

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

August 23, 2013

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

PSF No: 02OD-242

OAHU

RESUBMITTAL:

- (1) Rescind Prior Board Action of June 4, 2004, Item D-12, Fee Simple Sale of Reclaimed (Filled) Land to Michael Gallagher and Ada Murakami, Niu, Honolulu, Oahu, TMK (1) 3-7-002:seaward of 008; and
- (2)(a) Authorize Grant of 55-Year Term, Non-Exclusive Easement to Michael Gallagher and Ada Murakami for Seawall and Filled Lands Purposes, Niu, Honolulu, Oahu; TMK (1) 3-7-002:seaward of 008; or alternatively,
 - (b) Enforcement Action Against Michael Gallagher and Ada Murakami as Owners of TMK (1) 3-7-002:008 for Unauthorized Encroachment, Niu, Honolulu, Oahu, TMK (1) 3-7-002:seaward of 008.

BACKGROUND:

By letter dated January 24, 2001, Michael Gallagher and Ada Murakami (“Owners”), through their attorney, inquired if the Office of Conservation and Coastal Lands¹ (“OCCL”) would recommend to the Board the issuance of an easement covering the “*makai* portion of the Gallagher-Murakami’s yard”. A copy of the 2001 letter is attached as **Exhibit 1**.

On June 10, 2002, Oceanit, on behalf of the Owners, provided a written request asking for an “easement for shoreline encroachment” at the subject location. Oceanit advised the Department that the intent was “to have a certified shoreline survey made for the property”. A copy of the 2002 letter is attached as **Exhibit 2**. Based on the information/material provided in Exhibits 1 and 2, OCCL had no objections to an easement request.²

In September 2002, the Owners were provided a draft Board submittal for the easement request in which staff would recommend the Board collecting a deposit of \$139,995. Payment of such deposit would allow the shoreline certification to be processed simultaneously with the easement request.

In February 2003, Oceanit advised the Department that the Owners were willing to “proceed with purchasing the property assuming that a fair price can be negotiated”. On June 4, 2004, item D-12,

¹ Coastal Land Program, which appears on Exhibit 1, was the predecessor to OCCL in the Department.

² Please see OCCL’s letter dated July 31, 2002 attached to the Board submittal attached as Exhibit 3.

the Board authorized the sale of subject encroachment area (1,993 square feet) pursuant to the statutes regarding the reclaimed land. A copy of the 2004 submittal is attached as **Exhibit 3**.

By an independent appraisal dated March 30, 2005 conducted by Medusky & Co., Inc., the market value of the fee simple interest of the reclaimed land was determined to be \$145,000. Chairperson approved the appraisal on April 5, 2005 and the Owners were informed accordingly by the offer letter dated April 20, 2005.

There was no record of a response from the Owners regarding the offered price since 2005. At the same time, there was no disposition consummated.

At the Board meeting of April 27, 2012, item D-14, regarding a similar shoreline encroachment case at the neighboring property, TMK (1) 3-7-002:009 (“TLM”)³, Land Division Administrator advised the Board that there were a number of other applications pending for years with similar encroachment requests. Land Division wrote a letter to the Owners on August 6, 2012 (**Exhibit 4**) requesting discussion to resolve the encroachment issues.

Today’s submittal reports the recent discussion between the staff and the Owners; and seeks the Board’s blessing on the course of action regarding the encroachment at the subject location.

SALE OF RECLAIMED LANDS:

Recently, staff discussed with Mr. Gallagher his plan toward the resolution of the encroachment at the subject location. He advised staff that he did not need any shoreline certification now because he had dropped the renovation plan for his property. Staff notes that there was no shoreline certification done at the subject location since 2001. Further, he believes he should not be responsible for the encroachment since he was not the one who caused the encroachment. Staff respectfully disagreed with Mr. Gallagher’s position and told him that the case needed to be heard by the Board. The condition at the subject location remains status quo, i.e. existence of unauthorized encroachments.

Staff does not believe the subject case differs from the TLM case on the neighboring lot. The seawall at the subject location appears to be contiguous with the seawall on both sides of the Owners’ parcel. It is higher than the adjacent shoreline. Photos taken during the site visit by the appraiser are attached as **Exhibit 5**. The historical information on both sites is identical.⁴ Therefore, it is the Land Division’s position that the subject encroachment needs to be resolved.

The current Land Division administration does not believe that selling the fee interest of previously submerged lands is good policy. If agreeable to other agencies, the Division will support the issuance of term, non-exclusive easement to address the issue of reclaimed land and improvements placed thereon. Further, at the recent Board meeting held on January 25, 2013, the Land Division Administrator, as supported by testimonies from other divisions of the Department, opposed the

³ TLM eventually executed a term shoreline encroachment easement, in which the consideration is due on or before the four (4) triggers: June 1, 2022; sale; building permit; shoreline certification.

⁴ Refer to OCCL’s letter dated July 31, 2002 attached to the 2004 submittal. Aerial photo dated 1954 shows no seawall structure, while a 1961 aerial photo shows a seawall structure in the neighborhood.

proposed sale or land exchange regarding the Sand Island Industrial Park, which was previously submerged land. Therefore, staff recommends the Board rescind the prior approval of June 4, 2004, Item D-12 allowing the sale of reclaimed land at the subject location.

Upon approval of the requested rescission, the subject encroachment becomes an enforcement issue. Staff recommends the Board authorize the enforcement action as detailed in Recommendation Section 1 below.

TERM EASEMENT:

Recently, staff has written to the Owners inquiring about their interest in obtaining a term, non-exclusive easement (**Exhibit 6**). At the time of finalizing this submittal, staff did not receive any response from the Owners. In the event the Owners decide to obtain a land disposition from the Board, staff will recommend the Board issue a 55-year, non-exclusive easement for seawall and filled lands purposes, subject to a lump sum payment of consideration at \$77,900, which has been determined by an independent appraisal valued as of June 4, 2004 [i.e. the original Board approval date of the sale of reclaimed land]. Therefore, staff recommends the term of the proposed easement will commence from June 4, 2004. Land Division paid for the appraisal for the easement consideration. Further, an exemption notification regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS is prepared at **Exhibit 7**. Recommendation Section 2 below is prepared to allow the Board issue a term easement as an alternative.

In addition, the 2004 approval imposed a fine of \$500 for unauthorized encroachment of State lands. Recently, staff has recommended the Board assess an administrative fee of \$200 in addition to the fine for similar shoreline encroachment cases. Therefore, staff recommends the Board assess the similar administrative fee for the request, as reflected in the Recommendation Section 2 below.

RECOMMENDATION: That the Board

1. A. Rescind its prior approval of June 4, 2004, under agenda item D-12 regarding the sale of reclaimed land at the subject location.
- B. Pursuant to Hawaii Revised Statutes 171-6 (12), authorize injunctive relief through the issuance of an order to Michael Gallagher and Ada Murakami for the removal of all encroachments located on public land seaward of Tax Map Key (1) 3-7-002:008 including but not limited to seawall and filled lands at their own cost, as shown on the map filed as CSF No. 23955 dated January 19, 2005 and attached herein as **Exhibit 8** within 180 days of the date of this approval;
- C. Pursuant to Hawaii Revised Statutes 171-6 (12):
 - i. Authorize the imposition of a fine against Michael Gallagher and Ada Murakami 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;

- ii. Order Michael Gallagher and Ada Murakami to pay administrative costs of \$200; and, if necessary, additional costs incurred by the Department for the removal of the encroachment and restoration of the land to its original condition.

OR

2. That the Board amend its prior action of June 4, 2004, under agenda item D-12 by replacing the entire Recommendation Section with the following:
 - “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. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a 55-year, non-exclusive easement to Michael Gallagher and Ada Murakami covering the subject area for seawall and filled lands 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) 3-7-002:008, 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. Payment of a one-time payment consideration at \$77,900, document fee (\$30), and map and description fee (\$25);
 - 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.
- 3. Impose a \$500 fine for illegal encroachment and assess administrative costs of \$200, under Section 171-6, HRS.”

Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson



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CADES SCHUTTE FLEMING & WRIGHT
ATTORNEYS AT LAW

RECEIVED
LAND DIVISION

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P.O. Box 939 · Honolulu, Hawai'i 96808-0939 · Tel (808) 521-9200 · Fax (808) 521-9210 · www.cades.com

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Donna Y. L. Leong · (808) 521-9232 · Direct Fax (808) 540-5026 · E-mail dleong@cades.com

BY HAND DELIVERY

January 24, 2001

Mr. Sam Lemmo
Coastal Lands Program
Department of Land and Natural Resources
State of Hawai'i
P.O. Box 621
Honolulu, Hawai'i 96809

Re: Request for Encroachment Easement

Dear Mr. Lemmo:

We represent Michael Gallagher and Ada Murakami ("**Gallagher-Murakami**") the owners of a property having the street address _____ and identified by tax map key parcel no. (1) 3-7-2-8 (the "**Property**"). The Property and those in the surrounding vicinity are used as single-family residences. The purpose of this letter is to ask whether the Department of Land and Natural Resources would consider recommending to the Board of Land and Natural Resources that it grant to Gallagher-Murakami an easement for the area cross-hatched on Exhibit A attached to this letter (the "**Easement Area**").

Description of Encroachment and Proposed Easement Area. Gallagher-Murakami have owned the Property for only 2 and ½ years, since August 1998. They purchased the Property from architect Norman Lacayo, who purchased from the Cassiday family. The family home, which is the *makai*-most structure, was built by the Cassiday family around the 1930's, according to real property tax records.

The Easement Area is essentially the *makai* portion of the Gallagher-Murakami's yard. At the *makai* boundary of the Easement Area is a seawall that Gallagher-Murakami believe is at least 40 years old and was built by the Cassiday family circa 1954 to 1960. Enclosed as Exhibit B is a survey dated July 31, 2000 prepared by James R. Thompson that shows the location of the seawall in relation to the *makai* boundary of the Property based on recorded deeds. Enclosed as Exhibit C is a copy of File Plan No. 279 dated August 9, 1927, which first established the *makai* boundary of the Property. Based on the survey, the Easement Area appears to cover slightly more than 1,000 square feet.

EXHIBIT "1"

Mr. Sam Lemmo
Department of Land and Natural Resources
January 24, 2001
Page 2 of 4

Construction of the Seawall. Gallagher-Murakami believe the seawall was built between 1954 and 1961 based on aerial photographs of the Property and the neighboring parcels retrieved from RM Towill Corporation, attached as Exhibits D and E. The 1954 photograph (Exhibit D) shows no seawall, and the 1961 photograph (Exhibit E) shows a seawall. The Cassidy family owned the Property during that period according to the tax records. There are no other artificial coastal structures that Gallagher-Murakami are aware of in the vicinity of the Property.

No Previous Shoreline Certification. In 1990, the Cassidy family applied for shoreline certification but was denied because of the encroachment issue. See Exhibit F. After having reviewed the State Surveyor's files, we are unaware of any previous shoreline certification applicable to the Property.

We enclose for your ease of reference as Exhibit H a copy of a reduced tax map showing the results of our research at the State Surveyor's Office, together with relevant correspondence, with regard to shoreline certification applications made for properties in the neighborhood. As you can see, certain properties were granted certifications and others were not.

No Usable Sandy Beach Resources. Enclosed as Exhibit G are recent photographs of the Property and its vicinity. The photographs' perspectives are shown on Exhibit A. As can be seen from those photographs, even if the seawall were removed, there would be no usable sandy beach fronting the Property as the ocean in this area is essentially mud flats, it is shallow, and it is undesirable to boaters, swimmers or beach-goers. Whatever beach there might have been would have been muddy.

Gallagher-Murakami believe that the area began silting when the Hawaiians first built the niu fish pond where Niu-Iki Circle now exists. That fish pond is shown on File Plan No. 279 (Exhibit C). The prevailing water flow is from Maunalua Bay and includes the fresh water run-off from Hawaii Kai and its valleys. That flow is blown by the trades and causes a slow area in the shallows (leeward of Niu Iki Circle), which in turn causes sediment build-up in those shallows, including the front of the Property.

The closest usable sandy beach is located approximately four to five parcels on the *ewa* side of the Property, next to Niu Stream. That beach area can be seen in the RM Towill photographs.

Moreover, there is no public parking in the vicinity as parking is not allowed on Kalaniana'ole Highway. The closest public parking to Niu Stream (the closest public access to the ocean) is *mauka* of Kalaniana'ole Highway, on Halemaumau Street.

Ocean Access for the Public. The closest ocean access runs alongside Niu Stream as stated above. There is no public access from Niu Iki Circle that Gallagher-Murakami are aware of.

Mr. Sam Lemmo
Department of Land and Natural Resources
January 24, 2001
Page 3 of 4

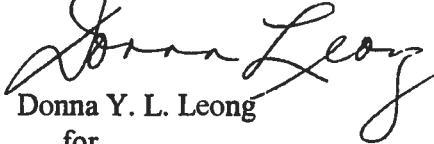
Effect of Removing Seawall. The purpose of the seawall is to prevent the sea, during storm conditions, from surging onto the Property and into Gallagher-Murakami's home, which is located approximately 10-15 feet *mauka* of their *makai* property boundary line.

If the seawall were removed, the sea during storm conditions might enter their home, cause property damage, and pose a threat to the inhabitants. Further, if the seawall were removed, some of Gallagher-Murakami's *makai* lawn would have to be removed, and there would be a decline from their property boundary line to the ocean. We do not anticipate any other effect on the Property or surrounding properties.

Gallagher-Murakami do not believe that removal of the seawall would improve beach processes or public access given the location of the Property in relation to Niu-Iki Circle and the fact that the closest public access is next to Niu Stream. The 1954 photograph shows the Property without the seawall. Even before the seawall was constructed, there was no usable sandy beach and no public access to the area *makai* of the Property.

We look forward to a favorable response. Thank you for your consideration.

Very truly yours,



Donna Y. L. Leong
for

CADES SCHUTTE FLEMING & WRIGHT

Enclosures

cc: Michael Gallagher and Ada Murakami (w/o enc.)

IMANHONO:339867.3



Oceanit
...Innovation through engineering and scientific excellence...

2002 JUN 13 A 10:15

June 10, 2002

Attn: Mr. Barry Cheung
Mr. Harry Yada, Administrator
Department of Land and Natural Resources
Land Division
P.O. Box 621
Honolulu, HI 96809

Subject: Request for Easement for Shoreline Encroachment at
TMK: 3-7-02:008

Dear Mr. Yada:

On behalf of our clients, Ms. Ada Murakami and Mr. Michael Gallagher, we request an easement for shoreline encroachment at Honolulu, HI 96821, TMK: 3-7-02:008. After telephone discussions with Mr. Barry Cheung and Mr. Masa Alkire of your staff, we completed a Shoreline Encroachment Information Sheet and obtained aerial photographs and survey maps of the property. The photographs show that a seawall on the property was built before January 1961, prior to the legislation on Conservation Districts. This information is attached for your review.

Our clients' intent is to have a certified shoreline survey made for the property. We understand that the first step in this process is to provide the attached information after which someone from DLNR will inspect the site and notify Mr. Gallagher of further requirements and easement costs.

If you need additional information, please contact me at 531-3017 or Ms. Murakami/Mr. Gallagher

Sincerely:

Warren E. Bucher, Ph.D.
Senior Ocean Engineer

Attachments

EXHIBIT "2"

P. 12

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

June 4, 2004

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

PSF No.: 02od-242

OAHU

Sale of Reclaimed (Filled) Land to Michael Gallagher and Ada Murakami, Niu, Honolulu, Oahu, TMK (1) 3-7-02:08 seaward.

APPLICANTS:

Michael Gallagher and Ada Murakami, as Tenants in Common, whose mailing address is Honolulu, Hawaii 96821.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands located seaward of (1) 3-6-02:08 situated at Niu, Honolulu, Oahu, as shown on the attached map labeled Exhibit A.

AREA:

2,000 square feet, more or less, to be determined by Survey Division, DAGS.

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: YES NO

CURRENT USE STATUS:

Unencumbered

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
June 4, 2004

ITEM D-12
EXHIBIT "3"

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by independent or staff appraiser, subject to review and approval by the Chairperson. Fair market value shall be based on the value of the reclaimed land.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. Subject lands are to be conveyed to abutting landowner(s) and will become privately owned land at that point. Chapter 343, HRS, would not apply to any future development on the parcel, as no State lands would be involved.

DCCA VERIFICATION:

Individuals, not applicable

APPLICANTS REQUIREMENTS:

Applicants shall be required to

- 1) Provide documentation that he/she is the owner of the property abutting the subject-reclaimed land.
- 2) Pay for an appraisal to determine the one-time payment of fair market value for the reclaimed land;
- 3) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 4) Pay for the costs of public notice pursuant to section 171-16(d).

REMARKS:

The Applicants applied for a City and County permit and were required to get a shoreline certification, which revealed the sea wall and filled land encroachment. The Applicants wrote a letter dated June 10, 2002 requesting an easement and asking to pay a deposit to process the easement and shoreline certification simultaneously. Recently, the applicants decided to apply by letter dated January 22, 2004 to purchase the reclaimed land because they could prove the land was reclaimed prior to June 30, 1962. (Pursuant to Section 171-53(b), HRS, reclaimed land can only be sold if proven to have been added prior to the enactment of this section on June 30, 1962).

The encroaching wall is contiguous with the wall running down the end of the neighboring reclaimed property. An aerial photo dated January 20, 1961 shows the seawall and fill land with mature vegetation. Staff believes this evidence is sufficient to prove that the reclaimed land existed prior to June 30, 1962.

The Office of Conservation and Coastal Lands (OCCL) staff reviewed the original request for a 55-year term easement and recommended an

easement be processed (see Exhibit B). Subsequently, the applicant decided to pursue purchase rather than acquire a term easement. OCCL and Land Division staff discussed this request and OCCL had no objections. No other departments or agencies were asked to comment on the seawall and fill land purchase request.

Since the encroachment was done without proper State Government authorization, staff recommends the Board impose a fine of \$500 for the encroachment upon public lands pursuant to Section 171-6(12) HRS.

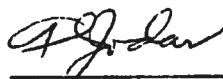
The Applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION:

That the Board, subject to the Applicant fulfilling all of the Applicant requirements listed above:

1. Find that the sale of the subject-reclaimed land is not prejudicial to the best interest of the State, community or area in which subject reclaimed land is located.
2. Authorize the sale of the subject reclaimed land to Michael Gallagher and Ada Murakami covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The Grantee shall consolidate the reclaimed land with the Grantee's abutting property through the County subdivision process;
 - b. The standard terms and conditions of the most current deed or grant (reclaimed land) form, as may be amended from time to time;
 - 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.
3. Impose a fine of \$500 for encroachment upon public lands without Government authorization pursuant to Section 171-6(12) HRS.

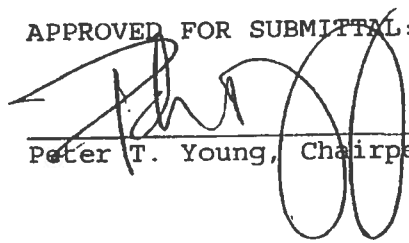
Respectfully Submitted,



Al Jodar
Land Agent



APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

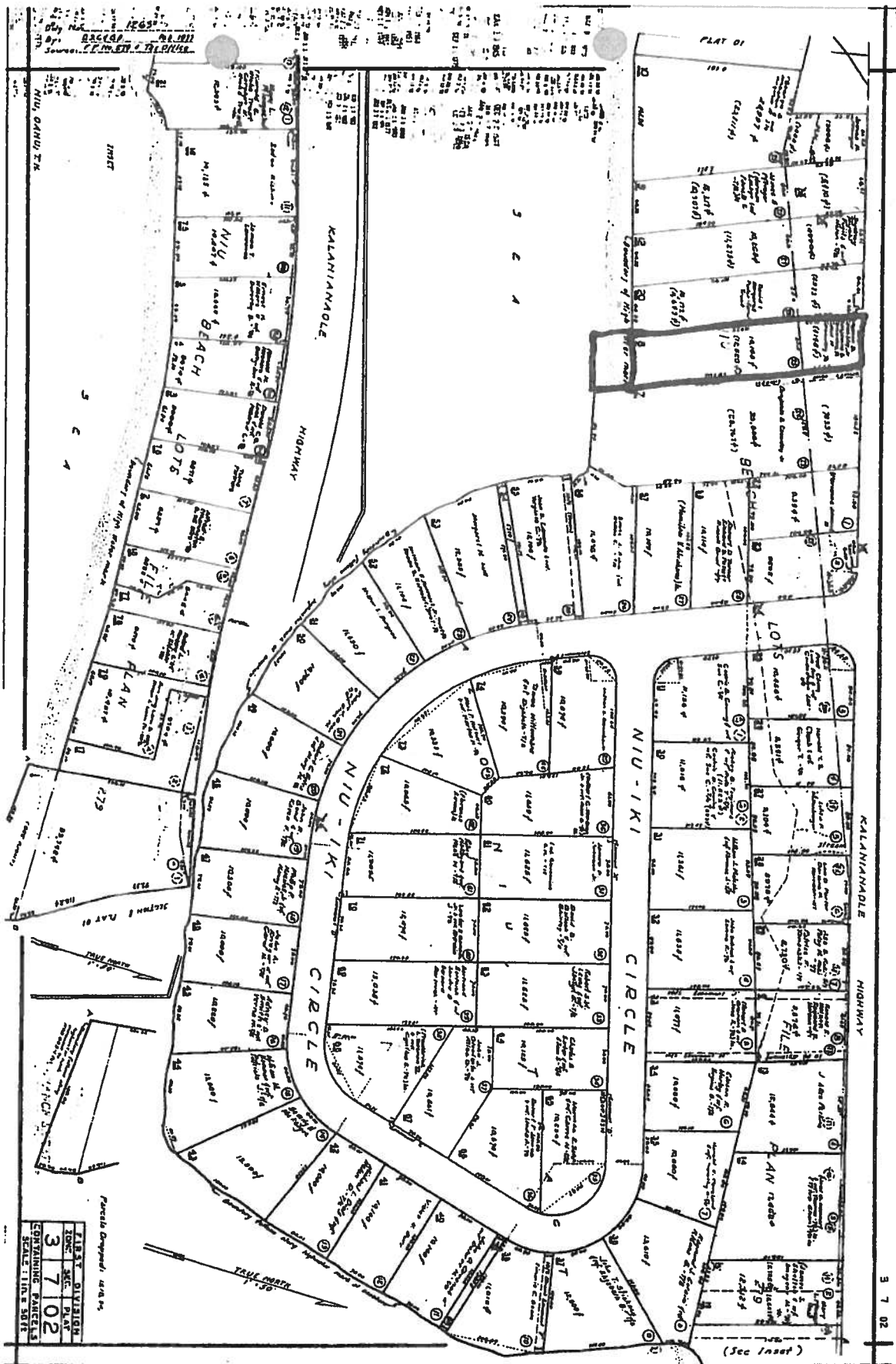


EXHIBIT A

REF:PB:MA



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 621
HONOLULU, HAWAII 96809

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND DIVISION
STATE PARKS
WATER RESOURCE MANAGEMENT

File Number Encroachment: OA-02-27

Warren Bucher, Ph. D.
Oceanit

JUL 31 2002

Honolulu, HI 96813

Dear Mr. Bucher:

Subject: Shoreline Encroachment (Sea Wall and Fill) at
[TMK: (1) 3-7-02:008]

Coastal Lands Program (CLP) staff has reviewed this case, which involves your client's seawall and encroachment area at Nui, Oahu. Based upon information you have submitted on behalf of your clients, Ada Murakami and Michael Gallagher, the seawall and encroachment area in question consists of approximately 2000 square feet. According to previous information that the applicant's attorney has submitted to the Department, the Cassidy family had constructed the seawall fronting the encroachment area at some date between 1954 and 1960.

According to submitted evidence it appears that seawall defining the encroachment area in question was built at some date between 1954 and 1961. Two R.M. Towill aerial photos have been submitted, one from 11/17/1954 that shows no seawall structure Makai of parcel [TMK (1) 3-7-02:008] and one from 01/20/1961 which appears to show a seawall structure located Makai of the parcel in question as well as a seawall fronting the neighboring parcel.

The Board of Land and Natural Resource (BLNR) recently 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;
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. This form has been completed and submitted. On July 3, 2002 staff visited the site to investigate the encroachment and to gather

EXHIBIT B

reconnaissance information to support a recommendation for either removal of the encroachment or issuance of an easement. Of primary importance are the Department's objectives to protect and preserve shoreline resources and shoreline access.

Surrounding Land Uses:

It was observed during the site visit that surrounding uses are residential. It appears that the abutting neighbor's seawall to the east is contiguous with the seawall in question. The land area behind the neighboring parcel [TMK (1) 3-7-02:007] seawall is not an encroachment area. The land area behind the seawall of parcel :007 lies within the recorded boundaries of that parcel. The area behind the neighboring parcel [TMK (1) 3-7-02:020] to the west appears to be an encroachment area. The owner of parcel :20 was informed in 1990 to either remove the encroaching seawall or apply for an easement for the area from the State.

Beach Resources:

CLP staff inspected the area. The beach area mostly consists of mudflats. In some areas there is a thin layer of sand.

Public Access:

There is no nearby easy public access to the shoreline in this area. The closest ocean access is at Niu Stream approximately four or five parcels to the west side of the property.

Effect of Removing the Encroachment on:

Beach Resources: Removal of the seawall would be inconsequential as there is no beach in the vicinity. Public recreation such as fishing, boating and surfing takes place offshore of the parcel.

Public Access: CLP staff has determined that public access would not be enhanced by removal of the encroachment.

Affect on Adjacent Properties: Removal of the seawall in question could cause damage to the seawall fronting parcel TMK (1) 3-7-02:007, which appears to be contiguous with the seawall in question.

Staff observed during the site visit that the subject seawall appears long established. The encroaching wall is contiguous with the seawall fronting the neighboring parcel to the east. The submitted evidence (aerial photos) suggests the seawall was in existence prior to 1961. The encroachment area in question is quite substantial in size (approximately 2000 square feet) but based on inspection of the submitted aerial photo it appears that this area was in existence prior to the construction of the seawall in question. The neighboring parcel to the east [TMK (1) 3-7-02:007] currently has property boundaries that extend much further Makai than the seaward boundary of the parcel in question. The property to the east has had its present Makai boundary included in its parcel description since at least 1949. This is evidence that the land Makai of parcel :008 seaward boundary has been in existence for a substantial length of time.

Further evidence to the long term existence to the area fronting subject parcel :008 is documentation at State Survey regarding the neighboring parcel to the west [TMK (1) 3-7-

02:020J. A certified shoreline for parcel :020 was rejected in 1990 because of the low concrete wall fronting that parcel. The low concrete wall adjoins the seawall fronting the parcel :008. In 1990 the owner of parcel :020 was given two options by the Department to rectify the situation and receive a certified shoreline; either remove the structure or apply for an easement from the State for the encroachment area.

Staff review of the available evidence suggests that the encroachment area in question may have been an accretion area in existence before October 1, 1964, which is the year that Conservation District law came into effect. This possible accretion area was artificially stabilized without the authorization from any agency. As the shoreline was artificially stabilized the landowner is no longer able to make an accretion claim for the encroachment area in question. The seawall that stabilized the accretion area was constructed prior to October 1, 1964 when Conservation District law came into effect. Thus staff cannot substantially prove that any portion of the encroachment area was ever located within the Conservation District.

Upon review and consideration of the information gathered on this case, staff has determined that the issuance of an easement for the encroachment area would have no adverse impacts on natural resources, including beach resources. Therefore, the Coastal Lands Program has no objections to an easement request being processed. The Oahu District Land Office calculates the monetary amount required to dispose this use of State land through an easement. The landowner should note that they may be subject to the administrative penalty system for unauthorized use of State land pursuant to section 171-6, Hawaii Revised Statutes.

We hope this letter helps resolve some of the outstanding issues regarding your property. Please feel free to contact Masa Alkire of the Coastal Lands Program at 587-0382. Please contact the Oahu District Land Office at 587-0433 regarding the processing of an easement.

Aloha,



Dierdre S. Mamiya
Administrator

Cc: Oahu Board Member
Oahu District Land Office
City and County of Honolulu DPP
Chairperson's Office

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 6, 2012

Ref. No.: 02OD-242

Michael Gallagher and Ada Murakami

Honolulu, Hawaii 96821

Dear Mr. Gallagher & Ms. Murakami,

Subject: Encroachment on State Land, Niu, Honolulu, Oahu, Seaward of Tax Map Key
No. (1) 3-7-002:008.

We are writing in regards to the matter referenced above. At its meeting on June 4, 2004, under Agenda Item D-12, the Board of Land and Natural Resources approved a sale of the reclaimed (filled) land seaward of parcel to you for the purpose of resolving an encroachment on public land. An appraisal report, dated March 30, 2005, conducted by Medusky and Co., Inc. valued the fee simple interest in the reclaimed (filled) land as One Hundred Forty Five Thousand Dollars (\$145,000.00). Subsequently, an offer letter, dated April 20, 2005, was sent by the Department to you (a copy of which is enclosed). To date we have not received any response to this letter.

We would like to sit down and discuss with you the resolution of the encroachment through the issuance of an easement. Please contact Barry Cheung, Oahu District Land Agent, at (808) 587-0430 or Ian Hirokawa, Project Development Specialist at (808) 587-0420 within thirty (30) calendar days of the date of this letter to resolve the encroachment. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell Y. Tsuji".

Russell Y. Tsuji
Administrator

Enclosure

cc: Chairperson
Oahu Land Board Member

EXHIBIT "4"

SUBJECT PROPERTY
Niu, Honolulu, Oahu, Hawaii



PHOTO NO. 3: Southeasterly view from the northwest corner of the Reclaimed Land. Note Koko Head in the distance.



PHOTO NO. 4: Southwesterly view across the Reclaimed Land. The boundary pin to the right of the coconut tree is the northwest corner of the Reclaimed Land.

SUBJECT PROPERTY
Niu, Honolulu, Oahu, Hawaii



PHOTO NO. 5: Westerly view along the southern boundary of the Reclaimed Land. Note that the rock outcropping at the base of the wall is included in the Reclaimed Land.

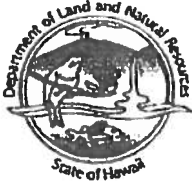


PHOTO NO. 6: Northeasterly view across the Reclaimed land. Note the main house to the left.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



WILLIAM J. AH A, JR.
CHAIRMAN
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May 7, 2013

Ref: 02OD-242

BY FIRST CLASS MAIL AND EMAIL

Michael Gallagher and Ada Murakami

Honolulu, Hawaii 96821-2303

Dear Mr. Gallagher and Ms. Murakami:

Subject: Encroachment on State Lands, Niu, Honolulu, Oahu;
TMK (1) 3-7-002:Seaward of 008

We write to follow-up our previous communication regarding the subject matter.

As we have explained to you over the phone, we will recommend the Board rescind its prior approval of selling the encroachment as reclaimed land; and authorize such encroachment be removed. If you are still interested, we are willing to recommend the Board issue a 55-year, non-exclusive easement subject to payment of a consideration to be determined by an appraisal. We will hire an independent appraiser at our cost and we intend to provide the appraised value when we ask the Board for decision regarding the encroachment.

Please indicate your intention toward obtaining an easement as described above and provide a signed copy of this letter to us as soon as possible for further processing. We will write to you again regarding the actual Board date when the request is scheduled. If you have any further questions, please feel free to contact us at 587-0430.

Sincerely,

Barry Cheung
Barry Cheung
District Land Agent

_____ Yes, we are interested in obtaining a term, non-exclusive easement.

_____ No, we are not interested in obtaining a term, non-exclusive easement.

Sign and Date

EXHIBIT "6"

EXEMPTION NOTIFICATION

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

Project Title: Term Easement for Seawall and Filled Lands Purposes

Project / Reference No.: PSF 02OD-242

Project Location: Niu, Honolulu, Oahu, Tax Map Key: (1) 3-7-002:seaward of 008

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."

The subject seawall was in existence prior to 1961. 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

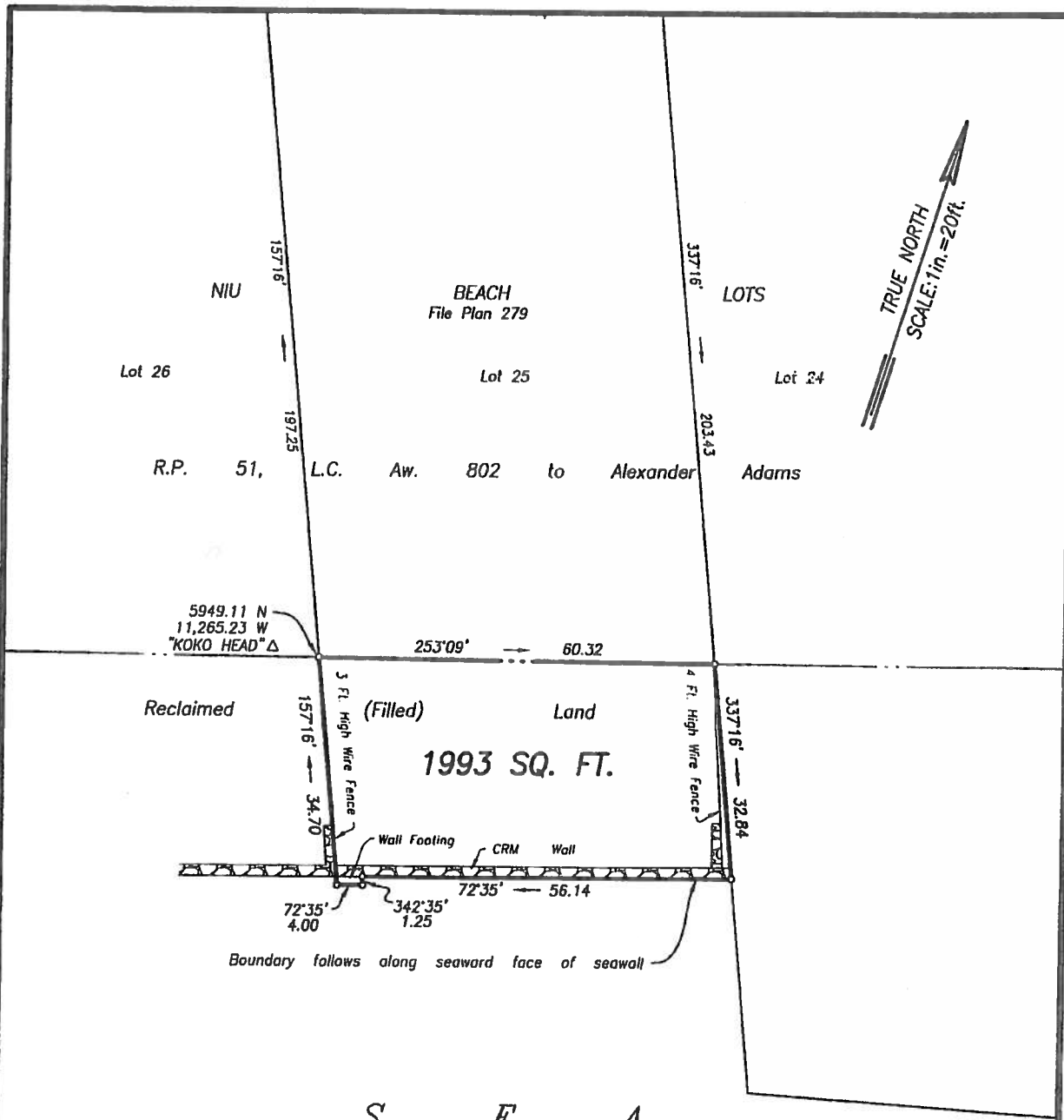
Recommendation: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila Jr., Chairperson

Date 8/6/13

EXHIBIT 7



**PORTION OF
THE RECLAIMED (FILLED) LAND OF NIU**
Fronting Lot 25 of Niu Beach Lots, File Plan 279
Niu, Honolulu, Oahu, Hawaii

JOB 0-341(04)
C. BK.

Scale: 1 inch = 20 feet

EXHIBIT " 8 "

Fronting Parcel 08 of TMK 3-7-02

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

C.S.F. NO. 23,955

JGL January 19, 2005