

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

December 8, 2017

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

PSF No.: 17OD-136

OAHU

Grant of Term, Non-Exclusive Easement to Nanaina 'O Pali Ku, LLC for Seawall and Landscaped Area Purposes; Heeia, Koolaupoko, Oahu, Tax Map Key: (1) 4-6-001:Seaward of 019

APPLICANTS:

Nanaina 'O Pali Ku, LLC, a Hawaii Limited Liability Company.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of Heeia, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-6-001:seaward of 019, as shown on the attached map labeled **Exhibit A**.

AREA:

1,379 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 landscaped area 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 Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, “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,” item 46 that states, “creation or termination of easement, covenants, or other rights in structures or land.” See **Exhibit B**.

DCCA VERIFICATION:

Not applicable.

APPLICANT REQUIREMENTS: Applicants 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:

The previous abutting property owner, Richard Gessler, constructed the unauthorized seawall on accreted State lands in 1978. And, in 1981 Mr. Gessler worked with the then Planning Office of the Department of Land and Natural Resources to obtain an After-the-Fact (AFT) authorization for the construction of the seawall and the acquisition of State

lands located mauka of the seawall. For reasons not known, the acquisition of the accreted State lands and the Conservation District Use Permit for the seawall was never completed.

Subsequently, in March 2007, Dr. Clayton Honbo purchased the abutting property. According to Dr. Honbo, even though the escrow company ordered an American Land Title Association (ALTA) policy (which revealed the seawall encroachment) at the time of the purchase, his real estate broker did not disclose that the concrete seawall was an issue or that there was an encroachment that needed to be resolved. It was Dr. Honbo's understanding that there were no issues with the property as represented by his broker and previous owner.

In March of 2009, Dr. Honbo secured a revolving line of credit on the abutting property. According to Dr. Honbo, the institution where the line of credit was secured did not require that an ALTA policy be obtained. Therefore, at that time, Dr. Honbo was still unaware of the encroachment issue.

In 2014, Dr. Honbo transferred to the property to his company, i.e. the applicant. Recently, the applicant decided to sell the property; however, during the diligence process a shoreline survey map revealed the seawall and landscaped encroachments (see **Exhibit C**). Since the revelation of the encroachments in the 2014 survey, the applicant worked with the Office of Conservation and Coastal Lands to submit an AFT Conservation District Use Application (CDUA) for the seawall. At its meeting on November 9 2017, Item K-1, the Board approved CDUA 3802 (see **Exhibit D**), for the existing concrete seawall. The applicant now comes before to the Board for approval of an easement for the seawall and landscaped area.

Comments from other government agencies were sought during the application stage for the conservation district use permit mentioned above. Therefore, staff did not solicit another round of requests for comment on the proposed easement.

Pursuant to the Board's action of June 28, 2002, item D-17, which established criteria for imposing fines for illegal encroachments, a fine of \$500 is to be imposed if the encroachment area is over 100 square feet. Since the encroachment area is 1,379 square feet (more or less), staff recommends that a fine of \$500 be imposed by the Board.

Upon approval of today's request, Applicant will be reminded of the requirement for concurrent resolution from both houses of the legislature under the Hawaii Revised Statutes 171-53(c), prior to the issuance of the easement.

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



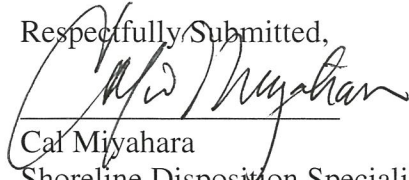
provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Assess a non-refundable administrative cost of \$500, under Section 171-6, HRS.
3. Impose a fine of \$500, under HRS 171-53(c), for an encroachment over 100 square feet.
4. 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) 4-6-001:019, 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.
5. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to Nanaina ‘O Pali Ku, LLC, covering the subject area for seawall and landscaped area 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. Throughout the term (unless sooner abandoned or otherwise terminated herein) this easement shall run with the land and shall inure to the benefit of the real property described as tax map key no. (1) 4-6-001:019, provided however, that the Grantee shall carry the required liability insurance covering the easement area and comply with all other terms and conditions as provided herein, and that the Grantee, or authorized representative of the Grantee’s estate, shall notify the Grantor in writing when this easement is sold, assigned, conveyed, or otherwise transferred, and Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document.
  - c. Terms and conditions of CDUP (OA-3802);
  - 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



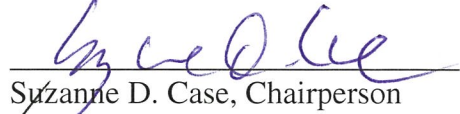
- g. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

Respectfully Submitted,



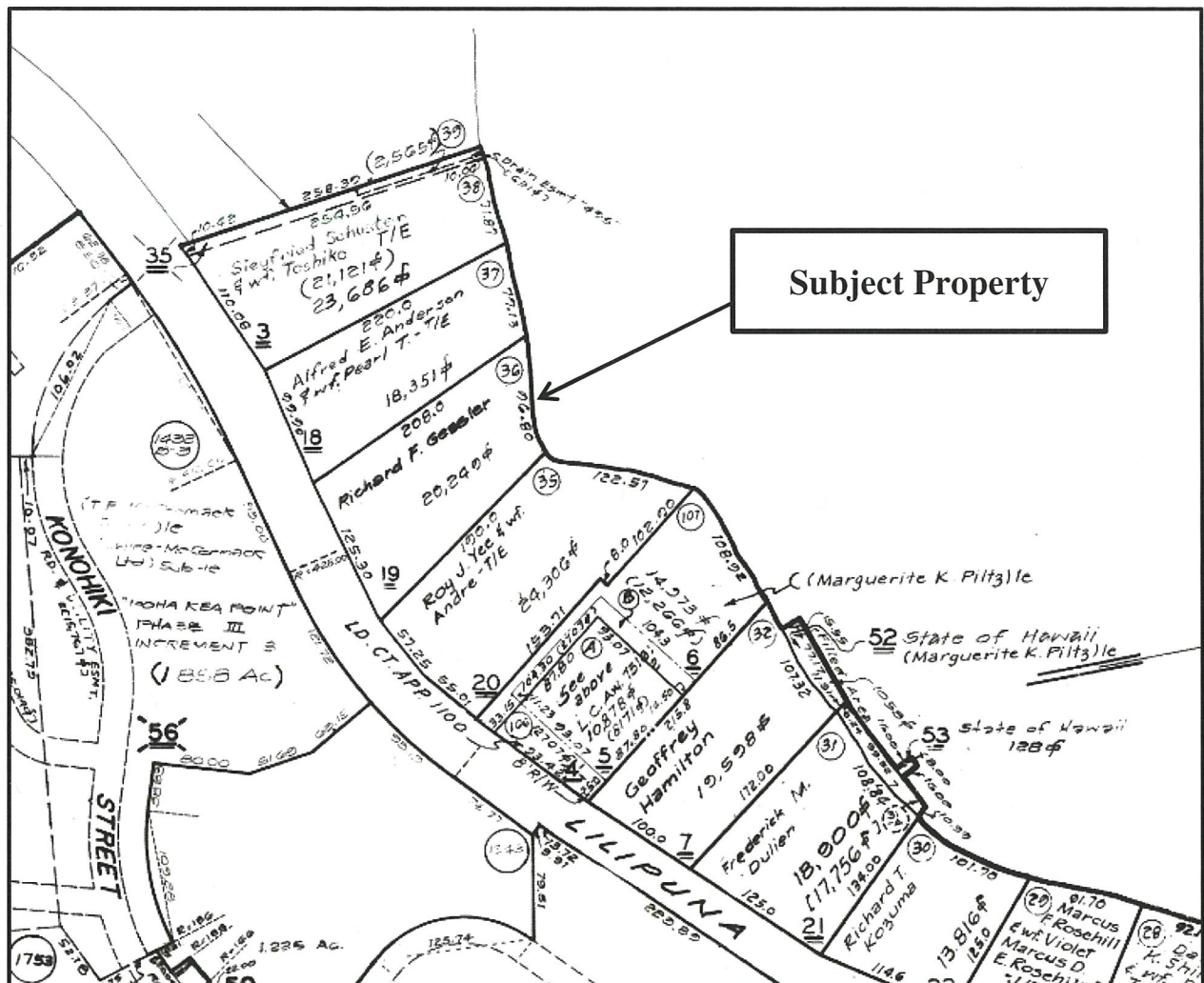
Cal Miyahara  
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson





**TMK: (1) 4-6-001:seaward of 019**

**EXHIBIT A**

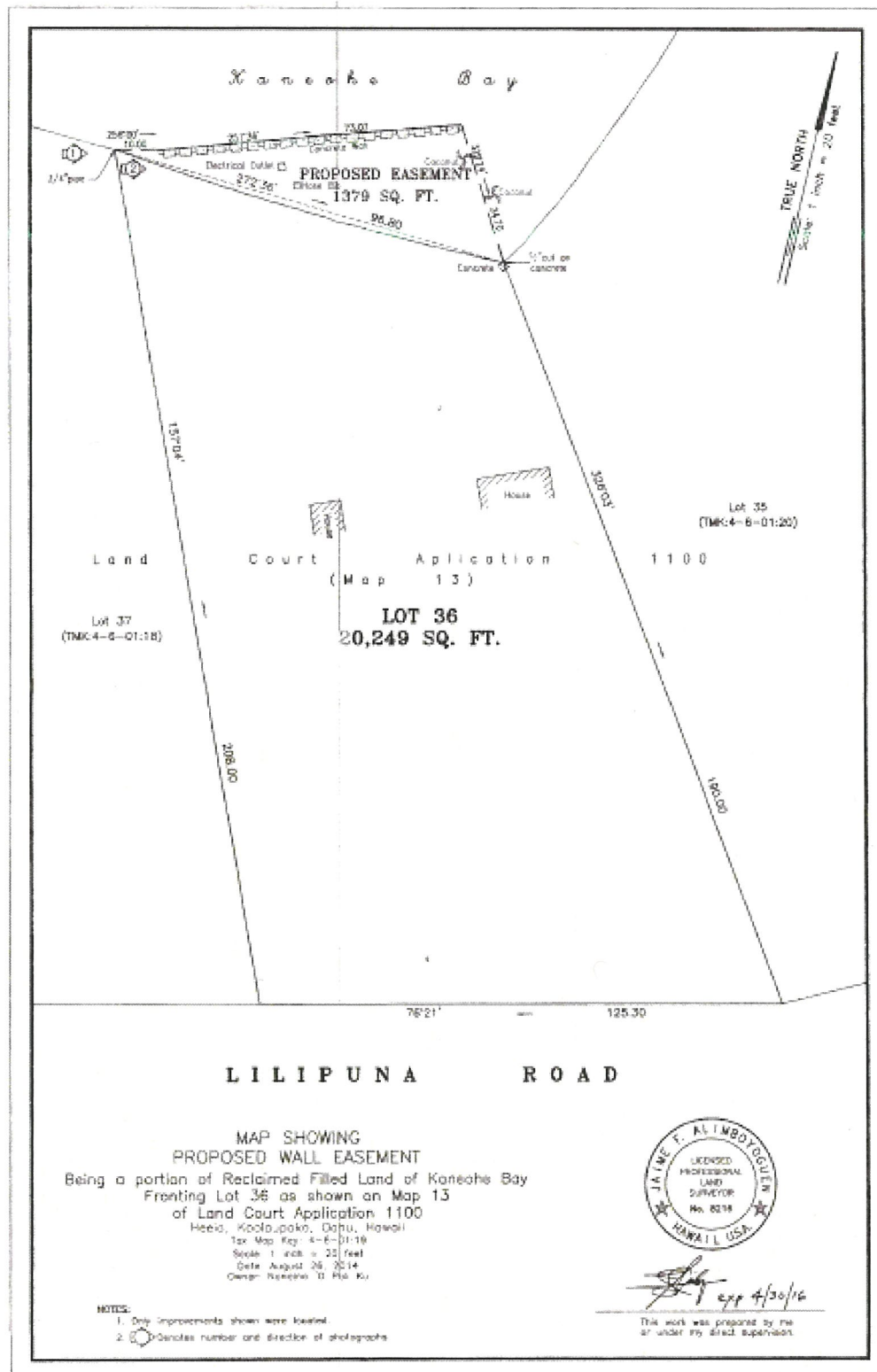
**EXEMPTION NOTIFICATION**

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

|                          |  |
|--------------------------|--|
| Project Title:           | Easement for seawall and landscaped area purposes  |
| Project / Reference No.: | PSF 17OD-136   |
| Project Location:        | Heeia, Koolaupoko, Oahu, Tax Map Key: (1) 4-6-001:seaward of 019.  |
| Project Description:     | Issuance of term, non-exclusive easement for seawall and landscaped area purposes.   |
| Chap. 343 Trigger(s):    | Use of State Land  |
| Exemption Class No.:     | <p>In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, "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," item 46 that states, "creation or termination of easement, covenants, or other rights in structures or land."</p> <p>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.</p> |
| Consulted Parties        | As noted in the submittal, other agencies were requested to offer comment during the conservation district use application stage.  |
| Recommendation:          | That the Board finds 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.   |

**EXHIBIT B**



**EXHIBIT C**

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
HONOLULU, HAWAII

*November 9, 2017*

BOARD OF LAND AND  
NATURAL RESOURCES  
STATE OF HAWAII  
HONOLULU, HAWAII

**REGARDING:** Proposed Conservation District Use Application (CDUA) OA-3802 for an After-the-Fact (ATF) Shoreline Erosion Control Structure

**APPLICANT:** Dr. Clayton Honbo & Nanaina O Pali Ku, LLC

**LANDOWNER(S):** Dr. Clayton Honbo & Nanaina O Pali Ku, LLC

**LOCATION:** Kaneohe Bay, Ko'olaupoko District, Island of Oahu

**TMK:** (1) 4-6-001:019

**AREA OF PARCELS:** 20449 sq. ft.

**AREA OF USE:** 1379 sq. ft.

**SUBZONE:** Resource

**PREVIOUS REGULATORY ACTIVITY:**

In August 1981, the landowner of the subject property (at that time) submitted a Conservation District Use Application (CDUA) for an existing seawall that was found to be encroaching on State Lands. According to that landowner, the seawall was constructed in 1977/1978 on "fast land" located behind (mauka) the shoreline. More than three (3) years passed between the time of construction and the request for authorization, such that DLNR staff could not dispute the location of the seawall since there was no shoreline certification at the time of construction. It was determined in 1981 that *"removal of the wall will be more detrimental to the aquatic environment than by its presence"*, and the matter was remanded to the Board of Land and Natural Resources (BLNR) for disposition.

On May 21, 1982, the BLNR denied the CDUA without prejudice for: *"further investigation into the possibility of any land use violation that may exist in addition to the seawall"*. Since that time (i.e., 1982) no other action was pursued by either DLNR or the applicant until the submittal of a CDUA in 2016 in order to legalize the unpermitted structure.

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

NOV - 9 2017

K-1

**EXHIBIT D**

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Natural Resources

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**DESCRIPTION OF AREA AND CURRENT USE:**

The subject property is located along the southern end of Kaneohe Bay (**Exhibit 1**) in a subdivision of similar residential development (**Exhibit 2, 2a**). The topography of the parcel is relatively flat and slopes gently towards to the shoreline. The elevation of the parcel is approximately 45 feet to 3 feet above sea level and is landscaped with typical trees and grasses. There is residential development located on the parcel in the form of a boat-house/apartment, along with the existing seawall structure (**Exhibit 3**). There are no apparent streams or wetlands located on the parcel, and the present shoreline is the result of significant man-made alterations, extensive dredging seaward (makai) of the parcel, and accretion against the shoreline. The existing development surrounding the subject parcel consist of residential structures, seawall structures, dredged areas makai of the property, and numerous small inlets, other shoreline erosion control structures, small piers, and moorings. There are no beaches in the vicinity of the subject parcel.

The property and surrounding area have been in residential use for many decades, and the areas are dominated by typical urban landscaping and introduced species. The applicant has stated that there are no unique, rare, threatened, or endangered flora or fauna species on the parcel or in the vicinity of the shoreline. Presently, the ocean water reaches the wall during above average high tide levels due to the erosion of land makai of the existing seawall; the top of the seawall is level with the surrounding ground surface of the parcel.

The subject parcel has been extensively developed for residential use, and has been previously altered through residential construction, and general landscaping common to this area. The applicant has stated that a review of the records from the State Historic Preservation Division (SHPD) indicate that the subject parcel is not considered a historic property, or listed on the Hawaii Register of the National Register of Historic Places, or that have been determined eligible for inclusion. Furthermore, the applicant stated that no archeological or historical resources are known to exist on the property or surrounding areas.

The applicant states that the property and immediate vicinity along the shoreline have been in residential use for approximately 70 years. Additionally, there are no known cultural resources or practices that occur on the subject parcel or at the shoreline seawall structure. Access to this area is primarily via water or through the privately-owned parcel.

**AFTER THE FACT (ATF) USE:**

This Conservation District Use Application (CDUA) is being prepared for an After-the-Fact (ATF) permit for an existing seawall structure, and encroachment of that structure onto State lands makai of a residential parcel located on the southern shore of Kaneohe Bay (**Exhibit 4, 4a, 4b**).

The area on which the existing seawall is located was previously identified as submerged lands of the State, and was determined to have appeared due to accretion of sediments against the shoreline (**Exhibit 5**). The applicant is proposing to resolve the encroachment by requesting approval in order to finalize a shoreline certification for the parcel, to obtain a land disposition of the encroachment, and to retain the existing seawall structure to continue protecting the subject parcel (**Exhibit 6**).



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The "accreted land" where the existing seawall is located was previously estimated to be approximately seventy-three (73) feet long with varying widths of zero (0) to thirty-five (35) feet; the total area is approximately 1379 square feet. The applicant states that the existing seawall was originally constructed set back from the shoreline with solid steel reinforced concrete and a four (4) foot wide base that extends approximately seven (7) feet below sea level.

Staff notes that no work is proposed at the shoreline or on the parcel at this time, additionally, the proposed ATF land use will not modify or alter the existing uses at the site or nearshore area.

#### **SUMMARY OF COMMENTS:**

The application was referred to the following agencies for review and comment; The Department of Land and Natural Resources (DLNR): Oahu District Land Office (ODLO), the State Historic Preservation Division (SHPD), DLNR - Engineering Division, DLNR - Division of Aquatic Resources (DAR), and the Division of Boating and Ocean Recreation (DOBOR). Additionally, the application was sent to the State Department of Health (DOH), the Office of Hawaiian Affairs (OHA), the City and County of Honolulu - Department of Planning and Permitting (CCH-DPP), the City and County of Honolulu - Division of Environmental Quality (CCH-ENV), the National Oceanic and Atmospheric Administration (NOAA), the US Fish and Wildlife Service (USFWS), and the US Army Corps of Engineers - Honolulu District (USACOE) along with the Kaneohe Public Library and Neighborhood Board #30 (Kaneohe) in order to make this information readily available to those who may wish to review it.

A summary of the comments received by OCCL is listed below:

#### **DLNR - Division of Aquatic Resources (DAR):**

The Division has no objections to the Proposed Use since it involves permitting the existing seawall and encroachment that has been in place for over 40 years to remain as is. No new construction or change in land use is involved with maintaining the existing seawall. Removal of the seawall will have more of a detrimental impact than allowing the seawall to remain in place by increasing the potential for erosion on the property, neighboring property, and increase erosion and runoff of sediments into Kaneohe Bay. Allowing the seawall to remain in place will not create any adverse impacts on aquatic resources found within the area.

#### **Applicant Response:**

*We acknowledge the comments from the Division of Aquatic Resources and appreciate your participation in the review process.*

#### **DLNR - Division of Boating and Ocean Recreation (DOBOR):**

The agency had no comments on the proposed project.

#### **DLNR - Engineering Division (ENG):**

The agency had no comments on the proposed project.

#### **DLNR - Oahu District Land Office (ODLO)**

A term, non-exclusive easement will be required for any man-made structure seaward of the certified shoreline (on State submerged lands).

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*Applicant Response: We acknowledge the comments concerning the CDUA from the Land Division and offer the following response:*

*The applicant acknowledges that a term, non-exclusive easement will be required for the shoreline erosion control structure seaward of the certified shoreline. Approval is being sought to finalize a shoreline certification for the subject parcel ad [sic] to obtain a land disposition for the use of public lands for the accreted portion of the parcel located makai of the applicants makai property boundary.*

**City and County of Honolulu – Department of Planning and Permitting**

Regarding the Special Management Area (SMA) Ordinance, Chapter 25, Revised Ordinances of Honolulu (ROH), we have the following comments:

- If the Office of Conservation and Coastal Lands (OCCL) determines that the regulatory shoreline is at the makai face of the seawall, then the seawall is within the SMA;
- If the OCCL finds the regulatory shoreline is mauka of the seawall, then the seawall is not within the SMA. Pursuant to Section 25-1.3, the SMA is defined as the land extending inland from the shoreline;
- Since no work is proposed on the seawall, an SMA permit is not triggered at this time;
- While the seawall is not located on the zoning lot, it is a shoreline protection structure that can be seen as an accessory to the development on the subject lot. Therefore, if repair work is proposed in the future, the SMA determination will take into account the development of the lot at that time;
- It should be noted that development on a site with a dwelling unit exceeding a floor area of 7,500 square feet will require an SMA permit. If no dwelling unit exists on the lot, work that is not related to the establishment of a new dwelling unit may also trigger an SMA permit.

*Applicant Response: The applicant acknowledges that an SMA permit is not necessary for the ATF approval for an existing seawall. Future development may require an SMA permit, therefore the applicant will contact the City and County of Honolulu if that becomes necessary.*

No other comments were received by any agency or the public.

**ANALYSIS:**

Following review and acceptance for processing, the Applicant's Agent was notified, by letter dated May 27, 2015 that:

1. The proposed *Lilipuna Road ATF Seawall* project appears to be an identified land use in the Conservation District *Resource* Subzone pursuant to Hawaii Administrative Rules (HAR) §13-5-22, P-15 **SHORELINE EROSION CONTROL (D-1) Seawall, revetment, groin, or other coastal erosion control structure or device, including sand placement, to control erosion of land or inland area by coastal waters, provided that the applicant shows that (1) the applicant would be deprived of all reasonable use of the land or building with the permit;** Please be advised, however, that this finding does not constitute approval of the



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proposed use, and that the final decision to approve or deny this application will rest with the Board of Land and Natural Resources (BLNR);

2. Pursuant to HAR §13-5-40, *Hearings*, this project does not require a public hearing;
3. In conformance with §343, Hawaii Revised Statutes (HRS), as amended, and HAR, §11-200-8, the OCCL has determined this project may be considered exempt from the preparation of an Environmental Assessment pursuant to **DLNR Exemption Class 1 (46) – Creation or termination of easement, covenants, or other rights in structures of land**, and **DLNR Exemption Class 1 (47) – Leases of state land involving negligible or no expansion of change of use beyond previously existing**. **Concurrence for these exemptions was provided by the DLNR Land Division via memo dated July 6, 2017.**

Notice of this Conservation District Use Application (CDUA) **OA-3802** for ATF approval of an existing seawall was published in the *August 8, 2017* issue of the Office of Environmental Quality Control (OEQC) publication the *Environmental Notice*.

**§13-5-30 CRITERIA:**

The following discussion evaluates the merits of the proposed land use by applying the criteria established in HAR §13-5-30.

- 1) *The proposed use is consistent with the purpose of the Conservation District. The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.*

The applicant stated that the existing structure includes a seawall and accreted lands makai of the property boundary. The structure was built approximately 40 years ago in 1977, and has not been modified, altered or changed in that time. The applicant states that to allow the structure to remain in place will not have direct adverse impact on the coastal processes, marine resources, or natural resources of the area.

Staff notes that based on a review of the existing structure, completed by the DLNR Division of Aquatic Resources (DAR), the removal of the seawall may have an adverse impact on the nearshore resources as it has been in place for decades; therefore, it was recommended to allow it to remain.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur. The seawall and accreted lands are located in the Resource Subzone of the Conservation District, pursuant to HAR §13-5-13, the objective of the Resource Subzone is to ensure, with proper management, the sustainable use of the natural resources of the area.*

The applicant stated that allowing the existing seawall to remain and granting the easement request which is the “proposed use” of this CDUA, would not have a discernable effect or change the natural resources along the section of the shoreline fronting the property. OCCL



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staff believes that allowing the seawall segments to remain in place should not influence any sustainable use of the parcel since the seawall has been in place for some time with no apparent change to the shoreline. The seawall structures are in character with the myriad of shoreline hardening devices (e.g., bulkheads, seawalls) located throughout this coastal area.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable. The Coastal Zone Management Program recognizes a number of objectives and policies to monitor when determining potential impacts to the coastal zone area. While not all of the objectives and policies are relevant to each project, some objectives have the potential to be influenced by the proposed project.*

Coastal Zone Management (CZM) policies and OEQC guidance documents regarding shoreline hardening are primarily in reference to eroding shoreline and sand beaches. The subject parcel is neither eroding, nor fronts a sandy beach.

**Recreational resources:** The applicant has stated that the proposed use will not impact recreational opportunities in the coastal zone and it will be consistent with the surrounding residential land uses. The shoreline along the property is not comprised of sandy deposits and is fronted by previously dredged areas. The proposed use will not impact fishponds or other unique coastal resources and will not hinder public access to and along the shoreline.

**Historic Resources:** The applicant has stated that the property and proposed use complies with policies regarding historic resources as the project is not anticipated to affect historic or cultural resources as no construction is involved and no historic resources have been identified in the area.

**Scenic and open space resources:** The applicant states the property is not located within any significant view planes. The proposed use will not affect existing coastal scenic and open space resources, and, as such, are not expected to have a significant visual impact on the community. The existing seawall will remain unaltered. OCCL staff notes that because this seawall has been existing for decades, similar structures line this coastal area, and the structure is considered low-profile, there should be no influence on coastal scenic vistas or view planes.

**Coastal Ecosystems:** The applicant stated that the proposed use is in compliance with coastal ecosystem policies. There are not stream diversions, channelization, and similar land and water uses within the property. Drainage of on-site storm water runoff for the property will not be altered and will continue to comply with all applicable regulations. OCCL staff notes that it was determined by DLNR – DAR that to remove the structure could cause more harm to the coastal resources than allowing it to remain in place.

**Economic uses:** The applicant states that the proposed use is consistent with residential uses that have occurred on the property and is consistent with State and County plans and land regulations and will not result in any adverse social, visual, and environmental impacts in the coastal zone management area.

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**Coastal hazards:** The applicant stated that the property and existing seawall are within Flood Zone "X", which is a low risk flood zone. The property lies within the tsunami evacuation zone, however, because the barrier reef complex and broad reef flat of Kaneohe Bay help to dissipate high wave energy, the tsunami hazard is ranked moderately low in this area (USGS Survey, January 2002). Staff believes the property has no more or no less coastal hazards than any of the myriad of hardened shoreline structures and properties within this area.

**Marine resources:** The applicant has stated that the existing seawall will not require alteration or repair, therefore the proposed use will not involve the direct use or development of marine, coastal, or ocean resources or impact coastal or marine resources. The applicant is working with DLNR to resolve the un-permitted seawall and encroachment and obtain a new certified shoreline survey for the subject property. Staff believes the marine resources should not be impacted as this existing structure has been in place for approximately 40 years, and has not been altered, enlarged, or modified during that time.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

The applicant stated that the neighboring properties shorelines in the vicinity of the subject parcel have been extensively developed and modified with similar seawall structures since the 1960's and 1970's. The existing seawall has been in place for 40 years and will continue to have little or no impact on the existing natural resources of the area.

Staff believes the proposed action does not involve any irrevocable commitment to loss or destruction of natural or cultural resources. There is no significant flora or fauna, which would be lost due to allowing the seawall structure to remain in place. As this structure is in character with the other seawalls and coastal hardening located along this stretch of shoreline, staff believes that allowing the seawall to remain will not have any substantial impact on existing natural resources.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The applicant has stated that the existing seawall and encroachment area are similar in design and construction to other shoreline erosion control structures located along the shoreline of Kaneohe Bay and neighboring properties. Similar structures along the shoreline have been granted permits to legalize the structures and encroachments which supports that the proposed use is an accepted and appropriate functional and visual use of the property and coastal zone.

Staff notes that the existing seawall and encroachment are compatible and consistent with the coastal hardening that is prevalent in this area. The subject parcel and neighboring parcels are within a heavily developed residential community that has been in existence for some time.



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- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*  
The primary goal of this After-the-Fact CDUA is to permit the landowner to retain an existing seawall in order to minimize the erosion of the applicant's parcel.

The applicant has stated that the existing seawall and encroachment will not impact any natural beach processes or public access to Kaneohe Bay. Removal of the seawall will not lead to the restoration of beach resources in the area as the shoreline consists of shallow mud flats and recreation activities take place offshore from the property. Furthermore, the removal of the seawall and encroachment will increase the potential for erosion on the parcel and potentially the neighboring properties as well. Removal of the seawall would also inc

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed use will not require the Subdivision of land in the Conservation District.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The applicant has stated that there will be no detrimental impact to public health, safety, and welfare as the existing seawall and encroachment have been in place for 40 years, and no construction, or modification of the existing land use will take place. Staff notes that structures that have been in place for decades end up becoming part of the nearshore environment, and removal could be detrimental to that system.

**CULTURAL AND HISTORICAL IMPACT REVIEW:**

The applicant has stated that no specific cultural, historic, and natural resources were identified to occur at the subject property or within the surrounding area. The natural resources in the area, and along the shoreline remain consistent with the residential development of the area. Similarly, access to the shoreline would have to be through the water as the parcel is privately owned.

The applicant has stated that legalizing the existing seawall and encroachment will not affect the traditional and customary native Hawaiian Rights practiced in the area. Additionally, as previously noted, no specific traditional or customary Hawaiian rights have been identified as being currently exercised at the property or surrounding shoreline area.

Staff notes that the most common cultural or traditional practices would involve fishing, swimming, diving, and/or gathering of ocean resources from the water. Since access to the water is not available from this parcel, and the existing seawall does not appear to influence nearshore resources, staff believes this proposal will not alter or influence any native gathering, or traditional or customary uses of the area.



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**Discussion:**

This After-the-Fact (ATF) approval is being pursued in order to legalize an un-permitted shoreline erosion control structure that has been existing on the parcel since 1977-1978.

The Department and Board of Land and Natural Resources has jurisdiction over land makai of the shoreline as evidenced by the upper reaches of the wash of the waves other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limits of debris left by the wash of the waves, pursuant to Hawaii Revised Statutes (HRS) §205A-1.

Coastal development can be a serious impediment to protecting and preserving coastal ecosystems, recreation, and processes. In this case, the residential development was created at a time (c. 1977) when mean sea level was at a lower elevation, and coastal erosion, sea level rise, and climate change were not necessary attributes for regulatory discussions. Typically, shorelines in Kaneohe Bay have lower erosion rates than most other Oahu shorelines and coastal areas; studies seem to suggest that accretion may be dominant in some portions of Kaneohe Bay (i.e., SOEST, UH-Manoa).

The OCCL normally employs a no tolerance policy with regards to the unauthorized construction of any type of shoreline erosion control structure. In this instance, however, unusual circumstances have revealed this is a more complex problem than is typically found in these cases. It is clear that the current landowner did not build the original seawall structure; sufficient evidence shows that it existed many years prior to the current owner purchasing the property. Additionally, it appears the landowner attempted to resolve the issue in the mid-1980's but was unsuccessful; neither the DLNR or the landowner pursued a resolution for the encroachment after that.

In shoreline enforcement cases, the OCCL aims to rectify the situation by either, 1) recommending removal of the structure, 2) imposing fines, and/or 3) requiring the landowner apply for an after-the-fact (ATF) Conservation District Use Permit (CDUP) through the DLNR. In this case the OCCL determined that removal of the seawall would not enhance existing coastal resources or shoreline processes, and could minimize the protection level that currently exists on the makai side of the property. The removal of the structure would have little to no effect on the existing shoreline access, shoreline recreation, or cultural uses in this area.

As stated above, a majority (if not all) of the residential lots located in the vicinity of the subject property are protected by hardened shoreline structures, boat ramps, and piers such that this existing low-profile seawall is in line with the development of this area.

If the current landowner is successful in obtaining approval for the existing seawall via an ATF CDUP, it should be noted that the landowner would also be required to obtain a Shoreline Easement through the DLNR Land Division for the portion of the improvements that extend makai of the property boundary.

*Staff, therefore, recommends as follows:*

Chair of Land and  
Natural Resources

CDUA: OA-3802

**RECOMMENDATION:**

Staff recommends that the Board of Land and Natural Resources **APPROVE** this After-the-Fact application for an existing low-profile, seawall located in Kaneohe Bay, Ko’olaupoko District, Island of Oahu, seaward of *Tax Map Key: (1) 4-6-001:019* subject to the following conditions pursuant to HAR §13-5-42:

1. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
2. The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
3. The permittee shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable;
4. The permittee shall comply with all applicable department of health administrative rules;
5. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
6. In issuing the permit, the department and board have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
7. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
8. Use of the area shall conform with the program of appropriate soil and water conservation district or plan approved by and on file with the department, where applicable;
9. Artificial light from exterior lighting fixtures, including but not limited to floodlights, uplights, or spotlights used for decorative or aesthetic purposes, shall be prohibited if the light directly illuminates or is directed to project across property boundaries toward the shoreline and ocean waters, except as may be permitted pursuant to section 205A-71, HRS. All exterior lighting shall be shielded to protect the night sky;
10. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law; and
11. Other terms and conditions as prescribed by the chairperson.

Chair of Land and  
Natural Resources

CDUA: OA-3802

12. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.

Respectfully submitted,



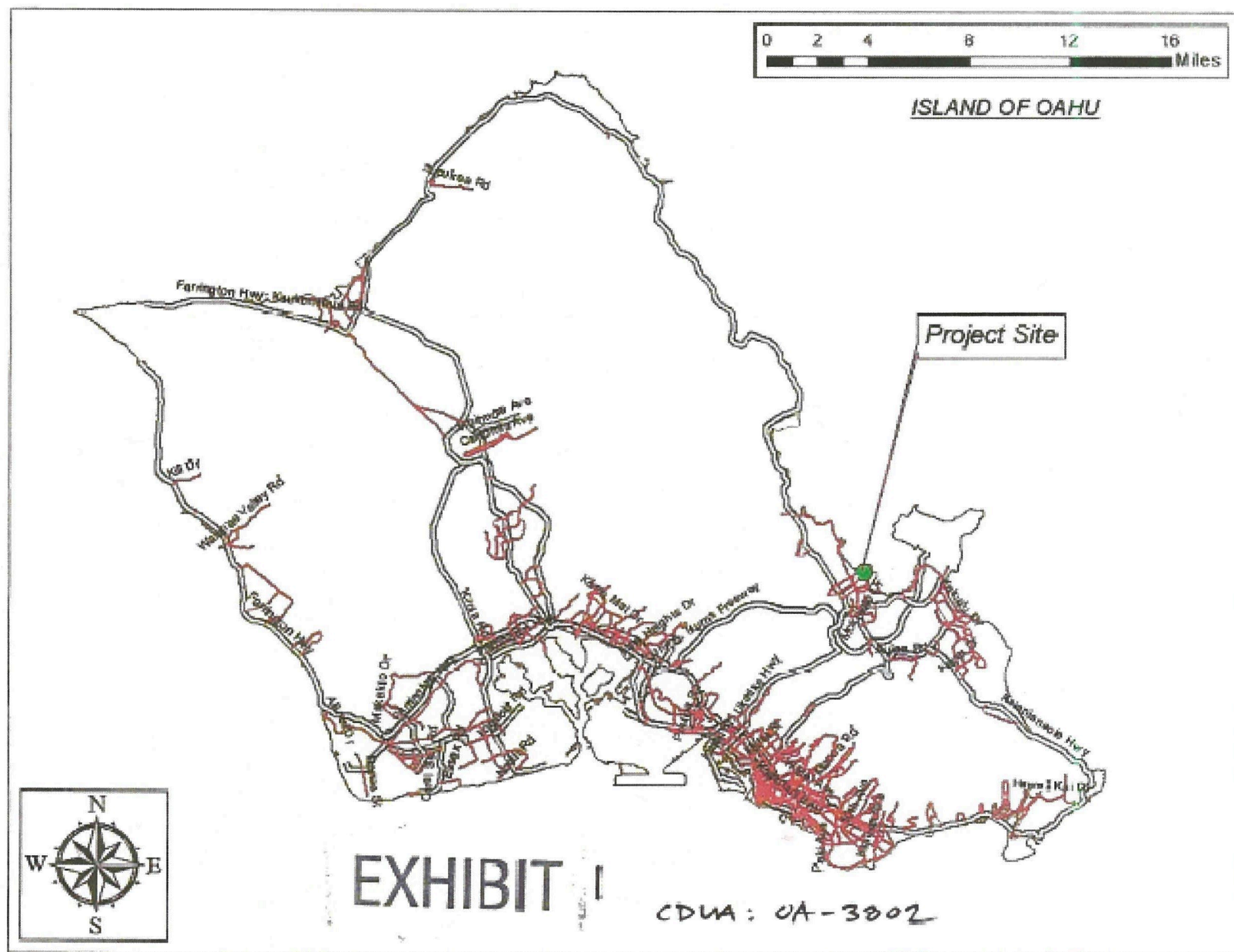
**Alex J. Roy, M.Sc., Staff Planner**  
*Office of Conservation and Coastal Lands*

Approved for submittal:

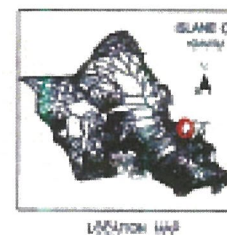


**Suzanne D. Case, Chairperson**  
*Board of Land and Natural Resources*









Existing Seawall along the shoreline boundary

Honbo Residential Property  
Address: 46-123 Lilipuna Road, Kaneohe, HI  
TMK (1) 4-6-001:019

EXHIBIT 2  
CDWA: OA-3802

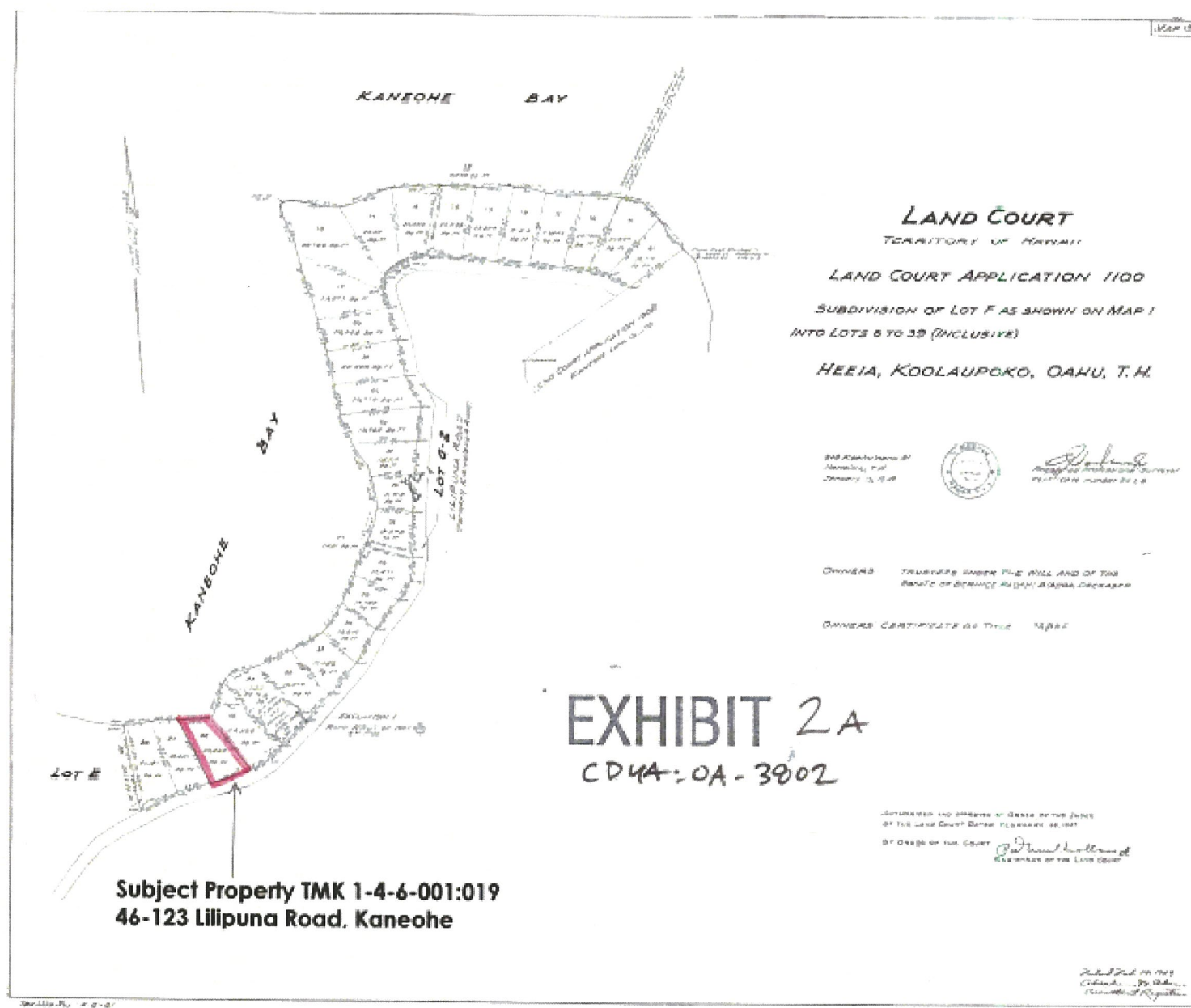






EXHIBIT 3 CDUA: 0A-3802



· TMK (1)4-6-001:019 PHOTOGRAPHS

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Sections of the existing seawall built in 1977



Sections of the existing seawall built in 1977

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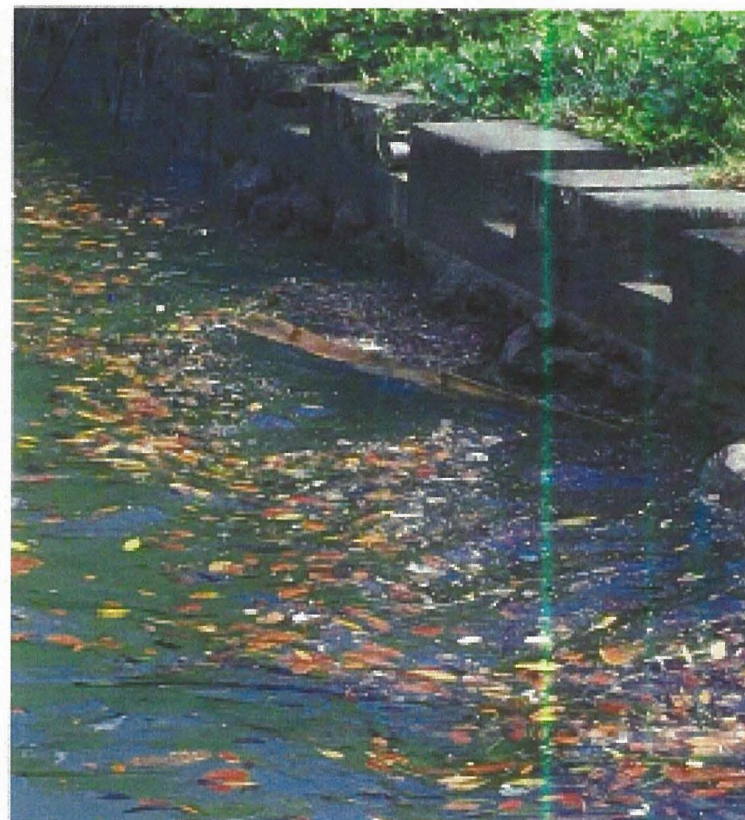
EXHIBIT 4

CDUA: OA-3802





Section of the seawall Located along the shoreline of TMK 1-4-6-001:019



Section of the seawall Located along the shoreline of TMK 1-4-6-001:019

EXHIBIT 4A  
CDUA: 0A-3802



· TMK (1)4-6-001:019 PHOTOGRAPHS

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Location of existing seawall along the shoreline boundary of the Property

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EXHIBIT 4B CDUA: 0A-3802



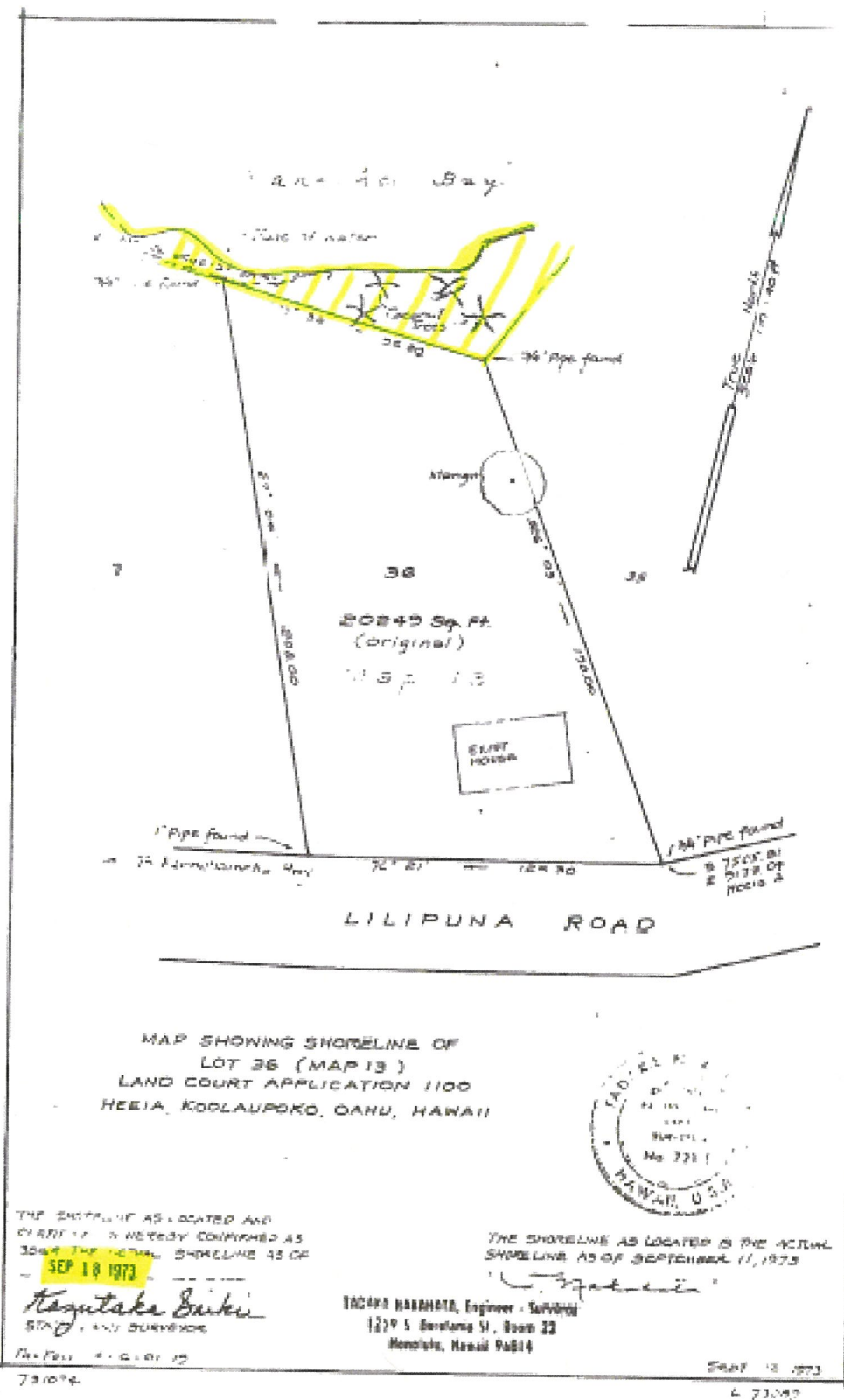


EXHIBIT 5 CDNA: OA-3802

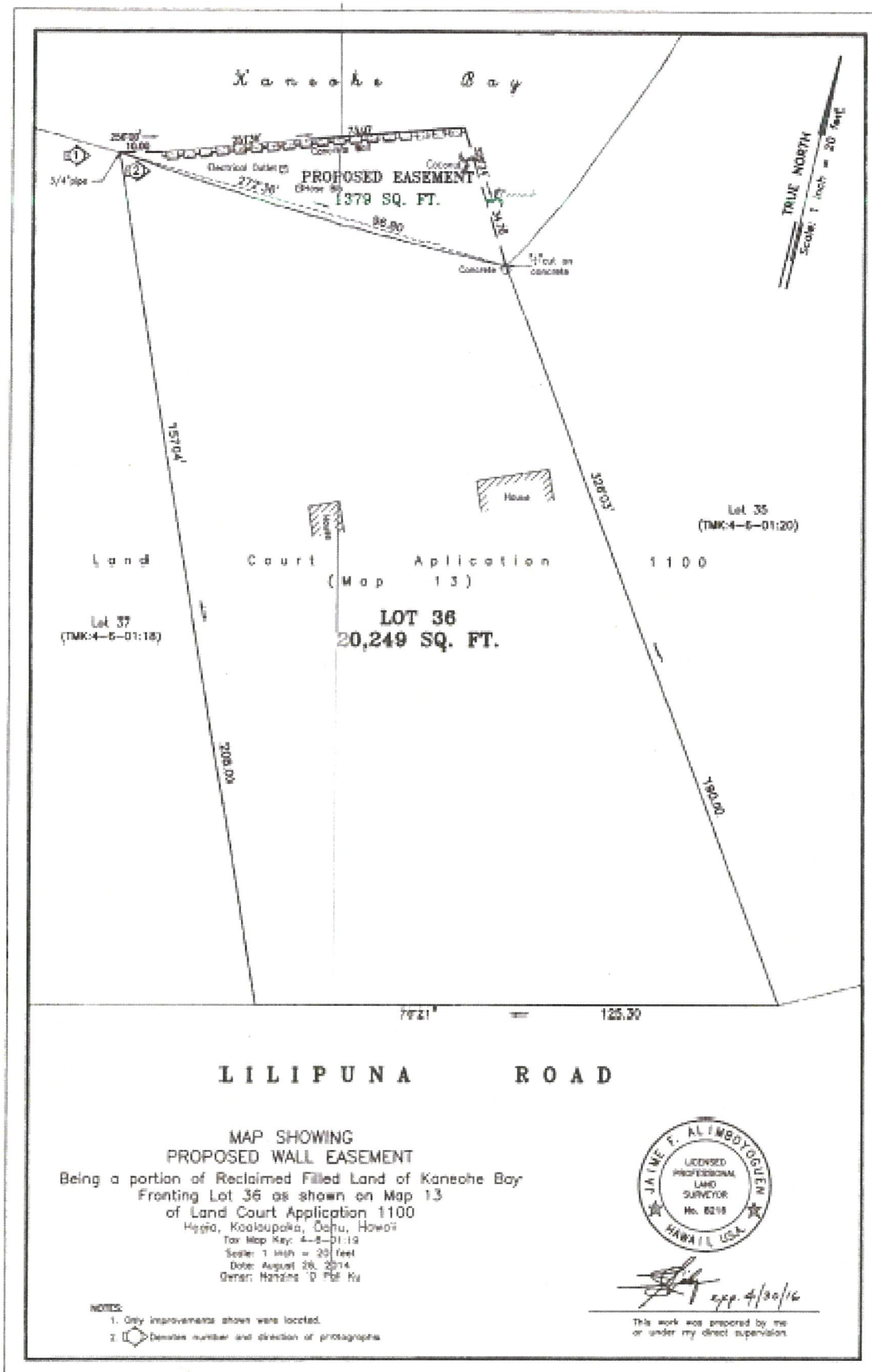


EXHIBIT 6 CDUA: OA-3802