

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

July 28, 2017

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

Ref no.: 17OD-060

OAHU

Amend Grant of Non-Exclusive Easement No. S-5986 for Seawall and Steps Purposes by Increasing Easement Area; R&I Hawaii Inc., Grantee; Kahala, Honolulu, Oahu; TMK (1) 3-5-001: seaward of 004.

BACKGROUND:

On July 22, 2009, under agenda item D-10, the Board authorized the issuance of a 55-year term, non-exclusive easement (GL-5986) for seawall and steps purposes to Kevin Fialko for an original area of 773 square feet, at a one-time payment of \$83,020. The encroachment was noticed as part of the due diligence for Mr. Fialko's purchase of the abutting property. A copy of the original easement map is attached as **Exhibit A**.

In 2009, the policy for shoreline encroachment used the recorded private property boundary to determine the mauka boundary of the encroachment easement, regardless if any portion of the shoreline were mauka of the recorded boundary (assuming the shoreline was determined to be mauka of the recorded boundary).

Mr. Fialko, through his land surveyor, was aware of our policy for encroachments outside of the recorded boundary and proceeded with the request for an easement. Mr. Fialko did not pursue any certified shoreline until 2011. Records show portions of the encroachment were located within the 2011 shoreline area. See excerpt of the 2011 certified shoreline map attached as **Exhibit B**. Nevertheless, at that time staff was concerned about assuming State ownership over previously private lands and the possibility of a "taking" claim; staff did not recommend at that time to amend GL 5986 to include the encroachment between the recorded boundary and the shoreline.

Subsequently, after much analysis and discussion with the Department of the Attorney General, Land Division took the position that every structure built by the private land owner (or predecessors) that is situated seaward of the shoreline is an encroachment on State land and needs to be resolved by either removal or applying for an easement.

In April 2013, the property was sold to R&I Hawaii Inc., who recently submitted an application for a shoreline certification. During the due diligence period, additional encroachment areas beyond the area covered under GL 5986 were noted from the application. Staff brings the request to the Board for disposition of the additional areas.

REMARKS:

The 2016 application determined the shoreline is now located further landward and shows additional encroachment areas of approximately 191 square feet. See latest survey map at **Exhibit C**, which also identifies the current easement area. Staff notes that it is necessary to revise the easement area in GL 5986 from the original 773 square feet to a new total area of 964 square feet, more or less. As a result of the expanded area, additional consideration is also required from the grantee.

Staff recommends the Board authorize the amendment of GL 5986 by: (1) replacing the original easement area of 773 square feet with the new area of 964 square feet, subject to confirmation by the Department of Accounting and General Services, Survey Division regarding the final area; and, (2) authorizing the Chairperson to approve a one-time payment for the additional area based on the unit rate paid by the grantee under GL 5986<sup>1</sup>. The additional consideration payable is presented below:

$$(\$83,020 \div 773 \text{ sq. ft.}) \times 191 \text{ sq. ft.} = \$20,513$$

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.

The Office of Conservation and Coastal Lands (OCCL) has no objection to the proposed amendment of GL 5986 due to the additional area. Staff did not solicit comments from other agencies. There are no other pertinent issues or concerns. Staff does not have any objections to the request.

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 concurred with 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. See **Exhibit D**.

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 amendment of Grant of Non-Exclusive Easement No. 5986 under the terms and conditions cited above, which are by this reference incorporated

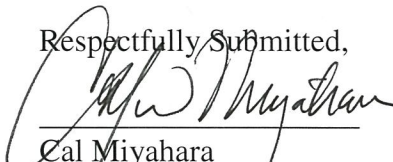
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<sup>1</sup> Staff believes using the 2010 rate is prudent since the same additional area existed back then.

herein and further subject to the following, by:

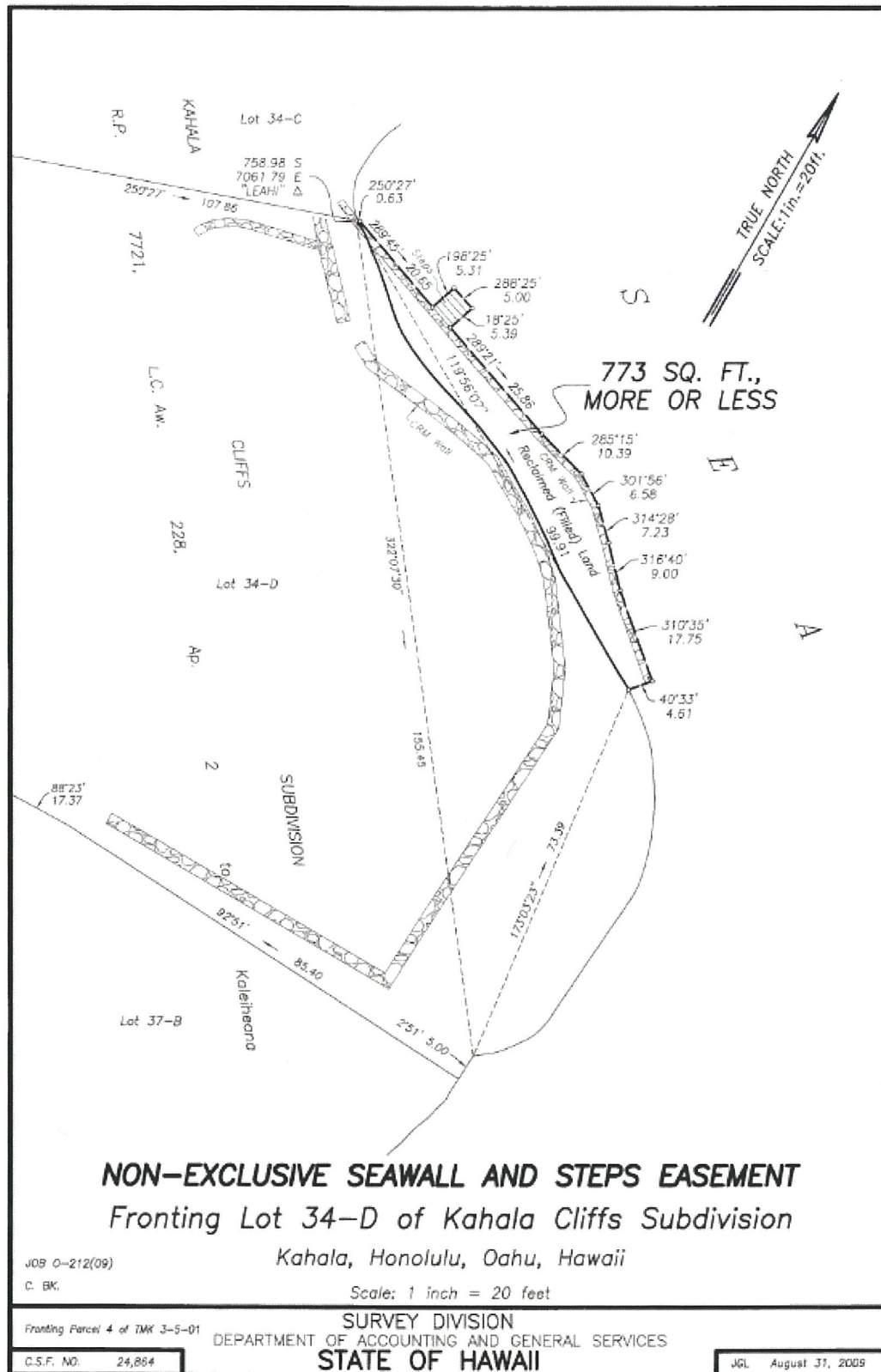
- A. The standard terms and conditions of the amendment of easement form, as may be amended from time to time;
- B. Replacing the original easement area of 773 square feet with the new area of 964 square feet, more or less;
- C. Payment of \$20,513 for the additional area;
- D. Review and approval by 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

Respectfully Submitted,

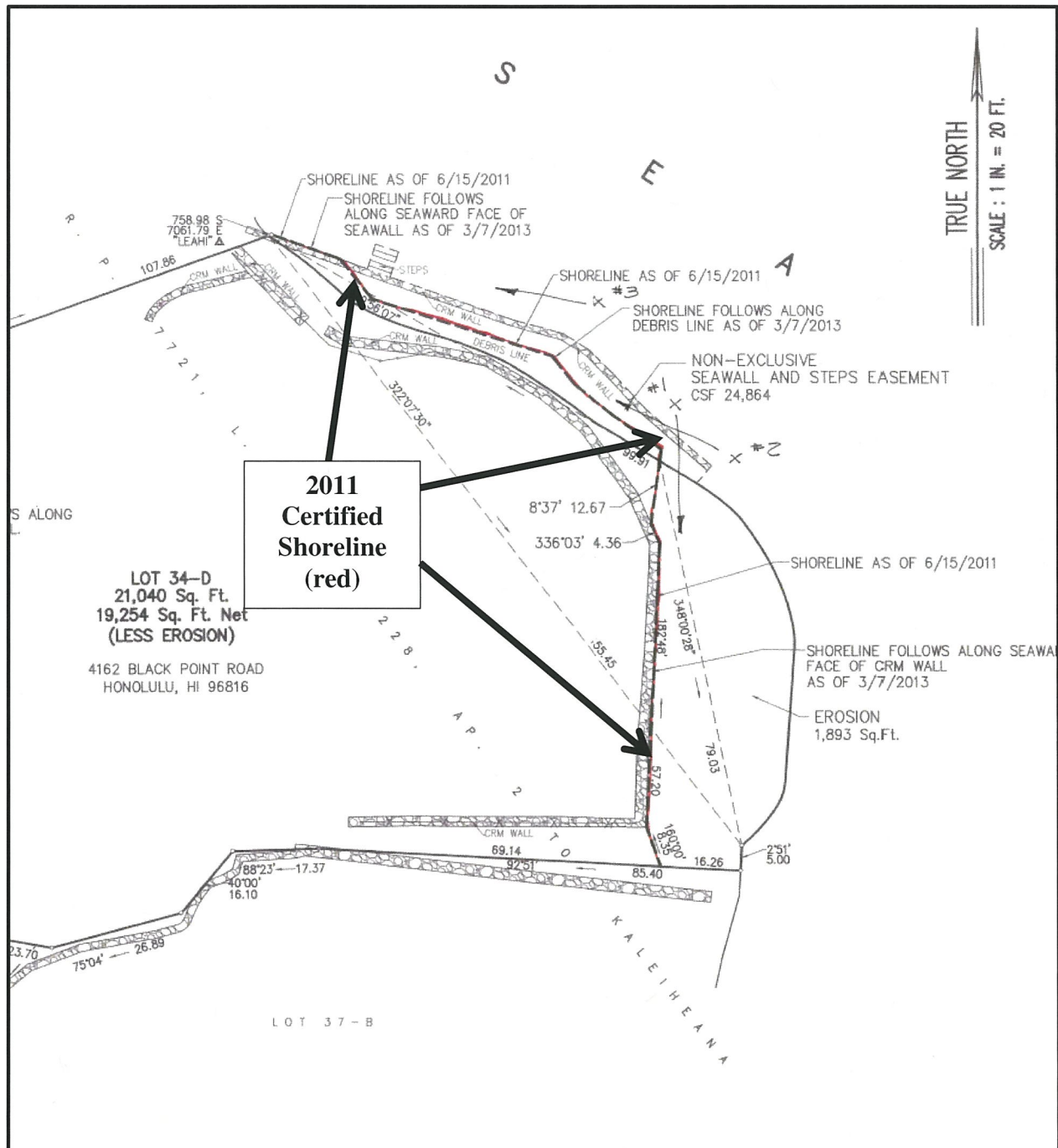
  
Cal Miyahara  
Shoreline Disposition Specialist

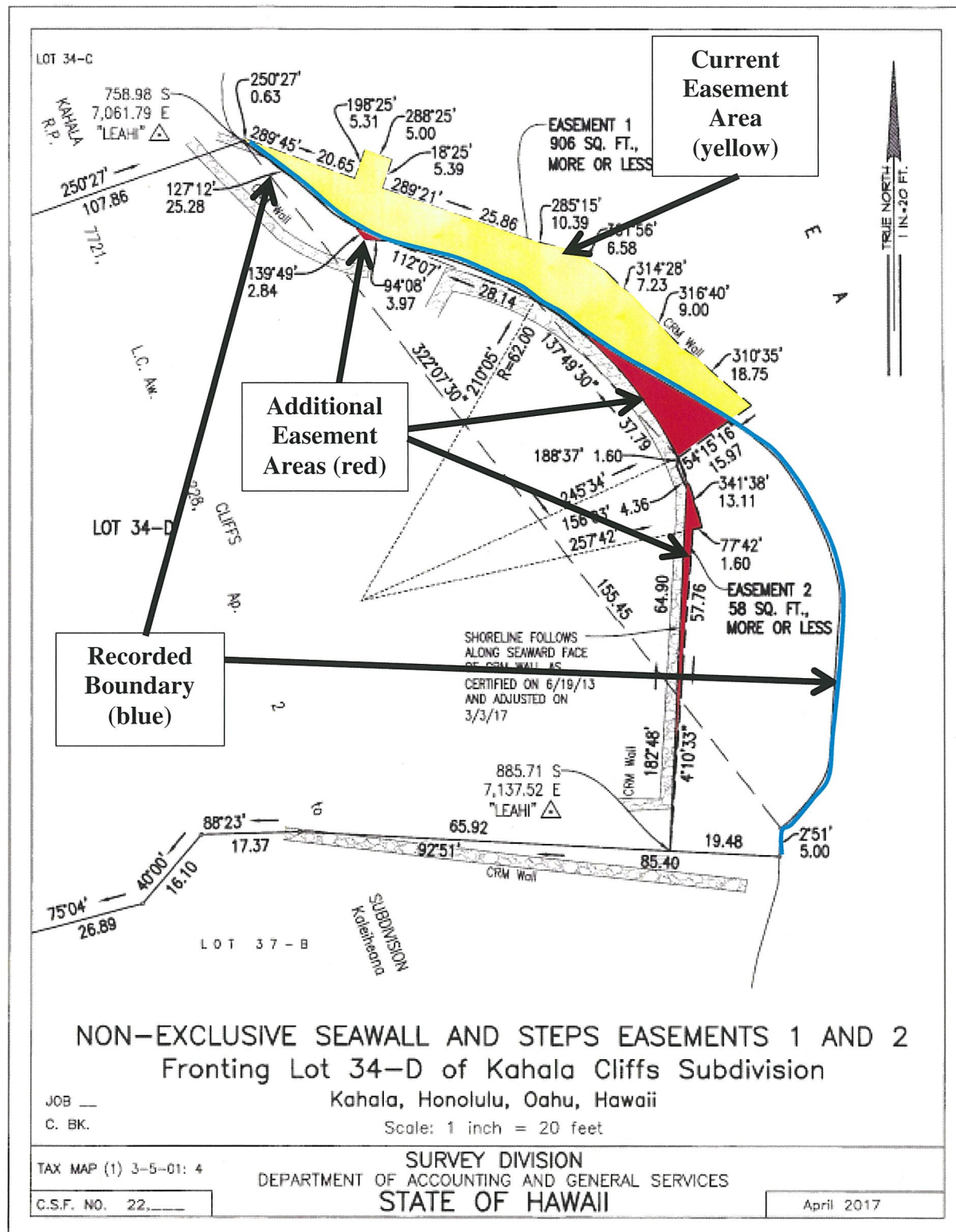
APPROVED FOR SUBMITTAL:

  
Suzanne D. Case, Chairperson

**EXHIBIT A**



**EXHIBIT B**



Note: The additional easement area follows along the shoreline on the Mauka side.

**EXHIBIT C**

**EXEMPTION NOTIFICATION**

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

Project Title: Amendment of Easement S-5986.

Project / Reference No.: PSF 17OD-060

Project Location: Kahala, Honolulu, Oahu, TMK:(1) 3-5-001:seaward of 004.

Project Description: Amendment of Easement for Additional Area of Encroachment on State Lands

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 concurred with 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, which states the "Creation or termination of easement, covenants, or other rights in structures or land".

In the past, amended easements were issued for similar situations where additional areas of encroachments have been identified during the process of obtaining a new shoreline survey. Since no new structures have been constructed in the added encroachment areas, staff anticipates that this should result in no significant impacts to the natural and environmental resources in the area. As such, staff believes that the proposed 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 was consulted with no objections provided.

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.

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Suzanne D. Case, Chairperson

Date:

**EXHIBIT D**