

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

January 11, 2013

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

PSD 12OD-174

OAHU

Grant of Term, Non-Exclusive Easement to Kenton T. Eldridge and Hannelore G. Eldridge for Pier Purposes, Wailupe, Honolulu, Oahu, Tax Map Key: (1) 3-6-001:021 seaward

APPLICANT:

Kenton T. Eldridge and Hannelore G. Eldridge, husband and wife, Tenants by the Entirety

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located in Wailupe, Honolulu, Oahu, identified by Tax Map Key: (1) 3-6-001:021 seaward, as shown on the attached map labeled **Exhibit A**.

AREA:

270 square feet, more or less.

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

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:

A Finding of No Significant Impact (FONSI) was published in the Office of Environmental Quality Control's Environmental Notice on August 8, 2007. There were no challenges to the FONSI.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

On October 12, 2007, under agenda item K-3, the Board approved the Conservation District Use Permit (OA-3417) for pier purposes at the subject location. A copy of the approval letter accepted by the Applicant is attached as **Exhibit B**. Condition 13 of the approval requires the Applicant obtain a land disposition for the use of State land. Nevertheless, the approval letter was not copied to the Land Division in 2007 and no land disposition was issued

regarding the pier. Recently, the Applicant has been in the process of selling the abutting private property and intends to resolve this issue.

Staff did not solicit comments from other government agencies regarding the subject request as the proposed pier has undergone the environmental assessment process, which includes solicitation of public and agency comment.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

The requested area for the pier is considered submerged land for the purpose of this request. Upon approval of today's request, Applicant is reminded of the requirement for concurrent resolution from both houses of the legislature under Sect.171-53(c), HRS. Governor's approval pursuant to Section 171-53 (c), HRS will be pursued by the staff upon approval of today's request.

There are no other pertinent issues or concerns. Staff has no objection to the request.

RECOMMENDATION: That the Board:

1. 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) 3-6-001:021, 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.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Kenton T. Eldridge and Hannelore G. Eldridge 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) 3-6-001:021, 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;

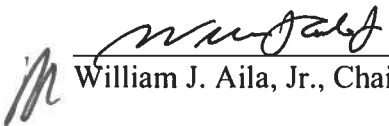
- C. Review and approval by the Department of the Attorney General;
- D. Terms and conditions of Conservation District Use Permit (OA-3417);
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
- F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,

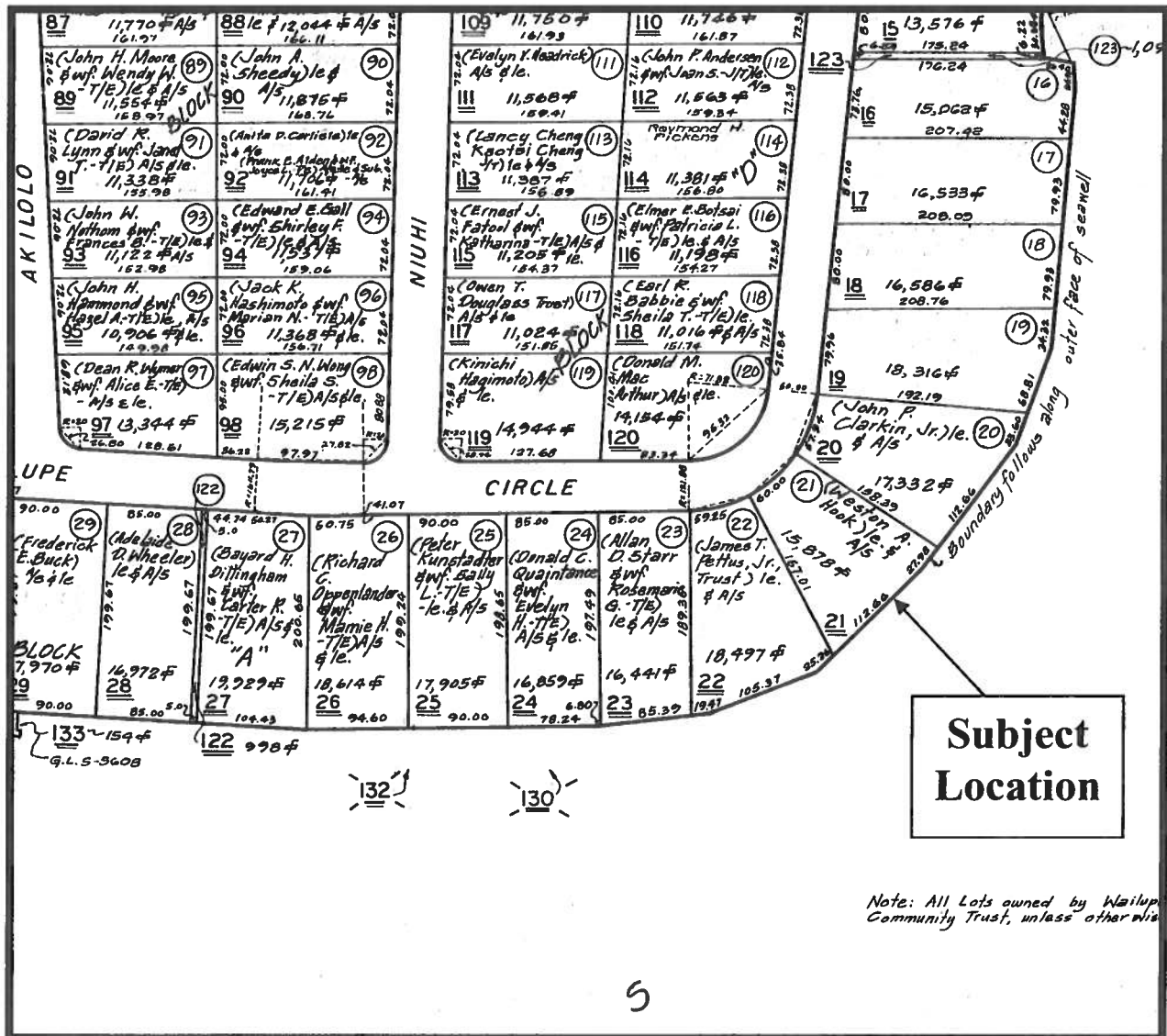


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



TMK (1) 3-6-001:021 seaward

EXHIBIT A

LINDA LINGLE
GOVERNOR OF HAWAII



RECEIVED

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BELT COLLINS HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

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BOATING AND OCEAN RECREATION
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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIKOOLAWA ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:MC

CDUP: OA-3417

Mary O'Leary
Belt Collins Hawai'i Ltd.
2153 North King Street, Suite 200
Honolulu, HI 96819

OCT 16 2007

Dear Ms. O'Leary,

SUBJECT: CONSERVATION DISTRICT USE PERMIT (CDUP) OA-3417
RECREATIONAL PIER
Wailupe, Honolulu District, O'ahu,
TMK (1) 3-6-01:21

2007 OCT 22 A 9
DEPARTMENT OF LAND & NATURAL RESOURCES
STATE OF HAWAII
RECEIVED
LANDS

This is to inform you that on October 12, 2007, the Board of Land and Natural Resources approved the Conservation District Use Permit (CDUP) OA-3417 for pier construction at Honolulu, TMK (1) 3-6-01:21, subject to the following conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the Federal, State and County governments, and the applicable parts of Section 13-5-42, Hawai'i Administrative Rules;
- 2) The applicant, their successors and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, their successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall comply with all applicable Department of Health administrative rules;
- 4) All mitigation measures set forth in the application materials, and in the final environmental assessment for this project are hereby incorporated as conditions of the permit;
- 5) Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
- 6) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
- 7) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;

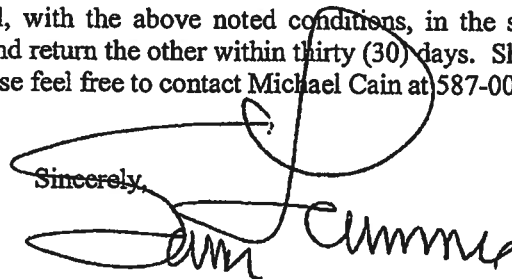
EXHIBIT "B"

Mary O'Leary
Belt Collins Hawai'i Ltd.

- 8) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
- 9) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawai'i, and by Hawai'i statutory and case law;
- 10) During construction, appropriate mitigation measures shall be implemented to minimize impacts to the marine environment, off-site roadways, utilities, and public facilities;
- 11) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
- 12) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 13) The applicant shall obtain a land disposition from the O'ahu District Land Office for the use of State land;
- 14) The applicant shall provide documentation (e.g., book and page, or document number) that the permit approval has been placed in recordable form as a part of a deed instrument
- 15) Pursuant to HRS § 171-36 (a) (9) and *Act 261, SLH 2000, as amended*, the applicant will post a sign indicating the public's right to use the pier
- 16) Other terms and conditions as may be prescribed by the Chairperson; and
- 17) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within thirty (30) days. Should you have any questions on any of these conditions, please feel free to contact Michael Cain at 587-0048.

Sincerely,



Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged:


Applicant's Signature

Date

10/17/07

c: DLNR Chair