

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

October 11, 2013

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

PSF No.:13OD-070

OAHU

Grant of Term, Non-Exclusive Easement to Global Spring Management Hawaii, LLC for Rock Blanket Purposes; Assess Administrative Cost of \$500, Kailua, Koolaupoko, Oahu, Tax Map Key: (1) 4-3-003:Seaward of 065.

APPLICANT:

Global Spring Management Hawaii, LLC

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of Kailua, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-3-003:seaward of 065, as shown on the attached map labeled **Exhibit A**.

AREA:

814 square feet¹, 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

¹ The easement area may change, depending on the determination of the shoreline pursuant to the shoreline certification process. At the time of writing this submittal, the shoreline is based on the survey map prepared by the Applicant's surveyor attached as Exhibit C.

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing rock blanket 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) 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 declaration attached as **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; and
- 2) Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

Note: Applicant already provided survey maps and descriptions according to State DAGS standards.

REMARKS:

Applicant, who is the owner of the abutting property identified as tax map key (1) 4-3-003:065 (“Parcel 65”), has been in the process of obtaining a shoreline certification. Parcel 65 is described as Lot 339 of Land Court Application 616, Map 60 dated April 17, 1963, which comprised Lot 29 (Map 1, dated July 18, 1924) and the accretion abutting Lot 29. The original seaward boundary of Lot 339 was sited along “highwater mark” as shown on the respective maps of the same Land Court application. During a recent survey process, the subject encroachment was found to be makai of the shoreline as shown on the latest shoreline survey map attached as **Exhibit C**.

OCCL’s comment

According to the research conducted by the Office of Conservation and Coastal Lands (“OCCL”), there is insufficient evidence to determine if the encroachment was built prior to 1964. At the same time, OCCL cannot conclusively determine if the encroachment was built after 1964. In addition, OCCL noted in its letter attached as **Exhibit D** that “... shoreline hardening at Lanikai has had an overall detrimental effect on the beach resources”, and “OCCL does not see an immediate threat to a habitable structure at the subject property.” However, OCCL will not require an after-the-fact Conservation District Use Application to cure this matter, and OCCL does not have a recommendation regarding the disposition for an easement of the encroachment.

Notwithstanding OCCL’s findings mentioned above, the encroachment is now encroaching on State submerged lands and the applicant cannot provide any authorization/permit for the construction of the encroachment. Nevertheless, the applicant intends to resolve the encroachment issue.

Comments from other agencies

Department of Facility Maintenance, Department of Parks and Recreation, Division of Aquatic Resources, Board of Water Supply, and Department of Health have no comment or objection to the request.

State Historic Preservation Division, Department of Planning and Permitting, and Office of Hawaiian Affairs have not responded to the solicitation for comment at the time of writing this submittal.

Issuance of Easement

Notwithstanding the lack of recommendation from OCCL, staff recommends the Board issue an easement to resolve the encroachment issue. Further, removal of the encroachment would not result in substantial improvement to the beach resources at the subject location.

No fine for Encroachment

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.

Bill for 2014 Legislative Session

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 in the 2014 session. The subject request does not meet all the requirements of the proposed legislation because it lacks the "authorization" component. Therefore, the easement will be issued subject to a payment of fair market value determined by an appraisal.

Resolution from Governor and Legislature pursuant to 171-53(c), HRS

Upon approval of today's request, Applicant will be reminded of the requirement for concurrent resolution from both houses of the legislature, while staff will pursue the Governor's concurrence pursuant to Section 171-53(c), HRS prior to the issuance of the requested easement.

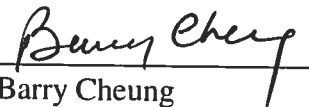
RECOMMENDATION: That the Board:

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 requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-3-003:065, 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 Global Spring Management Hawaii LLC covering the subject area for rock blanket 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) 4-3-003:065, 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.

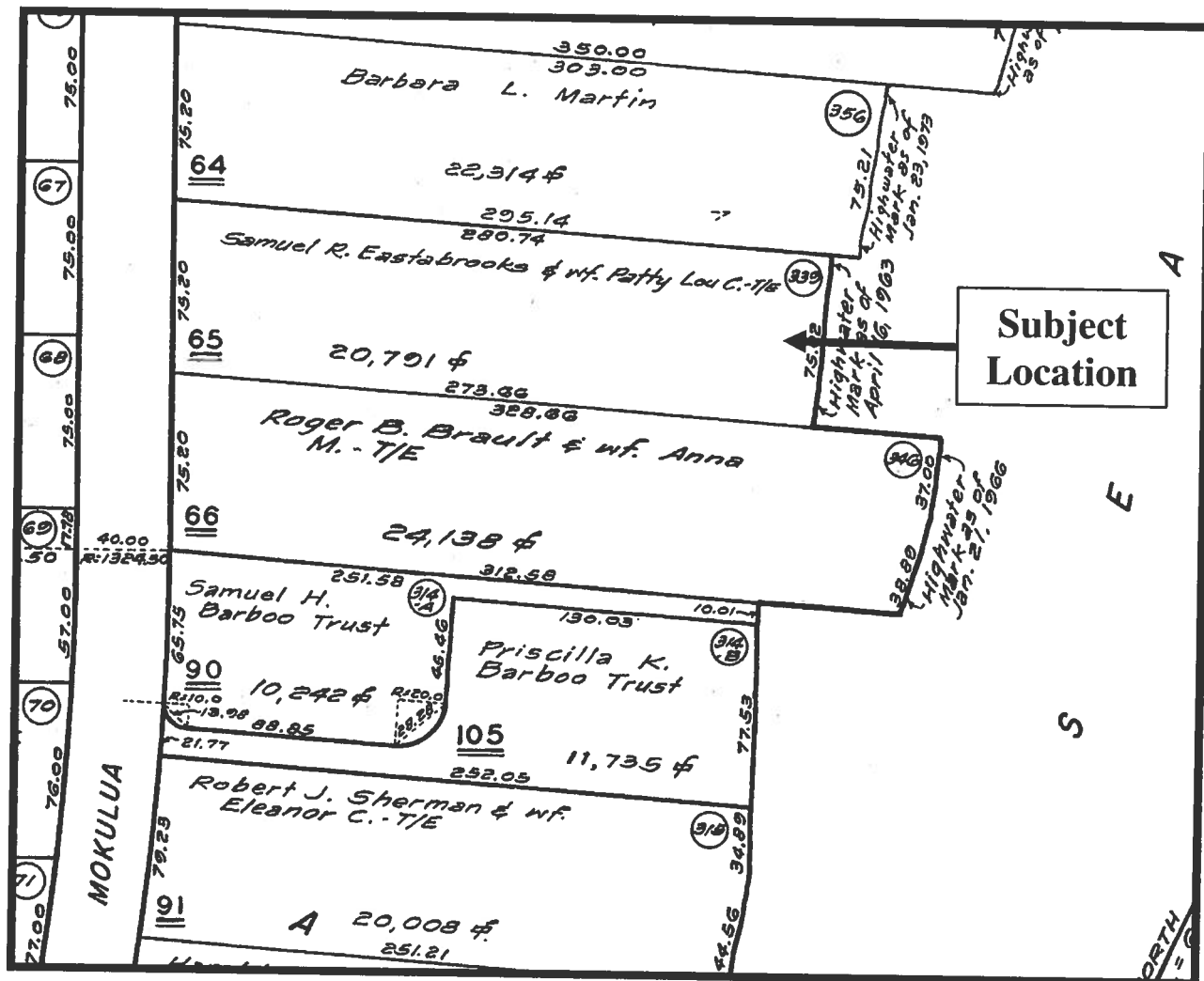
Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson





TMK (1) 4-3-003:seaward of 065

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 Rock Blanket Purposes

Project / Reference No.: PSF 13OD-070

Project Location: Kailua, Koolaupoko, Oahu, Tax Map Key: (1) 4-3-003:seaward of 065.

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 existing rock blanket appears to be within the recorded boundary in 1963. At present, the same rock blanket is makai of the shoreline, which falls within the conservation district. Applicant is not planning on conducting major change to the existing topographical and/or vegetation condition of the rock blanket. 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.



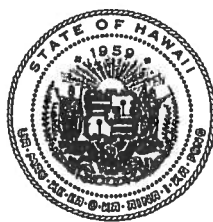
William J. Aila Jr., Chairperson
Date

EXHIBIT B

130D-70

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

RECEIVED
LAND DIVISION



2013 JUL 11 AM 11:14



DEPT. OF LAND &
NATURAL RESOURCES
STATE 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
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

REF:DLNR:BR

File Number Encroachment: OA-13-16

Global Spring Management Hawaii, LLC
c/o Mr. James R. Thompson
Walter P. Thompson, Inc.

JUL 11 2013

Honolulu, Hawaii 96801

Dear Mr. Thompson,

SUBJECT: Request for an Exemption from the Preparation of a Conservation District Use Permit for a Rock Blanket (Revetment) at Kailua, Oahu; Seaward of Tax Map Key (1) 4-3-003:065; Owner: Global Springs Management, LLC

This is in response to your June 24, 2013 request for an "exemption from the preparation of a Conservation District Use Permit for the rock blanket" (rock revetment, the subject encroachment) at Tax Map Key (1) 4-3-003:065. With your letter you also provided a copy of a letter and enclosures from Ms. Lauri Clegg at Analytical Planning Consultants, Inc. (APC), which reviewed the "status of nonconforming rock revetment resolution of shoreline encroachment." On May 21, 2013 the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) responded to your request to resolve the State land encroachment by informing you that the information provided at that time was not sufficient to support processing the subject encroachment.

A 1934 Land Court Map provided with your June, 2013 letter indicates that the subject property was originally created with "the boundary of all lots along the high water mark." A 1963 Land Court Map shows 1688 sq ft of accreted land added to the seaward side of the subject property. A Land Court Map from 1973 shows accretion added to an adjacent property. None of these maps indicate or depict the subject encroachment. The subject encroachment appears to be within the property record boundaries as established in 1963. However, at present, the subject encroachment appears to be seaward of the shoreline, within the State Conservation District.

Your letter also included aerial photos dated November 1963 and May 1967 showing the subject property. OCCL staff has concluded that the aerial photos appear to show only vegetation and

EXHIBIT "C"

beach along the seaward edge of the property, with no clear indication that the subject encroaching rock blanket was established at the time of the photograph. Additionally, a 1949 aerial photograph from the University of Hawaii Coastal Geology Group website¹ also provides no indication that the subject encroachment was established at that time.

A historical shoreline change study by the University of Hawaii Coastal Geology Group² found that the beach fronting the subject property advanced seaward (accreted) between 1949 and 1975. Beginning in the late 1970s the beach began to erode and by the late 1980s the beach fronting the subject property was completely lost to erosion (characterized by shoreline armoring).

Based on the information in your April and May, 2013 letters, OCCL has determined that the information you have provided remains insufficient to determine the date of establishment of the subject encroachment. Conversely, OCCL cannot conclusively determine that the subject encroachment was built after 1964, given the information presently available and considering the historical variability of the beach (accretion followed by erosion).

Therefore, OCCL will not be asking for an after-the-fact Conservation District Use Application to cure this matter. OCCL may reconsider this finding should we find that the subject encroachment was built without permits, within the Conservation District after 1964.

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, OCCL developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide OCCL's decisions on the disposition of shoreline encroachments.

Surrounding Land Uses:

The surrounding land uses are primarily residential. The adjacent properties are fronted by similar coastal armoring structures (seawalls, revetments). Mokulua Drive runs along the mauka side of the property.

Beach Resources:

Due to a trend of beach erosion (shoreline recession) over the past several decades, little or no dry beach remains fronting the coastal armoring at the subject property and adjacent properties.

¹ <http://www.soest.hawaii.edu/coasts/erosion/mosaics.php?sArea=lanikai>

² <ftp://soest.hawaii.edu/coastal/webftp/Oahu/posters/LanikaiSTsmoothTMKPosterRGB72ppi.jpg>

Public Access:

This section of coast has limited access along the beach fronting this property and adjacent properties with waves breaking against the base of the armoring structures. Shoreline public access is available about 200 feet to the north from Mokulua Drive.

Effect of Removing the Encroachment on:

Beach Resources: Little or no beach remains fronting the subject encroachment and similar revetments on adjacent properties. Removal of the subject encroachment would not result in a substantial improvement to beach resources fronting the property. However, shoreline hardening at Lanikai has had an overall detrimental effect on the beach resources.

Public Access: OCCL staff has determined that no significant improvement would be gained by removing the subject encroachment because the adjacent properties are fronted by similar armoring structures with little or no useable beach. As a whole, shoreline armoring at Lanikai has had a detrimental effect on public shoreline access.

Effect on Adjacent Properties: It is not known what effect removal of the subject encroachment would have on the adjacent parcels.

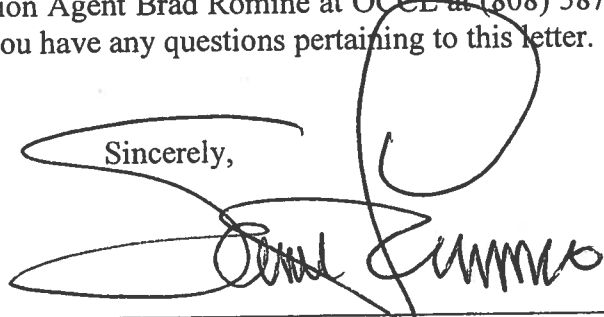
It has been a general policy and practice of OCCL to support disposition requests that have no discernible effect on beach and recreational resources, and do not act as a detriment to public access. In line with the DLNR policy we have opposed the issuance of easements that might be detrimental to resources. Shoreline hardening at Lanikai has contributed to loss of public beach resources and shoreline 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. OCCL does not see an immediate threat to a habitable structure at the subject property.

Upon review and careful consideration of the information gathered on this case following the requirements stated in HRS § 205A, HRS § 183C, and in OCCL's evaluation criteria, OCCL has determined that there remains insufficient evidence to substantiate the legacy of the structure with respect to Conservation District rules and regulations. Therefore, OCCL does not have a recommendation regarding the disposition for an easement for the subject encroachment.

OCCL has provided an analysis to DLNR Land Division on this encroachment case. Land Division is ultimately responsible for processing the disposition request. You may contact DLNR Land Division at (808) 587-0433 should you still wish to pursue an easement for the subject shoreline encroachment.

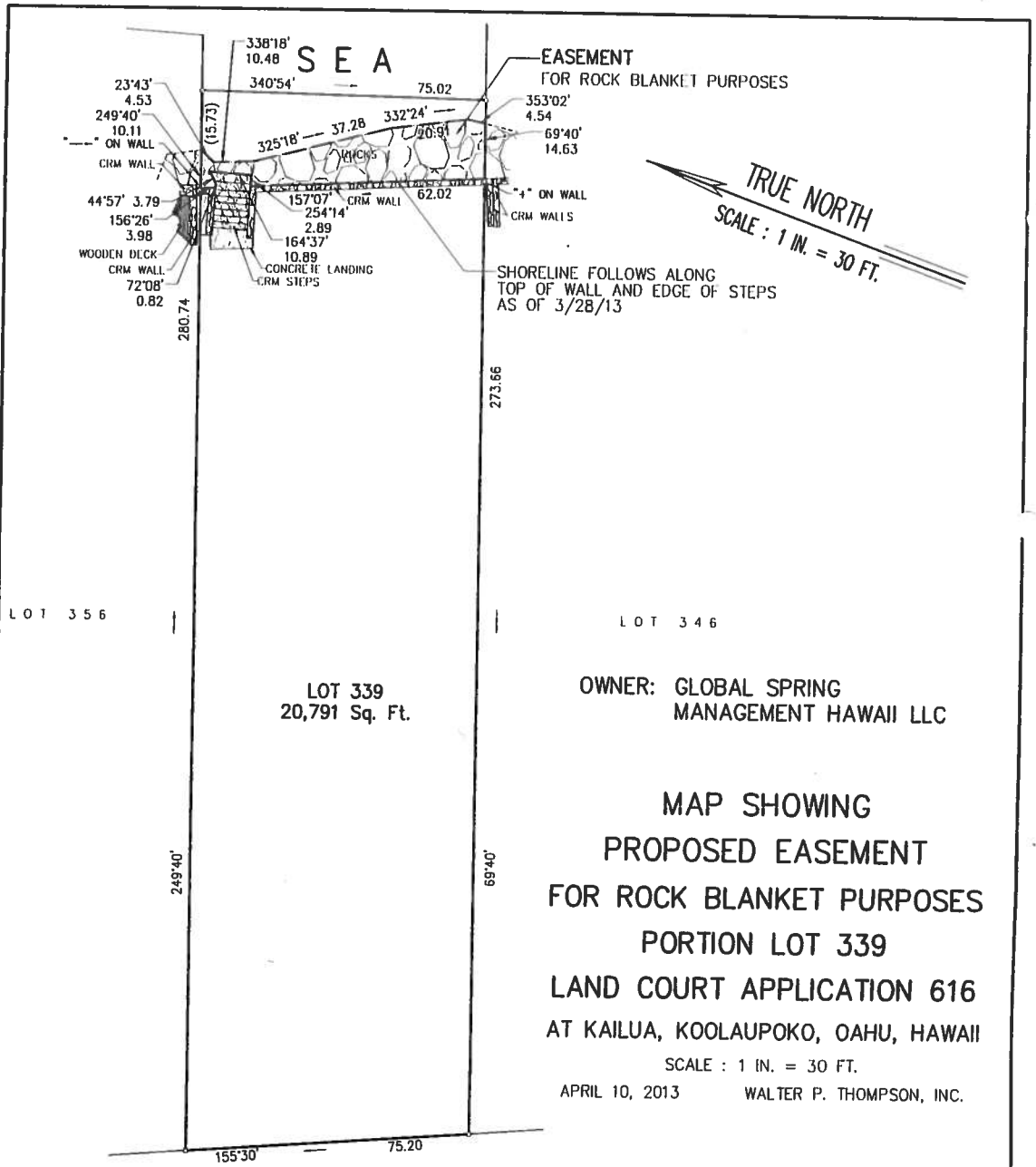
Please feel free to contact Sea Grant Extension Agent Brad Romine at OCCL at (808) 587-0049 or Bradley.M.Romine@hawaii.gov should you have any questions pertaining to this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel J. Lemmo". The signature is written in a cursive style and is positioned above a horizontal line. There are some scribbles and overlapping lines around the signature.

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

cc: Land Division, Attn: Barry Cheung



LOT 356

LOT 339
20,791 Sq. Ft.

LOT 346

OWNER: GLOBAL SPRING
MANAGEMENT HAWAII LLC

MAP SHOWING
PROPOSED EASEMENT
FOR ROCK BLANKET PURPOSES
PORTION LOT 339
LAND COURT APPLICATION 616
AT KAILUA, KOOLAUPOKO, OAHU, HAWAII

SCALE : 1 IN. = 30 FT.
APRIL 10, 2013 WALTER P. THOMPSON, INC.

MOKULUA DRIVE



THIS WORK WAS PREPARED BY
ME OR UNDER MY SUPERVISION

James R. Thompson
EXP 4/30/14

EXHIBIT "D"

11105100.dwg/0000.00/swj/091412

NOTE:
AREA OF EASEMENT = 814 Sq. Ft.