

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

November 14, 2014

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

PSF No.: 14OD-115

OAHU

Grant of Term, Non-Exclusive Easement to Eve G. Anderson Trust for Seawall and Steps Purposes; Assess Administrative Cost of \$500, Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-002:Seaward of 007

APPLICANT:

Eve G. Anderson Trust

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of Waimanalo, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-1-002:seaward of 007, as shown on the attached **Exhibit A**.

AREA:

4,491 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-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

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall and steps 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:

Applicant is contemplating listing the abutting property identified as tax map key (1) 4-1-02:007 ("Parcel 7") for sale. The recorded seaward boundary of Parcel 7 was described as along "high water mark" or "outer face of seawall", as shown on Land Court Application 997 Map 1. In the due diligence period, the encroachments comprising portions of the seawall and steps were noted on the survey map attached as **Exhibit C**.

Pursuant to the letter dated January 23, 1931 (**Exhibit D**), the Chairman of the Board of Harbor Commissioners wrote to the owner allowing a concrete facing to be placed on the present rock wall. Based on this letter, the Applicant argues that the encroachment should be considered as approved by the Government. Staff has no objection to this argument and will reflect such government approval in the forthcoming appraisal process. Accordingly, staff is not recommending any fine for the subject encroachment.

According to the material provide by the applicant, the Office of Conservation and Coastal Lands (“OCCL”) supports a disposition to resolve the encroachments. A copy of OCCL’s review on the encroachment is attached as **Exhibit E**.

Department of Parks and Recreation, Division of Aquatics Resources, Department of Planning and Permitting, and Board of Water Supply have no objection/comment to the request.

Pursuant to State Historic Preservation Division’s comment at **Exhibit F**, it requests an archaeological inventory survey, including assessment of the seawall, be conducted prior to the issuance of any future permit involving ground-disturbing activities and such provision be disclosed at the time of property sale or transfer. Staff has no objection to the first requirement but notes that the easement runs with the abutting property and will be recorded at the Bureau of Conveyances. Therefore, staff believes only the additional condition requiring the archaeological inventory survey as described above is necessary.

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.

There are no other pertinent issues or concerns.


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 request to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-1-002:007, 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 Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to Eve G. Anderson Trust covering the subject area for seawall and steps purposes under the terms and

conditions cited above, which are by this reference incorporated herein and further subject to the following:

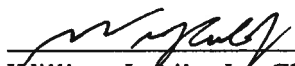
- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-1-002:007, provided however: (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. Grantee shall conduct an archaeological inventory survey, including assessment of the seawall, prior to the issuance of any future permit involving ground-disturbing activities.
- D. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
- E. Review and approval by the Department of the Attorney General;
- F. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
- G. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

Respectfully Submitted,



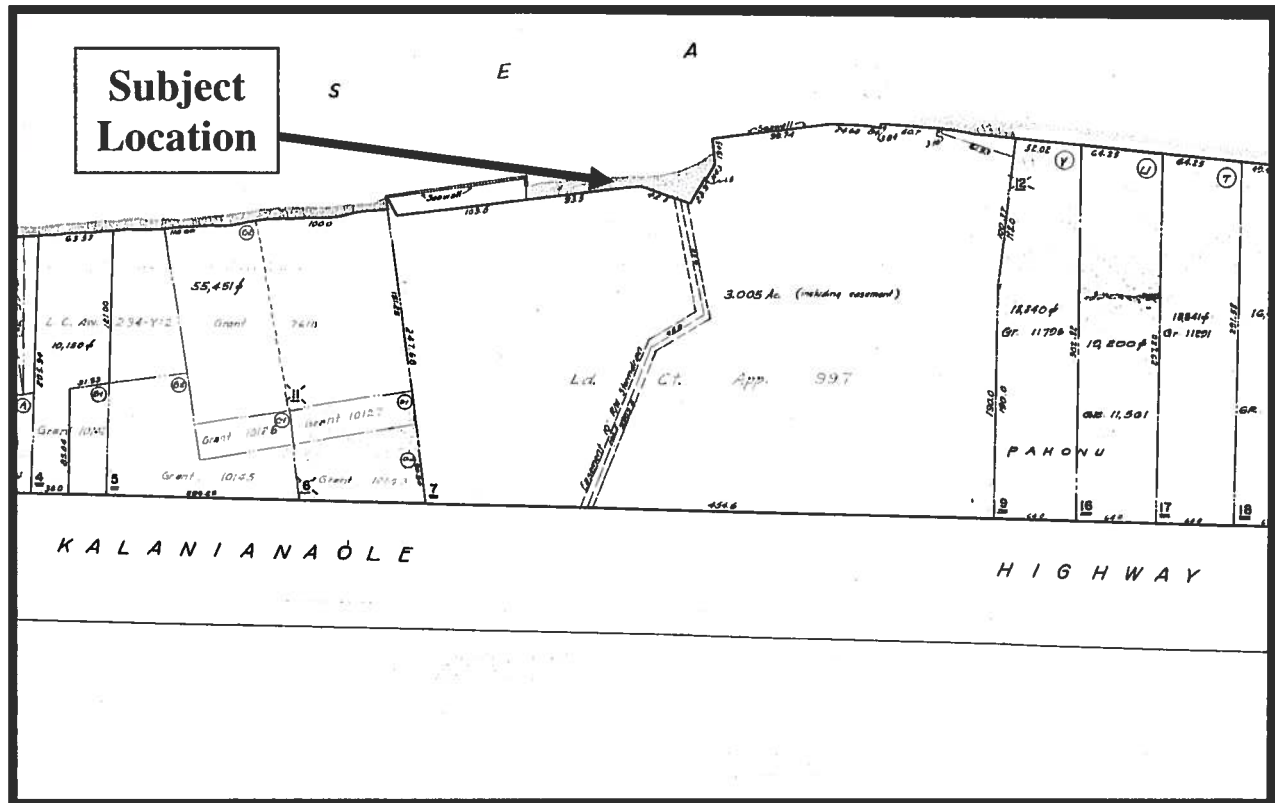
Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson





TMK (1) 4-1-002: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 Seawall and Steps Purposes

Project / Reference No.: PSF 14OD-115

Project Location: Waimanalo, Koolaupoko, Oahu, Tax Map Key: (1) 4-1-002:seaward of 007.

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

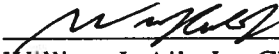
Chap. 343 Trigger(s): Use of State Land

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.

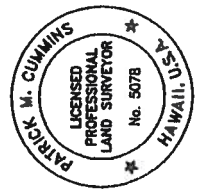
Recommendation: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



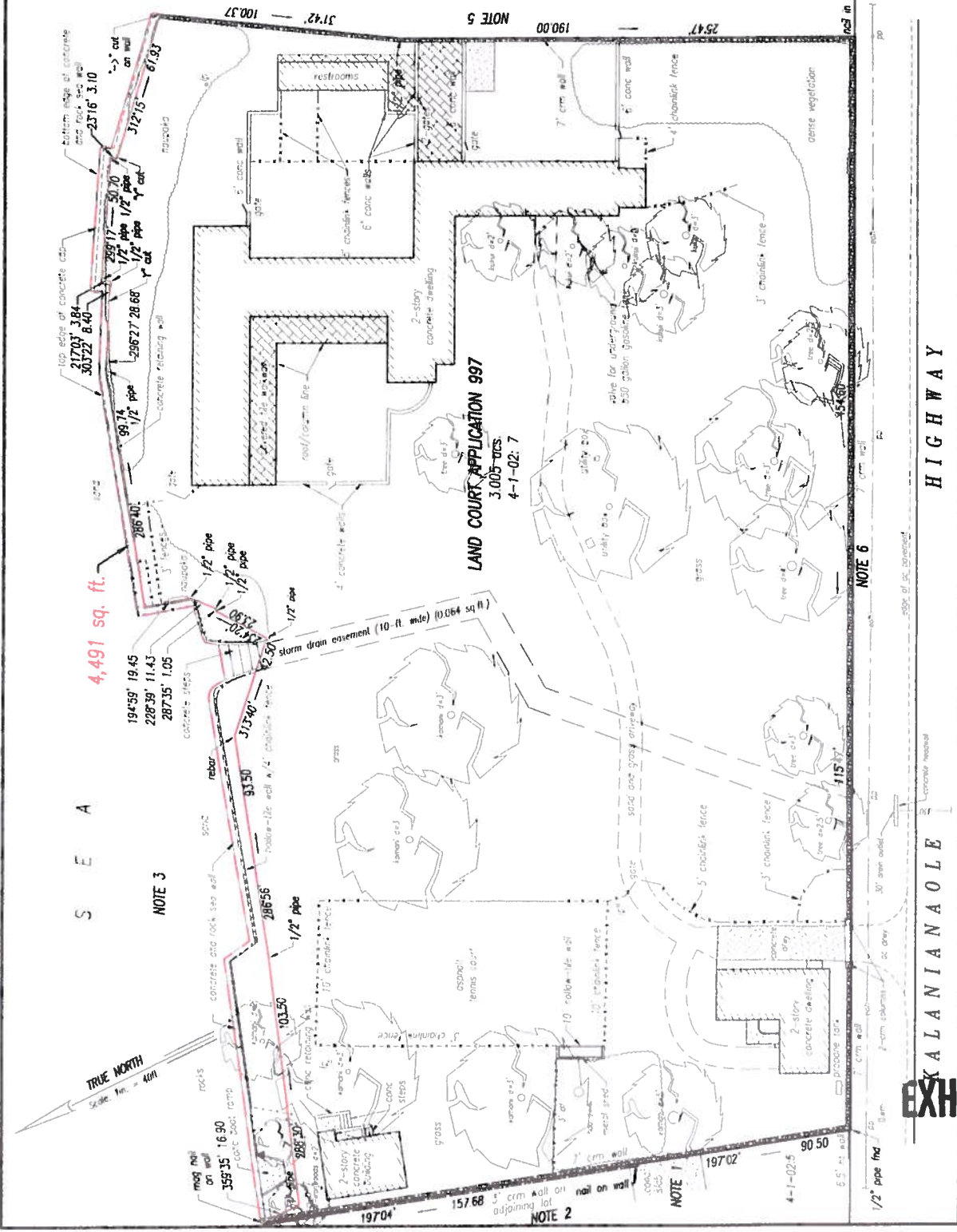
William J. Aila Jr., Chairperson
Date 10/20/14

EXHIBIT B

**PLAN SHOWING
LAND COURT APPLICATION 997
AS SHOWN ON MAP 1
AT PAHONU, WAIMANALO,
KOOLAUPOKO, OAHU, HAWAII
MARCH 18, 2014**



This work was prepared by me
or under my direct supervision.
Patrick M. Cummins
Patrick M. Cummins
Licensed Professional Land Surveyor
Certificate No. 5078
Expires April 30, 2014



Address all Communications to the Board of Harbor Commissioners
Territorial Office Bldg.

LYMAN H. BIGELOW, CHAIRMAN
JAMES WAKEFIELD
JAMES L. FRIEL
JAMES WINNE
SHERWOOD LOWREY, SECRETARY

CAPT. W. R. FOSTER, HARBORMASTER
CAPT. J. UNTERMANN, ASSISTANT HARBORMASTER
H. N. BROWNE CHIEF CLERK

TERRITORY OF HAWAII
BOARD OF HARBOR COMMISSIONERS
HONOLULU, T. H.

January 23, 1931.

Dr. O. E. Wall,
Honolulu, T. H.

Dear Sir:

RE CONSTRUCTION OF CONCRETE FACING IN
FRONT OF WALL AT WAIMANALO:

As per your verbal request, permission is hereby granted to put a concrete facing on the present rock wall in front of your property at Waimanalo, it being understood that the same is now constructed along your property.

Very truly yours,
BOARD OF HARBOR COMMISSIONERS,
By its Chairman,



LHB:HW

EXHIBIT "D"

NEE AHU RO HONOHU
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

WILHELM MEA III
GOVERNOR
KESE K. SOUKI
COMMISSIONER
WILLIAM TAM
DEPUTY COMMISSIONER
OFFICE OF SPECIAL
TRUSTS AND EASEMENTS
DEPARTMENT OF LAND AND NATURAL RESOURCES
1555 ALI'OLE DRIVE, SUITE 200, HONOLULU, HAWAII 96813
TELEPHONE: (808) 586-2500
FAX: (808) 586-2501
WWW.DLN.RH.GOV

REF:DLNR:BR

Re: Encroachment: OA-14-19

Eve G. Anderson Trust
c/o Peter Young
1539 Kanapuu Drive
Kailua, Hawaii 96734

SEP - 3 2014

Dear Mr. Young,

SUBJECT: Request to Resolve State Land Encroachment at
Waimanalo, Oahu: Seaward of Tax Map Key (1) 4-1-002:007 (owner: Eve G.
Anderson Trust)

This is in response to your June, 2014 request to resolve the shoreline encroachments at Tax Map Key (1) 4-1-002:007. According to information and maps contained with your request, you have identified approximately 4,491 square feet of encroachment (seawalls, filled lands) fronting the subject property onto State land. The seawalls are within approximately 30 feet of the main residence on the subject property.

Based on a Hawaii Land Court map (LCA 997, 1930) and a property survey map provided with your request (dated March 18, 2014), it appears that the subject encroachments are on unencumbered State-owned lands. The estimated encroachment area is outlined in red on the 2014 survey map. The Land Court Map you provided (LCA 997, 1930) and aerial photographs from the University of Hawaii Coastal Geology Group¹ from 1949 and 1963 appear to indicate that the subject encroachments were established prior to the adoption of State Conservation District Rules in October, 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 Available at <http://www.soest.hawaii.edu/coasts/erosion/oahu/mosaics.php>

EXHIBIT "E"

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 property to the northwest is fronted by similar vertical seawalls. The adjacent property to the southeast is fronted by a rock revetment. Kaiona Beach Park is approximately 500 feet to the northwest. Kalamiana'ole Highway runs along the mauka side of the property. The subject property and adjacent property to the northwest are fronted by a low rock-walled enclosure. Analysis by DLNR Division of Forestry and Wildlife staff (DLNR Ref: OAI4-02 Pahou, Waimanalo) indicates that rock-walled enclosure historically served as a turtle enclosure or turtle pond ("Pahou") for the purpose of keeping turtles for food for a local chief. DLNR's analysis indicates that the turtle pond "is in the State of Hawaii, and as part of the Public Trust Lands inventory is recognized as held in trust by the State of Hawaii for its present and future generations."

Beach Resources:

Little or no beach remains fronting northwest and southeast sides of the subject property. A narrow "pocket beach" exists at the middle of the property where the seawalls bend landward for approximately 150 feet; however, this section of beach is narrow and submerged at high tide. The turtle pond provides a shallow, protected swimming area popular with local families. A historical erosion map by the University of Hawaii Coastal Geology Group² indicates annual shoreline erosion rates between 0.5 and 1 foot per year since 1949 at the beach fronting the subject property. The trend of historical erosion has resulted in beach narrowing and loss fronting the seawall, particularly at the northwest and southeast ends.

Public Access:

Public shoreline access is available about 500 feet to the northwest at Kaiona Beach Park. This section of coast has limited public access along the shoreline due to seawalls fronting the subject property and adjacent properties, which are fronted in some areas by loose rock. Public access is particularly difficult at higher tides when the beach and rocks are submerged and low waves break against the seawalls.

Effect of Removing the Encroachment on:

Beach Resources: The encroaching seawall and seawalls on adjacent properties are fronted by narrow beaches, as described above. Assuming there are beach sand resources impounded behind the seawalls, removal of the encroachment may result in an increase in beach width by allowing the shoreline to erode back and releasing sand ("nourishing" the beach). However, existing buildings on the property would likely be threatened if the walls were removed

² Available at: <http://www.soest.hawaii.edu/coasts/erosion/oahu>

Public Access: *Substantial improvement to alongshore public access would likely be gained by removing the encroachment by providing increased beach width as described above.*

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

As described above, the seawalls appear to be Non-Conforming Shoreline Structures (established prior to October, 1964) and have been in place since at least 1930. Removal of the seawalls may result in improvements to beach resources and alongshore public access. However, removal would threaten structures (existing residences on the subject property) and would have impacts to the adjacent and upland developments by threatening the stability of adjoining seawalls and yards.

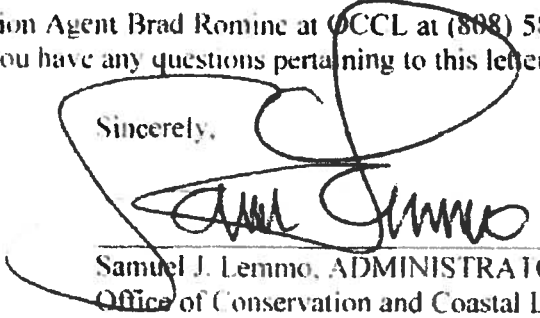
The OCCL has no regulatory standing in this matter because the improvements are almost 100 years old, which is prior to the establishment of the Conservation District. We do not necessarily advise removal and remediation in this case because such action would change the fundamental character of the area which has existed in its current state for nearly a century. In addition, the property is armored on both sides and removal could have detrimental effects to the adjacent properties. We feel that a term easement to address this difficult matter is not unreasonable and provides for future options should the State decide to reclaim the area.

OCCL suggests that, if an easement is granted, DLNR Land Division consider requiring additional mitigation or compensation to the State. One suggestion for possible mitigation is removal of loose rock at the base of the seawalls to improve alongshore access and for use in repairing the turtle pond walls.

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.

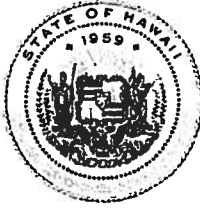
Sincerely,



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

cc: Land Division, Attn: Barry Cheung

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD, STE 555
KAPOLEI, HAWAII 96707

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
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

October 8, 2014

Mr. Barry Chueng, District Land Agent
Department of Land and Natural Resources
Land Division
P.O. Box 621
Honolulu, HI 96809

LOG NO: 2014.0438
DOC NO: 1410G004
Archaeology

RECEIVED
LAND DIVISION
OCT 15 AM 10:45

Dear Mr. Cheung:

SUBJECT: **Chapter 6E-7 Historic Preservation Review –
Request for Term – Non-Exclusive Easement for Seawall and
Steps Purposes to Eve G. Anderson Trust – Ref. No.: 14OD-115
Waimānalo Ahupua‘a, Ko‘olaupoko District, Island of O‘ahu
TMK: (1) 4-1-002:007 seaward**

Thank you for the opportunity to comment on this request for a Non-Exclusive Easement for a seawall and steps. Eve G. Anderson Trust (applicant) is contemplating listing for sale the “abutting property identified as tax map key (1) 4-1-02:007 (“Parcel 7”).” The property consists of “a portion of government lands” within the 4,491 square foot (0.103 acres) parcel “subject to review and approval by the Department of Accounting and General Services, Survey Division.”

The purpose of the request is to address the “encroachments” which are identified as comprising portions of the existing seawall and steps. In a letter dated January 23, 1931, the Chairman of the Board of Harbor Commissioners allowed the owner to apply a concrete facing to the seawall. Based on this letter, the applicant argues that the “encroachment” should be considered as approved by the Government. The current request letter indicates that DLNR staff have no objection to this argument and will reflect this government approval in the forthcoming appraisal process.

Our records indicate that no archaeological inventory survey (AIS) has been conducted, and no archaeological historic properties have been identified on this parcel. They also indicate that the current seawall is more than 50 years old and has not yet been evaluated as a potential historic property. In addition, Pahonu Turtle Pool (SIHP 50-80-15-1037) is located adjacent to the above seaward property, and the geologic substrate within the current property consists of Jaucus sand (Foote et al. 1972) which is conducive to subsurface historic properties including cultural layers and human burials.

We have no information regarding whether construction of the existing seawall may have disturbed potential subsurface historic properties along the seaward portion of the subject parcel. Due to the potential for yet unidentified subsurface historic properties to be present, we request an archaeological inventory survey, including assessment of the sea wall, be conducted prior to issuance of any future permit involving ground-disturbing activities. We also request that this provision be disclosed at the time of property sale or transfer.

Please contact me at (808) 692-8019 or at Susan.A.Lebo@hawaii.gov if you have any concerns regarding this letter.

Aloha,

Susan A. Lebo, PhD
Oahu Lead Archaeologist

EXHIBIT "E"

cc: Sam J. Lemmo, Administrator, Office of Conservation and Coastal Lands (Sam.J.Lemmo@hawaii.gov)