

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

July 10, 2015

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

PSF No.: 15OD-070

OAHU

Grant of Term, Non-Exclusive Easement to August J. Monge and Veronica Q. Monge for Rock Seawall Purposes; Issuance of Management Right-of-Entry, Kaipapau, Koolauloa, Oahu, Tax Map Key: (1) 5-4-003:Seaward of 035.

APPLICANT:

August J. Monge and Veronica Q. Monge, tenants in common.

LEGAL REFERENCE:

Sections 171-6, 13, 17, 53(c), and 55 Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward Kaipapau, Koolauloa, Oahu, identified by Tax Map Key: (1) 5-4-003:Seaward of 035, as shown on the attached map labeled **Exhibit A**.

AREA:

350 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
City & County of Honolulu LUO: R-5 [for the abutting private property]

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:

Vacant with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing rock 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.

See Remarks Section on Stage Payment Plan.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Final Environmental Assessment and Finding of No Significant Impact for the subject improvement under Conservation District Use Application (CDUA OA-3711) was published on the OEQC Environmental Notice dated November 23, 2014.

DCCA VERIFICATION:

Not applicable. Applicants, as landowners, are not required to register with DCCA.

APPLICANT REQUIREMENTS: Applicants shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards and at Applicants' own cost;
2. Pay for an appraisal to determine one-time payment; and
3. Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

REMARKS:

In 2001, Applicants purchased the abutting property with the subject rock seawall in existence. In 2002, they were cited in violation of Conservation District rules for unpermitted seawall and were fined \$600 by the Board. As part of the resolution requirement, an after-the-fact Conservation District Use Permit (OA-3711) was approved by the Board on February 27, 2015, item K-2. See **Exhibit B**. One of the conditions of the OA-3711 is to obtain appropriate authorization for the occupancy of state land. Staff brings the request for an easement to today's agenda.

The latest draft shoreline survey map attached as **Exhibit C** shows the subject encroachment, which covers the area from the shoreline surveyed on January 2, 2014 as depicted on the map toward the ocean. Applicants will provide the map and legal description for such easement area.

Upon approval of today's request, Applicants will be reminded of the requirement for concurrent resolution from both houses of the legislature under Section 171-53(c), HRS prior to the issuance of the requested easement. The resolution will not be available until June 2016, at the earliest. Therefore, staff recommends the Board authorize the issuance of a standard right-of-entry permit, including the requirement for posting liability insurance naming the State as additionally insured.

Abandoned Drainage Pipe

Pursuant to §13-222-19, HAR, any unauthorized improvement encroaches upon State land needs to be resolved with the applicable department before the shoreline is certified¹. This rule shall apply to the "conc. jacket" and "exposed 18" pipe" ("Drainage Pipe") as depicted on Exhibit C, with photos on **Exhibit D**.

Applicants bought the adjacent property in 2001 and noted the Drainage Pipe was already there. Their consultant has inquired with various State and County agencies regarding the jurisdiction of the Drainage Pipe, and none of those agencies has any record of the Drainage Pipe. On the land title side, staff cannot find any document or record that may link the Drainage Pipe to any party, or public or private entity, with jurisdiction over it.

In addition, there is no physical evidence showing the Drainage Pipe benefits the private property. There are two drainage outlets nearby which make the necessity for a third drainage outlet in the vicinity highly doubtful.

Discussion was held between the staff and the Office of Conservation and Coastal Lands ("OCCL") regarding the disposition of the Drainage Pipe in the light of the remarks

¹ HAR §13-222-19 Encroachment upon state land and unauthorized shoreline improvements The chairperson shall not certify the shoreline in case where an unauthorized improvement encroaches upon state land or where an unauthorized improvement interferes with the natural shoreline processes. The property owner shall first resolve the encroachment or violation problem with the applicable department prior to the chairperson certifying the shoreline.

mentioned above. OCCL said it would, typically, consider three criteria; (1) the improvement is physically connected to the private property; (2) the current owner built the improvement; and (3) the private property is protected by the improvement, like a seawall. If these three requirements are not met, OCCL does not believe it is appropriate to require the current owner to remove the improvement or obtain an easement for the improvement.

As described above, the Drainage Pipe does not fit into any of those three criteria. Therefore, staff recommends the Board agree that the approval of the subject request for an easement covering the seawall sufficiently resolves the encroachment for purposes of §13-222-19, HAR, i.e. Applicants are not required to remove or obtain an easement covering the Drainage Pipe. OCCL has no objection to this recommended approach for the Drainage Pipe.

Stage Payment

Applicants have expressed that they may have difficulty in settling the one-time payment appraised for the subject easement, and request another possible payment method, for example, annual payment.

It has been a long established policy for the Division to demand a one-time payment over the entire easement term. The current practice eliminates the need for rental reopenings at the cost of the State every 10 years during the term of easement. Such reopening obligation is a significant impact on the Division's limited resources, which may be compounded if it develops into mediation and arbitration, with additional costs to the State.

To address the Applicants' issue, staff recommends the Board authorize the Chairperson to approve an installment payment plan for the lump sum payment of the consideration when the appraisal is available, further subject to the prevailing interest rate for late vendor payment as determined by the Comptroller of the Department of Accounting and General Services. At the time of writing this submittal, the interest rate is 5.25% per annum, pursuant to Comptroller's Memorandum, No. 2015-03.

Staff did not solicit comments from other agencies as a similar request for comment was conducted during the CDUA stage.

RECOMMENDATION: That the Board:

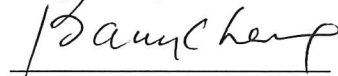
1. Assess a non-refundable administrative cost of \$500, under Section 171-6, HRS.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 5-4-003:035, provided the succeeding owner has not had a lease, permit, 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 Applicants fulfilling all of the Applicants Requirements listed above,

authorize the issuance of a term, non-exclusive easement to August J. Monge and Veronica Q. Monge covering the subject area for rock seawall 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) 5-4-003:035, 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. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
 - D. Conditions of Conservation District Use application OA-3711, [as shown on Exhibit B herein];
 - E. Review and approval by the Department of the Attorney General;
 - F. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
 - G. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.
4. Issuance of a management right-of-entry permit to the August J. Monge and Veronica Q. Monge covering the subject area for rock seawall 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 management right-of-entry permit document form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

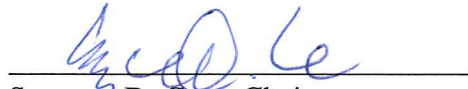
5. Authorize the Chairperson to approve an installment payment plan for the consideration payable for the requested easement, further subject to the prevailing interest rate for late vendor payment as decided by the Comptroller of the Department of Accounting and General Services from time to time.

Respectfully Submitted,



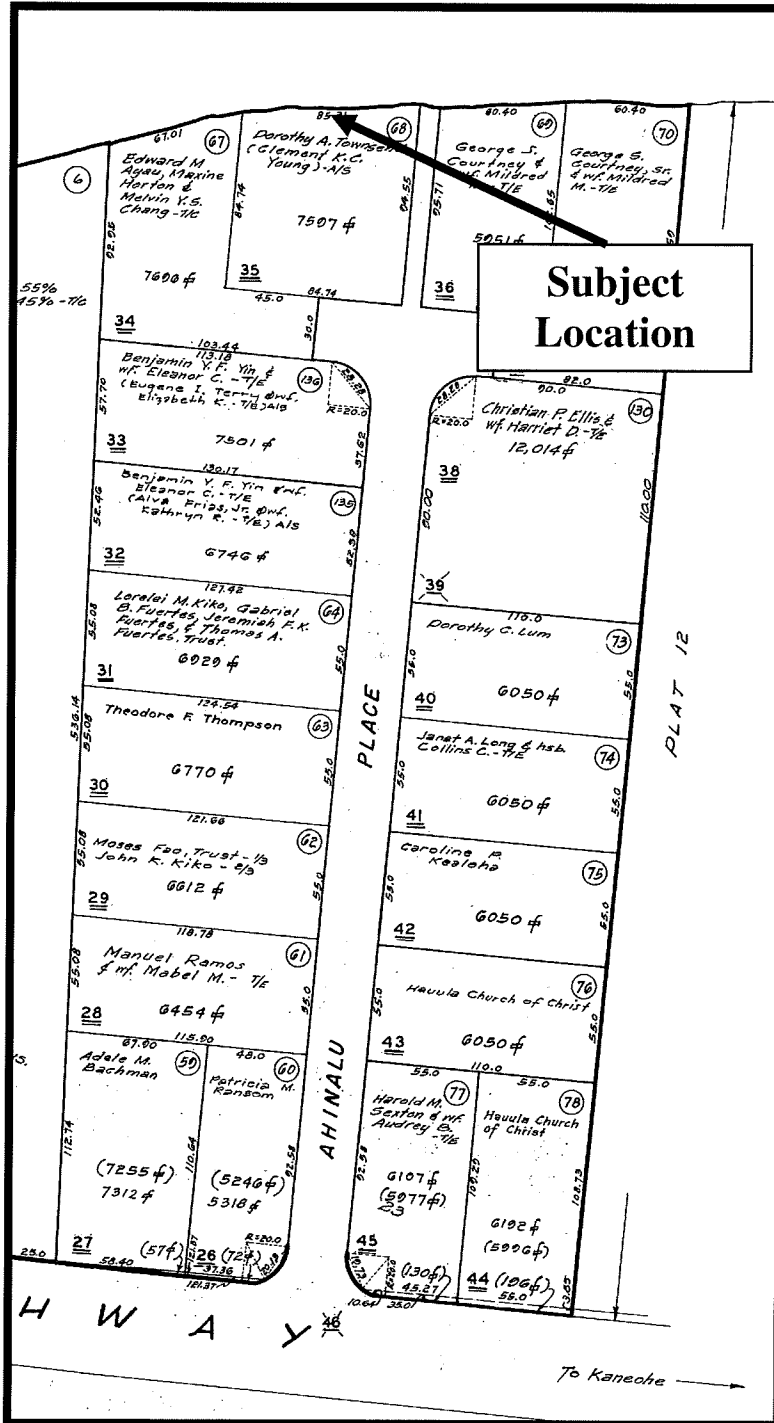
Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

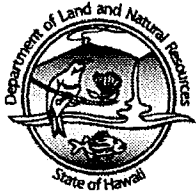




TMK (1) 5-4-003:seaward of 035

EXHIBIT A

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
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DANIEL S. QUINN
INTERIM FIRST DEPUTY

W. ROY HARDY
ACTING 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: OCCL: AJR

CDUP: OA-3711

Jason Nakata
c/o The Limtiaco Consulting Group

Honolulu, HI

SUBJECT: CONSERVATION DISTRICT USE PERMIT (CDUP) No. OA-3711
After-The-Fact Approval for Existing Rock Seawall
Ko'olau Loa District, Island of O'ahu
TMK: (1) 5-4-003:035

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2015 MAR 13 A 11:05
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

This is to inform you that on **February 27, 2015** the Board of Land and Natural Resources (BLNR) approved Conservation District Use Permit (CDUP) **OA-3711** for After-The-Fact Approval for an Existing Rock Seawall located in the Ko'olau Loa District, Island of O'ahu, on **TMK: (1) 5-4-003:035**, subject to the following conditions:

1. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
2. The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
3. **The permittee shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable;**
4. The permittee shall comply with all applicable department of health administrative rules;
5. The permittee shall provide documentation (e.g., book and page or document number) that the permit approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
6. Before proceeding with any work authorized by the department or the board, the permittee shall submit four (4) copies of the construction plans and specifications to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be

EXHIBIT "B"

returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;

7. All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;
8. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
9. In issuing the permit, the department and board have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
10. When provided or required, potable water supply and sanitation facilities shall have the approval of the department of health and the county department of water supply;
11. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
12. Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;
13. Use of the area shall conform with the program of appropriate soil and water conservation district or plan approved by and on file with the department, where applicable;
14. The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;
15. For all landscaped areas, landscaping and irrigation shall be contained and maintained within the property, and shall under no circumstances extend seaward of the shoreline as defined in section 205A-1, HRS;
16. Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;
17. Where applicable, provisions for protection of beaches and the primary coastal dune shall be established by the permittee, to the satisfaction of the department, including but not limited to avoidance, relocation, or other best management practices;
18. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law; and

19. Other terms and conditions as prescribed by the chairperson.

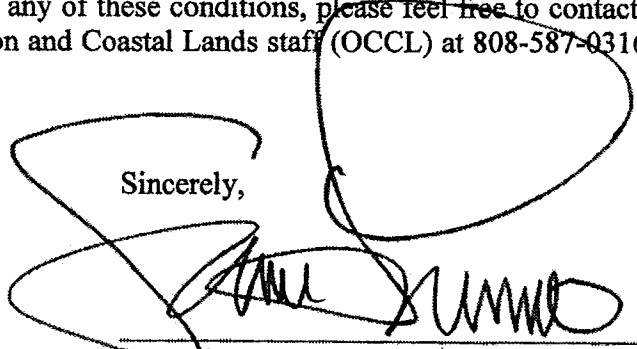
Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. **Please sign two copies. Retain one copy and return the other within thirty (30) days to:**

Office of Conservation and Coastal Lands, P.O. Box 621, Honolulu, HI, 96809

Should you have any questions on any of these conditions, please feel free to contact Alex J. Roy, M.Sc. of our Office of Conservation and Coastal Lands staff (OCCL) at 808-587-0316 or via email at alex.j.roy@hawaii.gov

Sincerely,



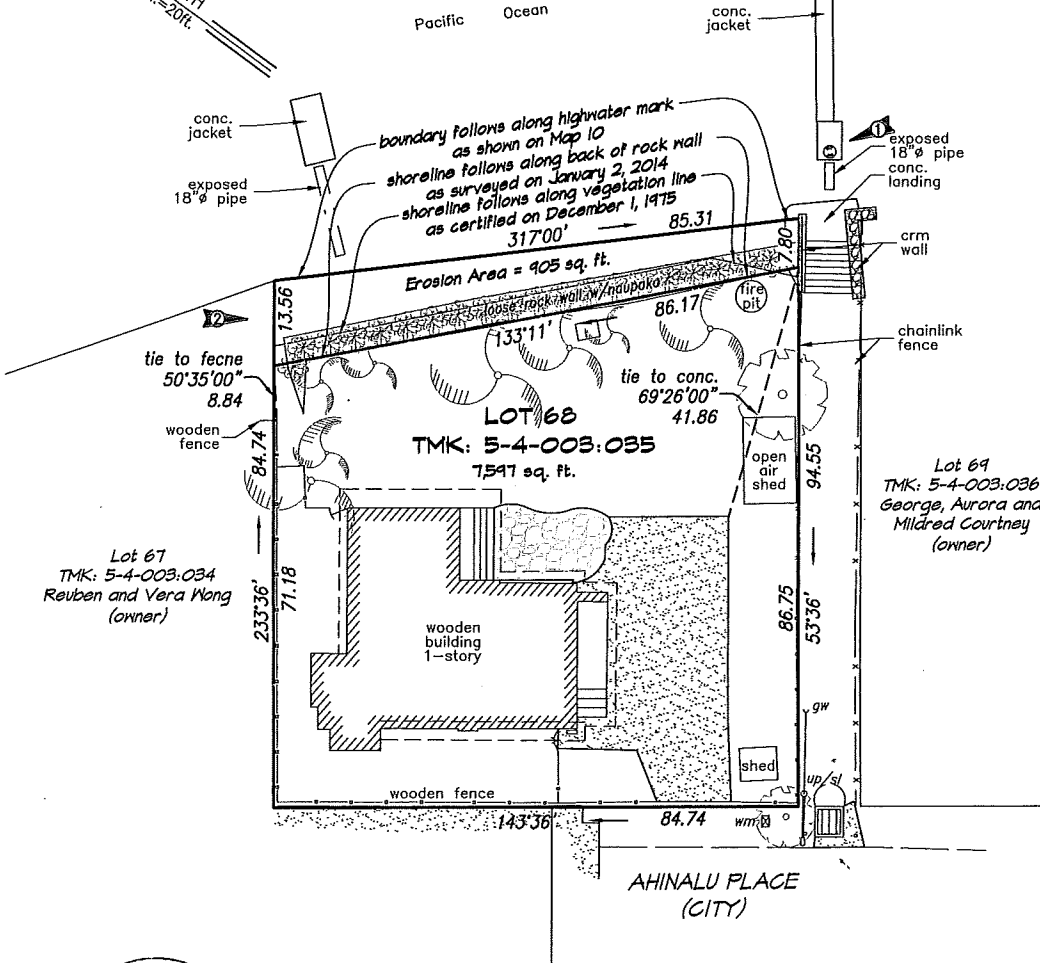
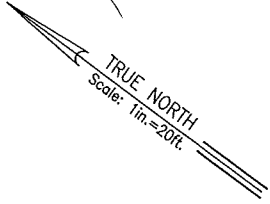
Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged:

August J. Inoué
Applicant's Signature

March 11, 2015
Date

CC: Chairperson
ODLO
City and County of Honolulu - DPP
City and County of Honolulu - ENV



SHORELINE CERTIFICATION MAP

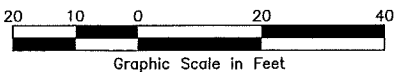
BEING LOT 68 (MAP 10) OF
 LAND COURT CONSOLIDATION 23
 AT KAIPAPAU, KOOLAULOA, OAHU, HAWAII
 TMK: (1) 5-4-003: 035

AUSTIN, TSUTSUMI, & ASSOCIATES INC.
 501 SUMNER STREET, SUITE 521
 HONOLULU, HI 96817, (808) 533-3646

THIS WORK WAS PREPARED BY ME
 OR UNDER MY SUPERVISION.

Erik S. Kaneshiro 1/21/12

ERIK S. KANESHIRO
 LICENSED PROFESSIONAL LAND SURVEYOR
 CERTIFICATE No. 9826



SITE ADDRESS: HAUULA, HAWAII. 96717
 OWNER: AUGUST J. AND VERONICA Q. MONGE

NOTES

1. Azimuths and record coordinates shown on this map are referred to Government Survey Triangulation Station "KAIPAPAU" Δ.
2. Names of adjoining property owners were taken from Tax Map Key Records.
3. Shoreline certification is for permitting purposes.
4. [Symbol] Denotes photo number and direction.
5. Map is based on a field survey on January 2, 2012.

JANUARY 20, 2014

