

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

May 24, 2024

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

OAHU

Amend Prior Board Action of April 26, 2024, Item D-11, *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.*

The purpose of the amendment is to (1) extend the effective period of the subject right-of-entry permit up to June 14, 2024; and (2) delegate authority to the Chairperson for issuance any further extension for good cause shown.

BACKGROUND:

At its meeting of April 26, 2024, under agenda item D-11,¹ the Board of Land and Natural Resources (Board) gave its after-the-fact approval for the issuance of a right-of-entry permit (ROE) to Norton Lilly International, LLC to berth a wave energy device at the subject pier. The ROE commenced from April 15, 2024 to May 14, 2024, subject to a one-time payment of \$6,000.

On May 7, 2024, staff received an email from the applicant stating that there is outstanding repair work needed to be done at the final offshore mooring location before the device is deployed. Staff noted that the ROE would expire seven (7) days later on May 14, 2024.

The request was not placed on any Board agenda due to the time constraints between the date of the request and the next available Board meeting under sunshine meeting requirement. Staff reached out to the Division of Aquatic Resources and the Department of Transportation, Harbors Division, and both agencies had no objection to the requested extension. On May 10, 2024, Chairperson authorized the issuance of the requested right-of-entry for the period from May 15, 2024 to June 14, 2024, further subject to seeking Board after-the-fact approval.

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.

Staff recommends the Board amend its prior Board action of April 26, 2024, Item D-11,

¹ April 26, 2024 submittal can be downloaded from the following link <https://dlnr.hawaii.gov/wp-content/uploads/2024/04/D-11.pdf>

by extending the subject ROE to June 14, 2024. In addition, staff recommends the Board delegate the authority to the Chairperson to issue further extension of the subject ROE beyond June 14, 2024 for good cause shown.

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.

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.

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. Amend its prior action of April 26, 2024, under agenda item D-11 by extending the subject right-of-entry permit to June 14, 2024.
3. Delegate the Chairperson authority to issue further extension of the subject right-of-entry permit beyond June 14, 2024 for good cause shown.
4. Affirm that, except as amended hereby, all terms and conditions listed in its April 26, 2024 approval shall remain the same.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

KEM

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