

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

June 8, 2018

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

PSF No.: 16OD-151

OAHU

Amend Prior Board Action of December 9, 2016, Item D-20, Grant of Term, Non-Exclusive Easement to Martha K. Bush for Pier Purposes; Termination of Revocable Permit No. S-6546; Kaneohe, Koolaulupoko, Oahu, Tax Map Key: (1) 4-5-058:121

The amendment will increase the easement area from 284 square feet to 538 square feet, and add “eave and seawall” into the character of use of the requested easement.

BACKGROUND:

On December 9, 2016, Item D-20, the Board authorized the issuance of a 55-year term, non-exclusive easement for pier purposes to Martha Bush for an original area of 284 square feet (area covered by RP-6546). See **Exhibit 1**. Resolution (HCR78 HD1) was obtained from the Legislature 2017 regarding the leasing of submerged lands.

REMARKS:

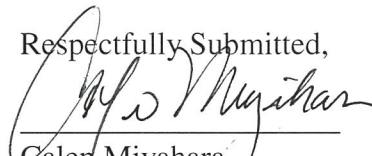
Subsequent to the Board’s authorization in 2016, the Department of Accounting and General Services, Survey Division, finalized the easement map that showed an area of 538 square feet, i.e., an increase of 254 square feet (see **Exhibit 2**). The same map shows that within the 538 square feet area, portions of a roof eave and seawall are also encroaching on State lands. Therefore, the easement area will be increased to 538 square feet; and, the character of use need to be revised to accommodate the roof eave and seawall described above. Mrs. Bush was informed of the increased area and wanted to continue pursuing an easement. The appraisal will be done for the fair market value of the 538 square feet easement area.

Staff recommends the Board authorize amending the prior approval to increase the easement area to 538 square feet and include “eave and seawall” in the character of use. Staff also notes that concurrent legislative resolution was obtained during the 2017 session, followed by the governor’s concurrence. Staff will request authorization for the larger area during the 2019 legislative session.

RECOMMENDATION: That the Board amends its prior action of December 9, 2016, item D-20 by:

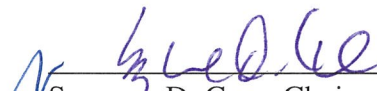
1. Revising the easement area to 538 square feet;
2. Adding "eave and seawall" in the Character of Use of the requested easement; and
3. All other terms and conditions in the December 9, 2016 approved submittal to remain the same.

Respectfully Submitted,



Calen Miyahara
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

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

December 9, 2016

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

PSF No.: 16OD-151

OAHU

Grant of Term, Non-Exclusive Easement to Martha K. Bush for Pier Purposes;
Termination of Revocable Permit No. S-6546; Kaneohe, Koolaupoko, Oahu, Tax
Map Key: (1) 4-5-058:121

APPLICANT:

Martha K. Bush, tenant in severalty.

LEGAL REFERENCE:

Sections 171-6, 13, 17, 53(c), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of submerged land located in Kaneohe, Koolaupoko, Oahu, identified by Tax Map
Key: (1) 4-5-058:121, as shown on the map attached as **Exhibit A**.

AREA:

284 square feet, more or less, 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

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
December 9, 2016 Go.

D-20
EXHIBIT "1"

CURRENT USE STATUS:

Encumbered by Revocable Permit No. S-6546 to C. Bryson Bush for recreational pier purposes.

CHARACTER OF USE:

Right, privilege and authority to use, repair, and maintain existing pier 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:

CDUA Permit OA-3017B covering the piers under the Kaneohe Bay Pier Amnesty Program was approved by the Board on July, 13, 2001, Item D-32.

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 B**.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS: Applicant 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 May 1987, Mr. and Mrs. Conrad Bryson Bush purchased the property from Ms. Josephine P. Wong. At that time, Ms. Wong had a Revocable Permit (S-5411) for the pier. Thereafter, at its meeting on December 18, 1987, the Board authorized the cancellation of RP S-5411 and the issuance of a RP to Mr. Bush for the subject pier. Since then, Mr. Bush has been the permittee under RP S-6546 at a monthly rental rate of \$21.59 effective January 17, 2017.

Recently, staff sent a letter to Mr. Bush inquiring whether he is interested in converting the monthly permit to a term easement for the same purposes. Mrs. Bush informed the staff that her husband recently passed away. Staff discussed the situation with Mrs. Bush, who became the sole owner of the abutting private property, and she expressed an interest in the conversion mentioned above.

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 Department of Planning and Permitting provided a comment on the correct zoning for the abutting property. The abutting property's zoning was changed to reflect the correct City and County of Honolulu Land Use Ordinance. The Office of Conservation and Coastal Lands, and the Board of Water Supply has no objections.

The Department of Facility Maintenance and the Office of Hawaiian Affairs did not respond to the request for comments.

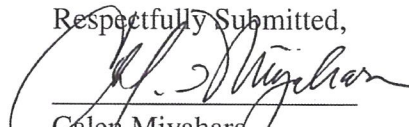
Also, staff requests the Board authorize the termination of RP S-6546 upon issuance of the easement.

RECOMMENDATION: That the Board:

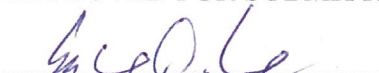
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Assess a non-refundable administrative cost 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) 4-5-058:033, 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.

4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Martha K. Bush, covering the subject area for pier 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) 4-5-058:033, 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.
5. Termination of Revocable Permit No. S-6546 upon the issuance of the requested easement.

Respectfully Submitted,


Calen Miyahara
District Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



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 Pier Purposes

Project / Reference No.: PSF 16OD-151

Project Location: Kaneohe, Koolaupoko, Oahu, TMK (1) 4-5-058:121.

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

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

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4), 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: Agencies notes in the submittal.

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.

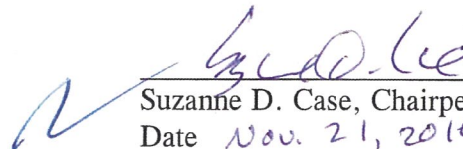
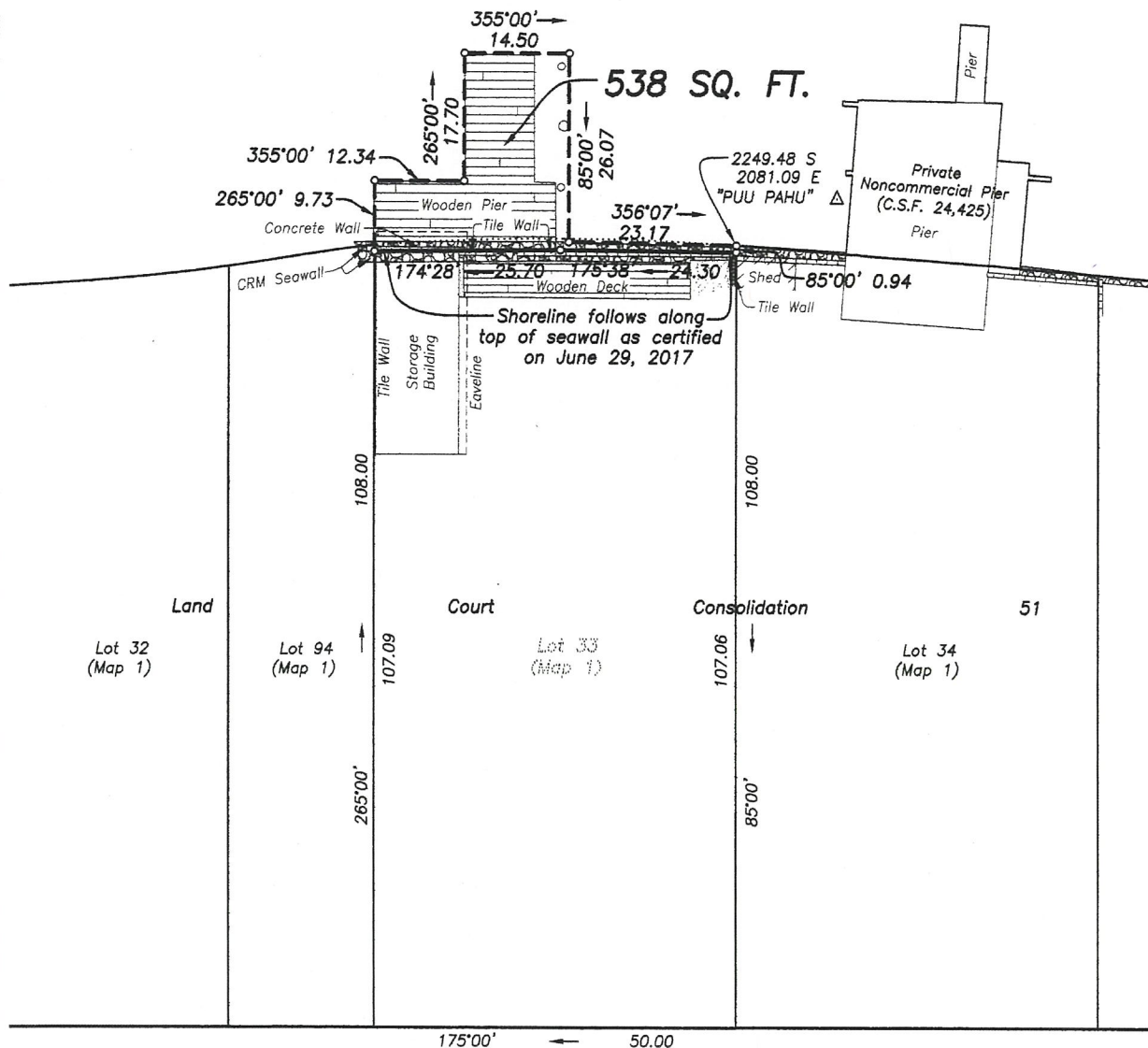

Suzanne D. Case, Chairperson
Date Nov. 21, 2016

EXHIBIT B

TRUE NORTH
SCALE: 1 in. = 20 ft.

KANEOHE BAY



MAHALANI CIRCLE

NON-EXCLUSIVE EAVE, PIER AND SEAWALL EASEMENT Affecting Lot 33 of Land Court Consolidation 51 Punaluu, Kaneohe, Koolaupoko, Oahu, Hawaii

Job 0-170(17)
C. BK.

Scale: 1 inch = 20 feet

Fronting Parcel 33 of TMK 4-5-58

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

C.S.F. NO. 25,638

STATE OF HAWAII

RDM November 20, 2017

EXHIBIT "2"