

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

August 28, 2020

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

PSF No.: 02OD-100

OAHU

Amend Grant of Non-Exclusive Easement No. S-5669 for Seawall Purposes, Bank of Hawaii as Trustees for the Tsugio Ueyama Revocable Living Trust dated July 10, 2001 and the Jane N Ueyama Revocable Living Trust dated July 10, 2001, and Lynn M. Wong, Grantees, Wailupe, Honolulu, Oahu, TMK (1) 3-6-003: seaward of 015.

The purpose of this amendment is to increase the easement area by 16 square feet.

Rescind Prior Actions of June 9, 2006, Item D-8 and October 12, 2007, Item D-5.

APPLICANTS:

Bank of Hawaii as Trustees for the Tsugio Ueyama Revocable Living Trust dated July 10, 2001 the Jane N Ueyama Revocable Living Trust dated 7/10/2001, and Lynn M. Wong.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located in Wailupe, Honolulu, Oahu, identified by Tax Map Key: (1) 3-6-003: seaward of 015, as shown on the attached maps labeled **Exhibits A-1** and **A-2**.

AREA:

16 square feet, more or less, as reviewed and approved 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
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Grant of Non-Exclusive Easement No. S-5669 for seawall purposes.

CONSIDERATION:

One-time payment consideration of \$1,240. See Remarks section.

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, reviewed and concurred with by the Environmental Council on March 3, 2020, 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," and Exemption Class No. 1, Part 1, Item 40 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:

None.

REMARKS:

Pursuant to its approval at the meeting of July 12, 2002, under agenda item D-9, the Board authorized the issuance of a non-exclusive, 55-year term easement for seawall purposes covering 146 square feet subject to a lump sum consideration of \$11,300.00. The easement document ("GL 5669") was signed in April 2003.

Around 2006, the Applicants expressed interest in purchasing the easement area as reclaimed (filled) lands.¹ At its meeting on June 9, 2006, Item D-8, the Board authorized the sale of

¹ For the Board's information, at its meeting on April 8, 2011, Item D-5, the Board approved staff's recommendation that selling of the fee interest of the ceded, reclaimed land was not a good policy. As such, the practice of disposing of reclaimed State lands through sales has not been an option since that time. Under the

reclaimed land, which was meant to replace the original easement, GL-5669. The consideration for the sale was determined at \$23,500 by an appraisal at a fee of \$1,900, paid by the Applicants. The Applicants also paid other fees related to the proposed sale, e.g. document, map, and publication fees etc.

Before the sale could be finalized, the Department of Accounting and General Services, Survey Division, noted that the footing and overhang of the subject seawall were also encroaching on State lands; i.e., a land disposition is required for these two newly found encroachments (see **Exhibit C-1** and **C-2**). Therefore, two dispositions dealing with the sales of the reclaimed land area (135 square feet) and reduce the area of GL-5669 to the 27 square feet area of the seawall overhang and footing were moving simultaneously. At its meeting on October 12, 2007, Item D-5, the Board authorized amending the Board action of June 9, 2006 to address the situation mentioned above.

During the documentation process around early 2008, the Department of the Attorney General requested additional information. Around the same time, it was the Land Division procedure to send every land disposition request to the Attorney General for review before the request can be placed on any Board agenda. The subject request was misplaced. Thereafter, no further actions were pursued.

Staff is reviewing all the outstanding shoreline encroachment files and became aware of the subject situation. Recently, staff contacted Mrs. Lynn DeJesus (formerly, Ms. Lynn Wong) with the intent of resolving this outstanding case. She indicated she wants to resolve all the encroachment issues at the subject location.

Upon review of the overall situation, staff recommend the Board: (1) rescind its prior actions of June 9, 2006, Item D-8, and October 12, 2007, Item D-5, as they are no longer applicable; (2) amend GL-5669 by increasing the easement area 16 square feet at an additional consideration of \$1,240,² further noting that footing and overhang are considered as part of the same seawall improvement; and (3) authorize the refund of the appraisal fee in the amount of \$1,900 and other fees associated with the sales of reclaimed land, such as, the appraisal, map and documents, and public notice, as determined by the Land Division.

The Office of Conservation and Coastal Lands (OCCL) has no objection to the proposed amendment of GL 5669 due to the additional easement area. Staff did not solicit comments from other agencies. There are no other pertinent issues or concerns. Staff does not have any objections to the request.

RECOMMENDATION: That the Board:

same 2011 submittal, the Board authorized the refund of the appraisal fee paid by the applicant for the sale of the reclaimed land.

² Original easement of 146 square feet was subject to a consideration of \$11,300, or \$77.40 per square feet. Using the same unit rate, the additional 16 square feet easement area should be equivalent to [77.40×16 square feet = \$1,238, say \$1,240]

1. Rescind prior Board approvals of June 9, 2006, Item D-8, and October 12, 2007, Item D-5;
2. Authorize the amendment of Grant of Non-Exclusive Easement No. S-5669 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 amendment of easement form, as may be amended from time to time;
 - b. Revising the easement area to 162 square feet;
 - c. Payment of additional one-time payment of consideration at \$1,240;
 - d. Review and approval by the Department of the Attorney General
 - e. Terms and conditions as prescribed by the Chairperson to best serve the interest of the State; and
3. Refunding appraisal fee of \$1,900 plus other fees paid by the Applicants related to the sale of reclaimed land mentioned above as determined by the Land Division.

Respectfully Submitted,

Cal Miyahara

Cal Miyahara
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:

Suzanne D. Case

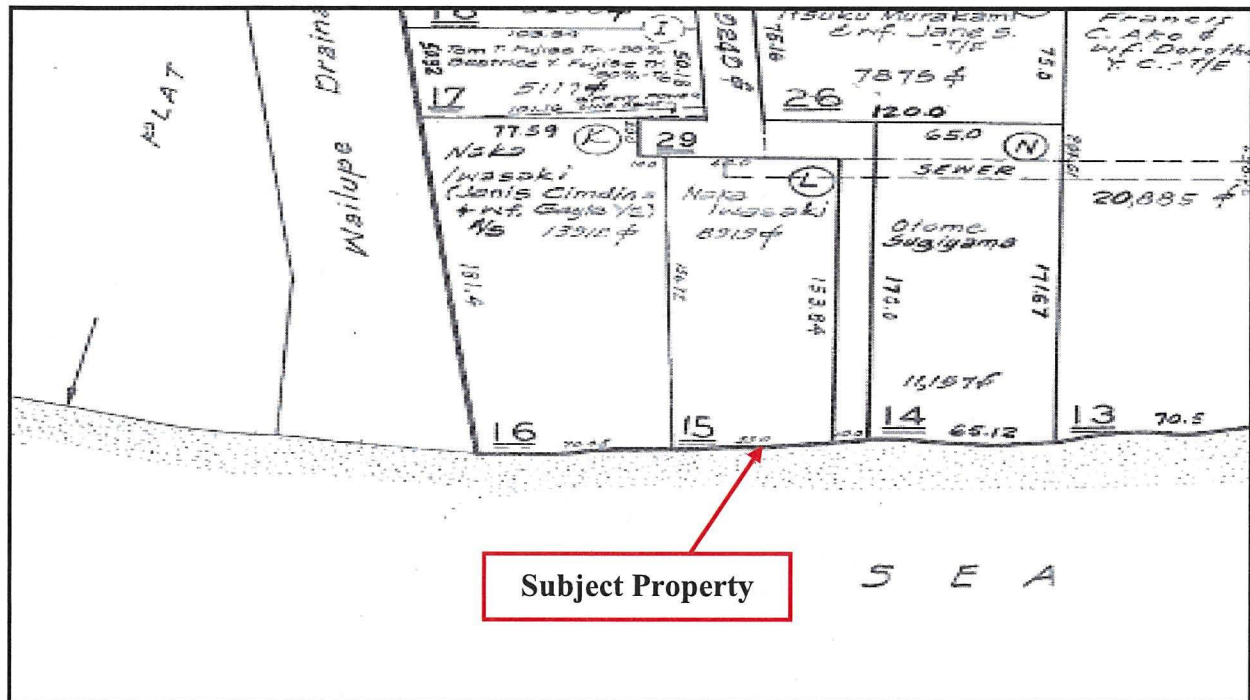
RT

Suzanne D. Case, Chairperson



Note: The property is located in the Maunaloa Bay vicinity.

EXHIBIT A-1



TMK: (1) 3-6-003:seaward of 015

EXHIBIT A-2

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1-15, HAR

Project Title: Amend Grant of Non-Exclusive Easement No. S-5669 for Seawall Purposes, Bank of Hawaii as Trustees for the Tsugio Ueyama Revocable Living Trust dated July 10, 2001 and the Jane N Ueyama Revocable Living Trust dated July 10, 2001, and Lynn M. Wong, Grantees, Wailupe, Honolulu, Oahu, TMK (1) 3-6-003: seaward of 015

Reference No.: PSF 06OD-100

Project Location: Maunalua, Honolulu, Oahu, Tax Map Key: (1) 3-6-003: Seaward of 015.

Project Description: Amend Grant Non-Exclusive Easement S-5669 by increasing the original easement area by 16 square feet; and, rescind prior actions of June 9, 2006, Item D-8 and October 12, 2007, Item D-5.

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

Exemption Class No.: In accordance with Section 11-200.1-15, Hawaii Administrative Rule, and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated March 3, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 40 that states "Creation or termination of easement, covenants, or other rights in structures or land".

The Applicants 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 to amend a 55-year term easement for an existing, permanent shoreline structure (seawall and reclaimed land) by adding the seawall's overhang and footing. The seawall and reclaimed land were in existence at the location for 50+ years. Therefore, no successive actions will occur in the same location. As such, staff believes that there would be no

EXHIBIT B

significant cumulative impact.

Action May Have
Significant Impact on
Particularly Sensitive
Environment?

No, the requested area is a portion of shoreline State land that 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 55-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.

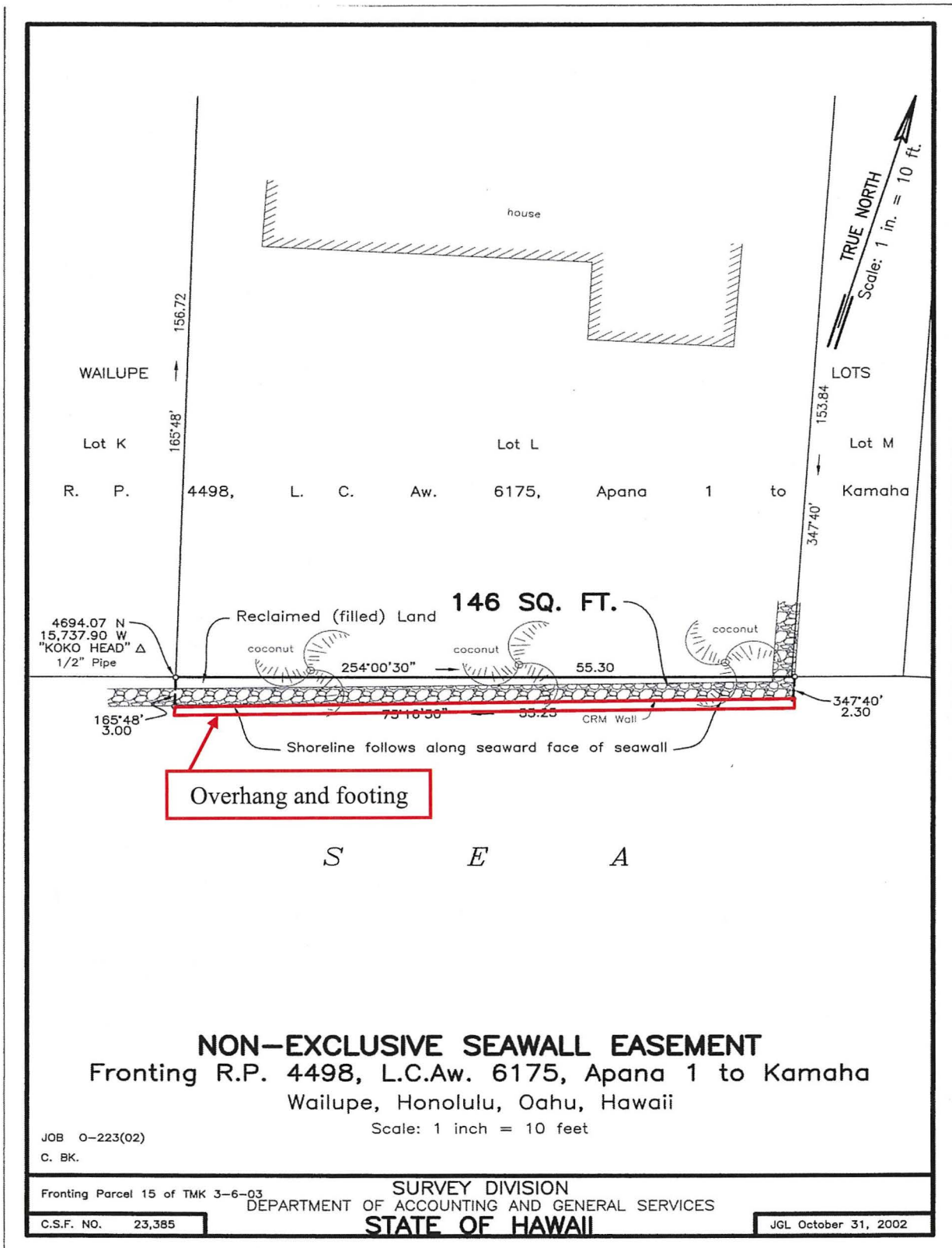


Exhibit C-1



Note: Photo of seawall looking west. Footing can be seen below the water line. The overhang is located at the top of the seawall.