

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

April 12, 2019

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

PSF No.: 16OD-155

OAHU

Amend Prior Board Action of January 13, 2017, Item D-14, *Grant of Term, Non-Exclusive Easement to C. Michael Muller, Trustee of the C. Michael Muller Trust dated November 21, 1989 for Pier Purposes; Termination of Revocable Permit No. S-5408; Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-001:seaward of 011*

The amendment is to change the easement area from 716 square feet to 2,818 square feet, add adjacent property Tax Map Key: (1) 4-1-001:seaward of 013, and adding seawall and steps into the character of use of the requested easement.

BACKGROUND:

On January 13, 2017, Item D-14, the Board authorized the issuance of a 55-year term, non-exclusive easement for pier purposes to C. Michael Muller for an original area of 716 square feet (area covered by RP-5408). See **Exhibit 1**. Resolution (HCR27 SD1) was obtained from the Legislature in 2017 regarding the leasing of submerged lands.

REMARKS:

On March 8, 2019, the surveyor submitted an easement map that showed a total easement area of 2,818 square feet, i.e., an increase of 2,102 square feet (see **Exhibit 2-A to 2-C**). The same map shows that within the 2,818 square feet area, portions of a seawall and steps are also encroaching on State lands. Therefore, the easement area will be increased to 2,818 square feet; and, the character of use will need to be revised to accommodate the seawall and steps described above. Mr. Muller 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 total easement area upon review and approval from the Department of Accounting and General Services, Survey Division.

The original area of 716 square feet was obtained from the pier area permitted under RP-5408. The subsequent survey conducted in 2019 showed the additional 2,102 square feet of encroachments which included the seawall and steps area. Also, the survey map showed the encroachment extended along the Makai portion of the adjacent property identified as Tax

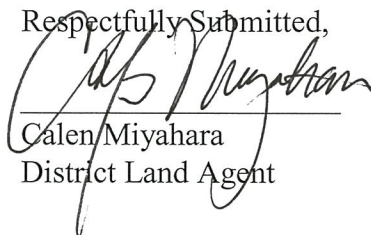
Map Key: (1) 4-1-001:013. The adjacent property is also owned by the Mr. Muller, who agreed to include the portion of encroachments Makai of parcel 013 into the total easement area.

Staff recommends the Board authorize amending the prior approval to increase the easement area to 2,818 square feet, add “seaward of 013” parcel to the easement, and include “seawall and steps” 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 inform applicant to request authorization for the larger area during the 2020 legislative session.

RECOMMENDATION: That the Board amends its prior action of January 13, 2017, item D-14 by:

1. Revising the easement area to 2,818 square feet; and
2. Revising the parcel to add “seaward of 013”; and
3. Adding “seawall and steps” in the Character of Use of the requested easement; and
4. All other terms and conditions in the January 13, 2017 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

January 13, 2017

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

PSF No.: 16OD-155

OAHU

Grant of Term, Non-Exclusive Easement to C. Michael Muller, Trustee of the C. Michael Muller Trust dated November 21, 1989 for Pier Purposes; Termination of Revocable Permit No. S-5408; Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-001:seaward of 011

APPLICANT:

C. Michael Muller, Trustee of the C. Michael Muller Trust dated November 21, 1989

LEGAL REFERENCE:

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

LOCATION:

Portion of submerged land located in Waimanalo, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-1-001:seaward of 011, as shown on the map attached as **Exhibit A**.

AREA:

716 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-10 [for the abutting private property]

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

**EXHIBIT "1"**

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

January 13, 2017

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Encumbered by Revocable Permit No. 5408 to C. Michael Muller for swimming, fishing and sunbathing purposes, at a monthly rent of \$62.23 effective from January 1, 2017.

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:

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, 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 October 1972, Mr. Muller purchased the property with the pier already constructed. Thereafter, at its meeting on August 12, 1977, the Board authorized the issuance of a Revocable Permit (RP) to Mr. Muller for the subject pier. Since then, Mr. Muller has been the permittee under RP S-5408.

Pursuant to the review of the Statewide RP program undertaken by the Task Force appointed by the Chairperson, it is the consensus that the RPs should be replaced with long term disposition. Otherwise, the RP can be terminated by a 30-day notice provided in the permit.

Recently, staff sent a letter to Mr. Muller inquiring whether he is interested in converting the monthly revocable permit to a term easement for the same purposes. Staff discussed the situation with Mr. Muller, who expressed an interest in the conversion mentioned above. However, Mr. Muller initially expressed his disinterest in paying the cost of the appraisal used to determine the value of the submerged land area. Pursuant to HRS 171-17(b)(2)<sup>1</sup>, Applicant is required to pay the cost of the appraisal. Mr. Muller understands that he will need to pay all costs to move forward. The alternative would be the cancellation of the RP and the removal of the pier.

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, the Department of Facility Maintenance, and the Board of Water Supply has no objections.

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

Also, staff requests the Board authorize the termination of RP 5408 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.

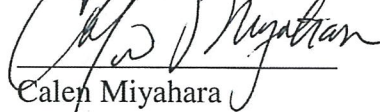
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<sup>1</sup> §171-17 (b)(2), HRS states in part: "A disinterested appraiser or appraisers whose service shall be contracted for by the board,.....shall be at the cost of the purchaser;"

2. Assess a non-refundable administrative cost of \$500, under Section 171-6, HRS.
3. Authorize the subject request to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-1-001:011, 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 C. Michael Muller, Trustee of the C. Michael Muller Trust dated November 21, 1989, 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) 4-1-001:011, 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. 5408 upon the issuance of the requested easement.

Respectfully Submitted,



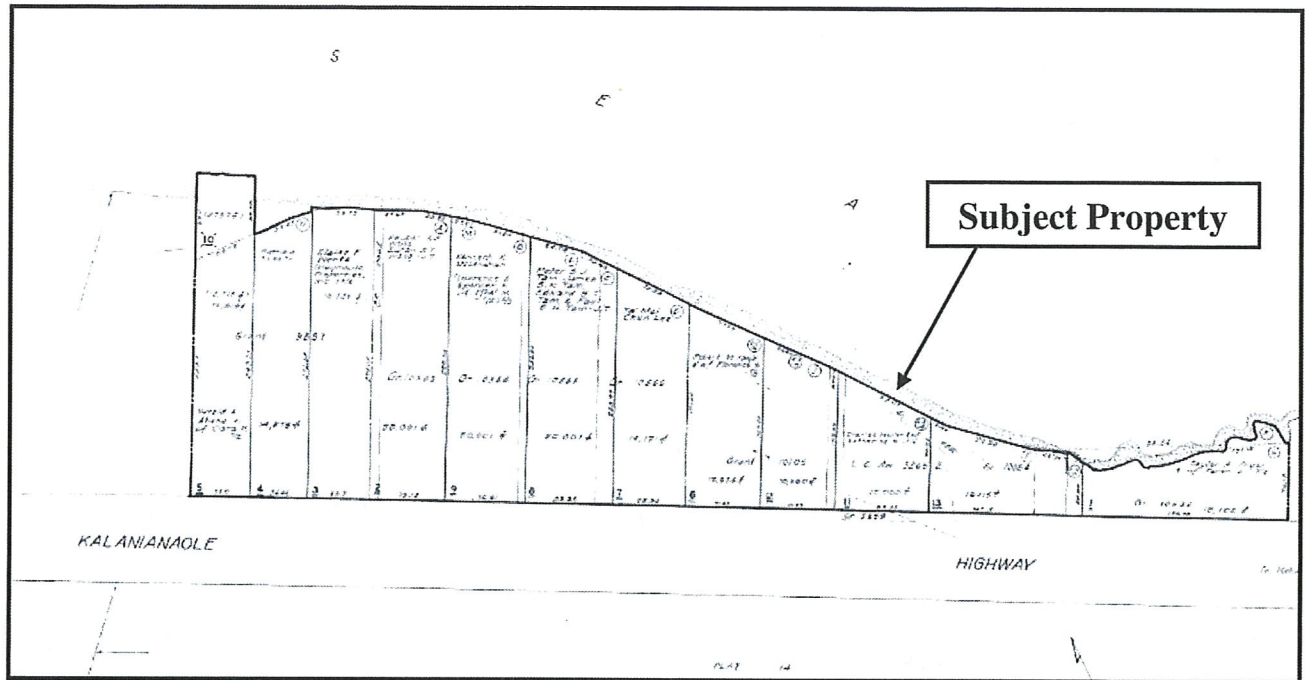
Calen Miyahara  
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson





**TMK (1) 4-1-001:seaward of 011**

# 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 Pier Purposes

Project / Reference No.: PSF 16OD-155

Project Location: Waimanalo, Koolaupoko, Oahu, TMK (1) 4-1-001:seaward of 011.

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

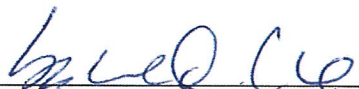
Chap. 343 Trigger(s): Use of State Land

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"/

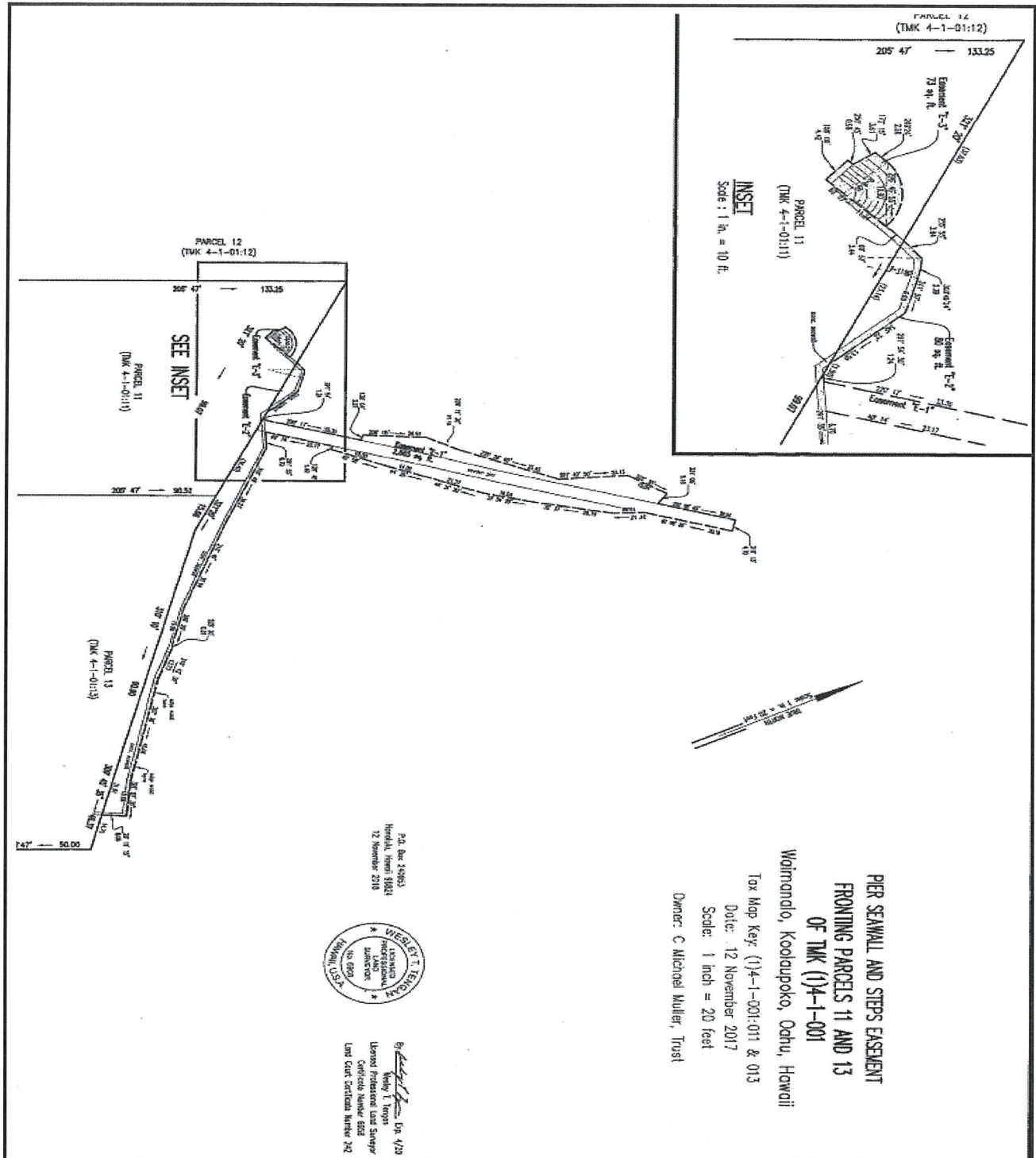
The request is triggered by the change in tenure of the disposition for the same improvement. The owner is not planning to have any new improvement to the subject area. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously 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.

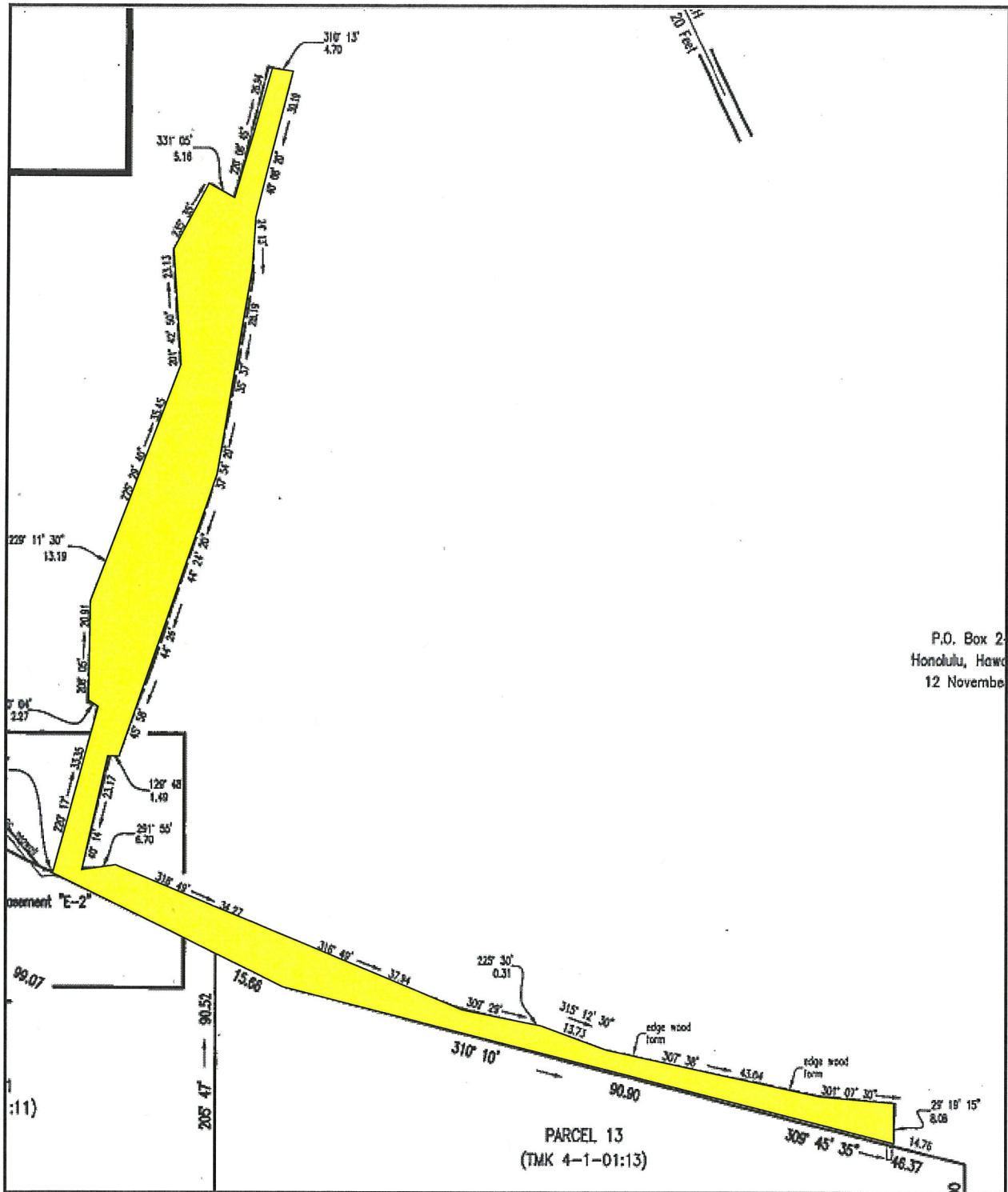
  
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Suzanne D. Case, Chairperson  
Date 12/21/16

**EXHIBIT B**



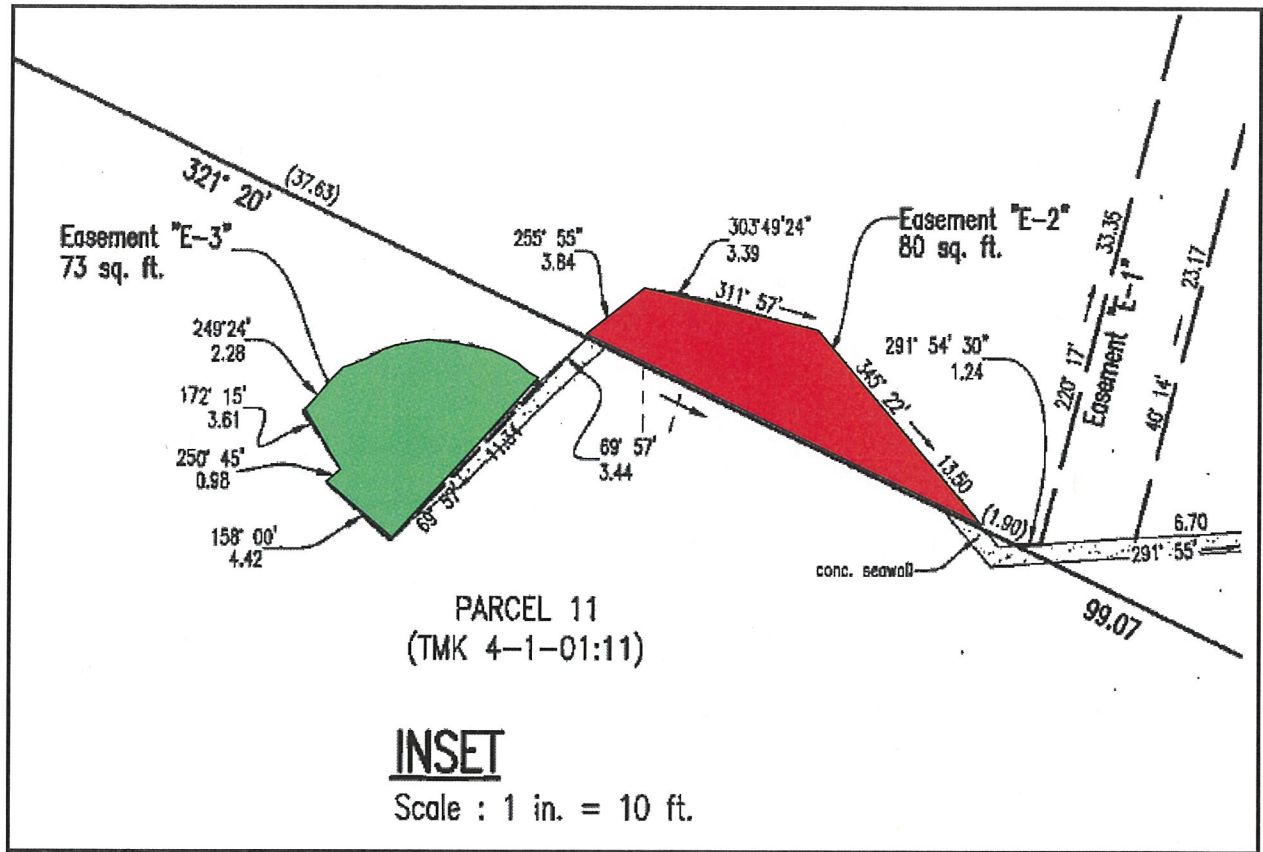
Note: Easement 1 area: 2,665 Square feet. Easement 2 area: 80 square feet. Easement 3 area: 73 square feet. Total Easement area: 2,818 square feet.

## EXHIBIT 2-A



Note: Easement 1 area: 2,665 square feet.

EXHIBIT 2-B



Note: Easement 2 area (red): 80 square feet. Easement 3 area (green): 73 square feet.