

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

April 11, 2008

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

PSF No.:08OD-058

OAHU

Grant of Term, Non-Exclusive Easement to Stevan M. Bailey for Floating Pier
Purposes, Kahaluu, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-030:018 seaward.

APPLICANT:

Stevan M. Bailey, whose mailing address is 47-253 Miomio Loop, Kaneohe, Hawaii
96744.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Kahaluu, Koolaupoko, Oahu, identified
by Tax Map Key: (1) 4-7-030:018 as shown on the attached map labeled Exhibit A.

AREA:

49 square feet, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____ NO
X

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing floating pier over, under and across State-owned land.

COMMENCEMENT DATE:

January 1, 2007. See Remarks.

CONSIDERATION:

See Remarks.

EASEMENT TERM:

Expires on December 31, 2061. See Remarks.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, 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."

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

On August 24, 2006, Conservation District Use Permit OA-3345 was issued to the applicant for construction of a floating pier. On October 13, 2006, the Board authorized

the issuance of a 55-year lease for private noncommercial pier purposes pursuant to the Kaneohe Bay Piers Amnesty Program. General Lease No. 5904 was signed for a floating pier of 408 square feet subject to a one-time payment of \$23,300, and a map for the pier is attached as Exhibit B. According to the lessee, the construction of the floating pier was completed before June 30, 2007.

Recently, the lessee intended to submit an application for shoreline certification for the purpose of the renovation project on his property. However, a latest survey map (Exhibit C) shows the actual configuration and area of the pier is slightly different from that of the lease. According to the contractor hired by the applicant, the gusset shown on Exhibit C provides structural support for the pier, and the other additional areas include fender boards. The revised area is 457 square feet and photos of the additional area are attached as Exhibit D. Applicant wants to resolve the additional encroaching area (49 square feet), which is not covered under GL 5904.

Staff considered amending GL 5904 by incorporating the additional area in the lease. Staff notes that the special legislation (Act 261, SLH 2000) allowing the Board issue direct lease for private noncommercial pier purposes expired on June 30, 2007. Apparently, the Board no longer has the legal authority to amend a pier lease. Therefore, the next alternative for the applicant is to obtain a term easement for the additional area.

The additional area comprises of portion of the floating dock, and fender board, which do not touch the submerged land. Army Corps of Engineers has no objections to the request. Office of Conservation and Coastal Lands and Division of Aquatic Resources have not responded to the subject request as of the suspense date.

Office of Hawaiian Affairs requests the applicant put up signs indicating public access to the pier. Staff notes that the majority area of the floating pier is under GL 5904 issued pursuant to Act 261, SLH 2000, which specifically deleted the requirement of putting up signs for public access.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, staff recommends no fine as the subject encroachment is less than 100 square feet.

Further, the additional area was put up at the same time when the floating pier was built. If the applicant were aware of the discrepancy in the area during the construction, he certainly would approach the department requesting approval for the additional area. Therefore, staff recommends the Board authorize using the same unit rate charged for the floating pier under GL 5904 for the additional area, subject to review and approval of the Chairperson.

Commencement date of the requested easement should also start and end on the same dates of GL 5904, i.e. January 1, 2007 to December 31, 2061.

Applicant is in compliance with the terms and conditions of GL 5904. 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.

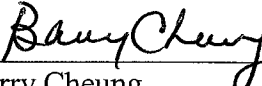
There are no other pertinent issues or concerns.

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, 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 requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-7-030:018, 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 Stevan M. Bailey covering the subject area for floating pier 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) 4-7-030:018, 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 Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - C. Review and approval by the Department of the Attorney General;
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and

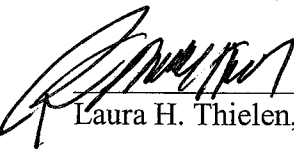
- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



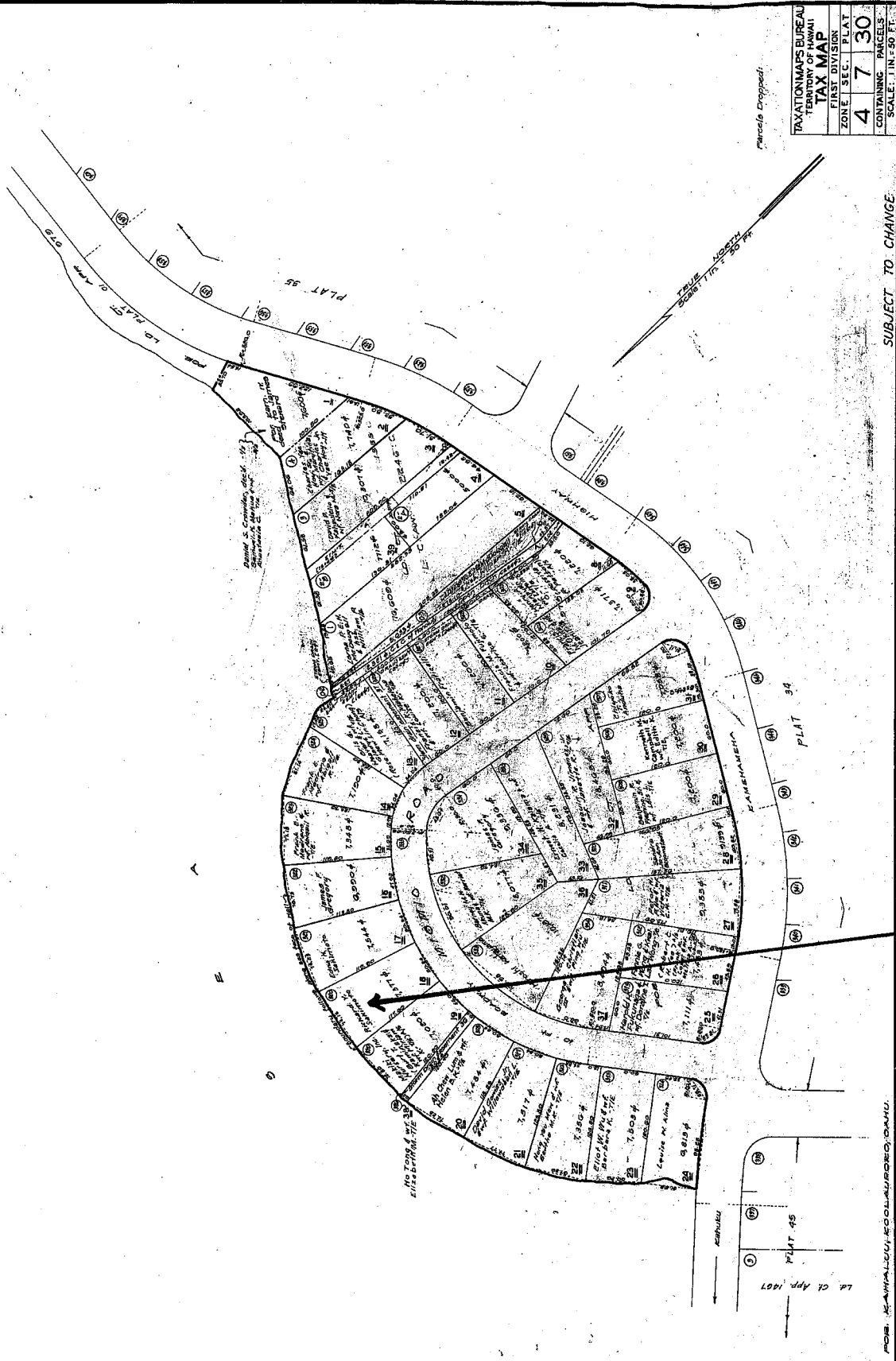
Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson





TAXATION MAPS BUREAU	
TERRITORY OF HAWAII	
TAX MAP	
DISTRICT DIVISION	
ZONE	4 7 30
PLAT	30
CONTAINING PARCELS	
SCALE: 1 IN. = 50 FT.	

Parcels Drapped

Subject Location

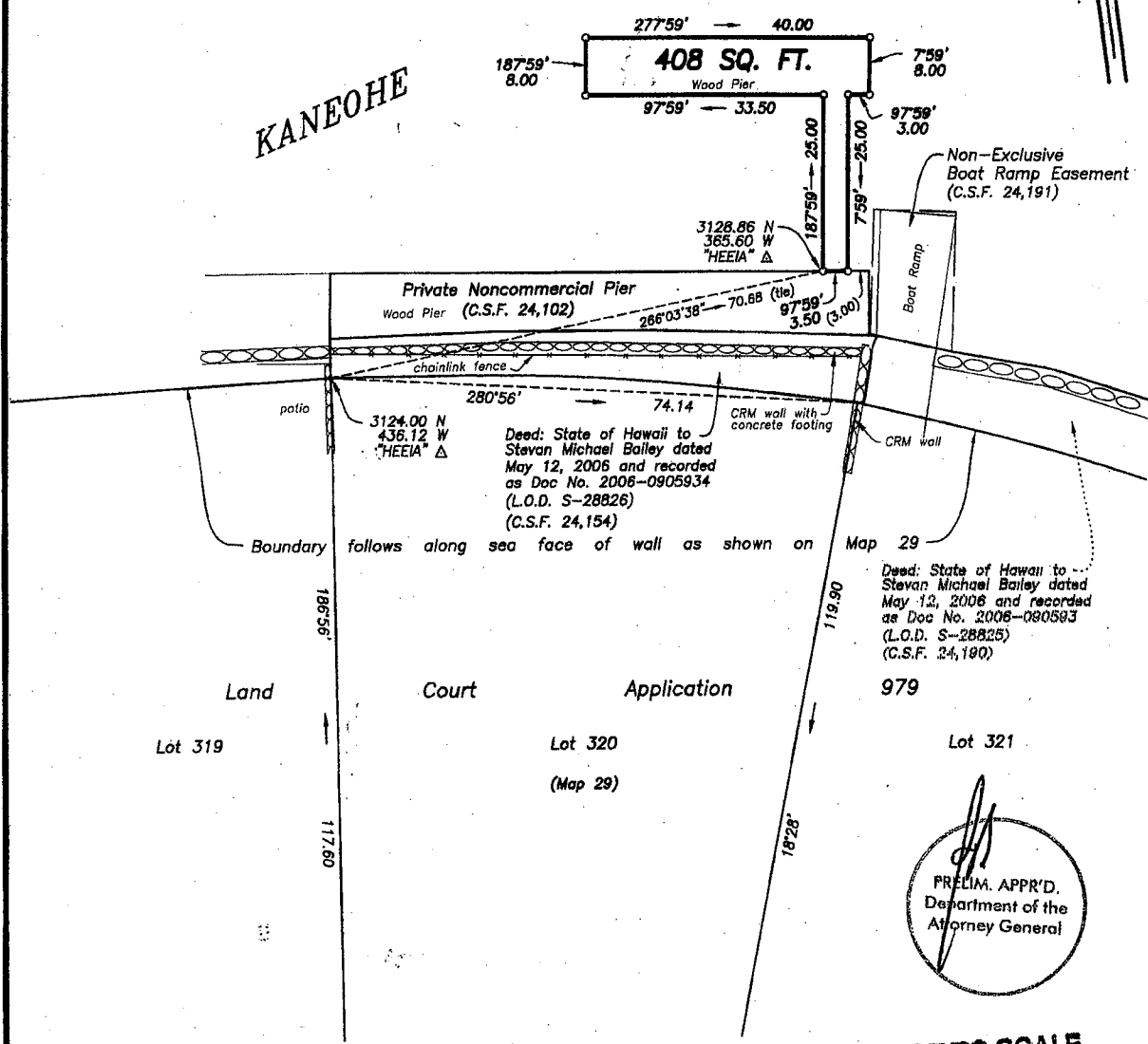
EXHIBIT "A"

DHP, No. 1, 2004
 Source: Maps of the Terr. of Hawaii, Dept. of Public Works, Honolulu, Hawaii
 By: T.H. & B.L. DATE: December, 1954

TRUE NORTH
SCALE: 1 in. = 20 ft.

KANEOHE

BAY



REDUCED NOT TO SCALE

PRIVATE NONCOMMERCIAL PIER
 Fronting Deed: State of Hawaii to Stevan Michael Bailey
 dated May 12, 2006 and recorded as Doc. No. 2006-0905934
 Kahaluu, Koolaupoko, Oahu, Hawaii

EXHIBIT "B"

Job 0-432(06)
C. BK.

Scale: 1 inch = 20 feet

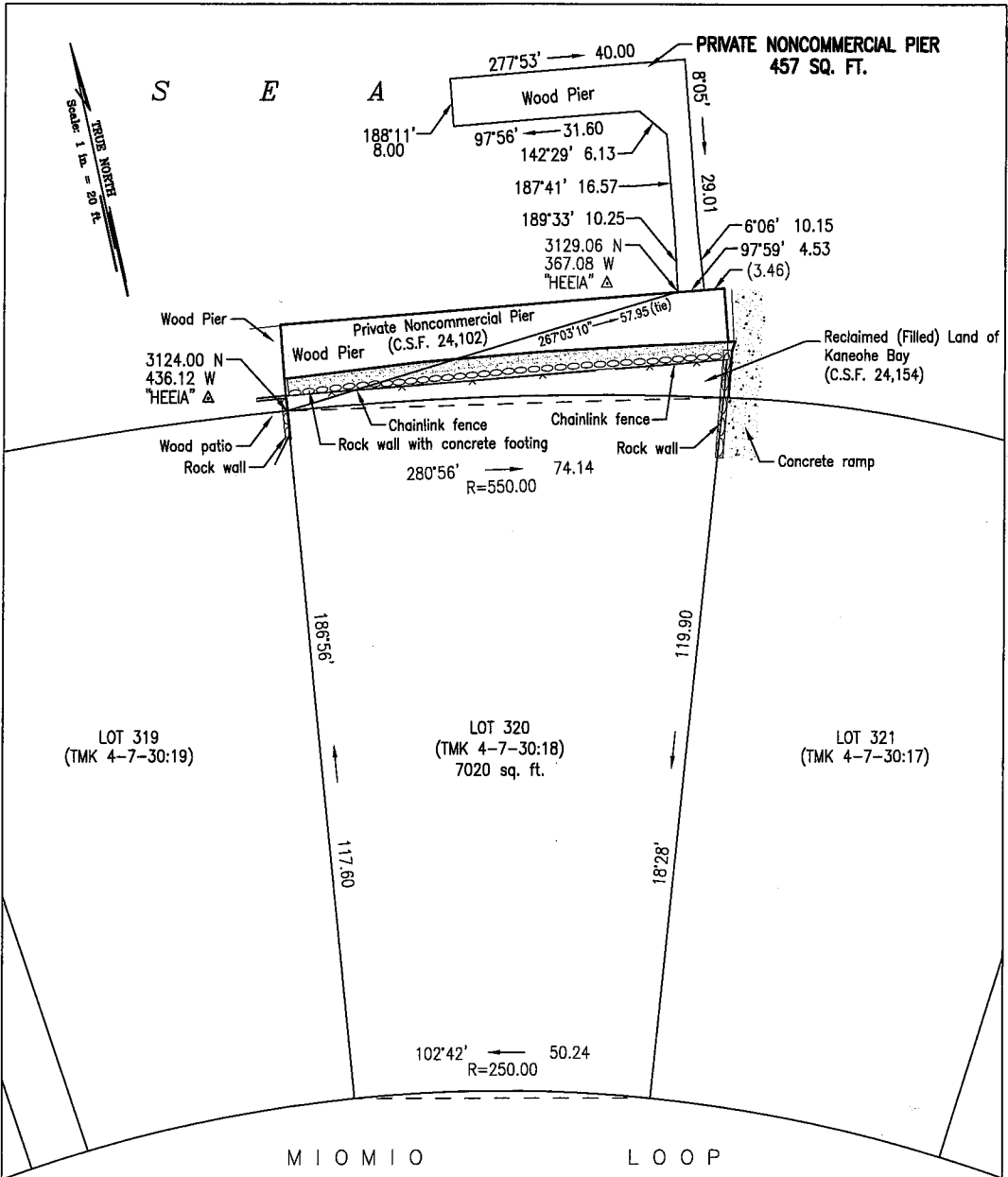
Fronting Parcel 18 of TMK 4-7-30

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

C.S.F. NO. 24,363

JGL October 30, 2008

EXHIBIT "B"



PRIVATE NONCOMMERCIAL PIER

Fronting Lot 320 of Land Court Application 979
As Shown on Map 29
Kahaluu, Koolaupoko, Oahu, Hawaii

Owner: Stevan M. Bailey
47-253 MIOMIO LOOP

TMK: 4-7-30:18

EXHIBIT "C"

