

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

April 27, 2018

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

PSF No.:17OD-095

OAHU

Grant of Term, Non-Exclusive Easement to Shea Alan Sutton for Pier and Seawall
Purposes; Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-058:seaward of 030

APPLICANTS:

Shea Alan Sutton, a single man.

LEGAL REFERENCE:

Sections 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) 4-5-058:seaward of 030, as shown on the attached map (**Exhibit A**).

AREA:

1. Pier - 302 square feet, more or less;
2. Seawall – to be determined; further 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, repair, and maintain existing pier and 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:

In June 2017, the previous owners, Nicholas and Amy Denzer, worked with the Office of Conservation and Coastal Lands (OCCL) to resolve a pier encroachment by submitting the Shoreline Encroachment Information questionnaire. OCCL noted in its response letter that upon review of the information provided in the questionnaire, the pier was in existence in 1961, prior to the advent of the State Land Use Conservation District, and that it is non-conforming. OCCL supported a disposition for the encroachment. A copy of OCCL's letter dated July 21, 2017 is attached as **Exhibit C**.

Staff discussed the shoreline proposed by the applicant's surveyor as shown on **Exhibit D-1 to D-2** with the DAGS Survey Division. The proposed shoreline appears to be acceptable for a shoreline certification purpose. However, during a subsequent site inspection portions of the abutting seawall appeared to be Makai of the shoreline^[1] and may also be encroaching onto State lands (**Exhibit D-3 to D-5**). Staff will continue to work with the applicant or his surveyor to finalize the easement area, which will be further subject to review and approval by DAGS Survey Division.

In July 2017, the abutting property was sold to the applicant. The applicant expressed a desire to continue pursuit of the easement. In light of this, based on OCCL's support, staff recommends the disposition of the shoreline encroachment abutting the Applicant's property through an easement. Staff requests that the Board authorize the granting of a term, non-exclusive easement for the pier and seawall.

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. Therefore, staff recommends that a fine of \$500 be imposed by the Board.

The Department of Accounting and General Services – Survey Division provided a comment that the easement should include all portions of the seawall that is located seaward of the property boundary and/or shoreline.

The Department of Planning and Permitting and the Department of Facility Maintenance have no objections, and the Board of Water Supply has no objections and no comments to the request and the proposed environmental assessment exemption declaration.

The State of Hawaii Historic Preservation Division and the Office of Hawaiian Affairs did not respond to the request for comments.

RECOMMENDATION: That the Board:

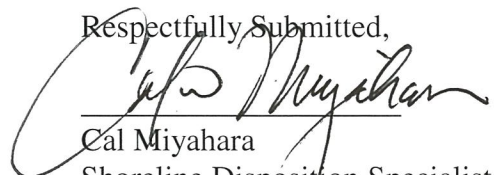
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Assess a fine 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) 4-5-058:030 when such change in ownership occurs prior to the execution of the requested easement, provided the succeeding owner has not had a lease, permit, easement or other

[1] On Exhibit D-1, the shoreline is proposed at top of the seawall, which would render portions of the wall makai of such shoreline as shown on the photos attached as Exhibits D-3 to D-5 encroaching on State lands.

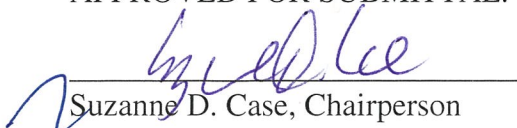
disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

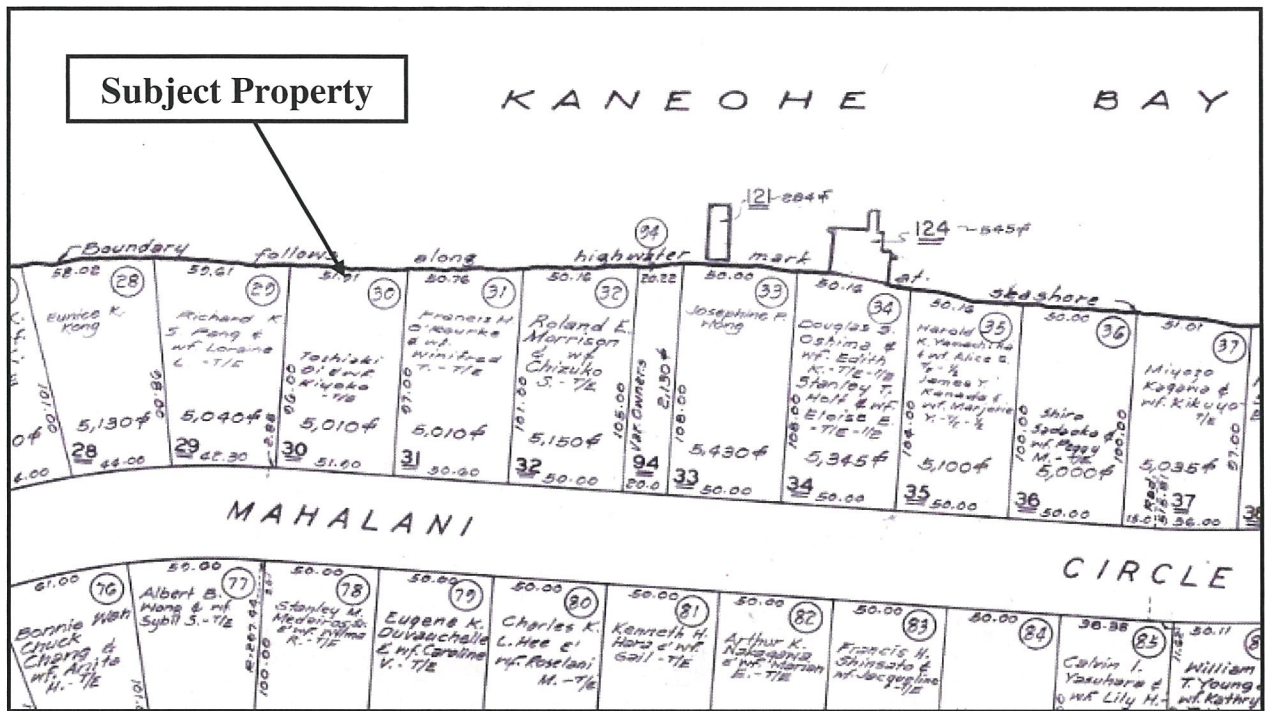
4. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to Shea Alan Sutton covering the subject area for encroachment purposes under the terms and conditions cited above, which are by this reference incorporated 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) 4-5-058:030, 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) 4-5-058:seaward of 030



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 pier and seawall purposes
Project / Reference No.:	PSF 17OD-095
Project Location:	Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-058:seaward of 030.
Project Description:	Issuance of term, non-exclusive easement for pier and seawall area purposes.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	<p>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".</p> <p>The applicant is not planning on conducting major change to the existing topographical and vegetation condition at the subject location. 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.</p>
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.

EXHIBIT B

April 27, 2018



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

KERIDA KALUHTWA
FIRST DEPUTY

JEFFREY T. HARRISON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCE
PLANNING AND OCEAN RECREATION
BUREAU OF COASTVASCES
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RECREATION DEVELOPMENT
DIVISION

FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOLA ISLAND RESERVE COMMISSION
LANDS
STATE PARKS

Ref: OCCL:LY

CORR. OA 18-16

Mr. Nick Denzer

JUL 21 2017

Waialua, HI 96791

SUBJECT: Repair and Rebuilding of a Pier Located at
O'ahu
Tax Map Key: (1) 4-5-058:030

Kāne'ohe,

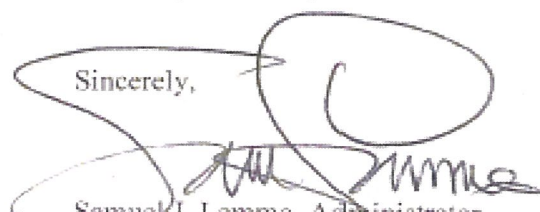
Dear Mr. Denzer:

The Office of Conservation and Coastal Lands (OCCL) is in receipt of your information packet regarding the subject pier. According to the information provided, you purchased the subject property in 2006. At the time, the pier was already deteriorated, but the pilings were still present. Therefore, you decided to repair the pilings and replace the wooden deck. Also provided were several aerial photographs showing that the pier was in existence sometime prior to 1961.

The OCCL notes that the pier is located on submerged lands and is, therefore, located within the Resource subzone of the State Land Use Conservation District. In addition, as the pier was in existence in 1961, prior to the advent of the State Land Use Conservation District, it appears that the pier is a non-conforming structure. Please work with the Land Division to obtain an easement for the subject pier.

Should you have any questions regarding this correspondence, please contact Lauren Yasaka of our Office at (808) 587-0386.

Sincerely,


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

c: ODLO
C&C DPP

EXHIBIT C

**EXHIBIT D-1**



Note: Blue line (—) indicates pier encroachment area.

EXHIBIT D-2



Photo looking east.



Photo looking west.

EXHIBIT D-3



Photo looking northwest along the face of the seawall.



Photo looking southwest along the face of the seawall.

EXHIBIT D-4



Photo looking south along the seawall.



Photo looking north along the seawall.

EXHIBIT D-5