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

February 10, 2006

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

OAHU

Issuance of Direct Lease for Private Noncommercial Pier Purposes, Honolulu, Oahu, Tax Map Key: (1) 3-6-1:18,19, 20,23,31,33,34,37,39,41,122; 3-7-2:43 seaward.

APPLICANT:

List of Applicants (Exhibit A) showing, to the best of our knowledge, the owners of the properties abutting the subject piers; provided that if, prior to the execution of the lease document, an Applicant changes due to confirmation of the legal owners, transfer of interests in the abutting property or other reason, then the Board hereby approves such change and no further approval shall be required.

LEGAL REFERENCE:

Section 171-53(c), Hawaii Revised Statutes, as amended and Act 261, SLH 2000, Act 068, SLH 2002 and Act 129, SLH 2005.

LOCATION:

Portion of submerged Government lands fronting the properties as shown on the attached map labeled Exhibit B1-B2.

AREA:

To be determined.

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: YES ____ NO __X__

CURRENT USE STATUS:

ITEM D-9

Unencumbered with encroachments.

CHARACTER OF USE:

Private Noncommercial Pier Purposes.

LEASE TERM:

Fifty-five (55) years.

COMMENCEMENT DATE:

July 13, 2001. See "THE PROGRAM" below for further discussion.

CONSIDERATION:

Alternative A:
One-time payment to be determined according to the appraisal methodology approved by the Board on February 23, 2001, Item D-7, as amended, subject to review and approval by the Chairperson; OR

Alternative B:
Annual initial rent to be determined according to the appraisal methodology approved by the Board on February 23, 2001, Item D-7, as amended, subject to review and approval by the Chairperson and with rental reopenings on the 10th, 20th, 30th, and 40th years of the lease term;

Provided that for both alternatives A & B, if any Applicant is not willing to accept the approved appraisal methodology, consideration shall be determined by an independent appraiser selected by the Department but at the cost of the Applicant, subject to review and approval by the Chairperson.

PERFORMANCE BOND:

Twice the annual rental amount if the Applicant chooses Alternative B in Consideration Section (i.e. paying rent annually).

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Office of Conservation and Coastal Lands (OCCL) determined that the list of applications on Exhibit A have either a nonconforming pier or Conservation District Use Permit for the pier. Army Corps of Engineers (ACOE) indicated that permits were issued for the applications. This information is incorporated into Exhibit A.

DCCA VERIFICATION:

Not applicable for the individual property owners on Exhibit A. Other than these individual owners:

Place of business registration confirmed:	YES X	NO ____
Registered business name confirmed:	YES X	NO ____
Applicant in good standing confirmed:	YES X	NO ____

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1) Pay for an appraisal to determine annual initial rent or one-time payment, as appropriate, if an Applicant is not willing to accept the appraisal methodology approved by the Board; and

2) Provide survey maps and descriptions acceptable to State DAGS and at Applicant's own cost.

BACKGROUND:

On May 15, 1998, under agenda Item D-3, the Board of Land and Natural Resources (Board) approved a plan to address the problem of unauthorized piers in Kaneohe Bay. This is now called the Kaneohe Bay Piers Amnesty Program (K-Bay Program). The goal of the program is to provide owners of illegal piers with the required authorization for a land disposition from the State and to resolve the illegal pier problem in Kaneohe Bay.

To help facilitate this program, Act 261, SLH 2000 was enacted to allow the Board to lease by direct negotiation submerged lands for private residential noncommercial piers. This Act also deleted the requirement to post signs on piers to allow for public use and eliminated the requirement to obtain prior approval of the Governor and Legislature for the leasing of noncommercial piers. On August 24, 2001, under agenda item D-29, the Board approved the issuance of 150 leases for the K-Bay Program. A copy of the 2001 submittal (less the exhibits therein) describing the program is attached as Exhibit C.

In the past, staff explained to the pier owners that a pier permitted by the ACOE or obtained pursuant to a Conservation District Use Permit (CDUP) from this Department still requires an authorization from the Board to occupy the land where the pier is situated. The typical disposition is in the form of a monthly revocable permit. Under this program, the holder of a revocable permit can make use of the opportunity to convert his monthly permit to a long-term lease for a private pier.

With Act 068, SLH 2002, which deleted the word "residential" from the previous legislation, pier(s) owned by non-residential owner(s), e.g. YWCA, were also allowed to apply for a pier lease.

Then Act 129, SLH 2005, stated that "… The Legislature finds that additional time is needed to negotiate long-term leases with private noncommercial pier owners across the state, in areas such as Wailupe, Niuiki Circle, and Portlock, given the disproportionate attention paid primarily to Kaneohe Bay pier

owners in the implementation of Act 261, SLH 2000.... " A copy of Act 129, SLH 2005 is attached as Exhibit D.

The sunset date of Act 261, SLH 2000 was also extended by Act 129, SLH 2005 for two years until June 30, 2007. Further, the Legislature urged the Board to commence using prevailing real property tax assessment values of the fast land in determining the lease rent for any submerged land lease entered into after July 1, 2006, to prompt procrastinating pier owners who desired to enter into leases with the State.

For the Board's information, as of the time of writing this submittal, the Department has completed over 80 pier leases and another 30 cases are pending payment or an executed lease document from the owner. The Department has recently sent letters to these 30 cases reminding the owners about Act 129, SLH 2005.

After the passing of Act 129, SLH 2005, staff tried to establish an inventory of piers in other areas of the State. With the help of aerial photos, staff notes the existence of 35 piers in Wailupe and Niuiki Peninsula. Letters were sent out to these owners inquiring of their interest in participating in a program similar to the Kaneohe Bay Piers Amnesty Program. To date, we have received 12 applications as shown on Exhibit A. There are a few cases wherein the owners need to establish nonconformity or obtain a CDUP. Staff will request the Board's authorization of these piers when the respective applications are ready.

THE PROGRAM:

A. Conservation District Use Permit

Staff incorporated comments from OCCL on the applications listed as Exhibit A. According to some historical aerial photos, the majority of these piers existed as of 1952. Therefore, OCCL advises that they do not require any CDUP as they are considered non-conforming. For the piers which cannot establish a date of construction, ACOE confirmed that they obtained authorization from ACOE for the pier. This will also allow the pier be exempted from getting a CDUP. In short, OCCL has no objections to the issuance of pier leases for those applications listed as Exhibit A.

B. The Lease

1. Terms: The pier leases issued pursuant to the K-Bay Program are for 55-year terms commencing July 13, 2001. Both the piers under the K-Bay Program and the subject piers for this submittal existed before July 13, 2001, however, the Board is not assessing any rent prior to 2001. For the sake of fairness, staff recommends using the same terms and commencement date for the subject submittal as was approved for the K-Bay Program.

2. Rent: On February 23, 2001, under agenda Item D-7, the Board approved a methodology to compute the rent for the pier leases under K-Bay Program. Basically, the methodology uses the County's real property assessed land value of 2000 Assessment Year. Example below illustrates the methodology in more details:

EXAMPLE:

2000 Assessment Year land value	$200,000	(a)
Area of the applicant's property	10,000 sq. ft.	(b)
Fast land value (a)/(b)	$20/sq. ft.	(c)
Submerged land value (c) x 50%	$10/sq. ft.	(d)
Area of the pier	200 sq. ft.	(e)
Land value of pier (d) x (e)	$2,000	(f)
Annual rent for pier (f) x 4%	$80	(g)
One-time lease rent payment for pier (Capitalized @4% for 55 years) (g) x 22.1086	$1,769	
Say	$1,770	

Staff recommends the Board authorize the same methodology as approved by the Board on February 23, 2001, Item D-7, for the subject pier leases issued pursuant to this submittal.

Upon approval by the Board, the ensuing process shall include provision of a survey map of the pier by a private land surveyor hired by the applicant, verification of the map by the State Surveyor, an appraisal and preparation of the legal document. While the staff will try its best to seek assistance from other State agencies to expedite the process, a survey map of each pier is crucial because it triggers the steps following the approval. Act 129, SLH 2005 urges the Board to commence using prevailing real property tax assessment values to determine lease rent for any pier lease entered into after July 1, 2006, to prompt procrastinating piers owners who desire to enter into a lease with the State. Applicants will need to coordinate with private land surveyors hired at their request to expedite the process. If the lease cannot be executed before July 1, 2006, the Board may consider using the prevailing assessed value, which is much higher than the 2000 value, to determine the lease rent. Staff will come back to the Board asking for authorization for any deviation from today's approval.

C. Other Agencies' comments

DLNR-Commission of Water Resource Management	No comments.
City's Department of Parks	No comments.

and Recreation	
Army Corps of Engineers	Provided a list of properties which received permits from ACOE in the 1940's. **Note: ACOE's comments are incorporated into Exhibit A.**
DLNR-Aquatic Resources	Requests the Department to review any construction and maintenance work. A sign allowing public use of the pier should be placed on the pier. **Note: The requirement for placing a sign is waived by Act 261, SLH 2000.**
Office of Conservation and Coastal Lands	OCCL's comments on the nonconforming status of the piers are incorporated into Exhibit A.
City's Department of Facility Maintenance	Requests the leasing of submerged land should not obstruct the outlets of storm water pipes or affect the maintenance of the drains. **Note: Staff does not anticipate any conflict with the maintenance of the drains since the subject piers have existed at the locations for decades.**
Office of Hawaiian Affairs	Requests fair leases be negotiated for these piers.
Department of Health, Department of Hawaiian Home Lands, DLNR-Historic Preservation and City's Department of Planning and Permitting.	Have not responded as of the suspense date.

D. Encroachment

Staff notes from its experience with the K-Bay Program that shoreline encroachments, e.g. a seawall, are quite commonly found in the processing of a pier lease. A survey map of the pier prepared by the land surveyor hired by an applicant should reveal any encroachment existing beyond the recorded boundary, i.e. within State lands. These encroachments are not covered by the subject program and each of them will need to be considered on a case-by-case basis. Assuming the owner can retain the encroachment, the owner will need to obtain a term, non-exclusive easement at fair market value from the Board. In addition, if no prior authorization from any government agency exists and the encroaching area is over 100 square feet, staff will recommend a fine of $500 for the unauthorized occupation of government land. Staff will bring each request for a shoreline encroachment easement, if any, to the Board at a later date.

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. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a fifty-five (55) year lease to the Applicants 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 pier lease document form, as may be amended from time to time;

   B. Review and approval by the Department of the Attorney General; and

   C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Barry Cheung
Land Agent

APPROVED FOR SUBMITTAL:

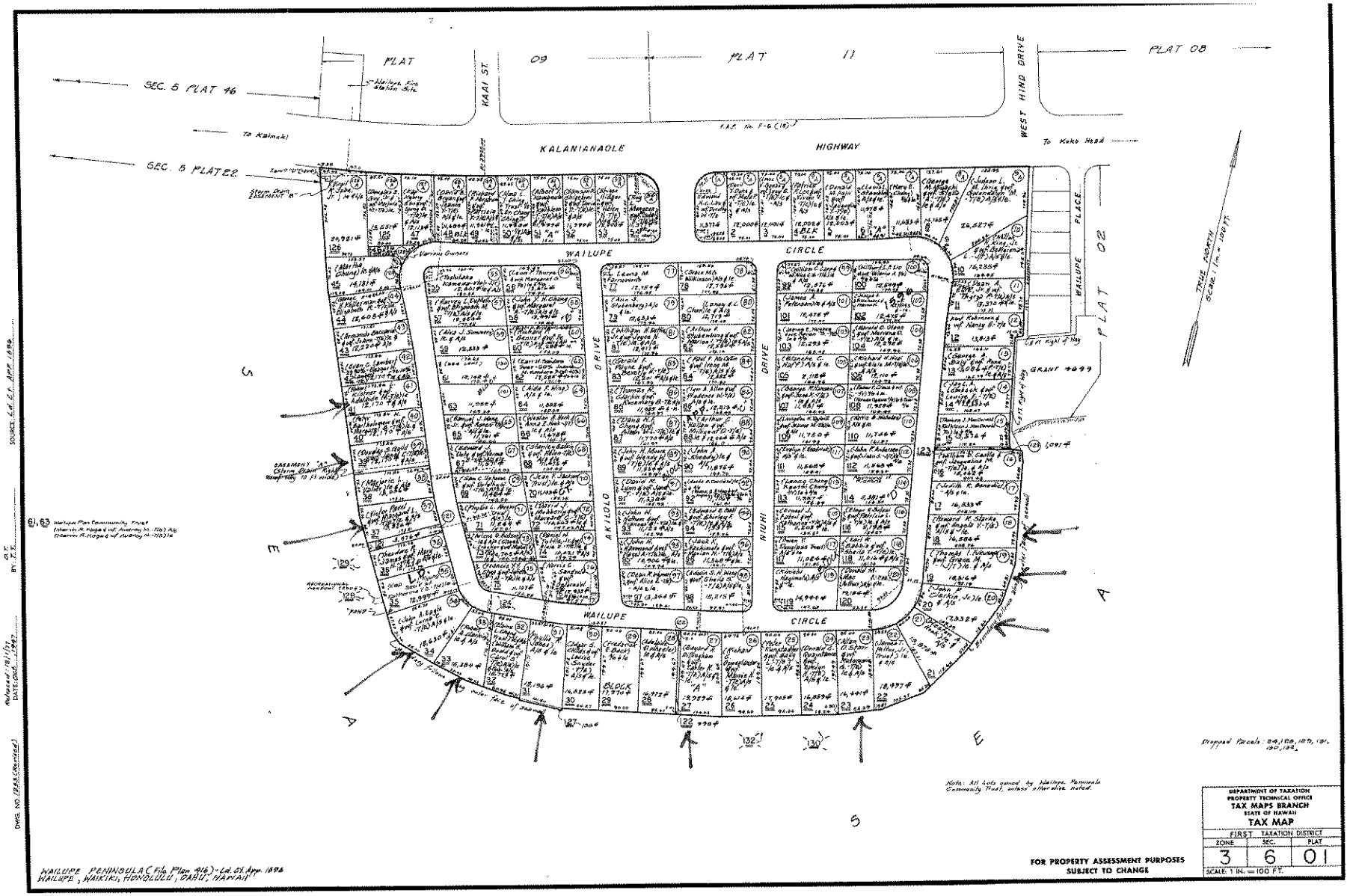
Peter T. Young, Chairperson

List of Applications for Pirvate Noncommercial Pier Leases

TMK	Name	ACOE Permit (per ACOE's 12/5/05 letter)	Date of Construction of Pier (per OCCL's memo dated 12/19/05)	Prior CDUA? (per OCCL's memo dated 12/19/05)
(1) 3-6-001:018	Angela Starke		between 1952 & 1968	No (see Note)
(1) 3-6-001:019	Grace Fukunaga Trust	Yes	between 1952 & 1968	No
(1) 3-6-001:020	Herbert R. Takahashi		before 1952	
(1) 3-6-001:023	Jo Starr Trust	Yes	before 1952	
(1) 3-6-001:031	Walter A. Dods, Jr. Trust	Yes	before 1952	
(1) 3-6-001:033	M. B. Clarkin Trust	Yes		
(1) 3-6-001:034	Edward J. Weldon, III	Yes	before 1952	
(1) 3-6-001:037	Victor Pavel	Yes	before 1952	
(1) 3-6-001:039	Philippe R. Kahn	Yes	before 1952	
(1) 3-6-001:041	Robert L. Kistner	Yes	before 1952	
(1) 3-6-001:122	Wailupe Peninsula Community Association	Yes	before 1952	
(1) 3-7-002:043	American Trust Company of Hawaii Inc. Trust	Yes		OA-795

Note: By a letter dated August 3, 1978, DLNR concluded the pier at TMK (1) 3-6-1:18 was built prior to effectuation of Departmental Regulation No. 4, and no application is required for the use under Chapter 183, HRS.

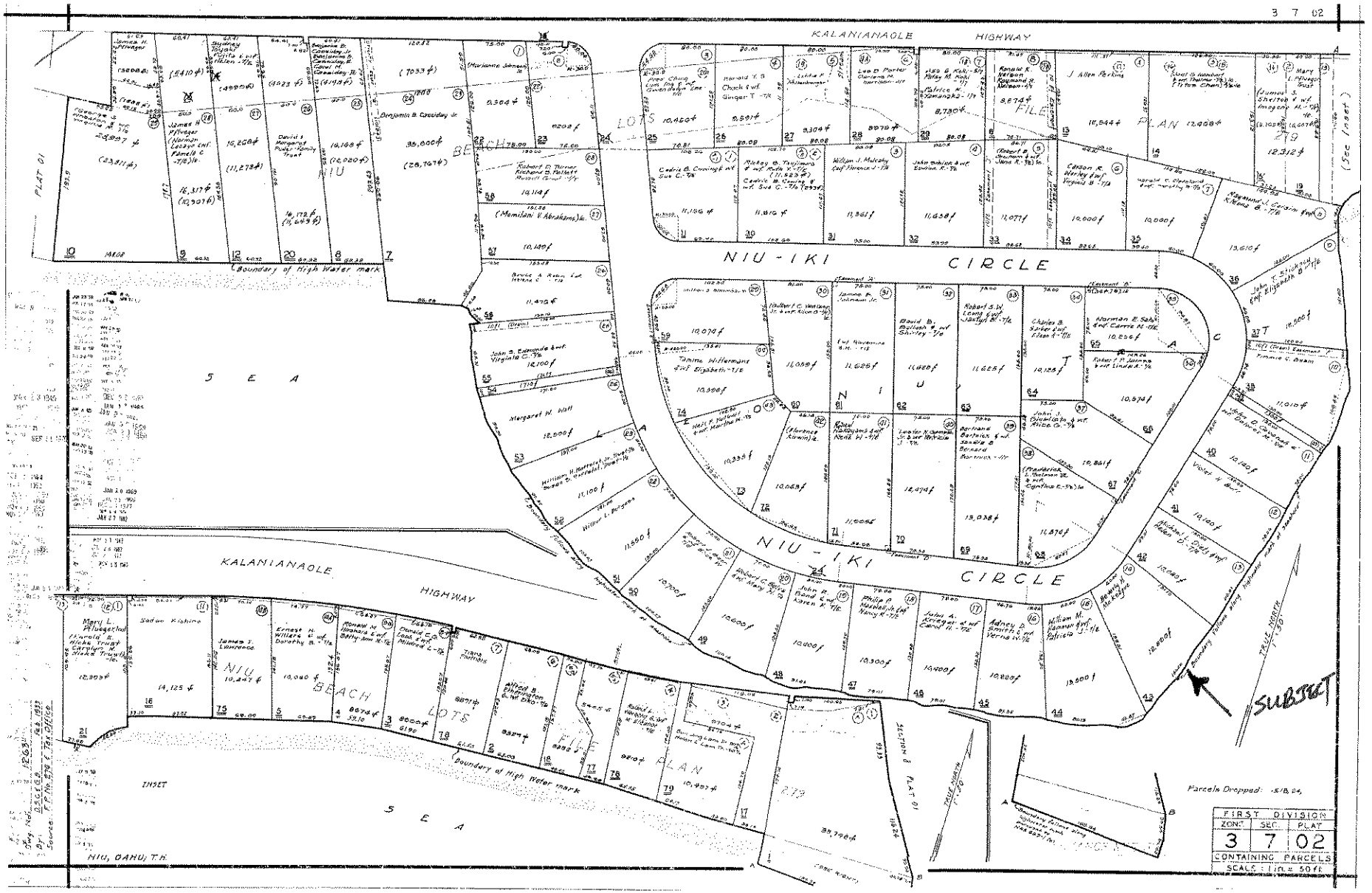
EXHIBIT A



KEY

↑ SUBJECT PROPERTY

EXHIBIT "B"



KEY

← SUBJECT PROPERTY

EXHIBIT "B2"

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

August 24, 2001

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

OAHU

Issuance of 150 Leases for Private Residential Noncommercial Piers Pursuant to the Kaneohe Bay Piers Amnesty Program, Kaneohe, Koolaupoko, Oahu; Various Tax Map Keys

APPLICANTS:

List of Applicants (Exhibit A) showing, to the best of our knowledge, the owners of the properties abutting the subject piers; provided that if, prior to execution of the lease document, an Applicant changes due to confirmation of the legal owners, transfer of interests in the abutting property or other reason, then the Board hereby approves such change and no further approval shall be required.

LEGAL REFERENCE:

Section 171-53(c), Hawaii Revised Statutes, as amended and Act 261, SLH 2000.

LOCATION:

Portions of submerged Government lands fronting the properties as shown on the attached map labeled Exhibit B1-B5.

AREA:

To be determined.

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: YES ____ NO __x__

CURRENT USE STATUS:

Other than those parcels encumbered by respective revocable

As Amended
August 24, 2001.

ITEM D-29

EXHIBIT "C"

permits as shown on Exhibit A, the rest of the parcels involved in this submittal are presently unencumbered land.

CHARACTER OF USE:

Private residential noncommercial pier

LEASE TERM:

Fifty-five (55) years

COMMENCEMENT DATE:

July 13, 2001 for all leases as approved by the Board on July 13, 2001, Item D-32

CONSIDERATION:

ALTERNATIVE A:
One-time payment to be determined according to the appraisal methodology approved by the Board on February 23, 2001, Item D-7, subject to review and approval by the Chairperson; OR

ALTERNATIVE B:
Annual initial rent to be determined according to the appraisal methodology approved by the Board on February 23, 2001, Item D-7, subject to review and approval by the Chairperson and with rental reopenings on the 10th, 20th, 30th, and 40th years of the lease term; provided that for both Alternatives A and B:

1) If any Applicant is not willing to accept the approved appraisal methodology, consideration shall be determined by independent appraiser, subject to review and approval by the Chairperson; and

2) If the Attorney General determines that the Board, in converting existing revocable permits to long-term leases, can apply rent credit towards the payment of the long-term leases for past payments already made under the revocable permits, then the one-time payment for existing permittees who are converting to leases shall be reduced by the amount of rent paid under the existing revocable permit. (Staff notes the AG opinion request was sent to AG's on July 25, 2001; no response has been received as of August 15, 2001.)

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

CDUA Permit OA-3017B covering the piers under Kaneohe Bay Pier Amnesty Program was approved by the Board at its meeting of July 13, 2001 under Agenda Item D-32.

DCCA VERIFICATION:

Most of the applicants shown on Exhibit A are individuals, and

the DCCA verification process is not applicable to them. For cases where Applicants are in the name of a corporation, staff will confirm their status via the DCCA website.

APPLICANT REQUIREMENTS:

Applicants shall be required to:

1) Provide survey maps and descriptions according to State DAGS standards and at Applicants' own cost;

2) Pay for an appraisal to determine one-time payment where an Applicant is not willing to accept the appraisal methodology approved by the Board.

BACKGROUND:

On May 15, 1998 under agenda Item D-3, the Board of Land and Natural Resources (Board) approved a plan to address the problem of unauthorized piers in Kaneohe Bay. The problem of illegal piers in Kaneohe Bay has persisted for decades. The goal of what is called the Kaneohe Bay Amnesty Program is to provide owners of illegal piers with the required permits to achieve compliance with the State's land use laws and, ultimately, resolve the illegal pier problem in Kaneohe Bay.

To help facilitate this program, Act 261, SLH 2000, was enacted to allow the Board to lease by direct negotiation submerged lands for private residential noncommercial piers. This Act also deleted the requirement to post signs on piers to allow for public use and eliminated the requirement to obtain prior approval of Governor and Legislature for the leasing of noncommercial piers.

On February 23,2001, under Agenda Item D-7, the Board approved the appraisal methodology to determine the lease rental rates for private, non-commercial residential piers at Kaneohe Bay.

On July 13, 2001, under agenda item D-32, the Board approved the Conservation District Use Application (CDUA) for the Kaneohe Piers Amnesty Program subject to 11 specified conditions (see Exhibit C). Further, the Board amended staff's recommendation by adding the following:

1) All pier leases shall commence on July 13, 2001. The Department will stop billing the owners currently on revocable permits who are participating in the Amnesty Program;

2) Staff shall request an opinion from the Attorney General on whether the Board may provide credit to the owners of piers who have been making rental payments (under revocable permits) and are in good standing;

3) Pier owners shall have one year from the Board's action to complete all matters relating to the execution of a lease, or by July 13, 2002, including submission of maps, liability insurance, performance bond and payment of the rental under the lease;

4) Pier owners who are not participating in the Amnesty Program shall have 90 days from July 13, 2001 to apply for the program. If the Department does not receive an application to participate in the program, the Department will remove the piers at the owner's expense.

OVERALL PROCESS

Staff sent out about 230 letters to pier owners in the Kaneohe Bay area according to data collected in prior years. This letter explained the Amnesty Program and included an application form for the owners to complete. At the time of the writing of this submittal, 150 pier owners have agreed to participate in the Amnesty Program. About 40 other owners responded and have chosen not to participate for reasons such as "would like to stay on revocable permit," "pier is not on State land," "do not have a pier," "have a Department of Transportation (DOT) permit."

Staff intends to process the piers in Kaneohe Bay according to the flowchart attached as Exhibit D.

GROUP A: Owners who respond by the deadline established by the Board (October 13, 2001) and who want to participate in the Amnesty Program. The process of lease documentation is provided on page 2 of flowchart. If at any time during the process, the Applicant does not submit a required item (e.g., survey maps, consideration, fees, tax clearances, etc.), we are requesting the Board delegate the authority to the Chairperson to rescind approval of the pier lease for those Applicants.

GROUP B: Owners who responded that they do not have a pier. Staff will confirm with a site inspection. If a pier is found, the owner shall be put into Group G.

GROUP C: Owners who responded that their pier is not on State land. Staff will confirm. If the pier is on State land, the owners will have the opportunity to obtain a lease through the Amnesty Program if Act 261, SLH 2000 has not sunsetted.

GROUP D: Owners who responded that they would like their piers removed. Staff will follow-up to remove the pier, including researching building permit records and other available information. If the records show the pier was built under the current owner, such owner will be charged for the full cost of removal.

GROUP E: Owners who responded that they would like to remain on their DOT permit. The DOT permit is a legal disposition of public lands by the State government. As such, no further action is required by staff. Staff has been confirming DOT permits (actual copies of the DOT permits must be provided) and advising permit holders that they will be required to keep their piers open to the public ("no trespassing" signs are not allowed) and that obtaining liability insurance may be difficult or expensive due to this requirement.

GROUP F: Owners who responded that they want to remain on their revocable permits. These owners have existing revocable permits. Because these permittees have been legal, staff is recommending that they be allowed to choose whether to convert their permits to leases. Staff is recommending, however, that no further revocable permits be issued for non-commercial piers. As a result, if the current owners transfer their properties in any way, the new owners would be required to obtain a pier lease, including submitting a Conservation District Use Application (CDUA). If this transfer occurs after the sunset date of Act 261, then they will also be required to obtain legislative authorization.

GROUP G: Owners who did not respond by the October 13, 2001 deadline or who have otherwise defaulted into this group from another group. Staff will follow-up including conducting inspections, imposing fines and/or removing piers. Similar to Group D, staff will research building permit records and other available information. If the records show the pier was built under the current owner, such owner will be charged for the full cost of removal.

Anyone building a new pier (i.e., pier built after July 13, 2001) will be required to submit a CDUA and may apply for a pier lease under Act 261 up to its sunset date.

Anyone requesting a pier lease after the sunset date of Act 261 will be required to obtain legislative authorization and submit a CDUA.

Staff sent letters on or around July 25, 2001 to each of the different groups clarifying the above instructions. For those who had not responded, the letter stated the deadline set by the Board and the consequences if no response is received.

GROUP A DISPOSITION PROCESS

The disposition process of the pier leases is depicted on Page 2

of Exhibit D. Staff highlights the following:

Step 3: The Applicant will be required to submit private CAD survey maps; instructions on the Department of Accounting and General Services (DAGS), Survey Division standards will be provided in the notification letter of the Board results.

Step 5: The private survey maps will be sent to DAGS Survey Division for creation of a CSF map. Alternatively, if DAGS is unable to handle the volume of this project, we may use the private survey map.

Step 7: If encroachments are found during the verification of the maps and description by DAGS Survey Division, we will halt the disposition of the pier until resolution of such encroachments. As shown on Page 3 of the flowchart, the owner will have the option of removing the encroachment or applying for an easement. Any such application will be referred to the Coastal Lands Program (CLP) for analysis on a case-by-case basis of whether an easement should be granted. Depending on the CLP's analysis, the encroachment will be resolved by either removal or issuance of easement covering the encroachment as may be approved by the Board. Staff will recommend fines for any encroachments as is the standard procedure. Once the encroachments are resolved, the lease of the pier will be processed.

Step 14: As mentioned earlier under Group A, if at any time during the process, the Applicant does not submit a required item (e.g., survey maps, consideration, fees, tax clearances, etc.), we are requesting the Board delegate the authority to the Chairperson to rescind approval of the pier lease for those Applicants.

AGENCY/COMMUNITY COMMENTS

A public hearing was held on February 27, 2001 for the master CDUA covering the Amnesty Program. Questions regarding the disposition, e.g., methodology for determining the rent, liability insurance and land surveyor cost were answered by the staff at the meeting. The pier owners were informed that the subject submittal and the boilerplate for the lease are posted on the website of the Land Division. Staff believes community concerns, so far expressed, have been adequately addressed. At this point, the only continuing concerns are from Mr. Alvin Maeda (refer to Exhibit E for his latest correspondence). Staff believes his concerns in this letter have been appropriately addressed in this submittal.

The proposed use under the subject submittal is not different from the existing use, whether legal or illegal pier. Therefore, staff did not solicit comments from other agencies separate from

the CDUA process.

APPLICANT QUALIFICATION:

Staff will confirm that the Applicants have 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.

PROPOSED PROVISIONS OF THE STANDARD KANEOHE BAY PIER LEASE:

Survey maps and descriptions - Normally, an applicant for a lease is required to submit privately-prepared maps and descriptions which are used by DAGS Survey Division to prepare a CSF map and description which are used as the legal description in the document. In view of the large number of cases in Kaneohe Bay piers and their heavy workload, the Survey Division may not be able to promptly process all of the CSF maps before the sunset date of Act 261. Further, where encroachments are found and the Board grants approval for an easement, additional maps and descriptions will be required burdening the Survey Division with even more work. Staff has been in discussion with the Survey Division to address this potential backlog. DAGS is attempting to increase their staff to be able to handle this workload. However, if these plans should fall through, we may need to use the maps prepared by the private surveyor hired by the applicant as the legal description to meet the sunset date of Act 261. Staff will take steps to reduce the errors in the maps. If errors are found after the execution of the legal document, a lease amendment will be required.

Liability insurance - The standard coverage amounts for term easements for encroachments are $300,000 for each occurrence and $500,000 aggregate which staff is recommending for the pier leases.

Performance Bond - Staff has identified two alternatives on the issue of whether to impose a performance bond.

On the one hand, one may argue that a bond is needed to ensure the performance of the lessee, particularly with regard to obtaining insurance (or rent, if paid annually). If the lessee should default and the lease is cancelled, the State has little recourse to ensure removal of the pier, except through court action. Staff did recommend the performance bond requirement on the issuance of a Kaneohe Bay pier lease approved by the Board on April 12, 2001, under Item D-2. The applicants needed a shoreline certification for a building permit, and they were the first approval of a pier lease under the Amnesty Program. The Board approved staff's recommendation to require a performance bond based on the estimated demolition cost of the pier.

On the other hand, staff recently recommended changes to the boilerplate easement document. In the absence of a performance

bond and to ensure that the State has recourse to require removal of the improvements and/or satisfactory restoration of the premises where an easement is terminated, the following changes to the Surrender provision were made to encroachment easement documents:

"10. The Grantee shall, at the end of the term or other sooner termination of this easement, peaceably deliver unto the Grantor possession of the premises, together with all improvements existing or constructed thereon or Grantee shall remove such improvements and shall restore the premises to its original state, or as close thereto as possible, within a reasonable time and at the expense of the Grantee, at the option of the Grantor. If the Grantee does not remove the improvements or restore the premises to the satisfaction of the Grantor, the Grantor may effect such action and the Grantee agrees to pay all costs and expenses for such action. Furthermore, upon the expiration, termination, and/or revocation of this easement, should the Grantee fail to remove any and all of Grantee's personal property from the premises, after notice thereof, the Board may remove any and all of Grantee's personal property from the premises, and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Grantee and the Grantee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the easement."

Staff is comfortable with this amended language where payments are one-time since the only critical ongoing performance issue is insurance. Where an Applicant chooses to pay annually, however, staff feels that a performance bond would be appropriate.

Mutual termination - We are recommending that the lease include a provision to allow for mutual termination. This provision would allow the lessee to terminate the lease by giving 30 days notice where removal is desired by the lessee.

Surrender - We are recommending Standard term upon surrender, e.g. remove the pier at the option of the lessor, will ensure the area involved returned in a clean and orderly manner. For the standard lease condition, the rental may be adjusted taken into account of the area withdrawn for public purposes. However, if the lessee wants to terminate the pier lease, the area previously covered by the pier is not going to be used for a specific public purpose. Staff thinks no compensation should be payable to the lessee if the lessee decides to exercise this clause. The lessee will not be required to procure liability insurance for the pier lease upon termination.

Apart from the above mentioned, the lease will use the standard terms and conditions of the most current lease form, as may be amended from time to time.

PREVIOUS KANEOHE BAY APPROVALS:

Staff notes that the Board has already approved a handful of leases for piers in Kaneohe Bay. These actions were expedited because the Applicants needed a shoreline certification for a building permit and the pier or other encroachment impeded this certification. For these actions, the Board authorized a deposit of the estimated lease or easement cost to ensure the Applicant fully executed the document(s). Staff is requesting the Board grant a blanket amendment to all of these previous submittals to ensure conformance with the terms and conditions as outlined in this submittal, except for the collection of the deposit upfront.

RECOMMENDATION: That the Board:

1. Subject to the Applicants fulfilling all of the Applicant requirements listed above, authorize the issuance of fifty-five (55) year leases to the Applicants 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 Kaneohe Bay lease form, as may be amended from time to time;

   b. Applicants shall comply with all of the conditions stated in CDUA OA-3017B as approved by the Board on July 13, 2001 under Agenda Item D-32;

   c. Performance bond shall be required for Applicants who pay annually; no performance bond shall be required for Applicants who pay one-time;

   d. Mutual termination shall be allowed with no compensation;

   e. Review and approval by the Department of the Attorney General; and

   f. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

2. Authorize the Chairperson to rescind this action for any Applicant who has been unresponsive in submitting required items, as determined by staff.

3. Authorize the amendment of any and all prior Board actions from April 12, 2001 on for which the Board approved the issuance of a pier lease in Kaneohe Bay so that the terms and conditions of such lease conforms to those established in this action of August 24, 2001, except for the collection of any deposit upfront.

Respectfully Submitted,

Barry Cheung
Barry Cheung
Project Development Specialist

APPROVED FOR SUBMITTAL:

GILBERT S. COLOMA-AGARAN, Chairperson

APPROVED AS AMENDED. The Board approved the submittal subject to the following amendments:

(1) Recommendation 1(c) to "A $20 per sq. ft. performance bond shall be required on all dispositions whether by one time payment or annual lease rent.

(2) Recommendation 3 was amended by making it subject to approval by the Chairman and the Department of the Attorney General.

(3) A condition was added instructing staff to hold an informational meeting for all applicants to go over the implementation process.

(4) Staff is instructed to provide the Board with a report on the results of the informational meeting.

(5) The Board requested that staff report back to the Board on the status and process for non-residential piers.

ACT 129

HOUSE OF REPRESENTATIVES
TWENTY-THIRD LEGISLATURE, 2005
STATE OF HAWAII

H.B. NO. 1659 H.D. 1 S.D. 1 C.D. 1

A BILL FOR AN ACT

RELATING TO NONCOMMERCIAL PIERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that in May of 1998, the board of land and natural resources approved a plan to address unauthorized piers in Kaneohe bay after several decades of non-enforcement. Nearly two hundred shorefront property owners in Kaneohe bay had piers, many of which were built before statehood. Many of the pier owners, as well as countless others statewide, were unaware that their piers lacked proper authorization from the State and were considered illegal. As a result, the Governor signed Act 261, Session Laws of Hawaii (SLH) 2000, on June 20, 2000, which established a new section under chapter 171, Hawaii Revised Statutes, to read:

"**Private residential noncommercial piers.** Notwithstanding any limitations to the contrary, the board of land and natural resources may lease, by direct negotiation and without recourse to public auction, state submerged lands or lands beneath tidal waters for private residential non-commercial piers

EXHIBIT "D"

on such terms and conditions as may be prescribed by the board."

The legislature further finds that an amnesty program was therefore established in 2000 and 2001 to provide noncommercial pier owners with the appropriate permits for legal authorization and to resolve the illegal pier problem in Kaneohe bay. The legislature also finds that as of January 1, 2005, only twelve out of one hundred sixty Kaneohe bay pier owners had obtained a new lease, with an additional fifty cases in the process of approval with no guarantee of completion before the deadline of June 30, 2005, due to the difficulties and time constraints involved in obtaining all of the required surveys, appraisals, and additional documentation. The legislature further finds that additional time is needed to negotiate long-term leases with private noncommercial pier owners across the state, in areas such as Wailupe, Niuiki Circle, and Port Lock, given the disproportionate attention paid primarily to Kaneohe bay pier owners in the implementation of Act 261, SLH 2000.

The purpose of this Act is to:

(1) Allow noncommercial pier owners more time to negotiate leases of state submerged lands or lands beneath tidal

waters by extending the repeal date of Act 261, SLH 2000, from June 30, 2005, to June 30, 2007; and

(2) Urge DLNR to commence using the prevailing real property tax assessment value of the fast land in determining the lease rent for the submerged land lease entered into after July 1, 2006, to prompt procrastinating pier owners who desire to enter into leases with the State.

SECTION 2. Act 261, Session Laws of Hawaii 2000, as amended by Act 68, Session Laws of Hawaii 2002, section 2, as amended by Act 103, Session Laws of Hawaii 2002, section 1, is amended by amending section 5 to read as follows:

"SECTION 5. This Act shall take effect upon its approval; provided that:

(1) The authority granted to the department of land and natural resources to enter into lease agreements with owners of private noncommercial piers shall be repealed on June 30, [~~2005,~~] 2007;

(2) The amendments made by sections 1 and 3 of this Act to the Hawaii Revised Statutes, shall be repealed as of June 30, [~~2005,~~] 2007, and section 171-53(c), Hawaii Revised Statutes, shall be reenacted in the form in

which it read on the day prior to the effective date of this Act;

(3) The amendment made by section 2 of this Act to section 171-36(a), which deleted paragraph (9), shall be repealed as of June 30, [~~2005,~~] 2007, and paragraph (9) shall be reenacted in the form in which it read on June 19, 2000; and

(4) Any lease agreement executed pursuant to this Act prior to June 30, [~~2005,~~] 2007, or any lease extension executed thereon after the repeal of this Act, shall remain exempt from section 171-36(a)(9), Hawaii Revised Statutes, after the repeal of this Act."

SECTION 3. To prompt procrastinating pier owners who desire to enter into leases with the State for their noncommercial piers, the department of land and natural resources is urged to commence using the prevailing real property tax assessment value of the fast land in determining lease rent for a lease of the state submerged land or land beneath tidal water entered into after July 1, 2006.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on June 29, 2005.

Approved by the Acting Governor

on JUN 16 2005