

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

September 14, 2012

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

PSF No.:12OD-105

OAHU

Grant of Term, Non-Exclusive Easement to Bruce H.S. Kim for Seawall Purposes in  
Kaalaea, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-024:seaward of 022

APPLICANT:

Bruce H.S. Kim.

LEGAL REFERENCE:

Section 171-13 and 53(c), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of submerged land located in Kaneohe, Koolaupoko, Oahu, identified by Tax Map  
Key: (1) 4-7-024:seaward of 022, as shown on the attached map labeled **Exhibit A**.

AREA:

117 square feet, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Unencumbered with encroachment.

CHARACTER OF USE:

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

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

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

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." (See **Exhibit B**)

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

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

REMARKS:

During the shoreline certification process, the subject portions of the seawall were found to be encroaching on State lands. A draft survey map showing the encroachment is attached as **Exhibit C**. Therefore, the applicant wants to resolve the encroachment for the shoreline certification process.

According to the research by the Office of Conservation and Coastal Lands (OCCL), the subject encroachment “was most likely built when the lot was developed, based on the photographs provided by the applicant...” Staff notes the abutting property was part of the subdivision approved in 1943 under Land Court Application 1341. By its letter attached as **Exhibit D**, the OCCL supports a disposition request for the encroachment, and further suggests the land uses remain unimproved. Staff understands it is a standard condition in the easement document that no building or improvement other than the existing ones shall be placed within the easement area.

The seaward boundary of the abutting property was described on Map 2 of Land Court Application 1341 dated March 2, 1943 (excerpt attached as **Exhibit E**) as “boundary follows high water mark at sea coast”. In the 1973 shoreline certification process (**Exhibit F**), the shoreline of the abutting property was determined to be on the face of the current seawall. There are no other records pertaining to the area seaward of the abutting property. Staff finds that both exhibits mentioned above are identical to the current survey map at Exhibit C. Therefore, staff believes that the subject encroaching area should be considered as submerged lands, for which Governor’s approval and authorization of the Legislature are required pursuant to Section 171-53 (c), HRS.

Meanwhile, staff cannot locate record of authorization from any government agency pertaining to the encroachments. Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff is recommending a fine of \$500 as the subject encroachment is over 100 square feet. In addition, staff recommends the Board assess administrative costs of \$200 for staff time incurred in resolving this matter, under Section 171-6(12).

Department of Health, Division of Aquatic Resources, Board of water Supply, and Department of Facility Maintenance have no objections/comments on the request. State Historic Preservation, Department of Planning and Permitting, and Office of Hawaiian Affairs have not responded at the time of writing this submittal.

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.

Upon approval of today’s request, staff will work with the applicant in obtaining the required approval from the Governor and the concurrence of the Legislature, pursuant to 171-53 (c)

HRS. There are no other pertinent issues or concerns. Staff has no objection to the request.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Impose a \$500 fine for illegal encroachment and assess administrative costs of \$200, under Section 171-6(12).
3. 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) 4-7-024:022, 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.
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Bruce H.S. Kim covering the subject area for seawall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
  - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 4-7-024:022, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
  - C. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
  - D. Review and approval by the Department of the Attorney General;
  - E. Such other terms and conditions as may be prescribed by the Chairperson to

best serve the interests of the State; and

- F Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

  
for   
William J. Aila, Jr., Chairperson



## EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Term Easement for Seawall Purposes

Project / Reference No.: PSF 12OD-105

Project Location: Kaalaea, Koolaupoko, Oahu, Tax Map Key: (1) 4-7-024: seaward of 022.

Project Description: Easement to legalize the encroachments on State lands.

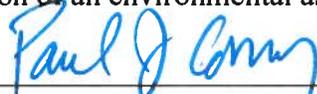
Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

The subject encroachment was most likely built when the lot was developed around 1943, i.e. before the enactment of Chapter 343 in 1974. The applicant is not planning on conducting major change to the existing topographical and vegetation condition of the property. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties Office of Conservation and Coastal Lands

Recommendation: That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

  
\_\_\_\_\_  
William J. Aila Jr., Chairperson

Date

  
**EXHIBIT B**

TRUE NORTH  
Scale: 1 inch = 30 feet

Sea

Shoreline follows along seaward  
face of seawall as located  
on November 22, 2011

0'48" Rock Wall with Tile Walls on top  
70.25  
70.22

1" cut on  
tile wall  
Rock Wall  
Tile Wall  
Storage

PROPOSED EASEMENT  
(117 SQ. FT.)

Concrete Slab  
Coconut  
1/2 pipe (1.83)

Lot B-20-B  
(TMK:4-7-24:23)

228.84

277'20"

LOT B-19  
17,695 SQ. FT.

House  
Concrete

275.61

Lot B-18  
(TMK:4-7-24:21)

97'20"

KAMEHAMEHA  
HIGHWAY

216'34.54"  
10'01"  
R=475.00



*[Signature]*

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

SHORELINE SURVEY MAP  
**LOT B-19**

as shown on Map 2  
of Land Court Application 1341  
Kaalea, Koolaupoko, Oahu, Hawaii

Tax Map Key: 4-7-24:22  
Scale: 1 inch = 30 feet  
Date: February 15, 2012

Owner: Bruce H S Kim  
Address: 47-865 Kamehameha Highway  
Kaneohe, Hawaii 96744

- NOTES:  
1. Only improvements shown were located.  
2. Denotes number and direction of photographs.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Office of Conservation and Coastal Lands  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
GUY H. KAULUKUKUI  
FIRST DEPUTY  
WILLIAM M. TAM  
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

REF:DLNR:BR

Mr. Bruce H.S. Kim  
c/o Mr. Jaime Alimboyguen  
Kapolei, Hawaii 96707

File Number Encroachment: A-12-10  
2012 JUL - 2 P 3:07  
RECEIVED  
LAND DIVISION  
DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII

Dear Mr. Kim,

SUBJECT: Request to Resolve State Land Encroachment at  
Kaneohe, Oahu, Tax Map Key (1) 4-7-024:022. Owner: Bruce H.S. Kim.

This is in response to your request to resolve the shoreline encroachments at Tax Map Key (1) 4-7-024:022.

According to information and maps contained with your request, you have identified approximately 117 square feet of encroachment (concrete masonry unit (CMU) seawall) makai of the subject property on State land.

OCCL staff was unable to locate any construction permit or other land use authorization permits at the State or at the County Planning/Building Department for the subject improvements. However, the wall appears to be old and was most likely built when the lot was developed, based on the photographs provided by the applicant. As a consequence, DLNR will not be asking for an after-the-fact Conservation District Use Application to cure this matter. Should the OCCL find that either the seawall was built without permits, within the Conservation District after 1964, the OCCL may reconsider this finding.

The Board of Land and Natural Resource (BLNR) established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;

EXHIBIT "D"

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 coastal uses along the coastline are primarily residential. The adjacent properties are fronted by similar seawalls.*

Beach Resources:

*There are limited beach resources fronting the encroachment. The narrow beach is composed largely of terrigenous sediment (mud, alluvium) and is typically submerged during high tides. Therefore, the beach is of limited use for recreation.*

Public Access:

*This section of coast has limited public access fronting this seawall and along adjacent properties. Public access from Kamehameha Highway does not appear to be available in the immediate area.*

Effect of Removing the Encroachment on:

*Beach Resources: OCCL staff has determined that removal of the encroaching portions of the seawall will not improve beach resources because the encroachments are negligible and don't intrude substantially in the beach area. Further, the beach in this area is of limited recreational use.*

*Public Access: OCCL staff has determined that no improvement would be gained by removing the encroaching seawall.*

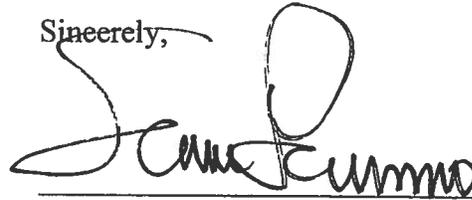
*Affect on Adjacent Properties: Removal of the encroaching seawall might destabilize the lawn at the subject property and the lawns and seawalls at the adjacent properties.*

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

Upon review and careful consideration of the information gathered on this case, staff has determined that the requirements stated in HRS § 205A, HRS § 183C, and in the OCCL's evaluation criteria would support a disposition request being processed for the seawall. The OCCL suggests that any disposition require the land uses remain unimproved. Please contact the Oahu District Land Agent at 587-0433, should you choose to pursue an easement for the subject encroaching structure.

Please feel free to contact Sea Grant Extension Agent Brad Romine, at the Office of Conservation and Coastal Lands at [Bradley.M.Romine@hawaii.gov](mailto:Bradley.M.Romine@hawaii.gov) should you have any questions.

Sincerely,

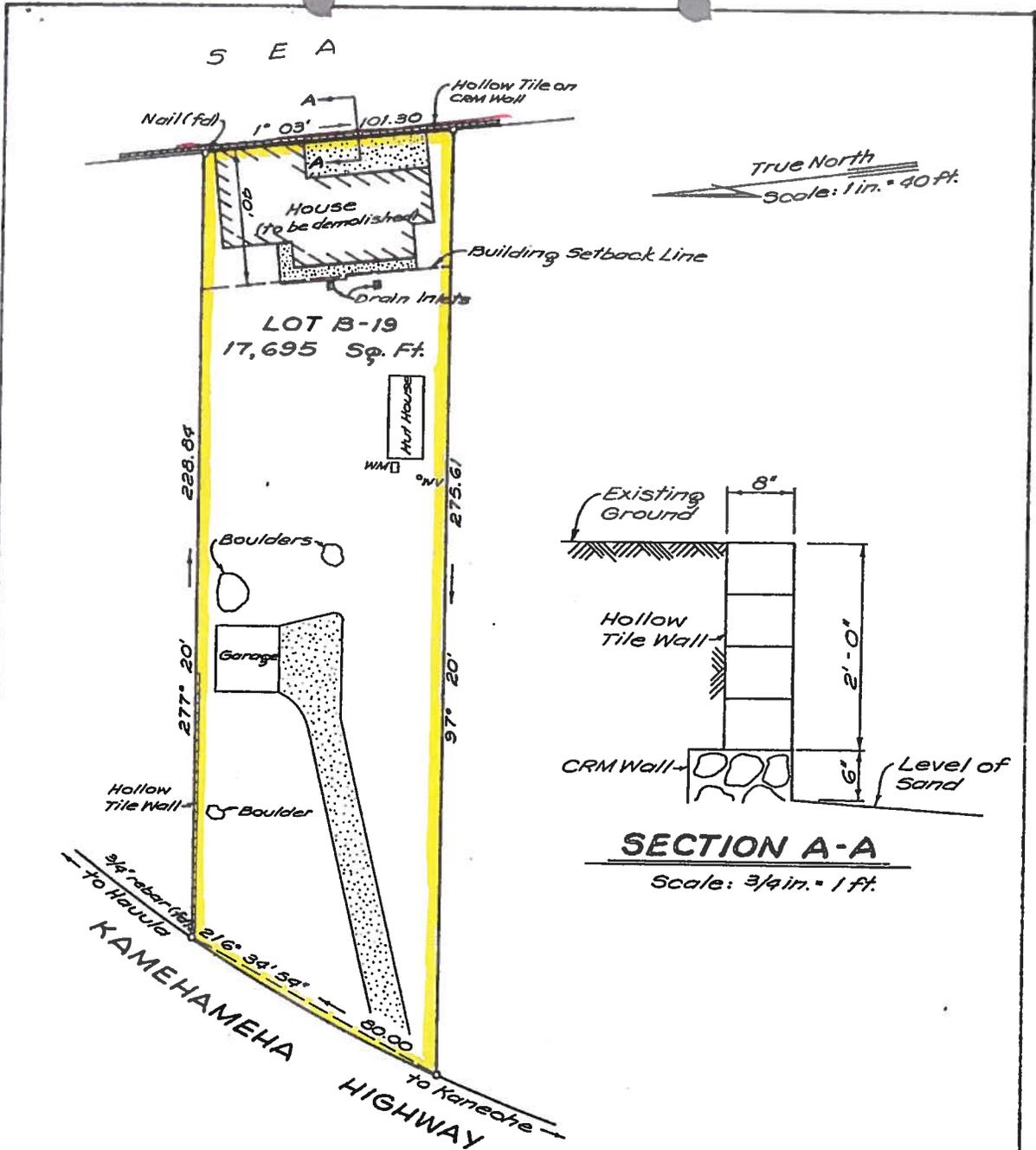
A handwritten signature in black ink, appearing to read "Samuel J. Lemmo". The signature is written in a cursive style with a large, looped initial "S".

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Samuel J. Lemmo, ADMINISTRATOR  
Office of Conservation and Coastal Lands

Cc: Land Division





**TOPOGRAPHIC MAP OF LOT B-19  
OF LAND COURT APPLICATION 1341**

*Kaalaea, Koolaupoko, Oahu*

Tax Map Key: 9-7-24:22 Scale: 1 in. = 40 ft. August 30, 1973

The shoreline as located and certified and delineated in red is hereby confirmed as being the actual shoreline as of SEP 4 1973 For Deen Morita

*Tazutaka Saihi*  
State Land Surveyor  
Owner: Deen Morita

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION.  
*Kataichi Ninomiya*

