

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

May 11, 2018

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

PSF No.:17HD-094

Hawaii

Grant of Term, Non-Exclusive Easement to HIJLTT LLC and TG Super 16088755 LLC for Seawall Encroachment Purposes, Puapuaa 1st, North Kona, Hawaii, Tax Map Key: (3) 7-5-020:047.

APPLICANTS:

HIJLTT LLC, a Hawaii limited liability company and TG Super 16088755 LLC, a Hawaii limited liability company.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located in Puapuaa 1st, North Kona, Hawaii identified by Tax Map Key: (3) 7-5-020: seaward of parcel 047, as shown on the attached map labeled Exhibit A.

AREA:

191 square feet, more or less.

ZONING:

State Land Use District:	Urban
County of Hawaii CZO:	RS-15 (Residential minimum 15,000sf)

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 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:

Refer to attached Exhibit B.

DCCA VERIFICATION:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for a DLNR contracted appraisal to determine initial one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Obtain concurrent resolution from the Legislature pursuant to 171-53(c), HRS.

REMARKS:

The subject wall is located within the record boundary of property identified as tax map key (3) 7-5-020:047. The Applicants are in the process of obtaining County of Hawaii building permits for a single family residence. As a requirement of the permitting process, applicants must obtain a shoreline certification. During the survey process, a portion of the seaward boundary wall was found to be makai of the shoreline. The encroachment of 191 sf. consists of concrete riprap and the footing of the boundary wall (refer to Exhibit C). Applicants are requesting an easement to resolve the encroachment.

According to a signed affidavit provided to the County of Hawaii by the son of a previous owner, the wall was built by his father in August 1964 to allow retention of backfill used to level the natural slope of the yard. The Hawaii County Planning Department has determined that the wall appears to be a Non-Conforming land use (refer to Exhibit D).

In a letter from OCCL dated August 3, 2017, it is stated that neither beach resources nor public access is negatively impacted by the wall and OCCL's evaluation criteria support an easement being issued for the wall (refer to Exhibit E). The property is located in an Urban State Land Use Classification area and therefore, not subject to a CDUA.

A site visit conducted by staff on August 17, 2017 showed an intact boundary wall that allows retention of backfill to create a level yard area. The presence of large water tumbled boulders on the makai side of the wall indicates periods of strong wave action upon the rock shelf fronting the wall. Further, the rock shelf itself shows erosion due to the effects of waves and water. There is no doubt that this area is subject to regular ocean inundation, most particularly during periods of extreme high tides and large winter swells (refer to Exhibit F photos).

Based on the information above, and pursuant to the Board's action of June 28, 2002, under agenda item D-17 that established criteria for imposing fines for encroachments, staff is not recommending a fine as the subject encroachment is within the record boundary of private lands, which indicates the owner's intent was not to encroach upon State lands.

Applicants 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.

This submittal was sent to various agencies for comments. Only the Department of Hawaiian Home Lands returned a response which indicated it had no comments. A table of agencies contacted is summarized in the following table:

State Agencies	Response
Dept. of Hawaiian Homes Land	No Comments
DLNR - Conservation & Coastal Lands	No Response
Hawaii County Agencies	Response
Planning Dept.	No Response
Other Agencies	Response
Office of Hawaiian Affairs	No Response

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) 7-5-020:047, 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 HIJLTT LLC and TG Super 16088755 LLC 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) 7-5-020:047, 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 (State of Hawaii) 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. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Candace Martin
Land Agent

APPROVED FOR SUBMITTAL:

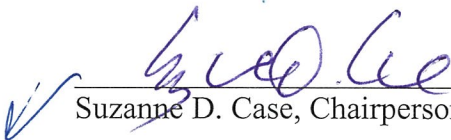
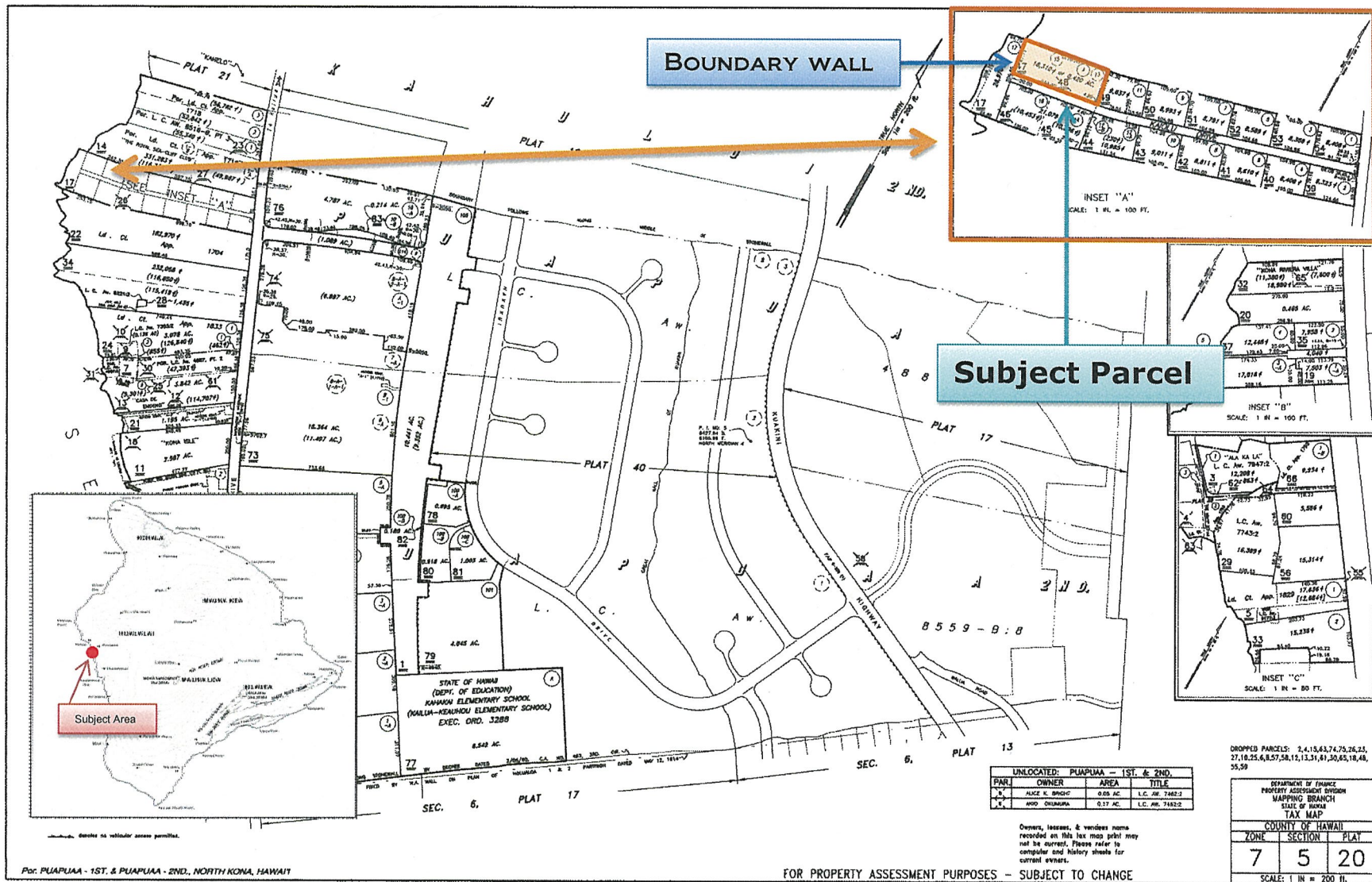

Suzanne D. Case, Chairperson

EXHIBIT A



DAVID Y. IGE
GOVERNOR OF HAWAII

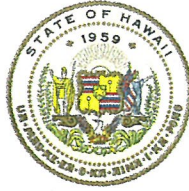


EXHIBIT B

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

ROBERT K. MASUDA
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

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

April 13, 2018

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 HIJLTT LLC and TG Super 16088755 LLC for Seawall Encroachment Purposes.

Project / Reference No.: PSF 17HD-094

Project Location: Puapuaa 1st, North Kona, Hawaii, TMK: (3) 7-5-020:047.

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 and the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 46, "Creation or termination of easement, covenants, or other rights in structures or land."

The Office of Conservation and Coastal Lands and the County of Hawaii Planning Department have accepted that the seawall was constructed in 1964. The Applicants are not planning on conducting construction activities on the existing seawall that would change the existing topographical or vegetative conditions of the property. As such, staff believes that the request would involve negligible or no expansion or change in the use of the subject area beyond that previously existing.

Cumulative Impact of
Planned Successive
Actions in Same Place
Significant?:

The applicant is attempting to build a house on its private land. The SMA permit process requires a certified shoreline. The shoreline survey indicated that a portion of the wall is within the

shoreline, but the wall was built within the record boundary of the private property. The sale of this easement is to legalize the encroachment of the existing wall. Denial of the easement in this case would not prevent the above planned successive actions as the applicant could remove the wall to resolve the encroachment and move forward with the same development plans. Further, OCCL has reviewed the situation and determined that the subject encroachment is negligible and there does not appear to be any benefit to removing the minor encroaching areas.

Action may have
Significant Impact on
Particularly Sensitive
Environment?:

OCCL has reviewed the situation and determined that retention or removal of the wall would not have a significant impact on beach resources, public access or adjacent properties.

Consulted Parties:

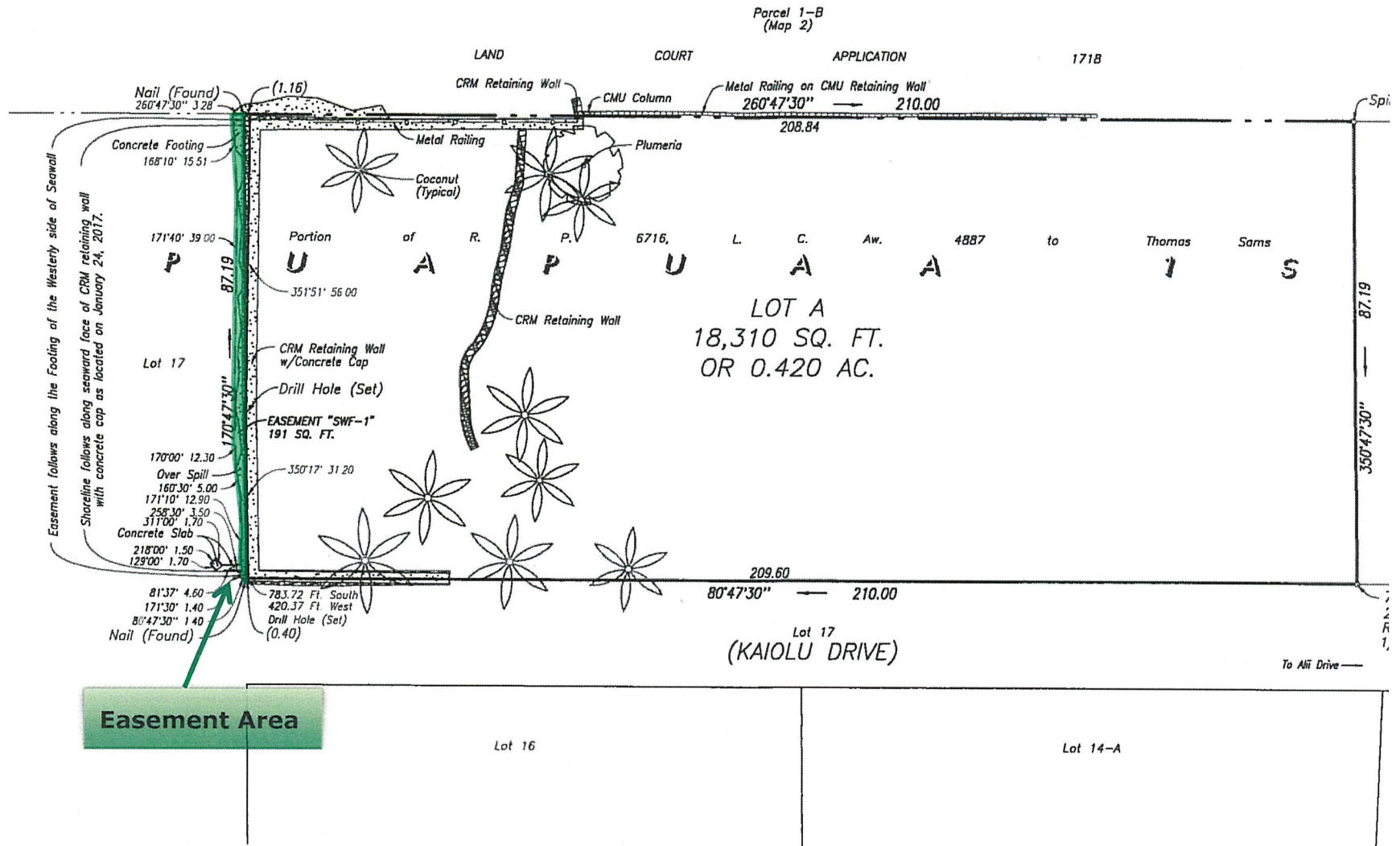
State of Hawaii:
DHHL and OCCL
County of Hawaii:
Planning Department
Other Agencies:
Office of Hawaiian Affairs

These agencies were consulted on the propriety of the HRS Chapter 343 exemption, and expressed no comments in opposition to the exemption.

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.

EXHIBIT C



William P. Kenoi
Mayor



BJ Leithead Todd
Planning Director

County of Hawaii

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720
Phone (808) 961-8288 • Fax (808) 961-8742

April 9, 2009

Mr. Robert Hanson

Camas, WA 98607

Dear Mr. Hanson:

Inquiry Yard Setback Requirements
TMK: (3) 7-5-20:47, North Kona, Hawai'i

First of all, we apologize for this delayed follow-up to your inquiry relating to clarification on yard setback requirements for the subject property.

As you are aware, the subject property, consisting of approximately 18,310 square feet, is designated Urban by the State Land Use Commission and zoned Single-Family Residential District (RS-15) by the County. It is also situated within the Special Management Area boundary of the County.

According to discussions between you and Keola Childs, staff at the Kona Office, you were advised that the department would have to assess available information and photos in order to determine whether a new certified shoreline survey would be required before setbacks and yards can be determined for the subject property. In addition, you were advised that we would need to determine whether said property would qualify for a minimum 20 foot setback, if applicable, or the minimum 40 foot setback from the shoreline.

In review of our files, we received similar inquiries in November, 2005 relating to shoreline setback and shoreline survey certification based on a site plan showing a proposed dwelling, swimming pool and spa and other improvements on the subject property. Subsequently, staff conducted a site inspection of the property on December 6, 2005. Based on our findings of the site inspection, we had determined that a new certified shoreline survey was required. This determination still holds true today. We

APR 13 2009

Mr. Robert Hanson
Page 2
April 9, 2009

have enclosed a copy of our December 12, 2005 letter responding to the previous inquiries.

For your information, we previously questioned the legality of the construction of the seawall and boundary walls of the subject property. However, this was resolved based on the enclosed letter from Mr. J. Curtis Tyler III providing the history of the seawall and boundary walls.

At this time, we provide you with the general yard setbacks for the subject property until such time as a new certified shoreline survey is submitted to this office. The yard setbacks are 10 feet side yard setback from the east boundary, 20 feet front yard setback from the south boundary, 20 feet rear yard setback from the north boundary, and **minimum** 40 feet or 20 feet from the shoreline (west boundary), to be determined based on a new certified shoreline survey. However, it is pointed out that portions of the front and rear boundaries within previous Lot 15 toward the west boundary may be within the shoreline setback. Again, the yard setback from those boundaries will be determined upon receipt of a new certified shoreline survey.

Should you have any further questions, please feel free to contact Alice Kawaha or Esther Imamura of this department at 961-8288.

Sincerely,



BJ LEITHEAD TODD
Planning Director

AK

p:/wpwin60/CZM/letters/2009/LHanson 7-5-20-47

Enclosures

xc w/encls: Planning Department – Kona Office

Jun-02-06 01:23pm From-CLARK REALTY KEAUHOU

8083222258

T-749 P.002/004 F-868

J. CURTIS TYLER III
• Kailua-Kona • Hawaii • 96740-9344

April 10, 2006

Christopher J. Yuen, Planning Director
HAWAII COUNTY PLANNING DEPARTMENT
101 Pauahi Street, Suite 3
Hilo, HI 96720-3043

Re: Stone Walls at Puapuaa 2, North Kona, HI, TMK: 7-5-20:047

Dear Mr. Yuen:

I was contacted by Kathy Jensen of Clark Realty Corporation regarding the construction of stone walls located on the subject property. Inasmuch as three successive generations of the Tyler family have owned this property, beginning with the first sale of the property itself, I am writing to provide you with my personal and firsthand knowledge and recollection of the property and the walls themselves. These are:

1. In 1952, my father's parents, Joseph C. Tyler Sr. and Annette O. Tyler, purchased the two original Lots 13 and 15, which now make up parcel 47. As part of that purchase, they also received a two-sixteenths (2/16) common interest in the Roadway and Beach Lot 17. They built a retirement home on lot 13 and established a lawn and garden area on the mauka portion of the Lot 15, where they planted plumeria and coconut, among other plantings. The makai portion of that lot sloped to Lot 17 and contained large boulders and other rocks. My grandparents lived on the property until 1960, when they returned to Spokane, WA, and transferred the property to my father and mother, J. C. Tyler Jr. and Thelma W. Tyler.
2. As I recall, the more mauka sections of the current "wing walls" on the north and south sides of Lot 15 were pre-existing on Lot 15, when it was purchased in 1952. Subsequently, these walls were rebuilt and extended as part of the construction of the makai seawall in 1964.
3. While my grandparents were living on the subject property, they, along with my parents and I, observed their good friend and neighbor to the immediate south, Lester W. "Bill" Bryan, a retired and very well-known Hawaii forester, lay out and build, all by himself, dry-stack stone walls along the south, west and east shoreward boundaries of his property. At the highest point, I estimate these walls

were about 4-6 feet tall. As he built the walls, he also backfilled the area behind these walls. When they were completed in the late 1950s, he backfilled them, planting coconut trees, and covering the area with sand. This created a very usable, flat area, where he built a stone BBQ and placed wooden benches and tables, which he also built himself. It was a wonderful area for relaxation and entertainment and exists to this day. My grandparents always admired the improvements created by Mr. Bryan, and I recall them saying that, someday, they wanted to do the same thing on the makai portion of Lot 15. Unfortunately, that did not happen before they returned to the mainland, although my Dad always spoke about fulfilling their wish.

3. In 1962, my parents moved to Puerto Rico; however, they returned to Kona every summer, where they vacationed in the "beach house." The home remained a long-term rental property, until its sale to Maryl Development in January 1997.
4. Beginning in June 1963, my parents and I talked about building a "seawall" along the makai boundary of Lot 15, immediately adjacent to the "Beach Lot" owned in common by each subdivision landowner. As I recall, the actual construction of that wall itself began in June 1964. My Dad hired a number of local rock wall builders and they did most of the rock setting, while my father and I physically cracked and hauled rocks located in the makai portion of Lot 15. We also used rock from the shoreline part of Lot 17 directly makai of Lot 15. The north and south "wing" walls were extended makai to meet the new wall, I believe the dry-stacked walls were completed in August 1964.
5. Over the course of the next 2-3 summers, my Dad and I worked to back fill Lot 15 mauka of the wall. We hauled more rock from the Lot 17 to accomplish this.
6. In October 1976, Lots 13 and 15 (aka as parcels 47 and 48) were consolidated into the current parcel 47.
7. As I recall, in the late 1970s and early 1980s, the Kona shoreline areas experienced at least one or two very large storm events. The exceptional waves generated by these resulted in some minor damage to top portions of the walls. Following these events, it was decided that the walls needed to be further strengthened to retain their integrity and permanency. My father hired Will Kim, a licensed masonry contractor, to assess all three walls and do the necessary work to strengthen them. Family records indicate this work was begun in December 1982 and completed the following month. As part of his work, Mr. Kim grouted the pre-existing walls and added the concrete caps. As far as I can determine, with the exception of the caps, the height and footprint of each wall remained, and remains, unchanged from those constructed in 1964.

EXHIBIT D

Jun-02-06 01:23pm From-CLARK REALTY KEAUHOU

8083222258

T-748 P.004/004 F-888

Thank you for the opportunity to provide you with additional information about the shoreline property our family enjoyed for so many years. If I can be of further help, please let me know.

Sincerely,

J. Curtis Tyler III

cc: Kathy Jensen
Elizabeth Tyler

DAVID Y. IGE
GOVERNOR OF HAWAII



EXHIBIT E

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

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

2017 AUG -9 A 10:44

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

RECEIVED
LAND DIVISION
HILO, HAWAII

DLNR:OCCL:NF

Encroachment HA-18-02

Roy A. Vitousek III
Cades Schutte LLP
75-170 Hualalai Rd, Suite B-303
Kailua-Kona, HI 96740

AUG 03 2017

SUBJECT: Request to Resolve State Land Encroachment Located Seaward of
Holualoa, Hawaii: Tax Map Key: (3) 7-5-020:047 and 017

Dear Mr. Vitousek,

The Department of Land and Natural Resources, Office of Conservation and Coastal Lands (OCCL) is responding to your July 21, 2017 request to resolve the State land encroachment located seaward of Tax Map Keys (3) 7-5-020:047 and 017. You are working on behalf of the landowners, HIJLTT LLC and TG Super 16088755 LLC, to resolve the encroachment.

You are seeking to resolve the encroachments fronting the subject properties to move forward with a shoreline certification. According to the information provided, there is approximately 191 square feet of encroachment (concrete and seawall footing connected to a seawall on Parcel 47) seaward of the property boundary of Parcel 17 (a private road parcel) onto State lands. You included a letter dated April 10, 2006 from J. Curtis Tyler to the Hawaii County Planning Department that concludes the existing seawall fronting the subject property was built in August 1964. Thus, the seawall appears to be a Non-Conforming land use pursuant to Hawaii Revised Statutes (HRS), Chapter 183C.

The Board of Land and Natural Resources 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

EXHIBIT E

Roy A. Vitousek

Encroachment HA-18-02

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 subject property is bordered by a residential condominium property to the north and a single-family residence to the east. Kaiolu Drive (Parcel 17) borders the property to the south. A seawall runs along the western boundary of the subject parcel. The neighboring property to the south appears to have a seawall along the seaward property boundary, as well.

Beach Resources:

The shoreline is characterized by lava rock and crushed coral with tidepools on top of an irregular shallow rocky shelf. The shallow nearshore waters provide for swimming, snorkeling and fishing.

Public Access:

Public beach right-of-ways to the shoreline exist in various locations along Alii Drive. Alongshore access exists along the rocky shelf fronting the subject property.

Effect of Removing the Encroachment on:

Beach Resources: The shoreline in this area is predominately rocky. The encroaching areas of the seawall fronting the subject property were built on or seaward of the adjacent parcel to the south (Parcel 17). Removal of the encroaching areas of the seawall would not result in a significant improvement to the beach resources fronting the subject property.

Public Access: Alongshore access exists along the rocky shelf fronting the subject property. Removal of the encroaching areas of the seawall would not result in an improvement to lateral beach access fronting the subject property.

Effect on Adjacent Properties: Portions of the seawall were partially built on or seaward of the adjacent parcel to the south (Parcel 17). Removal of the encroaching areas of the seawall would not have a significant impact on adjacent properties.

It has been a general policy and practice of OCCL to support disposition requests that have no discernable effect on beach and recreational resources and do not act as a detriment to public access. In cases where the encroachment serves as primary erosion control for potentially threatened structures, impacts to the adjacent and upland developments must also be considered. The shoreline fronting the seawall on the subject property consists of a rocky shelf with no significant beach resources. Removal of the minor encroachments would not improve lateral shoreline access. The subject encroachments are negligible and there does not appear to be any benefit to removing the minor encroaching areas of concrete and seawall footing. Furthermore, the majority of the seawall is located on private property and appears to have been in place for over 50 years.

EXHIBIT E

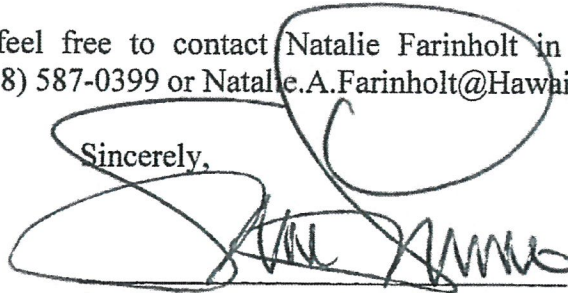
Encroachment HA-18-02

Roy A. Vitousek

Upon review and careful consideration of the information gathered on this case, OCCL has determined that OCCL's evaluation criteria would support a disposition request being processed for the subject shoreline encroachments.

If you have any questions, please feel free to contact Natalie Farinholt in the Office of Conservation and Coastal Lands at (808) 587-0399 or Natalie.A.Farinholt@Hawaii.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel J. Lemmo', is written over a large, loopy circular mark.

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

Cc: **HDLO**
County of Hawaii, Planning Dept

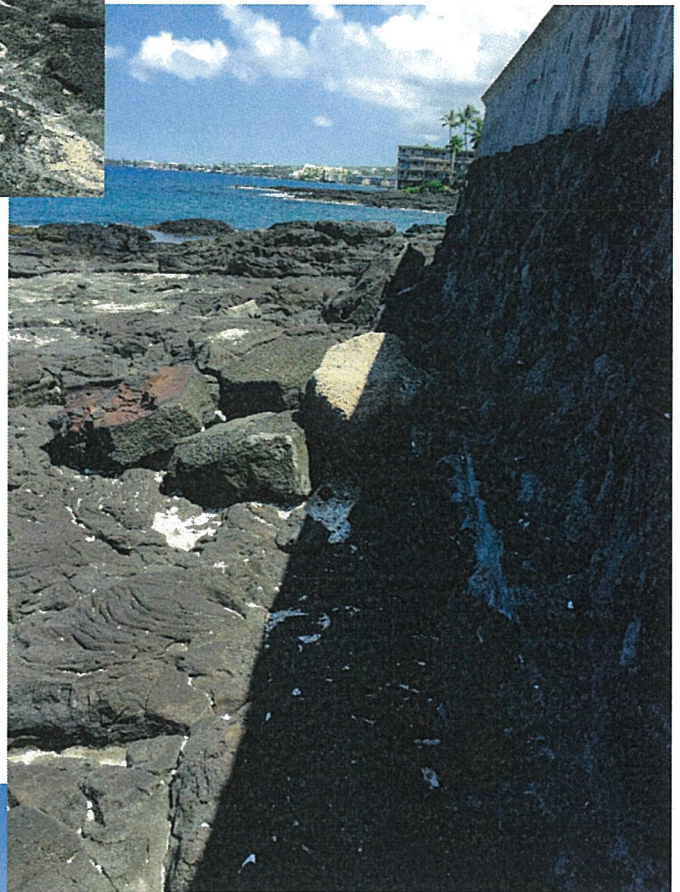
EXHIBIT F



Seaward face of wall



Profile of wall from middle
looking North.
Note the large water tossed
boulders at
the base of wall.



Profile of wall from middle
looking South



EXHIBIT F

Southwest corner of
the wall looking west



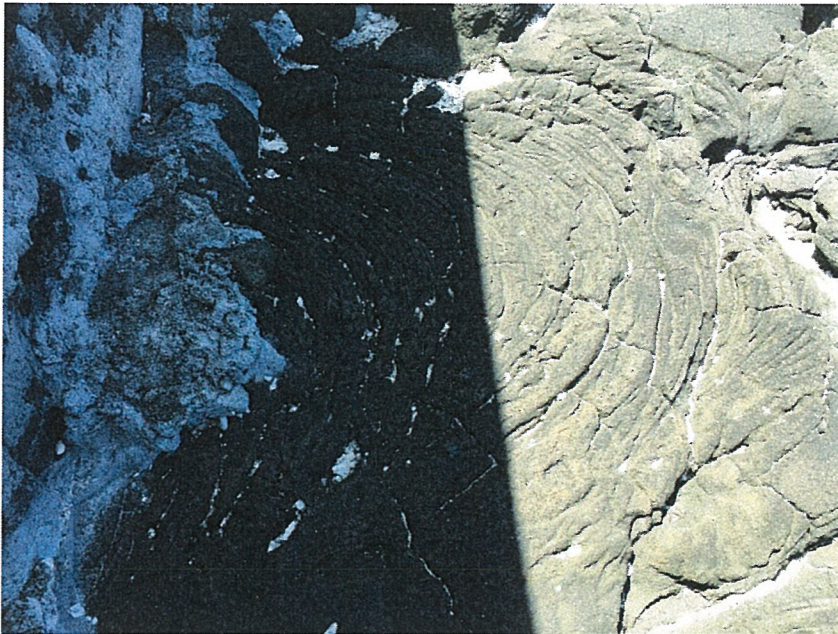
Northwest corner of
the wall looking south



Northwest corner of the
wall looking mauka.
Note the water eroded
boulder at the base of
the wall.



EXHIBIT F



Concrete riprap and waterworn pahoehoe at base of wall.



Concrete footing of wall with coral sand and waterworn rocks in the foreground.



Level yard created by backfill on mauka side of wall

