

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

July 28, 2017

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

PSF No.: 03OD-214

OAHU

Amend Prior Board Action of July 15, 2003, Agenda Item D-12; Grant of 55-year Term, Non-Exclusive Easement to Cho Gilger for Seawall Purposes; Haleaha, Koolauloa, Oahu, Tax Map Key: (1) 5-3-006: seaward of 021.

The Amendment is to Change the Applicant from Cho Gilger to Phillip T. Spencer and Lisa T. Spencer, Co-Trustees of Phillip T. Spencer Revocable Trust dated September 3, 2009 and Lisa T. Spencer Revocable Trust dated September 3, 2009.

REMARKS:

At its meeting of July 25, 2003, under agenda item D-12, the Board approved the issuance of a 55-year term, non-exclusive easement for seawall purposes to Mr. Cho Gilger. The encroaching area of 26 square feet (as approved by the Survey Office) was appraised at \$580. The consideration and fees were paid and the easement document was mailed to Mr. Gilger. However, the document was never signed and returned. A copy of the 2003 approved submittal is attached as **Exhibit 1**. Meanwhile, Mr. Gilger sold the abutting private property to Mr. & Mrs. Phillip Spencer, as co-trustees under their respective trusts.

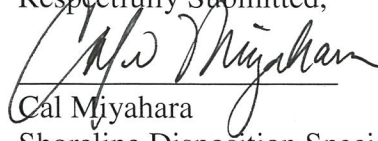
For housekeeping purposes, staff requests the Board amend its prior action of July 25, 2003, item D-12, by changing the applicants' names. Staff will continue to process the approved seawall easement on the terms and conditions approved by the Board.

RECOMMENDATION: That the Board:

1. Amend its prior action of July 25, 2003, item D-12, by replacing the applicant with Phillip T. Spencer and Lisa T. Spencer, Co-Trustees of Phillip T. Spencer Revocable Trust dated September 3, 2009 and Lisa T. Spencer Revocable Trust dated September 3, 2009:

2. All other terms and conditions of the July 25, 2003 approval shall remain in full force and effect.

Respectfully Submitted,



Cal Miyahara
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

D-12

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

July 25, 2003

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

03od-214

Oahu

Grant of 55-year Term, Non-Exclusive Easement to Cho Gilger,
for Seawall Purposes, Haleaha, Koolauloa, Oahu, Tax Map Key:
5-3-06: seaward of 21.

APPLICANT:

Cho Gilger, as tenant in severalty, whose mailing address is
Hauula, Hawaii 96717.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Haleaha, Koolauloa, Oahu,
identified by Tax Map Key: 5-3-06: seaward of 21, as shown on the
attached map labeled Exhibit A.

AREA:

26 sq.ft., more or less, to be determined by Survey Division, DAGS.

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: YES _____ NO x

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to use, repair and maintain seawall

EXHIBIT "1"

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

July 25, 2003

ITEM D-12

purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

LEASE TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

During recent inspection, Coastal Land Program (CLP) staff observed the subject seawall was built before 1974 i.e. prior to the enactment of the environmental assessment law.

DCCA VERIFICATION:

Not required for individuals

APPLICANT REQUIREMENTS:

Applicant shall be required to

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Provide survey map and description according to State DAGS standards and at Applicants' own cost (previously submitted).
- 3) Pay for the estimated consideration and fees of \$1,055.00.

REMARKS:

During the preparation of the maps for a shoreline certification, the seawall was shown to be encroaching onto the State lands. (The applicant is not one of the pier owners participating in the Kaneohe Piers Amnesty Program.) The encroaching area is about 26 square feet (see Exhibit B).

The Coastal Land Program staff has determined that the issuance of an easement for the encroaching portion of the seawall would have no adverse impacts on natural resources, including beach resources and therefore has no objections to the issuance of an easement. The Coastal Land Program (CLP) staff reviewed the applicants' encroachment history and visited the area. The CLP staff recommended an easement be issued by the Land Office (see CLP letter, Exhibit C).

The applicant, Cho Gilger is the buyer with escrow closing this

month from the sellers, Steven and Susan Bissonnette.

The 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.

The encroachment is less than 100 square feet. Based on criteria of minor encroachments, staff recommends waiving the \$500 fine under 171-6(12) HRS following the June 28, 2002, Item D-17, as amended, which described the various criteria for fines on illegal encroachments.

The applicant requested an estimated easement calculation to assist the buyers' and sellers' negotiations for closing with escrow in July. The estimated lump sum payment for a 55-year easement is \$1,000.00 plus \$25 DAGS Survey mapping fee and \$30 documentation fee. Should the actual appraisal differ from the \$1,000.00 estimate, the applicant shall pay the difference or will receive a refund as the case may be.

No departments and agencies (other than CLP staff of the department) were asked to comment on the encroachment, as the proposed use is not different from the existing use.

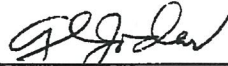
RECOMMENDATION: That the Board:

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. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a 55-year term non-exclusive easement to Cho Gilger 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 easement document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed

July 25, 2003

by the Chairperson to best serve the interests of the
State.

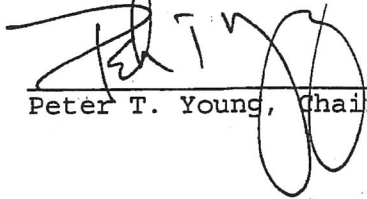
Respectfully Submitted,



Al Jodar
Land agent



APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

John W. Ambrose & w/f
Hauzani J. - 7/8

29 Paul J. Naki Jr. Tr. - 1/2
Susan K. Akau-Naki Tr. - 1/2

54 Theodore T. Kanihuna, Jr.
& w/f Lucille M. - 7/8

09
PAPAOKOKO - HALEAHU
Roman Catholic Church
in Hawaii
(Chia-Hsing Lin - 1/2
Yung-Lung Chen - 1/2) 1c.
8.842 Ac.

Ap. 1

Yen-Shen Chen
& w/f Tush-O Ho-Tu
2.236 Ac.

GR. 1308

309

7.04 Acs.

Liliuokalani Trust

34
Ching-Tung Cho & w/f
Chin-Hua C. - 7/8
1.50 Acs.
37806

Judith N.W. Choy - 86.67%
Gary A. Choy - 13.33%
L. C. AN. 5853.12
1.632 Ac.
GR. 1308.3

JAMES K. Mayton & w/f
3000 S. - 1/2
1/2 E. Newhouse & w/f
1/2 E. 1311 Ap. 2

row & w/f
m-Rupnow - 7/8

w/f.

Agnes K. - 1/2
Judith N.W. Choy
& Gary A. Choy - 7/8 - Rdm

30 B 84 Richard T. Antoku Trust - 50.00
Rigono U. Antoku Trust - 50.00 - 7/8

52 Mem Lin Ching Chock & Milton K. Y. Chock
- 1/2

55 David H. H. Lee Trs. - 1/2
Charlotte S. K. Lee Trs. - 1/2

73 Herbert A. B. Kamkekeana
& w/f Sylvia K. - 7/8

48 Nicholas T. Long & w/f Ruth L.
55.400 / 55.400 A KAHANAMANA HIGHWAY

Ann Marie Galuteris
Lincoln P. Galuteris
4.732 Ac.
GR. 1311 1/2

Subject Location

Frederick H. K. K. K.

9.04 Acs.

2.86 Acs.

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SUBJECT TO CHANGE

Roman Catholic Church
65,206 \$
1307:2

Stephen K. Belling &
w/f Orpha K. - 7/8

10,026 \$
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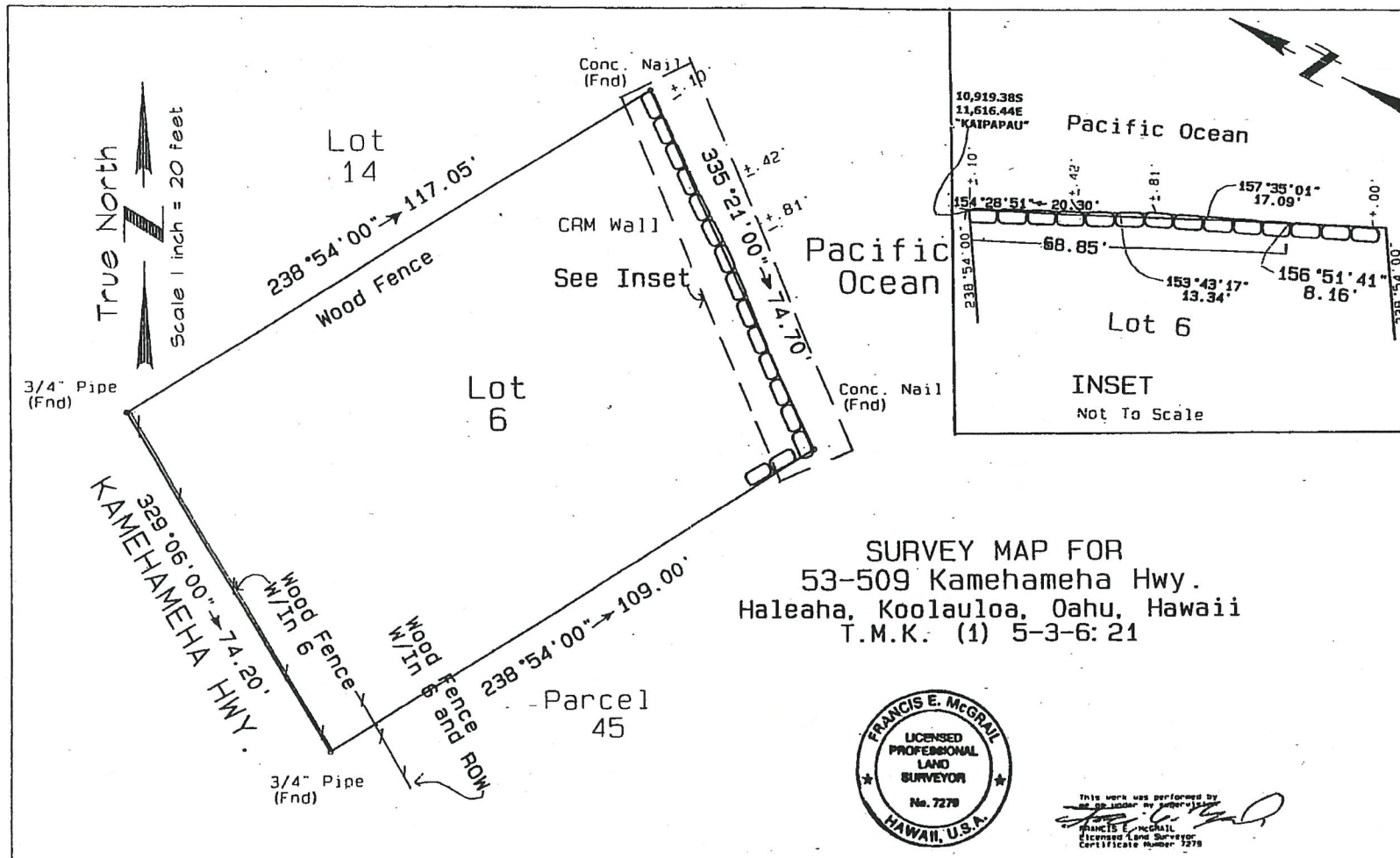
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DEPARTMENT OF THE TAX COMMISSIONER
TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP

FIRST DIVISION		
ZONE	SEC.	PLAT
5	3	06
CONTAINING PARCELS		
SCALE: 1 IN. = 100 FT.		

EXHIBIT A

EXHIBIT B



SURVEY MAP FOR
53-509 Kamehameha Hwy.
Haleaha, Koolauloa, Oahu, Hawaii
T.M.K.: (1) 5-3-6: 21



This work was performed by
me or under my supervision
Francis E. McGrail
Licensed Land Surveyor
Certificate Number 7279

Technical Field Data Service, Inc.
44-0 23 Aina Mui Place
Kaneohe, Hawaii 96744

LINDA LINGLE
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

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU
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:PB:MM

JUN 25 2003

File Number Encroachment: OA-03-38

Steven and Susan Bissonnette
c/o Lynn Wells
Homequest Realtors

Kailua, HI 96734

Dear Mr. and Mrs. Bissonnette:

**Subject: Shoreline Encroachment (Seawall) at
Punaluu, Oahu, TMK: (1) 5-3-06:021**

Office of Conservation and Coastal Lands staff has reviewed the submitted documentation for this case. The encroachments in question are a seawall located Makai of the homeowner's property line. The structures are Makai of the metes and bounds of the parcel in question and thus constitute an encroachment onto State of Hawaii land. The area of encroachment is approximately 26 square feet.

During the June 13, 2003 site visit staff observations confirm that the encroachments in question are long established. A survey map entitled 1735 (Revised), Tax Maps Bureau, appears to show the encroachments in question in existence as of December 23, 1958.

Office of Conservation and Coastal Lands staff was unable to locate any construction permit or other land use authorization permits at the State or at the City and County of Honolulu for the seawall. However, DLNR does not consider the encroachments a Conservation District violation and will not be asking for an after-the-fact Conservation District Use Application to cure this matter, since State Land Use District boundaries were not in existence 50 years ago. The Conservation District did not exist in 1958, and as a consequence the landowners could not have committed a violation if they constructed their structure(s) prior to the establishment of the Conservation District in 1964.

EXHIBIT C

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this 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. This form has been completed and submitted. On June 13, 2003 staff visited the site to investigate the encroachments and to gather reconnaissance information to support a recommendation for either removal of the encroachments or issuance of an easement. Of primary importance are the Department's objectives to protect and preserve shoreline resources and shoreline access.

Surrounding Land Uses:

It was observed during the site visit that surrounding uses are residential. Many of the Kamehameha Highway residences in this area have seawalls. The houses to the left and right of the property have seawalls.

Beach Resources:

CLP staff inspected the area. The tidal area is a sandy beach.

Public Access:

There is no public access to the beach.

Effect of Removing the Encroachment on:

Beach Resources: The removal of the encroachment would have no impact on public access. Public recreation such as fishing, diving and boating takes place offshore of the parcel.

Public Access: CLP staff has determined that public access would not be enhanced by removal of the encroachment.

Affect on Adjacent Properties: Removal of this portion of the wall and ramp would affect the two abutting landowners as the wall in question also fronts their parcels.

Upon review and careful consideration of the information gathered in this case, staff has determined that the encroachment of 26 square feet would have no

adverse impacts on natural resources, including beach resources. Therefore, the Office of Conservation and Coastal Lands has no objections to the encroachment remaining in place. Pursuant to Chapter 171, you are required to obtain a land disposition (normally a term easement in these cases) for the use of public lands, and you may be subject to a \$500 fine for the encroachment. Please contact the Oahu District Branch at 587-0433 regarding the processing of an easement. If you do not pursue an easement, you will be required to remove the encroachment.

We hope this letter helps resolve some of the outstanding issues regarding your property. Please feel free to contact Matthew Myers, of the Office of Conservation and Coastal Lands at 587-0382.

Aloha,



Dierdre S. Mamiya
Acting Administrator
Office of Conservation
and Coastal Lands

Cc: Oahu Board Member
Oahu District Land Office
Chairperson's Office
Patti Edwards, DOCARE