

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

July 22, 2009

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

PSF No.:09OD-058

OAHU

Grant of Term, Non-Exclusive Easement to Kevin Fialko for Seawall and Steps Purposes,
Black Point, Kahala, Honolulu, Oahu; Tax Map Key: (1) 3-5-01: 004 seaward

APPLICANT:

Kevin Fialko, whose mailing address is 5815 LaJolla Mesa Drive, LaJolla, CA 92037

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of Black Point, Kahala, Honolulu, Oahu;
identified by Tax Map Key: (1) 3-5-01:004 seaward, as shown on the attached map
labeled Exhibit A.

AREA:

773 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

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____ NO X

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall and steps 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 rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

According to the Office of Conservation and Coastal Lands (OCCL), the subject improvements appeared to be built prior to 1974, prior to the enactment of the EIS law and this action is therefore exempt from Chapter 343.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

The subject encroachment was discovered due to a shoreline certification process. A copy of the latest survey map is attached as Exhibit B. Applicant has provided information and requests an easement for the subject encroachment.

OCCL does not consider the subject encroachment to be a Conservation District violation, nor was a Conservation District Use Permit required. A copy of OCCL's comments is attached as Exhibit C.

Further, OCCL does not object to allowing the subject encroachments to remain.

The Board of Water Supply, Division of Aquatic Resources and Department of Facility Maintenance have no comments/objections to the subject request.

The Department of Health, State Historic Preservation Division, Commission on Water Resource Management, Department of Planning and Permitting and the Office of Hawaiian Affairs have not responded as of the suspense date of this request.

On June 28, 2002, under agenda item D-17, the Board established a \$500 fine, pursuant to Chapter 171-6, HRS, for any encroachments over 100 square feet. The law has been changed and the fine has been raised to \$1,000 effective from July 7, 2008 by Act 215 SLH 2008. Staff recommends the Board assess a fine of \$1,000 to the property owner pursuant to the current provision in the statutes.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

1. Impose a \$1,000 fine for illegal encroachment, under Section 171-6.
2. 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) 3-5-001: 004 seaward, 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.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Kevin Fialko covering the subject area for seawall and steps 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) 3-5-001: 004 seaward, 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;

- 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.

Respectfully Submitted,



Timmy Chee
Land Agent

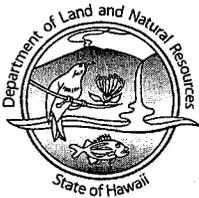
APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. TH ELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RECEIVED
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KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND AND NATURAL RESOURCES
STATE PARKS
STATE OF HAWAII

REF:CC

JUN - 8 2009

File Number Encroachment: OA-09-08

MEMORANDUM:

TO: Timmy Chee
Land Division

FROM: Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

SUBJECT: Request to Resolve State Land Encroachment at 4162 Black Point Road, Honolulu, HI 96816, TMK (1) 3-5-001:004, owner Kevin Fialko

This is in response to the May 2009 request to resolve the shoreline encroachment at Tax Map Key (1) 3-5-001:004.

According to information and maps contained with the request, there appears to be approximately 773 square feet of encroachment (seawall and stairs) makai of the subject property onto State land.

Office of Conservation and Coastal Lands (OCCL) staff was unable to locate any construction permit or other land use authorization permits at the State for the seawall, and the applicant provided none. However, the applicant submitted a dated aerial photograph that showed the seawall, in its current shape and location, present in 1949. It appears, from the evidence presented, that the structure is intact and unaltered since prior to the inception of the Conservation District rules in 1964.

As a consequence, DLNR does not consider either of the encroachment to be a Conservation District violation. Should the OCCL find that the structure has been significantly altered since the inception of the Conservation District rules, the OCCL may reconsider this finding.

The Board of Land and Natural Resource (BLNR) established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department 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;

EXHIBIT "C"

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, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted.

Surrounding Land Uses:

The surrounding uses are primarily residential.

Beach Resources:

This parcel is on the eastern side of Black Point. Beach resources are very poor in this area. There is a very small, wet, cobble and sand beach in the area of the seawall.

Public Access:

The wet, cobble beach has very limited access, as Black Point is a gated community. There is little if any shoreline access along the coastline, because most of the coastal area is coastal bluffs.

Effect of Removing the Encroachment on:

Beach Resources: Removal of the seawall will not improve beach resources in the area. The encroachment area is primarily soil and rock, with little if any sandy substrate to be released by removal of the seawall.

Public Access: OCCL staff has determined that public access would not be improved by removal of the encroaching seawall. Coastal access is extremely limited in this region to begin with, and removal of the seawall would not improve access. The OCCL does recommend posting signs at the seawall that indicate the area is public and access is open.

Affect on Adjacent Properties: Removal of the seawall would not impact the adjacent parcels and their developments.

It has been a general policy and practice of the OCCL to support easement requests that have no discernable effect on beach and recreational resources, and do not act as a detriment to public access. In cases where the encroachment serves as primary erosion control for potentially threatened structures, impacts to the adjacent and upland developments must also be considered.

Upon review and careful consideration of the information gathered on this case, staff has determined that the requirements stated in HRS § 205A, HRS § 183C, and in the OCCL's evaluation criteria would support a disposition request being processed for the encroachment. The OCCL suggests that proper signage be placed identifying that the seawall and the State land are open to the public. The OCCL suggests that any disposition require that the land use remain unimproved. However, if improvements are allowed the OCCL also suggests a requirement for an integrated public access component to address the mandated lateral shoreline access parameters stated in HRS § 115.

Please feel free to contact Sea Grant Extension Agent Chris Conger, at the Office of Conservation and Coastal Lands at 587-0049.

CC: OHA, Grant Arnold
DPP, City and County of Honolulu