

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

July 12, 2013

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

PSF No: 08od-001

OAHU

Amend Prior Board Action of March 14, 2008, Item D-6 by Revising the Easement Area, Consideration, Commencement Date, and Legal Reference; Rescind Prior Board Action of December 12, 2008, Item D-19; Grant of Term, Non-Exclusive Easement to Sarajeon A. Tokunaga, Trustee, for Seawall and Filled Land Purposes, Kaneohe, Oahu, Tax Map Key (1) 4-5-047:seaward of 116

BACKGROUND:

The applicant participated in the Kaneohe Bay Piers Amnesty Program, and a lease (GL5924) for private non-commercial pier purposes was issued subsequently. During the process, a portion of seawall and filled land were found encroaching on the abutting State lands.

On March 14, 2008, agenda item D-6, the Board authorized the issuance of a 55-year non-exclusive easement. On July 15, 2008, the Chairperson approved an appraisal, which establishes the lump-sum payment consideration at \$26,800 for the requested easement area of 500 square feet.

On December 12, 2008, agenda item D-19, the Board authorized its prior action of March 14, 2008 by allowing the Applicant pay the consideration by 24 monthly payments, due to unforeseen medical expenses faced by the Applicant. To date, the consideration has not been paid and the easement is not consummated. For more background information, a copy of the prior submittal is attached as **Exhibit 1**.

REMARKS

Recently, the Applicant, through its realtor, inquired the status of the outstanding easement request because the abutting property is being sold and the closing of the sale is scheduled in early July 2013.

During a recent site visit to the property with the State Surveyor, staff was advised by the Applicant's realtor that the steps would be removed and the easement area would be reduced by four (4) square feet, from 500 to 496 square feet. Survey Division of the Department of Accounting and General Services assisted in revising the map and description for the revised easement area. As a result, the entire easement area (496 square feet) is located at makai of the recorded boundary and no submerged land is involved. According the legal description, the easement is a portion of reclaimed land. Applicant wants to resolve the encroachment to facilitate the forthcoming conveyance of the

abutting property.

In view of the situation, staff recommends the Board amend its prior actions regarding the encroachment at the subject location as described in the following paragraphs. In addition, staff recommends the Board rescind the December 2008 action authorizing the stage payment plan as the issue is no longer necessary.

Easement Area

Revise the easement area to 496 square feet, more or less.

Appraisal

Revise the approved consideration for the easement to \$26,590 as shown below:

$$\$26,800 \times 496 \text{ sq ft} / 500 \text{ sq ft.} = \$26,585.6, \text{ say } \$26,590$$

Commencement Date

Authorize using March 14, 2008 [the original Board approval date] as the commencement date of the 55-year term easement.

Legal Reference

Adding 171-53(b), HRS as the legal reference for the subject easement request.

Upon approval of today's request, staff will arrange the publication of the request in the newspaper pursuant to 171-53(b) and finalize the easement document for execution by the Applicant.

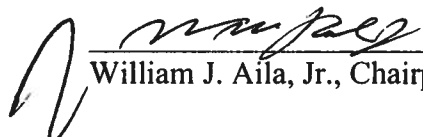
RECOMMENDATION: That the Board:

1. Rescind its prior Board action of December 12, 2008, item D-19;
2. Amend its prior Board action of March 14, 2008, item D-6 regarding the easement area, consideration, commencement date, and legal reference as described above in the Remarks Section; and
3. All terms and conditions listed in its March 14, 2008 approval to remain the same.

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

December 12, 2008

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

PSF No: 08od-001

OAHU

Amend Prior Board Action of March 14, 2008, Item D-6, Grant of Term, Non-Exclusive Easement to Sarajejan A. Tokunaga, Trustee, for Seawall and Filled Land Purposed, Kaneohe, Oahu, Tax Map Key (1) 4-5-047:seaward of 116

BACKGROUND:

The applicant participated in the Kaneohe Bay Piers Amnesty Program, and a lease (GL5924) for private non-commercial pier purposes was issued subsequently. During the process, a portion of seawall and filled land were found encroaching on the abutting State lands.

On March 14, 2008, agenda item D-6, the Board authorized the issuance of a 55-year non-exclusive easement. A copy of the approved submittal is attached as Exhibit A.

REMARKS:

On July 15, 2008, the Chairperson approved an appraisal, which establishes the lump-sum payment consideration at \$26,800 for the requested easement area of 500 square feet. Staff wrote an offer letter to the applicant demanding payment of \$27,355, which covers the consideration, document and map fee, and fine for unauthorized encroachment. The offer is good for four weeks. No response after the said four weeks may result in rescission of the approval and removal of the encroachment at applicant's cost.

Later, Curt Tokunaga, son of the applicant, inquired the possibility of settling the required payment by installment. The reason underlying such inquiry is the family is facing an unexpected medical bill amounts to over \$100,000. The applicant intends to resolve the encroachment, but she simply does not have the financial ability to meet our demand by a lump-sum payment. Through her son, the applicant offers to settle the amount (\$27,355) over a period of 24 months at a monthly payment of \$1,223.60, which equates to an annual interest rate of 7.521%. There will be no prepayment penalty for the balance if paid prior to the two-year period.

According to Comptroller's Memorandum No. 2008-14 (Exhibit B), "the interest rate for obligations related to goods delivered or services performed that are unpaid after 30 days is equal

December 12, 2008

D-19  
EXHIBIT " / "

to the prime rate for each calendar quarter plus two percent ... for the quarter beginning October 1, 2008 and ending December 31, 2008 will be 7.00% per annum." The offer from the applicant is even higher than we would pay for late payment for goods or services. Though the said memorandum is not applicable on land disposition, staff recommends the Board use it as a reference to determine the interest on the installments.

Upon the payment in full by the applicant, staff will work with the Department of the Attorney General for the required easement document. Staff has no other comments on the request.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of March 14, 2008, under agenda item D-6 by adding paragraph 4 to the Recommendation Section:
  - "4. Allow the applicant to pay the consideration, document and map fee, and fine for unauthorized encroachment over a period of 24 months at a monthly payment of \$1,223.60."
2. All terms and conditions listed in its March 14, 2008 approval to remain the same.

Respectfully Submitted,



Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:



\_\_\_\_\_  
Laura H. Thelen, Chairperson

CS  
D-6

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

March 14, 2008

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

PSF No.: 08od-001

OAHU

Grant of Term, Non-Exclusive Easement to Sarajeon A.  
Tokunaga, Trustee for Seawall and Filled Land Purposes,  
Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-047:116  
seaward.

APPLICANT:

Sarajeon A. Tokunaga, Trustee, whose mailing address is  
Wailuku, Hawaii 96793.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located in Kaneohe, Koolaupoko, Oahu,  
identified by Tax Map Key: (1) 4-5-047:116 seaward, as shown on  
the attached map labeled Exhibit A.

AREA:

501 square feet, more or less.

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: YES \_\_\_\_\_ NO X

CURRENT USE STATUS:

Unencumbered with encroachments.

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

March 14, 2008

**EXHIBIT "A"**

D-6

CHARACTER OF USE:

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

Staff observed the subject seawall and filled land and determined it appeared to be built before 1974 based on an aerial photo dated 1967, prior to the enactment of the EIS law and this action is therefore exempt from Chapter 343.

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 one-time payment; and
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

The owner participated in the Kaneohe Bay Piers Amnesty Program, and a pier lease was issued subsequently. During the process, the subject encroachment (seawall and filled land) was noted on the shoreline survey map (Exhibit B).

At the date of writing this submittal, Department of Planning and Permitting, Department of Facility Maintenance and Commission on Water Resource Management indicate that they have no objections to the subject request. Staff understands Office of Conservation and Coastal Lands has no objections to the request.

Meanwhile, Department of Health, Board of Water Supply, Division of Aquatic Resource, and Division of Historic Preservation have

not submitted any comments.

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.

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.


There are no other pertinent issues or concerns, and staff has no objections to the subject request.

RECOMMENDATION: That the Board:



1. Impose a \$500 fine for illegal encroachment, under Section 171-6(12).
2. 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) 4-5-047:116, 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.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Sarajeon Tokunaga, Trustee covering the subject area for seawall and filled land 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) 4-5-047:116, 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 Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this 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

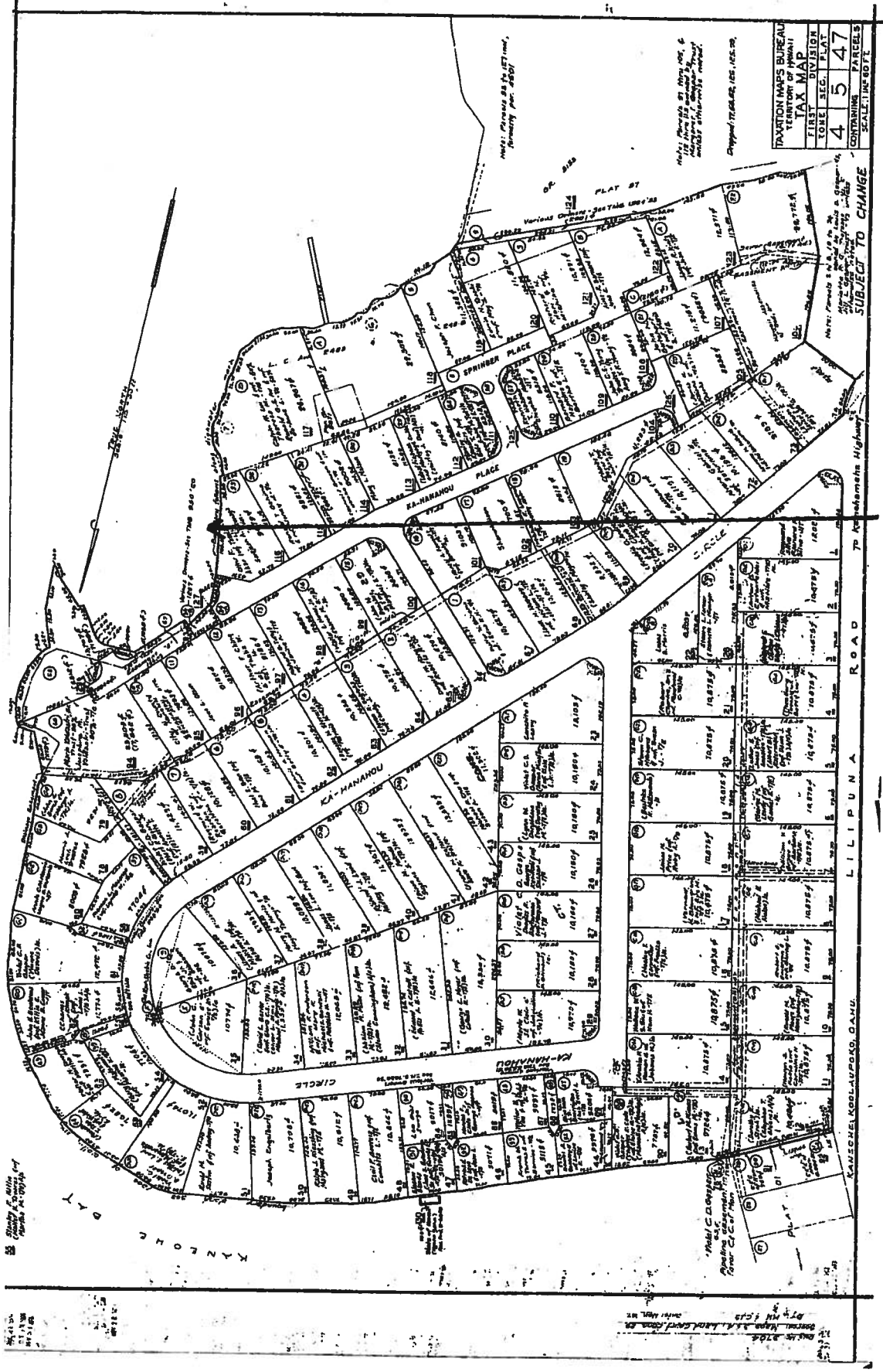
Respectfully Submitted,

  
\_\_\_\_\_  
Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Laura H. Thielen, Chairperson 





TAXATION MAPS BUREAU		PARCELS	
TERRITORY OF HAWAII		SCALE: 1 INCH = 50 FT.	
TAX MAP			
FIRST DIVISION	4	5	47
LOT SEC.			
PLAT			

SUBJECT TO CHANGE

Subject Location



42680

LINDA LINGLE  
GOVERNOR



RUSS K. SAITO  
Comptroller

BARBARA A. ANNIS  
Deputy Comptroller

STATE OF HAWAII  
DEPARTMENT OF ACCOUNTING  
AND GENERAL SERVICES  
P.O. BOX 119  
HONOLULU, HAWAII 96810-0119

RECEIVED

08 SEP -8 18:12

DEPT. OF LAND  
& NATURAL RESOURCES  
STATE OF HAWAII

SEP - 5 2008

COMPTROLLER'S MEMORANDUM NO. 2008-14

TO: Department Heads  
SUBJECT: Quarterly Interest Rate for Late Vendor Payments

Pursuant to Section 103-10 of the Hawaii Revised Statutes, the interest rate for obligations related to goods delivered or services performed that are unpaid after 30 days is equal to the prime rate for each calendar quarter plus two percent. The interest rate is adjusted quarterly using the prime rate as posted in the Wall Street Journal on the first business day of the month preceding the calendar quarter.

This memorandum is to inform you that the interest rate for the quarter beginning October 1, 2008 and ending December 31, 2008 will be 7.00% per annum.

Interest due to vendors is automatically calculated if the payment is made in excess of 30 days from the Aging Start Date. The interest calculation is as follows:

- Interest Due = (Daily Rate of Interest) x (Days in Excess of 30) x (Payment Amount)
- Daily Rate of Interest = Current Interest Rate / 365 days
- Days in Excess of 30 = Number of days starting from the day after the Aging Start Date up to and including the Date of the Check.

We will inform you of the effective interest rate at the beginning of each calendar quarter. If you have any questions, please call Mr. Kurt Muraoka of our Systems Accounting Branch at 586-0610.

*Russ K. Saito*  
RUSS K. SAITO  
State Comptroller

EXHIBIT "B"