

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

July 9, 2021

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

PSF No.: 11OD-172

OAHU

After-the-Fact Consent to Assignment of Grant of Non-Exclusive Easement No. S-5343 for Revetment Purposes from MARTIN A YESTER, aka Martin A. Yester to MARTIN A YESTER, TRUSTEE of the Martin A. Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated; After-the-Fact Consent to Assignment of Partial Interest in Grant of Non-Exclusive Easement No. S-5343 for Revetment Purposes from MARTIN A YESTER, TRUSTEE of the Martin A. Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated, to Craig Yester and David Yester, as to an undivided 0.62% interest; Pupukea, Koolauloa, Oahu, TMK: (1) 5-9-001:038 por.

Amendment of Grant of Non-Exclusive Easement No. S-5343 for Revetment Purposes, CRAIG YESTER, SUCCESSOR TRUSTEE, of the Martin A. Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated; Pupukea, Koolauloa, Oahu, TMK: (1) 5-9-001:038 por.

The purposes of the amendment are to increase the easement area by an additional 48 square feet from 5,141 to 5,189 square feet and to allow the easement to “run with land”, subject to the limited term of the easement, so that Board consent will not be required for future assignments of the easement.

APPLICANTS:

MARTIN A YESTER, TRUSTEE of the Martin A. Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated (99.38%), Craig Yester and David Yester as tenants in common in equal shares an undivided 0.62% interest, and CRAIG YESTER, SUCCESSOR TRUSTEE, of the Martin A. Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located in Pupukea, Koolauloa, Oahu, identified by Tax Map Key: (1) 5-9-001:038 por., as shown on the attached maps labeled **Exhibits A-1** and **A-2**.

AREA:

Existing Easement Area: 5,141 square feet, more or less.
Additional Easement Area: 48 square feet, more or less, subject to the review and approval by the Department of Accounting and General Services, Survey Division.
Total Easement Area: 5,189 square feet, more or less.

ZONING:

State Land Use District: Urban
City & County of Honolulu LUO: P-2

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:

Encumbered by Governor Executive Order No. 2598 to the City and County of Honolulu for park and related purposes.

CHARACTER OF USE:

Revetment purposes.

CONSIDERATION:

One-time fair market rent payment of \$2,229.65, based on 48 square feet of additional encroaching area. 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 November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Part 1, Item 39 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.

HISTORY:

Pursuant to a Consent Decree and Order in Puamalu Beach Homeowners' Association, et al. v. William Paty, in his official capacity, et al., Civil No. 92-00663 ACK, easement GL-5343 was issued to Martin A. Yester in October 1992. The settlement agreement was recorded in the Bureau of Conveyance as document number 93-174960, of which pages 1-10, 24, and 25 are relating to subject easement. The court ordered the easement to be a 65-year term, non-exclusive easement, beginning on October 16, 1992 and expires on October 15, 2057, for the existing revetment. The order also stipulated that the one-time rent payment for the easement area be calculated by multiplying the total square feet by \$6.00. The consideration paid by Martin Yester was calculated at \$30,864.00 for an easement area of 5,141 square feet.

GL 5343 prohibits any assignments without prior written consent from the Board. Pursuant to the warranty deed, as recorded in the Bureau of Conveyance as document number 2007-080206, Martin A Yester conveyed both the abutting property and the subject easement to the Martin A. Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated ("Trust"). This conveyance was not approved by the Board.

Subsequently, by another warranty deed recorded in the Bureau of Conveyance as document number 2008-094595, the Trust conveyed to Craig Yester and David Yester, as tenants in common over an undivided 0.62% interest in and to all of the abutting private property and the subject easement. This conveyance was also not approved by the Board.

For housekeeping purposes, staff recommends the Board give its consent to the above-mentioned two assignments of the subject easement.

Martin A. Yester passed away on October 26, 2008. His son, Craig Yester, thereafter became the successor trustee under the trust.

REMARKS:

A subsequent shoreline survey at the subject property identified two small sections of a revetment that was encroaching on State lands beyond the property boundary (see **Exhibit C**). The Applicants expressed a desire to move forward to amend the easement to include additional portions of the encroaching areas. The two additional encroaching areas are 17 (Easement "A") and 31 (Easement "B") square feet, for an approximate total area of 48

square feet.

Pursuant to Applicants' desire to resolve the additional encroaching area, staff recommends the Board authorize amending GL-5343 to include the additional 48 square feet of encroaching area.

Staff believes the 2 additional encroaching areas were in existence at the time of the original 1992 easement but may have been inadvertently omitted during the surveying process. Staff determined the value amount of \$2,229.65 based on the 1992 tax assessed value. See **Exhibit D** for the computation of the one-time payment for the easement that expires on October 15, 2057.

In addition to the requested amendment due to the latest encroachment area, staff also recommends the Board authorize another amendment of the subject easement by allowing the easement to inure to the benefit of the abutting property, further identified as TMK (1) 5-9-020:065 which is a standard arrangement for contemporary shoreline encroachment easement.

The Office of Conservation and Coastal Lands commented (via email) that "as long as its small and does not extend the easement term in time". The Division of Aquatic Resources, and the City and County Facility Maintenance Department had no objections to the proposed amendment. The Department of Parks and Recreation had no comments. The Board of Water Supply had no objections and no comments. The Historic Preservation Division, Department of Planning and Permitting, and the Office of Hawaiian Affairs did not respond.

There are no other pertinent issues or concerns. Staff does not have any objections to the request.

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. Consent after the fact to the assignment of Grant of Easement No. S-5343 (i) from MARTIN A YESTER, aka Martin A. Yester to MARTIN A YESTER, TRUSTEE of the Martin A. Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated; and (ii) from MARTIN A YESTER, TRUSTEE of the Martin A. Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated, to Craig Yester and David Yester, as to an undivided 0.62% interest;
 - a. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;

- b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the amendment of Grant of Non-Exclusive Easement No. S-5343 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. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 5-9-020:065, 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. Revising the easement area to 5,189 square feet;
 - d. Payment of additional one-time payment of consideration at \$2,229.65;
 - e. Review and approval by the Department of the Attorney General; and
 - f. Terms and conditions as prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,

Cal Miyahara

Cal Miyahara
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:

Suzanne D. Case

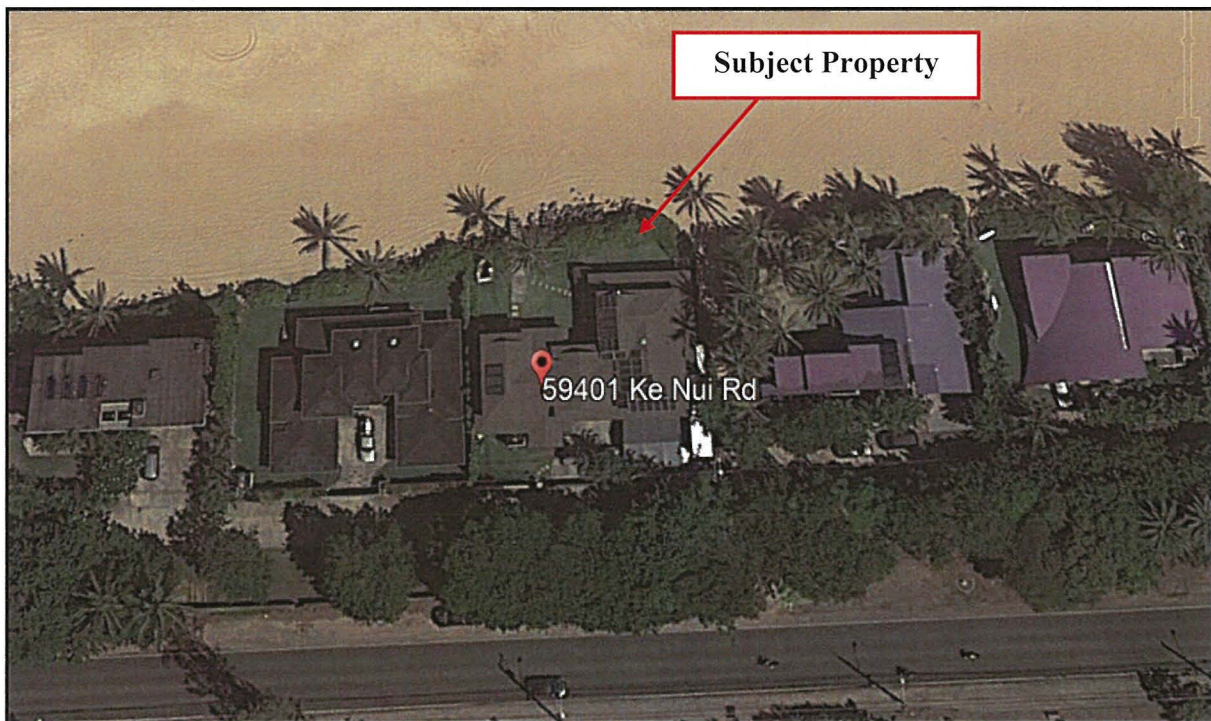
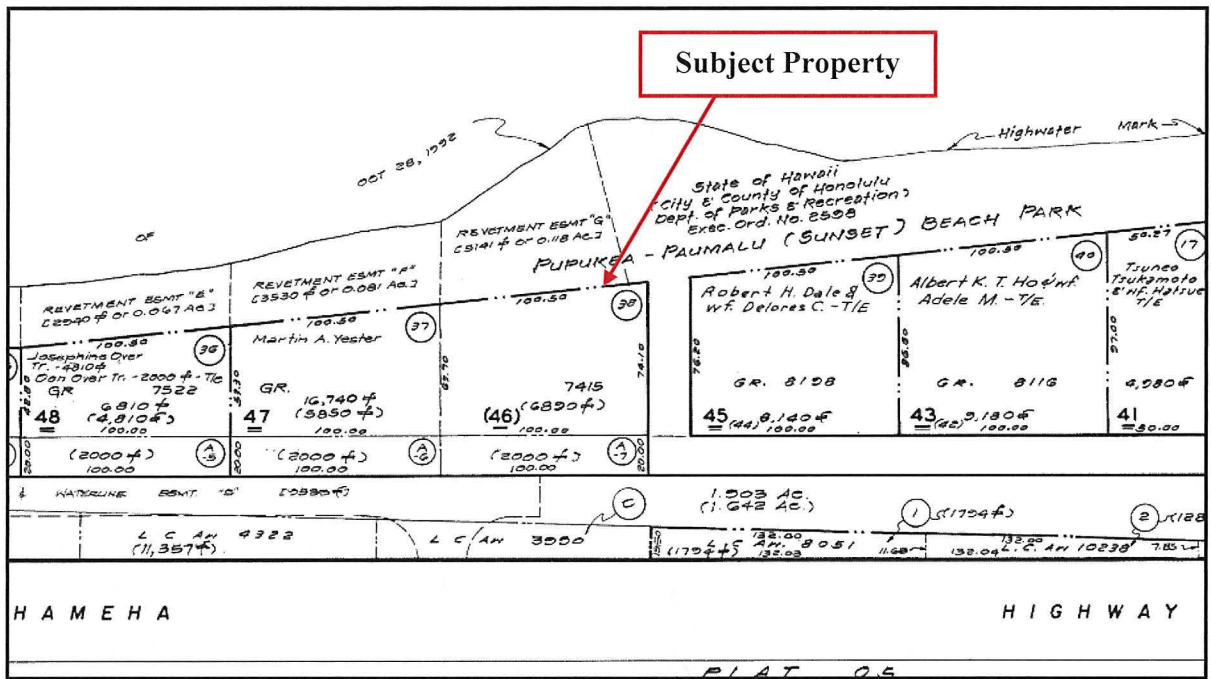
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Suzanne D. Case, Chairperson



Note: The property is located in the Sunset Beach vicinity.

EXHIBIT A-1



TMK: (1) 5-9-020:seaward of 065

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: After-the-Fact Consent to Assignment of Grant of Non-Exclusive Easement No. S-5343 for Revetment Purposes from MARTIN A YESTER, aka Martin A. Yester to MARTIN A YESTER, TRUSTEE of the Martin A. Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated; After-the-Fact Consent to Assignment of Partial Interest in Grant of Non-Exclusive Easement No. S-5343 for Revetment Purposes from MARTIN A YESTER, TRUSTEE of the Martin A. Yester Revocable Living Trust under that certain unrecorded Trust Agreement dated April 23, 1992, as amended and restated, to Craig Yester and David Yester, as to an undivided 0.62% interest; Pupukea, Koolauloa, Oahu, TMK: (1) 5-9-001:038 por.

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Reference No.: PSF 11OD-172

Project Location: Pupukea, Koolauloa, Oahu, Tax Map Key: (1) 5-9-0201:038 por.

Project Description: Amend Grant Non-Exclusive Easement S-5343 by increasing the original easement area by an additional 48 square feet, and authorizing after-the-fact assignments.

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

Exemption Class No.: In accordance with Section 11-200.1-16, 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

EXHIBIT B

Exemption Class No. 1, Item 39 that states "Creation or termination of easement, covenants, or other rights in structures or land".

The Applicants are 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 65-year term easement for an existing, permanent shoreline structure (revetment) by adding additional existing encroaching areas. There is no intent to alter the existing structure, as such, no successive actions will occur in the same location. Therefore, staff believes that there would be no significant cumulative impact.

Action May Have
Significant Impact on
Particularly Sensitive
Environment?

No, the requested area is a portion of 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 long-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 find 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.

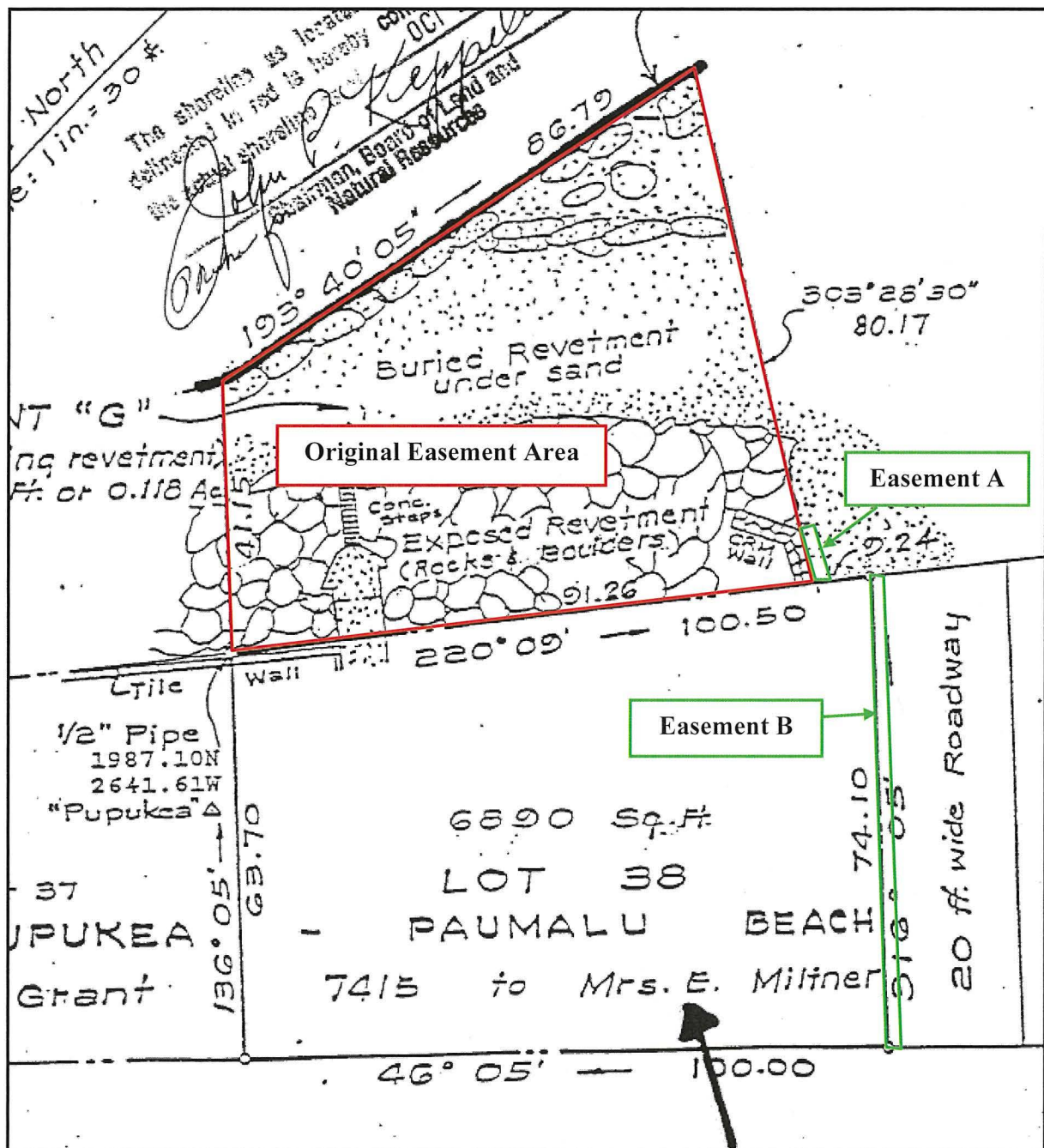
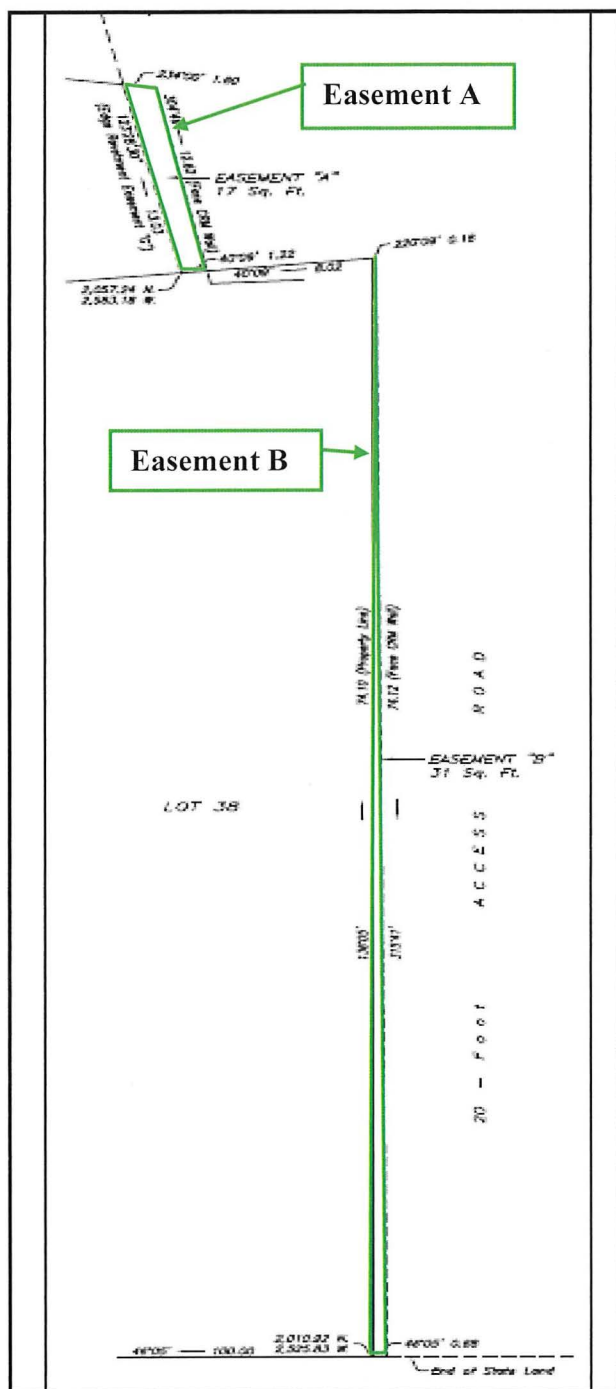


Exhibit C



Note: Survey of the 2 additional encroaching areas (enlarged). Easement "A" area is 17 sq. ft. Easement "B" area is 31 sq. ft. Total easement area is 48 sq. ft.



Photo of Easement “A” looking south west.



Photo of Easement “B” looking north west.



 <p>DAVID Y. IGE GOVERNOR OF HAWAII</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 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 KAHOOLAWE ISLAND RESERVE COMMISSION LAND STATE PARKS</p>
<p>TO: Suzanne D. Case, Chairperson</p> <p>Through: Russell Y. Tsuji, Administrator</p> <p>From: Land Division, Appraisal Section</p> <p>Date: June 10, 2021</p> <p>Subject: Yester Non-Exclusive Easement</p>		
<hr/>		
<p>An Appraisal Report was prepared for the property below and is summarized as follows:</p>		
<p>Reference: PSF No. 11OD-172</p> <p>Applicant: Craig Yester, as Successor Trustee</p> <p>TMK: (1) 5-9-020:065</p> <p>Term: 65-year, non-exclusive easement for revetment purposes</p> <p>Existing Area of Easement: 5,141 square feet</p> <p>Additional Easement Area: 48 square feet</p> <p>Effective Date: October 16, 1992</p> <p>Market Value: \$2,229.65 one-time payment</p>		
<p>The undersigned finds that the Appraisal Report was completed in accordance with the appraisal assignment.</p>		
<p><i>Russell Tsuji</i></p> <p>_____ [for] Suzanne D. Case, Chairperson</p>		<p><u>06/10/2021</u> Date</p>

Exhibit D

	1992
Assessed Land Value (\$)	683800
Land Area (sf)	8890
Unit Rate Land Value (\$/sf)	76.917885
Encroachment Area (sf)	48
Encroachment Land Value (\$)	3692.0585
Annual Rent @ 4 to 8%	0.04
Recommended Annual Value	147.68234
Present Value (65 years @7%)	(\$2,229.65)