

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

January 12, 2018

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

PSF No: 15HD-186
HAWAII ISLAND

Amend Prior Board Action of January 27, 2017, Agenda Item D-9, Grant of Term, Non-Exclusive Easement to Edward S. Henrickson and Clarence Lyman as Co-Trustees of the Leon A. Thevenin Restated and Amended Trust dated December 30, 1995, and the Dora C. Thevenin Restated and Amended Trust dated December 30, 1995, for Seawall Encroachment Purposes, Lalamilo, South Kohala, Hawaii, Tax Map Key: (3) 6-9-001: portion of 002.

The purpose of the amendment is to correct the name of the grantee of the easement to Edward S. Henrickson and Clarence Lyman as Co-Trustees of the Leon A. Thevenin Trust dated December 30, 1985, as Restated and Amended, and the Dora C. Thevenin Trust dated December 30, 1985, as Restated and Amended

BACKGROUND:

At its meeting of January 27, 2017, under agenda item D-9, the Board approved the above subject matter regarding the issuance of a term, non-exclusive easement for seawall easement encroachment purposes. A copy of the approved submittal is attached as Exhibit A.

While preparing the documents for the issuance of the term easement, it was brought to the attention of staff that the name of the trust as approved by the Board was incorrect. The correct trust name is "Edward S. Henrickson and Clarence Lyman as Co-Trustees of the Leon A. Thevenin Trust dated December 30, 1985, as Restated and Amended, and the Dora C. Thevenin Trust dated December 30, 1985, as Restated and Amended."

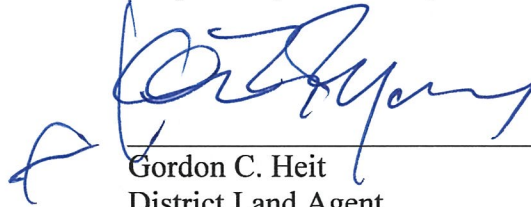
REMARKS:

To correct this error and complete the grant of term easement process, staff is requesting the Land Board amend the prior approval of the grant of easement by changing the name of the trust to: "Edward S. Henrickson and Clarence Lyman as Co-Trustees of the Leon A. Thevenin Trust dated December 30, 1985, as Restated and Amended, and the Dora C. Thevenin Trust dated December 30, 1985, as Restated and Amended."

RECOMMENDATION: That the Board:

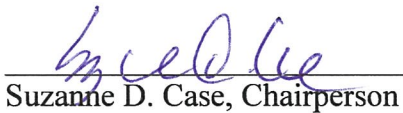
1. Amend its prior Board action of January 27, 2017, under agenda item D-9 by changing the name of the trust from "Edward S. Henrickson and Clarence Lyman as Co-Trustees of the Leon A. Thevenin Restated and Amended Trust dated December 30, 1995, and the Dora C. Thevenin Restated and Amended Trust dated December 30, 1995" to "Edward S. Henrickson and Clarence Lyman as Co-Trustees of the Leon A. Thevenin Trust dated December 30, 1985, as Restated and Amended, and the Dora C. Thevenin Trust dated December 30, 1985, as Restated and Amended."
2. Affirm that, except as amended hereby, all terms and conditions listed in the Board's January 27, 2017 approval to remain the same.

Respectfully Submitted,



Gordon C. Heit
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

EXHIBIT A

D-9

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

January 27, 2017

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

PSF No.: 15HD-186

HAWAII

Grant of Term, Non-Exclusive Easement to Edward S. Henrickson and Clarence Lyman as Co-Trustees of the Leon A. Thevenin Restated and Amended Trust dated December 30, 1995, and the Dora C. Thevenin Restated and Amended Trust dated December 30, 1995, for Seawall Encroachment Purposes, Lalamilo, South Kohala, Hawaii, Tax Map Key: (3) 6-9-001: portion of 002.

APPLICANTS:

Edward S. Henrickson and Clarence Lyman as Co-Trustees of the Leon A. Thevenin Restated and Amended Trust dated December 30, 1995, and the Dora C. Thevenin Restated and Amended Trust dated December 30, 1995.

LEGAL REFERENCE:

Section 171-6(12), 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Puako House Lots, Lalamilo, South Kohala, Hawaii, identified by Tax Map Key: (3) 6-9-001:002, seaward of (3) 6-9-005:007, as shown on the attached map labeled Exhibit A.

AREA:

1,319 square feet, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Residential

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
January 27, 2017 Go.

D-9

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:

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:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exemption Notification attached below as Exhibit C.

DCCA VERIFICATION:

Not applicable. The Applicants as landowners are not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicants shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicants' own cost; and
- 2) Pay for an appraisal to determine initial one-time payment.

REMARKS:

By letter dated October 8, 2015, Mr. Edward S. Henrickson, Successor co-trustee of the Leon A. Thevenin and Dora C. Thevenin Restated and Amended Trusts, dated December 30, 1985, requested an easement to resolve encroachments of a seawall built largely within the Thevenin's property. The Leon A. Thevenin and Dora D. Thevenin Trusts are in the process of selling their private property, identified as Tax Map Key: (3) 6-9-005:007. In so doing, Applicants submitted an application for shoreline certification. Pursuant to a site inspection conducted on August 14, 2015, the shoreline was identified and located by a debris line mauka of the existing seawall and concrete sidewalk, resulting in the seawall and sidewalk becoming encroachments on State submerged lands.

On October 23, 2015, HDLO staff conducted a site inspection of the subject seawall during a 2 feet high tide at 1:05pm. It was noted that the seawall is in overall poor condition. Over the years, the seawall became severely weathered, sustaining partial damages with the upper lip toppling over seaward. Coral rubble was observed piled up to the lip of the seawall at the southern end, and on the northern end the wall stood five feet high, free of accumulated sand/coral. (Exhibit B)

The Grantee is requesting an easement over an approximate 1,319 square feet area, which extends from the preliminary shoreline as of 4/29/15, then extends inland up to the debris line. (Exhibit A) The purpose of acquiring an easement is to resolve an encroachment situation, so a shoreline certification may be finalized. Grantee intends to restore and preserve the existing seawall if granted an easement. Grantee is aware that special permits might be required from the Office of Conservation and Coastal Lands and the County Planning Department. Similar to many of the seawalls in the Puako area, it is believed that the existing seawall was built sometime in the 1960's without a permit as there are no documents to verify its construction.

The Leon A. Thevenin and Dora C. Thevenin Restated and Amended Trust have 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.

On November 5, 2015, various governmental agencies and interest groups were solicited for comments.

AGENCIES	COMMENTS
County of Hawaii	
Planning	No response
Public Works	No objections
State of Hawaii	
DLNR-Aquatic Resources	No response
DLNR-Historic Preservation	No response
DLNR-Land Division	No response

DLNR-OCCL	** See comment
Other Agencies/ Interest Groups:	
Office of Hawaiian Affairs	No response
Puako Community Association	No objections

The County Public Works has no objections to the repair and restoration of the existing seawall, provided the historical wall height is not exceeded, the development does not involve changing ground elevations and is landward of mean high tide. No building permit is required for the wall repair and restoration if the wall remains less than 4 feet in height. Assuming a Special Management Area Permit is required, an existing location and topography survey of the seawall area should be required with that permit application.

The Office of Conservation and Coastal Lands provided its comments (Exhibit D) relating to the applicants' request for a 55-year term, non-exclusive easement to address the seawall encroachment into the adjacent State Beach Reserve. OCCL has determined that removal of the encroachment could: 1) result in minor beach widening, 2) result in minor improvement to beach access, and 3) potentially destabilize the seawall on the adjacent property to the northwest and the lawn of the adjacent property to the southwest. Removal of the seawall could result in a landward extension of the wash of the waves, which could damage the existing single family residence.

OCCL noted that "although some minor improvement to beach access could result from the removal of all of the encroachments, we feel that the impact to the homeowner could be severe with only nominal change in the overall quality of the beach resources in the area".

Upon review and careful consideration of the information gathered on this case, OCCL has determined that the requirements stated in Hawaii Revised Statutes (HRS) §205A, HRS §183C, and in OCCL's evaluation criteria would support a disposition request being processed for the subject shoreline encroachments.

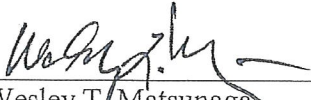
In addition, if the applicants intend to repair or replace the structure, they will need to first obtain authorization from OCCL to satisfy any Conservation District Use Permit requirements pursuant to HRS §183C and any special permits over the Special Management Area from the County Planning Department.

Staff has no objections to applicants' request for the issuance of an easement to resolve the seawall encroachments.

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. 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: (3) 6-9-005:007, 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.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Edward S. Henrickson and Clarence Lyman as Co-Trustees of the Leon A. Thevenin Restated and Amended Trust dated December 30, 1995, and the Dora C. Thevenin Restated and Amended Trust dated December 30, 1995, covering the subject area for seawall encroachment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (3) 6-9-005:007, 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. If applicants intend to repair or replace the seawall, they will need to consult with the County Planning Department for any requirements for a Special Management Area Permit, and OCCL to satisfy any Conservation District Use Permit requirements pursuant to HRS §183C;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



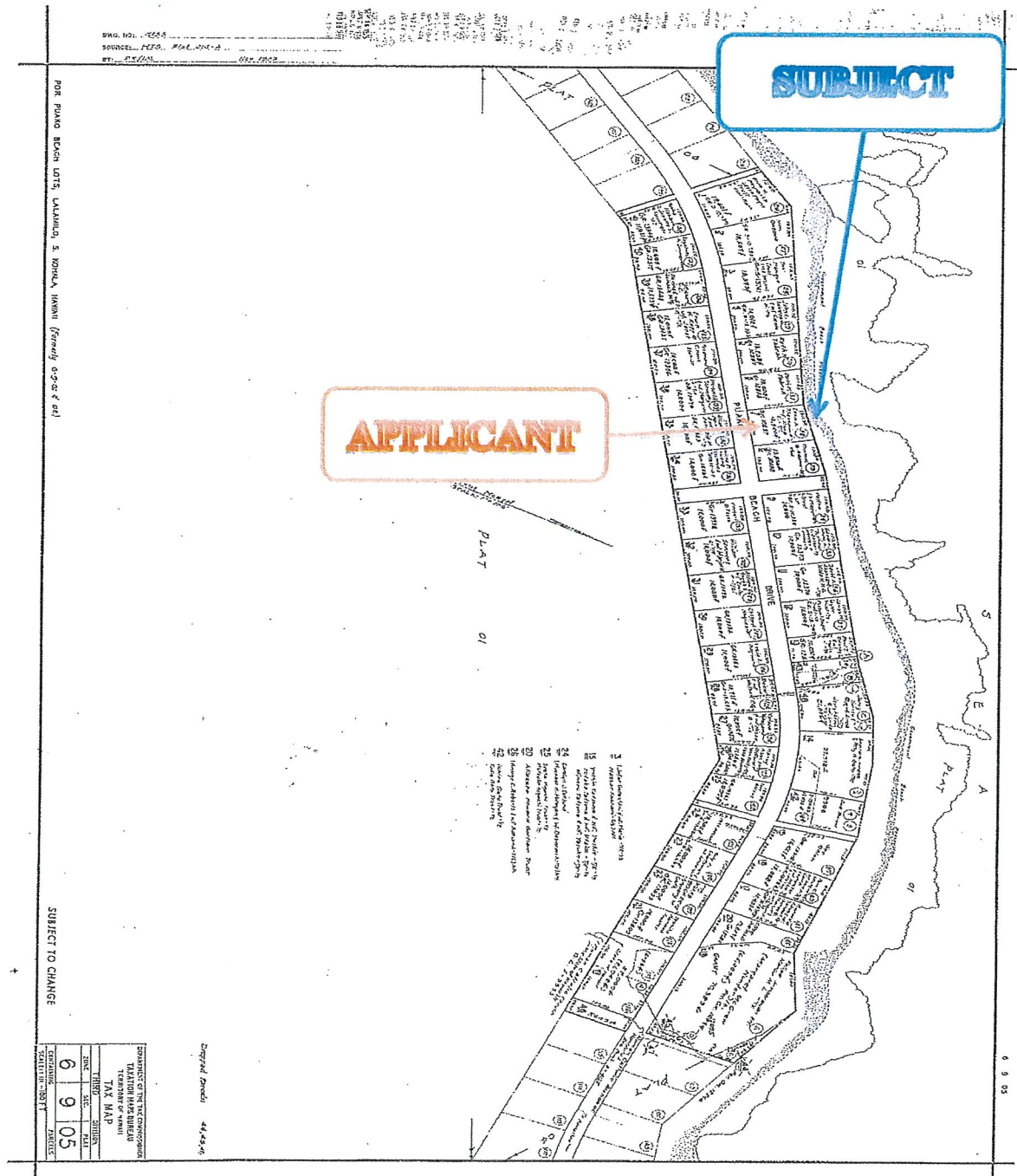
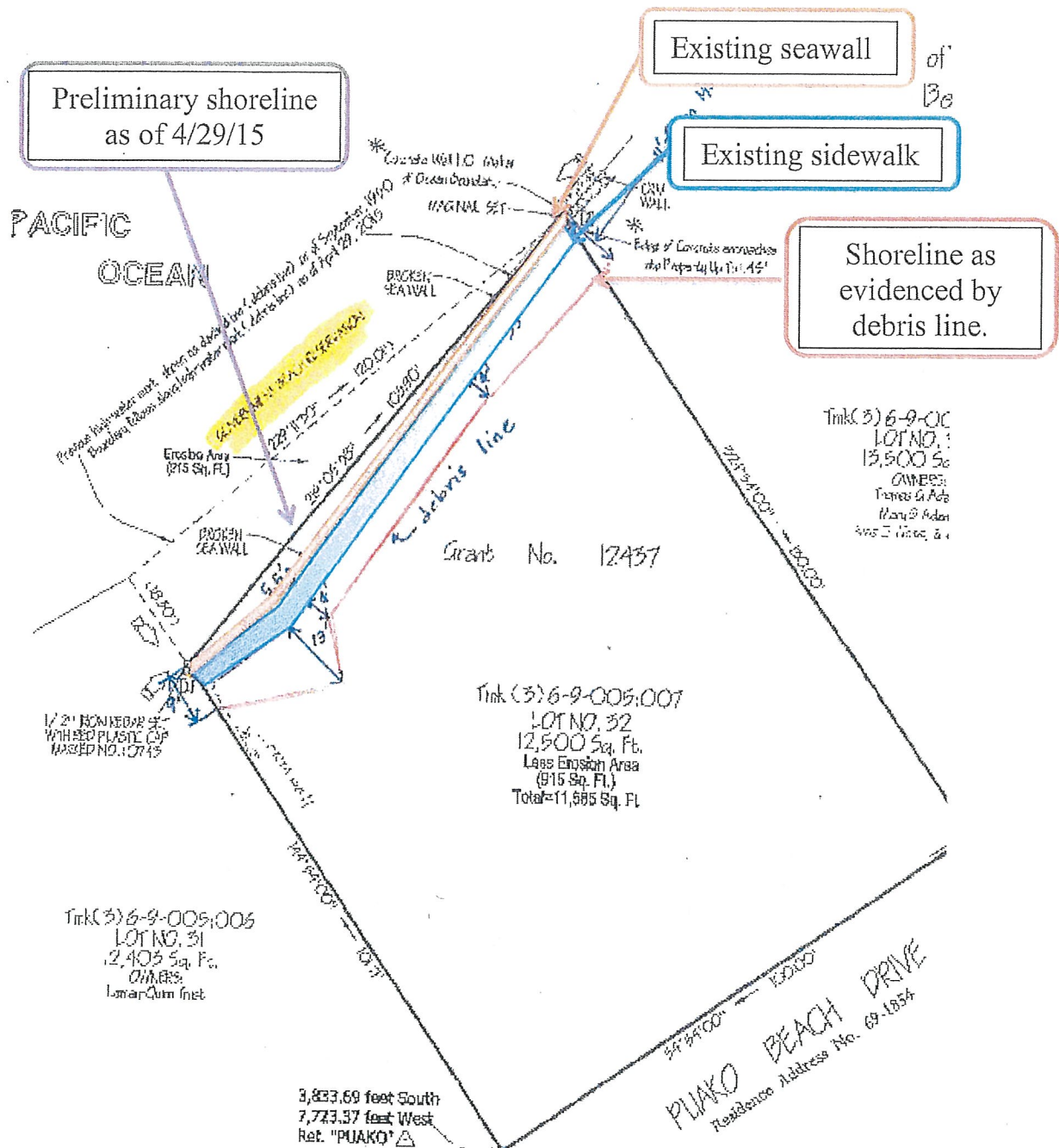


EXHIBIT A



Note: The easement runs along the preliminary shoreline as of 4/29/15, the northern boundary of Lot No. 32, then extends inland up to the debris line.

EXHIBIT A

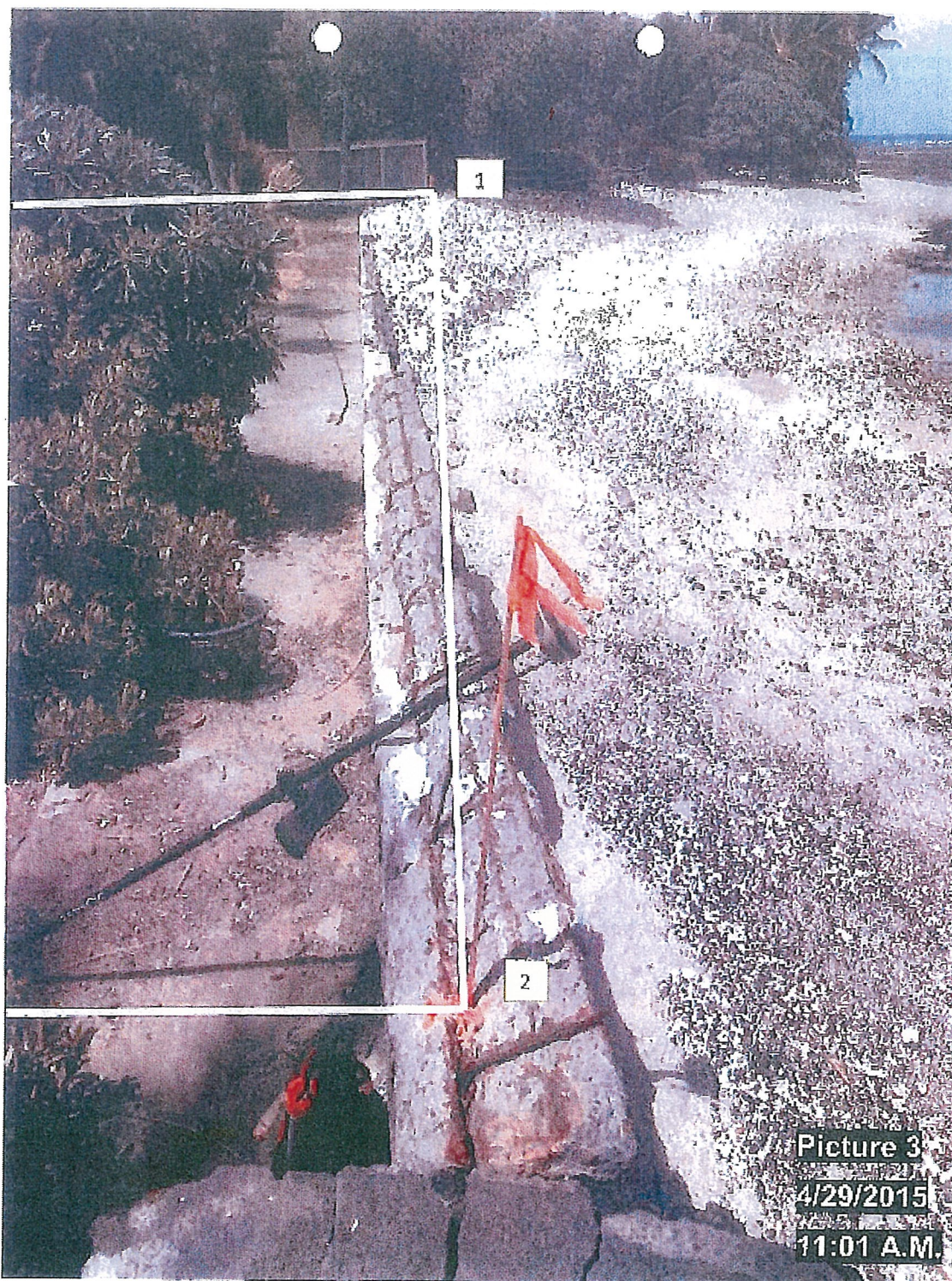


EXHIBIT A

10/23/15

Thevenin



TMK 6-9-5-8

EXHIBIT B



TMK 6-9-5-8

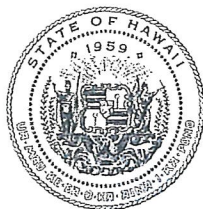
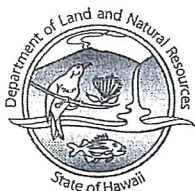
EXHIBIT B



TMK 6-9-5-8

EXHIBIT B

DAVID Y. IGE
GOVERNOR OF HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

EXEMPTION NOTIFICATION

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

Project Title:	Grant of Term, Non-Exclusive Easement to Edward S. Henrickson and Clarence Lyman as Co-Trustees of the Leon A. Thevenin Restated and Amended Trust dated December 30, 1995, and the Dora C. Thevenin Restated and Amended Trust dated December 30, 1995, for Seawall Encroachment Purposes
Project / Reference No.:	PSF No.: 15HD-186
Project Location:	Lalamilo, South Kohala, Hawaii, Tax Map Key: (3) 6-9-001: portion of 002.
Project Description:	Grant of Term, Non-Exclusive Seawall Encroachment Easement.
Chap. 343 Trigger(s):	Use of State land.
Exemption Class No. and Description:	<p>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 June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to:</p> <p>Exemption Class 1, No. 15, which 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</p> <p>Exemption Class 4, No. 18, which states, "Minor alterations of retaining walls."</p>

EXHIBIT C

Exemption Item Description
from Agency Exemption List:

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.

Minor alterations in the conditions of land, water or vegetation.

Consulted Parties:

Agencies listed in submittal.

Recommendation:

The issuance of a term, non-exclusive easement for seawall encroachment over a portion the land in itself will probably have minimal or no significant effect on the environment. The existing seawall was constructed in the 1960s. It is recommended that the Board of Land and Natural Resources find that the action is exempt from the preparation of an environmental assessment. Inasmuch as the Chapter 343 environmental requirements apply to any future use of the lands, assessment.



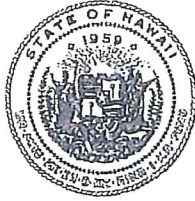
Suzanne D. Case, Chairperson



Date

11/10/17

DAVID Y. IGE
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

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
KEKOA KALUHIWA
FIRST DEPUTY
JEFFREY T. PEARSON, P.E.
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

DLNR:OCCL:NF

Encroachment HA-16-4

MEMORANDUM:

TO: Wesley Matsunaga
Land Division

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

A handwritten signature in black ink, appearing to read "Samuel J. Lemmo", is written over the "FROM:" line of the memorandum.

JAN 20 2016

SUBJECT: Grant of a 55-Year Term, Non-Exclusive Easement to the Leon A. Thevenin and Dora C. Thevenin Restated and Amended Trust for Seawall Encroachment Purposes, Located at Lalalimo, Hawaii; Tax Map Key (3) 6-9-005:007

The Office of Conservation and Coastal Lands (OCCL) is in receipt of the requested Shoreline Encroachment Information Sheet and updated draft submittal regarding a proposed 55-Year Term, Non-Exclusive Easement for a seawall and walkway fronting the subject property at TMK (3) 6-9-005:007. The applicant and co-trustee, Edward Henrickson, is seeking an easement to resolve the shoreline and boundary encroachments fronting the subject property.

In your memorandum dated November 5, 2015, you note that the applicant is in the process of selling the property and retained a surveyor to conduct a shoreline survey on August 14, 2015 that indicated a proposed shoreline seaward of the seawall, but upon further inspection, the surveyor determined that the shoreline is landward of the existing seawall and walkway. You believe the seawall was built sometime in the 1960s, but there are no documents to verify the date of construction. According to the information provided, your office conducted a site inspection of the seawall on October 23, 2015 and indicated that the seawall is severely weathered, damaged, and in overall poor condition. During that site inspection, your staff observed coral rubble piled up to the lip of the seawall at the southern end and free of coral and accumulated sand at the northern end. You note that the applicant intends to restore and preserve the existing seawall if granted an easement.

According to the Shoreline Encroachment Information Sheet, received by OCCL on December 1, 2015, the applicant states that the approximate date of establishment of the encroachment is not applicable at this time. You note that the seawall is four feet high, 1 foot wide, and 103 feet long and the walkway is four feet wide and 103 feet long. The approximate square feet of the encroachment was not provided to OCCL.

EXHIBIT D

The Board of Land and Natural Resources (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;
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 northeast is fronted by a stone and concrete seawall that is contiguous with and adjoins to the subject property's seawall. The adjacent property to the southwest does not appear to have a seawall fronting the property. Puako Beach Drive runs along the landward side of the property.

Beach Resources:

There is an irregular, exposed sand/cobble beach with some large diameter coral cobbles extending out to a basalt bench with intermittent tide pools fronting the subject property.

Public Access:

There is a public access point located along the northeast property boundary of the adjacent property to the northeast of the subject property. Alongshore access is available along the sand/cobble beach fronting the property.

Effect of Removing the Encroachment on:

Beach Resources: The encroaching seawall and seawall on the adjacent property are fronted by a narrow sand/cobble beach extending out to a basalt bench with intermittent tide pools. Removal of the encroachment could result in minor beach widening.

Public Access: There is public access fronting the seawall and the seawall on the adjacent property. Removal of the encroachment could result in a minor improvement to beach access.

Effect on Adjacent Properties: Removal of the seawall and walkway could potentially destabilize the seawall on the adjacent property to the northeast and the lawn of the adjacent property to the southwest. Removal of the seawall could result in a landward extension of the wash of the waves which could damage the existing single family residence.

Although some minor improvement to beach access could result from the removal of all of the encroachments, we feel that the impact to the homeowner could be severe with only nominal change in the overall quality of the beach resources in the area.

Wesley Matsunaga

Encroachment HA-16-4

Upon review and careful consideration of the information gathered on this case, OCCL has determined that the requirements stated in Hawaii Revised Statutes (HRS) §205A, HRS §183C, and in OCCL's evaluation criteria would support a disposition request being processed for the subject shoreline encroachments.

In addition, if the applicant intends to repair or replace the structure, they will need to first obtain authorization from our office to satisfy any Conservation District Use Permit requirements pursuant to HRS §183C.

Please feel free to contact Coastal Lands Program Specialist Natalie Farinholt at OCCL at (808) 587-0399 or Natalie.A.Farinholt@hawaii.gov should you have any questions pertaining to this memorandum.

Cc: Chairperson
County of Hawaii
Russell Tsuji, Land