

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

July 22, 2016

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

PSF No: 14KD-031

KAUAI

Amend Prior Board Action of November 14, 2014, Item D-2, 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.

The Amendment is to delete legal reference HRS 171 Section 53(b) and insert legal reference HRS 171 Section 53(c).

BACKGROUND:

On November 14, 2014, under agenda item D-2, the Board authorized the issuance of a term, non-exclusive easement for encroachment of three portions of the pre-existing seawall along the property's makai boundary. A copy of the approved submittal is attached as **Exhibit A**.

At the time of the shoreline certification survey, it was believed that the encroachments were not placed on state submerged land. Department of Accounting and General Services - Copy of Survey Furnished (CSF) Map No. 25, 413 showed that it was indeed submerged land. Copy of CSF Map is attached as **Exhibit B**.

REMARKS:

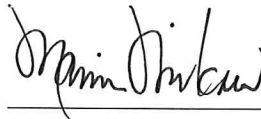
After determination that the state lands were submerged, as required by Section 171-53 (c), HRS, the Board of Land and Natural Resources ("Board") may lease submerged lands "with the prior approval of the Governor and the prior authorization of the Legislature by concurrent resolution".

Senate Concurrent Resolution 19 was drafted and went thru the legislative process. S.C.R. No. 19, S.D. 1 was passed and approved on April 26, 2016, is attached as **Exhibit C**.

RECOMMENDATION: That the Board:

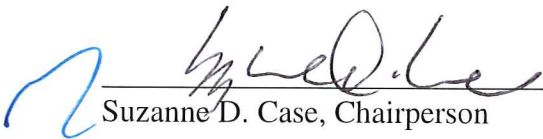
1. Amend its prior Board action of November 14, 2014, under agenda item D-2 by deleting Section 53(b) Hawaii Revised Statutes and replace with Section 53(c), Hawaii Revised Status. This change authorizes the Board to lease State submerged lands.
2. All terms and conditions listed in its November 14, 2014 approval to remain the same.

Respectfully Submitted,



Marvin Mikasa  
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

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

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

November 14, 2014 jo

D-2

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 Kukuila, 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.

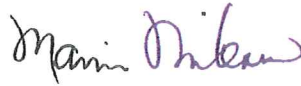
Staff does not recommend imposing a fine, pursuant to Section 171-6(12) of the Hawaii Revised Statutes, for the seawall encroachment constructed without prior consent by the State.

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,



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Marvin Mikasa  
Acting District Land Agent

APPROVED FOR SUBMITTAL:

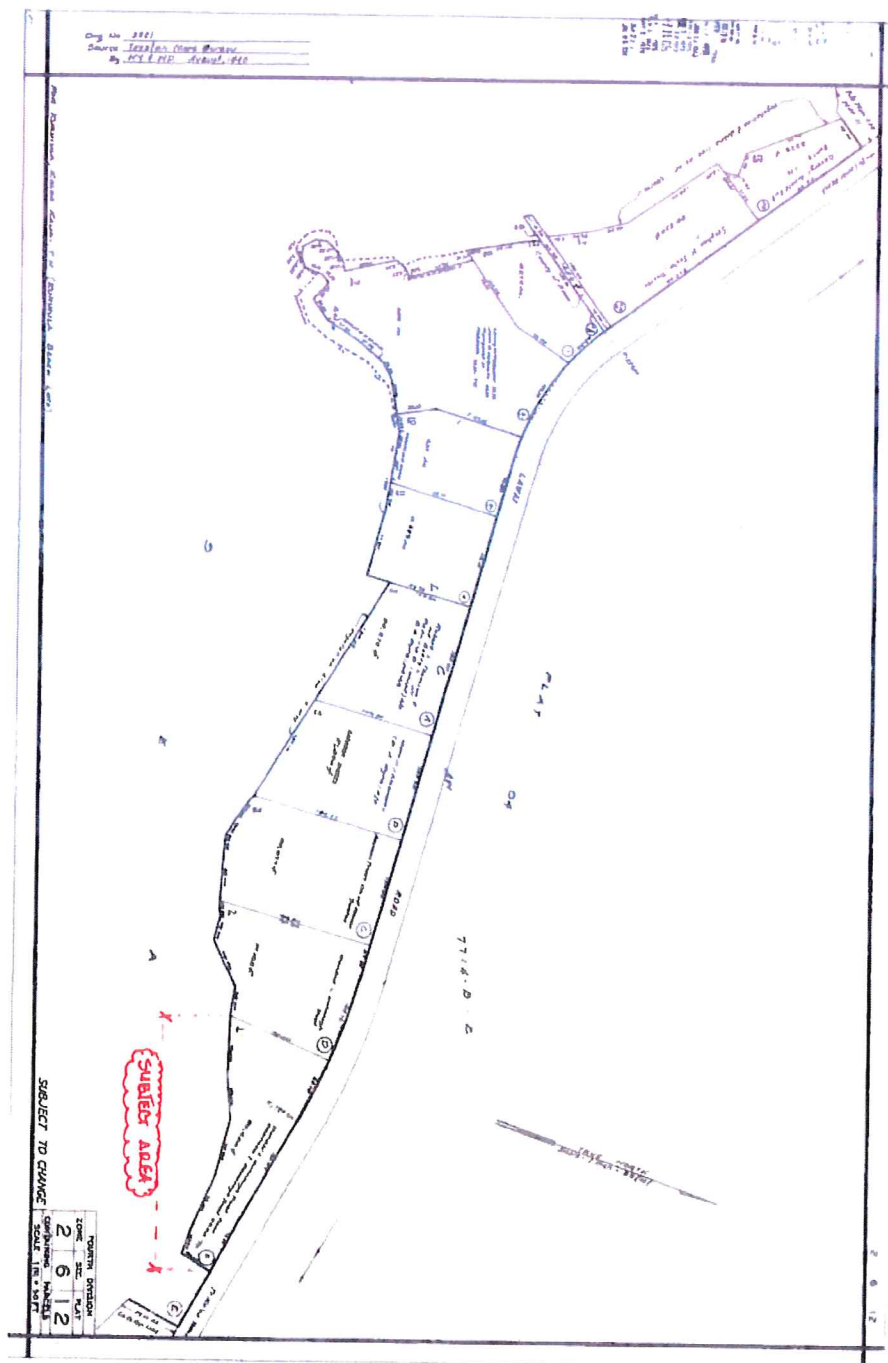


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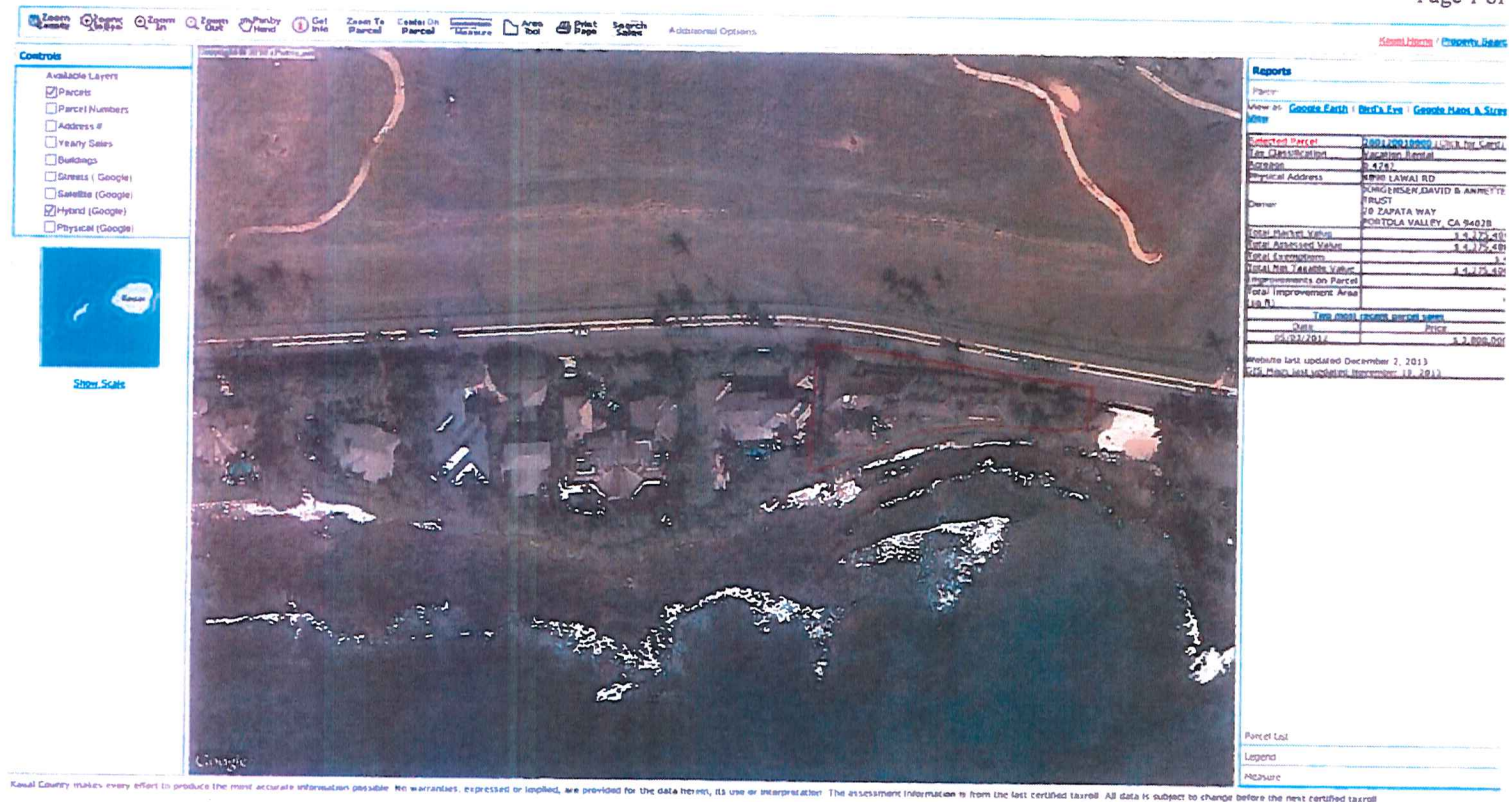
William J. Aila, Jr., Chairperson



EXHIBIT "A"



# Kauai County Parcel Maps



[http://qpublic9.qpublic.net/qmap4/map.php?county=hi\\_kauai&layers=parcels+ghybrid&mapmode](http://qpublic9.qpublic.net/qmap4/map.php?county=hi_kauai&layers=parcels+ghybrid&mapmode)

7/24/201

NEIL ABERCROMBIE  
LAND RECTOR HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

WILLIAM J. ABE, JR.  
COMPTROLLER  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
1001 KALANIANA'OLANI BLVD., SUITE 1000, HONOLULU, HI 96813

JESSE K. SOOKI  
DIRECTOR

WILLIAM M. TANI  
DEPUTY DIRECTOR - LAND

ALVIN K. KIMBLE  
SEAWARD LAND ACQUISITION  
DIVISION OF CONSERVATION  
AND LAND MANAGEMENT  
1001 KALANIANA'OLANI BLVD., SUITE 1000, HONOLULU, HI 96813  
TELEPHONE: (808) 586-1234  
FAX: (808) 586-1235  
E-MAIL: ALVIN.KIMBLE@DLNR.HAWAII.GOV

**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"**

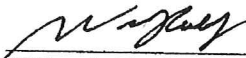
previously existing," and


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

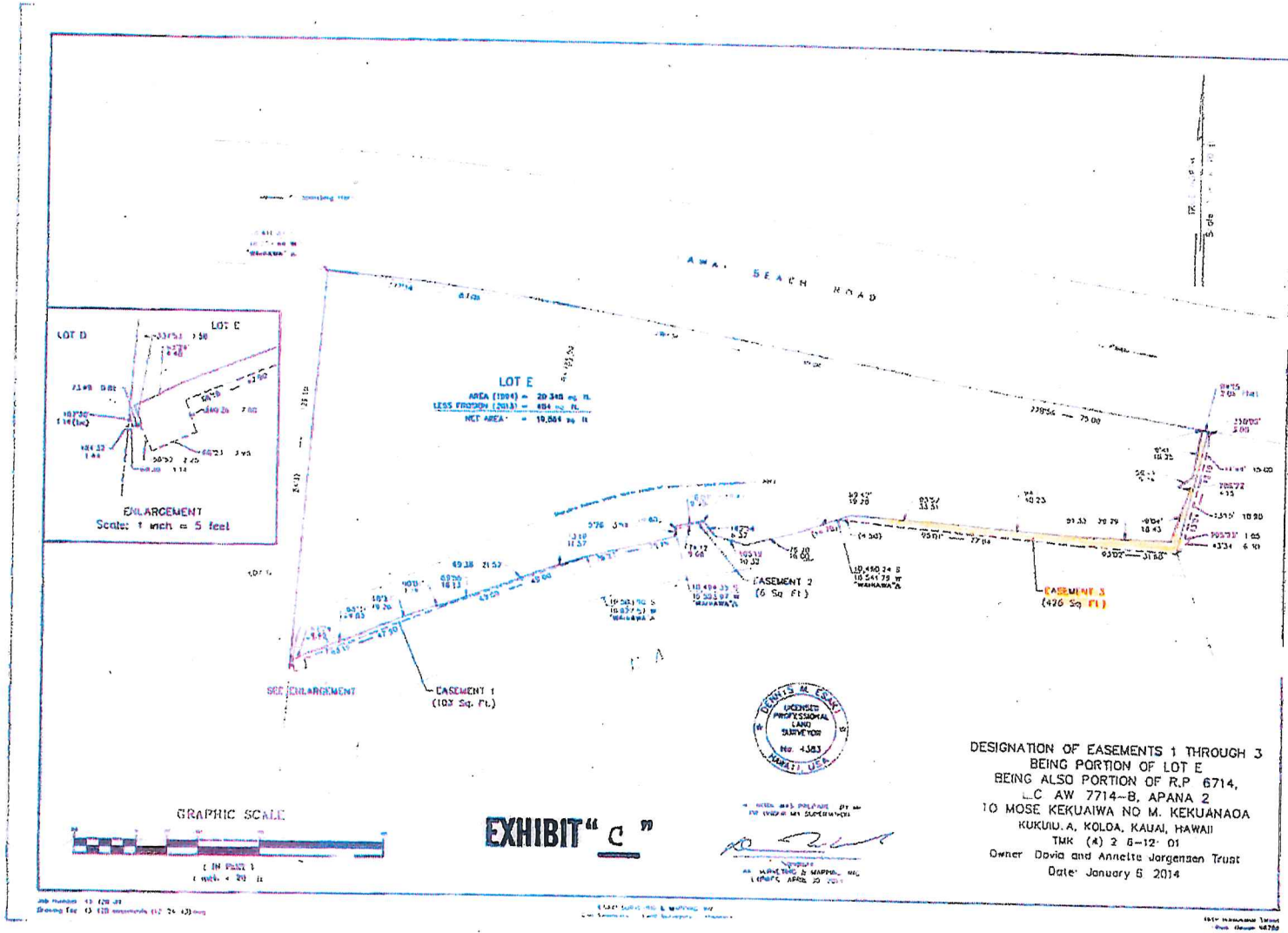
Exemption Item Description From Agency Exemption List	Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing
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**Recommendation:**

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

  
10/31/14  
\_\_\_\_\_  
Date





STATE OF HAWAII  
SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU

C.S.F. No. 25, 413

December 15, 2014

NON-EXCLUSIVE SEAWALL EASEMENT  
EASEMENTS 1 TO 3, INCLUSIVE  
Fronting Lot E of Kukuiula Beach Lots

Kukuiula, Koloa, Kauai, Hawaii

Being portions of the submerged land fronting Royal Patent 6714,  
Land Commission Award 7714-B, Apana 2 to M. Kekuaiwa no M.  
Kekuanaoa.

EASEMENT 1

Beginning at the northeast corner of this easement, the coordinates of  
said point of beginning referred to Government Survey Triangulation Station  
“WAHIAWA” being 10,503.90 feet South and 16,622.57 feet West, thence running by  
azimuths measured clockwise from True South:-

- |    |          |             |
|----|----------|-------------|
| 1. | 69° 59'  | 49.00 feet; |
| 2. | 68° 19'  | 47.90 feet; |
| 3. | 340° 36' | 2.80 feet;  |
| 4. | 66° 23'  | 3.95 feet;  |
| 5. | 156° 52' | 2.25 feet;  |

- |     |          |   |
|-----|----------|---|
| 6.  | 68° 38'  | 1.14 feet;  |
| 7.  | 184° 32' | 1.44 feet along Lot D of Kukuiula Beach Lots;   |
| 8.  | 347° 38' | 1.14 feet along the shoreline along R.P. 6714, L.C.<br>Aw. 7714-B, Ap. 2 to M. Kekaiwa no M.<br>Kekuanaoa;      |
| 9.  | 253° 49' | 0.81 of a foot along the shoreline along R.P. 6714,<br>L.C. Aw. 7714-B, Ap. 2 to M. Kekaiwa<br>no M. Kekuanaoa; |
| 10. | 157° 53' | 1.58 feet along the shoreline along R.P. 6714, L.C.<br>Aw. 7714-B, Ap. 2 to M. Kekaiwa no M.<br>Kekuanaoa;      |
| 11. | 243° 24' | 4.48 feet along the shoreline along R.P. 6714, L.C.<br>Aw. 7714-B, Ap. 2 to M. Kekaiwa no M.<br>Kekuanaoa;      |
| 12. | 248° 31' | 24.83 feet along the shoreline along R.P. 6714, L.C.<br>Aw. 7714-B, Ap. 2 to M. Kekaiwa no M.<br>Kekuanaoa;     |
| 13. | 248° 37' | 19.26 feet along the shoreline along R.P. 6714, L.C.<br>Aw. 7714-B, Ap. 2 to M. Kekaiwa no M.<br>Kekuanaoa;     |
| 14. | 260° 01' | 3.24 feet along the shoreline along R.P. 6714, L.C.<br>Aw. 7714-B, Ap. 2 to M. Kekaiwa no M.<br>Kekuanaoa;      |
| 15. | 249° 56' | 16.13 feet along the shoreline along R.P. 6714, L.C.<br>Aw. 7714-B, Ap. 2 to M. Kekaiwa no M.<br>Kekuanaoa;     |
| 16. | 249° 38' | 21.52 feet along the shoreline along R.P. 6714, L.C.<br>Aw. 7714-B, Ap. 2 to M. Kekaiwa no M.<br>Kekuanaoa;     |

17. 253° 19' 11.57 feet along the shoreline along R.P. 6714, L.C. Aw. 7714-B, Ap. 2 to M. Kekaiwa no M. Kekuanaoa to the point of beginning and containing an AREA OF 103 SQUARE FEET.

### EASEMENT 2

Beginning at the southwest corner of this easement, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAHIAWA" being 10,494.35 South and 16,593.97 West, thence running by azimuths measured clockwise from True South:-

1. 185° 26' 0.80 of a foot along the shoreline along R.P. 6714, L.C. Aw. 7714-B, Ap. 2 to M. Kekaiwa no M. Kekuanaoa;
2. 256° 07' 9.20 feet along the shoreline along R.P. 6714, L.C. Aw. 7714-B, Ap. 2 to M. Kekaiwa no M. Kekuanaoa;
3. 322° 54' 0.47 of a foot along the shoreline along R.P. 6714, L.C. Aw. 7714-B, Ap. 2 to M. Kekaiwa no M. Kekuanaoa;
4. 74° 12' 9.66 feet to the point of beginning and containing an AREA OF 6 SQUARE FEET.

EASEMENT 3

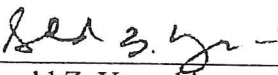
Beginning at the southwest corner of this easement, the coordinates of said beginning referred to Government Survey Triangulation Station "WAHIAWA" being 10,490.24 South and 16,541.79 West, thence running by azimuths measured clockwise from True South:-

1. 249° 42' 4.50 feet along the shoreline along R.P. 6714, L.C.  
Aw. 7714-B, Ap. 2 to M. Kekaiwa no M.  
Kekuanaoa;
2. 273° 52' 33.51 feet along the shoreline along R.P. 6714, L.C.  
Aw. 7714-B, Ap. 2 to M. Kekaiwa no M.  
Kekuanaoa;
3. 274° 37' 40.23 feet along the shoreline along R.P. 6714, L.C.  
Aw. 7714-B, Ap. 2 to M. Kekaiwa no M.  
Kekuanaoa;
4. 271° 33' 29.29 feet along the shoreline along R.P. 6714, L.C.  
Aw. 7714-B, Ap. 2 to M. Kekaiwa no M.  
Kekuanaoa;
5. 199° 04' 18.43 feet along the shoreline along R.P. 6714, L.C.  
Aw. 7714-B, Ap. 2 to M. Kekaiwa no M.  
Kekuanaoa;
6. 106° 22' 4.15 feet along the shoreline along R.P. 6714, L.C.  
Aw. 7714-B, Ap. 2 to M. Kekaiwa no M.  
Kekuanaoa;
7. 236° 13' 5.74 feet along the shoreline along R.P. 6714, L.C.  
Aw. 7714-B, Ap. 2 to M. Kekaiwa no M.  
Kekuanaoa;
8. 189° 41' 16.25 feet along the shoreline along R.P. 6714, L.C.  
Aw. 7714-B, Ap. 2 to M. Kekaiwa no M.  
Kekuanaoa;

December 15, 2014

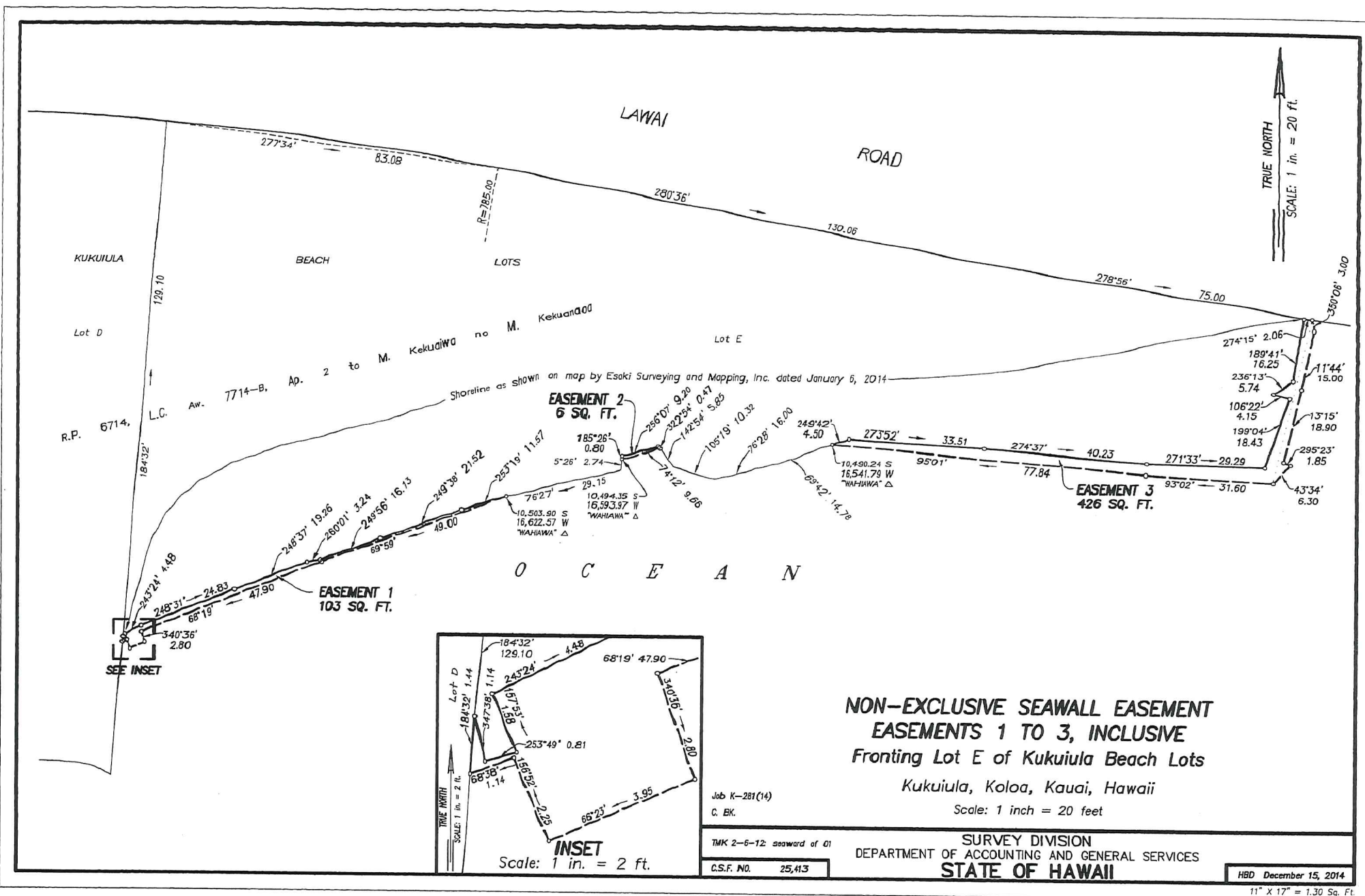
- |     |          |  |
|-----|----------|--|
| 9.  | 274° 15' | 2.06 feet along the shoreline along R.P. 6714, L.C.<br>Aw. 7714-B, Ap. 2 to M. Kekauwa no M.<br>Kekuanaoa; |
| 10. | 350° 06' | 3.00 feet;   |
| 11. | 11° 44'  | 15.00 feet;  |
| 12. | 13° 15'  | 18.90 feet;  |
| 13. | 295° 23' | 1.85 feet;   |
| 14. | 43° 34'  | 6.30 feet;   |
| 15. | 93° 02'  | 31.60 feet;  |
| 16. | 95° 01'  | 77.84 feet along to the point of beginning and<br>containing an AREA OF 426 SQUARE<br>FEET.                |

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By:   
Gerald Z. Yonashiro  
Land Surveyor

hbd

Compiled from map and desc. furn. by  
Esaki Surveying and Mapping Inc. Said  
map and desc. have been examined and  
checked as to form and mathematical  
correctness but not on the ground by the  
Survey Division.



## SENATE CONCURRENT RESOLUTION

AUTHORIZING THE ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT  
COVERING A PORTION OF STATE SUBMERGED LANDS AT KUKUIULA,  
KOLOA, KAUAI, FOR THE MAINTENANCE AND REPAIR OF THE  
EXISTING ROCK SEAWALL, AND FOR THE USE, MAINTENANCE, AND  
REPAIR OF THE EXISTING IMPROVEMENTS CONSTRUCTED THEREON.

1 WHEREAS, portions of the existing rock seawall fronting the  
2 property identified as Tax Map Key: (4) 2-6-012: seaward of  
3 001, Kukuiula, Koloa, Kauai, were placed on state submerged  
4 lands; and  
5

6 WHEREAS, in 2014, the Department of Land and Natural  
7 Resources' Office of Conservation and Coastal Lands worked with  
8 the property owners, David G. Jorgensen and Annette Thatcher  
9 Jorgensen, Trustees of the David and Annette Jorgensen Revocable  
10 Trust, to resolve the encroachment; and  
11

12 WHEREAS, on November 14, 2014, the Board of Land and  
13 Natural Resources, under agenda item D-2, approved a grant of a  
14 fifty-five-year non-exclusive easement to resolve the  
15 encroachment; and  
16

17 WHEREAS, the subject area is about 535 square feet, which  
18 will be reviewed and approved by the Department of Accounting  
19 and General Services' Survey Division; and  
20

21 WHEREAS, the grantees are required to pay the State the  
22 fair market value of the easement as consideration for the use  
23 of public lands to be determined by an independent appraisal;  
24 and  
25

26 WHEREAS, section 171-53, Hawaii Revised Statutes, requires  
27 the prior approval of the Governor and prior authorization of  
28 the Legislature by concurrent resolution for this disposition of  
29 state submerged lands; now, therefore,

JUN 18 '15

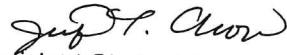


1  
2 BE IT RESOLVED by the Senate of the Twenty-eighth  
3 Legislature of the State of Hawaii, Regular Session of 2016, the  
4 House of Representatives concurring, that the Board of Land and  
5 Natural Resources is hereby authorized to issue a term, non-  
6 exclusive easement covering a portion of state submerged lands  
7 fronting the property identified as Tax Map Key: (4) 2-6-012:  
8 seaward of 001, Kukuiula, Koloa, Kauai, for the maintenance and  
9 repair of the existing rock seawall, and for the use,  
10 maintenance, and repair of the existing improvements constructed  
11 thereon, pursuant to section 171-53, Hawaii Revised Statutes;  
12 and  
13

14 BE IT FURTHER RESOLVED that a certified copy of this  
15 Concurrent Resolution be transmitted to the Chairperson of the  
16 Board of Land and Natural Resources.

I hereby certify that this is a full, true, and  
correct copy of the original filed in this office.

Dated: APR 26 2016

  
Assistant Clerk of the Senate  
State of Hawai'i

