

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

January 13, 2017

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

PSF No.: 16OD-164

OAHU

Grant of Term, Non-Exclusive Easement to Hilton Hawaiian Village Lessee LLC
for Pier Purposes; Termination of Revocable Permit No. S-7566; Waikiki,
Honolulu, Oahu, Tax Map Key: (1) 2-6-008:029

APPLICANT:

Hilton Hawaiian Lessee Village, LLC, a foreign limited liability company

LEGAL REFERENCE:

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

LOCATION:

Portion of submerged land located in Waikiki, Honolulu Oahu, identified by Tax Map
Key: (1) 2-6-008:029, as shown on the maps attached' as **Exhibit A-1** and **A-2**.

AREA:

3,930 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: Public Precinct

TRUST LAND STATUS:

Section 5(a) 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. 7566 to Hilton Hawaiian Village LLC, for recreational boating purposes at a current monthly rent of \$33,766 or \$1.50 per customer, whichever is greater. Staff notes the permit area described in the permit document is 3,917 square feet.

CHARACTER OF USE:

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

COMMENCEMENT DATE:

To be determined by the Chairperson.

ANNUAL BASE and PERCENTAGE RENT:

To be determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson, noting that the gross receipts for the calculation of percentage rent shall mean all income and revenue derived from, relating to, or connected with the operations, sales, and services rendered under the easement.

METHOD OF PAYMENT:

Semi-annual payments, in advance for base rent, and in arrears for percentage rent.

RENTAL REOPENINGS:

At the end of every ten (10) years of the easement, by independent appraisal.

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, 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." See **Exhibit B**.

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>

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Pay for an appraisal to determine one-time payment; and
2. Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

Note: The requested area is mapped in Governor's Executive Order No. 4190 under CSF 24,360 dated October 13, 2006. So, the same map can be used for the subject easement with some minor revisions, if necessary.

REMARKS:

Starting in 1956, the Board of Harbor Commissioners of the Territorial government (BHC) granted three (3) licenses¹ to the owner/developer of the adjacent hotel property for the use of a strip of underwater area to construct a boat dock, concrete catwalk, and catamaran pier. **Exhibit C** shows the respective areas under the various licenses.

On September 1, 1964, the Board of Land and Natural Resources approved the issuance of Revocable Permit S-3528 (RP), to the Applicant for boating purposes. The RP encompassed the concrete catwalk, catamaran pier, and boat pier shown on Exhibit C for a total area of approximately 3,917 square feet.

At its meeting on October 23, 2009, agenda item D-12, the Board authorized the re-issuance of 144 RPs to various land tenants, which included the Applicant, for the purpose of incorporating updated standard language and conditions in dated RPs. Since then, the Applicant, who owns and operates the resort complex as shown on Exhibit A-1, has been the permittee under RP S-7566.

Recently, staff sent a letter to the Applicant inquiring whether they were interested in converting the monthly revocable permit to a term easement for the same purposes. By letter dated November 15, 2016 (**Exhibit D**), Applicant, through their counsel, expressed an interest in the conversion mentioned above.

Applicant's counsel requests the option to opt out of the easement process and remain under the RP while being responsible for any cost, e.g. appraisal fee, incurred up to that point. The subject pier engages in various commercial activities, e.g. submarine tour, as well as the annual canoe paddling race events. As such, keeping the pier, regardless of long or short-term dispositions, will continue to provide the facility to commercial vendors and the community at large. Therefore, staff recommends the termination of RP S-7566 only if the requested easement is consummated.

Upon approval of today's request, Applicant will be reminded of the requirement for

¹ License Nos. 97 (1956) [superseded by 97A (1958)], 140 (1960), and 157 (1961).

concurrent resolution from both houses of the legislature under Sect.171-53(c), HRS prior to the issuance of the requested easement.

The Office of Conservation and Coastal Lands, Division of Aquatic Resources, Department of Planning and Permitting, Department of Facility Maintenance, and the Board of Water Supply has no objections and/or comments.

The Office of Hawaiian Affairs did not respond to the request for comments.

Also, staff requests the Board authorize the termination of RP S-7566 upon issuance of the easement.

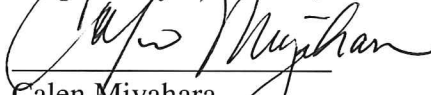
RECOMMENDATION: That the Board:

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. Assess a non-refundable administrative cost of \$500, under Section 171-6, HRS.
3. Authorize the subject request to be applicable in the event of a change in the ownership of the resort complex shown on Exhibit A-1, 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 the Hilton Hawaiian Village Lessee LLC, 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) 2-6-008:034², 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

² The resort complex comprises of various tax map parcels as shown on Exhibit A-1,

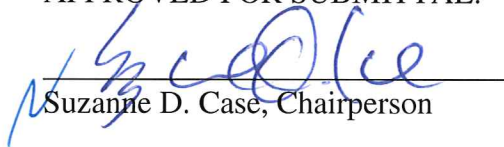
- writing, separate and apart from the easement document;
- C. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
 - F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.
5. Termination of Revocable Permit No. S-7566 upon the issuance of the requested easement.

Respectfully Submitted,



Calen Miyahara
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:

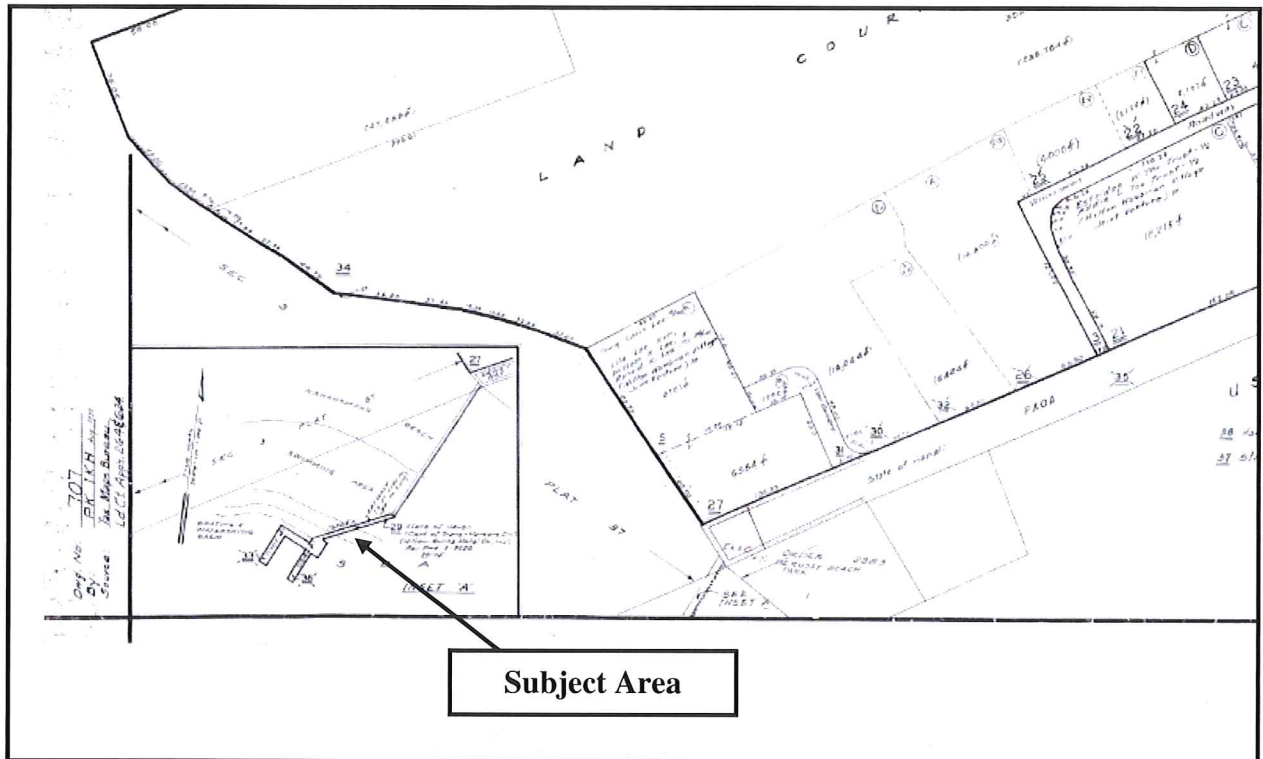


Suzanne D. Case, Chairperson



TMK (1) 2-6-008:029

EXHIBIT A-1



TMK (1) 2-6-008:029

EXHIBIT A-2

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 16OD-164

Project Location: Waikiki, Honolulu, Oahu, TMK (1) 2-6-008:029.

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".

The request is triggered by the change in tenure of the disposition for the same improvement. The owner is 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 12/21/16

EXHIBIT B

STARN O'TOOLE MARCUS & FISHER
A LAW CORPORATION

November 15, 2016

VIA U.S. MAIL

Ms. Suzanne D. Case
Chairperson
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Re: Revocable Permit No. 7566 ("*Revocable Permit*") for Recreational Pier Purposes,
Waikiki
Honolulu, Oahu; TMK (1) 2-6-008:029

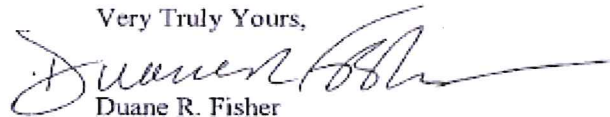
Dear Chair Case:

As you know, we represent Hilton Hawaiian Village, LLC ("*Hilton*"). This letter is in follow-up to our recent correspondence regarding the BLNR's request that Hilton decide whether to continue with the Revocable Permit, or transition to a long-term disposition for the Hilton Pier. Thank you again for allowing us additional time to consider the BLNR's request.

This will confirm that Hilton would like to pursue converting its Revocable Permit to a long-term disposition (*i.e.*, a 55-year, non-exclusive easement). We understand that the DLNR staff will begin the process and be back in touch with us to discuss next steps.

Thank you very much.

Very Truly Yours,



Duane R. Fisher

c: Mr. William Kidd
Mr. Gerald Gibson
Mr. Nevin Kelly
Mr. Russell Tsuji
Mr. Barry Cheung

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Telephone: (808)537-6100 Fax: (808)537-6434 Website: www.starnlaw.com

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EXHIBIT D