

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

November 9, 2018

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

PSF No.:18OD-041

OAHU

Grant of Term, Non-Exclusive Easement to Wendy Brandt Johnson and William Paul Johnson, Co-Trustees under unrecorded Wendy Brandt Johnson Declaration of Trust dated December 16, 1987, as amended and restated, and Gary K. Johnson, also known as Gary Kahalewai Johnson, as Trustee under that certain unrecorded Gary K. Johnson Trust dated May 12, 2005, for Seawall and Steps Purposes; Kaalawai, Honolulu, Oahu, Tax Map Key: (1) 3-1-040:Seaward of 001

APPLICANTS:

Wendy Brandt Johnson and William Paul Johnson, Co-Trustees under unrecorded Wendy Brandt Johnson Declaration of Trust dated December 16, 1987, as amended and restated, as to an undivided 59.805% interest.

Gary K. Johnson, also known as Gary Kahalewai Johnson, as Trustee under that certain unrecorded Gary K. Johnson Trust dated May 12, 2005, as to an undivided 40.195% interest.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of Kaalawai, Honolulu, Oahu, identified by Tax Map Key: (1) 3-1-040:seaward of 001, as shown on the attached map labeled **Exhibit A**.

AREA:

80 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-7.5 [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, repair, and maintain existing seawall and steps 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 ("HAR") Sections 11-200-8 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 Exemption Class No. 1, Item 46 that states "Creation or termination of easement, covenants, or other rights in structures or land". See exemption declaration attached as **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 Applicants' 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 Applicants requested a certified shoreline to obtain County building permits. However, during the due diligence shoreline process portions of a seawall and steps were located Makai of the shoreline (see **Exhibits C-1 to C-5**).

Subsequently, the applicants worked with the Office of Conservation and Coastal Lands (OCCL) to resolve the encroachment by submitting the Shoreline Encroachment Information questionnaire. Upon review of the information provided in the questionnaire, OCCL supported a disposition for the encroachments. OCCL stated that the structures were established prior to the 1960's. A copy of OCCL's letter dated February 21, 2018 is attached as **Exhibit D**. Upon site inspection, the improvements were determined to be about 80 square feet.

Based on OCCL's support, staff recommends the disposition of the shoreline encroachment abutting the Applicants' property through an easement. Staff requests that the Board authorize the granting of a term, non-exclusive easement for the seawall and steps.

Staff also notes that there are remnants of what may be a public access along the rocky area fronting the Makai face of the seawall of the abutting subject private property that the public still uses for traversing the area to reach swimming and surfing spots. However, there are no records or evidence definitively indicating whether the walkway was private or publicly built, therefore, staff is unable to ascertain whether the remnants are part of a public walkway. For the sake of obtaining a shoreline certification for the subject property, the applicant agrees to an easement covering only the portions showing benefit to the subject property, e.g., rocks reinforcing the vertical wall and the rock steps leading to the ocean. And, as such, the State will not take any action or responsibility to maintain or repair the outstanding encroachments not covered by the easement.

Comments

At the time the submittal was drafted the Board of Water Supply, and the City and County, Planning and Permitting office have no objections and no comments to the granting of an easement. The City and County, Facility Maintenance Department and the Office of Conservation and Coastal Lands have no objections. The Department of Accounting and General Services – Survey Office, and the Office of Hawaiian Affairs, did not respond to the request for comments.

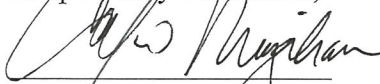
Upon approval of today's request, the Applicants will be reminded of the requirement for concurrent resolution from both houses of the legislature under Sect.171-53(c), HRS prior to the issuance of the requested easement.

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.

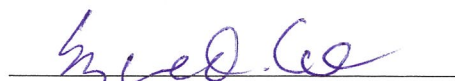
2. Authorize the subject request to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 3-1-040:001 when such change in ownership occurs prior to the execution of the requested easement, provided the succeeding owner has not had a lease, permit, 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 Applicants fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to Wendy Brandt Johnson and William Paul Johnson, Co-Trustees under unrecorded Wendy Brandt Johnson Declaration of Trust dated December 16, 1987, as amended and restated, and Gary K. Johnson, also known as Gary Kahalewai Johnson, as Trustee under that certain unrecorded Gary K. Johnson Trust dated May 12, 2005 covering the subject area for 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: (1) 3-1-040:001, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
  - C. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
  - D. Review and approval by the Department of the Attorney General;
  - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
  - F. 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

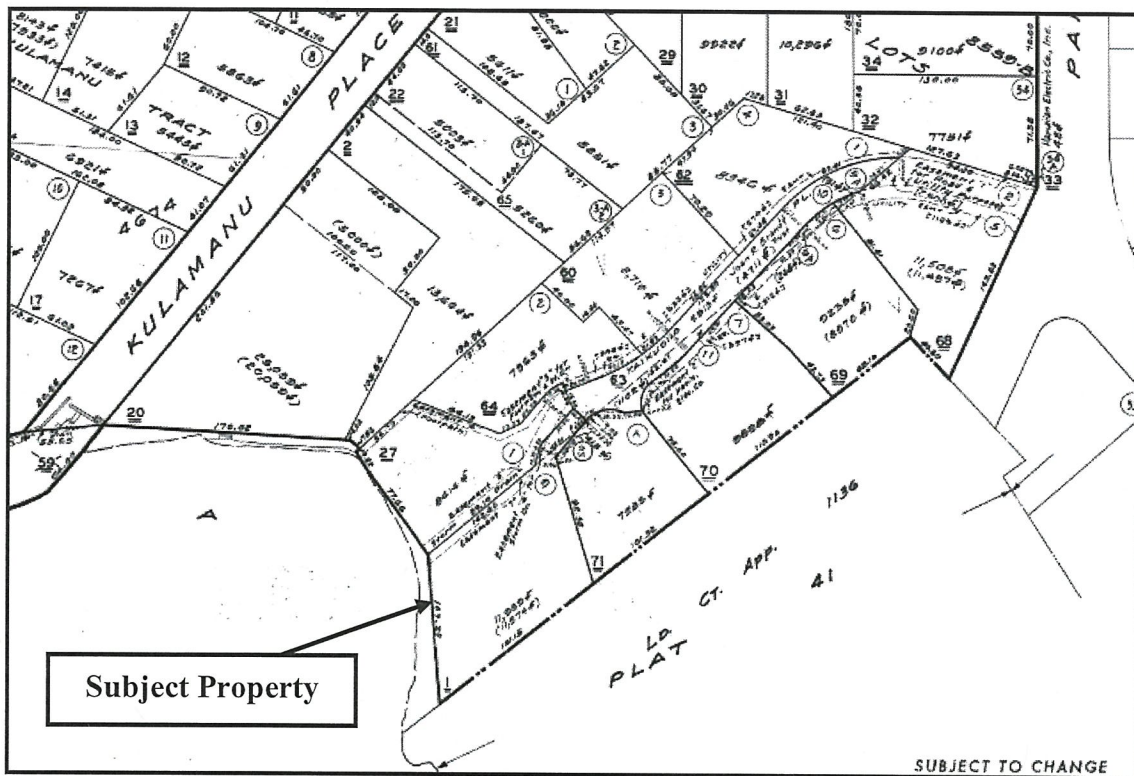
APPROVED FOR SUBMITTAL:

  
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Suzanne D. Case, Chairperson



Note: The property is located south east of Diamond Head, also known as Black Point area.

Exhibit A



TMK: (1) 3-1-040:seaward of 001

EXHIBIT A

**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 Wendy Brandt Johnson and William Paul Johnson, Co-Trustees under unrecorded Wendy Brandt Johnson Declaration of Trust dated December 16, 1987, as amended and restated, and Gary K. Johnson, also known as Gary Kahalewai Johnson, as Trustee under that certain unrecorded Gary K. Johnson Trust dated May 12, 2005, for Seawall and Steps Purposes
Reference No.:	PSF 18OD-041
Project Location:	Kaalawai, Honolulu, Oahu, Tax Map Key: (1) 3-1-040:seaward of 001.
Project Description:	Issuance of term, non-exclusive easement for seawall and steps purposes.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	<p>In accordance with Hawaii Administrative Rule Sections 11-200-8 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 Exemption Class No. 1, Item 46 that states "Creation or termination of easement, covenants, or other rights in structures or land".</p> <p>The Applicants 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>
Cumulative Impact of Planned Successive Actions in Same Place Significant?	No, this request is for a 55-year term easement for an existing, permanent shoreline structure (seawall and steps). The seawall and steps were in existence at the location for 50+ years. Therefore, no successive actions will occur in the same location. As such, staff believes that there would be no significant cumulative impact.
Action May Have Significant Impact on Particularly Sensitive	The requested area is a portion of shoreline State lands that is accessible to the public for the purpose of reaching swimming and surfing locations, and is impacted by human activity daily.

Environment?

In addition, based on the analysis below, staff believes there would be no significant impact to sensitive environmental or ecological receptors.

Consulted Parties:

Agencies as noted in the submittal.

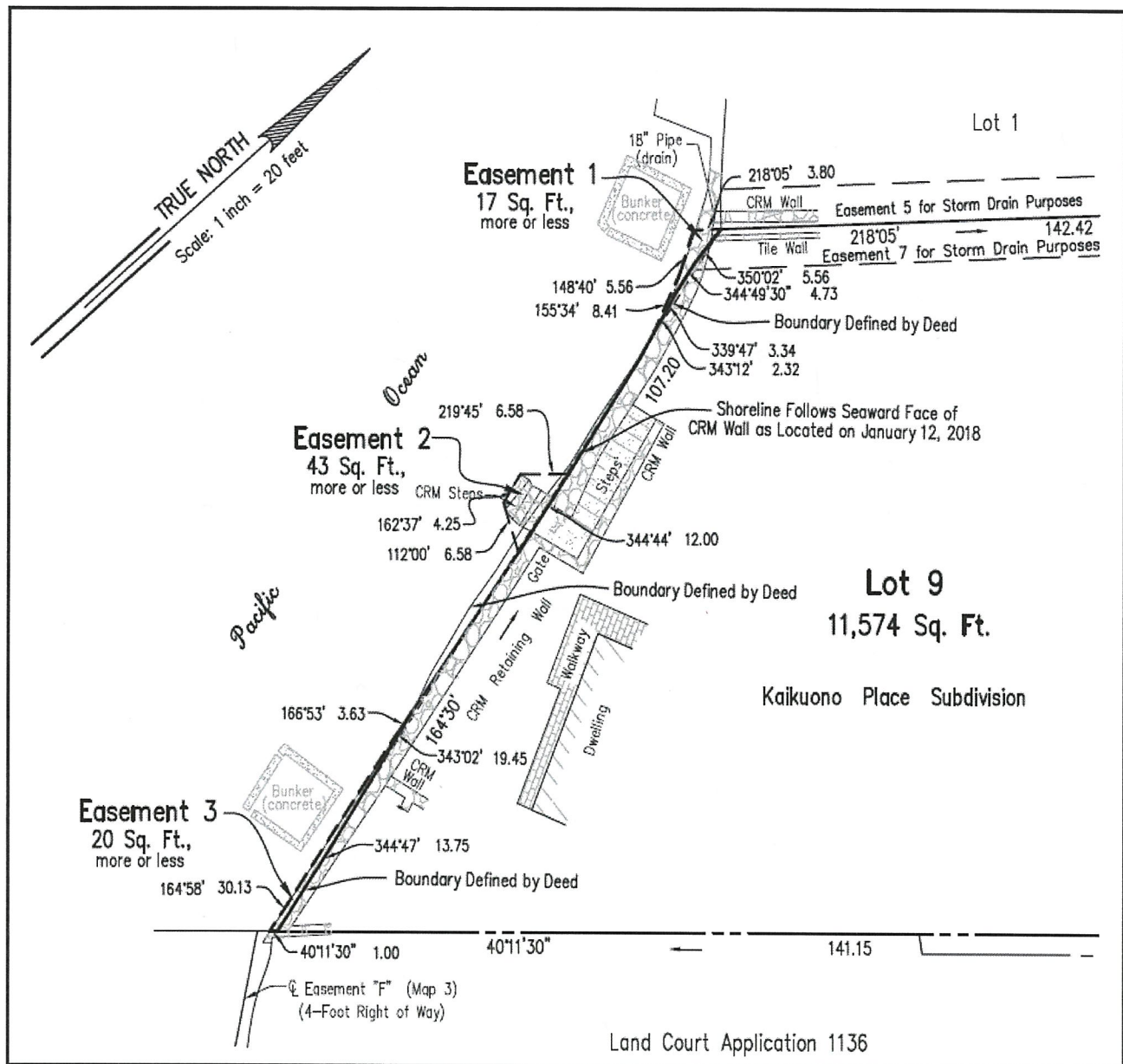
Analysis:

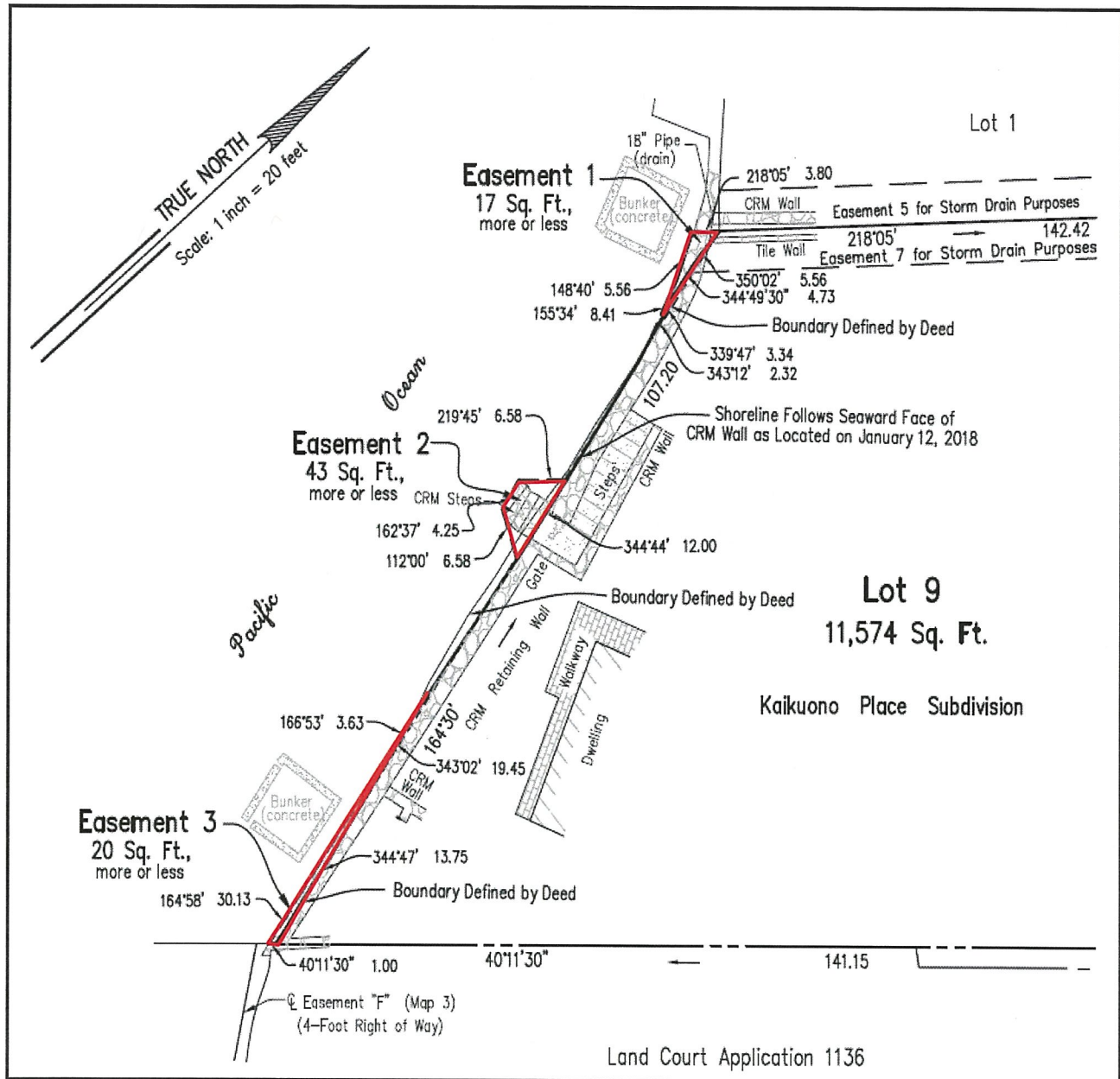
The Board has authorized 55-year term, non-exclusive easements for existing shoreline structures in the past. The proposed request is of a similar type and scope as other shoreline easement request across the State. Staff also believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

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-1**



Note: Red line ( — ) indicates encroachment areas.

**EXHIBIT C-2**



Photo looking northeast along the face of the seawall. Photo shows Easement 1 area.

**EXHIBIT C-3**



Photo looking north along the face of the seawall. Photo shows Easement 2 area.

**EXHIBIT C-4**

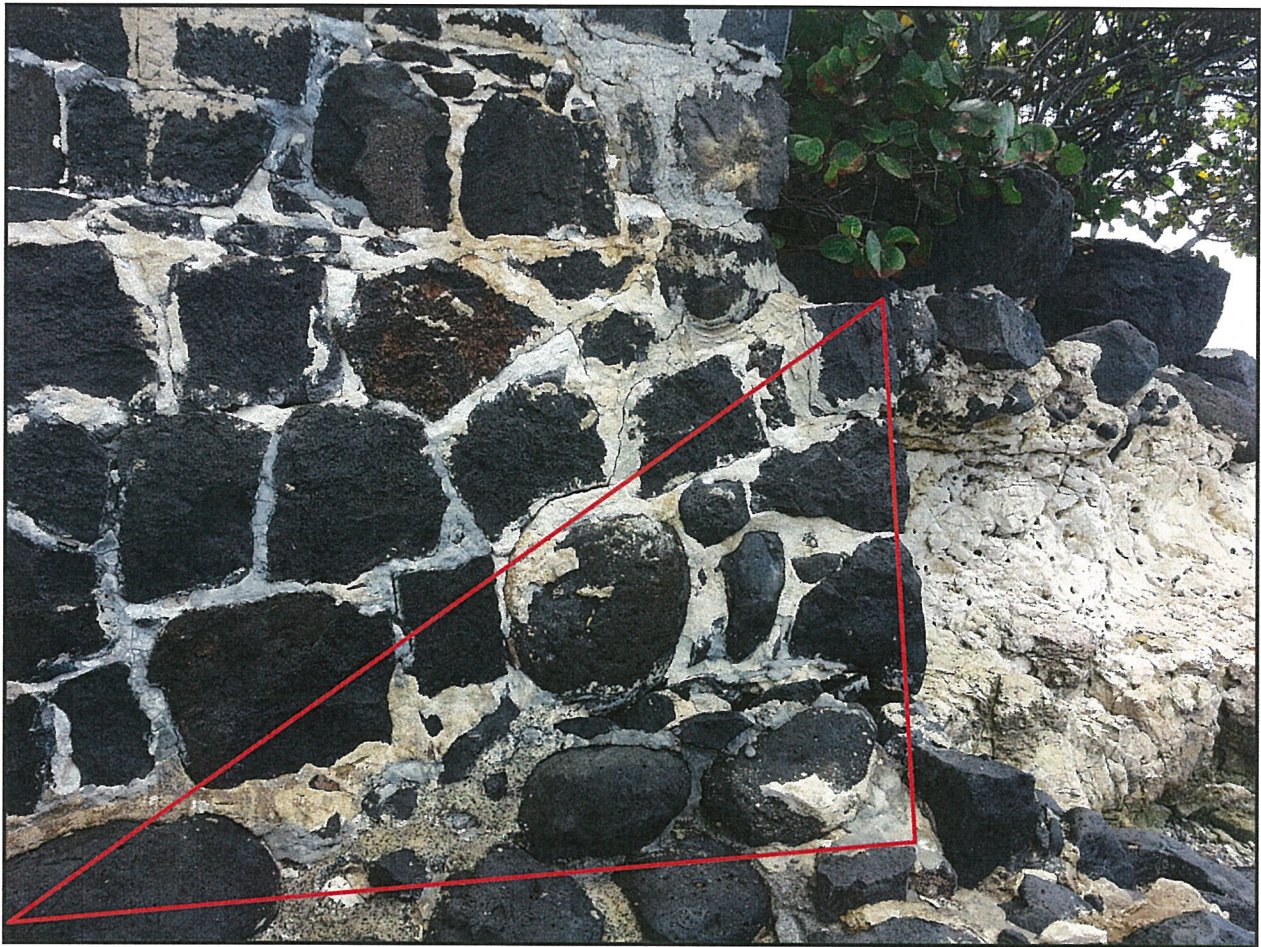


Photo looking southeast along the face of the seawall. Photo shows Easement 3 area.

**EXHIBIT C-5**



<p>DAVID Y. IGE GOVERNOR OF HAWAII</p> 	 <p><b>STATE OF HAWAII</b> <b>DEPARTMENT OF LAND AND NATURAL RESOURCES</b> OFFICE OF CONSERVATION AND COASTAL LANDS POST OFFICE BOX 621 HONOLULU, HAWAII 96809</p>	<p>RECEIVED LAND DIVISION 2018 FEB 22 AM 10:48</p> <p>SUZANNE D. CASE CHAIRPERSON BOARD OF LAND AND NATURAL RESOURCES COMMISSION ON WATER RESOURCE MANAGEMENT</p> <p>ROBERT K. MASUDA FIRST DEPUTY</p> <p>JEFFREY T. PEARSON, P.E. DEPUTY DIRECTOR - WATER</p> <p>AQUATIC RESOURCES BOATING AND OCEAN RECREATION BUREAU OF COAST PROTECT COMMISSION ON WATER RESOURCE MANAGEMENT COORINATOR NATIONA APPLICANTIAL LAND CONSERVATION AND RESOURCES ENFORCEMENT ENFORCEMENT PROPERTY AND WILDLIFE HAWAIIAN ISLANDS RESOURCES COMMISSION LAND STATE PARKS</p>
<p>DLNR:OCCL:SL</p> <p>Mr. Gary Kahalewai Johnson</p> <p>Honolulu, Hawaii 96809</p> <p>SUBJECT: Request to Resolve State Land Encroachment Located Seaward of Island of Oahu; Tax Map Key: (1) 3-1-040:001</p> <p>Dear Mr. Johnson,</p> <p>The Department of Land and Natural Resources, Office of Conservation and Coastal Lands (OCCL) is in receipt of your letter dated January 29, 2018 seeking our recommendation for an encroachment seaward of 201 Kaikuona Place.</p> <p>You are working to resolve the encroachment on State land. The encroachment consists of approximately 53 square feet of the seaward face and concrete steps fronting the subject property, established prior to the 1960s.</p> <p>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:</p> <ol style="list-style-type: none"> <li>1. Protect/preserve/enhance public shoreline access;</li> <li>2. Protect/preserve/enhance public beach areas;</li> <li>3. Protect adjacent properties;</li> <li>4. Protect property and important facilities/structures from erosion damages; and</li> <li>5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures</li> </ol> <p>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.</p> <p><u>Surrounding Land Uses:</u> A single-family dwelling exists on the subject property. The surrounding land uses are primarily residential. The Doris Duke Estate lies to the east side of the subject property.</p>		

EXHIBIT D

Gary Kahalewai Johnson

Encroachment: OA-18-09

Beach Resources:

*The subject property is located on Black Point which is largely a lava outcrop with a few pocket beaches. The most popular beach is Kaalawai Beach several 100 feet to the North West.*

Public Access:

*Public shoreline access is available from Kaalawai Beach to the Doris Duke Estate. People traverse the rocky shoreline in front of the subject property for ingress and egress to the Doris Duke area.*

Effect of Removing the Encroachment on:

*Beach Resources: Removal of the steps and sliver of CRM wall would have no effect on beach resources.*

*Public Access: Alongshore access is unaffected by the small encroachments.*

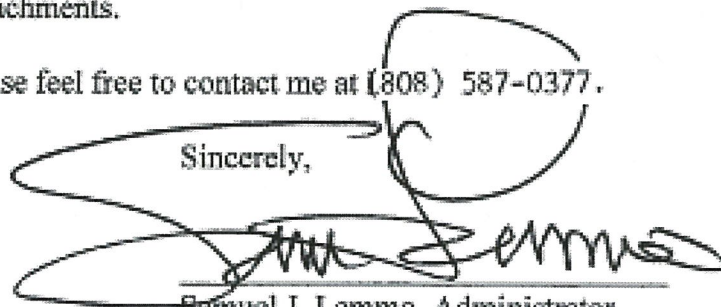
*Effect on Adjacent Properties: None*

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. There are little or no carbonate beach resources fronting the subject seawall. It is unlikely that removal of the encroachments would improve lateral shoreline access. Furthermore, the structures were established prior to the 1960s.

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 me at (808) 587-0377.

Sincerely,

A handwritten signature in black ink, appearing to read "Samuel J. Lemmo", is written over a horizontal line.

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

Cc: LAND  
City and County of Honolulu  
Department of Planning and Permitting