

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96819

October 11, 2019

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

Land Board Members:

SUBJECT: FIND AND DECLARE THAT LA MARIANA SAILING CLUB, INC. (LMSC) HAS ENCROACHED ONTO STATE LAND AT OR ADJACENT TO KE'EHII SMALL BOAT HARBOR, LOCATED AT KE'EHII SMALL BOAT HARBOR, HONOLULU, OAHU, TAX MAP KEY: (1) 1-2-023:081 (POR.)

SUMMARY:

This submittal requests that the Board of Land and Natural Resources (the "Board") find that LMSC encroached upon Department of Land and Natural Resources (DLNR) Division of Boating and Ocean Recreation (DOBOR) land outside of their lease area and made improvements without prior written approval as required by their lease.

DISCUSSION:

The original term of LMSC's lease No. H-78-5 was 35 years, commencing May 1, 1979, and ending on April 30, 2014. In order for LMSC to recover costs of repairing piers damaged by the March 11, 2011, tsunami (in Japan) the Board granted a 5-year extension from May 1, 2014, to April 30, 2019.

At its April 26, 2019, meeting, under agenda item J-2, the Board granted LMSC a 20-year extension commencing May 1, 2019, and expiring on April 30, 2039. During the meeting, the Board instructed DOBOR to pursue financial remedies from LMSC for the unauthorized use of state land.

LMSC lease area is comprised of .605 acres of fast land and 2.374 acres of submerged land. Google Earth photos indicate that LMSC constructed an additional pier extension that is outside of their lease area. The pier extension was done without DOBOR's authorization and encroached onto submerged state lands as shown on **Exhibits A-1 thru A-3** (encroachment). The April 19, 2005, Google Earth historic satellite photo shows the (Ewa) pier as having a length of approximately 160 linear feet. See **Exhibit B-1**. The July 30, 2006, satellite photo, shows the (Ewa) pier measuring approximately 235 linear feet. See **Exhibit B-2**.

At its meeting on April 26, 2019, the Board noted that the violation occurred on Conservation Land. It was recommended that staff investigate the application of sanctions found in HAR §13-1-70 (Administrative sanctions schedule; factors to be considered) and HRS §183.c.7 (Penalties for violations). The Office of Conservation and Coastal Lands (OCCL) was consulted regarding sanctions for the encroachment onto Conservation Land. OCCL deferred action to DOBOR as the land owner and the responsible party.

Although the encroachment area and lease area are encumbered by GEO No. 3202 (issued to Department of Transportation Airport and Harbors Division, by operation of law, Act 272 Session Laws of Hawaii, 1991) Act 272 transferred the administration of small boat harbors to DLNR-DOBOR. Staff consulted with the DLNR Oahu District Land Office (ODLO) to clarify whether the encroachment area was included in the transfer under Act 272, and therefore under DOBOR's jurisdiction. ODLO confirmed that the encroachment area is under DOBOR's jurisdiction.

FACTUAL BACKGROUND:

Neither staff nor LMSC has a record of when the pier extension was started or completed. For the purposes of making a recommendation for retroactive rental due, a start date, area and rate per square foot were determined as follows:

Staff assumes a start date of January 1, 2006. The Google Earth historic photo dated May 19, 2005, shows the Ewa pier as measuring approximately 160 linear feet, as shown on **Exhibit B-1**. The Google Earth historic photo dated July 30, 2006, shows the Ewa pier as measuring approximately 235 linear feet, as shown on **Exhibit B-2**. It appears that LMSC encroached upon state land and construction of the pier extension occurred within the 14.33-month period between May 19, 2005, and July 30, 2006. Therefore, staff is recommending a start of encroachment date of January 1, 2006, which is seven (7) months prior to when the pier extension appeared on the July 30, 2006, Google Earth photo.

To determine the encroachment area, staff used the Google Earth's polygon measuring tool. Staff estimates that the encroachment measures approximately 7,000 square feet, as shown on **Exhibit B-3**.

LMSC rent was reopened in 2004, by an independent appraisal hired by DLNR. The rent for submerged lands was established at \$.04 per square foot per month. Staff recommends that this rate (\$.04/sq. ft./mo.) be used in determining retroactive rent from January 1, 2006, to April 30, 2019, for the 7,000 square feet of submerged land. The proposed retroactive rent from January 1, 2006, to April 30, 2019, is \$44,800.00 (\$.04/month x 7,000 Sq. Ft. x 160 months).

The current rental rate, for the first 10 years of the 20-year extension, effective May 1, 2019, and ending April 30, 2029, is currently in negotiations, pursuant to HRS §171-17. LMSC is in the process of removing the encroaching pier improvements. Once the new rent has been determined thru negotiations and the improvements have been removed, staff will retroactively calculate the rent from May 1, 2019, to the date of removal.

REGULATORY AUTHORITY:

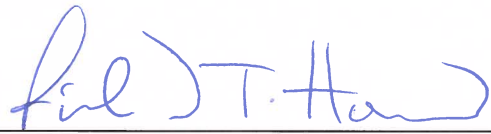
HAR §171-6.14 Powers.

RECOMMENDATION

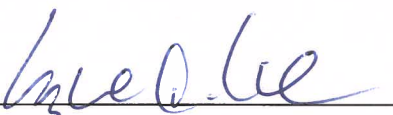
That the Board of Land and Natural Resources:

1. Find that LMSC made improvements that encroached onto state land without DLNR (Lessor) consent.
2. Authorize the Chairperson to charge LMSC back rent of \$44,800 for the period January 1, 2006, to April 30, 2019.
3. Authorize the Chairperson to charge LMSC back rent from May 1, 2019, to the date improvements have been removed, based upon the negotiated rental rate for submerged lands.

Respectfully Submitted,

for 
EDWARD R. UNDERWOOD, Administrator
Division of Boating & Ocean Recreation

APPROVED FOR SUBMITTAL:


SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

Attachments:

- Exhibit A-1 Location of Ke'ehi Small Boat Harbor on Oahu
- Exhibit A-2 Location of LMSC Encroachment at Ke'ehi Small Boat Harbor
- Exhibit A-3 Satellite Map of LMSC Lease Area and Encroachment Area
- Exhibit B-1 Pier Length as of April 19, 2005
- Exhibit B-2 Pier Length as of July 30, 2006
- Exhibit B-3 Encroachment Area

Exhibit A-1

La Mariana Sailing Club, Inc. Encroachment at Ke'ehi Small Boat Harbor



Exhibit A-1

Ke'ehi Small Boat Harbor

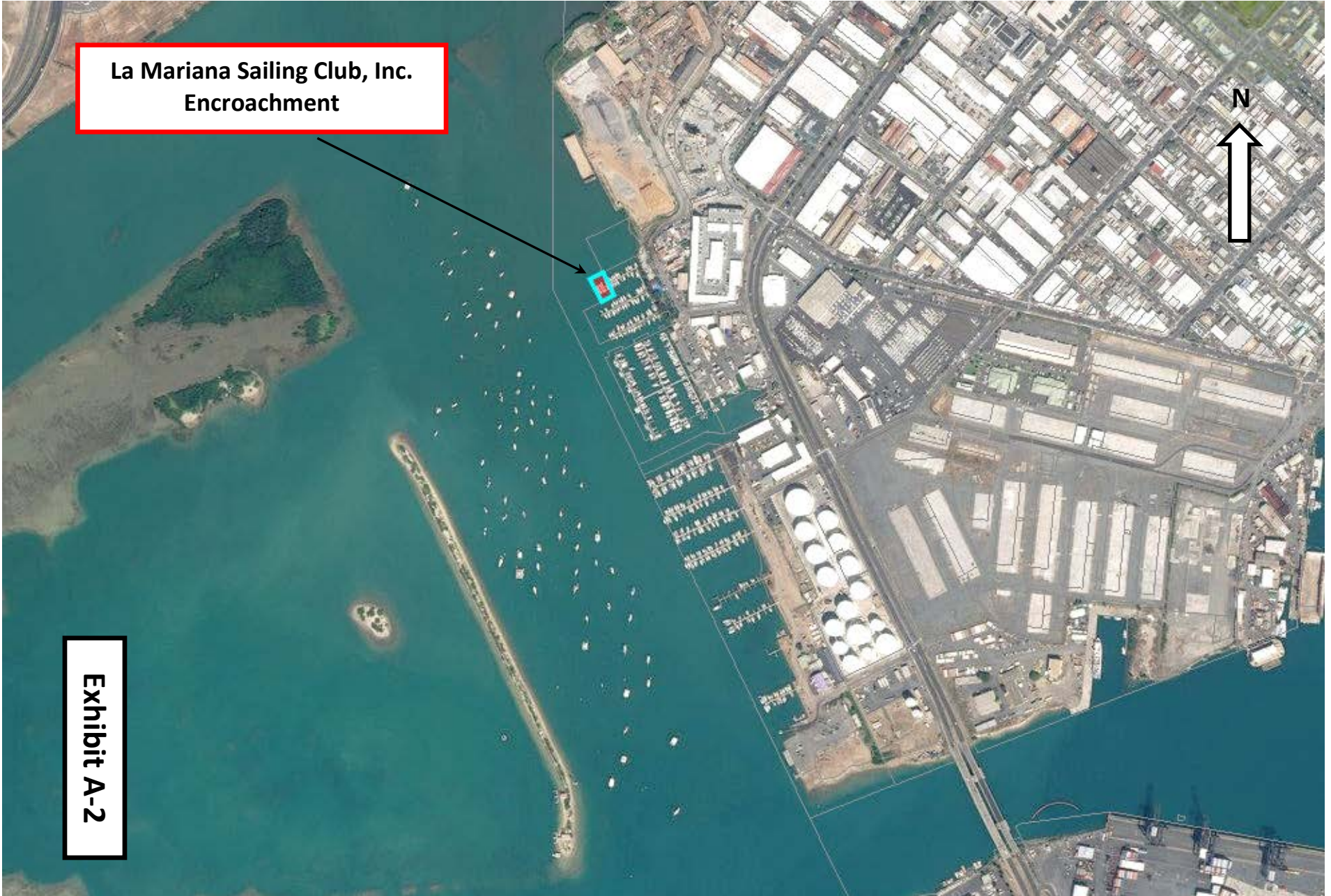
Ke'ehi Small Boat Harbor

Exhibit A-2

**La Mariana Sailing Club, Inc.
Encroachment**

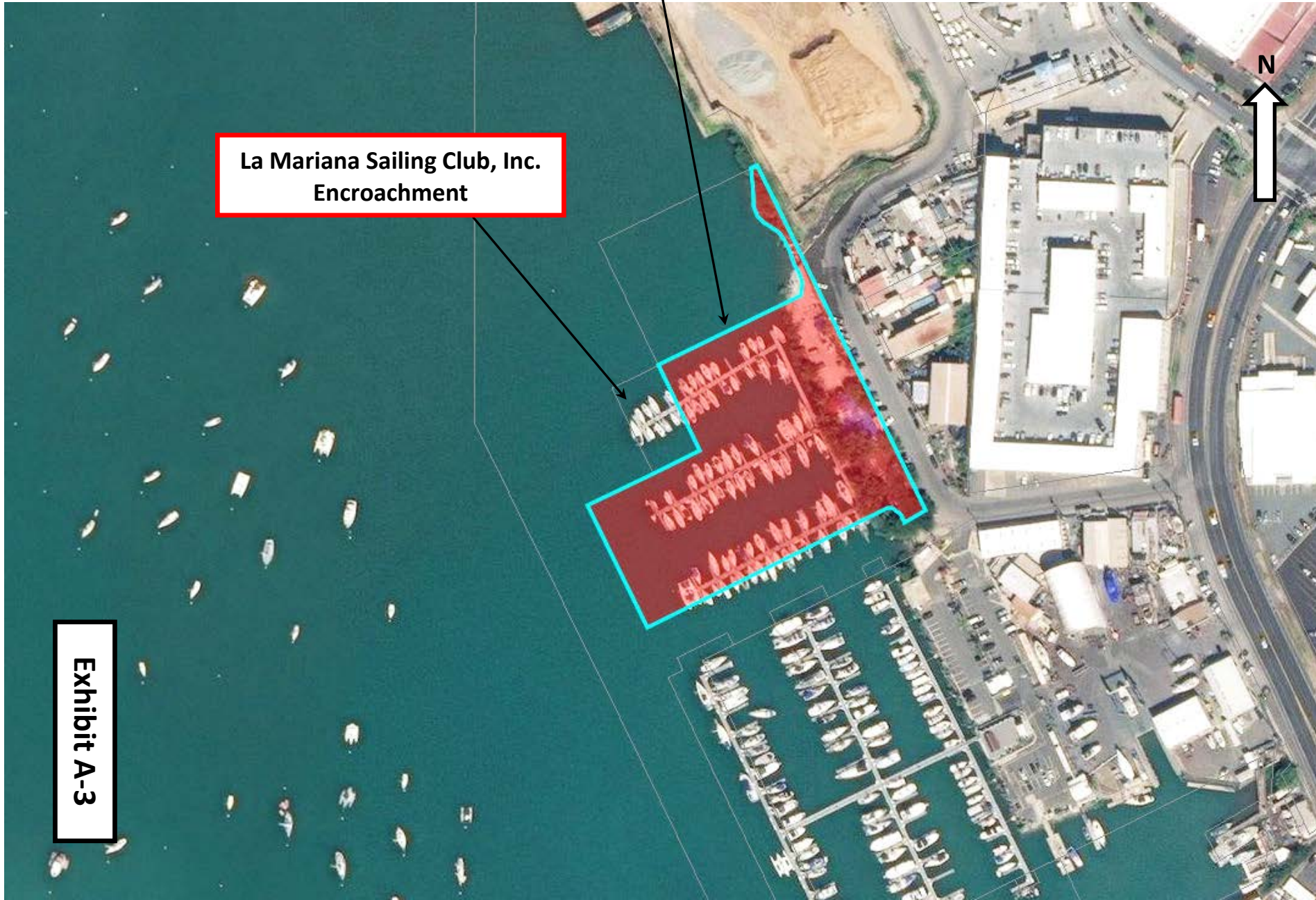
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Exhibit A-2



La Mariana Sailing Club, Inc. Lease Area

Exhibit A-3



**La Mariana Sailing Club, Inc.
Encroachment**

Exhibit A-3

Exhibit B-1

La Mariana Sailing Club, Inc. Encroachment at Ke'ehi Small Boat Harbor

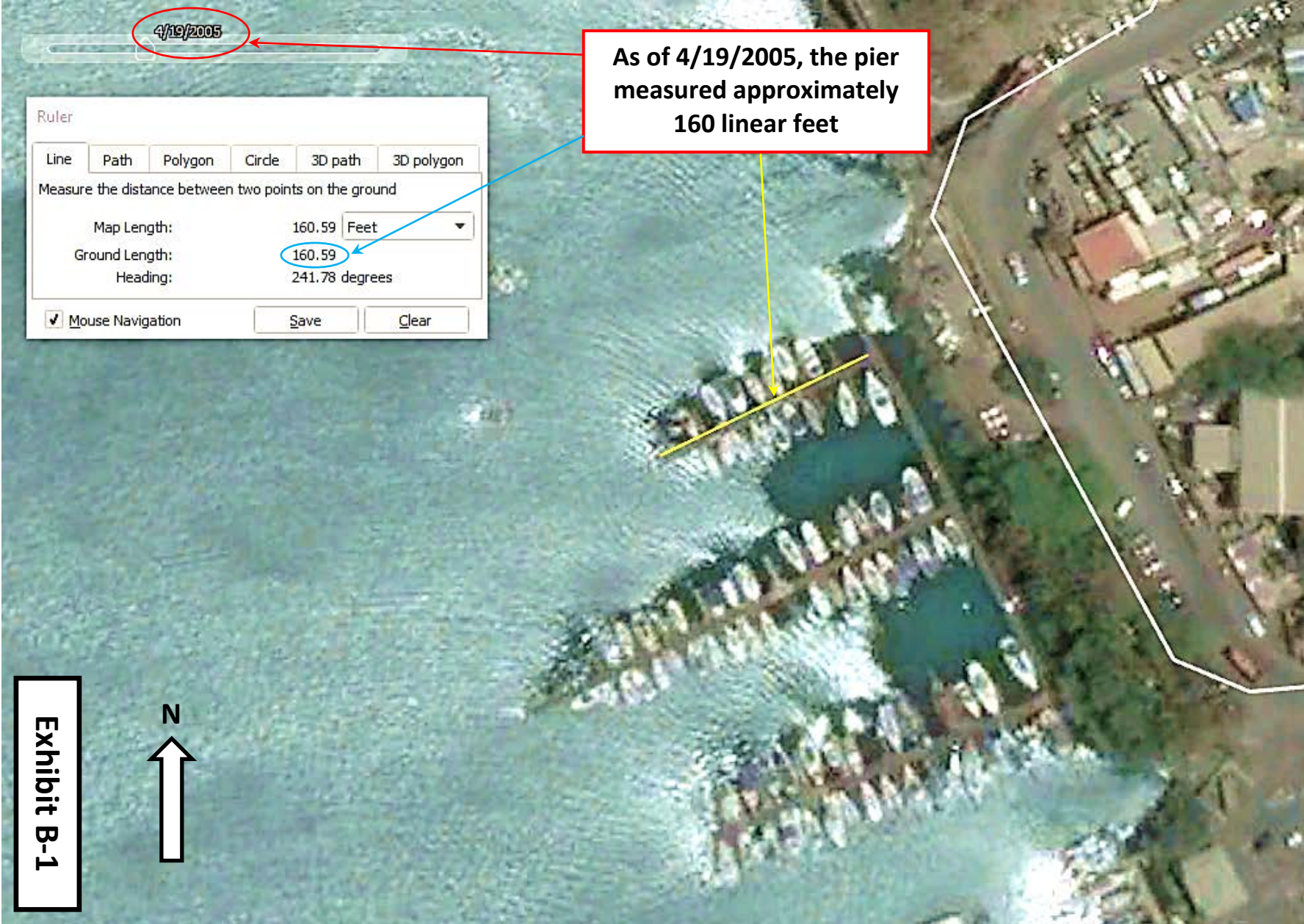


Exhibit B-2

La Mariana Sailing Club, Inc. Encroachment at Ke'ehi Small Boat Harbor

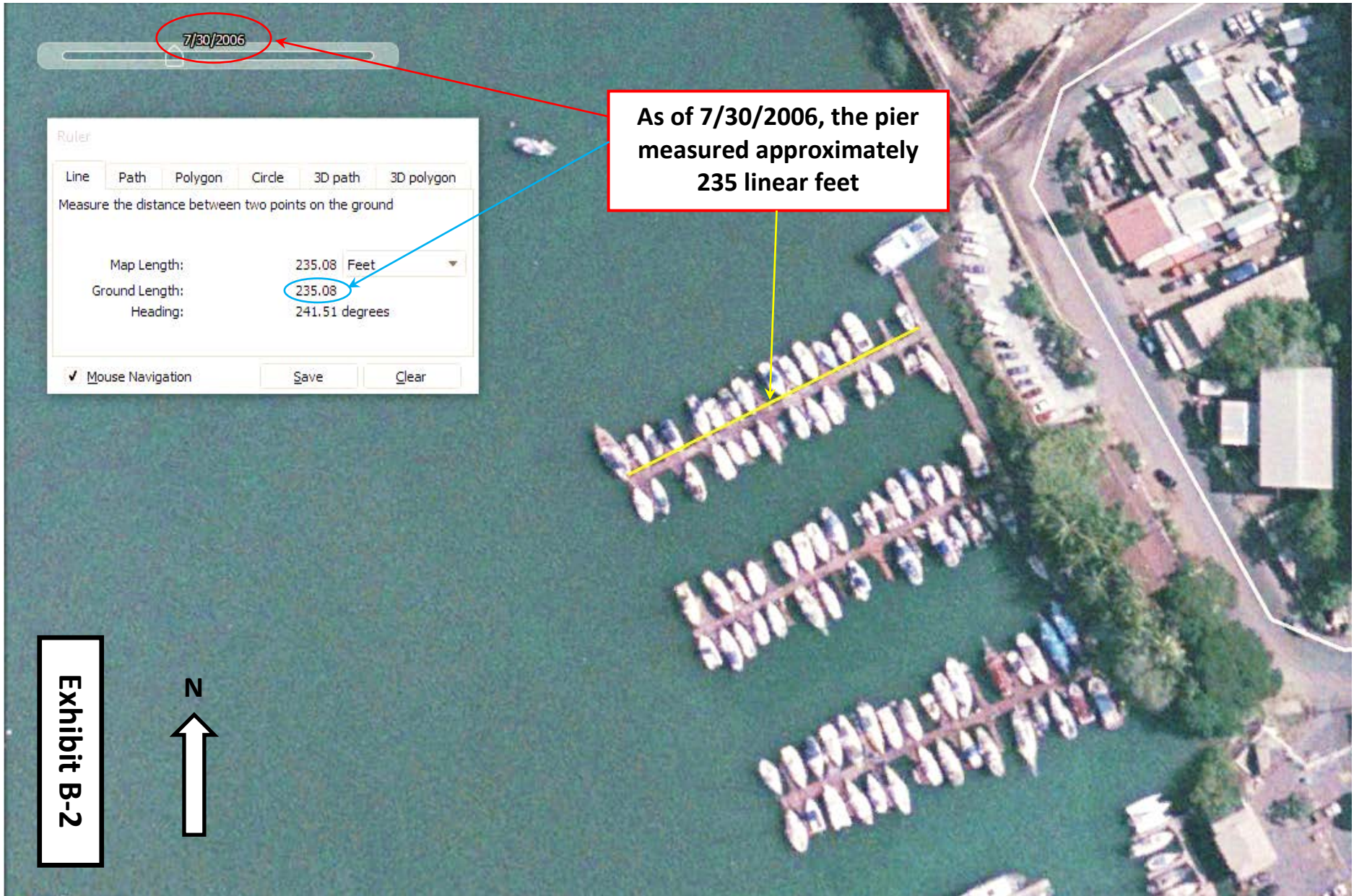


Exhibit B-3

La Mariana Sailing Club, Inc. Encroachment at Ke'ehi Small Boat Harbor

