

Suzanne Case, Chairperson
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

July 12, 2019

Regarding: Request for Contested Case Hearing Regarding Unauthorized Seawall at Kaneohe, Island of Oahu, Seaward of TMK: 4-6-001:007, Charles T.Y. Wong Trust

Subject Petitions: Docket No. **ENF-OA 19-01**, Item K-1 of BLNR Meeting on 9/28/2018

Subsequent to the hearing by the Land Board as Item K-1 at the September 28, 2018 Board Meeting, the petitioner (Wong) *discovered new evidence from your office, **OCCL letter dated October 28, 2003; File Number Encroachment OA-04-12 (Exhibit 1)***, regarding his neighbor, Kenneth Simon's seawall, which is contiguous with Wong's seawall. The petitioner believes that *this new evidence is clear and convincing*, and will persuade the Land Board to reverse its order that the petitioner remove a portion of the contiguous seawall that encroaches on State Land makai of petitioner's subject property in Kaneohe, Oahu: TMK (1) 4-6-001:007.

Bottom line upfront: The petitioner respectfully requests to perform an After-the-Fact (ATF) Conservation District Use Application (CDUA), *if required*, for the renovated seawall and to work diligently with the DLNR-Oahu District Land Office to obtain a term non-exclusive easement for the use of any state lands.

The petitioner requests to be treated fairly and consistently with the established precedent, as in the case of the petitioner's neighbor, Kenneth Simon, whose property fronts the same contiguous seawall, according to the *legal principle of estoppel*.

Background:

On October 28, 2003, OCCL sent Kenneth Wong, attorney for Kenneth Simon the above mentioned determination letter allowing Simon to keep his seawall and to resolve the enforcement case with a 55 year non-exclusive easement based on the findings:

- **All adjacent residences share this contiguous seawall.**
- **Removal of the wall could result in significant soil erosion.**
- **Affect on Adjacent Properties: Removal of this portion of the wall would affect the two abutting landowners as the wall in question also fronts their parcels.**
- **Upon review and careful consideration of the information gathered on this case, staff has determined that allowing the encroachment to remain through the issuance of an easement for the seawall and fill area would have no adverse impacts on natural resources, including beach resources.**

Discussion:

Based on the facts and findings of the above mentioned OCCL letter dated October 28, 2003, the subject seawall was contiguous, fronting three properties, owned by:

- Kenneth Simon, 46-109 Lilipuna Road, Kaneohe, Hawaii, TMK: 4-6-001:006, to the West of the petitioner's (Wong) property.
- Charles T.Y. Wong, 46-107 Lilipuna Road, Kaneohe, Hawaii, TMK: 4-6-001:007, in the Center.
- Hugh Y. Okuda, 46-099 Lilipuna Road, Kaneohe, Hawaii, TMK: 4-6-001:021, in the East.

Based on the facts and findings of OCCL October 28, 2003 letter to Kenneth Simon's attorney Kenneth Wong, regarding the **Alleged Unauthorized Seawall Construction in the State Land Use Conservation District Resource Subzone**, the petitioner admits to the unauthorized renovation of a portion of the existing contiguous shoreline structure (seawall).

The unauthorized renovation of the existing contiguous shoreline structure should be classified as **Moderate Harm to the Resource/Department Permit (C)**, which penalty ranges from \$2,000-\$10,000.

The petitioner believes that the Land Board's September 28, 2018 decision to order the petitioner to remove a portion of the existing contiguous seawall would have adverse impacts to the resource:

- **Removal of the wall could result in significant soil erosion.**
- **Affect on Adjacent Properties: Removal of this portion of the wall would affect the two abutting landowners as the wall in question also fronts their parcels.**

The seawall is contiguous forming an integral geological feature that has been in existence for decades, with no adverse impacts to the resource. Of the petitioner's portion of the seawall, there is a date inscribed in the concrete cap of the seawall dating back to 1940, well preceding the establishment of the Conservation District in 1964 (**Exhibits 2 & 3**).

The dimensions of this portion of the seawall, which the Land Board has ordered the petitioner to remove is approximately 28 linear feet, by approximately two feet high, and one foot in depth, and forms approximately 10% of an approximately 280 linear foot seawall, which is in the middle of the currently contiguous seawall fronting three properties (**Exhibit 4**).

The petitioner believes that if this 28 foot portion of the seawall were removed, it may cause serious soil erosion, known as side cutting and back cutting, which would affect the abutting property owners, namely Kenneth Simon, who is the immediate abutting property owner, of this portion of the seawall.

Please see survey(s) by Wesley Tengan, Licensed Professional Surveyor, for parcel 6, dated May 19, 2006 and parcel 7 dated April 11, 2017, showing that the seawall is contiguous, and removal of the 28 foot portion would make the seawall no longer contiguous, which may have serious adverse impacts to the abutting property owners and to the resource (**Exhibit 5**).

Recommendation:

The petitioner respectfully requests the Land Board to reverse its decision to order the petitioner to remove this 28 foot section of an approximately 280 linear foot contiguous seawall.

The petitioner respectfully requests the Land Board to **reduce the violation to moderate**, based on the fact that the seawall or shoreline structure was contiguous, making Wong's violation the unauthorized renovation of the existing contiguous shoreline structure. The penalty for moderate violations, ranges from \$2,000-10,000.

On the basis that the petitioner's intentions were to protect the resource, and to prevent adverse impacts such as significant soil erosion which would adversely affect abutting property owners, the petitioner requests that his fine be reduced from \$10,000 down to **\$2,000**.

The petitioner admits to the unauthorized renovation of a pre-existing contiguous shoreline structure, but does not know if an after-the-fact Conservation District Use Application is required to cure the matter, based on the fact the shoreline structure bears a date of 1940, preceding the establishment of the Conservation District.

However, the petitioner is willing to perform an After-The-Fact (ATF) Conservation District Use Application (CDUA) for the renovation of a pre-existing contiguous shoreline structure (if required) and to work diligently with the DLNR-Oahu District Land Office to obtain a term non-exclusive easement for the use of any state lands.

The petitioner sincerely appreciates the Land Board giving him the opportunity for "**fair process**" to present new evidence, in order to protect adjacent properties, and protect property and important facilities/structures from erosion damages, and other adverse impacts to the resource, in the spirit of ***Malama Pono and Malama Aina***.

Respectfully submitted,



Charles Tsu Yew Wong, Owner
46-107 Lilipuna Road
Kaneohe, Hawaii 96744.



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
DAN DAVIDSON
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DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:PB:SL

OCT 28 2003

File Number Encroachment: OA-04-12

Mr. Kenneth Wong
Attorney at Law
745 Fort Street, Suite 600
Honolulu, Hawaii 96813

Dear Mr. Wong:

Subject: Shoreline Encroachment (Seawall and Fill) at Kaneohe Bay, Oahu, Hawaii, TMK: (1) 4-6-1:6

Office of Conservation and Coastal Lands (OCCL) staff has reviewed the submitted documentation for this case. The encroachment in question is a seawall and fill located Makai of the homeowner's property line. The total area of the encroachment is approximately 819 square feet.

OCCL staff was unable to locate any construction permit or other land use authorization permits at the State or at the City and County of Honolulu for the seawall. The agent for the applicant states that the seawall was present before his client's purchased the property in 1978. Based on the photographs submitted with the questionnaire, the subject wall and fill appear to have been present for a long time. The fill area has mature trees growing on it.

However, we reviewed the Land Court files in the State Survey Office to glean more information about this parcel. Land Court Application # 1100, Map 21 does not show the subject wall encroachment in existence in 1958. Thus, we conclude that the encroachment occurred sometime after that, although we do not know if it occurred subsequent or prior the establishment of the Conservation District in 1964.

OCCL will not pursue this matter as a Conservation District violation since we have not been able to conclude or deduce that a violation was committed in the Conservation District for this encroachment. As a consequence, DLNR does not consider the encroachment a Conservation District violation and will not be asking for an after-the-fact Conservation District Use Application to cure this matter.

EXHIBIT C

Exhibit 1

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department 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, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted.

Surrounding Land Uses:

The surrounding uses are residential. All adjacent residences share this contiguous seawall.

Beach Resources:

The tidal area is a shallow mud flat.

Public Access:

There is no public access to the beach.

Effect of Removing the Encroachment on:

Beach Resources: The removal of the encroachment would have no impact on public access. Public recreation such as fishing, diving and boating takes place offshore of the parcel. Removal of the wall could result in significant soil erosion.

Public Access: OCCL staff has determined that public access would not be enhanced by removal of the encroachment.

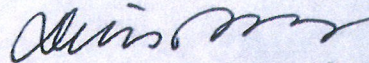
Affect on Adjacent Properties: Removal of this portion of the wall would affect the two abutting landowners as the wall in question also fronts their parcels.

Upon review and careful consideration of the information gathered on this case, staff has determined that allowing the encroachment to remain through the issuance of an easement for the seawall and fill area would have no adverse impacts on natural resources, including beach resources. Therefore, the OCCL has no objections to an easement request being processed. Pursuant to Chapter 171, you are required to obtain a land disposition (normally a term easement in

these cases) for the use of public lands, and you may be subject to a \$500 fine for the encroachment. Please contact the Oahu District Branch at 587-0433 regarding the processing of an easement. If you do not pursue an easement, you will be required to remove the encroachment.

We hope this letter helps resolve some of the outstanding issues regarding your property. Please feel free to contact Sam Lemmo, of the Office of Conservation and Coastal Lands at 587-0381. Please contact the Oahu District Land Agent at 587-0433 regarding the processing of an easement.

Sincerely,



Dierdre S. Mamiya, Acting Administrator
Office of Conservation and Coastal Lands

Cc:Oahu Board Member
Oahu District Land Office
Chairperson's Office



Exhibit 2



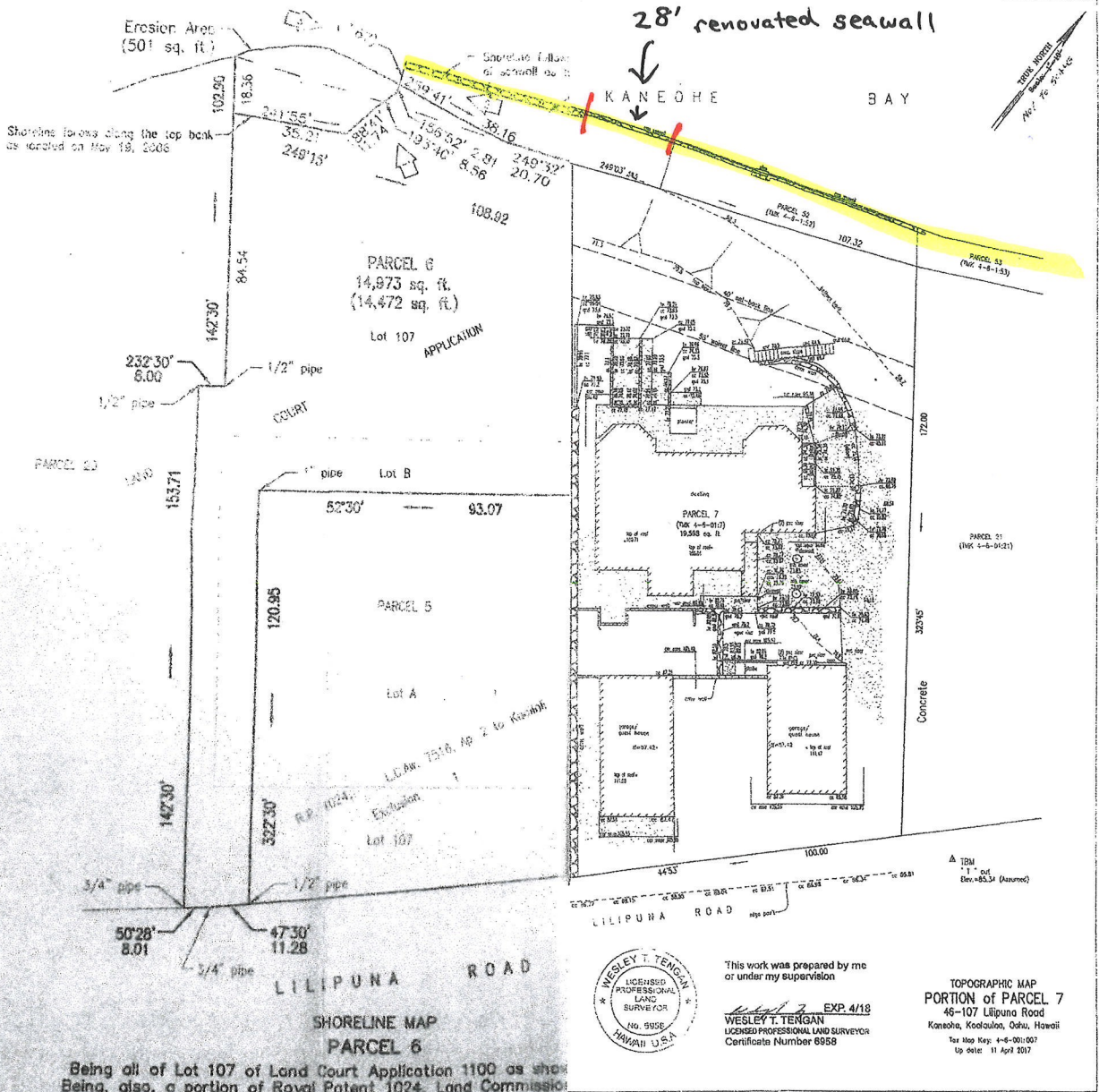
Exhibit 3



Imagery Date: 1/29/2013 21°25'30.06" N 157°47'43.53" W elev 1m eye alt 127 m

Google Earth

Exhibit 4



SHORELINE MAP
PARCEL 6
 Being all of Lot 107 of Land Court Application 1100 as shown on the map of the same title.
 Being, also, a portion of Royal Patent 1024, Land Commission Case No. 1024, Apona 2 to Kaalihi (all of Lot B) Heela, Koolaupoko, Oahu, Hawaii
 Date: May 19, 2006



This work was prepared by me
 or under my supervision
WESLEY T. TENGAN
 LICENSED PROFESSIONAL LAND SURVEYOR
 Certificate Number 6958

TOPOGRAPHIC MAP
PORTION OF PARCEL 7
 46-107 Lilipuna Road
 Kaneohe, Koolauloa, Oahu, Hawaii
 Tax Map Key: 4-8-001/007
 Up date: 11 April 2017