

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

August 26, 2022

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

PSF No.: 22OD-045

OAHU

Grant of Term, Non-Exclusive Easement, Immediate Right-of-Entry and Revocable Permit to James Michael Elhoff, Trustee of the Michael Elhoff Living Trust dated November 30, 2017 for Boat Ramp and Concrete Wall Purposes at Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-047: seaward of 051.

APPLICANTS:

James Michael Elhoff, Trustee of the Michael Elhoff Living Trust dated November 30, 2017. ("Applicant")

LEGAL REFERENCE:

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

LOCATION:

Portion of Government submerged land located in Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-047: seaward of 051, as shown on **Exhibits A-1 and A-2**.

AREA:

319 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  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Unencumbered with encroachments.

TERM, NON-EXCLUSIVE EASEMENT:CHARACTER OF USE:

Right, privilege and authority to use, repair, and maintain existing boat ramp and concrete wall 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 value, subject to review and approval by the Chairperson.

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.

MONTHLY RENTAL FOR RIGHT-OF-ENTRY AND REVOCABLE PERMIT:

Monthly rental amount \$65.00 for right-of-entry and revocable permit has been calculated by staff and has been reviewed and approved by the Chairperson. (**Exhibit B<sup>1</sup>**)

REMOVAL BOND:

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<sup>1</sup> Exhibit B uses 4% as rate of return, which is typical for residential property. For commercial uses, the rate could be up to 8%.

A removal bond is required, in an amount to be determined by Land Division, in consultation with the Engineering Division, and further subject to the approval by the Chairperson.

#### CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules ("HAR") § 11-200.1-15 and -16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, Part 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," Item 39, that states the "creation or termination of easement, covenants, or other rights in structure or land". The subject request will probably have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment. (**Exhibit C**)

#### DCCA VERIFICATION:

Individual owners, not applicable.

#### 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 and the approval of the Governor.

#### REMARKS:

After the Applicant purchased the abutting private property in 2021, he planned to construct some improvements on the property. While he was working on the shoreline certification in preparation for any upcoming construction activities on the property, the subject encroachments [boat ramp and concrete wall] were noted. Applicant decided to resolve the issue by providing an updated map and other relevant documents to the Office of Conservation and Coastal Lands ("OCCL") for review. By its letter dated March 3, 2022 (**Exhibit D**), OCCL supports a disposition being processed for the existing encroachment.

319 square feet was noted in the map provided by the applicant as the encroachment area to the Office of Conservation and Coastal Lands for review. The actual encroachment area should include the improvements makai of a shoreline, not the recorded boundary as noted on the applicant's map as marked on **Exhibit E**. Upon approval of today's request, staff will work with the Applicant and State Survey Division to finalize the map of the encroachment area.

The Board of Water Supply had no objections/comments and concurs to the proposed



environmental assessment exemption. Department of Planning and Permitting has no objections to the State's granting of easement and proposed exemption. Other government agencies solicited, including the Department of Planning and Permitting, Department of Parks and Recreation, Department of Facility Maintenance, and the Office of Hawaiian Affairs, have not responded to the request for comments as of this writing.

In anticipation of the time to complete the entire easement process, including survey, appraisal, and Legislative and Governor's approvals, Staff recommends the Board authorize the issuance of an immediate right-of-entry which will be followed by a revocable permit scheduled to last until the consummation of the requested easement. In the event the requested easement does not receive approval from the Legislature or the Governor as required by the statutes, the Applicant/Permittee will be required to remove the subject encroachment pursuant to the provisions in the revocable permit and the revocable permit will be terminated upon the completion of the removal of the encroachment to the satisfaction of the Department. In addition, the Department can call on the removal bond for the removal of the subject encroachment if the Applicant/Permittee fails to carry out this obligation. Upon approval of today's request, staff will work with the Department of the Attorney General on drafting conditions to protect the interest of the State in the above-mentioned situation. Before the consummation of the interim revocable permit, a management right-of-entry for the same purpose is recommended due to the length of time needed to process the revocable permit.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, a fine of \$500 is to be imposed if the encroachment is over 100 square feet. Since the encroachment area is 319 square feet (more or less), staff recommends that a fine of \$500 be imposed by the Board.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

There are no other pertinent issues or concerns and staff has no objection 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 11-200.1-15 and -16, 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 fine of \$500 for unauthorized encroachment pursuant to the above-mentioned approval adopted by the Board at its meeting of June 28, 2002, under agenda item D-17.
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) 4-5-047:051 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.

4. Authorize the issuance of a right-of-entry permit to James Michael Elhoff, Trustee of the Michael Elhoff Living Trust dated November 30, 2017, covering the subject area for encroachment 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 right-of-entry permit form, as may be amended from time to time;
  - B. Posting of removal bond during the effective period of the revocable permit;
  - C. Remove the subject encroachment, if required, within the period stipulated by the Chairperson;
  - D. The right-of-entry shall commence on the August 26, 2022 and be for a term of one year or until the issuance of the revocable permit described in recommendation 5 below, whichever is sooner; provided that the Chairperson may extend the right-of-entry for an additional one year periods for good cause shown;
  - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Authorize the issuance of a revocable permit to James Michael Elhoff, Trustee of the Michael Elhoff Living Trust dated November 30, 2017, covering the subject area for encroachment 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 revocable permit form, as may be amended from time to time;
  - B. Posting of removal bond during the effective period of the revocable permit;
  - C. Remove the subject encroachment, if required, within the period stipulated by the Chairperson;
  - D. Review and approval by the Department of the Attorney General; and
  - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
6. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to James Michael Elhoff,

Trustee of the Michael Elhoff Living Trust dated November 30, 2017, covering the subject area for encroachment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:


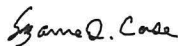
- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-5-047:051, provided however: (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<sup>2</sup> and concurrent 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.

Respectfully Submitted,



Darlene Bryant-Takamatsu  
Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Suzanne D. Case, Chairperson

\_\_\_\_\_  
2 Staff will prepare the request seeking Governor's approval upon the adoption of a resolution by the Legislature.





**TMK (1) 4-5-047: seaward of 051**

**EXHIBIT A-1**





**TMK: (1) 4-5-047: seaward of 051**

**EXHIBIT A-2**





**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
DEPUTY DIRECTOR - WATER

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

TO: Suzanne D. Case, Chairperson

Through: Russell Y. Tsuji, Administrator <sup>RT</sup>

From: Land Division, Appraisal Section

Date: August 4, 2022

Subject: Elhoff Revocable Permit

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A shoreline revocable permit valuation was prepared for the property below and is summarized as follows:

Reference: PSF No. 22OD-045

Applicant: James Michael Elhoff, Trustee of the Michael Elhoff Living Trust  
dated November 30, 2017

TMK: (1) 4-5-047:Seaward of 051

Area: 319 square feet

Effective Date: Upon Board Approval

Recommended Value: **\$65/month**

The undersigned finds that the valuation was completed in accordance with the assignment.

*Suzanne D. Case*

Suzanne D. Case, Chairperson <sup>RT</sup>

Aug 4, 2022

Date

**EXHIBIT B**

**EXEMPTION NOTIFICATION**

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

Project Title: Grant of Term, Non-Exclusive Easement, Immediate Right-of-Entry and Revocable Permit to James Michael Elhoff, Trustee of the Michael Elhoff Living Trust dated November 30, 2017.

Reference No.: PSF 22OD-045

Project Location: Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-047: seaward of 051

Project Description: Issuance of term, non-exclusive easement for boat ramp and wall purposes.

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

Exemption Class No.: In accordance with HAR § 11-200.1-15 and -16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, Part 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," Item 39, that states the "creation or termination of easement, covenants, or other rights in structure or land".

The Applicant is not planning on conducting any major change to the existing topographical condition of the subject location. 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 structure as early as 1967. No successive actions are planned by the applicant in the same location. As such, staff believes that there would be no significant cumulative impact.

**EXHIBIT C**



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 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.



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**Office of Conservation and Coastal Lands**  
 POST OFFICE BOX 621  
 HONOLULU, HAWAII 96809

**SUZANNE D. CASE**  
 CHAIRPERSON  
 BOARD OF LAND AND NATURAL RESOURCES  
 COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
 FIRST DEPUTY

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 FORESTRY AND WILDLIFE  
 HISTORIC PRESERVATION  
 KAHOOILAWA ISLAND RESERVE COMMISSION  
 LAND  
 STATE PARKS

REF:OCCL:SS

Shoreline Encroachment OA 22-2

Jaime Alimboyoguen, LLC  
 c/o Jaime Alimboyoguen  
 92-324 Kewai Place  
 Kapolei, HI 96707

MAR - 9 2022

SUBJECT: Request to Resolve State Land Encroachments at [REDACTED]  
 [REDACTED] Kaneohe, Oahu; Seaward of Tax Map Key (1) 4-5-047:051

Dear Mr. Alimboyoguen,

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL), is in receipt of your letter on behalf of the landowner, the Michael Elhoff Trust, containing a Shoreline Encroachment Information Sheet seeking to resolve an encroachment on State Lands fronting the subject property located at [REDACTED] Kaneohe, Oahu. Your letter included a Shoreline Encroachment Information Sheet, three copies of a survey map showing the subject lot, an aerial image of the property area from 1967, and multiple pictures of the encroachment.

You are working to resolve a shoreline encroachment consisting of three separate objects: (1) a concrete boat ramp with an encroaching area of approximately 147 square feet; (2) a submerged concrete wall with an encroaching area of approximately 169 square feet; and (3) a portion of a wall that juts into the Conservation District with a total encroaching area of approximately three (3) square feet. According to the information provided, the subject encroaching areas total approximately 319 square feet.

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:

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 "no tolerance" policy for recent or new unauthorized shoreline structures

**EXHIBIT D**



Elhoff

Shoreline Encroachment OA 22-2

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.

Surrounding Land Uses: The surrounding area is heavily residential, with Kaneohe Bay itself used for ocean activities such as swimming, fishing, and boating. However, the land directly makai of the encroachment does not have walkable access.

Beach Resources and Environment: The encroachments are part of a seawall abutting Kaneohe Bay. It is noted that the area fronting the subject property, as well as the area fronting the adjacent properties to both the north and the south of the subject property, do not have walkable lateral access to the public as there is no sandy shoreline.

Public Access: Public shoreline access is not available in the subject property's vicinity. A shoreline access point is located about 100 yards southwest of the subject property. There is no longshore access makai of the encroachment as there is no sandy beach and the land is consistently submerged.

*Effect of Removing the Encroachment on:*

Beach Resources: There is no sandy beach in the immediate area. Adjacent properties also have seawalls fronting their shoreline boundaries, so removal of the encroachment would likely have a negative effect.

Public Access: Public shoreline access is not available in the subject property's immediate vicinity. A shoreline access point is located about 100 yards southwest of the subject property. There is no longshore access makai of the encroachment as there is no sandy beach and the land is consistently submerged. Removal of the encroachment would not improve public access in the area.

Adjacent Properties: Removing the encroachments may compromise the structural integrity of the seawall that fronts the shoreline sides of both adjacent properties.

It has been the general policy and practice of the OCCL to support easement requests that have no discernible effect on beach and recreational resources, and do not act as a detriment to public access. In cases where the encroachment serves as a primary erosion control for potentially threatened structures, impacts to the adjacent and upland developments must also be considered.

The subject encroachment consists of three separate objects: (1) a concrete boat ramp with an encroaching area of approximately 147 square feet; (2) a submerged concrete wall with an encroaching area of approximately 169 square feet; and (3) a portion of a wall that juts into the Conservation District with a total encroaching area of approximately three (3) square feet, for a total encroachment area of approximately 319 square feet.

These encroachments are negligible, having a small footprint in the subject area, and exist as a part of the existing seawall that has been in this location since at least 1967,

Elhoff

Shoreline Encroachment OA 22-2

the date of the aerial image provided to our office. The subject encroachments do not have detrimental effects on public access nor beach and recreational resources in the area, and the encroachments are attached to the seawall that serves as primary erosion control for the subject property as well as neighboring properties that are also armored.

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. However, this support does not take into account any intended expansions or improvements on the subject encroachments as those would need to be separately approved by our office. Should you have any questions regarding this correspondence, contact the Office of Conservation and Coastal Lands at 808-587-0377.

Sincerely,

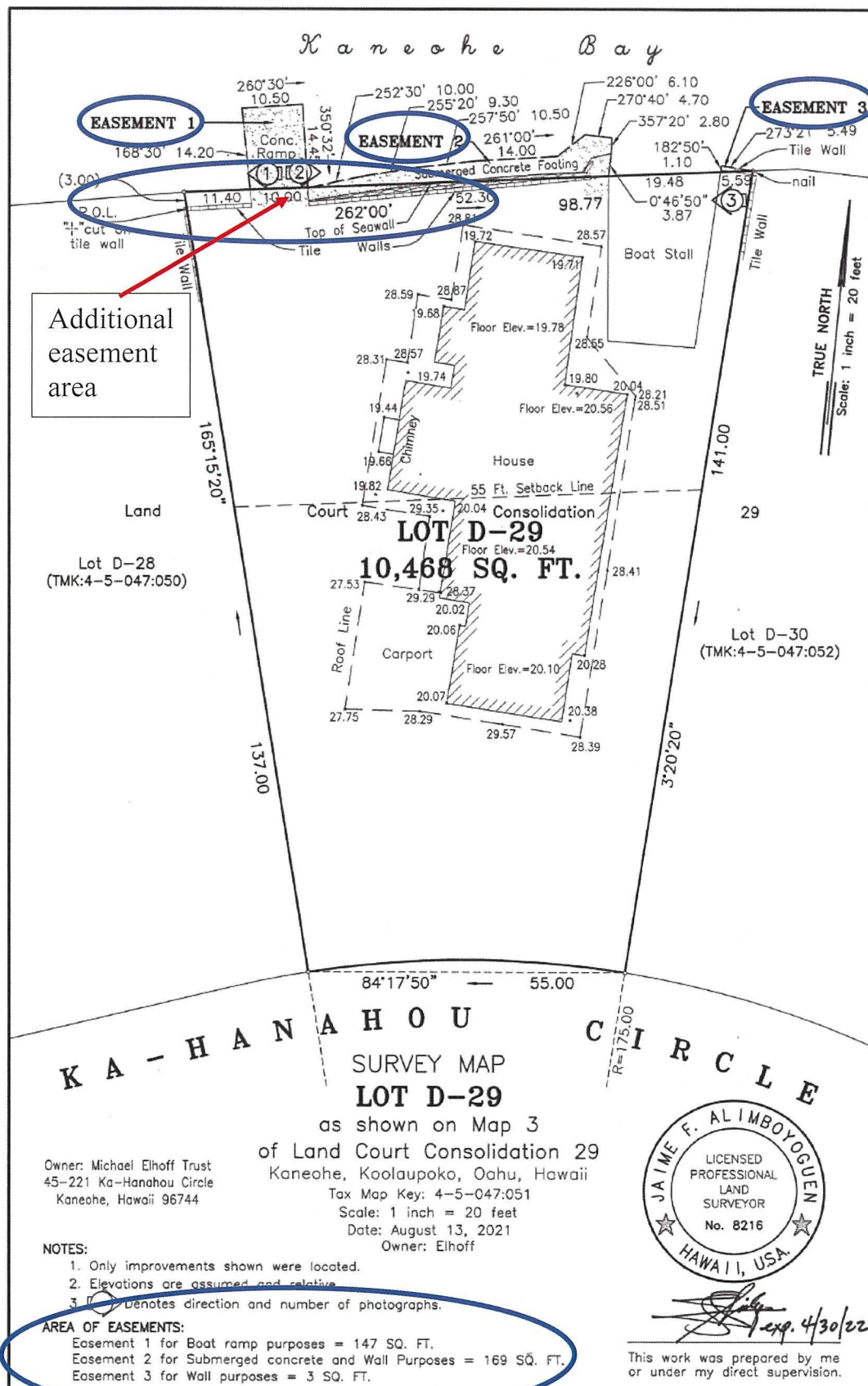
*S Michael Cain*

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Michael Cain, Acting Administrator  
Office of Conservation and Coastal Lands

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



**EXHIBIT E**