

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

October 9, 2009

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

PSF No.:09OD-104

OAHU

Grant of Term, Non-Exclusive Easement to Kamehameha Schools for Seawall  
Purposes, Haleiwa, Waialua, Oahu, Tax Map Key: (1) 6-1-008:seaward 023.

APPLICANT:

Kamehameha Schools, whose mailing address is 567 South King Street, Honolulu,  
Hawaii 96813.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward Haleiwa, Waialua, Oahu, identified by Tax  
Map Key: (1) 6-1-008:seaward of 023, as shown on the attached map labeled Exhibit A.

AREA:

289 square feet, more or less.

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 with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

During a research, Office of Conservation and Coastal Lands (OCCL) staff observed the subject seawall and determined it appeared to be built before 1974, prior to the enactment of the EIS law and this action is therefore exempt from Chapter 343, HRS.

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:

Applicant is the owner of the parcel identified as tax map key (1) 6-1-008:023, shown as "sandy beach" on the tax map. It is planned to subdivide parcel 23 and convey the respective portions to the abutting private owners. During the process, the subject

encroachment (as shown on Exhibit B) was discovered. Subsequent to the discussion with the department, the applicant requests a non-exclusive easement to resolve the issue.

According to OCCL's letter at Exhibit C, OCCL believed that the subject encroachment was built before 1964, i.e. the establishment of the Conservation District. Therefore, OCCL does not consider the encroachment a Conservation District violation. Further, OCCL has determined that issuance of an easement would be the "best practical response ... , have minimal impact to beach resources and would provide for continued public access."

Department of Facility Maintenance, State Historic Preservation Division, Department of Hawaiian Home Lands, Board of Water Supply, Commission on Water Resource Management, Division of Aquatic Resources have no comments/objections on the request.

At the time of writing this submittal, Department of Health and Department of Planning and Permitting have not responded.

Office of Hawaiian Affairs asks if fine or consideration will be recommended for this case. Staff responds the request is subject to one-time payment consideration and a fine detailed below.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, and the current version of Section 171-6(12), Hawaii Revised Statutes, staff is recommending a fine of \$1,000 as the subject encroachment is over 100 square feet.

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. Staff has no objections to the request.

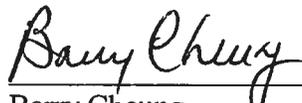
RECOMMENDATION: That the Board:

1. Impose a \$1,000 fine for illegal encroachment, under Section 171-6(12).
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) 6-1-008;023, 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 Kamehameha Schools

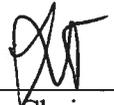
covering the subject area for seawall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- 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) 6-1-008:023, 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 



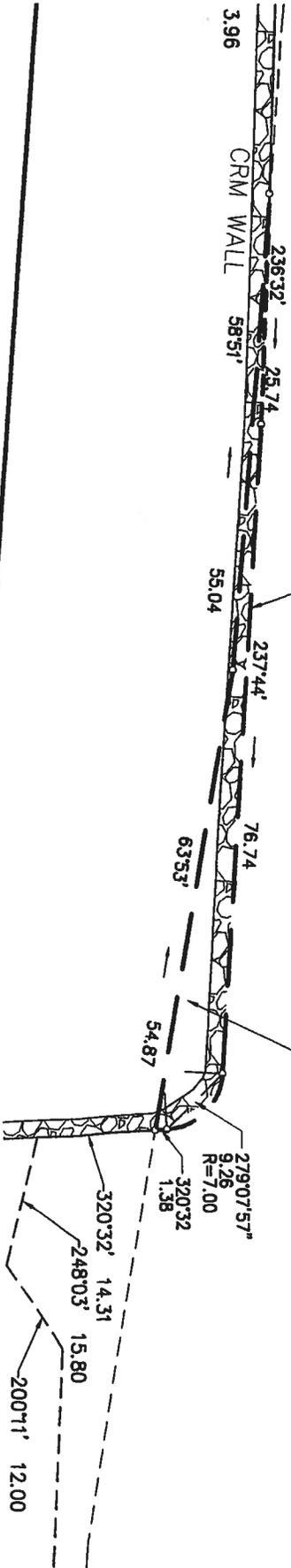
INSET SCALE : 1 IN. = 20 FT.

RESERVE NO. 2

S E A

SHORELINE FOLLOWS OUTER FACE OF CRM WALL AS OF JULY 7, 2009

EASEMENT A FOR SEAWALL PURPOSES



LOT 18

LOT 19

E H A

H I G H W A Y

MAP SHOWING

EXHIBIT "B"

LINDA LINGLE  
GOVERNOR OF HAWAII



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

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
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



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

RECEIVED  
LAND DIVISION

SEP 23 10:11

STATE OF HAWAII

Ref.: OCCL: DE

Encroachment: OA-10-01

September 21, 2009

SEP 23 2009

Kamehameha Schools  
567 South King Street  
Honolulu, Hi 96813

Authorized Representative:  
ATTN: James Thomson  
Walter P. Thomson, Inc.  
P.O. Box 3351  
Honolulu HI, 96801

SUBJECT: Shoreline Encroachment (Seawall) at TMK (1) 6-1-08:23 Fronting TMK (1) 6-1-08:05 61-419 Kamehameha Hwy, Lot 18 Kawaioloa Beach Lots, Haleiwa.

The Office of Conservation and Coastal Lands (OCCL), Department of Land and Natural Resources (DLNR) has received the request for review of the subject shoreline encroachment. The OCCL has reviewed the supplied shoreline encroachment information provided and researched historical shoreline information on the subject property to evaluate the environmental impact of granting an easement for the subject encroachment. The encroachment in question is (a portion of) a concrete and rock seawall, located makai of the property line and within state-owned land.

The subject property is located in Kawaioloa, Oahu. A recent survey map by James Thomson dated August 24, 2009 shows a 289 ft<sup>2</sup> portion of the seawall and fill encroaching onto state land (Figure 1). This was not a state certified shoreline but delineates the improvements and the encroaching area and is pending certification by the DLNR upon approval of the easement. According to the information provided to the DLNR, it is believed construction of the seawall began before 1957 as illustrated by provided historical aerial photographs. An affidavit of William W. Paty (former BLNR Chair) dated June, 22, 2009 is provided indicating:

1. Mr. Paty is a neighboring resident at 61-441 Kam Hwy,
2. The rock wall fronting the subject property (61-667 Kamehameha Hwy- Lot 18) has existed in the same form and location since at least 1957.

EXHIBIT "C"

3. The rock wall has not been altered or improved in any manner from the pre-1964 condition, except for minor repairs and maintenance.

### **Conservation District Violation**

Based on the information available, it appears the subject improvements were initiated before the establishment of the Conservation District in 1964. As a consequence, DLNR does NOT consider the subject encroachment a Conservation District violation and will not be asking for an after-the-fact Conservation District Use Application to cure this matter.

### **BLNR Shoreline Encroachment Policy**

The Board of Land and Natural Resource (BLNR) recently 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;
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 DLNR developed a “Shoreline Encroachment Information Sheet” that is intended to provide the DLNR with additional information to guide the Department’s decisions on the disposition of shoreline encroachments. This form has been completed and submitted to the satisfaction of DLNR staff. Based on the information provided the DLNR has made the following determinations with regard to the subject improvements:

### **Resource Assessment:**

#### Surrounding Land Uses:

The surrounding uses are agriculture and urban residential development. There are no public access right of ways in the immediate area. The nearest dedicated access is at the City and County beach reserve at Chun’s Beach approximately 0.25 miles to the southeast.

#### Beach and Marine Resources:

The beach and marine resources are excellent. Based on the BLNR decision-making criteria above, beach resources here are excellent. The region is defined by sandy embayed beaches and a continuous sandy beach for 0.5 miles in either direction. The beach features are controlled by the nearshore fringing coral reef and the seasonal surf that dominates this region. The marine environment is superior with the clear, calm waters nearshore resulting in safe swimming and the offshore reef providing popular surfing offering unique recreational and social opportunities.

#### Public Access:

There is no direct public access to the shoreline at the site of the subject improvements. The region has excellent lateral access provided by the continuous sandy beach. There are no existing public beach access easements identified in the immediate area.

**Assessment of Removing the Encroachment:****Beach Resources:**

The removal of the *entire* seawall may have a beneficial impact on beach resources by providing needed accommodation space for a beach and improving lateral public access. However the encroaching portion of the seawall serves as an integral part of the whole structure that provides stability and retention of the fill material behind it. In addition, since only a portion of the subject seawall is encroaching, partial removal would serve no benefit to any party and not improve beach resources in any meaningful way (Figure 1). The subject seawall has been in place for nearly 50 years and does not appear to have negatively impacted the beach resource other than direct placement loss on the beach.

**Public Access:**

Lateral public access will be slightly improved if the subject encroachment is removed but the minor improvement may be offset by the erosion of dirt fill and debris onto the public beach by the subsequent failure of the remaining (not encroaching portions) of the subject structure. The encroaching portion of the seawall serves as an integral part of the whole structure that provides stability and retention of the fill material behind it.

**Affect on Adjacent Properties:**

Removal of the subject improvements would have a negative effect on the adjacent parcel due to potential for flanking, scour and erosion of the dirt and fill behind the wall. Since only a portion of the structure is encroaching partial removal would only destabilize the seawall and may lead to eventual failure. The effect of removing the subject improvements would place an unnecessary risk to the seawall, the landward dwelling and the surrounding properties and not provide an appreciable gain in beach area. Removal of the entire seawall would result in a significant improvement to coastal resources including public access.

Upon review and careful consideration of the information gathered on this case, OCCL staff have evaluated the above factors including the fact *this is a partial encroachment of an existing, non-conforming seawall*. The OCCL has determined that allowing the encroachments to remain through the issuance of an easement for the subject improvements would be the best practical response, have minimal impact to beach resources and would provide for continued public access. **Therefore, the DLNR has no objections to an easement request being processed.**

Pursuant to Chapter 171 Hawaii Administrative Rules (HAR), you are required to obtain a land disposition (normally a term easement in these cases) for the use of public lands, and you may be subject to a fine for the encroachment.

**Please contact the DLNR, Land Division at (808) 587-0430 regarding the processing of an easement. If you do not pursue an easement, you will be required to remove the encroachment.**

We hope this letter helps resolve some of the outstanding issues regarding this property. If you have any questions, please feel free to contact Dolan Eversole, of the Office of Conservation and Coastal Lands at (808) 587-0321.

Sincerely,



Sam Lemmo, Administrator  
Office of Conservation and Coastal Lands

Cc: Chairperson  
Oahu Board Member  
Land Division  
City and County DPP

Figure 1. Site Map and Ground Photos

