

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

October 14, 2022

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

Ref No. 22OD-051

Oahu

Amend Grant of Non-Exclusive Easement under Land Office Deed No. S-27764 to Stephen F. and Charlene T. Williams for Fencing Purposes, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-005:089 portion.

The purpose of amending the document is to 1) allow the easement to "Run with the Land," and be assignable without the written consent of the Board of Land and Natural Resources' and 2) update the minimum liability insurance to \$1,000,000 for each occurrence and \$2,000,000 aggregate

APPLICANT:

Stephen F. Williams and Charlene T. Williams, husband and wife, as tenants by the entirety.

LEGAL REFERENCE:

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

LOCATION:

Portion of a State-owned Beach Right-of-Way situated at Waimanalo, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-1-005:089 (Portion), as shown on the attached map labeled **Exhibit A1, A2 and A3**.

AREA:

77 square feet, more or less.

ZONING:

State Land Use District:	Urban
City and County of Honolulu CZO:	R-10 (Residential)

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 Grant of Non-Exclusive Easement ("LOD 27764") to Stephen F. Williams and Charlene T. Williams for Fencing Purposes; and

Encumbered by Governor's Executive Order No. 4089 to the City and County of Honolulu for addition to Waimanalo Beach Park.

CONSIDERATION:

One-time payment of \$260.00 was paid in full prior to execution of LOD 27764.

TERM:

Perpetual.

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". The subject request is a de minimis action that will probably have minimal or no significant effect on the environmental and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR, as a de minimis action.

DCCA VERIFICATION:

Individual owners, not applicable.

APPLICANT REQUIREMENTS:

None.

BACKGROUND:

The subject perpetual easement under Land Office Deed No. S-27764 (LOD 27764) was issued to Stephen F. and Charlene T. Williams, husband and wife, on August 21, 1988 for purposes of maintaining a fence that encroached onto a strip of public land that serves as beach access corridor. The easement is 77 feet long and 1 foot wide for a total area of 77 square feet.¹

Recently, Mr. Williams notified staff that due both his and his wife's age, they are planning on selling their property abutting the beach right-of-way and are requesting amendment of the easement condition to allow the easement to "run with the land". Current language in LOD 27764 requires prior written consent from the Board in the event of any change of the Grantee. The requested amendment is consistent with the current template for grant of easements.

Further, the current insurance coverage requirement for similar easements is the amount of at least \$1 million per occurrence and \$2 million aggregate. LOD 27764 required an amount acceptable to the grantor and shall cover the entire easement, including all grounds and all roadways or sidewalks on or adjacent to the easement in the use or control of the Grantees. Staff recommends the Board authorize the amendment of the easement by updating the insurance coverage provisions with the current requirements.

The grantee is compliant with the terms and conditions of LOD 27764 and 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 recommends the Board approve the request.

RECOMMENDATION: That the Board amend the subject Grant of Non-Exclusive Easement as follows:

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 as a de minimis action.
2. Replace paragraph 6 of the easement with the following: "The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-1-005:069, provided however: (1) it is

¹ Under current departmental practice, staff would have recommended a term easement instead of a perpetual easement for a fence encroachment such as this. Review of the Board's action on May 13, 1988, agenda item F-8 did not provide any explanation for issuance of a perpetual easement instead of a term easement.

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."

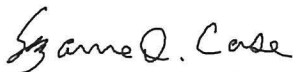
3. Update paragraph 12 of the easement with the current insurance provision, including the requirement of coverage in an amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregate, and naming the State of Hawaii as additional insured. The insurance shall cover the entire easement, including all grounds and all roadways or sidewalks on or adjacent to the easement in the use or control of the Grantees.
4. Review and approval by the Department of the Attorney General; and
5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

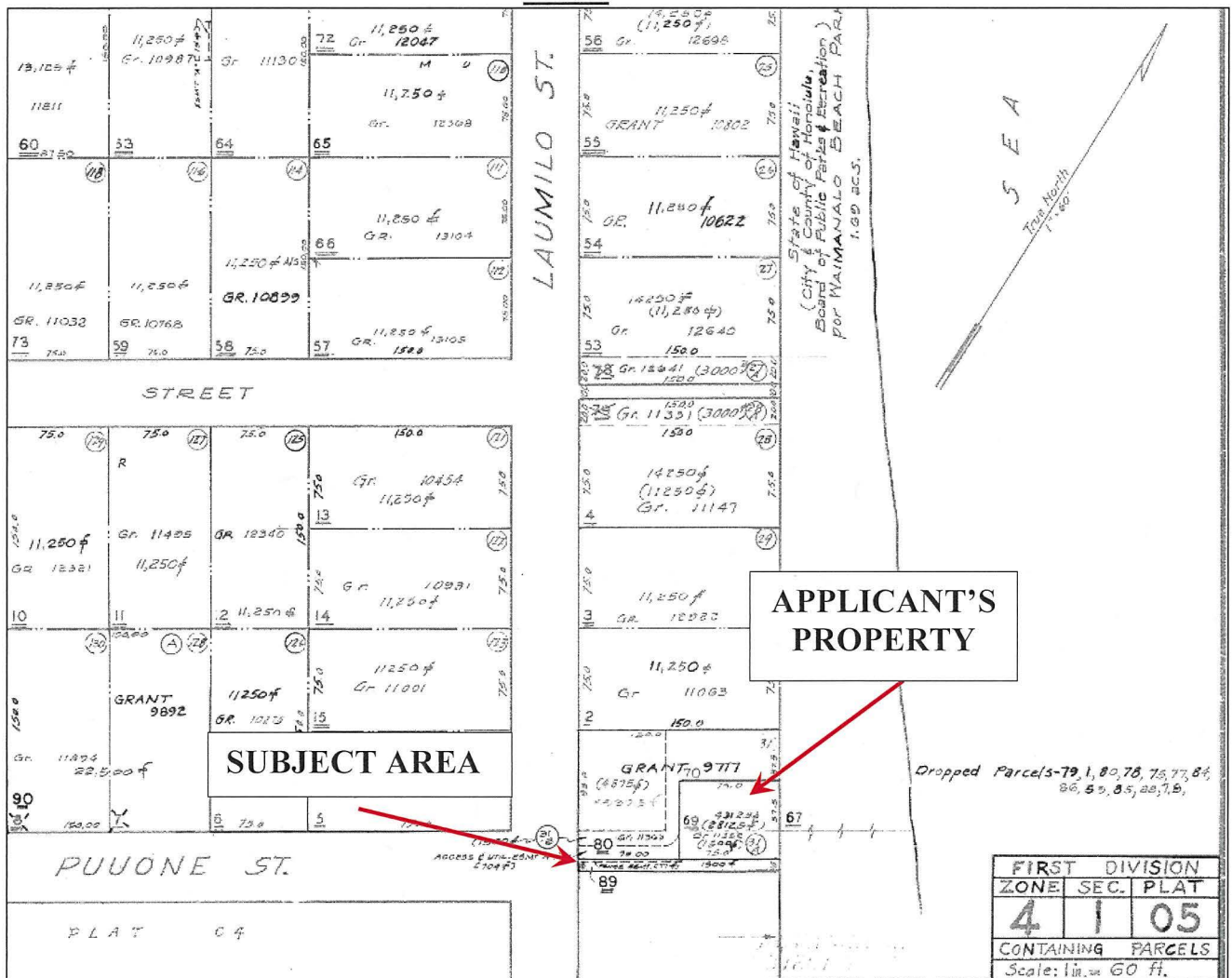


Patti E. Miyashiro
Land Agent

APPROVED FOR SUBMITTAL:

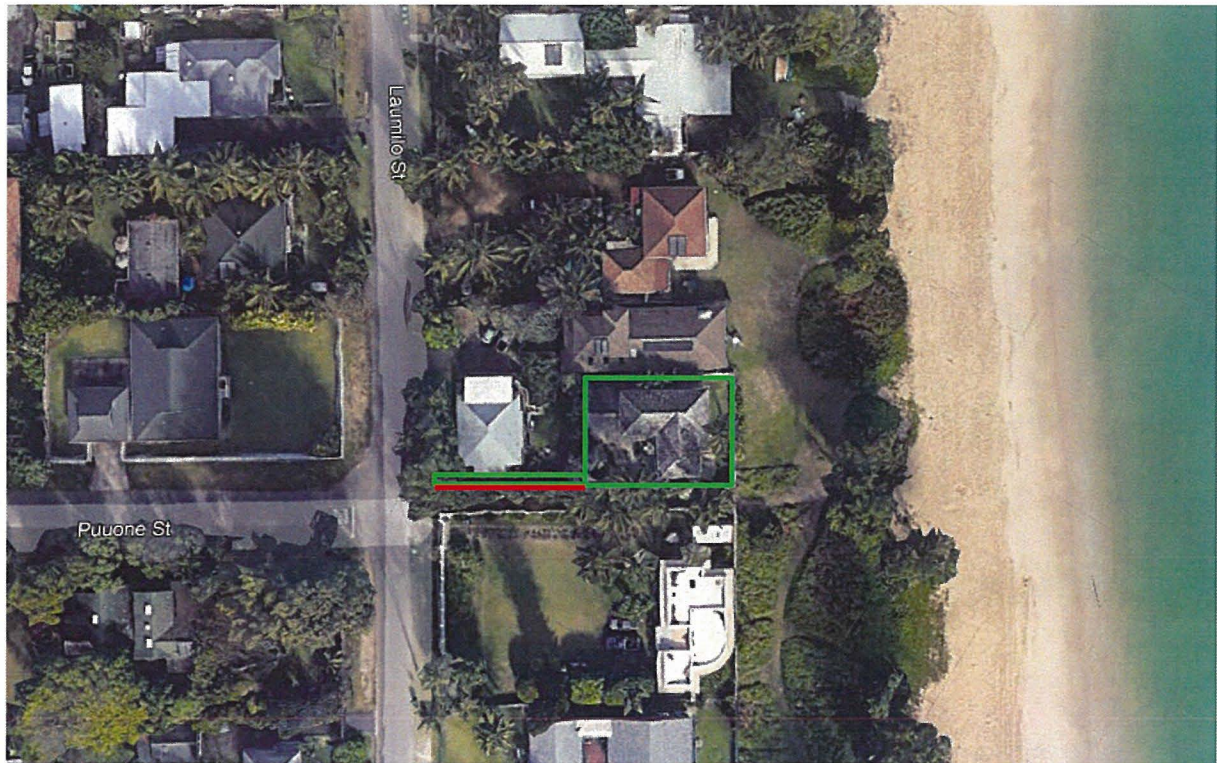


Suzanne D. Case, Chairperson *RT*



TAX MAP KEY: (1) 4-1-005:089

EXHIBIT A1



AERIAL OF SUBJECT PRIVATE PROPERTY AND SUBJECT EASEMENT

 = Applicant's Private Property


 = Easement Area

EXHIBIT A2

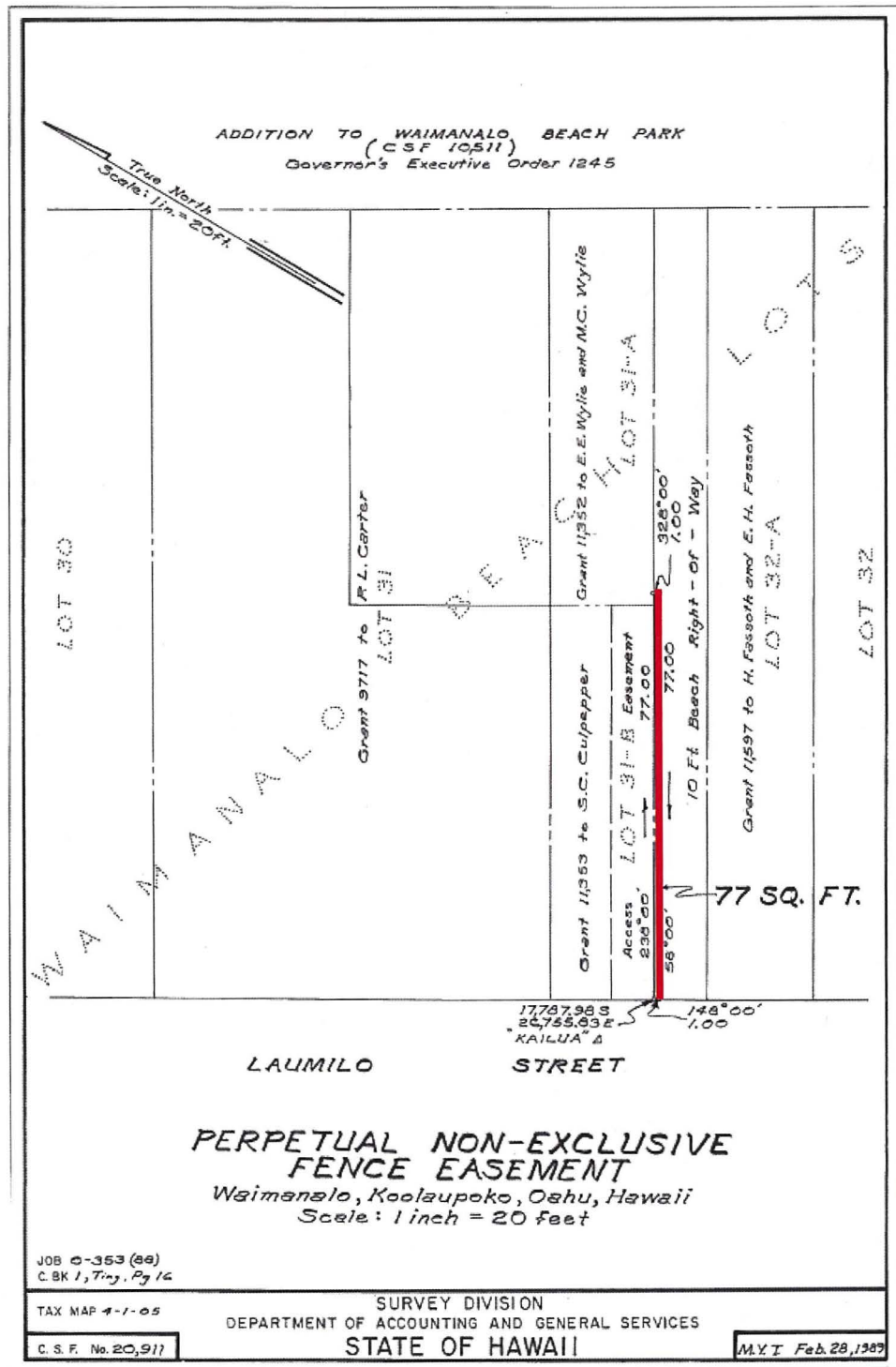


EXHIBIT A3