

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of State Parks  
Honolulu, Hawaii 96813

March 24, 2016

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

OAHU

Grant of Term, Non-Exclusive Easement and Management Right-Of-Entry to  
Poka Place LLC for Erosion Control and Drainage Improvements and Site  
Remediation Purposes, Diamond Head, Honolulu, Oahu, Tax Map Key: (1) 3-1-  
042:017 (portion)

APPLICANTS:

Poka Place LLC

LEGAL REFERENCE:

Section 171-6, 13, and 17, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located at Diamond Head, Honolulu, Oahu, identified by  
Tax Map Key: (1) 3-1-042:017 (portion), as shown on the attached map labeled **Exhibit  
A**.

AREA:

2,000 square feet, more or less, (portion of the 6.465-acre property) subject to review and  
approval by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District:  
City & County of Honolulu LUO:

Conservation (Resource)  
P-1 (Adjoining Property is R-10)

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:

Unencumbered with encroachments.

On February 12, 2016 the Board of Land and Natural Resources approved the Conservation District Use Application (CDUA) OA-3754 for After-The-Fact Erosion Control and Drainage Improvements and Site Remediation located at the Diamond Head State Monument and further identified as Tax Map Key (TMK) (1) 3-1-042:017 subject to conditions. On February 25, 2016, CDUP: OA-3754 was issued (**Exhibit C**).

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove Erosion Control and Drainage Improvements and Site Remediation 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:

In accordance with Hawaii Administrative Rule Sections 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 46 that states "Creation or termination of easement, covenants, or other rights in structures or land". See exemption declaration attached as **Exhibit B**.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Registered business name confirmed:	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Applicant in good standing confirmed:	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>

Poka Place LLC is not registered with the Department of Commerce Consumer Affairs. However, if the entity is only holding title to property in Hawaii, as opposed to

conducting business in the state, it may not be required to register with DCCA. Staff will confirm with the Department of the Attorney General if this matter is approved.

**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:**

The proposed subject easement area is located in Honolulu, O'ahu, Hawai'i, on the southern slope of Diamond Head Crater and part of the Diamond Head State Monument (DHSM,) under the jurisdiction of the DLNR Division of State Parks. The subject area is at the end of Poka Place and involves drainage and soil retention improvements on the State land adjoining the Poka Place LLC parcel.

To the south of the State DHSM parcel is TMK (1) 3-1-047-049 (3703 Poka Place) which is currently owned by Poka Place, LLC. The Poka Place lot includes a main residence as well as a guest residence, a carport and pool. Between the two residences, the private property is encumbered by a 10-foot wide storm drainage easement in favor of the State.

Offsite runoff is conveyed to the Poka Place, LLC lot from the DHSM. A large portion of this runoff is collected within a small valley along the DHSM slope which lies to the north and center of the lot. Within the private lot there is a 10-foot wide storm-drain easement that roughly aligns with the path of the runoff. Runoff from the valley is discharged into the private lot over the drainage easement.

At an undetermined time previous, rock retaining walls, terraced walls and landscaping was added to the state property.

On September 12, 2014, pursuant to HRS §183C, the Board found Poka Place, LLC in violation of HRS §183C-7; and HAR §13-5-22 and § 13-5-23, subject to the following:

1. That Poka Place LLC is fined \$10,000.00 in one instance for violating the provisions of HRS § 1 83C-7 and HAR § 13-5-22 for unauthorized construction of earth retention structures by failing to obtain the appropriate approvals within the Conservation District;
2. That Poka Place LLC is fined \$2,000.00 in one instance for violating the provisions of HRS §183C-7 and HAR §13-5-23 for unauthorized landscaping within the Conservation District;
3. That Poka Place LLC is fined an additional \$2,000.00 for administrative costs associated with the subject violations (\$1,000.00 for OCCL and \$1,000 for State Parks);

4. That Poka Place LLC shall pay all designated fines and administrative costs (\$14,000.00) within ninety (90) days from the date of the Board's actions;
5. That Poka Place LLC shall apply for an after-the-fact Conservation District Use Permit (CDUP) Departmental Permit for the earth retention walls and landscaping improvements within one hundred twenty (120) days of the Board's action on this matter; That Poka Place LLC shall provide engineered approved stamped plans to be submitted along with the CDUP application;
6. That the CDUP for the earth retention structures and landscaping will need to be approved by the Department, who has the final authority to sign, modify, or deny the permit; and that if the permit is denied walls will need to be removed and the area restored to its natural state;
7. That Poka Place LLC shall remediate and restore the terraced landscaping areas, pursuant to approval of plans by the Department;
8. That Poka Place LLC shall remediate the irrigated landscaping area to the extent in which the drainage purpose of the area is maintained, but the extraneous improvements (i.e. waterfall and pond) are removed and restored pursuant to approval of plans by the Department;
9. That Poka Place LLC either remove or replace the introduced and/or invasive species that are part of the terraced landscaping area and the irrigated landscaping area with either endemic or indigenous plants to Hawai'i, or allow the area to re-grow naturally;
10. That Poka Place LLC, and its successors and assigns, shall hold the State of Hawai'i harmless from and against any loss, liability, claims, or demand for property damage, personal injury, and death arising from the construction of improvements over the existing drainage easement as well as any alteration to the natural drainage pattern of the property;
11. That no further work shall occur on the subject parcel within the Conservation District, without the Board of Land and Natural Resources approval; Chairman's approval and/or OCCL approval. If Poka Place, LLC conducts further work in the subject parcel without approval, they will be fined an additional \$15,000.00 a day; and
12. That in the event of failure of Poka Place, LLC to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

OCCL Staff notes that the fine was paid in full on October 8, 2014 and that Poka Place LLC applied for a Conservation District Use Permit and prepared an associated environmental assessment.

On February 12, 2016, the Board of Land and Natural Resources approved Poka Place LLC's Conservation District Use Application (CDUA) OA-3754 for after-the-fact Erosion Control and Drainage Improvements and Site Remediation located at the Diamond Head State Monument and further identified as Tax Map Key (TMK) (1) 3-1-042:017 subject to conditions including obtaining appropriate authorization from the department for the occupancy of State lands.

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.

RECOMMENDATION: That the Board:

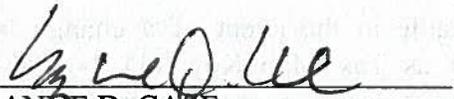
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. 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) 3-1-047-049, 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 noncompliance with such terms and conditions.
3. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement and management right-of-entry to Poka Place, LLC covering the subject area for erosion control and drainage improvements and site remediation 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 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) 3-1-047-049, 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. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

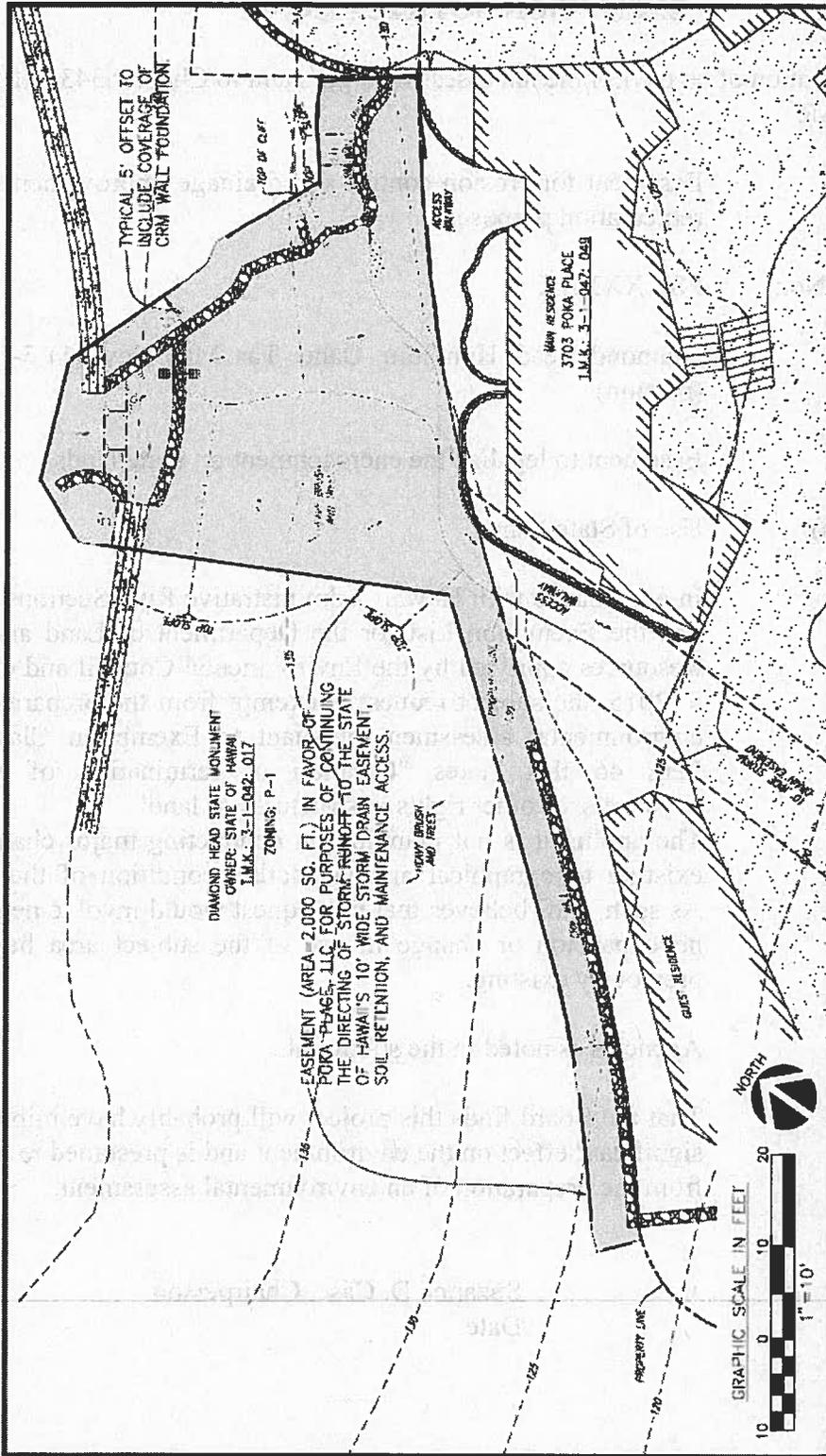
Respectfully Submitted,



**CURT A. COTTRELL**  
**State Parks Administrator**

**APPROVED FOR SUBMITTAL:**

  
**SUZANNE D. CASE**  
**CHAIRPERSON**



POST-CONSTRUCTION DWG. NO. C-2  
 SITE PLAN

3703 POKA PLACE  
 HONOLULU, OAHU, HAWAII  
 T.M.K.: 3-1-042-049  
 Prepared By: Alpha Engineers, Inc.

**TMK: (1) 3-1-042:017 (portion)**  
**EXHIBIT A**

**EXEMPTION NOTIFICATION**

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

**Project Title:** Easement for erosion control and drainage improvements and site remediation purposes;

**Project / Reference No.:** PSF XXXXX

**Project Location:** Diamond Head, Honolulu, Oahu, Tax Map Key: (1) 3-1-042:017 (portion)

**Project Description:** Easement to legalize the encroachment on State lands.

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

**Exemption Class No.:** In accordance with Hawaii Administrative Rule Sections 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 46 that states "Creation or termination of easement, covenants, or other rights in structures or land".  
The applicant is not planning on conducting major change to the existing topographical and vegetation condition of the property. 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 as noted in the submittal.

**Recommendation:** That the Board finds 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:

**EXHIBIT B**