

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

June 28, 2013

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

PSF No.: 11OD-185

OAHU

Amend Prior Board Action of July 27, 2012, (Item D-6) by Adding Legal Reference to the Submittal; Grant of Term, Non-Exclusive Easement to Frank H. Barton Trust and Elsie M. Barton Trust for Pier, Seawall, and Landscaping Area Purposes in Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-037:seaward of 033

BACKGROUND:

On July 27, 2012, item D-6, the Board approved as amended the subject request. A copy of the approved submittal is attached as **Exhibit 1**, citing Section 171-13 and 53 (c), HRS as the relevant statutes for the request.

Applicant has paid the consideration and obtained the required concurrences from the Governor and the Legislature pursuant to Section 171-53(c), HRS. During the preparation of the easement document, the Department of the Attorney General (AG) notes that portions of the requested easement area is portion of filled land, as described in the legal description prepared by the State Survey Division, which is governed by Section 171-53(b), HRS. Staff recommends the Board amend its prior action by adding 171-53(b), HRS as the legal reference.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of July 27, 2012, (Item D-6) by adding 171-53(b), HRS as the legal reference.
2. All terms and conditions listed in its July 27, 2012 approval to remain the same.

Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

AMENDED

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

July 27, 2012

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

PSF No.:11OD-185

OAHU

Grant of Term, Non-Exclusive Easement to Frank H. Barton Trust and Elsie M. Barton Trust for Pier, Seawall, and Landscaping Area Purposes in Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-037:seaward of 033

APPLICANT:

Elsie M. Barton, Trustee under both above-referenced trusts dated January 10, 1986.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of Kaneohe, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-4-037:seaward of 033, as shown on the attached map labeled **Exhibit A**.

AREA:

1,588 square feet, more or less.

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:

As Amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES *DR*
AT ITS MEETING HELD ON
July 27, 2012

D-6
EXHIBIT "1"

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing pier, seawall, and landscaping area 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:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (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." (See **Exhibit B**)

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

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:

The applicant plans to list the abutting property for sale. During the due diligence, the subject encroachment, comprising seawall, pier, and landscaping area are found on State

lands. A draft survey map showing the encroachment is attached as **Exhibit C**. Therefore, the applicants want to resolve the encroachments prior to the sale.

Staff notes that the pier (about 280 square feet) is sitting on submerged lands, which trigger the requirement from the Governor and concurrence from the Legislature under 171-53 (c), HRS. Meanwhile, staff cannot locate record of authorization from any government agency pertaining to any of the above-referenced encroachments.

According to the research by the Office of Conservation and Coastal Lands (OCCL), the subject encroachments existed prior to 1963. By its letter attached as **Exhibit D**, the OCCL supports a disposition request for the encroachment, and further suggests the land uses remain unimproved. Staff understands it is a standard condition in the easement document that no building or improvement other than the existing ones shall be placed within the easement area.

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.

Division of Aquatic Resources, Department of Health, Board of Water Supply, Department of Planning and Permitting, and Department of Facility Maintenance have no objection or comment to the request. State Historic Preservation Division and the Office of Hawaiian Affairs have not responded as of the time of writing this submittal.

Applicants have 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.

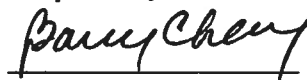
Upon approval of today request, staff will work with the applicant in obtaining the required approval from the Governor and the concurrence of the Legislature, pursuant to 171-53 (c) HRS. There are no other pertinent issues or concerns. Staff has no objection to the request.

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. 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: (1) 4-4-037:033, 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 Frank H. Barton Trust and Elsie M. Barton Trust covering the subject area for pier, seawall, and landscaping 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) 4-4-037:033, 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. 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

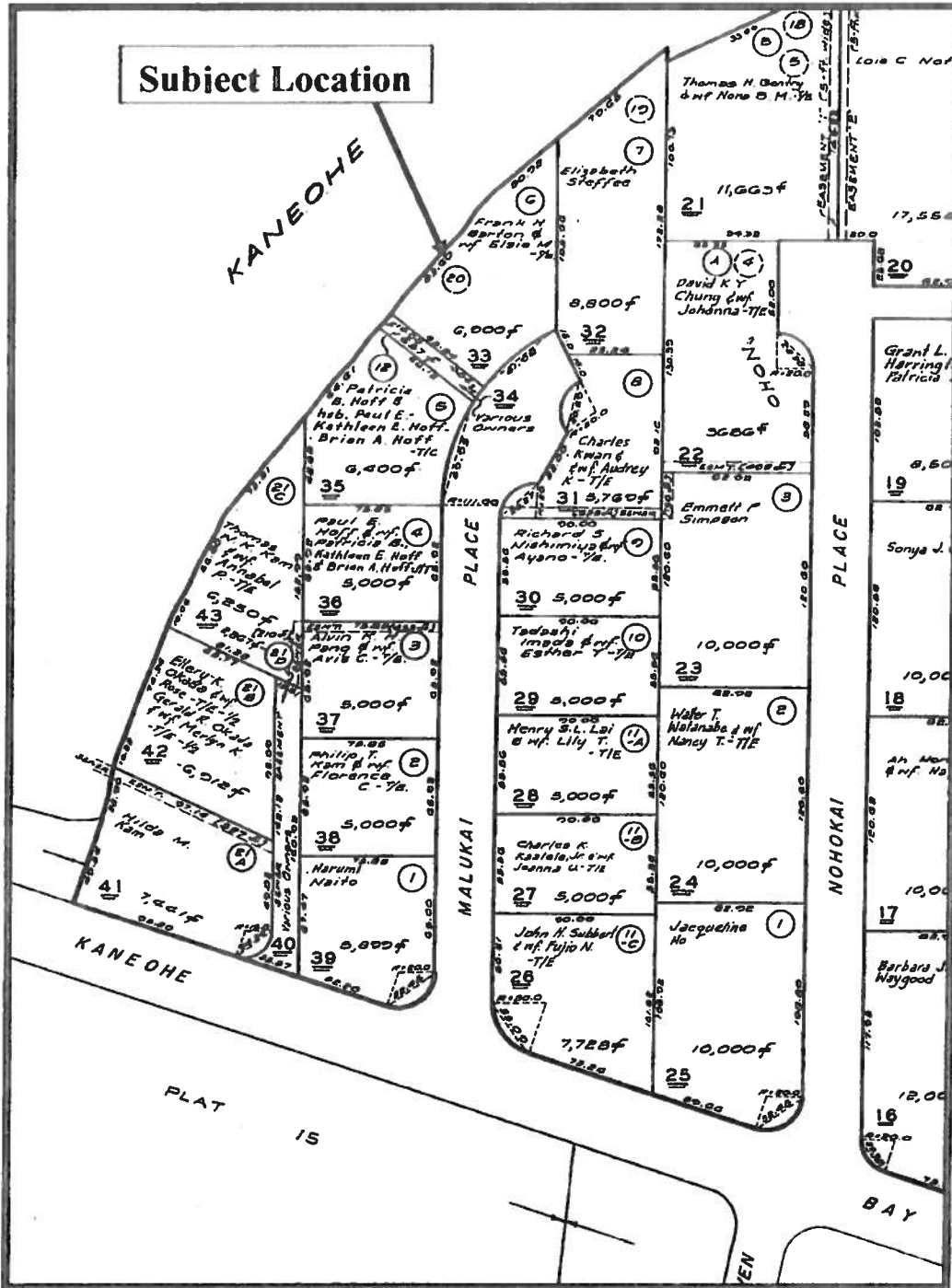
APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

✓ Land Board Meeting: D-6 : July 27, 2012: - .
Approved as Amended. The Board amended recommendation 1 of the
submittal to read as follows:

1. Impose a \$500 fine for illegal encroachment and assess administrative costs of \$200 for staff time incurred in resolving this matter, under Section 171-6(12)



TMK (1) 4-4-037:seaward of 033

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 Pier, Seawall, and Landscaping Area Purposes

Project / Reference No.: PSF 110D-185

Project Location: Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-037: seaward of 033.

Project Description: Easement to legalize the encroachments 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."

The subject encroachments were in existence prior 1963, i.e. before the enactment of Chapter 343 in 1974. 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

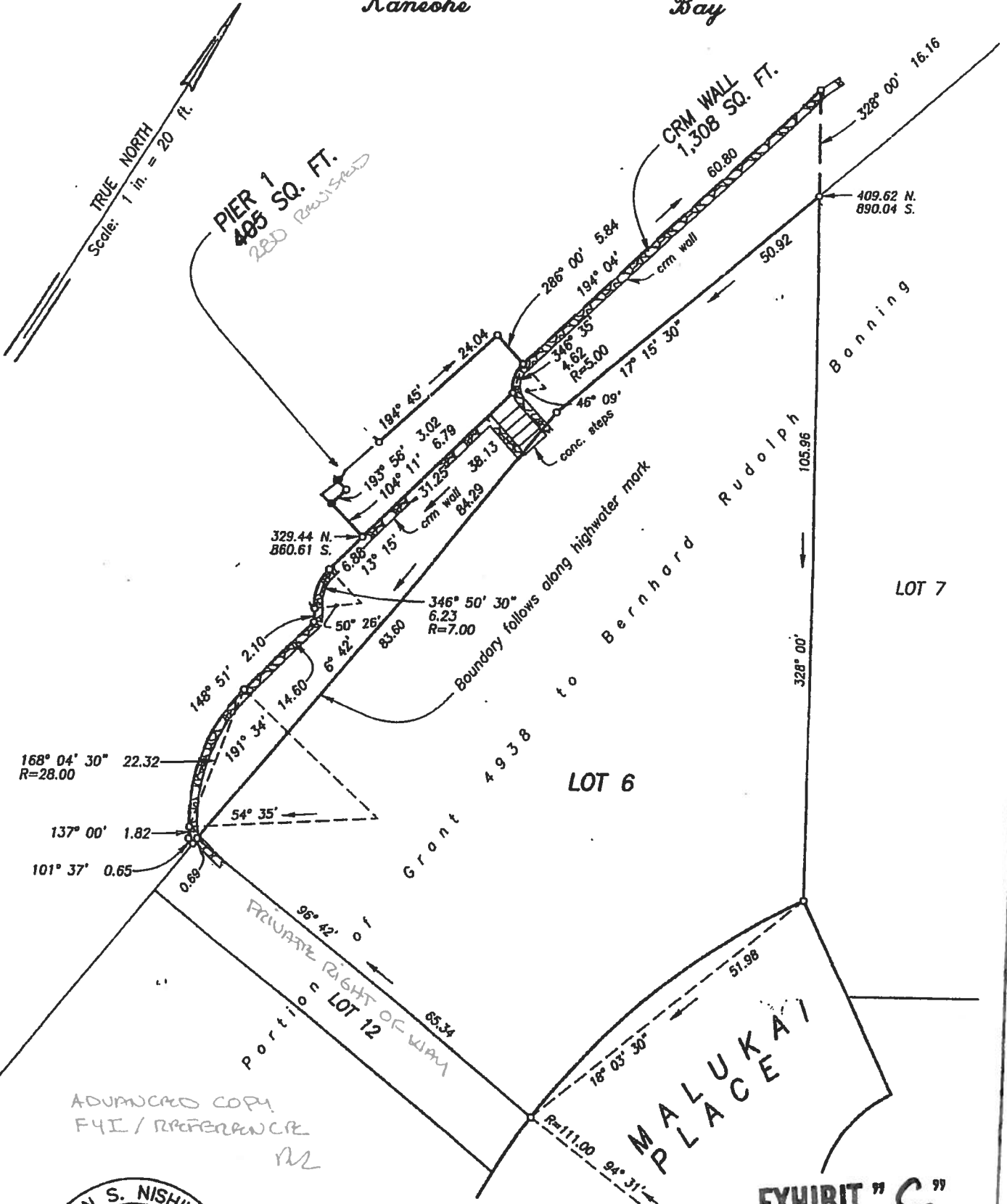
Recommendation: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila Jr., Chairperson
Date

EXHIBIT B

Kaneohe Bay



ADVANCED COPY
FYI / REFERENCE
M



EXHIBIT "C"
LOCATION OF PIER'S

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
COMMISSIONER OF WATER RESOURCE MANAGEMENT
GUY H. KAHAIKUKUI
FIRST DEPUTY
WILLIAM M. TAN
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN POLLUTION
BUREAU OF CONVICTIONS
COMMISSIONER OF WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES (CORCTM)
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIKOLA W. ISLAND RESERVE COMMISSION
LAND
STATE PARKS

JUN 4 2012

File Number Encroachment: OA-12-07

MEMORANDUM

TO: Barry Cheung
Land Division

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

SUBJECT: Request to Resolve State Land Encroachment at
Kaneohe, Oahu, Tax Map Key (1) 4-4-037:033

RECEIVED
LAND DIVISION
2012 JUN -5 P 2:52
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

This is in response to your November 9, 2012 request to resolve the shoreline encroachment at Tax Map Key (1) 4-4-037:033.

According to information and maps contained with the request, there is approximately 1,308 square feet of encroachment (CRM wall and yard), and 280 square feet of encroaching pier, makai of the subject property onto State land.

OCCL staff was unable to locate any construction permits or other land use authorization permits at the State for the subject improvements. Non-conforming status of the encroaching structures has been sufficiently provided due to a letter and photograph submitted to the Department dated August 1983, which provide reasonable photographic evidence of the presence of the improvements prior to 1963.

As a consequence, DLNR will not be asking for an after-the-fact Conservation District Use Application to cure this matter.

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:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;

EXHIBIT "D"

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 shoreline armoring structures (rock walls and revetments, legality undetermined) fronting adjacent properties.

Beach Resources:

There is no sand beach resource fronting the encroachment. The property is fronted by Kaneohe Bay. The area immediately seaward of the improvements is shallow water and mudflats.

Public Access:

There is a privately owned right-of-way on the adjacent lot which is owned in common by eleven Malukai Place lot owners.

Effect of Removing the Encroachment on:

Beach Resources: OCCL staff has determined that removal of the rock wall, and pier will not improve beach resources.

Public Access: OCCL staff has determined that no improvement would be gained by removing either the encroaching portion of rock wall and pier.

Affect on Adjacent Properties: Removal of the encroaching rock wall, would likely cause flank erosion of the adjacent properties.

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 encroaching rock wall and pier. The OCCL suggests that any disposition require the land uses remain unimproved.

Please feel free to contact us at the Office of Conservation and Coastal Lands at (808) 587-0377, should you have any questions.