

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

February 08, 2019

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

PSF No.: 18OD-146

OAHU

Grant of Term, Non-Exclusive Easement to the Marion S. Zoechbauer, Trustee of the Marion S. Zoechbauer Living Trust dated November 12, 2014, for Existing Stairs and Deck Purposes; Issuance of Management Right-of-Entry Permit; Makiki Heights, Honolulu, Oahu, Tax Map Key: (1) 2-5-020: Portion of 002.

APPLICANT:

Marion S. Zoechbauer, Trustee of the Marion S. Zoechbauer Living Trust dated November 12, 2014.

LEGAL REFERENCE:

Sections 171-13, -17, and -55, Hawaii Revised Statutes ("HRS"), as amended.

LOCATION:

Portion of Government lands situated at Makiki Heights, Honolulu, Oahu, Tax Map Key: (1) 2-5-020: Portion of 002, as shown on the maps attached as **Exhibit A1** and **A2**.

AREA:

328 square feet, more or less.

ZONING:

State Land Use District:	Conservation
City & County of Honolulu LUO:	Preservation (P-1)

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:

Requested area is unencumbered.

CHARACTER OF USE:

Right, privilege and authority to use, repair, replace and maintain existing deck and stairs purposes.

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.

TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule ("HAR") 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", and Item 46, which states that "creation or termination of easement, covenants, or other rights in structures or land." See **Exhibit B**.

DCCA VERIFICATION:

Not required for individuals.

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Pay for an appraisal to determine one-time payment; and
2. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.
3. Process and obtain designation of easement approval from the Department of

Planning and Permitting at Applicant's own cost.

REMARKS:

The applicant recently purchased property at TMK: (1) 2-4-026:034, with existing deck and stairs that were found to be located on State-owned land abutting the property at TMK: (1) 2-5-020:002. The private property is situated on a slope with the front entrance on Keeaumoku Place dropping down to Makiki Heights Drive. The applicant informed staff that original stone and rock steps were in disrepair with loose stones and exposed dirt areas creating hazardous conditions for anyone using them and applicant made repairs to the steps to provide safe access along the hill to and from the Ohana dwelling upslope to the downslope parking along Makiki Heights Drive.

After the repairs, the owner was subsequently found in violation by the Office of Conservation and Coastal Lands ("OCCL") for encroachment onto unencumbered State-owned lands zoned as Conservation District for the deck and stairs. The owner has cooperated with OCCL on resolving the land use violation by submitting the required application for site plan approval, supplying requested documentation, commissioning requested survey maps, and paying all fines incurred. OCCL's investigation culminated with the approval of the application for the deck and stairs as OA-19-39, dated November 26, 2018 (**Exhibit C**). The owner is respectfully seeking easement approval for the encroachment as the final step in resolving the violation of State-owned land usage.

The Division of Forestry and Wildlife and Department of Facility Maintenance has no objections/comments and concur to the proposed EA exemption. State Historic Preservation Division, Conservation and Coastal Lands, Department of Planning and Permitting, and the Board of Water Supply have not responded to the solicitation for comments before the deadline.

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.

Staff also recommends the Board authorize the issuance of a management right-of-entry until the issuance of the requested easement. The above-mentioned right-of-entry shall contain the standard insurance and indemnity provisions.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Marion S. Zoechbauer,

Trustee of the Marion S. Zoechbauer Living Trust dated November 12, 2014, covering the subject area for stairs and deck purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

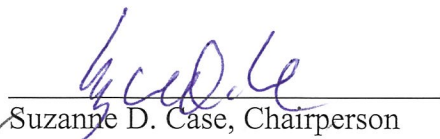
- A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
  - B. Review and approval by the Department of the Attorney General; and
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of an management right-of-entry permit to the Marion S. Zoechbauer, Trustee of the Marion S. Zoechbauer Living Trust dated November 12, 2014, covering the subject area 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 right-of-entry permit form, as may be amended from time to time; and
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



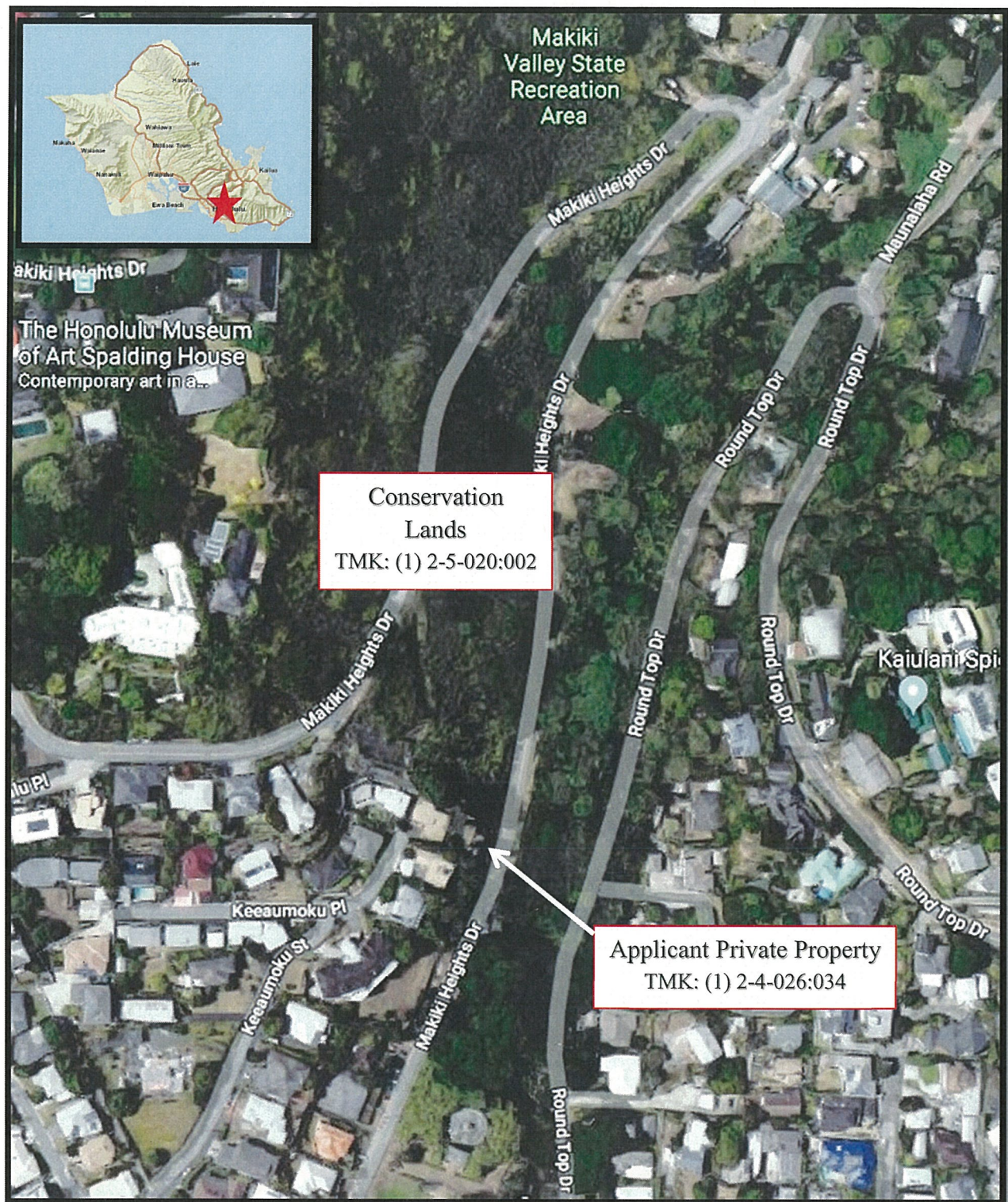
Darlene Bryant-Takamatsu  
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

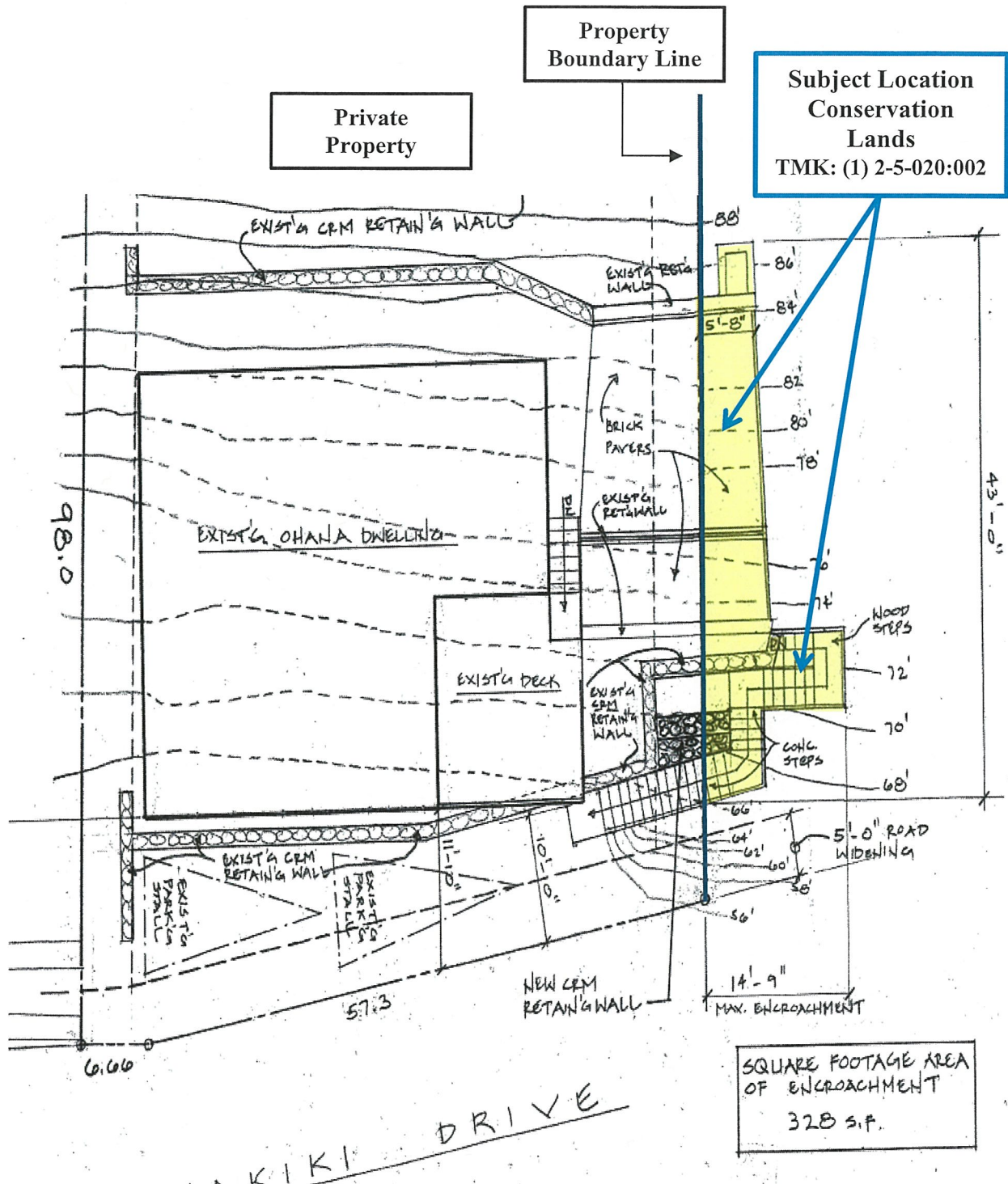




**TMK (1) 2-5-020: Portion of 002**

**EXHIBIT A1**





TMK (1) 2-5-020: Portion of 002

EXHIBIT A2

## 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 the Marion S. Zoechbauer, Trustee, for Existing Stairs and Deck Purposes; Issuance of Immediate Right-of-Entry Permit
Project Location:	Makiki Heights, Honolulu, Oahu, Tax Map Key: (1) 2-5-020: Portion of 002.
Project Description:	Grant of Term, Non-Exclusive Easement to the Marion S. Zoechbauer, Trustee, for Encroachment of Existing Stairs and Deck; Issuance of Immediate Right-of-Entry Permit.
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."</p> <p>The subject deck and stairs replace earlier structures that fell into disrepair. The current use constitutes negligible expansion or change of the subject area beyond previously existing.</p>
Cumulative Impact of Planned Successive Actions in Same Place Significant?	No. All currently existing improvements are permanently constructed so there would be no successive or repetitive action in the same place. As such, staff believes that there would be no significant cumulative impact.
Action May Have Significant Impact on Particularly Sensitive Environment:	The Office of Conservation and Coastal Lands observed no known protected or listed species in the subject area and use of the area would change negligibly from what is existing.

**EXHIBIT B**

Consulted Parties	Office of Conservation and Coastal Lands, Division of Forestry and Wildlife, State Historic Preservation Division, Department of Facility Maintenance, Department of Planning and Permitting, Board of Water Supply, Office of Hawaiian Affairs.
Analysis:	Based on the above mentioned, staff believes there would be no significant impact to sensitive environmental or ecological receptors.
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.



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

RECEIVED  
LAND DIVISION  
2018 NOV 27 11:13 AM  
SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
KIEKOA KALUHWA  
FIRST DEPUTY  
JEFFREY T. PEARSON, P.E.  
DEPUTY DIRECTOR - WATER  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF RESOURCE MANAGEMENT  
COMMISSION ON WATER CONVEYANCES  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:OCCL:MC

Site Plan Approval OA-19-39

Scarlett Zoechbauer

NOV 26 2018

Honolulu, HI 96822

Dear Ms. Zoechbauer,

Subject: SITE PLAN APPROVAL OA-19-39: STAIRS AND DECK  
MAKIKI HEIGHTS, HONOLULU, O'AHU  
TMK (1) 2-5-020:002

The Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Lands (OCCL) has reviewed your application for an "after-the-fact" Site Plan Approval (SPA) for a set of concrete stairs and a brick deck associated with your property at TMK (1) 2-4-026:034. The stairs partially encroach on unencumbered State-owned property at TMK (1) 2-5-020:002. The area of encroachment is in the Resource Subzone of the State Land Use Conservation District.

Based on the information you provided, you constructed the stairway in December 2016 to connect a parking area with the residence. A previous owner constructed the brick deck at an unknown date, possibly in the 1980s.

OCCL found that the encroaching stairs and the brick deck presented a potential land use violation as they were built without authorization from DLNR, and opened enforcement case OA-18-08. On February 1, 2018 our office sent you a Notice of Civil Resource Violation.

OCCL notes that you complied with the Notice and paid the recommended fines. Securing a Site Plan Approval, and then an easement for the use of State land, will resolve the violation.

The property, and the adjoining conservation land, is located on the slopes of Punchbowl in the Makiki area of Honolulu. The soil is composed of lava rock and volcanic cinder. There is dense vegetation on the hillside, consisting, among other things, of vines, ferns, haole koa, dragon fruit, bougainvillea, monkey pod trees, mango trees and umbrella trees. There are no known protected or listed species in the project area.

The stairs connect a parking area along Makiki Heights Drive with the residence on Ke'eaumoku Place. The wooden stairs replaced an earlier set of concrete stairs that had fallen into disrepair. It is unclear when the original concrete stairs were built, or who built them. Neither the parking area nor the residence are in the Conservation District. Approximately 14 linear feet of the stairs crosses State-owned land.

EXHIBIT C

The encroaching patio is composed of brick layers that were placed between two existing CMU retaining walls. They encroach approximately five feet eight inches onto State-owned land. The total area of encroachments, according to a survey commissioned by the landowner, is 328 square feet.

OCCL had previously found that the deck and stairs were identified land uses in the Conservation District pursuant to HAR §13-5-22, Identified Land Uses in the Protective Subzone, P-8 STRUCTURES AND LAND USES, EXISTING, (B-1) *Demolition, removal, or minor alteration of existing structures, facilities, land and equipment. Any historic property shall be evaluated by the department for historical significance.* This use requires a Site Plan Approval (SPA) from OCCL.

OCCL consulted with the Land Division on the application. Land Division had no objections to OCCL issuing a Site Plan Approval, and concurred that the project could be considered exempt from requiring an environmental assessment pursuant to Hawai'i Administrative Rules (HAR) §11-200-8 Exemption Class 6: *Construction or placement of minor structures accessory to existing facilities.*

OCCL based this exemption on the fact that only a small portion of the structure lies in the Conservation District, and that there was minimal ground disturbance during installation.

After careful review, the Department gives an-after-the-fact Site Plan Approval for the portion of the stairs and deck that are on Conservation Land on TMK (1) 2-5-020:002 in Makiki Heights, Honolulu, O'ahu, subject to the following conditions:

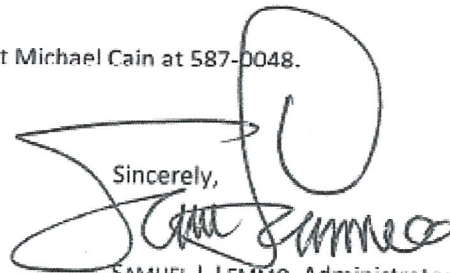
1. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
2. The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any 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;
4. The permittee shall comply with all applicable department of health administrative rules;
5. Unless otherwise authorized, any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and shall be completed within three years of the approval of such use. The permittee shall notify the department in writing when construction activity is initiated and when it is completed;
6. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
7. 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;
8. All exterior lighting shall be shielded to protect the night sky;

SPA OA-19-39  
Zoechbauer Stairs

9. 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;
10. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact HPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
11. Other terms and conditions as prescribed by the chairperson.
12. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.

Should you have any questions, please contact Michael Cain at 587-0048.

Sincerely,

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

SAMUEL J. LEMMO, Administrator  
Office of Conservation and Coastal Lands