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

January 11, 2008

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

Ref: 07od-184

OAHU

Re-submittal - Enforcement of Violation of Unencumbered Public Lands, Unauthorized Landscaping and Removal of Sand and Plants on State Land by David and Maureen Cross, Kailua, Koolaupoko, Oahu; TMK (1) 4-3-017:033 seaward

PURPOSE:

Enforcement of violation of Hawaii Administrative Rules relating to unencumbered public lands, unauthorized landscaping and removal of sand and plants by David and Maureen Cross, seaward of 396 Dune Circle, Kailua, further identified by tax map key (1) 4-3-017:033.

LEGAL REFERENCE:

Sections 13-221-2, -23, and -28, Hawaii Administrative Rules (HAR), as amended.

BACKGROUND:

The subject submittal was scheduled for December 14, 2007 meeting. Mr. & Mrs. David Cross live on the mainland and they requested, through their attorney, a deferral of the item until January 2008.

In June 2007, staff received a complaint from an individual who wished to remain anonymous regarding a possible violation of unencumbered public land rules as stipulated in Section 13-221, HAR. A site inspection conducted by staff on June 2, 2007 determined that dune grading, landscaping and sprinkler installation were conducted seaward of the subject premises identified as tax map key (1) 4-3-017:033, which is unencumbered public lands. According to the information provided by the complainant, the owner of 396 Dune Circle in Kailua installed sprinklers, removed natural vegetation and planted new grass covering an area

about 20 feet makai of their seaward boundary. A copy of the tax map is attached as Exhibit A.

The grassy area shown on the photo attached as Exhibit B depicts the situation soon after the planting of the new grass. The green fence shown at the right of the photo is the makai boundary of the subject property. Staff noted from the vegetation on both sides of the subject property that natural vegetation was believed to exist previously at the subject location. Staff found no approval authorizing such activity.

By letter dated August 6, 2007, the Department requested the owners, David and Maureen Cross, to stop the alleged violation and contact the staff for resolution. A copy of the letter is attached as Exhibit C. Subsequent to the discussion with the staff, Mr. Cross stated that the present situation was due to an error by his landscape contractor, and he removed the sprinklers and new grass makai of his property boundary. At that time, staff adopted an approach of letting nature take its course, believing that the natural vegetation would start to grow at the location formerly landscaped by Mr. Cross. Therefore, initially staff did not require Mr. Cross to restore the area.

Pursuant to an inspection conducted by the staff in early September 2007, the violations were believed to have been resolved. The sprinklers and new grass were removed, as shown on the photos attached as Exhibit D.

Not long after the violations mentioned above were believed to have been resolved, staff received a second complaint advising staff that the situation continued. According to the information provided, plastic edging was installed along the mauka perimeter of the remaining existing natural vegetation which effectively stops this vegetation from growing inland. Sprinklers installed along the property boundary face seaward and in effect promote the extension of the new grass seaward. Photos showing the latest situation are attached as Exhibit E1 & E2.

Staff of the Land Division and the Office of Conservation and Coastal Lands discussed the subject violation. Staff concurs that the owner was given ample opportunity to resolve the violations. However, evidence gathered after the initial resolution of the violations in September 2007 indicates a continuation of the violations and action taken to promote the growth of the new grass seaward and to prohibit the reestablishment of the natural vegetation.

HAR 13-221-23 states in pertinent part: "No person shall destroy, disturb, or mutilate any geological features or dig, or remove sand, earth, gravel, minerals, rocks, fossils, coral or any other substances on the premises." Staff believes the dune grading caused the change in the topography and constitutes a disturbance to the geological features in violation of HAR 13-221-23.

Further, Section 13-221-28(d) states "No person shall destroy, dig, remove, or possess any tree, shrub or other plant, except for noxious weeds, as defined in Chapter 4-68, Hawaii Administrative Rules, within the premises." Staff believes the removal of the natural vegetation at the subject location constitutes a violation pursuant to this rule.

RECOMMENDATION:

That the Board determine:

1. That David and Maureen Cross violated the provisions of Section 13-221-23, and -28, HAR, in two (2) instances by (1) failing to obtain the appropriate approval for the dune grading constituting a disturbance to the geological features as set forth above; and (2) for the removal of natural vegetation, also as set forth above. David and Maureen Cross are fined **$1,000** for two (2) unencumbered public lands violations;

2. That David and Maureen Cross are fined an additional **$2,500** for administrative costs associated with the subject violations (Land and OCCL staff);

3. That David and Maureen Cross shall pay all fines **($3,500)** within thirty (30) days of the date of the Board's action;

4. That David and Maureen Cross at their expense shall implement a Dune Restoration Plan within forty-five days of the date of the Board's action; and will restore the land within the unencumbered public lands to a condition suitable to the Chairperson;

5. If the remediation effort is not completed to the satisfaction of the Chairperson within forty-five days of the date of this action, David and Maureen Cross will be fined $500 per day until they complete the remediation effort to the satisfaction of the Chairperson;

6. Land and OCCL staff will conduct a site inspection within forty-five days to verify that Condition 4 has been met;

7. No further work shall occur within the unencumbered public lands without the Board of Land and Natural Resources approval, Chairperson's approval, and/or Land Division or OCCL approval. If further work occurs in the unencumbered public lands without approval, David and Maureen Cross will be fined an additional $500 a day;

8. That in the event of failure of David and Maureen Cross to comply with any order herein, they shall be fined an additional $500 per day until the order is complied with; and

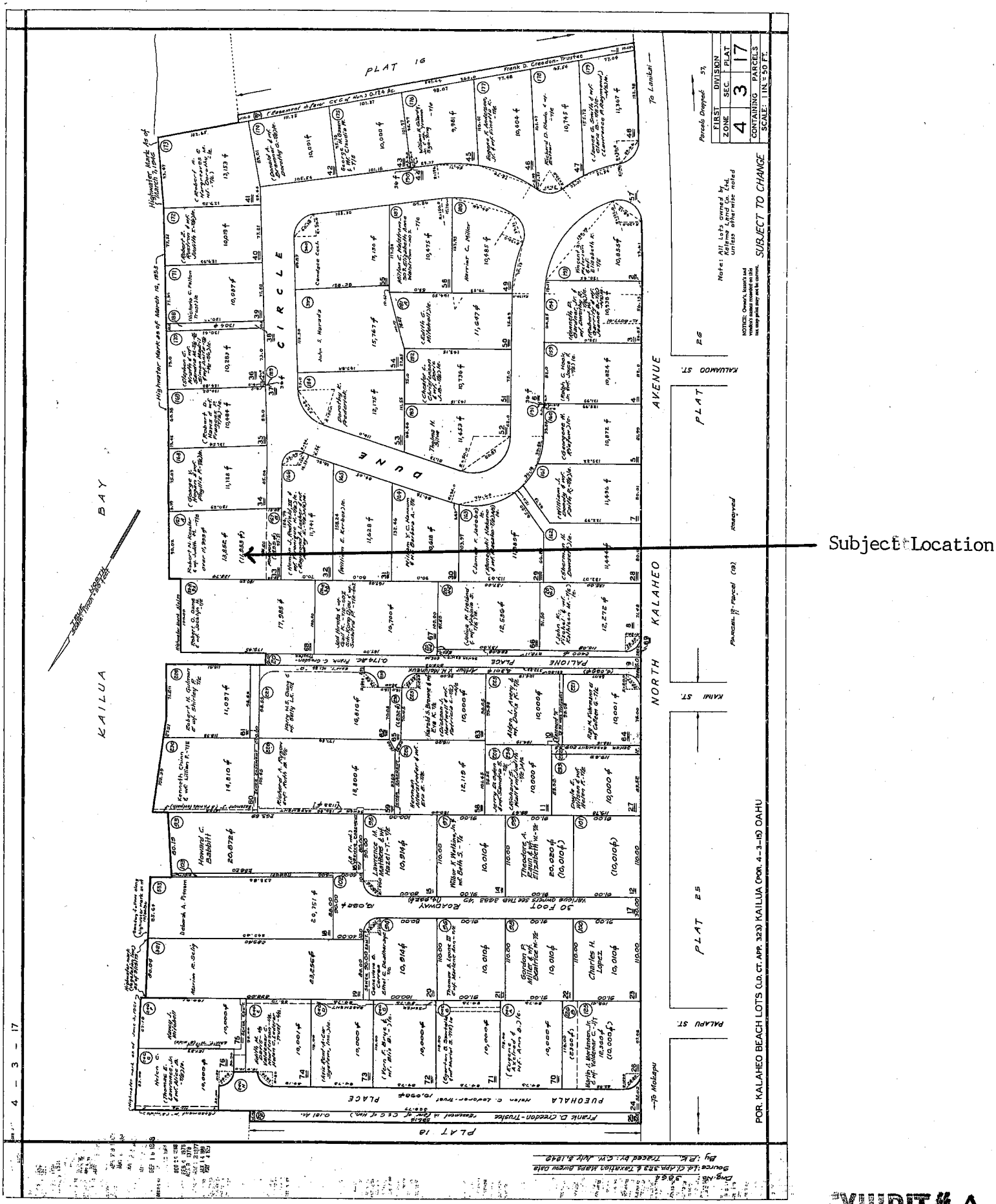
9. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.

Respectfully Submitted,

Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:

Laura H. Thielen, Chairperson



Subject Location
KAILUA BAY
NORTH KALAHEO AVENUE
DUNE CIRCLE
PLAT 16
PLAT 18
PLAT 25
PLAT 26
PUEOHALA PLACE
30 FOOT ROADWAY
PALAPU ST.
KAIMI ST.
KALUAMOO ST.
To Lanikai
To Mokapu
Frank D. Creedon-Trustee
FIRST DIVISION
ZONE 4 SEC. 3 PLAT 17
CONTAINING PARCELS
SCALE: 1 IN. = 50 FT.
SUBJECT TO CHANGE
POR. KALAHEO BEACH LOTS (LD. CT. APP. 323) KAILUA (POR. 4-3-15) OAHU
4 - 3 - 17


EXHIBIT "A"

PHOTO TAKEN IN JUN 2007

EXHIBIT "B"

6420

All

LAURA H. THIELEN
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ALLAN A. SMITH
INTERIM DEPUTY DIRECTOR - LAND

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
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LAND
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**STATE OF HAWAII**
**DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**AUG - 6 2007**

VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED;
and First Class Mail-Postage Paid

7003 0500 0003 2596 0646

David and Maureen Cross
1073 Granville Drive
Newport Beach
California, 92660

David and Maureen Cross
396 Dune Circle
Kailua, Hawaii 96734

Dear Mr. & Mrs. Cross:

Subject: Illegal Activity on Unencumbered Public Lands, Kailua, Oahu;
Tax Map Key: (1) 4-3-017:033 (seaward)

NOTICE IS HEREBY GIVEN that you are in violation of Hawaii Administrative Rules (HAR) Title 13, Chapter 221, entitled "Unencumbered Public Lands" providing for the control of public activities on unencumbered public lands, enacted pursuant to Chapter 171, Hawaii Revised Statutes.

An inspection of the premises on which the illegal activity has been conducted was made on June 2, 2007 by the Department of Land and Natural Resources (DLNR). We have determined that:

1) The subject premises, identified as tax map key: (1) 4-3-017:033 seaward, is unencumbered public lands;
2) The following uses were conducted on the subject premises: dune grading, landscaping and sprinkler system installation; and
3) These uses were not authorized by the Department of Land and Natural Resources under Chapter 13-221, HAR.

YOU ARE HEREBY ORDERED TO RESTORE the subject dune premises to the original condition. Should you fail to restore the subject premises to the satisfaction of the DLNR within 30 days from the date of this letter, we will bring the subject violation to the Board

EXHIBIT "C"

of Land and Natural Resources for disposition, and you will be subject to fines of up to $500 per day pursuant to Chapter 13-221, HAR, in addition to administrative costs incurred by the Department.

Please contact Dolan Eversole of the Office of Conservation and Coastal Lands for any questions on the dune restoration work. Should you have any other questions, please contact Barry Cheung of Oahu District Land Office at 587-0430.

Sincerely,

Laura H. Thielen
Interim Chairperson

c: Land Board Member
Kailua Neighborhood Board
Department of Planning and Permitting, C & C of Honolulu
Dolan Eversole, OCCL

PHOTO TAKEN IN SEPT 2007

EXHIBIT "D"

PHOTO TAKEN IN SEPT 2007

EXHIBIT "E1"

PHOTO TAKEN IN SEPT 2007

EXHIBIT "E2"