

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

July 11, 2014

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

PSF No.: 14OD-071

OAHU

Grant of Term, Non-Exclusive Easement to Clifford J. Tillotson and Renee Tillotson for CRM Wall, Landscaping Area, Floating Dock, and Concrete Pier Purposes; Assess Administrative Cost of \$500 and Fine of \$500, Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-022:Seaward of 007

APPLICANT:

Clifford J. Tillotson and Renee Tillotson, as tenants by the entirety

LEGAL REFERENCE:

Section 171-6, 13, 17, 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) 4-4-022:seaward of 007, as shown on the attached map labeled Exhibit A.

AREA:

3,414 square feet¹, more or less, subject to review and approval by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Conservation/urban
City & County of Honolulu LUO: R-10 [for the abutting private property]

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

¹ 3,414 square feet was shown on the shoreline survey map, without the area occupied by the floating dock.

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing CRM wall, landscaping area, floating dock, and concrete pier 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) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 2) Pay for an appraisal to determine one-time payment; and
- 3) Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

REMARKS:

Applicants, who are the owners of the abutting property identified as tax map key (1) 4-4-022:007 ("Parcel 7"), are planning to improve their property. In the due diligence period, the subject encroachments were noted on the survey map attached as **Exhibit C**.

The recorded seaward boundary of Parcel 7 was described as along "highwater mark" as shown on File Plan 556. The subject encroachments comprise portions of CRM wall, landscaping area, floating dock, and concrete pier. In the event the shoreline is determined to be different from the recorded boundary, the encroachment area may change correspondingly.

According to the material provide by the applicants and the research conducted by the Office of Conservation and Coastal Lands ("OCCL"), there is evidence indicating that the encroachments have been in existence since 1963. In view of this situation, OCCL will not require an after-the-fact Conservation District Use Application to cure this matter, and supports a disposition to resolve the encroachments. A copy of OCCL's review on the encroachment is attached as **Exhibit D**.

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

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. Staff recommends the Board impose a fine of \$500 for the subject encroachments.

Upon approval of today's request, Applicant will be 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.

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 fine of \$500 and 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) 4-4-022:007, 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 Applicants fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to Clifford J. Tillotson and Renee Tillotson covering the subject area for CRM Wall, Landscaping Area, Floating Dock, and Concrete Pier 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) 4-4-022:007, 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,

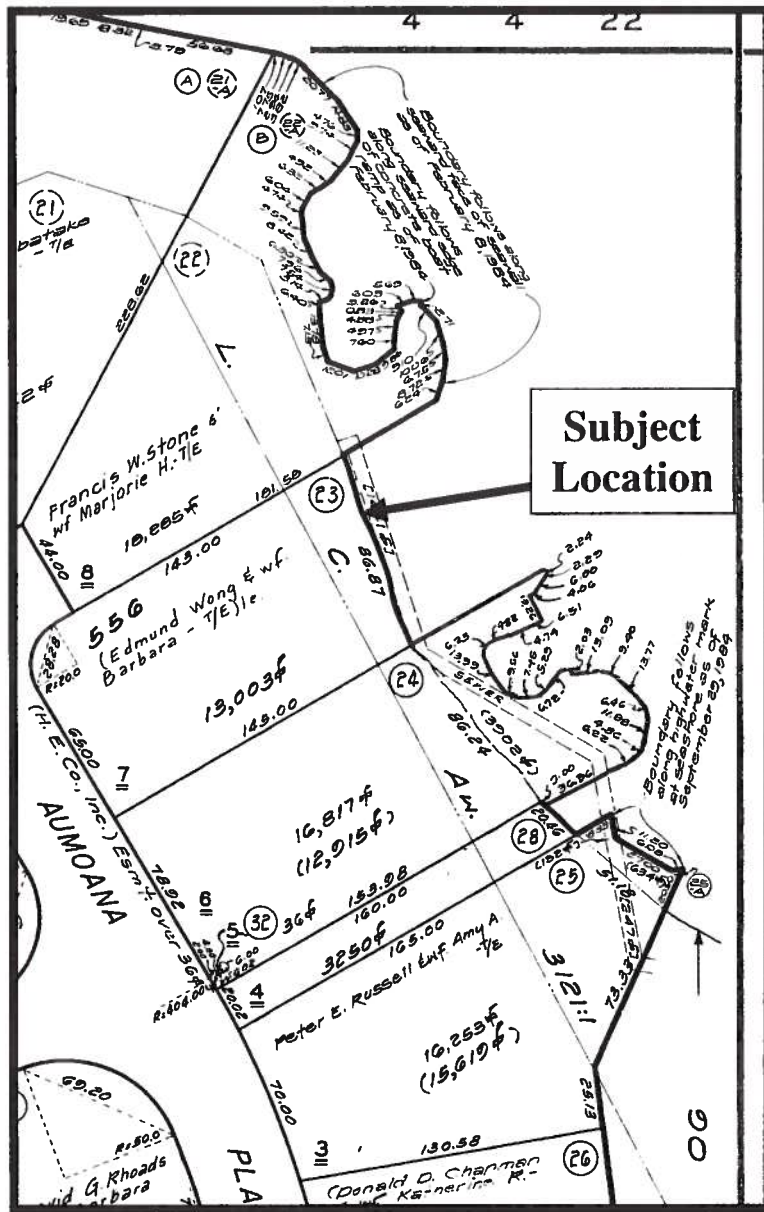


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson 



TMK (1) 4-4-022:seaward of 007

EXHIBIT A

EXEMPTION NOTIFICATION

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

Project Title: Easement for CRM Wall, Landscaping Area, Floating Dock, and Concrete Pier Purposes

Project / Reference No.: PSF 14OD-071

Project Location: Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-4-022:seaward of 007.

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

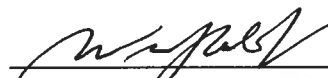
Chap. 343 Trigger(s): Use of State Land

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 applicant is not planning on conducting major change to the existing topographical and vegetation condition of the property. The improvements appear to be in existence before 1963. 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 As noted in the submittal.

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.



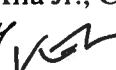
William J. Aila Jr., Chairperson
Date 6/23/14 

EXHIBIT B

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
COMMISSION ON WATER RESOURCE MANAGEMENT

JESSE K. SOUKI
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

Re: Encroachment: OA-14-18

MAY 12 2014

Cliff Tillotson

Kaneohe, Hawaii 96744

Dear Mr. Tillotson,

**SUBJECT: Request to Resolve State Land Encroachment at
Kaneohe, Oahu; Seaward of Tax Map Key (1) 4-4-022:007**

This is in response to your April, 2014 request to resolve the shoreline encroachments at Tax Map Key (1) 4-4-022:007. According to information and maps contained with your request, you have identified approximately 3,500 square feet of encroachment fronting the subject property onto State land.

An April 22, 2014 letter from OCCL determined that the information you had provided was not sufficient to support processing the subject encroachments at this time. On April 29, 2014, in response to OCCL's letter, you provided OCCL with copies of portions of air photos including one dated November 20, 1963, which appears to show that the existing area of reclaimed lands of Kaneohe Bay (land fill) and seawalls seaward of the subject property were established prior to that date. Thus, the fill area appears to be a nonconforming land use pursuant to Hawaii Revised Statutes, Chapter 183C.

Based on records at the DLNR Land Division offices, it appears that the area of reclaimed lands seaward of the subject property record boundary are unencumbered State-owned lands. This area is identified as "Parcel 23-A" in an April, 2014 Shoreline Survey map you provided from surveyor Ryan M. Suzuki.

On May 1, 2014 the State of Hawaii Land Surveyor responded to a Shoreline Certification Application for the subject property (ref. Shoreline OA-1583, enclosed for your reference), identifying potential encroachments makai of the shoreline including portions of the CRM seawall, the CRM seawall footing, CRM step, water lines and hose bibs, boat docks, drainage pipe, metal dock pilings, boats, metal boat lift and pulley system, and rubber bumpers. Also, concrete walkways, CRM planter retaining walls, CRM walls, irrigation system, sand fill

EXHIBIT "D"

material, tents, lighting system, boat storage, wooden planter boxes, furniture, and landscaping were identified on the unencumbered State land on the makai side of the subject property.

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 recommendations on the disposition of shoreline encroachments.

Surrounding Land Uses:

The surrounding land uses are primarily residential. The adjacent properties are fronted by similar reclaimed lands and seawalls. Aumoana Place runs along the mauka side of the property.

Beach Resources:

There are no beach resources fronting the seawalls at the subject property and adjacent properties in this back-bay area of Kaneohe.

Public Access:

This section of coast has little or no public access to the shoreline characterized by seawalls fronting shallow water.

Effect of Removing the Encroachment on:

Beach Resources: *The encroaching seawall and seawalls on adjacent properties are fronted by shallow water without beach resources. Therefore, removal of the encroachment would not result in a substantial improvement to beach resources fronting the property.*

Public Access: *OCCL staff has determined that no improvement would be gained by removing encroaching portion of the seawall because the adjacent properties are fronted by similar seawalls fronting shallow water.*

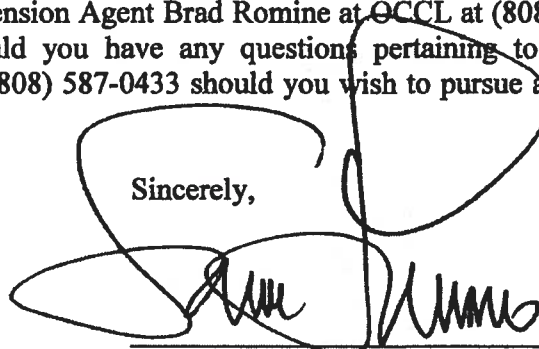
Effect on Adjacent Properties: *Removal of the encroaching portion of the seawall may destabilize seawalls and lawns at the adjacent properties.*

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.

Upon review and careful consideration of the information gathered on this case, OCCL 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 subject shoreline encroachments.

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. Please contact DLNR Land Division at (808) 587-0433 should you wish to pursue an easement for the subject shoreline encroachment.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Samuel J. Lemmo', is written over the word 'Sincerely,' and extends downwards into the printed name area.

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

cc: Land Division, Attn: Barry Cheung