

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

October 11, 2024

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

PSF No.: 24OD-106

Oahu

Grant of Term, Non-Exclusive Easement, Immediate Right-of-Entry and Revocable Permit to William S. Chee, Trustee of That Certain Unrecorded The William S. Chee Trust, dated August 27, 2008, and WSC Capital LLC for Beach Revetment Purposes, Waialae-Iki, Honolulu, Oahu, Tax Map Key: (1) 3-5-058: seaward of 004.

APPLICANT:

William S. Chee, Trustee of That Certain Unrecorded The William S. Chee Trust, dated August 27, 2008, as to an undivided 85% interest, in trust, and WSC Capital LLC, a Hawaii limited liability corporation, as to an undivided 15% interest, as tenant in severalty, the whole being held as tenants in common.

LEGAL REFERENCE:

Sections 171-13, 53 and 55, and Chapters 115, 205A, and 343 Hawaii Revised Statutes (HRS), as amended. Chapter 26, Revised Ordinances of Honolulu.

LOCATION:

Portion of State land located Waialae-Iki, Honolulu, Oahu, identified by Tax Map Keys: (1) 3-5-058: seaward of 004, as shown on **Exhibits A-1 and A-2**.

AREA:

845 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 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, and repair 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 \$284.00 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 of \$146,825.00, as determined by Land Division in consultation with Engineering Division, subject to approval by the Chairperson. **(Exhibit C)**

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 a de minimis action that is expected to have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment.

DCCA VERIFICATION:

William S. Chee, Trustee of That Certain Unrecorded The William S. Chee Trust, dated August 27, 2008

Not applicable. Applicant is Trustee of a trust that is not required to register with DCCA for this purpose.

WSC Capital LLC

| | | |
|---|--------------|--------------|
| Place of business registration confirmed: | YES <u>x</u> | NO <u>__</u> |
| Registered business name confirmed: | YES <u>x</u> | NO <u>__</u> |
| Applicant in good standing confirmed: | YES <u>x</u> | NO <u>__</u> |

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards at Applicant's own cost;
2. Provide liability insurance with minimum coverage of \$1,000,000 per occurrence and \$2,000,000 aggregate, with the State of Hawaii Department of Land and Natural Resources named as an additional insured, for the easement area for the entire, successive terms of the requested right-of-entry permit, revocable permit, and easement;
3. Pay for an appraisal to determine one-time payment in consideration of the easement; and
4. Obtain the prior concurrence of the Legislature and approval of the Governor through a Concurrent Resolution pursuant to §171-53(c), HRS.

JUSTIFICATION FOR REVOCABLE PERMIT:

The land disposition presented to the Board as one of the recommended options in this matter is an orderly process that uses a series of permits structured to allow for immediate use and occupancy and proceed on a direct course to a to a long-term lease, subject to conditions that benefit the State. The land disposition requested in the present submittal is a three-stage process encompassing:

1. Issuance of a right-of-entry permit for a period of up to six months. This allows the Applicants to immediately legitimize occupancy of the public land in question, begin repair and maintenance of the shoreline protection structure without undue delay and without cost to the State, and begin preparations for the Applicants' obligations under future land dispositions.¹ The right-of-entry permit includes requirements for payment of monthly rent, provision to the Department of a removal bond or equivalent securitized funds, indemnification of the State, and provision of liability insurance by the Applicants. The purpose of the removal bond is to ensure that there are funds available to remove the encroachment from State land in the event that the Legislature or Governor does not approve the easement authorized by the Board.
2. Issuance of a revocable permit for no longer than one year. This allows Land Division time to complete the administrative processes that underlie

¹ The Applicant's obligations under a right-of-entry and revocable permit include obtaining a survey to confirm the size of the disposition area, obtaining a cost estimate for removing the shoreline protection structure which determines the amount of the removal bond, and procurement through Land Division of an appraisal to determine the lump-sum value of the easement.

the grant of easement including approval of the easement contract by the Department of the Attorney General, completion of the appraisal (at the Applicants' cost) to determine the lump-sum payment for value of the easement, and approval of the Legislature and Governor of the easement while the Applicants maintain the same obligations for rent payments, removal costs, indemnification, and provision of liability insurance.

3. Issuance of an easement. This final step cannot be executed without prior completion of the prerequisites stated above. Therefore, the interim disposition through revocable permit is necessary.

The interim revocable permit step is limited in its duration and essential in its utility. While the revocable permit is in effect, the Applicants assume the costs of maintaining the subject parcel of State land and the liability for any damages caused on or by the Applicants' use of the land during the often-lengthy process of consummating the easement.

REMARKS:

The Applicants are owners of the private residential property identified as Tax Map Key: (1) 3-5-058:004. The Applicants submitted an application for shoreline certification for the property in May 2023. This application was rejected because of the presence of an unresolved shoreline encroachment, consisting of a rock revetment, on the state submerged land abutting the Applicants' private property. **(Exhibit C)** The Applicants, through their representative, later submitted a Shoreline Encroachment Information Sheet to the Office of Conservation and Coastal Lands (OCCL) and requested an easement to resolve the encroachment.

In a letter to the Applicants dated February 16, 2024, OCCL found that the subject revetment does not seem to have detrimental effects on public access or on beach and recreational resources and serves as primary erosion control for the subject property and surrounding properties. Further, OCCL found that removal of the revetment would likely have negative effects and may destabilize the currently equilibrated beach, create a significant erosion event, and impact the surrounding residential properties. OCCL's analysis concluded that the revetment is a permitted structure and supported an easement disposition. **(Exhibit D)**

The encroachment in question is a rock revetment that abuts the makai side of the private residential property and occupies a portion of state submerged land abutting the private property. The revetment was constructed in 1964 across approximately fifteen residential lots by Bishop Estate, the original property owner, at the time that the Kai Nani subdivision was originally developed for residential sale. **(See Exhibit D, pages 27 & 35)**

At a Board meeting on April 10, 1964, under agenda item F-17, Land Division presented Bishop Estate's request for approval to construct the subject revetment, to run along the shoreline of multiple house lots of Kai-Nani subdivision which includes the subject property. The 1964 submittal also requested a construction right-of-entry permit to be in place while processing of an easement proposal was underway. **(See Exhibit D, page 22- 25)** Subsequently, through a letter dated October 1, 1964, Land Division informed Bishop Estate of the Board's approval and authorized it to proceed with construction. This letter also stated that Land Division was processing the sale of the easement. **(See Exhibit D, page 26)** Due to reasons unknown to Staff, no such easement sale ever happened.

The Board has previously authorized easements for at least two additional sections of the subject revetment fronting separate private, residential properties. At its meeting on August 28, 2009, under agenda item D-20, the Board approved an easement for the portion of the revetment abutting the private residential property identified as (1) 3-5-058:010. This easement was later approved by the Legislature and the Governor and consummated as S-5994. At its meeting on April 14, 2023, under agenda item D-5, the Board approved an easement for the portion of the revetment abutting the private residential property identified as TMK: (1) 3-5-058:011. This easement was approved by the Legislature and the Governor in the 2024 regular legislative session. Processing of this easement is ongoing.

In its letter dated February 16, 2024, OCCL recommends that proper signage be placed on the subject area identifying the encroachment area and surrounding State land as open to the public. **(Exhibit D)** Staff understands that the standard conditions of the shoreline encroachment easement document state 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's recommendation about the signage.

OCCL also requests that any disposition of the easement area require that the land remain unimproved other than the currently existing revetment. However, if improvements of any kind are allowed, OCCL requests that improvements include a requirement for an integrated public access component to address lateral shoreline access as required under chapter 115, HRS. **(Exhibit D)** Land Division has not received any requests for authorization of improvements on the state submerged land or alteration of the revetment portion subject to the current easement request and does not have reason to believe that any such request will be forthcoming. Since the issue of improvement or alteration is not currently before Land Division or the Board, Land Division does not recommend any requirements related to those issues at this time. If the Applicants or Applicants' successor do submit a request to permit improvements or alterations, any such requirements may be properly considered at that time.

Finally, OCCL 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. **(Exhibit D)** 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 Applicants. Third, the Board declined to impose retroactive rent for the term easements granted in 2009 and 2023, discussed above.

The Department of Planning and Permitting of the City & County of Honolulu (DPP) confirmed that the existing rock revetment was constructed pursuant to Building Permit No. 3687 (1962) and is a nonconforming structure with respect to Revised Ordinances of Honolulu Chapter 26, Shoreline Setback Ordinance. DPP does not object to the proposed easement. Further, DPP strongly suggests that the easement terms include strict repair limitations that prohibit expansion or fortification of the shoreline hardening structure (revetment) in accord with Chapter 205A, HRS, Coastal Zone Management Law, which limits public shoreline hardening structures and prohibits private shoreline hardening structures. **(Exhibit E-1)** Staff notes that the standard language of Land Division's Right of Entry, Revocable Permit, and General Lease (easement) documents includes requirements that the permittee comply with all municipal, state, and federal laws applicable to the premises. Staff finds that this language is sufficient to require compliance with Chapter 205A, HRS. Similarly to Staff's response to OCCL's request discussed above, Staff notes that Land Division is not aware of any request by the Applicants to alter the revetment structure and does not have reason to believe that such a request will be forthcoming. Since the issue of repair is not currently before Land Division or the Board, Land Division does not recommend any requirements related to that issue at this time. If the Applicants or Applicants' successor do submit a request for authorization of improvements or alterations, any such requirements may be properly considered at that time.

The Board of Water Supply of the City & County of Honolulu has no objections or comments to the present submittal and concurs with the proposed EA exemption. **(Exhibit E-2)** Comments were not received timely for inclusion in the present submittal from the Office of Hawaiian Affairs or the City & County of Honolulu Departments of Parks & Recreation and Facilities Maintenance.

The Office of Conservation and Coastal lands has no comment on the present submittal and concurs with the proposed EA exemption.

Pursuant to the 1964 Board action and correspondence described above, there was an authorization from the Board regarding the construction of the subject revetment. Further, DPP confirmed, as stated above, that the revetment was constructed pursuant to a valid Building Permit. Therefore, staff does not recommend a fine for unauthorized encroachment.

The 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.

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 as a de minimis activity.
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) 3-5-058:004, 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 William S. Chee, Trustee of That Certain Unrecorded The William S. Chee Trust, dated August 27, 2008, and WSC Capital LLC 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 William S. Chee, Trustee of That Certain Unrecorded The William S. Chee Trust, dated August 27, 2008, and WSC Capital LLC 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 William S. Chee, Trustee of That Certain Unrecorded The William S. Chee Trust, dated August 27, 2008, and WSC Capital LLC 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) 3-5-058:004, 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 N. S. Chang, Chairperson

TMK: (1) 3-5-058: seaward of 004



TMK: (1) 3-5-058: seaward of 004



JOSH GREEN, M.D.
GOVERNOR | KE HIA'ĀINA
SVI MA 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
RYAN K.P. KANAKA'OLE
FIRST DEPUTY
DEAN D. UYENO
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: August 30, 2024
Subject: William S. Chee Trust and WSC Capital LLC Shoreline Revocable Permit

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

Reference: PSF No. 24OD-106
Applicant: William S. Chee, Trustee of That Certain Unrecorded The William S. Chee Trust, dated August 27, 2008 and WSC Capital LLC, a Hawaii limited liability corporation, William S. Chee, Manager
TMK: (1) 3-5-058: seaward of 004
Area: 845 square feet, more or less
Effective Date: Upon Board Approval
Recommended Value: **\$284 per month**

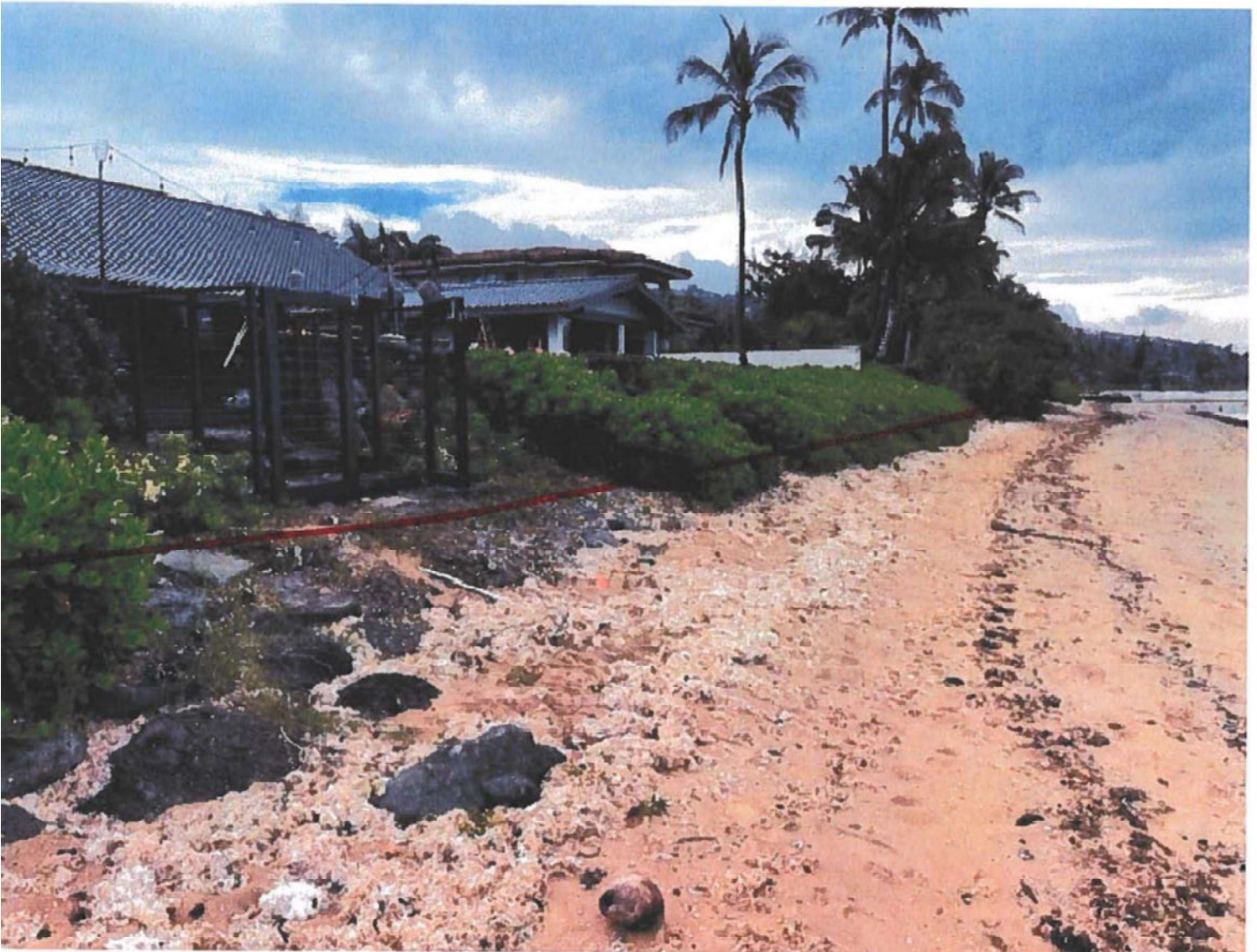
The undersigned finds that the valuation was completed in accordance with the assignment.


Dawn N. S. Chang, Chairperson

Aug 30, 2024
Date

| | |
|------------------------------|----------------------------|
| TMK | (1) 3-5-058:seaward of 004 |
| Assessed Land Value (\$) | 3,844,200 |
| Land Area (sf) | 19,033 |
| Unit Rate Land Value (\$/sf) | 201.9755 |
| 50% Off For Submerged Lands | 100.9878 |
| Encroachment Area (sf) | 845 |
| Encroachment Land Value (\$) | 85334.66 |
| Annual Rent @ 4 to 8% | 0.04 |
| Recommended Annual Value | 3413.386 |
| Monthly Value | 284.4489 |

TMK: (1) 3-5-058: seaward of 004



Please note: Photo provided by Applicant with rejected shoreline application. Red line represents Applicant's proposed shoreline location which has not been confirmed by State Surveyor and Land Division staff.

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



KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'ŌIĦANA KUMUWAIWAI 'ĀINA
OFFICE OF CONSERVATION AND COASTAL LANDS
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DAWN N.S. CHANG
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:CM

Shoreline Encroachment OA 24-06

Feb 16, 2024

William Chee, Trustee
The William S. Chee Trust, and
WSC Capital, LLC
[REDACTED]
Honolulu, HI 96821

SUBJECT: Request to Resolve State Land Encroachments at [REDACTED]
Waialae-Iki, Oahu, 96821; Tax Map Key (1) 3-5-058:seaward of 004

Dear Mr. Chee,

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL), has reviewed your Shoreline Encroachment Information Sheet package submitted by your representative, Hunter Hill of Brett Hill Construction, Inc., seeking to resolve an encroachment on State Lands seaward of the subject property. Your package included a Shoreline Encroachment Information Sheet, a shoreline map showing the encroaching revetment, a certified shoreline application, a rejection letter for the shoreline application, and a google aerial photo of the property.

You are working to resolve a shoreline encroachment consisting of a rock revetment along the makai boundary of the subject property. The shoreline map that you provided shows the subject revetment occupies a total encroachment area of approximately 845 square feet.

Previously, OCCL supported a disposition for a revetment a few properties away (TMK: (1) 3-5-058:011) based on evidence provided that the revetment seems to have been in place since the 1960's and was given approval to be constructed. The revetment at the subject property appears to be a continuation of the same revetment along the ocean front homes of the Kai-Nani subdivision.

The attached supportive evidence for the revetment is as follows: (1) a February 5, 1964 TMK and property boundary map (see **Exhibit 1**); (2) 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**); (3) an April 10, 1964 Right-of-Entry (ROE) request made to the Board of Land and Natural Resources (BLNR) from Bishop Estate asking for

The William S. Chee Trust
Rock revetment

Encroachment OA 24-06

approval to construct the subject erosion protection structure (see **Exhibit 3**); (4) a copy of the BLNR meeting minutes from April 10, 1964 that approved the ROE request (see **Exhibit 4**); (5) 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**); (6) 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**); (7) a copy of the August 28, 2009 BLNR approval for the rock revetment fronting the adjacent property to the east (see **Exhibit 7**); and, (8) an August 14, 2023, survey map of the encroaching area for the subject property (see **Exhibit 8**).

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

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 Kai-Nani subdivision residential homes to the east, west, and mauka. About 0.3 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 0.4 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 500 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

The William S. Chee Trust
Rock revetment

Encroachment OA 24-06

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 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 nearby 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 7).

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 845 square feet along the makai face of the subject property and extends along the area fronting the adjacent properties to the east and west. Additionally, the section of revetment fronting the nearby 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

The William S. Chee Trust
Rock revetment

Encroachment OA 24-06

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 OCCL's position in the 2009 easement request for the section of the subject revetment fronting the nearby 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.

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,

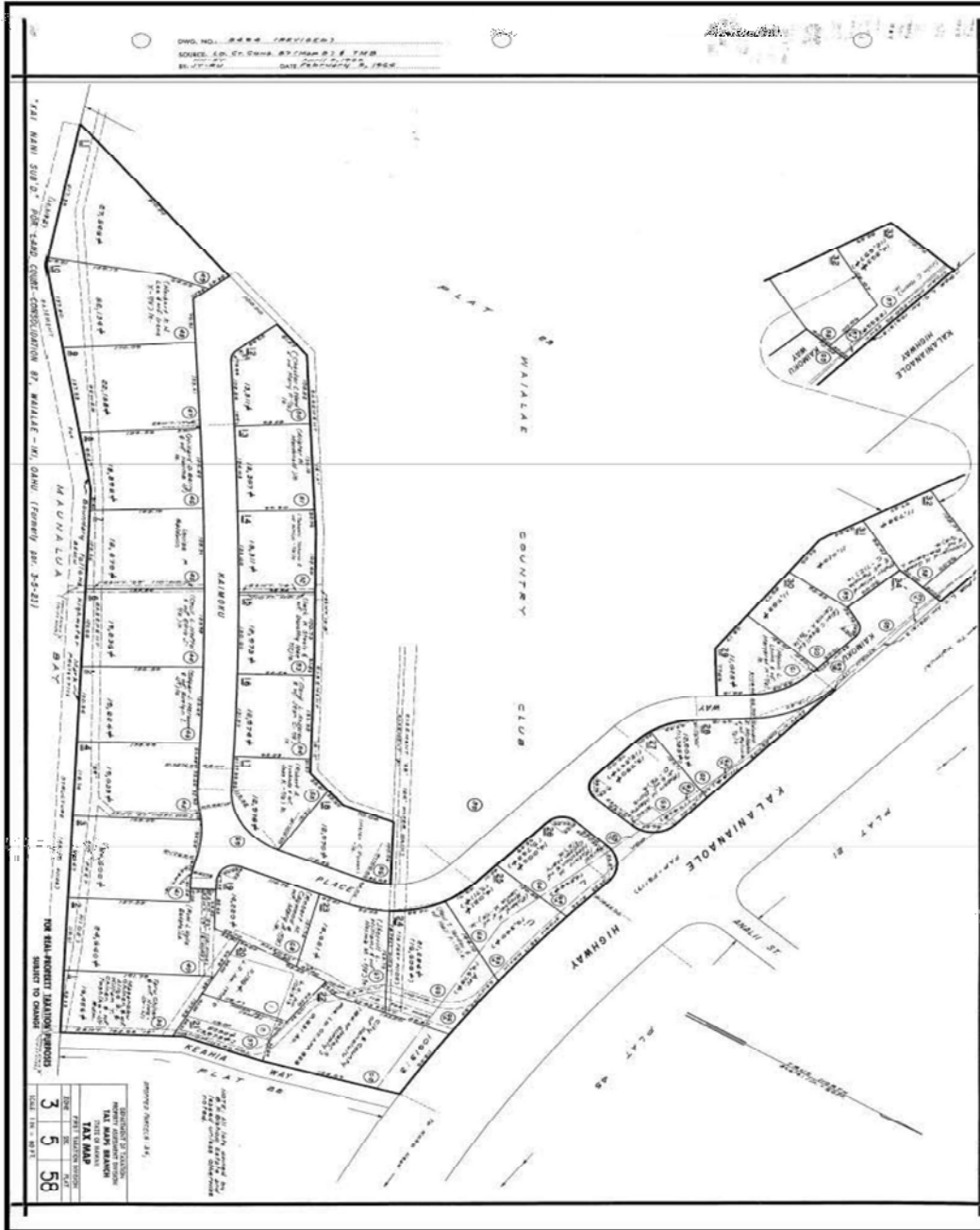
S Michael Cain

Michael Cain, Administrator
Office of Conservation and Coastal Lands

CC: ODLO
City & County of Honolulu-DPP
Mr. Hunter Hill, Brett Hill Construction, Inc., 88 Piikoi Street, Suite 303, Honolulu,
HI 96814

The William S. Chee Trust
Rock revetment

Encroachment OA 24-06

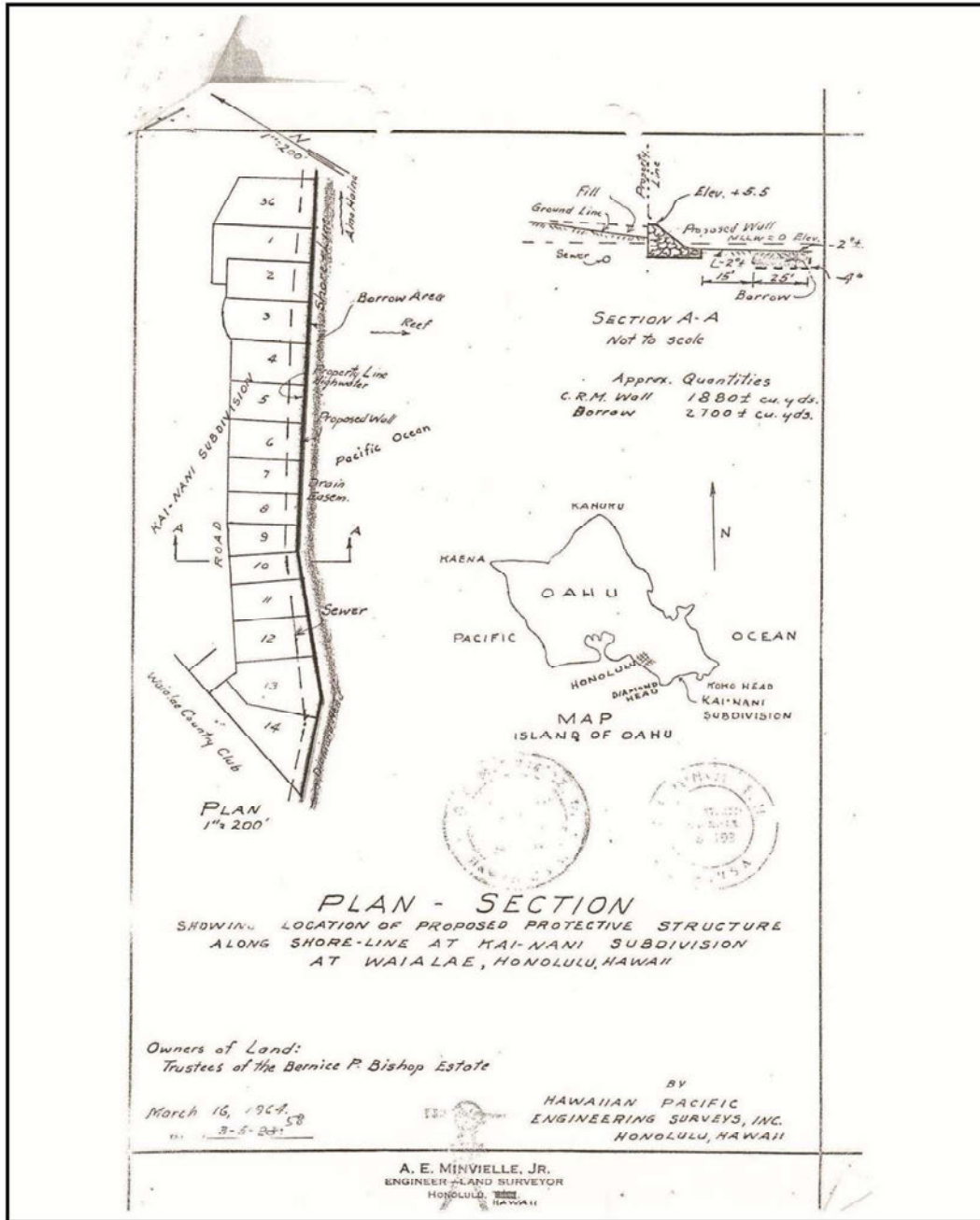


Note: February 5, 1964, TMK and property boundary map of Kai-Nani subdivision.

Exhibit 1

The William S. Chee Trust
Rock revetment

Encroachment OA 24-06

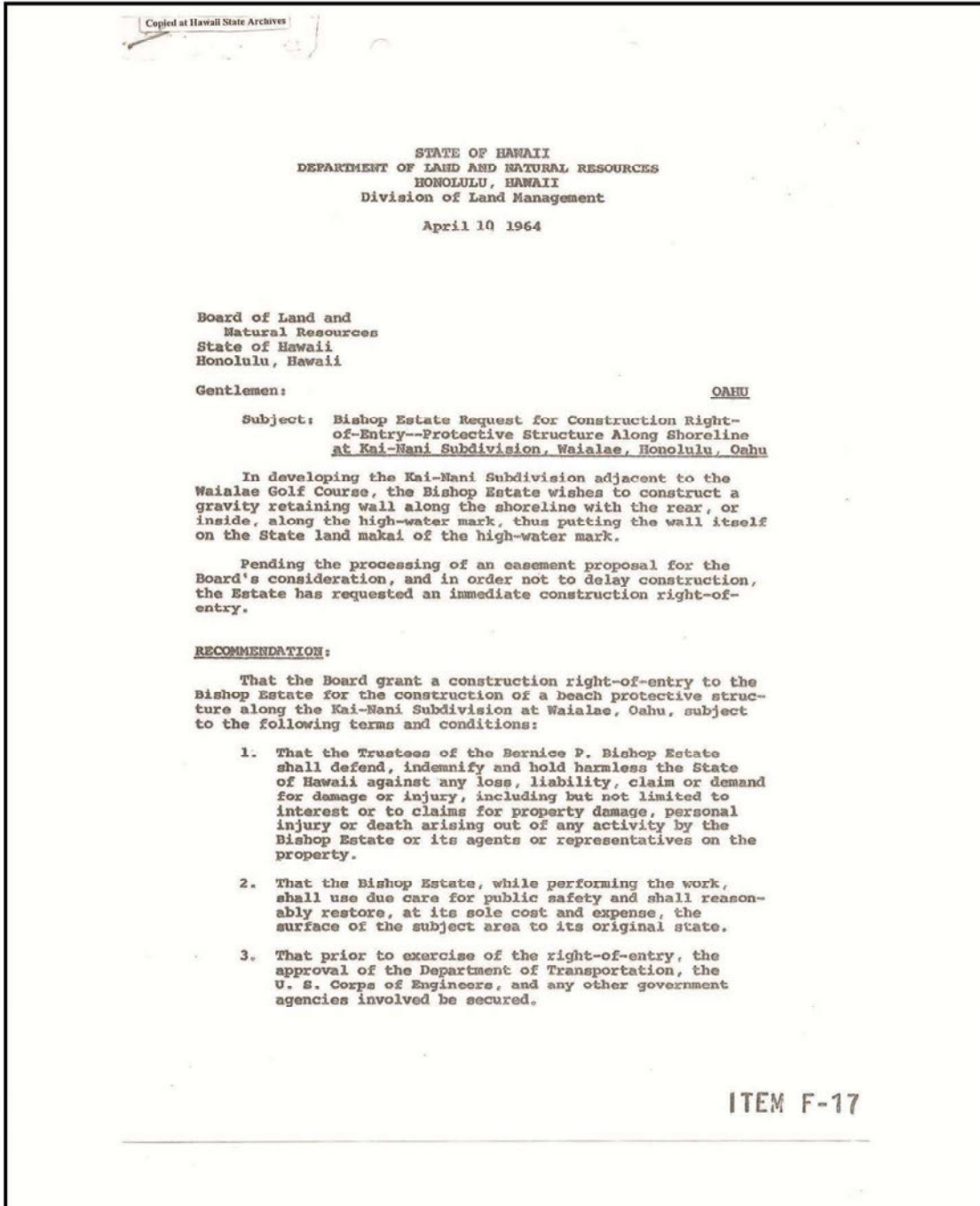


Note: March 16, 1964, Lot map and drawing of the beach protection structure prior to its construction for the shoreline homes in the vicinity.

Exhibit 2

The William S. Chee Trust
Rock revetment

Encroachment OA 24-06

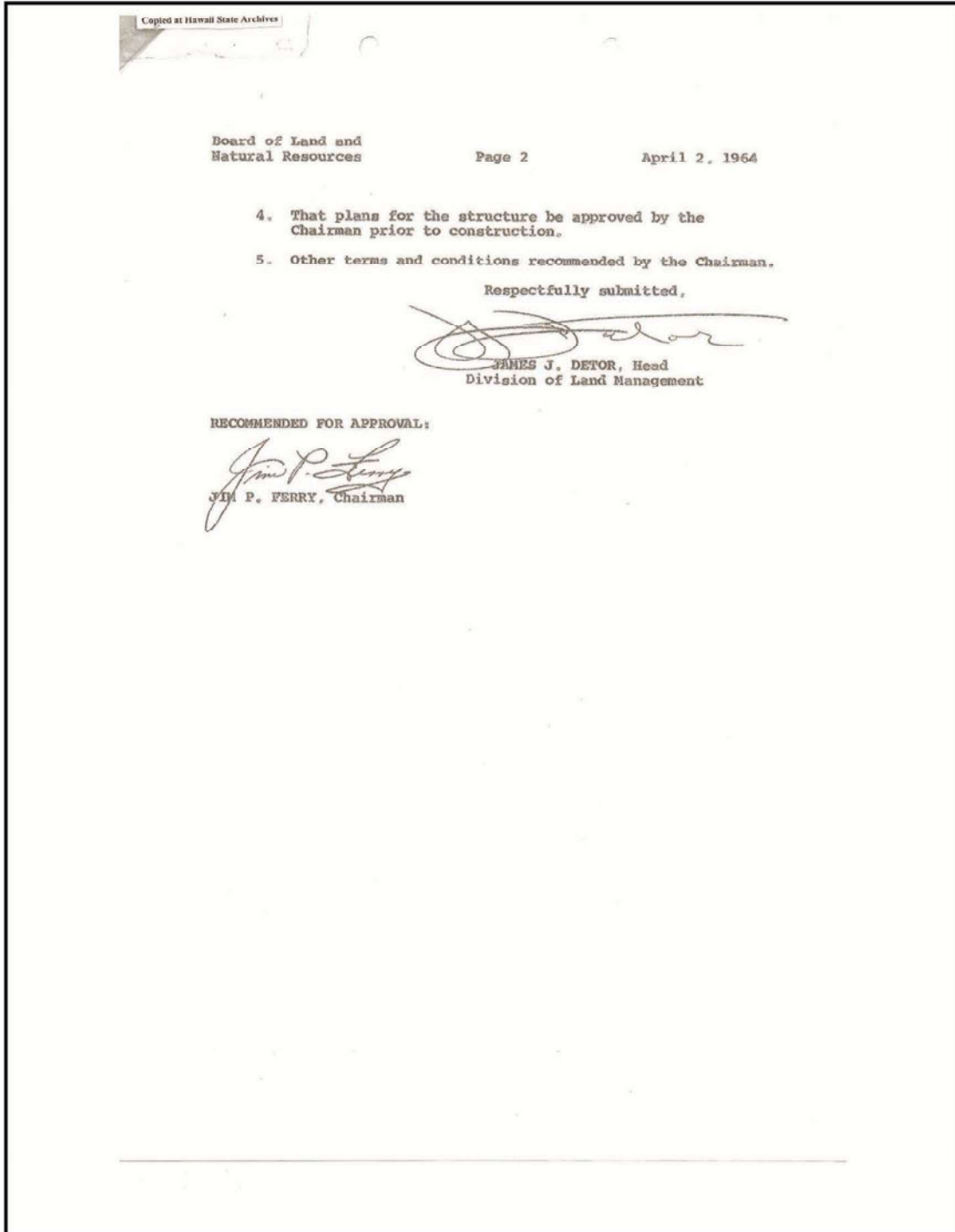


Note: April 10, 1964, BLNR ROE request for beach protection structure.

Exhibit 3

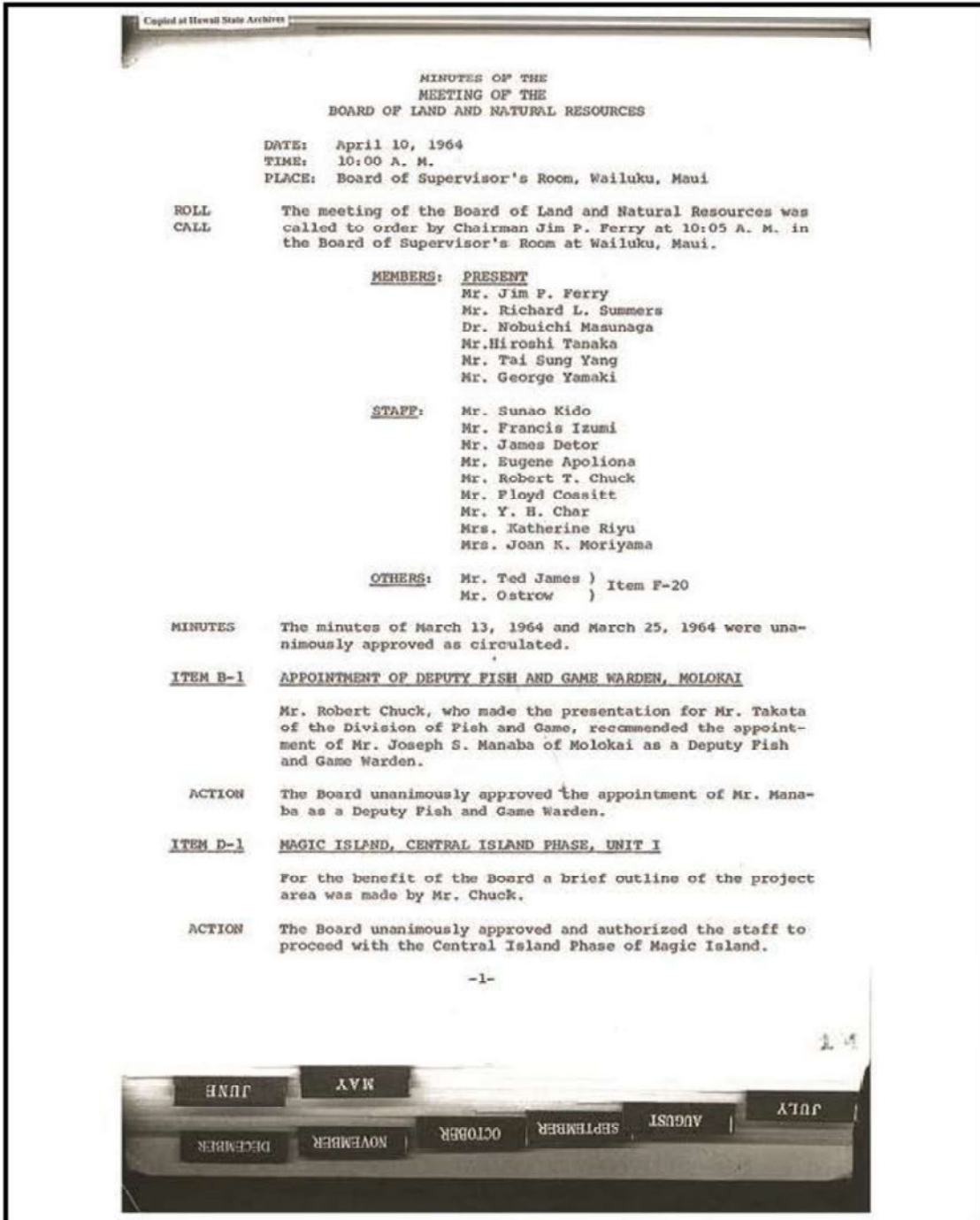
The William S. Chee Trust
Rock revetment

Encroachment OA 24-06



The William S. Chee Trust
Rock revetment

Encroachment OA 24-06

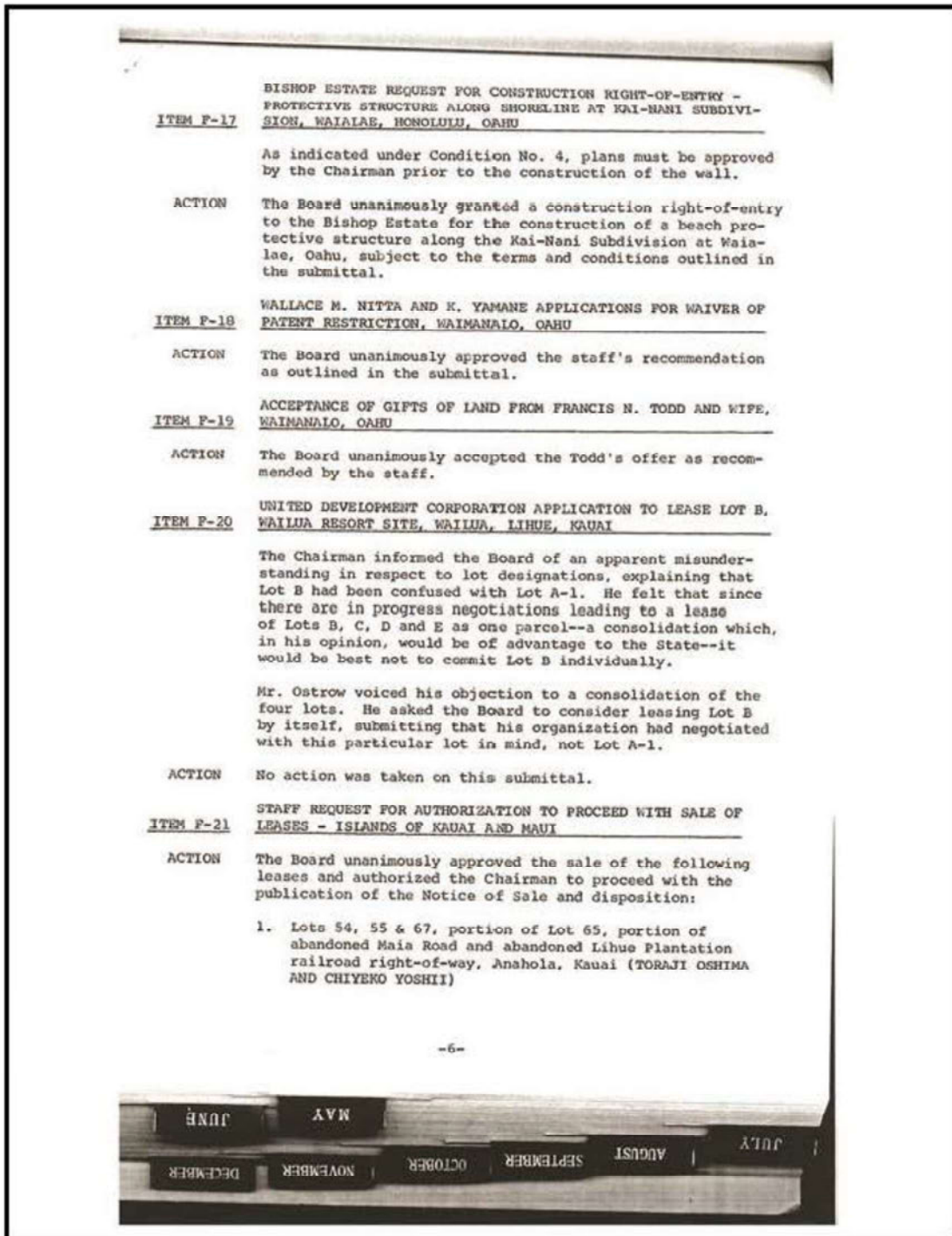


Note: April 10, 1964, BLNR minutes approving the ROE for beach protection structure.

Exhibit 4

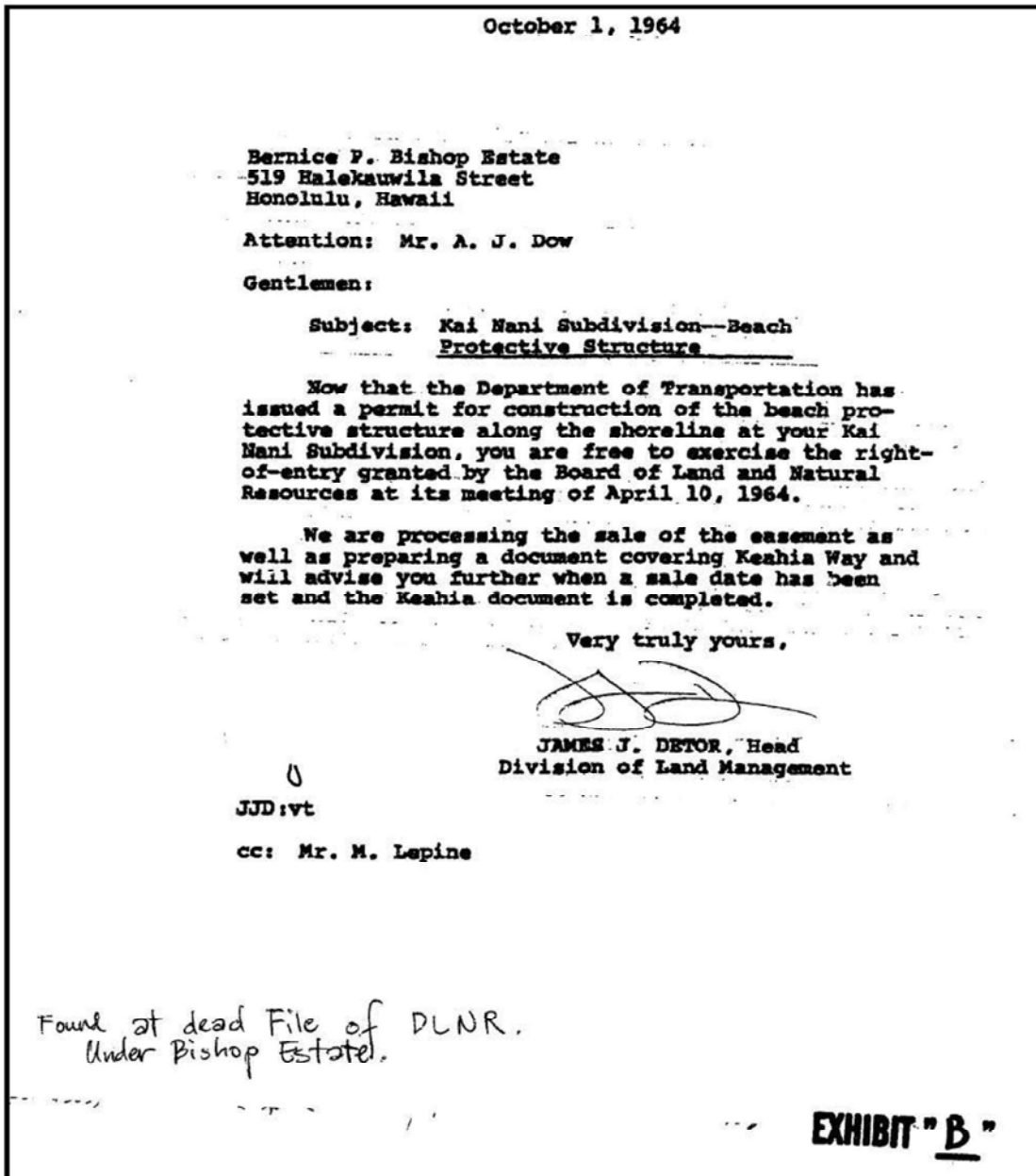
The William S. Chee Trust
Rock revetment

Encroachment OA 24-06



The William S. Chee Trust
Rock revetment

Encroachment OA 24-06

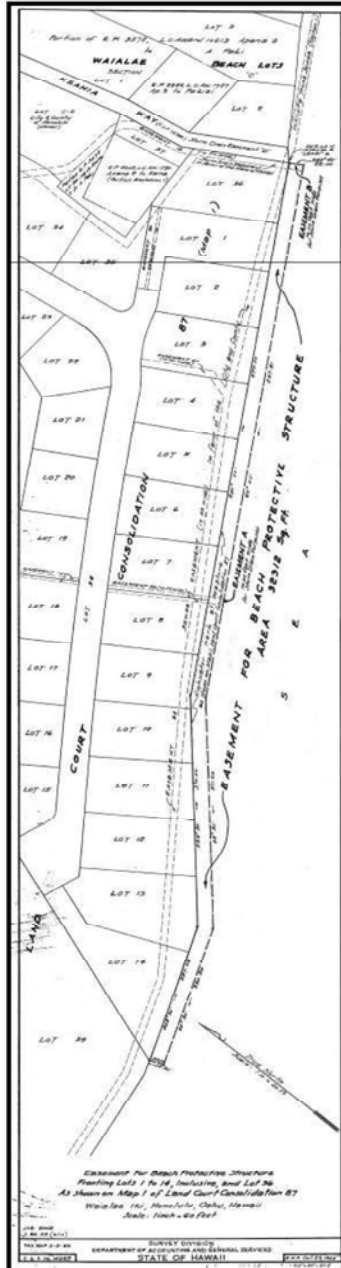


Note: October 1, 1964, approval letter to exercise the ROE for the construction of the beach protection structure.

Exhibit 5

The William S. Chee Trust
Rock revetment

Encroachment OA 24-06



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.

Exhibit 6

The William S. Chee Trust
Rock revetment

Encroachment OA 24-06

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.:08od-197
OAHU

Grant of Term, Non-Exclusive Easement to Beecom Hawaii LLP for Revetment
Purposes, Waialae-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 Waialae-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 WB

D-20

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

Exhibit 7

The William S. Chee Trust
Rock revetment

Encroachment OA 24-06

| | | |
|--|--------|-----------------|
| BLNR - Issuance of Easement to Beecom Hawaii LLP | Page 2 | August 28, 2009 |
| DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No | | |
| <u>CURRENT USE STATUS:</u> | | |
| Unencumbered with encroachments. | | |
| <u>CHARACTER OF USE:</u> | | |
| Right, privilege and authority to use, maintain, repair, replace and remove existing revetment over, under and across State-owned land. | | |
| <u>COMMENCEMENT DATE:</u> | | |
| To be determined by the Chairperson. | | |
| <u>CONSIDERATION:</u> | | |
| One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson. | | |
| <u>EASEMENT TERM:</u> | | |
| Fifty-five (55) years | | |
| <u>CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:</u> | | |
| 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. | | |
| <u>DCCA VERIFICATION:</u> | | |
| Not applicable. The Applicant as a landowner is not required to register with DCCA. | | |
| <u>APPLICANT REQUIREMENTS:</u> | | |
| 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.] | | |
| <u>REMARKS:</u> | | |
| The applicant intends to undertake renovation on his property and a shoreline certification | | |

The William S. Chee Trust
Rock revetment

Encroachment OA 24-06

BLNR - Issuance of Easement
to Beecom Hawaii LLP

Page 3

August 28, 2009

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,

The William S. Chee Trust
Rock revetment

Encroachment OA 24-06

BLNR - Issuance of Easement
to Beecom Hawaii LLP

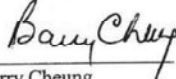
Page 4

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:

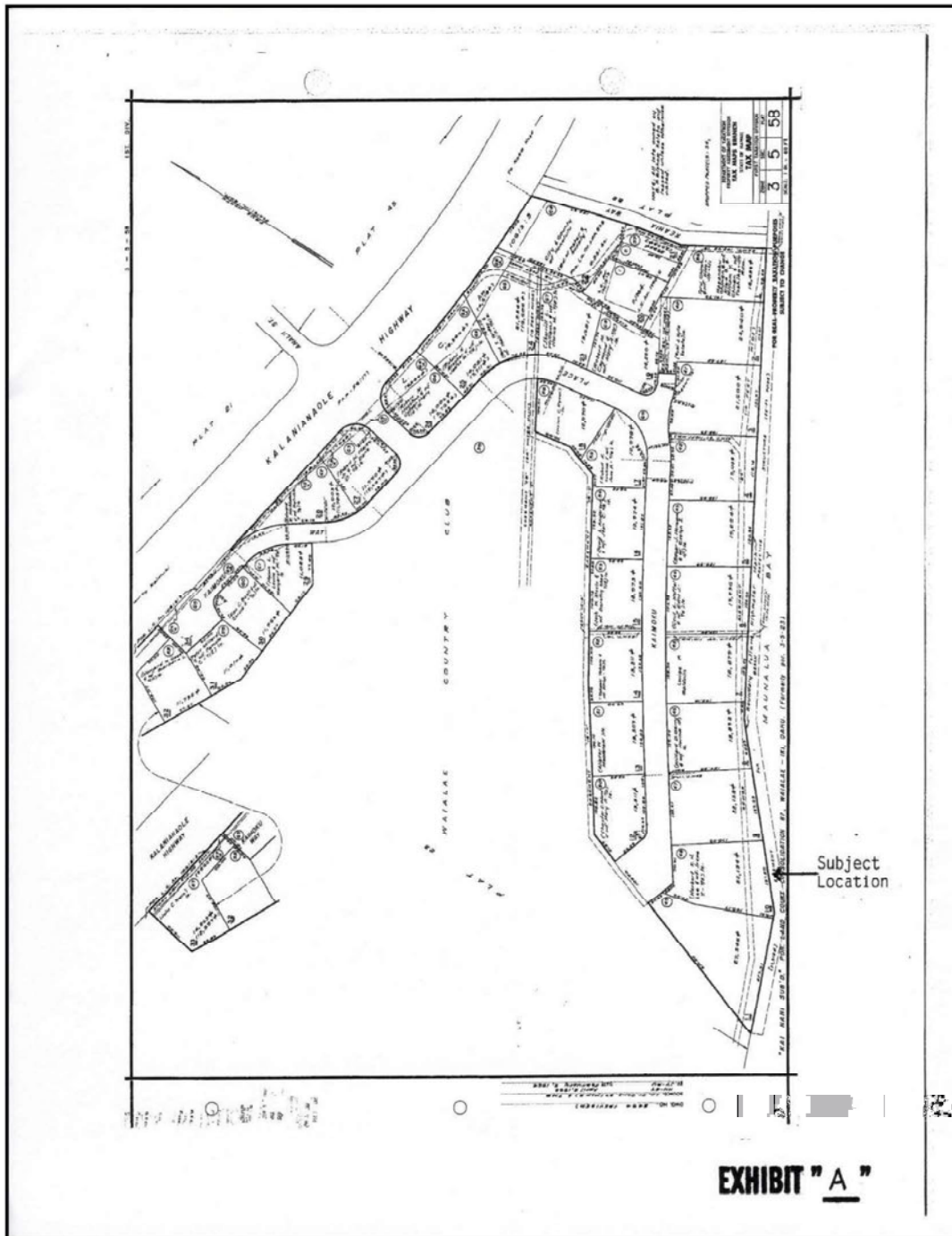

Laura H. Thielen, Chairperson





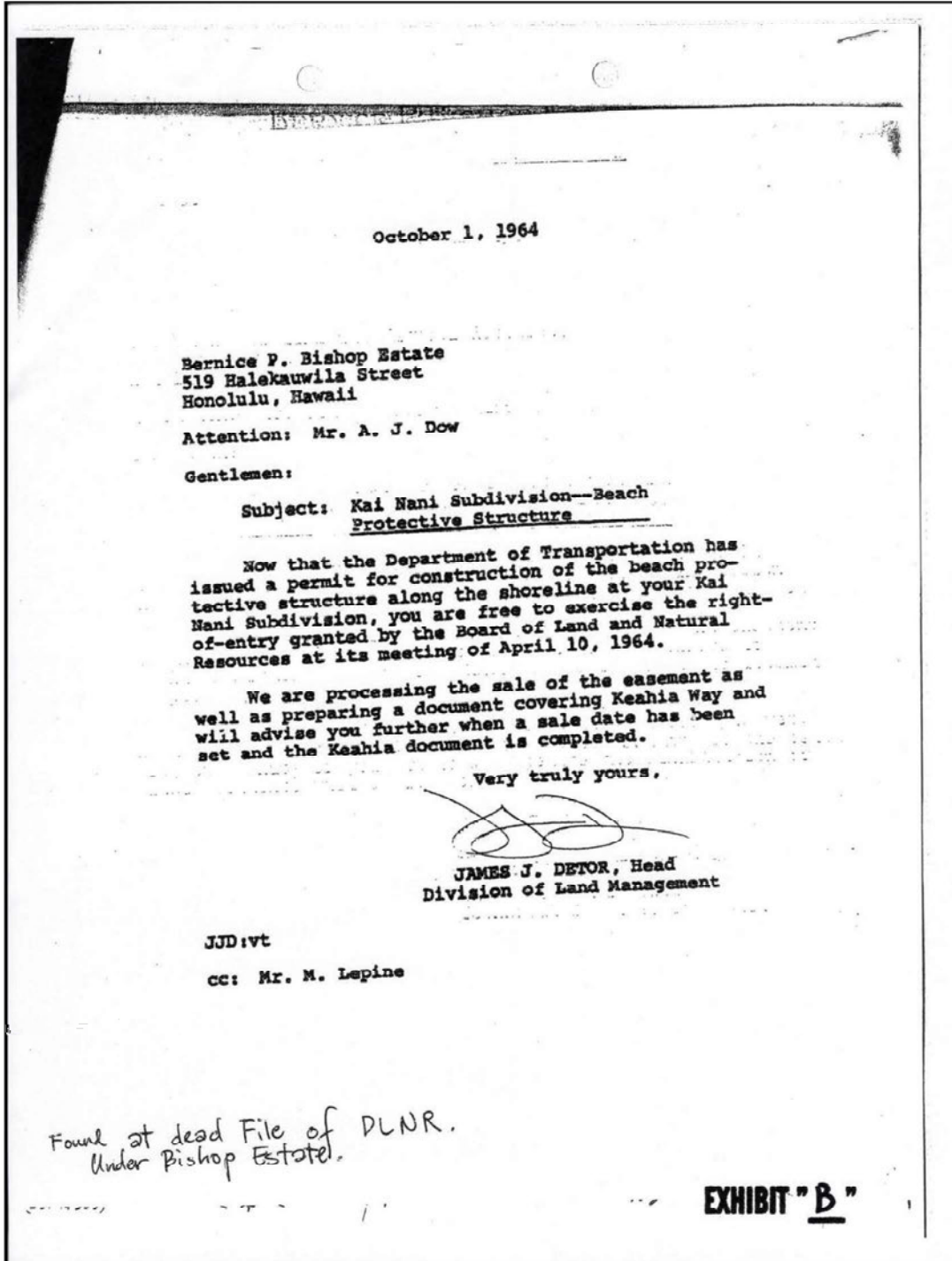
The William S. Chee Trust
Rock revetment

Encroachment OA 24-06



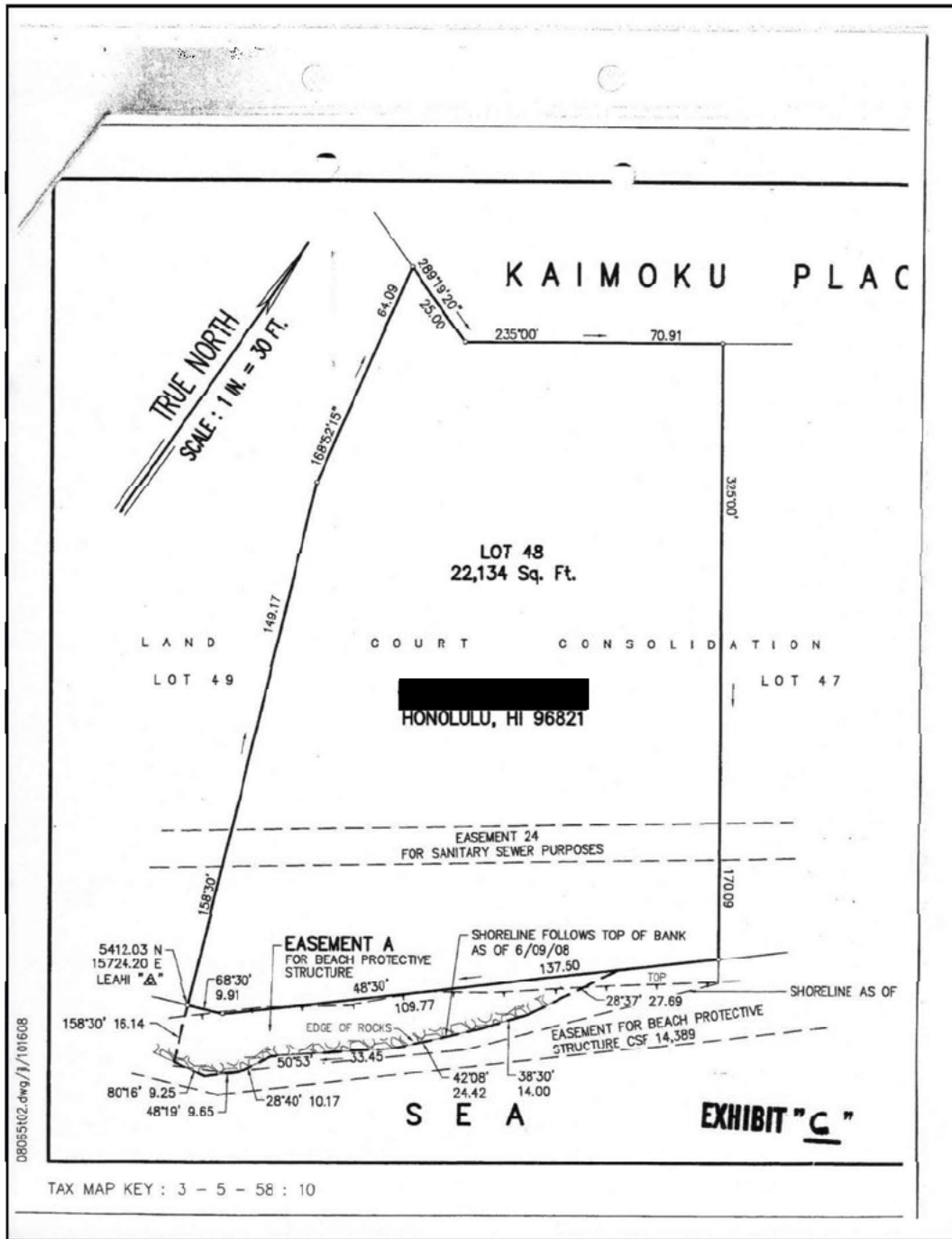
The William S. Chee Trust
Rock revetment

Encroachment OA 24-06



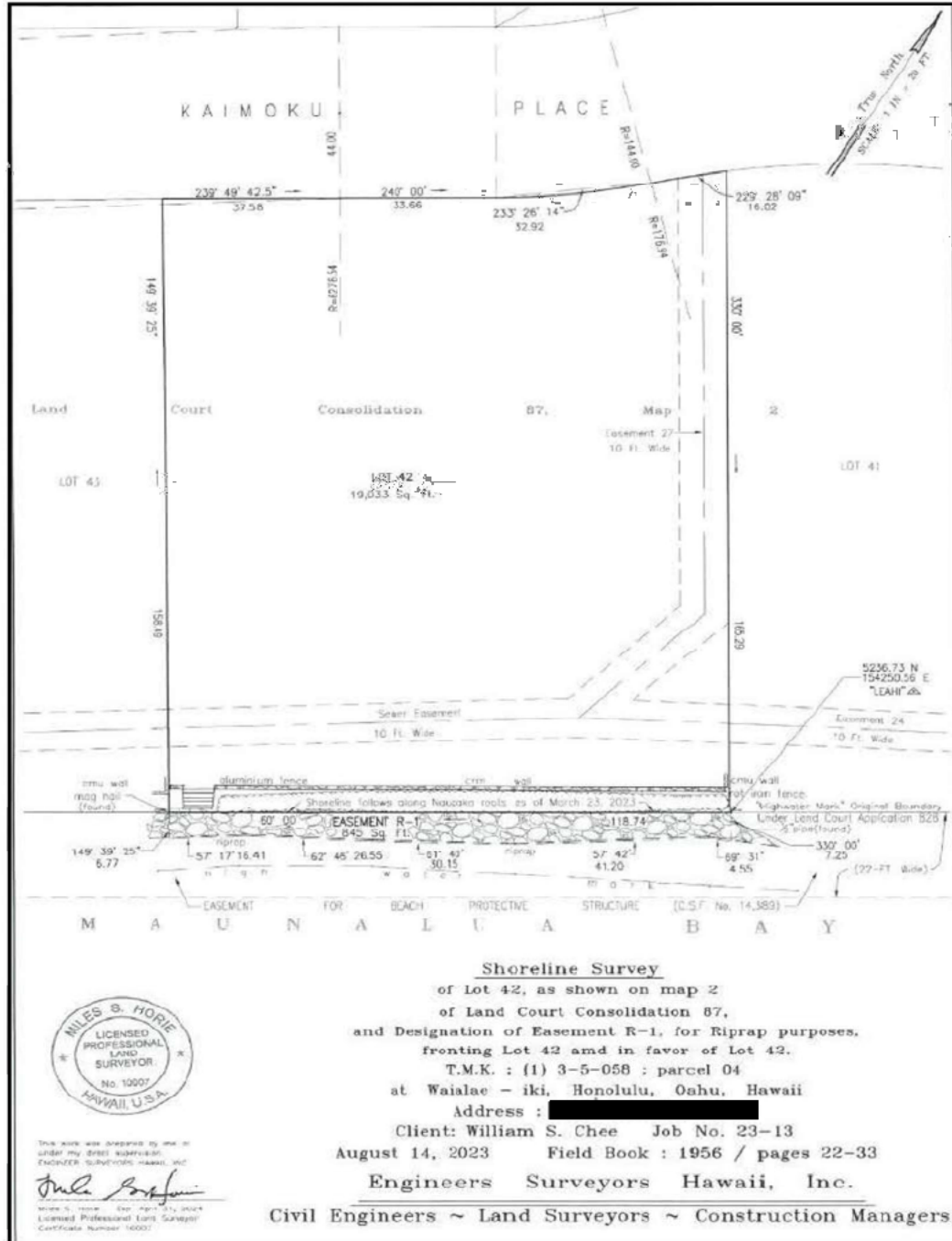
The William S. Chee Trust
Rock revetment

Encroachment OA 24-06



The William S. Chee Trust
Rock revetment

Encroachment OA 24-06



Note: Survey map showing encroaching revetment.

Exhibit 8

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:

OAHU

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

In developing the Kai-Nani Subdivision adjacent to the Waialae 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 structure along the Kai-Nani Subdivision at Waialae, 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 reasonably 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.

ITEM F-17

Copied at Hawaii State Archives

Board of Land and
Natural Resources

Page 2

April 2, 1964

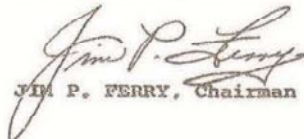
4. That plans for the structure be approved by the Chairman prior to construction.
5. Other terms and conditions recommended by the Chairman.

Respectfully submitted,



JAMES J. DETOR, Head
Division of Land Management

RECOMMENDED FOR APPROVAL:



JIM P. FERRY, Chairman



Shoreline Survey

of Lot 42, as shown on map 2

of Land Court Consolidation 87,

and Designation of Easement R-1, for Riprap purposes,
fronting Lot 42 and in favor of Lot 42.

T.M.K. : (1) 3-5-058 : parcel 04

at Waialae - iki, Honolulu, Oahu, Hawaii

Address : [REDACTED]

Client: William S. Chee Job No. 23-13

August 14, 2023 Field Book : 1956 / pages 22-33

Engineers Surveyors Hawaii, Inc.

Civil Engineers ~ Land Surveyors ~ Construction Managers



This work was prepared by me or under my direct supervision. ENGINEER SURVEYORS - HAWAII, INC.

Miles S. Horie

Miles S. Horie Exp April 31, 2024
Licensed Professional Land Surveyor
Certificate Number 10907

**DEPARTMENT OF PLANNING AND PERMITTING
KA 'OIHANA HO'OLĀLĀ A ME NĀ PALAPALA 'AE
CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041 • WEBSITE: honolulu.gov/dpp

RICK BLANGIARDI
MAYOR
MEJA



DAWN TAKEUCHI APUNA
DIRECTOR
PO'O

BRYAN GALLEGHER, P.E.
DEPUTY DIRECTOR
HOPE PO'O

REGINA MALEPEAI
2ND DEPUTY DIRECTOR
HOPE PO'O KUALUA

September 18, 2024

2024/ELOG-1705(ST)

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

RECEIVED
LAND DIVISION
2024 SEP 23 AM 9:19
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Dear Ms. Anderson:

**SUBJECT: Twenty-Five Year Non-exclusive Easement
(Ref. No.: 24OD-106)
Nonconforming Beach Revetment
Kalaniana'ole Highway – Waialae-Iki
Seaward of Tax Map Key 3-5-058: 004 (Parcel 004)**

This responds to your request, received on September 3, 2024, for comment on the proposed issuance of a non-exclusive easement for an existing rock revetment seaward of the above parcel. A review of our records confirms that the existing rock revetment is considered a nonconforming structure by the Department of Planning and Permit (DPP) with respect to the Revised Ordinances of Honolulu (ROH) Chapter 26, Shoreline Setback Ordinance. In December of 1964, Building Permit (BP) No. 3687 was issued by the City (The Building Department) for the rock revetment located along 11 lots of the Bishop Estates' Kai Nani Subdivision, which was approved in July of 1962.

The DPP does not have an objection to the issuance of the non-exclusive easement for Parcel 004. However, we strongly suggest that strict repair limitations, which prohibit the expansion or fortification of the artificial shoreline hardening structure, be included in the easement. Repair to a nonconforming structure must be limited so that the repair work does not exceed more than 50 percent of its total replacement cost. This is to be consistent with the policies of the Hawaii Revised Statutes Chapter 205A, Coastal Zone Management Law, which calls for the limitation of public shoreline hardening structures and prohibition of private shoreline hardening structures.

Ms. Rebecca Anderson
September 18, 2024
Page 2

Should you have any questions, please contact Steve Tagawa, of our Land Use
Approval Branch, at (808) 768-8024 or via email at stagawa@honolulu.gov

Very truly yours,



FOR Dawn Takeuchi Apuna
Director

cc: Office of Planning, Shichao Li (via email)
Office of Planning, Lisa Webster (via email)
Office of Planning, Rachel Beasley (via email)

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



RECEIVED
LAND DIVISION

2024 SEP 13 PM 2:22



STATE OF HAWAII | KA MOKU'AINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE OF HAWAII | KA 'OIHANA KUMUWAIWAI 'AINA
LAND DIVISION

P.O. BOX 621
HONOLULU, HAWAII 96809

August 30, 2024

240815

for myle
Dep
Lend

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

LN-1702
Corr- 9/6/24
Due - 9/13/24

RECEIVED
BOARD OF WATER SUPPLY
SEP 05 2024

Ref. No.: 24OD-106

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

SUBJECT: Request for Comments: Twenty-five Year Term Revetment Easement

LOCATION: Waialae-Iki, Honolulu, Oahu

APPLICANT: William S. Chee, Trustee of The William S. Chee Trust and WCS Capital LLC

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 September 20, 2024. 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 808-587-0424 or rebecca.l.anderson@hawaii.gov. Thank you.

Attachments

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

Signed: Ernest Y. W. Lau
Date: September 11, 2024

for ERNEST Y. W. LAU, P.E.
Manager and Chief Engineer
Board of Water Supply

cc: Central Files
District Files

EXHIBIT E-2