

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

August 22, 2014

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

PSF No.:14OD-116

OAHU

Grant of Term, Non-Exclusive Easement to Scott Mitsuo Miyasaki and Beverly-Jo Leinani Miyasaki, and Tracy Leiko Miyasaki Lindo for Encroachment (including Portions of Family Residence, its Foundation and Lanai) Purposes; Assess Administrative Cost of \$500 and Fine of \$500, Hauula, Koolauloa, Oahu, Tax Map Key: (1) 5-4-010:Seaward of 009

APPLICANTS:

Scott Mitsuo Miyasaki and Beverly-Jo Leinani Miyasaki, husband and wife, tenants by the entirety as to an undivided fifty percent (50%) interest; and Tracy Leiko Miyasaki Lindo, married, as to an undivided fifty percent (50%) percent interest, as Tenants in Common

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of Hauula, Koolauloa, Oahu, identified by Tax Map Key: (1) 5-4-010:seaward of 009, as shown on the attached map labeled Exhibit A.

AREA:

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

ZONING:

State Land Use District: Conservation
City & County of Honolulu LUO: R-5 [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

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing single family residence, its foundation, and lanai 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. Applicants as natural persons are not required to register with DCCA.

APPLICANT REQUIREMENTS: Applicants shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards and at Applicants' 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) 5-4-

010:009 (“Parcel 9”), 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 9 was described as along “sea beach” as shown on File Plan 120 dated June 1913. The subject encroachments comprise portions of single family residence, including its foundation and lanai. 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 1950s or earlier. 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 encroachments is attached as **Exhibit D**.

Department of Planning and Permitting, Division of Aquatic Resources, Board of Water Supply, and Department of Facility Maintenance have no objections/comments to the subject request.

Department of Health, State Historic Preservation Division, Commission on Water Resource Management, Department of Parks and Recreation, 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) 5-4-010:009, 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-

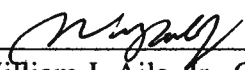
compliance with such terms and conditions.

4. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to Scott Mitsuo Miyasaki and Beverly-Jo Leinani Miyasaki, and Tracy Leiko Miyasaki Lindo covering the subject area for encroachment 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) 5-4-010:009, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
 - C. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
 - D. Review and approval by the Department of the Attorney General;
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
 - F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

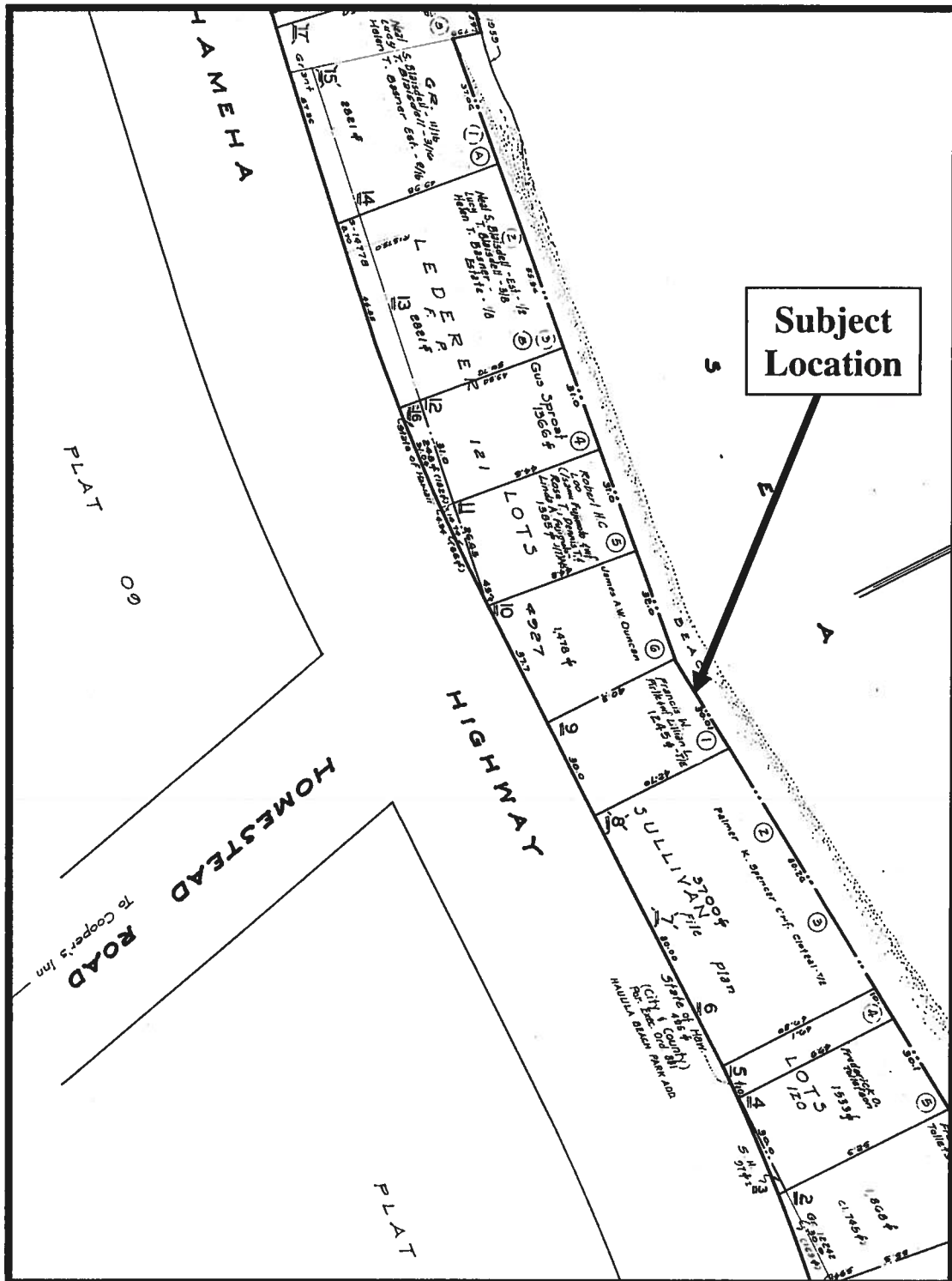
Respectfully Submitted,


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson





TMK (1) 5-4-010:seaward of 009

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 portion of single family residence, including its foundation and lanai purposes

Project / Reference No.: PSF 14OD-116

Project Location: Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 5-4-010:seaward of 009.

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 1950s. 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: Agencies as noted in the submittal.

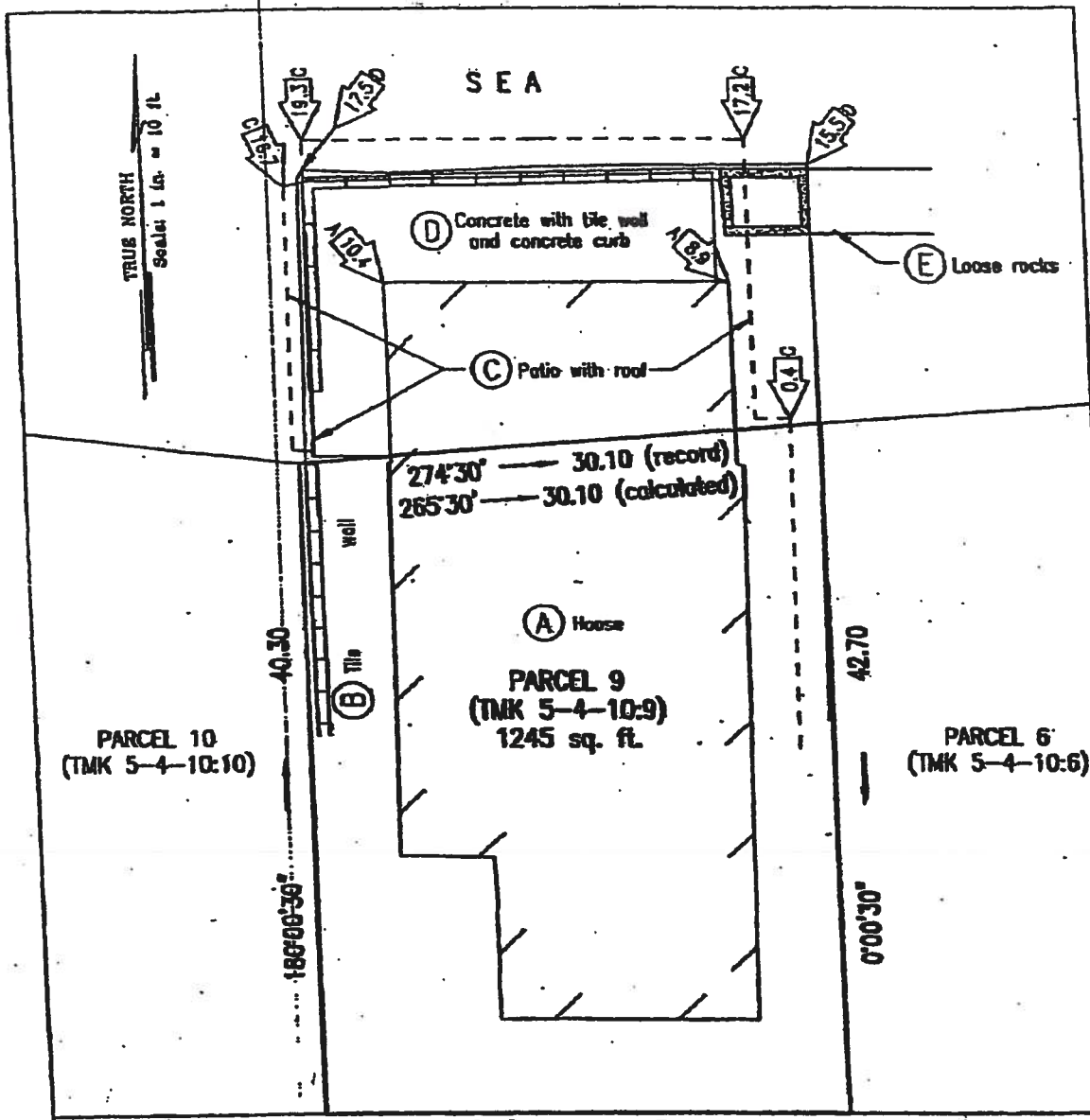
Recommendation: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila Jr., Chairperson
Date: 7/28/14

EXHIBIT B

TRUE NORTH
Scale: 1 in. = 10 ft.

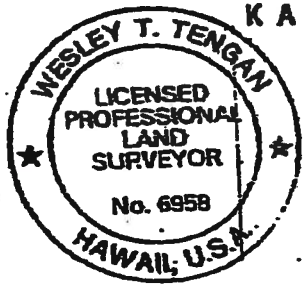


PARCEL 10
(TMK 5-4-10:10)

PARCEL 9
(TMK 5-4-10:9)
1245 sq. ft.

PARCEL 6
(TMK 5-4-10:6)

KAMEHAMEHA HIGHWAY



PERIMETER MAP
PARCEL 9

Hauula, Koolauloa, Oahu, Hawaii
Date: October 16, 2007
Tax Map Key: 5-4-10:9

Notes:

1. Only improvements shown were located
2. All easements may not be shown
3. denotes approximate distance out of property
4. Property line shown subject to change

WESLEY T. TENGAN
LICENSED PROFESSIONAL LAND SURVEYOR
Certificate Number 6958

EXHIBIT "C"

54-013 KAMEHAMEHA HIGHWAY

The existing entire house (which includes both non-encroachment and encroachment portions of the Lot and the House) totals 870 square feet (SF) of area; the existing Lot area (which includes both the non-encroachment and encroachment portions of the Lot) [Parcel 9/TMK: 5-4-010: 09 - non-encroachment portion] consists of 1,245 square feet (SF) with 540 square feet (SF) consisting of the encroachment portion for a total 1,785 square feet (SF).

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

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-13-15

JUN 13 2013

Mr. Francis W. and Mrs. Lillian Pirtle
c/o Mr. Robert Michael Mandich
Honolulu Consulting Group, LLC
800 Bethel Street, Suite 401
Honolulu, HI 96813

Dear Mr. Mandich,

SUBJECT: Request to Resolve State Land Encroachment at
Hauula, Oahu; Tax Map Key (1) 5-4-010:009; Owners: Francis and Lillian Pirtle

This is in response to your May 2013 request to resolve the shoreline encroachments at Tax Map Key (1) 5-4-010:009. According to information and maps contained with your request, you have identified approximately 540 square feet of encroachment (rear of single family residence, including concrete foundation and lanai) makai of the subject property onto State land.

Public Record Data provided by the applicant and aerial photographs from the University of Hawaii Coastal Geology Group from 1958¹ indicate that the home and subject encroachment have been in existence since the 1950s or earlier. As a consequence, the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (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 encroachments were 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;

¹ University of Hawaii Coastal Geology Group, Historical Shoreline Aerial Photo Mosaics,
<http://www.soest.hawaii.edu/coasts/erosion/oahu/mosaics.php>

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, 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. Adjacent properties have similar encroaching structures. Kamehameha Highway runs along the mauka side of the property.

Beach Resources:

The coastline in the vicinity of the subject property is fronted by a narrow calcareous sand beach, typical of northeast Oahu.

Public Access:

This section of coast has good access along the beach fronting this property and adjacent properties, except during high tides and high wave conditions when waves wash up to and around the encroaching structures. Beach access is available on the south side of the adjacent property.

Effect of Removing the Encroachment on:

Beach Resources: The encroachments on the subject property and on adjacent properties are fronted by a narrow beach that is useable during all but the highest tides. Removal of the encroachment from the active beach may result in improvement to beach resources fronting the property.

Public Access: OCCL staff has determined that no substantial improvement to public beach access would be gained by removing the subject encroachment because adjacent properties are fronted by similar encroachments and narrow beach.

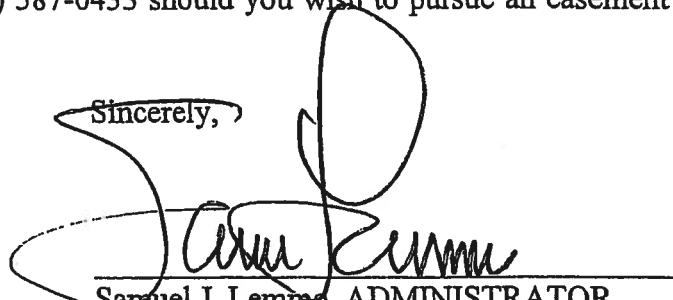
Affect on Adjacent Properties: Removal of the encroachment may destabilize the foundation of a home on an adjacent property.

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 encroachment. OCCL suggests that any disposition require the land uses remain unimproved.

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,



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

cc: Owners: Francis and Lillian Pirtle
Land Division, Barry Cheung