

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

November 9, 2012

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

PSF No: 11OD-120

OAHU

Amend Prior Board Action of November 10, 2011, Item D-15 by Allowing Payment of the Consideration in Installments; Grant of Term, Non-Exclusive Easement to Robert E. Cambra and Agnes K. Freitas Trust for Seawall and Filled Land Purposes, Kaalaea, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-014:seaward of 010

BACKGROUND:

On November 10, 2011, under agenda item D-15, the Board authorized the issuance of a term, non-exclusive easement for seawall and filled land purposes to the owners of the abutting private property ("Applicant"). The encroachment is about 2,243 square feet. On July 9, 2012, the Chairperson approved an appraisal that determined the fair market value of the easement to be \$62,600 payable in one lump sum. Applicant subsequently inquired if the consideration could be paid off in three annual installments. A copy of the approved submittal is attached as **Exhibit 1**.

REMARKS:

Staff has reviewed similar shoreline encroachment easements issued in the past and is not aware of any precedent case where the consideration was paid in installments. In the situation in which the annual payment was relatively small, staff believes that requiring a lump sum payment of consideration was a prudent management decision. It substantially reduces the administrative costs and staff time in the recurring billing.

In the subject case, the easement consideration is \$62,600. Staff has no objection in recommending the Board allow the Applicant to settle the payments by three annual installments. Staff wants to note that this is an exceptional case, and it should not be regarded as precedent for other cases in the future. Each future request shall be considered individually.

In addition, staff recommends the Board apply an annual interest rate of 7% on the declining

principal balance. Upon approval of the subject request, staff will work with the Fiscal Office to compute the payment required for each of the three installments.

RECOMMENDATION: That the Board:

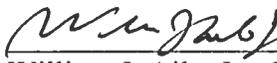
1. Amend its prior Board action of November 10, 2011, under agenda item D-15 by allowing payment of the consideration by three annual installments, further subject to an annual interest of 7% on the declining principal balance.
2. All terms and conditions listed in its November 10, 2011 approval to remain the same.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

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

November 10, 2011

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

PSF No.: 110d-120

OAHU

Grant of Term, Non-Exclusive Easement to Robert E. Cambra and Agnes K. Freitas Trust for Seawall and Filled Land Purposes, Kaalaea, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-014:seaward of 010

APPLICANT:

Robert E. Cambra, and Agnes L. Freitas Trust

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands situated at Kaalaea, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-7-014:seaward of 010, as shown on the attached map labeled **Exhibit A**.

AREA:

2,229 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

TRUST LAND STATUS:

Section 5 (b) of Hawaii Admission Act

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

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

November 10, 2011 *DR*

EXHIBIT " 1 "

D-15

CURRENT USE STATUS:

Encumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove seawall, filled land over, under and across State-owned land.

TERM

Fifty-five (55) years

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, 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 Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation.", as included in **Exhibit B**.

DCCA VERIFICATION:

Not applicable. Individual owners.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at

Applicant's own cost.

REMARKS:

Applicant is in the processing for shoreline certification when the subject encroachments are noted on the survey map (**Exhibit C**). The encroachments contain filled land, seawall and a small tile wall located makai of the recorded boundary. Photos showing the encroachment are attached as **Exhibits D1 & D2**. Applicant requests a term easement to resolve the encroachments.

Office of Conservation and Coastal Lands (OCCL) reviewed the material provided by the Applicant and determined that the encroachments appeared to be in place prior to the inception of the Conservation District rules in 1964. Therefore, OCCL does not consider the subject encroachments a conservation district violation. OCCL also supported a land disposition being processed for the subject encroachments, and such land disposition shall require the land use remain unimproved and a transit corridor (at least 6 feet wide) at the top of the seawall (page 2 of OCCL's letter attached as **Exhibit E**.)

Staff understands it is a standard condition in the shoreline easement that public access is allowed on the entire easement area. Further, the proposed use mentioned above will not allow any improvement on the easement area. Therefore, staff believes the standard easement document is able to accommodate OCCL's concerns.

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.

Board of Water Supply, Department of Facility Maintenance, Department of Parks and Recreation, Department of Hawaiian Home Lands, Office of Hawaiian Affairs, Division of Aquatic Resources, and Division of State Parks have no objection/comment on the subject request.

Department of Health, Division of Forestry and Wildlife, State Historic Preservation Division, and Department of Planning and Permitting have no responded as of the suspense date.

There are no other pertinent issues or concerns. Staff does not have any 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, 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) 4-7-014:010, 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 Robert E. Cambra, and Agnes L. Freitas Trust covering the subject area for seawall and filled land 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 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) 4-7-014:010, 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;

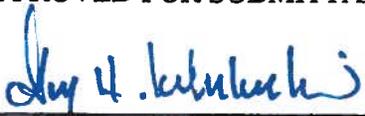
 - C. Review and approval by the Department of the Attorney General; and

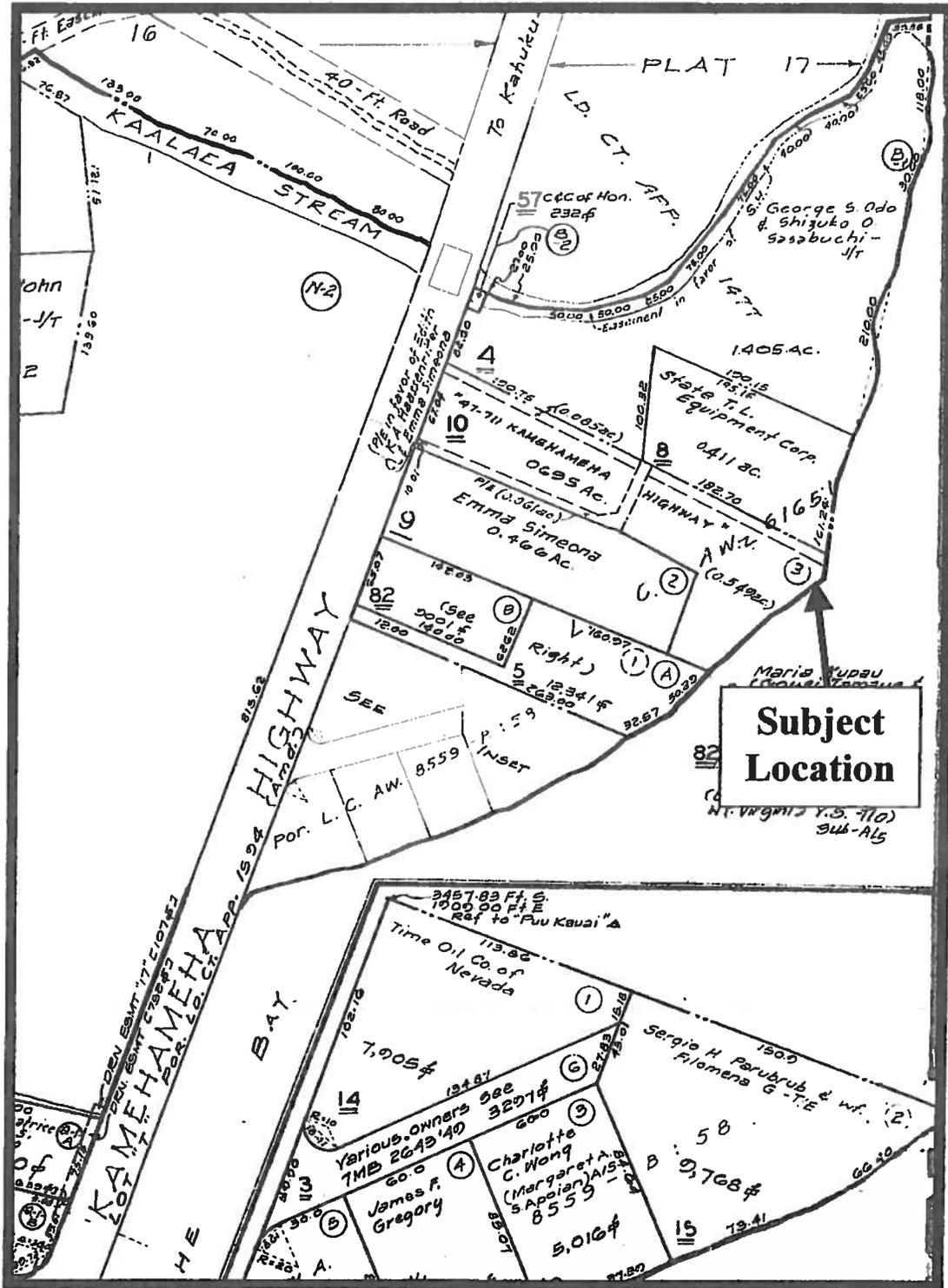
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson



TMK (1) 4-7-014:seaward of 010

EXHIBIT A

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 10, 2011

EXEMPTION NOTIFICATION

regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Grant of Term, Non-Exclusive Easement for Seawall and Filled Land Purposes

Project / Reference No.: PSF 11od-120

Project Location: Kaalaea, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-014:seaward of 010

Project Description: Grant of Term, Non-Exclusive Easement for Seawall and Filled Land Purposes

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

Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, 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 Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

The subject encroachment was determined by the Office of Conservation and Coastal Lands to be in place prior to 1964. See OCCL's letter dated June 17, 2011 attached as Exhibit D of the Board submittal. It also predates the enactment date of Chapter 343 in 1974. The request is to document the encroachment by the issuance of an easement which would require, among other terms and conditions of the easement, the grantee provide liability insurance for the easement area. The applicant for the easement

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TANI
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOARD OF LAND AND NATURAL RESOURCES
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES (LAND/TERRAIN)
(NORSEHESI)
FORESTRY AND WILDLIFE
RESTORATION/PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXHIBIT B

does not propose any new use of State lands or funds. Staff does not anticipate the request will result in major alterations in the conditions of land, water and vegetation. Therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements.

Consulted Parties

Office of Conservation and Coastal Lands

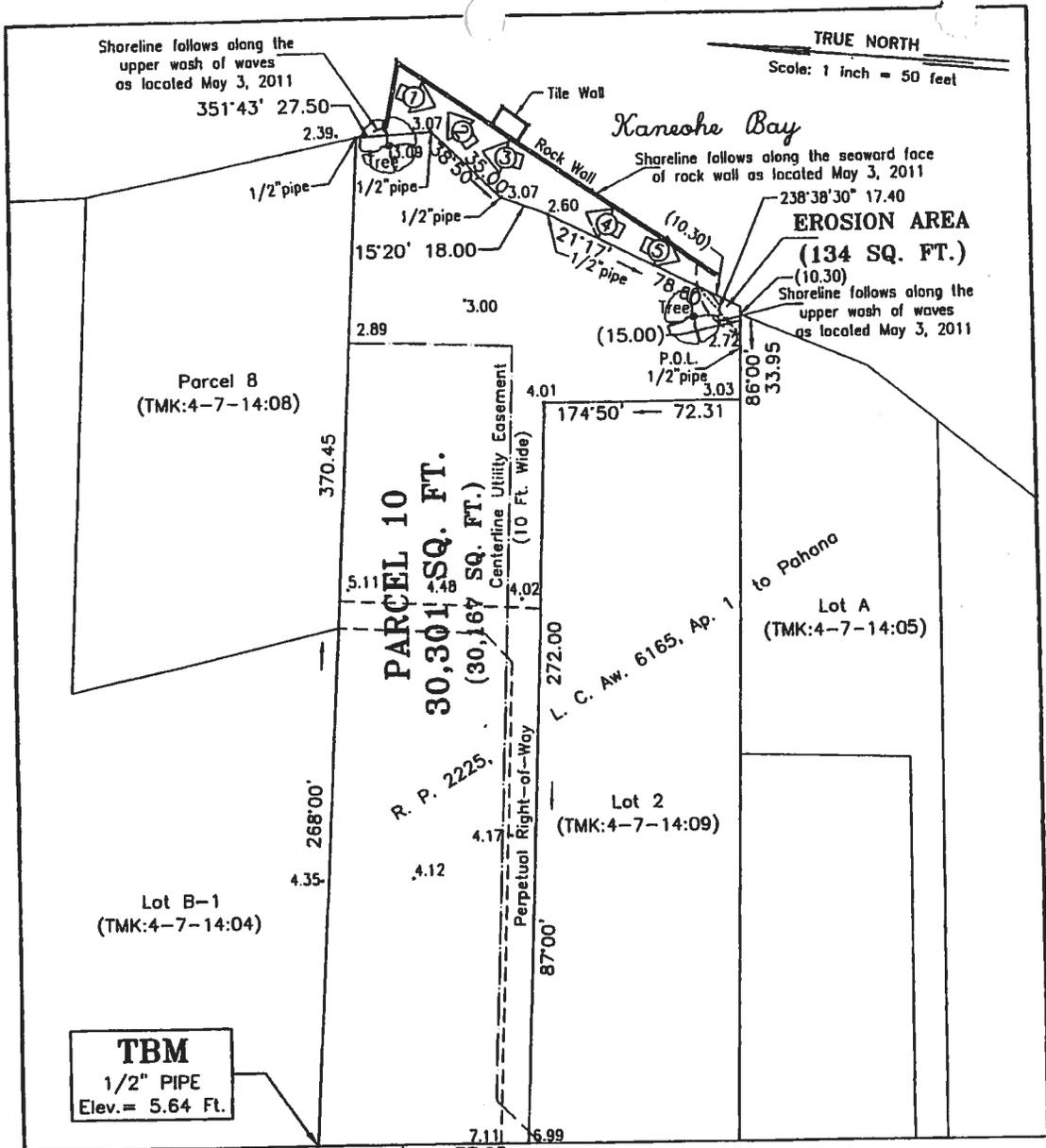
Recommendation:

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.



William J. Aila, Jr., Chairperson
For _____
10.25.11

Date



K A M E H A M E H A H I G H W A Y

**SHORELINE SURVEY MAP
PARCEL 10**

Being a portion of R. P. 2225,
L. C. Aw. 6165, Ap. 1 to Pahana
Kaalaea, Koolaupoko, Oahu, Hawaii

Tax Map Key: 4-7-14:10
Scale: 1 inch = 50 feet
Date: May 3, 2011
Owner: Robert Combro



[Signature] exp. 4/30/12

This work was prepared by me
or under my direct supervision.

NOTE:

1. Elevations referred from TU 0379 with an elevation of 6.64 ft. NGVD.
2. (1) Denotes number and direction of photographs.

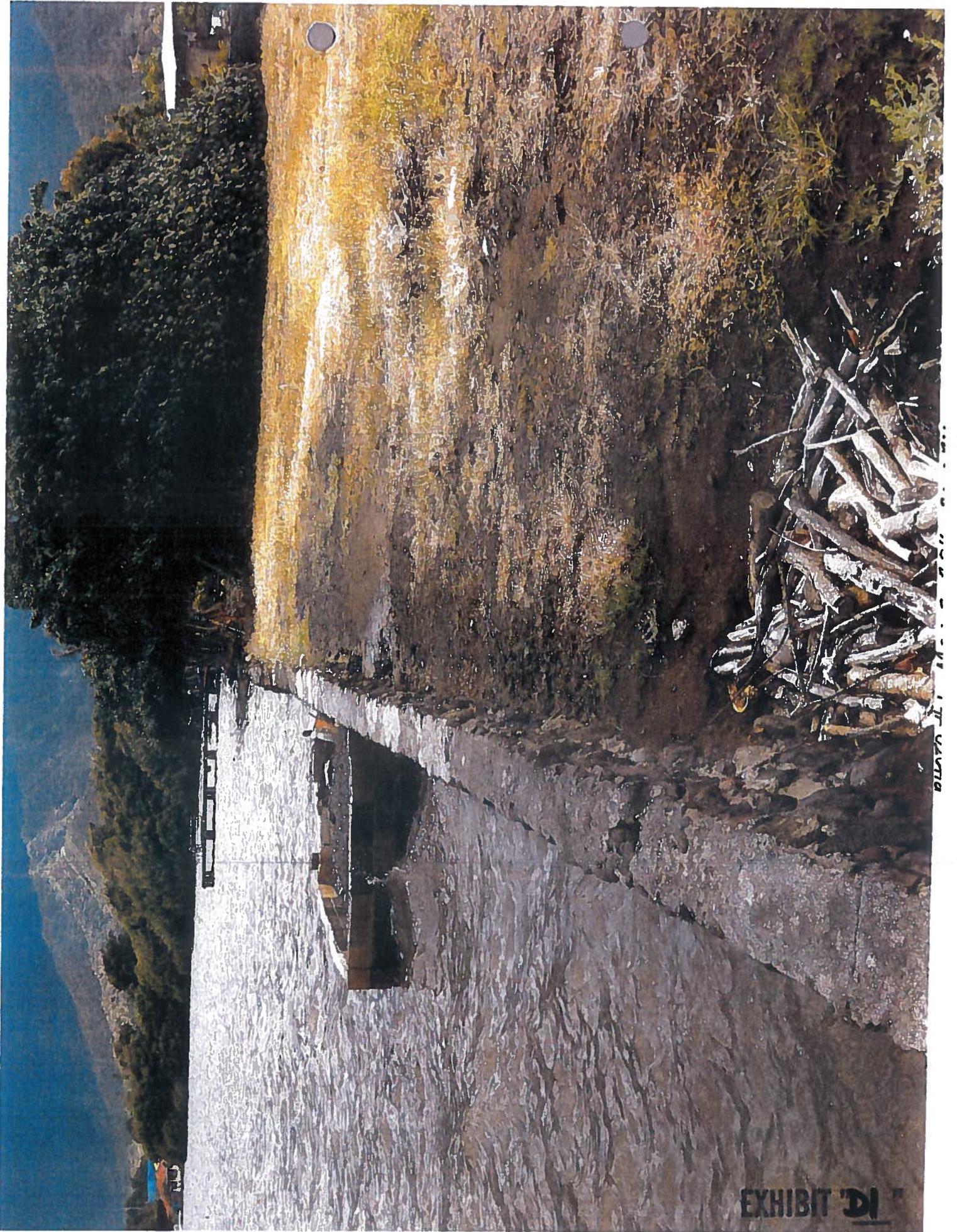


EXHIBIT 'DI'



EXHIBIT "D2"

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

JUN 21 REC'D

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

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AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
EMBODIMENT
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



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

REF:DLNR:CC

File Number Encroachment: OA-11-10

Mr. Jaime F. Alimboyoguen

JUN 17 2011

Kapolei, Hawaii 96707

Dear Mr. Alimboyoguen,

SUBJECT: Request to Resolve State Land Encroachment at 47-7 Kamehameha Highway, Kaneohe, Oahu, Tax Map Key (1) 4-7-014:010. Owner Robert Cambra

This is in response to your June 2011 request to resolve the shoreline encroachments at Tax Map Key (1) 4-7-014:010.

According to information and maps contained with your request, you have identified approximately 2,229 square feet of encroachment (seawall, small tile wall, and yard) makai of the subject property onto State land.

OCCL staff was unable to locate any construction permit or other land use authorization permits at the State for the subject improvements. After review of the documents presented, staff finds the following:

The high resolution, 1968, aerial photograph of the area shows the structures clearly in place and well established.

The notarized affidavit of Janet Constance Freitas Machado indicates that the structure in the aerial photograph was in place as early as 1958.

The structure appears to be in place prior to the inception of the Conservation District rules on October 1, 1964.

As a consequence, DLNR cannot prove the seawall and small tile wall encroachments are Conservation District violations and will not be asking for an after-the-fact Conservation District Use Application to cure this matter. Should the OCCL find that either the seawall or the small tile wall were built without permits, within the Conservation District after 1964, the OCCL may reconsider this finding.

The Board of Land and Natural Resource (BLNR) established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

EXHIBIT "E"

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

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments.

Surrounding Land Uses:

The surrounding coastal uses along the coastline are primarily residential, with a stream mouth to the north and some undeveloped land to the south.

Beach Resources:

There is no beach resource fronting the encroachment. There is a tidal flat area makai of the seawall and along the coast to the north and south.

Public Access:

This section of coast has fair access at low-tide, fronting this seawall and others. There are no public accesses in the immediate area.

Effect of Removing the Encroachment on:

Beach Resources: OCCL staff has determined that removal of the seawall and tile wall will not improve beach resources.

Public Access: OCCL staff has determined that no improvement would be gained by removing either the encroaching portion of seawall or the tile wall.

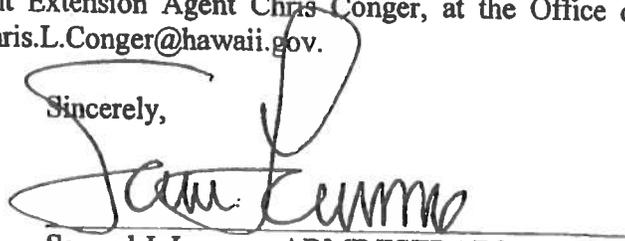
Affect on Adjacent Properties: Removal of the encroaching portion of seawall and landing would not impact any adjacent properties. Removal of the encroaching portion of the seawall might destabilize the lawn mauka, but it will not impact an inhabited dwelling. Removal of the tile wall would have minor, if any, impact to the seawall.

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

Upon review and careful consideration of the information gathered on this case, staff has determined that the requirements stated in HRS § 205A, HRS § 183C, and in the OCCL's evaluation criteria would support a disposition request being processed for the seawall and tile wall. The OCCL suggests that any disposition require the land uses remain unimproved. The OCCL also recommends that, in accordance with HRS § 115, a transit corridor be maintained along the top of the seawall that is at least six (6) feet wide and free of obstructions and vegetation.

Please feel free to contact Sea Grant Extension Agent Chris Conger, at the Office of Conservation and Coastal Lands at Chris.L.Conger@hawaii.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam. Lemmo". The signature is written in a cursive style and is positioned above a horizontal line.

Samuel J. Lemmo, ADMINISTRATOR
Office of Conservation and Coastal Lands

cc: Land Division