

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

June 9, 2017

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

Ref no.: 12OD-108

OAHU

Amend Prior Board Action dated January 11, 2013, item D-14, *Grant of Term, Non-Exclusive Easement to West Coast Roofing, Inc. for Seawall Purposes; Assess Administrative Costs of \$200, Makaha, Waianae, Oahu, Tax Map Key: (1) 8-4-005:seaward of 002.*

This Amendment Pertains to Additional Easement Area and Consideration.

BACKGROUND:

On January 11, 2013, under agenda item D-14 (**Exhibit 1**), the Board authorized the issuance of a 55-year term, non-exclusive easement for seawall purposes to West Coast Roofing, Inc. covering an area of 131 square feet (encroachment shown on Exhibit C of the 2013 submittal). The fair market value of the 131-square foot encroachment was determined by an independent appraiser at the applicant's cost¹ as \$3,000 and was paid on September 23, 2013.

REMARKS:

The Department received an application for a shoreline certification on September 27, 2013. Pursuant to the site inspection conducted by the State Surveyor, additional portions of the same seawall of 190 square feet were located makai of the shoreline. The additional seawall area was previously covered by sand and became exposed during a high wave event, such that the entire length of the seawall was exposed. The latest survey map, approved by DAGS (**Exhibit 2**), indicates that the entire encroaching area is approximately 321 square feet. Staff notes that it is necessary to revise the easement area from the original 131 square feet to the new area of 321 square feet, more or less. As a result of the expanded area, additional consideration is required from the Applicant.

Staff recommends the Board authorize the one-time payment for the additional area based on the unit rate paid by the Applicant under the previously approved appraised value. The additional consideration payable is presented below:

¹ Appraisal fee was \$3,120.42

$(\$3,000 \div 131 \text{ sq. ft.}) \times 190 \text{ sq. ft.} = \$4,351. \text{ [to be paid by applicant]}$

As required under §171-53(c), Hawaii Revised Statutes, approval from the Governor [dated May 11, 2016] and the Legislature [Senate Concurrent Resolution No. 17 S.D. 1 was adopted by the Legislature 2016 Session] were obtained for the additional area.

Staff did not solicit comments from other agencies to the subject amendment, other than Office of Conservation and Coastal Lands and received no objection.

Staff recommends the Board authorize the issuance of an immediate management right-of-entry (ROE) until the issuance of the easement. The ROE shall require the insurance and indemnification provisions.

Applicant's position

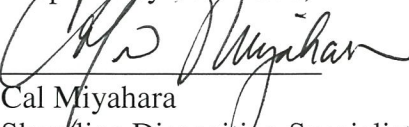
During a recent conversation whereby the Applicant was informed of the need to amend the easement area to include the additional seawall area as well as the \$4,351 additional payment, the Applicant was wondering why he is being required to pay for a seawall that was built within the recorded property boundary. The Applicant stated that he is currently paying taxes and is required to have \$1,000,000 liability insurance for the State land. Also, the Applicant stated he has already paid over \$3,000 for the survey and \$3,000 for the easement. Staff informed the Applicant that he was not being singled out; similar occurrences have been encountered whereby additional encroaching areas are identified on subsequent surveys.

Upon approval of today's request, staff will continue to work on the consummation of the easement document.

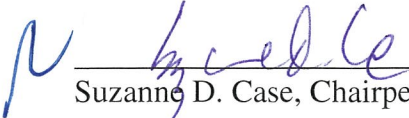
RECOMMENDATION: That the Board amends its prior action of January 11, 2013, Item D-14 by:

- A. Replacing the original easement area of 131 square feet with the new area of 321 square feet, more or less; and
- B. Payment of \$4,351 for the additional area.
- C. Other terms and conditions of the January 11, 2013, Item D-14 shall remain in full force and effect.

Respectfully Submitted,


Cal Miyahara
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

b-14

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

January 11, 2013

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

PSF No.:12OD-108

OAHU

Grant of Term, Non-Exclusive Easement to West Coast Roofing, Inc. for Seawall
Purposes; Assess Administrative Costs of \$200, Makaha, Waianae, Oahu, Tax
Map Key: (1) 8-4-005:seaward of 002.

APPLICANT: ("Applicant")

West Coast Roofing, Inc., a domestic profit corporation.

LEGAL REFERENCE:

Section 171-6, 13 and 53, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located in Makaha, Waianae, Oahu, identified by Tax Map
Key: (1) 8-4-005:seaward of 002 as shown on the attached map labeled **Exhibit A**.

AREA:

131 square feet, more or less.

Subject to review and approval of the Department of Accounting and General Services,
Survey Division.

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

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
January 11, 2013 *Dr*

D-14

EXHIBIT 1

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West Coast Roofing, Inc.

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CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Subject to one-time payment of consideration determined by an independent appraiser 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 Notification at **Exhibit B**.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>x</u>	NO <u> </u>
Registered business name confirmed:	YES <u>x</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>x</u>	NO <u> </u>

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine the one-time payment of consideration;
- 2) Provide survey maps and descriptions according to State DAGS standards and at

BLNR - Issuance of Easement
West Coast Roofing, Inc.

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- 3) Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

BACKGROUND:

Applicant, who is the owner of the abutting properties identified as tax map key (1) 8-4-005:002 ("Parcel 2"), has been in the process of obtaining a shoreline certification. During the survey process, portion of the seawall was found to be makai of the shoreline (see **Exhibit C**). Applicant intends to resolve the encroachment.

Parcel 2 is described as Lot 57 of Land Court Application 1052, Map 5 dated April 1, 1947. The original seaward boundary of Lot 57 was cited along "highwater mark" as shown on Map 5. In October 2010, the shoreline was determined to be mauka of the recorded boundary and the seawall. See Exhibit C for the location of the 2010 shoreline. The portion of the seawall is now considered as encroaching on State lands, i.e. below the highwater mark.

The subject encroachment, which is now located makai of the shoreline, is considered submerged land for the purpose of this request. Upon approval of today's request, Applicant is reminded of the requirement for concurrent resolution from both houses of the legislature under Sect.171-53(c), HRS.

By its letter dated July 31, 2012 attached as **Exhibit D**, Office of Conservation and Coastal Lands (OCCL) determined that the encroachment does not appear to be built recently. OCCL declined to ask for an after-the-fact conservation district use application or initiate any enforcement action on the subject encroachment.

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

State Historic Preservation Division, Department of Planning and Permitting, and Office of Hawaiian Affairs have not responded as of the suspense date.

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.

The Department will be submitting a bill for the next legislative 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. The easement will include the normal insurance coverage and indemnification language to protect the best interests of the State. To avoid any delay in the disposition process, staff brings the request on today's agenda, with the Recommendation drafted to accommodate any changes in the forthcoming Legislative

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West Coast Roofing, Inc.

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session as discussed above.

According to the certified shoreline map dated October 10, 1974 and attached as **Exhibit E**, the subject wall was located landward of the 1974 shoreline. In fact, a portion of the wall has eroded since 1974. Further, a building permit issued in 1964 regarding a 2-foot high and 70-foot long seawall at the subject location matches the present physical condition (other than the eroded portion). Staff believes the subject request fits the criteria under the proposed legislation mentioned above, namely, landward of the shoreline and with authorization at the time of construction.

Regardless of the outcome of the proposed legislation changes, staff plans returning to the Board after the end of the next legislative session for a final determination of the consideration for the requested easement. If the bill is passed, staff will make recommendation following the revised statutes. Alternatively, staff will seek the Board authorization to proceed with the appraisal process (payment of appraisal fee, procurement etc.) in the event the bill is not approved.

In the meantime, staff recommends the Board approve the issuance of the easement with a temporary deferral of the payment of the consideration. If the proposed legislation is not enacted, then Applicant shall be responsible for paying the consideration. Failure to pay the consideration may result in the termination of the easement and subsequent enforcement action.

In addition, staff recommends the Board assess the administrative costs of \$200 for staff time incurred in resolving this matter, under Section 171-6, HRS.

Governor's approval pursuant to Section 171-53 (c), HRS will be pursued by the staff upon approval of today's request.

Applicant has 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:

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 administrative costs of \$200, 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) 8-4-005:002 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-

BLNR - Issuance of Easement
West Coast Roofing, Inc.

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compliance with such terms and conditions.

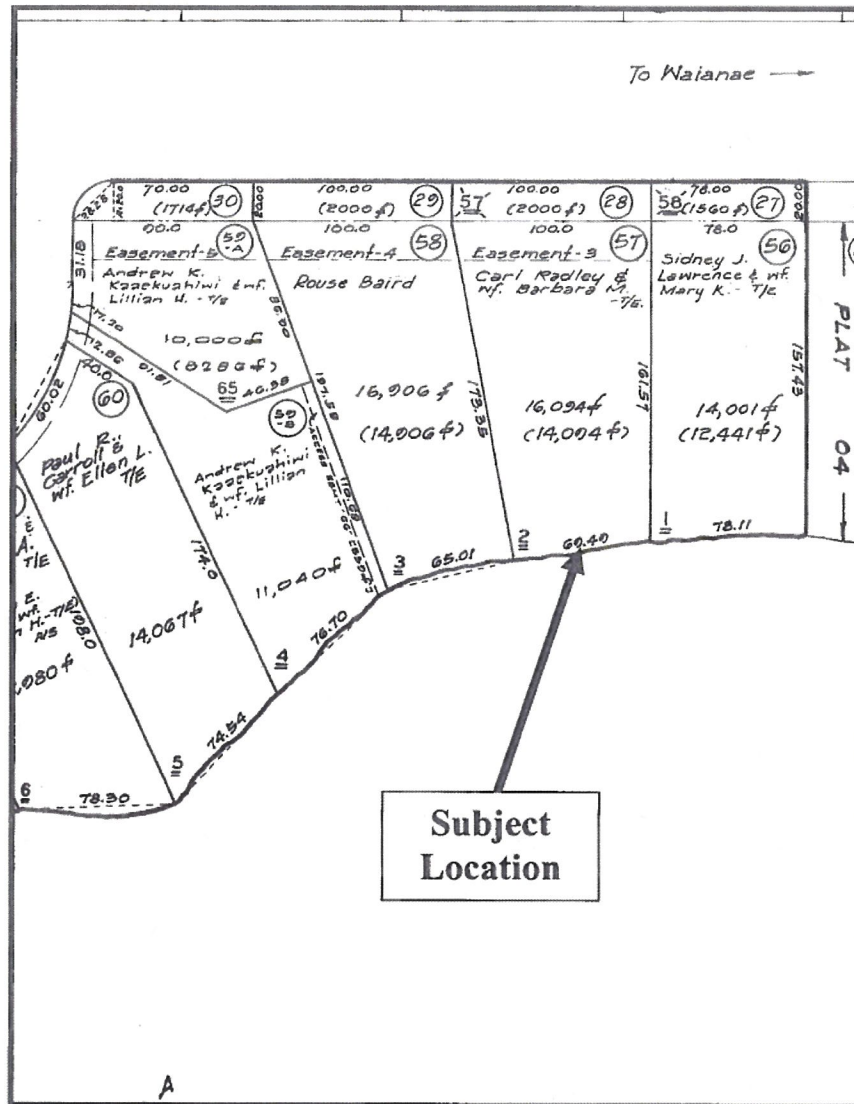
4. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to West Coast Roofing, Inc., covering the subject area for seawall purposes under the terms and conditions cited above, which are by this reference incorporated 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 property described as Tax Map Key (1) 8-4-005:002, 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. Approve the execution of the easement with a temporary deferral of payment of the easement consideration under the terms and conditions as described above;
 - 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) 8-4-005:seaward of 002

EXHIBIT A

BLNR - Issuance of Easement
West Coast Roofing, Inc.

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January 11, 2013

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 Purposes

Project / Reference No.: PSF 12OD-108

Project Location: Makaha, Waianae, Oahu, Tax Map Key: (1) 8-4-005:seaward of 002.

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."

Office of Conservation and Coastal Lands believes that the subject encroachment was not built recently. 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

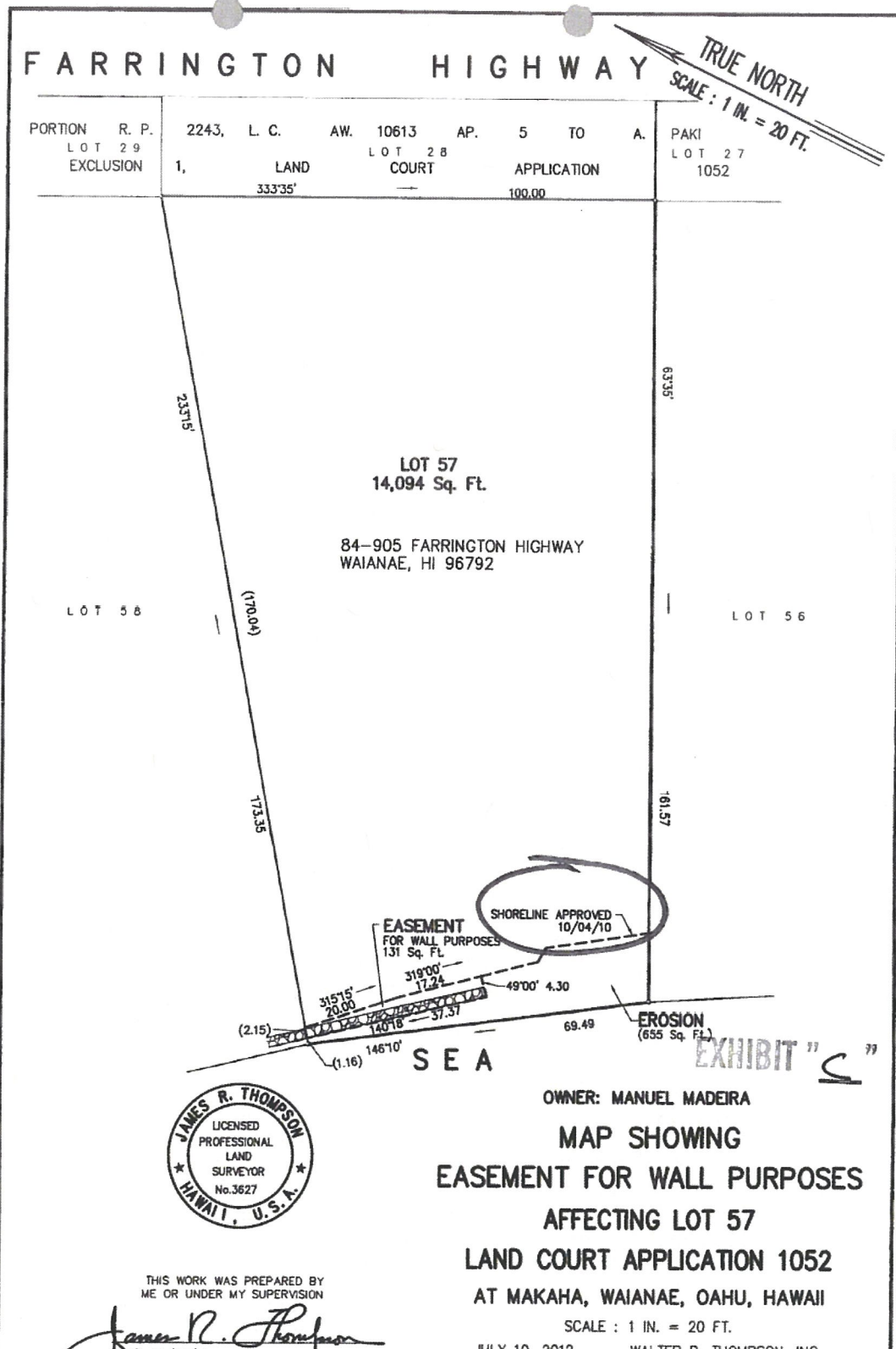
Recommendation: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



William J. Aila Jr., Chairperson

N Date 12/12/12

EXHIBIT B



NEIL ABERCROMBIE
GOVERNOR OF HAWAII



RECEIVED
LAND DIVISION

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STATE OF HAWAII
DEPT. OF LAND & 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 RESOURCES MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:DLNR:SL

JUL 31 2012

File Number Encroachment: OA-13-4

MEMORANDUM:

TO: Barry Cheung, Oahu District Land Agent
Land Division

FROM: Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

SUBJECT: Request to Resolve State Land Encroachment at Makaha, Waianae Oahu
TMK: (1) 8-4-005:002 Seaward

This is in response to your July 12, 2012 request to resolve the shoreline encroachment seaward of Tax Map Key (1) 8-4-005:002 (Seaward).

According to information and maps contained in the Shoreline Encroachment Information Sheet approximately 131 square feet of encroachment has been identified seaward of the subject property onto State land. The surveyor for the applicant states that the date of the encroachment is unknown. A previous shoreline certification was accepted October 4, 2010. Staff of the Office of Conservation and Coastal Lands (OCCL) conducted independent research and discovered an October 10, 1974 shoreline certification. The map that was part of this older shoreline certification file indicated the presence of a CRM wall, which appears to be the same wall that is the subject of the current easement request. We have no records earlier than 1974 so we cannot definitively confirm that the structure is nonconforming, nor can we show that it is illegal. We have no way of knowing when it was built or whether it was built in the Conservation District, although it does not appear that the structure was built recently, so we do not suspect a violation.

OCCL will not be asking for an after-the-fact Conservation District Use Application to cure this matter, nor do we wish to initiate any enforcement action in this matter for the reasons stated above. Should the OCCL find that the improvements were built without permits within the Conservation District after 1964 the OCCL may reconsider this finding.

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

EXHIBIT "D"

TMK (1) 8-4-005:002

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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.

Surrounding Land Uses:

The surrounding coastal uses along the coastline are primarily residential.

Beach Resources:

Beach resources fronting the encroachment are excellent.

Public Access:

There is ample public access in the form of lateral public access. There are public access ways from the street to the beach to both sides of the parcel some 600-700 feet away.

Effect of Removing the Encroachment on:

Beach Resources: OCCL staff has determined that removal of the encroachment could marginally improve beach resources or public access. Removal of the wall might result in some sand released onto the beach, and create a slightly wider beach.

Public Access: OCCL staff has determined that only marginal improvement would be gained by removing the wall. The beach already supports excellent lateral public access, so removal could result in a marginal improvement over existing conditions.

Affect on Adjacent Properties: It is unknown what impact removal of the encroachment would have on the adjoining properties.

It has been a general policy and practice of the 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.

The OCCL is directed in its actions and policies by a mandate to protect and preserve the natural resources of the state for present and future generations. This directive is articulated in government statutes, rules, policies, and a general office ethic of healthy natural resource stewardship. Hawaii’s beaches are one of our many valued natural resources. As with many fragile resources of the state, beaches are at risk of damage from a number of threats, including shoreline armoring. The OCCL does not generally support the granting of easements that abut

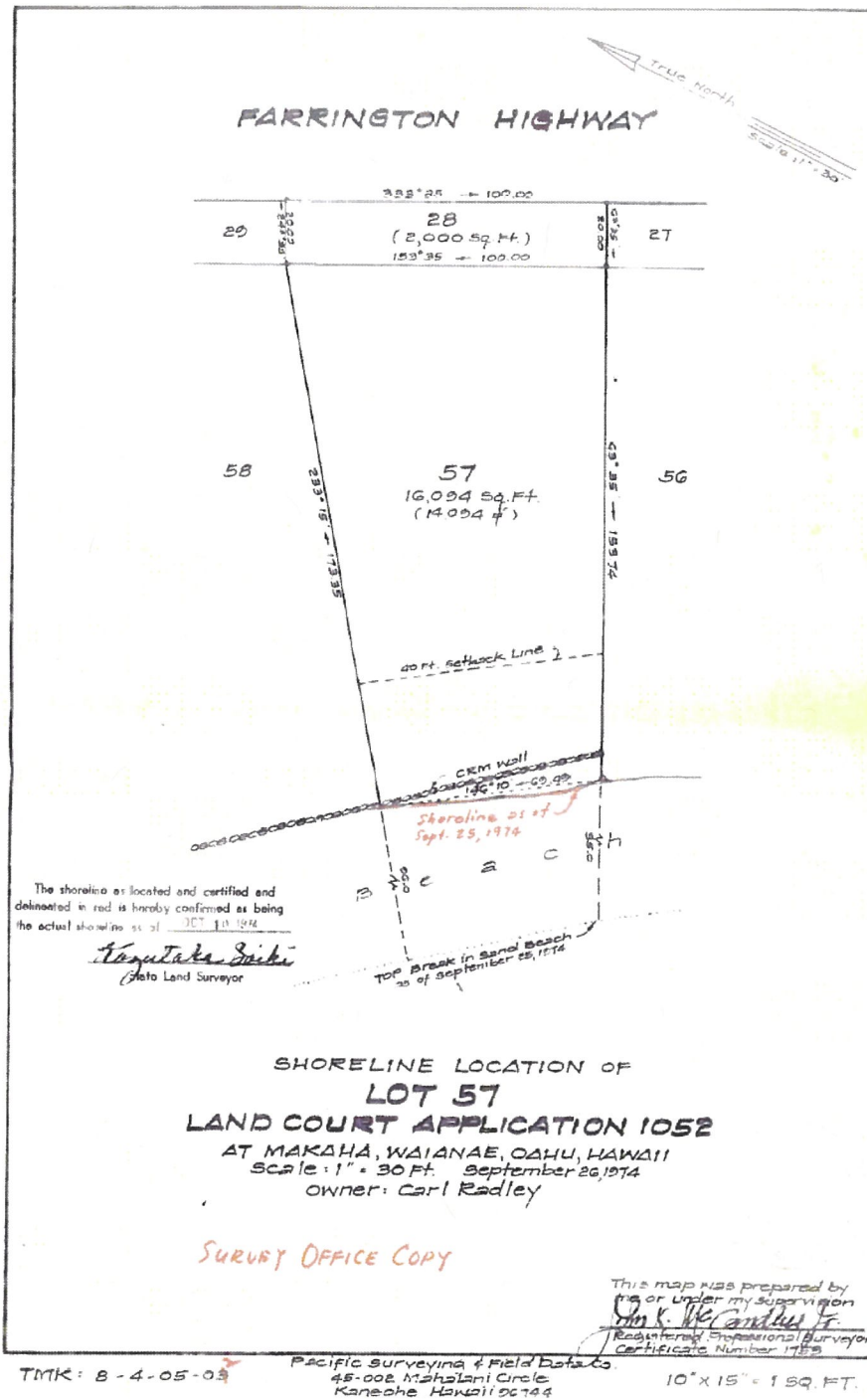
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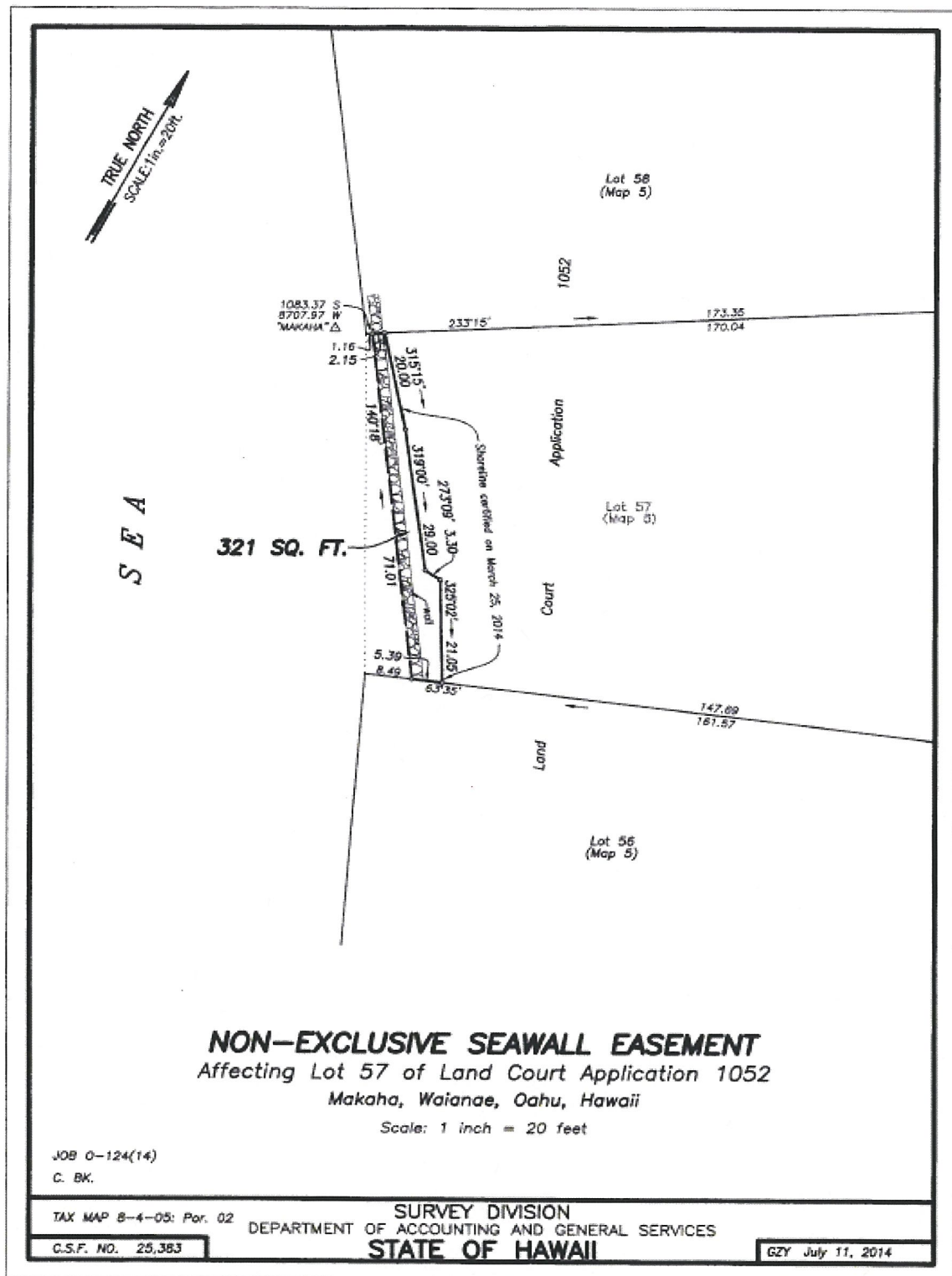
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good or excellent sandy beaches where we see no imminent threat to an abutting habitable structure or facility. That being said, we believe that applicant should be afforded an opportunity to present their request for an easement to the Board of Land and Natural Resources (BLNR) to consider the matter.

Please feel free to contact us at the Office of Conservation and Coastal Lands at 587-0377 should you have any questions on this matter.

C: Chairperson

**EXHIBIT "E"**



Latest Survey Map

EXHIBIT 2