

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

April 14, 2023

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

PSF No.:23OD-006

OAHU

Grant of Term, Non-Exclusive Easement, Immediate Right-of-Entry and Revocable Permit to David D. Kim for Beach Revetment Purposes, Waialae-Iki, Honolulu, Oahu, Tax Map Key: (1) 3-5-058:seaward of 011.

APPLICANT:

David D. Kim, unmarried, tenant in severalty.

LEGAL REFERENCE:

Sections 171-6, 13, 17, 53(c), and 55, Hawaii Revised Statutes (“HRS”), as amended.

LOCATION:

Portion of Government submerged land located in Waialae-Iki, Honolulu, Oahu, identified by Tax Map Key: (1) 3-5-058: seaward of 011, as shown on **Exhibits A-1 and A-2**.

AREA:

2,894 square feet, more or less, to be reviewed and approved by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Conservation
City & County of Honolulu LUO: R-7.5 [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.

TERM, NON-EXCLUSIVE EASEMENT:

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing beach revetment 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 value, subject to review and approval by the Chairperson.

TERM:

Twenty-five (25) years.

The Land Division has reduced the term for 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 pursuant to the recommendation of the Office of Conservation and Coastal Lands. Landward migration of the shoreline is currently occurring as a direct result of sea level rise. This will progressively expose immobile shoreline structures to an evolving combination of destructive effects from erosion, chronic flooding, and wave inundation. The intention of the term reduction is two-fold: (1) to reduce the potential for accidents and liabilities resulting from dysfunctional shoreline structures by more frequently reviewing and managing shoreline structures and (2) to facilitate a general process of managed retreat from the shoreline.

MONTHLY RENTAL FOR RIGHT-OF-ENTRY AND REVOCABLE PERMIT:

Monthly rental amount \$831.00 for right-of-entry and revocable permit has been calculated by staff and has been reviewed and approved by the Chairperson. **(Exhibit B)**

REMOVAL BOND:

Applicant shall be required to post a removal bond in an amount to be determined by Land Division in consultation with Engineering Division, subject to approval by the

Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules ("HAR") §§11-200.1-15 and -16 and the Exemption List for the Department of Land and Natural Resources, reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an Environmental Assessment pursuant to General Exemption Type 1, which applies to "[o]perations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing." Specifically, the subject request is exempt under Part 1, Item 39, which exempts the "[c]reation or termination of easement, covenants, or other rights in structures or land." The subject request is expected to have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment. (**Exhibit C**)

DCCA VERIFICATION:

Not applicable. Applicant is an individual, residential landowner and is not required to register with DCCA for this purpose.

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards at Applicant's own cost;
2. Pay for an appraisal to determine one-time payment in consideration of the easement; and
3. Obtain the prior concurrence of the Legislature and approval of the Governor through a Concurrent Resolution pursuant to §171-53(c), HRS.

REMARKS:

The Applicant's pursuit of approvals for renovation of his private property designated as TMK: (1) 3-5-058:011 (Parcel 11) triggered a shoreline certification and the subject encroachment was discovered in the certification process. A copy of a 2021 shoreline survey map, prepared by a surveyor contracted by the Applicant, with the encroachment shown is attached as **Exhibit D**.

On April 10, 1964, the original developer of the subdivision containing Parcel 11 requested Board approval to construct the subject revetment, to run along the shoreline of multiple house lots of the same subdivision, for the purpose of erosion protection. The 1964 submittal requested a construction right-of-entry permit to be in place while processing of an easement proposal was underway. Subsequently, through a letter to the developer dated October 1, 1964, Land Division informed the developer of the Board's approval and authorized the developer to proceed with construction. This letter also stated that Land Division was processing the sale of the easement. Due to reasons unknown to the staff,

such sale of easement never happened. See **Exhibit E**, below.

A request similar to the present one but regarding the immediate neighboring property (Parcel 10) was heard by the Board on August 28, 2009, under agenda item D-20. At that time, the Board granted a 55-year term easement to the owner of Parcel 10.

OCCL, by their letter attached as **Exhibit E** supports the subject request. OCCL recommends that proper signage be placed on the subject area. Staff understands that it is a standard condition in the shoreline encroachment easement document stating that the public shall have access to the easement area. Section 171-13, HRS, does not require placement of a sign on the easement area. Therefore, staff does not support OCCL comment about the signage.

OCCL further requests that the property owner pay a retroactive rent amount that reflects the benefits received from the encroaching revetment from the time construction was completed to the present. Staff does not support this recommendation to collect retroactive rent for several reasons. First, records indicate that the lack of follow-up as to sale of the easement was due to inaction by the Department and not due to any action or inaction on the part of the original developer, original owner, or a subsequent owner: no easement request was ever placed on the Board agenda. Second, a charge of retroactive rent in an instance such as this is not the Department's standard procedure. Finding sales and market information to determine the market value from the 1960s to the present likely would turn out to be a lengthy and costly research process at cost to the Applicant. Finally, the Department did not charge retroactive rent for the term easement granted for the adjoining Parcel 10 in 2009 and referred to above.

The Board of Water Supply had no objections/comments and concurs to the proposed environmental assessment exemption. The Department of Planning and Permitting has no objections the State's granting of the easement and proposed granting of an exemption. Other government agencies solicited, including Department of Parks and Recreation, Department of Facility Maintenance and the Office of Hawaiian Affairs, have not responded to the request for comments as of this writing.

Pursuant to the 1964 Board action and correspondence described above, there was an authorization from the Board regarding the construction of the subject revetment. Therefore, staff does not recommend a fine for unauthorized encroachment.

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. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and §§11-200.1-15 and -16, HAR, this project is expected to have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Authorize the continued applicability of the subject requests in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 3-5-058:011, provided that 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. Authorize the issuance of a right-of-entry permit to David D. Kim 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 right-of-entry permit form, as may be amended from time to time;
 - B. Posting of a removal bond during the effective period of the right-of-entry permit;
 - C. Removal of the subject encroachment, if required, within the period determined by the Chairperson;
 - D. Commencement of the right-of-entry on the Board date, for a term of one year or until the issuance of the revocable permit described in recommendation 4 below, whichever is sooner; provided that the Chairperson may extend the right-of-entry for additional one-year periods for good cause shown; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the issuance to David D. Kim of a revocable permit 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 revocable permit form, as may be amended from time to time;
 - B. Posting of a removal bond during the effective period of the revocable permit;
 - C. Removal of the subject encroachment, if required, within the period determined by the Chairperson;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

5. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance to David D. Kim of a 25-year term, non-exclusive easement 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) 3-5-058:011, 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 State, as Grantor, of such transaction in writing, and shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
 - C. Prior concurrence of the Legislature and approval of the Governor through a Concurrent Resolution pursuant to §171-53(c), HRS.;
 - D. Review and approval by the Department of the Attorney General;
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
 - F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



Rebecca L. Anderson
Shoreline Specialist

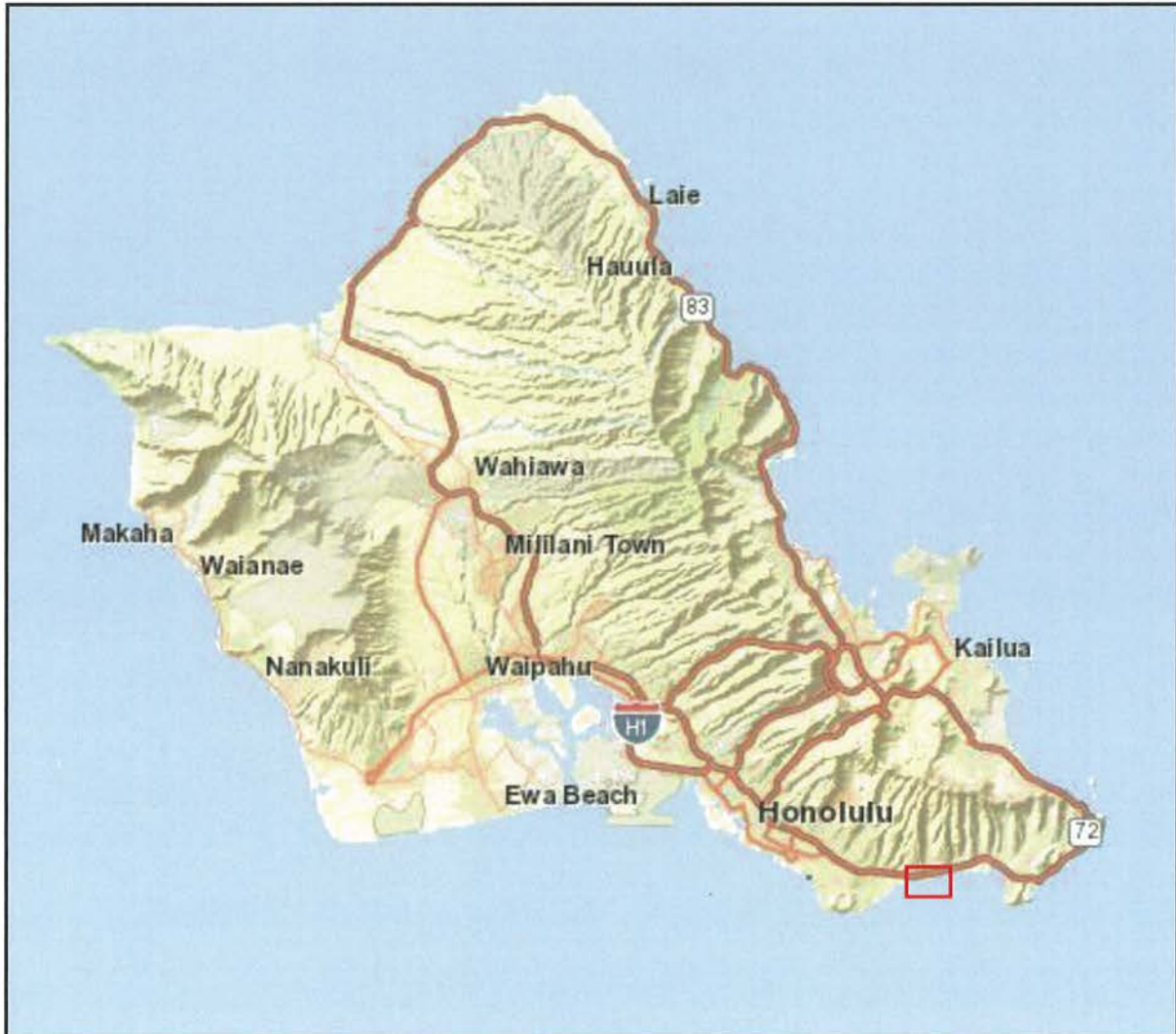
APPROVED FOR SUBMITTAL:



Dawn S. N. Chang, Chairperson

KDM

RT



TMK (1) 3-5-058: seaward of 011

EXHIBIT A-1



TMK (1) 3-5-058: seaward of 011

EXHIBIT A-2

JOSH GREEN, M.D.
GOVERNOR | KE KAHANA
SYLVIA LIUKE
LIEUTENANT GOVERNOR | KA HOPE KAHANA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
LAURA H.E. KANGIA
FIRST DEPUTY
M. KALEO MANUEL
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF COMPTONANCE
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

To: Dawn N. S. Chang, Chairperson
Through: Russell Y. Tsuji, Administrator
From: Land Division, Appraisal Section
Date: February 16, 2023
Subject: David Kim Shoreline Revocable Permit

A shoreline revocable permit valuation was prepared for the property below and is summarized as follows:

Reference: PSF No. 23OD-006
Applicant: David Kim
TMK: (1) 3-5-058: Seaward of 011
Area: 2,894 square feet, more or less
Effective Date: Upon Board Approval
Recommended Value: \$831/month

The undersigned finds that the valuation was completed in accordance with the assignment.



Dawn N. S. Chang, Chairperson

Feb 16, 2023

Date

EXHIBIT B

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, Immediate Right-of-Entry and Revocable Permit to David D. Kim.
Reference No.:	PSF 23OD-006
Project Location:	Portion of Government submerged land located in Waialae-Iki, Honolulu, Oahu, identified by Tax Map Key: (1) 3-5-058: seaward of 011.
Project Description:	Issuance of term, non-exclusive easement for beach revetment purposes.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	<p>In accordance with HAR §§11-200.1-15 and -16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, which applies to “[o]perations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing.” Specifically, the subject request is exempt under Part 1, Item 39, which exempts the “creation or termination of easement, covenants, or other rights in structure or land.”</p> <p>The Applicant is not planning on conducting any major change to the existing topographical condition of the subject location. 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.</p>
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 revetment that was placed in the 1960s. No successive actions are planned by the applicant in the same location. As such, staff believes that there would be no significant cumulative impact.

EXHIBIT C

Action May Have
Significant Impact on
Particularly Sensitive
Environment?

No, the requested area is a portion of shoreline State land that contains improvements makai of the abutting private property which, by visual analysis, seem to have been in existence for many years and are 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:

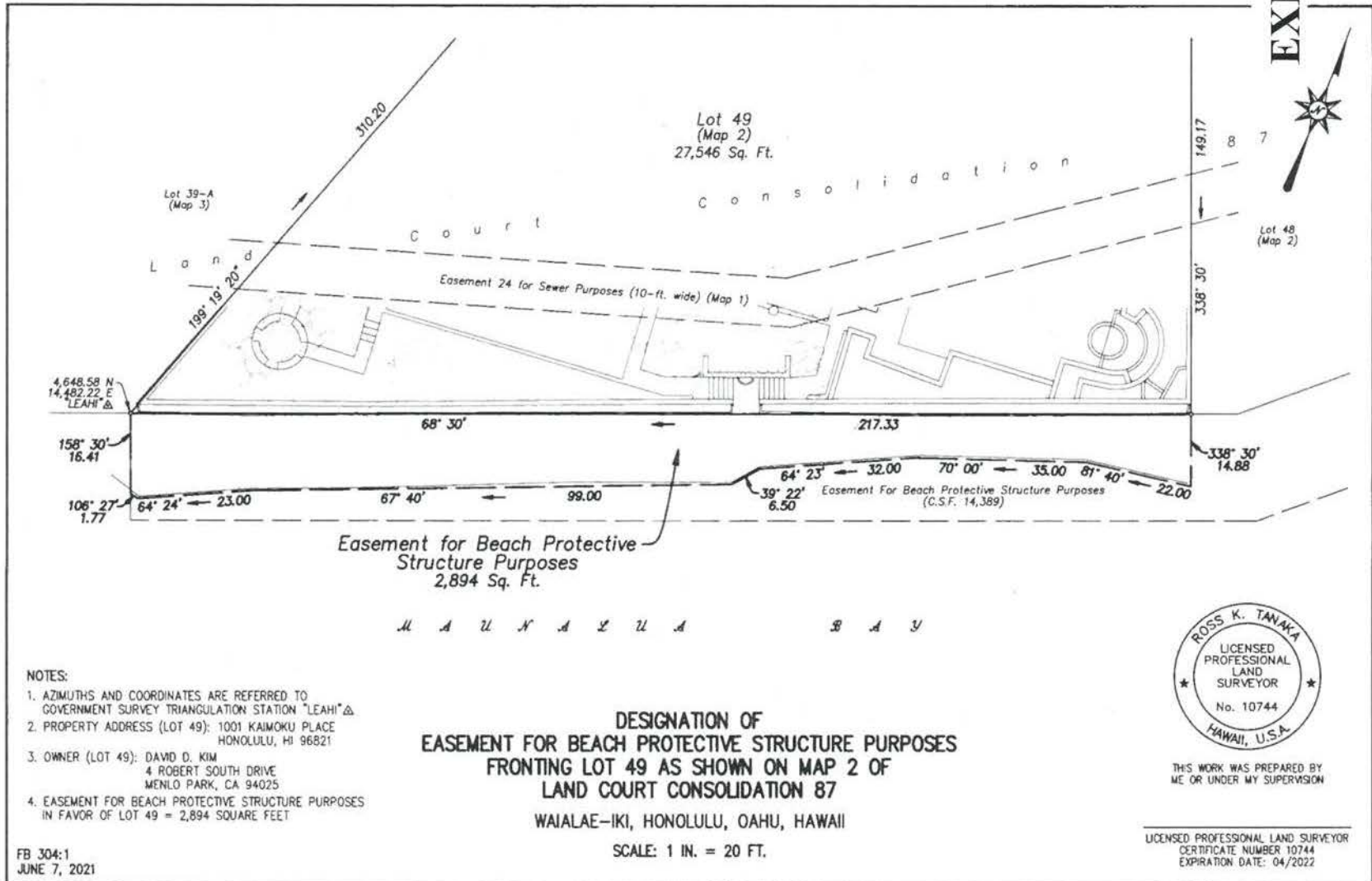
Agencies as noted in the submittal.

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 find 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.



- NOTES:
1. AZIMUTHS AND COORDINATES ARE REFERRED TO GOVERNMENT SURVEY TRIANGULATION STATION "LEAHI" Δ
 2. PROPERTY ADDRESS (LOT 49): 1001 KAIMOKU PLACE HONOLULU, HI 96821
 3. OWNER (LOT 49): DAVID D. KIM
4 ROBERT SOUTH DRIVE
MENLO PARK, CA 94025
 4. EASEMENT FOR BEACH PROTECTIVE STRUCTURE PURPOSES IN FAVOR OF LOT 49 = 2,894 SQUARE FEET

**DESIGNATION OF
EASEMENT FOR BEACH PROTECTIVE STRUCTURE PURPOSES
FRONTING LOT 49 AS SHOWN ON MAP 2 OF
LAND COURT CONSOLIDATION 87**

WAIALAE-IKI, HONOLULU, OAHU, HAWAII

SCALE: 1 IN. = 20 FT.

FB 304:1
JUNE 7, 2021

TAX MAP KEY: (1) 3-5-058: 011

KN SURVEYING, LLC
500 ALAKAWA STREET #100A
HONOLULU, HAWAII 96817



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION

LICENSED PROFESSIONAL LAND SURVEYOR
CERTIFICATE NUMBER 10744
EXPIRATION DATE: 04/2022

10" x 15" = 1.0 SQ. FT.

RECEIVED
LAND DIVISION
DAVID Y. IGE
GOVERNOR OF HAWAII
2022 DEC -7 PM 1:12
DEPT. OF LAND &
NATURAL RESOURCES
STATE 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
M. KALEO MANUEL
DEPUTY DIRECTOR - WATER
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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:CM

Shoreline Encroachment OA 22-1

Dec 5, 2022

Kristian Eiserloh
Eiserloh Architects
820 West Hind Drive, Suite 240139
Honolulu, HI 96824

SUBJECT: Request to Resolve State Land Encroachments at 1001 Kaimoku Place,
Waialae-Iki, Oahu, 96821; Tax Map Key (1) 3-5-058:seaward of 011

Dear Mr. Eiserloh,

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL), is in receipt of your Shoreline Encroachment Information Sheet package seeking to resolve an encroachment on State Lands seaward of the subject property on behalf of your client David Kim, who is the landowner of record. Your package included a Shoreline Encroachment Information Sheet, and in chronological order; a February 5, 1964 TMK and property boundary map (see **Exhibit 1**); a March 16, 1964 Lot map and drawing of a beach protection structure prior to its construction for the shoreline homes in the vicinity (see **Exhibit 2**); an April 10, 1964 Right-of-Entry (ROE) request made to the Board of Land and Natural Resources (BLNR) from Bishop Estate asking for approval to construct the subject erosion protection structure (see **Exhibit 3**); a copy of the BLNR meeting minutes from April 10, 1964 that approved the ROE request (see **Exhibit 4**); an October 1, 1964 approval letter from the Head of the Division of Land Management to Bishop Estate to exercise the ROE for the construction of the beach protection structure (see **Exhibit 5**); a October 23, 1964 State of Hawaii, DAGS-Survey Office, CSF map of an easement for a beach protection structure along Kai-Nani subdivision ocean front homes (see **Exhibit 6**); a copy of the August 28, 2009 BLNR approval for the rock revetment fronting the adjacent property to the east (see **Exhibit 7**); and a June 7, 2021, survey map of the encroaching area for the subject property (see **Exhibit 8**), and multiple pictures of the encroachment.

You are working to resolve a shoreline encroachment consisting of a rock revetment along the makai boundary of the subject property. The information you provided suggests the revetment may have constructed in the 1960s following authorization by the BLNR. The easement map that you provided shows the subject revetment occupies a total encroachment area of approximately 2,894 square feet.

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.

EXHIBIT E

Shoreline Encroachment OA 22-1

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

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 subject property is flanked by the Waialae Golf Course to the west, and the Kai-Nani subdivision residential homes to the east and mauka. About 0.2 miles west of the subject property is the Kahala Hotel. Land directly makai of the revetment is submerged with a narrow sandy lateral beach access that is exposed during low tide. The submerged land area is part of Maunalua Bay, which is used for ocean activities such as swimming and fishing. The narrow sandy beach extends northeast of the subject property towards Wailupe Beach Park, located about 0.5 miles away. The sandy beach also extends west of the subject property along the Waialae Golf Course. The only public access to the shoreline would be at the Kahala Hotel and the Wailupe Beach Park.

Beach Resources and Environment: The encroachment is a rock revetment abutting Maunalua Bay in the northeastern corner of the Kahala area. A narrow sandy beach exists west and east of the subject encroachment, but it is narrow and often wet at high tide. However, the narrow beach walkway shows signs of long-term stability.

Public Access: A dedicated mauka-makai public shoreline access pathway is not available in the subject property's immediate vicinity. The information provided notes that there is a private road located approximately 1,200 feet northeast of the subject property that is possibly being used by the public to access the sandy beach area. Additionally, it is noted that the beach is usually wet and mostly submerged during high tide, making longshore access difficult during those periods. However, the beach is available for public use.

Effect of Removing the Encroachment on:

Beach Resources: Removal of the revetment would not improve beach resources in the area. The revetment extends to the adjacent property and is largely buried in the beach sand since its installment in the 1960s. The beach appears to have equilibrated to the current environmental conditions and removing the revetment entirely could disrupt the equilibrated state of the subject beach and have a negative effect.

Public Access: While the beach remains open to the public, dedicated mauka-makai public shoreline access is not available in the subject property's vicinity. With regards to lateral access, the subject revetment appears to be largely buried under the sand and

Shoreline Encroachment OA 22-1

the effects of removing the revetment would likely have negative effects in that it may create a significant erosion event, if sand is not used as a replacement for the revetment, and possibly resulting in beach loss as the beach returns to equilibrium. Beach loss would be a definite detriment to shoreline access, and erosion would be a short-term detriment as the beach adjusted to a new equilibrated state. Removal of the encroachment would not improve public access in the area.

Adjacent Properties: Removing the revetment may negatively impact the eastern neighbor that shares the revetment with the owner of the subject property. Additionally, the section of revetment fronting the adjacent property to the east, TMK (1) 3-5-058:010, was granted an easement by the Board of Land and Natural Resources for that section on August 28, 2009 (attached as **Exhibit 1**).

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.

Summary

The subject encroachment consists of a section of a rock revetment approximately 2,894 square feet along the makai face of the subject property and extends along the area fronting the adjacent property (TMK: (1) 3-5-058:010) to the east. Additionally, the section of revetment fronting the adjacent property was granted an easement by the Board of Land and Natural Resources at its meeting on August 28, 2009. The subject revetment does not seem to have detrimental effects on public access nor beach and recreational resources in the area, and the revetment serves as primary erosion control for the subject property as well as the adjacent 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. The subject encroachment seems to have been in place since the 1960's and was given approval to be constructed and authorization to exist on State lands. Exhibit 5 authorizes the construction of a shoreline protection structure for the Kai-Nani subdivision oceanfront homes. Should the OCCL find that the structure has been significantly altered since it was originally authorized, the OCCL may reconsider this finding.

Similar to our position in the 2009 easement request for the section of the subject revetment fronting the adjacent property to the east, OCCL suggests that proper signage be placed identifying the revetment and the State land are open to the public. The OCCL suggests that any disposition require that the land uses remain unimproved. However, if improvements of any kind are allowed, the OCCL also suggests a requirement for an integrated public access component to address the mandated lateral shoreline access parameters as stated in HRS §115.

Shoreline Encroachment OA 22-1

The OCCL also suggests an additional requirement of back payment on the original easement authorization. The DLNR authorized the easement in conjunction with the DOT permitted work. The owners completed the work and have received the benefit of the structure for 45 years, but it appears that a lease has not been paid.

Should you have any questions regarding this correspondence, contact Cal Miyahara of our Office at (808) 798-6147 or calen.miyahara@hawaii.gov.

Sincerely,

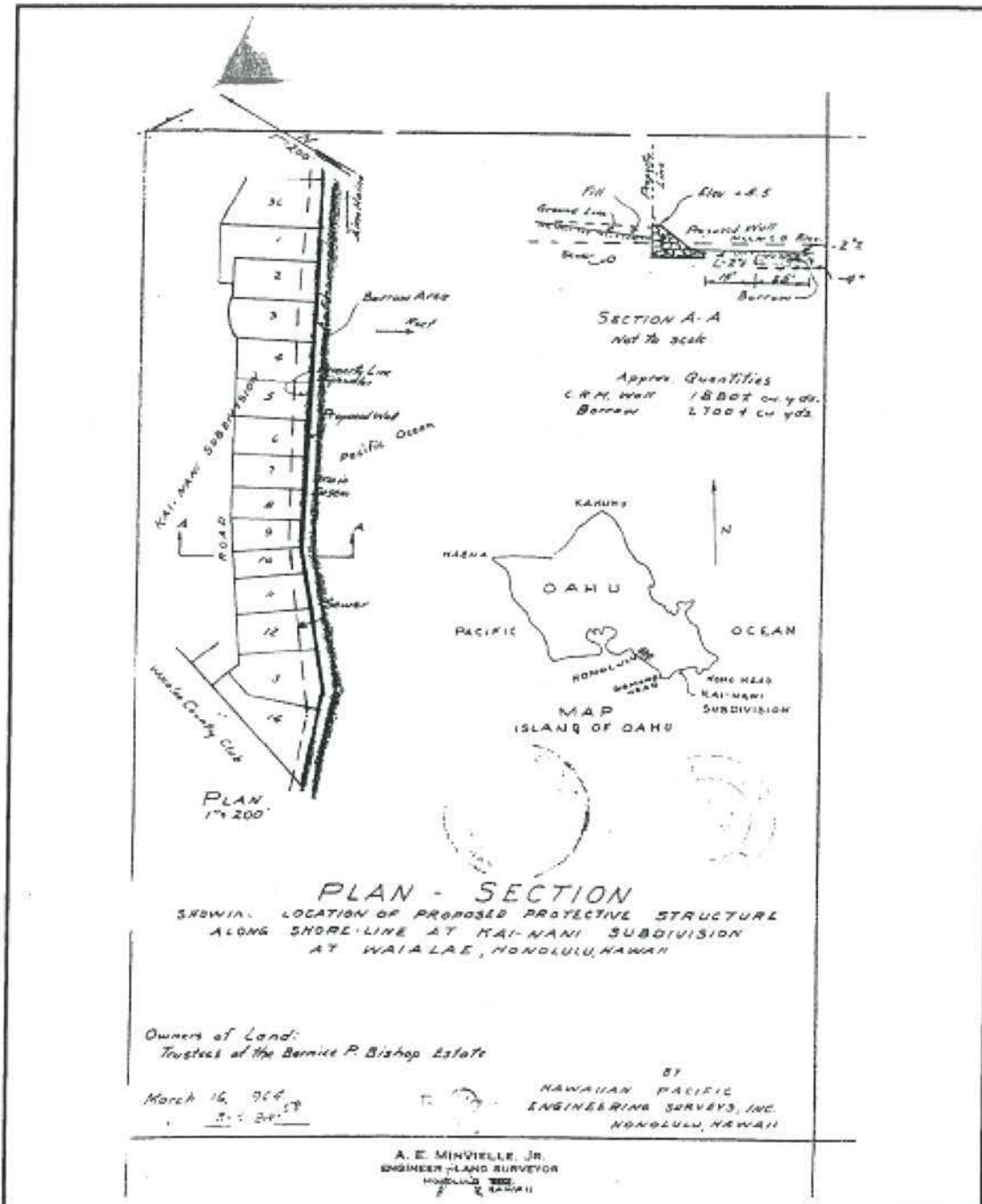
S Michael Cain

Michael Cain, Administrator
Office of Conservation and Coastal Lands

CC: Chairperson
ODLO
City & County of Honolulu-DPP
OHA

Shoreline Encroachment OA 22-1

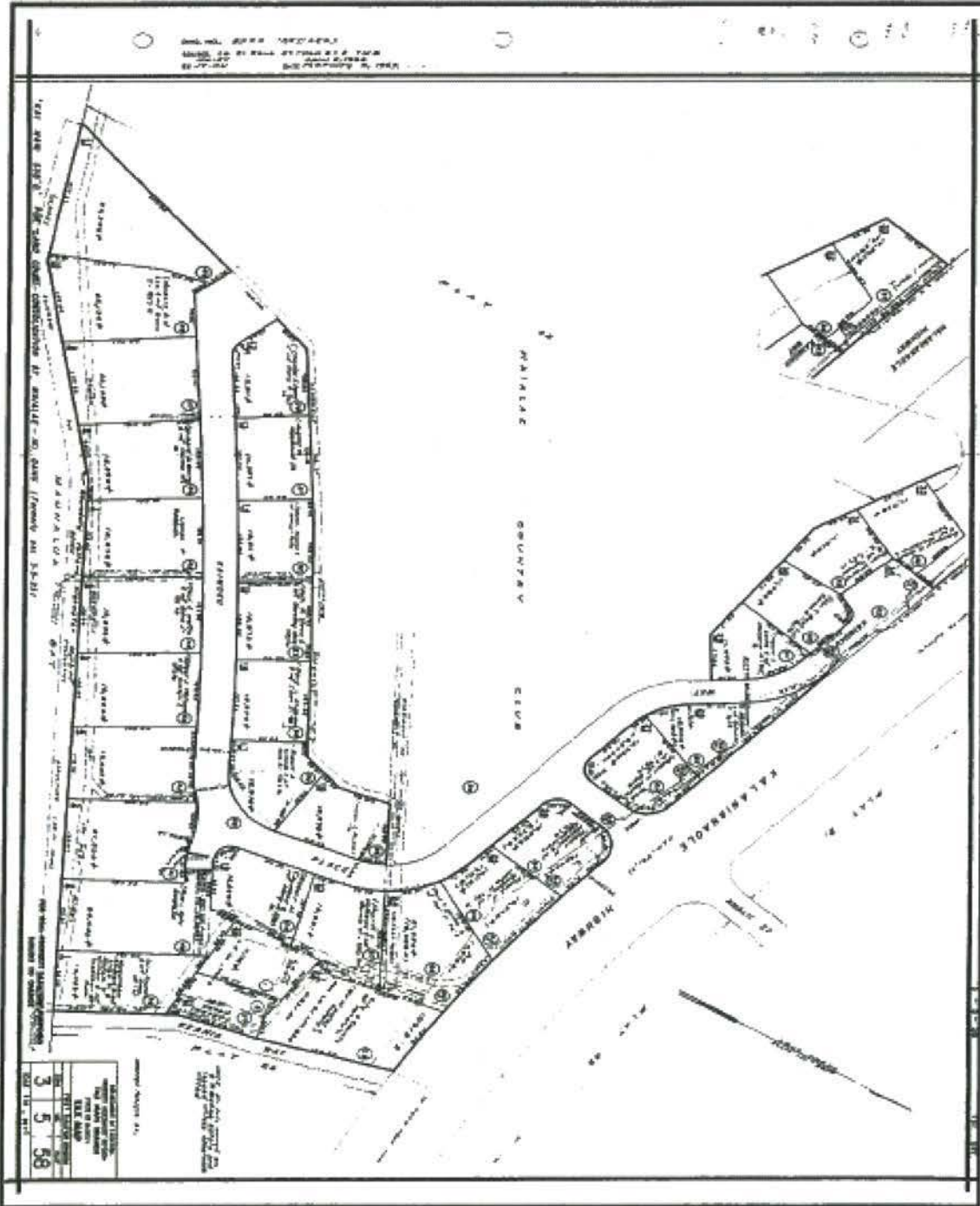
Exhibit 2



Note: March 16, 1964, Lot map and drawing of the beach protection structure prior to its construction for the shoreline homes in the vicinity.

Shoreline Encroachment OA 22-1

Exhibit 1



Note: February 5, 1964, TMK and property boundary map of Kai-Nani subdivision.

Shoreline Encroachment OA 22-1

Exhibit 3

Copied at Hawaii State Archives

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
HONOLULU, HAWAII
Division of Land Management
April 10 1964

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

Gentlemen: OMU

Subject: Bishop Estate Request for Construction Right-
of-Entry--Protective Structure Along Shoreline
at Kai-Mani Subdivision, Waiialea, Honolulu, Oahu

In developing the Kai-Mani Subdivision adjacent to the
Waiialea Golf Course, the Bishop Estate wishes to construct a
gravity retaining wall along the shoreline with the rear, or
inside, along the high-water mark, thus putting the wall itself
on the state land makai of the high-water mark.

Pending the processing of an easement proposal for the
Board's consideration, and in order not to delay construction,
the Estate has requested an immediate construction right-of-
entry.

RECOMMENDATION:

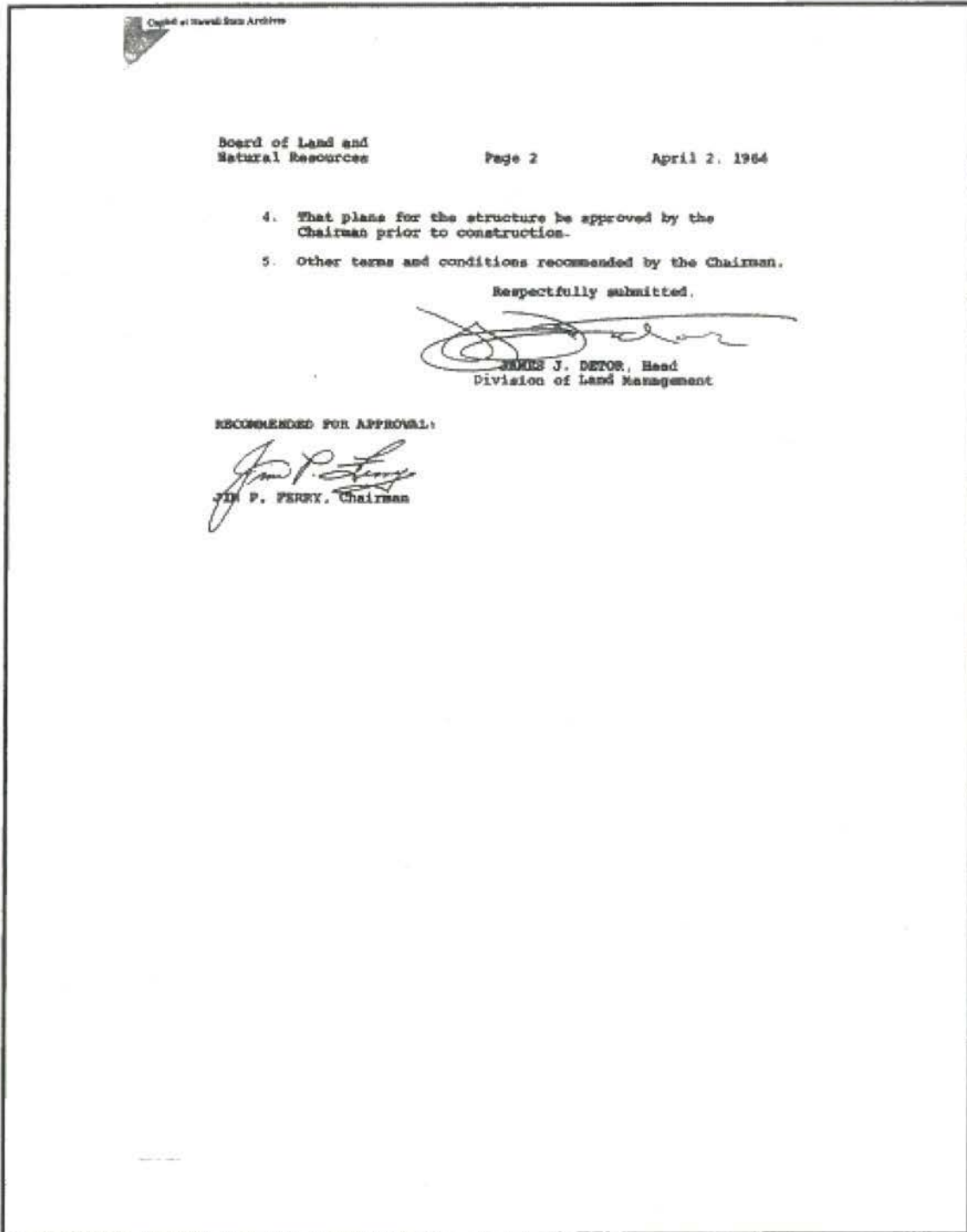
That the Board grant a construction right-of-entry to the
Bishop Estate for the construction of a beach protective struc-
ture along the Kai-Mani Subdivision at Waiialea, Oahu, subject
to the following terms and conditions:

1. That the Trustees of the Bernice P. Bishop Estate
shall defend, indemnify and hold harmless the State
of Hawaii against any loss, liability, claim or demand
for damage or injury, including but not limited to
interest or to claims for property damage, personal
injury or death arising out of any activity by the
Bishop Estate or its agents or representatives on the
property.
2. That the Bishop Estate, while performing the work,
shall use due care for public safety and shall reason-
ably restore, at its sole cost and expense, the
surface of the subject area to its original state.
3. That prior to exercise of the right-of-entry, the
approval of the Department of Transportation, the
U. S. Corps of Engineers, and any other government
agencies involved be secured.

ITEX F-17

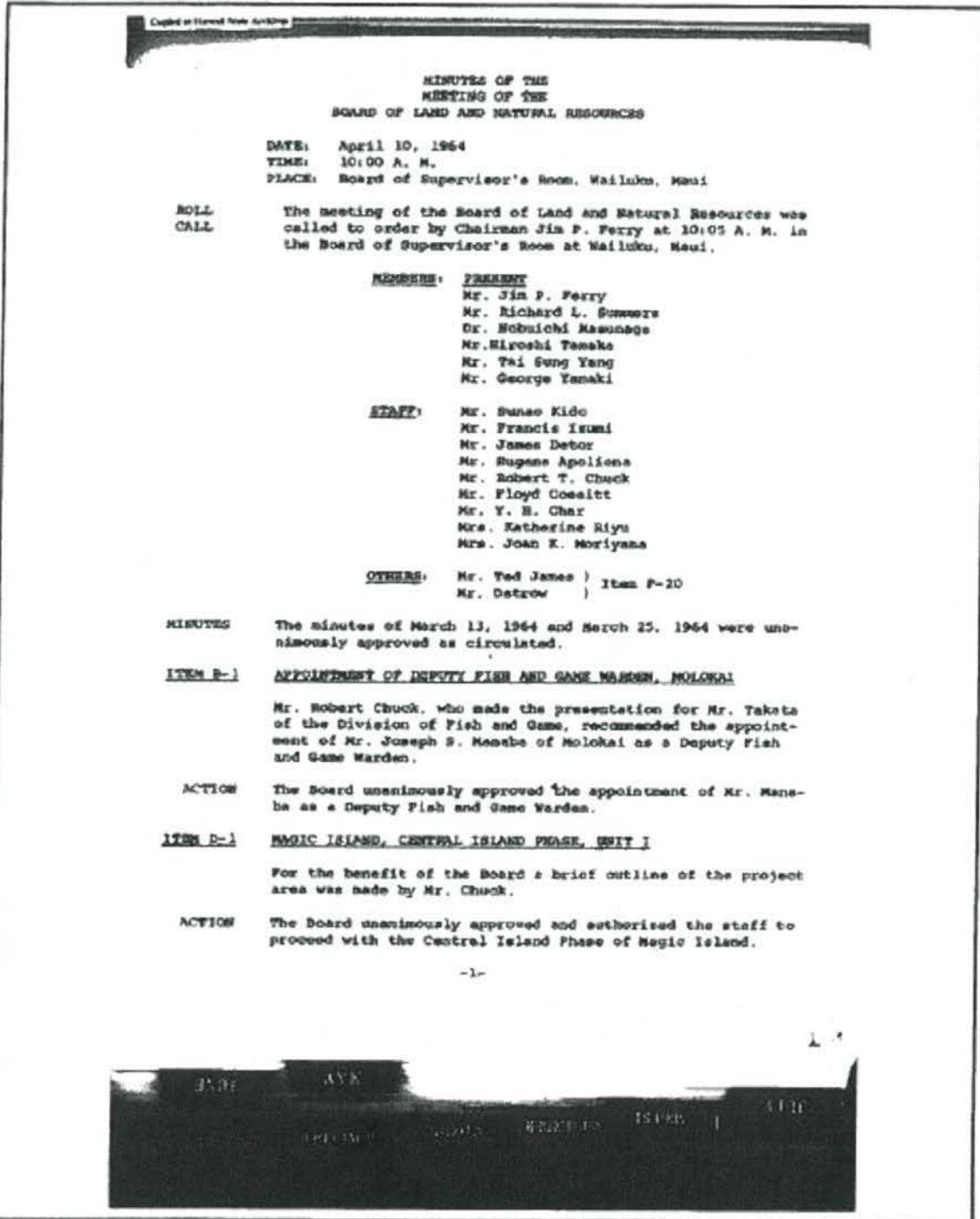
Note: April 10, 1964, BLNR ROE request for beach protection structure.

Shoreline Encroachment OA 22-1



Shoreline Encroachment OA 22-1

Exhibit 4



Note: April 10, 1964, BLNR minutes approving the ROE for beach protection structure.

<u>ITEM P-17</u>	<p>BISHOP ESTATE REQUEST FOR CONSTRUCTION RIGHT-OF-ENTRY - PROTECTIVE STRUCTURE ALONG SHORELINE AT KAI-MANI SUBDIVI- SION, MAIALAE, HONOLULU, OAHU</p> <p>As indicated under Condition No. 4, plans must be approved by the Chairman prior to the construction of the wall.</p> <p>ACTION The Board unanimously granted a construction right-of-entry to the Bishop Estate for the construction of a beach protective structure along the Kai-Mani Subdivision at Wai-lee, Oahu, subject to the terms and conditions outlined in the submittal.</p>
<u>ITEM P-18</u>	<p>WALLACE M. MITER AND K. YAMANE APPLICATIONS FOR WAIVER OF PATENT RESTRICTION, WAIMANALO, OAHU</p> <p>ACTION The Board unanimously approved the staff's recommendation as outlined in the submittal.</p>
<u>ITEM P-19</u>	<p>ACCEPTANCE OF GIFTS OF LAND FROM FRANCIS H. TODD AND WIFE, WAIMANALO, OAHU</p> <p>ACTION The Board unanimously accepted the Todd's offer as recommended by the staff.</p>
<u>ITEM P-20</u>	<p>UNITED DEVELOPMENT CORPORATION APPLICATION TO LEASE LOT B, WAILUA RESORT SITE, WAILUA, LIHUE, KAUAI</p> <p>The Chairman informed the Board of an apparent misunderstanding in respect to lot designations, explaining that Lot B had been confused with Lot A-1. He felt that since there are in progress negotiations leading to a lease of Lots B, C, D and E as one parcel--a consolidation which, in his opinion, would be of advantage to the State--it would be best not to commit Lot B individually.</p> <p>Mr. Ostrow voiced his objection to a consolidation of the four lots. He asked the Board to consider leasing Lot B by itself, submitting that his organization had negotiated with this particular lot in mind, not Lot A-1.</p> <p>ACTION No action was taken on this submittal.</p>
<u>ITEM P-21</u>	<p>STAFF REQUEST FOR AUTHORIZATION TO PROCEED WITH SALE OF LEASES - ISLANDS OF KAUAI AND MAUI</p> <p>ACTION The Board unanimously approved the sale of the following leases and authorized the Chairman to proceed with the publication of the Notice of Sale and disposition:</p> <ol style="list-style-type: none">1. Lots 54, 55 & 67, portion of Lot 65, portion of abandoned Maie Road and abandoned Lihue Plantation railroad right-of-way, Anahola, Kauai (TORAJI OSHIMA AND CHYENGO YOSHI)

Shoreline Encroachment OA 22-1

Exhibit 5

October 1, 1964

Bernice F. Bishop Estate
519 Malakawila Street
Honolulu, Hawaii

Attention: Mr. A. J. Dow

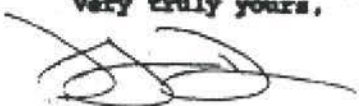
Gentlemen:

Subject: Kai Mani Subdivision--Beach
Protective Structure

Now that the Department of Transportation has issued a permit for construction of the beach protective structure along the shoreline at your Kai Mani Subdivision, you are free to exercise the right-of-entry granted by the Board of Land and Natural Resources at its meeting of April 10, 1964.

We are processing the sale of the easement as well as preparing a document covering Keahia Way and will advise you further when a sale date has been set and the Keahia document is completed.

Very truly yours,


JAMES J. DETOR, Head
Division of Land Management

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JJD:vt

cc: Mr. M. Lepine

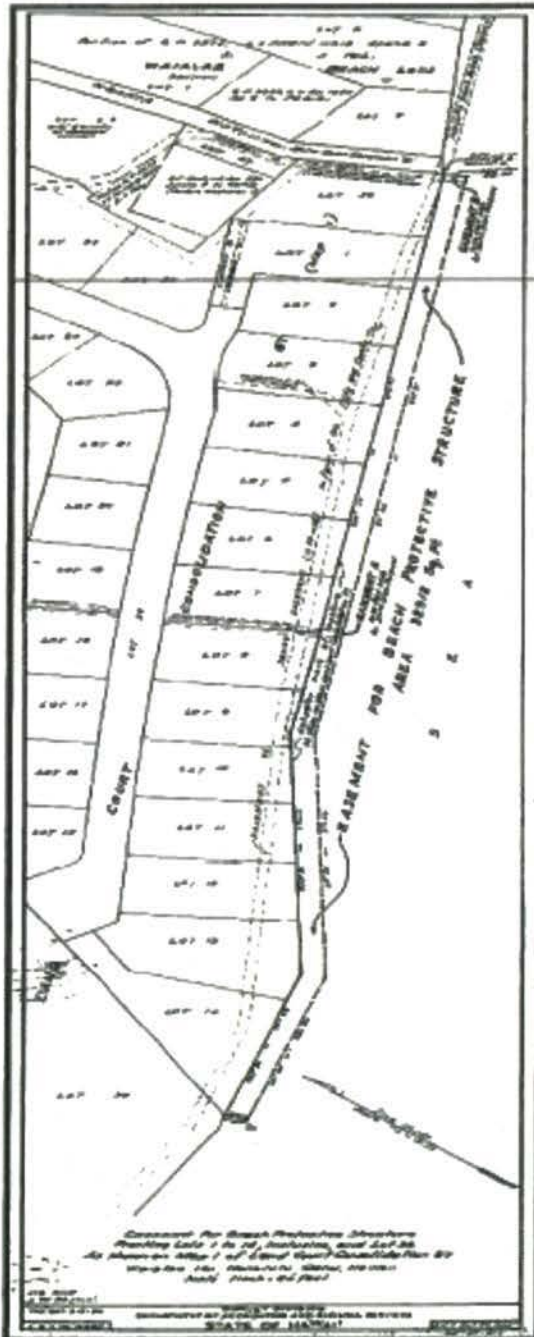
Found at dead File of DLNR.
Under Bishop Estate.

EXHIBIT "B"

Note: October 1, 1964, approval letter to exercise the ROE for the construction of the beach protection structure.

Shoreline Encroachment OA 22-1

Exhibit 6



Note: October 23, 1964, State of Hawaii, DAGS-Survey Office, CSF map of an easement for a beach protection structure along Kai-Nani subdivision ocean front homes.

Shoreline Encroachment OA 22-1

Exhibit 7

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

August 28, 2009

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

PSF No. 08ed-197

OAHU

Grant of Term, Non-Exclusive Easement to Beecom Hawaii LLP for Revetment
Purposes, Waiialae-Iki, Honolulu, Oahu, Tax Map Key: (1) 3-5-058 seaward of
010.

APPLICANT:

Beecom Hawaii LLP, c/o Sachi Hawaii, 88 Piikoi Street, Suite 301, Honolulu, Hawaii
96814.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Waiialae-Iki, Honolulu, Oahu, identified
by Tax Map Key: (1) 3-5-058 seaward of 010, as shown on the attached map labeled
Exhibit A.

AREA:

1,460 square feet, more or less, to be determined by DAGS Survey Division.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
August 28, 2009

D-20

**Note: BLNR approval (August 28, 2009) for revetment fronting adjacent property
to the east.**

Shoreline Encroachment OA 22-1

BLNR - Issuance of Easement
to Beecom Hawaii LLP

Page 2

August 28, 2009

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, maintain, repair, replace and remove existing
revetment over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair
market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

By a letter dated October 1, 1964 (Exhibit B), the Department indicated that the subject
structure was authorized by the Department of Transportation. It appears that the subject
structure was built before 1974, prior to the enactment of the EIS law and this action is
therefore exempt from Ch. 343.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to pay for an appraisal to determine the one-time payment.

[Note: Applicant already provided the map and description of the subject area.]

REMARKS:

The applicant intends to undertake renovation on his property and a shoreline certification

BLNR - Issuance of Easement
to Beecom Hawaii LLP

Page 3

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us triggered. During the process, the subject encroachment was discovered. A copy of the latest survey map is attached as Exhibit C.

According to the letter at Exhibit B, the Board planned to sell the easement at a later date. Due to reasons unknown to the staff, such sale of easement never happened.

OCCL, by their letter attached as Exhibit D, supports the subject request. OCCL further recommends proper signage be placed on the subject area, and demands for retroactive rent. Similar comment regarding the signage is shared by the Office of Hawaiian Affairs (OHA). Staff understands that it is a standard condition in the shoreline encroachment easement document stating that the public shall have access to the easement area. Sec. 171-13, Hawaii Revised Statutes does not require a sign be placed on the easement area. Therefore, staff does not support OCCL & OHA's comment about the signage.

Other agencies' responses are tabulated below:

Agencies with no objections/comments	State Historic Preservation Division, Department of Facility Maintenance, Department of Hawaiian Home Lands, Board of Water Supply, Division of Aquatic Resources
Agencies did not respond	Department of Health, Commission of Water Resource Management, Department of Planning and Permitting

Pursuant to the letter at Exhibit B, there was an authorization from the Department of Transportation regarding the construction of the subject revetment, staff does not recommend a fine for unauthorized encroachment.

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.

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

RECOMMENDATION: That the Board:

1. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 3-5-058-010, 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.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above,

Shoreline Encroachment OA 22-1

BLNR - Issuance of Easement
to Beecom Hawaii LLP

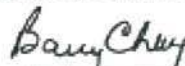
Page 4

August 28, 2009

authorize the issuance of a term, non-exclusive easement to Beecom Hawaii LLP covering the subject area for revetment 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: 91) 3-5-058:010, 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 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.
- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

Respectfully Submitted,



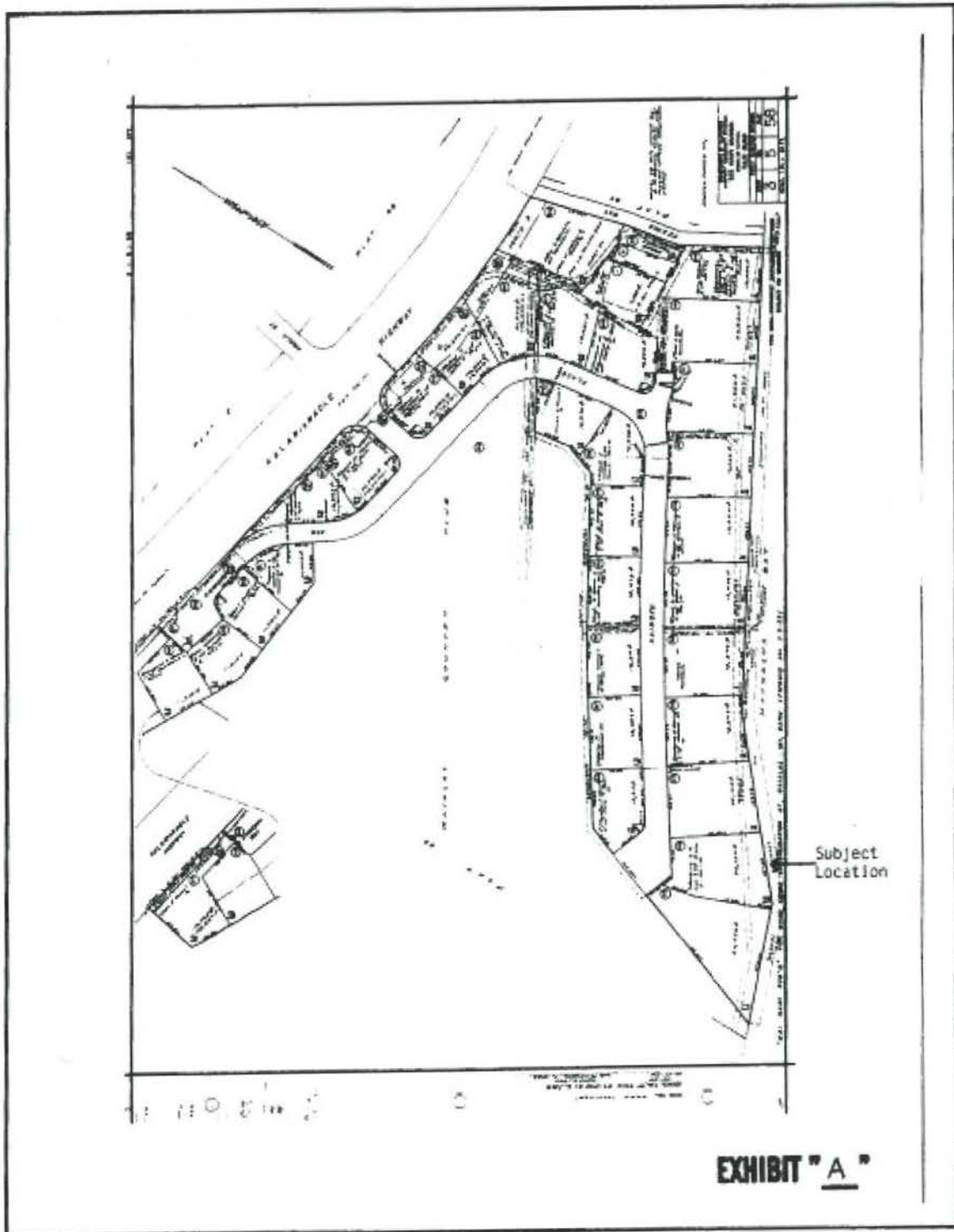
Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

Shoreline Encroachment OA 22-1



Shoreline Encroachment OA 22-1

October 1, 1964

Bernice P. Bishop Estate
519 Halekuanila Street
Honolulu, Hawaii

Attention: Mr. A. J. Dow


Gentlemen:

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Very truly yours,


JAMES J. DWYER, Head
Division of Land Management

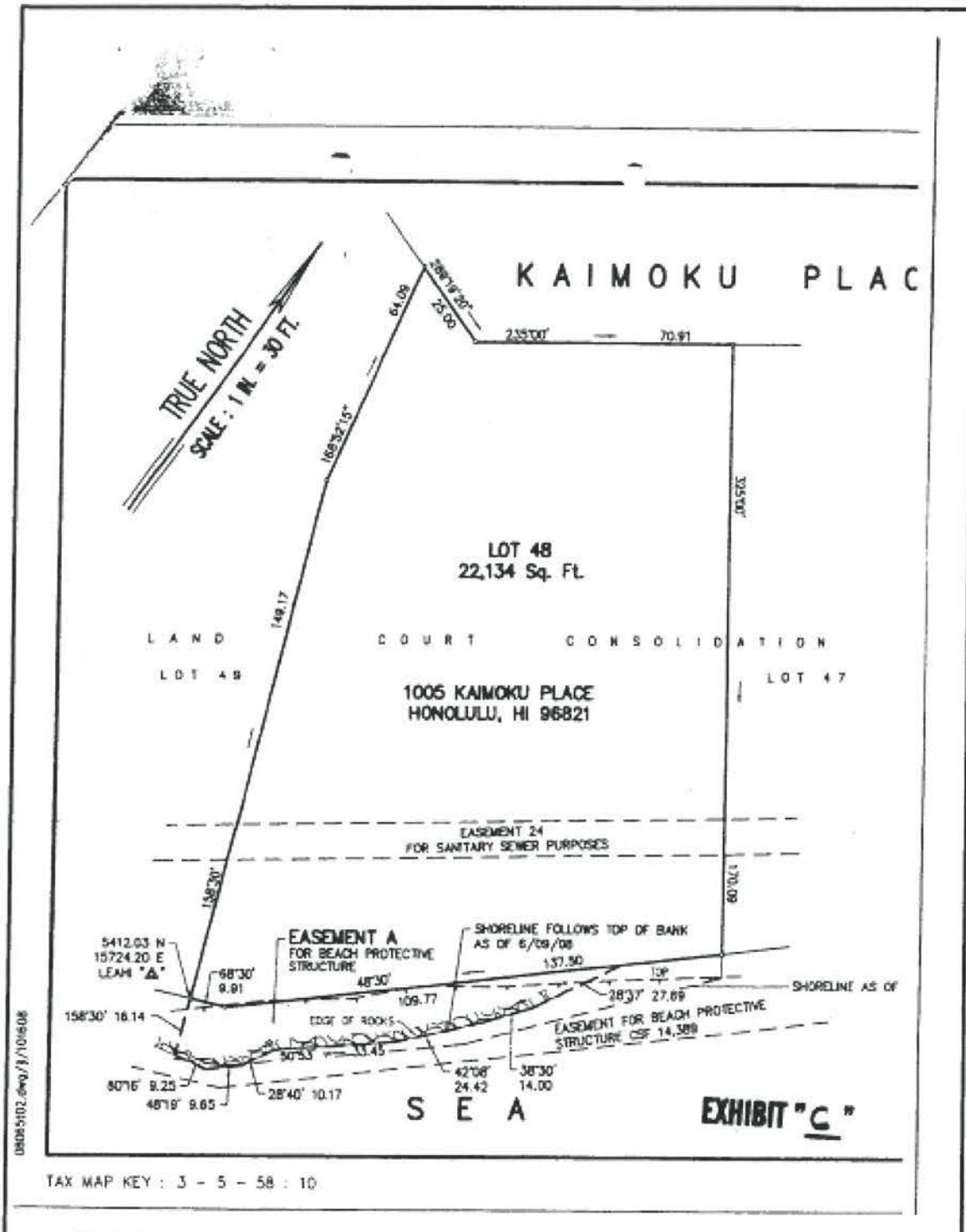
JJD:vt

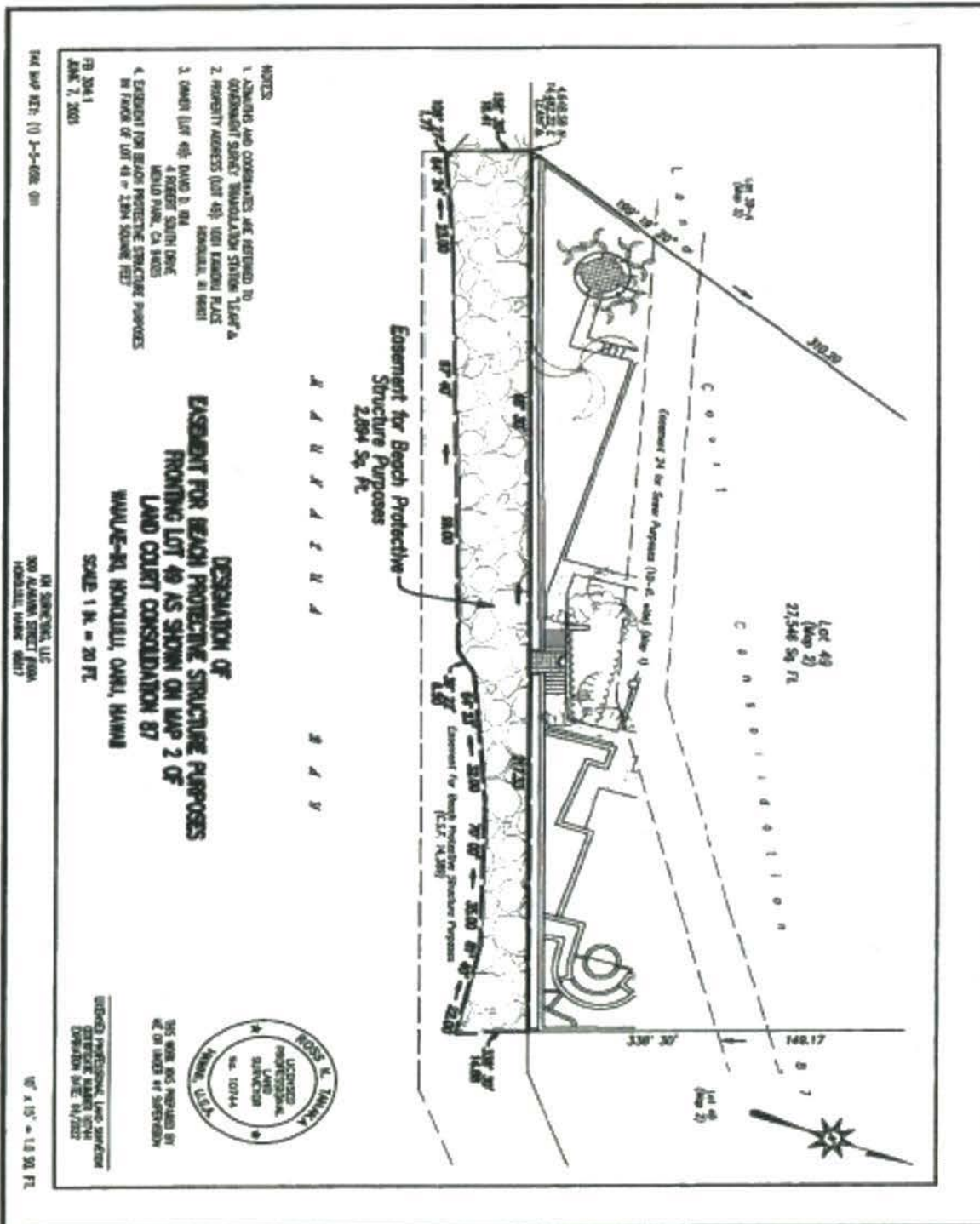
cc: Mr. M. Lepine

Found at dead file of DLNR.
Under Bishop Estate.

EXHIBIT "B"

Shoreline Encroachment OA 22-1





Note: June 7, 2021, survey map of the encroaching area for the subject property.