

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

June 26, 2015

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

PSF No.: 14HD- 200

HAWAII

Deny Request for a Grant of Term, Non-Exclusive Easement; Assess \$500 Fine Against Cynthia Kay Anderson, for Seawall Encroachment Purposes, Lalamilo, South Kohala, Hawaii, Tax Map Key: (3) 6-9-001: portion of 002.

APPLICANT(S):

Cynthia Kay Anderson.

LEGAL REFERENCE:

Section 171-6(12) and 171-13, 53(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land, a beach reserve, located seaward of TMK: (3) 6-9-003:004, Lalamilo, South Kohala, Hawaii, identified by Tax Map Key: (3) 6-9-001: portion of 002, as shown on the attached map labeled Exhibit A.

AREA:

515 square feet, more or less. (Exhibit B)

ZONING:

State Land Use District: Urban/ Conservation
County of Hawaii CZO: Residential

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 seawall over, under and across State-owned land.

DCCA VERIFICATION:

Not applicable. Applicant, as an individual, is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Submit a check for \$500 made payable to the Department of Land and Natural Resources for seawall encroachment violation.
- 2) Remove encroaching seawall within 180 days of this Board action.
- 3) Consult with OCCL to determine if any special permits required if deciding to relocate/construct the wall on their private property.
- 4) Consult with County Planning Department regarding a need for SMA Permit and/or Shoreline Setback Variance if relocating/constructing the wall on their private property.

REMARKS:

By memorandum dated September 4, 2014, Mr. Roy A. Vitousek III, of Cades Schutte LLP, on behalf of Cynthia K. Anderson, requested a grant of easement for seawall encroachments upon State lands (Beach Reserve) at Lalamilo, South Kohala, Hawaii, TMK: (3) 6-9-001: portion of 002. Applicant's private property is identified as Tax Map Key: (3) 6-9-003:005.

Applicant does not know when the seawall was constructed, but many of the seawalls in the adjacent properties were constructed in the early 1960's or earlier. Records indicate that there are no shoreline certificates on file.

In the discovery of these seawall encroachments, there are only two options available in resolving the encroachment situation. One alternative is to issue a grant of easement to the private landowner to authorize the seawall to remain as is. Another solution would be to have the seawall removed. At times, the removal of a seawall might create an adverse

effect upon the shoreline, so a decision might be made to keep the wall in place.

In this particular case, the abutting private properties also contain seawalls that are contiguous along the shoreline. However, it cannot be determined if removal of the Anderson seawall would create an adverse effect to the abutting properties and its shoreline.

Based on the information provided above, and 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.

On April 30, 2015, various governmental agencies and interest groups were solicited for comments.

AGENCIES	COMMENTS
County of Hawaii:	
Planning Department	Objection - See comments - Exhibit C
Public Works	No response
State of Hawaii:	
DLNR-Aquatic Resources	No response
DLNR - DOFAW	No response
DLNR - Na Ala Hele	No response
DLNR - Historic Preservation	No objections - See comments below
DLNR - OCCL	Objection - See comments - Exhibit D
Other Agencies/ Interest Groups:	
Office of Hawaiian Affairs	No comments

The State Historic Preservation Division commented that “we believe no historic properties will be affected by this activity.”

The County Planning Department provided, “pursuant to Rule No. 11-7(a)(6), structures can be allowed within the shoreline setback area provided written clearance is secured from the Planning Department as “Structures which were completed by or activities commenced prior to June 22, 1970.” After extensive search of all related files, we do not have any record that the seawall was determined to be a legal, non-conforming structure built prior to June 1970. Since such a request has never been submitted to our office, we believe the granting of an easement is premature.” (Exhibit C)

The Office of Conservation and Coastal Lands (OCCL) provided that the Board of Land and Natural Resource 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. OCCL is of the opinion that the policies and evaluation criteria do not support the issuance of an easement. (Exhibit D)

Upon consulting with the Office of Conservation and Coastal Lands, staff is concurring with OCCL's recommendation to not issue an easement, and to have the wall removed from the State property at Applicant's expense.

RECOMMENDATION: That the Board:

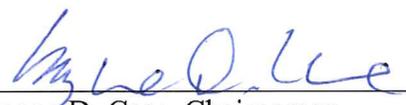
1. Pursuant to Hawaii Revised Statutes Section 171-6(12):
 - A. Authorize the imposition of a fine against Cynthia K. Anderson in the amount of \$500 for the seawall encroachment that exceeds 100 square feet.
 - B. Authorize injunctive relief through the issuance of an order to Cynthia K. Anderson, for the removal of all encroachments located on public land seaward of Tax Map Key: (3) 6-9-003:005, including but not limited to the CRM wall, at its own cost, within 180 days of the date of this action.
 - C. Pursuant to Hawaii Revised Statutes, Section 171-6(12), authorize the imposition of a fine against Cynthia K. Anderson in the amount of \$1,000 per day for the violation, commencing on the date of the Board's Order, if the encroachment is not removed to the Department's satisfaction within 180 days as noted above.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



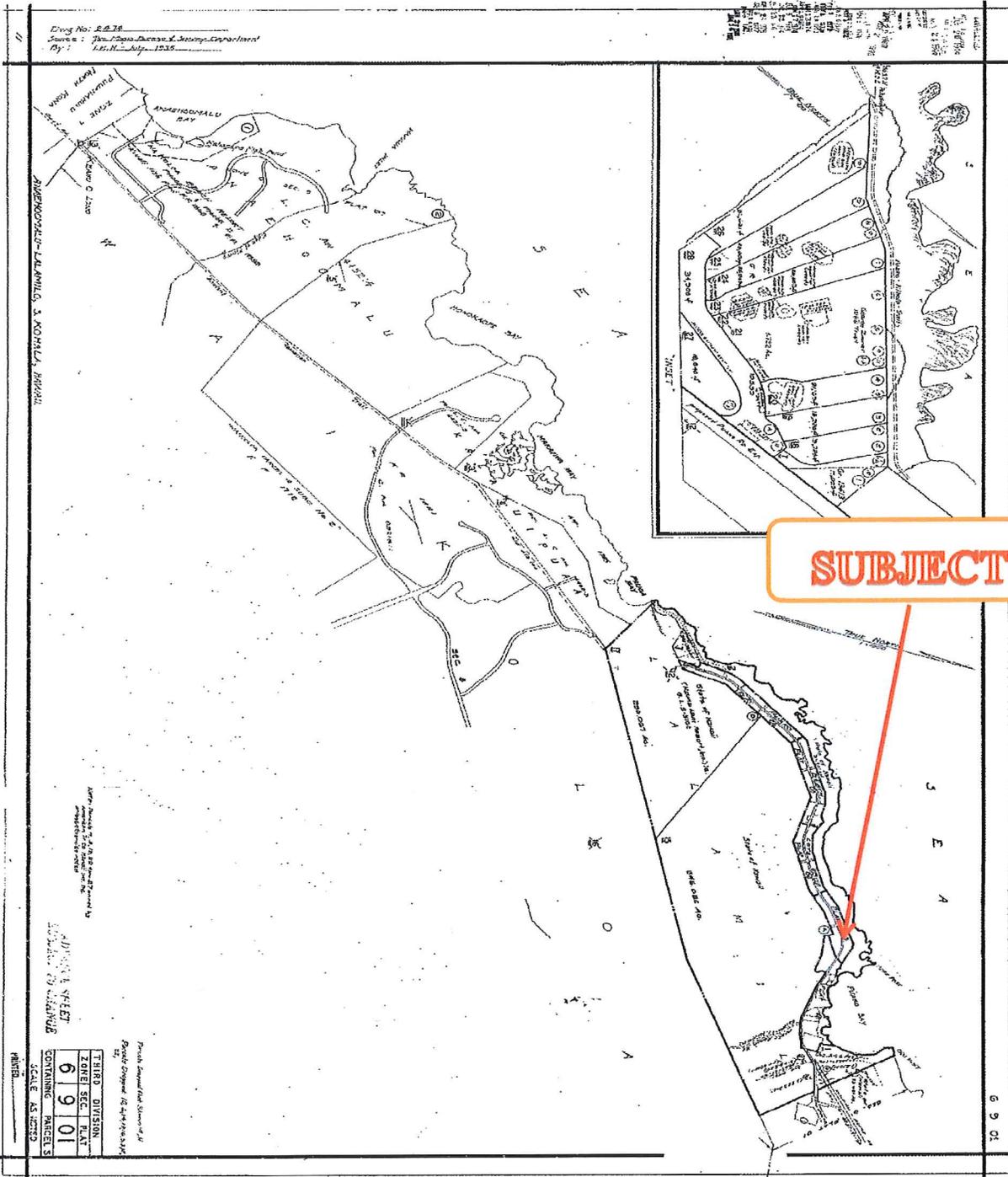


EXHIBIT A

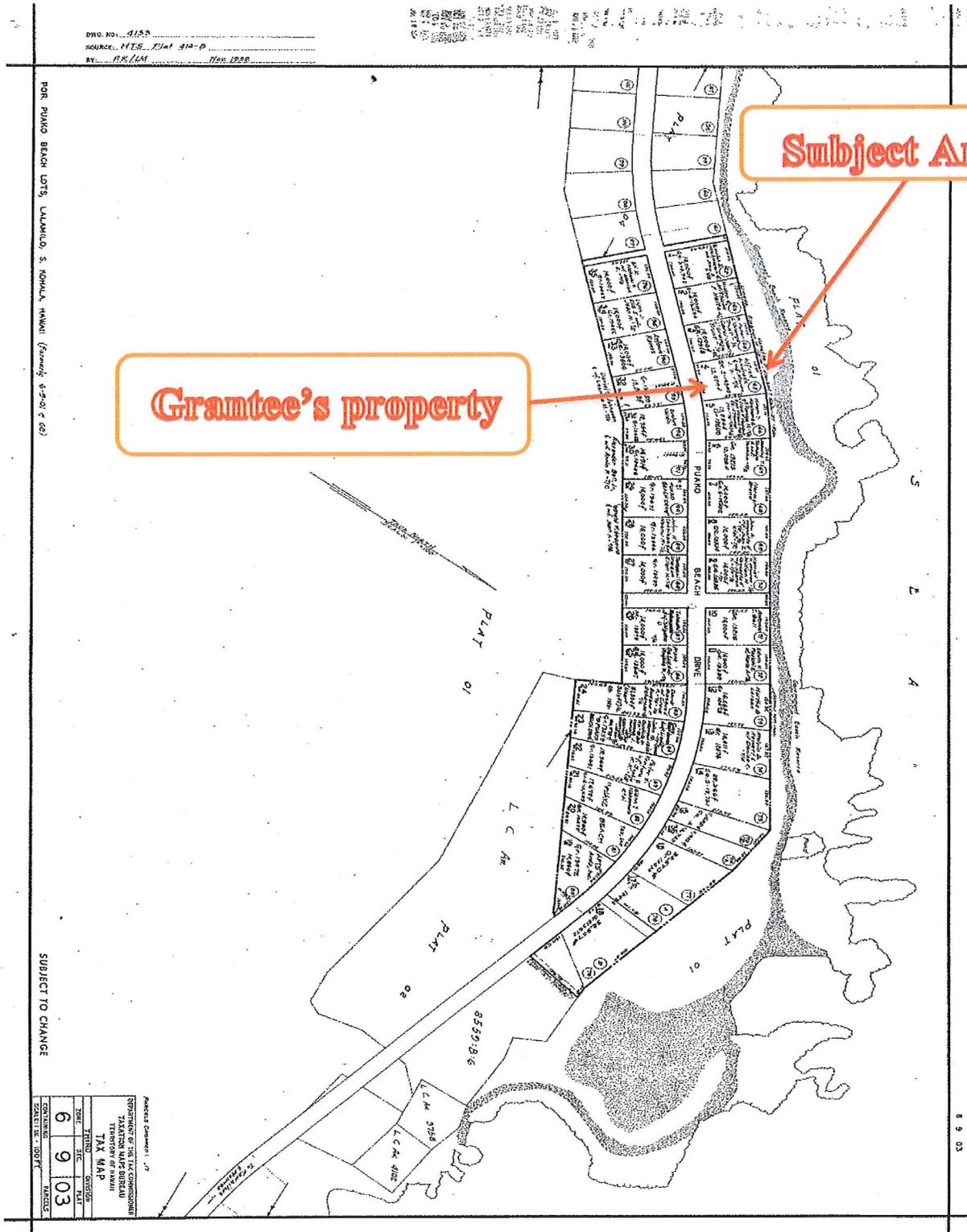


EXHIBIT A

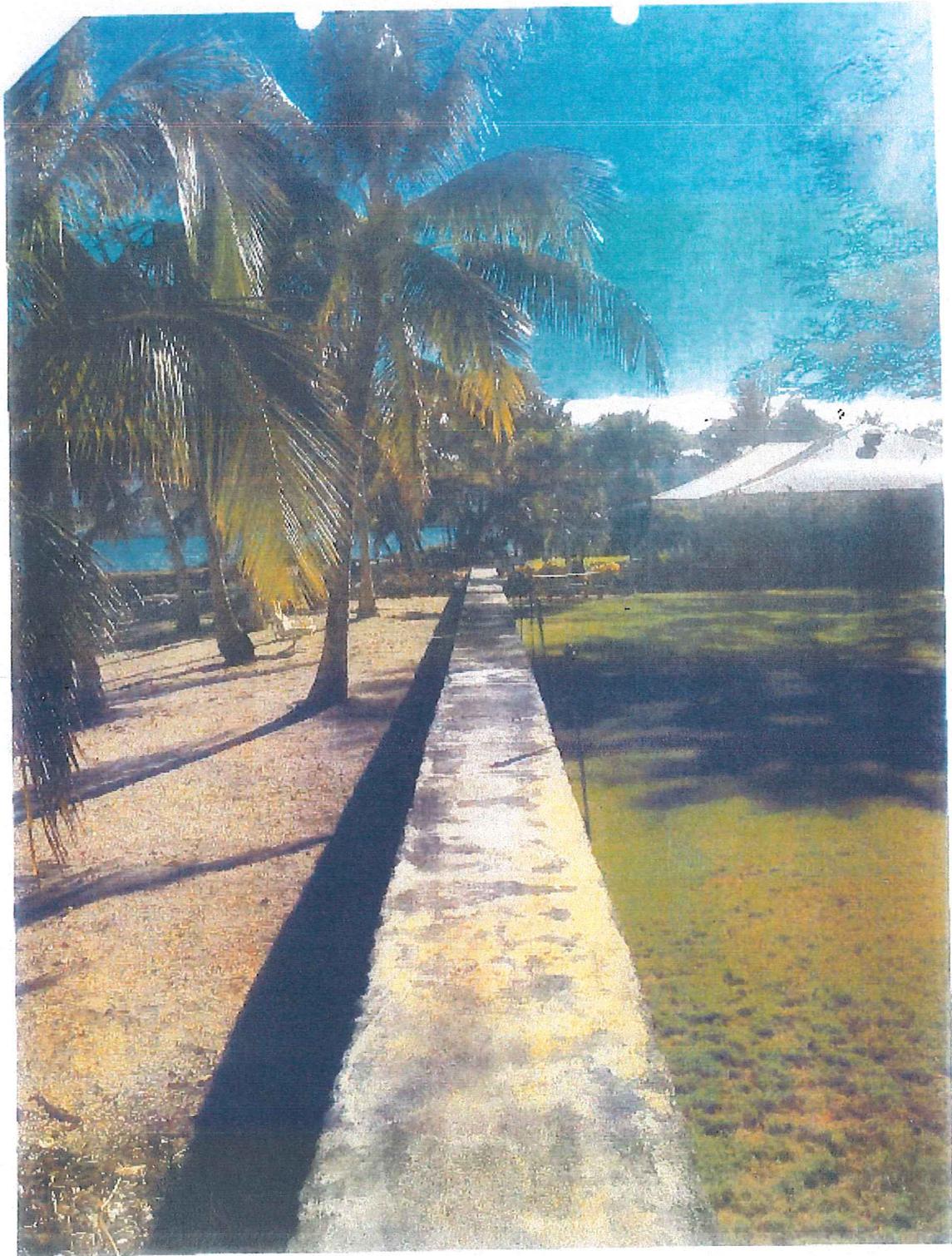


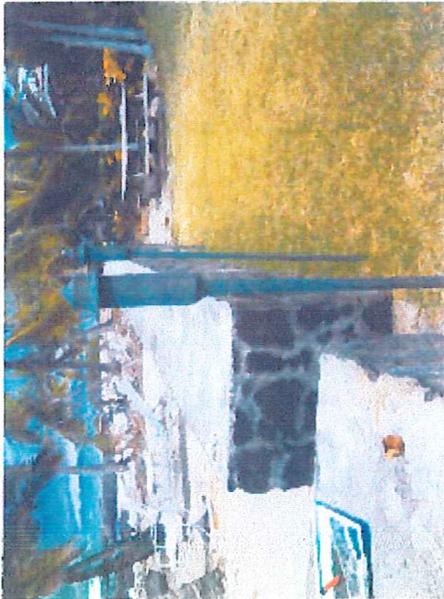
EXHIBIT A



Subject property (parcel 4) wall - view southwestward.



Adjacent property on southwest side (parcel 3).



Subject property (parcel 4) wall - view northeastward.

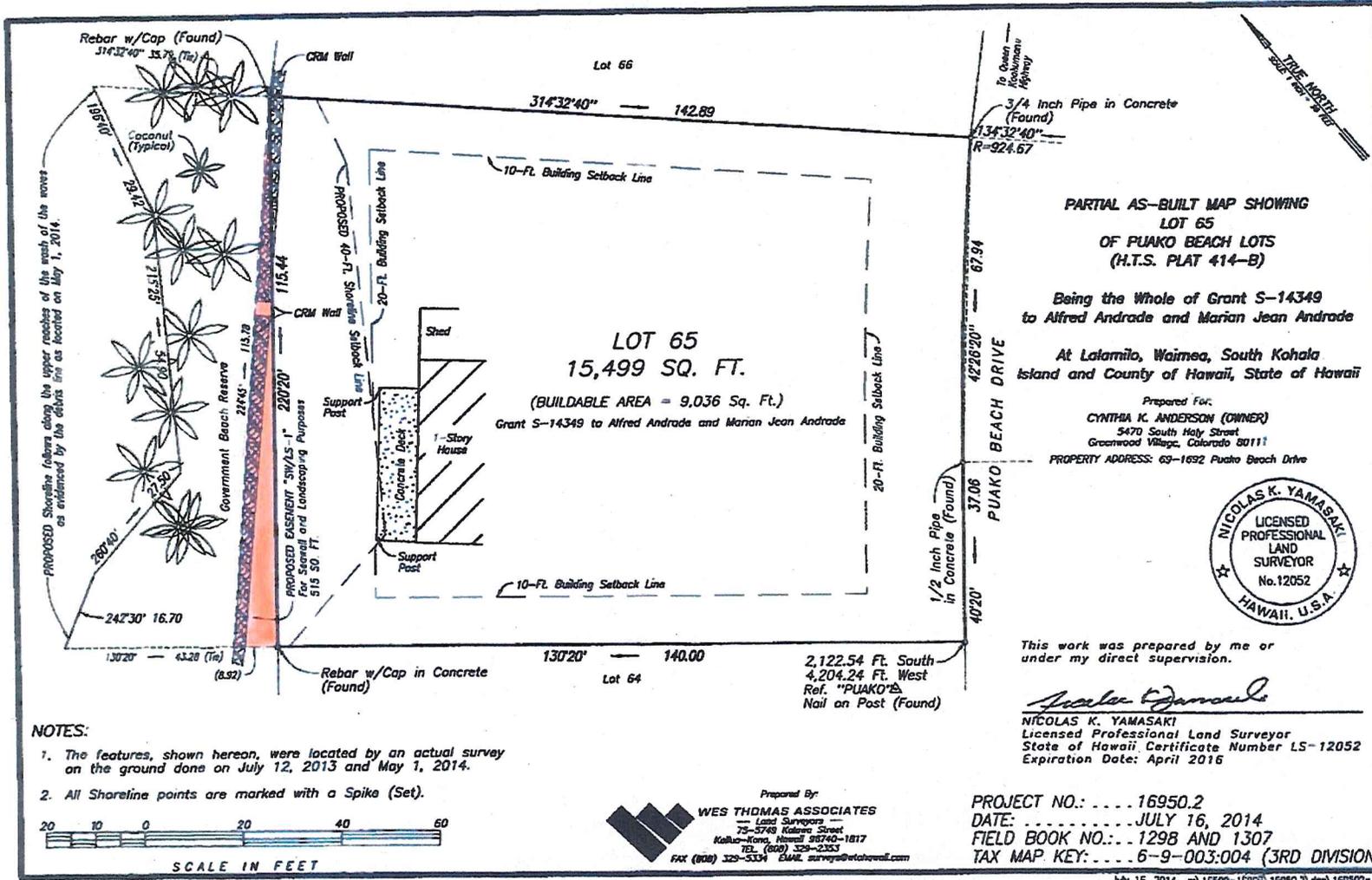


Adjacent property on northeast side (parcel 5).

Photo by EKNA Services, Inc. 10-30-13

EXHIBIT A

EXHIBIT B



**PARTIAL AS-BUILT MAP SHOWING
LOT 65
OF PUAKO BEACH LOTS
(H.T.S. PLAT 414-B)**

Being the Whole of Grant S-14349
to Alfred Andrade and Marian Jean Andrade

At Lalamilo, Waimea, South Kohala
Island and County of Hawaii, State of Hawaii

Prepared For:
CYNTHIA K. ANDERSON (OWNER)
5470 South Holy Street
Greenwood Village, Colorado 80111
PROPERTY ADDRESS: 63-1692 Puako Beach Drive



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

Nicolas K. Yamasaki
NICOLAS K. YAMASAKI
Licensed Professional Land Surveyor
State of Hawaii, Certificate Number LS-12052
Expiration Date: April 2016

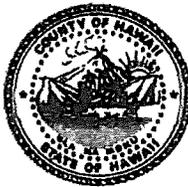
- NOTES:**
- The features, shown hereon, were located by an actual survey on the ground done on July 12, 2013 and May 1, 2014.
 - All Shoreline points are marked with a Spike (Set).



Prepared By
WES THOMAS ASSOCIATES
— Land Surveyors —
75-5749 Kalanani Street
Kalihi-Hono, Hawaii 96740-1817
TEL: (808) 329-0363
FAX (808) 329-3334 EMAIL: surveys@wethomas.com

PROJECT NO.:16950.2
DATE:JULY 16, 2014
FIELD BOOK NO.:1298 AND 1307
TAX MAP KEY:6-9-003:004 (3RD DIVISION)

William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokaloie Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

RECEIVED
LAND DIVISION
HILO, HAWAII

May 6, 2015

Mr. Wesley Matsunaga
Department of Land and Natural Resources
Land Division
75 Aupuni Street, Room 204
Hilo, Hawai'i 96720

Dear Mr. Matsunaga:

SUBJECT: Grant of Term, Non-Exclusive Easement for Seawall Encroachment Purposes
Tax Map Key: (3) 6-9-001: Portion of 002, (3) 6-9-003:004; Lālāmilo, South Kohala,
Hawai'i

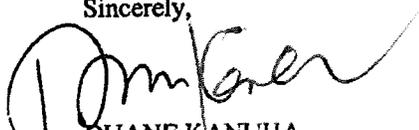
This is in response to your memorandum dated April 30, 2015. Please note that there appears to be a typographical error on page 3 of the draft grant of term in reference to the Applicant's private property tax map key number. The correct tax map key number is (3) 6-9-003:004.

Pursuant to Planning Department (PD) Rule No. 11-7(a) (6), structures can be allowed within the shoreline setback area provided written clearance is secured from the Planning Department as "Structures which were completed by or activities which commenced prior to June 22, 1970."

After an extensive search of all related department files, we do not have any record that the seawall was determined to be a legal, non-conforming structure built prior to June 22, 1970. Since such a request has never been submitted to our office, we believe the granting of an easement is premature.

Thank you for allowing us to comment on this request. If you have questions, please feel free to contact Bethany Morrison of this office at 961-8138.

Sincerely,


DUANE KANUHA
Planning Director

BJM:cjl

\\COH33\Planning\Public\Wpwin60\Bethany\General Zoning Inquiries\DLNR Grant Of Easement- Anderson Doc

EXHIBIT C

DAVID Y. IGE
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

CARTY S. CHANG
DIRECTOR
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES

KEKOA KALJHIWA
DIRECTOR

W. ROY HARDY
ACTING DIRECTOR - WATER

AQUATIC RESOURCES BOATING AND OCEAN RECREATION BUREAU
COMMISSION ON WATER RESOURCES
CONSERVATION AND COASTAL LANDS
ENGINEERING
FORESTRY AND WILDLIFE
KAIKOOLAWE ISLAND RESERVE
LAND
STATE PARKS

DLNR:OCCL:SL

to
Encroachment HA-15461--

MEMORANDUM:

TO: Wesley Matsunaga, Land Agent
Land Division, Hilo

FROM: Sam Lemmo, Administrator
Office of Conservation and Coastal Lands

APR 28 2015
[Handwritten signature]

SUBJECT: Request for Review and Comments on State Land Encroachment Seaward of Tax Map Key (3) 6-9-003:004; Lalamilo, South Kohala, Hawaii (Owner: Cynthia Kay Anderson)

This is in response to your April 30, 2015 request to review and comment on the shoreline encroachments seaward of Tax Map Key (3) 6-9-003:004. According to information and maps contained with your request, you have identified approximately 515 square feet of encroachment (seawall) fronting the subject property onto State lands (Beach Reserve, TMK (3) 6-9-001:002).

A draft staff report from Land Division (Ref. PSF No.: 14HD-200) provided with your request proposes to assess a \$500 fine against the applicants and granting a non-exclusive easement for the subject encroachment pursuant to HRS §171-13, 53(b). The report indicates that "it is presumed the wall was built without permits and predated the Conservation District rules.,, However, no documentation or evidence has been provided verifying the date that the encroachment was established.

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 D

Following the criteria above, OCCL offers the following analysis and recommendations regarding the removal or issuance of an easement for the subject encroachment.

Surrounding Land Uses:

The surrounding land uses are primarily residential. The adjacent properties to the north and south are fronted by similar seawalls. The beach fronting the subject property is a State-owned Beach Reserve. Puako Beach Drive runs along the mauka side of the property.

Beach Resources:

The seawall at the subject property and adjacent properties are fronted by a "perched" beach atop a lava rock bench and tide pools. The beach is comprised of a mix of carbonate sand and gravel with coral and basalt cobble.

Public Access:

Public access to the shoreline is available through six rights-of-way along the length Puako Road.

Effect of Removing the Encroachment on:

Beach Resources: Removal of the encroaching portion of the seawall would help restore and conserve the natural character of the State Beach Reserve fronting the subject property.

Public Access: Removing the encroaching portion of the seawall would help maintain public access through the beach transit corridor along the shoreline through the State Beach Reserve.

Effect on Adjacent Properties: It is not clear what effect, if any, removal of the encroaching structures would have on the adjacent properties. Information on long-term beach erosion trends is not available for this shoreline. The presence of coral and basalt cobble on the perched beach indicates the beach is occasionally over-washed during periods of high surf

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.

Based on the information provided, the subject encroachment along the State-owned Beach Reserve does not appear to serve as primary erosion control for potentially threatened structures.

Upon review and careful consideration of the information gathered on this case, OCCL has determined that the policies and evaluation criteria do not support the issuance of an easement.

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.

Thank you for the opportunity to review and comment on this matter.