

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

March 14, 2025

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

PSF No.: 24OD-104

Oahu

Grant of Term, Non-Exclusive Easement, Immediate Right-of-Entry, and Revocable Permit to Joseph Bismark for Boulder Retention, Portion of Concrete Steps, and Portion of Concrete Walkway, Kailua, Koolauapoko, Oahu, Tax Map Key: (1) 4-3-001: seaward of 014.

APPLICANT:

Joseph Bismark, fee owner of the private property.

LEGAL REFERENCE:

Sections 171-13, 171-17, 171-53, and 171-55, Hawaii Revised Statutes (HRS), as amended. Section 13-222-19, Hawaii Administrative Rules (HAR).

LOCATION:

Portion of State land located in Kailua, Koolauapoko, Oahu, identified by Tax Map Key: (1) 4-3-001: seaward of 014, as shown on **Exhibits A-1 and A-2**.

AREA:

1,372 square feet, more or less, to be reviewed and approved by the Department of Accounting and General Services, Survey Division. (**Exhibit B**)

ZONING:

State Land Use District: Conservation
City & County of Honolulu LUO: Residential A (for abutting private property)

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Unencumbered with encroachments.

TERM, NON-EXCLUSIVE EASEMENT:

CHARACTER OF USE:

Right, privilege and authority to use, maintain, and repair existing boulder revetment, portion of concrete steps, and portion of concrete walkway 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 value, subject to review and approval by the Chairperson.

TERM:

Twenty-five (25) years.

The Land Division has reduced the term for which shoreline easements are granted from 55 to 25 years in response to sea level rise projections disclosed in the Hawaii Sea Level Rise Vulnerability and Adaptation Report adopted by the State Climate Change Mitigation and Adaptation Commission and pursuant to the recommendation of the Office of Conservation and Coastal Lands. Landward migration of the shoreline is currently occurring as a direct result of sea level rise. This will progressively expose immobile shoreline structures to an evolving combination of destructive effects from erosion, chronic flooding, and wave inundation. The intention of the term reduction is two-fold: (1) to reduce the potential for accidents and liabilities resulting from dysfunctional shoreline structures by more frequently reviewing and managing shoreline structures and (2) to facilitate a general process of managed retreat from the shoreline.

MONTHLY RENTAL FOR RIGHT-OF-ENTRY AND REVOCABLE PERMIT:

Monthly rental amount \$815 for right-of-entry and revocable permit has been calculated by staff and has been reviewed and approved by the Chairperson.

REMOVAL BOND:

Applicant shall be required to post a removal bond in an amount of \$24,325, as determined by Land Division in consultation with Engineering Division, subject to approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) §§11-200.1-15 and -16 and the Exemption List for the Department of Land and Natural Resources, reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an Environmental Assessment pursuant to General Exemption Type 1, which applies to “[o]perations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing.” Specifically, the subject request is exempt under Part 1, Item 39, which exempts the “[c]reation or termination of easement, covenants, or other rights in structures or land.” The subject request is a de minimis action that is expected to have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment.

DCCA VERIFICATION:

Not applicable. Applicant is an individual and is not required to register with DCCA for this purpose.

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards at Applicant’s own cost;
2. Provide liability insurance with minimum coverage of \$1,000,000 per occurrence and \$2,000,000 aggregate, with the State of Hawaii Department of Land and Natural Resources named as an additional insured, for the easement area for the entire, successive terms of the requested right-of-entry permit, revocable permit, and easement;
3. Pay for an appraisal to determine one-time payment in consideration of the easement; and
4. Obtain the prior concurrence of the Legislature and approval of the Governor through a Concurrent Resolution pursuant to §171-53(c), HRS.

JUSTIFICATION FOR REVOCABLE PERMIT:

The land disposition presented to the Board as one of the recommended options in this matter is an orderly process that uses a series of permits structured to allow for immediate use and occupancy and proceed on a direct course to a to a long-term lease, subject to conditions that benefit the State. The land disposition requested in the present submittal is a three-stage process encompassing:

1. Issuance of a right-of-entry permit for a period of up to six months. This allows the Applicant to immediately legitimize occupancy of the public land in question, begin repair and maintenance of the shoreline protection structure without undue delay and without cost to the State, and begin preparations for the Applicant's obligations under future land dispositions.¹ The right-of-entry permit includes requirements for payment of monthly rent, provision to the Department of a removal bond or equivalent securitized funds, indemnification of the State, and provision of liability insurance by the Applicant. The purpose of the removal bond is to ensure that there are funds available to remove the encroachment from State land in the event that the Legislature or Governor does not approve the easement authorized by the Board.
2. Issuance of a revocable permit for no longer than one year. This allows Land Division time to complete the administrative processes that underlie the grant of easement including approval of the easement contract by the Department of the Attorney General, completion of the appraisal (at the Applicant's cost) to determine the lump-sum payment for value of the easement, and approval of the Legislature and Governor of the easement while the Applicant maintains the same obligations for rent payments, removal costs, indemnification, and provision of liability insurance.
3. Issuance of an easement. This final step cannot be executed without prior completion of the prerequisites stated above. Therefore, the interim disposition through revocable permit is necessary.

The interim revocable permit step is limited in its duration and essential in its utility. While the revocable permit is in effect, the Applicant assumes the costs of maintaining the subject parcel of State land and the liability for any damages caused on or by the Applicant's use of the land during the often-lengthy process of consummating the easement.

¹ The Applicant's obligations under a right-of-entry and revocable permit include obtaining a survey to confirm the size of the disposition area, obtaining a cost estimate for removing the shoreline protection structure which determines the amount of the removal bond, and procurement through Land Division of an appraisal to determine the lump-sum value of the easement.

REMARKS:

The Applicant originally submitted an application for shoreline certification to Land Division in April 2024. This application was rejected pursuant to section 13-222-19, HAR, due to the presence of a boulder revetment, headwall, storm drain, concrete stairs with metal railing, and concrete walkway which were not documented and constitute unresolved encroachments in the shoreline area. In May 2024, the Applicant submitted a Shoreline Encroachment Information Sheet to the Office of Conservation and Coastal Lands (OCCL) and requested an easement to resolve the encroachments. Because of OCCL's findings that the encroachments are non-conforming and include County infrastructure, Land Division agreed to accept the Applicant's shoreline application for processing simultaneously with processing of the Applicant's shoreline disposition request.

In a letter dated May 13, 2024, OCCL found that the encroachments are non-conforming structures which may be resolved through a land disposition. Based on historical aerial photographs and land surveys submitted to OCCL by the Applicant, the encroaching structures were located within the private property boundaries and outside of the Conservation District at the time they were constructed and have become located within the Conservation District due to mauka migration of the shoreline. **(Exhibit C)**

The documents submitted by the Applicant to OCCL include a Land Court map delineating a ten-foot-wide easement across the private property in favor of the City & County of Honolulu for storm drain purposes. The City & County's GIS map that documents its stormwater system identifies the storm drain as Object ID 31994 and the stormwater conduit attached to the drain as Object ID 23907. The storm drain, headwall, a portion of the concrete steps including the metal railing, and a portion of the concrete walkway are located within the storm drain easement. Land Division considers the encroachments located within the storm drain easement to be resolved for purposes of shoreline certification and will pursue a separate land disposition in favor of the City & County of Honolulu for that portion at a later date.

The unresolved encroachments outside of the storm drain easement area consist of a boulder revetment abutting a non-conforming seawall that is within the private property boundaries, a portion of the concrete stairs, and a portion of the concrete walkway. It is unknown when the encroachments were constructed and Staff was not able to locate any building permits for any portions of the encroachment, including those portions within the City & County easement. However, aerial photographs show that the structures were present on the property at least as early as 1967. **(Exhibit C)** The Applicant asserts that the concrete steps and railing were installed and are maintained by the City & County of Honolulu and are regularly used by City & County personnel to access the storm drain and headwall for infrastructure maintenance purposes. Staff confirmed that the headwall, storm drain, a portion of the steps, the railing, and a portion of the concrete path are within the City & County easement area. Staff was not able to confirm ownership

of the infrastructure outside of the City & County easement area. However, the Applicant has agreed to assume responsibility for all of the infrastructure that lies outside of the City's easement area on the Applicant's proposed easement area, even if the infrastructure is appurtenant to the City's storm drain.

Comments on this submittal were requested from the City and County of Honolulu's Department of Planning and Permitting, Board of Water Supply, and Department of Facilities Maintenance and the Office of Hawaiian Affairs. As of the writing of this submittals, comments have not been received. If received prior to the Board hearing on this matter, agency comments will be submitted to the Board as additional exhibits.

The Office of Conservation and Coastal Lands was consulted on this submittal. OCCL supports the easement disposition and concurs with the proposed exemption pursuant to chapter 343, HRS.

The 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.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and §§11-200.1-15 and -16, HAR, this project is expected to have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment as a de minimis activity.
2. Authorize the continued applicability of the subject requests in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 4-3-001:014, provided that 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. Authorize the issuance of a right-of-entry permit to Joseph Bismark covering the subject area for encroachment 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 right-of-entry permit form, as may be amended from time to time;
 - B. Posting of a removal bond during the effective period of the right-of-entry permit;
 - C. Removal of the subject encroachment, if required, within the period

- determined by the Chairperson;
- D. Commencement of the right-of-entry on the Board date, for a term of one year or until the issuance of the revocable permit described in recommendation 4 below, whichever is sooner; provided that the Chairperson may extend the right-of-entry for additional one-year periods for good cause shown; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
4. Authorize the issuance to Joseph Bismark of a revocable permit covering the subject area for encroachment 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 revocable permit form, as may be amended from time to time;
 - B. Posting of a removal bond during the effective period of the revocable permit;
 - C. Removal of the subject encroachment, if required, within the period determined by the Chairperson;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance Joseph Bismark of a 25-year term, non-exclusive easement covering the subject area for encroachment 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) 4-3-001:014, 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 State, as Grantor, of such transaction in writing, and shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;

- C. Prior concurrence of the Legislature and approval of the Governor through a Concurrent Resolution 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,



Rebecca L. Anderson
Shoreline Specialist

APPROVED FOR SUBMITTAL:



RT

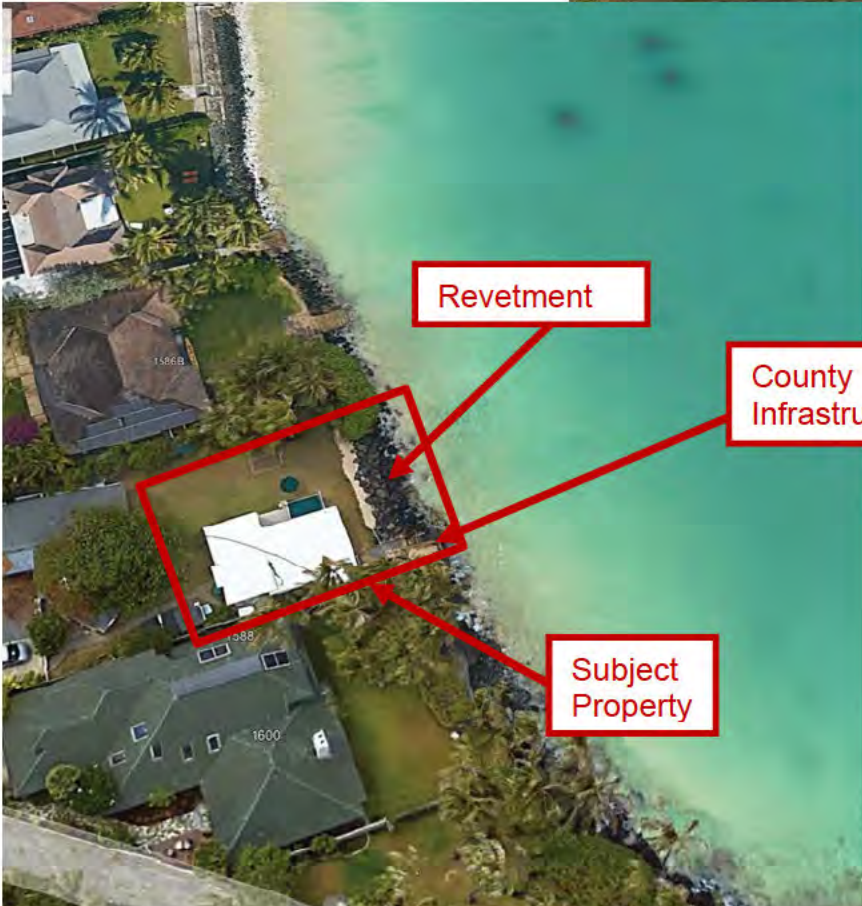


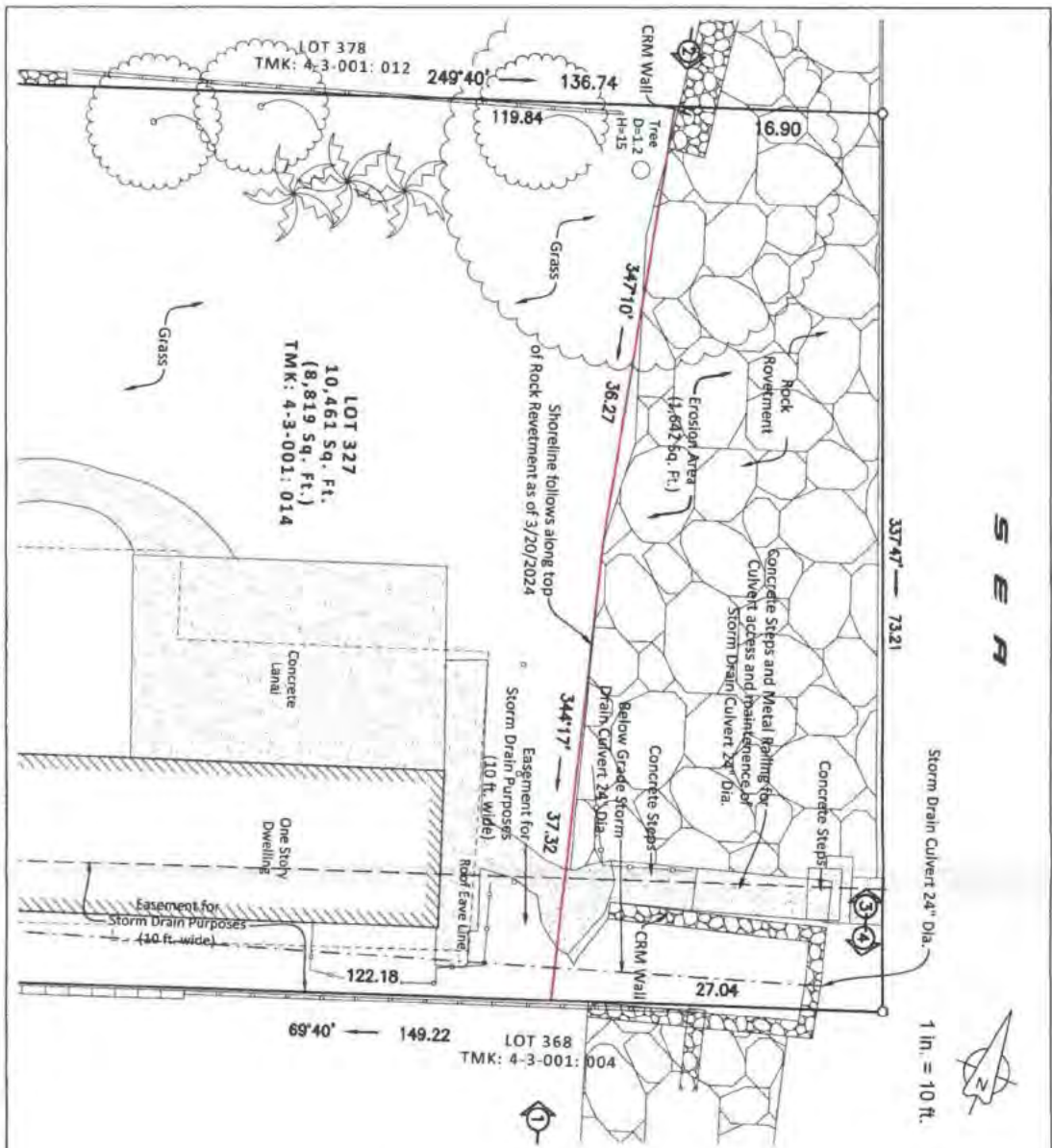
Dawn S. N. Chang, Chairperson

TMK: (1) 4-3-01: seaward of 014



TMK: (1) 4-3-01: seaward of 014





S E A



1 in. = 10 ft.

SHORELINE CERTIFICATION MAP

LOT 327 ON MAP 51
LAND COURT APPLICATION 616

Tax Map Key: (1) 4-3-001: 014

AT KAILUA, KOOLAUPOKO, OAHU, HAWAII

Site Address: [Redacted]
Kailua, Hawaii 96734
Owners: Joseph Bismark



This work was prepared by me or under my supervision
Benjamin E. K. Guieb
Licensed Professional Land Surveyor
Certificate Number 19770
Exp. 4/30/2026

- NOTES:
1. - (1) - Symbol represents direction and location of photographs taken on March 20, 2024 at 1130.
 2. Property Corners were found or marked and set as shown in Map.

PAPER SIZE: 10" x 15"

EXHIBIT B

JOSH GREEN, M.D.
GOVERNOR | KE HIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K. P. KANAOKLE
FIRST DEPUTY

DEAN D. UYENO
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
KAILODLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

To: Dawn N. S. Chang, Chairperson
Through: Russell Y. Tsuji, Administrator
From: Land Division, Appraisal Section
Date: September 4, 2024
Subject: Joseph Bismark Shoreline Revocable Permit

A shoreline revocable permit valuation was prepared for the property below and is summarized as follows:

Reference: PSF No. 24OD-104
Applicant: Joseph Bismark
TMK: (1) 4-3-001: seaward of 014
Area: 1,035 square feet, more or less
Effective Date: Upon Board Approval
Recommended Value: **\$815 per month**

The undersigned finds that the valuation was completed in accordance with the assignment.

^{PT} Dawn N. S. Chang, Chairperson

Sep 4, 2024

Date

TMK	(1) 4-3-001:seaward of 014
Assessed Land Value (\$)	4,941,300
Land Area (sf)	10,461
Unit Rate Land Value (\$/sf)	472.3545
50% Off For Submerged Lands	236.1772
Encroachment Area (sf)	1035
Encroachment Land Value (\$)	244443.4
Annual Rent @ 4 to 8%	0.04
Recommended Annual Value	9777.737
Monthly Value	814.8114

JOSH GREEN, M.D.
GOVERNOR OF THE STATE OF HAWAII

SYLVIA LUKE
DEPARTMENT CHIEF OF POLICE



KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA
OFFICE OF CONSERVATION AND COASTAL LANDS
P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
HAWAIIAN ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:CM

Shoreline Encroachment OA 24-07

Joseph Bismark

May 13, 2024

[REDACTED]
Kailua, Hawaii 96734

SUBJECT: Request to Resolve State Land Encroachment at [REDACTED]
Lanikai, Oahu; Tax Map Key (1) 4-3-001:seaward of 014

Dear Mr. Bismark,

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) is in receipt of your Shoreline Encroachment Information Sheet package submitted by Chris Harvey, your agent, seeking to resolve an encroachment on State land seaward of the subject property. Your package included a Shoreline Encroachment Information Sheet, a 2007 shoreline map, a 2024 shoreline map showing the proposed shoreline and encroachment area, aerial photos from 1959, 1963, and 1967 of the encroachments, and current photos of the encroachment (see **Exhibit 1-photos**).

According to the information you provided, there is a rock revetment, stairs, and a City and County storm water drainage that is located makai of the proposed shoreline (see **Exhibit 2-2024 easement map**). These structures appear to be within the State Land Use Conservation District Resource subzone. Encroachments makai of the shoreline are under the jurisdiction of the DLNR. The OCCL regulates land use within the Conservation District pursuant to Hawaii Administrative Rules, Chapter 13-5.

Based on the 2024 shoreline map, you calculated an encroaching area of approximately 1035 square feet area for the rock revetment and approximately 360 combined square feet area for the stairs and storm water drainage.

Land Court Application Map No. 616, dated July 1924, showed the high-water mark location makai of the subsequently built revetment, stairs, and storm drain. Thereafter, no certified shoreline was completed to ascertain a more current shoreline location.

From the information submitted, it is unclear when the encroachments were established. However, the 1967 aerial photo shows the encroaching structures being located within

Joseph Bismark
Revetment, stairs, and storm water drain encroachment

Shoreline Encroachment OA 24-07

the property boundary and mauka of the shoreline (see **Exhibit 3-1967 aerial photo**).¹ Further, the 2007 shoreline survey conducted by DJNS Surveying and Mapping, Inc., identified the shoreline makai of the revetment, stairs, and storm water drain (see **Exhibit 4-2007 shoreline survey**). The OCCL has determined the revetment, stairs, and storm drainage appears to have been constructed within the private property prior to its inclusion in the Conservation District, therefore, the structures are considered non-conforming.

Hawaii Administrative Rules, §13-5-2, defines nonconforming use as the lawful use of any building, premises, or land for any trade, industry, residence, or other purpose which is the same as and no greater than that established prior to October 1, 1964, or prior to the inclusion of the building, premises, or land within the conservation district.

It is OCCL's understanding the revetment, stairs, and storm drain now lie within the shoreline and are encroaching on unencumbered State submerged lands. Since these structures are determined to be a non-conforming, they do not require a Conservation District Use Permit (CDUP) from our office, but please be advised that any future proposed work and/or repair to the structure may require a review and possibly authorization from the Department or the Board of Land and Natural Resources. If you have any questions about the rules and regulations of the Conservation District, please read the Hawaii Administrative Rules, Chapter 13-5, which can be found on our website at <https://dlnr.hawaii.gov/occl/files/2013/08/HAR-13-5-2021.pdf>.

Although a CDUP is not required for the revetment, please contact the Land Division to determine if a disposition may be needed to resolve the encroachments.

Should you have any questions regarding this correspondence, contact Cal Miyahara of our Office at (808) 798-6147 or calen.miyahara@hawaii.gov.

Sincerely,

S. Michael Cain

Michael Cain, Administrator
Office of Conservation and Coastal Lands

CC: Chairperson
ODLO
City & County of Honolulu-DPP
OHA

¹ The rectangular shape on the 1967 aerial photo appears to indicate the private property boundaries. However, the shape is not accurately drawn or drawn to scale. The makai boundary line should be located further mauka, but still makai of the encroaching structures.

Joseph Bismark
Revetment, stairs, and storm water drain encroachment

Shoreline Encroachment OA 24-07

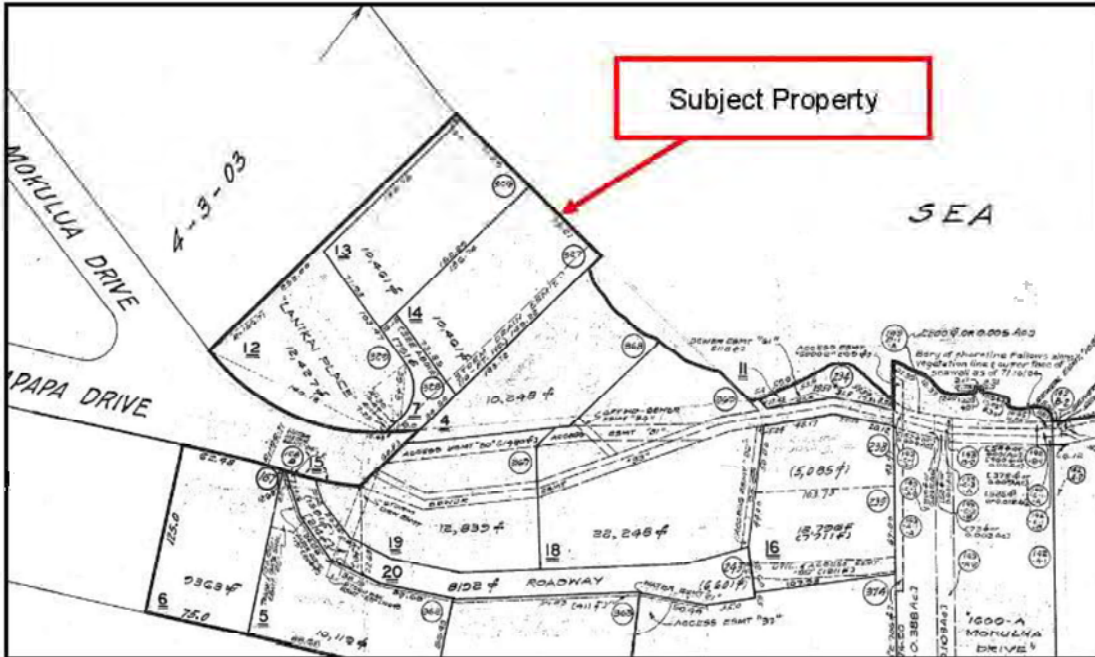


Note: [redacted] revetment, stairs, and storm drain. TMK: (1) 4-3-001:014.

Exhibit 1

Joseph Bismark
Revetment, stairs, and storm water drain encroachment

Shoreline Encroachment OA 24-07



Joseph Bismark
Revetment, stairs, and storm water drain encroachment

Shoreline Encroachment OA 24-07



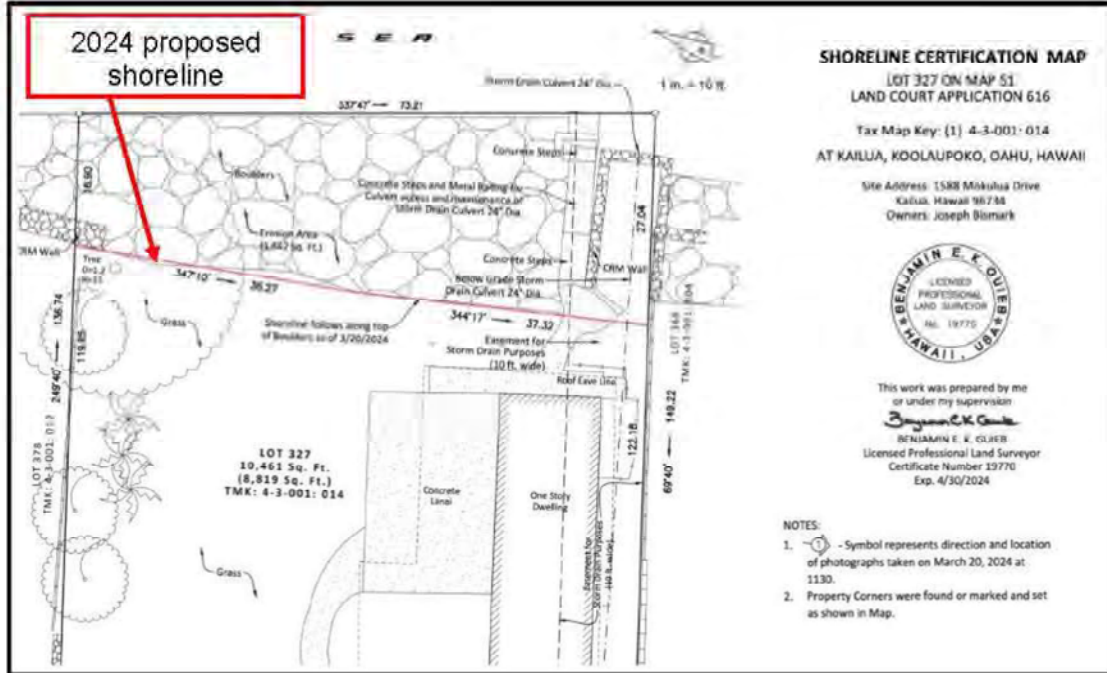
Note: Photo of revetment looking north. Waves are washing up the revetment.



Note: Photo of City and County stairs and storm water drainage.

Joseph Bismark
Revetment, stairs, and storm water drain encroachment

Shoreline Encroachment OA 24-07



Note: 2024 shoreline map showing the encroaching revetment, stairs, and storm drain.

Exhibit 2

Joseph Bismark
Revetment, stairs, and storm water drain encroachment

Shoreline Encroachment OA 24-07

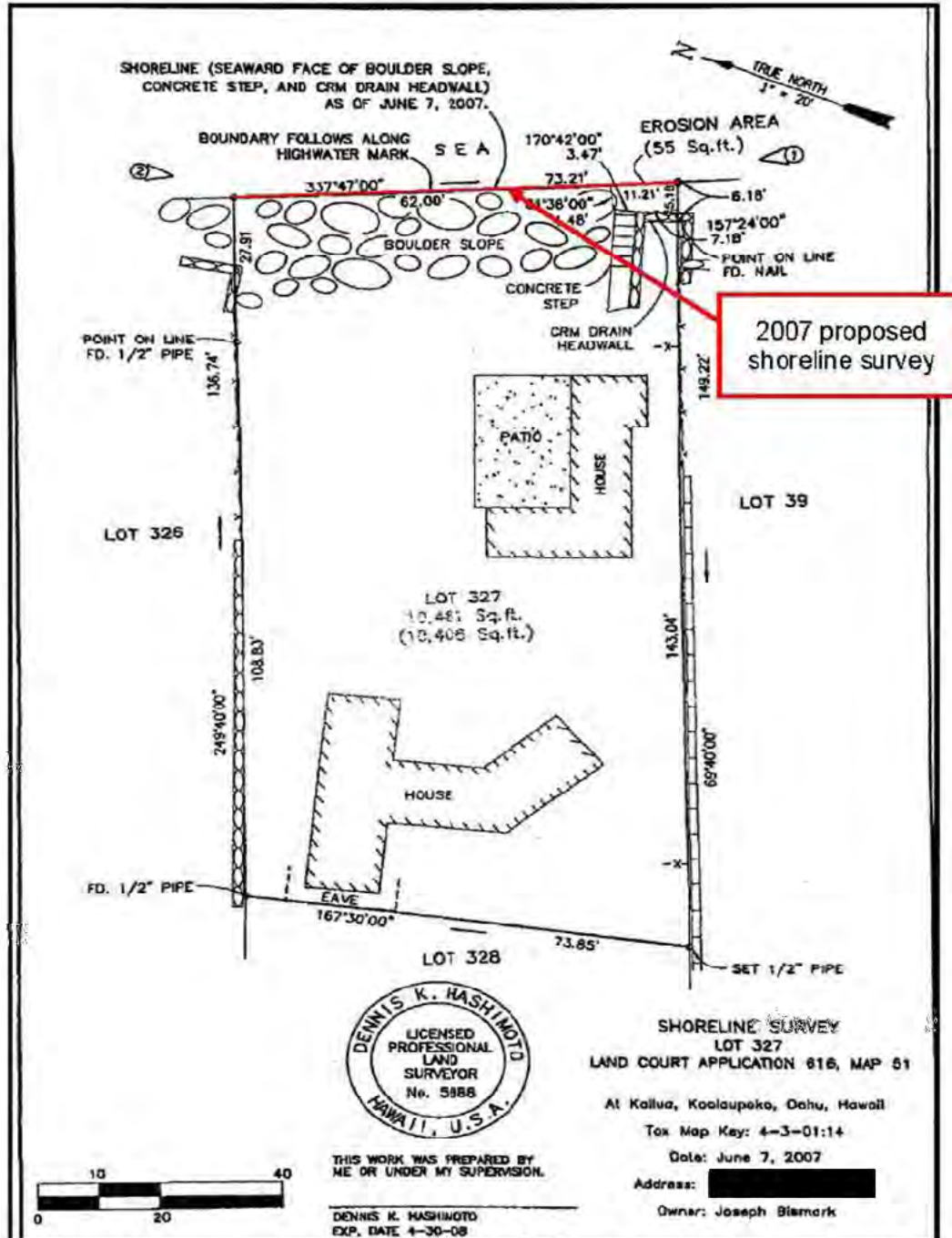


Note: 1967 aerial photo showing encroaching structures mauka of the shoreline.

Exhibit 3

Joseph Bismark
Revetment, stairs, and storm water drain encroachment

Shoreline Encroachment OA 24-07



Note: 2007 shoreline survey showing the proposed shoreline makai of the revetment, stairs, and storm water drain.

Exhibit 4