

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

April 23, 2021

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

REGARDING: Conservation District Enforcement OA 19-42 Alleged
Unauthorized Land Use [Pier] Located in the Conservation District

BY: David X Pham, Jennifer P V Pham, Deandrea P V Pham

LANDOWNER: State of Hawaii (submerged land)

LOCATION: Makai of 45-030 Springer Place, Kāneʻohe, Koʻolau Piko, Oʻahu

Tax Map Key: (1) 4-5-047:118 [landward and adjacent to site]

SUBZONE: Resource

DESCRIPTION OF AREA (Exhibit A)

The site of the alleged unauthorized land use within the Conservation District is upon submerged land of Kāneʻohe Bay. The site is adjacent to the coastal private property noted as TMK: (1) 4-5-047:118 owned by the Phams.

BACKGROUND (Exhibits B & C)

A nonconforming pier (constructed prior to Oct. 1964) existed makai and adjacent to the private property. The former landowner did not have a general lease nor did the former landowner take advantage of the Pier Amnesty program that was approved by the Board of Land and Natural Resources on July 13, 2001. The property was purchased by the Pham's in 2017.

ALLEGED UNAUTHORIZED LAND USES:

A nonconforming pier was removed, and a new pier was constructed without review or authorization by the Department within the Resource subzone of the Conservation District.

The following chronological documentation discusses the matter and provides evidence of the alleged unauthorized land use and actions taken regarding the matter:

February 9, 2018 The Office of Conservation and Coastal Lands is in receipt of a Shoreline Encroachment Information Sheet from the Phams regarding the nonconforming pier adjacent to their property. The

Encroachment Information Sheet is utilized by the OCCL to make a recommendation to the Land Division to assist in the land disposition of the encroachment. A certified shoreline survey from October 7, 1977 and photos dated 12/17/17 were included. The OCCL's evaluation of the nonconforming encroaching pier supported the disposition request. ¹ **(Exhibits D & E)**

- April 26, 2018 In response to the Land Division's request for comments for a proposed grant of term, non-exclusive easement for the encroaching pier and steps, the City and County's Planning Department provides comments that improvements located within the shoreline setback area were built without the necessary approvals and that a Notice of Violation was issued by the DPP. **(Exhibit F)**
- May 7, 2018 The Land Division sends notification to the Phams that due to the outstanding violation with the City, the Department was not able to move forward with the processing of the easement. **(Exhibit G)**
- February 13, 2019 It was brought to the Department's attention that work was being done in the Conservation District as it appeared the pier was being rebuilt with new footings and a small structure was constructed on the mauka end of the pier. Notice of an alleged violation in the Conservation District was issued. **(Exhibit H)**
- February 28, 2019 Email received from Deandrea Pham stating that because of the dilapidated conditions of the pier, repair work was conducted. Ms. Pham also noted that the small structure was taken down. **(Exhibit I)**
- July 9, 2020 The OCCL requests a status update and also notes the removal of the small structure but that it appeared that the pier had been rebuilt. **(Exhibit J)**
- September 10, 2020 Correspondence from Jennifer Pham received by the OCCL in response to the February 13, 2019 Notice and the July 9, 2020 request for a status update. The correspondence states:
"Our repair works of the pier were necessitated due to the dilapidated condition of the pier and the supporting structures. At the time the repair was made, we believed that our repair qualified as "Minor Repair" meaning routine work done to an existing structure, a rotten wood to be replaced with the same, or like-to-like replacement of component parts, and results in negligible change to or impact to land or natural and cultural resources. If we had misinterpreted the rules set forth in HAR

¹ **STAFF NOTES:** The nonconforming pier that was the subject of the Encroachment Information Sheet was replaced with another pier without authorization.

13-5, we sincerely apologize for the misinterpretation and herein wish to apply for an after the fact permit.

Due to the unique location of our pier, right in front of our land, we had no other means to access to our boat without the pier, there is also no public access to get to our boat, therefore: the removal of the pier would be an undue hardship.” **(Exhibit K)**

Conservation District

The Hawai'i Revised Statutes (HRS), Chapter 183C, and the Hawai'i Administrative Rules (HAR), Chapter 13-5, regulate land uses in the Conservation District by identifying land uses that may be allowed by Conservation District Use Permit (CDUP). §13-5-2, HAR defines “land use” as:

- (1) The placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;
- (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
- (3) The subdivision of land; or
- (4) The construction, reconstruction, demolition, or alteration of any structure, building, or facility on land.

Photographic evidence and aerial images indicate the former pier has been replaced by a shorter, wider pier with a small mauka deck similar to the previous pier.**(Exhibit L&M)**

HRS, §183C-7 **Penalty for violation** notes (a) The department shall prescribe administrative procedures as it deems necessary for the enforcement of this chapter and (b) Any person violating this chapter or any rule adopted in accordance with this chapter shall be fined not more than \$15,000 per violation in addition to administrative costs, costs associated with land or habitat restoration, and damages to public land or natural resources, or any combination thereof. After written or verbal notification from the department, willful violation of this chapter or any rule adopted in accordance with this chapter may incur an additional fine of up to \$15,000 per day per violation for each day in which the violation persists.

The board may set, charge, and collect the fine based on the value of the natural resource that is damaged, the market value of the natural resource damaged, and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this subsection are cumulative and in addition to any other remedies allowed by law.

While HAR, §13-5-7 allows for the repair of nonconforming land uses, once a nonconforming land use is destroyed including voluntary demolition to an extent of more than 50% of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the provision of HAR, Chapter 13-5.

Regarding the new pier, staff has assessed the closest identified land use that the alleged unauthorized action appears to conform to and it is HAR, §13-5-24 R-5 Marine Construction (D-1) Dredging, filling, or construction on submerged lands, including

construction of harbors, piers, marinas and artificial reefs. This would require a Board permit.

Pursuant to HAR, §13-5-6 Penalty. (a) Any person, firm, government agency, or corporation violating any of the provision of Chapter 13-5 or permits issued pursuant thereto shall be punished as provided in chapter 183C, HRS; and (f) for the purposes of providing guidance in the assessment of administrative sanctions and promoting consistency within the department, there shall be adopted by the board an administrative sanctions schedule.

Based on the *Conservation District Violation Penalties Schedule Guidelines and Assessment of Damages to Public Land or Natural Resources*, the unauthorized land use is considered a “Major” unauthorized land use since the closest identified land use appears to require a Board permit. This violation follows a penalty range of \$10,000 to \$15,000.

The unauthorized land use occurred in the Conservation District without approval and therefore allegedly violated the above referenced chapters and rules.

DISCUSSION

Rather than removing the pier, the Phams would like to file an after the fact Conservation District Use Application to hopefully obtain the Board’s authorization for the pier. However, there appears to be matters that need to be attended to in the Urban District prior to the Phams applying for the Conservation District land use and the land disposition for the use of State land. Therefore, the Phams must resolve matters with the City within a timely manner prior to applying for the after the fact CDUA.

FINDINGS

1. That the Phams caused:
 - The unauthorized removal/demolition of a nonconforming pier; and
 - The unauthorized construction of a pier.
2. That the unauthorized land uses occurred within the State Land Use Conservation District upon submerged lands within the Resource Subzone.

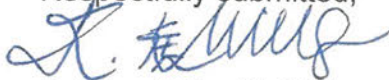
AS SUCH, STAFF RECOMMENDS AS FOLLOWS:

That, pursuant to HRS, §183C-7, the Board of Land and Natural Resources finds David X Pham, Jennifer P V Pham, Deandrea P V Pham [the Phams] in violation of HAR, §13-5-24, and subject to the following:

1. The Phams are fined \$15,000 for violating the provisions of HAR, §13-5-24 for the demolition and alteration of an existing pier and the construction of a new pier within the Conservation District, Resource subzone prior to obtaining the appropriate approvals within the Conservation District;
2. The Phams are fined an additional \$1,000.00 for administrative costs associated with the subject violations;

3. The Phams shall pay all designated fines and administrative costs that totals \$16,000 within 90-days of the date of this Board's action;
4. The Phams shall not utilize the pier until proper authorizations such as a Conservation District Use Permit (CDUP) and a land disposition are obtained;
5. The Phams shall comply with all applicable statutes, ordinances, rules, and regulations of the Federal, State and County governments;
6. The Phams shall resolve all outstanding matters with the City prior to filing an After the Fact Conservation District Use Application with the Department **within one year** of this Board's action to determine its final disposition or the pier shall be removed;
7. That in the event of failure of the Phams to comply with any order herein, the Phams shall be fined an additional \$1,000 per day until the order is complied with; and
8. That in the event of failure of the Phams to comply with any order herein, this matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Respectfully submitted,

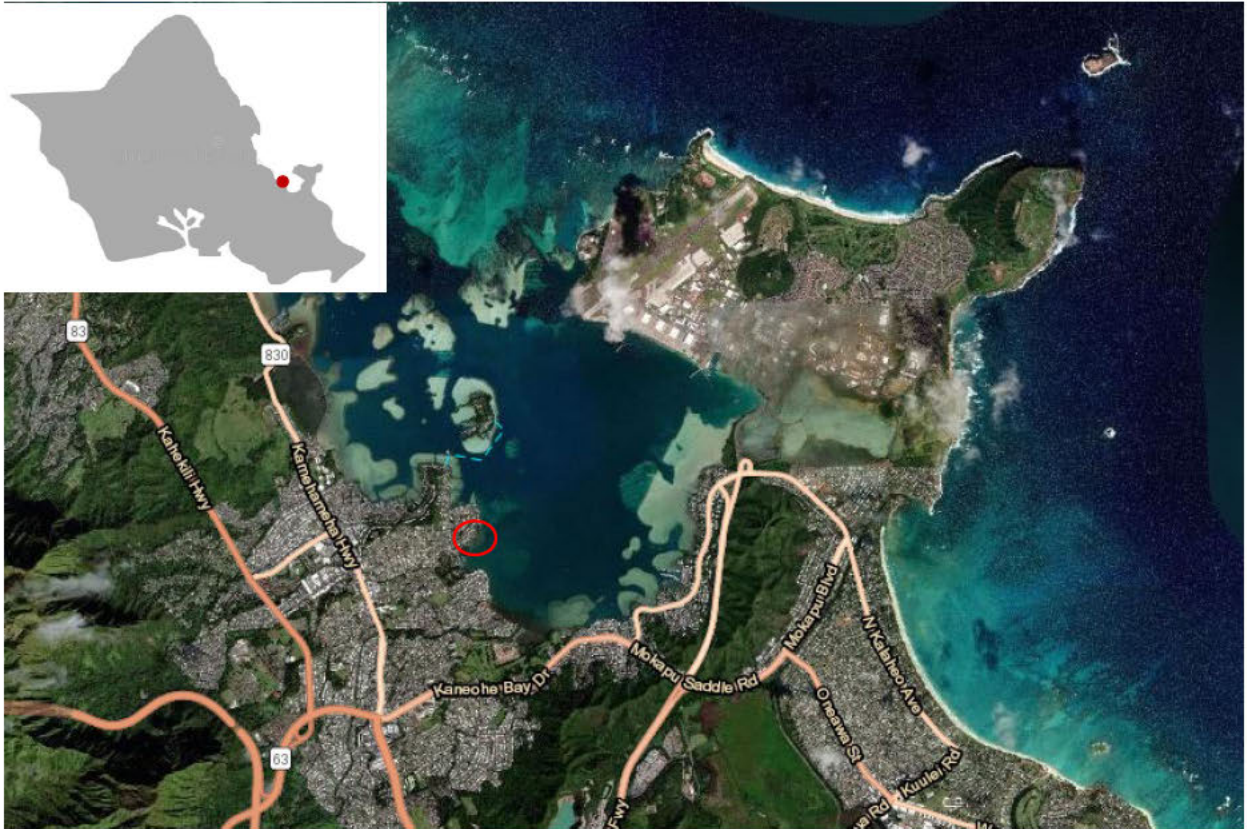


K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



Suzanne D. Case, Chairperson
Board of Land and Natural Resources



Site Location: Makai of 45-030 Springer Place, Kāne'ohe, Ko'olau Poko, O'ahu



EXHIBIT A

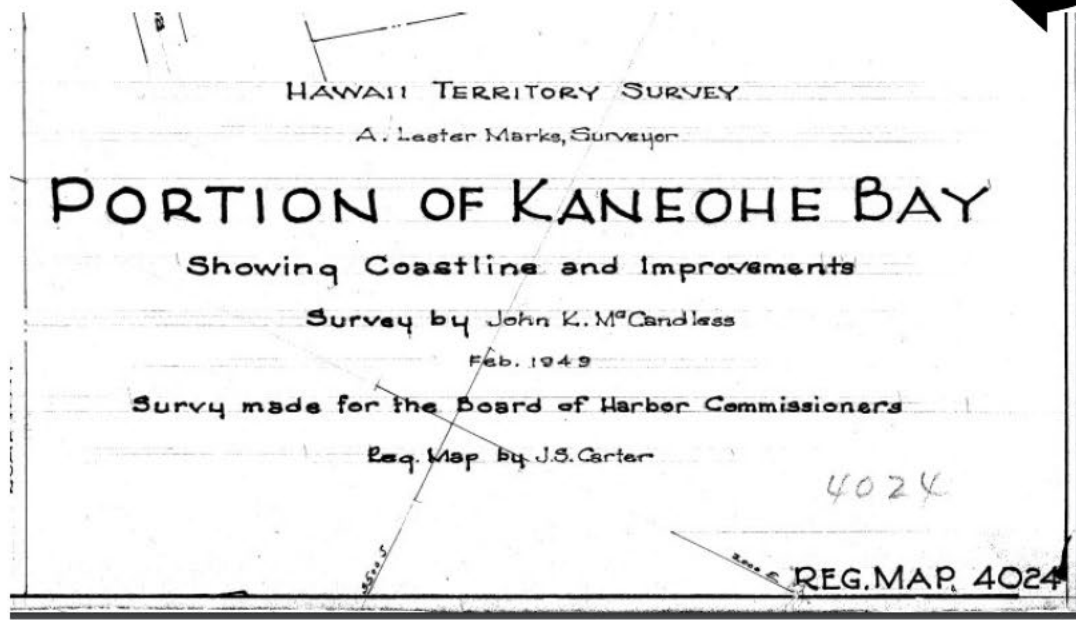
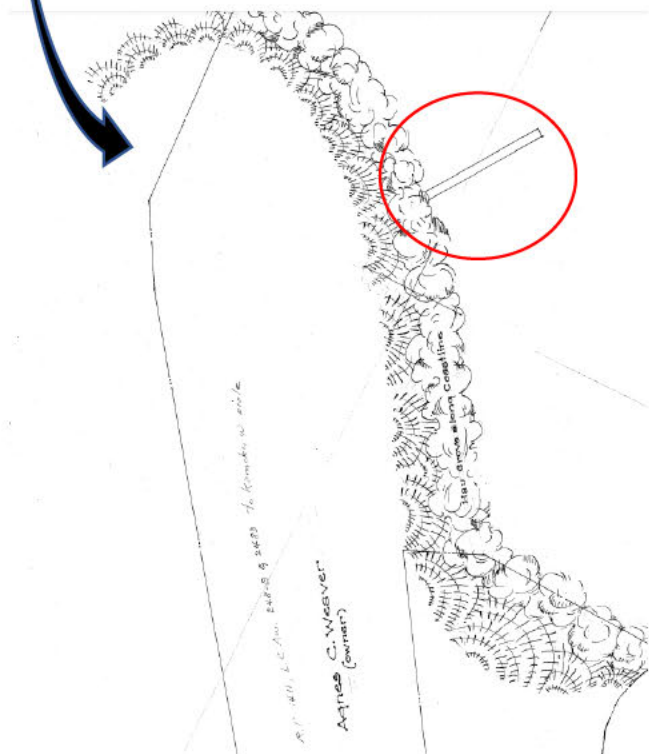
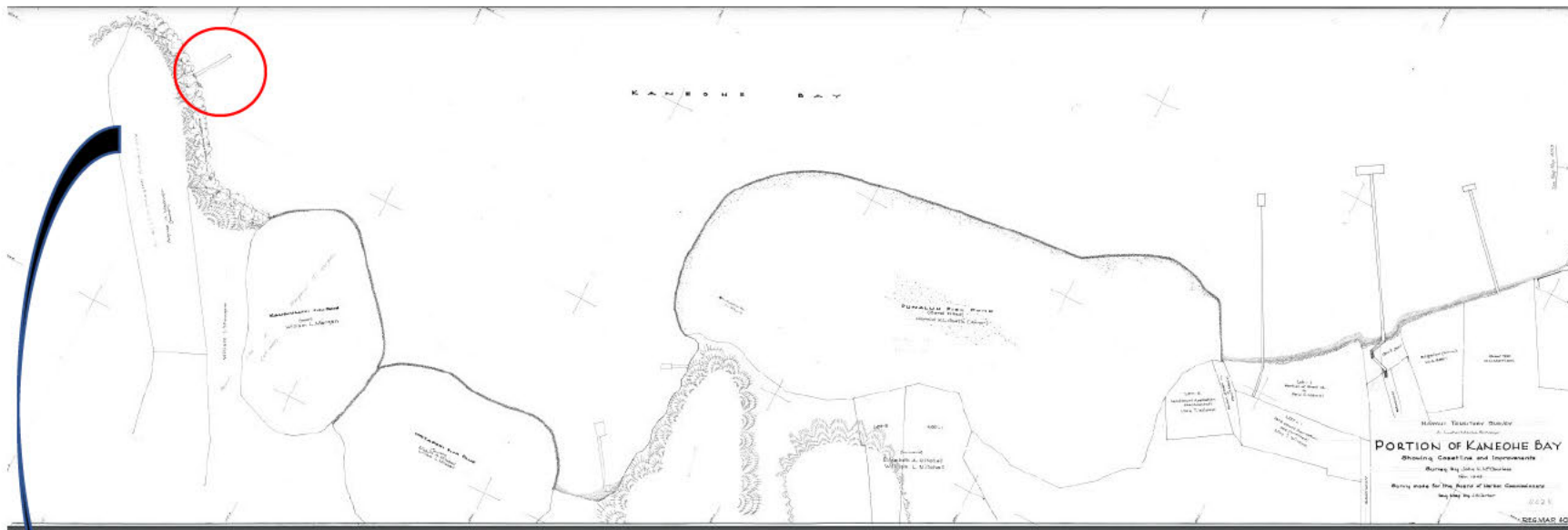


EXHIBIT B

Kāneohe Bay
(1)4-5-047:118
January 20, 2000



EXHIBIT C

OA-18-7



Shoreline Encroachment Information Sheet

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



Please provide complete and detailed answers for each question and include any relevant maps and photos. Attach additional sheets, if necessary. If you have any questions, feel free to contact the Office of Conservation and Coastal Lands at 808-587-0377. Mail completed information sheet and attachments to:

Office of Conservation and Coastal Lands
Post Office Box 621
Honolulu, HI 96809

This information will be used by the Department of Land and Natural Resources (DLNR) to help recommend the appropriate disposition of the encroachment(s). The Board of Land and Natural Resources (BLNR) is not obligated to grant an easement and may do so only when it is consistent with the policies and laws of the State and DLNR. If the BLNR is willing to grant an easement, you will be required to execute an easement document with the State with terms and conditions, including monetary compensation. If the BLNR does not grant an easement, you may be required to remove the encroachment(s). The BLNR reserves the right to institute enforcement proceedings.

- 1. Please provide your name, the landowner's name (if different than you), and contact information.

David and Jennifer Pham



- 2. Please provide the physical address and Tax Map Key (TMK) of the property. Provide photos and survey map.

45-030 Springer Place
TMK: (1) 4-5-47:118

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2018 FEB - 9 A 10:44
DEPT OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

- 3. Identify and describe the encroachment(s) including the approximate area (square feet) of the encroachment(s). Provide photos of encroachment(s).

Wood Pier, Wood Deck, Concrete Stair
Total Area = 623 Square Feet

- 4. What is the approximate date of establishment of the encroachment(s)? Please submit documentation.

Before August 28, 1977 as shown on Shoreline Map dated August 28, 1977.

- 5. Are there any previous Shoreline Certifications for this property? Date(s)? Provide survey map(s).

Yes, August 28, 1977 (map attached)

EXHIBIT D



Shoreline Encroachment Information Sheet

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



6. Please identify all surrounding land uses and any adjacent and upland development.

- a. West side (Lot 5) Residential (TMK: 4-5-47:119)
- b. North Side (Lot B) Access Road for Lot B (TMK: 4-5-47:117)

7. Please identify any surrounding (artificial) coastal structures.

Wood Pier are visible in the vicinity aside from the Subject Lot.

8. Describe the shoreline environment in the area (i.e., types of beach, any observed shoreline erosion and beach loss, backshore geology, recreational activities observed).

No recreational activities during the survey, erosion on the Subject Lot and beach loss, hao bush, no sign of beach goers or swimmers.

9. Describe the public shoreline access in the area (i.e., nearest public access points and feasibility of alongshore access).

The public access for this area is thru Ka Hanahou Circle and not thru my immediate area.

10. What would be the effect of removing the encroachment(s) on adjacent properties and upland development?

Should the existing pier be removed, I will not be able to park my boat which will be a hardship to my family since we have to go to Heeia Pier otherwise.

11. How would removal of the encroachment(s) improve or affect the shoreline/beach environment?

No impact on the shoreline environment.

12. How would removal of the encroachment(s) improve or hinder alongshore public shoreline access?

No impact on the shoreline environment.



Shoreline Encroachment Information Sheet



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

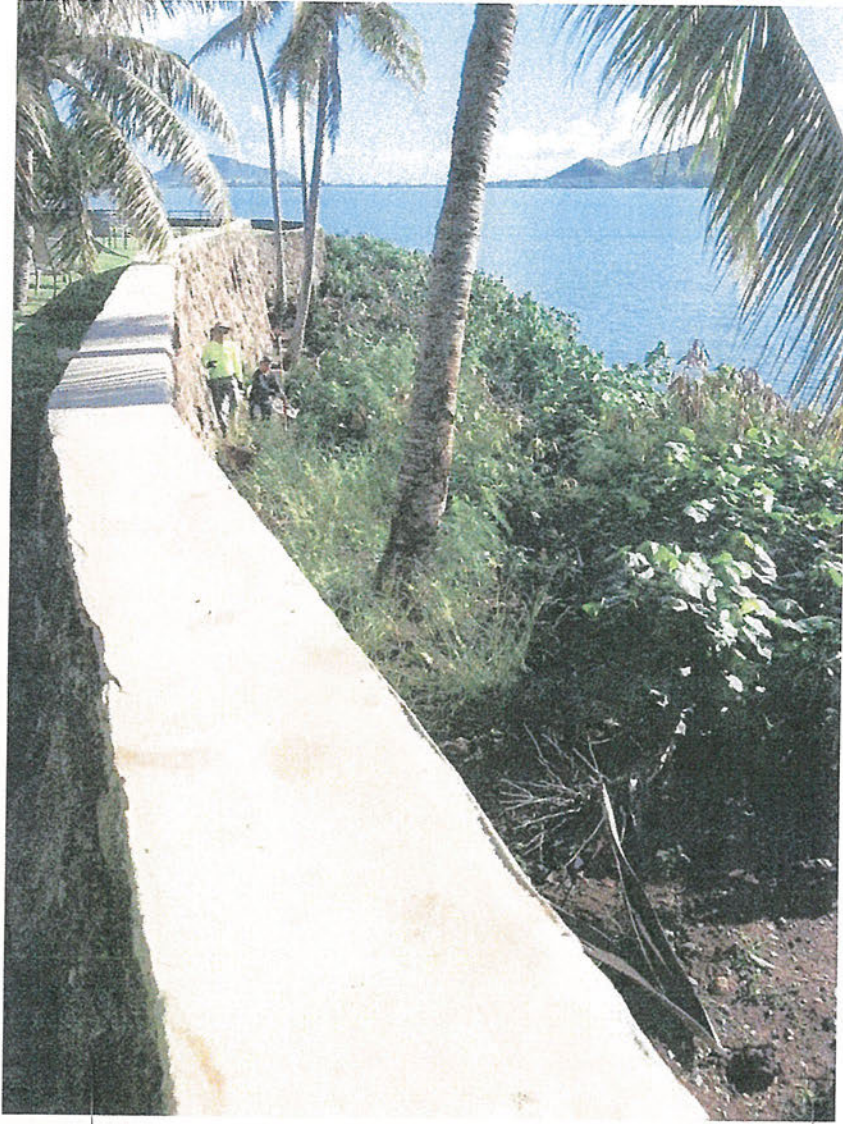
INFORMATION CHECKLIST

To ensure timely processing, please check that the following are included before submitting:

- Correct mailing address and contact information
- Tax Map Key (TMK) Map
- Current survey map showing property boundaries and encroaching area (survey map should provide calculation of encroaching area in square feet).
- Recent photos showing the encroachment(s) and beach resources from various angles. Include photographs of adjacent public access points and adjacent coastal structures, if applicable.
- Previous shoreline maps (if applicable).
- Documentation or permit(s) for encroachment(s).
- Documentation of non-conforming status of encroachment, i.e. stamped aerial photographs, building permits, authorization letters from Federal, State or County agency (if applicable).
- Attach additional sheets as necessary.



LOOKING WEST



LOOKING EAST

D-4

12/17/17

PHOTO 2

10:00 AM



LOOKING WEST

D-5

12/17/17

PHOTO 3

10:00 AM



LOOKING EAST

D-6

12/17/17

PHOTO 4

10:00 AM



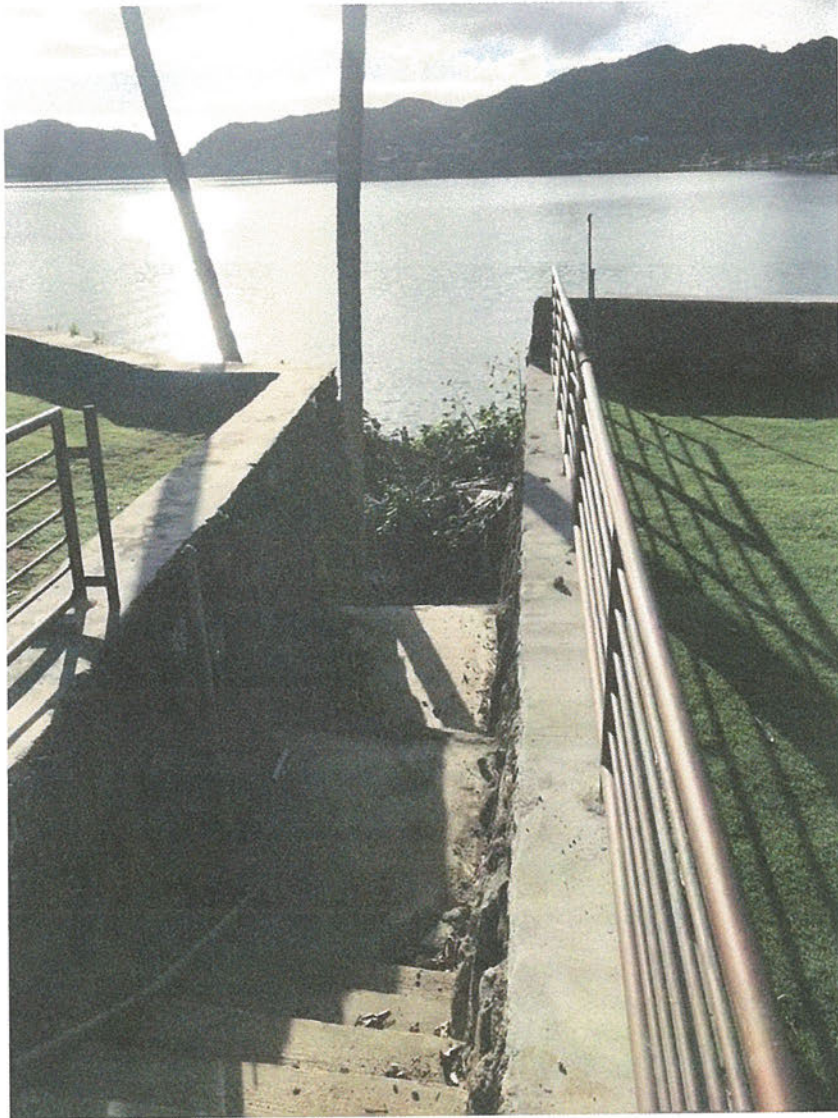
LOOKING SOUTH

12/17/17

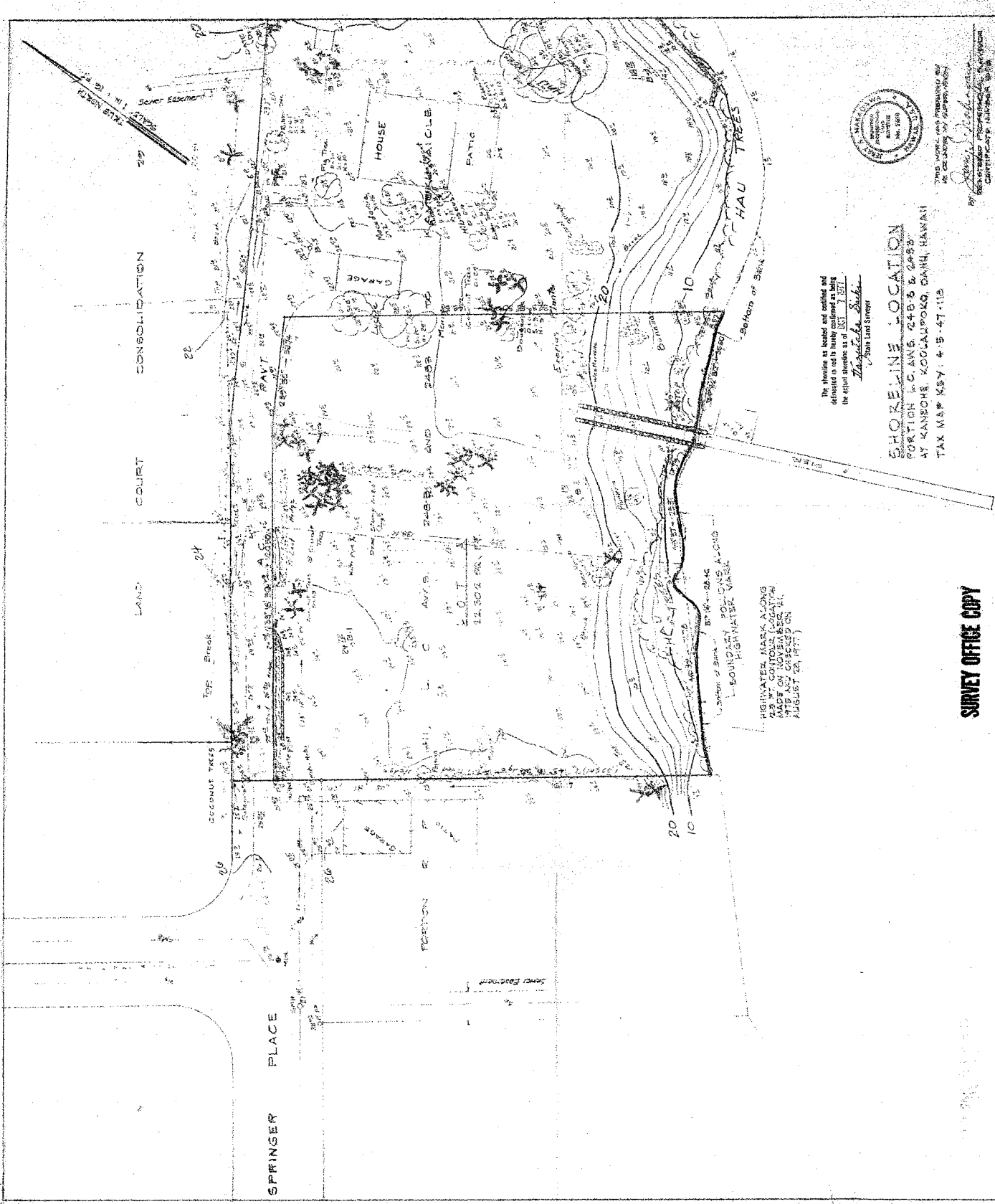
PHOTO 5

D-7

10:00 AM



LOOKING SOUTH



The shoreline as located and certified and delineated in red is hereby confirmed as being the actual shoreline as of 2/11/1971.

SHORELINE LOCATION
 PORTION OF C.A.V.S. 2485 & 2488
 AT KANOEHA, KOOLAHOPOLO, OAHU, HAWAII
 TAX MAP KEY: 4-5-47-113

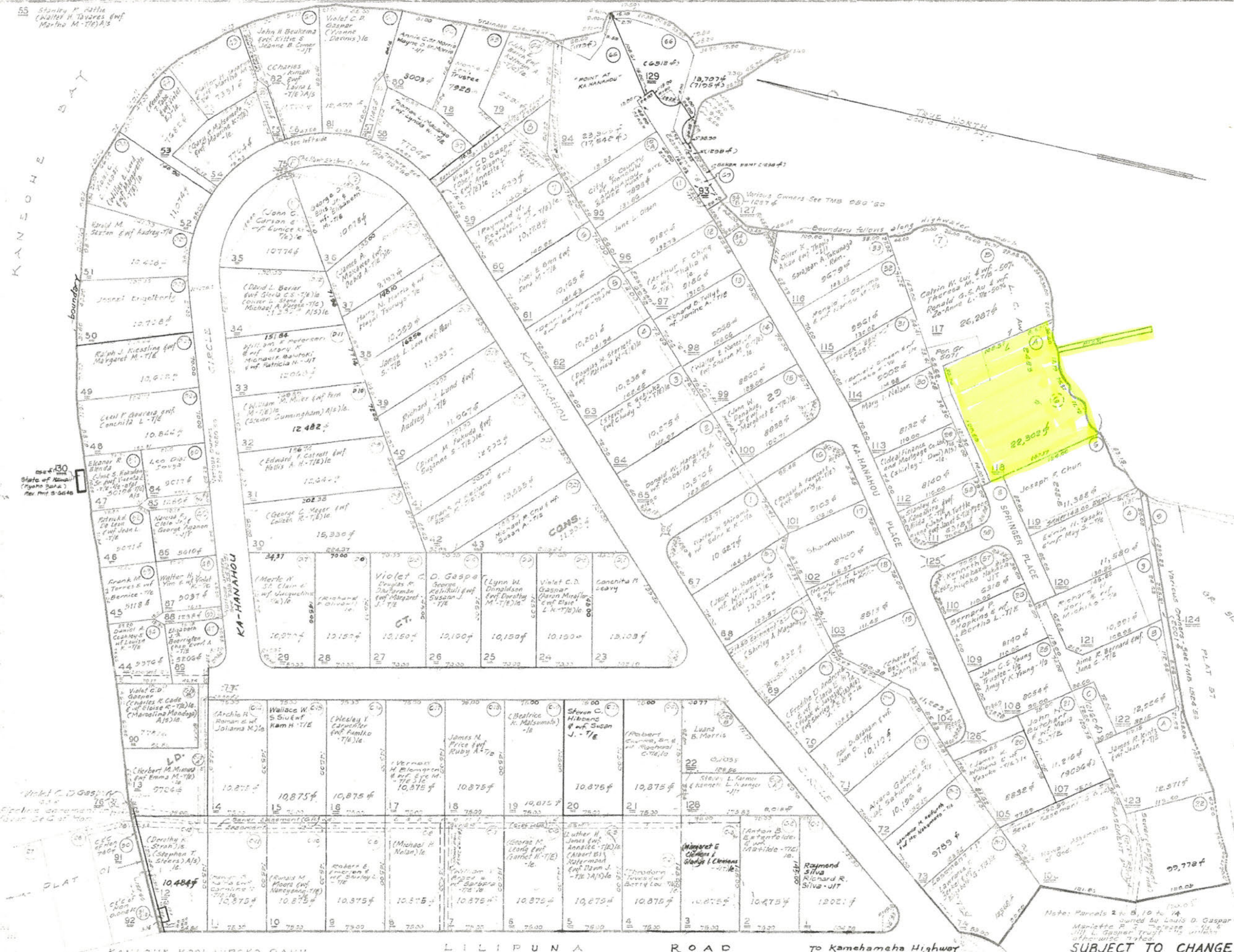
LEGIONARY POL-DNS ALONG
 HIGHWAY MARK ALONG
 MADE ON NOVEMBER 22, 1971
 1975 AND CHECKED ON
 AUGUST 28, 1977

SURVEY OFFICE COPY

WILLIAM FEE & ASSOCIATES, INC.
 CIVIL ENGINEERS, SURVEYORS-PLANNERS

HONOLULU, HAWAII
 72-78

1970 JAN 11
 2012 JAN 11



Note: Parcels 93 to 121 incl. formerly par. 450.

D-10

Note: Parcels 21 thru 104, 112 thru 118 owned by Margaret I. Gaspar Trust unless otherwise noted.

DROPPED PARCELS: 77, 66, 82, 125, 95

TAXATION MAPS BUREAU		
TERRITORY OF HAWAII		
TAX MAP		
FIRST DIVISION	ZONE	SEC. PLAT
4	5	47
CONTAINING PARCELS		SCALE: 1" = 60 FT.

Note: Parcels 2, 3, 10 to 14 owned by Louis D. Gaspar, Margaret P. Gaspar, and John L. Gaspar Trust unless otherwise noted.

SUBJECT TO CHANGE

503 16 5704
 Source: Maps 3, 4, Land Court 009 19
 1971, 1972, 1973, 1974

KANEHOE, KOOLAPOKO, OAHU LILIPUNA ROAD To Kanehameha Highway

DAVID Y. IGE
GOVERNOR OF HAWAII



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

JEFFREY T. PEARSON, P.E.
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

DLNR: OCCL: SL

Encroachment OA-18-07

David and Jennifer Pham

[REDACTED]
Kaneohe, Hawaii 96744

MAR - 1 2018

SUBJECT: Request to Resolve State Land Encroachment Located Seaward of 45-030 Springer Place, Kaneohe, Island of Oahu: Tax Map Key: (1) 4-5-047:118

Dear Mr. Pham,

The Department of Land and Natural Resources, Office of Conservation and Coastal Lands (OCCL) is in receipt of your Shoreline Encroachment Information Sheet seeking our recommendation for an encroachment seaward of your property.

You are working to resolve the encroachment on State land. The encroachment consists of approximately 623 square feet of a wood pier and concrete stairs, established in the late 1950s.

The Board of Land and Natural Resources established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, OCCL 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, 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:

A single-family dwelling exists on the subject property. The surrounding land uses are primarily residential.

EXHIBIT E

E

Beach Resources:

The subject property is located on Kaneohe Bay.

Public Access:

Public shoreline access is limited.

Effect of Removing the Encroachment on:

Beach Resources: Removal of the pier would have no effect on beach resources.

Public Access: Removal of the pier would have no effect on public access.

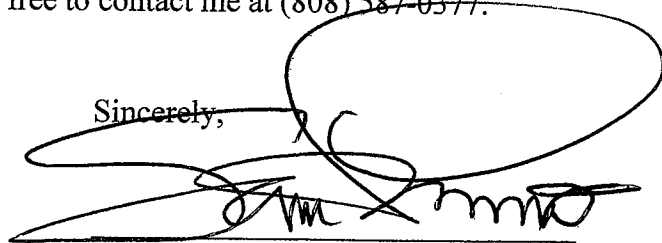
Effect on Adjacent Properties: None

It has been a general policy and practice of OCCL to support disposition requests that have no discernable effect on beach and recreational resources and do not act as a detriment to public access. The pier has been in existence since the late 1950s. Piers are a common feature in Kaneohe Bay. Most of these piers have no effect on beaches or access to beaches because beach resources in Kaneohe Bay are very limited due to the coastal geology of the bay. Beaches do occur on offshore sandbars.

Upon review and careful consideration of the information gathered on this case, OCCL has determined that OCCL's evaluation criteria would support a disposition request being processed for the subject shoreline encroachments.

If you have any questions, please feel free to contact me at (808) 587-0377.

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel J. Lemmo', is written over a horizontal line. The signature is stylized and somewhat cursive.

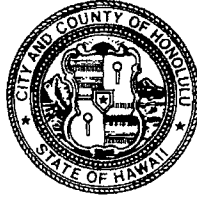
Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Cc: LAND

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.gov • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



2018 APR 27 A 11:53
KATHY K. SOKUGAWA
ACTING DIRECTOR
TIMOTHY F. T. HIU
DEPUTY DIRECTOR
EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

2018/ELOG-724(ST)

April 26, 2018

Ms. Suzanne D. Case
Chairperson
Board of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, Hawaii 96809

Attention: Cal Miyahara

Dear Ms. Case:

SUBJECT: Proposed Grant of Term, Non-Exclusive Easement for Pier
and Steps
David and Jennifer Pham (Ref. No. 18OD-045)
45-30 Springer Place - Kaneohe
Tax Map Key 4-5-047: 118

This is in response to your memorandum, received on April 11, 2018, regarding the proposed grant of a term, non-exclusive easement for the makai areas of the above site. The Department of Planning and Permitting (DPP) has photographic evidence which indicates that a pier and walkway, presumably constructed of wood, were present at this location prior to the shoreline setback regulations established on June 22, 1970 (Act 136). Therefore, the pier and walkway appear to be nonconforming structures that originate from within the 40-foot shoreline setback area.

However, we should also point out that the concrete rubble masonry retaining wall and backfill that extends along the entire width of the site (about 160 feet), as shown on Exhibits C-1 and C-2 of your transmittal, are located within the shoreline setback area and were built without the necessary approvals, including an Environmental Assessment and a Shoreline Setback Variance, pursuant Chapter 343, Hawaii Revised Statutes and Chapter 23, Revised Ordinances of Honolulu, respectively. Consequently, on December 6, 2017, the DPP issued a Notice of Violation (No. 2017/NOV-08-153) for the unauthorized structures.

EXHIBIT F

F

Ms. Suzanne D. Case
April 26, 2018
Page 2

We also note that should a Shoreline Variance be granted, the retaining wall will need building and/or grading permits, and is likely to require a Zoning Adjustment because it exceeds six-feet in height within the required (rear) yard.

At this time, the violation remains outstanding, and it remains unclear whether the shoreline was altered in the process of constructing the unauthorized structure. Please note that the DPP we will soon be issuing a Notice of Order, which carries an initial civil fines, should the Applicant not address this unauthorized construction.

Should you have any questions, please contact Steve Tagawa of our staff, at 768-8024.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kathy K. Sokugawa', with a long horizontal line extending to the right from the end of the signature.

FOR: Kathy K. Sokugawa
Acting Director

cc: Code Compliance Branch
Department of Land and Natural Resources
Office of Conservation & Coastal Lands

DAVID Y. IGE
GOVERNOR OF HAWAII



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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May 7, 2018

Ref. No.: 18OD-045

Mr. and Mrs. David Pham

[REDACTED]
Honolulu, Hawaii 96816

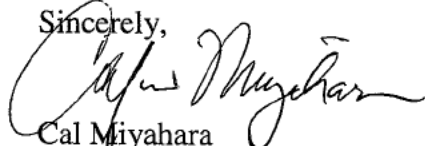
Dear Mr. and Mrs. Pham:

Subject: Grant of Term, Non-Exclusive Easement to David Pham and Jennifer Pham for Pier and Steps Purposes; Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-047:seaward of 118.

During a request for comments from various governmental agencies regarding the subject easement, we received notice from the City and County of Honolulu, Department of Planning and Permitting that an outstanding violation remains unresolved at the abutting property (see attached). As such, we are not able to move forward with processing your easement.

Upon resolution of the outstanding violation, please contact our office so we may resume with your easement request. If you have questions, please feel free to contact Mr. Cal Miyahara at (808) 587-0424. Thank you.

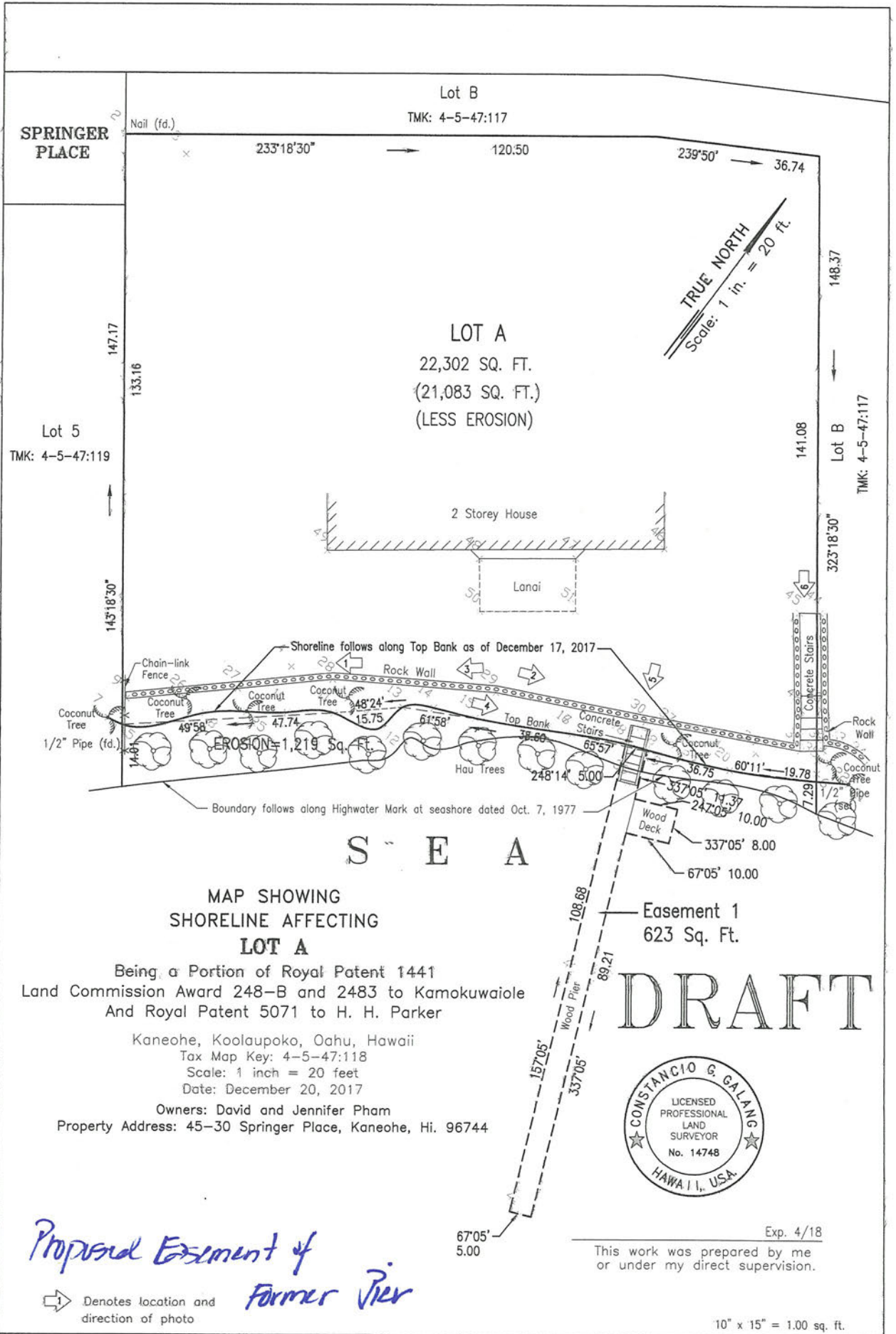
Sincerely,


Cal Miyahara
Shoreline Disposition Specialist

Enclosure

EXHIBIT G

G



➡ Denotes location and direction of photo

G

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
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DEPUTY DIRECTOR - WATER

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

DLNR:OCCL:SS

ENF: OA 19-42

FEB 13 2019

CERTIFIED MAIL/RETURN RECEIPT

7014 2870 0000 1652 9141

Mr. David Pham
Ms. Jennifer Pham

[REDACTED]
Kaneohe, HI 96744

SUBJECT: Alleged Unauthorized Land Use and Work Within the Shoreline Area, Makai of
45-030 Springer Place, Kaneohe, HI 96744
Tax Map Key: (1) 4-5-047:118

Dear David and Jennifer Pham:

It has come to the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands' (OCCL) attention that there has been work done on the pier fronting the subject property. It appears that the pier has been rebuilt in the shoreline and marine areas and that a small structure is being placed onto the mauka end of the pier without authorization from our office.

The DLNR has recently received notices and photographs that show a new structure being built at the mauka end of the pier (*Exhibits 1 & 2*) as well as work being done to rebuild the pier (*Exhibits 3 - 7*). The photographs show, among other things, new pilings and planks for the pier itself, someone working on the pier, and the shell of the small structure being built at the foot of the pier. This work is done in an area that is located makai of the subject property without State approval.

EXHIBIT H

H



Exhibit 1



Exhibit 2



Exhibit 3



Exhibit 4



Exhibit 5



Exhibit 6



Exhibit 7

NOTICE IS HEREBY GIVEN you may be in violation of Hawaii Administrative Rules (HAR) Title 13, Chapter 5, entitled Conservation District providing for land uses within the Conservation District, enacted pursuant to the Hawaii Revised Statutes (HRS), Chapter 183C.

The Department of Land and Natural Resources (DLNR) has determined that:

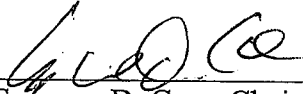
1. The location of the alleged unauthorized land use is located makai of TMK number (1) 4-5-047:118 and is located within the State Land Use Conservation District, Resource Subzone;
2. Pursuant to §13-5-2, HAR, "Land use" means:
 - (1) The placement or erection of any solid material on land if that material remains on the land more than thirty days, or which causes a permanent change in the land area on which it occurs;
 - (2) The grading, removing, harvesting, dredging, mining, or extraction of any material or natural resource on land;
3. This land use was not authorized by the Department of Land and Natural Resources under Chapter 13-5, HAR.

Pursuant to 183C-7, HRS, the Board of Land and Natural Resources (Board) may subject your client to fines of up to \$15,000.00 per violation in addition to administrative costs. Should your

client fail to immediately cease such activity after written or verbal notification from the department, willful violation may incur an additional fine of up to \$15,000.00 per day per violation for each day in which the violation persists.

We recommend that you stop all work on the structures. Please note any information provided may be used in civil proceedings. Please contact this office to discuss resolution of this matter at (808) 587-0377.

Sincerely,



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

c: City & County of Honolulu
Department of Planning and Permitting
Parks and Recreation
DOCARE (Oahu)
ODLO

From: Deandrea Pham [REDACTED]
Sent: Thursday, February 28, 2019 2:02 PM
To: Saluga, Salvatore J <salvatore.j.saluga@hawaii.gov>
Subject: Re: Test

Hi Sal,

Thanks for the all your help over the phone the other day, and sorry for the delay.

On behalf of my parents and myself, I'm really sorry for the inconvenience. But, I would like to say that because of the dilapidating conditions, we felt it was necessary to do the repairs as there was an accident walking out on the old pier since it was a safety hazard. I will attach photos of the pre-existing pier to show you the condition it was in, these photos were taken January 2018.



EXHIBIT I



As for the storage room, we had a pre-existing post where the storage room was located, and we also thought since our neighbor has a storage room located on his dock, it was ok to renovate ours.



Please see below for the neighbors storage room.



We would like to again apologize for our actions in not getting permission to renovate our dock, and we were fast to take down the storage room once we found out about the violation, please see the photos below that shows our compliance with taking down the storage structure.





Please let me know what the next step is and if there is anything I can do to amend the situation. Have a great day.

Mahalo,
Deandrea Pham
Pham & Associates LLC

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<input type="checkbox"/> Return Receipt (hardcopy)	\$
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<input type="checkbox"/> Certified Mail Restricted Delivery	\$
<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	\$
Total Postage and Fees	\$

JUL - 9 2020

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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

Enf./Vio. OA 19-42

JUL - 9 2020

Sent To **David & Jennifer Pham**
Street and Apt. N [REDACTED]
City, State, ZIP+4 **Kaneohe, HI. 96744**

PS Form 3800, 11/15

David Pham
Jennifer Pham
[REDACTED]
Kaneohe, HI 96744

**SUBJECT: Alleged Unauthorized Land Use Within the Shoreline Area, Makai of 45-030
Springer Place, Kaneohe, HI 96744; Tax Map Key (1) 4-5-047:118**

Dear Landowners:

On February 13, 2019, the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) transmitted a letter to you regarding alleged unauthorized work done in the shoreline area fronting the subject property that is located on State land. This alleged work included the construction of a small structure on the mauka end of the pier as well as rebuilding of the pier itself.

During correspondence with OCCL, you provided evidence that the small structure on the mauka end of the pier had been removed. However, it appeared that the rebuilt pier remained.

We are requesting a status update on the above-referenced pier. If there has been authorization granted for the subject pier from another agency, please provide evidence of such to our office. If there has not been authorization granted for the subject encroachments and they currently remain in place, please call our office to discuss measures to resolve the situation. Please contact Salvatore Saluga of the Office of Conservation and Coastal Lands within 30 days of receipt of this notice at (808) 798-6147 or at salvatore.j.saluga@hawaii.gov to discuss a remedy to this situation.

Sincerely,
Sam Lemmo

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

c: City & County of Honolulu
Department of Planning & Permitting
DOCARE (Oahu)
ODLO

EXHIBIT J

J

Honolulu September 9, 2020
Mr. Samuel J. Lemno, Administrator
Office of Conservation and Coastal Lands
Post Office Box 621
Honolulu, Hawaii 96809

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

2020 SEP 10 P 3:50

RE: Alleged Unauthorized Land Use Within the Shoreline Area, Makai of 45-030
Springer Place, Kaneohe, Hawaii 96744; TMK(1)4-5-047:118
NATURAL RESOURCES
STATE OF HAWAII

Dear Mr. Lemno,

This letter is in response to your letter dated July 9, 2020 regarding an alleged unauthorized work done in the shoreline area fronting our property that is determined by your office to be located on State land.

Per your letter dated February 13, 2019 in which it stated that this alleged unauthorized work included the construction of a small structure on the mauka end of the pier and the pier. Our repair works had completed prior to receiving your letter. However, we subsequently removed the small structure on the mauka end of the pier at the direction of Mr. Saluga on or about February 28, 2019 after a meeting between DeAndrea Pham and Salvator J. Saluga. We believe that we had complied with your order dated February 13, 2019.

Your letter dated July 9, 2020 noted that the rebuilt pier remained. Our repair works of the pier were necessitated due to the dilapidated condition of the pier and the supporting structures. At the time the repair was made, we believed that our repair qualified as "Minor Repair" meaning routine work done to an existing structure, a rotten wood to be replaced with the same, or like-to-like replacement of component parts, and results in negligible change to or impact to land or natural and cultural resources. If we had misinterpreted the rules as set forth in HAR13-5, we sincerely apologized for the misinterpretation and herein wish to apply for an after the fact permit.

Due to the unique location of our pier, right in front of our land, we had no other means to access to our boat without the pier, there is also no public access to get to our boat, therefore; the removal of the pier would be an undue hardship.

We look forward for a favorable decision in allowing us to keep our pier while waiting for the disposition of our variance process with the City and County of Honolulu to dispose our current violation with the City and County of Honolulu

Sincerely yours,

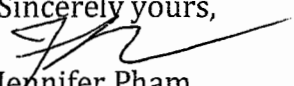

Jennifer Pham
Homeowner
Enclosures

EXHIBIT K

K

45-30 Springer Place, Kaneohe, O'ahu
TMK: (1) 4-5-047:118



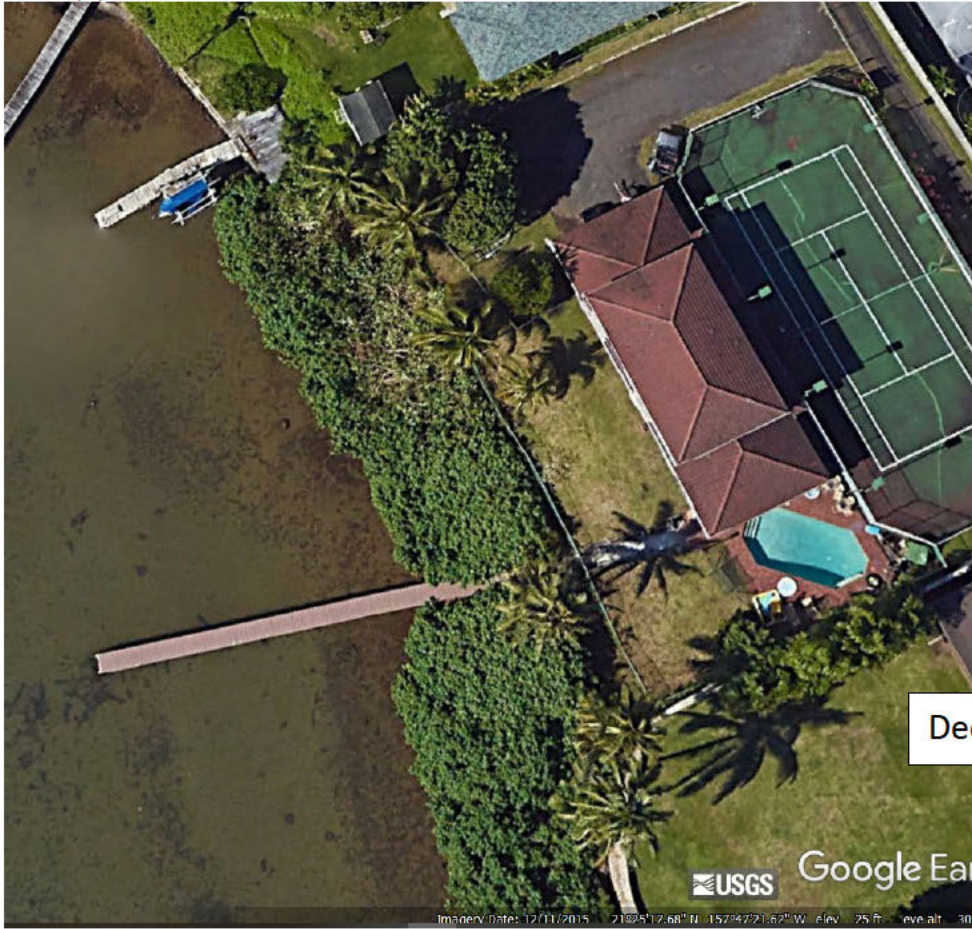
December 11, 2015



May 24, 2019

EXHIBIT L

45-30 Springer Place, Kaneohe, O'ahu
TMK: (1) 4-5-047:118



December 11, 2015



May 24, 2019

<https://www.vrbo.com/1434949> 2020/2021



EXHIBIT M