

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

June 14, 2013

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

PSF No.:12OD-108
12OD-111
12OD-141
11KD-005

OAHU/ KAUAI

Amend Prior Board Actions of August 10, 2012, agenda item D-1, and January 11, 2013, agenda items D-11, D-13, and D-14 by Adding the Issuance of Management Right-of-Entry regarding the following cases:

Amend Prior Board Action of October 28, 2011, Item D-8, Grant of Term, Non-Exclusive Easement to Harlan Cabot Amstutz and Patricia Price Amstutz, Co-Trustees of the Amstutz Family Trust Seawall and Stairway Purposes, Koloa, Kauai, Tax Map Key (4) 2-6-003:018 & 060, to Request a Deferral Regarding Tender of Consideration for the Easement.

Grant of Term, Non-Exclusive Easement to Minatoya Real Estate, LLC for Seawall and Steps Purposes; Assess Administrative Costs of \$200; Kualoa, Koolaupoko, Oahu, Tax Map Key: (1) 4-9-009:seaward of 005.

Grant of Term, Non-Exclusive Easement to Douglas & Kathleen Giannetti for Seawall Purposes, Assess Administrative Costs of \$200, Kawailoa, Waialua, Oahu, Tax Map Key: (1) 6-1-003:024-0001 seaward.

Grant of Term, Non-Exclusive Easement to West Coast Roofing, Inc. for Seawall Purposes; Assess Administrative Costs of \$200, Makaha, Waianae, Oahu, Tax Map Key: (1) 8-4-005:seaward of 002.

BACKGROUND:

On August 10, 2012, under agenda item D-1 and January 11, 2013, under agenda items D-11, D-13, and D-14, the Board authorized the issuance of four (4) term non-exclusive easements for shoreline encroachments as described in the subject line. Prior submittals (without the exhibits attached thereto) are attached as **Exhibits 1** through **4**.

All four cases involve improvements found in the latest shoreline certification process, which has been determined to be mauka of the improvements as well as the recorded boundary. These improvements are now considered as encroaching on State submerged lands.

As reported in some prior shoreline encroachment easement requests, the Department introduced a bill in the 2013 session asking the Legislature to allow the Board to issue easements at less than fair market value for shoreline encroachments now located seaward of the shoreline but that were authorized and built within the recorded boundary of the property and landward of the shoreline at the time of construction. For reasons unbeknownst to the Department, the bill did not get a hearing from the Senate or House Judiciary Committees, even though the Senate and House Water/Land Committees approved the Department's proposed bill, unamended and quite quickly. Though the bill died this session, it can be resurrected next session; and the Department will reintroduce another bill again just in case.

Staff suggested in the prior submittal that these requests would be processed as a normal easement request (i.e. conducting an appraisal to determine the fair market value) if the bill is not approved. Upon review of the situation, staff believes the proposed bill deserves a second chance at the Legislature.

Before the outcome of the proposed bill is known to the Department, which will be mid-2014, staff recommends the Board authorize the issuance of management right-of-entry to the abutting private owners at gratis, and further subject to standard indemnification and insurance conditions. The proposed right-of-entry will protect the interest of the State until an easement is issued and allow the owners proceed their shoreline certification applications.

RECOMMENDATION: That the Board amend its prior actions of August 10, 2012, under agenda item D-1 and January 11, 2013, under agenda item D-11, D-13, and D-14 by authorizing the issuance of management right-of-entry permits to the respective applicants mentioned in the submittals, and further subject to the following:

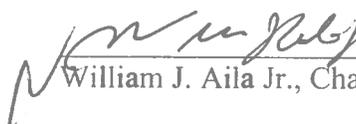
- A. The standard terms and conditions of the most current term right-of-entry document form, as may be amended from time to time; and
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
- C. All terms and conditions listed in the aforementioned respective approvals to remain the same.

Respectfully Submitted,



Ian Hirokawa, Project Development Specialist
Barry Cheung, District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila Jr., Chairperson

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

August 10, 2012

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

PSF No: 11KD-005
KAUAI

Amend Prior Board Action of October 28, 2011, Item D-8, Grant of Term, Non-Exclusive Easement to Harlan Cabot Amstutz and Patricia Price Amstutz, Co-Trustees of the Amstutz Family Trust Seawall and Stairway Purposes, Koloa, Kauai, Tax Map Key (4) 2-6-003:018 & 060, to Request a Deferral Regarding Tender of Consideration for the Easement.

BACKGROUND:

At its meeting on October 28, 2011, under agenda item D-8 as amended, the Board approved a grant of a fifty-five year term, non-exclusive easement to the Applicant (Attached as Exhibit A). The total easement area consisted of eight separate easement areas, identified as Easements A through H, totaling 1632 square feet. The vast majority of the easement area contained improvements that were built on fast lands within the record boundary of the property, but due to the movement of the shoreline inland, are now located in the shoreline area. Under the terms of the prior Board approval, the Applicant was required to pay the fair market value of the easement as determined by independent appraiser. Subsequently, Appraisal Hawaii Inc. was contracted to prepare a summary appraisal report to establish the fair market value of the easement, which was completed on April 4, 2012. As a result, the fair market value as of March 20, 2012 was determined to be a one-time payment of \$78,900.00.

REMARKS:

When informed of the results of the appraisal, the Applicant expressed concern regarding the amount of the cost of the easement, stating that it would create a significant financial burden. Considering that the primary purpose of seeking the easement is to resolve indemnity and insurance issues regarding the encroachments, the Department will attempt to remedy the situation by introducing proposed legislation for the 2013 Legislative Session. See draft legislation as Exhibit B. The proposed legislation will seek to grant the Board the authority to approve at a nominal rate, the issuance of easements for encroaching structures now located seaward of the shoreline but were authorized and built within the record boundary of the property and landward of the shoreline at the time of construction. The Department believes that passage of this proposed legislation would encourage compliance from other landowners in

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

August 10, 2012

ROW

EXHIBIT "L"

similar situations in obtaining easements.

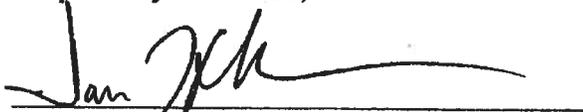
The Applicant was informed of the Department's proposed legislation, and now requests that the Board amend its approval of the easement to hold enforcement by allowing a temporary deferral of payment until the close of the 2013 Legislative Session, which would allow the proposed legislation to be enacted. A copy of the Applicant's testimony on this Item is attached as Exhibit C. The Board is respectfully requested to approve of the execution of the easement to the Applicant for the entire easement area, and the Applicant will compensate the Department only for the encroachments that are located outside the record boundary of the property. The amount of the compensation will be calculated using the "per square foot" cost of the entire easement, approximately \$48.35, and applying it to the area outside the record boundary. The easement area for the encroachments located outside the record boundary of the property total approximately 100 square feet, more or less, resulting in a cost of about \$4835.00. Staff asks and recommends the Board set the value at \$4835.00 for the encroachments situated outside the record boundary.

Applicant understands that payment for the remaining balance is only temporarily deferred, not waived. If the proposed legislation passes, then the Applicant would be excused from any further payment obligation. However, if the proposed legislation is not enacted, then Applicant shall be responsible for paying the remaining balance of the easement amount. In such an event, failure of the Applicant to pay may result in the termination of the easement and subsequent enforcement action.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of October 28, 2011, under agenda item D-8 by approving the execution of the easement with a temporary deferral of the payment of the entire easement cost under the terms and conditions as described above; and
2. All terms and conditions listed in its October 28, 2011 approval to remain the same.

Respectfully Submitted,



Ian Hirokawa

Project Development Specialist

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

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

January 11, 2013

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

PSF No.:12OD-111

OAHU

Grant of Term, Non-Exclusive Easement to Minatoya Real Estate, LLC for Seawall and Steps Purposes; Assess Administrative Costs of \$200; Kualoa, Koolaupoko, Oahu, Tax Map Key: (1) 4-9-009:seaward of 005.

APPLICANT: ("Applicant")

Minatoya Real Estate, LLC, a domestic limited liability company.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located in Kualoa, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-9-009:seaward of 005 as shown on the attached map labeled **Exhibit 1**.

AREA:

448 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.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

January 11, 2013

EXHIBIT "2"

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall and steps 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 2**.

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

BACKGROUND:

Applicant is the owner of the abutting properties identified as tax map key (1) 4-9-009:005 ("Parcel 5"). In 2009, the Applicant intended to sell Parcel 5. During due

diligence, encroachment outside the recorded boundary was found. Subsequently, the Applicant obtained a 55-year, non-exclusive easement (GL 5970) from the Board for 378 square feet comprising seawall and filled land from the Board. The 2009 easement was for the encroachment outside the recorded boundary and the one-time payment of consideration was \$23,000. Staff notes from the map in GL 5970, the portion of seawall and steps under today's request existed within the recorded boundary of Parcel 5 in 2009.

Recently, the Applicant has been in the process of obtaining a current shoreline certification. During the survey process, portions of the seawall and steps were found to be makai of the current shoreline proposed by the Office of Conservation and Coastal Lands ("OCCL"). The portions of the seawall and steps are now considered as encroaching on State lands, i.e. below the highwater mark. Based on the information available in the existing easement document (GL 5970), the subject seawall was in existence prior to 1967. A copy of the current survey map is attached as **Exhibit 3**.

By OCCL's letter dated July 20, 2012 attached as **Exhibit 4**, which made further reference to its prior letter dated May 14, 2008, OCCL does not have any position on the latest request for easement. Meanwhile, OCCL believes the Applicant should be offered an opportunity for the Board to consider its request.

Board of Water Supply, Department of Health, and Division of Aquatic Resources have no comment/objection to the request. Department of Facility Maintenance, State Historic Preservation Division, Department of Planning and Permitting, and Office of Hawaiian Affairs have not responded as of the suspense date.

The Department will be submitting a bill for the next legislative session asking the Legislature to allow the Board to issue easements at less than fair market value for shoreline encroachments now located seaward of the shoreline but that were authorized and built within the recorded boundary of the property and landward of the shoreline at the time of construction. The easement will include the normal insurance coverage and indemnification language to protect the best interests of the State. To avoid any delay in the disposition process, staff brings the request on today's agenda, with the Recommendation drafted to accommodate any changes in the forthcoming Legislative session as discussed above.

Staff notes that there was no shoreline certification processed for the Parcel 5 in the past years. According to the quitclaim deed recorded on December 10, 2007 (2007-212719) kept in the file, the seaward boundary of Parcel 5 was described as "... along high water mark at seashore ...". Therefore, the encroachment under the subject request was considered as landward of the shoreline according to the recorded boundary.¹

When the Board considered the easement request (GL 5970) on August 8, 2008, item D-9 (**Exhibit 5**), the Board agreed to "recognize the subject revetment fronting applicants' properties to be authorized structures for the purposes of shoreline certification under Hawaii Administrative Rules, Section 13-221-19." Staff notes the revetment considered by the Board in 2008 was not the same encroachment under the subject request.

¹ As shown on Exhibit C, the subject encroachment is mauka of the recorded boundary.

Nevertheless, both the 2008 revetment and the subject encroachment are portions of the same structure. Therefore, staff recommends the Board recognize the subject encroachment as authorized for the purpose of the proposed legislation mentioned above, following the analogy of the 2008 Board action.

Regardless of the outcome of the proposed legislation changes, staff plans returning to the Board after the end of the next legislative session for a final determination of the consideration for the requested easement. If the bill is passed, staff will make recommendation following the revised statutes. Alternatively, staff will seek the Board authorization to proceed with the appraisal process (payment of appraisal fee, procurement etc.) in the event the bill is not approved.

In the meantime, staff recommends the Board approve the issuance of the easement with a temporary deferral of the payment of the consideration. If the proposed legislation is not enacted, then Applicant shall be responsible for paying the consideration. Failure to pay the consideration may result in the termination of the easement and subsequent enforcement action.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, a fine of \$500 is to be imposed if the encroachment is over 100 square feet. Nevertheless, staff does not recommend any fine for the subject encroachment based on the fact that it was once within the recorded boundary of the private property.

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

The subject encroachment, which is now located makai of the shoreline, is considered as submerged land for the purpose of this request. Upon approval of today's request, Applicant is reminded of the requirement for concurrent resolution from both houses of the legislature under Sect.171-53(c), HRS. Governor's approval pursuant to Section 171-53 (c), HRS will be pursued by the staff upon approval of today's request.

Applicant has 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. 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) 4-9-009:005

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 Minatoya Real Estate LLC, covering the subject area for seawall and steps 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) 4-9-009:005, 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. Approve the execution of the easement with a temporary deferral of payment of the easement consideration under the terms and conditions as described above;
 - F. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
 - G. 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. Aifa Jr., Chairperson

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

January 11, 2013

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

PSF No.: 12OD-141

OAHU

Grant of Term, Non-Exclusive Easement to Douglas & Kathleen Giannetti for Seawall Purposes, Assess Administrative Costs of \$200, Kawailoa, Waialua, Oahu, Tax Map Key: (1) 6-1-003:024-0001 seaward.

APPLICANT:

Douglas & Kathleen Giannetti, husband and wife, tenants by the entirety.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located in Kawailoa, Waialua, Oahu, identified by Tax Map Key: (1) 6-1-003:024-0001 seaward as shown on the attached map labeled **Exhibit A**.

AREA:

110 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

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

January 11, 2013

PK

EXHIBIT " 3 "

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall 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:

Applicant 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 Applicant's own cost; and
- 3) Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

BACKGROUND:

Applicants are the owners of the abutting property identified as tax map key (1) 6-1-003:024-0001 ("Parcel 24"). They plan to renovate the improvements, which triggers the shoreline certification process. A copy of the survey map is attached as **Exhibit C**. During due diligence, a portion of the seawall was found to be makai of the shoreline proposed by the Office of Conservation and Coastal Lands ("OCCL"), but located within the recorded boundary of the private parcel identified as tax map key (1) 6-1-003:036 ("Parcel 36")¹.

Land Division considers the portions of seawall makai of the proposed shoreline to be located on submerged land, i.e. State lands, notwithstanding the subject location once was within the recorded boundary of a private parcel (Parcel 36). Therefore, the portions of the seawall located makai of the shoreline are now considered as unauthorized encroachments on State submerged land. The applicants want to resolve the encroachment and request the Board authorize the issuance of a term, non-exclusive easement. A disposition is required to resolve the encroachment on State lands.

OCCL, by its letter attached as **Exhibit D**, supports a disposition request to resolve the encroachment issue. Department of Facility Maintenance, Board of Water Supply, Department of Planning and Permitting, 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.

According to the Applicant's attorney, the subject seawall is shown on the aerial photo dated May 8, 1949, which is attached as **Exhibit E**. Further, staff notes that the certified shoreline map for the neighboring parcel (Parcel 55) dated April 8, 1993 (**Exhibit F**) showed the continuation of the seawall going into Parcel 24 now owned by the Applicant.

The Department will be submitting a bill for the next legislative session asking the Legislature to allow the Board to issue easements at less than fair market value for shoreline encroachments now located seaward of the shoreline but that were authorized and built within the recorded boundary of the property and landward of the shoreline at the time of construction. The easement will include the normal insurance coverage and indemnification language to protect the best interests of the State. To avoid any delay in the disposition process, staff brings the request on today's agenda, with the Recommendation drafted to accommodate any changes in the forthcoming Legislative session as discussed above.

For Parcel 24, staff was not able to locate any past certified shoreline. However, the above mentioned 1993 shoreline of the neighboring Parcel 55 could be relevant to locate the shoreline if there were any shoreline certified for Parcel 24. The proposed shoreline for Parcel 24 would likely follow that of Parcel 55, i.e. along "face of seawall". It would result in the subject wall being located landward of the shoreline.

¹ Parcel 36 is owned by Jack and Karen Visin according to the website of the County's Real Property Tax Office.

Regarding the criteria of authorization under the proposed legislation mentioned above, it is noted from the 1949 aerial photo that the wall had existed prior to 1949. While OCCL does not require an after-the-fact Conservation District Use Permit for the subject wall (see Exhibit D), staff was not able to locate any government agency approval at the time of writing this submittal. Nevertheless, staff recommends the Board consider the information indicating the subject wall had existed prior to 1949 adequate for the purpose of authorization.

Regardless of the outcome of the proposed legislation changes, staff plans returning to the Board after the end of the next legislative session for a final determination of the consideration following the requested easement. If the bill is passed, staff will make recommendation of the revised statutes. Alternatively, staff will seek the Board authorization to proceed with the appraisal process (payment of appraisal fee, procurement etc.) in the event the bill is not approved.

In the meantime, staff recommends the Board approve the issuance of the easement with a temporary deferral of the payment of the consideration. If the proposed legislation is not enacted, then Applicant shall be responsible for paying the consideration. Failure to pay the consideration may result in the termination of the easement and subsequent enforcement action.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, a fine of \$500 is to be imposed if the encroachment is over 100 square feet. Nevertheless, staff does not recommend any fine for the subject encroachment based on the fact that it was once within the recorded boundary of Parcel 36, a private property.

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

Regardless of whether the proposed legislation will be approved, the subject encroachment, which is now located makai of the shoreline, is considered submerged land for the purpose of this request. Upon approval of today's request, applicants will be reminded of the requirement for concurrent resolution from both houses of the legislature under Sect. 171-53(c), HRS.

Governor's approval pursuant to Section 171-53 (c) 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.

Applicants request the Board to defer payment of the consideration for the easement until the end of the 2013 legislative session, in view of the possible passing of the law which may allow for less than fair market value consideration. Further, the Applicants, through

their attorney, request the Board authorize the processing of the shoreline certification contingent upon approval of today's request. A copy of the letter from the attorney is attached as **Exhibit G²**. Staff does not have any objection to the request of deferring the payment and continuing with the shoreline certification process.

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 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) 6-1-003:024-0001 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 Douglas and Kathleen Giannetti, covering the subject area for seawall 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) 6-1-003:024-0001, 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;

² The consideration, if any, will be determined by an independent appraiser. The estimate from the Applicants' attorney is irrelevant for today's request.

- E. Approve the execution of the easement with a temporary deferral of payment of the easement consideration under the terms and conditions as described above;
 - F. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
 - G. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.
5. Authorize the Chairperson to proceed with the shoreline certification of Parcel 24.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila Jr., Chairperson

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

January 11, 2013

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

PSF No.: 12OD-108

OAHU

Grant of Term, Non-Exclusive Easement to West Coast Roofing, Inc. for Seawall Purposes; Assess Administrative Costs of \$200, Makaha, Waianae, Oahu, Tax Map Key: (1) 8-4-005:seaward of 002.

APPLICANT: ("Applicant")

West Coast Roofing, Inc., a domestic profit corporation.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located in Makaha, Waianae, Oahu, identified by Tax Map Key: (1) 8-4-005:seaward of 002 as shown on the attached map labeled **Exhibit A**.

AREA:

131 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

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

Dir
January 11, 2013

EXHIBIT "4"

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall 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:

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 the one-time payment of consideration;
- 2) Provide survey maps and descriptions according to State DAGS standards and at

- 3) Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

BACKGROUND:

Applicant, who is the owner of the abutting properties identified as tax map key (1) 8-4-005:002 ("Parcel 2"), has been in the process of obtaining a shoreline certification. During the survey process, portion of the seawall was found to be makai of the shoreline (see **Exhibit C**). Applicant intends to resolve the encroachment.

Parcel 2 is described as Lot 57 of Land Court Application 1052, Map 5 dated April 1, 1947. The original seaward boundary of Lot 57 was cited along "highwater mark" as shown on Map 5. In October 2010, the shoreline was determined to be mauka of the recorded boundary and the seawall. See Exhibit C for the location of the 2010 shoreline. The portion of the seawall is now considered as encroaching on State lands, i.e. below the highwater mark.

The subject encroachment, which is now located makai of the shoreline, is considered submerged land for the purpose of this request. Upon approval of today's request, Applicant is reminded of the requirement for concurrent resolution from both houses of the legislature under Sect. 171-53(c), HRS.

By its letter dated July 31, 2012 attached as **Exhibit D**, Office of Conservation and Coastal Lands (OCCL) determined that the encroachment does not appear to be built recently. OCCL declined to ask for an after-the-fact conservation district use application or initiate any enforcement action on the subject encroachment.

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

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

Pursuant to the Board's action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, a fine of \$500 is to be imposed if the encroachment is over 100 square feet. Nevertheless, staff does not recommend any fine for the subject encroachment based on the fact that it was once within the recorded boundary of the private property.

The Department will be submitting a bill for the next legislative session asking the Legislature to allow the Board to issue easements at less than fair market value for shoreline encroachments now located seaward of the shoreline but that were authorized and built within the recorded boundary of the property and landward of the shoreline at the time of construction. The easement will include the normal insurance coverage and indemnification language to protect the best interests of the State. To avoid any delay in the disposition process, staff brings the request on today's agenda, with the Recommendation drafted to accommodate any changes in the forthcoming Legislative

session as discussed above.

According to the certified shoreline map dated October 10, 1974 and attached as **Exhibit E**, the subject wall was located landward of the 1974 shoreline. In fact, a portion of the wall has eroded since 1974. Further, a building permit issued in 1964 regarding a 2-foot high and 70-foot long seawall at the subject location matches the present physical condition (other than the eroded portion). Staff believes the subject request fits the criteria under the proposed legislation mentioned above, namely, landward of the shoreline and with authorization at the time of construction.

Regardless of the outcome of the proposed legislation changes, staff plans returning to the Board after the end of the next legislative session for a final determination of the consideration for the requested easement. If the bill is passed, staff will make recommendation following the revised statutes. Alternatively, staff will seek the Board authorization to proceed with the appraisal process (payment of appraisal fee, procurement etc.) in the event the bill is not approved.

In the meantime, staff recommends the Board approve the issuance of the easement with a temporary deferral of the payment of the consideration. If the proposed legislation is not enacted, then Applicant shall be responsible for paying the consideration. Failure to pay the consideration may result in the termination of the easement and subsequent enforcement action.

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

Applicant has 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.

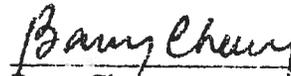
RECOMMENDATION: That the Board:

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. 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) 8-4-005:002 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 West Coast Roofing, Inc., covering the subject area for seawall 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) 8-4-005:002, 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. Approve the execution of the easement with a temporary deferral of payment of the easement consideration under the terms and conditions as described above;
 - F. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
 - G. 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. Aifa Jr., Chairperson