

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

June 9, 2011

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

PSF No: 08od-068

OAHU

Request to Cancel Grant of Term, Non-Exclusive Easement to TLM Partners Ltd. for Seawall, Lanai and Landscaping Purposes, and Request for Refund of Consideration and Fees Paid, situated at Niu, Honolulu, Oahu, Tax Map Key (1) 3-7-002:seaward of 009

BACKGROUND:

On May 8, 2008 and June 6, 2008, the Department received correspondence from Mr. Donald Clegg, the consultant for TLM Partners Ltd ("TLM" which hereafter shall also includes its attorneys, consultants and agents) seeking to acquire an easement for a seawall encroachment and use of State lands. Mr. Clegg's correspondence also included survey maps, photographs, and a "shoreline encroachment information sheet" describing the area it sought to acquire. See Exhibits "1" and "2" attached hereto.

In 1999 the Board of Land and Natural Resource (Land Board) 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 this instance, staff concurred with TLM's consultant that the legitimization through an easement would be appropriate. Thereafter, on September 26, 2008, under agenda item D-9, the Land Board approved TLM's request and staff's recommendation for the issuance of a 55-year term, non-exclusive easement to TLM for seawall, lanai and landscaping purposes. A copy of the September 26, 2008 submittal is attached as Exhibit "3". Parts of the Land Board requirements were as follows:

CONSIDERATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to

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

TLM paid for the appraisal and agreed to the appraisal amount. By letter dated September 8, 2009 (Exhibit 4), TLM paid the appraised value of \$135,080.00 for the term easement and submitted survey maps of the subject encroachment area of 2,195 square feet.¹ The Department of Attorney General drafted the easement document. Staff sent the document to TLM in January 2010.

TLM still holds the legal easement document and has not returned the executed document to the Department. Nevertheless starting in May 2010, TLM, through its attorneys has been asking staff to cancel the easement and return the money it paid.² For various correspondence between TLM's attorneys and the Department, see Exhibits "5a through 5d" through "6a through 6c," respectively.

At TLM's insistence, staff agreed to present this matter to the Land Board.

SUBJECT PROPERTY AND THE ENCROACHMENT:

The subject property is located in the Niu Beach Lots subdivision. This area was subdivided in 1927. See attached subdivision map, Exhibit 7. TLM's property includes Lot 28 as shown on this map. The shoreline at the time is shown on the map. The approximate azimuths and distances of the shoreline are stated on the map.

The easement covers 2195 square feet of land makai of the 1927 shoreline and a seawall on the makai end of this new land. The seawall is about 35 to 40 feet makai of the record boundary. Staff believes the area between the record boundary and the seawall is filled.

¹ TLM's private survey maps are part of Exhibit "1" and "2" attached hereto, and for the Land Board's information, attached as Exhibit "9" are additional photographs of the encroachment area from the appraisal report.

² The money for these shoreline encroachments, especially for a seawall and use of State lands, typically is initially split 20% to OHA, and 80% to the Beach Fund administered by the Office of Conservation and Coastal Lands. Here, since the money was received by the Beach Fund in or around January of 2010, it is very likely the money has already been set aside by OCCL to help pay for its beach nourishment project at Waikiki Beach.

Such filled land and the seawall is an encroachment.

There are several bases for staff's position. A 1949 aerial photograph shows that the seawall had been constructed by that time and was located makai of an existing sandy beach – that is makai of the then shoreline. Exhibit 8. Some time after the seawall was built on territorial / state land, the area behind it was backfilled. This is apparent from staff's site visit when it was noted that the height of the seawall is about 6 feet higher than the submerged lands (which consists of a rocky shoreline). The land mauka and inside the seawall sits at least 5 feet above the submerged lands that is situated outside and seaward of the seawall.³ This is clear indicia and evidence that the area was filled in the past. Moreover, other property owners within this particular neighborhood have sought to legitimize various encroachments in the form of easements as well. See Exhibits "10" and "11" which includes a spreadsheet showing various lot owners in the surrounding area and a map of those who obtained or are seeking an easement to legitimize encroachments and unauthorized uses of State lands.

TLM itself indicated that the area behind the seawall was "fill." See specifically para. 6 of Clegg's letter dated June 6, 2008 (Exhibit "2") and enclosures, and see generally, Clegg's letter dated May 8, 2008 (Exhibit "1").

REMARKS:

The Land Division staff has been consulting with the Department of the Attorney General, as well as the shoreline certification crew consisting of members from the Land Division, Office of Conservation and Coastal Lands and the State Surveyor's Office. Staff and the Department of the Attorney General do not believe TLM is entitled to cancel its easement which was issued to legitimize the seawall encroachment and unauthorized fill on State lands.

Here, we have TLM or its agent requesting to legitimize the encroachment through an easement for the seawall and filled land area. We have TLM's offer, Land Board's acceptance, and performance by TLM of providing the necessary survey maps, payment of the appraisal fee, and the payment of the appraised value of the easement. Staff and the Department of Attorney General consider the easement is a completed transaction. TLM's request to cancel the easement is and should be treated exactly as would any such request. In such a case, the easement can only be canceled if alternative arrangements are made to resolve the encroachment.

Staff therefore recommends that the Land Board deny TLM's request to cancel the easement unless and until TLM works with staff to make satisfactory alternative

³ See photographs of the area attached to Don Clegg's letter dated June 6, 2008 (Exhibit "2") and the photographs from the Appraisal Report attached hereto as Exhibit "9".

arrangements to resolve the encroachment.⁴

If and when such arrangements are made, then a portion of the payment for the easement may be retained to account for unauthorized use of state land.⁵

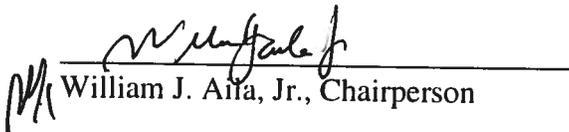
RECOMMENDATION: That the Land Board deny the request by TLM to cancel the easement and request for a refund of the consideration and fees for a total amount of \$135,135.00 regarding the grant of term, non-exclusive easement unless and until alternative arrangements to resolve the encroachment are presented to and approved by the Land Board.

Respectfully Submitted,



Barry Cheung
Russell Y. Tsuji
Land Division

APPROVED FOR SUBMITTAL:



William J. Aifa, Jr., Chairperson

⁴ This scenario often arises when processing shoreline certification applications. Applicants with shoreline encroachment problems must "resolve the encroachment" before the Department will certify the shoreline. Resolving the encroachment will either involve seeking the approval from the Department and Land Board to legitimize the encroachment through an easement as was done in the instant TLM case, or removal. HAR 13-222-19 [Encroachment upon State land and unauthorized shoreline improvements]. In this case, removal will likely lead to substantial erosion on the subject property and possibly neighboring properties.

⁵ Easement commencement date upon Land Board's approval (September 26, 2008) through June 9, 2011 which is about 32-33 months or so, over a 55-year term easement. The encroachments have clearly been in existence for at least as long as and perhaps longer than the Land Board approval of September 26, 2008.

EXHIBIT

LIST

Exhibit List

TLM—Seawall Encroachment and Filled Lands Case

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|--|
| 1 | Don Clegg letter dated May 8, 2008 |
| 2 | Don Clegg letter w/Enclosures dated June 6, 2008 |
| 3 | Land Board Submittal dated September 26, 2008 |
| 4 | TLM's letter dated September 8, 2009 paying \$135,080.00 for the term easement for the encroachment |
| 5a | TLM's Counsel's letter to DLNR dated May 3, 2010 |
| 5b | TLM's Counsel's letter to DLNR dated July 30, 2010 |
| 5c | TLM's Counsel's letter to DLNR dated November 2, 2010 |
| 5d | TLM's Counsel's letter to DLNR dated December 9, 2010 |
| 6a | DLNR's letter to Counsel dated May 24, 2010 |
| 6b | DLNR's letter to Counsel dated October 18, 2010 |
| 6c | DLNR's letter to Counsel dated November 29, 2010 |
| 7 | 1927 Subdivision Map |
| 8 | 1949 Aerial Photograph of the area |
| 9 | Photographs from Appraisal Report |
| 10 | Spreadsheet showing various lot owners in the surrounding area that have sought or obtained easements for various types of encroachments |
| 11 | Map of showing various lot owners in the surrounding area that have sought or obtained easements for various types of encroachments |

EXHIBIT

1

PHONE (BUS): (808) 536-5695
FAX: (808) 599-1553



ANALYTICAL PLANNING CONSULTANTS, INC.

928 NUUANU AVENUE, SUITE 502 • HONOLULU, HI 96817

RECEIVED
LAND DIVISION

2008 MAY 12 A 9:03

PLANNING DIVISION
HAWAII

May 8, 2008

Mr. Morris Atta, Acting Director
Land Division
Department of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, HI 96809

Dear Mr. Atta

Mr. Tom McConnell is the owner of the property at 5677 Kalaniana'ole Hwy., TMK 3-7-002:009. It is our understanding that the State of Hawaii owns a strip of land, 2,195 sq. ft. in area, located between the makai boundary of Mr. McConnell's property and the ocean. Mr. McConnell wants to purchase/lease the strip of land from the State prior to doing some reconstruction of the existing house.

Enclosed is map prepared by a licensed Land Surveyor which shows the McConnell property and the purchase/lease area. Mr. McConnell is aware of the hold on the sale of ceded lands and if purchase is not possible at this time, would like to proceed with a lease.

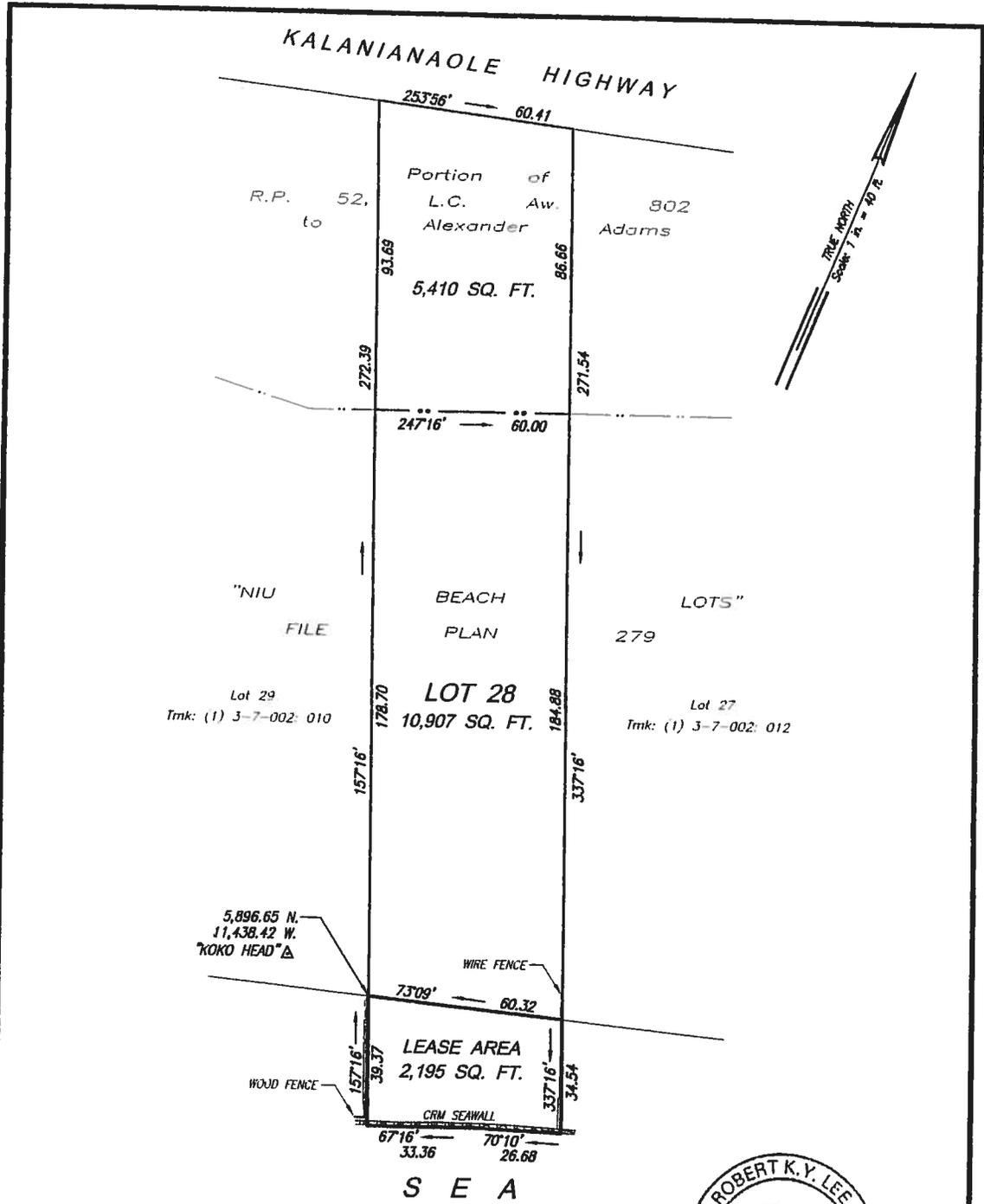
I have discussed this with Mr. Al Jodar of your staff who suggested that I submit this request to your office. If there are any questions please contact me at 536-5695.

Sincerely,

Donald Clegg
President

EXHIBIT " 1 "

JH.C:\SURVEY CAD FILES\2008\4611\DWG\4611_LOT28_EASE.DWG



**PLAN SHOWING LEASE AREA
FRONTING LOT 28 OF "NIU BEACH LOTS"
AS SHOWN ON FILE PLAN 279**

AT NIU, HONOLULU, OAHU, HAWAII
TAX MAP KEY: (1) 3-7-002: 009

OWNER: TLM PARTNERS LTD.
ADDRESS: 5677 KALANIANA'OLE HIGHWAY
Honolulu, Hawaii 96821



This work was prepared by me
or under my direct supervision.

Robert K. Y. Lee

Robert K.Y. Lee
Licensed Professional Land Surveyor
Certificate Number 5075

APRIL 30, 2008

JOB NO.: 4611
FB. NO.: 1789
8.5" X 14" = 0.8 Sq. Ft.

TOWILL SHIGEOKA & ASSOCIATES, INC.
LAND SURVEYORS

2153 N. KING STREET
SUITE 308
HONOLULU, HAWAII 96815

EXHIBIT

2



PHONE (BUS): (808) 536-5695
FAX: (808) 599-1553

ANALYTICAL PLANNING CONSULTANTS, INC.
928 NUUANU AVENUE, SUITE 502 • HONOLULU, HI 96817

RECEIVED
LAND DIVISION

2008 JUN -6 P 3:33

June 6, 2008

DEPARTMENT OF LAND & NATURAL RESOURCES
STATE OF HAWAII

08ad-068

Mr. Morris Atta, Acting Director
Land Division
Department of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, HI 96809

Attn: Mr. Al Jodar

Dear Mr. Atta

Mr. Tom McConnell is the owner of the property at 5677 Kalaniana'ole Hwy., TMK 3-7-002:009. It is our understanding that the State of Hawaii owns a strip of land, approximately 2,195 sq. ft. in area, located between the makai boundary of Mr. McConnell's property and the ocean. Mr. McConnell wants to purchase the strip of land from the State prior to doing some reconstruction of the existing house or constructing a new home. Mr. McConnell is aware of the hold on the sale of ceded lands and if purchase is not possible at this time would like to proceed with a long term lease.

Enclosed are the following:

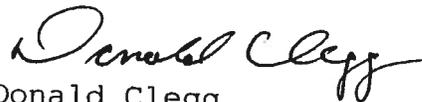
1. Completed "Shoreline Encroachment Information Sheet".
2. Aerial Photo of the property and surrounding area dated Nov. 17, 1954. The photo shows a seawall at the makei end of the property. There appears to be a second wall mauka of the seawall which would be at the current makai boundary of the parcel. The distance on the photo from this wall and the street matches this distance on the surveyors map, and the distance from this wall to the sea wall on the photo matches this distance on the surveyors map. This latter is the area that the owner is asking to purchase or lease.
3. Aerial photo of the property and surrounding area dated Jan. 20, 1961. Unfortunately the resolution on this photo is not as good as the 1954 photo, however there appears to be a seawall at the makai end of the property on the State land. The second wall mauka is obscured by the vegetation.

EXHIBIT " 2 "

4. Photo from the ocean of the sea wall encroachment in front of the existing house. Photo taken May 2008.
5. Photo from the ocean of the abutting seawall encroachments. Note that every property has a sea wall. In, fact there are sea walls makai of every parcel along Niuiki Circle. Photo taken May 2008
6. Photo taken from the house showing much of the "fill" area. Photo taken May 2008.
7. Google satellite photo of property and surrounding area. Photo taken 2007 or 2008.
8. Tax map
9. Map prepared by a licensed land surveyor of the McConnell property and the proposed purchase/lease area.
10. Topographic Survey of parcel 6 (Lot 28) and the encroachment.

If there are any questions please contact me at 536-5695.

Sincerely,



Donald Clegg
President

SHORELINE ENCROACHMENT INFORMATION SHEET
Department of Land and Natural Resources
State of Hawaii

June 3, 2008

#1: Applicant:

TLM Partners Ltd.
1568 Calzada Avenue
Santa Ynez, CA 93460
Thomas E. McConnell, Linda M. McConnell;
General Partners
Tel: (805) 686-1489 home, (805) 264-5510 mobile,
(805) 922-2250 office, (808) 373-4544 home Hawaii

#2: Location:

5677 Kalaniana'ole Hwy
Honolulu, HI 96821

TMK: (1) 3-7-002:009 Lot 28 File Plan 279

#3: Approximate Size of Encroachment: 2,195 sq. feet

#4: Approx. Date of Encroachment:

Unknown but prior to November 17, 1954 (see aerial photo showing seawall existing at site as of this date).

#5: Date of Previous Shoreline Survey:

Unknown

#6: Identification of Adjacent Development and Surrounding Land Use:

See aerial photo. Existing residential properties adjacent to both sides of site. All properties in area have existing seawalls.

#7: Identification of Surrounding Artificial Coastal Structures:
Existing seawalls. See photos.

#8: Assessment of Beach Resources:

Poor. Area has no beach.

#9: Assessment of Public Access:

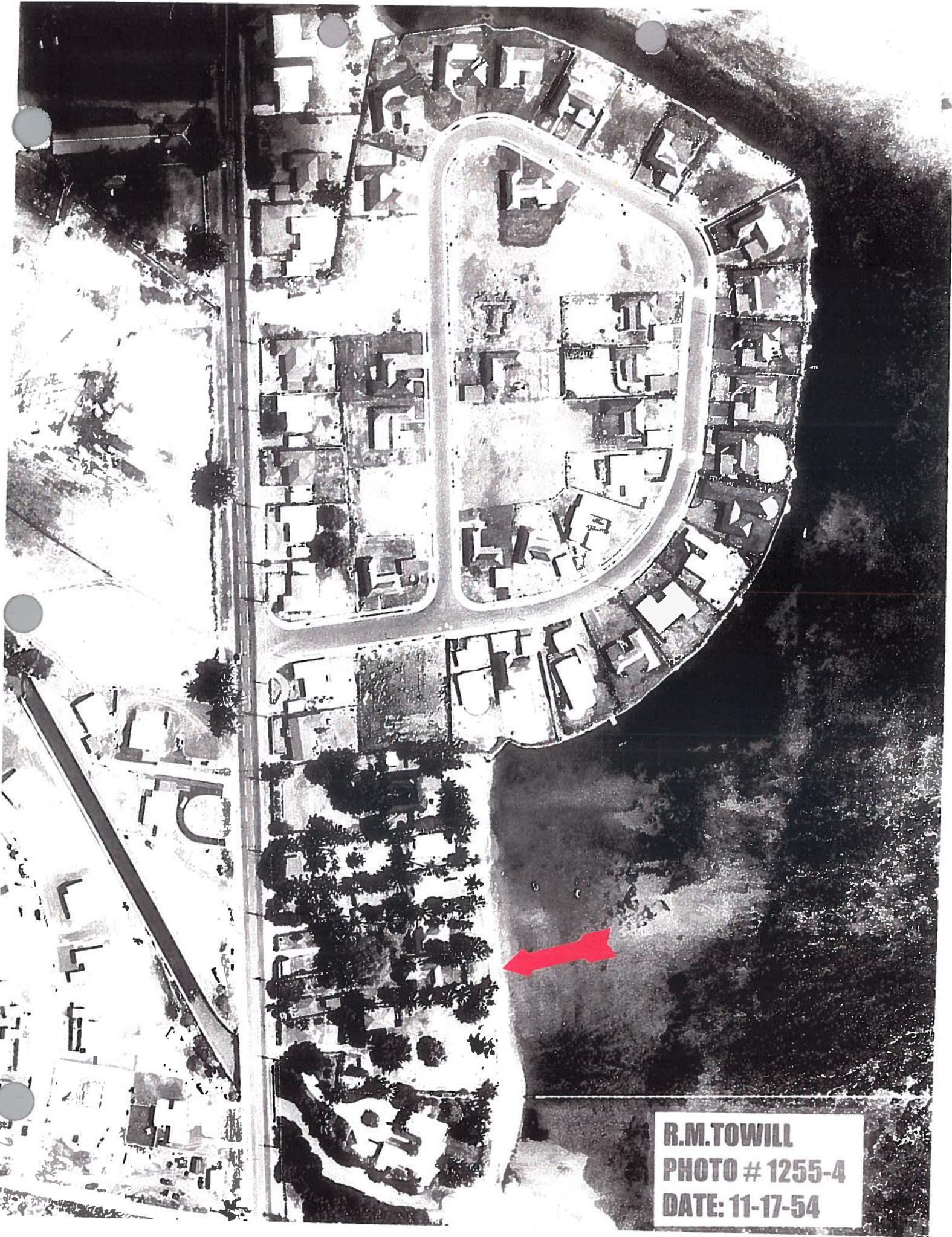
Poor. Area has no public access and no public parking.

#10: Effect of Removing Encroachment on Upland Development and Surrounding Uses:

Removing existing seawall would result in rapid erosion of land areas behind existing seawalls on adjacent properties, loss of existing mature shoreline palm trees and other vegetation, and other unknown damage.

#11: Would Removal of Encroachment Improve Beach Processes and Public Access:

No. The area has no beach, no public access, and no public parking.



R.M.TOWILL
PHOTO # 1255-4
DATE: 11-17-54



R.M.TOWILL
PHOTO # 2238-2F
DATE: 1-20-61



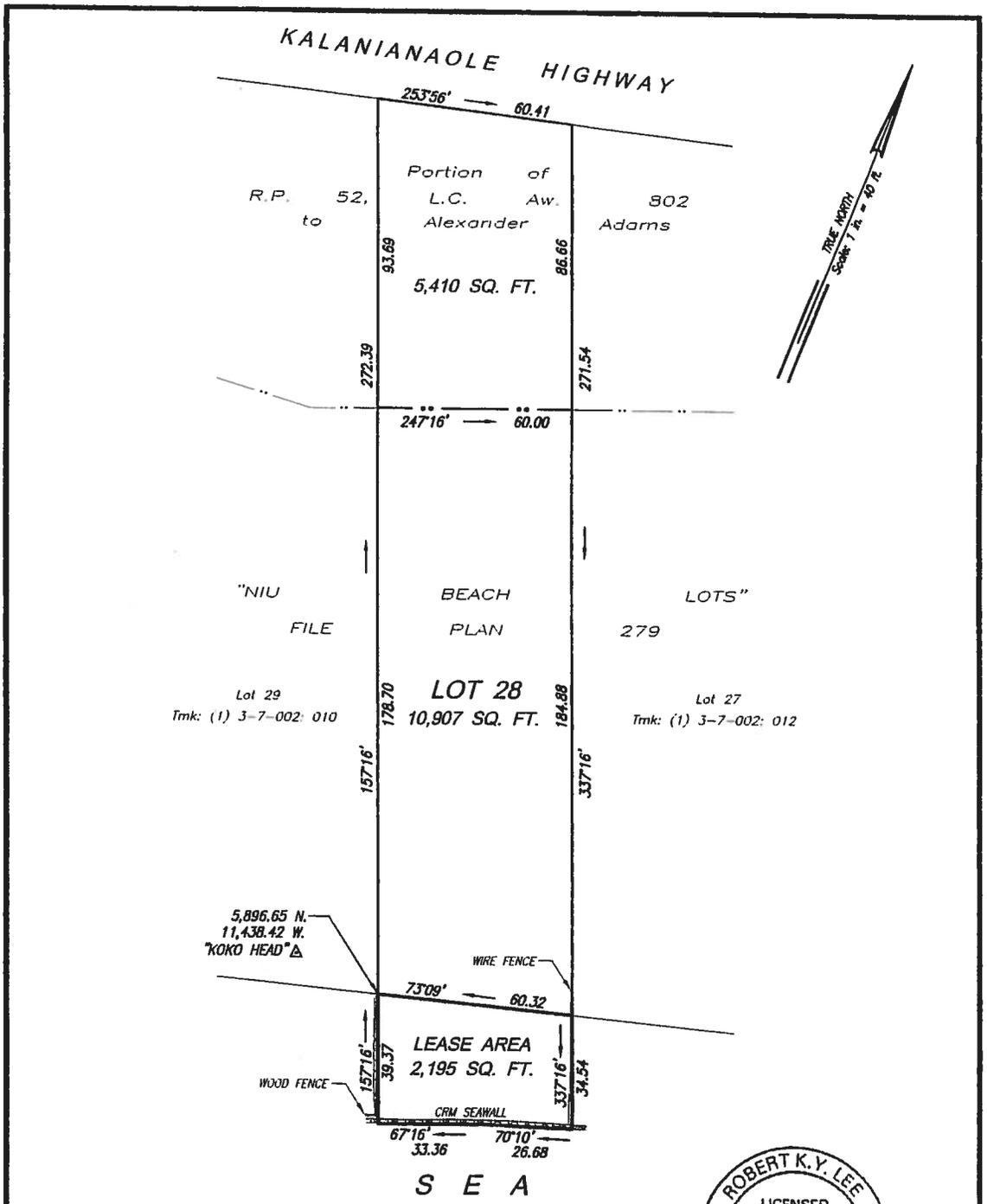




5677 Kalanianaʻole Hwy, Honolulu, HI 96821



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**PLAN SHOWING LEASE AREA
FRONTING LOT 28 OF "NIU BEACH LOTS"
AS SHOWN ON FILE PLAN 279**

AT NIU, HONOLULU, OAHU, HAWAII
TAX MAP KEY: (1) 3-7-002: 009

OWNER: TLM PARTNERS LTD.
ADDRESS: 5677 KALANIANA'OLE HIGHWAY
Honolulu, Hawaii 96821

This work was prepared by me
or under my direct supervision.
Robert K.Y. Lee
Robert K.Y. Lee
Licensed Professional Land Surveyor
Certificate Number 5075

JOB NO.: 4611
FB. NO.: 1789
8.5" X 14" = 0.8 Sq. Ft.

TOWILL SHIGEOKA & ASSOCIATES, INC.
LAND SURVEYORS

APRIL 30, 2008
2153 N. KING STREET
SUITE 308
HONOLULU, HAWAII 96819

EXHIBIT

3

080D-068

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

September 26, 2008

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

Ref:08od-068

Oahu

Grant of Term, Non-Exclusive Easement to TLM Partners LTD
for Seawall, Lanai and Landscaping Purposes, Niu, Honolulu,
Oahu, Tax Map Key: 3-7-02: 09 seaward.

APPLICANT:

TLM Partners LTD, whose mailing address is 1568 Calzada Avenue,
Santa Ynez, California 93460.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government lands of Honolulu located seaward of Tax
Map Key: 3-7-02: 09, Niu, Honolulu, Oahu, as shown on the
attached map labeled Exhibit A.

AREA:

2,195 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.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
September 26, 2008

EXHIBIT "3"

CHARACTER OF USE:

Right, privilege and authority to use and occupy the subject area for the purpose of using, maintaining, repairing, replacing and removing existing seawall, lanai and landscaping area purposes, 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:

Office of Conservation and Coastal Lands (OCCL) staff cited evidence that the subject seawall is contiguous with the neighbors' walls on either side, which were in existence before 1964, and is considered a pre-existing use prior to the enactment of Chapter 343. Inasmuch as this action contemplates the use and maintenance of pre-existing structures or features on State lands, this action is exempt from the provisions of chapter 343, HRS, as amended, pursuant to Exemption class #1 of the Approved EIS Exemption List for the Division dated April 28, 1986.

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; and
- 2) Provide survey map and description according to State DAGS standards and at Applicant's own cost (previously submitted).

REMARKS:

The applicant is planning to do some reconstruction on the property. Part of the building permit process triggers a shoreline certification process. The survey map reveals an encroachment of the seawall, portion of the dwelling's tile lanai and a landscaped

area with a total area of about 2,195 square feet (see Exhibit B-1 & B-2).

The Office of Conservation and Coastal Lands (OCCL) staff has determined that the issuance of an easement for the encroachments would have no adverse impacts on natural resources, including beach resources and therefore has no objections to the issuance of an easement (see OCCL letter, Exhibit C).

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.

Staff also recommends imposing a \$500 fine, pursuant to Section 171-6(12)HRS, for the encroachment constructed without prior authorization by the State.

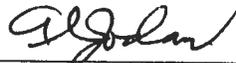
A request for comments was made to various agencies. The Department of Hawaiian Home Lands, Department of Land and Natural Resources, Water Resource Management Division and the Board of Water Supply had no objections or no comments. The Office of Hawaiian Affairs provided comments regarding the \$500 fine and the 55-year term easement (see Exhibit D). Staff notes that the 55-year term easement is a standard condition that has been approved for earlier seawall easements with similar issues while the \$500 fine is what the Board had consistently imposed in these cases.

RECOMMENDATION: That the Board:

1. Impose a \$500 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) 3-7-02:09, 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 TLM Partners LTD, covering the subject area for seawall, lanai and landscaping area 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;

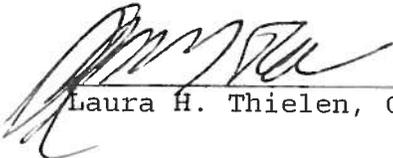
- B. Review and approval by the Department of the Attorney General;
- C. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: 3-7-02:09, provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
- 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,



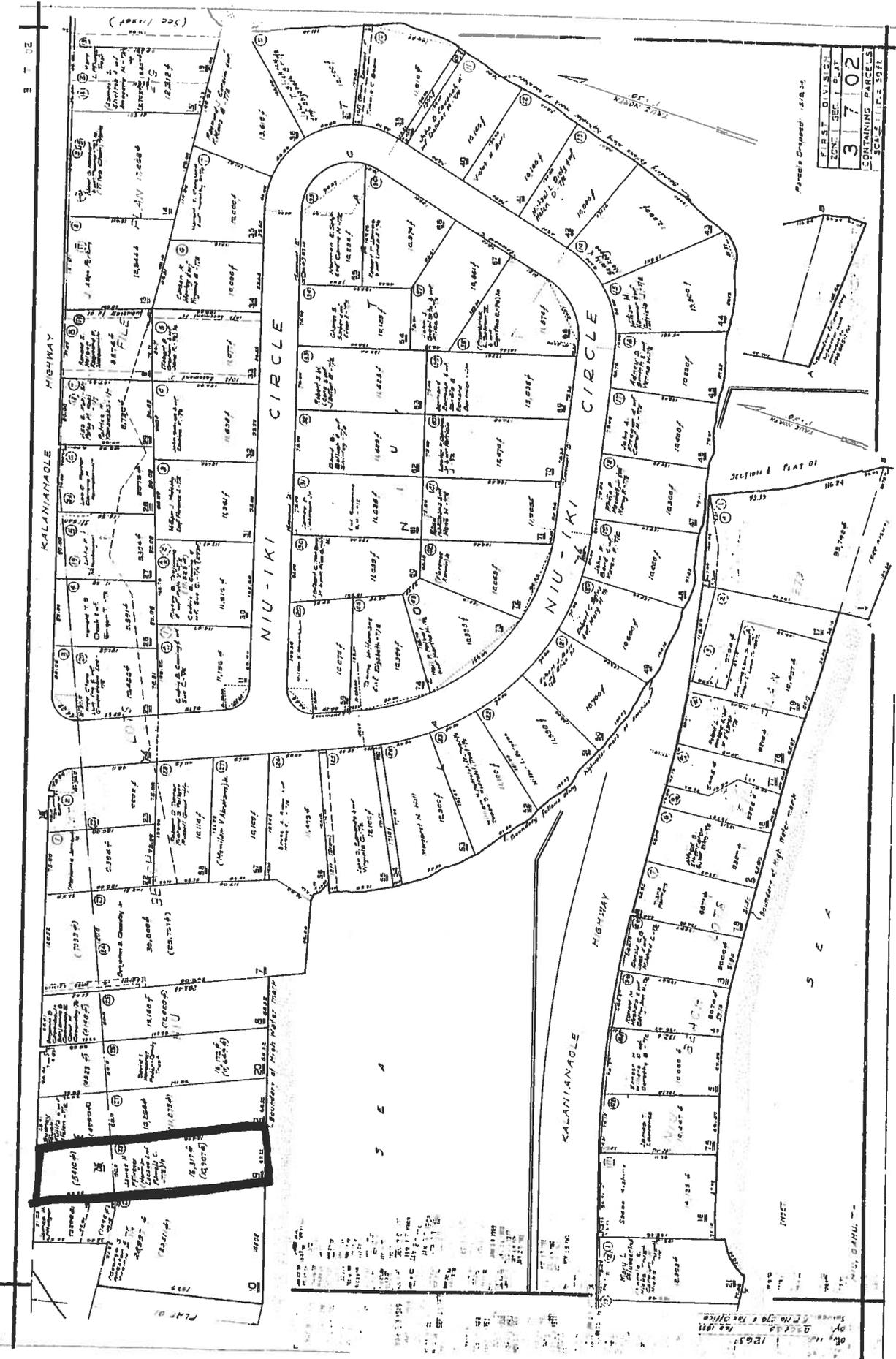
Al Jodar
Land agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



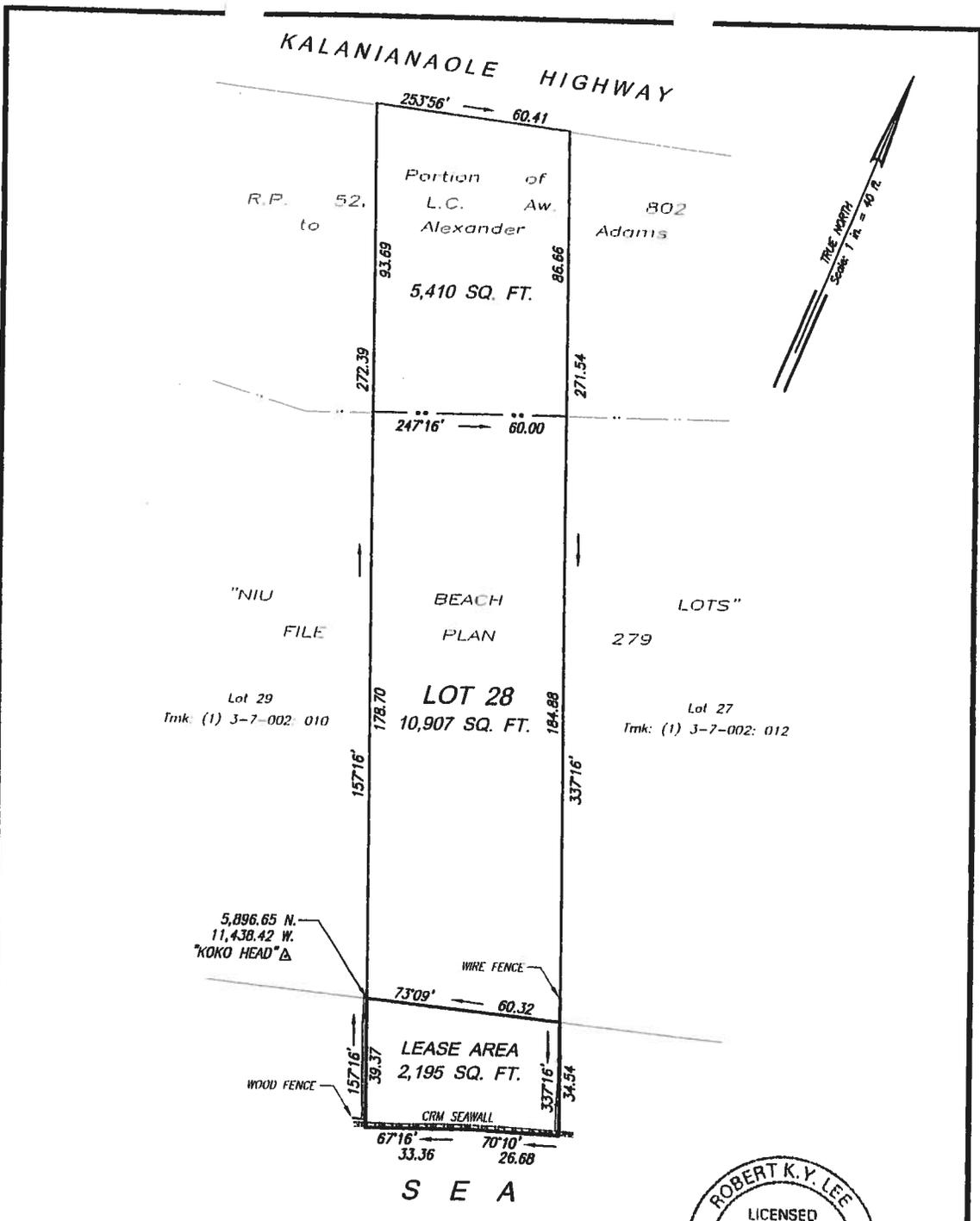


| | |
|--------------------|------------|
| FIRST DIVISION | 3702 |
| ZONE | SEC 1 PLAT |
| CONTAINING PARCELS | |
| SCALE 1/4" = 100' | |

ON 11/12/53
 BY [Signature]
 SURVEYOR
 1253

EXHIBIT "A"

J:\L.C.\SURVEY CAD FILES\2008\4611\DWG\4611_LOT28_EASE.DWG



**PLAN SHOWING LEASE AREA
FRONTING LOT 28 OF "NIU BEACH LOTS"
AS SHOWN ON FILE PLAN 279
AT NIU, HONOLULU, OAHU, HAWAII
TAX MAP KEY: (1) 3-7-002: 009**



*This work was prepared by me
or under my direct supervision.*

Robert K.Y. Lee
Robert K.Y. Lee
Licensed Professional Land Surveyor
Certificate Number 5075

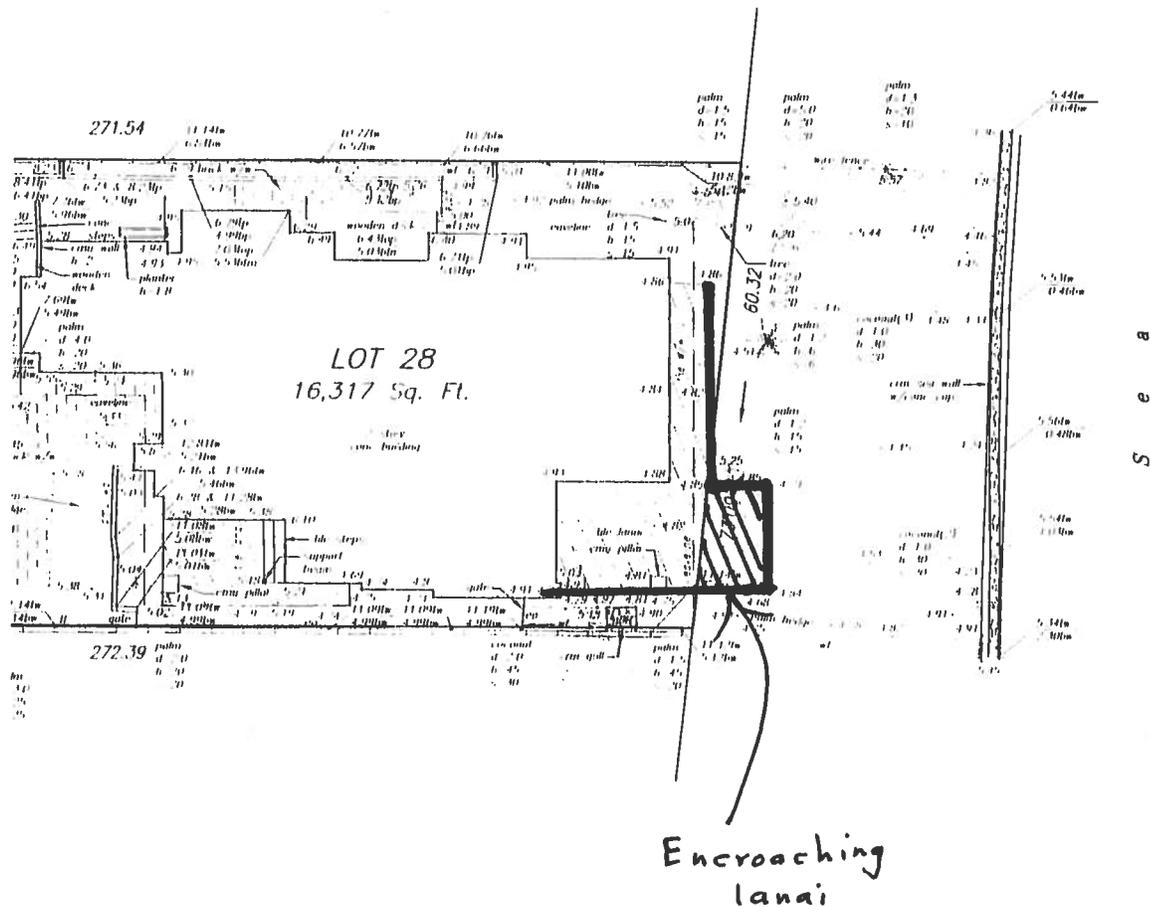
OWNER: TLM PARTNERS LTD.
ADDRESS: 5677 KALANIANA'OLE HIGHWAY
Honolulu, Hawaii 96821

JOB NO.: 4611
FB. NO.: 1789
8.5" X 14" = 0.8 Sq. Ft.

TOWILL SHIGEOKA & ASSOCIATES, INC.
LAND SURVEYORS

APRIL 30, 2008
2153 N. KING STREET
SUITE 308
HONOLULU, HAWAII 96819

EXHIBIT "D" - 1



TOWILL, SHIGEOKA & ASSOCIATES, INC.

Robert Ky Lee
 Licensed Professional Land Surveyor
 Certificate Number 5075

LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THELEN
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

REF:CC

File Number Encroachment: DA-08-018

08-08-068

MEMORANDUM:

TO: Al Jodar, Land Agent, Oahu
Land Division

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

SUBJECT: Shoreline Encroachments at 5677 Kalaniana'ole Hwy, Waialae, Oahu
Tax Map Key: (1) 3-7-002:009

AUG 2 2008
RECEIVED
LAND DIVISION
2008 AUG 12 4:10:32
OFFICE OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

The Office of Conservation and Coastal Lands (OCCL) has reviewed the June 06, 2008 memo from Land Division, including the Shoreline Encroachment Information Sheet provided by the applicant, Mr. Donald Clegg.

According to information, photographs, and maps, it appears as though the encroachments are nonconforming. The encroachments include 2195 square feet of state land with a tile lanai on the mauka side and a seawall on the makai side.

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;
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.

Surrounding Land Uses:

The surrounding uses are residential in nature.

Beach Resources:

EXHIBIT "C"

There is no existing beach resource makai of the shoreline structure. Though the 1954 aerial photograph shows a small beach fronting the shoreline structure, it had disappeared by the 1961 aerial photograph.

Public Access:

This section of coastline has limited public access. There are no local shoreline accesses and no local public parking.

Effect of Removing the Encroachment on:

Beach Resources: It is unknown if removal of the seawall would positively impact the beach resource, as the substrate mauka of the seawall is unknown. Though seawalls on either side will limit the potential formation of beach, a small pocket beach has the potential to form with input from the eroded coastal plain and the adjacent stream mouth clearing activities.

Public Access: OCCL staff has determined that public access will not be enhanced by removal of the seawall and tile lanai.

Affect on Adjacent Properties: Removal of the seawall may have a negative effect on neighboring shoreline armoring structures and might lead to their consequent destabilization. Consideration should be given to these potential impacts if the seawall is removed.

Affect on Upland Development: Removal of the seawall will cause erosion of the coastal plain. As the residence is more than 30 feet mauka of the seawall, it is uncertain whether removal of the seawall will create an emergency situation from the erosion.

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 both of the encroachments and the 2195 square feet of State land. The OCCL suggests that proper signage be placed identifying that the seawall, State land, and portion of the tile lanai on State land are open to the public.

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

CC: Office of Hawaiian Affairs, Grant Arnold

PHONE (808) 594-1888



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

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LAND
FAX (808) 594-1865

2008 SEP -3 A 10:51

GIFT OF LAND
NATURAL RESOURCES
STATE OF HAWAII

HRD08/3791

August 29, 2008

Al Jodar
Department of Land and Natural Resources
Post Office Box 621
Honolulu, Hawai'i 96809

Re: Request for comments on the proposed 55-year term easement for seawall and landscaping on state lands, Niu, O'ahu, TMK: 3-7-02:09 seaward.

Aloha e Al Jodar,

The Office of Hawaiian Affairs (OHA) is in receipt of the above-mentioned letter dated August 14, 2008. OHA has reviewed the project and offers the following comments.

OHA understands that a shoreline certification process revealed an encroachment on the subject property due to a seawall, landscaping area and a portion of the dwelling itself. OHA sees that staff recommendation to the board is to authorize the issuance of a term non-exclusive easement for the encroachment in addition to imposing a \$500 fine.

OHA notes that page two of the August 12, 2008 memorandum from Samuel Lemmo to Al Jodar states that a 1954 aerial photograph shows a small beach fronting the property, which is no longer there. OHA asks if the 1954 or 1961 photographs show the seawall or encroaching structures. We understand that not only did a beach used to be exist, but from the Office of Conservation and Coastal Lands memorandum we see that "a small pocket beach has the potential to form" if the seawall were removed.

While OHA is not suggesting that the seawall be removed in this case, we are inquiring if the loss of this beach can be attributed to what the Board of Land and Natural Resources may authorize in this action. If such a link can be made, perhaps a \$500 fine is too lenient.

EXHIBIT "D"

Al Jodar
August 29, 2008
Page 2

We also suggest that the 55-year lease now proposed may be too long. OHA notes that federal and state agencies are preparing for the advent of sea level rise. For example, the Coastal Zone Management Act at 16 USC §1451 (l) states, "Because global warming may result in a substantial sea level rise with serious adverse effects in the coastal zone, coastal states must anticipate and plan for such an occurrence." Therefore, a shorter lease term may allow future boards and decision-makers more flexibility in dealing with the unfortunates that this issue will present for us in the near future.

Further, OHA notes that the subject land is designated as Section 5(b) Ceded Lands, which hold a considerable amount of sentimental, historical and legal significance for Native Hawaiians and OHA. These lands were illegally taken from the Hawaiian Kingdom after the 1893 overthrow and later transferred ("ceded") by the United States government to the State of Hawai'i upon statehood. Today, the state holds the Ceded Lands corpus in trust for Native Hawaiians and the general public. OHA is supposed to receive a portion of all revenues generated on these lands.

Thank you for the opportunity to comment. If you have further questions, please contact Grant Arnold at (808) 594-0263 or e-mail him at granta@oha.org.

'O wau iho nō me ka 'oia'i'o,



Clyde W. Nāmu'o
Administrator

EXHIBIT

4

September 8, 2009

Mr. Timothy Chee
Land Agent, Land Division
Dept. of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809
Via: Express Mail

Re: Ref. No.: 08OD-068

Subject: Non-Exclusive Easement to TLM Partners Ltd. for Seawall, Lanai, and Landscaping Purposes Niu, Honolulu, Oahu, Tax Map Key: (1)-3-7-002:009 seaward.

Dear Mr. Chee:

Please find enclosed TLM Partners Ltd.'s check #2476 in the amount of \$135,135.00 that you requested in your letter of January 29, 2009 in anticipation of the granting for the easement described above plus document fee and maps and description fee. I am also enclosing the State and City/County Tax Clearances requested.

I will look forward to receiving the legal document from the Department of the Attorney General that you mention for my approval and signature so that the easement will be final and be able to be recorded.

Please contact me at the below address or by telephone if you have any questions.

Sincerely,



Thomas E. McConnell
General Partner
TLM Partners Ltd.
1568 Calzada Avenue
Santa Ynez, CA 93460
Tel: (805) 264-5510 cell; (805) 686-1489

TEM/ck
Encl.

DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

2009 SEP 10 A 10: 21

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LAND DIVISION

EXHIBIT "4"

EXHIBIT

5a

RECEIVED

10 MAY -5 110:21

DAMON KEY LEONG KUPCHAK HASTER

A LAW CORPORATION
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

May 3, 2010

Attorneys at Law

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Website: www.hawaiilawyer.com

Chairperson Laura H. Thielen
State of Hawaii, Department of Land and Natural Resources
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813

Re: TAX MAP KEY (1) 3-7-002: SEAWARD OF 009

Dear Chair Thielen:

We represent TLM Partners Ltd. ("TLM"), which is the owner of 5677 Kalaniana'ole Hwy, Honolulu, HI 96821, Tax Map Key: (1) 3-7-002:009 ("Property"). We and our client have been in contact with Messrs. Barry Cheung and Timothy Chee of your Department ("DLNR"), who asked that we write to you to request the return of the ONE HUNDRED THIRTY-FIVE THOUSAND ONE HUNDRED THIRTY-FIVE DOLLARS (\$135,135.00) submitted in connection with a proposed easement that does not appear to be necessary.

When it was suggested that TLM may need an easement, DLNR was contacted to discuss that possibility. The Board of Land and Natural Resources ("BLNR") voted to approve the grant of an easement to TLM in or around September 2008. After a year of discussions, however, the parties were not able to agree upon the need for, or the possible terms of, an easement. Because it is unclear that an easement is necessary, or even that the State has the right to grant an easement, we request that DLNR refund the \$135,135.00.

Further, Mr. Cheung asked that we provide you with any other questions or concerns. One concern we have relates to recent correspondence from DLNR to Mr. Thomas McConnell, the general partner of TLM, dated February 10, 2010, suggesting the existing seawall, lanai and landscaping constitute encroachments.

EXHIBIT "5a"

- Cherise K. Boyce
- Elizabeth L. Burroughs
- Hoelle B. Catalan
- Matthew T. Evans
- Trod R. Eyerly
- Diane D. Foster
- Joseph W. Foster
- Caron H. Horka
- Courtney S. Kajiawa
- Christine A. Kubota
- Christi Anne H. Luchs Choe
- Gregory W. Luge
- Kenneth E. Kupchak
- Dennis H. Leong
- David P. McAuley
- James C. McWhinnie
- Mark M. Muralant
- Anna H. Oshiro
- Michelle M. Shin
- Douglas C. Smith
- Robert H. Thomas
- Michael A. Yoshida

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R. Charles Borchert
C.J. Damon, Jr.
Gerhard Frohlich
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Charles W. Key
(1999-2008)

¹Admitted in Hawaii and California

²Admitted in New York and District of Columbia



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DAMON KEY LEONG KUPCHAK HASTERT

Chairperson Laura H. Thielen

May 3, 2010

Page 2

Previously, the DLNR suggested there was a single encroachment – the lanai of the house, despite the fact that the house and lanai were built by prior owners in or around 1934. We respectfully disagree that any encroachments exist, and seek further information concerning this.

It is unclear on what basis the State can claim either the right to grant an easement or to declare anything an encroachment under the circumstances. We have been unable to locate any evidence that this was not accreted land, and we have found nothing in DLNR's files to the contrary. It is well settled in Hawaii that accreted land belongs to the littoral owner, *see Maunalua Bay Beach Ohana 28 v. State*, 122 Haw. 34, 52, 222 P.3d 441, 459 (Ct. App. 2009), which in this case is TLM. We are interested in understanding from you what evidence, if any, exists to the contrary.

With respect to the suggestion that existing vegetation is an encroachment, we disagree. Not only does the photographic evidence suggest that palm trees have been in existence on the land for over fifty years, vegetation cannot constitute an encroachment since it is a naturally occurring phenomenon. *See, generally, Griefield v. Gibraltar Fire & Marine Ins. Co.*, 24 So.2d 356, 357-58 (Miss. 1946) (no landowner liability for natural growing vegetation).

As for the seawall, it is a lawful, non-conforming structure that continues along the makai boundary of several parcels. *See generally* Revised Ordinances of Honolulu, ch. 23 (providing for the continued use of nonconforming structures in the shoreline setback area); Haw. Admin. R. § 13-5-37 (stating similarly in the conservation district). *See also Waikiki Marketplace Inv. Co. v. Chair of Zoning Bd. of Appeals*, 86 Haw. 343, 356, 949 P.2d 183, 196 (Ct. App. 1997) (construing non-conforming structures and uses as lawful). The seawall has been in existence since 1961, or possibly earlier. *See* August 12, 2008, DLNR Letter from Mr. A. Jodar to Mr. S. Lemmo (File No. 0A-08-018). Further, DLNR already determined that "removal of the seawall will cause erosion of the coastal plain," and that, because "the residence is more than 30 feet mauka of the seawall, it is uncertain whether removal of the seawall will create an emergency situation from the erosion." More specifically, DLNR found that "impacts to the adjacent and upland developments must be considered" and that removal of the seawall fronting TLM's Property "may have a negative effect on neighboring shoreline armoring structures and might lead to their consequent destabilization." Furthermore, even assuming the seawall is located on State land, it was not constructed by TLM. Accordingly, we are unclear what right or duty exists to allow or require TLM to remove it.

DAMON KEY LEONG KUPCHAK HASTERT

Chairperson Laura H. Thielen

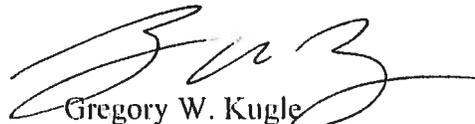
May 3, 2010

Page 3

We appreciate your anticipated cooperation with this matter. Please do not hesitate to contact the undersigned if you have any questions.

Very truly yours,

DAMON KEY LEONG KUPCHAK HASTERT



Gregory W. Kugle

Christi-Anne H. Kudo Chock

GWK/CHKC:ecc
118047P

EXHIBIT

5b

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LAND DIVISION

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DAMON KEY LEGONG KUPCHAK HAWAIIAN
2010 AUG 5 A 9:39 AM
A LAW CORPORATION

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

Attorneys at Law

1001 Bishop Street, Suite 1600
Honolulu, Hawaii 96813-6152

July 30, 2010

Telephone (808) 531-8031
Facsimile (808) 531-2542
E-Mail: info@hawaiilawyer.com
Website: www.hawaiilawyer.com

Chairperson Laura H. Thielen
Department of Land and Natural Resources
State of Hawaii
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813

Re: Tax Map Key (1) 3-7-002; seaward of 009

Dear Chair Thielen:

Thank you for your correspondence dated May 24, 2010, concerning the issues of easements and encroachments related to 5677 Kalaniana'ole Highway, TMK No. (1) 3-7-002;seaward of 009, which is owned by our client, TLM Partners Ltd. ("TLM"). This correspondence concerns settlement and is therefore inadmissible for any purpose pursuant to Haw. R. Evid. 408.

While we do not agree with all of the positions taken by the Department, we do believe, as discussed below, there is enough uncertainty concerning some of the issues, and the impact of potentially adverse decisions on other land around the State, such that both the Department and our client have an interest in amicably resolving the situation. Therefore, we request a meeting with you to discuss a resolution that we hope would: (1) result in the entry of an easement at fair market value; (2) establish the face of the existing seawall as the certified shoreline; (3) regulate the uses, and the parties' respective rights and obligations within the easement area, and; (4) clarify the maintenance and repair obligations of the parties with respect to the seawall and other improvements within the easement area.

While there are some factual questions, such as (1) whether the land mauka of the seawall is the product of accretion or fill, or (2) whether the State's interest in such land is fee simple absolute until title is quieted or whether it is held in trust for the beneficial abutting owner, or (3) whether the State or Territory or some other entity constructed the seawall that protects a number of homes along this stretch of Niu coastline, there are other important facts that are not in dispute and worth noting.

- Elizabeth L. Bunnage
- Flordel B. Catalan
- John C.A. Copeland
- Matthew I. Evans
- Paul E. Eysely
- Diane D. Hester
- Caron H. Hock
- Courtney S. Kajiawa
- Charlene A. Kubota
- Christi Anne H. Eudo Chock
- Gregory W. Fugle
- Kenneth E. Kopchak
- Derek J. Leong
- David P. McCauley
- James C. McWhinnie
- Malik A. Abdulant
- Anna H. Oshiro
- Christopher Pan
- Michelle K. Shin
- Douglas C. Smith
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EXHIBIT "5b"

DAMON KEY LEONG KUPCHAK HASTERT

Chairperson Laura H. Thielen

July 30, 2010

Page 2

TLM did not build the subject seawall. Not only was it present when TLM purchased the property, but it has been present since at least 1961. Additionally, the seawall is a continuous wall fronting multiple Niu lots, not just TLM's property, which is further proof that it was not installed by TLM. Lastly, despite this wall having been in existence for fifty (50) years, allegedly on State land, the State has never, until recently, taken the position that the wall fronting TLM's property is an encroachment onto State land for which TLM is responsible. Thus, if the land on which the seawall sits is, in fact, State land, then the seawall appears to belong to the State, not TLM. Under the State's theory, TLM should not be responsible for its installation, repair or removal. Similarly, the State would face potential liability to TLM, as well as the adjoining owners, if the wall is not maintained, or is removed, thereby causing damage to adjacent properties and TLM's property.

With respect to vegetation and also assuming that it is located on State land, rather than TLM's property, the parties appear to disagree as to who has the right or obligation to maintain the vegetation, or whether maintenance constitutes a trespass, or violation, or a reasonable exercise of an adjacent owner's rights to protect his own property from damage or vermin emanating from another's property. The State has not, to TLM's knowledge, ever maintained the vegetation present on its alleged property.

For the foregoing reasons, it is in both the State's interest, and TLM's interest, to seek an amicable resolution. TLM would be amenable to a resolution that would: (1) result in the entry of an easement at fair market value; (2) establish the face of the existing seawall as the certified shoreline; (3) regulate the uses, and the parties' respective rights and obligations within the easement area, and; (4) clarify the maintenance and repair obligations of the parties with respect to the seawall and other improvements within the easement area. The negotiations prior to this time have not resulted in an easement based on the fair market value, or that clearly sets forth TLM's rights with respect to maintenance and repair. Assuming the terms of the easement, and related shoreline certification, can be reached, then the fair market value can be determined. If the parties are unable to agree on the value, then TLM would seek the appraisal procedures as set forth in Haw. Rev. Stat. § 171-17(b). Or, in the event an amicable resolution cannot be reached in a timely manner, TLM will have no choice but to consider legal action to recover sums paid, plus interest and attorneys' fees, as well as a declaration of the parties' rights with respect to maintenance of the seawall, ownership of the property, and any such other relief that TLM may be entitled to.

DAMON KEY LEONG KUPCHAK HASTERT

Chairperson Laura H. Thielen
July 30, 2010
Page 3

We look forward to meeting with you, schedule permitting, during the week of August 2nd or the week beginning August 9th, to discuss the foregoing. Thank you in advance for your continued cooperation in this matter.

Very truly yours,

DAMONKEY LEONG KUPCHAK HASTERT



Gregory W. Kugle
Christi-Anne H. Kudo Chock

GWK/CIHKC:ds
cc: TLM Limited Partnership
Mr. Barry Cheung
121452P

EXHIBIT

5c

6837c

hawaiilawyer.comSM

DAMON KEY LEONG KUPCHAK HASTERT
A LAW CORPORATION

2010 NOV - 8 P 3: 13

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII
November 2, 2010

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- Caron N. Ikeda
- Courtney S. Kajiikawa
- Chikako A. Kubota
- Christal Anne H. Kudo Chock
- Gregory W. Fogle
- Kenneth R. Kupchak
- Denis C.H. Leong
- David P. McCauley
- James C. McWhinle
- Mark M. Muralani
- Anna H. Oshtro
- Michelle M. Shin
- Douglas C. Smith
- Robert H. Thomas
- Michael A. Yoshida

Of Counsel

- R. Charles Bucklen
- C.J. Damon, Jr.
- Harry A. Inman

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Chairperson Laura H. Thielen
State of Hawaii, Department of Land and Natural Resources
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813

Re: TAX MAP KEY (1) 3-7-002: SEAWARD OF 009

Dear Chair Thielen:

We represent TLM Partners Ltd. ("TLM"), which is the owner of 5677 Kalamianuole Hwy, Honolulu, HI 96821, Tax Map Key: (1) 3-7-002:009 ("Property"). This correspondence responds to yours dated October 18, 2010.

TLM hereby demands return of the \$135,135.00, which the Department of Land and Natural Resources ("DLNR" or "Department") has been holding for the past year. TLM's money must be returned forthwith because: (1) TLM was wrongly informed that an easement was required; (2) to date, no easement has been granted, and; (3) the Department's legal authority to demand or grant the subject easement is questionable at best. Please immediately return TLM's funds to it. The check can be mailed directly to:

TLM Partners Ltd.
1568 Calzada Avenue
Santa Ynez, CA 93460

Please confirm that the funds will be transmitted by November 12, 2010, or otherwise respond to this request by that date. If this demand for the return of the funds must be addressed to the Board, then please have this matter put on the agenda at the earliest possible time.

EXHIBIT "5c"

DAMON KEY LEONG KUPCHAK HASTERT

Chairperson Laura H. Thielen

November 2, 2010

Page 2

The October 18 correspondence mischaracterizes Analytical Planning ("AP")'s June 6, 2008 correspondence. AP used the term "fill" in quotes, indicating that the term was not AP's term, but a term used by others. Furthermore, AP is not a soils engineer, coastal engineer or other expert for purposes of determining the nature of the land in question. Finally, and perhaps most importantly, DLNR could not have relied on this "admission" because DLNR's own files are replete with references to the land located behind this common seawall along Niu beach as being "accreted land":

Staff review of the available evidence suggests that the encroachment area in question may have been **an accretion area in existence before October 1, 1964**, which is the year that the Conservation District law came into effect. This possible **accretion area** was artificially stabilized without authorization from any agency.... Thus staff cannot substantially prove that any portion of the encroachment area was ever located within the Conservation District.

See Correspondence from Dierdre Mamiya, Administrator, Department of Land and Natural Resources, to Warren Bucher, Ph.D., dated July 31, 2002 (enclosed, emphasis added).

Ms. Mamiya's letter is significant for several reasons. First, it is describing a parcel just 3 lots away from TLM's parcel. Second, it is also describing the same common seawall that was built prior to 1961 and which protects all of the lots along this section of Niu. Third, it characterizes the land mauka of the seawall as "accretion". Fourth, it concedes that DLNR could not prove that this accretion area was ever located within the Conservation District, which means that DLNR could not prove that this accretion area was located makai of the shoreline. In sum, while AP made no admissions on TLM's behalf, DLNR files are replete with admissions of its own.

Furthermore, historically, TLM's makai property line was located at the high water mark, not further inland. In the original Land Commission Award of Niu Valley to Alexander Adams (enclosed), the makai boundary was "along Sea." In the 1927 file plan, the makai description of Lot 28 also states "high water mark at sea shore to a t on coral." Thus, historically, the makai boundary of TLM's lot, and

DAMON KEY LEONG KUPCHAK HASTERT

Chairperson Laura H. Thielen
November 2, 2010
Page 3

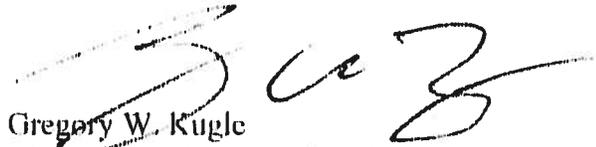
the privately owned lots along Niu beach, was the high water mark. It was not further inland.

Moreover, our prior correspondence simply pointed out that assuming arguendo the State holds legal and beneficial title to the land in question, then the seawall located on that land would also belong to the State and it would be unfair and improper to force TLM to remove it. The fact that the seawall is a common, integrated seawall fronting a number of properties along Niu is evidence that it was not built by any one owner to protect any one individual parcel, but was instead a regional project. Certainly TLM, which acquired this parcel several decades after the seawall was built, should not remove it. Moreover, whoever removes the seawall, or requires its removal, will undoubtedly face liability from nearby property owners. DLNR has determined that removal of the seawall would result in erosion and damage to properties on either side of TLM's property, to a loss of the "State" land, and would also endanger TLM's property and house. Should DLNR remove the seawall, or order a third party to remove it, DLNR will create a dangerous condition.

We appreciate your anticipated cooperation with this matter. Please do not hesitate to contact the undersigned if you have any questions.

Very truly yours,

DAMON KEY LEONG KUPCHAK HASTERT



Gregory W. Kugle
Christ-Anne H. Kudo Chock

GWK/CHKC:ccc/ds
Enclosures

cc: TLM Partners Ltd. (w/enclosures)
128823P

REF:PB:MA



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 021
HONOLULU, HAWAII 96809

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

File Number Encroachment: OA-02-27

Warren Bucher, Ph. D.
Oceanit
1001 Bishop Street
Pacific Tower, Suite 2970
Honolulu, HI 96813

JUL 3 | 2002

Dear Mr. Bucher:

**Subject: Shoreline Encroachment (Sea Wall and Fill) at 5691 Kalaniana'ole Highway
[TMK: (1) 3-7-02:008]**

Coastal Lands Program (CLP) staff has reviewed this case, which involves your client's seawall and encroachment area at Nui, Oahu. Based upon information you have submitted on behalf of your clients, Ada Murakami and Michael Gallagher, the seawall and encroachment area in question consists of approximately 2000 square feet. According to previous information that the applicant's attorney has submitted to the Department, the Cassidy family had constructed the seawall fronting the encroachment area at some date between 1954 and 1960.

According to submitted evidence it appears that seawall defining the encroachment area in question was built at some date between 1954 and 1961. Two R.M. Towill aerial photos have been submitted, one from 11/17/1954 that shows no seawall structure Makai of parcel [TMK (1) 3-7-02:008] and one from 01/20/1961 which appears to show a seawall structure located Makai of the parcel in question as well as a seawall fronting the neighboring parcel.

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. On July 3, 2002 staff visited the site to investigate the encroachment and to gather

reconnaissance information to support a recommendation for either 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. It appears that the abutting neighbor's seawall to the east is contiguous with the seawall in question. The land area behind the neighboring parcel [TMK (1) 3-7-02:007] seawall is not an encroachment area. The land area behind the seawall of parcel :007 lies within the recorded boundaries of that parcel. The area behind the neighboring parcel [TMK (1) 3-7-02:020] to the west appears to be an encroachment area. The owner of parcel :20 was informed in 1990 to either remove the encroaching seawall or apply for an easement for the area from the State.

Beach Resources:

CLP staff inspected the area. The beach area mostly consists of mudflats. In some areas there is a thin layer of sand.

Public Access:

There is no nearby easy public access to the shoreline in this area. The closest ocean access is at Niu Stream approximately four or five parcels to the west side of the property.

Effect of Removing the Encroachment on:

Beach Resources: Removal of the seawall would be inconsequential as there is no beach in the vicinity. Public recreation such as fishing, boating and surfing takes place offshore of the parcel.

Public Access: CLP staff has determined that public access would not be enhanced by removal of the encroachment.

Affect on Adjacent Properties: Removal of the seawall in question could cause damage to the seawall fronting parcel TMK (1) 3-7-02:007, which appears to be contiguous with the seawall in question.

Staff observed during the site visit that the subject seawall appears long established. The encroaching wall is contiguous with the seawall fronting the neighboring parcel to the east. The submitted evidence (aerial photos) suggests the seawall was in existence prior to 1961. The encroachment area in question is quite substantial in size (approximately 2000 square feet) but based on inspection of the submitted aerial photo it appears that is area was in existence prior to the construction of the seawall in question. The neighboring parcel to the east [TMK (1) 3-7-02:007] currently has property boundaries that extend much further Makai than the seaward boundary of the parcel in question. The property to the east has had its present Makai boundary included in its parcel description since at least 1949. This is evidence that the land Makai of parcel :008 seaward boundary has been in existence for a substantial length of time.

Further evidence to the long term existence to the area fronting subject parcel :008 is documentation at State Survey regarding the neighboring parcel to the west [TMK (1) 3-7-

02:020]. A certified shoreline for parcel :020 was rejected in 1990 because of the low concrete wall fronting that parcel. The low concrete wall adjoins the seawall fronting the parcel :008. In 1990 the owner of parcel :020 was given two options by the Department to rectify the situation and receive a certified shoreline; either remove the structure or apply for an easement from the State for the encroachment area.

Staff review of the available evidence suggests that the encroachment area in question may have been an accretion area in existence before October 1, 1964, which is the year that Conservation District law came into effect. This possible accretion area was artificially stabilized without the authorization from any agency. As the shoreline was artificially stabilized the landowner is no longer able to make an accretion claim for the encroachment area in question. The seawall that stabilized the accretion area was constructed prior to October 1, 1964 when Conservation District law came into effect. Thus staff cannot substantially prove that any portion of the encroachment area was ever located within the Conservation District.

Upon review and consideration of the information gathered on this case, staff has determined that the issuance of an easement for the encroachment area would have no adverse impacts on natural resources, including beach resources. Therefore, the Coastal Lands Program has no objections to an easement request being processed. The Oahu District Land Office calculates the monetary amount required to dispose this use of State land through an easement. The landowner should note that they may be subject to the administrative penalty system for unauthorized use of State land pursuant to section 171-6, Hawaii Revised Statutes.

We hope this letter helps resolve some of the outstanding issues regarding your property. Please feel free to contact Masa Alkire of the Coastal Lands Program at 587-0382. Please contact the Oahu District Land Office at 587-0433 regarding the processing of an easement.

Aloha,



Dierdre S. Mamiya
Administrator

Cc: Oahu Board Member
Oahu District Land Office
City and County of Honolulu DPP
Chairperson's Office

This is a Claim for a tract of Land called "Niu", in the district of Waikiki, Oahu; consisting of 200 acres and a Tract Land belonging to "Niu", called "Kawaiakala", consisting of 1,700 acres.

From the Testimony of Poo "Tikuanooa", and Mr. Ji, it appears, that the claimant was created Rord or Nonohiki of this Land in the time of Kamehameha I; and that he has exercised the Nonohiki-ship of the same, without dispute ever since the Year of our Lord 1822. It further appears, that the Claimant obtained his Rights in this Land in the same way that he obtained his Rights in the Land comprised in the Claim N^o 301; namely, in remuneration for services rendered the King as Sea Captain or Sailing Master.

The Board are of the opinion, that the Claimant's Rights in these Lands are as large as those possessed by any Chief or other high Nonohiki in Lands possessed by them; namely a Feudal title less than allodial, subject to the Rights of Tenants.

We do therefore award to Alexander Adams, the Claimant, a Feudal title less than allodial, in the Land of "Niu"; and in the Tract Land of "Kawaiakala" according to the Meters and bounds of the annexed Survey, made by T. Abbott Esq; on 11th day of February A.D. 1848. The Claimant is to respect the Rights of all Tenants of these Lands; and may commute this Title for a Fee simple, as prescribed by Law.

Notes of Survey of "Niu", in Waikiki.

Commencing at Rock marked + at Makai S.W. Corner of this Land by spring of water - joining Waikiki at Sea - and running N. 29. 30 W. 52 Ch 39 1/2 ft. up Pali and along middle of Ridge separating Niu from Waikiki Valley to large Rocks at angle. Thence N. 44. 1/2 W. 11 Ch 46 ft. along Waikiki on top of Ridge to a tree on last bare peak at foot of woods. Thence N. 15. 00 W. 76 Ch

along Waitepe to mauka N. W. peak of this land on top of Mountain next to Koolau. Then following along on top of Mountain ridge, the mauka side of this land and Koolau to Mountain peak at mauka E. peak of this, to land called "Kulionou" in Koolau. Then following along down Ridge separating this from Koolau to Road on top of Sea Pali little above Sea - thence S. $33^{\circ} 30'$ E. 6 Ch. $39 \frac{1}{2}$ ft. down Pali along Kulionou to Rock near Corner of Kalopatch little above Sea, at the Mookai S. E. Corner of this land, then along Sea to place of Commencement. This land has a Sea to it as marked on map. and contains an area of

Feb. 11. 1848

Acres 24.12

See Page 190 for diagram

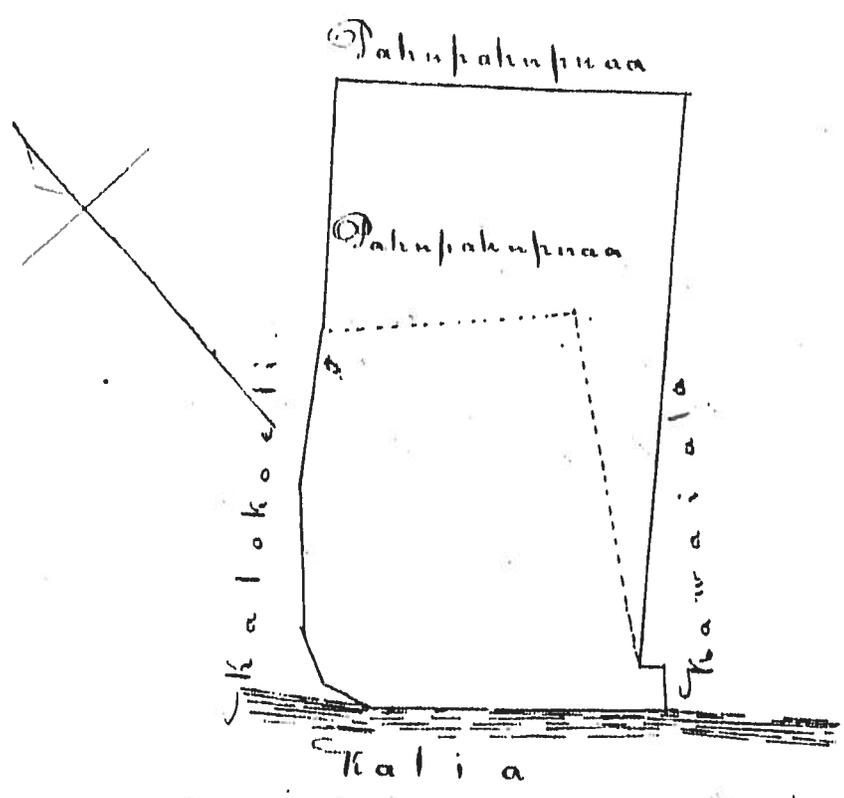
"Notes of Survey of Kato Lands in Waikiki called Kawaiata alua in Niu"

"Commencing at Mookai S. Corner of this land on Mauka side of stream called Kalia, and running N. 44° W. 3 Ch. $63 \frac{1}{2}$ ft. along Kalia stream to slight angle - thence N. 19° W. 58 ft. to Mookai W. Corner of this land - thence N. 24° E. $46 \frac{1}{2}$ ft. along Kaloheoheo to slight angle - thence N. $43^{\circ} 45'$ E. 2 Ch. to slight angle - thence N. 55° E. 2 Ch. $11 \frac{1}{2}$ ft. along Kaloheoheo to slight angle - thence N. $48^{\circ} 30'$ E. 3 Ch. $33 \frac{1}{2}$ ft. to Mauka N. Corner of this land - thence S. 42° E. 1 Ch. $63 \frac{3}{4}$ ft. along Pahipahupua to mauka E. Corner of this land - thence S. 51° W. 8 Ch. along Kawaiata to corner - then offset $31 \frac{1}{2}$ ft. to left to corner - thence S. $42^{\circ} 30'$ W. $38 \frac{1}{2}$ ft. to place of Commencement including an area of

Feb. 11. 1848

Acres 4 $\frac{1}{100}$

T. M. Keefe Sur.



Cook's Adjudication of C. N. 802. Mr. Adams' Lt.

To "Incidental Expenses & action of Commission" in this Ct. 19 January 1848
 draft deposition of Lt. reduced
 Citation
 draft testimony Reduced & Eng. & anal. plan? Lt
 Survey of Lt. Adams for two lands
 Engrossed Copy of do
 Report this day rendered by Commissioners on the above claim

| |
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| 1 |
| 1 |
| 1 |
| 50 |
| 75 |
| 20 |
| 6 |
| 5 |

State Kahuwala
 29 January 1849

W. L. Lee
 J. H. Smith
 L. H. ...
 J. K. ...
 ...

35 25

This is a Claim for a tract of Land called "Niu", in the district of Waikiki Oahu; consisting of 2. 1/2 acres and a Kalo land belonging to "Niu", called "Kawaiakala", consisting of 1. 7/8 acres.

From the Testimony of "Poo" Nekuanaoa, and Mr. Si, it appears, that the claimant was created Lord or Kionohitu of this Land in the time of Kamehameha I; and that he has exercised the Kionohitiship of the same, without dispute ever since the Year of our Lord 1822. It further appears, that the Claimant obtained his Rights in this Land in the same way that he obtained his Rights in the Land comprised in the Claim N^o 301; namely, in Remuneration for services rendered the King as Sea Captain or Sailing Master.

The Board are of the opinion, that the Claimant's Rights in these Lands are as large as those possessed by any Chief or other high Kionohitu in Lands possessed by them; namely a Feehold title less than allodial, subject to the Rights of Tenants.

We do therefore award to Alexander Adams, the Claimant; a Feehold title less than allodial, in the Land of "Niu"; and in the Kalo Land of "Kawaiakala" according to the Meters and bounds of the annexed Survey, made by J. Atwater Esq. on 12th day of February A.D. 1848. The Claimant is to respect the Rights of all Tenants of these Lands; and may commute this Title for a Fee simple, as prescribed by Law.

Notes of Survey of "Niu", in Waikiki.

Commencing at Rock marked + at Mahealani W. Corner of this Land by spring of water - joining Waikiki at Sea - and running N. 29. 30 W. 52 Ch 39 1/2 ft. up Pali and along middle of Ridge separating Niu from Waikiki Valley to large Rock at angle. Thence N. 71. 1/2 W. 11 Ch 46 ft. along Waikiki on top of Ridge to a tree on last bare peak at foot of woods. Thence N. 15. 00 E. 76 Ch

along Waikape to Mauka N. W. peak of this land on top of Mountain next to Koolau. Then following along on top of Mountain ridge, the Mauka side of this land and Koolau to Mountain peak at Mauka E. peak of this, to land called "Kulioou" in Koolau, then following along down ridge separating this from Koolau to Rocks on top of Sea Pali little above Sea - thence S. $33^{\circ} 30'$ E. 6 Ch. $39 \frac{1}{2}$ ft. down Pali along Kulioou to Rocks near Corner of Kalo patch little above Sea, at the Mauka S. E. Corner of this land, then along Sea to place of Commencement. This land has a Sea to it as marked on map. and contains an area of

Feb. 11. 1848

Acres 2442

See Page 190 for diagram

"Notes of Survey of Kalo Land in Waikiki called
"Kawaiiaata alua in Niu"

"Commencing at Mauka S. Corner of this land on Mauka side of stream called Kalia, and running N. 44° W. 3 Ch. $63 \frac{1}{2}$ ft. along Kalia stream to slight angle - thence N. 19° W. 58 ft. to Mauka W. Corner of this land - thence N. 24° E. $46 \frac{1}{2}$ ft. along Kalo Kalo to slight angle - thence N. $43^{\circ} 45'$ E. 2 Ch. to slight angle - thence N. 55° E. 2 Ch. $11 \frac{1}{2}$ ft. along Kalo Kalo to slight angle - thence N. $48^{\circ} 30'$ E. 3 Ch. $33 \frac{1}{2}$ ft. to Mauka N. Corner of this land - thence S. 42° E. 1 Ch. $62 \frac{3}{4}$ ft. along Pahupahu to Mauka E. Corner of this land - thence S. 51° W. 8 Ch. along Kawaiiaata 182 to corner - then offset - $21 \frac{1}{2}$ ft. to left to corner - thence S. $42^{\circ} 30'$ W. $38 \frac{1}{2}$ ft. to place of Commencement including an area of

Feb. 11. 1848

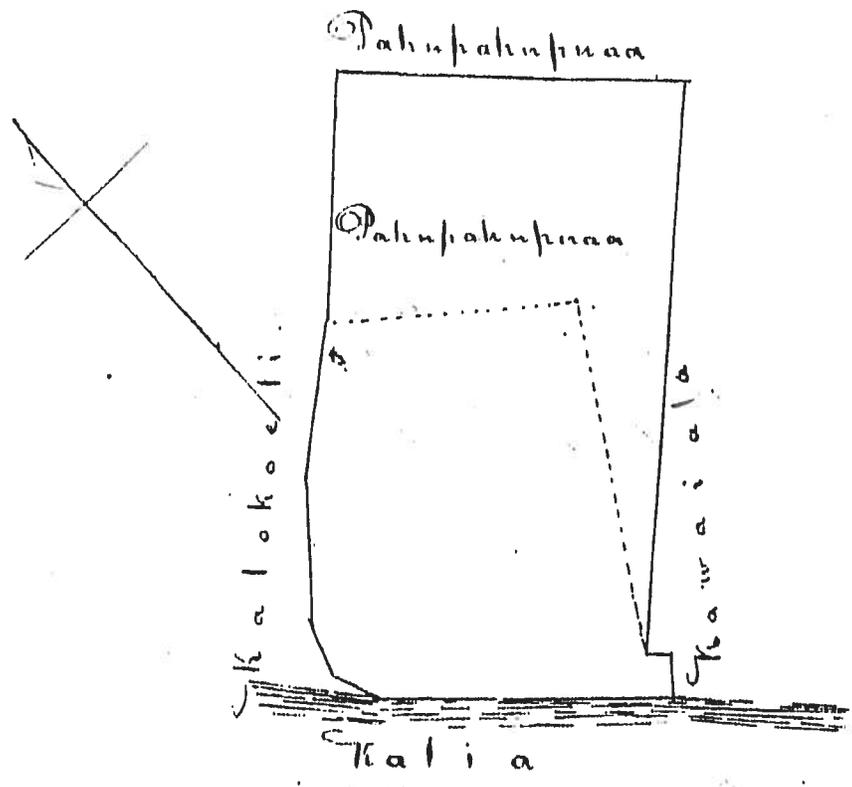
Acres 1400

J. M. Keat, Sur.

190

Page 107. Cl. 802.





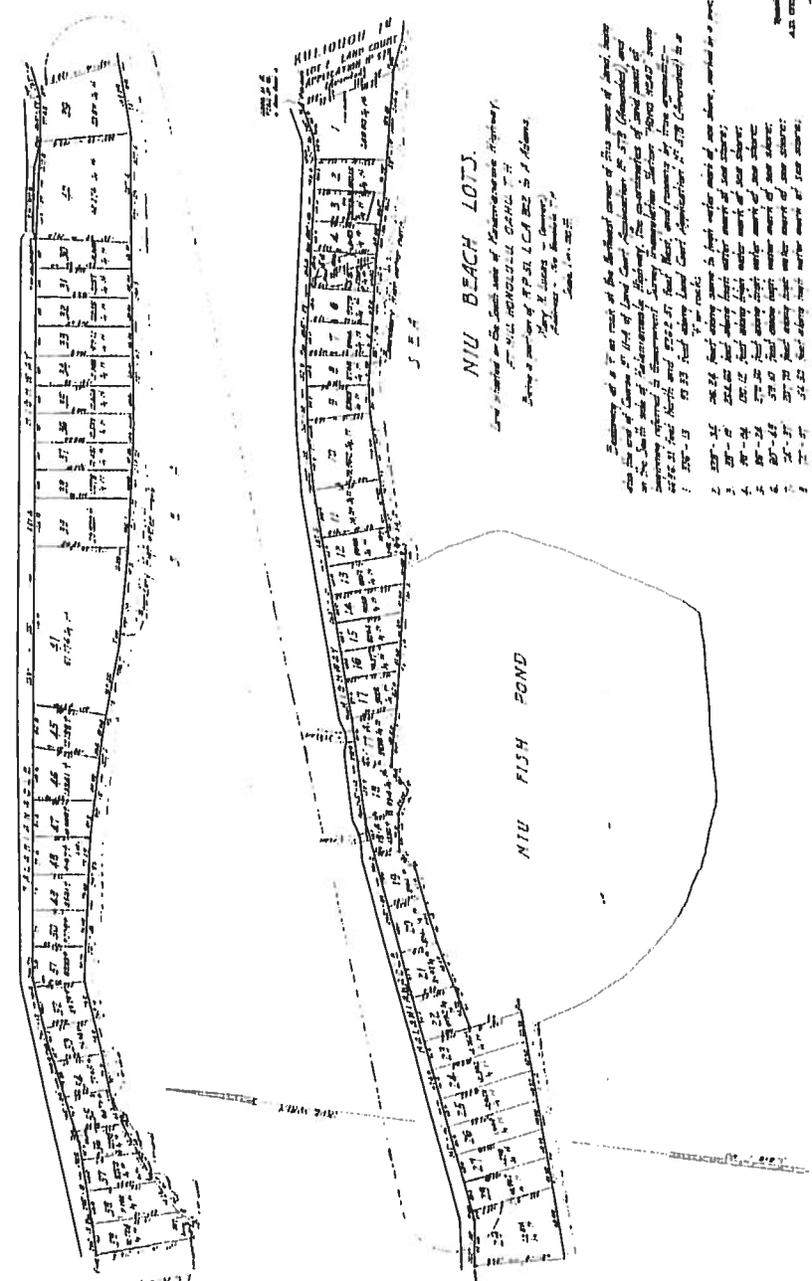
Cook's Adjudication of C. N. 802. Mer. Adams Lt.

| | |
|---|-------|
| To Incidental Expenses in | 1 |
| action of Commis. in this Ct. 19 January 1843 | 1 |
| draft deposition of Lt. reduced | 1 |
| Citation | 50 |
| draft testimony Reduced & Eng. on 19 Jan. 43 | 75 |
| Survey of Lt. Meale's for two lands | 20 |
| Engrossed Copy of do | 6 |
| Report this day rendered by Commissioners | 5 |
| on the above claim | |
| | <hr/> |
| | 35 25 |

State Records
29 January 1849

W. L. Lee
J. B. Smith
S. M. K. and others
By Hawaiian
Council

WALTER
L. A. W. & SONS, INC.
HOLLOUGH, I. O.



NIU BEACH LOTS.

Map recorded in the South side of Subdivision Highway.
 1st. WILL HULLOUGH, GRANTOR.
 Survey a portion of T.P. 21, L.C. 202, 2d. of Adams.
 Henry H. Jones, Surveyor.
 Adams, 1st. 1st. 1922.

Subdivision of 6.75 acres at the Northwest corner of this range of land, being the land of James H. Hill of Land Grant Association No. 273 (Hullough) and the 2nd. 2d. side of Subdivision Highway. The plan of this subdivision and survey are referred to Government Survey Commission Section 19103 1922. Being 252.21 feet North and 252.21 feet West, and running by true meridian. 1. 252.21 feet along Land Grant Association No. 273 (Hullough) to a 1/4" wide road.
 2. 252.21 feet along same to high water mark of sea shore, marked by a post.
 3. 252.21 feet along high water mark of sea shore.
 4. 252.21 feet along high water mark of sea shore.
 5. 252.21 feet along high water mark of sea shore.
 6. 252.21 feet along high water mark of sea shore.
 7. 252.21 feet along high water mark of sea shore.

- 1. 252.21 feet along high water mark of sea shore to a post.
- 2. 252.21 feet along high water mark of sea shore to a post.
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- 32. 252.21 feet along high water mark of sea shore to a post.
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- 34. 252.21 feet along high water mark of sea shore to a post.
- 35. 252.21 feet along high water mark of sea shore to a post.
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- 37. 252.21 feet along high water mark of sea shore to a post.
- 38. 252.21 feet along high water mark of sea shore to a post.
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- 41. 252.21 feet along high water mark of sea shore to a post.
- 42. 252.21 feet along high water mark of sea shore to a post.
- 43. 252.21 feet along high water mark of sea shore to a post.
- 44. 252.21 feet along high water mark of sea shore to a post.
- 45. 252.21 feet along high water mark of sea shore to a post.
- 46. 252.21 feet along high water mark of sea shore to a post.
- 47. 252.21 feet along high water mark of sea shore to a post.
- 48. 252.21 feet along high water mark of sea shore to a post.
- 49. 252.21 feet along high water mark of sea shore to a post.
- 50. 252.21 feet along high water mark of sea shore to a post.

Witness my hand and seal of my office this 1st. day of January 1922.
 Henry H. Jones, Surveyor.
 Adams, 1st. 1st. 1922.

Approved in the presence of me
 and the Board of Supervisors of Adams
 County, Missouri, this 1st. day of January 1922.
 Board of Supervisors

Required for filing in the office of the
 Recorder of Adams County, Missouri.
 Henry H. Jones, Surveyor

EXHIBIT

5d

DAMON KEY LEONG KUPCHIAK HASTERI
A LAW CORPORATION

December 9, 2010

RECEIVED
LAND DIVISION
2010 DEC 13 A 9 51
DEPARTMENT OF LAND & NATURAL RESOURCES
STATE OF HAWAII

Attorneys at Law

1001 Bishop Street, Suite 1600
Honolulu, Hawaii 96813-6157

Telephone: (808) 531-0011
Facsimile: (808) 531-0111
E-Mail: info@hawaiiawyer.com
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- Matthew J. Evans
- Brad P. Feely
- Diane D. Hefert
- Caron H. Hoku
- Conroy S. Kaplowat
- Christine A. Kubota
- Christi-Anne H. Kudo Choek
- Gregory W. Kugle
- Kenneth P. Kupchak
- Damon K. Leong
- David P. McCauley
- James C. McWhinnie
- Paul M. Moulton
- Anne H. Oshiro
- Christopher Pan
- Michelle H. Shin
- Douglas C. Smith
- Robert H. Thomas
- Michael A. Yoshida

Of Counsel
P. Charles Bucken
C. J. Damon Jr.
Henry A. Johnson

Charles W. Fay
(1999-2000)

Admitted in Law in: Hawaii
Admitted in California
Admitted in New York and
District of Columbia



Being business clients
would be a great help to
replicate and legal advice
and a reputation for

Mr. Barry Cheung
Oahu District Land Office
State of Hawaii Department of Land and Natural Resources
Post Office Box 621
Honolulu, Hawaii 96809

Re: Tax Map Key No. (1) 3-7-002:009

Dear Mr. Cheung,

In response to your letter of November 29, 2010, we respectfully disagree with the Department of Land and Natural Resources' characterization of our position and the events that have transpired in regards to Tax Map Key No. (1) 3-7-002:009 seaward.

Therefore, we request that the issue of reimbursement be added to the agenda of the Board of Land and Natural Resources' January, or next available, meeting.

If you have any questions, please feel free to contact the undersigned.

Very truly yours,.

DAMON KEY LEONG KUPCHIAK HASTERI

(Handwritten signature)
Gregory W. Kugle
Christi-Anne H. Kudo Choek

GWK/CHK:ds
cc: Mr. Thomas McConnell
130731P

EXHIBIT

6a

LINDA LINGLE
GOVERNOR OF HAWAII

Laura H. Theelen
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSIONER OF WATER RESOURCES MANAGEMENT



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

May 24, 2010

Mr. Gregory W. Kugle
Ms. Christi-Anne H. Kubo Chock
Damon Key Leong Kupchak Hastert
1003 Bishop Street, Suite 1600
Honolulu, Hawaii 96813-6452

Dear Mr. Kugle & Ms. Chock

In response to your letter dated May 3, 2010 regarding questioning the need, as well as, the Board of Land and Natural Resource's (Board) authority to issue the proposed easement at TMK: (1) 3-7-002: Seaward of 009, it is our position that any improvement outside the recorded boundary of the private property that falls on State land is an encroachment. An easement will legitimize the situation in which people are causing encroachment on State lands.

By the topographical survey map conducted by Towill, Shigeoka & Associates dated, November 20, 2007, a portion of lanai, landscaping area, and seawall are located seaward of the recorded boundary of your client's property. Therefore, these improvements are encroaching on State lands.

In your letter, you mentioned that there was no evidence indicating the subject area was not accreted land. However, you fail to point out that there is a lack of any evidence establishing that the subject area was in fact accreted lands. Furthermore, even if there was some evidence establishing that the subject area was in fact accreted lands, there is no record of the subject area being adjudicated by the court as accreted lands and belong to the abutting landowner. Therefore, we believe the subject area is currently owned by the State of Hawaii.

From the photos submitted by your client's consultant, we cannot agree that the current state of the vegetation at 5677 Kalaniana'ole Highway is naturally occurring phenomenon. The area is well-maintained with grass nicely mowed. A manicured lawn on State land is, at minimum, an unauthorized use, if not outright encroachment.

The Board, pursuant to §171(6)(12), HRS, has the power to remove, or remedy any encroachment on State land. And, under §171(6)(15), HRS, the Board has the authority to address the unauthorized, or prohibited use of State lands. The non-conforming nature of the encroachments relates to its "zoning" status. Your allegations of the "lawful" nature of the

Kugle, G./Kubo-Chock, C.
May 24, 2010
Page 2.

structures may be relevant to its status under building permit laws; however, it does not address the trespass issues on State land. Zoning, and land ownership rights are two separate matters.

Therefore, we determined that an easement is needed to legitimize the encroachment at the subject location. Should you choose to remove the encroachment, please inform us in advance of this action so we can ensure that no one's land is damaged, including State land.

Please feel free to contact Mr. Barry Cheung of Oahu District Land Office at #587-0430 should you have any questions.

Sincerely,



LAURA H. THIELEN

cc: Sam Lemmo, OCCL

EXHIBIT

6b

LINDA FINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
CONSERVATION WATER RESOURCES MAHAOLELE



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

October 18, 2010

Ref: 08od-068

Mr. Gregory W. Kugle
Ms. Christi-Anne H. Kudo Chuck
Damon Key Leong Kupchak Hastert
1003 Bishop Street, Suite 1600
Honolulu, Hawaii 96813-6452

Dear Mr. Kugle & Ms. Chock

Subject: TLM Partners Ltd. Niu, Honolulu, Oahu, TMK (1) 3-7-002:seaward of 009

Thank you for your letter dated July 30, 2010 wherein you queried the State's ownership of the subject area, and reiterated your client did not build the seawall. Your client is also asking for the refund of \$135,135.00 paid to resolve the encroachment.

We respectfully point out to you that your client's agent, Analytical Planning Consultants, Inc., stated in its letter dated June 6, 2008 that enclosed was a "[p]hoto taken from the house showing much of the "fill" (emphasis added) area". Accordingly, the Department took this as an admission that the subject land is in fact "fill" or reclaimed lands. Therefore, the statement in your letter dated May 3, 2010 that "[i]t was settled in Hawaii that accreted land belongs to the littoral owner" does not appear applicable in this case, and we believe the issuance of a non-exclusive easement in this case is proper.

Further, we do not agree with your statement that "the seawall appears to belong to the State, not TLM..." In the aforementioned letter from your client's agent, the subject location of the State owned strip of land was described as the "sea wall encroachment in front of the existing house". The proposed easement seeks to resolve all such encroachments.

If you wish to discuss this matter further, you may contact Russell Tsuji, Land Administrator at 587-0414 or Barry Cheung of Oahu District Land Office at 587-0430.

Sincerely,

A handwritten signature in black ink, appearing to be "LH Thielen".

 Laura H. Thielen
Chairperson

EXHIBIT "6b"

EXHIBIT

6c

LINDA LINGEE
GOVERNOR OF HAWAII



LAURA H. THIELEN
Honorable
Member of the Board of Land and Natural Resources
Department of Land and Natural Resources
Honolulu, Hawaii

PAUL J. CONRY
Honorable
Member of the Board of Land and Natural Resources
Department of Land and Natural Resources
Honolulu, Hawaii

JENNIFER N. CHIEK
Honorable
Member of the Board of Land and Natural Resources
Department of Land and Natural Resources
Honolulu, Hawaii

AGNES HONORIO
Honorable
Member of the Board of Land and Natural Resources
Department of Land and Natural Resources
Honolulu, Hawaii

CHRISTOPHER M. HARRIS
Honorable
Member of the Board of Land and Natural Resources
Department of Land and Natural Resources
Honolulu, Hawaii

DAVID M. HARRIS
Honorable
Member of the Board of Land and Natural Resources
Department of Land and Natural Resources
Honolulu, Hawaii

DAVID M. HARRIS
Honorable
Member of the Board of Land and Natural Resources
Department of Land and Natural Resources
Honolulu, Hawaii



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 29, 2010

Mr. Gregory W. Kugle
Ms. Christi-Anne H. Kudo Chock
Damon Key Leong Kupchak Hastert
1003 Bishop Street, Suite 1600
Honolulu, Hawaii 96813-6452

Dear Mr. Kugle & Ms. Chock:

In response to your letter dated November 2, 2010, the Board of Land and Natural Resources authorized the issuance of a non-exclusive easement to remedy an encroachment on State land. The easement has not been consummated only because your client refused to sign the easement document. We enclose another copy of the easement document for execution should you wish to reconsider your position.

Alternatively, the proper forum to present your arguments is at a future meeting of the Board. Please let us know if you would like this matter presented to the Board.

If you have any further questions, you may contact Russell Tsuji, Land Administrator at 587-0414, or Barry Cheung of our Oahu District Land Office at 587-0430.

Sincerely,

for
Paul J. Conry
LAURA H. THIELEN

Enclosure

RECEIVED
LAND ADMINISTRATION
2010 NOV 29 P 2:07

EXHIBIT "6c"

EXHIBIT

7

EXHIBIT

8



EXHIBIT "8"

EXHIBIT

9

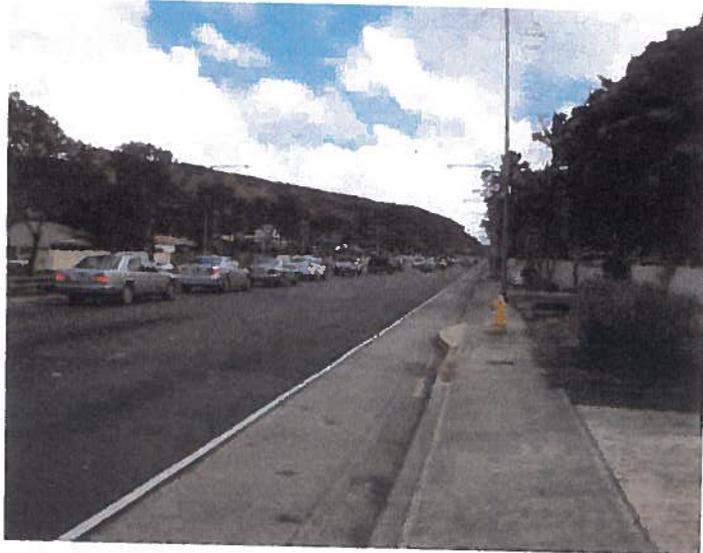
Subject Photo Page

| | | | |
|------------------|----------------------------------|--------|---------------------|
| Borrower/Client | TLM Partners, Ltd | | |
| Property Address | 5677 Kalaniana'ole Hwy | | |
| City | Honolulu | County | Honolulu |
| | | State | Hawaii |
| Lender | Dept of Land & Natural Resources | | Zip Code 96821-2303 |



Subject Front

5677 Kalaniana'ole Hwy
Sales Price N/A
Gross Living Area
Total Rooms
Total Bedrooms
Total Bathrooms
Location Niu Beach
View 16,317sf/Ocean Frt
Site
Quality
Age



Street Scene



Subject Aerial

Subject Photo Page

| | | | |
|---|-----------------|--------------|---------------------|
| Borrower/Client TLM Partners, Ltd | | | |
| Property Address 5677 Kalaniana'ole Hwy | | | |
| City Honolulu | County Honolulu | State Hawaii | Zip Code 96821-2303 |
| Lender Dept of Land & Natural Resources | | | |



Subject Rear Yard & Lanai

5677 Kalaniana'ole Hwy
Sales Price N/A
Gross Living Area
Total Rooms
Total Bedrooms
Total Bathrooms
Location Niu Beach
View 16,317s/Ocean Frt
Site
Quality
Age



Subject Rear Yard & Lanai

Subject Photo Page

| | | | |
|------------------|----------------------------------|----------|------------|
| Borrower/Client | TLM Partners, Ltd | | |
| Property Address | 5677 Kalaniana'ole Hwy | | |
| City | Honolulu | County | Honolulu |
| Lender | Dept of Land & Natural Resources | State | Hawaii |
| | | Zip Code | 96821-2303 |



Subject SE Rear Corner

5677 Kalaniana'ole Hwy
Sales Price N/A
Gross Living Area
Total Rooms
Total Bedrooms
Total Bathrooms
Location Niu Beach
View 16,317st/Ocean Frt
Site
Quality
Age



Rear Yard/Seawall

Looking East



Seawall Looking East

| | | | |
|------------------|----------------------------------|----------|------------|
| Borrower/Client | TLM Partners, Ltd | | |
| Property Address | 5677 Kalaniana'ole Hwy | | |
| City | Honolulu | County | Honolulu |
| | | State | Hawaii |
| Lender | Dept of Land & Natural Resources | Zip Code | 96821-2303 |



SW Rear Corner

5677 Kalaniana'ole Hwy
Sales Price N/A
Gross Living Area
Total Rooms
Total Bedrooms
Total Bathrooms
Location Niu Beach
View 16,317sf/Ocean Frt
Site
Quality
Age



Rear Yard/Seawall

Looking West



Seawall Looking West

EXHIBIT

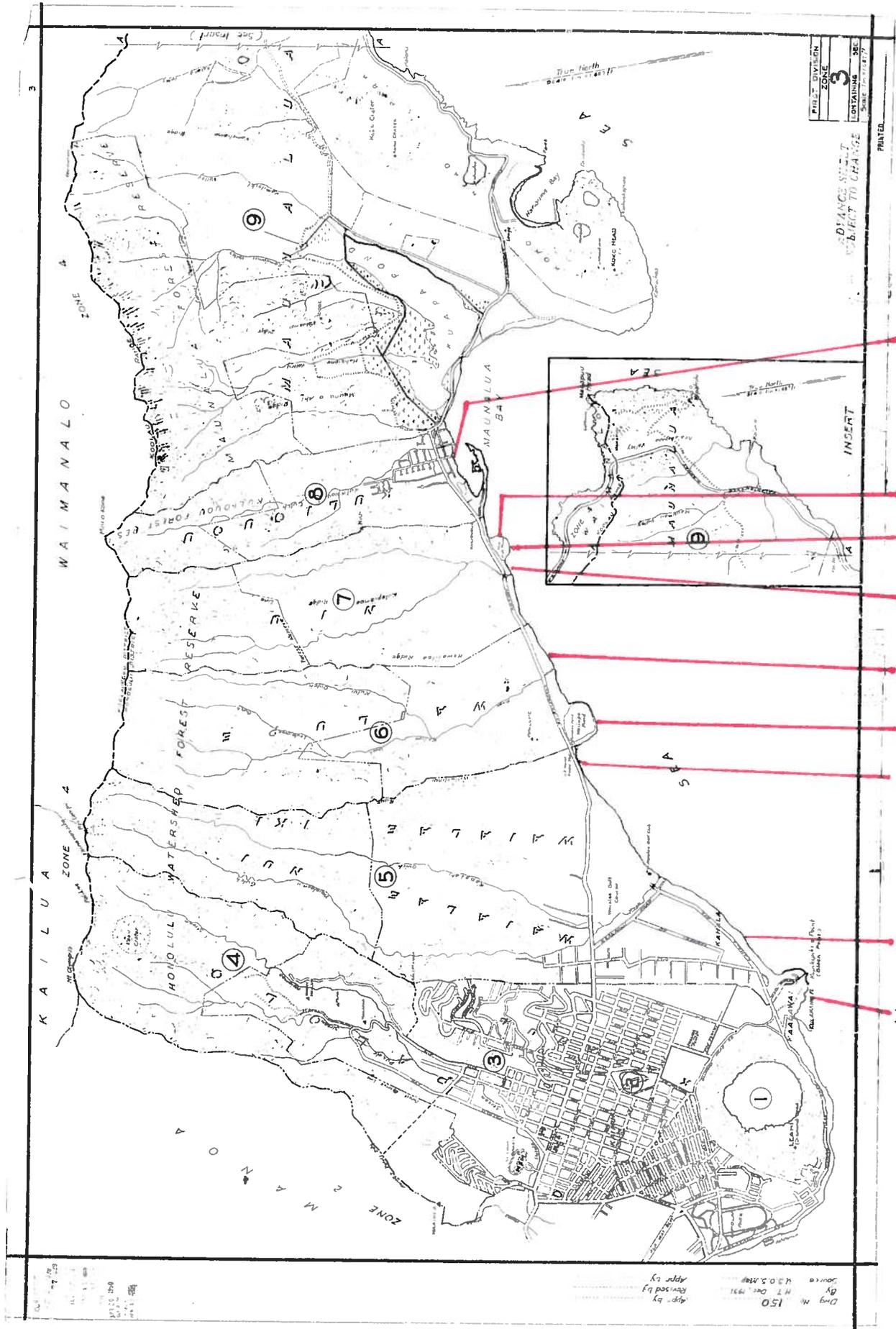
10

TLM-Seawall Encroachment and Filled Lands Case
Other Lot Owners in the Surrounding Area that have Sought or Obtained Easements

| | TMK | Date of OCCL's letter | Owner | File # | GL# | Area (sf) | Consideration (\$) | Date of Commencement |
|----|-----------------|-----------------------|----------------------------|----------|--------|-----------|--------------------|----------------------|
| 1 | (1) 3-5-001:004 | 6/8/2009 | Fialko | | GL5986 | 773 | 83,020 | 6/23/2010 |
| 2 | (1) 3-5-003:010 | 9/23/2005 | WF Coastal Proeprties, LLC | | GL5932 | 2197 | 34,140 | 4/23/2008 |
| 3 | (1) 3-5-022:001 | 9/21/2004 | Nakama | | GL5853 | 323 | 12,800 | 1/22/2007 |
| 4 | (1) 3-5-022:002 | 10/12/1999 | Chang | | GL5601 | 111 | 2,100 | 5/1/2000 |
| 5 | (1) 3-5-022:005 | 3/10/2006 | Fox | 06od-107 | | | | |
| 6 | (1) 3-5-058:010 | 6/8/2009 | Beecom Hawaii LLP | | GL5994 | 1460 | 233,770 | 9/1/2010 |
| 7 | (1) 3-6-001:029 | 7/27/2000 | Wo | | GL5609 | 505 | 20,430 | 8/5/2005 |
| 8 | (1) 3-6-002:002 | 12/8/2004 | Henli Investment | | GL5934 | 95 | 3,670 | 12/15/2010 |
| 9 | (1) 3-6-002:005 | 6/20/2000 | Felix | | GL5610 | 843 | 50,700 | 7/15/2003 |
| 10 | (1) 3-6-003:015 | 4/10/2002 | Ueyama | | GL5669 | 146 | 11,300 | 7/12/2002 |
| 11 | (1) 3-7-002:008 | 7/31/2002 | Gallagher | 02od-242 | | | | |
| 12 | (1) 3-7-002:009 | 8/12/2008 | TLM Partners Ltd (subject) | 08od-068 | | | | |
| 13 | (1) 3-7-002:040 | 9/17/2003 | D'Olier | 03od-294 | | | | |
| 14 | (1) 3-7-002:043 | 3/21/2005 | Cho | | GL5874 | 199 | 11,530 | 2/7/2007 |
| 15 | (1) 3-7-002:050 | 9/3/2003 | Naniwa Shoji Co. Ltd | | GL5906 | 777 | 49,700 | 3/1/2007 |
| 16 | (1) 3-8-002:001 | 7/20/2004 | Wu | 04od-219 | | | | |
| 17 | (1) 3-8-002:004 | 6/9/2005 | Ward | 05od-158 | | | | |

EXHIBIT

11



- 16, 17
- 13, 14
- 15
- 11, 12
- 8 to 10
- 7
- 3 to 6
- 2
- 1