

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

November 8, 2019

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

PSF No.:19OD-116

OAHU

Grant of Term, Non-Exclusive Easement to 20 Baldwin Partners LLC, a Hawaii Limited Liability Company, and Phillip K. Binney Also Known As Philip K. Binney, Trustee of the Phillip K. Binney 2018 Irrevocable Gift Trust Agreement dated September 18, 2018, for Pier, House, Rockwall, and Landscape Purposes; and, Issuance of Management Right-of-Entry Permit; Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-016:Seaward of 016

APPLICANTS:

20 Baldwin Partners LLC, a Hawaii Limited Liability Company, an undivided seventy-four percent (74%) interest, as tenant in severalty.

Phillip K. Binney aka Philip K. Binney, Trustee of the Phillip K. Binney 2018 Irrevocable Gift Trust Agreement dated September 18, 2018 (“Binney Trust”), an undivided twenty-six (26%) interest, in trust, together as tenants in common.

20 Baldwin Partners LLC and Binney Trust are jointly referred to hereafter as “Applicants”.

LEGAL REFERENCE:

Sections 171-6, 13, 17, 53(c), and 55, Hawaii Revised Statutes (“HRS”), as amended.

LOCATION:

Portion of Government land located seaward of Kaneohe, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-4-016:seaward of 016, as shown on the attached map labeled **Exhibits A-1, and A-2.**

AREA:

1,898 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-7.5 [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, house, rockwall, and landscape area 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:

Twenty-five (25) years.

The Land Division is reducing the term in which shoreline easements are granted from 55 to 25 years in response to sea level rise projections disclosed in the Hawaii Sea Level Rise Vulnerability and Adaptation Report adopted by the State Climate Change Mitigation and Adaptation Commission, and as suggested by the Office of Conservation and Coastal Lands. Landward migration of the shoreline is occurring as a direct result of sea level rise, which will progressively expose immobile shoreline structures to an evolving combination of coastal hazards (i.e., erosion, chronic flooding, and wave inundation). The intention of the term reduction is to: 1) lessen the potential for accidents and liabilities that may result from the presence of dysfunctional shoreline structures by increasing the periodicity in which shoreline encroachments are reviewed and managed, and 2) facilitate a process of managed retreat from the shoreline.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Section 11-200.1-15, Hawaii Administrative Rules (“HAR”), 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: For 20 Baldwin Partners LLC

Place of business registration confirmed: YES X NO
 Registered business name confirmed: YES X NO
 Applicant in good standing confirmed: YES X NO

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
2. Pay for an appraisal to determine one-time payment; and,
3. Obtain concurrent resolution from the Legislature pursuant to Section 171-53(c), HRS.

REMARKS:

Applicants purchased the abutting private property in February of this year. At the time of the purchase, Applicants was aware that a portion of the house was constructed Makai of the private property boundary. Applicants came to our office to discuss the situation and possible remedies. Applicants also said there is a pier. Our records showed the pier did not have an easement. After discussing alternatives, Applicants expressed a desire to resolve the encroachments through an easement. Applicants also requested to have the State lands (fast lands) located between his private property and the shoreline be included in the easement for landscaping purposes. Staff informed Applicants that if the Board authorized the easement to include the fast lands, there can be no structures built on the fast land area and it can only be used for landscaping purposes. Applicants acknowledged the directive.

Staff conducted a site inspection on April 3, 2019 with the Office of Conservation and Coastal Lands (OCCL) staff to verify the encroachments. After locating the Makai property boundary pins it was clear that the rear portion of the house extended beyond the private property onto State lands; staff also observed the pier and the fast land area that the applicant is requesting. Staff also notes that the fast lands did not have any sandy beach, but were a muddy area covered by weeds and was inaccessible to the general public. There was no nearby public right-of-way and the shoreline was blocked on both sides by overgrowth from the subject and neighboring properties (see **Exhibit C-1 to C-6**).

The applicant worked with OCCL to resolve the pier and house encroachment by submitting the Shoreline Encroachment Information questionnaires for each encroachment. The OCCL noted in its response letter regarding the pier that based on the information an easement is needed to resolve the encroachment. The pier response letter stated 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. The OCCL supports a disposition for the pier encroachment. Also, the house response letter

stated that the building permit from the City and County for the house extension (which includes the encroaching area) was dated March 3, 1950, therefore the original house was determined to be constructed before 1950, which would make the structure non-conforming. The OCCL also supports a disposition for the house encroachment. A copy of the OCCL's letters dated July 24, 2019 (pier encroachment) and August 6, 2019 (house encroachment), is attached as **Exhibit D**.

An easement map submitted by Walter P. Thompson, Inc. also showed a small portion a rockwall encroaching Makai of the private property boundary (see Exhibit C-1 and C-2).

Based on the OCCL's support, staff recommends the disposition of the pier, house, and rockwall through an easement. Also, staff recommends disposition of the fast lands between the private property and shoreline because of its inaccessible nature and the applicant intends to maintain the area by landscaping. Staff requests that the Board authorize the granting of a term, non-exclusive easement for the pier, house, rockwall, and landscaped area.

The OCCL provided comments to the shoreline questionnaire, as such, they had "no comments" to the request for comments inquiry. The Department of Facility Maintenance has no comments to the granting of an easement. The Board of Water Supply has no objections and no comments. The Department of Planning and Permitting has no objections and provided comments (see **Exhibit E**). The Office of Hawaiian Affairs did not respond to the request for comments.

Upon approval of today's request, Applicants will be reminded of the requirement for concurrent resolution from both houses of the legislature under Section 171-53(c), HRS prior to the issuance of the requested easement.

Staff also recommends the Board authorize the issuance of a management right-of-entry until the issuance of the requested easement. The above-mentioned right-of-entry shall contain the standard insurance and indemnity provisions.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, 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 subject request to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-4-016:016 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 disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to 20 Baldwin Partners

LLC, a Hawaii Limited Liability Company, and Phillip K. Binney, Trustee of the Phillip K. Binney 2018 Irrevocable Gift Trust Agreement dated September 18, 2018, covering the pier, house, rockwall, and landscaped area for encroachment and requested land 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) 4-4-016:016, 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.
4. Authorize the issuance of an management right-of-entry permit to 20 Baldwin Partners LLC, a Hawaii Limited Liability Company, and Phillip K. Binney, Trustee of the Phillip K. Binney 2018 Irrevocable Gift Trust Agreement dated September 18, 2018, covering the subject area 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 right-of-entry permit form, as may be amended from time to time; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

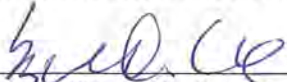
Respectfully Submitted,



Cal Miyahara

Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL



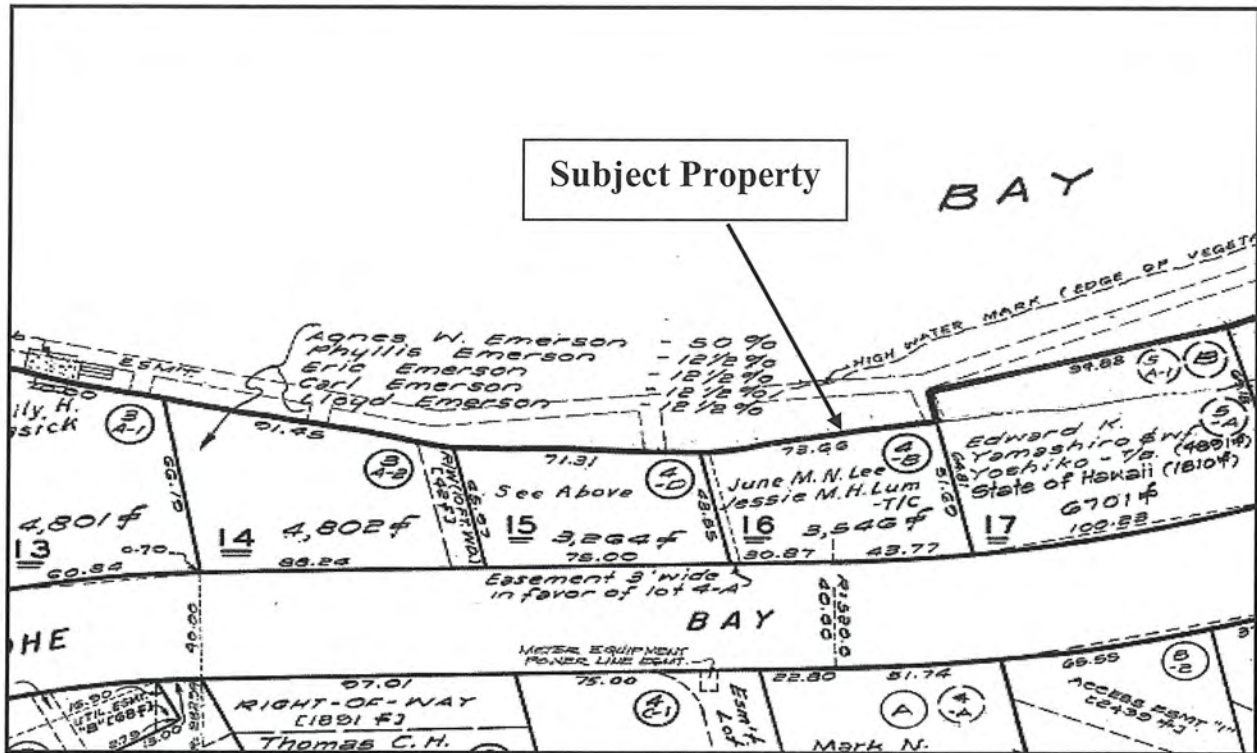
Suzanne D. Case, Chairperson

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Note: The property is located in the Kaneohe Bay area.

EXHIBIT A-1



TMK: (1) 4-4-016:seaward of 016

EXHIBIT A-2

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, HAR

Project Title:	Grant of Term, Non-Exclusive Easement to 20 Baldwin Partners LLC, a Hawaii Limited Liability Company, and Phillip K. Binney Also Known As Philip K. Binney, Trustee of the Phillip K. Binney 2018 Irrevocable Gift Trust Agreement dated September 18, 2018, for Pier, House, Rockwall, and Landscape Purposes; and, Issuance of Management Right-of-Entry Permit; Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-016:Seaward of 016
Reference No.:	PSF 19OD-116
Project Location:	Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-016:Seaward of 016.
Project Description:	Issuance of term, non-exclusive easement for pier, house, rockwall, and landscape purposes.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	In accordance with Sections 11-200.1-15, HAR, 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". The Applicant is not planning on conducting major change to the existing topographical and vegetation condition of the property. 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.
Cumulative Impact of Planned Successive Actions in Same Place Significant?	No, this request is for a 25-year term easement for an existing, permanent shoreline structures (pier, house, rockwall, and landscape area). The pier, house, rockwall, and landscape area were in existence prior to purchasing the property. Therefore, no successive actions will occur in the same location. As such, staff believes that there would be no significant cumulative impact.
Action May Have	No, the requested area is a portion of shoreline State land that

EXHIBIT B

Significant Impact on Particularly Sensitive Environment?

contains improvements Makai of the abutting private property which, by visual analysis, seem to have been in existence for many years and is not likely to have any significant environmental impact. In addition, based on the analysis below, staff believes there would be no significant impact to sensitive environmental or ecological receptors.

Consulted Parties:

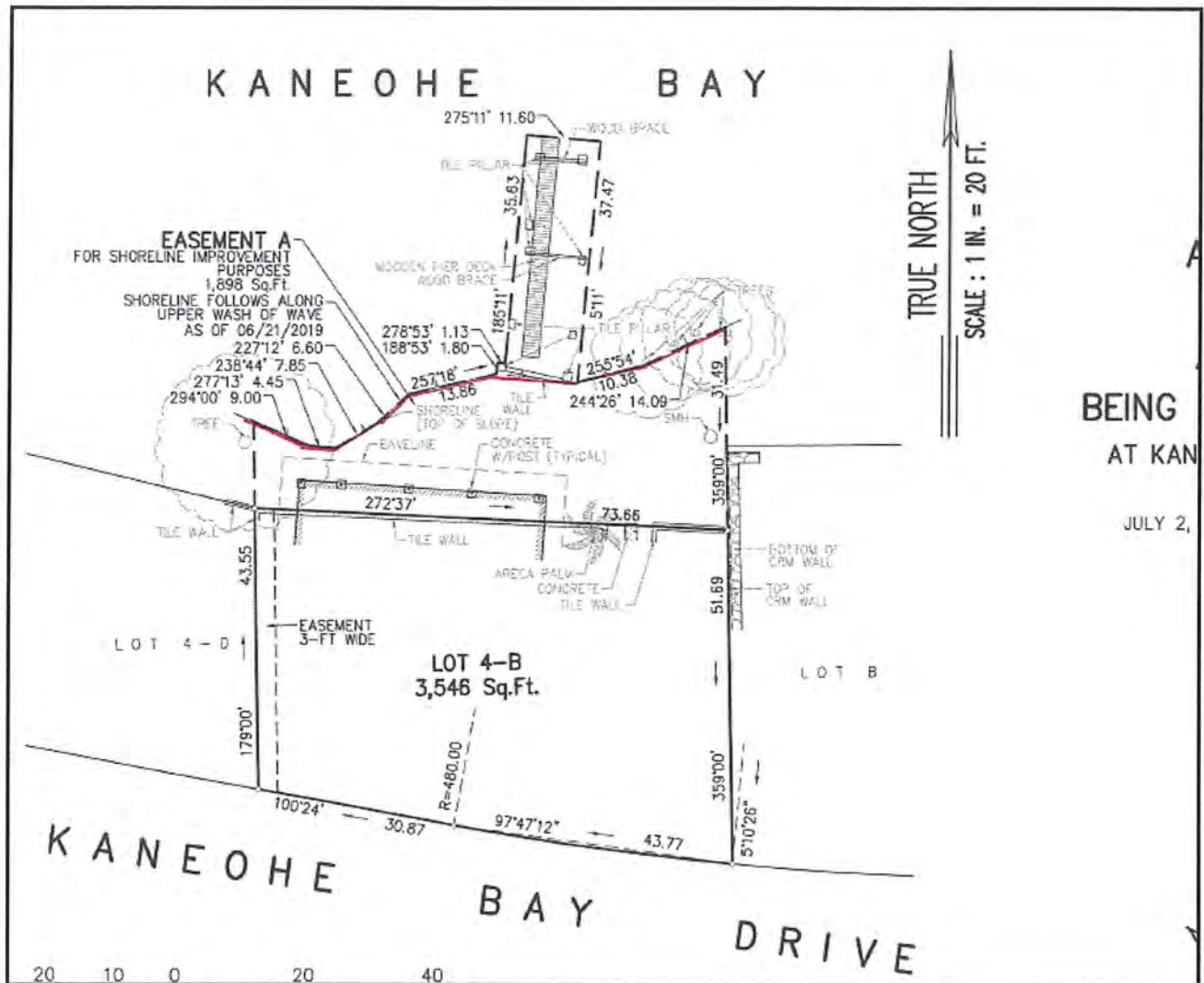
Agencies as noted in the submittal.

Analysis:

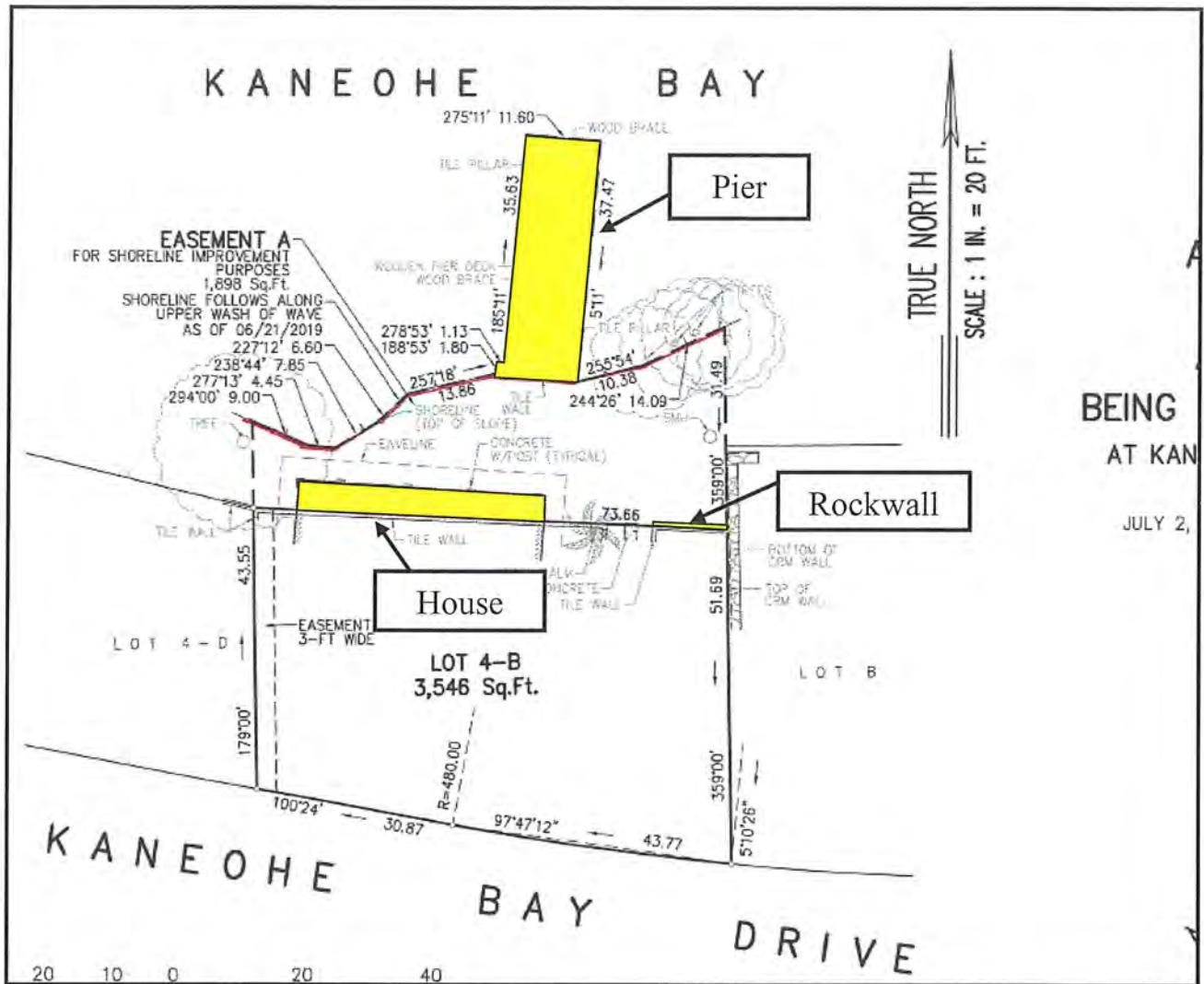
The Board has authorized 25-year term, non-exclusive easements for existing shoreline structures in the past. The proposed request is of a similar type and scope as other shoreline easement request across the State. Staff also believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

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.

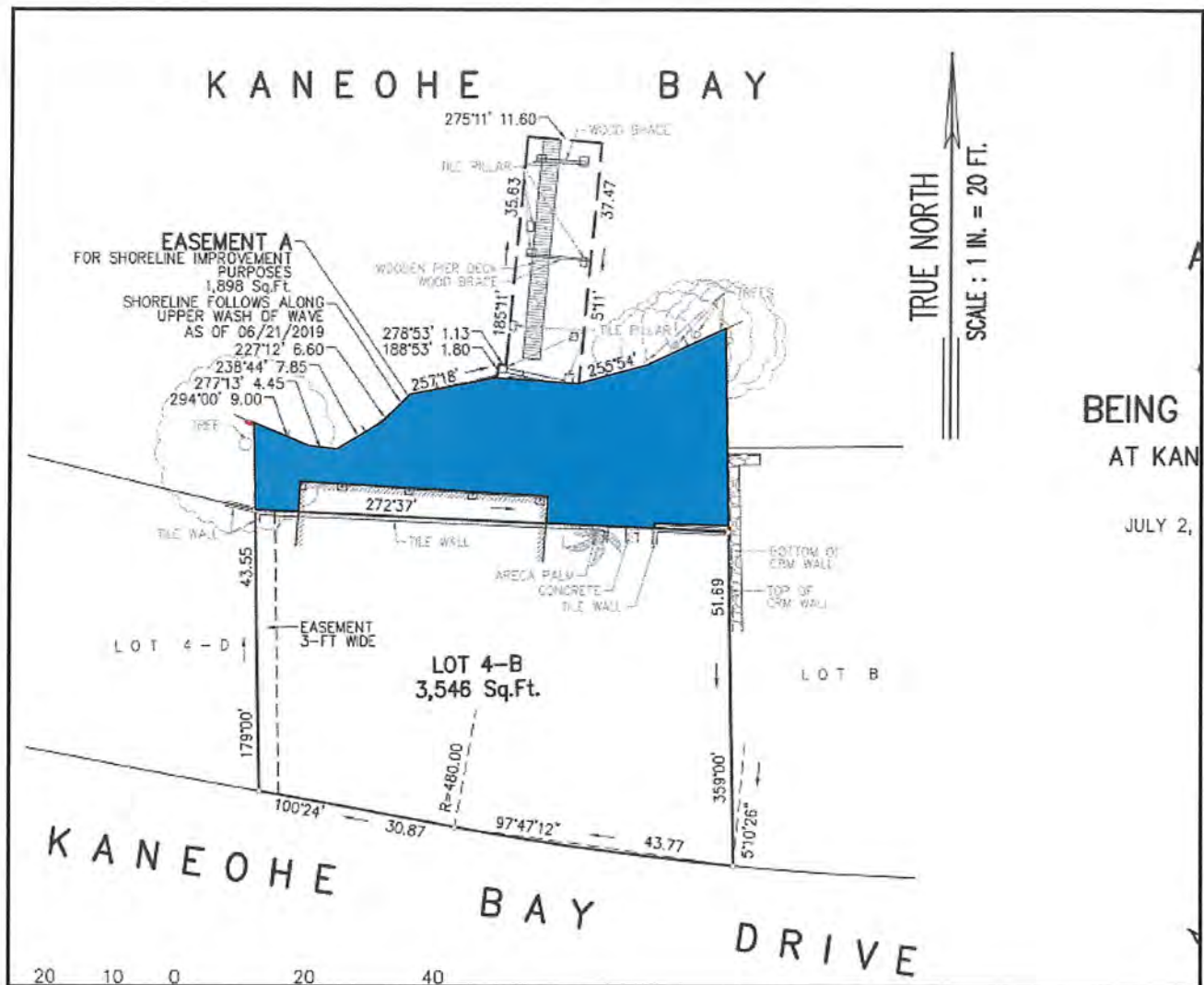


Note: The red line indicates the proposed shoreline.

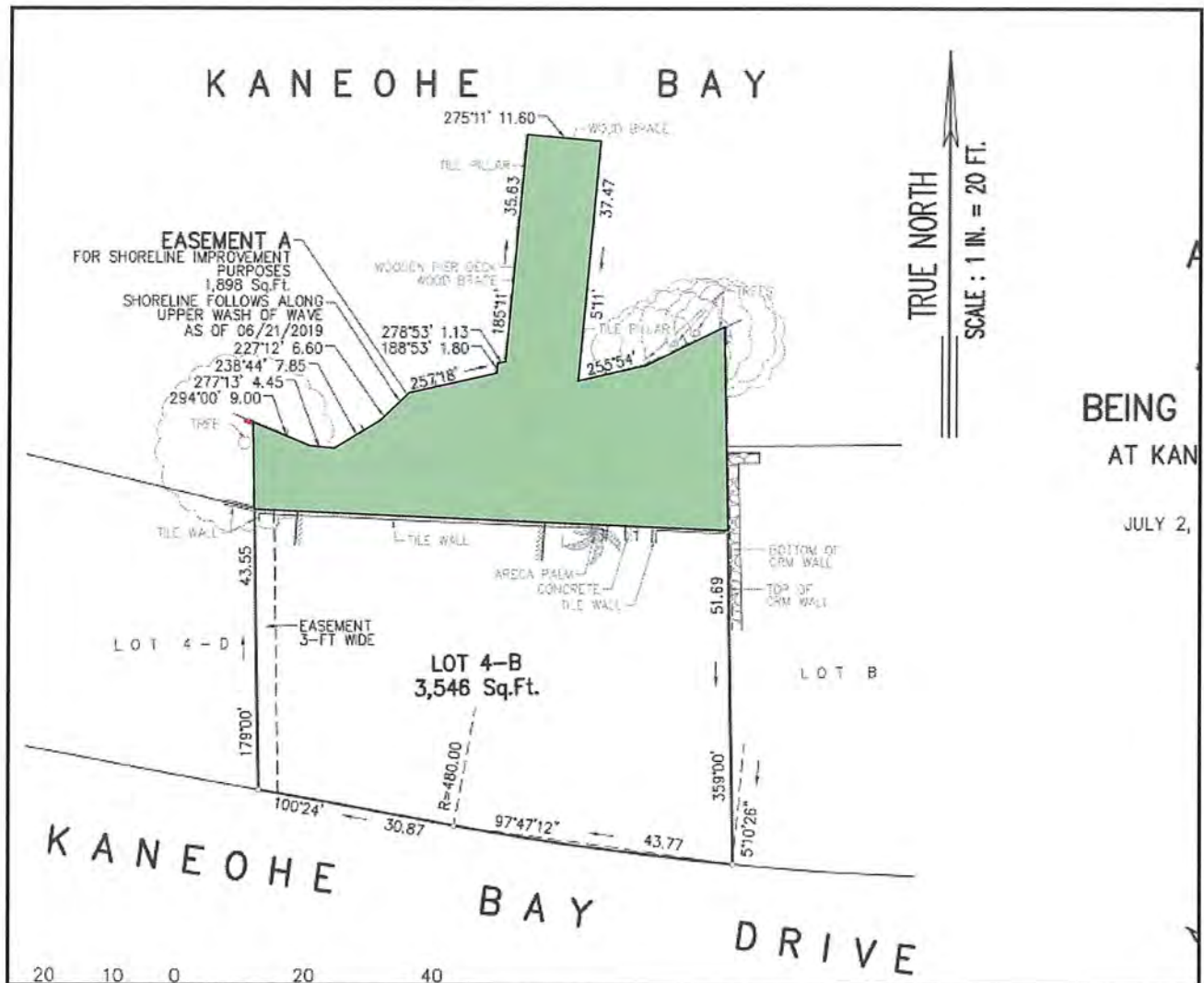


Note: The yellow shaded area indicate encroachment areas. For location purposes, only.

EXHIBIT C-2



Note: The blue area indicates fast lands requested by Applicants for landscaping purposes. For location purposes, only.



BEING
AT KAN
JULY 2,

Note: The green area indicates the total easement area.

EXHIBIT C-4



Photo looking north towards the pier.



Photo looking southwest towards the house encroachment.

EXHIBIT C-5



Photo looking west showing house encroachment. CMU wall is the private property boundary.



Photo looking east at the requested fast land area.

EXHIBIT C-6


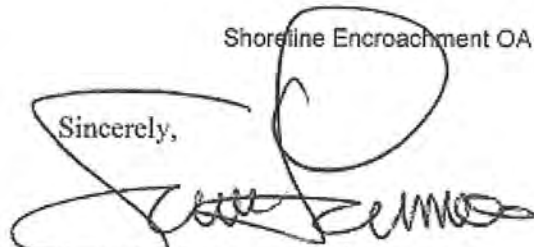
<p>DAVID Y. IGE GOVERNOR OF HAWAII</p> 	<p>RECEIVED LAND DIVISION</p> <p>2019 JUL 25 AM 10:46</p> <p>STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES POST OFFICE BOX 621 HONOLULU, HAWAII 96809</p>	<p>SUZANNE D. CASE CHAIRPERSON BOARD OF LAND AND NATURAL RESOURCES COMMISSION ON WATER RESOURCE MANAGEMENT</p> <p>ROBERT K. MASUDA FIRST DEPUTY</p> <p>M. KALEO MANUJEL DEPUTY DIRECTOR - WATER</p> <p>AQUATIC RESOURCES BOATING AND OCEAN RECREATION BUREAU OF CONVEYANCES COMMISSION ON WATER RESOURCE MANAGEMENT CONSERVATION AND COASTAL LANDS CONSERVATION AND RESOURCES ENFORCEMENT ENGINEERING FORESTRY AND WILDLIFE HISTORIC PRESERVATION KAHOOLAWE ISLAND RESERVE COMMISSION LAND STATE PARKS</p>
REF:OCCL:SS	Shoreline Encroachment OA 20-1	JUL 24 2019
<p>Philip Kai Binney 1338 Mokulua Drive Kailua, HI 96734</p>		
<p>SUBJECT: Request to Resolve State Land Encroachments at 44-605 Kaneohe Bay Drive, Kaneohe, Oahu; Seaward of Tax Map Key (1) 4-4-016:016</p>		
<p>Dear Mr. Binney,</p>		
<p>The Department of Land and Natural Resources, Office of Conservation and Coastal Lands (OCCL), is in receipt of your Shoreline Encroachment Information Sheet seeking to resolve encroachments on State Lands fronting property located at 44-605 Kaneohe Bay Drive in Kaneohe, Oahu. Your letter included a Shoreline Encroachment Information Sheet, a parcel map of the area noting the location of the subject lot, a map of the subject lot, a picture of the encroaching pier, and a copy of OCCL's letter to you regarding an inquiry on nonconforming land uses at the subject property dated April 17, 2019.</p>		
<p>You are working to resolve a shoreline encroachment consisting of a pier extending out into State Lands. The encroachment projects roughly 36.5 feet makai of the subject property and has an approximate total area of 420 square feet. Prior research done by OCCL staff shows the presence of a pier in aerial imagery dated January 30, 1959. However, the former landowner appears to have reconstructed the pier deck without authorization. To resolve this matter, an easement must be gained for the area that the pier and pilings exist within.</p>		
<p>The Board of Land and Natural Resources has established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, OCCL has established criteria to guide decision-making over specific cases. The criteria are as follows:</p>		
<ol style="list-style-type: none"> 1. Protect/preserve/enhance public shoreline access; 2. Protect/preserve/enhance public beach areas; 3. Protect adjacent properties; 4. Protect property and important facilities/structures from erosion damages; and 5. Apply a "no tolerance" policy for recent or new unauthorized shoreline structures 		
<p>In addition, OCCL developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide OCCL's recommendations on the disposition of shoreline encroachments.</p>		

EXHIBIT D



Shoreline Encroachment OA 20-1

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel D. Lemmo". The signature is written in a cursive style with a large, looping initial "S".

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

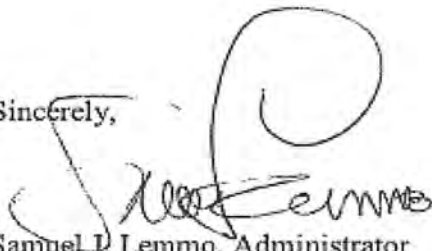
CC: Chairperson
ODLO
City & County of Honolulu
-Planning Department

 <p>DAVID Y. IGE GOVERNOR OF HAWAII</p>	 <p>RECEIVED LAND DIVISION</p> <p>2019 AUG -7 AM 10:30</p> <p>STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES</p> <p>POST OFFICE BOX 621 HONOLULU, HAWAII 96809</p>	<p>SUZANNE D. CASE CHAIRPERSON BOARD OF LAND AND NATURAL RESOURCES COMMISSION ON WATER RESOURCE MANAGEMENT</p> <p>ROBERT K. MASUDA FIRST DEPUTY</p> <p>M. KALEO MANUEL DEPUTY DIRECTOR - WATER</p> <p>AQUATIC RESOURCES BOATING AND OCEAN RECREATION BUREAU OF CONVEYANCES COMMISSION ON WATER RESOURCE MANAGEMENT CONSERVATION AND COASTAL LANDS CONSERVATION AND RESOURCES ENFORCEMENT ENGINEERING FORESTRY AND WILDLIFE HISTORIC PRESERVATION KAIHALAWE ISLAND RESERVE COMMISSION LAND STATE PARKS</p>
REF:OCCL:SS	Shoreline Encroachment OA 20-3	AUG - 6 2019
<p>Philip Kai Binney 1338 Mokulua Drive Kailua, HI 96734</p>		
<p>SUBJECT: Request to Resolve State Land Encroachments at 44-605 Kaneohe Bay Drive, Kaneohe, Oahu; Seaward of Tax Map Key (1) 4-4-016:016</p>		
<p>Dear Mr. Binney,</p>		
<p>The Department of Land and Natural Resources, Office of Conservation and Coastal Lands (OCCL), is in receipt of your Shoreline Encroachment Information Sheet seeking to resolve encroachments on State Lands at the property located at 44-605 Kaneohe Bay Drive in Kaneohe, Oahu. Your letter included a Shoreline Encroachment Information Sheet, a parcel map of the area noting the location of the subject lot, two maps of the subject lot, a letter from August 2014 referencing a Boundary Survey done for the subject property, a printout of the owner and parcel information for the lot from the City and County website, historical and aerial pictures of the lot, a copy of a 1950 building permit from the City and County, and copies of your previous correspondence with OCCL regarding encroachments on the subject property.</p>		
<p>You are working to resolve a shoreline encroachment consisting of roughly 147 square feet of a residential structure that straddles the boundary line of the subject property and encroaches onto State Lands. This issue has been previously raised with OCCL, and a request was made to OCCL for assistance in determining if the structure was nonconforming in order to comply with existing law. Staff of OCCL visited the project site on April 3 and July 24 of 2019. You provided evidence to OCCL staff that the property was recently purchased and that you did not construct either the residence or the pier on site. You are working to obtain an easement for the land between your property boundary and the shoreline, part of which contains sections of the residential structure.</p>		
<p>The Board of Land and Natural Resources has established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, OCCL has established criteria to guide decision-making over specific cases. The criteria are as follows:</p>		
<ol style="list-style-type: none"> 1. Protect/preserve/enhance public shoreline access; 2. Protect/preserve/enhance public beach areas; 3. Protect adjacent properties; 4. Protect property and important facilities/structures from erosion damages; and 5. Apply a "no tolerance" policy for recent or new unauthorized shoreline structures 		

Shoreline Encroachment OA 20-3

Upon review and careful consideration of the information gathered on this case, OCCL's evaluation criteria would support a disposition request being processed for the encroachment area. Should you have any questions regarding this correspondence, contact Salvatore Saluga of our office at (808) 587-0399.

Sincerely,



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

CC: Chairperson
ODLO
City & County of Honolulu
-Planning Department

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 769-6041
DEPT. WEB SITE: www.honolulu.gov • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

October 16, 2019

2019/ELOG-1817 (CK)

Mr. Cal Miyahara, Shoreline Disposition Specialist
State of Hawaii
Department of Land and Natural Resources
Land Division
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96804

Dear Mr. Miyahara:

SUBJECT: Request for Comments
State Grant of Term, Non-Exclusive Easement for Pier, House,
Rockwall, and Filled Land Purposes
Seaward of Tax Map Key (TMK) 4-4-016: 016 - Kaneohe
State Reference No. 190D-116

This is in response to your letter, received September 17, 2019, requesting comments regarding the above-referenced proposal, consisting of a 25-year State grant of a non-exclusive easement and a management right-of-entry permit, for disposition of existing structures and vegetation currently encroaching onto State Lands. According to your submittal, approximately 147 square feet of an existing residence extends beyond the private property line and onto State Land. The property line is roughly demarcated by an existing concrete-rubble masonry wall along the property line, which runs, in part, below a portion of the makai side of the residence. An existing pier and fast lands also occupy State Lands makai of the property boundary.

We do not have any objections to the State's proposed "Grant of Term, Non-Exclusive Easement." We do, however, wish to reiterate that the property mauka of the State property line at TMK 4-4-016: 016 (subject property) falls within the City and County of Honolulu's R-7.5 Residential District, and therefore that portion of the site is subject to the Revised Ordinances of Honolulu (ROH), Chapter 21 (Land Use Ordinance).

Exhibit E

Mr. Cal Miyahara
October 16, 2019
Page 2

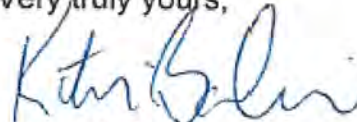
Having briefly reviewed the building permit history included with your submittal and in our records, it appears that the existing residential structure on the subject property was lawfully permitted in 1945 (main structure - Building Permit No. 48163) and 1950 (addition - Building Permit No. 84510). However, we do not have evidence that the structure was built in conformance with approved plans, as it does not comply with the five-foot back yard setback that would have been required at that time (ROH, 1942).

As the existing residence was constructed prior to the 1950 shoreline regulations, its encroachment into the shoreline setback does appear to be nonconforming in relation to Chapter 23, ROH (Shoreline Setbacks).

Finally, the property owner should be aware that the subject property is listed as Flood Zone D on the Federal Emergency Management Agency Flood Insurance Rate Map, which corresponds to areas where no floodplain mapping has occurred. Flood Zone D properties are not subject to Chapter 21A, ROH (Flood Hazard Requirements). However, it is recommended that property owners in Flood Zone D have a flood hazard assessment conducted as part of due diligence for their own properties.

Thank you for the opportunity to comment on this proposal. Should you have any questions, please contact Christi Keller, of our staff, at (808) 768-8087.

Very truly yours,


for Kathy K. Sokugawa
Acting Director

Enclosure