

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-062

OAHU

Second Amendment of Grant of Term, Non-Exclusive Easement S-5827 to Basil Gomez and Donna C. Marron for Seawall and Landscape Purposes, Kaalaea, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-016:seaward of 060.

BACKGROUND:

On July 8, 2005, the Board authorized the issuance of a 55-year non-exclusive easement for seawall purposes to Basil Gomez and Donna C. Marron and the easement document (GL5827) was executed on September 7, 2007.

On May 9, 2008, the Board authorized the amendment of GL5827 to accommodate a slight change (13 square feet) in the area and added "landscape" to the purpose of the easement. The amendment document was signed on September 3, 2008.

During a recent shoreline certification process, the State noted there were some concrete piles located makai of the easement area. The additional encroaching area is about 416 square feet. Staff understands that such discovery was noted because the tide was lower than that of the previous survey. Therefore, the additional concrete piles were not caught in the 2008 survey.

A copy of the letter requesting a second amendment to include the newly found additional encroaching area provided by the consultant of the grantees, together with the maps and photos are attached as Exhibit A for the Board's reference.

Office of Conservation and Coastal Lands and the Division of Aquatic Resources have no objections to the request. Department of Planning and Permitting indicates that they have no record of the subject structure. Office of Hawaiian Affairs has not responded as of the suspense date.

Grantees paid \$18,260 as the lump sum payment for the subject easement which covers

3,666 square feet. Staff recommends the Board authorize the staff appraiser using the same unit rate under GL 5827 to appraise the additional consideration payable pursuant to the subject request, and further subject to review and approval of the Chairperson.

There are no other pertinent issues and concerns. Staff has no objections to the request.

RECOMMENDATION: That the Board authorize the amendment of grant of non-exclusive easement S-5827 by including the additional area covered in the subject request, and further subject to the following:

- A. Payment of consideration for the additional encroaching area based on the pro-rated value paid under the grant of non-exclusive easement S-5827, as amended;
- B. Review and approval by the Department of the Attorney General; 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
District Land Agent

APPROVED FOR SUBMITTAL:

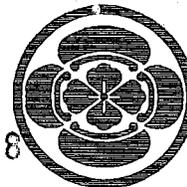


Laura H. Thielers, Chairperson



RECEIVED
LAND DIVISION
Imata & associates, Inc.
CIVIL ENGINEERS • LAND SURVEYORS

2009 MAY 22 P 2: 28



May 14, 2009

Mr. Barry Cheung, Land Agent
Department of Land and Natural Resources
State of Hawaii
1151 Punchbowl Street
Honolulu, Hawaii 96813

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Dear Mr. Cheung,

Re: Non-Exclusive Seawall and Landscape Easement
At 47-775 Kamehameha Highway, Kaneohe, Oahu, Hawaii
Tax Map Key: 1st Div. 4-7-016:060
Owners: Basil Gomez and Donna Marron

We are sending you a letter from the Owners of the subject parcel requesting amendment of a Non-Exclusive Seawall and Landscape Easement that was recently granted. Subsequently, an application for certification of the shoreline location was submitted. However, when the State's representatives visited the site, the tide was lower than it was on the day of our original shoreline location survey, and some concrete piles were bared in front of the wall. We were informed that these piles were outside the easement and that they would have to be removed or that the easement would have to be amended to include the piles.

In order to verify the State's findings, we waited for a tide that was as low or lower than it was during the State's visit. The tide was extremely low when we did go out, and we found more piles in front of the wall and extending beyond the subject parcel. Attached are photos and a revised map showing the additional easement areas that must be obtained in order to rectify the encroachment issue. If this is acceptable to you, we can provide a new map and legal description.

Your earliest attention to this matter will be greatly appreciated. We are available to meet with you to discuss this matter further. Please call if you have any questions.

Very truly yours,

Natalie Imata

State of Hawaii,
Department of Land and Natural Resources – Land Division,
Kalanimoku Building,
1151 Punchbowl Street,
Honolulu, Hawaii 96813.

May 14, 2009

Re: 97od-134 GL5827 Grant of non-exclusive seawall easement for S-5833 for seawall purposes, Kaalaea, Koolaupoko, Oahu, TMK 4-7-16:60 seaward.

Dear Sirs,

We recently applied to the State's Land Survey Division for a shoreline certification, but when the State's representatives visited the property at low tide they observed a series of concrete piles establishes the outer limit of the area that should be covered by a non-exclusive seawall and landscape easement. Unfortunately our above-mentioned easement does not cover the entire area. The piles in question are visible in the attached photographs and their location is shown on the latest survey map of our property (also attached). Additionally, the map delimits the two areas where we think extensions (of 40~~2~~ and 11 square feet, respectively) to our easement are required to satisfy the State's requirement that it include the area delimited by the piles.

We are unfortunately unaware of all the different stages that were involved in constructing the seawall and drafting the original easement, but we would like our current easement to include the area covered by the piles, which the State regards as man-made objects that lie within the projection of our property lines and encroach onto State land. For this reason, we wish to inquire if it is possible for us to pay the State a *pro rata* amount (based on the amount we paid for our easement, plus any necessary administrative fees) to have the land occupied by the piles included in the area covered by the easement and have the description and the easement documents revised to reflect this?

We would like to emphasize that we make this request solely to satisfy the State's requirements for shoreline certification and that we have no intention of using the land that would be covered by the extension for any purpose whatsoever in the future. Consequently, we would not object if the amendment included wording that prohibited us from doing this.

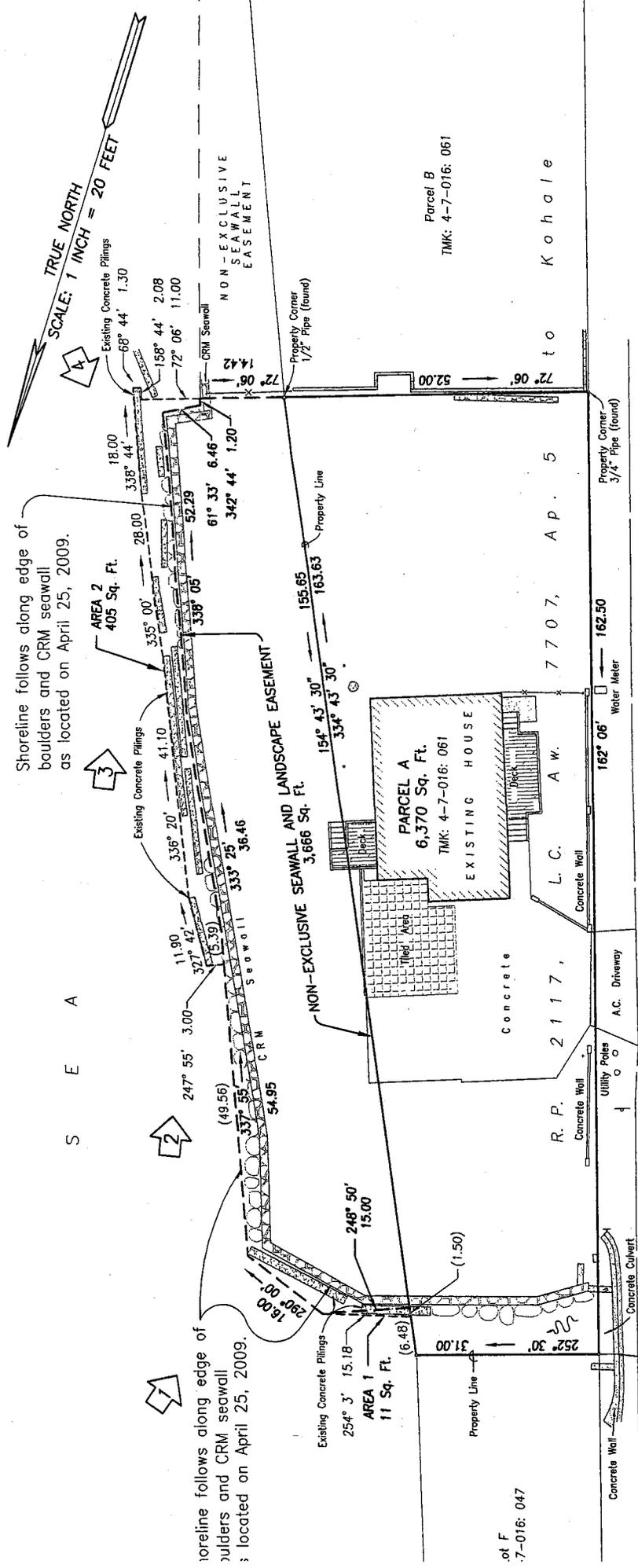
Of course, if you have any other suggestions about how we can resolve this matter we would be pleased if you would advise us of them.

Yours faithfully,



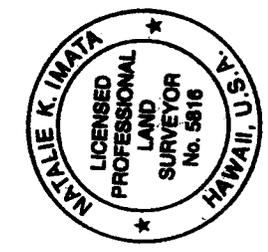
Basil Gomez & Donna C. Marron,
4885 Fieldstone Trail,
Indianapolis, IN 46254.

Phone/Fax: (317) 388-0412
e-mail: bgomez@indstate.edu dmarron@psrb.com



Shoreline follows along edge of boulders and CRM seawall as located on April 25, 2009.

Shoreline follows along edge of boulders and CRM seawall as located on April 25, 2009.



K A M E H A M E H A H I G H W A Y

SHORELINE CERTIFICATION

PARCEL A

Portion of R. P. 2117, L. C. Aw. 7707, Ap. 5 to Kohale

At Kaalaea, Koolaupoko, Oahu, Hawaii

Owners: Basil Gomez
Donna C. Marron

Parcel B
TMK: 4-7-016: 061

to Kohale

of F
7-016: 047

Offset 3.0 Feet to Property Corner
Arrow on Bridge Wall (found)

DATE PREPARED: 05/10/2009

TMK: 4-7-016: 060

Date: April 25, 2009 9:00 A.M.

Shoreline (yellow) Concrete pilings (white)

Photo 1



Photo 2



TMK: 4-7-016: 060

Date: April 25, 2009 9:00 A.M.

Shoreline (yellow) Concrete pilings (white)

Photo 3



Photo 4

