

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

April 24, 2015

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

PSF No.: 02OD-316

OAHU

Grant of Term, Non-Exclusive Easement to Hitoshi Yoshikawa for Seawall, Boat Ramp, and Pier Purposes; Issuance of Management Right-of-Entry, Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-018:seaward of 072.

APPLICANT:

Hitoshi Yoshikawa, unmarried.

LEGAL REFERENCE:

Sections 171-6, 13, 17, 53(c), and 55 Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located in Kaneohe, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-4-018:Seaward of 072, as shown on the attached map labeled **Exhibit A1 & A2**.

AREA:

624 square feet¹, more or less, subject to review and approval by the Department of Accounting and General Services, Survey Division

ZONING:

State Land Use District: Conservation
City & County of Honolulu LUO: R-5 [for the abutting private property]

TRUST LAND STATUS:

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

D-15

¹ The easement area may be revised due to the location of the shoreline under the shoreline certification process.

CURRENT USE STATUS:

Encumbered by the encroachments mentioned below.

CHARACTER OF USE:

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

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent 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 Section 11-200-8(a)(1)(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.". See **Exhibit B**.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS: Applicant shall be required to:

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

REMARKS:

On August 24, 2001, (item D-29)², and April 25, 2003 (item D-4), the previous owner of the

² The 2001 approval was part of the Pier Amnesty Program authorized by Act 261, SLH 2000, as amended, which sunset on June 30, 2007. Copy of the 2001 submittal is not attached herein.

abutting property, Ms. Mabel Wong, obtained approvals from the Board for disposition covering the subject encroachments, i.e. pier, seawall, and boat ramp. Maps were prepared and appraisals were conducted. Nevertheless, Ms. Wong did not respond to our request for payment, and the dispositions were never consummated.

Recently, the Department was approached by the representatives of the applicant, Mr. Hitoshi Yoshikawa, regarding the resolution of the subject encroachments before Mr. Yoshikawa can obtain proper permit to renovate his property. For Board's information, the applicant purchased the abutting property from the Estate of Mable Wong in 2014.

Upon discussion between the staff and the shoreline team, there was no objection for the applicant to continue the request left by the late Mable Wong over 10 years ago, subject to provision of current map, current appraisal, and payment of fine (for seawall and boat ramp only) and administrative costs. Staff brings the request to today's agenda seeking the Board's authorization.

Comments from agencies

Office of Conservation and Coastal Lands, by its letter attached as **Exhibit C**, does not consider the seawall and boat ramp a conservation district violation. There was no other government authorization given for the seawall and the boat ramp. Further, Conservation District Use Permit OA-3017B was approved by the Board on July 13, 2001 for the piers in Kaneohe, including the subject pier, in addition to the approval granted by the State Department of Transportation on the subject pier in 1963.

During the Board processes in 2001 and 2003 mentioned above, other government agencies were solicited for comments and included in the submittal, if applicable. Staff did not solicit for another round of comment this time, as the subject request only differs from the previous one by the applicant's name.

Shoreline Certification and Escrow

The applicant requests his shoreline certification and easement request be processed simultaneously. Staff recommends the Board authorize the Chairperson execute an escrow agreement, with details to be worked out between the Department and the applicant. Generally, the agreement requires the applicant to deposit an amount to the satisfaction of the Chairperson for the removal of the subject encroachments, if necessary. The piers and seawall/boat ramp were previously appraised at a one-time payment of \$6,722 and \$6,060 respectively. Staff suggests using \$25,000, which is about twice the appraisals, for the purpose of the escrow.

Right-of-Entry

With the execution of the escrow agreement, the applicant will be issued a right-of-entry permit, with indemnification and provision of liability insurance clauses covering the period until the issuance of the easement. This process will cover the State's liability until it is replaced by the easement knowing the concurrent resolution from the legislature will not be available until next June, at the earliest.

³ Letter dated March 4, 2014 from OCCL provides the information on the DOPT approval in 1963.

Upon approval of today's request, Applicant will be reminded of the requirement for concurrent resolution from both houses of the legislature under Sect. 171-53(c), HRS prior to the issuance of the requested easement.

For housekeeping purposes, staff requests the Board rescind its prior actions of August 24, 2001, (item D-29), and April 25, 2003 (item D-4) noting that the requests were processed under the previous owner.

RECOMMENDATION: That the Board:

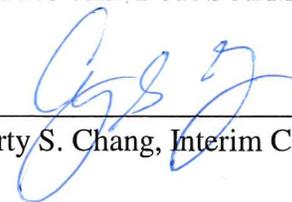
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Assess a non-refundable administrative cost of \$500 and a fine of \$500 for unauthorized encroachment, under Section 171-6, HRS.
3. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-4-018:072, 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 Hitoshi Yoshikawa covering the subject area for pier, seawall, and boat ramp 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: (1) 4-4-018:072, 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.
5. Authorize the issuance of a right-of-entry permit to Hitoshi Yoshikawa covering the subject area for pier, seawall, and boat ramp 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 right-of-entry permit document form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
6. Authorize the Chairperson enter into an escrow agreement regarding the removal of the subject encroachments by the State at the applicant's cost under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The applicant shall deposit into the escrow account an amount to the satisfaction of the Chairperson; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
7. Rescind its prior actions of August 24, 2001, agenda item D-29, and April 25, 2003 agenda item D-4.

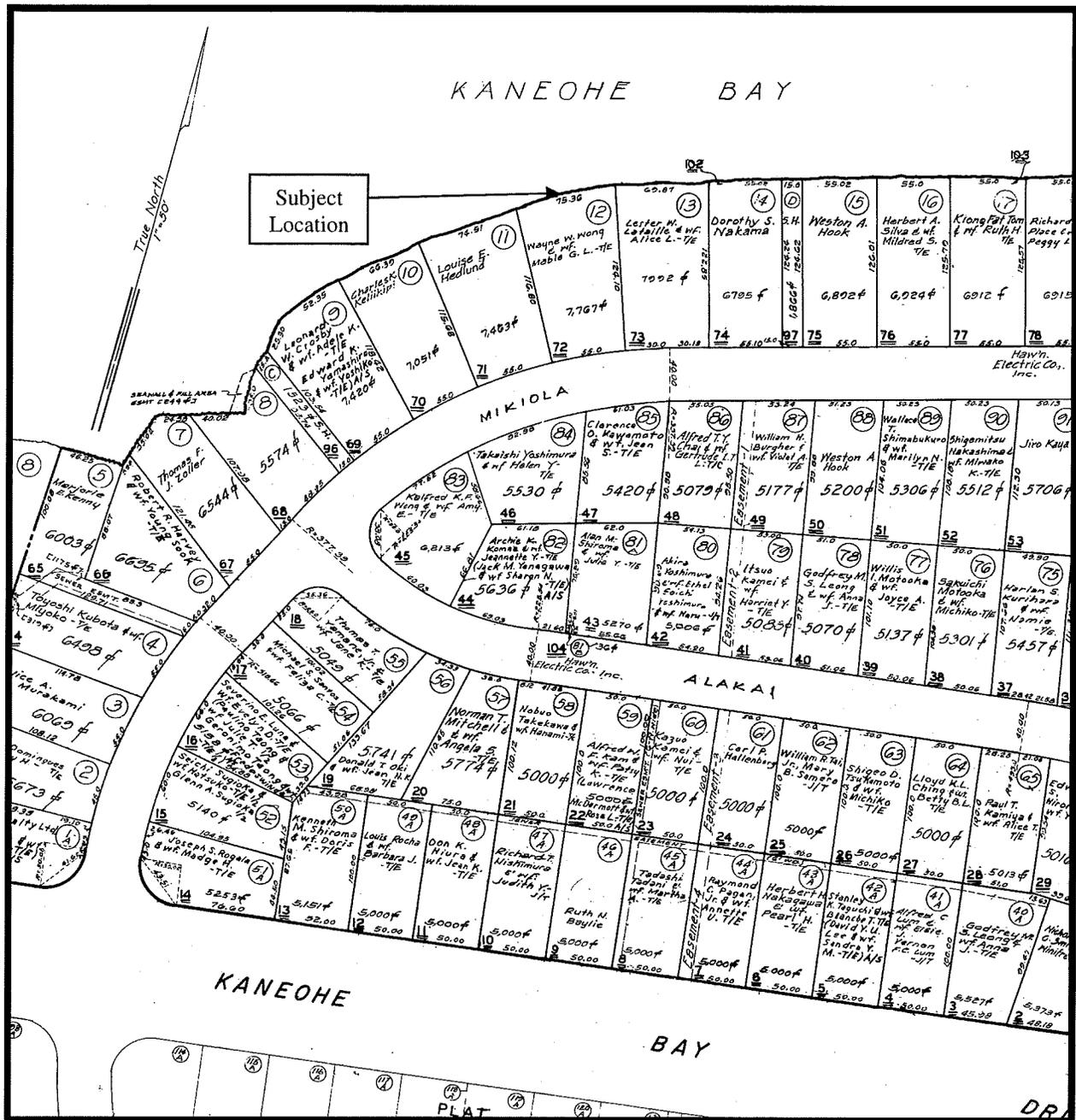
Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


Carty S. Chang, Interim Chairperson

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TMK (1) 4-4-018seaward of 072

EXHIBIT A

EXEMPTION NOTIFICATION

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

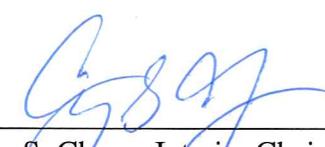
Project Title: Issuance of Term, Non-Exclusive Easement for Pier, Seawall, and Boat Ramp Purposes
Project / Reference No.: PSF 02OD-316
Project Location: Kaneohe, Koolaupoko, Oahu, TMK (1) 4-4-018:seaward of 072.
Project Description: Issuance of term, non-exclusive easement to resolve encroachments.
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."

The request is triggered by the change in ownership of the abutting private property after the Board had given its approval to the issuance of disposition to resolve the encroachments. The new owners are not planning to have any new improvement to the subject area. 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: Agencies notes in the submittal.

Recommendation: It is recommended that the Board find that 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.



Carty S. Chang, Interim Chairperson
Date APR - 8 2015

A

EXHIBIT B

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. Box 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

DAN DAVIDSON
DEPUTY DIRECTOR FOR LAND

ERNEST Y. W. LAU
DEPUTY DIRECTOR FOR
THE COMMISSION ON WATER
RESOURCE MANAGEMENT

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

REF:PB:MM

MAR 27 2003

File Number Encroachment: OA-03-05

Albert Minami
c/o Mable Wong's Estate
ATM Realty

Honolulu, HI 96805

Dear Mr. Minami:

**Subject: Shoreline Encroachment (Boat Ramp, Seawall and Fill) at
Kaneohe, Oahu, TMK: (1) 4-4-18:072**

Land Division, Planning Branch staff has reviewed the submitted documentation for this case. The encroachment in question is a boat ramp, seawall and fill area located Makai of the homeowner's property line. The structure is Makai of the metes and bounds of the parcel in question and thus constitutes an encroachment onto State of Hawaii land. The area of encroachment is approximately 271 square feet. The applicant has submitted an aerial photo dated April 23, 1967 that shows the encroachment in question at that time.

Land Division, Planning Branch staff review of the submitted aerial photos confirms the existence of the boat ramp, seawall and fill area in 1967. However, this does not confirm whether the boat ramp and seawall was built prior to 1964 which could make it non-conforming.

During the November 19, 2002 site visit staff observations confirm that the encroachment in question is long established. However, a survey map you submitted entitled Land Court Consolidation 31 does not show the encroachment in question in existence as of July, 1948.

Land Division staff was unable to locate any construction permit or other land use authorization permits at the State or at the City and County of Honolulu for the boat ramp, seawall and fill. A review of an aerial photo submitted in 1967 doesn't

EXHIBIT C

establish the legality of the boat ramp, seawall or fill area since it provided no evidence of the improvements prior to 1964, which was the effective establishment of the Conservation District.

Nevertheless, DLNR cannot confirm whether the structure was built before or after the establishment of the Conservation District. Nor can DLNR determine whether the structure was built within the Conservation District even if it was built after 1964. As a consequence, DLNR does not consider the encroachment a Conservation District violation and will not be asking for an after-the-fact Conservation District Use Application to cure this matter.

The Board of Land and Natural Resource (BLNR) recently 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. This form has been completed and submitted. On November 19, 2002 staff visited the site to investigate the encroachments and to gather reconnaissance information to support a recommendation for either removal of the encroachments or issuance of an easement. Of primary importance are the Department's objectives to protect and preserve shoreline resources and shoreline access.

Surrounding Land Uses:

It was observed during the site visit that surrounding uses are residential. The Mikiola Drive subdivision residences all share a contiguous seawall.

Beach Resources:

CLP staff inspected the area. The tidal area is a shallow mud flat.

Public Access:

There is no public access to the beach.

Effect of Removing the Encroachment on:

Beach Resources: The removal of the encroachment would have no impact on public access. Public recreation such as fishing, diving and boating takes place offshore of the parcel.

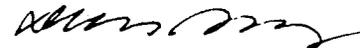
Public Access: CLP staff has determined that public access would not be enhanced by removal of the encroachment.

Affect on Adjacent Properties: Removal of this portion of the wall would affect the two abutting landowners as the wall in question also fronts their parcels.

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 for the boat ramp, seawall and fill area would have no adverse impacts on natural resources, including beach resources. Therefore, the Planning Branch has no objections to an easement request being processed. The Oahu District Land Office calculates the monetary amount required to dispose this use of State land through an easement. The landowner should note that they may be subject to an administrative penalty for unauthorized use of State land pursuant to section 171-6, Hawaii Revised Statutes.

We hope this letter helps resolve some of the outstanding issues regarding your property. Please feel free to contact Matthew Myers, of the Land Division, Planning Branch at 587-0382. Please contact the Oahu District Land Agent at 587-0433 regarding the processing of an easement.

Aloha,



Dierdre S. Mamiya
Administrator

Cc: Oahu Board Member
Oahu District Land Office
Chairperson's Office
Patti Edwards, DOCARE