

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

December 14, 2012

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

OAHU

Authorize Posting of Performance Bond for the Removal of Remaining Structures of Pier; Waikalua Development LLC, Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-005:059 seaward.

APPLICANT:

Waikalua Development LLC, a California limited liability company

LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located in Kaneohe, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-5-005:059 seaward as shown on the attached map labeled **Exhibit A**.

ZONING:

State Land Use District: Conservation

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.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Today's request does not involve the use of State land or State funds. Therefore, it does not trigger an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes.

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>

BACKGROUND:

Applicant is the owner of the abutting private property identified as tax map key (1) 4-5-005:059 (“Parcel 59”), which is undergoing development into private residences. During the due diligence period, the remaining posts of a former pier (“PIER”) were found located seaward of Parcel 59. **Exhibit B** shows the PIER in an aerial image.

There is no authorization or land disposition pertaining to the PIER. Pursuant to §13-222-19, Hawaii Administrative Rules, the Chairperson shall not certify the shoreline when there is unauthorized encroachment. The same rule requires the Applicant to resolve the encroachment with the Department prior to any certification of the shoreline.

The current development plan does not include any pier. Nevertheless, the Applicant does not want to remove the PIER now, because the owners association to be formed under the proposed development may later request an easement to restore the PIER.

To resolve this dilemma, Applicant intends to post a performance bond, in the amount of the demolition cost plus associated permit fees, with the Department. Applicant requests the Board consider the posting of the performance bond as a means to resolve the encroachment, and allow the shoreline certification moving forward.

STAFF RESPONSE

In most shoreline encroachment cases, obtaining an easement with the consideration paid and provision of liability insurance to the State is the common outcome. In short, the encroachment will be allowed to remain during the term of the easement.

In the subject request, the PIER cannot be used currently due to its physical condition. The Applicant wants to keep the option open for the future residence owners to restore the PIER for recreational use.

Staff understands the bond amount will be determined by three quotes to be provided by the Applicant for the future demolition work, plus any permit fees. Staff anticipates seeking the assistance of the Engineering Division of the Department to review the bond amount.

Staff understands a bond is to be renewed every year upon Applicant’s payment of the premium. If the bond is not renewed, for example, if the company dissolves after the project is completed and no renewal premium is paid, the Department will have no recourse to fund the demolition of the PIER. In this event, a cash deposit would be preferable.

The development plan did not set aside any funding for the demolition of the PIER

because the developer was not aware of the issue until the shoreline certification process mentioned above. To address the issue of lack of funding at the present moment, staff believes the performance bond can be replaced by a cash deposit when the Applicant starts selling the residences with the downpayment coming to the Applicant. Therefore, staff recommends the Board request the performance bond be replaced in its entirety by cash bond before the fee transfer of Parcel 59 or portions thereof.

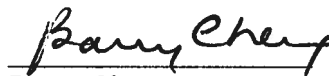
In addition, the Applicant shall also provide liability insurance naming the State as additional insured and indemnify the State.

If the future owners association desires to obtain a land disposition for the PIER, such request will be brought to the Board for consideration at a later date.

RECOMMENDATION: That the Board:

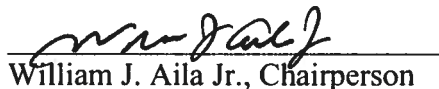
1. Authorize the posting of performance bond in an amount for the demolition cost and associated permit fees for the PIER under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The performance bond amount shall be subject to approval by the Chairperson;
 - b. Applicant shall provide liability insurance to the State in an amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregate, and naming the State as additional insured;
 - c. Applicant shall indemnify and hold harmless the State;
 - d. The performance bond shall be replaced in its entirety by a cash bond in the same amount before any fee transfer of Parcel 59 or portions thereof.
2. Upon compliance of Recommendation 1, authorize the Chairperson to proceed with the shoreline certification for Parcel 59.
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

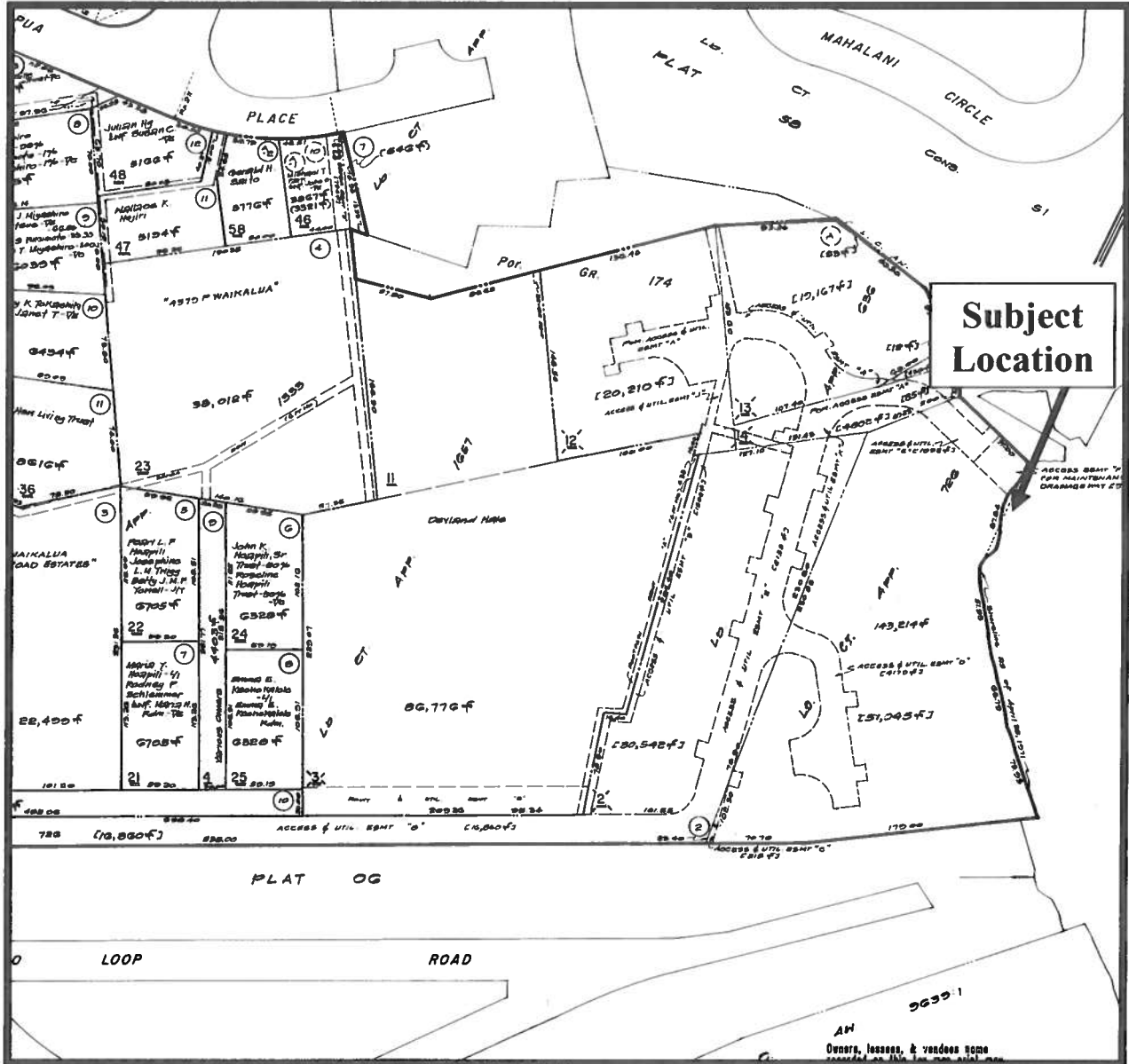


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

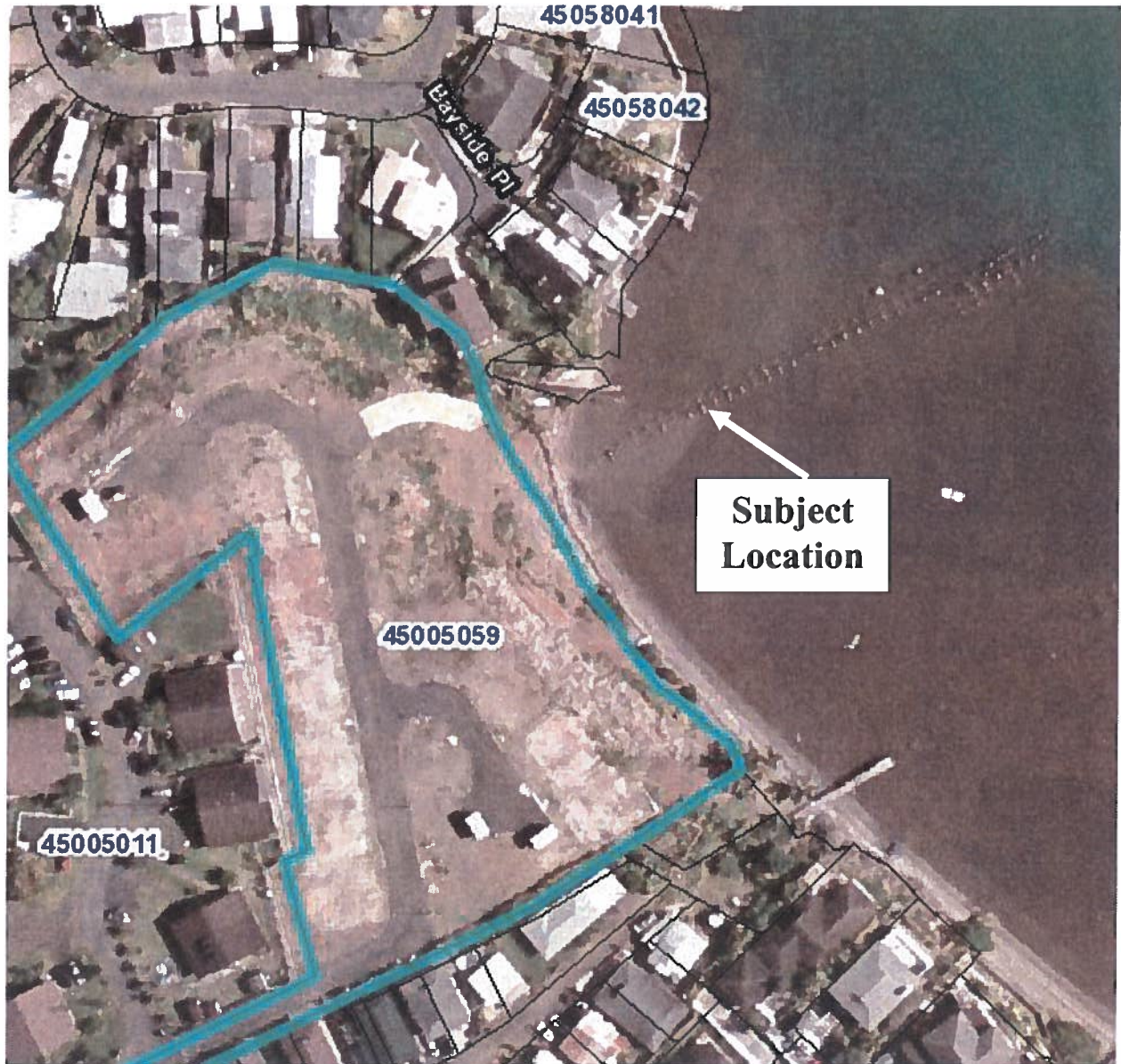


William J. Aila Jr., Chairperson



TMK (1) 4-5-005:059 seaward

EXHIBIT A



TMK (1) 4-5-005:059 seaward

EXHIBIT B