

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

November 13, 2015

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

PSF No.:15OD-110

OAHU

Grant of Term, Non-Exclusive Easement to Scott Porter and Colleen Anne Porter for Seawall Purposes; Assess Administrative Cost of \$500, Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-016:Seaward of 015

APPLICANTS:

Scott Porter, husband, to an undivided two-third (2/3) interest; and Colleen Anne Porter, wife, as to an undivided one-third (1/3) interest, as Tenants in Common

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of Kaneohe, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-4-016:seaward of 015, as shown on the attached map labeled **Exhibit A**.

AREA:

31 square feet, 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

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 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 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 46 that states "Creation or termination of easement, covenants, or other rights in structures or land". See exemption declaration attached as **Exhibit B**.

DCCA VERIFICATION:

Not applicable.

APPLICANT REQUIREMENTS: Applicants shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards and at Applicants' 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:

The previous homeowners requested a certified shoreline to obtain permits for house repairs. During the survey of the subject property, identified as tax map key (1) 4-4-016:015 ("Parcel 15"), an encroachment onto State submerged land beyond the private property's boundary was noted. In the due diligence period, the subject encroachment was noted on the survey map (attached as **Exhibit C**).

According to the material provide by the applicants and the research conducted by the Office of Conservation and Coastal Lands (“OCCL”), there is evidence indicating that the seawall is non-conforming. Given this determination, OCCL will not require an after-the-fact Conservation District Use Application, and supports a disposition to resolve the encroachment. A copy of OCCL’s review on the encroachment is attached as **Exhibit D**.

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. Since the encroachment area is 31 square feet (more or less), staff recommends that no fine be imposed by the Board.

The Division of Aquatics Resources, Office of Hawaiian Affairs, Department of Parks and Recreation, Department of Facility Maintenance, and the Board of Water Supply have no objections/comments to the subject request.

The Department of Health, State Historic Preservation Division, and the Department of Planning and Permitting have not responded to the solicitation for comments before the deadline.

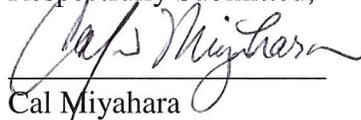
Upon approval of today’s request, Applicant will be reminded of the requirement for concurrent resolution from both houses of the legislature under Sect.171-53(c), HRS prior to the issuance of the requested easement.

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, 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) 4-4-016:015, 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 Scott and Colleen Anne Porter covering the subject area for encroachment 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;

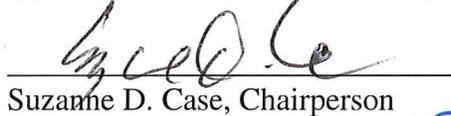
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-4-016:015, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination 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,



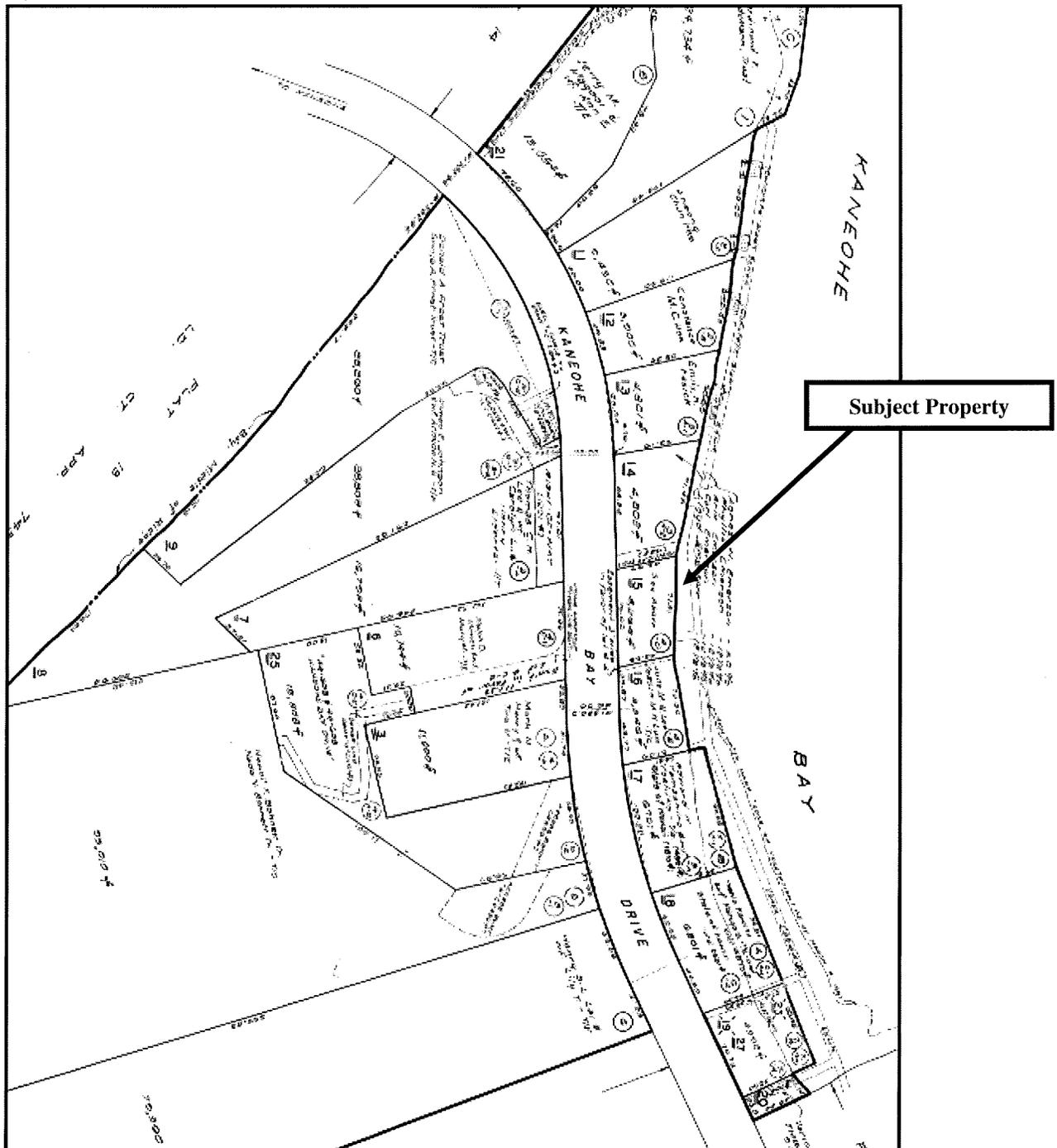
Cal Miyahara
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson





TMK: (1) 4-4-016:seaward of 15

EXHIBIT A

EXEMPTION NOTIFICATION

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

Project Title: Easement for seawall purposes

Project / Reference No.: PSF 15OD-110

Project Location: Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-016:seaward of 015.

Project Description: Easement to legalize the encroachment on State lands.

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

Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 46 that states "Creation or termination of easement, covenants, or other rights in structures or land".
The applicant is not planning on conducting major change to the existing topographical and vegetation condition of the property. 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 as noted in the submittal.

Recommendation: That the Board finds 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.



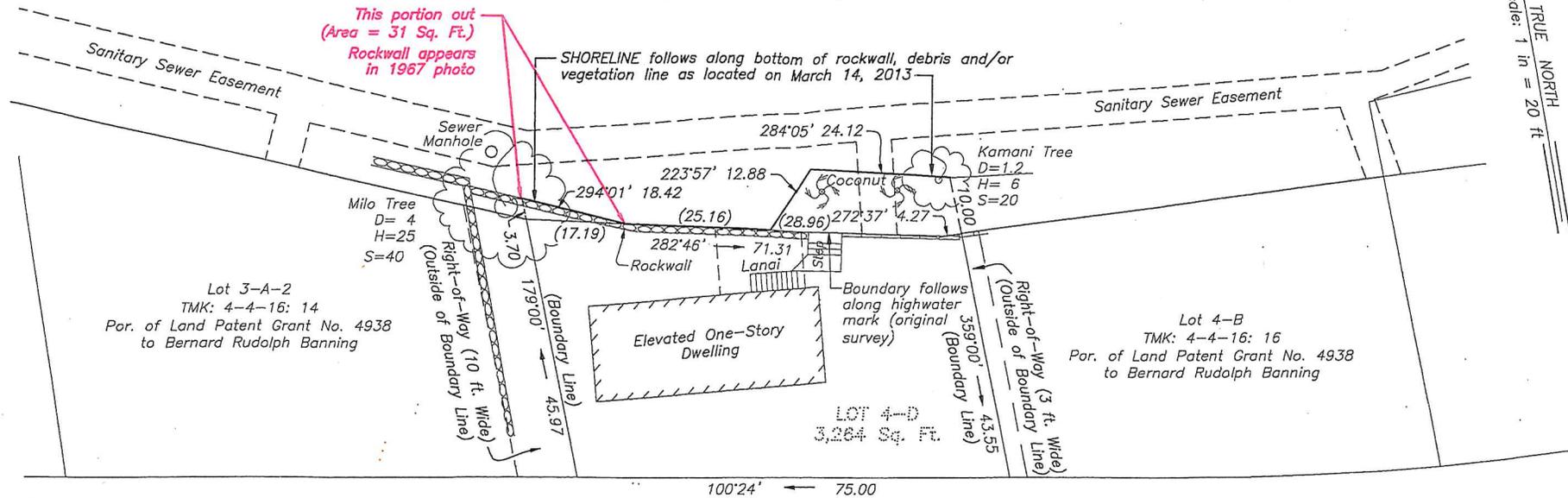
 Suzanne D. Case, Chairperson
 Date: 11/2/15 

EXHIBIT B

S E A



TRUE NORTH
Scale: 1 in = 20 ft



NOTE:

② Direction of photographs taken on March 14, 2013 at 1:00 PM.

K A N E O H E B A Y D R I V E

SHORELINE SURVEY MAP
LOT 4-D

PORT. OF Land Patent Grant No. 4938
to Bernard Rudolph Banning

Tax Map Key: (1) 4-4-16: 15
At KEAALAU, KANEŌHE, KOOLAUPOKO, OAHU, HAWAII
Owner: EDNA YUKIE SAKURAI, Trustee of
Walter Yoshio Sakurai & Edna Yukie Sakurai Trust

This work was prepared by me
or under my supervision

GIL P. BUMANGLAG
Licensed Professional Land Surveyor
Certificate Number 8948
Exp. Date: April 30, 2014



Site Address:

Kaneohe, HI

Date: March 14, 2013
FB No. G-343: 37
c:\proj\shore\44609kaneohebay31413

GIL SURVEYING SERVICES, inc.
1442 UILA STREET HONOLULU HAWAII 96818

10" x 15" = 1.04 sqft.

EXHIBIT "C"

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

RECEIVED
LAND DIVISION
2015 SEP -4 AM 11:11
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON
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
KAMOOĀWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DLNR:OCCL:NF

Encroachment: OA 16-3

MEMORANDUM:

SEP - 3 2015

TO: Cal Miyahara
Land Division

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

SUBJECT: Request to Resolve State Land Encroachment at
Kaneohe, Oahu; Seaward of Tax Map Key (1) 4-4-016:015

This is in response to your July 15, 2015 memorandum to resolve the shoreline encroachments at Tax Map Key (1) 4-4-016:015. According to the Shoreline Encroachment Questionnaire and maps included with the memorandum, there is approximately 31 square feet of encroachment (seawall, filled lands) seaward of the subject property boundary onto State land.

The Shoreline Encroachment Questionnaire with the memorandum included a copy of an aerial photo dated April 23, 1967, which appears to show a seawall fronting the subject property in the general location of the existing seawall. Thus, the seawall appears to be a Non-Conforming land use pursuant to Hawaii Revised Statutes, Chapter 183C.

The Board of Land and Natural Resources (BLNR) established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, OCCL 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, OCCL developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide OCCL's recommendations on the disposition of shoreline encroachments.

EXHIBIT "D"

Surrounding Land Uses:

The surrounding land uses are primarily residential. The adjacent property to the west is fronted by a similar low seawall. Kaneohe Bay Drive runs along the mauka side of the property.

Beach Resources:

There are little or no carbonate beach resources in this back-bay area of Kaneohe. The shoreline is generally characterized by terrigenous mud and a mixed sand/gravel beach.

Public Access:

Alongshore access is limited along the narrow mixed sand/gravel beach fronting the property, particularly at high tide when the nearshore mudflat is submerged.

Effect of Removing the Encroachment on:

Beach Resources: The encroaching seawall and seawalls on adjacent properties are fronted by shallow water with little to no beach resources. Therefore, removal of the encroachment would not result in a substantial improvement to beach resources fronting the property.

Public Access: OCCL staff has determined that no improvement would be gained by removing the encroaching portion of the seawall because the adjacent property has a similar seawall fronting shallow water.

Effect on Adjacent Properties: Removal of the encroaching portion of the seawall may destabilize seawalls and lawns on the adjacent properties.

It has been a general policy and practice of 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, OCCL has determined that the requirements stated in HRS § 205A, HRS § 183C, and in OCCL's evaluation criteria would support a disposition request being processed for the subject shoreline encroachments.

Please feel free to contact Coastal Lands Program Specialist Natalie Farinholt at OCCL at (808) 587-0399 or Natalie.A.Farinholt@hawaii.gov should you have any questions pertaining to this memorandum.