

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

May 12, 2023

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

PSF No.: 23OD-019

OAHU

Grant of Term, Non-Exclusive Easement, Immediate Right-of-Entry and Revocable Permit to Kim Lu and Beiting Gao for Boat Ramp Purposes at Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-047: seaward of 013.

APPLICANTS:

Kim Lu and Beiting Gao, married persons, tenants by the entirety. (“Applicants”)

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 Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-047: seaward of 013, as shown on **Exhibits A-1 and A-2**.

AREA:

156 square feet, more or less, subject to review and approval by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Conservation
City & County of Honolulu LUO: R-10 [for the abutting private property]

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Unencumbered with encroachments.

TERM, NON-EXCLUSIVE EASEMENT:CHARACTER OF USE:

Right, privilege and authority to use, repair, and maintain existing concrete boat ramp 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 (OCCL). 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 \$40.00 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:

A removal bond is required, in an amount to be determine by Land Division, in consultation with the Engineering Division, and further subject to the 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 negligible or no expansion or change of use beyond that previously existing.” Specifically, the subject request is exempt under Part I, Item 39, which exempts the “[c]reation or termination of easement, covenants, or other rights in structure 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. Applicants are individual, residential landowners and are not required to register with DCCA for this purpose.

APPLICANT REQUIREMENTS: Applicants shall be required to:

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

REMARKS:

The Applicants were cited by the City and County of Honolulu Department of Planning and Permitting (DPP) with two Notices of Violation based on unpermitted construction within a shoreline setback area. In a letter to the Applicants dated October 4, 2022 (**Exhibit D**), DPP stated that the entirety of the subject property is located within a Special Management Area, and therefore, subject to certain permitting requirements.

In the process of resolving the Notices of Violation, Applicants were required to obtain a State shoreline certification for purposes of obtaining the required County building and shoreline setback permits. Applicants submitted a completed Shoreline Certification Application Form dated July 8, 2022 to Land Division. The shoreline certification process revealed the subject encroachment, a nonconforming boat ramp, which must be resolved through removal or easement before the shoreline can be certified. DPP’s October 4, 2022 letter states that, based on historical shoreline photos and DPP records, the boat ramp was present on the location at least as early as 1967. Therefore, the County determined that the

boat ramp is a non-conforming structure. **(Exhibit D)**

By its letter dated February 27, 2023, OCCL supports the processing of a disposition request for the encroaching boat ramp, specifically, through issuance of an easement for the boat ramp. **(Exhibit E)** OCCL's letter states that the boat ramp occupies a total encroachment area of approximately 156 square feet and consists of a concrete ramp that is partially submerged by the waters of Kaneohe Bay. Land directly makai of the boat ramp is submerged with a rocky mud bottom. The near-shore area of the Bay is not conducive for swimming or other ocean recreation activities. There are no sandy beaches along the area shoreline. There is virtually no lateral shoreline access in the area because of the muddy, rocky shore and the fact that most neighboring shoreline properties have sea walls abutting the ocean. The closest public shoreline access is located just under a mile away at Kaneohe Beach Park.

OCCL's letter states that removal of the boat ramp would not improve the shoreline area in terms of beach resources, public access, or the condition of adjacent properties. To the contrary, OCCL found that the ramp seems to be serving, in part, as an erosion control structure and its removal could have a detrimental effect on the subject property as well as on neighboring properties. The characteristics of the surrounding shoreline and near-shore waters are such that removal of the boat ramp would neither improve nor significantly alter access and beach resources. The boat ramp's age and non-conforming status, its function as erosion control, and the lack of public access and ocean recreation in the area led to OCCL's determination to support disposition of the encroachment through an easement.

The Applicants provided a map **(Exhibit F-1)** and description **(Exhibit F-2)** of the proposed easement area for the boat ramp, prepared by a professional surveyor contracted by the Applicant. Both documents indicate an easement area of approximately 156 square feet, with the property boundary as the makai border. The actual encroachment area should include the portion of the encroaching boat ramp that extends makai of the shoreline. Upon approval of this request, staff will work with the Applicants and State Survey Division to finalize the map of the encroachment area.

The Honolulu Board of Water Supply had no objections/ comments and concurs with the proposed environmental assessment exemption. The Honolulu Department of Planning and Permitting (DPP) had no specific objections to the proposed easement or to the associated environmental assessment exemption but noted that the Applicants have accrued two DPP violations on the property mauka of the shoreline and requested notification of the progress of this application, particularly in regard to any change in size and extent of the easement. **(Exhibits G-1 and G-2)** Other government agencies solicited, specifically the Office of Hawaiian Affairs, Honolulu Department of Parks & Recreation, and Honolulu Department of Facilities Maintenance, have not responded to the request for comments as of this writing.

In anticipation of the time to complete the entire easement process, including survey, appraisal, and Legislative and Governor's approvals, staff recommends the Board authorize the issuance of an immediate right-of-entry which will be followed by a

revocable permit for a term to end upon consummation of the requested easement. Should the requested easement not receive approval from the Legislature or the Governor as required by section 171-53, Hawaii Revised Statutes, the Applicants will be required to remove the subject encroachment pursuant to the revocable permit. The revocable permit will be terminated upon removal of the encroachment to the satisfaction of the Department. In addition, the Department can call on the removal bond for the removal of the subject encroachment if the Applicants fail to carry out this obligation. Upon approval of today's request, staff will work with the Department of the Attorney General on drafting conditions to protect the interest of the State should the Applicants be required to remove the boat ramp. Before the consummation of the interim revocable permit, staff recommends a management right-of-entry for the same purpose due to the length of time needed to process the revocable permit.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, a fine of \$500 is to be imposed if the encroachment is over 100 square feet. Since the subject encroachment area is at least 156 square feet, staff recommends that the Board impose a fine of \$500.

Applicants have 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. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Sections 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. Assess a fine of \$500 for unauthorized encroachment pursuant to the criteria adopted by the Board at its meeting of June 28, 2002, under agenda item D-17.
3. 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) 4-5-047:013 if such change in ownership occurs prior to the execution of the requested easement, provided that the succeeding owner 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.
4. Authorize the issuance of a right-of-entry permit to Kim Lu and Beiting Gao, 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 5 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.
5. Authorize the issuance of a revocable permit to Kim Lu and Beiting Gao, 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 stipulated 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.
6. Subject to the Applicants fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to Kim Lu and Beiting Gao, covering the subject area for encroachment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;

- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-5-047:013, 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 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.
7. Include the City & County of Honolulu Department of Planning and Permitting in any notifications or communications regarding its grant of the requested easement including any changes to the size and extend of the easement.

Respectfully Submitted,

Rebecca L. Anderson
Shoreline Specialist



APPROVED FOR SUBMITTAL:



Dawn S. N. Chang, Chairperson

REN

RT



TMK (1) 4-5-047: seaward of 013

EXHIBIT A-1

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



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. KAAKUA
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

To: Dawn N. S. Chang, Chairperson
Through: Russell Y. Tsuji, Administrator
From: Land Division, Appraisal Section
Date: March 16, 2023
Subject: Kim Lu and Beiting Gao Shoreline Revocable Permit

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

Reference: PSF No. 23OD-019
Applicant: Kim Lu and Beiting Gao
TMK: (1) 4-5-047:seaward of 013
Area: 156 square feet, more or less
Effective Date: Upon Board Approval
Recommended Value: **\$40 per month¹**

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

RT Dawn N. S. Chang, Chairperson

Mar 16, 2023

Date

¹ On May 31, 2005, under agenda item D-19, the Board of Land and Natural Resources (Board) adopted a minimum rent of \$480 per annum. In this assignment, the indicated rent was below the minimum rent adopted by the Board. Accordingly, the minimum rent of \$480 per annum or \$40 per month was applied.

TMK	(1) 4-5-047:seaward of 013
Assessed Land Value (\$)	1,256,100
Land Area (sf)	9,724
Unit Rate Land Value (\$/sf)	129.1752
50% Off For Submerged Lands	64.58762
Encroachment Area (sf)	156
Encroachment Land Value (\$)	10075.67
Annual Rent @ 4 to 8%	0.04
Recommended Annual Value	403.0267
Monthly Value	33.58556

Shoreline RP - Lu & Gao - PSF No. 23OD-019

Final Audit Report

2023-03-16

Created:	2023-03-16 (Hawaii-Aleutian Standard Time)
By:	Andrew Tello [REDACTED]
Status:	Signed
Transaction ID:	CBJCHBCAABAAtDGW5XW3bagBQ575RGBRgFAG7IceTM2z

"Shoreline RP - Lu & Gao - PSF No. 23OD-019" History

-  Document created by Andrew Tello [REDACTED]
2023-03-16 - 9:51:32 AM HST
-  Document emailed to Kevin Moore [REDACTED] for approval
2023-03-16 - 9:53:37 AM HST
-  Email viewed by Kevin Moore [REDACTED]
2023-03-16 - 9:55:45 AM HST
-  Document approved by Kevin Moore [REDACTED]
Approval Date: 2023-03-16 - 9:56:08 AM HST - Time Source: server
-  Document emailed to Russell Tsuji [REDACTED] for approval
2023-03-16 - 9:56:09 AM HST
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-  Document emailed to Dawn Chang [REDACTED] for signature
2023-03-16 - 10:01:18 AM HST
-  Email viewed by Dawn Chang [REDACTED]
2023-03-16 - 9:47:36 PM HST
-  Document e-signed by Dawn Chang [REDACTED]
Signature Date: 2023-03-16 - 9:48:53 PM HST - Time Source: server
-  Agreement completed.
2023-03-16 - 9:48:53 PM HST

Names and email addresses are entered into the Acrobat Sign service by Acrobat Sign users and are unverified unless otherwise noted.

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 Kim Lu and Beiting Gao.

Reference No.: PSF 23OD-019

Project Location: Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-047: seaward of 013

Project Description: Issuance of term, non-exclusive easement for boat ramp.

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

Exemption Class No.: 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 I, Item 39, which exempts the “[c]reation or termination of easement, covenants, or other rights in structure or land.”

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.

Cumulative Impact of Planned Successive Actions in Same Place Significant?

No. This request is for a 25-year term easement for an existing, permanent shoreline structure that seems to have been in place since prior to 1967. No successive actions are planned by the applicant in area of the subject easement. 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 requests across the State, including a substantially similar easement authorized by the Board at its meeting on August 26, 2002 under agenda item D-4. Staff also believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Recommendation:

That the Board finds this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

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) 768-8041
 DEPT. WEB SITE: www.honolulu.gov • CITY WEB SITE: www.honolulu.gov



RICK BLANGIARDI
 MAYOR

DAWN TAKEUCHI APUNA
 DEPUTY DIRECTOR

October 4, 2022

2022/ELOG-1733(CK)

Mr. Kim Lu and Ms. Beiting Gao

[REDACTED]
 Ewa Beach, Hawaii 96706

Dear Mr. Lu and Ms. Gao:

SUBJECT: Request for Shoreline Structure and Special Management Area (SMA) Determination
 Lu/Gao Residence
 [REDACTED] - Kaneohe, Koolaupoko
 Tax Map Key 4-5-047: 013

This is in response to your submittal, received August 22, 2022, requesting a shoreline structure and SMA determination for the existing dwelling unit and accessory structures at the above-referenced property. The subject property is a 9,724-square-foot (sq. ft.) shoreline lot within the R-10 Residential District and SMA in Kaneohe. We understand you are seeking clarification as to what permits and actions will be required to correct two Notices of Violation (NOV) issued by the Department of Planning and Permitting, one for building violations and one for shoreline setback violations. Specifically, unpermitted construction occurred within the shoreline setback area involving the replacement of walls and a portion of the roof on an existing dwelling located partially within the shoreline setback area, as well as the construction of an unpermitted fence and garage structure. In addition, we understand that the State of Hawaii Department of Land and Natural Resources (DLNR) is reviewing a draft shoreline survey for potential certification, which was submitted to the DLNR in response to the shoreline NOV referenced above.

The following is a summary of the chronology relating to the existing structures at the subject property:

- The DPP shoreline records indicate that the existing dwelling is partially located within the shoreline setback, and is therefore considered a nonconforming

EXHIBIT D

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shoreline structure, subject to the requirements of Section 23-1.6, Revised Ordinances of Honolulu (ROH).

- Construction of a single-story, 1,863 sq. ft. dwelling unit and garage was authorized at the subject property under Building Permit (BP) No. 125122 in 1956.
- Construction of a new five-ft. high wooden perimeter fence was authorized under BP No. 128997 in 1956.
- Connection to the municipal sewer system was authorized under BP No. 17329 in 1967.
- Construction of a new 540 sq. ft. lanai was authorized under BP No. 50286 in 1968.
- Construction of a new 50-ft. long, six-ft. high wooden fence along the front of the property was authorized under BP No. 57384 in 1968.
- The enclosure of the existing lanai was authorized under BP No. 58503 in 1975.
- Construction of a new six-ft. high wooden fence along the left of the property was authorized under BP No. 71129 in 1976.
- The addition of a new solar hot water system was authorized under BP No. 769277 in 2014.
- Historic shoreline photos dating back to 1967 indicate the presence of the existing seawall, the existing concrete boat ramp, a dwelling unit, and a garage at the subject property. The presence of the boat ramp, because it appears to be partially covered by Kaneohe Bay water, may be within the State Land Use Conservation District. DPP records indicate the existing seawall is considered a nonconforming shoreline structure.
- A historic shoreline photo from 1992 shows the presence of the same structures as in the 1967 photograph, in addition to the enclosed lanai and a wooden fence along the left side of the property.
- A historic photo from 2019 and the survey prepared for submittal to the DLNR show the presence of an additional pergola structure attached to the left, makai corner of the existing dwelling. Because the pergola structure does not appear in

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prior shoreline photos, and we could not locate permits issued to allow the structure, we anticipate that this structure is unauthorized, and is not considered a nonconforming shoreline structure.

As noted above, the entirety of the subject property is located within the SMA. Further, a portion of the existing dwelling and fence, as well as the entirety of the existing seawall, boat ramp, paved slab area mauka of the seawall, and pergola structure are located within the 40-foot shoreline setback area. The NOV's issued for work at the subject property identify the following activities as unauthorized:

- The existing enclosed lanai was demolished and replaced without obtaining building permits, an SMA Permit, or a Shoreline Setback Variance, and
- A new vinyl fence and gates were constructed around the perimeter of the property without first obtaining building permits, an SMA permit, or a Shoreline Setback Variance.

Based on the above, we have concluded the following:

- The subject property is a shoreline lot within the SMA. Proposed work involves the construction of a new garage, gate, and fencing on a shoreline lot, which for the purposes of the SMA is considered development under Chapter 205A, Hawaii Revised Statutes. Therefore, an SMA permit is required.
- The valuation provided by the Applicant for proposed work is \$40,730, well below the \$500,000 threshold triggering an SMA Use Permit. Therefore, we anticipate an SMA Minor Permit will be required prior to moving forward with proposed development activities.
- Construction of the existing dwelling unit, enclosed lanai, garage structure, and perimeter fence were previously authorized. Portions of these structures that are located within the shoreline setback area are considered nonconforming, and may only be repaired and maintained in accordance with the nonconforming shoreline structure regulations contained in Section 23-1.6, ROH, which states the following:
 - (a) *“Any nonconforming structure may be repaired or altered in any manner which does not increase its nonconformity.*
 - (b) *If a nonconforming structure is destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, it shall not be reconstructed except in conformity with the*

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provisions of this chapter and the shoreline setback rules and regulations, or successor regulations. Reconstruction of such a structure within the shoreline area shall require a variance."

- Based on the inspection of the site and issuance of an NOV regarding the work on the enclosed patio, we find the roof and walls were removed, the roof was raised and expanded, and the nonconforming structure was destroyed before it was rebuilt without permits. Therefore, we conclude that the former nonconforming structure was destroyed to an extent of more than 50 percent of its replacement cost and it may not be reconstructed within the shoreline setback area without a Shoreline Setback Variance.
- In order to proceed with any further development at the subject property, the Applicant must supply a Certified Shoreline Survey, and a detailed valuation of the proposed work on the remainder of the dwelling (i.e. the portion that was not removed). This information must be included in the application for an SMA Permit.
- According to our records, the only authorized perimeter fencing consisted of a wooden fence. Therefore, unless the Applicant can provide records proving otherwise, the existing vinyl fence is likely unauthorized and must be removed or an SMA Permit, a Minor Shoreline Structure Permit, and appropriate building permits must be obtained for an open-work fence.
- We have no records indicating the concrete slab located between the enclosed lanai and the seawall, or the pergola structure along the left side of the dwelling structure were authorized. Therefore, unless the Applicant can provide records proving otherwise, these structures are likely unauthorized and must be removed.
- Instructions and forms to apply for an SMA Permit and Minor Shoreline Structure Permit are available on our website at:

<http://www.honoluludpp.org/ApplicationsForms/ZoningandLandUsePermits.aspx>

Plans and documentation submitted in support of an SMA permit must identify the location of the certified shoreline and shoreline setback line in relation to any existing and proposed structures and/or development activities.
- No Shoreline Setback Variances or SMA permits have been issued by the DPP for any structure at the subject property.

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- If you have pictorial evidence and valuations prepared by a development professional to support a finding that the former enclosed patio was not destroyed to an extent greater than 50 percent of its replacement value, we encourage you to provide such evidence to the DPP.

The DPP issues advisory opinions in response to zoning verification requests because such responses serve an important public purpose. Advisory opinions do not establish or confirm any legal rights or obligations. Advisory opinions may not be appealed because they are not “actions of the Director” under the Land Use Ordinance (LUO) or the Rules of the Zoning Board of Appeals (ZBA). Should you have records associated with the property that you believe may affect the conclusions of this advisory letter, please provide such documentation to the DPP to allow us to reconsider our conclusions.

The DPP may issue declaratory rulings applying specific provisions of the LUO to specific facts. A declaratory ruling is an “action of the Director” that may be appealed to the ZBA. ZBA Rules Sections 21-1, 22-1. Declaratory Rulings are governed by Chapter 3 of Part I of DPP’s Rules of Practice and Procedure.

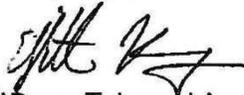
This letter is not a disclosure statement nor is it intended to substitute for mandatory disclosures in real estate transactions regarding the subject parcel. The City is under no obligation to investigate, research, or participate in the preparation of disclosure statements other than providing available public records. This letter does not create liability on the part of the City, or any officer or employee thereof, if used in or as a disclosure statement. The seller, buyer, lender, or their agent, not the City, is solely responsible for the use of any public record information in the preparation of a disclosure statement.

Please note that any request for permit research and/or copies (e.g., a Certificate of Occupancy, or a specific land use or BP) must be accompanied with a research request fee. A money order or certified check in the amount of \$5.00, made payable to the City and County of Honolulu, will initiate the process of researching and copying the specific records you are interested in obtaining. There will also be a copy charge of \$0.50 for the first page of every record, and \$0.25 for each page of the same record, thereafter. In addition to the copy charge, there is a research fee of \$5.00 per 10 minutes, or fraction thereof, of research time. Shipping and handling charges will also be added to your total cost for this type of request. These charges will be imposed separately from the zoning clearance and confirmation request fee. Please contact our Customer Service Division at (808) 768-8272 for cost estimates to initiate the request.

Mr. Kim Lu and Ms. Beiting Gao
October 4, 2022
Page 6

The receipt for your Shoreline Structure Determination is enclosed. Should you have any questions, please contact Christi Keller, of our staff, at [REDACTED] or via email at [REDACTED]

Very truly yours,


For: Dawn Takeuchi Apuna
Acting Director

Enclosure: Receipt No. 137798

cc: Shichao Li, Office of Planning (via email)
DLNR Land Division (via email)

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA
OFFICE OF CONSERVATION AND COASTAL LANDS
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. KAAKUA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:CM

Shoreline Encroachment OA 22-7

Feb 27, 2023

Kim Lu and Beiting Gao
[REDACTED]
Kaneohe, HI 96744

SUBJECT: Request to Resolve State Land Encroachment at [REDACTED]
Kaneohe, Oahu, Tax Map Key (1) 4-5-047:seaward of 013

Dear Landowners,

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. Your package included a Shoreline Encroachment Information Sheet, an easement map, a letter from the City and County of Honolulu, Department of Planning and Permitting (County) regarding a Special Management Area determination, land court maps, and photos of the encroachment (see **Exhibit 1**).

You are working to resolve a shoreline encroachment consisting of an existing boat ramp located makai of the subject property's shoreline. The information you provided suggests the boat ramp may have constructed prior to 1967, based on the County's research. As such, the County has determined the boat ramp to be a non-conforming structure. The easement map that you provided shows the subject boat ramp occupies a total encroachment area of approximately 156 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. In carrying-out this policy, OCCL has established criteria to guide decision-making over specific cases. The criteria are as follows:

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

EXHIBIT E

Kim Lu and Beiting Gao
Boat ramp encroachment

Shoreline Encroachment OA 23-7

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 residential homes along the adjacent shoreline to the east and north. Land directly makai of the boat ramp is submerged with a rocky mud bottom. The submerged land area sits within the inner reaches of Kaneohe Bay, and the near shore area is not conducive for swimming or other ocean recreation activities. Approximately 2.5 miles to the north is the Kaneohe sandbar, where majority of the ocean activities occur. The only public access to the shoreline would be at the Kaneohe Beach Park which is located approximately 0.8 miles south on Waikalua Road.

Beach Resources and Environment: The encroachment is a boat ramp abutting the inner reaches of Kaneohe Bay. The submerged lands area is characterized by a muddy and rocky ocean bottom. This is characteristic of the lateral shoreline in this region of Kaneohe Bay. This area has no sandy beach resource.

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 the nearest public access to the shoreline is located approximately 0.8 miles to the south at Kaneohe Beach Park.

Effect of Removing the Encroachment on:

Beach Resources: Removal of the boat ramp would not improve beach resources in the area as the ocean bottom consists of mud and rocks with no sandy beach resource. However, removing the boat ramp could be detrimental and have a negative effect by leaving the exposed land open to erosion. The boat ramp, in part, seems to be serving as an erosion control structure that may be preventing potential loss of private land.

Public Access: Removal of the encroachment would not improve public access in the area. There exists no lateral access along the shoreline in this region of Kaneohe Bay. Majority of the shoreline properties have seawalls abutting the ocean. The only nearby public access to the shoreline is located approximately 0.8 miles to the south at Kaneohe Beach Park.

Adjacent Properties: Removing the boat ramp may negatively impact the eastern neighbor that abuts the boat ramp with the owner of the subject property. Erosion to the subject property may result with the removal of the boat ramp. This could lead to flanking erosion of the neighboring property to the east.

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.

Kim Lu and Beiting Gao
Boat ramp encroachment

Shoreline Encroachment OA 23-7

Summary

The subject encroachment consists of a boat ramp approximately 156 square feet and located makai of the shoreline at the subject property. The subject boat ramp does not seem to have detrimental effects on public access as there is no beach and recreational resources in the area, and the boat ramp seems to serve, in part, as an erosion control for the subject property by potentially alleviating loss of private land.

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 at least since 1967, based on the County's research and was deemed to be non-conforming. Should the OCCL find that the structure has been significantly altered since it was originally constructed, the OCCL may reconsider this finding.

Should you have any questions regarding this correspondence, contact Cal Miyahara of our Office at [REDACTED]

Sincerely,

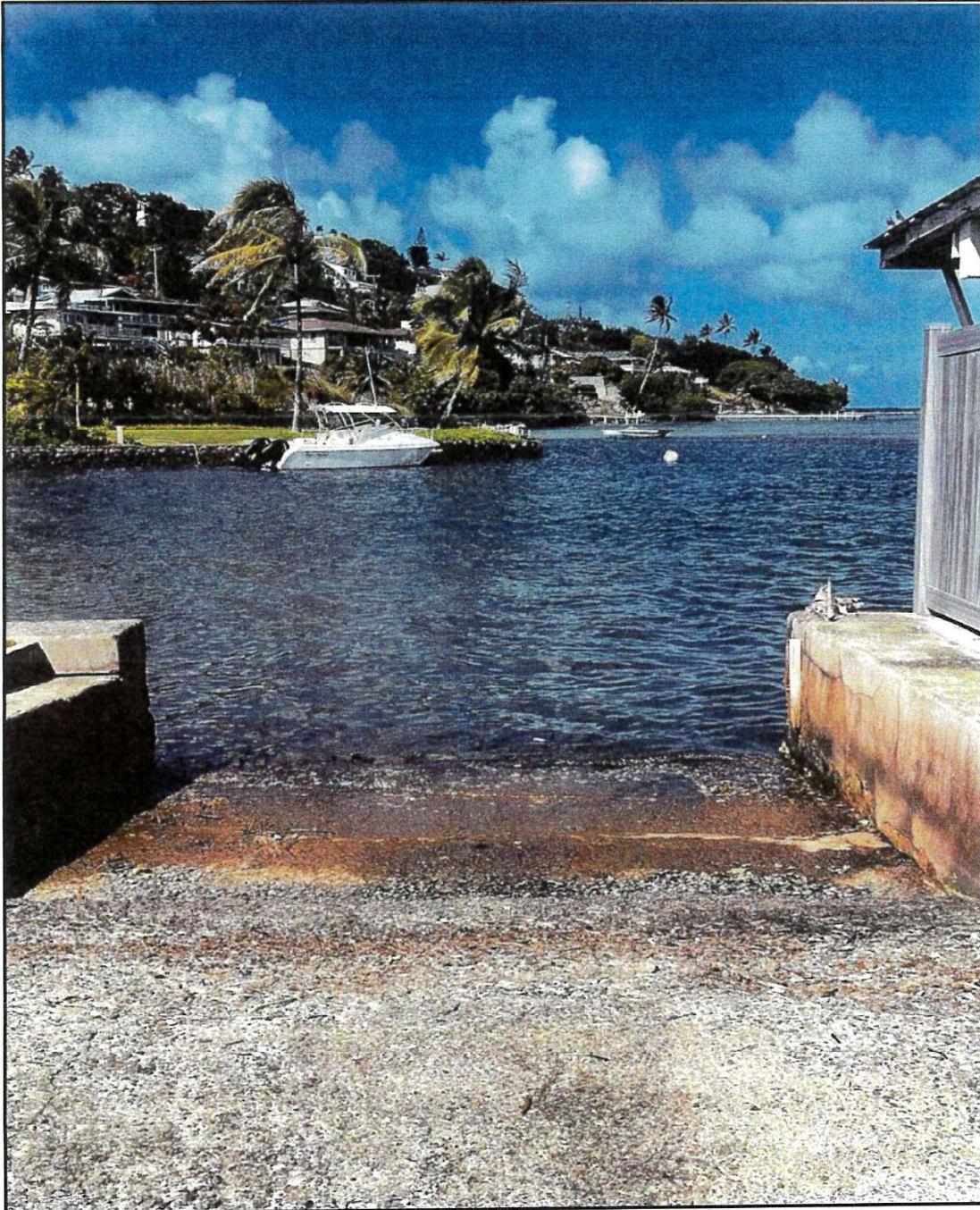
S Michael Cain

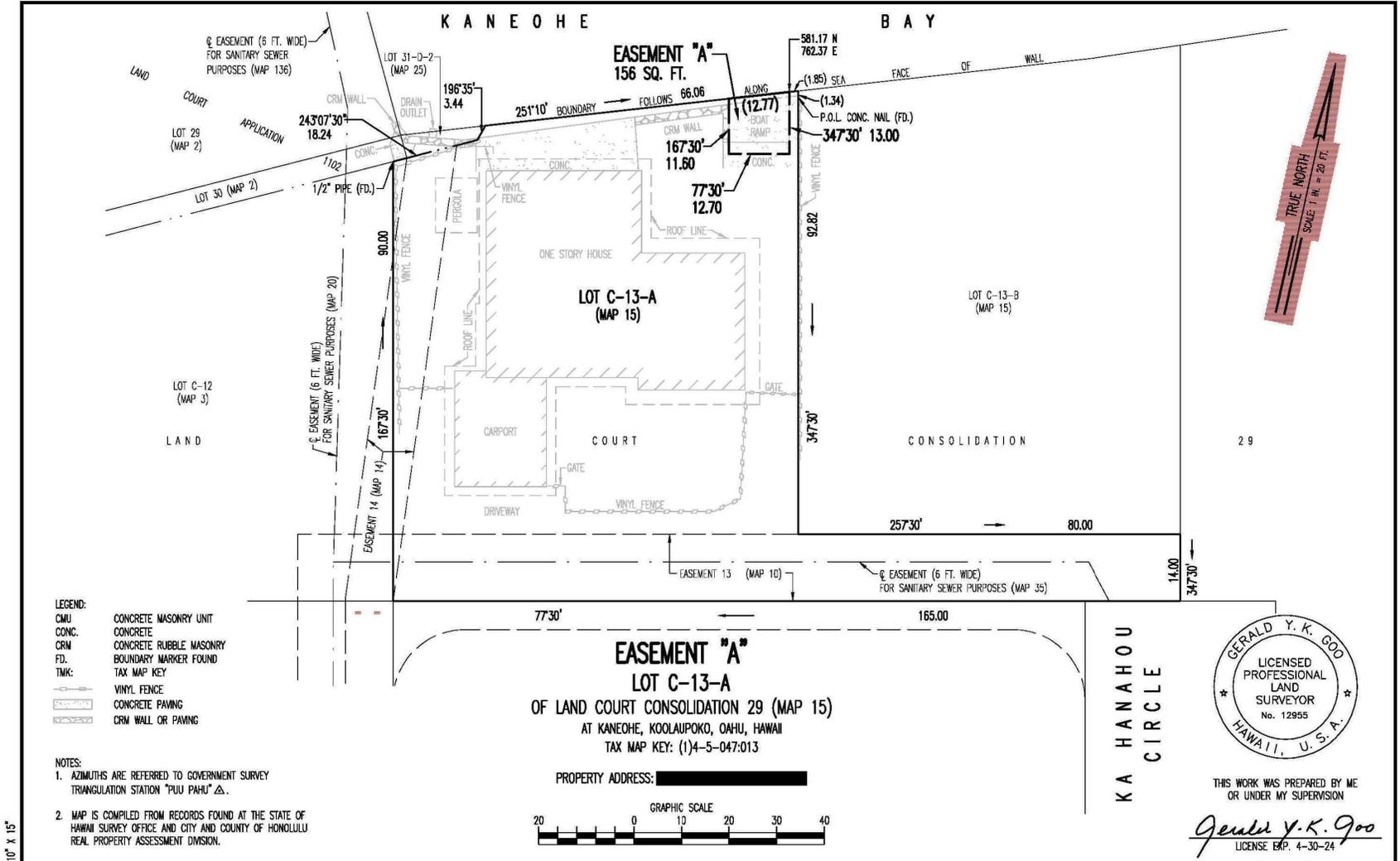
Michael Cain, Administrator
Office of Conservation and Coastal Lands

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

Kim Lu and Beiting Gao
Boat ramp encroachment

Shoreline Encroachment OA 23-7





10" x 15"

Job No: 15237
1:1-5
1-17-23 45-277A Ka Hanahou Cir ESM1.dwg

Line of Sight, LLC
P. O. Box 11269
Honolulu, HI 96828

(808)429-2484
www.lineofsightllc.com
January 17, 2023

EXHIBIT E-1

EASEMENT "A"

Being a portion of Lot C-13-A of Land Court Consolidation 29 (Map 15)

Land situated at Kaneohe, Koolaupoko, Oahu, Hawaii

Beginning at the Northeast corner of this easement, being 71° 10' 1.85 feet from the Northwest side of Lot C-13-B of Land Court Application 29 (Map 15), said point of beginning referred to Government Survey Triangulation Station "PUU PAHU" being 581.17 feet North and 762.37 feet East, thence running by azimuths measured clockwise from true South:

- 1. 347° 30' 13.00 feet along the remainder of Lot C-13-A Ld. Ct. Cons. 29 (Map 15);
- 2. 77° 30' 12.70 feet along same;
- 3. 167° 30' 11.60 feet along same;
- 4. 251° 10' 12.77 feet along Kaneohe Bay to the point of beginning and containing an area of 156 square feet.



By Gerald Y. K. Goo
 Gerald Y. K. Goo
 Expiration 4/30/24
 Land Court Cert. 316

DATE: January 17, 2023

Tax Map Key: (2)4-5-047:013

JOSH GREEN, M.D.
GOVERNOR | KE KIA'AINA
SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'AINA



RECEIVED
LAND DIVISION

2023 APR 16 PM 2:30



DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII | KA MOKU'AINA 'O HAWAII'
NATURAL RESOURCES
STATE OF HAWAII
KA 'OIHANA KUMUWAIWAI 'AINA
LAND DIVISION

P.O. BOX 621
HONOLULU, HAWAII 96809

March 15, 2023

230243

DAWN N. S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

Mgr
Dep Kai
Land

RECEIVED
BOARD OF WATER SUPPLY

MAR 22 2023

LN-1597
Scotty 3/24/23
Due 4/3/23

Ref. No.: 23OD-019

MEMORANDUM

TO:

State Agencies:

- Dept. of Education
- DLNR-State Parks
- DLNR-Aquatic Resources
- DLNR-Forestry & Wildlife
- DOT – Highways Division

Federal Agencies:

- Corps of Engineers
- NRCS

County Agencies:

- Planning & Permitting
- Parks & Recreation
- Dept. of Transportation Services
- Board of Water Supply
- Dept. of Facilities Maintenance

Other Agencies:

- Office of Hawaiian Affairs

FROM:

Rebecca L. Anderson, Shoreline Specialist *RLA*

SUBJECT:

Grant of Term, Non-Exclusive Easement, Immediate Right-of-Entry and Revocable Permit for Boat Ramp Purposes

LOCATION:

Kaneohe, Koolaupoko, Oahu; TMK: (1) 4-5-047:seaward of 013

APPLICANT:

Kim Lu and Beiting Gao

Transmitted for your review and comment is a copy of the above referenced request involving State lands. We would appreciate your comments on this application. Please submit any comments by April 7, 2023. If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact me at [REDACTED]

[REDACTED] Thank you.

Attachments

- (x) We have no objections/ comments and concur to the proposed EA exemption.
- () Comments are attached.

Signed:

[Signature]

Date:

4/3/2023

cc: Central Files
District Files

EXHIBIT G-1

PK

2023/ FLOG-580

RECEIVED
JOSH GREEN
GOVERNOR | KA HOPE KIA'AINA
LAND DIVISION

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'AINA
2023 APR 12 PM 1:26



DAWN N. S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT



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

2023 MAR 21 AM 11:33

P.O. BOX 621
HONOLULU, HAWAII 96809

March 15, 2023

Ref. No.: 23OD-019

MEMORANDUM

TO: **State Agencies:**
___ Dept. of Education
___ DLNR-State Parks
___ DLNR-Aquatic Resources
___ DLNR-Forestry & Wildlife
___ DOT – Highways Division

County Agencies:
 Planning & Permitting
 Parks & Recreation
___ Dept. of Transportation Services
 Board of Water Supply
 Dept. of Facilities Maintenance

Federal Agencies:
___ Corps of Engineers
___ NRCS

Other Agencies:
 Office of Hawaiian Affairs

FROM: Rebecca L. Anderson, Shoreline Specialist *RLA*
SUBJECT: Grant of Term, Non-Exclusive Easement, Immediate Right-of-Entry and Revocable Permit for Boat Ramp Purposes
LOCATION: Kaneohe, Koolaupoko, Oahu; TMK: (1) 4-5-047:seaward of 013
APPLICANT: Kim Lu and Beiting Gao

Transmitted for your review and comment is a copy of the above referenced request involving State lands. We would appreciate your comments on this application. Please submit any comments by April 7, 2023. If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact me at [REDACTED]. Thank you.

Attachments

- () We have no objections/ comments and concur to the proposed EA exemption.
- (x) Comments are attached.

Signed: Jordan Oddy For DPP Director
Date: 4-6-23

cc: Central Files
District Files

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/dpp

RICK BLANGIARDI
MAYOR



DAWN TAKEUCHI APUNA
DIRECTOR

JIRO A. SUMADA
DEPUTY DIRECTOR

April 6, 2023

2023/ELOG-580(CK)

Ms. Rebecca Anderson
State of Hawaii
Department of Land and Natural Resources
Land Division
P.O. Box 621
Honolulu, Hawaii 96809

Dear Ms. Anderson:

SUBJECT: Request for Comments – Granting of Easement, Right-of-Entry,
and Revocable Permit for Boat Ramp Purposes
Ref. No. 23OD-019
Lu/Gao Residence
[REDACTED] - Kaneohe, Koolaupoko
Tax Map Key: Seaward of 4-5-047: 013

This is in response to your request, dated March 15, 2023, regarding a request for the Board of Natural Resources to grant of term, non-exclusive easement, immediate right-of-entry, and revocable permit for an existing boat ramp at seaward of the above-reference property. The Department of Planning and Permitting (DPP) does not have any specific objections to the proposal or associated exemption under Chapter 343, Hawaii Revised Statutes. However, as noted in the documentation provided, the Applicant has accrued two DPP violations mauka of the shoreline on Parcel 13. Therefore, we respectfully request that the Land Division continue to copy us as this proposal moves forward, particularly regarding any change to the size and extent of the easement.

Thank you for the opportunity to review and comments of this proposal. Should you have any questions, please contact Christi Keller, of our staff, at [REDACTED].

Very truly yours,

Jordan Oddy
FOR Dawn Takeuchi Apuna
Director