

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

December 14, 2012

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

PSF No.:12OD-112

OAHU

Grant of Term, Non-Exclusive Easement to Bernice K.Y. Bailey, Frederick K. Bailey, Jr., and Susan Koehler for Pier Purposes; Impose Fine of \$500 and Assess Administrative Costs of \$200, Heeia, Koolaupoko, Oahu, Tax Map Key: (1) 4-6-001:seaward of 014.

APPLICANT: (“Applicants”)

Bernice K.Y. Bailey, Frederick K. Bailey, Jr., and Susan Koehler, as tenants-in-common.

LEGAL REFERENCE:

Section 171-6, 13, and 53, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located in Heeia, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-6-001:seaward of 014 as shown on the attached map labeled **Exhibit A**.

AREA:

589 square feet, more or less.

Subject to review and approval of the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

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

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Subject to one-time payment of consideration determined by an independent appraiser subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, 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" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." See Exemption Notification at **Exhibit B**.

DCCA VERIFICATION:

Individuals. Not applicable.

APPLICANT REQUIREMENTS:

Applicants shall be required to:

- 1) Pay for an appraisal to determine the one-time payment of consideration;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicants' own cost; and
- 3) Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

BACKGROUND:

Applicants, who are the owners of the abutting property identified as tax map key (1) 4-6-001:014 ("Parcel 14"), have been in the process of obtaining a shoreline certification. During the survey process, it was found that the pier located makai of the Parcel 14 did

not have any authorization from the Board. Applicants intend to resolve the encroachment. A copy of the current shoreline survey map is attached as **Exhibit C**.

The pier is considered as submerged land for the purpose of this request. Upon approval of today's request, Applicants are reminded of the requirement for concurrent resolution from both houses of the legislature under Sect.171-53(c), HRS.

By its letter dated September 10, 2012 attached as **Exhibit D**, Office of Conservation and Coastal Lands (OCCL) determined that the encroachment was in existence prior to 1949, as evidenced by aerial photos. OCCL declined to ask for an after-the-fact conservation district use application or initiate any enforcement action on the subject encroachment. In addition, OCCL advised that in the event the Applicants decide to construct a new pier in place of the existing pier, a Conservation District Use Permit is required. Staff understands the Applicants do not have any imminent plan of replacing the existing pier with a new pier.

Department of Facility Maintenance, Department of Planning and Permitting, Board of Water Supply, Department of Health, and Division of Aquatic Resources have no comment/objection to the request.

State Historic Preservation Division and Office of Hawaiian Affairs have not responded as of the suspense date.

As mentioned above, the pier did not have any authorization from the Board. Pursuant to the Board's action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, staff is recommending a fine of \$500 as the subject encroachment is over 100 square feet.

In addition, staff recommends the Board assess the administrative costs of \$200 for staff time incurred in resolving this matter, under Section 171-6, HRS.

Governor approval pursuant to Section 171-53 (c), HRS will be pursued by the staff upon approval of today's request.

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.

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. Impose a \$500 fine for illegal encroachment and assess administrative costs of \$200, under Section 171-6, HRS.

3. Authorize the subject request to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key (1) 4-6-001:014 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 Applicants fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to Bernice K.Y. Bailey, Frederick K. Bailey, Jr., and Susan Koehler 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 property described as Tax Map Key (1) 4-6-001:014, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
 - C. 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;
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
 - F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila Jr., Chairperson

EXEMPTION NOTIFICATION

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

Project Title: Term Easement for Pier Purposes

Project / Reference No.: PSF 12OD-112

Project Location: Heeia, Koolaupoko, Oahu, Tax Map Key: (1) 4-6-001:seaward of 014.

Project Description: Easement to legalize the encroachments on State lands.

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" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

According to aerial photos dated 1949 provided to the Office of Conservation and Coastal Lands, the pier was in existence. The Applicants are not planning on conducting major change to the existing topographical and vegetation condition of the encroachment and the neighboring property. 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 Office of Conservation and Coastal Lands

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.

N 

William J. Aila Jr., Chairperson
Date 11/24/12

EXHIBIT B

TAX MAP KEY : 4 - 6 - 01 : 14

TRUE NORTH
SCALE : 1 IN. = 30 FT.

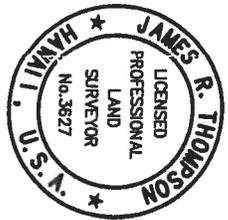
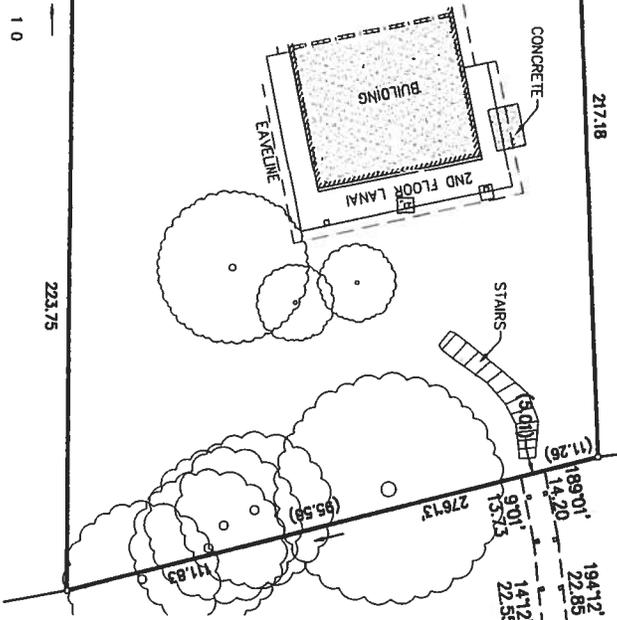
LILIPUNA ROAD

LOT 11
22,842 Sq. Ft
46-013 LILIPUNA ROAD
KANEHOHE, HI 96744

LOT 12

LOT 10

OWNERS : BERNICE K. Y. BAILEY
FREDERICK K. BAILEY JR
SUSAN K. KOEHLER
46-013 LILIPUNA ROAD
KANEHOHE, HI 96744



THIS WORK WAS PREPARED BY
ME OR UNDER MY SUPERVISION
James R. Thompson
EXP. 4/30/14

KANEHOHE BAY

MAP SHOWING
PROPOSED PIER EASEMENT
FRONTING LOT 11

LAND COURT APPLICATION 1100

AT HEEIA, KOOLAUPOKO, OAHU, HAWAII

SCALE : 1 IN. = 30 FT.
JULY 11, 2012 WALTER P. THOMPSON, INC.

EASEMENT
FOR PIER PURPOSES
589 Sq. Ft.
EXISTING PIER COLUMNS
(TYPICAL)
195'51" 51.00' 195'29" 30.16' 285'2" 3.00'
14.20' 14.12' 22.85' 15.51' 50.94' 15'29" 30.11'

10" x 15" = 1.04 S

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

PAUL J. CONRY
INTERIM FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

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

RECEIVED
LAND DIVISION

2012 SEP 10 P 2:59

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF: DLNR: SL

SEP 10 2012

File Number Encroachment: OA-13-2

MEMORANDUM:

TO: Barry Cheung, Oahu District Land Agent
Land Division

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

SUBJECT: Request to Resolve State Land Encroachment at Heeia, Koolaupoko, Oahu
TMK: (1) 4-6-001:014 Seaward

This is in response to your July 12, 2012 request to resolve the shoreline encroachment seaward of Tax Map Key (1) 8-4-005:014 (Seaward).

According to information and maps contained in the Shoreline Encroachment Information Sheet approximately 589 square feet of encroachment has been identified seaward of the subject property onto State land. The surveyor for the applicant states that the date of the encroachment is sometime prior to 1949. A date stamped aerial photograph from 1949 was submitted which clearly shows the subject pier. Should the OCCL find that the improvements were built without permits within the Conservation District after 1964 the OCCL may reconsider this finding.

The Board of Land and Natural Resource (BLNR) established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments.

Surrounding Land Uses:

The surrounding coastal uses along the coastline are primarily residential.

Beach Resources:

Beach resource fronting the property is poor.

EXHIBIT "D"

Public Access:

There are public access ways from the street to the shoreline approximately 350 feet to the west and 570 feet to the east..

Effect of Removing the Encroachment on:

Beach Resources: OCCL staff has determined that removal of the encroachment would have no negative effects on anything. It would eliminate what could be characterized as a nuisance in its present form.

Public Access: No substantial effect.

Effect on Adjacent Properties: No effect.

It has been a general policy and practice of the OCCL to support disposition requests that have no discernable effect on beach and recreational resources, and do not act as a detriment to public access. In cases where the encroachment serves as primary erosion control for potentially threatened structures, impacts to the adjacent and upland developments must also be considered.

The OCCL is directed in its actions and polices by a mandate to protect and preserve the natural resources of the state for present and future generations. This directive is articulated in government statutes, rules, polices, and a general office ethic of healthy natural resource stewardship.

Upon review and careful consideration of the information gathered on this case, staff has determined that allowing the encroachment to remain through the issuance of an easement would have no adverse impacts on natural resources, including beach resources and public access. Therefore, the OCCL has no objections to a disposition request being processed. Pursuant to Chapter 171, the landowner is required to obtain a land disposition (normally a term easement in these cases) for the use of public lands, and may be subject to a \$500 fine for the encroachment. However, prior to the approval of an easement, the landowner will need to receive a Conservation District Use Permit from the Department if they intend to construct a new pier in the place of the old pier.

We hope this letter helps resolve some of the outstanding issues regarding the issue. Please feel free to contact Sam Lemmo, of the Office of Conservation and Coastal Lands at 587-0377, should you have any questions on this matter.

Cc: Oahu Board Member
Chairperson's Office
City and County of Honolulu
Department of Planning and Permitting