

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

June 23, 2017

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

PSF No.: 05OD-145

OAHU

Grant of Term, Non-Exclusive Easement to Gwenette Ann Higa and Kelika Ricky Higa for Landscaping Purposes; Rescind Prior Board Action of March 11, 2010, Item D-18, *Sale of Reclaimed Land to Gwenette Higa; Rescind Prior Board Action of August 12, 2005, Item D-15, Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-007:seaward of 023.*

APPLICANT:

Gwenette Ann Higa, married, and Kelika Ricky Higa, married, as Joint Tenants.

LEGAL REFERENCE:

Section 171-6, 13, 16(d), 17, and 53(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kaneohe, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-5-007:seaward of 023, as shown on the attached map. See **Exhibit A**.

AREA:

2,189 square feet, more or less, as reviewed and approved by the Department of Accounting and General Services, Survey Division. See **Exhibit B**.

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:

Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace or remove existing landscape area over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time lump sum payment of \$37,000 fair market value as determined by an independent appraiser, reviewed and approved by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 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, 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." See **Exhibit C**.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for the costs of public notice pursuant to section 171-16 (d).

REMARKS:

On August 12, 2005, Item D-15, the Board approved the issuance of a term, non-

to Higa

exclusive easement for landscaping and filled land purposes to Ms. Higa¹. During the process, Ms. Higa paid for an appraisal (the easement value was determined to be \$113,140). However, before the easement was consummated, Ms. Higa changed her mind and requested to purchase the fee simple title of the subject land pursuant to statutes for reclaimed land sale. The appraisal fee was never refunded to Ms. Higa.

At its meeting on March 11, 2010, Item D-18, the Board authorized the sale of reclaimed land and rescinded the prior authorization for the easement. The fair market value of the reclaimed land was determined to be \$425,000. Nevertheless, Ms. Higa did not accept the appraised value and the sale of the reclaimed land was never completed. Again, the appraisal fee was never refunded.

For the Board's information, at its meeting on April 8, 2011, Item D-5, for another case in Kaneohe, the Board approved staff's recommendation that selling of the fee interest of the ceded, reclaimed land was not a good policy. As such, the practice of disposing of reclaimed State lands through sales has not been an option since that time. Under the same 2011 submittal, the Board authorized the refund of the appraisal fee paid by the applicant for the sale of reclaimed land.

Recently, staff inquired with Ms. Higa whether she was interested in reviving pursuit of a term, non-exclusive easement. Ms. Higa stated she wanted to retain the use of the State land area and expressed interest in obtaining an easement and wanted to know the cost of easement.

Thereafter, staff procured the current easement appraisal² at a cost of \$5,760.00 and informed the Applicant. The history of the case reveals that Ms. Higa initially paid for an easement appraisal on September 25, 2009 at a cost of \$575.92, then, later decided to purchase the reclaimed land and paid for another appraisal on May 25, 2010 at a cost of \$575.92, only to have the Board decide in 2011 not to sell ceded lands. Because Ms. Higa did not receive any refund for the two appraisal fees, staff recommends applying the two earlier appraisal amounts ($\$575.92 + \$575.92 = \$1,151.84$) towards the new appraisal cost. Ms. Higa would be responsible to pay \$4,608.16 ($\$5,760.00 - \$1,151.84$). As of March 31, 2017, the fair market value of the easement was determined to be \$37,000.

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.

No objections from other government agencies were received during the prior easement request. However, since the subject request is not different from the previous situation and being the easement request is for landscaping purposes, staff discussed the subject

¹ In 2012, Ms. Higa transferred the abutting private property to herself and her son.

² Also, at the time the current appraisal was procured staff inadvertently thought the prior Board submittal (in August 2005) approving the easement was still valid and submitted it in the appraisal request package.

request with the Office of Conservation and Coastal Lands, which had no objection.

Additionally, staff requests the Board rescind its prior approval dated March 11, 2010, item D-18.

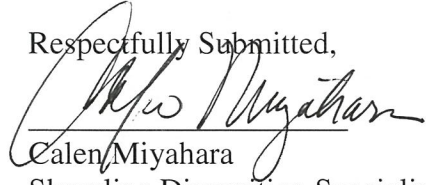
There are no other pertinent issues or concerns and staff has no objection to the request.

RECOMMENDATION: That the Board:

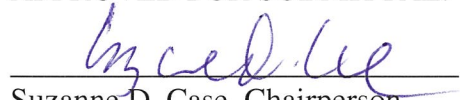
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. 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) 4-5-007:023, 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 Gwenette Ann Higa and Kelika Ricky Higa, covering the subject area for landscaping 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) 4-5-007:023, 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;
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and

- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.
4. Rescind its prior approval dated March 11, 2010, item D-18.

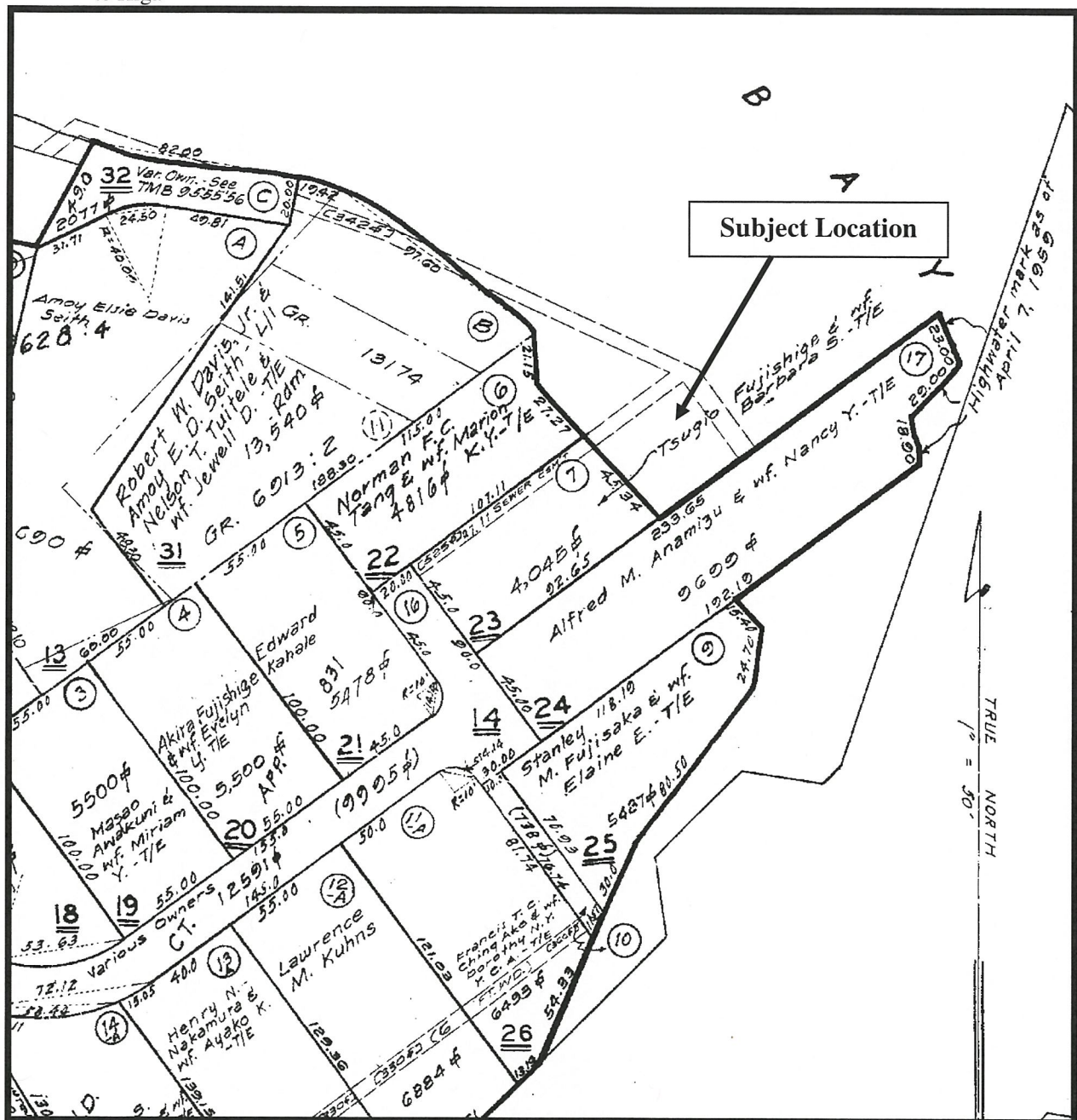
Respectfully Submitted,


Calen Miyahara
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson





TMK (1) 4-5-007:seaward of 023

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 Landscaping Purposes

Project / Reference No.: PSF 05OD-145

Project Location: Kaneohe, Koolaupoko, Oahu, TMK (1) 4-5-007:seaward of 023.

Project Description: Issuance of term, non-exclusive easement for landscaping purposes.

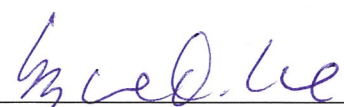
Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 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, 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."

The request is triggered by the change in tenure of the disposition for the same improvement. The 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: OCCL was consulted, with no objections to disposition through an easement.

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.


Suzanne D. Case, Chairperson

Date 6/17/17

EXHIBIT C