

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

March 9, 2018

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

Ref No. 18OD-022

OAHU

Consent to Assign Grant of Non-Exclusive Easement S-5680, Everett V. Freeman and Roberta M. Cosco, Assignors, to Kelly K. White, Assignee, Amend the Easement Conditions by Allowing the Easement to Run With the Abutting Property, and Updating the Insurance Provision; Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-047: seaward of 090.

APPLICANT:

Everett V. Freeman and Roberta M. Cosco, Assignors, to Kelly K. White, Tenant in Severalty, as Assignee.

LEGAL REFERENCE:

Section 171-6, 36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Kaneohe, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-5-047: seaward of 090, as shown on the attached map labeled Exhibit A.

AREA:

14 square feet, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CHARACTER OF USE:

For non-exclusive easement for the right, privilege and authority to use, maintain, repair, and construct, the existing fence and roof overhang of submerged land purposes.

TERM OF EASEMENT:

55 years, commencing on December 9, 2004 and expiring on December 8, 2059.

ANNUAL RENTAL:

Not applicable. One-time payment of \$250.00 was paid previously.

CONSIDERATION:

\$10.00

DCCA VERIFICATION:

Individual. Not applicable.

REMARKS:

At its meeting of October 11, 2002, under agenda item D-17, the Board approved the issuance of Non-Exclusive Easement S-5680 for encroachments of overhanging fence and roof to Everett V. Freeman and Roberta M. Cosco, husband and wife, Tenants in Common, as the Grantees.

Assignment:

By way of an Assignment of Non-Exclusive Easement S-5680 document, recorded at the Bureau of Conveyances by document A-66130203 on February 8, 2018, Everett V. Freeman and Roberta M. Cosco, conveyed the subject overhanging fence and roof easement to Kelly K. White, tenant in severalty. This event triggers the need for the Board to consent to the assignment of the subject easement.¹

Amendment to "Run with the Land":

Paragraph 5 of the easement document requires the prior written consent of the Board to any assignment of interest. The current policy for similar shoreline encroachment easements is to allow the easement to run with the property served by the easement. Therefore, staff recommends the Board authorize the amendment of the easement to allow it to "run with the land".

Amendment Regarding Insurance:

Paragraph 11 of the easement document requires the grantee to procure liability insurance in an amount acceptable to the Board. The current insurance requirement for similar shoreline encroachment easements is \$1 million per occurrence and \$2 million aggregate. Staff recommends the Board authorize the amendment of the easement by updating the insurance provision with the current requirements.

¹ The private noncommercial pier as shown on Exhibit A is encumbered by General Lease No. 5679, which has the condition allowing the lease to run with the abutting property. Therefore, no Board action is needed for the pier lease.

Staff did not solicit comments from other agencies on the subject request as there is no change in the existing use. The 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.

RECOMMENDATION: That the Board:

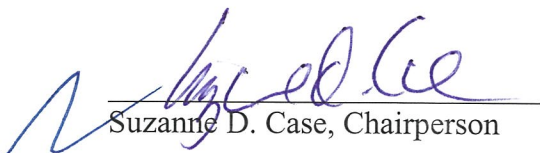
- A. Consent to the assignment of Grant of Non-Exclusive Easement No. S-5680, Everett V. Freeman and Roberta M. Cosco, Assignors, to Kelly K. White, Assignee subject to the following:
1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 2. Review and approval by the Department of the Attorney General; and
 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- C. Amend the Grant of Non-Exclusive Easement No. S-5680 as follows:
1. Replace paragraph 5 of the easement with the following: "The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-5-047:090, 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."
 2. Replace paragraph 11 of the subject easement with the current insurance provision.

Respectfully Submitted,

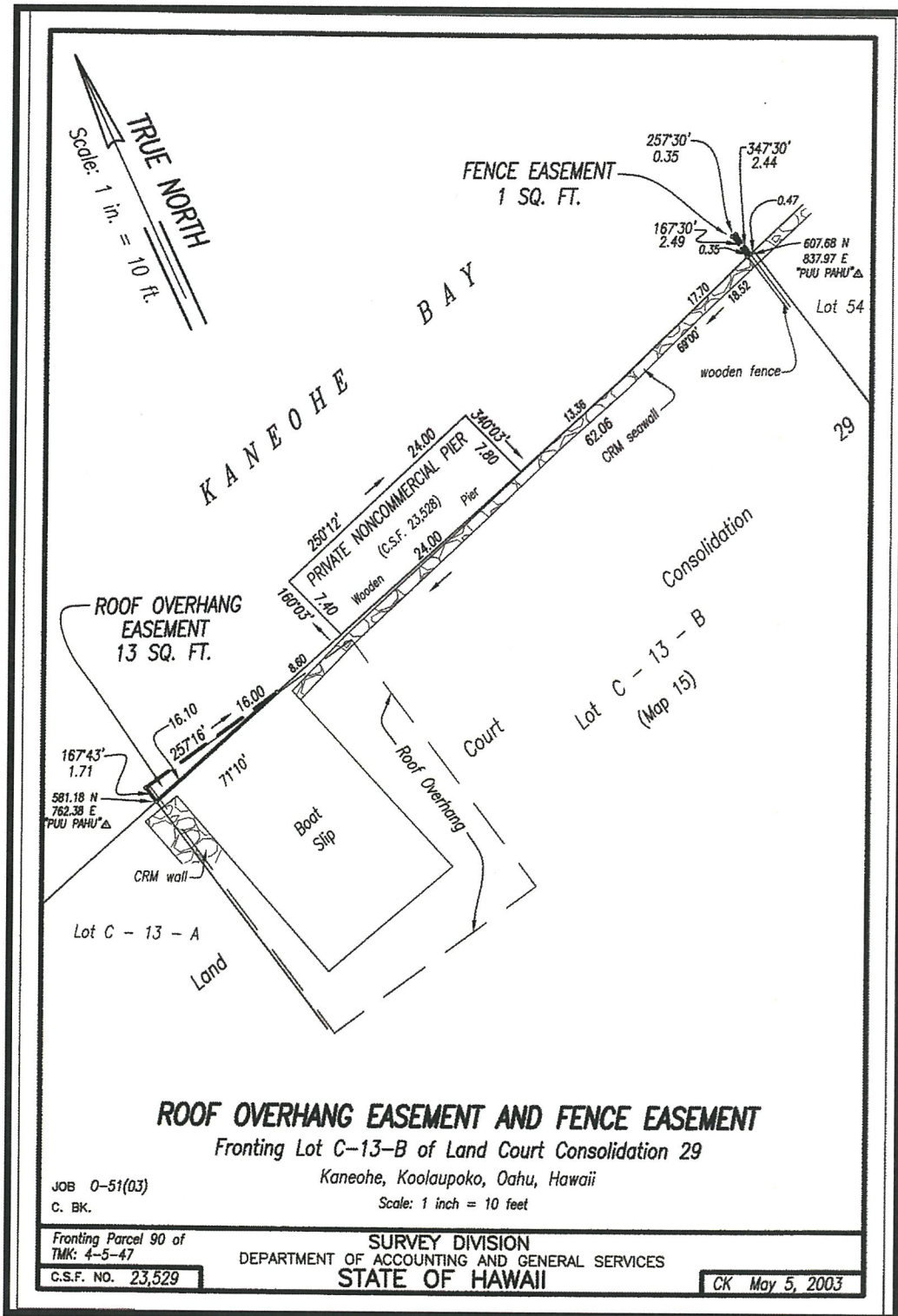


Darlene Bryant-Takamatsu
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



TMK: (1) 4-5-047:seaward of 090

EXHIBIT A