

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

November 14, 2014

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

PSF No.: 14KD-031

Kauai

Request for Grant of Term, Non-Exclusive Easement to David G. Jorgensen and Annette Thatcher Jorgensen, Trustees of the David and Annette Jorgensen Revocable Trust for Seawall Purposes, por. of Kukuiula, Koloa, Kauai, Tax Map Key: (4) 2-6-012:seaward of 001.

APPLICANT:

David G. Jorgensen and Annette Thatcher Jorgensen, Trustees of the David and Annette Jorgensen Revocable Trust.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of Kukuiula Beach Lots, por. of Kukuiula, Koloa, Kauai, identified by Tax Map Key: (4) 2-6-012:001 shown on the attached map labeled Exhibit A.

AREA:

Easement 1 - 103 square feet, more or less.
Easement 2 - 6 square feet, more or less.
Easement 3 - 426 square feet, more or less.

TOTAL: - 535 square feet, more or less., to be determined by Survey Division, DAGS.

ZONING:

State Land Use District:	Open
County of Kauai CZO:	Residential

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 seawall over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, 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 Exhibit B.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial one-time payment;

REMARKS:

The Jorgensens recently acquired and are the owners of parcel situated at Kukuiula, Koloa, Kauai, identified by Tax Map Key: (4) 2-6-012:001. They desire to do some renovations to the existing residence on the property, which require a current shoreline certification as part of their application to the County of Kauai for a building permit. In having the property surveyed for the shoreline certification, it was determined that the upper wash of the reaches of the waves reach up to a portion of pre-existing seawall along the property's makai boundary at three locations. See Exhibit C.

The Office of Conservation and Coastal Lands requires that the applicants obtain an easement before applying for a shoreline certification.

Land Division considers the portions of seawall makai of the proposed shoreline to be located on unencumbered land, owned by the State, notwithstanding that the subject structure once was within the recorded boundary of the parcel on private land. Therefore, the portions of the seawall located makai of the shoreline are now considered encroachments on State unencumbered 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 land.

Comments were solicited from the agencies identified below with the results indicated.

State Agencies:

DOH	Check for compliance with Community Noise Control
DLNR – Historic Preserv.	If any historic features found, contact office.
DLNR – OCCL	No response by suspense date
OHA	No objections

County Agencies:

County Planning	No response by suspense date
Public Works	No objections

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 fines for the subject encroachment based on the fact that it was once within the recorded boundary of the private property. However, staff recommends the Board assess the administrative cost of

\$500 for staff time incurred in resolving this matter, under Section 171-6, HRS.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last 5 (five) years due to non-compliance with such terms and conditions.

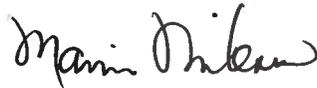
Staff does not recommend imposing a fine, pursuant to Section 171-6(12) of the Hawaii Revised Statutes, for the seawall encroachment constructed without prior consent by the State.

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 cost of \$500.00, under Section 171-6, HRS.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to David G. Jorgensen and Annette Thatcher Jorgensen, Trustees of the David and Annette Jorgensen Revocable Trust 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 real property described as Tax Map Key: (4) 2-6-012:001, 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. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



Marvin Mikasa
Acting District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson



NEH ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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HISTORY PRESERVATION
KAWAHAUINI AND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Request for Grant of Term, Non-Exclusive Easement to David G. Jorgensen and Annette Thatcher Jorgensen, Trustees of the David and Annette Jorgensen Revocable Trust for Seawall Purposes

Project Number: PSF No. 14KD-031

Project Location: por. of Kukuiula, Koloa, Kauai, Tax Map Key: (4) 2-6-012:seaward of 001.

Project Description: Seawall Purposes

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

Consulted Parties: Office of Conservation and Coastal Lands

Exemption Class No. In accordance with the "Exemption List for the State of Hawaii, Department of Land and Natural Resources, as Reviewed and Concurred Upon by the Environmental Council (Docket 91-EX-2, December 4, 1991), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, "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 [HAR § 11-200-8(a)(1)]."

Exemption Item No. and Description: In accordance with the Division of Land Management Environmental Impact Statement Exemption List, approved by the Environmental Council and dated April 28, 1986, the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to:

Exemption Class No. 1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that

EXHIBIT "B"

previously existing," and

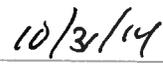
Exemption Class No. 4, which states, "Minor alterations in the conditions of land, water or vegetation."

Exemption Item Description From Agency Exemption List 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.

Recommendation: It is anticipated that this request will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila, Jr., Chairperson



Date



