

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

August 9, 2013

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

PSF No.:13MD-028

Maui

Grant of Term, Non-Exclusive Easement to Paul D. Gossman, as Trustee of the Paul D. Gossman Residence Trust Dated December 18, 2008, for Seawall Encroachment Purposes, Lahaina, Maui, Hawaii, Tax Map Key: (2) 4-5-003: Seaward of 026.

APPLICANT:

Paul D. Gossman, Paul D. Gossman, as Trustee of the Paul D. Gossman Residence Trust Dated December 18, 2008, Tenant in Severalty.

LEGAL REFERENCE:

Section 171-13, 53 (c), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of parcel 026, Lahaina, Maui, identified by Tax Map Key: (2) 4-5-003, as shown on the attached map labeled Exhibit 1.

AREA:

260 square feet, more or less.

ZONING:

State Land Use District:	Conservation
County of Maui CZO:	Special Management Area

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.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall 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 rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

During a recent site visit, Office of Conservation and Coastal Lands (OCCL) staff observed the subject seawall and determined it appeared to be built before 1974, prior to the enactment of the EIS law.

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." See attached Exemption Notification.

DCCA VERIFICATION:

Not applicable. The Applicant is a natural person and is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Comply with all County of Maui Special Management Area rules and regulations;
- 4) Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

REMARKS:

On June 7, 2012 the Maui District Land Office received an inquiry from the County of Maui's Planning Department regarding an encroaching section of a concrete and rock slab fronting the property at TMK: (2) 4-5-003:026. A review of district files indicates that there was no easement or permit with regards to any encroachment(s). Staff did locate correspondence dated April 4, 1990 (Exhibit #3) from former Land Agent Alan Tokunaga to a previous property owner, Mr. Clifford Merriles, indicating that a complaint had been received on March 29, 1990 of illegal construction activity occurring on the seaward side of the property. The advisory letter indicated that a site inspection revealed the existence of a recently completed rock and cement structure on the shoreline fronting the parcel. Mr. Merriles was advised of this encroachment upon public lands. He was then instructed to remove the structure immediately and restore the area to its original condition. No follow up correspondence between Mr. Merriles and the State was located with regards to the status of the encroachment.

In January of 2013, Mr. Paul D. Gossman contacted the Office of Conservation and Coastal Lands (OCCL) requesting to resolve the shoreline encroachments fronting his property at the subject location. Mr. Gossman advised that he purchased the property in January of 2005 inclusive of the existing encroachments along the shoreline. According to a survey map provided to OCCL by Mr. Gossman, the CRM seawall and footing encroachment encumbered an area of 260 square feet. Research of by OCCL staff indicated that through aerial photographs dated October, 1960 from the University of Hawaii Coastal Geology Group appeared to show shoreline armoring structures fronting the subject property and adjacent properties.

OCCL has determined that an after-the-fact Conservation District Use Application to cure the matter would not be required. They further indicated that they may reconsider this

finding should it be discovered that the seawall was built without permits, within the Conservation District after 1964. Refer to the OCCL correspondence dated January 24, 2013, related to File Number Encroachment: MA-13-12 (Exhibit #4). This letter provides an overview of OCCL's recommendation with regards to the surrounding shoreline areas, beach/shoreline access, and impacts on the natural beach process.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff is recommending a fine of \$500 as the subject encroachment is over 100 square feet.

The 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.

Governor's approval and Legislative Concurrent Resolution will need to be obtained after obtaining Board approval for this disposition.

Upon approval of today's request, the applicant is reminded of the requirement for concurrent resolution from both houses of the legislature under Sect. 171-53(c), HRS prior to the issuance of the requested easement.

EXHIBITS:

- Exhibit #1- Tax map of the subject area.
- Exhibit #2- Survey map of the encroachment.
- Exhibit #3- Advisory letter from Land Agent Alan Tokunaga.
- Exhibit #4- Letter from OCCL to Mr. Gossman regarding the shoreline encroachment.
- Exhibit #5- Photo of the subject encroachment.

AGENCY COMMENTS:

Comments have been solicited from the following agencies.

Agency	Comments
Office of Conservation & Coastal Lands	No objections via response letter dated 1/24/2013. File # OA-13-12
County of Maui – Planning Dept.	No comments
Office of Hawaiian Affairs	No response
State of Hawaii – DAR	No objections

RECOMMENDATION: That the Board:

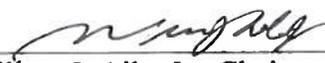
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Impose a \$500 fine for illegal encroachment, under Section 171-6(12).
3. 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: (2) 4-5-003:026, 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. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Paul D. Gossman, as Trustee of the Paul D. Gossman Residence Trust Dated December 18, 2008, covering the subject area for seawall 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: (2) 4-5-003:026, 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. 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.

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

Respectfully Submitted,

  
\_\_\_\_\_  
Daniel Ornellas  
District Land Agent

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
William J. Aila, Jr., Chairperson





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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

August 9, 2013

**EXEMPTION NOTIFICATION**

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

**Project Title:** Issuance of a Term Non-Exclusive Easement to Paul D. Gossman, as Trustee of the Paul D. Gossman Residence Trust Dated December 18, 2008.

**Project / Reference No.:** PSF No. 13MD-028

**Project Location:** Lahaina, Maui, Hawaii

**Project Description:** Granting of a Term Non-Exclusive Easement for Seawall Encroachment Purposes (260 sq. ft.).

**Chap. 343 Trigger(s):** Use of State Lands

**Exemption Class No. and Description:** In accordance with the Department of Land and Natural Resources Department-wide Exemption List, approved by the Environmental Council and dated December 4, 1991, the subject project is considered to be 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 [HAR 11-200-8 (a)(1)], and Exemption Class No. 4, Minor alteration in the conditions of land, water, or vegetation."

**Consulted Parties:** Mr. Sam Lemmo of the Office of Conservation and Coastal Lands was consulted as a source authority having jurisdiction or expertise in this matter, and concurs that the exemption identified above is applicable to and appropriate for the proposed request with the condition that the encroachment does not obstruct public access.

**Recommendation:** It is anticipated 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.*

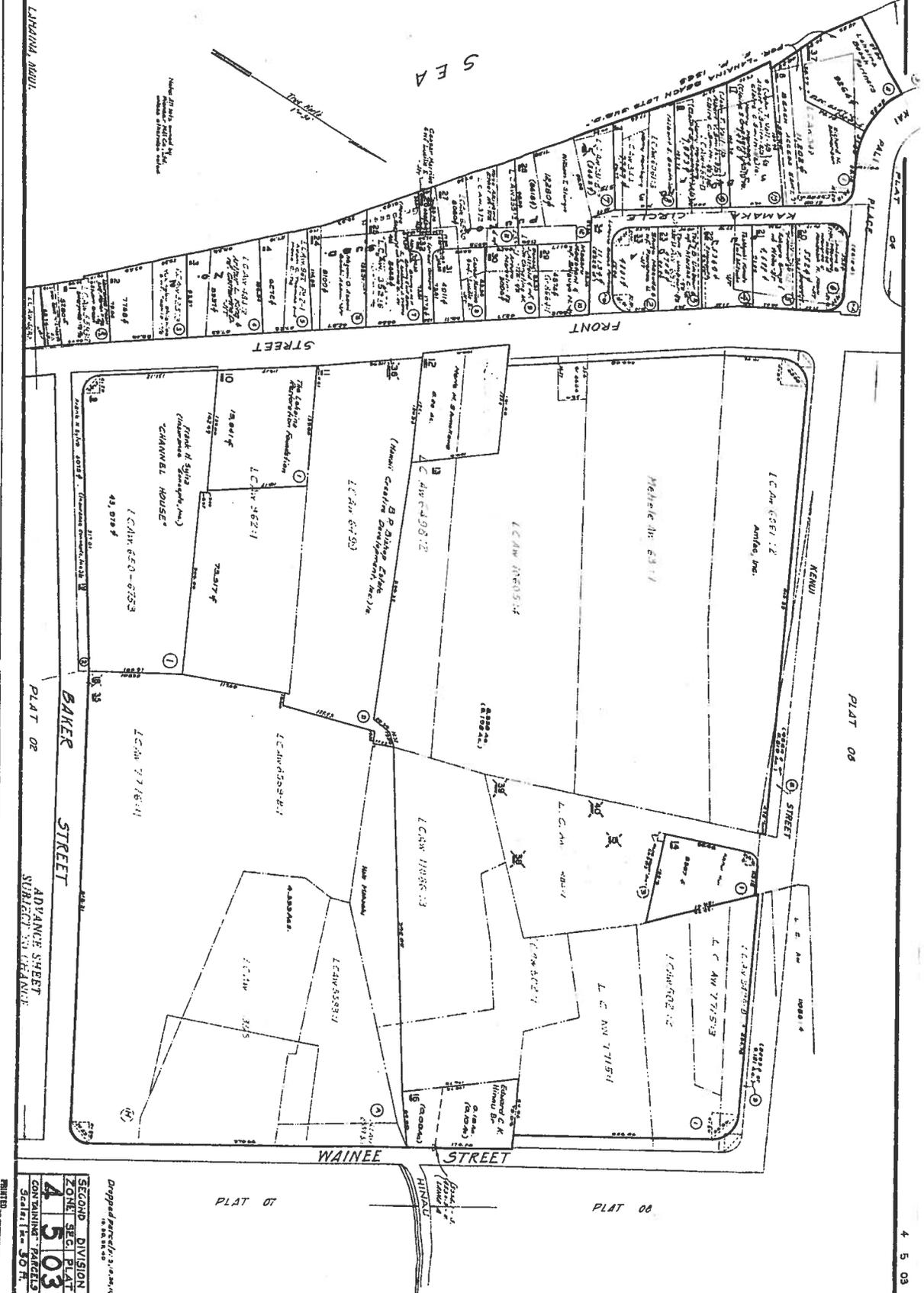
William J. Aila Jr., Chairperson

*N*

*7/26/13*

Date

Des. No. ---  
 By: P.C.  
 Source: ---

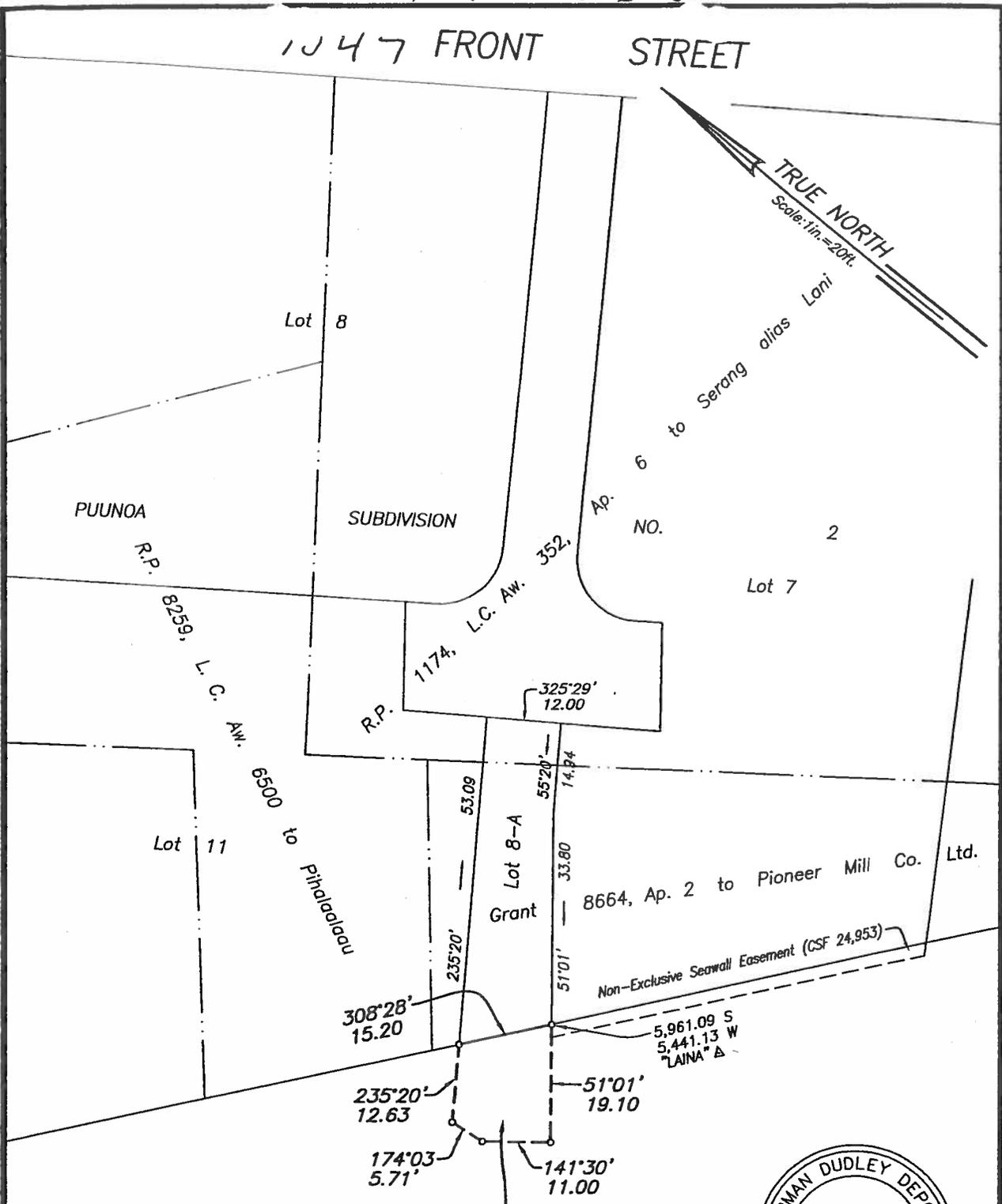
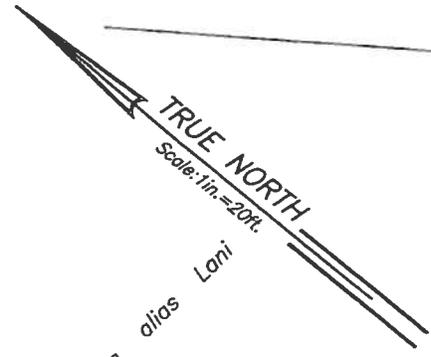


Dropped parcels shown

SECOND DIVISION	4
ZONE SECT. PLAT	503
CONTAINING PARCELS	30
Scale: 1" = 50'	

EXHIBIT " 1 "

1047 FRONT STREET



260 SQ. FT.

**NON-EXCLUSIVE SEAWALL EASEMENT**  
Fronting Lot 8-A of Puunoa Subdivision No. 2  
Kainehe, Lahaina, Maui, Hawaii



JOB Ma- (12)  
C. BK.

Scale: 1 inch = 20 feet

Exp. 4/30/14  
THIS WORK WAS DONE BY ME OR  
UNDER MY DIRECT SUPERVISION.

**EXHIBIT " 2 "**



JOHN WAIHEE  
GOVERNOR OF HAWAII

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

P. O. BOX 1049  
WAILUKU, HAWAII 96793

April 4, 1990

DIVISIONS:  
AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
CONSERVATION AND  
ENVIRONMENTAL AFFAIRS  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

IN REPLY REFER TO:

Mr. Clifford Merriles

Lahaina, HI 96761

Dear Mr. Merriles:

On March 29, 1990, we received an anonymous telephone call about illegal construction activity occurring seaward of the seawall fronting your Tax Map Key 4-5-03:26 at Lahaina, Maui.

An inspection of the site later that day confirmed that information.

This is to inform you that the rock and cement structure recently completed on the shoreline fronting your property constitutes an encroachment upon public lands.

The structure must be removed immediately and the area restored to its original condition. Failure to do so will subject you to a fine of \$500.00 per day plus administrative costs for violation of Section 171-6(12), Hawaii Revised Statutes, as amended (copy enclosed).

If you have any questions, please contact us at the above address or at 244-4456.

Very truly yours,

ALAN TOKUNAGA  
Land Agent

AT:js  
Encl.

cc: Mr. W. Mason Young  
Mr. John Arisumi

EXHIBIT " 3 "

TWK  
D

## CONSERVATION AND RESOURCES

- (4) Adopt rules which, upon compliance with chapter 91, shall have the force and effect of law;
- (5) Set, charge, demand, and collect reasonable fees for the preparation of documents to be issued, for the surveying of public lands, and for the issuing of certified copies of its public documents and records, which fees, when collected, shall be deposited into the state general fund, unless otherwise specified in this chapter;
- (6) Establish additional restrictions, requirements, or conditions, not inconsistent with those prescribed in this chapter, relating to the use of particular land being disposed of, the terms of sale, lease, license, or permit, and the qualifications of any person to draw, bid, or negotiate for public land;
- (7) Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural or pastoral use, or for resort, commercial, industrial, or other business use where the land being leased requires substantial improvements to be placed thereon; provided that such reduction or waiver shall not exceed two years for land to be used for any agricultural or pastoral use; or exceed one year for land to be used for resort, commercial, industrial, or other business use;
- (8) Delegate to the chairman or employees of the department of land and natural resources, subject to the board's control and responsibility, such powers and duties as may be lawful or proper for the performance of the functions vested in the board;
- (9) Utilize arbitration under chapter 658 to settle any controversy arising out of any existing or future lease;
- (10) Set, charge, and collect reasonable fees in an amount sufficient to defray the cost of performing or otherwise providing for the inspection of activities permitted upon the issuance of a land license involving a commercial purpose;
- (11) Appoint masters or hearing officers to conduct public hearings as provided by law and under such conditions as the board by rules shall establish;
- (12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall be subject to a fine of not more than \$500 a day for the first offense and shall be liable for administrative costs incurred by the department and for payment of damages. Upon the second offense and thereafter, the violator shall be fined not less than \$500 nor more than \$2,000 per day, shall, if required by the board, restore the land to its original condition if altered and assume the costs thereof, and shall assume such costs as may result from adverse effects from such restoration;
- (13) Set, charge, and collect interest on delinquent leases, sales, or other accounts. The rate of interest shall not exceed one per cent a month; provided that the contract shall state the interest rate and be signed by the party to be charged; and
- (14) Set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person violating any of the provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be fined not more than \$500 a day and shall be liable for administrative costs incurred

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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

ESTHER KLA'AINA  
FIRST DEPUTY

WILLIAM M. TAM  
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

REF:DLNR:BR

File Number Encroachment: <sup>MA</sup>QA-13-12

JAN 24 2013

Paul D. Gossman

Pacifica, CA 94044

Dear Mr. Gossman,

SUBJECT: Request to Resolve State Land Encroachment at 1047 Front Street, Lahaina, Maui; Tax Map Key (2) 4-5-003:026; Owner: Paul D. Gossman

This is in response to your January 2013 request to resolve the shoreline encroachments at Tax Map Key (2) 4-5-003:026. According to information and maps contained with your request, you have identified approximately 260 square feet of encroachment (CRM seawall and footing) makai of the subject property onto State land.

A copy of an aerial photograph dated October, 1960 from the University of Hawaii Coastal Geology Group appears to show shoreline armoring structures fronting the subject property and adjacent properties. As a consequence, the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) will not be asking for an after-the-fact Conservation District Use Application to cure this matter. OCCL may reconsider this finding should we find that the seawall was built without permits, within the Conservation District after 1964.

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, OCCL 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 "4"

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

Surrounding Land Uses:

*The surrounding land uses are primarily residential. The adjacent properties are fronted by similar seawalls. Front Street runs along the mauka side of the property.*

Beach Resources:

*There are no beach resources fronting the seawall at the subject property and adjacent properties due to a trend of long-term beach erosion (shoreline recession).*

Public Access:

*This section of coast has public limited access along the footing of the seawall fronting this property and adjacent properties with waves breaking against the base of the shoreline structures. Shoreline access is available a few hundred feet to the northwest from Baby / Puunooa Beach.*

Effect of Removing the Encroachment on:

*Beach Resources: There are no beach resources fronting the subject encroachment and adjacent seawalls. Therefore, removal of the encroachment would not result in an improvement to beach resources fronting the property.*

*Public Access: OCCL staff has determined that no improvement would be gained by removing encroaching portion of the seawall because the adjacent properties are fronted by similar seawalls.*

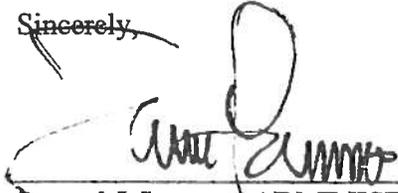
*Affect on Adjacent Properties: Removal of the encroaching portion of the seawall may destabilize seawalls and lawns at the adjacent properties.*

It has been a general policy and practice of 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, OCCL has determined that the requirements stated in HRS § 205A, HRS § 183C, and in OCCL's evaluation criteria would support a disposition request being processed for the subject shoreline encroachment. OCCL suggests that any disposition require the land uses remain unimproved.

Please feel free to contact Sea Grant Extension Agent Brad Romine at OCCL at (808) 587-0049 or Bradley.M.Romine@hawaii.gov should you have any questions pertaining to this letter. Please contact DLNR Land Division at (808) 984-8103 should you wish to pursue an easement for the subject shoreline encroachment.

Sincerely,



---

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

cc: Land Division, Daniel Ornellas

Paul D. Gossman, TMK: (2) 4-5-003:026

Photo of encroachment fronting  
TMK: (2) 4-5-003:026.

