

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

June 14, 2013

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

O'ahu

Approval to Remove Various Improvements Located within Easements within Diamond Head State Monument and Appurtenant to Diamond Head View Lots, Unit 1, Lots 1 and 1A, Kapahulu, Honolulu, O'ahu, Tax Map Key: (1) 3-1-047: 048, and 049

APPLICANT:

Martin Hsia, fee owner of Lot 1 (TMK: (1) 3-1-047:048)

LEGAL REFERENCE:

Section 171-57, and other relevant provisions of Section 171, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kapahulu situated at Honolulu, O'ahu, located within Diamond Head State Monument, identified by Tax Map Key: (1) 3-1-047: 048, and 049, as shown on the attached map labeled Exhibit A.

AREA:

2,327 square feet, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____ NO x

CHARACTER OF USE:

Road access purposes.

CURRENT USE STATUS:

Encumbered by Governor's Executive Order No. 3642 setting aside land for addition to the Diamond Head State Monument and by road easement in favor of Jack Cione and Maydelle Nevans Cione (owners of TMK: (1) 3-1-047:049), and by road easement in favor of George Winters and Madeline T. Winters (owners of TMK: (1) 3-1-047:048), adjacent fee owners.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exemption Notification attached hereto as Exhibit F.

APPLICANT REQUIREMENTS:

See remarks and recommendations sections.

REMARKS:

Mr. Hsia is the current fee owner and a successor in interest to George Winters and Madeline T. Winters, the initial fee owners of Lot 1 (hereinafter "Hsia Lot"). Poka Place LLC, is the current fee owner and a successor in interest to Jack Cione and Maydelle Nevans Cione, the initial owners of Lot 1-A (hereinafter "Poka Place Lot"). Map descriptions of these parcels are attached as Exhibit B. Both owners share a common road easement granted with the original conveyance of the properties which was part of an auction conducted by the Department in the 1960's.

On or about January 28, 1966, the Poka Place Lot was conveyed to the Ciones together with a Road Easement as depicted in Exhibit B. On or about March 20, 1967, the Hsia Lot was conveyed to the Winters together with the identical easement. The only distinction between the two easements was the Poka Place Lot easement provided that, "should the State extend Poka Place so as to afford suitable access to the above described lot or should the State provide for another means of access to said lot, the aforesaid appurtenant roadway easement shall terminate and end."

On May 14, 1965 (in other words before either lot was conveyed) (under Agenda Item F-18), the Board approved a request by the Ciones to construct a gate over the road right-of-way at its intersection with the northeasterly boundary of Lot 1-A.¹ There is no record of approval or objection by the Winters at the time and there are no records indicating when or if the approved gate was constructed. The approved plans indicated a gate height of 6 feet, 3 inches.

In an October 10, 1991 letter from counsel for the Paul Mitchel Trust (the then current owner of the Poka Place Lot), a request was made to install a 'driveway gate' across the easement in an area only affecting ingress and egress to said lot². The then O'ahu District Land Agent advised the Poka Place Lot owners in writing that their request was approved and subsequently signed a building permit application with the City and County of Honolulu. There is no record of approval or objection by the owner of the Hsia Lot. However, in a July 16, 2012 letter (attached as Exhibit E), Mr. Hsia advises counsel for the Poka Place Lot that the prior owner of his lot "had permitted the construction of the gate and landscaping on the roadway easement" and that he, Mr. Hsia, permitted the gate and landscaping to remain because "... it enhances my security by preventing traffic in front of my house and people from parking directly in front of my house."

On February 19, 2013, the City and County of Honolulu, Department of Planning and Permitting (DPP), issued a Notice of Violation (NOV) for construction work done without first obtaining a building permit and noted the height of the gate was above the limits per DPP's building code. In addition, the NOV included a violation for a fence at the rear of the easement area which was constructed without a building permit. As landowner, the Department was named as a party. On

¹ Attached as Exhibit D is a copy of the plans for the location of the gate as approved by the Department. The plans show a gate with associated walls.

² See Exhibit C – Map Depicting Gate. This drawing was attached to the building permit application and shows the approximate location of the existing gate. Staff has inspected the original 1965 plans for the Poka Place Lot as approved by the Department and determined the location of the gate in both plans is essentially the same.

May 3rd, 2013, however, DPP notified State Parks by telephone indicating the NOV was being withdrawn because it is viewed as a State matter.

Recently, staff from Land Division, State Parks and the Department of the Attorney General met with both Mr. Hsia and representatives of Poka Place LLC to discuss the matter. Mr. Hsia advised he did not consent to the construction of the gate and that the gate infringes on his access to the easement granted in his deed. In addition, he objected to the installation of trees and other improvements along the easement as they restrict vehicle movement and pose safety and liability risks. Poka Place LLC representatives advised they were in the process of curing the NOV and would work with DPP to achieve compliance and that the installation of the trees was made by the previous owner of their lot.

DISCUSSION:

Files do not indicate whether or not approval was obtained from the Hsia Lot owner for the installation of the gate on the Poka Place Lot side of the easement. Given the fact this condition has existed for many years and because there have been no other reported objections, this may indicate that the intent of the Hsia Lot easement was to serve the length of his property and not the entire length of the easement. However, the language of the easement specifies it is a road easement, and as such, no improvements infringing the easement were referenced when the easement language was placed in the deed. In addition, other improvements have been made to the easement area including the installation of an intercom and a mailbox as well as the planting of trees and other landscaping, none of which were approved by the Department. Although it isn't clear which owner planted the trees and landscaping, irrigation lines appear to be fed from the Poka Place Lot.

Staff recommends that the road easement should be restored by authorizing Mr. Hsia to remove improvements not essential to the road easement. This includes the gate improvements previously authorized by the Board in 1965, the landscaping, intercom and mailbox. The Poka Place Lot owner should be likewise afforded the right to remove any improvements in case they wish to salvage any of the improvements before Mr. Hsia removes and (presumably) discards any of the improvements.

In short, staff's recommendation – based on the language of both deeds – is that the easement area be used as an road easement and for no other purpose.

Staff further recommends that the Board make any removal or restoration subject to review and approval of the Chairperson upon presentation of plans and that all work be completed within one year unless the matter is brought back to the Board for additional time. In addition, the party or parties removing the improvements shall obtain all necessary permits and other approvals necessary. This may include site plan approval from the DLNR Office of Conservation and Coastal Lands.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

RECOMMENDATION:

That, subject to staff's recommendations, and the terms and conditions noted above, the Board authorize Martin Hsia and/or Poka Place LLC, at his/their sole cost and expense, to remove improvements not essential to the road easement as described herein including the removal of the gate and associated rock walls, coconut trees and other landscaping along the easement which block vehicular access, the intercom devices and structures provided that any removal or restoration is subject to review and approval of the Chairperson upon presentation of plans and that all work be completed within one year unless the matter is brought back to the Board for additional time. In addition, the parties removing and/or restoring said improvements shall be responsible for obtaining all necessary permits and approvals.

Respectfully Submitted,



Daniel S. Quinn
Administrator

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

EXHIBIT B – Lot Map Description

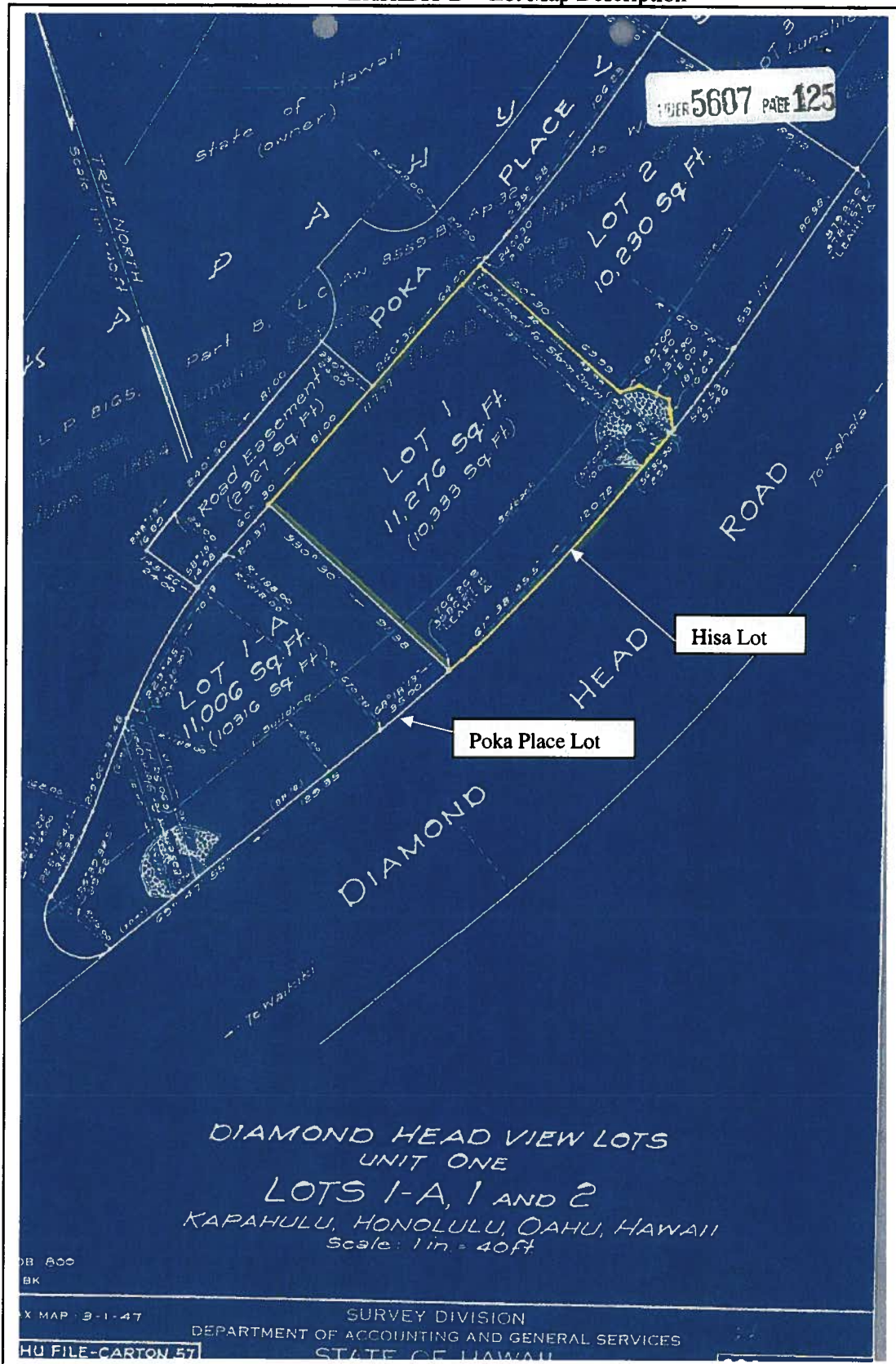


EXHIBIT C - Map Depicting Gate

BUILDING DEPARTMENT
FILE COPY

SCOPE OF JOB:

fabricate/furnish and install the following:

Item A: MECHANISM (Refer to attached drawing for style).

One pair of double swing driveway gates for an opening approx. 13'-10" x 8'-0" high. All to be hot dip galvanized, primed and painted black.

Item B: OPERATOR AND ACCESSORIES

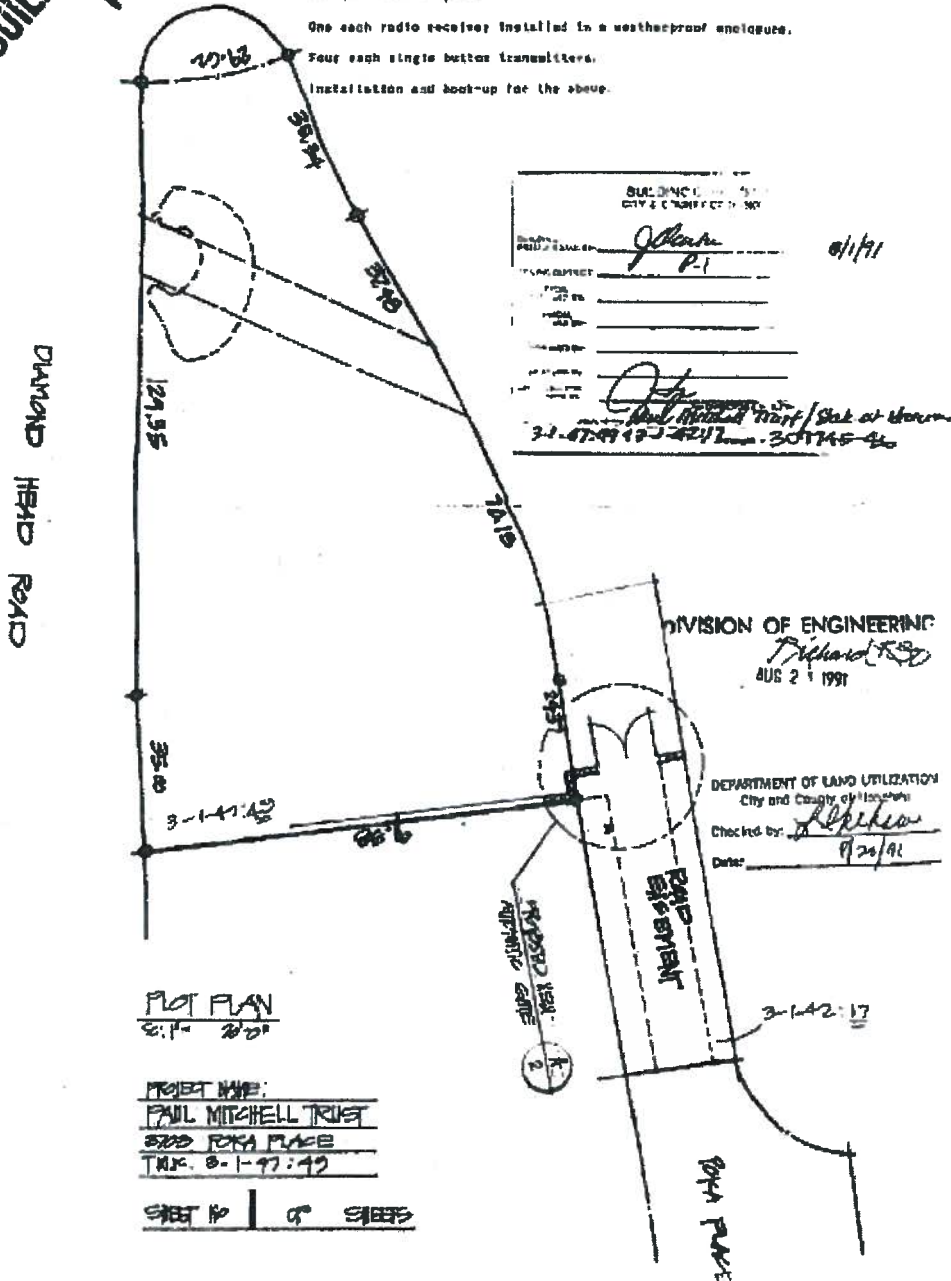
Two each FAAC Model 400 CBAC hydraulic actuator arms, 220 Volts, single phase.

One each control panel.

One each radio receiver installed in a weatherproof enclosure.

Four each single button transmitters.

Installation and hook-up for the above.



PLOT PLAN
S.P. 2001

PROJECT NAME:
PAUL MITCHELL TRUST
5220 POKA PLACE
TRAC. 8-1-77-42

SHEET 10 OF 11 SHEETS

EXHIBIT E – Hsia June 16, 2002 Letter

MARTIN E. HSIA
[REDACTED] E
HONOLULU, HAWAII [REDACTED] 6
[REDACTED] 5
[REDACTED] 9
[REDACTED] n

July 16, 2012

Via e-mail: [REDACTED] n
[REDACTED] l [REDACTED] , [REDACTED] .

Re: 3711 Poka Place

Hi Paul:

Thank you for your June 23, 2012, e-mail, responding to my June 22, 2012, voice mail status inquiry about our June 7, 2012, telephone conference. I have not yet been contacted by counsel for the Paul Mitchell Trust, so I thought I would send this follow up letter.

As I informed you in my voice mail, there was a burglary at Angus' house on June 30, 2012, in which the burglars cut the insect screens in a door and stole the caretaker [REDACTED] wallet and two of his wife's handbags between midnight and 5:00 am, while they were sleeping in the next room. The police asked whether we had any video that showed the burglars. Our preliminary review of our video camera footage did not disclose any suspicious activity. Thus, it appears that the burglars may have climbed up from the lower street, Diamond Head Road, or entered Angus' lot from the State of Hawaii's land on the opposite side of Angus' lot from my lot. However, that burglary incident shows that good neighborly relations are more important now than ever.

As we originally discussed on June 7, 2012, Angus and I have had very good neighborly relations for many years. Indeed, I was the one who found and reported the very dangerous major gas line rupture on May 12, 2012, at Angus' house at [REDACTED]. There had been periodic earlier reports of a gas leak, but neither the Fire Department nor The Gas Company was able to find that leak, most recently a few months ago (fire engine standing by, etc.).

Earlier, on April 2, 2012, we provided Honolulu Police Officer W. Scott (Badge 1503) with the video and photos used to identify the girls who vandalized the gate in front of Angus' house (Police Report 12-120826 CPD4). The video camera at Angus' house apparently had not been functioning for some time. Our identification ultimately resulted in the girls' parents paying to repair that gate.

Angus told me on August 17, 2008, while visiting his house with his property manager [REDACTED] k [REDACTED], that if I ever wanted to sell my house, he would want the chance to buy it, because he wants to maintain the character of the neighborhood to "keep it in the family", because he grew up in the house at [REDACTED]. I said that I would notify him if I ever wanted to sell

my house at [REDACTED]. My children also grew up on the street, at [REDACTED] a [REDACTED], and I am sure they also would want to preserve the character of the neighborhood.

Also, on July 1, 2009, I saw Angus and [REDACTED] as they were driving by, and Angus again said I should contact his property manager if I ever want to sell my house.

After so many years of good relations, I was therefore dismayed to find that, on June 1, 2012, Angus' property manager, [REDACTED] [REDACTED], someone under his direction, had placed a note on my IT contractor's truck stating "PLEASE DONT [sic] PARK IN FRONT OF MY DRIVEWAY 3703 POKA PL". We discussed the details of the incident in our telephone conference with Ricky, so I won't repeat them here. However, your apology on behalf of Angus was appreciated.

As we discussed, my lot at 3711 Poka Place also has the right to use the road easement in front of my lot, so the terminology "my driveway" on the note is not correct. Indeed, as I explained in our June 7, 2012, telephone conference, the road easement is on land owned by the State of Hawaii, and my deed grants me the right to use it. Of course, Angus' lot, 3703 Poka Place, also has the right to use that road easement.

While we were discussing the note described above, I also informed you that the roots from Angus' octopus tree near the border between our lots are damaging my wall and pavement adjacent to Angus' garage. I would like to discuss removal of that tree to prevent further damage.

The prior owner of my lot, the late Herbert Cornuelle, had permitted the construction of the gate and landscaping on the roadway easement, and I permitted the gate and landscaping to remain, because it enhances my security by preventing traffic in front of my house and people from parking directly in front of my house, and Angus is maintaining the road easement and landscaping. This permission is evidenced by my assistance in providing videos and photos of the girls who vandalized the gate, and the repair of my sprinkler system when it was damaged when the roadway was resurfaced. However, this permission does not mean that I am giving up my rights to use that road easement. If I ever renovate my house to place my garage at the end of my lot next to 3703 Poka Place, I will need to use that road easement to drive in and out (including backing up when exiting). Also, soon I will be having work done on the retaining wall for my house, and my contractors will use the roadway easement to gain access to my back yard through the gate bordering 3703 Poka Place. Accordingly, I need to write this letter to respond to the wording "my driveway" to set the record straight (and avoid any misunderstanding) that I also have the right to use the road easement.

I trust that this letter will resolve the issue of use of the road easement, so that we can agree that the wording "my driveway" was an unintentional and unfortunate choice of words, that my right to use the road easement remains unaffected, and that Angus and I can continue to be good neighbors.


Finally, as a good neighbor, please let me take this opportunity to inform Angus that, because it is very easy for a burglar to access my back yard from Angus' lot over the wall between the back portions of our lots (there is no wall between the front portions of our lots, near Poka Place), I

June 14, 2013

am installing another video camera visible from the street below (Diamond Head Road) pointing at that wall. I have already installed 2 very prominent and obvious video cameras on the front of my house: one pointing down the only access to both our houses, Poka Place, and the other pointing at the dead end turnaround near both our houses. We have seen quite a decrease in strangers parking or loitering in the dead end turnaround, or driving up the street, presumably because they are deterred by my highly visible video cameras. I hope that adding another very prominent and obvious video camera pointing at the wall between our houses, visible from Diamond Head Road, will deter burglars from climbing over that wall from Angus' lot and entering my back yard.

If I do not receive a response by August 17, 2012, I will consider this matter closed, and I will assume that Angus and I will continue to have good neighborly relations, which is especially necessary now, in view of the recent burglary.

Very truly yours,



Martin E. Hsia

EXHIBIT F– Exemption Notification

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF STATE PARKS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER F. KAIANA
FIRST DEPUTY DIRECTOR

WILLIAM M. TAM
DEPUTY DIRECTOR, WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
COOKED WATER AND RESOURCES INVESTIGATION
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAROLANE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

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

- Project Title: Approval to Remove Various Improvements Located within Easements within Diamond Head State Monument and Appurtenant to Diamond Head View Lots, Unit 1, Lots 1 and 1A, Kapahulu, Honolulu, O'ahu
- Project / Reference No.: N/A
- Project Location: O'ahu
- Project Description: Approval to remove easement improvements (DHSM)
- Chap. 343 Trigger(s): Use of State Land
- Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 which exempts, "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". The request involves removing existing improvements only.
- Consulted Parties: DLNR – Land Division, Office of Conservation and Coastal Lands
- Recommendation: It is recommended that the Board find that this action will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

William J. Aila Jr., Chairperson