

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-106

OAHU

Grant of Term, Non-Exclusive Easement to David A. Knox and Beverly J. Hoversland for Landscaping Area, Concrete Wall, and Footing Purposes; Assess Administrative Costs of \$200, Kahaluu, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-019:078 and seaward.

APPLICANT: (“Applicants”)

David A. Knox and Beverly J. Hoversland, husband and wife, by tenants of the entirety.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located in Kahaluu, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-7-019:078 and seaward as shown on the attached map labeled **Exhibit A**.

AREA:

Easement A:	1,543 square feet	Landscaping Area
Easement B:	63 square feet	Concrete Wall and Footing

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

ZONING:

State Land Use District:	Urban
City and County of Honolulu LUO	R-10

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 landscaping area, concrete wall, and footing 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) 4-7-019:077, have been in the process of obtaining a shoreline certification. During the survey process, a portion of a concrete wall and its footing were found to be makai of the shoreline (see **Exhibit C**). In the meantime, the Applicants intend to clear the State land identified as tax map key (1) 4-7-019:078 (Parcel 78), and use it for landscaping purposes.

In a map prepared by DAGS Survey Division dated March 17, 1964 referenced CSF 14247, the makai boundary of Parcel 78 was described as "along highwater mark". Since 1964, there was no shoreline certification processed for Parcel 78. According to the current shoreline map prepared as Exhibit C, majority of the requested Easement A is mauka of the 1964 shoreline, and therefore not considered as portion of submerged land for the purpose of the subject request.

The requested Easement B, comprising 63 square feet, is a portion of the concrete wall and its footing, located makai of the shoreline. Accordingly, Easement B is considered as submerged land. 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 July 24, 2012 attached as **Exhibit D**, Office of Conservation and Coastal Lands (OCCL) has determined that the concrete wall was built before 1964. OCCL will not consider the concrete wall and footing a violation of Conservation District rules, and will support a land disposition to resolve the encroachment.

To facilitate the process of the forthcoming shoreline certification, the Applicants intend to resolve the issue by obtaining a term easement from the Board.

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.

Staff cannot locate any approval for the construction of the concrete wall and its footing. Pursuant to the Board's action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, staff does not recommend a fine as the subject encroachment (Easement B) is less than 100 square feet.

Further, 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. 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) 4-7-019:077 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 David A. Knox and Beverly J. Hoversland covering the subject area for landscaping area, concrete wall, and footing 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) 4-7-019:077, 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;

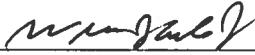
- D. Review and approval by the Department of the Attorney General;
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
- F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

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 Landscaping Area, Concrete Wall, and Footing Purposes

Project / Reference No.: PSF 12OD-106

Project Location: Kahaluu, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-019:078 and seaward

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."

The subject encroachments were in existence prior 1964, i.e. before the enactment of Chapter 343 in 1974. The applicant is not planning on conducting major change to the existing topographical and vegetation condition of the property, other than minimal clearing the overgrown vegetation. 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.

  
\_\_\_\_\_  
William J. Aila Jr., Chairperson  
Date 11/28/12

## EXHIBIT B





NEIL ABERCROMBIE  
GOVERNOR OF HAWAII

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

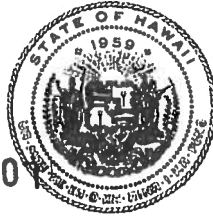
GUY H. KAULUKIKUI  
FIRST DEPUTY

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  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS



RECEIVED  
LAND DIVISION



2012 JUL 24 A 10:00

DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII  
Office of Conservation and Coastal Lands  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

REF:DLNR:SL

File Number Encroachment: OA-13-3

JUL 23 2012

MEMORANDUM:

TO: Barry Cheung, Land Agent  
Land Division

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

SUBJECT: Request to Resolve State Land Encroachment at Kahaluu, Oahu  
TMK: (1) 4-7-019:078 Seaward

This is in response to your July 10, 2012 request to resolve the shoreline encroachment seaward of Tax Map Key (1) 4-7-019:078.

According to information and maps contained in the Shoreline Encroachment Information Sheet approximately 1,606 square feet of encroachment has been identified (fill/wall) seaward of the subject property onto State land. The surveyor for the applicant states that the wall was established in 1964 (thus, it is presumed that the fill/landscaped area was also in existence in 1964). This has been validated by CFS Map 14,247. Since this encroachment predated the establishment of Conservation District zoning DLNR will not be asking for an after-the-fact Conservation District Use Application to cure this matter, nor does the encroachment constitute a violation of Conservation District rules. 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. To the west of the property is a concrete wall and boat ramp and to the east is a continuation of the concrete wall.*

Beach Resources:

*There are minimal beach resources fronting the encroachment. At low tide, the shoreline area is a mixture of dirt and sand, which is typical for Kaneohe Bay. The area is suited for boating and fishing.*

Public Access:

*There is public access in the immediate area, 500 feet to the west.*

Effect of Removing the Encroachment on:

*Beach Resources: OCCL staff has determined that removal of the encroachment would not improve beach resources or public access. This is an area that was filled with dredge material, and removal would be detrimental to the adjacent marine area.*

*Public Access: OCCL staff has determined that no improvement would be gained by removing the wall and fill.*

*Affect on Adjacent Properties: Removal of the encroachments would negatively impact the adjoining properties due to flanking.*

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.

Upon review and careful consideration of the information gathered on this case, staff has determined that the requirements stated in HRS § 205A, HRS § 183C, and in the OCCL's evaluation criteria would support a disposition request being processed for the pier foundation. The OCCL suggests that any disposition require the land uses remain unimproved. Please feel free to contact us at the Office of Conservation and Coastal Lands at 587-0377.

*C: Chairperson*