

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

April 23, 2021

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

OAHU

Enforcement Action for Unauthorized Encroachment and Work on Unencumbered State Lands, Hawaii Administrative Rules Chapter 13-221, and Hawaii Revised Statutes, Section 171-6, against Corine Hayashi, HTH DH Ventures LLC, and Sea Engineering, Inc. at Honolulu, Oahu, Tax Map Key: (1) 3-1-039: portions of 065.

PURPOSE:

Enforcement action for unauthorized encroachment and work on unencumbered State lands pursuant to Hawaii Administrative Rules (HAR) and Hawaii Revised Statutes (HRS) against Corine Hayashi, HTH DH Ventures LLC, and Sea Engineering, Inc. at Honolulu, Oahu, Tax Map Key: (1) 3-1-039:065.¹

LEGAL REFERENCE:

Subsections 171-6(12) and (15), Hawaii Revised Statutes (HRS), and Section 13-221-23, Hawaii Administrative Rules (HAR), as amended.

BACKGROUND:

HTH DH Ventures LLC (HTH) is the owner of TMK (1) 3-1-039:005. HTH initiated an inquiry with the Department in December 2019 regarding an easement request for the existing concrete steps located on the seaward side of the seawall at TMK (1) 3-1-039:065 (Parcel 65). Staff noted that HTH was planning to repair the steps due to their dilapidated condition.

According to the county's real property tax records, Parcel 65 is owned by Michael Fergus and Janice Lau (Fergus)² and covers portions of the Old Diamond Head Road and sandy beach area abutting the government road. Fergus also owns TMK

¹ The subject area is a portion of TMK (1) 3-1-039:065 as indicated on the City and County of Honolulu's Real Property Assessment Division record. Notice from the Department to the Respondents used "seaward of 044" as the subject location. However, both TMKs refer to the same location.

² Pursuant to the Declaratory Judgment in Civil No. 97-2900-07 dated January 7, 1998 recorded at the Bureau of Conveyances as document no. 98-123744 on August 20, 1998, the court ordered, adjudged and decreed final judgment in favor of Plaintiff Michael Fergus and Janice Lau against Defendant State of Hawaii. Defendant State of Hawaii has no interest, right, or title to [Parcel 65].

(1) 3-1-039:044 abutting Parcel 65 further subject to Easement J for footpath purposes in favor of HTH. See **Exhibits A-1 to A-3** for the respective locations. A proposed shoreline map is also attached as Exhibit A-3 showing the subject steps.³

In response to a shoreline encroachment information sheet, the Office of Conservation and Coastal Lands (OCCL) advised HTH's counsel by its letter dated December 9, 2019 (**Exhibit B-1**) that OCCL would support a disposition request to resolve the encroachment at the subject location.

Subsequently, OCCL learned that HTH did not have any recorded easement over Parcel 65, noting that Easement J only pertains to Parcel 44. In its letter dated February 11, 2020 (**Exhibit B-2**), OCCL advised HTH that its previous decision was based on the information provided by HTH in the Shoreline Encroachment Information Sheet regarding the physical impact of the encroachment on beach and public access. OCCL recommended HTH continue working with Land Division on the disposition request.

Staff is aware that a lawsuit was filed in 2020 by Fergus against HTH (1CCV-20-0001099, Fergus v. HTH DH Ventures).

REMARKS:

On the morning of February 27, 2021, it was brought to the Department's attention that unauthorized construction work (see photos at **Exhibit C**) on behalf of Corine Hayashi and HTH DH Ventures LLC was being done by or under the direction of Sea Engineering, Inc. (collectively "Respondents") on the above-referenced State land, including the demolition and removal of concrete steps, excavation on the public beach, and installation of formwork and rebar on State land. An officer from the Division of Conservation and Resources Enforcement (DOCARE) was dispatched to the site and verified the above-mentioned work.

Section 13-221-23, HAR, provides: "Geological features. No person shall destroy, disturb, or mutilate any geological features or dig, or remove sand, earth, gravel, minerals, rocks, fossils, coral or any other substance on the premises. No person shall excavate or quarry any stone, or lay, set, or cause any blast or explosion, or assist in these acts within the premises, except as provided by law or with the written permission of the board or its authorized representative."

Subsection 171-6(12), HRS states the Board may "[b]ring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall:

- (A) Be fined not more than \$1,000 a day for the first offense;

³ There is another stair located at the Koko Head side of Parcel 65, which is being utilized by the owner of Parcels 44 and 65. Any enforcement or disposition action regarding this stair will be under a separate request.

- (B) Be fined not less than \$1,000 nor more than \$4,000 per day upon the second offense and thereafter;
- (C) If required by the board, restore the land to its original condition if altered and assume the costs thereof;
- (D) Assume such costs as may result from adverse effects from such restoration; and
- (E) Be liable for administrative costs incurred by the department and for payment of damages . . .”

Subsection 171-6(15), HRS authorizes the Board to “[s]et, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person engaging in any prohibited use of public lands or conducting any prohibited activity on public lands, or violating any of the other provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be:

- (A) Fined not more than \$5,000 per violation for a first violation or a violation beyond five years of the last violation; provided that, after written or verbal notification from the department, an additional \$1,000 per day per violation may be assessed for each day in which the violation persists...”

There was no authorization from the Board or Land Division regarding the utilization of State lands at the subject location. The demolished steps (**Exhibit D**) had been in place for a long time. However, the Respondents boldly removed the old steps without authority and commenced the construction of new ones. Furthermore, the proposed replacement steps have a different design from the old ones, i.e., this was not a simple repair or maintenance job but a complete demolition and reconstruction of a different staircase.

After review of the facts and circumstances, notices dated March 4, 2021 (**Exhibit E**) were sent to each of the Respondents mentioned above informing them that all improvements and structures including rebar and formwork on the subject State land were unauthorized. The Notice demanded removal of unauthorized improvements and restoration of the subject location.

On March 12, 2021, Jeremy Remily of Sea Engineering, Inc. notified the Department via email that removal and restoration of the subject location required in the Notice dated March 4, 2021 was completed on March 11, 2021. A photo taken by staff after the removal/restoration is attached as **Exhibit F**.

Staff recommends the Board find the Respondents in violation of HAR Section 13-221-23, HRS Subsections 171-6(12) and 171-6(15) and impose fines against the Respondents severally pursuant to Subsection 171-6(15), HRS. In addition, staff recommends the Board authorize the reimbursement of administrative costs (including staff time and fringe benefits) shown in **Exhibit G** related to this enforcement action pursuant to Subsection 171-6(15), HRS.

RECOMMENDATION: That the Board:

1. Impose a fine against Corine Hayashi, HTH DH Ventures LLC, and Sea Engineering, Inc. severally in the amount of **\$5,000** for a first violation pursuant to Subsection 171-6(15), HRS.
2. Impose a fine against Corine Hayashi, HTH DH Ventures LLC, and Sea Engineering, Inc. severally in the amount of \$1,000 per day from March 4, 2021 (date of notice) to March 11, 2021 (date of removal and restoration), i.e. a total of **\$8,000**, pursuant to Subsection 171-6(15), HRS.
3. Find Corine Hayashi, HTH DH Ventures LLC, and Sea Engineering, Inc. jointly and severally liable for the administrative costs associated with administrative work related to this enforcement action described above, pursuant to Subsection 171-6(15), HRS, as itemized below and as shown on attached Exhibit G:

District Land Agent:	\$386.74
DOCARE Officer:	\$78.60
Total Costs:	\$465.34

4. Order that Corine Hayashi, HTH DH Ventures LLC, and Sea Engineering, Inc. shall pay the fines and the administrative costs stipulated above within thirty (30) days of the date of the Board's action.
5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,

Barry Cheung

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

Suzanne D. Case

RT

Suzanne D. Case, Chairperson



EXHIBIT A-1

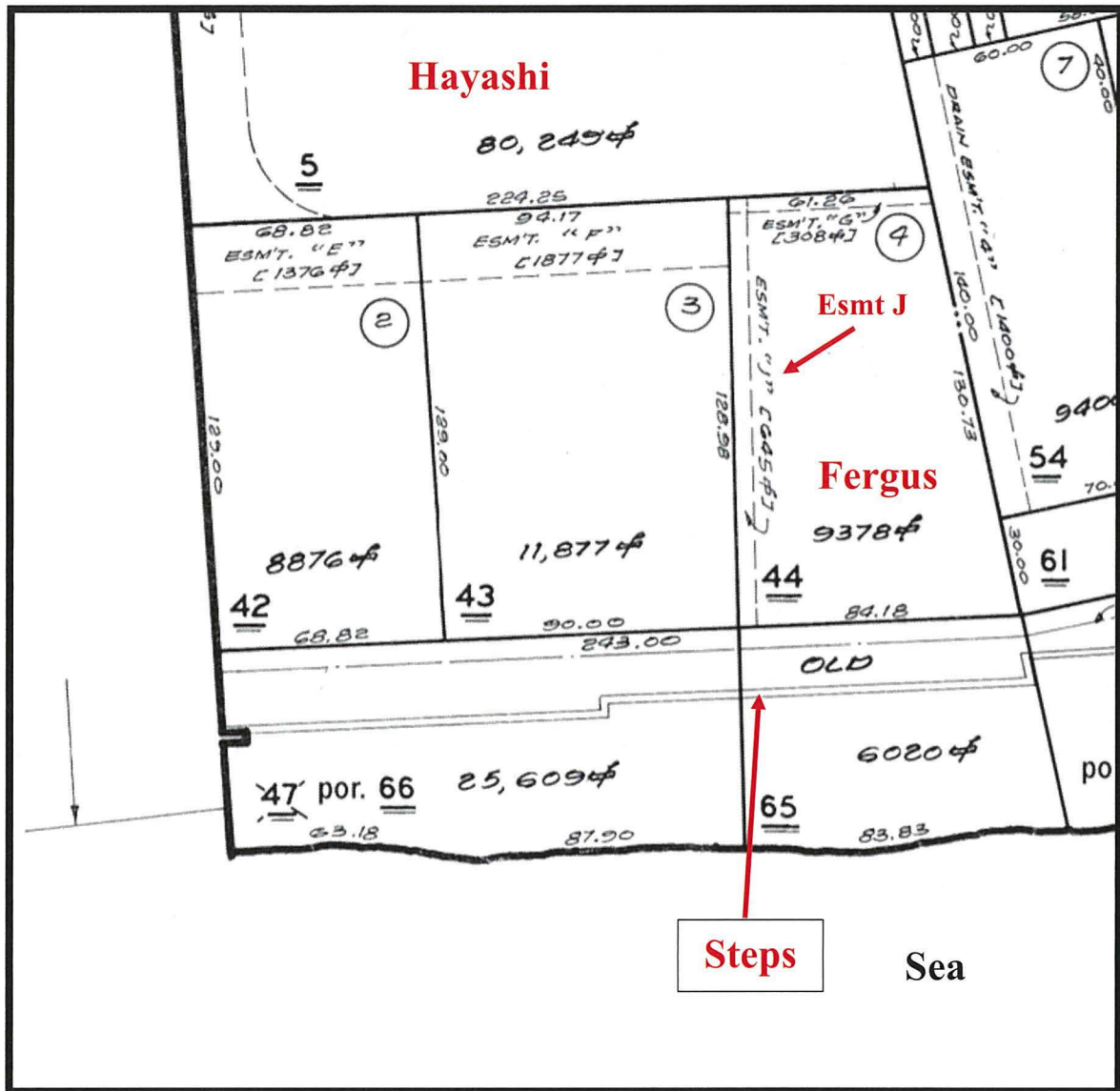


EXHIBIT A-2

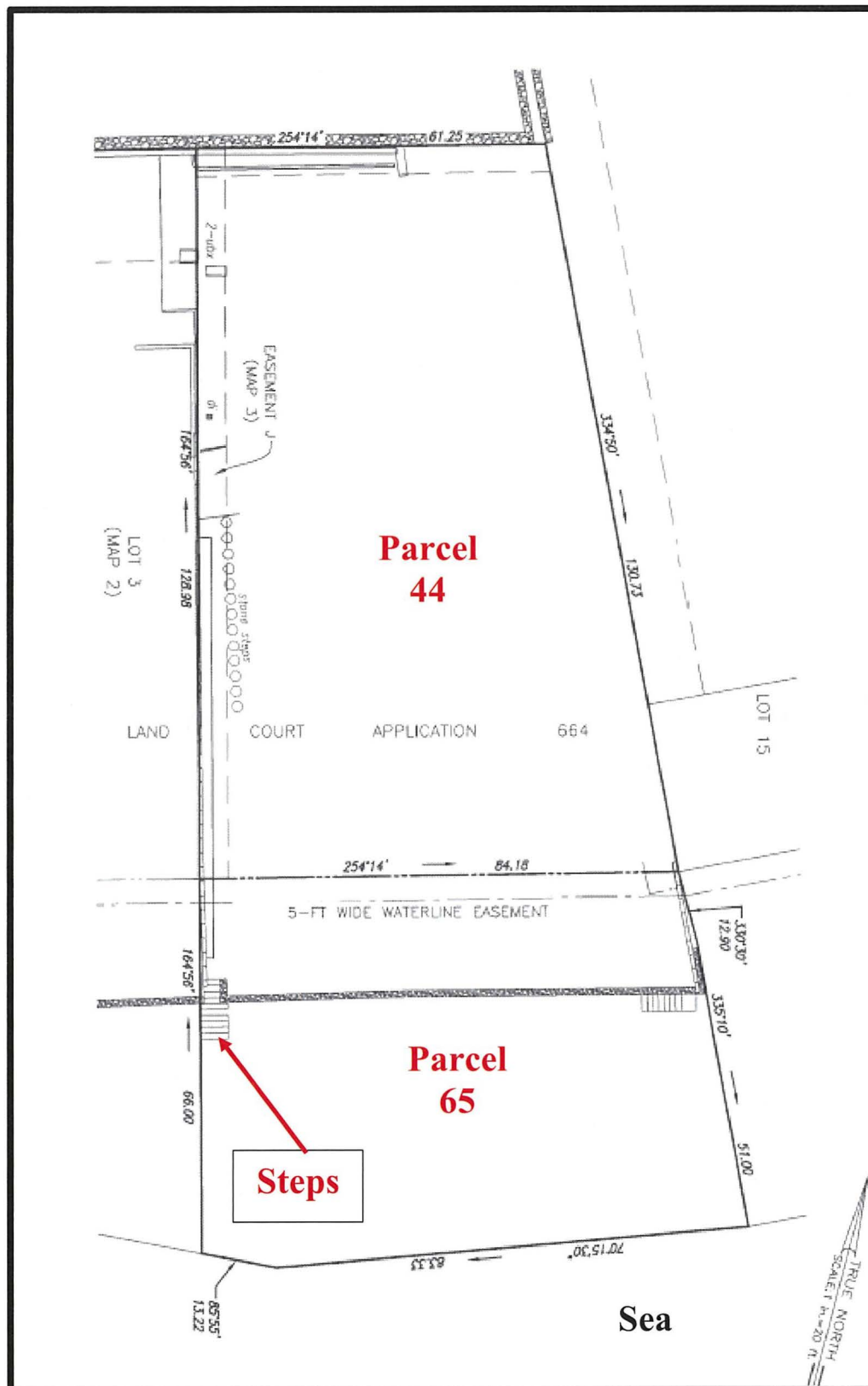


EXHIBIT A-3

April 23, 2021

DAVID Y. IGE
GOVERNOR OF HAWAII



RECEIVED
LAND DIVISION

DEC 10 AM 12:34



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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

REF:OCCL:SS

Shoreline Encroachment OA 20-07

DEC - 9 2019

Christina N. Ohira, Esq.
Starn O'Toole Marcus & Fisher
Pacific Guardian Center, Makai Tower
733 Bishop Street, Suite 1900
Honolulu, HI 96813

SUBJECT: RE: Request to Resolve State Land Encroachments at 3735 Diamond Head Road,
Honolulu, Oahu; Seaward of Tax Map Key (1) 3-1-039:005 (aka Lot 1)

Dear Ms. Ohira,

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL), is in receipt of your Shoreline Encroachment Information Sheet seeking to resolve an encroachment on State Lands fronting property located at 3735 Diamond Head Road, Honolulu, Oahu. Your letter included a Shoreline Encroachment Information Sheet, a tax map of the lot and surrounding area, a survey map of the lot, easement documents from Land Court for the beach access pathway from 1957, site plans for the intended repair of the stairs, and multiple pictures of the encroachment.

You are working to resolve a shoreline encroachment consisting of a concrete staircase that leads from the beach access pathway down to the sandy beach. The beach access pathway has an easement, and the staircase is encroaching on roughly 32.5 square feet of land makai of the easement boundary. The information provided contains evidence that the beach access was established in 1957 pursuant to Land Court Order 200990 as depicted on Land Court Application 664, Map 3, which was included in the package received by our office. The staircase is in dilapidated condition, and the information provided states that the landowner is requesting an easement in order to repair the staircase.

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:

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 B-1

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: The surrounding area is heavily residential, with the beach area itself used for ocean and shoreline activities such as sunbathing, surfing, swimming, fishing, and boating. The popular Cromwell’s Beach lies about 1,000 feet to the east of the subject property.

Beach Resources and Environment: The beach fronting the subject property is sandy with small rocks scattered throughout. The sandy beach stretches both eastward to Cromwell’s Beach and westward to Diamond Head Beach Park. The subject staircase is attached to a seawall; according to the information provided, seawalls stretch across roughly all of the oceanfront property in the area – a length of approximately 2,000 feet. The existing beach area was formerly an old government road as shown on the survey map provided by the applicant.

Public Access: The nearest public beach access, other than the access attached to the subject encroachment, is at Cromwell’s Beach, roughly 1,000 feet to the east. The sandy shoreline fronting the subject property can also be accessed from the west via Diamond Head Beach Park.

Effect of Removing the Encroachment on:

Beach Resources: Removing the encroaching staircase would have negligible effect on the beach resources in the area. The beach is part of a long sandy stretch that reaches from Diamond Head Beach Park in the west to Cromwell’s Beach in the east, and the encroaching staircase does not have a large enough footprint to suggest that its removal would have a positive effect on beach resources or processes in the area.

Public Access: Removing the encroaching staircase would essentially render the attached beach access unusable without jumping off of the existing seawall. Lateral access could improve slightly with the removal of the staircase, but neither the currently existing staircase nor the proposed staircase in the provided site plans appear to significantly prohibit lateral shoreline access in the area.

Adjacent Properties: We do not believe that removing the encroachment will significantly affect adjacent properties.

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.

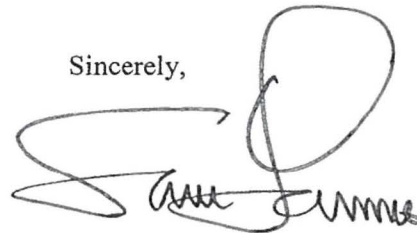
The subject encroachment consists of a 32.5 square foot concrete staircase that leads from the beach access pathway down to the sandy beach. Although the date of the staircase’s construction was unable to be directly determined, the beach access pathway has an easement in place that was granted in 1957. The staircase is in dilapidated condition, and the information provided states that the landowner is requesting an easement in order to repair the staircase. This encroachment is negligible, having a small footprint in the subject area, and exists as the only

Shoreline Encroachment OA 20-7

way to get from the provided beach access directly onto the sandy beach without jumping off of the seawall to which the staircase is attached. The subject encroachment does not have detrimental effects on public access nor beach and recreational resources in the area, and is attached to the seawall that serves as primary erosion control for the subject property.

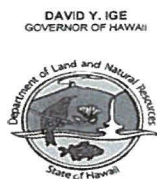
Upon review and careful consideration of the information gathered on this case, OCCL's evaluation criteria would support a disposition request being processed for the encroachment area. Should you have any questions regarding this correspondence, contact Salvatore Saluga of our Office at (808) 587-0399.

Sincerely,

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

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

CC: Chairperson
ODLO
City & County of Honolulu
-Planning Department
Michael J. Fergus



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:SS

Encroachment OA 20-07

Christina N. Ohira, Esq.
Starn O'Toole Marcus & Fisher
Pacific Guardian Center, Makai Tower
733 Bishop Street, Suite 1900
Honolulu, HI 96813

FEB 11 2020

SUBJECT: RE: Request to Resolve State Land Encroachments at 3735C Diamond Head
Road, Honolulu, Oahu;
Tax Map Keys: (1) 3-1-039:044 and (1) 3-1-039:065, and seaward

Dear Ms. Ohira,

Thank you for your letter dated January 29, 2020. On December 9, 2019, the Office of Conservation and Coastal Lands issued a letter for the easement request being processed for your client. This decision was made based on the information provided to us in the Shoreline Encroachment Information Sheet package which we now understand was not entirely complete. Our recommendations are only recommendations and are based on the physical impact of encroachments on beach access and public access. While we understand that more information has come to light on this matter, OCCL has nothing else to contribute to the discussion and we recommend that you address this matter directly to the Land Division.

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

Sincerely,

A large, stylized handwritten signature of Samuel J. Lemmo is written over the word "Sincerely,".

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

CC: Chairperson
ODLO
Cades Schutte, LLLP
c/o Philip J. Leas, Esq.

EXHIBIT B-2



EXHIBIT C





Subject steps prior to demolition

EXHIBIT D



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 521
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

March 4, 2021

Corine Hayashi and
HTH DH Ventures LLC
1668 S. King Street # 230,
Honolulu, Hawaii 96826

Corine Hayashi and
HTH DH Ventures LLC
3735 Diamond Head Road
Honolulu, Hawaii 96816

Mr. Jeremy Remily and
Sea Engineering, Inc.
863 N. Nimitz Highway
Honolulu, Hawaii 96817

Unauthorized Encroachment and Work on Unencumbered State Lands, Honolulu,
Oahu, TMK (1) 3-1-039: seaward of 044

On the morning of February 27, 2021, it was brought to our attention that unauthorized construction work on behalf of Corine Hayashi and HTH DH Ventures LLC was being done by or under the direction of Jeremy Remily and Sea Engineering, Inc. on the above-referenced State land, including the demolition and removal of concrete steps, excavation on the public beach, and installation of formwork and rebar¹ on State land ("incident"). An officer from our Division of Conservation and Resources Enforcement was dispatched to the site and verified the above-mentioned work.

After review of the facts and circumstances, NOTICE IS HEREBY GIVEN that all improvements and structures including rebar and formwork on the subject State land are unauthorized.

In addition, excavation on the beach is a violation of Section 13-221-23, Hawaii Administrative Rules, which provides: "Geological features. No person shall destroy, disturb, or mutilate any geological features or dig, or remove sand, earth, gravel, minerals, rocks, fossils, coral or any other substance on the premises. No person shall excavate or quarry any stone, or lay, set,

¹ We believe the formwork was for steps you were planning to construct on State lands without the prior approval or authorization of the Board of Land and Natural Resources.

EXHIBIT E

Corine Hayashi and
HTH DH Ventures LLC
Jeremy Remily and
Sea Engineering, Inc.
March 4, 2021
Page 2

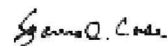
or cause any blast or explosion, or assist in these acts within the premises, except as provided by law or with the written permission of the board or its authorized representative.”

WE HEREBY DEMAND THAT YOU IMMEDIATELY CEASE AND DESIST placing any improvements or structures on the premises, AND IMMEDIATELY REMOVE all structures and encroachments placed on the premises and restore the subject land to its original and natural condition.

You are hereby on notice that the Department intends to bring an enforcement action against you before the Board of Land and Natural Resources for constructing unauthorized structures and other encroachments on State land in accordance with subsections 171-6(12) and (15), Hawaii Revised Statutes, which provide for, among other fines and penalties, fines up to \$5,000 for a first offense and \$1,000 per day for as long as the violation persists, plus recovery of administrative costs, expenses and other damages. Furthermore, the Department reserves all additional rights and remedies it may have against you and others who may have acted in concert with or on your behalf concerning the above-referenced incident of February 27, 2021.

Upon completion of removal of the unauthorized structures and encroachments and restoration to the natural condition, you may contact the Administrator of the Land Division, Russell Y. Tsuji at 587-0419.

Sincerely,



Suzanne D. Case
Chairperson

RT

- c: Douglas Chin by email: dchin@stamlaw.com
Christopher Goodin by email: cgoodin@cades.com
William Wynhoff, Department of the Attorney General



Photo taken on March 15, 2021 morning

EXHIBIT F

**Administrative Costs
(Including staff time and fringe benefits)**

	Hourly Rate	2/27/2021 (Hours)	3/3/2021 (Hours)	3/15/2021 (Hours)	Total Hours	Costs	Fringe benefits @ 68.03%	Total Costs Per Staff
District Land Agent	\$38.36		2	4	6	\$230.16	\$156.58	\$386.74
Conservation and Resources Enforcement Officer 1	\$23.39	2			2	\$46.78	\$31.82	\$78.60
Total:								\$465.34

EXHIBIT G