International, LLC, an Alabama limited liability company (Applicant).¹

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes (“HRS”), as amended.

LOCATION:

Unencumbered Pier in Sand Island, Honolulu, Oahu; TMK: (1) 1-5-041: seaward of 333 as shown on **Exhibits A1** and **A2**.

AREA:

0.952 acres berthing easement. The device length is about 122 feet and the beam is 60 feet approximately. (**Exhibit B**)

ZONING:

State Land Use District: Not applicable, Honolulu Harbor.

TRUST LAND STATUS:

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

¹ Applicant is the agent for the owner of the subject device. According to the Department of Transportation, Harbors Division, they only deal with the agent, not the owner, of any vessel coming into Honolulu Harbor, who will be responsible for any matters regarding the vessel when it is in the Honolulu Harbor.

CURRENT USE STATUS:

Requested area is unencumbered.

CHARACTER OF USE:

Right of entry to berth a wave energy device.

TERM:

August 25, 2023 to September 10, 2023 and April 15, 2024 to May 14, 2024

RENTAL:

One-time payment of \$3,000 and 6,000 for the 2023 and 2024 requested periods respectively. See Remarks section.

COLLATERAL SECURITY DEPOSIT:

None

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules ("HAR") §§11-200.1-15 and -16 and the Exemption List for the Department of Land and Natural Resources, reviewed and concurred on 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, which applies to "[o]perations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing." Specifically, the subject request is exempt under Part 1, Item 44, which exempts "[p]ermits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing." The subject request is a de minimis action that will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment and the requirements of section 11-200.1-17, HAR.

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>

REMARKS:

The subject pier and the adjoining area were formerly leased to SubCom LLC under

General Lease No. S-5219 until the lease and its holdover expired in November 2022. SubCom, LLC finally vacated the land and the pier on February 10, 2024. Division of Aquatic Resources (DAR) is the current agency utilizing Parcel 333 pursuant to Governor's Executive Order No. 4652 as part of its coral restoration program.

Ocean Energy USA LLC, the owner of the subject energy device named OE-35, is partnering with the U. S. Department of Energy regarding the testing and adoption of this device.

August 2023

When the device was brought from the mainland to the State, Department of Transportation, Harbors Division (DOT) allowed its stay in the Honolulu Harbor, Pier 35, where the University of Hawaii research facility is located. Staff understood that the stay in the Honolulu Harbor was triggered by some repair works needed for the device. Prior to this detour, the device was originally planned to stay in the Pearl Harbor. Later, Applicant was asked to move the device by August 26, 2023 due to other commitments at Pier 35.

Upon receipt of the notice to vacate, Applicant, being the agent of the owner, reached out to DOT requesting for any possible alternative site. Subsequently, Applicant was referred by DOT to DAR on August 11, 2023 regarding the possible berthing at the subject pier. The request subsequently reached the Land Division who takes care of the real estate side of the area on behalf of DAR.

DOT, DAR, and Land Division had been discussing on the applicable conditions if the State were to allow the device berth at the subject pier. On August 24, 2023, the office of the Undersecretary of Science and Innovation, U.S. Department of Energy, via an email supported the request from the Applicant to berth the device at the subject pier.

Due to time constraints,² the 2023 request was not placed on any Board agenda, and Applicant was allowed to berth the device at the subject pier from August 25, 2023 until September 10, 2023 at a total fee of \$3,000 payable to the Department. In addition, Applicant paid dockage fees required under DOT's Hawaii Administrative Rules.

The \$3,000 one-time payment was considered by DAR, DOT, and Land Division to be a fair compensation for the 2023 request. For housekeeping purposes, staff is asking retroactive approval for the berthing of the device at the subject pier from August 25, 2023 to September 10, 2023.

On September 10, 2023, the device was relocated to Pearl Harbor undergoing certain maintenance work and it was planned to be relocated to a final offshore mooring site upon completion of the maintenance work. Undersecretary for Science and Innovation, by her

² From the date that Land Division became aware of the request (August 11, 2023) and the associated discussions with other stakeholders to the required date of relocation (August 26, 2023), staff was unable to place the request on any Board agenda due to the sunshine meeting requirements.

email dated September 19, 2023, thanked the Navy, UH, DOT, and DLNR for their combined efforts in relocating the device within a short notice.

March 2024

By email dated March 28, 2024, the owner's agent advised the staff that the owner was asked by the Navy to remove the device from Pearl Harbor by April 15, 2024, as the Navy needed to make room for the incoming vessels participating in RIMPAC, which is a multi-national military exercise. The situation was complicated by the fact that the planned final offshore berthing location for the device is still under repair and the completion date is estimated to be around mid-May 2024.

In light of the above, the agent is asking the department for approval to allow the device to berth at the subject pier, with an anticipated commencement date of April 15, 2024 and lasting for one month.

DOT requested the following conditions to be incorporated into the requested right-of-entry permit, if approved:

1. Permittee understands the OE-35 is berthed within the jurisdiction of the State of Hawaii DOT.³
2. Permittee agrees to be governed by and pay all charges specified in the Hawaii Administrative Rules Title 19, and Hawaii Revised Statutes section 266.
3. Permittee shall comply with any official orders from DOT.
4. Permittee shall have a contract in place with an ocean going towing company to remove the OE-35 from Honolulu Harbor in case ordered by DOT.

DAR have no objection to the subject request, subject to payment of fee to DAR.

The 2023 request was charged \$3,000 for a total of 17 days, from August 25, 2023 to September 10, 2023. Staff recommends collection of \$6,000 to cover the requested one-month period, which would be consistent with the rate charged in 2023.

Applicant has not had a lease, permit, easement, or other disposition of State lands terminated within the past five years due to non-compliance with such terms and conditions. There are no other pertinent issues or concerns regarding the subject request.

The request was not placed on any Board agenda due to the time constraints between the date of the request and any available Board meeting under sunshine meeting requirement. On April 3, 2024, Chairperson authorized the issuance of the requested right-of-entry for the period from April 15, 2024 to May 14, 2024, further subject to seeking Board after-the-fact approval.

³ While the pier is unencumbered, the vessel will be staying within the boundary of Honolulu Harbor which has been set side to DOT pursuant to Governor's executive order.

There are no other pertinent issues or concerns and staff bring the request to the Board on today's agenda seeking after-the-fact approval for the requested periods described above.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and section 11-200.1-16, 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 as a de minimis activity.
2. After-the-fact authorization for the issuance of a right-of-entry permit to Norton Lilly International, LLC covering the subject area to berth the wave energy device under the terms and conditions cited above from August 25, 2023 to September 10, 2023 and April 15, 2024 to May 14, 2024, 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. Applicant understands the OE-35 is berthed within the jurisdiction of the Department of Transportation.
 - C. Applicant agrees to be governed by and pay all charges specified in the Hawaii Administrative Rules Title 19, and Hawaii Revised Statutes section 266.
 - D. Applicant shall comply with any official orders from the Department of Transportation.
 - E. Applicant shall have a contract in place with an ocean going towing company to remove the OE-35 from Honolulu Harbor in case ordered by the Department of Transportation.
 - F. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

PCM

RT



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

EXHIBIT A1



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

