

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

June 26, 2015

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

PSF No.: 04OD-347

OAHU

Grant of Term, Non-Exclusive Easement to Paul T. Noto, Trustee of the Paul T. Noto Trust Agreement dated July 7, 1988 and Teruko Noto, Trustee of the Teruko Noto Trust Agreement dated July 7, 1988 for Pier Purposes; Termination of Revocable Permit No. S-5414; Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-001:Seaward of 018.

APPLICANT:

Paul T. Noto, Trustee of the Paul T. Noto Trust Agreement dated July 7, 1988 (as to the undivided 1/3 interest) and Teruko Noto, Trustee of the Teruko Noto Trust Agreement dated July 7, 1988, (as to the undivided 2/3 interest) as tenants in common.

LEGAL REFERENCE:

Sections 171-6, 13, 17, 53(c), and 55 Hawaii Revised Statutes, as amended.

LOCATION:

Portion of submerged land located seaward in Kaneohe, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-5-001:Seaward of 018, as shown on the map attached as **Exhibit A**.

AREA:

100 square feet, more or less, subject to review and approval by the Department of Accounting and General Services, Survey Division

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 No. 5414 to Paul T. Noto for recreational pier purposes.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing pier over,
under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market rent,
subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

CDUA Permit OA-3017B covering the piers under the Kaneohe Bay Pier Amnesty Program
was approved by the Board on July, 13, 2001, Item D-32.

In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1)(4), 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" and Class No. 4, that states "Minor alteration
in the conditions of land, water, or vegetation.". See **Exhibit B**.

DCCA VERIFICATION:

Not applicable. The Applicants as landowners are not required to register with DCCA.

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards and at Applicants' own cost;
2. Pay for an appraisal to determine one-time payment; and
3. Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

REMARKS:

In 1964, Mr. Noto obtained Shore Waters Construction Permit No. 1311 from the Department of Transportation, Harbors Division for the subject pier, measuring 10 feet by 10 feet. Since 1977, Mr. Noto has been the permittee under Revocable Permit No. 5414 for the same pier for recreation pier purposes.

In 2000, the Legislature passed Act 261, which allowed the Board to issue direct leases for private noncommercial pier purposes. The Department established the Kaneohe Bay Pier Amnesty Program to address the piers on the Windward side of Oahu. Under the program, the abutting private property owners had an opportunity to obtain a 55-year direct lease, subject to a one-time payment consideration. The law expired on June 30, 2007. Mr. Noto decided not to participate in the program mentioned above.

Recently, Mr. Noto inquired about the possibility of a long term disposition for the pier. Staff explained to him that the Land Division would recommend the issuance of a term, non-exclusive easement, subject to other agencies' comments and the current Applicant Requirements as noted above.

Upon approval of today's request, Applicant will be reminded of the requirement for concurrent resolution from both houses of the legislature under Sect.171-53(c), HRS prior to the issuance of the requested easement.

Comments from other agencies

Board of Water Supply, Department of Parks and Recreation, Office of Hawaiian Affairs, Department of Planning and Permitting, State Historic Preservation Division, Division of Aquatic Resources, and Division of Forestry and Wildlife have no comment or objection to the request.

Department of Health, Commission on Water Resource Management, Office of Conservation and Coastal Lands, and Department of Facility Maintenance have not responded to the solicitation for comment at the time of writing this submittal.

For housekeeping purposes, staff requests the Board authorize the termination of RP 5414 upon issuance of the requested easement. Staff also recommends the Board assess a non-refundable administrative cost of \$500 for the subject request.

There are no other pertinent issues or concerns, and staff has no objection to the request.

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. Assess a non-refundable administrative cost of \$500, under Section 171-6, HRS.
3. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-5-001:018, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Paul T. Noto, Trustee of the Paul T. Noto Trust Agreement dated July 7, 1988, and Teruko Noto, Trustee of the Teruko Noto Trust Agreement dated July 7, 1988, covering the subject area for 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 term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-5-001:018, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
 - 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;
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and

execution of the grant of easement.


5. Termination of Revocable Permit No. 5414 upon the issuance of the requested easement.


Respectfully Submitted,

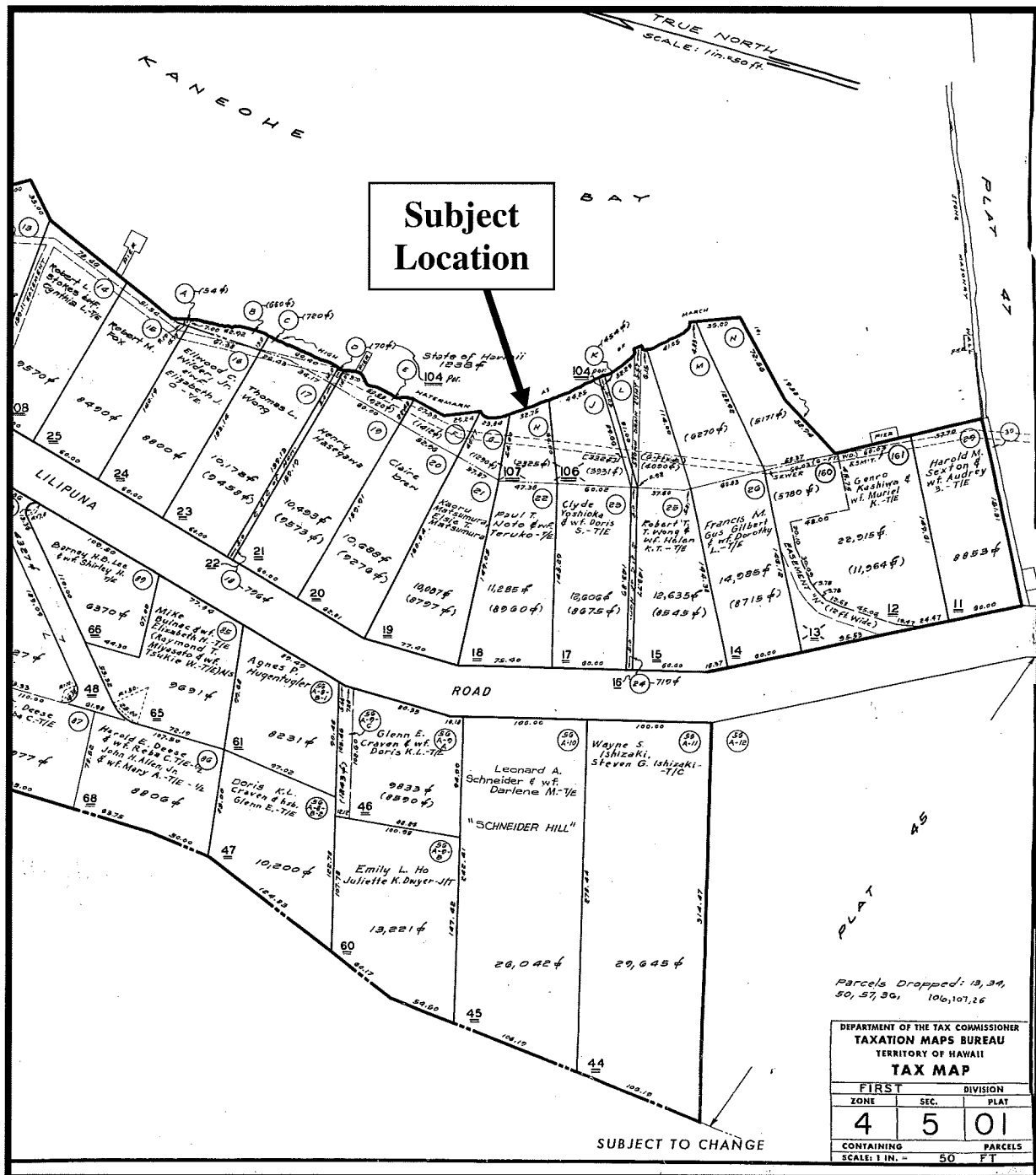


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



TMK (1) 4-5-001:seaward of 018

EXHIBIT A

EXEMPTION NOTIFICATION

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

Project Title: Issuance of Term, Non-Exclusive Easement for Pier Purposes

Project / Reference No.: PSF 04OD-347

Project Location: Kaneohe, Koolaupoko, Oahu, TMK (1) 4-5-001:seaward of 018.

Project Description: Issuance of term, non-exclusive easement for pier purposes.

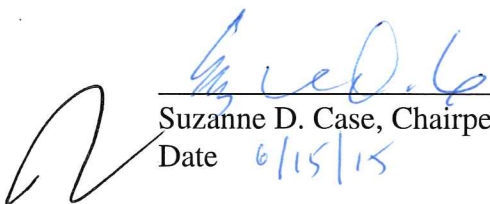
Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4), 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" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

The request is triggered by the change in tenure of the disposition for the same improvement. The owners are not planning to have any new improvement to the subject area. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties: Agencies notes in the submittal.

Recommendation: It is recommended that the Board find that 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.



Suzanne D. Case, Chairperson
Date 6/15/15

EXHIBIT B