

D/b

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

September 8, 2017

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

PSF No.: 06OD-004

OAHU

Authorize the Chairperson to Enter, on behalf of the Department of Accounting and General Services, into a License with the Secretary of the Army for a Radio Station Facility, Honouliuli, Ewa, Oahu, Tax Map Key: (1) 9-2-005: portion of 029.

APPLICANT:

Department of Accounting and General Services ("DAGS")

LEGAL REFERENCE:

Section 171-30, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of private land, identified as Lot 343, Land Court Application 1069, Map 54, situated at Honouliuli, Ewa, Oahu, further identified by Tax Map Key: (1) 9-2-005:029, as shown on the map attached as **Exhibit 1**.

AREA:

100 square feet, more or less.

ZONING:

State Land Use District: Conservation
City and County of Honolulu LUO: P-1

CHARACTER OF USE:

The right to exclusively use 100 square feet to construct, operate, and maintain a radio equipment shelter.

TERM:

Five (5) years from commencement date, retroactive to May 1, 2017.

CONSIDERATION:

Gratis. DAGS is responsible for its proportionate share of the utilities, while maintaining its own equipment.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred with 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 which 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., Item 45 "Acquisition of land or interests in land." See Exemption Declaration attached as **Exhibit 2**.

REMARKS:

In 1952, the Federal government obtained a perpetual easement¹ from the Estate of James Campbell, Deceased [previous owner] for operating and maintenance of military facilities. Lot 343 is one of the lots covered by the said easement.

Since 1988, the State, through its Department of Budget and Finance ("DBF"), has entered into a license with the Secretary of the Army to use 100 square feet at the location. The licensed area houses the radio equipment as part of the statewide emergency response government radio communication system.

At its meeting of January 13, 2006, under agenda item D-17, the Board approved the request from DAGS² to extend the license up to January 31, 2010. Despite repeated requests made to the Army, DAGS was not provided with the extension document from the Army.

Recently, DAGS and the Army agreed to enter a new license commencing from May 1, 2017, while noting the State's occupation of the subject premises since the initial license expired in 1995. A copy of the latest draft license is attached as **Exhibit 3**.

DAGS requests the Board authorize the Chairperson to execute, on behalf of DAGS, the license attached as Exhibit C, subject to review and approval by the Department of the Attorney General.

There are no other pertinent issues or concerns. Staff recommends the Board approve the subject request.

¹ Land Court document No. 144237 recorded on November 20, 1952

² In July 1997, the telecommunication function was transferred to the Department of Accounting and General Services.

RECOMMENDATION: That the Board:

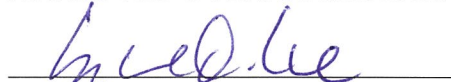
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

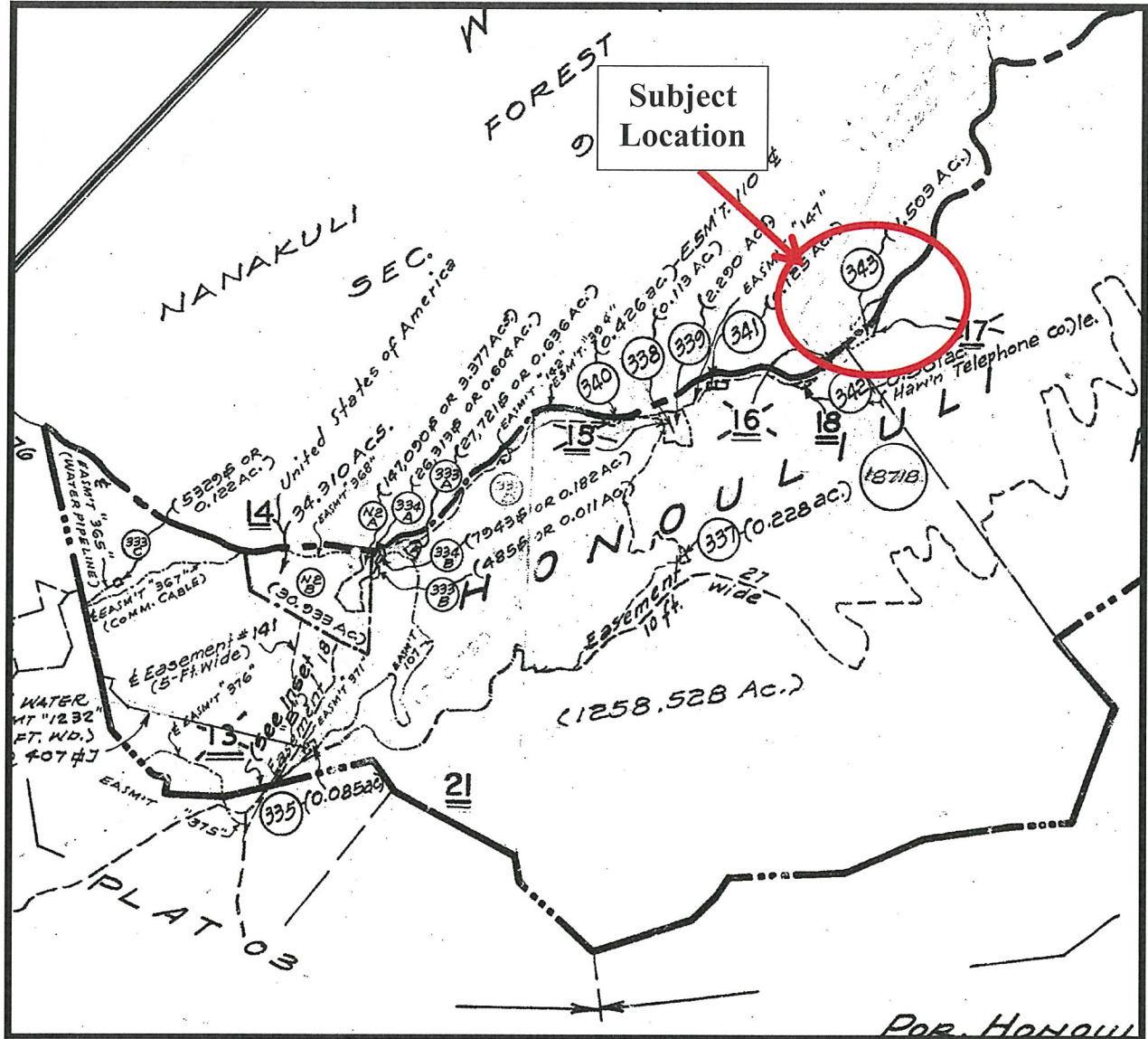
2. Authorize the Chairperson to execute, on behalf of Department of Accounting and General Services, the license attached as Exhibit 3, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. Review and approval by the Department of the Attorney General; and
 - B. 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:


Suzanne D. Case, Chairperson



TMK (1) 9-2-005: portion of 029

EXHIBIT 1

EXEMPTION NOTIFICATION

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

Project Title: Enter a License with the Army for the State's Telecommunication Equipment.

Project / Reference No.: PSF 06OD-004

Project Location: Honolulu, Oahu; TMK (1) 9-2-005: portion of 029

Project Description: Authorize the Chairperson, on behalf of the Department of Accounting and General Services, to enter a license with the Army to house the State's telecommunication equipment.

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

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred with 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 which 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", Item 45 "Acquisition of land or interests in land."

The request is to authorize the continuance of the license agreement between the State and the Army for existing Stat telecommunication equipment. No improvement is planned by the applicant at the moment. Staff believes that the proposed project would involve negligible or no expansion or change in use beyond that previously existing.

Consulted Parties Department of Accounting and General Services

Recommendation: That the Board find 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.

EXHIBIT 2

NO. DACA84-3-17-122
Supersedes DACA84-3-88-24

DEPARTMENT OF THE ARMY LICENSE
MAUNA KAPU COMMUNICATION STATION
HONOLULU COUNTY, HAWAII

THE SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, under authority of its General Administrative Powers, hereby grants to **STATE OF HAWAII, Board of Land and Natural Resources on behalf of the Department of Accounting and General Services**, hereinafter referred to as the grantee, a license for exclusive use of approximately 100 square foot area for an equipment shelter at Mauna Kapu Communication Station, as identified in Exhibit "A", attached hereto and made a part hereof, hereinafter referred to as the premises, located on the Island of Oahu, Hawaii.

THIS LICENSE is granted subject to the following conditions.

1. TERM

This license is granted for a term beginning May 1, 2017, and ending April 30, 2022, but revocable at will by the Secretary.

2. CONSIDERATION

The consideration for this license shall be the operation and maintenance of the equipment for the benefit of the general public in accordance with the terms and conditions hereinafter set forth.

3. NOTICES

All notices and correspondence to be given pursuant to this license shall be addressed, if to the grantee, to: Department of Accounting and General Services, Attn: State Comptroller, P.O. Box 119, Honolulu, HI 96810-0119; and if to the United States, to the Army Corps of Engineers, Honolulu District, Attention: Chief, Real Estate, Building 230, Room 318, Fort Shafter, Hawaii 96858-5440; or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

EXHIBIT " 3 "

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include any duly authorized representatives.

5. SUPERVISION BY THE INSTALLATION COMMANDER

The use and occupation of the premises shall be subject to the general supervision and approval of the Installation Commander, Schofield Barracks hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

6. APPLICABLE LAWS AND REGULATIONS

The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITIONAL USE BY GRANTEE

The exercise of the privileges herein granted shall be:

- a. without cost or expense to the United States;
- b. subject to the right of the United States to improve, use or maintain the premises.
- c. subject to other outgrants of the United States on the premises.
- d. personal to the grantee, and this license, or any interest therein, may not be transferred or assigned.

8. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the United States.

9. COST OF UTILITIES

The grantee shall pay the cost, as determined by the officer having immediate supervision over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the grantee, including the grantee's proportionate share of the cost of operation

and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

10. PROTECTION OF PROPERTY

The grantee shall keep the premises in good order and in a clean, safe condition by and at the expense of the grantee. The grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the grantee under this license, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

11. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the grantee, or for damages to the property or injuries to the person of the grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

12. RESTORATION

On or before the expiration of this license or its termination by the grantee, the grantee shall vacate the premises, remove the property of the grantee, and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the grantee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the grantee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The grantee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this license in restoring the premises.

13. NON-DISCRIMINATION

a. The grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin or religion.

b. The grantee, by acceptance of this easement, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C 2000d); the Age Discrimination Act of 1975 (42 U.S.C. 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the grantee, its agents, successors, transferees, and assignees. The grantee shall not discriminate against any person or persons or exclude them from participation in the grantee's operations, programs or activities because of race, color, religion, sex, age, handicap or national origin in the conduct of operations on the premises. The grantee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

14. TERMINATION

This license may be terminated by the grantee at any time by giving the District Engineer at least ten (10) days notice in writing provided that no refund by the United States of any consideration previously paid shall be made and provided further, that in the event that said notice is not given at least ten (10) days prior to the rental due date, the grantee shall be required to pay the consideration for the period shown in the Condition on CONSIDERATION.

15. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The grantee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the grantee's activities, the grantee shall be liable to restore the damaged resources.

c. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

d. The grantee shall adhere to the conditions listed in "Traffic Control Plan/Excavation Permit" dated 23 February 2016, attached as Exhibit "A".

16. HISTORIC PRESERVATION

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

17. DISCLAIMER

This license is effective only insofar as the rights of the United States in the premises are concerned; and the grantee shall obtain any permit or license which may be require by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this license does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

18. EXECUTIVE ORDER 13658

a. It has been determined this contract is not subject to Executive Order 13658 or the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order, and the following provisions.

b. If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this contract, that an erroneous determination regarding the applicability of Executive Order 13658 was made, contractor, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 determination. This includes contractor releasing any claim or entitlement it would otherwise have to an equitable adjustment to the contract and indemnifying and

holding harmless the United States from the claims of subcontractors and contractor employees.

19. SUPERSESSION

This License supersedes and replaces the previous Army License No. DACA84-3-88-24. The Secretary and the grantee acknowledge that the grantee has continually occupied the premises for its equipment shelter since License No. DACA84-3-88-24 expired January 31, 1995.

THIS LICENSE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the **Secretary of the Army**, this _____ day of _____, 2017.

ASHLEY N. KLIMASZEWSKI
Real Estate Contracting Officer
US Army Corps of Engineers
Honolulu District

THIS LICENSE is also executed by the grantee this _____ day of _____, 2017.

**STATE OF HAWAII, Board of Land and Natural Resources
on behalf of the Department of Accounting and General Services**

By: _____

(print or type name)

Title: _____

CERTIFICATE OF AUTHORITY

I, _____, certify that I am the _____
(Name) (Secretary or Attesting Officer)

of the _____, named as grantee/lessee/licensee herein;
(Agency Name)

that _____, who signed this Agreement on behalf
(Officer Name)

of said _____, was then _____
(Agency Name) (Officer Title)

of the Agency; and that said Agreement was duly signed for and on behalf of

the _____ by authority of its governing body and is
(Agency Name)

within the scope of its statutory powers.

Signed, _____
Secretary or Attesting Officer

(The person that signed the attached instrument cannot sign Certificate)

This form certifies that the person signing the attached instrument has the authority to do so. The signature of the Secretary/Attesting Officer and the Individual signing the attached instrument cannot be the same.

