

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

February 14, 2020

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

PSF No.: 02OD-286

OAHU

Rescind Prior Board Action of November 19, 2004, Item D-5, Sale of Reclaimed Lands to Gordon Imata, Trustee, Kahaluu, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-019:22 seaward

Grant of Term, Non-Exclusive Easement to Gordon Y. Imata and Natalie K. Imata, Co-Trustees of (1) The Gordon Y. Imata Trust dated August 16, 2011, and (2) The Natalie K. Imata Trust dated August 16, 2011, for Seawall, Steps and Reclaimed Land Purposes; Kahaluu, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-019:Seaward of 022

APPLICANTS:

Gordon Y. Imata and Natalie K. Imata, Co-Trustees of (1) The Gordon Y. Imata Trust dated August 16, 2011, and (2) The Natalie K. Imata Trust dated August 16, 2011. Undivided one-half (1/2) interest to each trust. Tenants in common.

LEGAL REFERENCE:

Sections 171-6, 13, 17, and 53(b), Hawaii Revised Statutes (“HRS”), as amended.

LOCATION:

Portion of Government land located in Kahaluu, Koolaupoko, Oahu, identified by Tax Map Key: (1) 4-7-019:seaward of 022, as shown on the attached maps labeled **Exhibits A-1** and **A-2**.

AREA:

669 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 reclaimed 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 Section 11-200.1-15, Hawaii Administrative Rules ("HAR") and the Exemption List for the Department of Land and Natural Resources, reviewed and concurred with 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 that states, "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 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. Applicant shall be required to pay for the costs of public notice pursuant to section 171-16 (d).

REMARKS:

In 2006, David T. Imata, Gordon Y. Imata, and Janyce K.I. Blair, property owners at the time, was granted a 55-year lease (GL-5819) for private non-commercial pier purposes for the abutting pier under the Kaneohe Bay Pier Amnesty Program.

In addition to the pier, a 2002 shoreline survey map showed the subject seawall, stairs, and reclaimed land area was also encroaching on State Conservation land (see **Exhibit C-1 to C-5**, photos included). By letter dated October 25, 2002 (OA-03-03), the Office of Conservation and Coastal Lands, formerly known as Coastal Lands Program (OCCL), commented that the encroachments appeared to have been in existence since the 1940s and they had no objections to the issuance of an easement to resolve the encroachments (see **Exhibit D**).

On November 19, 2004, Item D-5, the Board of Land and Natural Resources approved the sale of reclaimed lands to Gordon Imata, Trustee, for the subject encroachments. During the process, Mr. Imata paid the appraisal fee amount of \$2,100 (the sale value was determined to be \$54,000). An offer letter was sent to the applicant. However, the records show that the consideration was never paid; as such, the sale of the reclaimed lands was never completed. The appraisal fee was never refunded to Mr. Imata.

For the Board's information, at its meeting on April 8, 2011, Item D-5, for another case in Kaneohe, the Board approved staff's recommendation that selling of the fee interest of the ceded, reclaimed land was not a good policy. As such, the practice of disposing of reclaimed State lands through sales has not been an option since that time. Under the same 2011 submittal, the Board authorized the refund of the appraisal fee paid by the applicant for the sale of reclaimed land.

Around August 2019, staff contacted Gordon Imata regarding resolution of the encroachments. Mr. Imata was informed that the State no longer sell State lands and, instead now offers 25-year, term easements. Mr. Imata expressed interest in completing the disposition process. Therefore, staff recommends the Board authorize the granting of a 25-year, term easement for the seawall, stairs, and reclaimed land area. Staff also recommends applying Mr. Imata's \$2,100 towards the new appraisal cost. Staff notes a recent similar case whereby appraisal fees paid in years past were credited towards new appraisal costs for an easement disposition.

The Department of Facility Maintenance and the Board of Water Supply have no objections to the granting of an easement. The Office of Conservation and Coastal Lands has no objections and no comments. The Department of Planning and Permitting has no objections and provided comments (see **Exhibit E**). The Office of Hawaiian Affairs did not respond to the request for comments.

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.

Additionally, staff requests the Board rescind its prior approval dated November 19, 2004, item D-5.

There are no other pertinent issues or concerns and staff has no objection to the request.

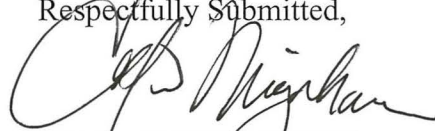
RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1-15, 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) 4-7-019:022 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 Gordon Y. Imata and Natalie K. Imata, Co-Trustees of (1) The Gordon Y. Imata Trust dated August 16, 2011, and (2) The Natalie K. Imata Trust dated August 16, 2011, 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) 4-7-019:022, 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. Review and approval by the Department of the Attorney General;
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
 - E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.
4. Rescind its prior approval dated November 19, 2004, item D-5.

Respectfully Submitted,



Cal Miyahara
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:

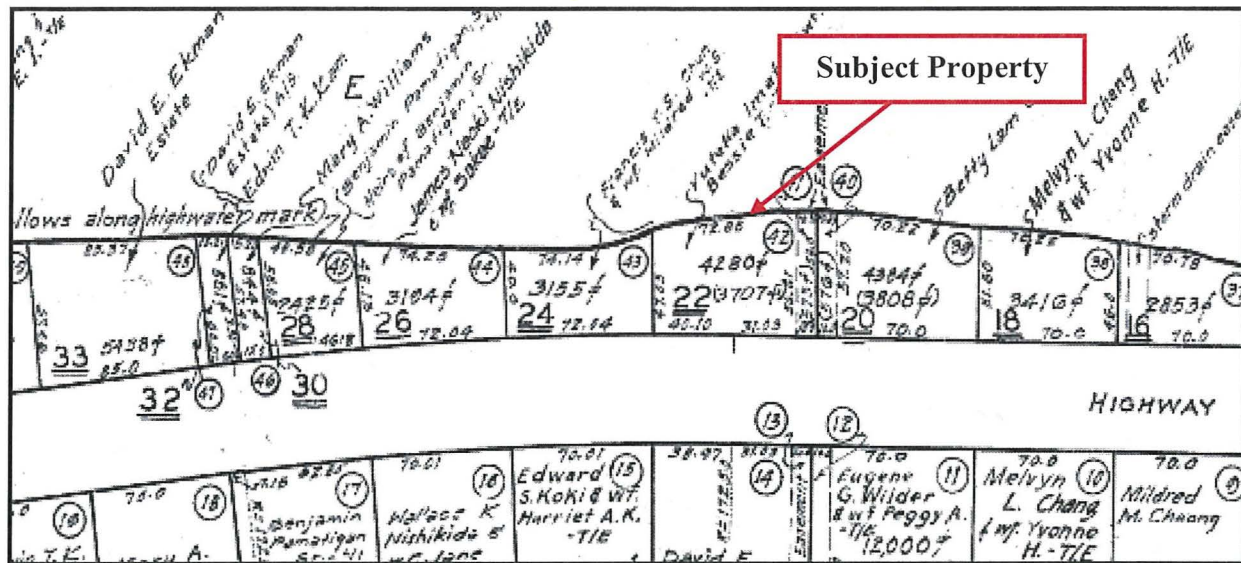


Suzanne D. Case, Chairperson



Note: The property is located in the Kaneohe Bay vicinity.

EXHIBIT A-1



TMK: (1) 4-7-019:seaward of 022

EXHIBIT A-2

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1-15, HAR

Project Title: Grant of Term, Non-Exclusive Easement to Gordon Y. Imata and Natalie K. Imata, Co-Trustees of (1) The Gordon Y. Imata Trust dated August 16, 2011, and (2) The Natalie K. Imata Trust dated August 16, 2011, for Seawall, Steps and Reclaimed Land Purposes; Rescind Prior Board Action of November 19, 2004, Item D-5, *Sale of Reclaimed Lands to Gordon Imata, Trustee, Kahaluu, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-019:22 seaward*

Reference No.: PSF 02OD-286

Project Location: Kahaluu, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-019:Seaward of 022.

Project Description: Issuance of term, non-exclusive easement for seawall, steps, and reclaimed land purposes.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Section 11-200.1-15, Hawaii Administrative Rule, 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".

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.

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 reclaimed land). The seawall, steps, and reclaimed land 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 No, the requested area is a portion of shoreline State land that contains improvements Makai of the abutting private property

EXHIBIT B

Particularly Sensitive Environment?

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 environmental or ecological receptors.

Consulted Parties:

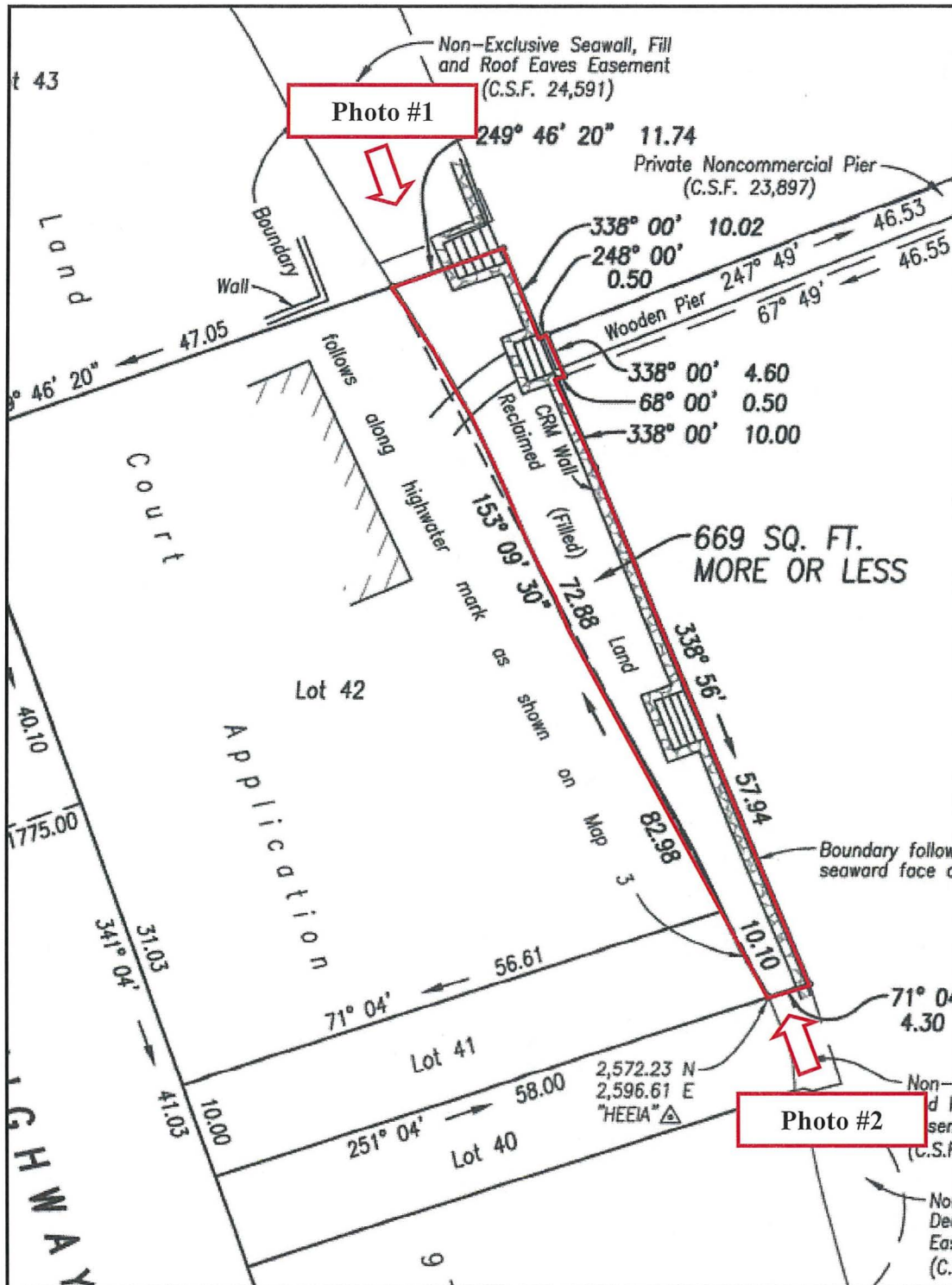
Agencies as noted in the submittal.

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.



Note: Red line (—) indicates encroachment areas, includes seawall, steps, and reclaimed land.

EXHIBIT C-1



Photo #1 - Looking south along the easement area.

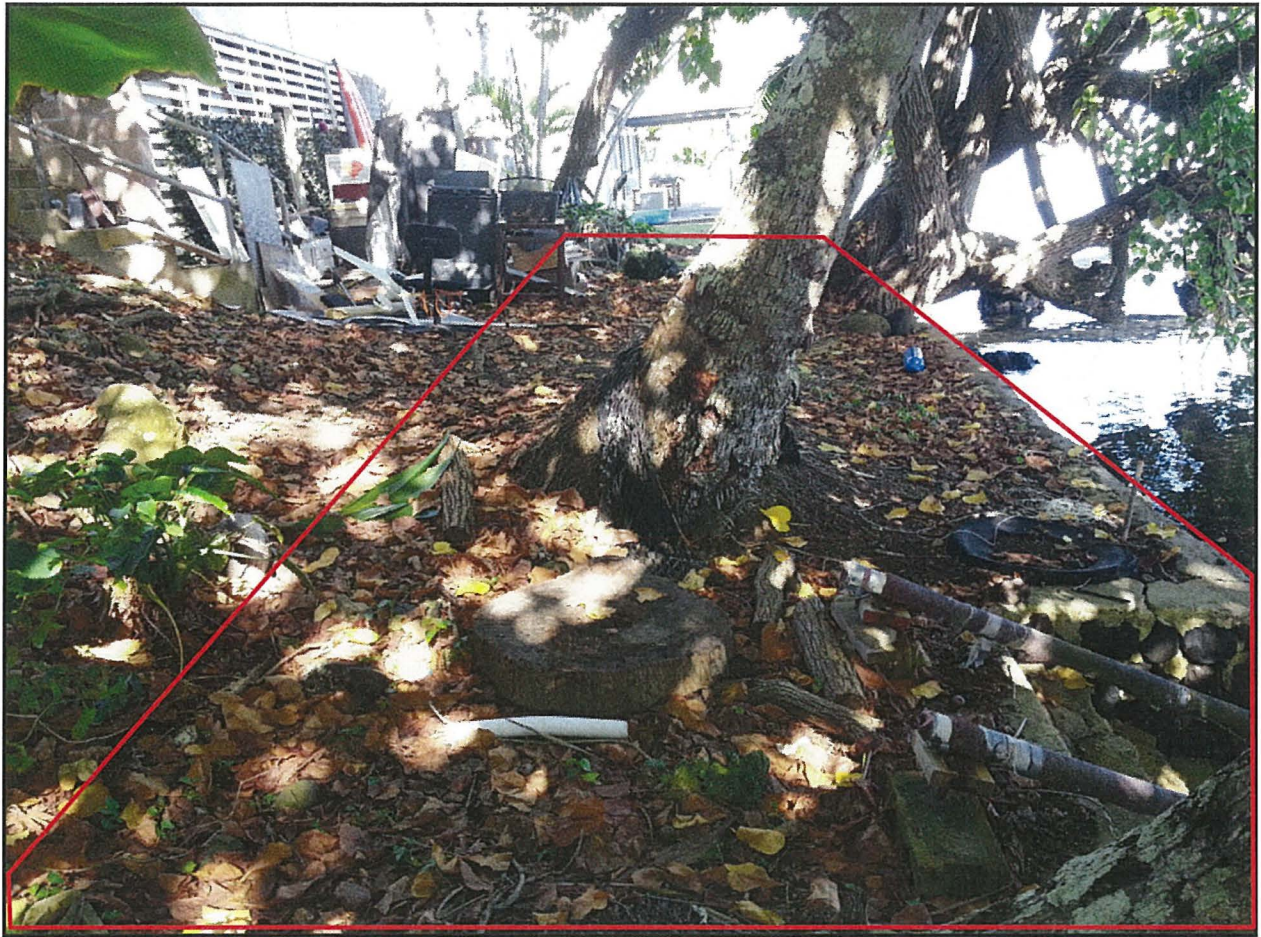


Photo #2 - Looking north along the easement area.

EXHIBIT C-3

BENJAMIN J. CAYETANO
GOVERNOR



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DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. Box 621
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE
COMMISSION
LAND
STATE PARKS

REF:PB:MM

File Number Encroachment: OA-03-03

OCT 25 2002

David T. Imata

Kaneohe, HI 96744-2442

Dear Mr. Imata:

Subject: Shoreline Encroachment (Seawall) at [REDACTED] Kaneohe, Oahu [TMK: 1-4-7-19:022]

Coastal Lands Program (CLP) staff has reviewed the submitted documentation for this case. The encroachment in question is a seawall and fill area located Makai of the homeowner's property line. This structure is Makai of the metes and bounds of the parcel in question and thus constitutes an encroachment onto State of Hawaii land. The area of the alleged encroachment is approximately 731 square feet.

During the September 12, 2002 site visit staff observations confirm that the encroachment in question is long established. Furthermore during this visit you submitted a survey map entitled Land Court Application 979, which appears to show the encroachment in question in existence as of August 29, 1940. Staff has reviewed the submitted Land Court documentation of August 29, 1940 and can confirm that the structure was built prior to the establishment of the Conservation District in 1964. It is not possible to confirm at this time whether the wall was constructed on submerged land. Thus we cannot determine whether the seawall and fill area in question was built within the Conservation District and therefore do not consider them a Conservation District violation.

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:

EXHIBIT D

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. On September 12, 2002 staff visited the site to investigate the encroachments and to gather reconnaissance information to support a recommendation for either removal of the encroachments or issuance of an easement. Of primary importance are the Department's objectives to protect and preserve shoreline resources and shoreline access.

Surrounding Land Uses:

It was observed during the site visit that surrounding uses are residential. The Kamehameha Highway subdivision in question was built on a portion of Ili of Luukoi (Grant 1275). Thus all adjacent residences share this contiguous seawall.

Beach Resources:

CLP staff inspected the area. 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.

Public Access: CLP 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 Planning Branch has no objections to an easement request being processed. The Oahu District Land Office calculates the monetary amount required to dispose this use of State land through an easement. The landowner should note that they may be subject to the administrative penalty system for unauthorized use of State land pursuant to section 171-6, Hawaii Revised Statutes.

We hope this letter helps resolve some of the outstanding issues regarding your property. Please feel free to contact Matthew Myers, of the Coastal Lands Program at 587-0385. Please contact the Oahu District Land Agent at 587-0433 regarding the processing of an easement.

Aloha,



Dierdre S. Mamiya
Administrator

Cc: Oahu Board Member
Oahu District Land Office
Chairperson's Office
Patti Edwards, DOCARE

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. HIJU
 DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
 DEPUTY DIRECTOR

January 16, 2020

2019/ELOG-2558 (CK)

Mr. Cal Miyahara, Shoreline Disposition Specialist
 State of Hawaii
 Department of Land and Natural Resources
 Land Division
 235 South Beretania Street, 6th Floor
 Honolulu, Hawaii 96804

Dear Mr. Miyahara:

SUBJECT: Request for Comments
 State Grant of Term, Non-Exclusive Easement for Seawall, Steps,
 and Reclaimed Land - Imata Trusts
 Seaward of Tax Map Key (TMK) 4-7-019: 022 - Kahaluu
 State Reference No. 02OD-286

This is in response to your letter, received December 29, 2019, requesting comments regarding the above-referenced proposal, to rescind a previous Board Action granting sale of the land seaward of the above-referenced property, and approval of a 25-year State grant of a non-exclusive easement for *"the right, privilege, and authority to use, repair, and maintain the existing seawall, steps, and reclaimed land over, under and across State-owned land."* According to your submittal, the proposed easement area would be located makai of the seaward property line and would consist of an approximately 667-square-foot strip of property inclusive of an existing rock seawall with steps and access to an existing boat ramp. The Applicant would be required to provide up-to-date survey maps showing the boundaries of the proposed easement area.

We do not have any objections to the State's proposed "Grant of Term, Non-Exclusive Easement," assuming the required survey maps confirm the easement area is located on State-owned land. Should this not be the case, we request further consultation in regard to this property.

EXHIBIT E

Mr. Cal Miyahara
January 16, 2020
Page 2

In addition, we would like to reiterate that the property mauka of the State property line at TMK 4-7-019: 022 (subject property) falls within the City and County of Honolulu's R-10 Residential District, is considered a shoreline lot, and is located within the Special Management Area. Therefore that portion of the site is subject to Chapter 21 (Land Use Ordinance), Chapter 23 (Shoreline Setbacks), and Chapter 25 (Special Management Area) of the Revised Ordinances of Honolulu (ROH).

Having briefly reviewed the building permit history included with your submittal and in our records, it appears that the existing residential structure on the subject property was lawfully permitted in 1961 (main structure - Building Permit No. 194052) and 1967 (basement alteration - Building Permit No. 36617). However, we do not have evidence as to whether the structure was built in conformance with approved plans and required setbacks. A building permit (Building Permit No. 37974) for a forty-foot-long, and four-foot, six-inch-high retaining wall topped by a one-foot-high fence was also approved for the property in 1967. It is unclear whether this permit refers to the seawall on the makai side of the property, or an existing retaining wall along Kamehameha Highway (mauka side).

Finally, the property owner should be aware that the subject property is listed as Flood Zone D on the Federal Emergency Management Agency Flood Insurance Rate Map, which corresponds to areas where no floodplain mapping has occurred. Flood Zone D properties are not subject to Chapter 21A, ROH (Flood Hazard Requirements). However, it is recommended that property owners in Flood Zone D have a flood hazard assessment conducted as part of due diligence for their own properties.

Thank you for the opportunity to comment on this proposal. Should you have any questions, please contact Christi Keller, of our staff, at (808) 768-8087, or by email at c.keller@honolulu.gov.

Very truly yours,



FOR: Kathy K. Sokugawa
Acting Director