

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

May 24, 2013

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

PSF No.:12OD-155

OAHU

Grant of Term, Non-Exclusive Easement to Bathtub Beach, LLC for Revetment and Steps Purposes; Assess Administrative Cost of \$500, Laie, Koolauloa, Oahu, Tax Map Key: (1) 5-5-002:seaward of 034.

APPLICANT: ("Applicant")

Bathtub Beach, LLC, an Alaskan limited liability company.

LEGAL REFERENCE:

Section 171-6, 13, and 53, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located in Laie, Koolauloa, Oahu, identified by Tax Map Key: (1) 5-5-002:seaward of 034 as shown on the attached map labeled **Exhibit A**.

AREA:

1,164 square feet, more or less.

Subject to review and approval of the Department of Accounting and General Services, Survey Division.

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: No

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

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

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Subject to one-time payment of consideration determined by an independent appraiser subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

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 Exemption Notification at **Exhibit B**.

DCCA VERIFICATION:

| | | |
|---|--------------|--------------|
| Place of business registration confirmed: | YES <u>x</u> | NO <u> </u> |
| Registered business name confirmed: | YES <u>x</u> | NO <u> </u> |
| Applicant in good standing confirmed: | YES <u>x</u> | NO <u> </u> |

APPLICANT REQUIREMENTS: Applicant shall be required to:

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

BACKGROUND:

Applicant, who is the owner of the abutting property identified as tax map key (1) 5-5-002:034 (“Parcel 34”), has been in the process of obtaining a shoreline certification. Parcel 34 is described as Lot 10-A of Land Court Application 772, Map 5 dated October 8, 1932. The original seaward boundary of Lot 10-A was cited along “highwater mark” as shown on Map 1 of the same application, dated March 28, 1927.

In 1975, the shoreline was determined to be mauka of the recorded boundary but makai of the revetment. See **Exhibit C**. During a recent survey process, the revetment and steps were found to be makai of the shoreline as shown on the latest shoreline survey attached as **Exhibit D**. The revetment and steps are encroaching on the State submerged lands and the applicant cannot provide any prior authorization/permit for the construction of the revetment and steps. Nevertheless, the applicant intends to resolve the encroachments.

Upon approval of today’s request, 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.

By its letter dated July 31, 2012 attached as **Exhibit E**, Office of Conservation and Coastal Lands (OCCL) could not determine that the encroachments are a conservation district violation and declined to ask for an after-the-fact conservation district use application. In addition, OCCL supports a disposition issued to resolve the encroachments.

Department of Facility Maintenance, Department of Health, Board of Water Supply, Division of Aquatic Resources, and Department of Parks Recreation have no objection/comments to the request. State Historic Preservation Division, Department of Planning and Permitting, and Office of Hawaiian Affairs have not responded before the due date.

Pursuant to the Board’s action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, a fine of \$500 is to be imposed if the encroachment is over 100 square feet. Nevertheless, staff does not recommend any fine for the subject encroachment based on the fact that it was once within the recorded boundary of the private property.

As reported in some prior shoreline encroachment easement requests, the Department introduced a bill in the 2013 session asking the Legislature to allow the Board to issue easements at less than fair market value for shoreline encroachments now located seaward of the shoreline but that were authorized and built within the recorded boundary of the property and landward of the shoreline at the time of construction. For reasons unbeknownst to the Department, the bill did not get a hearing from the Senate or House Judiciary Committees, even though the Senate and House Water/Land Committees approved the Department's proposed bill, unamended and quite quickly. Though the bill

is technically "dead" for this session, it can be resurrected next session; and the Department will reintroduce another bill again just in case.

The subject requests meets all the requirements of the proposed legislation except authorization for constructing the encroachments is not available at the time of writing this submittal. Therefore, staff recommends the requested easement be issued at fair market value.

In addition, staff recommends the Board assess the administrative cost of \$500 for staff time incurred in resolving this matter, under Section 171-6, HRS.

Governor's approval pursuant to Section 171-53 (c), HRS will be pursued by the staff upon approval of today's request.

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. Staff has no objection to the request.

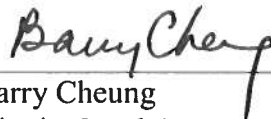
RECOMMENDATION: That the Board:

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. Assess a non-refundable administrative cost of \$500, under Section 171-6, HRS.
3. Authorize the subject request to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key (1) 5-5-002:034 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 Bathtub Beach, LLC, covering the subject area for revetment and steps 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 property described as Tax Map Key (1) 5-5-002:034, 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;

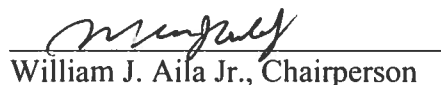
- C. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
- D. Review and approval by the Department of the Attorney General;
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
- F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



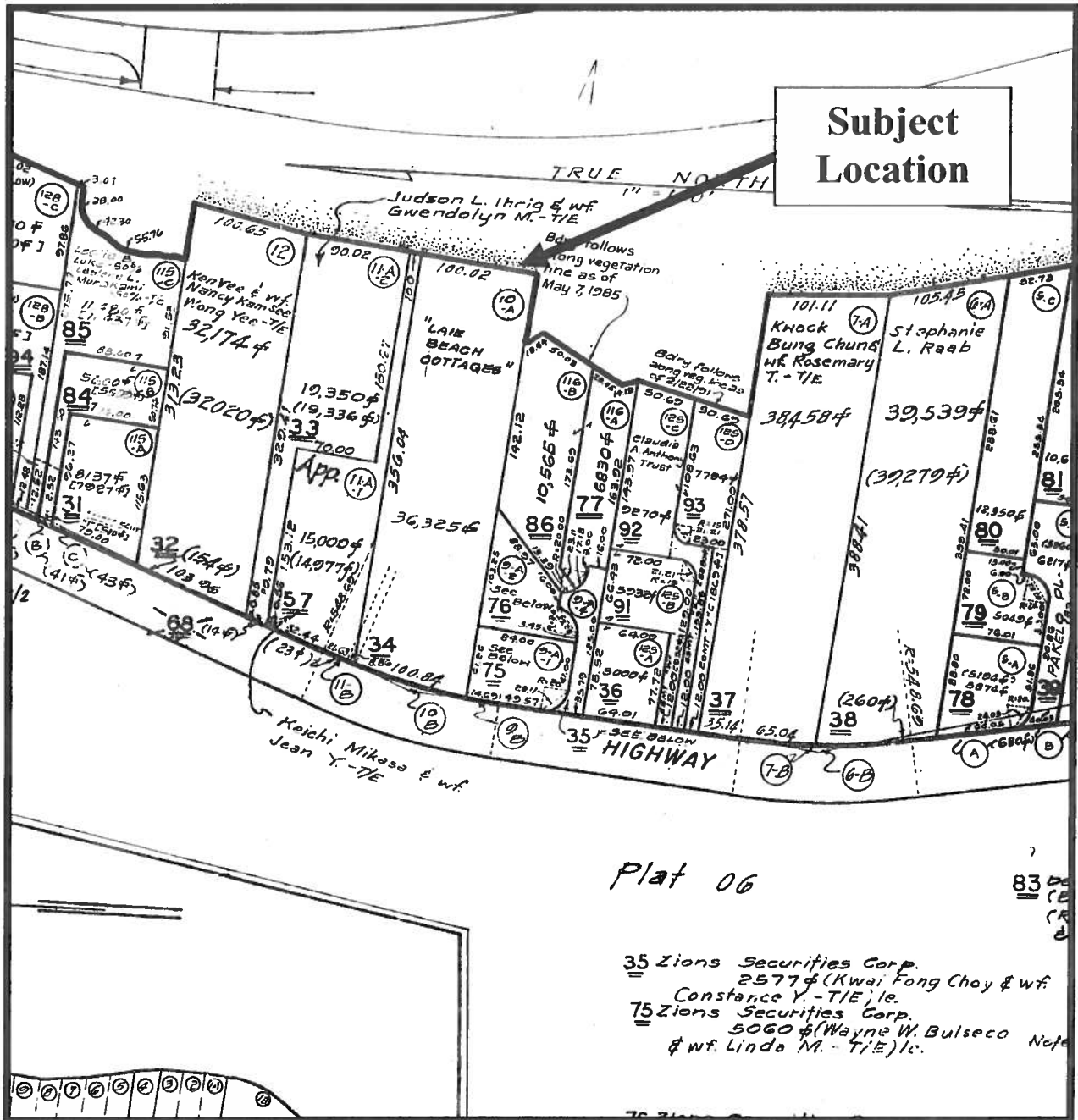
Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila Jr., Chairperson





TMK (1) 5-5-002:seaward of 034

EXHIBIT A

EXEMPTION NOTIFICATION

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

Project Title: Term Easement for Revetment and Steps Purposes

Project / Reference No.: PSF 12OD-155

Project Location: Laie, Koolauloa, Oahu, Tax Map Key: (1) 5-5-002:scaward of 034.

Project Description: Easement to legalize the encroachment on State lands.

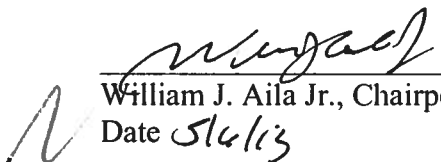
Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4), 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."

Staff believes the subject encroachment was built prior to 1975 as evidenced by the 1975 shoreline map. The applicant is not planning on conducting major change to the existing topographical and vegetation condition of the property. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties Office of Conservation and Coastal Lands

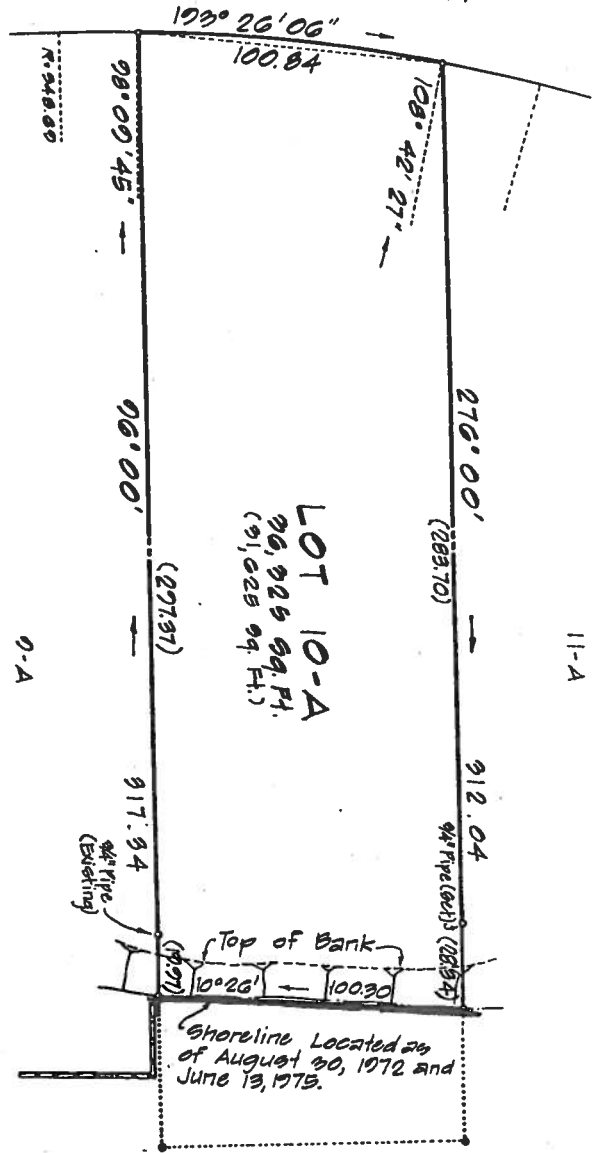
Recommendation: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila Jr., Chairperson
Date 5/24/13

EXHIBIT B

KAMEHAMEHA HIGHWAY



11-A

LOT 10-A
96,925 SQ. FT.
(91,625 94 Ft.)

LAIE BAY

Scale: 1 in. = 60 ft.
TRUE NORTH

THIS MAP IS FROM AN ACTUAL SURVEY ON THE GROUND MADE BY OR UNDER THE DIRECT SUPERVISION OF THE SURVEYOR AND UNDER THE SUPERVISION OF THE SURVEYOR ON AUG. 30, 1972 AND JUNE 13, 1975. AND MAY BE CHECKED WITH MY FIELD BOOK NO. 695.

MAP SHOWING SHORELINE
FRONTING LOT 10-A
OF LAND COURT APPLICATION 772
AS SHOWN ON MAPS
AT LAIE, KOOLAUPOLA, OAHU, HAWAII



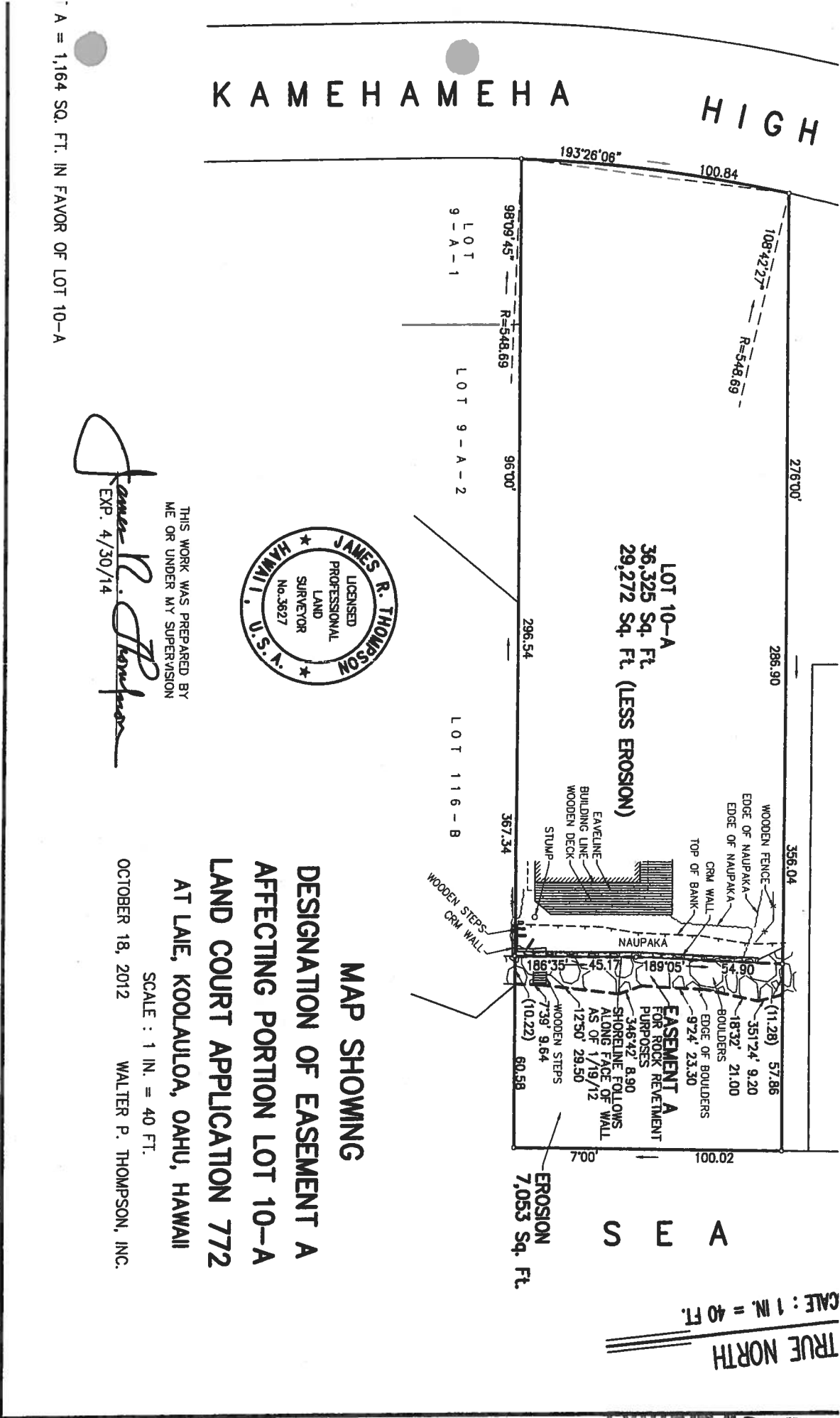
SHORELINE AS LOCATED
CERTIFIED IS HEREBY CONFIRMED
AS BEING THE ACTUAL SHORELINE AS OF
Masao Kawahara
STATE LAND SURVEYOR
JUNE 13, 1975
DECEMBER 5, 1972

Survey Office Copy

PARK ENGINEERING, INC.

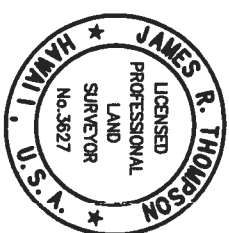
Masao Kawahara
Registered Professional Surveyor
Certificate No. 1246-B

KAMEHAMEHA HIGH



TRUE NORTH
SCALE : 1 IN. = 40 FT.

EXHIBIT "D"



THIS WORK WAS PREPARED BY
ME OR UNDER MY SUPERVISION
James R. Thompson
EXP. 4/30/14

MAP SHOWING
DESIGNATION OF EASEMENT A
AFFECTING PORTION LOT 10-A
LAND COURT APPLICATION 772
AT LAIE, KOOLAULOA, OAHU, HAWAII
SCALE : 1 IN. = 40 FT.
OCTOBER 18, 2012 WALTER P. THOMPSON, INC.

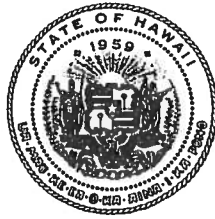
1 A = 1,164 SQ. FT. IN FAVOR OF LOT 10-A

Y : 5 - 5 - 02 : 34

10" x 15" = 1.04 Sq.Ft.

1200-155

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

ESTHER KIA'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



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

DLNR:OCCL:BR

File Number Encroachment: OA-13-8

Bathtub Beach, LLC
c/o Walter P. Thompson, Inc.
Attn: James R. Thompson

Honolulu, HI 96801

Dear Mr. Thompson,

RECEIVED
LAND DIVISION
2012 NOV 14 A 10:11
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

SUBJECT: RE: Request to Resolve State Land Encroachment at 55-323 Kamehameha Highway, Laie, Oahu, HI; TMK (1) 5-5-02:034. Owner: Bathtub Beach, LLC.

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) has reviewed the information submitted concerning the encroachments seaward of TMK (1) 5-5-002:034, 55-323 Kamehameha Highway, Laie, Oahu. According to information and maps contained with your request, you have identified approximately 1,164 square feet of encroachment (rock revetment and wooden steps) seaward of the subject property onto State land.

From the information submitted by the Applicant it is unclear when the encroachment was established. The Approximate Date of Establishment of Encroachment in the Shoreline Encroachment Questionnaire is listed as *unknown*. Based on the information provided, OCCL is unable to confirm legality or non-conforming status of the structure at this time.

OCCL was unable to locate any construction permits or other land use authorizations at the State related to construction of the revetment. A map showing proposed designation of an easement for the rock revetment provided by the Applicant and a State Land Surveyor Map depicting shoreline location as of August 30, 1972 and June 13, 1975 provided by DLNR staff indicate that the revetment was constructed landward of the shoreline as delineated in 1975.

As a consequence, DLNR cannot prove the encroaching rock revetment and stairs are Conservation District violations at this time and will not be asking for an after-the-fact Conservation District Use Application to cure this matter. Should the OCCL find that the encroaching structures were built without permits, within the Conservation District after 1964, the OCCL may reconsider this finding.

EXHIBIT "E"

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

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 uses along the coastline are primarily residential with shoreline armoring structures (rock walls and revetments, legality undetermined) fronting adjacent properties.

Beach Resources:

Due to a long-term trend of beach erosion, there is little or no sand beach resources remaining fronting the revetment. An exposed limestone beachrock shelf protects a tide pool fronting the subject property and adjacent properties.

Public Access:

This section of coast has poor access fronting this revetment and others. The closest public access appears to be approximately 2600 feet to the north and 2500 feet to the south.

Effect of Removing the Encroachment on:

Beach Resources: OCCL staff has determined that removal of the revetment fronting the subject property would not improve beach resources, without removing structures on adjoining properties. Although the backshore area appears to contain sand resources that might contribute to beach formation in the absence of a shoreline structure, there appears to be minimal potential benefits to beach formation due to the fact that abutting private properties are armored, the unusually high erosion rates for the area, and the potential damage to coastal structures if the structure is removed.

Public Access: OCCL staff has determined that improvement to public beach access would not be gained by removing the encroaching portion of the revetment without removing structures on adjoining properties.

Adjacent Properties: Removal of the encroaching revetment would likely impact adjacent properties as a result of increased flanking erosion on exposed sides of the adjacent properties. Removal of the encroaching structures would likely destabilize the vegetated slope landward of the revetment and may threaten an inhabited dwelling.

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.

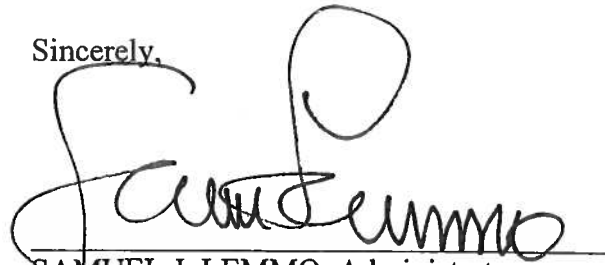
Structures on the subject property would be threatened by high rates of annual erosion (up to 2 ft/yr based on University of Hawaii Studies) without some type of erosion protection.

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 OCCL's evaluation criteria would support a disposition request being processed for the encroaching revetment. OCCL suggests that any disposition require the land uses remain unimproved. OCCL also recommends that, in accordance with HRS § 115, a transit corridor be maintained along the seaward extent of the revetment.

Please contact our Land Division office at (808) 587-0433 should you wish to pursue an easement for the subject area. If you do not wish to pursue an easement, please remove the structures and remediate the area.

Please feel free to contact Sea Grant Extension Agent Brad Romine, at the Office of Conservation and Coastal Lands at (808) 587-0049 or Bradley.M.Romine@hawaii.gov with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel J. Lemmo', written over a horizontal line.

SAMUEL J. LEMMO, Administrator
Office of Conservation and Coastal Lands

CC: Barry Cheung, Land Div.