

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

December 10, 2021

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

PSF No.: 02OD-530

OAHU

Amend Prior Board Action of October 8, 2004, Item D-5, *Grant of Term, Non-Exclusive Easement for Seawall and Reclaimed (fill) land to Harold and Julie Sharrer; Kahaluu, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-19:24 seaward*

The amendment is to Allow Payment of the Consideration in Installments.

BACKGROUND:

On October 8, 2004, under agenda item D-5, the Board authorized the issuance of a 55-year term, non-exclusive easement for seawall and reclaimed (filled) land purposes to the owners, Harold and Julie Sharrer, of the abutting property (“Applicant”). A copy of the approved submittal is attached as **Exhibit 1**. The 2004 Board action asked for a one-time payment of consideration of the requested easement.

The survey map attached as Exhibit B of the 2004 submittal showed a pier of about 80 square feet located makai of the subject easement area. The Applicant was supposed to obtain a lease from the Board for the pier under the now sunset pier amnesty program. To date, there was no land dispositions issued either for the pier or the subject easement area. Staff conducted a site inspection on August 14, 2019, and confirmed that the pier has been removed (see **Exhibit 2**). According to the Applicant, the pier was completely removed sometime between 2010 and 2012 after it was heavily damaged by a waterspout and a watercraft accident.

The subject request covers an encroachment area about 1,128 square feet, as shown on the map prepared by the State Survey Division and attached herein as **Exhibit 3**.¹

Recently, Mrs. Sharrer contacted the Division and explained that unforeseen medical issues plagued both her and husband Harold over the years and she recently discovered the unfinished paperwork for the easement in a box she was sorting out. Mrs. Sharrer contacted our staff and expressed a desire to make things right by completing the easement.

1 As noted in this submittal, the pier has been removed. Staff will work with the State Survey Division in removing the pier from any upcoming easement map. The seawall and steps appear to be reclaimed fast lands (not submerged lands).

On February 3, 2021, the Chairperson approved an appraisal that determined the fair market value of the easement to be \$43,300 payable in one lump sum. The Applicant subsequently inquired if the consideration could be paid in one down payment with annual installments.

REMARKS:

In the past, the Board has approved annual installment payments based on applicant's request. In the situation where the annual payment is relatively small, staff believes that requiring a lump sum payment of consideration is a prudent management decision, as it reduces the administrative costs and staff time in the recurring billing.

However, in the subject case, Mrs. Sharrer contacted the Division and explained that due to the failing health of Mr. Sharrer and Mrs. Sharrer's own health problems, they are not capable of managing the one-time payment. Through several email exchanges, Mrs. Sharrer asked if installment payments would be an option. Staff responded that the decision would rest on the Board. Mrs. Sharrer said she is able to put \$5,000 down and pay three equal annual installments. Staff informed Mrs. Sharrer that pursuant to Hawaii Revised Statutes 478-2, the interest for the annual installments will be calculated at ten percent annually. Each annual installment payment will be \$15,401.00.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of October 8, 2004, agenda Item D-5, by allowing payment of the consideration in one down payment of \$5,000 and three subsequent, equal annual installments, further subject to an annual interest of ten percent; and
2. Affirm that, except as amended hereby, all the terms and conditions listed in the October 8, 2004 approval shall remain the same.

Respectfully Submitted,

Calen Miyahara

Calen Miyahara
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:

Suzanne D. Case

ST

Suzanne D. Case, Chairperson

1-5

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

October 8, 2004

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

PSF No.: 02od-529

OAHU

Grant of a Term, Non-exclusive Easement for Seawall and Reclaimed (fill) land to Harold and Julie Sharrer, Kahaluu, Koolaupoko, Oahu, TMK (1) 4-7-19:24 seaward.

APPLICANTS:

Harold R. and Julie Y. Sharrer, husband and wife, as joint tenants, whose mailing address is 47-043 Kamehameha Hwy, Kaneohe, Hawaii 96744.

LEGAL REFERENCE:

Section 171-13, & -53(b) Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands located seaward of (1) 4-7-19:24 situated at Kahaluu, Koolaupoko, Oahu, as shown on the attached map labeled Exhibit A.

AREA:

1,156 square feet, more or less, to be determined by Survey Division, DAGS.

ZONING:

State Land Use District: conservation
City & County of Honolulu LUO:

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES NO

CURRENT USE STATUS:

Unencumbered

CHARACTER OF USE:

Construction, use, maintenance and repair of existing seawall and

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
October 8, 2004

ITEM D-5

Exhibit 1

BLNR - Issuance of Non-exclusive
Seawall easement to Mr. & Mrs. Sharrer

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October 8, 2004

reclaimed (fill) land that includes a portion of a dwelling,
concrete slab, 2-concrete staircases and dog kennel.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff
appraiser, subject to review and approval by the Chairperson.

LEASE TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

During recent inspection, Coastal Land Program (CLP) staff
observed the subject seawall appeared to be built before 1974
i.e. prior to the enactment of the environmental assessment law
and this action is therefore exempt from Ch. 343.

DCCA VERIFICATION:

Individuals, not applicable

APPLICANTS REQUIREMENTS:

Applicants shall be required to

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Provide survey maps and descriptions according to State DAGS
standards and at applicants' own cost (previously provided).

REMARKS:

The applicant is one of the pier owners participating in the Kaneohe
Piers Amnesty Program. During the preparation of the maps required
for the issuance of the pier lease, a rock seawall and reclaimed
land plus other structures were shown to be encroaching onto the
State lands. The applicant's survey map showing the encroachment
and pier is attached as Exhibit B.

The Office of Conservation and Coastal Lands (OCCL) staff visited
the site and reviewed historical documents but was unable to
determine the date of construction nor confirm whether the structure
was built before or after the establishment of the Conservation
District. OCCL staff has determined that the issuance of an
easement for the encroaching portion of the seawall and reclaimed
land would have no adverse impacts on natural resources, including
beach resources and therefore has no objections to the issuance of
an easement (see OCCL letter, Exhibit C). No Conservation District
violation was cited, as it could not be determined whether the
seawall and fill area was built within the Conservation District.

BLNR - Issuance of Non-exclusive
Seawall easement to Mr. & Mrs. Sharrer

Page 3

October 8, 2004

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 that established criteria for imposing fines for encroachments, staff is recommending a fine of \$500 as the subject encroachment is over 100 square feet.

The survey map shows the boundary bisecting the concrete stairs to the ocean. The neighbor, Mr. Imata, is aware of this situation.

No departments and agencies (other than OCCL staff of the department) were asked to comment on the seawall and filled area as the proposed use is not different from the existing use.

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.

RECOMMENDATION: That the Board

1. Impose a \$500 fine for illegal encroachment, under Section 171-6(12).
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a 55-year term non-exclusive easement for seawall and reclaimed (fill) land purposes that includes a portion of a dwelling, concrete slab, 2-concrete staircases and dog kennel to Harold and Julie Sharrer, 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 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: 4-7-19:24, provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.


BLNR - Issuance of Non-exclusive
Seawall easement to Mr. & Mrs. Sharrer

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October 8, 2004

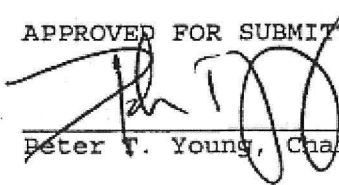
E. Any shoreline hardening policy that may be adopted by
the Board prior to execution of the grant of easement

Respectfully Submitted,



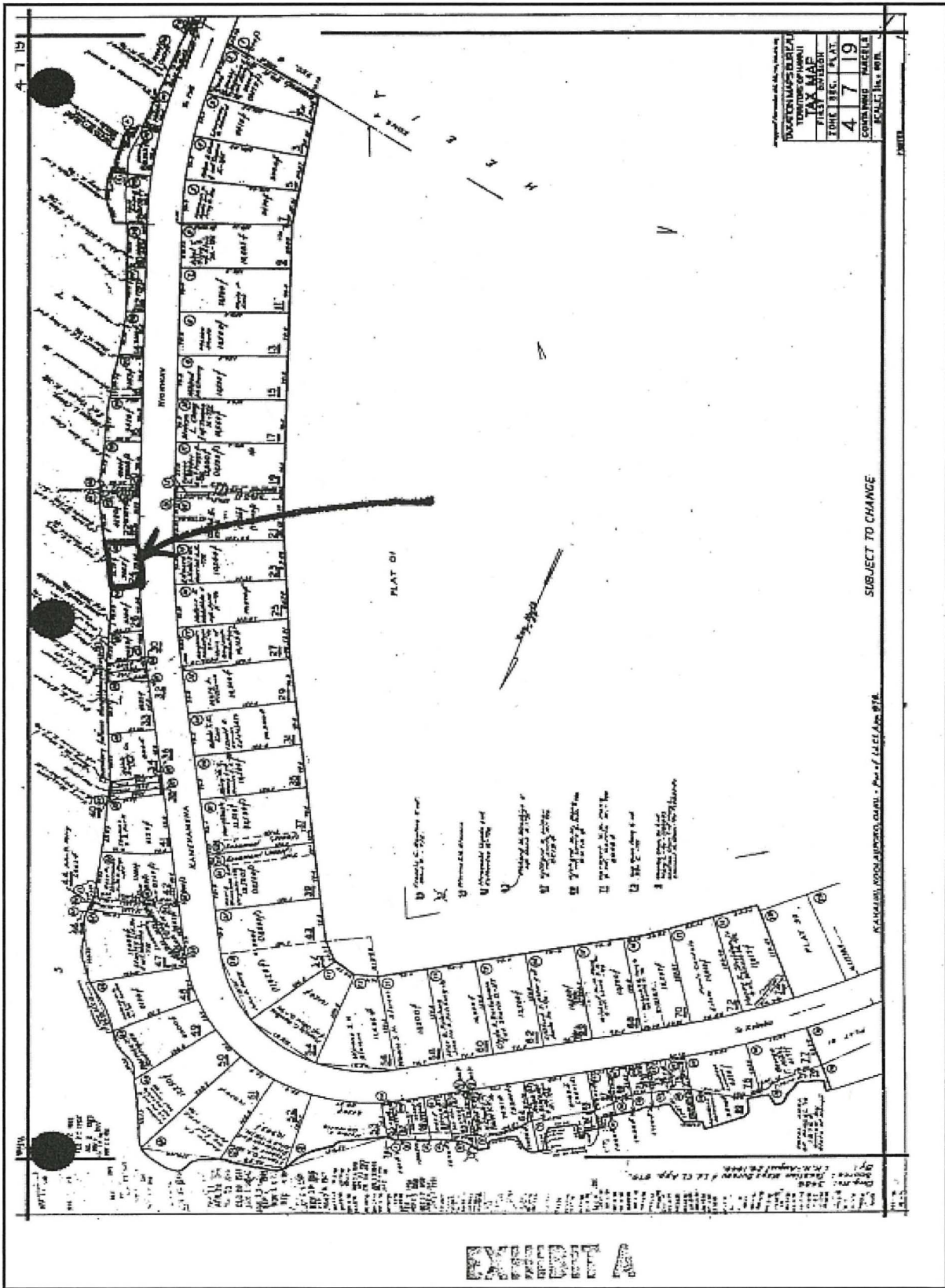
Al Jodar
Land Agent

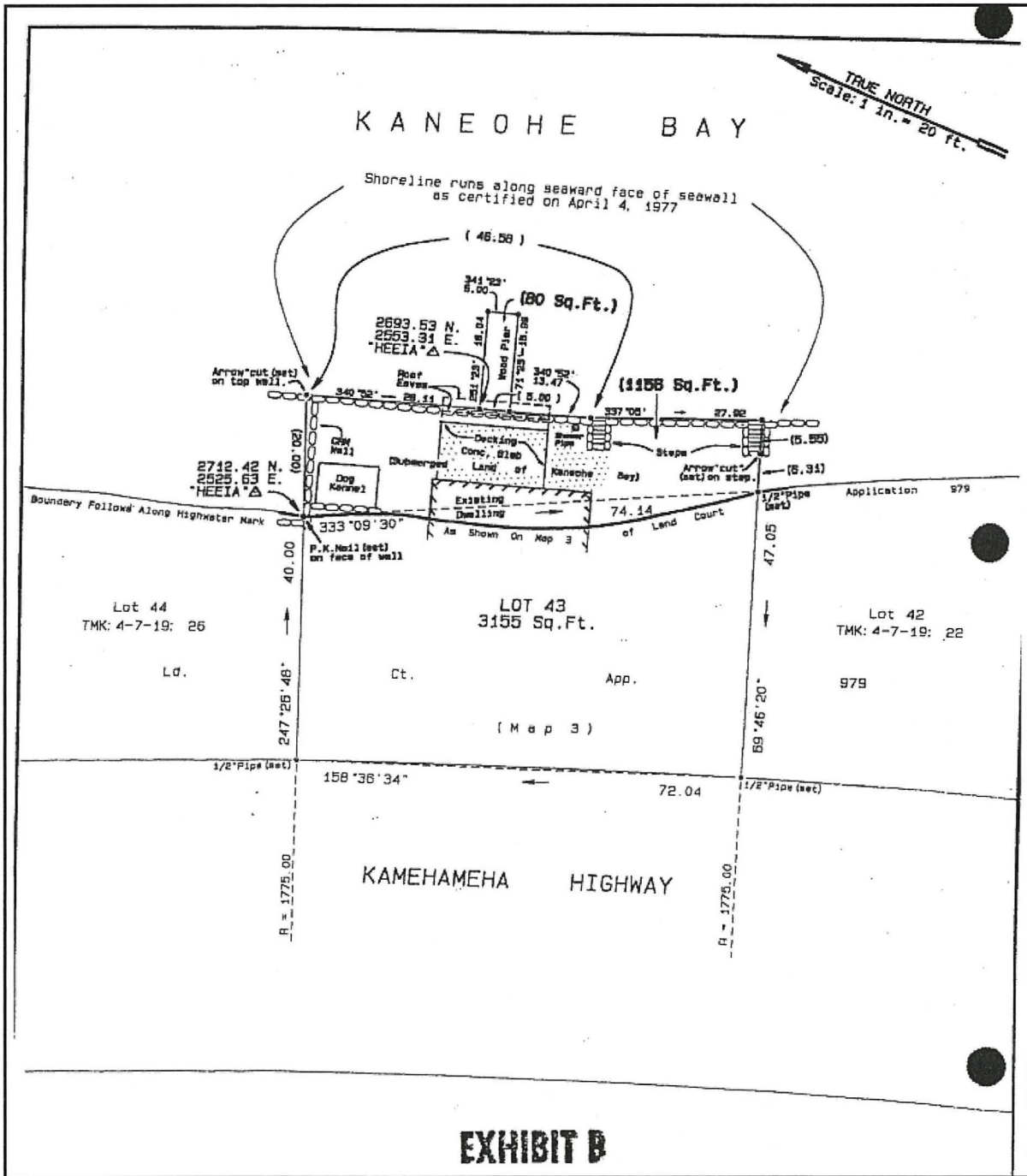
APPROVED FOR SUBMITTAL:



Peter F. Young, Chairperson







LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. Box 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
DAN DAVIDSON
DEPUTY DIRECTOR FOR LAND
ERNEST Y.W. LAU
DEPUTY DIRECTOR FOR
THE COMMISSION ON WATER
RESOURCE MANAGEMENT
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND RESOURCES
ENFORCEMENT
CONVEYANCES
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAMOOLAWA ISLAND RESERVE
COMMISSION
LAND
STATE PARKS

REF:PB:MM

MAR 27 2003

File Number Encroachment: OA-03-22

0202-529

Julie and Harold Sharrer
[REDACTED]
Kaneohe, Oahu 96744

Dear Mr. and Mrs. Sharrer:

Subject: Shoreline Encroachment (Seawall and Fill) at 47-043 Kamehameha Highway, Kaneohe, Oahu, TMK: (1) 4-7-19:024

Land Division, Planning Branch 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. The 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 encroachment is approximately 1,156 square feet. The applicant has submitted an aerial photo dated October 3, 1969 that shows the encroachment in question at that time.

Land Division, Planning Branch staff review of the submitted aerial photos confirms the existence of the seawall and fill area in 1969. However, this does not confirm whether the seawall was built prior to 1964 which could make it non-conforming.

During the January 9, 2003 site visit staff observations confirm that the encroachment in question is long established. However, a survey map you submitted entitled Land Court Application 979 does not show the encroachment in question in existence as of August 29, 1940.

Land Division staff was unable to locate any construction permit or other land use authorization permits at the State or at the City and County of Honolulu for the seawall and fill. A review of an aerial photo submitted in 1969 doesn't establish the legality of the seawall or fill area since it provided no evidence of the

EXHIBIT C

improvements prior to 1964, which was the effective establishment of the Conservation District.

Nevertheless, DLNR cannot confirm whether the structure was built before or after the establishment of the Conservation District. Nor can DLNR determine whether the structure was built within the Conservation District even if it was built after 1964. As a consequence, DLNR does not consider the encroachment a Conservation District violation and will not be asking for an after-the-fact Conservation District Use Application to cure this matter.

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages;
and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted. On January 9, 2003 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 shoreline residences in Kahaluu, Koolaupoko along Kamehameha Highway all share a 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.

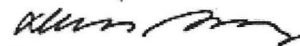
Public Access: CLP staff has determined that public access would not be enhanced by removal of the encroachment.

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 an administrative penalty 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 Land Division, Planning Branch at 587-0382. Please contact the Oahu District Land Agent at 587-0433 regarding the processing of an easement.

Aloha,



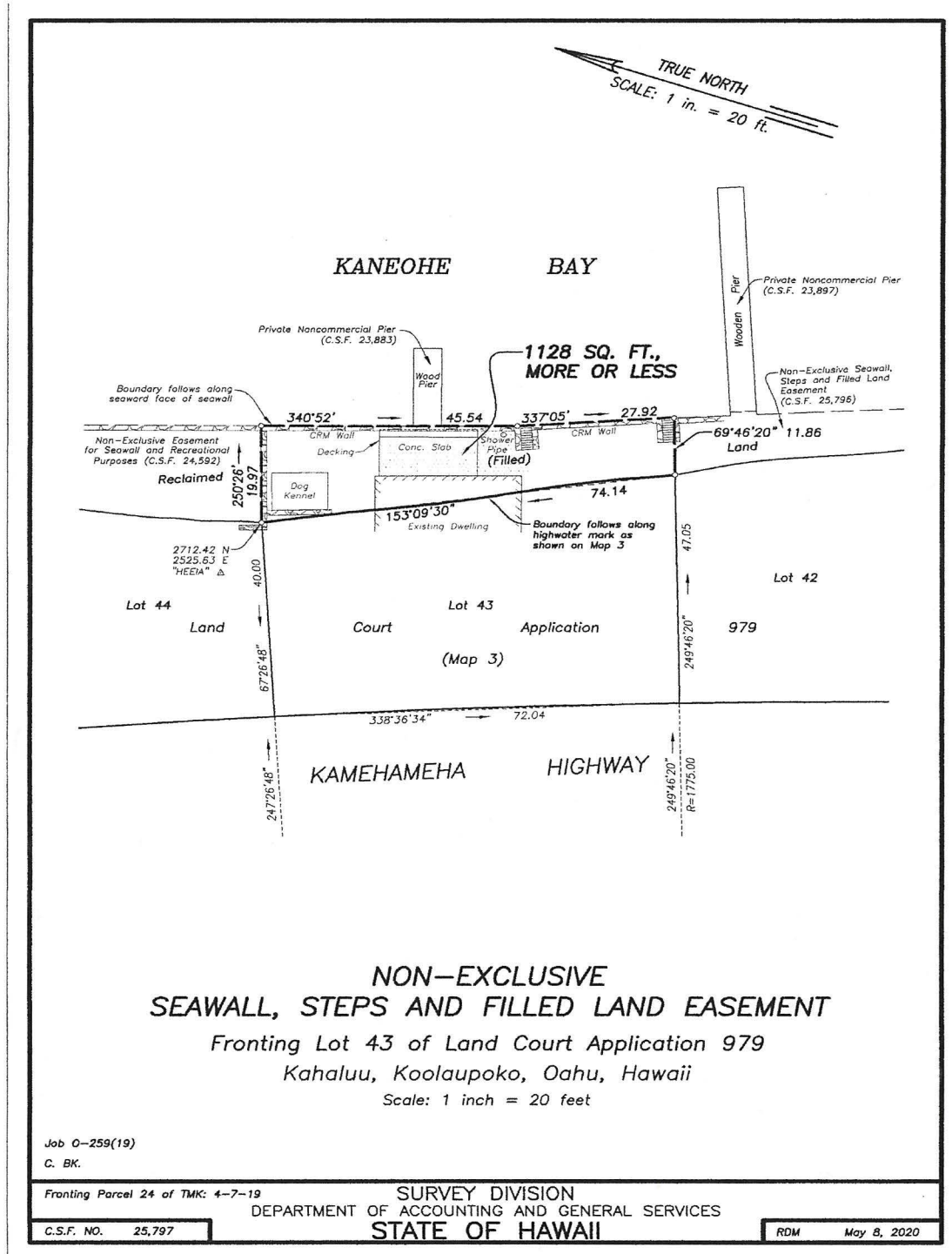
Dierdre S. Mamiya
Administrator

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



Note: Photo showing reclaimed (filled) land area and no pier. Photo taken facing northwest. Photo taken on August 14, 2019.

Exhibit 2



Note: Reclaimed land easement area (1,128 sq. ft.). Private Noncommercial Pier (CSF 23,883) will be removed in future revised CSF map.

Exhibit 3