

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

May 24, 2024

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

OAHU

Grant of Term, Non-Exclusive Easement and Issuance of Immediate Right-of-Entry Permit to Department of Transportation for Erosion Mitigation Purposes, Kaaawa, Koolauloa, Oahu, Tax Map Key: (1) 5-1-002: seaward of 025.

APPLICANT:

Department of Transportation, Highways Division (DOT), a government agency.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located in Kaaawa, Koolauloa, Oahu, identified by Tax Map Key: (1) 5-1-002: seaward of 025, as shown on **Exhibit A1** and **A2**.

AREA:

0.215 acre, more or less. **Exhibit B**.

ZONING:

State Land Use District: Conservation

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

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace, and remove a rock revetment over, under and across State-owned land for erosion mitigation purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Gratis, government agency.

EASEMENT TERM:

25 years.

Note: DOT advised the proposed improvement has a 25-year design life.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Impact Statement acceptance notice for the subject project, Kamehameha Highway at Kaaawa Erosion Mitigation, was published in the Office of Environmental Quality Control's The Environmental Notice on June 23, 2022.

DCCA VERIFICATION:

Government agency, not applicable.

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards at Applicant's own cost; and
2. Obtain the prior concurrence of the Legislature and approval of the Governor through a Concurrent Resolution pursuant to §171-53(c), HRS.

REMARKS:

A 400-foot section of Kamehameha Highway passing through Kaaawa in the vicinity of the elementary school has become undermined due to chronic and episodic coastal erosion. The undermining extends up to 10 feet under the shoulder of the road, extending as far

inshore as the makai travel way stripe. This section of road is in danger of failure and collapse. Kamehameha Highway is the only roadway providing access to windward communities from the south, and if this section of road fails, transportation services, emergency services, and commuter lines will be significantly impaired.

As shown on the certified shoreline map dated June 29, 2023 (**Exhibit B**), the shoreline (shown in red) was located mauka of parcel (1) 5-1-002:025 owned by the City and County of Honolulu and inside the DOT's right-of-way area. DOT proposes to construct over the subject Construction Parcel C (highlighted in yellow on Exhibit B), an engineered rock revetment to mitigate the shoreline erosion and protect the highway. Section and plan view of the proposed revetment are shown as **Exhibit C**.

At its meeting of March 22, 2024, under agenda item K-3, the Board of Land and Natural resources authorized the issuance of the Conservation District Use Permit (OA 3943) for the subject project. (**Exhibit D**)

Staff notes that majority of the subject area was formerly a portion of (1) 5-1-002:025. Pursuant to the certified shoreline in 2023, the requested area has become State land by operation of law due to the mauka migration of the shoreline. Therefore, staff brings the subject request to the Board for consideration.

Staff is aware of the Board's policy on zero tolerance for new structures within the shoreline. In the past, there were denials by the Board on requests by private owners to place protection structures along the shoreline to mitigate the erosion effect on private properties.¹ Significant fines were also imposed on some owners placing unauthorized improvements along the shoreline.²

Staff believes the subject request is worthy of an exemption from the zero-tolerance policy. The subject public highway, Kamehameha Highway, is the only highway serving residents of windward Oahu. It is also the primary access for emergency vehicles/personnel. Protecting a failing portion of the highway is critical for the sustainability of the community. The proposed improvement serves a much broader public purpose than the past denials involving shoreline hardening requests to protect private lands. Furthermore, there was a similar situation on Kauai in which the Board approved a proposed set aside to the County of Kauai along Aliomanu Road for erosion mitigation and a beach restoration project.³

When the Board considered the Conservation District Use Permit for the subject project at its meeting of March 22, 2023, the Board raised the issue of the Board policy on no new shoreline hardening improvements. In addition to the above-mentioned public purpose, DOT advised the Board that the proposed improvement is designed for a shorter span (25-

¹ Hilton Hawaiian Village's request to place sand on Duke Kahanamoku Beach <https://dlnr.hawaii.gov/wp-content/uploads/2023/10/D-10.pdf>

² Matthew J. Tang Trust in Punaluu <https://dlnr.hawaii.gov/wp-content/uploads/2023/03/K-2.pdf>

³ County of Kauai project <https://dlnr.hawaii.gov/wp-content/uploads/2023/10/D-13-1.pdf>

year design life). In short, it is temporary until a long-term solution becomes available. DOT's consultant also explained to the Board that other alternatives would not be feasible at the subject location for other reasons as well.

Further, it is Land Division's typical process to require the applicant for a shoreline encroachment easement to provide a removal bond. The removal bond would be called in the event the required Legislative and Governor approval were not obtained and the bond could be used to remove the encroachment placed on State land. Staff recommends the Board waive the requirement of the removal bond for the subject request because (1) the request, by a State agency, serves a public purpose which is critically needed to continue the sustainability of the community; and (2) staff understands the Applicant is exploring long term solutions to the impact of erosion on the coastal highway.

Staff did not solicit comments on the subject request as similar solicitation for comment process was conducted during the environmental assessment stage.

To expedite the upcoming process, DOT also requests the Board authorize the issuance of an immediate right-of-entry permit pending the preparation and execution of the easement.

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 recommends the Board authorize the issuance of the requested term easement and the immediate right-of-entry permit as described in the Recommendation section.

RECOMMENDATION: That the Board:

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to the Department of Transportation, Highways Division covering the subject area for erosion mitigation 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. Prior concurrence of the Legislature and approval of the Governor through a Concurrent Resolution pursuant to §171-53(c), HRS;
 - C. Review and approval by the Department of the Attorney General;
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and

- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.
2. Authorize the issuance of a construction right-of-entry permit to the Department of Transportation, Highways Division covering the subject area 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 document form, as may be amended from time to time;
 - B. Delegate to the Chairperson authority to approve any continuation or renewal of the right of entry for additional one-year periods for good cause shown; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

Barry Cheung

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District Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

KEM

RT



TMK (1) 5-1-002: seaward of 025

EXHIBIT A1



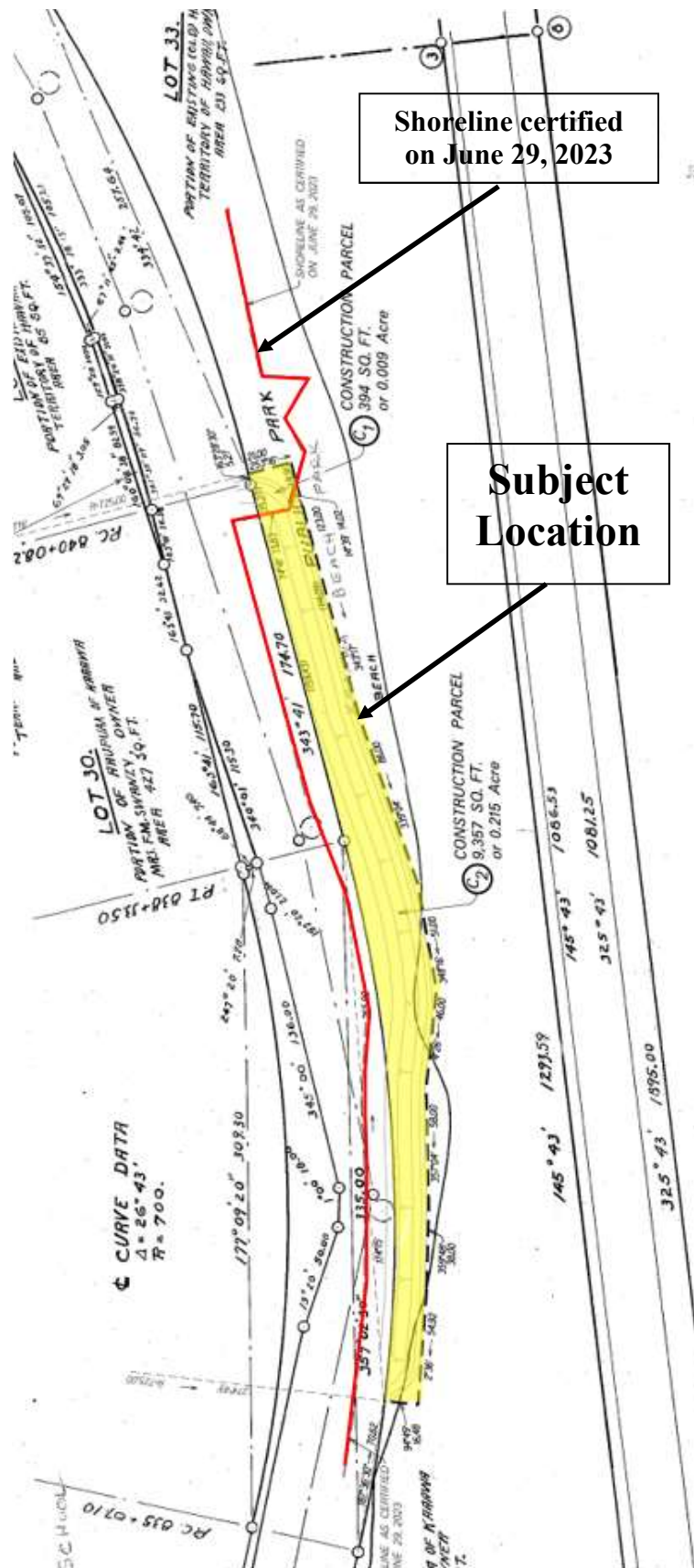


EXHIBIT B

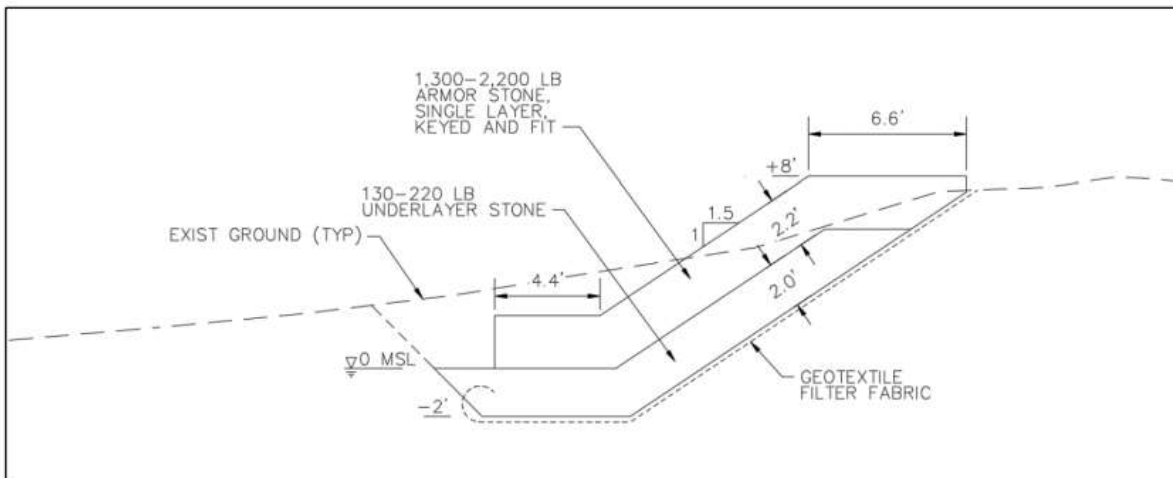


Figure 2-1. Riprap rock revetment typical section

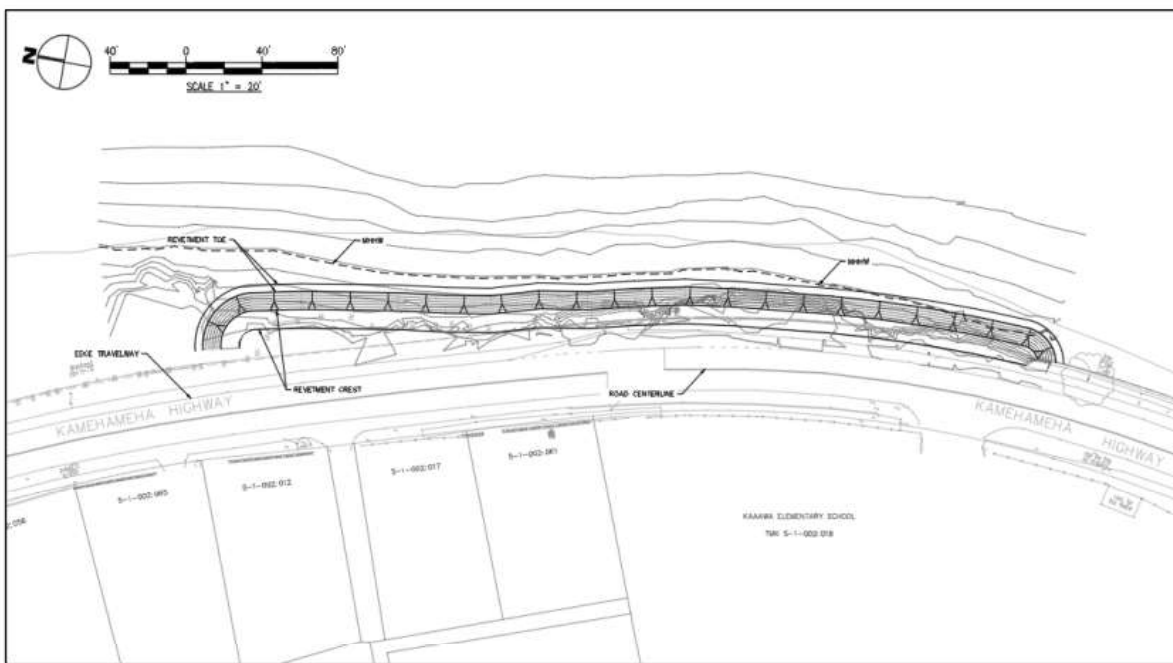


Figure 2-2. Riprap rock revetment plan view

Source: Final Environmental Assessment and Anticipated Finding of No Significant Impact for Kamehameha Highway at Kaaawa Erosion Mitigation, Kaaawa, Oahu, Hawaii (June 2022).