

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

February 11, 2010

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

PSF No: 01od-194

OAHU

Amend Prior Board Action of July 13, 2001, Item D-15, Grant of a Term, Non-Exclusive Easement for Seawall to Hal M. Stanley and Deborah L. Stanley, Co-trustees of the Stanley Family Trust under Trust Agreement dated November 25, 1993, Lanikai, Kailua, Oahu, TMK (1) 4-3-008:051 seaward

BACKGROUND:

On July 13, 2001, under agenda item D-15, the Board authorized the issuance of a 55-year term, non-exclusive easement for seawall purposes to the applicants. A copy of the approved submittal is attached as Exhibit A.

During the preparation of the document, the owner of the abutting private property was changed to Deborah L. Stanley Trust pursuant to the divorce of the original applicants. Easement document was prepared accordingly and was sent to Deborah L. Stanley Trust for signature in August 2004. During recent review of the outstanding requests, staff discovered that the subject easement document was never signed and returned from the applicant.

Upon further research, staff notes that the owner of the abutting private property has been changed multiple times. The current owner is INW 1, Limited Partnership, a California limited partnership which acquired the private property in February 2009.

Staff has written to the current owner inquiring of its interest of becoming the grantee of the subject easement. It is noted that the consideration and other related charges have been paid by the previous applicant. Current owner indicates its intention to become the grantee of the subject easement, and staff recommends the Board amend its prior action by changing the name of the applicant to INW 1, Limited Partnership.

Further, staff recommends the Board authorized the addition of a condition in the easement which allows the benefit of the easement run with the abutting private property. Such provision would eliminate the need for consent to the assignment of the easement should the ownership of the abutting private property change. It is a standard provision for the current shoreline

encroachment easement document.

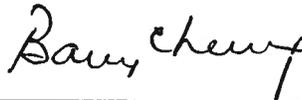
Since the request is for housekeeping purpose only and no changes to the proposed use is anticipated, staff did not solicit comments from other agencies. Staff has no objection to the request.

RECOMMENDATION: That the Board amend its prior Board action of July 13, 2001, under agenda item D-15 by:

1. Changing the name of applicant to INW 1, Limited Partnership; and
2. Adding the following condition:

“The easement shall run with the land and shall inure to the benefit of the real property respectively described as Tax Map Key: (1) 4-3-008:051, 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.”

Respectfully Submitted,



Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
  
\_\_\_\_\_  
Laura H. Thielen, Chairperson

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

D-15

July 13, 2001

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

OAHU

Grant of a term, non-exclusive easement for seawall to Hal M. Stanley and Deborah L. Stanley, Co-trustees of the Stanley Family Trust under Trust Agreement dated November 25, 1993, Lanikai, Kailua, Oahu, TMK (1) 4-3-008:051 seaward.

APPLICANT:

Hal M. Stanley and Deborah L. Stanley, Co-trustees of the Stanley Family Trust under Trust Agreement dated November 25, 1993, [REDACTED] Saratoga CA 95070.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands located seaward of (1) 4-3-008:051 situated at Lanikai, Kailua, Oahu, as shown on the attached map labeled Exhibit A.

AREA:

150 square feet, more or less, to be determined by Survey Division, DAGS.

ZONING:

State Land Use District: Conservation

LAND TITLE STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_\_ NO x

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

July 13, 2001. [Signature]

**EXHIBIT "A"**

CURRENT USE STATUS:

Unencumbered

CHARACTER OF USE:

Seawall purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

To be determined by staff appraiser, subject to review and approval by the Chairperson.

LEASE TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Evidence has been provided suggesting that the wall is at least 30 years old (Shoreline Certification, September 13, 1972) and may in fact been built prior to 1961.

DCCA VERIFICATION:

Individual, not applicable

APPLICANT REQUIREMENTS:

Applicant shall be required to provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

A recent application for shoreline certification was rejected because a CRM wall (portion) encroaches onto State property. The owner requested for an easement for the encroachment.

A portion of the seawall running long the boundary extends beyond the property line. The approximate encroachment area is about 75 square feet. The Survey Division also noticed that the footing of the seawall (covered by sand) extends beyond the property line too. The extent of the footing is subject to verification of the Survey Division. In the meantime, we need an area for preparing the deposit amount as mentioned below, staff suggests using 150 square feet as the area of encroachment.

Upon review and careful consideration of the information gathered on this case by the Coastal Land Program staff, they have determined that the issuance of an easement for the seawall is an acceptable

July 13, 2001

course of action. Given the small size of the encroachment (less than one foot over the property line) and the age of the encroachment it would be acceptable for the parcel owner to settle this matter through an easement for the use of State lands. See comment by CLP staff attached as Exhibit B.

Because the seawall or parts thereof existed prior to the enactment of the land use law, an EA and CDDA permit for the encroachment are not required. However, the encroachment into the State's property still requires a land disposition.

In order to facilitate the applicants obtaining a shoreline certification, staff recommends that the Board authorize the department to collect from the applicants a deposit of \$8,000, being the estimate for the one time payment of the easement (\$7,864) and other charges e.g. document fee and map. Upon execution of easement document, the deposit will be applied towards the consideration and any other charges. Any difference will be reimbursed to the applicants and vice versa. Applicants will be asked to remove the encroachment or forfeit the deposit should they fail to execute the document. Further enforcement action will be pursued if the encroachment is not removed by the applicants.

Since the encroachment was done without proper Government authorization, the Board shall impose a fine of \$500 for the encroachment upon public lands pursuant to Section 171-6(12) HRS.

No departments and agencies (other than CLP staff of the department) were asked to comment on the seawall due to the age and size of the seawall.

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. Authorize the Department to accept a deposit in the amount of \$8,000 from the applicants pursuant to the conditions set forth in the Remarks Section above in relation to the issuance of a 55 years non-exclusive easement for the seawall purposes.
2. Subject to the applicants fulfilling all of the applicant requirements listed above, authorize the issuance of a 55 year term non-exclusive easement for the footing of seawall to Hal M. Stanley and Deborah L. Stanley, Co-trustees of the Stanley Family Trust under Trust Agreement dated November 25, 1993, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

July 13, 2001

- A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
  - 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.
3. Impose a fine of \$500 for encroachment upon public lands without Government authorization pursuant to Section 171-6(12) HRS.

Respectfully Submitted,

  
\_\_\_\_\_  
Barry Cheung  
Project Development Specialist

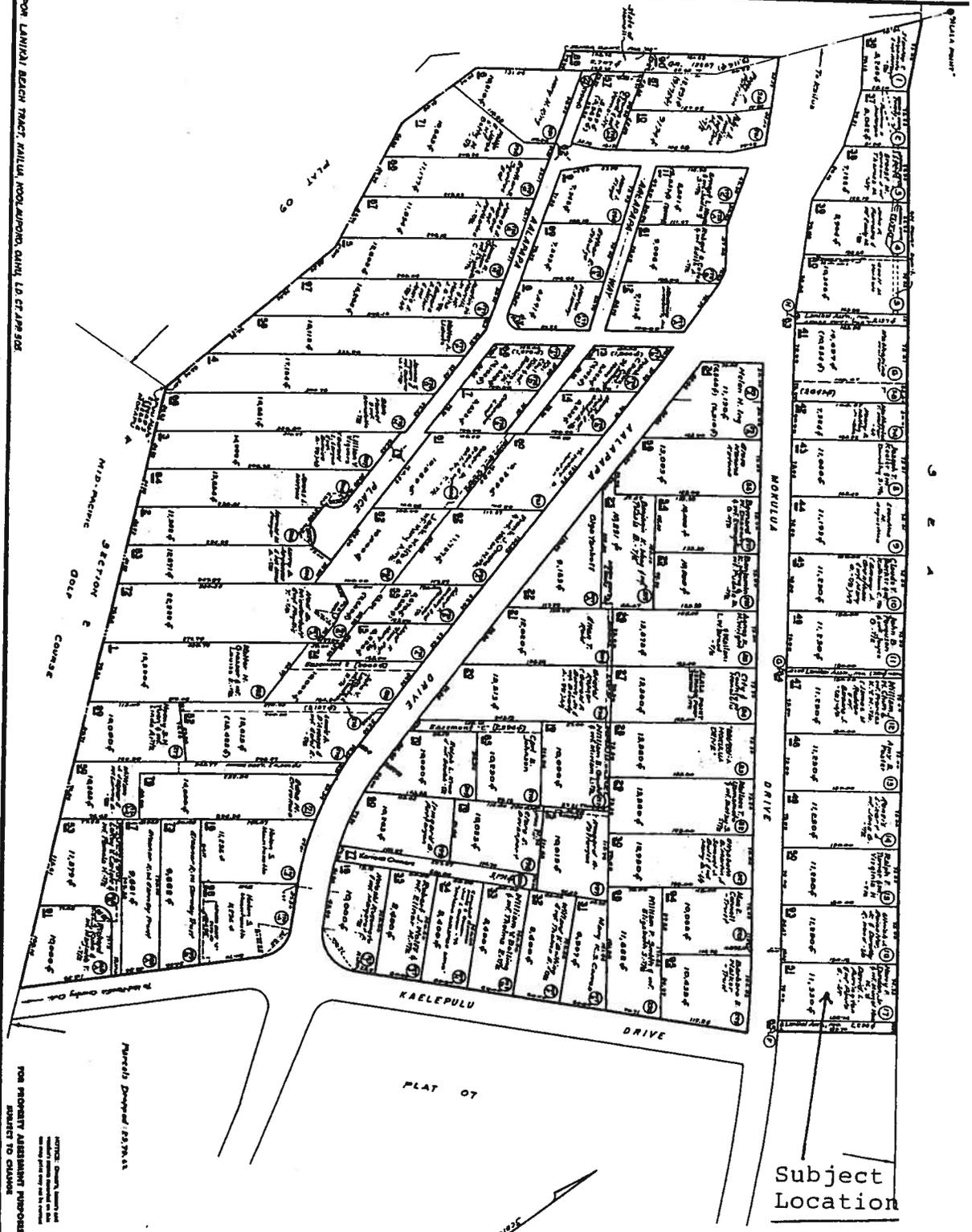
APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
GILBERT S. COLOMA-AGARAM, Chairperson

184  
 183  
 182  
 181  
 180  
 179  
 178  
 177  
 176  
 175  
 174  
 173  
 172  
 171  
 170  
 169  
 168  
 167  
 166  
 165  
 164  
 163  
 162  
 161  
 160  
 159  
 158  
 157  
 156  
 155  
 154  
 153  
 152  
 151  
 150  
 149  
 148  
 147  
 146  
 145  
 144  
 143  
 142  
 141  
 140  
 139  
 138  
 137  
 136  
 135  
 134  
 133  
 132  
 131  
 130  
 129  
 128  
 127  
 126  
 125  
 124  
 123  
 122  
 121  
 120  
 119  
 118  
 117  
 116  
 115  
 114  
 113  
 112  
 111  
 110  
 109  
 108  
 107  
 106  
 105  
 104  
 103  
 102  
 101  
 100  
 99  
 98  
 97  
 96  
 95  
 94  
 93  
 92  
 91  
 90  
 89  
 88  
 87  
 86  
 85  
 84  
 83  
 82  
 81  
 80  
 79  
 78  
 77  
 76  
 75  
 74  
 73  
 72  
 71  
 70  
 69  
 68  
 67  
 66  
 65  
 64  
 63  
 62  
 61  
 60  
 59  
 58  
 57  
 56  
 55  
 54  
 53  
 52  
 51  
 50  
 49  
 48  
 47  
 46  
 45  
 44  
 43  
 42  
 41  
 40  
 39  
 38  
 37  
 36  
 35  
 34  
 33  
 32  
 31  
 30  
 29  
 28  
 27  
 26  
 25  
 24  
 23  
 22  
 21  
 20  
 19  
 18  
 17  
 16  
 15  
 14  
 13  
 12  
 11  
 10  
 9  
 8  
 7  
 6  
 5  
 4  
 3  
 2  
 1

DWG. NO. 22 DATE: Revised April 1998 FROM: 12-14-92/12-92 SOURCE: L.P. OF APP. 908

FOR LANDLIFT BEACH TRACT MAILING HOODLAND, CALIF. LA. OF APP. 908



FOR PROPERTY ASSESSMENT PURPOSES  
 SUBJECT TO CHANGE

DEPARTMENT OF STATISTICS			
PROPERTY INFORMATION			
TAX MAP			
4	3	08	
4	3	08	
SCALE: 1" = 50 FT.			

**EXHIBIT A**

REF:PB:MA



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
P.O. BOX 821  
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND DIVISION  
STATE PARKS  
WATER RESOURCE MANAGEMENT

Encroachment File: OA-01-37

James R. Thompson  
WPT Surveying and Mapping  
PO Box 3351  
Honolulu, HI 96801

Subject: Encroachment (CRM Wall) in Lanikai, Kailua, Oahu  
[TMK: (1) 4-3-08:51]

Dear Mr. Thompson:

Coastal Lands Program staff has reviewed this case, which involves a portion of the sea wall fronting the beachfront parcel TMK (1) 4-3-08:51 at Lanikai, Oahu. Based on the information the agent for the applicant has provided the portion of the wall encroaching on State land is approximately 75 square feet in area. Evidence has been provided suggesting the wall is at least 30 years old (Shoreline Certification, September 13, 1972) and may in fact been built prior to 1961. The Department has no evidence that the seawall is in violation of Conservation District law.

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 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.

Staff visited the site on May 31st to investigate the encroachment and to gather reconnaissance information to support a recommendation for either

**EXHIBIT B**

removal of the encroachment or issuance of an easement. Of primary importance are the Department's objectives to protect and preserve shoreline resources and shoreline access.

**Surrounding Land Uses:**

It was observed during the site visit that surrounding uses are residential.

**Beach Resources:**

Coastal Lands Program (CLP) staff inspected the area. The Beach directly in front of the residence is the highly used recreation area of Lanikai Beach. This beach is one of the more popular beaches on Oahu known for its sand quality, good swimming and other ocean recreation. Thus the beach resources directly in front of the parcel are classified as excellent.

**Public Access:**

The nearest public access easement is directly beside (north) the parcel in question.

**Effect of Removing the Encroachment on:**

**Beach Resources:**

Removal of the wall would have effects on beach resources as the wall acts as a retaining wall for the parcel and the site would be subject to slumping. The land behind the wall is sandy soil as are most lots in Lanikai. Residential development very close to the beach has been a participating factor in the chronic erosion of the Lanikai area. Removal of the wall would allow the sandy soil of the parcel to mix with the high quality golden sand of Lanikai beach.

**Public Access**

Public access would not be enhanced by removal of the encroachment.

**Affect on Adjacent Properties**

Removal of the wall could result in flanking erosion on the adjoining parcels. The net result of all the sea walls in the Lanikai area is the erosion of Lanikai beach. This wall is one contributor to the sand entrapment problem.

Upon review and careful consideration of the information gathered on this case, staff has determined that the issuance of an easement for the sea wall is the most viable course of action. Given the small size of the encroachment (less than one foot over the property line) and the age of the encroachment it would be acceptable for the parcel owner to settle this matter through an easement for the use of State lands.

Lanikai is an area that has been misguidedly developed using seawalls built very close to the shoreline. Thus there has been high intensity and long established development of housing in the shoreline area, which has resulted in

the narrowing and loss of Lanikai beach. The buildibility of this lot is dependant on a retaining wall being present and it is probable that if this encroachment is removed another similar structure would have to be built farther back on the lot within the county's jurisdiction. Thus the negative impact of sand entrapment will persist even if the encroachment is removed.

The expense of removing the encroachment and building another wall would be fairly substantial to the owner. These monies would be better spent as public funds earmarked for beach rehabilitation as part of the Coastal Lands Program. They could be used in beach renourishment projects. Therefore, the Planning Branch does not object to an easement request being processed for the seawall encroachment. The Oahu District Land Agent calculates the monetary amount required to dispose this use of State land through an easement. The landowner should note that they will be subject to the administrative penalty system for unauthorized use of State land pursuant to section 171-6, Hawaii Revised Statutes.

If you have any further question regarding this matter please contact Masa Alkire of our Planning Branch at 587-0385.

Sincerely,



Harry Yada,  
Acting Administrator

Cc: Oahu District Land Agent ✓  
Oahu Board Member ✓