

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

February 8, 2019

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

PSF No.:18OD-145

OAHU

Grant of Term, Non-Exclusive Easement to Lynette Mau, Trustee of the Lynette Mau Revocable Living Trust dated May 18, 1977, as amended and restated, for Seawall, Steps, and Filled Land Purposes; and, Issuance of Management Right-of-Entry Permit; Kahaluu, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-001:Seaward of 006

APPLICANTS:

Lynette Mau, Trustee of the Lynette Mau Revocable Living Trust dated May 18, 1977, as amended and restated.

LEGAL REFERENCE:

Sections 171-6, 13, 17, 53(c), and 55, Hawaii Revised Statutes ("HRS"), as amended.

LOCATION:

Portion of Government land located seaward of Kahaluu, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-7-001:seaward of 006, as shown on the attached map labeled **Exhibits A-1, A-2, and A-3.**

AREA:

820 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, repair, and maintain existing seawall, steps, and filled land 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:

Twenty-five (25) years.

The Land Division is reducing the term in which shoreline easements are granted from 55 to 25 years in response to sea level rise projections disclosed in the Hawaii Sea Level Rise Vulnerability and Adaptation Report adopted by the State Climate Change Mitigation and Adaptation Commission, and as suggested by the Office of Conservation and Coastal Lands. Landward migration of the shoreline is occurring as a direct result of sea level rise, which will progressively expose immobile shoreline structures to an evolving combination of coastal hazards (i.e., erosion, chronic flooding, and wave inundation). The intention of the term reduction is to: 1) lessen the potential for accidents and liabilities that may result from the presence of dysfunctional shoreline structures by increasing the periodicity in which shoreline encroachments are reviewed and managed, and 2) facilitate a process of managed retreat from the shoreline.

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: Applicant 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;
3. Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.; and
4. Obtain a City and County after-the-fact building permit for the chain-linked fence that runs along the seawall and the rear of the property.

REMARKS:History

Pursuant to a deed dated July 8, 1964, recorded at the Bureau of Conveyance as Liber 4792, page 148¹, 1,426 square feet of reclaimed land (see Exhibit A-2) was conveyed to the then owners of the abutting private property, Mr. and Mrs. John Akima, Jr., at a consideration amount of \$1,521. The Makai boundary of the reclaimed land was described as "along the seaward face of seawall, along highwater mark at seashore".

Recently, the current owner, Lynette Mau, was in the process of conducting a shoreline survey to obtain County building permits. However, during the due diligence shoreline process, the survey map showed portions of a seawall, steps, and filled land located Makai of the shoreline and encroaching on State lands (see **Exhibits C-1 to C-5**). The encroaching area also included a set of steps that were part of the 1964 State land purchase. According to the shoreline map on Exhibit C-1, the steps are now located Makai of shoreline and considered as an encroachment. The easement map shows the total area of encroachment to be about 820 square feet.

Subsequently, the Applicant 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 encroachment. A copy of OCCL's letter dated October 18, 2018 is attached as **Exhibit D**.

Comments

The Department of Facility Maintenance has no objections to the granting of an easement. The Board of Water Supply has no objections and no comments. The Department of Planning and Permitting commented that their records show there is no building permit for the chain-link fence that runs along the seawall and the rear of the property. As such, their recommendation is the Applicant should be required to obtain an after-the-fact building permit should the easement be granted (see **Exhibit E**). The Department of Accounting and General Services, Survey Division, and the Office of Hawaiian Affairs, did not respond to the request for comments.

Upon approval of today's request, the Applicant will be reminded of the requirement for

¹ Deed filed in Land Division as LOD 22306.

concurrent resolution from both houses of the legislature under Sect. 171-53(c), HRS prior to the issuance of the requested easement.

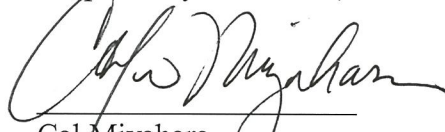
Staff also recommends the Board authorize the issuance of a management right-of-entry until the issuance of the requested easement. The above-mentioned right-of-entry shall contain the standard insurance and indemnity provisions.

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. 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) 4-7-001:006 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 Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to Lynette Mau, Trustee of the Lynette Mau Revocable Living Trust dated May 18, 1977, as amended and restated, covering the seawall and filled land 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) 4-7-001:006, 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.
4. Authorize the issuance of an management right-of-entry permit to Lynette Mau, Trustee of the Lynette Mau Revocable Living Trust dated May 18, 1977, as amended and restated, 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,


Cal Miyahara
Shoreline Disposition Specialist

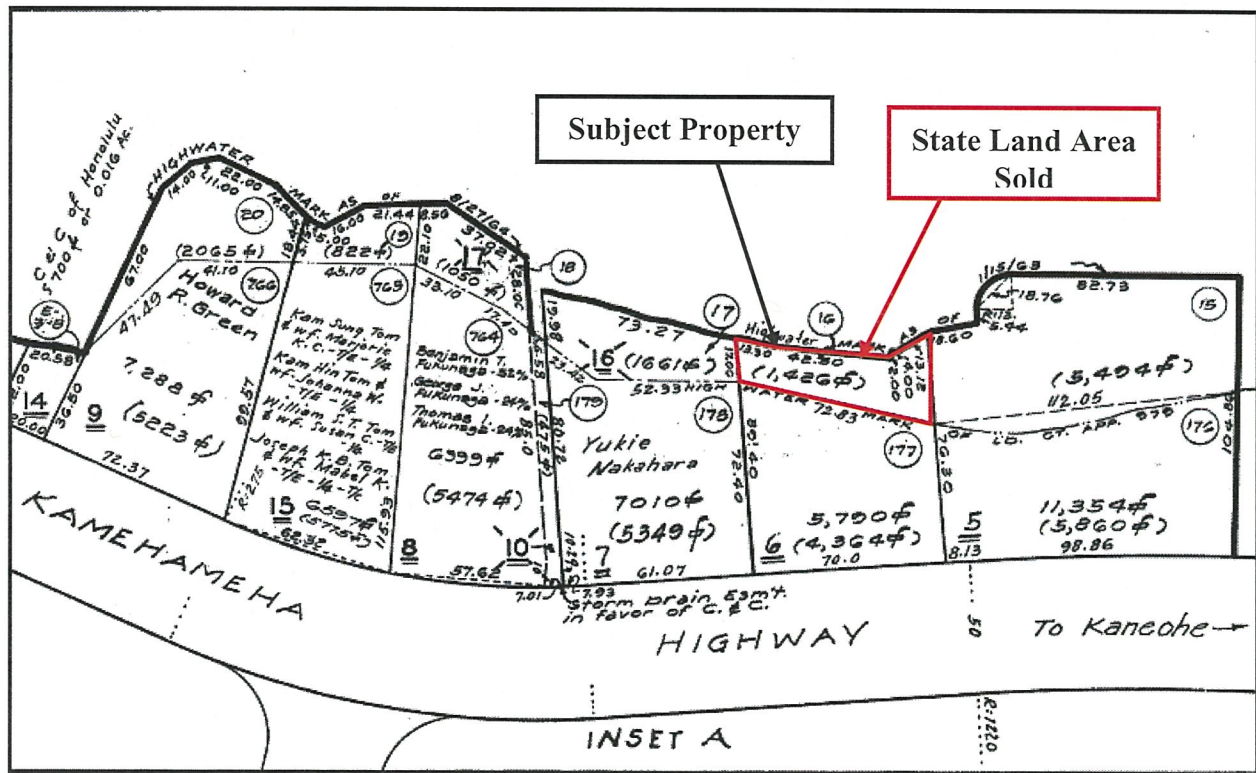
APPROVED FOR SUBMITTAL


Suzanne D. Case, Chairperson



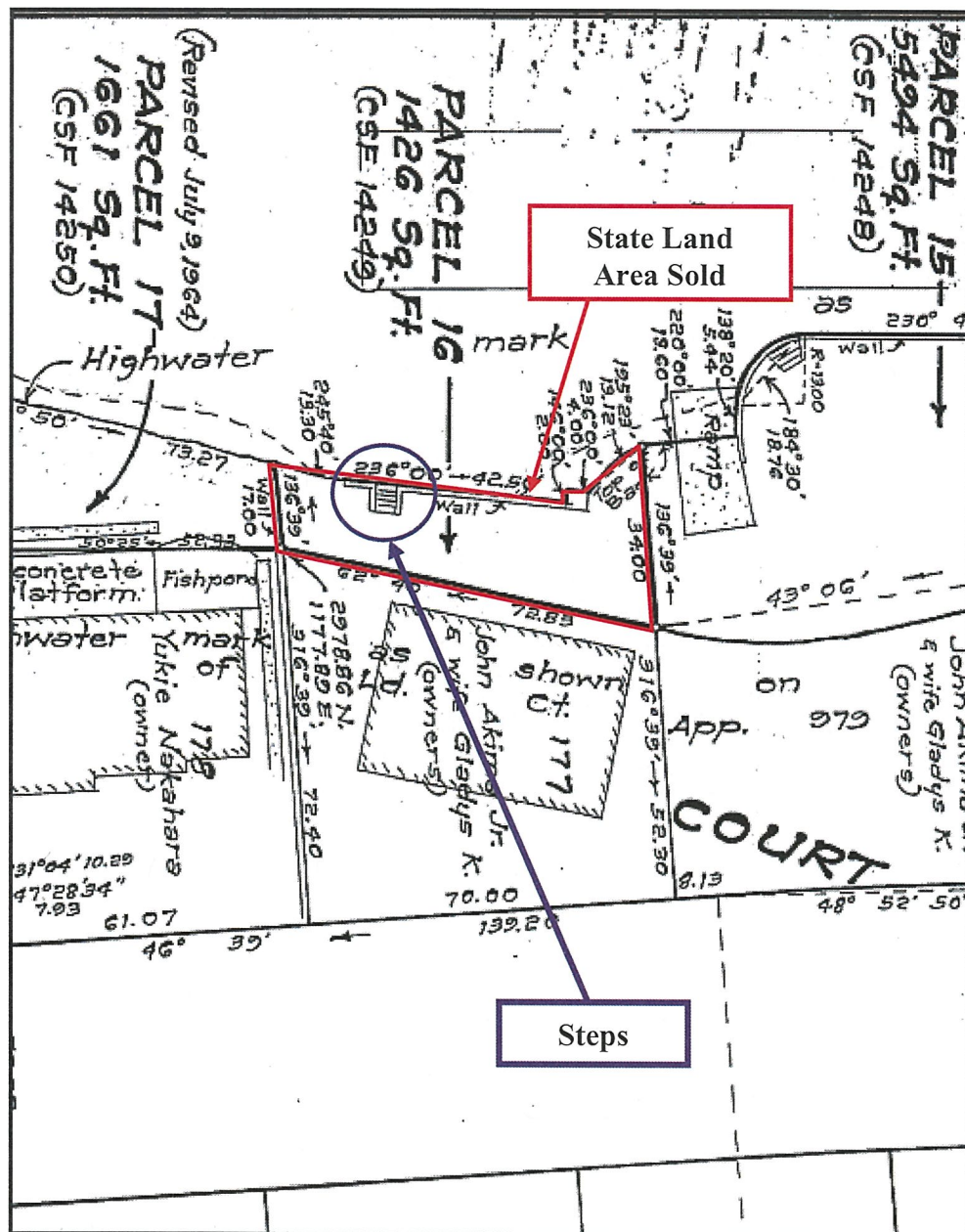
Note: The property is located in the Kaneohe Bay area, in the vicinity of the Heeia-Kea Boat Harbor.

EXHIBIT A-1



TMK: (1) 4-7-001:seaward of 006

EXHIBIT A-2



Note: Red () indicates the filled land purchased by Mr. and Mrs. John Akima, Jr. in 1964.
 Purple () indicates the steps that is located within the 1964 purchase, but is now Makai of the shoreline and is included in the easement area.

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 Lynette Mau, Trustee of the Lynette Mau Revocable Living Trust dated May 18, 1977, as amended and restated, for Seawall, Steps, and Filled Land Purposes
Reference No.:	PSF 18OD-145
Project Location:	Kahaluu, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-001:Seaward of 006.
Project Description:	Issuance of term, non-exclusive easement for seawall, steps, and filled land 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 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>
Cumulative Impact of Planned Successive Actions in Same Place Significant?	No, this request is for a 25-year term easement for an existing, permanent shoreline structure (seawall, steps, and filled land). The seawall, steps, and filled land were in existence prior to purchasing the property. 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 Environment?	No, the requested area is a portion of shoreline State land that contains improvements Makai of the abutting private property which, by visual analysis, seem to have been in existence for many years and is not likely to have any significant environmental impact. In addition, based on the analysis below, staff believes there would be no significant impact to sensitive

EXHIBIT B

environmental or ecological receptors.

Consulted Parties:

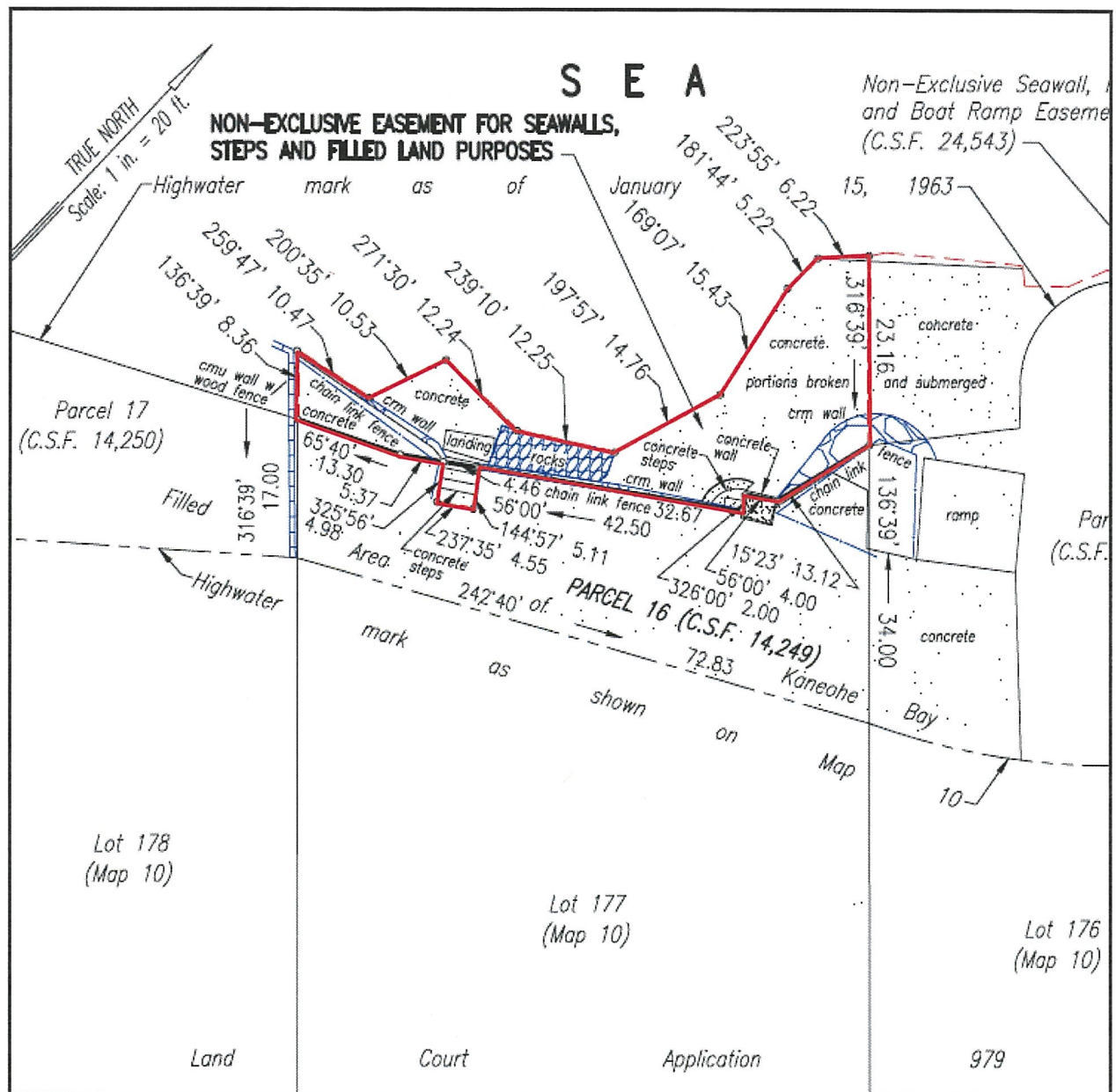
Agencies as noted in the submittal.

Analysis:

The Board has authorized 25-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.

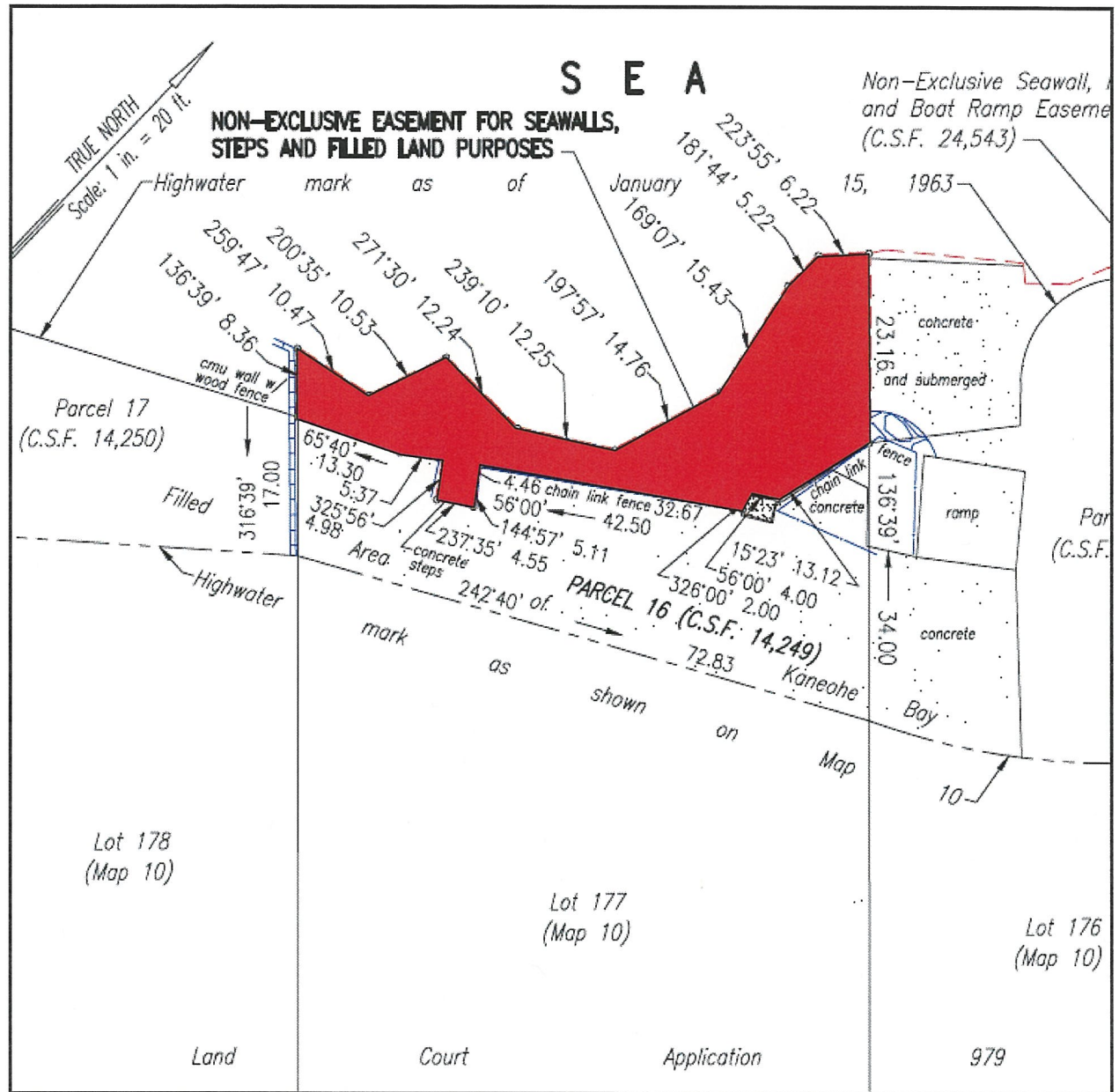
Recommendation:

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.



TMK: (1) 4-7-001:seaward of 006

EXHIBIT C-1



Note: Red shaded area indicate encroachment areas.

EXHIBIT C-2



Photo looking southwest along the shoreline.



Photo looking north at the submerged improvements.



Photo looking west along the face of the seawall.



Photo looking east at steps and submerged improvements.

EXHIBIT C-4



Photo looking west along the face of the seawall.



Photo looking west at steps. The steps are part of the purchased land, but are now located Makai of the shoreline and is now part of the easement area.

EXHIBIT C-5



 <p>DAVID Y. IGE GOVERNOR OF HAWAII</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 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</p>
<p align="center">STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES OFFICE OF CONSERVATION AND COASTAL LANDS POST OFFICE BOX 621 HONOLULU, HAWAII 96809</p>		
<p>REF:OCCL:SS</p>	<p align="right">Encroachment OA 19-2</p>	
<p>Arden Torcuato Leaps & Boundaries, Inc. 2016 Waterhouse St., Suite 101 Honolulu, HI 96819</p>	<p align="center">OCT 18 2018 RECEIVED LAND DIVISION STATE OF HAWAII</p>	
<p>SUBJECT: RE: Request to Resolve State Land Encroachments at Kamehameha Highway, Kaneohe, Hawaii 96744; Seaward of Tax Map Key (1) 4-7-001:006</p>		
<p>Dear Mr. Torcuato,</p>		
<p>The Department of Land and Natural Resources, Office of Conservation and Coastal Lands (OCCL), is in receipt of your letter dated October 2, 2018 seeking to resolve encroachments on State Lands fronting property located at Kamehameha Highway, Kaneohe, Oahu 96744. Your letter included a Shoreline Encroachment Information Sheet, a tax map key, a March 9, 2007 Issuance of Easement approval letter from the DLNR Board for similar encroachments on an adjacent parcel, and a Preliminary Survey Map showing the area of the subject encroachment.</p>		
<p>You are working on behalf of your clients, the Lynette Mau Revocable Living Trust, to resolve the encroachments on State land. The request is for a Non-Exclusive Easement pertinent to sea walls and concrete filled land in the area of a private boat ramp that was previously granted a Non-Exclusive Easement on March 9, 2007. The additional encroachments cover a total area of approximately 820 square feet.</p>		
<p>The Board of Land and Natural Resources has established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, OCCL has established criteria to guide decision-making over specific cases. The criteria are as follows:</p>		
<ol style="list-style-type: none"> 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 D

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: *Along the coastline, the subject property is bound by residential properties on both sides. The lot to the east is a residential lot with no building structure aside from a private boat ramp and seawall. The boat ramp was granted a Non-Exclusive Easement on March 9, 2007. The shoreline sits on the edge of Kaneohe Bay and is directly fronted by a reef and boat ramp channel that is accessible via the private boat ramp on the adjacent property.*

Beach Resources and Environment: *The subject encroachments are fronted by a boat channel within Kaneohe Bay that leads to the east and eventually turns northward to access the ocean. The ocean bottom that is not part of the boat channel is composed of a reef flat. There is no sandy beach abutting the subject encroachments or properties.*

Public Access: *There is no observed public access in this general area. The boat ramp adjacent to the subject encroachments is private, and there is no sandy beach in the shoreline area.*

Effect of Removing the Encroachment on:

Beach Resources: *There is no sandy beach in the shoreline area of the subject encroachments. If the encroachments were removed, it would likely cause both erosion of the land fronting the shoreline that is protected by the seawall as well as expose the area to soil erosion that could increase turbidity in nearshore waters.*

Public Access: *There is no observed public access in this general area. The area consists of a private boat ramp and seawalls fronting the shoreline with no lateral access to the public.*

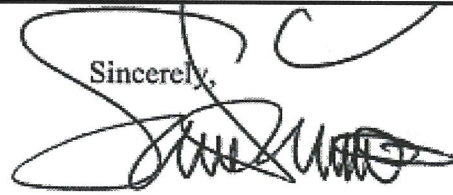
Adjacent Properties: *Removal of the encroaching improvements would have a negative effect on the surrounding parcels due to the potential for end flanking, scouring and erosion of the dirt and fill behind the wall as the adjacent properties have erosion control seawalls. The effect of removing the seawall would place an unnecessary risk to adjacent property's seawall and the landward improvements and would not provide an appreciable gain in beach area as there is no sandy beach in the vicinity*

It has been the general policy and practice of the OCCL to support easement requests that have no discernible effect on beach and recreational resources, and do not act as a detriment to public access. In cases where the encroachment serves as a primary erosion control for potentially threatened structures, impacts to the adjacent and upland developments must also be considered.

Upon review and careful consideration of the information gathered on this case, OCCL's evaluation criteria would support a disposition request being processed for the encroachment area.

Should you have any questions regarding this correspondence, contact Salvatore Saluga of our Office at (808) 587-0399.

Sincerely,

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

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

CC: Chairperson
ODLO
City & County of Honolulu
-Planning Department

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIJ
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

January 8, 2019

2018/ELOG-2453(JD)

Mr. Cal Miyahara
State of Hawaii
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Miyahara:

SUBJECT: Request for Comments
Grant of Term, Non-Exclusive Easement for Seawall, Steps,
and Filled Land Purposes
Kamehameha Highway - Kahaluu
Tax Map Key 4-7-001: 006

This responds to your letter, received December 18, 2018, requesting comments regarding the grant of term non-exclusive easement for seawall, steps, and filled land purposes involving state land. Department of Planning and Permitting records reveal there is no building permit for the existing chain-link fence that runs along the seawall and the rear of the property. Further, former shoreline photos do not show such a chain-link fence, so we have no reason to believe it is a nonconforming structure. As such, we recommend that if the easement is granted, the Applicant should be required to obtain an after-the-fact building permit for the chain-link fence.

Should you have any questions, please contact Jordan Dildy, of our Zoning Regulations and Permits Branch, at 768-8027 or jdildy@honolulu.gov.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Kathy K. Sokugawa".

For: Kathy K. Sokugawa
Acting Director

EXHIBIT E