

# **FINAL ENVIRONMENTAL ASSESSMENT**

**Residential Rock Wall in the Shoreline Setback Area  
45-010 Springer Place, Kaneʻohe, Oʻahu  
TMK 4-5-047:117**

Applicant: Mr. Valentine Peroff

April 2014

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45-010 Springer Place, Kane'ohē, O'ahu  
TMK 4-5-047:117**

Prepared For:  
Mr. Valentine Peroff

Prepared By:



In Association With LYON

April 2014

This document is prepared pursuant to:  
The Hawaii Environmental Policy Act, Chapter 343, *Hawai'i Revised Statutes* and  
Title 11, Chapter 200, Hawai'i Department of Health Administrative Rules.

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## **Exhibits**

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- Exhibit 1 Project Location Map**
- Exhibit 2 Tax Map**
- Exhibit 3 Photos**
- Exhibit 4 2007 Survey by ControlPoint Surveying, Inc.**
- Exhibit 5 LYON Report**
- Exhibit 6 Soil Survey**
- Exhibit 7 Flood Insurance Rate Map and Tsunami Zone**
- Exhibit 8 Public Shoreline Access**
- Exhibit 9 Significant Views**
- Exhibit 10 U.S. Army Corps of Engineers Correspondence**
- Exhibit 11 Notice of Violation**
- Exhibit 12 Notice of Resource Violation**
- Exhibit 13 Comments to the Draft EA**

## List of Acronyms

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BMP	Best Management Practices
BWS	Board of Water Supply
CRM	Concrete Rubble Masonry
DLNR	Department of Land & Natural Resources
DOH	Department of Health
DPP	Department of Planning and Permitting, City and County of Honolulu
EA	Environmental Assessment
FIRM	Flood Insurance Rate Map
FONSI	Finding of No Significant Impact
HAR	Hawai'i Administrative Rules
HECO	Hawaiian Electric Company
HRS	Hawai'i Revised Statutes
MSL	Mean Sea Level
NAAQS	National Ambient Air Quality Standards
ROH	Revised Ordinances of Honolulu
SCP	Sustainable Communities Plan
SHPD	State Historic Preservation Division
SSV	Shoreline Setback Variance
TMK	Tax Map Key
USACE	United States Army Corps of Engineers
USDA	United States Department of Agriculture

# 1. PROJECT SUMMARY

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**Proposed Action:** This document is prepared after-the-fact for a rock retaining wall, stairs, fence, and gates built within the shoreline area as defined by Chapter 23 of the *Revised Ordinances of Honolulu (ROH)*. Once this document is published, the applicant will proceed to apply for an after-the-fact shoreline setback variance permit which is required for the structure. All shoreline setback variance permits are subject to Chapter 343, *Hawai'i Revised Statutes (HRS)*. This document is prepared pursuant to Chapter 343, *HRS*.

The subject rock wall is situated on the applicant's private residential lot parallel to the seaward edge. Its location within the shoreline setback area varies in distance along its length. There are two openings in the wall where stairs lead from the higher elevation yard area to the shore and both of these openings have wooden gates. The northern opening has a wooden fence in addition to a gate.

**Property:** TMK Area  
4-5-047:117 26,287 square feet (0.603 acres)

**Recorded Fee Owner/  
Applicant:** Mr. Valentine Peroff  
45-010 Springer Place  
Kane'ohe, HI 96744  
(808) 487-1445

**Authorized Agent:** PlanPacific, Inc.  
1001 Bishop Street, Suite 2755  
Honolulu, HI 96813  
Contact: Lisa L. Imata, (808) 521-9418

**Approving Agency:** Department of Planning and Permitting  
City and County of Honolulu

**State Land Uses:** Urban

**Zoning Districts:** R-10 Residential

**Special Management Area:** The subject property is entirely within the SMA.

**Shoreline Setback:** 40 feet

**Special Design District:** Not applicable

**Agencies in Contact:** City & County of Honolulu  
Department of Planning and Permitting

State of Hawai'i  
Dept. of Land and Natural Resources

Federal  
U.S. Army Corps of Engineers

**Required Permits:** Shoreline Setback Variance  
(Other permits such as shoreline encroachment and State easements may be required)

**HRS, Chapter 343 Action:** Construction within the shoreline area as per Chapter 205A-41, ROH.

**Anticipated Determination:** Finding of No Significant Impact (FONSI).

## **2. DESCRIPTION OF THE PROPOSED ACTION**

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### **2.1. BACKGROUND**

This Environmental Assessment (EA) was prepared after-the-fact for a rock retaining wall for a private residence. This EA was prepared for the project because of the project's location within the shoreline area, as defined by Chapter 23 of the Revised Ordinances of Honolulu (ROH), requiring a Shoreline Setback Variance (SSV) Permit from the City and County of Honolulu's Department of Planning and Permitting (DPP), which in turn requires compliance with Chapter 343 of the *Hawai'i Revised Statutes (HRS)*. The applicant intends to apply for an after-the-fact SSV permit upon publication of this document.

### **2.2. PROJECT LOCATION AND SITE DESCRIPTION**

The subject property is located on the windward side of O'ahu, in the Ko'olau Poko Sustainable Communities Plan area, at Kane'ohe Bay, north of the Kane'ohe Marine Corps Base Hawai'i. See Exhibit 1. The street address is 45-010 Springer Place and the tax map key (TMK) is 4-5-047:117.

The subject property is in a hillside coastal residential area. It is a flag lot at the end of a dead-end street and it is a shoreline lot. The property has a long "flag-pole" access of approximately 160 feet long. The access is 14 feet wide and leads to the main area of the property that is wedge-shaped. The total lot area is 26,287 square feet, of which, roughly 2,200 square feet make up the access area. See Exhibit 2.

The majority of the property is generally a flat plateau situated around 20 feet above mean sea level (MSL). There is a long slope occurring along the northwestern property edge starting at the access driveway and continuing along where steps and a swale lead down to the shoreline. See Photo A of Exhibit 3. Along the curving property edge that follows the shoreline, the slopes are much steeper, i.e. the yard drops down to the shore. From earlier surveys, it appears that prior to the new wall, the majority of the property was level and at the same elevation as existing, but the change in slope began further inland, especially at the north and south corners. See Exhibit 4. The applicant has stated that the slope along the north was historically used for bringing private boats down to shore. It also functioned and still functions as a route for storm water surface runoff.

The subject property is developed with one single-family residence and garage. The structures are single-story buildings that were built in the 1970s. The majority of the yard area is at the rear of the property and it is mostly landscaped with grass.

The surrounding residences up and down the shore from the subject property have varied conditions and developments at their shore areas. Many residences have piers, including the subject property, some have sea walls, some have wooden docks or other structures, and some have an abundance of vegetation that obscures the shoreline. The character of the shoreline in the area is highly diverse and not very walkable. The City's *Ko'olaupoko Sustainable Communities Plan* of 2000 describes the larger shoreline area as follows:

***Kane'ohē Bay, from He'eia Fishpond to Nu'upia Pond.*** Similar to the northern end of Kane'ohē Bay, most of the shoreline in this section is stable. Vertical retaining walls have been constructed along many of the properties to support docks or to prevent soil banks from slumping into the water, but there are no chronic or significant patterns of erosion or accretion. Physical and visual access to the shoreline is very limited due to residential and other private urban or marina development along almost the entire length. Public access is available at the small Kane'ohē Beach Park, where parking and facilities are very limited.



Man-made structures lining Kane'ohē Bay, near the Marine Corps Base.

### **2.3. PROJECT DESCRIPTION**

The subject project, to be permitted after-the-fact, is a rock or concrete rubble masonry (CRM) retaining wall on the perimeter of the property located parallel to the seaward edge and returning along the side yards. According to a February 2014 report and site plan prepared after-the-fact by LYON engineers, the wall portion within the 40-foot

shoreline setback area is approximately 260 feet long. The portion of the southwest side yard wall in the setback area is approximately 24 feet long and the portion of the northwest side yard wall in the setback area is approximately 44 feet long. The corner of the wall in the north appears to extend beyond the shoreline based upon the 1975 certified shoreline. Refer to Exhibit 5, Appendix D, Sketch 1. A new shoreline certification will be needed to verify the location of the current shoreline, which may be further mauka or makai than in 1975. The estimated amount of backfill retained by the wall is 850 cubic yards. See Exhibit 5, Appendix D.

The typical thickness of the wall is 2 feet at the top and it widens to 7 feet at the footing. The height of the wall is 12 feet tall at maximum. There are two openings in the wall where stairs lead from the higher elevation yard area to the shore. One opening is in the middle of the lot and the other is at the north end. Both of these openings have wooden gates. The northern opening has a wooden fence in addition to a gate. See Photo B, Exhibit 3. As shown in the wall detail of Appendix D, Exhibit 5, grouting was used throughout the wall and for the footing and cap. Weep holes penetrate the wall at intervals for drainage purposes.

According to LYON engineers:

*Based on the type of wall that has been constructed (CRM retaining wall), the structure would not be considered a typical seawall or shoreline revetment structure to provide shoreline stability. By Hawai'i Administrative Rules: Title 13 – DLNR Sub-Title 10 Chapter 222, a "seawall" can be defined as a structure with a vertical face separating land and water areas, primarily designed to prevent erosion and other damage due to wave action. The constructed CRM retaining wall is a structure with a vertical face that is primarily along the land embankment and only separates land and sea areas near the ramp area on the north side of the lot; however, based on the information having been provided, it was not designed to prevent erosion and any other damage due to wave action. The CRM wall primarily serves to stabilize the embankment from the upper property areas (where the house and backyard areas are around elevation 20') down to the shoreline areas (around elevation 0' to 4') by providing a retaining structure. This will also prevent erosion of the slope and storm water runoff from percolating into the ground. The CRM wall will allow water to drain through the weep holes near the bottom of the wall in lieu of flowing down the embankment slope. The majority of the CRM wall is built with a setback from the shoreline with the wall base construction at an elevation above the mean higher-high water levels (MHHW). (See Exhibit 5, page 3)*

As previously mentioned, available maps show that prior to the construction of the wall, the edges where the yard transitioned from being relatively flat to sloping down to the shore were farther inland than what exists today. Construction of the subject project involved demolition of the pre-existing wall and walkway, excavation to prepare the wall foundation, grubbing to remove some vegetation along the shoreline, grading, and filling. All of these activities occurred in the shoreline area as defined by Chapter 23, ROH.

The pre-existing non-conforming CRM wall, chain-link fencing, gates, concrete walkway, and CRM stairway that was in place prior to construction of the subject project is mapped in Exhibit 4. The pre-existing wall was approximately 115 feet long and varied in height up to 5 feet. Previous drawings of the pre-existing wall conflict, but according to LYON, the April 2007 survey completed by ControlPoint Surveying, Inc. (Exhibit 4) appears to be most accurate. The previous walkway and stairs led down to a CRM pier, the latter of which still exists today. See Photo H, Exhibit 3. The new construction replaces the old staircase in place. The pier and stairs are allowed under the State of Hawai'i's Kane'ohē Piers Amnesty Program, administered by the Department of Land and Natural Resources (DLNR); however, it is uncertain what protocol was followed for repairs/reconstruction of the stairs allowed by the Amnesty Program.

#### **2.4. PERMITS AND APPROVALS REQUIRED**

Several approvals and permits would have been or will be required from various agencies within the City and County of Honolulu and the State of Hawai'i for the project as built. A summary listing is as follows:

##### U.S. Department of the Army

- Army Corps of Engineers
  - Permit might have been required for fill within the shoreline setback area

##### State of Hawai'i

- Department of Health
  - Construction Permits might have been required (Clean Water, Air Quality, Noise)
- Department of Land and Natural Resources
  - Conservation Easement, Shoreline Encroachment, Land Disposition, or other permit(s) may be required

### City and County of Honolulu

- Department of Planning and Permitting
  - Shoreline Setback Variance Permit, still required
  - Demolition Permit, would have been required for removal of pre-existing wall and walkway
  - Grading Permit, would have been required
  - Building Permit, would have been required
  - Approval for Drainage, may have been required
  - Approval for Construction Management Plan Related to Traffic, may have been required

The applicant had hired a contractor to obtain all required permits and build the wall. The contractor submitted plans and secured building permit #663900 in 2010, but it appears the permit is only for two 6 foot tall side yard fence walls outside of the shoreline setback area. There is a plan for the larger wall in the shoreline area, but it does not have the DPP (Department of Planning and Permitting) approval stamp that appears on the other pages of the plan set. The contractor built the larger connecting wall within the shoreline area and completed it in 2011. According to the applicant, he was not aware that the contractor did not obtain all required permits.

As mentioned in the previous section, the pre-project stairs and pier on the subject property was accepted as part of the DLNR's Kane'ohu Piers Amnesty Program. In 2007, the applicant received a private noncommercial pier lease from the Land Division of the DLNR. Because the pier is located makai of the shoreline, it falls under the jurisdiction of the State.

In March 2011, the applicant was contacted by the U.S. Army Corps of Engineers (USACE), Honolulu District by letter because of a report of unauthorized discharge of fill on the ocean or makai side of the wall. The USACE said that Department of Army permits may be required. The applicant hired LYON, an engineering consultant, to respond to the letter on his behalf. The engineering consultant provided the requested information to USACE and requested a new jurisdictional determination on whether after-the-fact Department of Army permits would be required for the structure or for discharge. The USACE responded with a new jurisdictional determination and the following statement:

*...we have determined that the wall itself is not constructed in a water of the United States (U.S.) and that there was minimal discharge of construction*

*material into a water of the U.S., which has since been removed. Therefore, no further enforcement action will be taken by our office. (see Exhibit 10).*

Also in March 2011, the applicant was issued a Notice of Violation (2011/NOV-03-261) by the DPP for “CRM retaining wall constructed in the Shoreline Setback area without a variance.” See Exhibit 11. The applicant is in the process of making amends and this EA is part of the process. A Shoreline Setback Variance permit requires the preparation of an EA.

The manager of the State Coastal Zone Management Program provided comment to the Draft EA in November of 2012. According to the manager, “pursuant to HRS §205A-32, any person who violates any provision of part II or part III of HRS Chapter 205A shall be liable as follows: (1) for a civil fine not to exceed \$100,000; or (2) for the cost of returning the affected environment or ecology within the coastal zone management area to the condition existing before the violation.”

### **3. DESCRIPTION OF THE AFFECTED ENVIRONMENT, POTENTIAL IMPACTS, AND MITIGATIVE MEASURES**

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#### **3.1. CLIMATE**

##### Existing Condition

O'ahu's subtropical location and topography are the primary influences on local climate. In general, prevailing northeasterly trade winds occur approximately 70 percent of the year with higher percentages in the summer months than winter, which give way to light, variable wind conditions. Warm ocean air flowing over the Ko'olau mountain range is the primary cause for local precipitation.

The average annual rainfall at the project site is 48 inches, which is higher than most of urban Honolulu at 28 inches. According to *The Rainfall Atlas of Hawai'i*, during the 2011 winter months, the high mean monthly rainfall reached 5.71 inches. During the 2011 summer months, the low mean monthly rainfall was 2.22 inches.

The project site is in an open coastal area and is thus exposed to breezes and morning, midday, and afternoon sun. Average monthly temperatures in Kane'ohe range from a low of 63 degrees Fahrenheit in the winter, to a high of 82 degrees Fahrenheit in the summer.

##### Potential Impacts and Mitigative Measures

No significant impacts to local temperature, rainfall, or wind patterns are anticipated to be associated with the completed residential wall in the shoreline setback area. As such, no mitigation measures are required.

#### **3.2. TOPOGRAPHY AND SOILS**

##### Existing Condition

The subject property ranges in elevation from approximately 25 feet to 2.5 feet above sea level at the shoreline<sup>1</sup>. The topography is a relatively flat plateau until closer to the shoreline.

Soils information for the project site was obtained from the Natural Resources Conservation Service Web Soil Survey. According to the survey, the soil association for the subject property is Lolekaa silty clay, 3 to 8 percent slopes (LoB). See Exhibit 6.

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<sup>1</sup> Depending upon which definitions are used, the shoreline is not always at 0 feet.

According to the USDA Soil Conservation Service's Soil Survey, Lolekaa silty clay consists of well-drained soils on fans and terraces on the windward side of O'ahu. The soils developed in old, gravelly colluvium and alluvium. They are gently sloping to very steep. Elevations range from nearly sea level to 500 feet. Lolekaa soils are geographically associated with Alaeloa and Waikane soils.

In a representative profile of this soil type, the surface layer is dark brown silty clay about 10 inches thick. The subsoil is 46 to more than 70 inches thick. The upper part is dark brown silty clay that has subangular blocky structure, and the lower part is dark yellowish-brown loam that has subangular blocky structure as well. The substratum is strongly weathered gravel. The soil is strongly acid in the surface layer and strongly acid to extremely acid in the subsoil.

Permeability of the soil is moderately rapid. Runoff is slow, and the erosion hazard is slight. In places, roots typically penetrate this soil type to a depth of 5 feet or more. Lolekaa silty clay soils are used for pasture, homesites, truck crops, bananas, and papaya.

#### Potential Impacts and Mitigative Measures

The completed project involved grading and site preparation for the new rock wall and stairs. Heavy equipment was used for excavation, grading, clearing, and back-filling; the latter of which made changes to the topography and soil composition at the makai or ocean side of the property.

Short-term construction related impacts included minor soil loss and erosion, but construction activities employed Best Management Practices (BMPs) to minimize such occurrences. BMPs employed included silt fences to minimize airborne dirt particles. It is uncertain what other BMPs were employed by the contractor. It is also uncertain if construction was in full compliance with the City and County of Honolulu's *Rules Relating to Soil Erosion Standards and Guidelines* and if grading work was done in accordance to *Revised Ordinances of Honolulu (ROH)* Chapter 14, Articles 13-16 as related to Grading, Soil Erosion and Sediment Control. No further mitigation measures are proposed as the disturbed soil is currently stabilized.

### **3.3. HYDROLOGY**

#### Existing Condition

There are no streams or wetlands within the project site. Prior to the new residential wall, storm water runoff likely sheet flowed from the street, on to the property, and

down to the shore, mostly along the northern property edge. The topography pattern at the north corner, prior to the existence of the subject project, suggests long-term erosion due to runoff. Refer to Exhibit 4.

#### Potential Impacts and Mitigative Measures

The presence of the new wall lessens the amount of entry points for runoff into the shore area from the subject property. The amount of water that reaches the shore area may also decrease as a result. No mitigation is proposed.

The nature of the new construction will have no impact on surface or groundwater resources.

BMPs for site preparation typically include silt fences, dust fences, drain inlet protection, and stabilized construction access. It is not clear which BMPs were followed during construction to minimize soil erosion and runoff, protecting water resources. It is also uncertain as to what degree the contractor complied with Hawai'i Administrative Rules (HAR) regarding clean water.

It should be noted that after construction, there was an incident where red soot was placed on the shoreline. The DLNR issued a Notice of Resource Violation (CRVS-OA-4-11-22) and the applicant corrected the situation. See Exhibit 12.

### **3.4. AIR QUALITY**

#### Existing Condition

National Ambient Air Quality Standards (NAAQS) have been established for seven major air pollutants: carbon monoxide (CO), nitrogen oxides (NO<sub>x</sub>), ozone (O<sub>3</sub>), particulate matter smaller than 10 microns (PM<sub>10</sub>), particulate matter smaller than 2.5 microns (PM<sub>2.5</sub>), sulfur oxides (SO<sub>x</sub>), and lead. Air pollutant levels are monitored by the State Department of Health (DOH) at a network of sampling stations statewide. Based on ambient air monitoring data, the U.S. Environmental Protection Agency has classified the island of O'ahu and the entire State of Hawai'i as being in attainment of the federal standards.

#### Potential Impacts and Mitigative Measures

Air quality impacts attributed to the construction of the wall likely included exhaust emissions and dust generated by short-term construction activities. The contractor installed dust screen barriers to mitigate impacts. It is uncertain if other mitigation measures were used and if construction activities were conducted in accordance with

State air pollution control regulations as outlined in HAR, Chapter 11-60.1-33, Fugitive Dust. There are no current impacts to air quality due to the project since it is complete, and therefore, no mitigation is necessary.

### **3.5. NOISE**

#### Existing Condition

Noise levels in the vicinity of the project site are relatively low, consistent with the character of the surrounding residential uses and recreational use of the waters of Kane'ohē Bay.

#### Potential Impacts and Mitigative Measures

Impacts on noise levels were limited to construction activities over the short-term. The operation of construction vehicles, machinery, tools, and the increased activity due to construction likely increased noise levels above the existing and pre-existing levels. Construction noise is regulated by the DOH under HAR Chapter 11-46, Community Noise Control. It is uncertain if the contractor operated in accordance with construction noise regulations. No noise mitigation is necessary at this point.

### **3.6. FLOOD HAZARD**

#### Existing Condition

According to the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), the project site is completely in Zone X. See Exhibit 7. Zone X areas are outside the 0.2 percent annual chance floodplain.

Based on evacuation maps prepared for the O'ahu Civil Defense Agency, the property is partially within the tsunami evacuation area. See Exhibit 7. The nearest designated public emergency shelter for the area is the Benjamin Parker Elementary School.

#### Potential Impacts and Mitigative Measures

No mitigation is proposed as flooding is not a significant potential hazard.

### **3.7. FLORA AND FAUNA**

#### Existing Condition

As a residential property that has been inhabited for many decades, the subject property and general area have been impacted over time by human use and are dominated by introduced plant species. The applicant described the pre-existing vegetation at the shore's edge as full near the south corner of the property, mostly with

very mature hau trees (*Hibiscus tiliaceus*). The hau trees still remain. Other plant species were observed on the makai side of the wall during a recent site visit. Most were low lying species, vines, and weeds. See Photos C and D, Exhibit 3.

No fauna or avifauna were observed on the site.

#### Potential Impacts and Mitigative Measures

The project involved the removal of trees, the clearing of shrubs and grass, as well as the installation of new grass. There is no known significant impact to endangered or threatened species or important habitats. There are no threatened or endangered species present on the subject property and no wetlands or conditions associated with wetlands present. No mitigation is proposed.

### **3.8. HISTORICAL, CULTURAL, AND ARCHAEOLOGICAL RESOURCES**

#### Existing Condition

It is not known if any subterranean historical, cultural, or archaeological sites exist on the subject property. The property has been used as a residential site for decades and the likelihood of subsurface remains is low. Also, the property is not on the National and State Registers of Historic Places.

#### Potential Impacts and Mitigative Measures

No mitigation is proposed at this time; however, review of this document by the State Historic Preservation Division may warrant future mitigation.

The residential wall will have no effect on the existing public use of any uplands, beach, or ocean waters, or traditional or customary gathering activities. The applicant has said that the activities of wading fishermen near his property still remain. No mitigation is proposed.

### **3.9. RECREATIONAL RESOURCES**

#### Existing Condition

The subject property does not contain, nor is it located near any park, trail, or public right-of-way. The property does not contain nor is it located near public shoreline accesses. See Exhibit 8. The existing shoreline is rocky and muddy and the pre-existing condition was the same. See Photos C and D of Exhibit 3.

There is no sandy beach nearby, but there are a few small strips of sandy shoreline between piers and groins farther north and south of the subject property. The

surrounding shoreline area has a mishmash of man-made structures such as piers, walls, or breakwaters. See Photos E and F, Exhibit 3. There are many areas overgrown with impenetrable vegetation as well. There is a small boat docking area south of the subject property. Ocean recreation in the area is active, but the majority of it is likely to be boating-related.

Lateral access along the shoreline in the area is limited because of the man-made structures and varying conditions of all properties in the area. See Photos E and F of Exhibit 3 and note the overall conditions of lateral shoreline access. For the subject property, lateral access is still available, but may be limited to low tide at the ends of the property.

#### Potential Impacts and Mitigative Measures

The construction of the wall does not impede adjacent land owner access to the ocean or public use of the shoreline. As previously mentioned, the applicant has stated that wading fishermen still frequent the area. No mitigation is proposed.

### **3.10. VISUAL RESOURCES**

#### Existing Condition

The subject property lies within the Kane'ohē Bay Viewshed, as defined by the City & County of Honolulu's Coastal View Study. The City's Ko'olau Poko Sustainable Communities Plan also documents important scenic views. The property is not within any significant viewplane or stationary viewing area. See Exhibit 9.

#### Potential Impacts and Mitigative Measures

The wall project is relatively small in scale and it has no impact on significant views. No public views of the shore or from the shore to the mountains are affected. Similarly, lateral views along the shoreline have not been significantly changed by the new wall. Therefore, no mitigation is necessary.

### **3.11. ROADS AND TRAFFIC**

#### Existing Condition

The subject property is a flag lot at the end of Springer Place. Local traffic is residential in nature.

#### Potential Impacts and Mitigative Measures

Impacts to traffic due to the construction of the wall were small-scaled, short-term and intermittent. Traffic in the neighborhood may have been slowed for short periods due

to the delivery of heavy machinery and materials to and from the subject property. No street or sidewalk closures occurred due to the project. Normal traffic flow and conditions have resumed and therefore, no mitigation is necessary.

### **3.12. UTILITIES**

#### 3.12.1. Wastewater

##### Existing Condition

The subject property is served by an 8-inch sewer main running under the nearby parallel street. The main line ties into the larger municipal wastewater system.

##### Potential Impacts and Mitigative Measures

No change in wastewater demand or in the wastewater system will be associated with the residential wall. No mitigation is necessary.

#### 3.12.2. Water

##### Existing Condition

The Honolulu Board of Water Supply's (BWS) system services the property.

##### Potential Impacts and Mitigative Measures

No change to water demand or to the water system will occur due to the new wall. No mitigation is necessary.

#### 3.12.3. Electrical

##### Existing Condition

Electrical power for the area is currently provided by Hawaiian Electric Company (HECO).

##### Potential Impacts and Mitigative Measures

No mitigation measures are proposed because the wall has no impact to electricity demand or services.

#### 3.12.4. Telecommunications, Cable TV, and Data

##### Existing Condition

Land line telephone service to the area is provided by Hawaiian Telcom and cable television service is provided by Oceanic Time Warner Cable. Internet (data) services are provided by both Hawaiian Telcom and Oceanic Time Warner Cable.

#### Potential Impacts and Mitigative Measures

There are no impacts to the existing services. No mitigation is necessary.

### **3.13. PUBLIC SERVICES**

#### Existing Condition

The subject property is located in the Honolulu Police Department's District No. 4, Sector 3, and served by the Kane'ohe District Station. The nearest fire station is the Kane'ohe Fire Station near the police station on Waikalua Road.

#### Potential Impacts and Mitigative Measures

The project will not increase the demand on public services, including law enforcement, fire protection, refuse collection, and educational, medical, and recreation facilities. No mitigation is necessary.

### **3.14. SOCIO-ECONOMIC CHARACTERISTICS**

#### Existing Condition

The resident population of Kane'ohe is fairly stable. In the year 2000, the population was approximately 35,000. Between 2000 and 2010, the population declined by about 1,000 people.

#### Potential Impacts and Mitigative Measures

The completed residential wall will not affect population numbers, economic or social diversification, jobs, or housing in Kane'ohe. No mitigation is necessary.

## 4. CONFORMANCE WITH THE KO'OLAU POKO SUSTAINABLE COMMUNITIES PLAN

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The Ko'olau Poko Sustainable Communities Plan (KPSCP) is the City's land use plan for the region of O'ahu spanning Kualoa to Makapu'u, and including Kane'ohe. The plan is guided by a community developed vision for the region's future. The plan takes inventory of the region's assets -- population, housing, transportation networks, historic resources, scenic resources, environmentally sensitive areas, social assets, etc. – and identifies needs. The plan sets policies and guidelines for development over the next few decades.

The KPSCP designates this area as low-density residential. The subject project is consistent with this designation.

Also, as discussed in section 2.2, the KPSCP recognizes that the shoreline along Kane'ohe Bay is not pristine and untouched, but developed with a variety of man-made structures and that physical and visual access to the shoreline is limited. The subject property and development along the shoreline is consistent with the KPSCP's description of the overall shoreline.

### 4.1. VISION

The vision statement for the KPSCP is as follows:

- *PROTECT COMMUNITY RESOURCES*
  - *Protect Natural and Scenic Resources. Significant scenic views of ridges, upper valley slopes, shoreline areas from major public parks highways, coastal waters and hiking trails must be protected. Furthermore, access to shoreline areas and mountainous regions should be improved and provided for all to use.*
  - *Preserve Cultural and Historical Resources. These resources should be preserved by retaining visual landmarks and significant views, protecting access rights relating to traditional cultural practices, and preserving significant historic, cultural, and archaeological features from Koolaupoko's past.*
  - *Preserve Agricultural Resources. Koolaupoko contains productive and potentially productive agricultural lands that should be preserved by adopting protective regulatory policies and implementing incentives and programs to promote active agricultural use of these lands.*
  - *Protect the Residential Environment of Neighborhoods. Preserve and enhance residential neighborhoods by improving infrastructure (roads, sewer, drainage,*

transportation) and by creating appropriate densities and design guidelines for residential communities.

- *ADAPT TO CHANGING COMMUNITY NEEDS*

Discussion: Pertaining to the above, the CRM wall does not affect significant scenic views or shoreline access. It also does not impact cultural and historical resources, agricultural resources, or the residential neighborhood character.

The KPSCP calls for implementation of the vision to be guided by the following key elements:

- *Adapt the concept of “ahupua’a” in land use and natural resource management;*
- *Preserve and promote open space throughout the region;*
- *Preserve and promote agricultural uses and define boundaries for these areas;*
- *Preserve and enhance scenic, recreational and cultural features that define Koolaupoko’s sense of place;*
  - *Physical access to the shoreline and mountain areas should also be increased and enhanced, especially along Kaneohe Bay between MCBH Kaneohe and Heeia Fishpond; along Kailua Beach between Kailua Road and Kawainui Channel; and to beaches within the Marine Corps Base Hawai’i – Kaneohe. To maintain lateral access along public beaches the challenges of long-term and seasonal erosion of the shoreline needs to be addressed. In addition, the disposition of beach accretion should be reviewed as a statewide issue, with the intent of making it public land in perpetuity.*
- *Emphasize alternatives to the private passenger vehicle as modes for travel;*
- *Adapt housing and public works standards to community character and changing needs;*
- *Protect residential neighborhoods;*
- *Define and enhance existing commercial and civic districts; and*
- *Establish Urban Community, Rural Community, Agriculture and Preservation boundaries.*
- *Maintain the predominantly low-rise, low-density, single family character of the urban fringe and rural communities.*

Discussion: The CRM wall does not conflict with the above key elements. Lateral shoreline access is still available at the subject property. According to the applicant, wading fishermen continue to use the area. The shoreline at the property and in the

area is rocky, which does not make it attractive for walking. Enhancement, erosion, and disposition of shoreline accretion need to be addressed at the State level.

## **4.2. POLICIES, PRINCIPLES, AND GUIDELINES**

The following KPSCP guidelines are applicable to shoreline areas:

### *3.1 Open Space Preservation*

#### *3.1.3 Guidelines*

##### *3.1.3.2 Shoreline Areas*

*Guidelines pertaining to shoreline areas are listed below:*

- *Maintain existing makai view channels along Kalanianaʻole Highway between Makapuu Point and Waimanalo Beach Park; along Kawailoa Road and North Kalaheo Avenue in Kailua; along Lilipuna Road in Kaneohe; and along Kamehameha Highway north of Kaneohe. Avoid visual obstructions, such as walls and dense landscaping.*
- *Create and maintain new makai view channels along Kamehameha Highway and Kahekili Highway north of Kaneohe through selective clearing of dense vegetation and the removal of structures. Such view channels should be created by public acquisition of shoreline properties along the highway or by obtaining easements and maintenance agreements with private landowners. Priority should be given to the areas where clearing would open up vistas of perennial streams, wetlands, fishponds and off-shore islands.*
- *Place high priority on maintaining the untamed landscape quality of the Makapuu viewshed. Any modification to this shoreline area should be done in a manner that continues the landscape character of the proposed scenic shoreline corridor on the East Honolulu side of Makapuu Point.*
- *Consideration should be given to the establishment of buffer zones for the protection of rare coastal resources and recognition that such resources should be defined and identified.*
- *Increase opportunities for physical access to the shoreline areas of Kaneohe and Kailua by acquiring additional shorefront areas. The top priority for such acquisition is in Kaneohe. In Kaneohe, access is being designed at the site of the Kaneohe Wastewater Pre-Treatment Facility, to be named Waikalua Bayside Park. The park is adjacent to Kaneohe Stream, which will be dredged to a depth of nine feet. Future expansion may be possible by either acquiring the adjacent Kokokahi YWCA facility or entering into a cooperative agreement with this organization for the joint use of both*

properties. Other sites in Kaneohe are at King Intermediate School and at a spot north of Heeia Kea Landing. The latter may require realignment of a portion of Kamehameha Highway to create adequate land area makai of the roadway. In Kailua, an additional park site should be sought in either the Oneawa Beach area, near the surf spot known as “Castles” or in the frontage along Kalaheo Avenue between Kailua Beach Park and Kalama Beach Park. The latter beach park could also be expanded if there is an opportunity to acquire an adjoining property.

- Existing pedestrian rights-of-way to the shoreline should be improved by providing onstreet or off-street parking nearby; secured bicycle racks where the access point adjoins an existing or planned bikeway, such as along Mokulua Drive in Lanikai and Kaneohe Bay Drive in Kaneohe; and provisions for emergency vehicle access and lateral access along the shoreline.
- To maintain lateral access along popular beaches that are subject to long-term and seasonal erosion, particularly at Lanikai and Kualoa, beach management plans should be developed and implemented, with an emphasis on non-structural approaches and prevention of adverse effects on adjacent coral reef ecosystems. Greater shoreline setbacks should be established for new structures along these and other unstable shoreline areas, using criteria developed in various shoreline studies. Plans and activities should be consistent with the objectives and policies of the State Coastal Zone Management Program.
- The placement and design of exterior lighting in areas adjacent to the shoreline may contribute to disorientation, injury or death of seabirds. Therefore, lighting should be designed and constructed to avoid such effects, using DLNR guidelines.
- The Alala Point to Wailea shoreline should be designated as an erosion-prone area and a beach management plan prepared and implemented. Periodic beach restoration activities should also focus on the Bellows Air Force Station beach and Kaupo beach.
- The shoreline along Kamehameha highway adjacent to Kualoa Ranch to Kualoa Point should be designated as an erosion-prone area and be subject to a beach management plan.
- To preserve public ownership and use of shoreline resources, legislation should be pursued to render all shoreline accretion as public (State) property in perpetuity.
- Discourage the use of shore armoring structures.

Discussion: The subject property is not adjacent to Kalanianaʻole or Kamehameha Highways and the subject CRM wall does not affect scenic views of the ocean from these highways. It does not affect the Makapuu viewshed, rare coastal resources, beach right of ways, and lateral access to popular beaches; nor does it prohibit opportunities for the City to acquire usable shorefront areas. Greater shoreline setbacks for new structures are called for by the KPSCP guidelines, but this is for documented unstable areas that affect access to popular recreation spots. No exterior lighting is associated with the subject CRM wall and the wall is not in the Alala Point to Wailea shoreline or the Kualoa shoreline. The CRM wall is not a shore armoring structure, but a retaining wall. The subject CRM wall is in accordance with the above guidelines.

## **5. ALTERNATIVES THAT COULD HAVE BEEN CONSIDERED PRIOR TO THE COMPLETED ACTION**

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The following describes alternatives to the constructed project that could have been considered.

### **5.1. NO ACTION**

Under the no action alternative, the new wall in the shoreline setback area would not have been built. The pre-existing nonconforming wall, walkway, and stairs in the shoreline setback area would still remain. The applicant would not have the privacy, security, and usable yard as desired.

### **5.2. NEW WALL OUTSIDE OF THE SETBACK AREA**

Under this alternative, the applicant would have constructed the new wall outside of the shoreline setback area. The result would have been a better sense of privacy and security that the applicant seeks, but also less usable yard area and a wall that would be located very close, less than 5 feet away (based on an earlier certified shoreline location and subject to change), to the house at the southeast corner. See Appendix D in Exhibit 5.

### **5.3. OPEN FENCE IN THE SETBACK AREA**

Under this alternative, the applicant would construct an open fence in the shoreline setback area. This would require a minor shoreline structure permit (instead of a SSV permit), but it is uncertain if such permit would be granted.

### **5.4. PREFERRED ALTERNATIVE**

The preferred alternative is as built. Because the mean higher-high water mark is a few feet below the wall's foundation<sup>2</sup>, there is no hardening of the shoreline, except possibly for a small portion in the north corner of the property.

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<sup>2</sup> See page 3 of Exhibit 5.

## **6. ALTERNATIVES FOR FUTURE ACTION**

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The following describes alternatives for future action, given current conditions.

### **6.1. NO ACTION**

Under the no action alternative, the new wall, stairs, gates, and fence that are located in the shoreline setback area would remain. The DLNR's Aquatic Resources Division provided comment to the Draft EA in November 2012 suggesting that this is preferable. They state: "we would have some concerns if the alternative of removing the current wall...is chosen....If the wall is to be removed, there will again be large amounts of soil exposed, thus potentially leading to a large sediment plume into Kaneohe Bay if there is a significant rain event." See Exhibit 13.

### **6.2. NEW WALL OUTSIDE OF THE SETBACK AREA**

Under this option, the applicant would demolish the new wall and relocate it outside of the shoreline setback area. This action involves major activities once again, using heavy machinery and would result in impacts to soil stability all around the makai perimeter of the property, impacts to the shoreline and vegetation, and changes in topography and slope.

### **6.3. RESTORE TO ORIGINAL CONDITION**

This alternative is similar to the above and would involve major activities using heavy machinery. The new wall would be demolished and removed, the yard would need to be excavated and fill would be removed to restore the previous slopes. The old CRM wall, stairs, and walkway would be rebuilt.

### **6.4. PREFERRED ALTERNATIVE**

The preferred alternative is as built, no action. At this point, this alternative would result in the least impact on the environment.

## 7. FINDINGS AND ANTICIPATED DETERMINATION

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### 7.1. ANTICIPATED DETERMINATION

Based on the findings of this Environmental Assessment (EA), it is anticipated that the approving agency, the City and County of Honolulu Department of Planning and Permitting, will determine that the after-the-fact project will not have a significant environmental impact, and an Environmental Impact Statement (EIS) will not be required. Therefore, a Finding of No Significant Impact (FONSI) is anticipated.

### 7.2. REASONS SUPPORTING THE ANTICIPATED DETERMINATION

The Department of Health Administrative Rules Section 11-200-12 provides thirteen “Significance Criteria” for determining if an action will have a significant impact on the environment. This includes all phases of a project, its expected consequences both primary and secondary, its cumulative impact with other projects, and its short and long-term effects. According to the Rules, an action shall be determined to have a significant impact on the environment if it meets any one of the criteria listed below.

#### 1. **Involves an irrevocable commitment to loss or destruction of any natural cultural resources.**

The project will not result in an irrevocable commitment to loss or destruction of any natural or cultural resources. As discussed in section 2.3, the new wall is not a sea wall or shoreline hardening wall and therefore, does not affect the existing littoral processes, nor does it change the patterns of accretion and erosion of beaches on the windward side of O’ahu. According to LYON engineers:

*By Hawai’i Administrative Rules: Title 13 – DLNR Sub-Title 10 Chapter 222, a “seawall” can be defined as a structure with a vertical face separating land and water areas, primarily designed to prevent erosion and other damage due to wave action. The constructed CRM retaining wall is a structure with a vertical face that is primarily along the land embankment and only separates land and sea areas near the ramp area on the north side of the lot; however, based on the information having been provided, it was not designed to prevent erosion and any other damage due to wave action. The CRM wall primarily serves to stabilize the embankment from the upper property areas (where the house and backyard areas are around elevation 20’) down to the shoreline areas (around elevation 0’ to 4’) by providing a retaining structure. This will also prevent erosion of the slope and storm water runoff from percolating into the ground.*

*The CRM wall will allow water to drain through the weep holes near the bottom of the wall in lieu of flowing down the embankment slope. The majority of the CRM wall is built with a setback from the shoreline with the wall base construction at an elevation above the mean higher-high water levels (MHHW).” (See Exhibit 5, page 3)*

The new wall does not affect use of the shoreline or ocean waters. No cultural resources are associated with the subject property.

**2. Curtails the range of beneficial uses of the environment.**

The area in which the subject project and property are located has a land use zoning of R-10 residential and has been heavily modified and inhabited for decades. The shoreline area also has been heavily modified by human activity and permanent structures such as docks, piers, groins, fishponds, man-made lagoons, and sea walls still exist. See photos E and F of Exhibit 3. Cumulatively, these structures and other human activities such as dredging, affect lateral access to the shore and alter the littoral processes. The subject project, however, does not curtail the range of beneficial uses of the environment nor does it curtail residential uses of the surrounding properties.

**3. Conflicts with the State’s long-term environmental policies or goals and guidelines as expressed in Chapter 344, HRS; and any revisions thereof and amendments thereto, court decisions, or executive orders.**

The new wall in the shoreline setback area does not conflict with the environmental policies established in *HRS*, Chapter 344. The residential wall in its setting and relation to existing man-made structures in the shoreline does not alter the area’s currently existing natural processes or resources and would not lower the quality of life for Hawai’i residents.

**4. Substantially affects the economic or social welfare of the community or state.**

The residential wall will have no significant effect on the socio-economic welfare of the community or state.

**5. Substantially affects public health.**

The residential wall will not affect public health. As mentioned above, construction likely produced some short-term impacts to air quality and noise, but these impacts were minor.

**6. Involves substantial secondary impacts, such as population changes or effects on public facilities.**

The private residential wall does not involve substantial secondary impacts.

**7. Involves a substantial degradation of environmental quality.**

It is not anticipated that the residential wall would further degrade overall environmental quality since much of the surrounding shoreline has been already altered. The scale of the structure is relatively small overall.

**8. Is individually limited but cumulatively has considerable effect on the environment, or involves a commitment for larger actions.**

The subject project is individually limited, would itself have an insignificant effect on the environment, and does not involve a commitment of larger actions.

**9. Substantially affect a rare, threatened or endangered species or its habitat.**

There are no rare, threatened, or endangered plants or animal species on the subject property.

**10. Detrimentially affects air or water quality or ambient noise levels.**

As previously discussed, construction of the residential wall likely produced temporary impacts to air quality and noise levels. Construction did affect water quality for the short-term and the applicant was cited by the DLNR and USACE (refer to sections 2.4 and 3.3), but corrections have been made. Long-term impacts to air and water quality, as well as ambient noise levels, will be negligible.

It should be noted that in the event that the applicant will be required to return the property to pre-existing conditions, the deconstruction of the wall and stairs will cause

soil disturbance and these activities will again create temporary impacts to air quality, water quality, and ambient noise levels.

**11. Affects or is likely to suffer damage by being located in an environmentally sensitive area, such as a flood plain, tsunami zone, beach, erosion-prone area, geologically hazardous land, estuary, freshwater, or coastal water.**

The subject property is located partially within the tsunami zone, but the wall would not exacerbate hazards due to storm or severe events, such as tsunamis. It is possible that the wall could suffer damage by being located near the ocean, but this would be true of the entire residential community.

Should the applicant be required to return the property to pre-existing conditions, the activities to do so will again temporarily affect the coastal land and water, even if mitigation measures are utilized. The DLNR's Aquatic Resources Division comments that, "[s]ince the wall is already built, we have no comment on impacts to aquatic life. We would suggest that the wall be allowed to remain, however, we would have some concerns if the alternative of removing the current wall in the dEA is chosen....If the wall is to be removed, there will again be large amounts of soil exposed, thus potentially leading to a large sediment plume into Kaneohe Bay if there is a significant rain event."

The Aquatic Resources Division recommends that work be limited to the summer/drier months and that sediment catchments be used if removal of the wall is deemed necessary.

**12. Substantially affects scenic vistas and view planes identified in county or state plans or studies.**

As discussed previously in section 3.10, the subject wall does not substantially affect scenic vistas and view planes identified in county or state plans or studies.

**13. Requires substantial energy consumption.**

The private residential wall will not require any energy consumption; although some minor energy consumption occurred during construction.

## 8. CONSULTATION

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The following agencies and groups were in contact with the applicant prior to the publication of this Draft EA.

City & County of Honolulu

Department of Planning and Permitting

State of Hawai'i

Department of Land and Natural Resources

Federal Government

U.S. Army Corps of Engineers

The following agencies reviewed the Draft EA and provided comments:

City & County of Honolulu

Department of Planning and Permitting

State of Hawai'i

Department of Business, Economic Development, and Tourism, Office of Planning

Department of Health, Environmental Planning Office

Department of Land and Natural Resources, Land Division

Department of Land and Natural Resources, Aquatic Resources

Department of Land and Natural Resources, Office of Conservation and Coastal Lands

Department of Land and Natural Resources, Engineering Division

The comment letters and replies are attached as Exhibit 13.

## REFERENCES

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City and County of Honolulu, Department of Land Utilization. 1987. *Coastal View Study*.

City and County of Honolulu, Department of Planning and Permitting. *Honolulu Land Information System*, <http://gis.hicentral.com/>

City and County of Honolulu, Department of Planning and Permitting. 2000. *Koolaupoko Sustainable Communities Plan*.

City and County of Honolulu, Department of Planning and Permitting. *Land Use Ordinance (as amended)*.

Giambelluca TW, Chen Q, Frazier AG, Price JP, Chen Y-L, Chu P-S, Eischeid J., and Delparte, D. 2011. The Rainfall Atlas of Hawai'i. <http://rainfall.geography.hawaii.edu>.

U.S. Department of Agriculture, Natural Resources Conservation Service, *Web Soil Survey*, <http://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>

# EXHIBITS

**EXHIBIT 1**  
**Project Location**



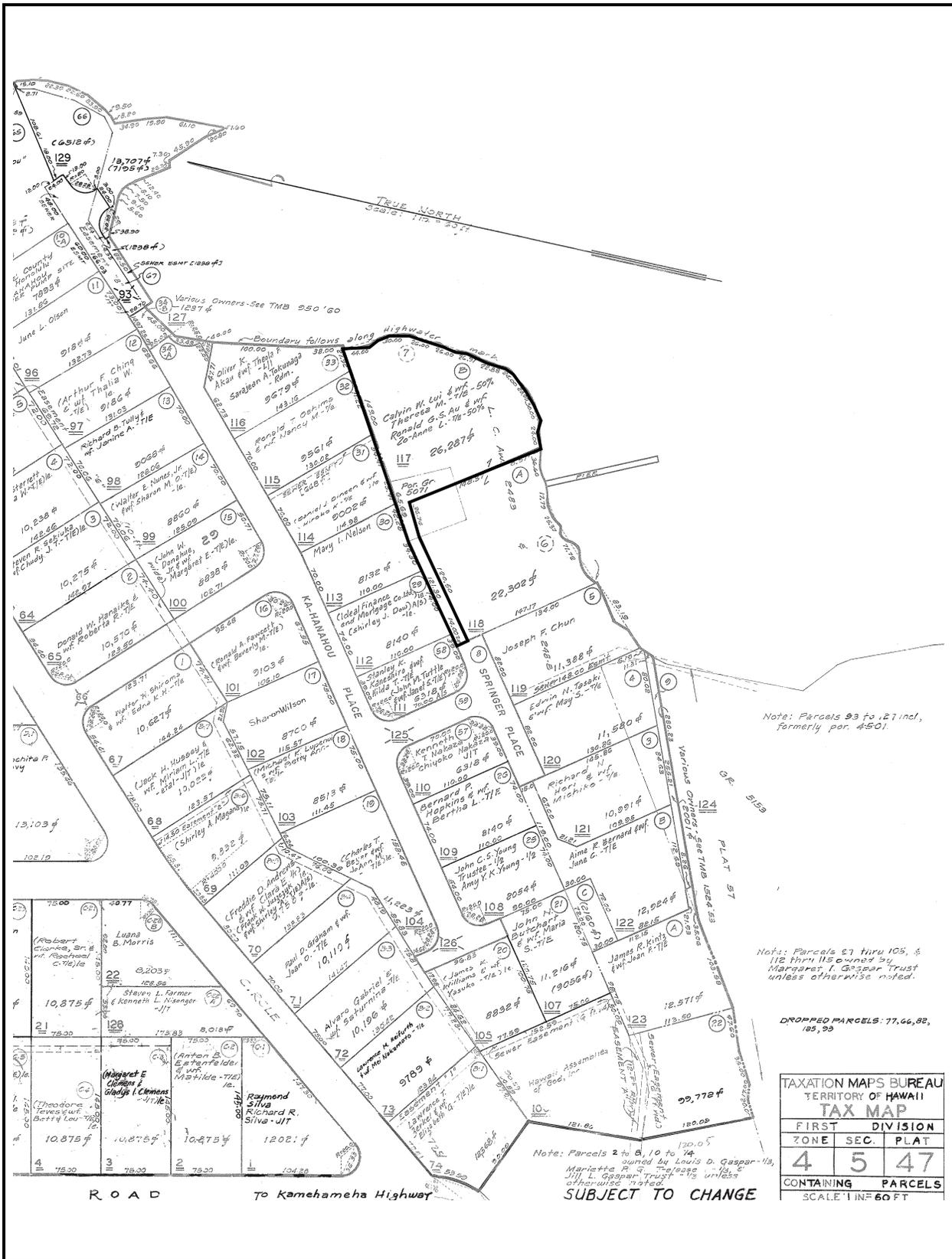
**Project Location**

45-010 Springer Place Residential Wall

**EXHIBIT 1**

## **EXHIBIT 2**

### **Tax Map**



Note: Parcels 93 to 121 incl, formerly par. 4501.

Note: Parcels 57 thru 105, & 112 thru 115 owned by Margaret I. Gaspar Trust unless otherwise noted.

DROPPED PARCELS: 77, 66, 82, 185, 93

TAXATION MAPS BUREAU		
TERRITORY OF HAWAII		
TAX MAP		
FIRST	DIVISION	
ZONE	SEC.	PLAT
4	5	47
CONTAINING		PARCELS
SCALE 1" = 60 FT		

Note: Parcels 2 to 8, 10 to 14 owned by Louis D. Gaspar-113, Marictha R. & Tragedge-112, & J. L. Gaspar Trust unless otherwise noted.



# Tax Map

45-010 Springer Place Residential Wall



**EXHIBIT 3**  
**Site Photos**

## SITE PHOTOS

(For additional photos of the project and construction, see Exhibit 5, Appendix B)



A. View of slope, steps and drainageway on north edge of property, looking northeast.



B. View of new wooden fence and gate at north end of the property, looking back toward the property from the shoreline. Also see fence and gate in photo A above.



C. Shoreline vegetation near the north end.



D. Shoreline vegetation near the south end.



E. Adjacent properties to the north.



F. Adjacent properties to the south.

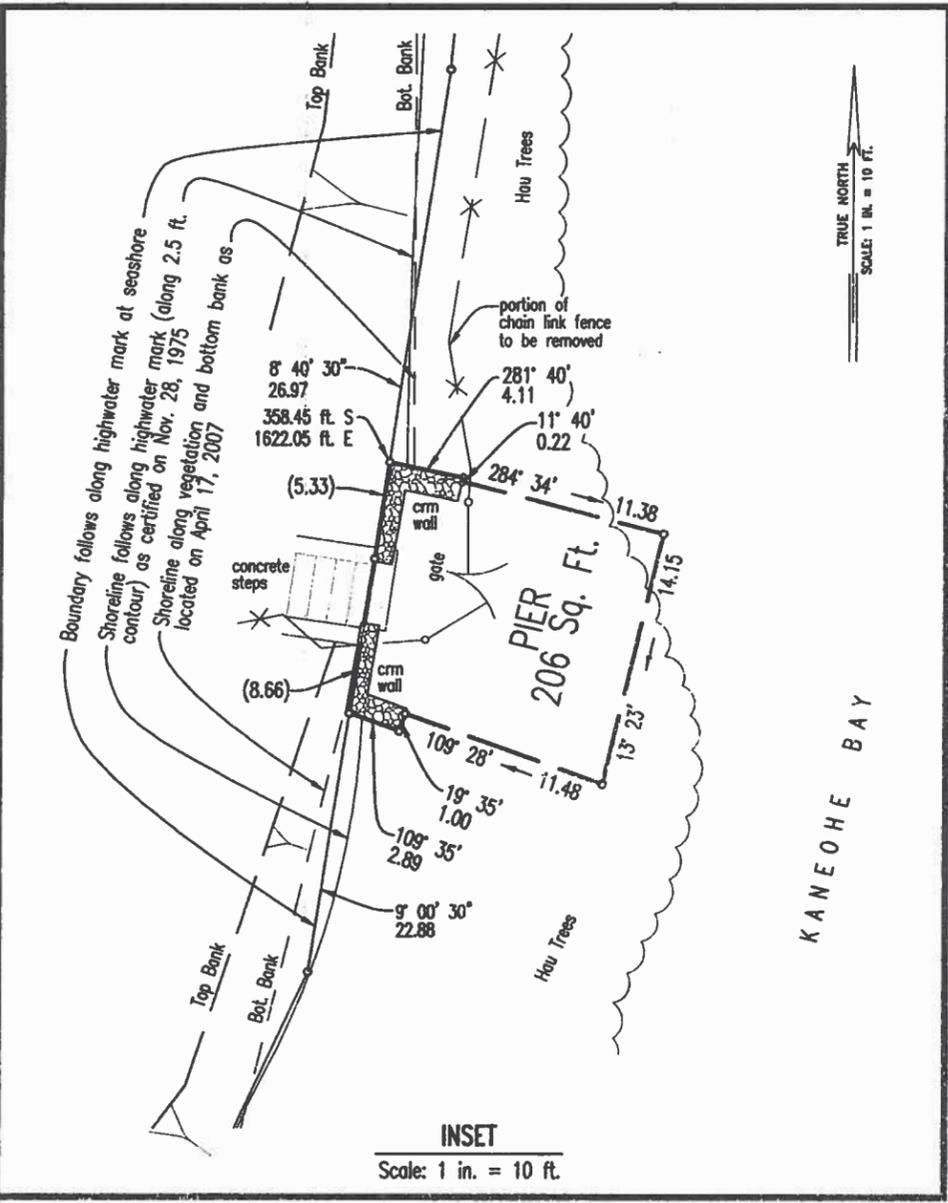


G. Top of wall at mid-lot, looking south. Stairs lead down to pre-existing pier.

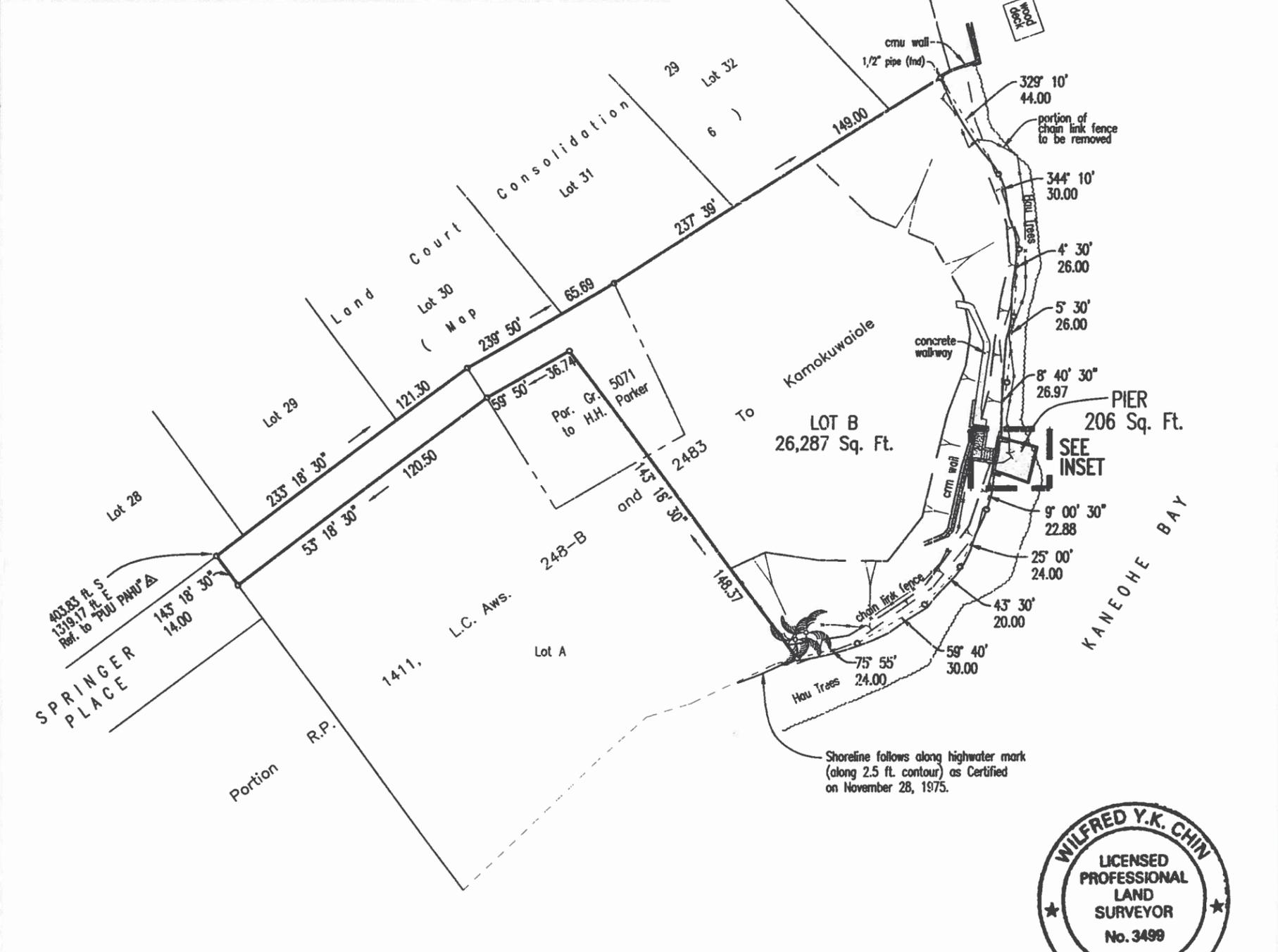


H. Pier belonging to the subject property, looking north.

**EXHIBIT 4**  
**2007 Survey**



INSET  
Scale: 1 in. = 10 ft.



**RESIDENTIAL NONCOMMERCIAL PIER,**  
**FRONTING LOT B,**  
**BEING PORTIONS OF GRANT 5071 TO H.H. PARKER**  
**AND R.P. 1411, L.C. AWS.**  
**248-B AND 2483 TO KAMOKUWAIOLE**  
**AT KANEOHE, KOOLAUPOKO, OAHU, HAWAII**



This work was prepared by me or under my direct supervision

By: *Wilfred Y.K. Chin*  
 Licensed Professional Land Surveyor  
 Certificate Number 3499-LS  
 Expires 4/08

FN: 07087.dwg

Note:  
 Coordinates referred to "PUU PAHU"  $\Delta$

Tax Map Key: 4-5-47: 117



**CONTROLPOINT SURVEYING, INC.**  
 1150 SOUTH KING STREET, SUITE 1200  
 HONOLULU, HAWAII 96814

11" x 17" = 1.30 Sq. Ft.  
 FB No. 2309H: 27  
 April 30, 2007

**EXHIBIT 5**  
**LYON Report**



February 27, 2014

Mr. Val Peroff  
45-010 Springer Place  
Kaneohe, HI 96744

RE: CRM Wall at 45-010 Springer Place  
TMK: 4-5-47:116

Dear Mr. Peroff,

We have had the chance to review the Concrete Rubble Masonry (CRM) wall constructed at 45-010 Springer Place in Kaneohe. After discussions with the Owner and review of the site, we have prepared this report showing details of the wall construction and some engineering considerations.

## **WALL CONSTRUCTION**

The CRM wall looks to have been constructed following typical rock wall construction practices here on Oahu. The gravity retaining wall structure consists of placed rock stone with concrete grout infill and withholds roughly 850 cubic yards of backfill. The Owner gave us engineering plans for the wall along with a building permit, which the contractor obtained before construction. The plans show a new 6' high CRM wall along the north and west property lines as a fence wall, with the "APPROVED DPP" stamp under building permit #663900. The building permit was obtained by the contractor, S & V Contracting LLC. An additional plan prepared by Brad T. Nago, P.E., shows a new CRM retaining wall to be placed along the rear property line (fronting the shoreline) built with a 40' setback from the shoreline and setback around 10' from an existing grandfathered Concrete Masonry Unit (CMU) and CRM wall. This additional plan showing the CRM retaining wall parallel to the shoreline does not have the "APPROVED DPP" stamp and appears that it was not part of the approved building permit. Based on our research, we believe the existing grandfathered CRM wall parallel to the shoreline did not extend the entire property frontage, but rather just a partial amount. This is evident in a survey conducted by Control Point Surveying, Inc. dated April 30, 2007, the CRM wall only existed near the middle of the property. The existing grandfathered CRM wall appears to have been approximately 115' long and varied in height from 0' to 5', and included an additional stairway down to the shoreline. The 2007 map prepared by Control Point should be a more accurate representation of the grandfathered CRM wall compared to the building permit #663900 plans. A copy of the building permit and plans is attached as Appendix A.

The Owner provided us with photographs and records of the CRM wall construction. Prior to construction of the new CRM retaining wall, a grandfathered CMU and CRM wall existed in its place. The grandfathered retaining CRM ran along a portion of the property's shoreline. The approximately 115 foot long wall was roughly set back 10 feet from the shoreline. This grandfathered wall was

approximately 5 feet at its maximum height. The top of the wall was 2 feet thick and at its base, the wall was 6 feet thick. As the makai side of the wall remained vertical at 90 degrees and perpendicular to the shore, the mauka side of the wall leaned approximately 38 degrees towards the ocean. The wall's thickness increased at a constant rate, moving downward at a slope of 1.2. Mounted along the top of the existing CRM wall were metal pipes with rope strung across the top to resemble a customized guard rail. Along the existing wall, there were two points of shoreline access, one located near the north end of the wall and the other located more toward the center. The access point at the north end consisted of a slope that led directly to the shore. The central access point consisted of a flight of stairs that led to a concrete pad. Grout filled the wall's crevices and also acted as a layer for the footing and cap. A copy of these photograph logs prepared by the Owner throughout construction of the newer wall is attached as Appendix B.

After the Owner received a Notice of Violation (NOV) that a CRM retaining wall was constructed within the shoreline setback area without a variance, he had a surveyor conduct a shoreline survey to process a new shoreline certification application with DLNR. The surveyor mapped the actual location of the wall parallel to the shoreline and prepared a draft Shoreline Plan showing the wall improvements, previous certified shoreline from 1972 and a proposed new shoreline following the seaward face of the new CRM wall or other man-made structures. DLNR was not able to approve the shoreline certification request and found the application to be incomplete since there were unauthorized improvements within the shoreline areas. The recent 2011 shoreline survey was only a draft, and we believe the final certified shoreline after a site visit with the State Surveyor would place the shoreline along the bottom of the embankment in most areas, rather than just following the edge of the CRM wall. A copy of the draft Shoreline Plan and DLNR review is included as Appendix C.

Based on our review of the building permit documents, draft Shoreline Plan, construction photograph logs and site visits, we prepared two sketches showing our assessment of what the CRM wall construction appears to be, as-built at the property. These sketches are attached as Appendix D. Sketch 1 shows a site plan of the CRM retaining wall parallel to the shoreline along with the misc. stairs, gates, old concrete pad/pier and the CRM fence wall along the side property lines. The approximate location of the previous top of embankment is shown on the plan, as seen in the previous topographic survey of the property. The approximate location of the 40' shoreline setback is shown based on the previous certified shoreline in 1972. Note that the current 40' setback will be dependent on a current certified shoreline. Sketch 1 also includes a detail of the CRM wall showing the typical construction details of how the wall was likely constructed for the CRM retaining wall parallel to the shoreline. Sketch 2 shows some additional detail near the stairs built by the old concrete pad/pier with some sections and partial wall profile within that area. The new CRM retaining wall built parallel to the shoreline was not built behind the existing grandfathered wall with 40' setback from the shoreline, but appears to have been built roughly along the same alignment as the old grandfathered wall which was removed during construction.

## **COASTAL ENGINEERING CONSIDERATIONS**

Based on the type of wall that has been constructed (CRM retaining wall), the structure would not be considered a typical seawall or shoreline revetment structure to provide shoreline stability. By Hawaii Administrative Rules: Title 13 – DLNR Sub-Title 10 Chapter 222, a “seawall” can be defined as a structure with a vertical face separating land and water areas, primarily designed to prevent erosion and other damage due to wave action. The constructed CRM retaining wall is a structure with a vertical face that is primarily along the land embankment and only separates land and sea areas near the ramp area on the north side of the lot; however, based on the information having been provided, it was not designed to prevent erosion and any other damage due to wave action. The CRM wall primarily serves to stabilize the embankment from the upper property areas (where the house and backyard areas are around elevation 20’) down to the shoreline areas (around elevation 0’ to 4’) by providing a retaining structure. This will also prevent erosion of the slope and storm water runoff from percolating into the ground. The CRM wall will allow water to drain through the weep holes near the bottom of the wall in lieu of flowing down the embankment slope. The majority of the CRM wall is built with a setback from the shoreline with the wall base construction at an elevation above the mean higher-high water levels (MHHW).

The nearest NOAA tidal gauge station, NOS Station Mokuoloe #1612480, is in Kaneohe Bay. A copy of the current tidal datum established at this station is attached as Appendix E. The tidal datum information shows that the MHHW level is 1.07’ above the mean sea level (MSL) or mean tide level, with mean lower-low water (MLLW) at 1.05’ below MSL or mean tide level. This information shows a 2.12’ tidal range is expected during spring tide conditions. Kaneohe Bay is protected from large winter storm waves due to the barrier reef which protects the bay, but locally generated wind waves and wave energy which is transmitted past the barrier reef will cause some wave energy at the shoreline in this location. The previous shoreline certification in 1972 identified a high water mark of 2.5’. The current upper reaches of the wash of the waves (other than storm or tsunami waves) at high tide during the season in which the highest wash of the waves occurs (usually evidenced by the edge of vegetation growth or the upper limit of debris left by the wash of the waves) would need to be surveyed, but appears to be below the 4’ MSL based on the current vegetation lines. Since a large majority of the CRM wall (except a portion of the stairs that tie into the old concrete pad/pier and the furthest north section which is closer to sea level elevations) is built above 4’ MSL, we would not expect this wall to act as a shore protection structure, but more as a typical CRM retaining wall along a sloping embankment.

## **SITE DRAINAGE**

The property generally drains from the higher elevations near the house towards the ocean. Before the CRM wall construction, storm water runoff appears that it would have sheet flowed across the backyard to the top of the shoreline embankment, and then flow down the embankment into Kaneohe Bay. The exception to that is the north side of the property. Storm water runoff from the flag lot driveway collects runoff from neighboring properties and flows down the driveway into a drainage swale which flows into the bay. Due to the additional watershed area of surrounding properties with storm water runoff eventually draining through this area, the runoff can be more concentrated during heavier rainfall

events compared to the sheet flow in the rest of the property. The Owner confirmed that the sloping ground with steps on the north side of the property was built to allow this storm water runoff to continue to flow into the bay (following existing drainage patterns) and the CRM retaining wall was not built continuously parallel to the shoreline in this area.



Figure 1. Storm Drainage systems according to DPP GIS information.

Figure 1 shows a map of the storm drainage facilities in the area according to the DPP's GIS information shown on the Honolulu Land Information System website. The main roadway in the neighborhood (Ka-Hanahou Circle) has a storm drain system consisting of catch basins on the side of the road with underground storm drains. Runoff from this roadway and the surrounding properties is discharged into the bay further north from the Peroff property. An open ditch collects storm water runoff from the properties between Ka-Hanahou Circle and Ka-Hanahou Place.

Based on aerial topographic information, Figure 2 shows the rough topography of the surrounding properties. Portions of properties surrounding Springer Place and the flag lot driveway to the Peroff property would discharge storm water runoff into the driveway, which would eventually reach the bay.

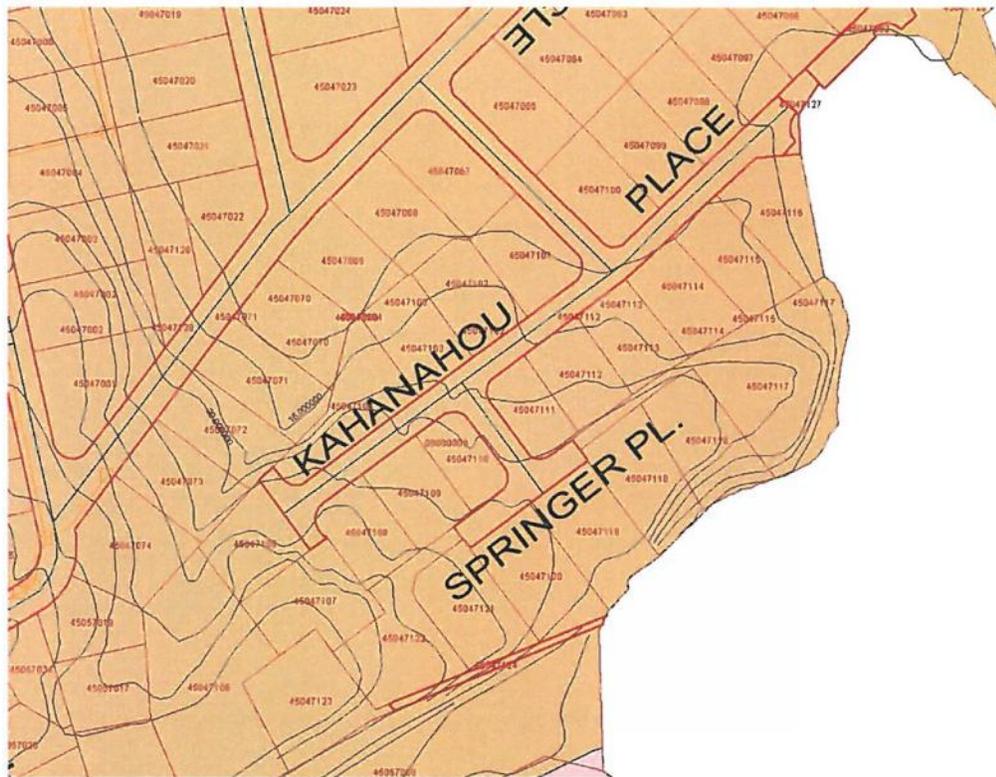


Figure 2. Aerial topographic survey information from GIS records showing 5' contour intervals.

## SUMMARY

The CRM wall built parallel to the shoreline does not appear that it was included in the building permit approved for the wall construction; hence, the NOV was issued to the Owner. The Owner's would like to keep the CRM wall (if possible to obtain approval from City and State agencies as needed, after-the-fact) and plans to submit a Shoreline Setback Variance (SSV) application. The recent shoreline survey was submitted to DLNR to request a shoreline certification as part of the SSV application, but cannot be approved by DLNR until the wall is permitted by the City and any portion of the wall built within state land is either removed or has an easement obtained for those encroachments. In order to submit the SSV application, an Environmental Assessment (EA) needs to be prepared. This report helps provide some information on the CRM wall and engineering considerations that can be considered in the EA and eventual SSV application.

The CRM wall is clearly built within the 40' shoreline setback; however, the setback varies and will depend on a current certified shoreline determination by DLNR. In general, the wall appears to be setback from the previous certified shoreline around 10' to 17', with the exception of the stairs/wall improvements near the old concrete pad/pier and the north side of the property where the wall

CRM Wall at 45-010 Springer Place

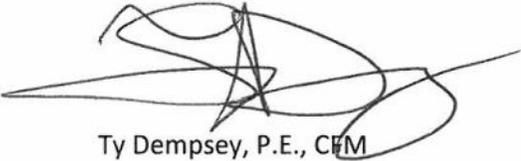
February 27, 2014

Page 6

transitions closer to the shoreline. A portion of the stairs and wall in these areas may extend beyond the original shoreline before the improvements were built.

If there are any questions with this report or additional information is requested, please feel free to contact me at 536-6621 or by email at [ty.dempsey@lyon.us.com](mailto:ty.dempsey@lyon.us.com).

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Dempsey', with a long horizontal stroke extending to the left.

Ty Dempsey, P.E., CFM  
Vice President  
LYON

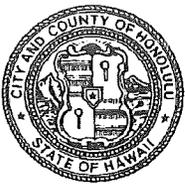


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CIVIL ENGINEERING / CONSTRUCTION MANAGEMENT

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## **APPENDIX A – BUILDING PERMIT DOCUMENTS**



DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET \* HONOLULU, HAWAII 96813  
 Phone: (808) 768-8220 \* Fax: (808) 768-6111

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
11/18/2010	11/17/2010	11:20:30	30
DT01 WALKIN PA PA			
RECEIPT # 320779		11/17/2010	OFLN
Dept 9034 6238 BUILDING			

# BUILDING PERMIT

FOR THE PERFORMANCE OF WORK UNDER THE  
 BUILDING ELECTRICAL, PLUMBING, AND SIDEWALK CODES  
 CHAPTERS 16, 17, 19, AND 20, RESPECTIVELY, AND UNDER CHAPTER 18  
 (FEES AND PERMITS) OF THE REVISED ORDINANCES OF  
 THE CITY AND COUNTY OF HONOLULU

Receipt Tot	\$311.00
\$.00 CK	\$320.00 CA
	\$9.00- CG

**LOCATION**

Zone	Section	Plat	Parcel
4	5	047	117

**45-010 SPRINGER PL**

**26,287 Sq. Ft.**

**\$311.00**

**PERMIT FEE**

Type of Payment(s)

Cash  X  
 Check  
 Charge

Site Address (if other than primary):

Accepted Value of Work: **\$15,000**

**PROJECT: (BP #663900) [TMK: 45047117] LUI & AU RESIDENCE - NEW 6' CRM  
 FENCE WALL @ FRONT & LEFT OF PROPERTY**

**TYPE OF WORK**

Fence Y

**RIGHT OF WAY WORK**

Driveway: New: Existing: Private:

Sidewalk Types:

Curbing Types:

Driveway Types:

Linear Ft. of Sidewalk:

Linear Ft. of Curbing:

Linear Ft. of Driveway:

**Please notify the Building Inspector listed below at least 24 hours before starting work in the Right-Of-Way.**

**GENERAL CONTRACTOR**

**S & V Contracting LLC**

Contact Info: **225-3552**

Lic. No.: **C-29147**

**NOTES**

**Fence Clauses**

For the work under this building permit, the City shall not be responsible, or liable for any potential drainage problems resulting from the flow of surface waters, or the alteration or concentration of surface water run-off on any property. It is a civil matter between affected parties. All footings shall rest on firm, stable, undisturbed soil and built entirely within property. For the work under this building permit, the City shall not be responsible, or liable for any potential drainage problems resulting from the flow of surface waters, or the alteration or concentration of surface water run-off on any property. It is a civil matter between affected parties.

**DATE ISSUED: 11/17/2010**

Permission is hereby given to do above work according to conditions hereon and according to approved plans and specifications pertaining thereto, subject to compliance with ordinances and laws of the City and County of Honolulu and State of Hawaii.

Location Permit Issued:

Location Application Created: **FMB**

FOR DIRECTOR OF DEPARTMENT OF PLANNING AND PERMITTING

**THIS PERMIT MUST BE POSTED IN A CONSPICUOUS PLACE ON THE SITE DURING THE PROGRESS OF WORK. THIS PERMIT MAY BE REVOKED IF WORK IS NOT STARTED WITHIN 180 DAYS OF DATE OF ISSUANCE OR IF WORK IS SUSPENDED OR ABANDONED FOR 120 DAYS.**

ELECTRICAL AND PLUMBING WORK TO BE DONE BY LICENSED PERSONS AS REQUIRED UNDER CHAPTER 448 E, HAWAII REVISED STATUTES.

NOTICE TO HOMEOWNERS: This is to inform all homeowners that improvements to your home may require approval by your Homeowners Association or authorized representative prior to the commencement of construction.

Approval by the Department of Planning and Permitting does not certify compliance with the Covenants, Conditions and Restrictions or other design restrictions administered and enforced by your Homeowners Association.

ALL CONSTRUCTION UNDER THIS BUILDING PERMIT IS SUBJECT TO INSPECTION BY THE BUILDING OFFICIAL. IT SHALL BE THE DUTY OF THE PERSON DOING THE WORK AUTHORIZED BY THIS PERMIT TO NOTIFY THE BUILDING OFFICIAL THAT THE WORK IS READY FOR INSPECTION.

THE FOLLOWING ARE THE INSPECTORS ASSIGNED TO INSPECT THE CONSTRUCTION UNDER THIS PERMIT AND THEIR TELEPHONE NUMBERS:

	<u>Building Inspector</u>	<u>Electrical Inspector</u>	<u>Plumbing Inspector</u>
Name:	RONALD KOKI		
Phone No.:	(808) 768-8141		

APPLICATION NO.: **A2010-10-0761**

JobID: 41051540  
 ExternalID: 041050999-002

PERMIT NO.: **663900**

## Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type  
 See specific instructions on page 2.

Name (as shown on your income tax return)  
S+V Contracting, LLC

Business name, if different from above

Check appropriate box:  Individual/Sole proprietor  Corporation  Partnership  Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) P  Exempt payee  
 Other (see instructions) ▶

Address (number, street, and apt. or suite no.)  
56-307 Kekaunoha Street

City, state, and ZIP code  
Kahuku HI 96731

List account number(s) here (optional)

Requester's name and address (optional)

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

OR

Employer identification number  
26-2328142

### Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here  Signature of U.S. person [Signature] Date 12/9/10

### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

**Limited liability company (LLC).** Check the "Limited liability company" box only and enter the appropriate code for the tax classification ("D" for disregarded entity, "C" for corporation, "P" for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

**Note.** You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

### Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the business name, sign and date the form.

Contractor's or Subcontractors Voucher, Release and  
And Interim Lien/Claim Waiver  
Conditional Lien Release

From:

S+V Contracting, LLC  
56-307 Kekoaoha St.  
Kahuku, HI 96731

Project:

Construction of CRU walls

Contact Person:

Contact Telephone:

Fax:

Project Manager:

Project Telephone:

Fax:

The undersigned does hereby acknowledge that upon receipt by the undersigned of a check from  
Valentine Peroff, Jr.\* in the sum of \$ 160,000.00 and when the check  
has been properly endorsed and has been paid by the bank upon which it was drawn, this  
document shall become effective to release pro tango and rights of lien which the undersigned  
has on the above referenced job. This release covers payment for labor, services, equipment  
and materials furnished through S+V Contracting LLC only and does not cover any  
retention or items furnished after that date. Before any recipient of this document relies on it, said  
party should verify evidence of payment to the undersigned.

I certify under penalty of perjury under laws of the State of Hawaii that the above is a true and  
correct statement.

\* Valentine Peroff Jr. dba Pearl City Service Center



Signature of authorized corporate officer/partner or owner.

Partner

Title:

Dated this 9 day of December, ~~2008~~ <sup>2010</sup> 8<sup>th</sup>

Kahuku, Hawaii

City & State

Note: This lien release is for the current amount being billed.  
Please submit with current monthly progress billing along with current state clearance and  
union statement of account.

**Kimo's Equipment Rental, LLC**

45-1138 Makaleha St.  
Kaneohe, HI 96744

*Approved  
12-9-10  
✓ Maria GJ  
Please cut check*

**Invoice**

Invoice #
386
Date
12/7/2010
Terms
P.O. Number

Bill To	Ship To
S. & V. MASONARY	

Item	Description	Rate	Quan...	Unit	Amount
M11 Xaiv...	2007 303CCR Caterpillar Compact Hydraulic Excavator Mw/24' Trench BKT VIN-BXT Delivery Date/Time: Meter Out: Fuel Out: Pickup Date/Time: Meter In: Fuel In: Totals- Time: Hours: Fuel:	700.00	1	WEEKS	700.00
M03 Jay...	'2006 S-160 Bobcat Skidsteer Loader VIN-526717052 Delivery Date/Time: Meter Out: Fuel Out: Pickup Date/Time: Meter In: Fuel In: Totals- Time: Hours: Fuel:	500.00	2	WEEKS	1,000.00
Cleaning	2 BOBCAT COVERED IN CONCRETE	150.00	2		300.00
GE Tax	Subtotal General Excise Tax	4.712%			2,000.00 94.24

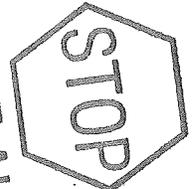
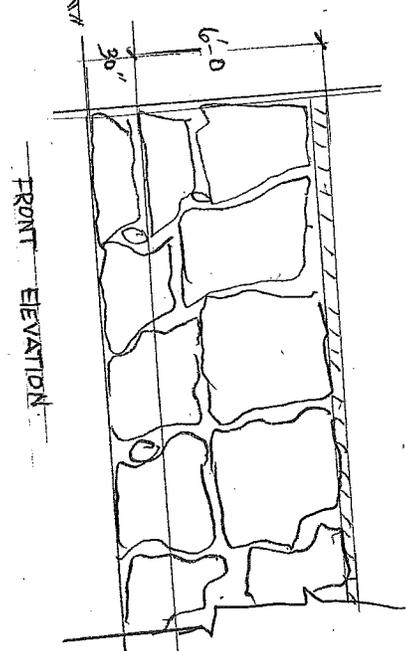
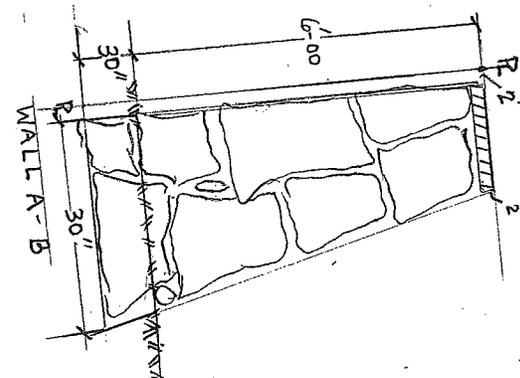
<b>Total</b>					\$2,094.24
<b>Payments/Credits</b>					\$0.00
<b>Balance Due</b>					\$2,094.24

1. Minimum half payment is payable in advance via cash, check or credit card.
2. Rates are based on a single shift (8-hour day; 5 days/ 40-hour week / 160 hour month)
3. A \$25 charge will be assessed to renter if the key is not returned upon time of pickup.
4. A \$25 will be assessed to renter for all returned checks.
5. A \$150 cleaning charge will be paid by renter if machine is not returned in the condition it was issued.
6. NO transporting of equipment without prior written consent from Kimo's Equipment Rentals.
7. Customer is responsible for all repairs and maintenance, including tires - except fair wear and tear.
8. Neglect, improper maintenance and/or abuse are for the customer's account.
9. Absolutely NO wet cement is allowed in the bucket at any time.
10. Equipment received is subject to the terms and conditions attached to this document.

CRM - WALL AND MR & MRS ROWARD G.S. AU  
 MR & MRS LIU AND MR & MRS SPRINGER PL  
 ADDRESS 45-010



PLOT PLAN TMK 4-5-47-117



DO NOT ALTER  
 THESE PLANS  
 Revisions must be  
 submitted **separately**  
**APPROVED**

DPP

JOB SITE COPY

A22010 0761

26,2814

DEPARTMENT OF PLANNING AND PERMITTING	
BUILDING DIVISION	
CITY AND COUNTY OF HONOLULU	
ACCEPTANCE:	DATE: <u>9/16/10</u>
ZONING: <u>R10</u>	
ZONING CODE:	
ELECTRICAL:	
PLUMBING:	
BUILDING:	<u>10/15/10</u>
PROJECT: <u>LM + AL</u>	PERMIT: <u>063900</u>
TMK: <u>4-5-047-117</u>	

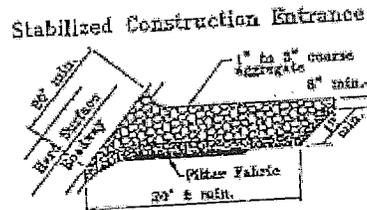


# EROSION CONTROL GUIDELINES

FIGURE 3  
MINIMUM BMP CHECKLIST FOR SMALL PROJECTS

## STABILIZED CONSTRUCTION ENTRANCE

All points of egress and ingress to a site shall be protected with a stabilized construction entrance.



## STOCKPILES

Stockpiles shall not be located in drainage ways or other areas of concentrated flows. Sediment trapping devices such as fences, traps, basins or barriers shall be used around the base of all stockpiles.

## DUST CONTROL

Dust control should be applied to reduce dust emissions. The Contractor, at his own expense, shall keep the project area and surrounding area free from dust nuisance. The work shall be in conformance with the air pollution control standards contained in Hawaii Administrative rules: Chapter 11-80, "Air Pollution Control".

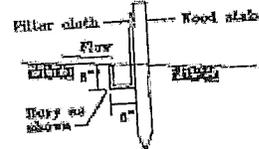
Dust Control



## SEDIMENT BARRIERS OR TRAPS

Sediment trapping devices such as fences, traps, basins or barriers shall be used down slope of all disturbed areas and around the base of all material stockpiles.

Sediment Barrier



## SLOPE PROTECTION

Surface flow from above an exposed slope shall not be allowed to flow over the slope without protection. Slope protection shall be used on areas with slopes greater than 50% and on areas of moderate slopes that are prone to erosion.

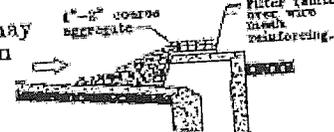
Slope Protection



## INLET PROTECTION

All storm drain inlets on site, and those offsite which may receive runoff from the site shall use an inlet protection device.

Inlet Protection



## TEMPORARY STABILIZATION

Is not required when the disturbed area will be worked within a 14 day period. Stabilization is required for disturbed areas at final grade and for those areas that will not be worked within a 14 day period.

## PERMANENT STABILIZATION

All disturbed areas shall be permanently stabilized prior to removing erosion and sediment measures. All temporary erosion and sediment control measures shall be removed within 30 days after final site stabilization or after the temporary measures are no longer needed. Trapped sediment and areas of disturbed soil which result from the removal of the temporary measures shall be immediately permanently stabilized.

Tax Map Key: 4-5-047:117  
 Application Index No: A2010-10-0761  
 Project Name: LUI & AU  
 Building Permit No.: 667900

BUILDING DIVISION  
 DEPARTMENT OF PLANNING AND PERMITTING

**SUPPLEMENTAL INFORMATION FOR BUILDING OWNER,  
 PERMIT APPLICANT AND CONTRACTOR**

The following information should prove helpful in determining whether additional information should be obtained before starting your project

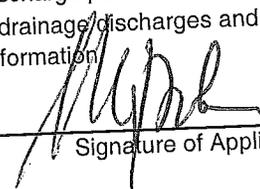
1.  A Phone Call May Save Your Life -- if you have underground utilities or if your work is under or near an electrical service line, investigate before you start work. Call:

	<u>WORKING HOURS</u>	<u>AFTER HOURS</u>
Hawaiian Telecom	840-1444	
Hawaiian Electric Company	543-5654	548-7961
GASCO	535-5933	535-5933
Board of Water Supply	748-5382	748-5000

**Be Aware of the Sign, Noise and OSH Regulations**

Sign Regulations - Building Division	768-8220
Noise Regulations - Department of Health	586-4700
Occupational Safety and Health - DOSH	586-9100
Department of Labor	
Asbestos and Lead-Based Paint Regulations	586-5800
Department of Health	

2.  Owners will be responsible to notify the Federal Aviation Administration (FAA) for structures which exceed 200 feet in height above ground line and certain structures within 4 miles from the nearest point of the nearest runway of each airport. (Single-family dwellings exempted.) FAA telephone is 541-1243.
3.  REMINDER - Owners should check their deeds, lease agreements, and/or association by-laws for any building restrictions.
4.  HOUSE NUMBERING REQUIREMENTS - All main entrances to buildings shall be numbered with numbers at least two inches in height. Address signs shall not exceed one square feet. Emergency service agencies such as fire, police, ambulance, etc., can respond more readily with minimum delays when buildings are properly numbered.
5.  To prevent termite entry, the building code requires openings around pipes or other penetrations in concrete slab-on-grade to be filled with non-shrink grout.
6.  Plumbing and / or Electrical plans not checked. Project subject to inspection for code compliance.
7.  Plumbing and / or Electrical work shall be inspected and approved prior to concealment.
8.  PROTECTION OF ADJOINING PROPERTY - The owner and contractor doing the excavation or fill shall be responsible to implement safety measures to protect adjoining properties, streets or natural watercourses from falling rocks, boulders, soil, debris and other dangerous objects.
9.  EROSION AND SEDIMENT CONTROL - Since it is unlawful to discharge pollutants from the construction site, the owner and the contractor shall check the criteria for handling drainage discharges and ensure compliance with all appropriate regulations. Call 768-8218 / 8219 for more information.

  
 \_\_\_\_\_  
 Signature of Applicant

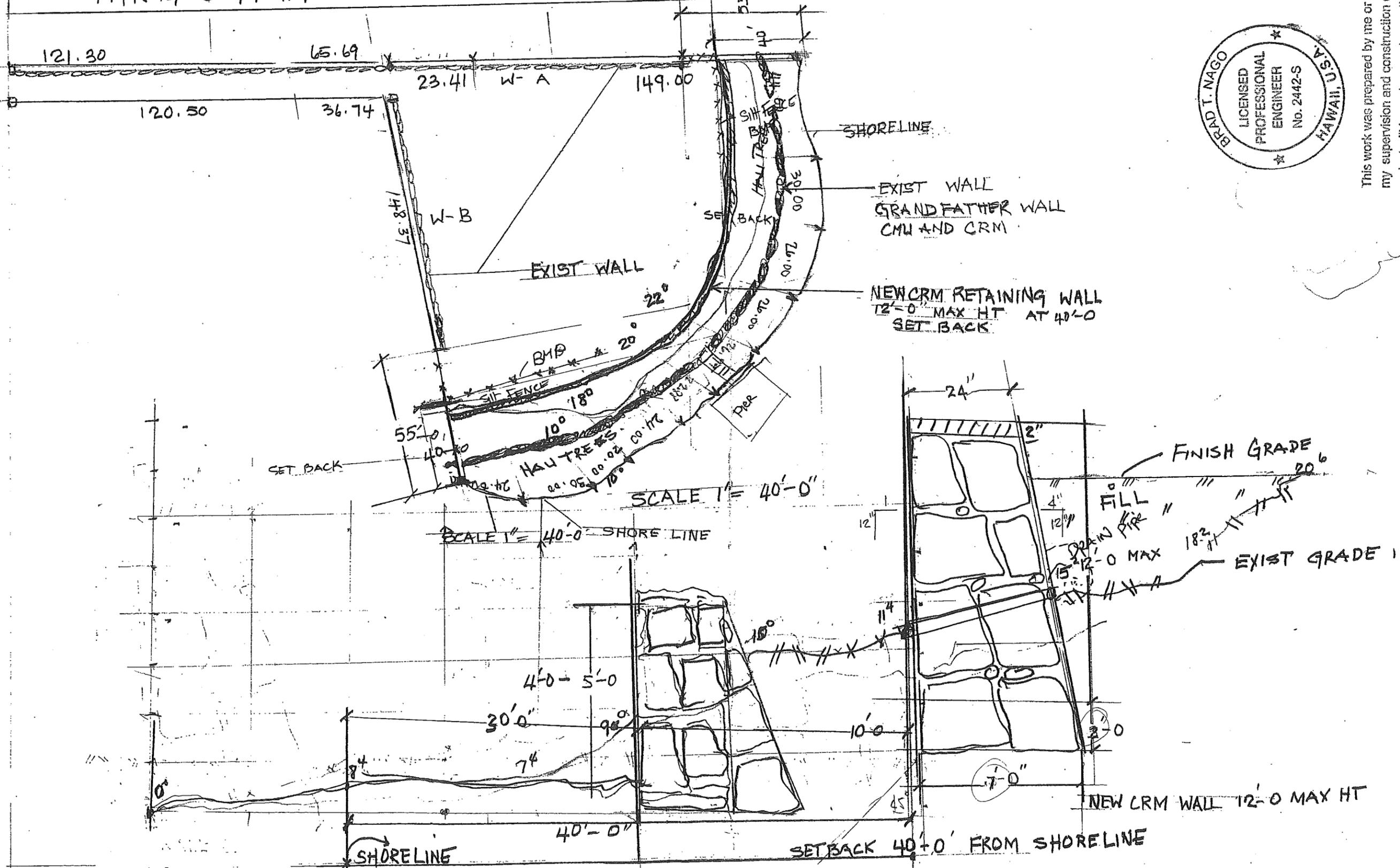
10/18/10  
 \_\_\_\_\_  
 Date

CRM WALL FOR MR & MRS LUI AND MR & MRS RONARD G.S AU  
 ADDRESS 45-010 SPRINGER PL  
 TMK 4-5-47-117



This work was prepared by me or under  
 my supervision and construction of this  
 project will be under my observation.

Signature: *Brad T. Nago* Date: 4/30/12  
 5472



NEW CRM WALL 12'-0" MAX HT

SETBACK 40'-0" FROM SHORELINE



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CIVIL ENGINEERING / CONSTRUCTION MANAGEMENT

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## **APPENDIX B – CONSTRUCTION PHOTOGRAPH LOGS**

**Wall @ Coconut Tree Area**

*(1) Progress pictures*

**Wall @ Mauka side stepdown**

*(2)Progress pictures*

**Wall and footings towards Pier**

*(3)*

**Wall at driveway**

*(4)*

**Pictures of Wall @  
Peroff's  
Home Nov 2010**

**Materials Delivered after 11/15/2010**

*Materials 11/15-11/24/2010 (5)*

**Footings towards pool Area**

*(6)Progress pictures*

**Wall from Ocean side**

*(7)*

**11/25/2010**

**Walls and steps @ stairs**

*(8)Progres Pictures*

**Rubbish out**

(9)

**Toward corner @ Cgipper**

*Progress pictures (10)*

**Cut Coconut tree**

(11)

**Towards corner @ Pier**

*Progress Pictures (12)*

**Pictures of wall  
@ Peroff's  
Home  
Nov 2010**

**Towards Corner from Ocean**

*Progress Pictures (13)*

**Misc Pictures**

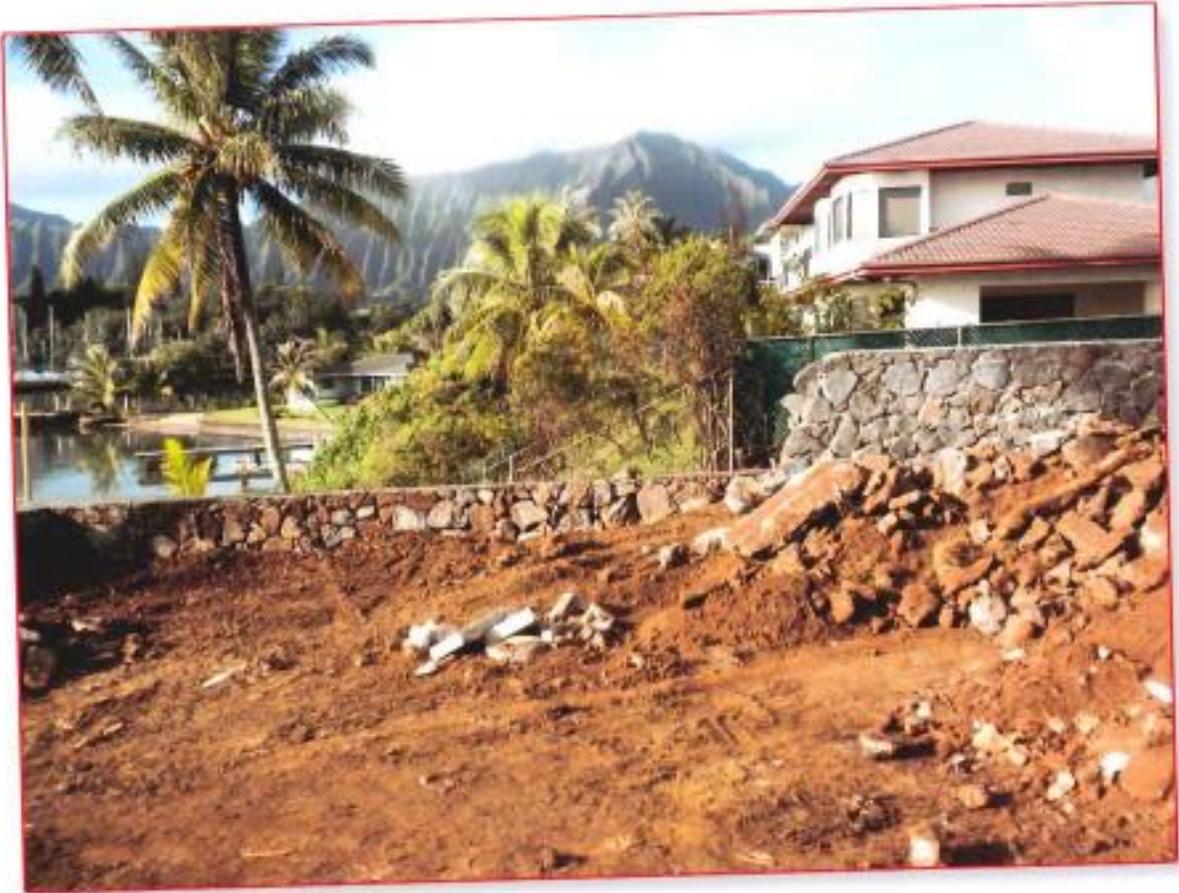
(14)



11/15/2010



11/15/2010



11/17/2010



11/20/2010



11/22/2010



3

11/23/2010



11/24/2010



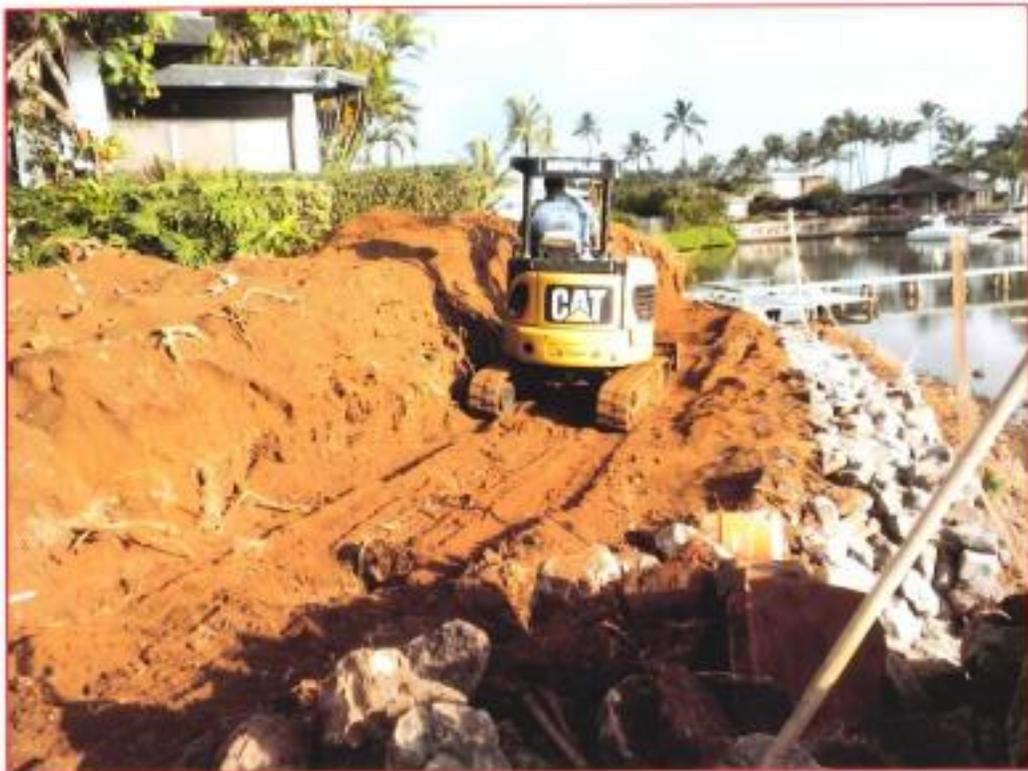
11/15/2010



11/15/2010



11/16/2010



11/17/2010



11/18/2010



11/19/2010



11/19/2010





11/20/2010



11/15/2010



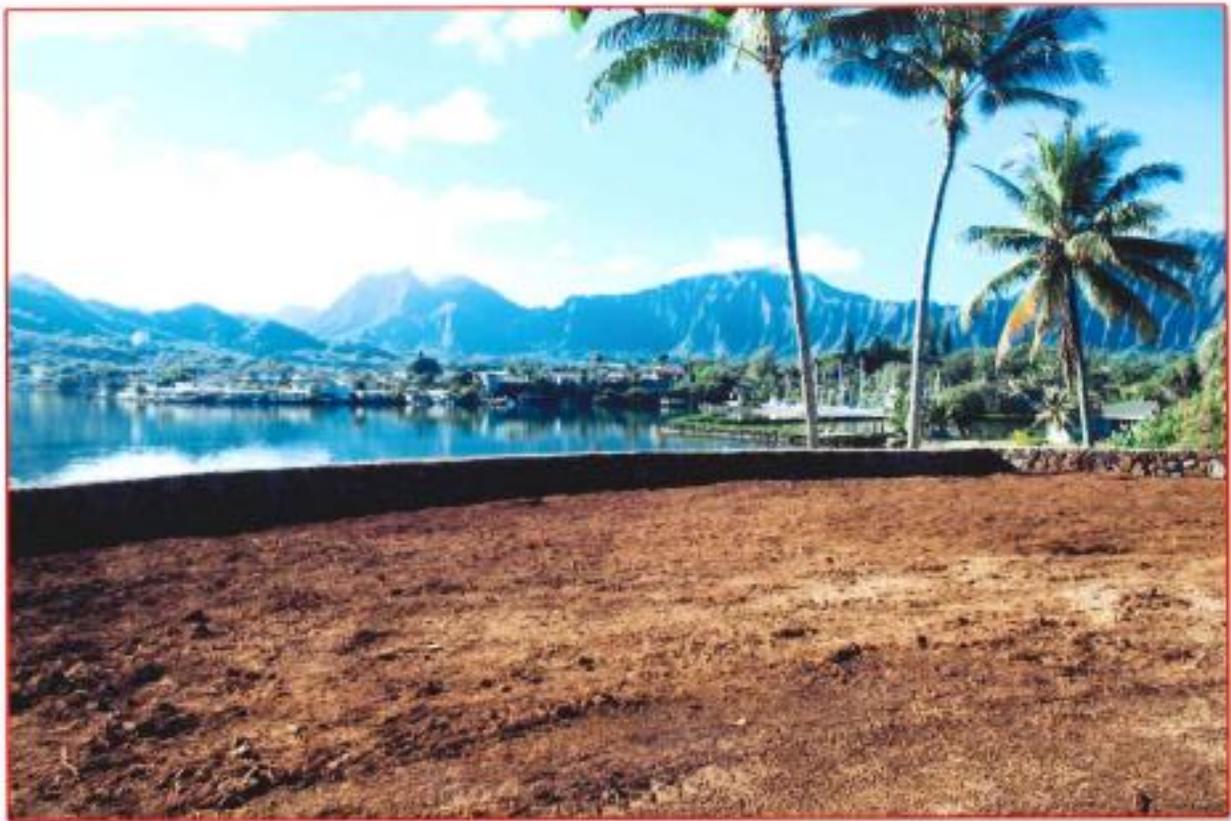
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11/16/2010



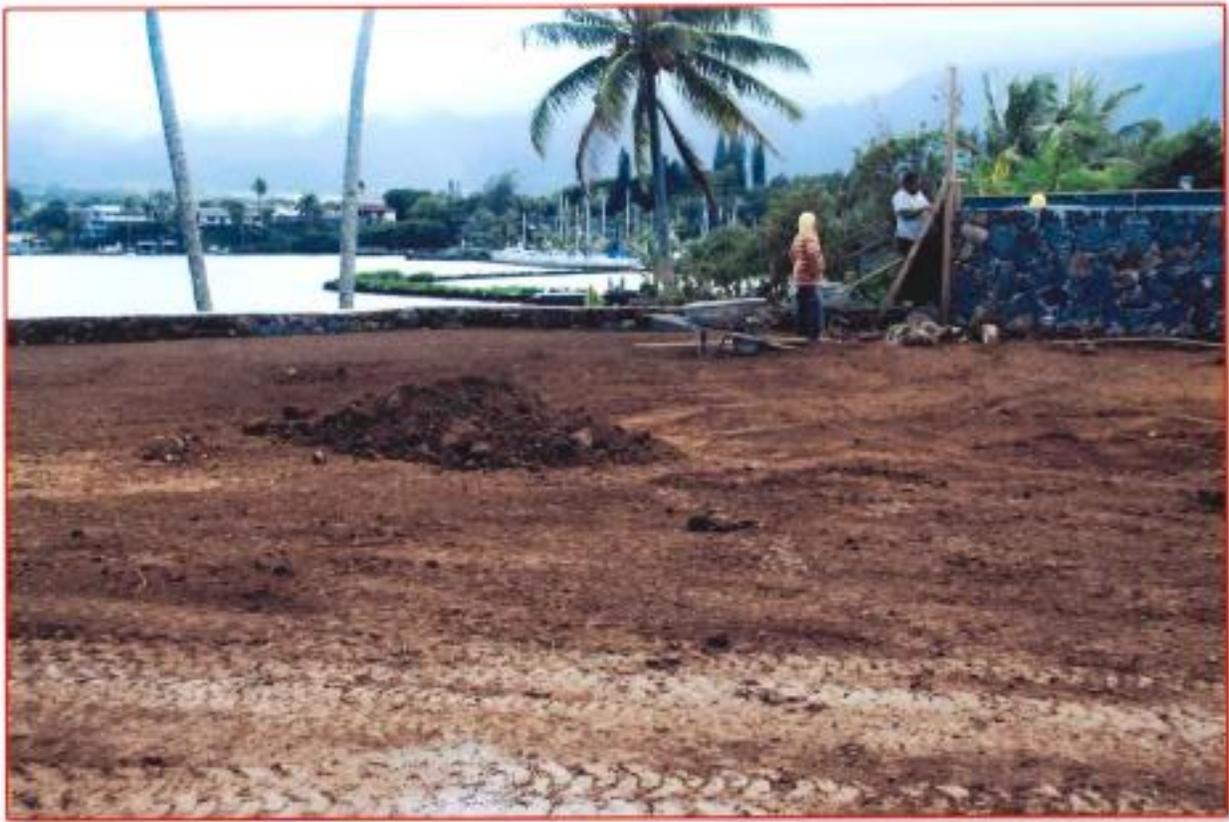
11/17/2010



11/22/2010



11/22/2010



11/24/2010



11/24/2010  
5



11/15/2010



11/18/2010



11/15/2010



11/16/2010



11/16/2010



11/16/2010



11/16/2010



11/17/2010



11/17/2010



11/18/2010



11/19/2010



11/20/2010



11/20/2010



11/20/2010



11/20/2010



11/20/2010



11/22/2010



11/22/2010



11/22/2010



11/23/2010



11/24/2010



11/24/2010



11/15/2010



11/22/2010



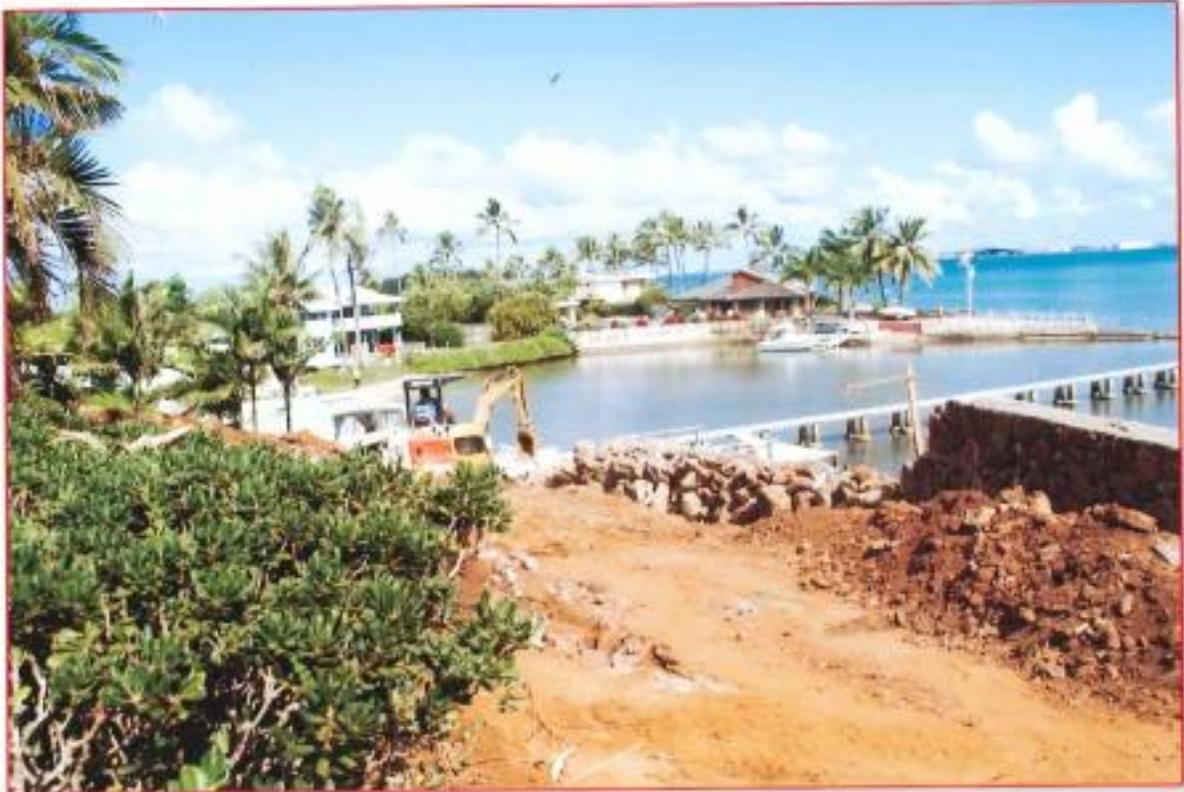
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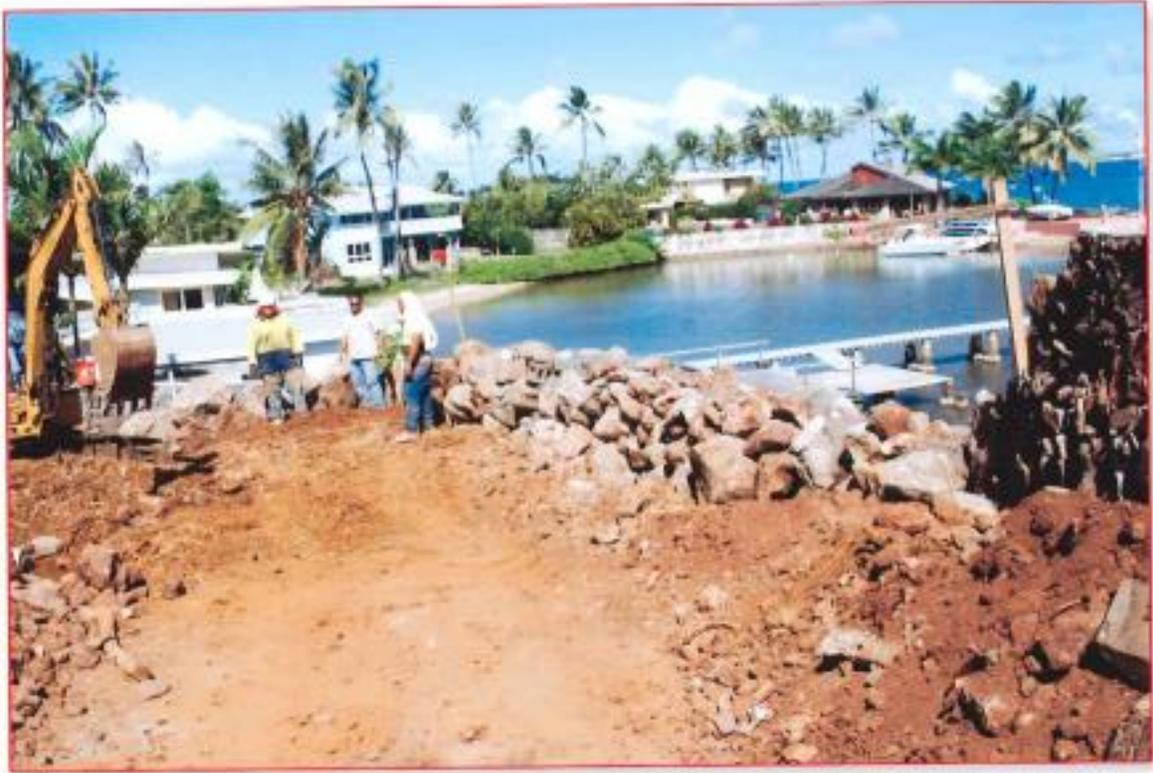


11/22/2010



Both  
11/23/2010





Both 11/23/2010

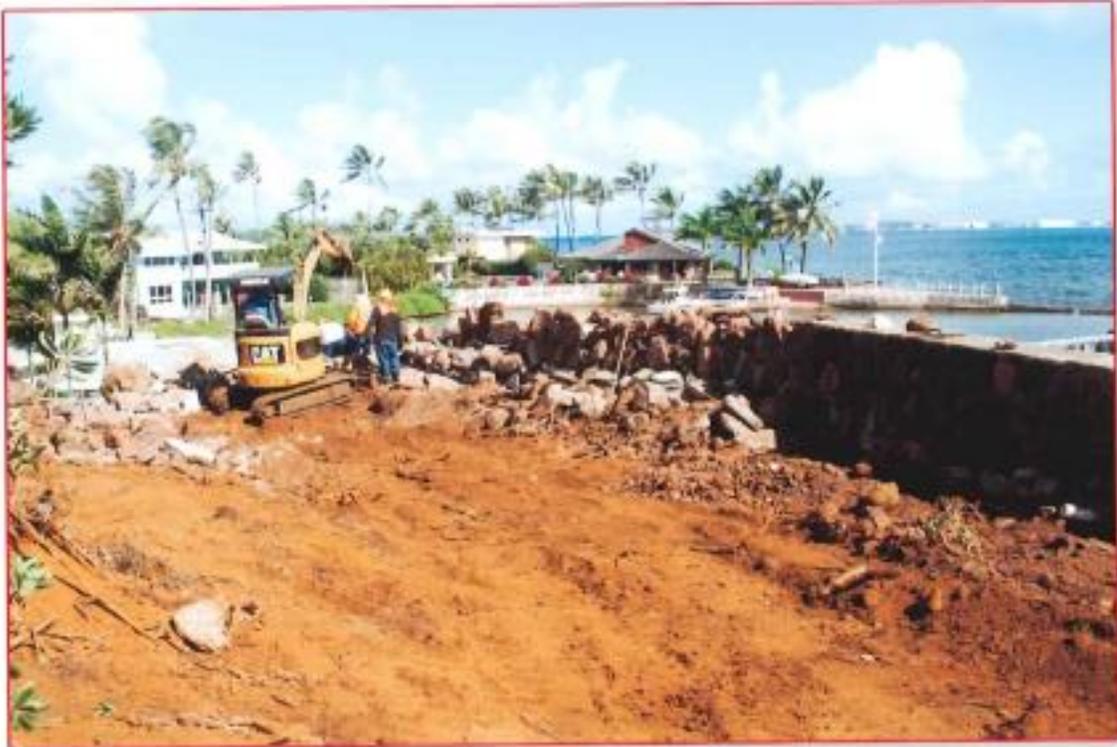




11/23/2010



11/24/2010



Both 11/24/2010





Both  
11/24/2010





Both 11/24/2010



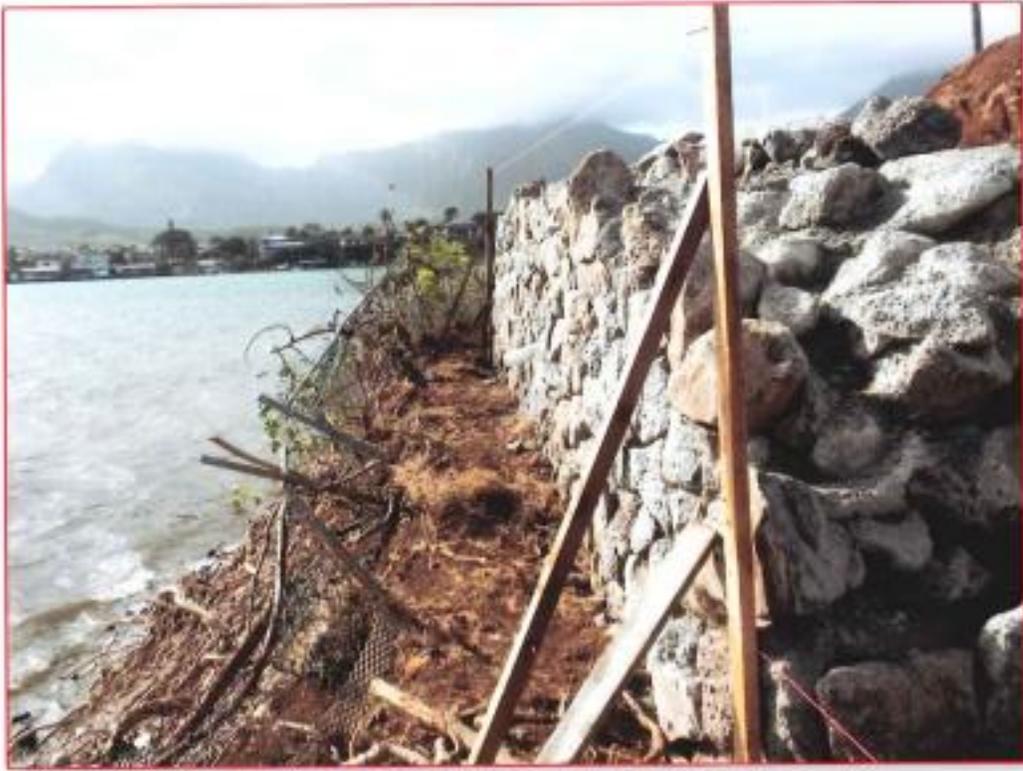
Both  
11/16/2010





Both 11/16/2010





11/17/2010



11/17/2010



Both  
11/17/2010





Both 11/17/2010





11/19/2010



11/19/2010



Both  
11/19/2010



Both  
11/18/2010





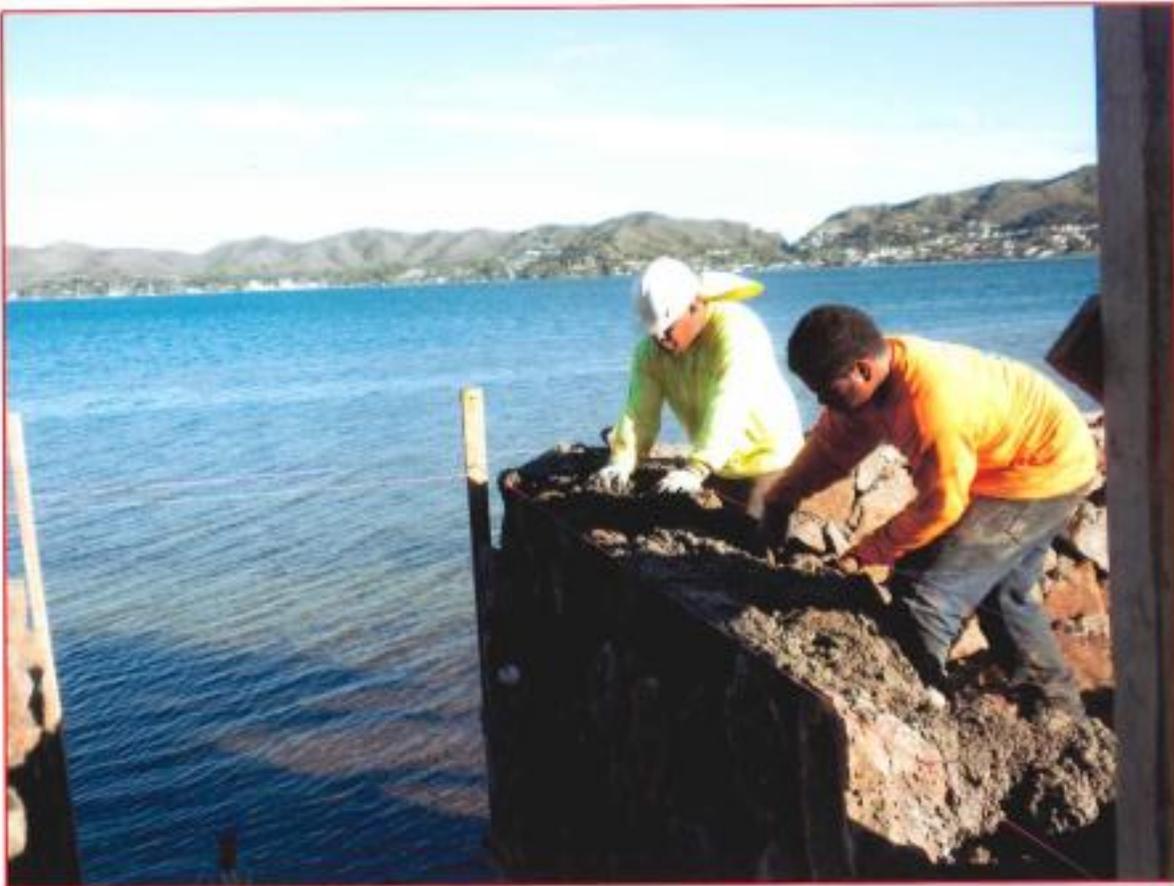
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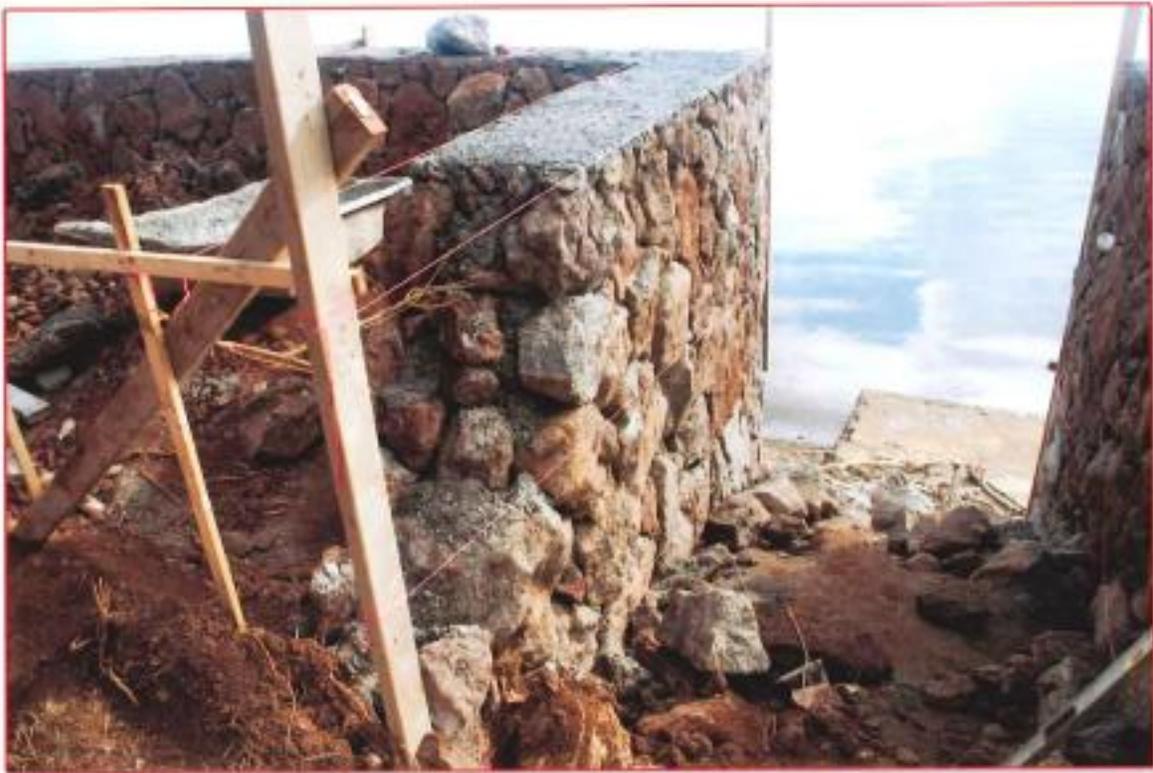
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11/19/2010



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11/19/2010



Both 11/19/2010



Both  
11/19/2010



11/19/2010



11/19/2010



11/19/2010



11/20/2010



Both  
11/20/2010





Both 11/22/2010





11/20/2010



11/20/2010



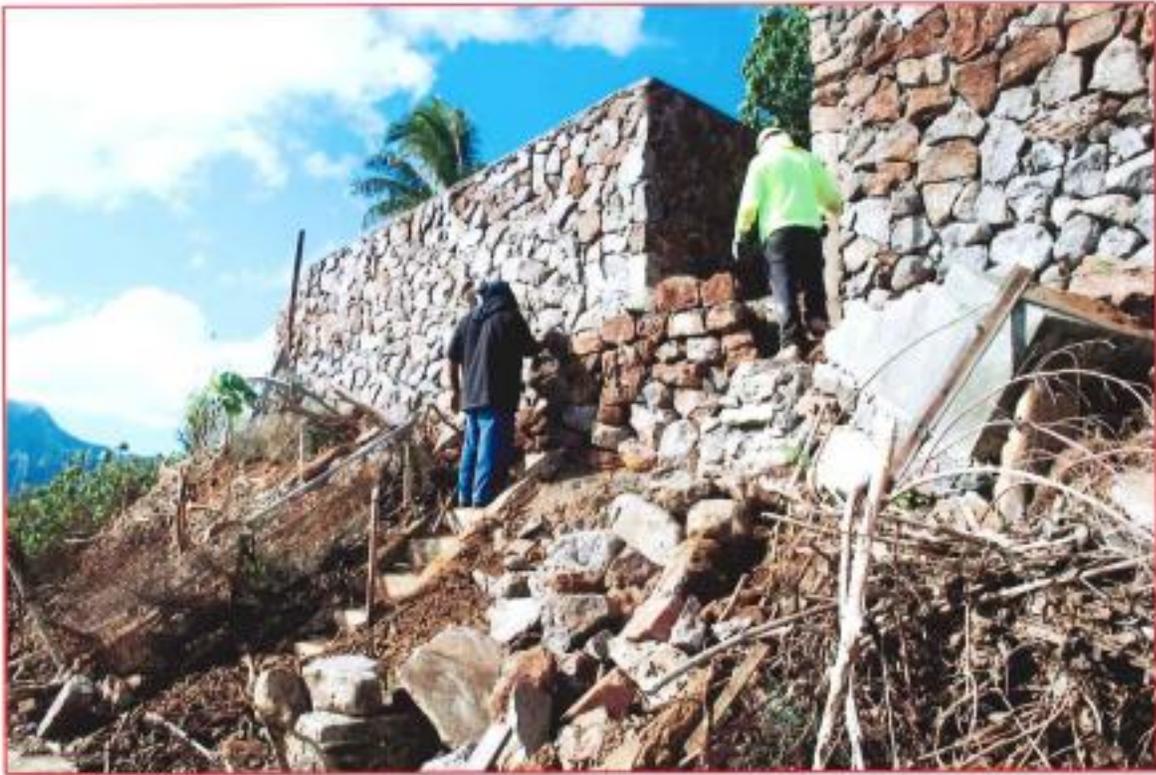
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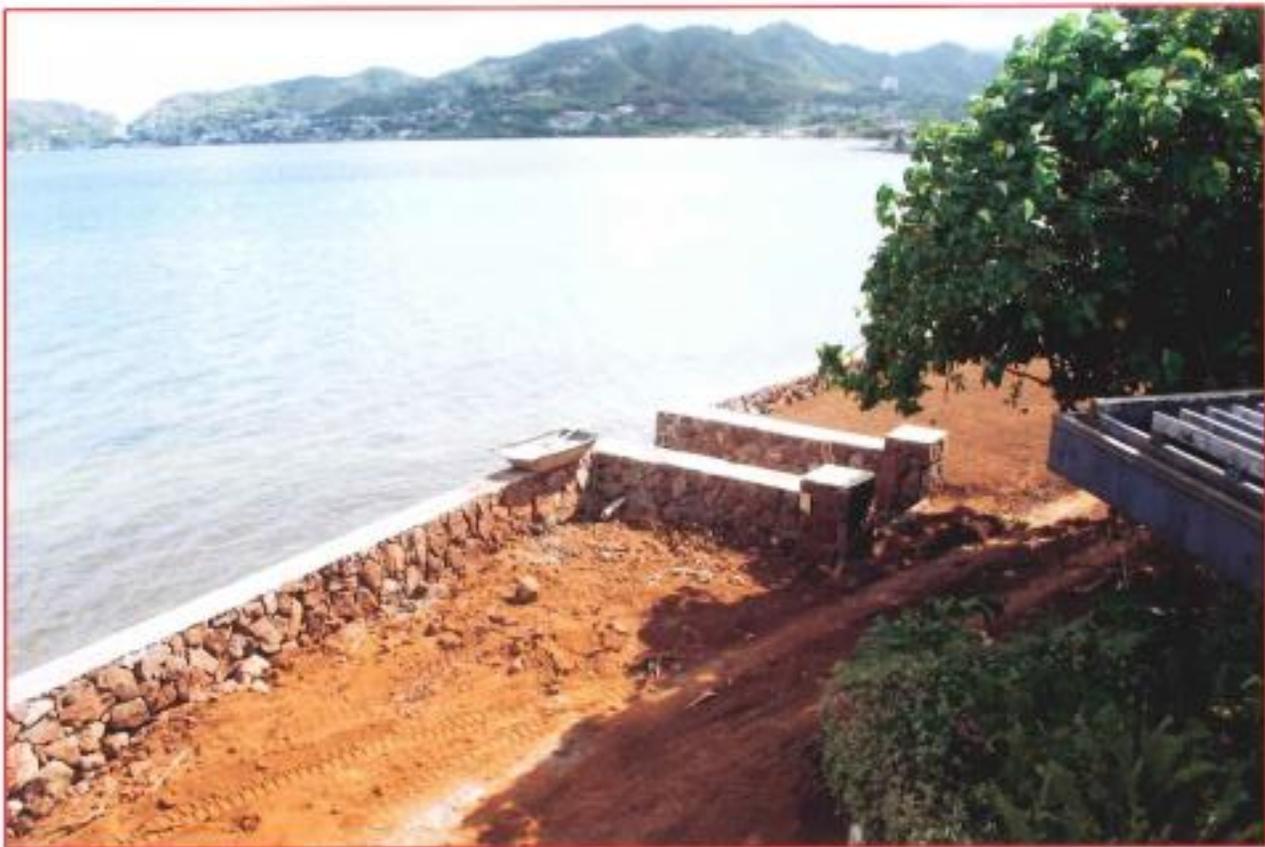
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Both  
11/22/2010



11/23/2010



11/24/2010



11/24/2010

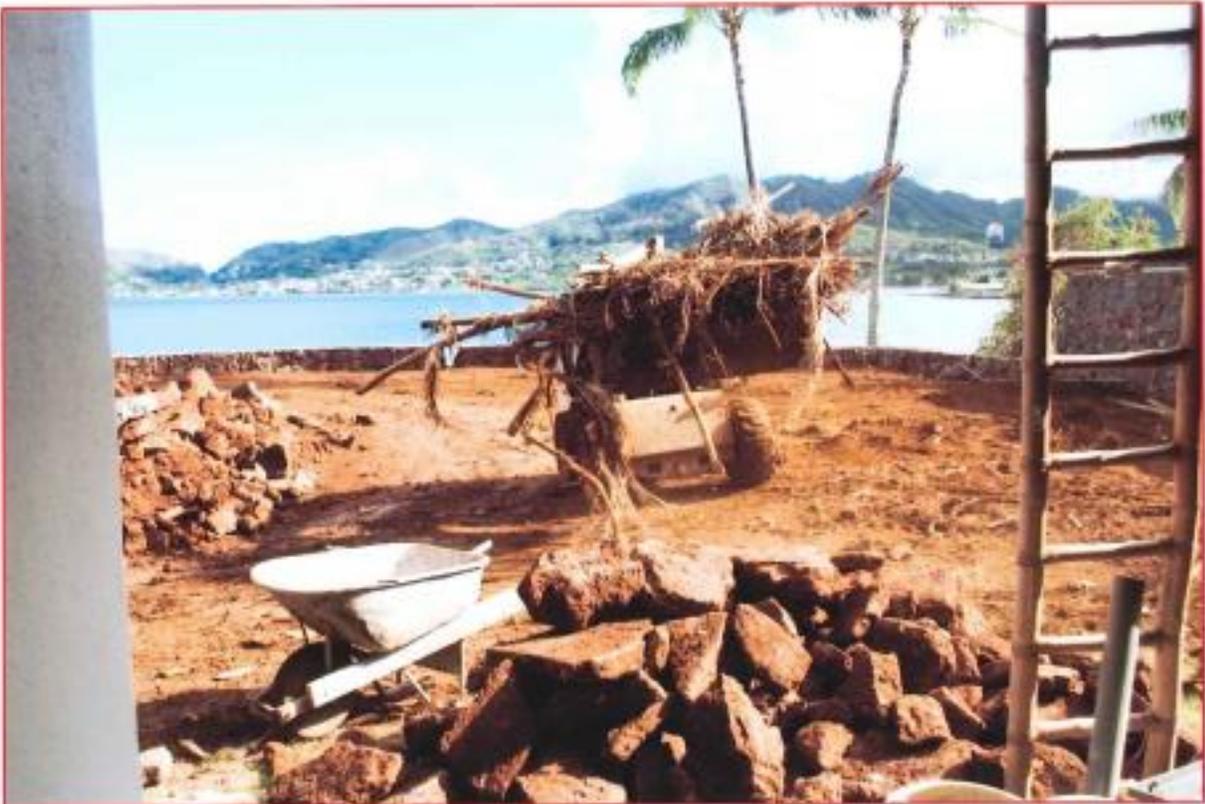


Both  
11/20/2010





Both 11/20/2010





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11/20/2010





Both 11/20/2010





11/20/2010



11/22/2010



11/23/2010



11/23/2010



11/24/2010

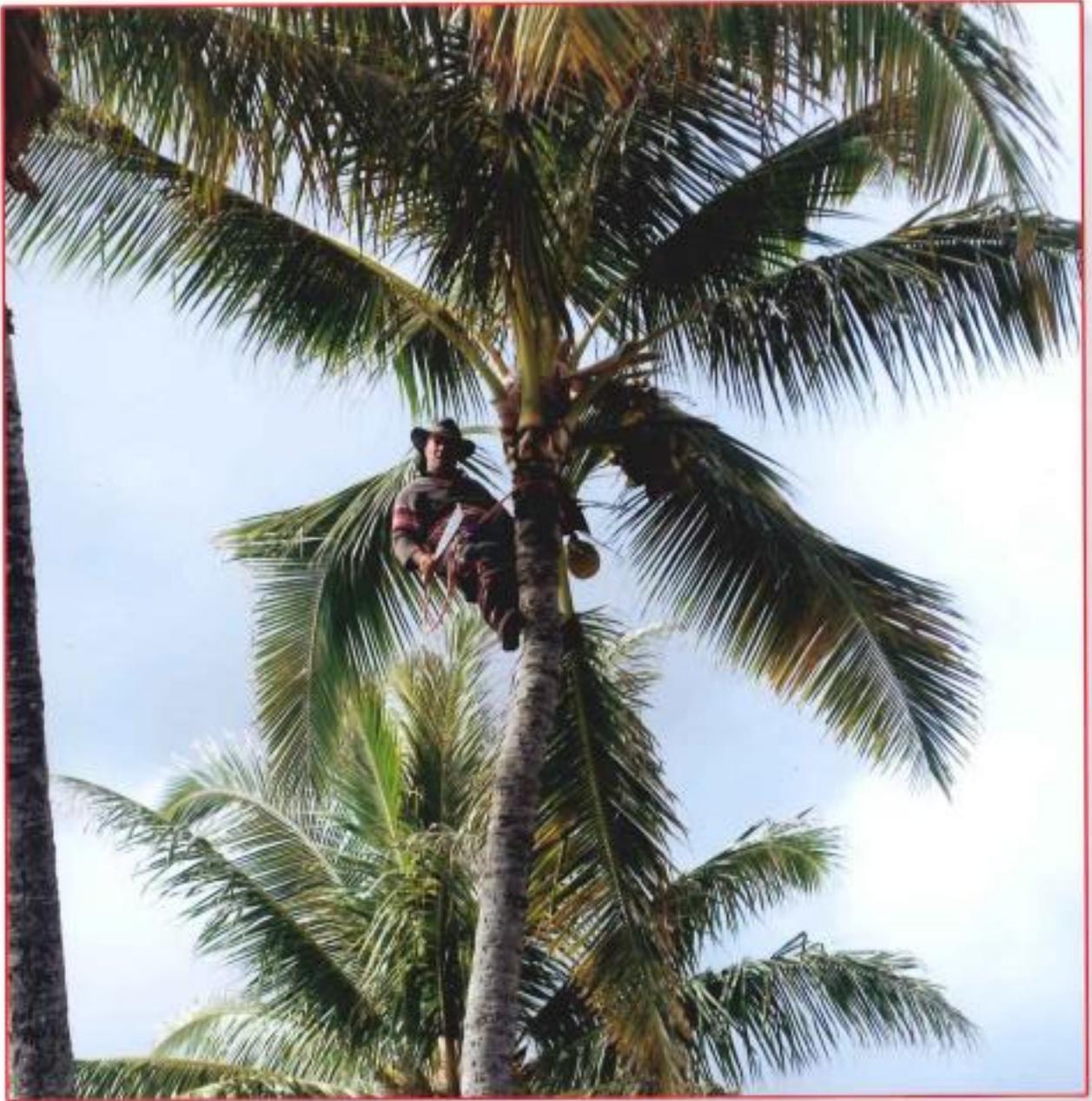


Both  
11/24/2010





11/24/2010



11/20/2010



11/17/2010



11/20/2010



11/20/2010



11/20/2010



Both 11/20/2010





11/22/2010



11/22/2010



Both  
11/22/2010





Both 11/22/2010





Both  
11/22/2010





Both  
11/23/2010



11/23/2010



11/24/2010



Both  
11/24/2010





Both 11/24/2010





Both 11/24/2010



11/18/2010



11/22/2010



11/22/2010



11/22/2010



11/22/2010



11/23/2010



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11/24/2010



11/16/2010



11/17/2010



11/19/2010









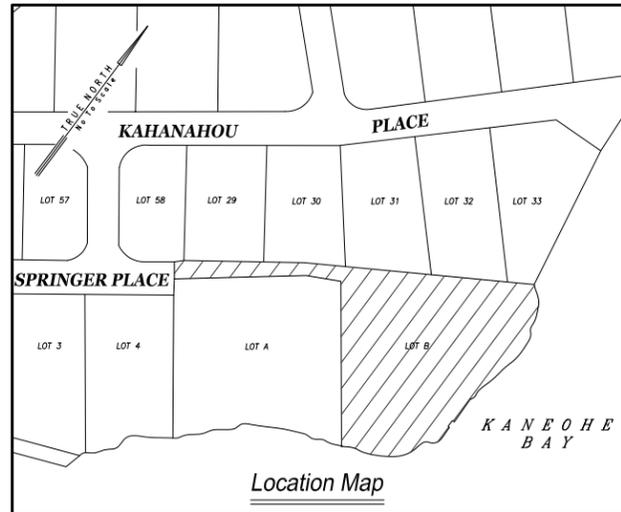


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CIVIL ENGINEERING / CONSTRUCTION MANAGEMENT

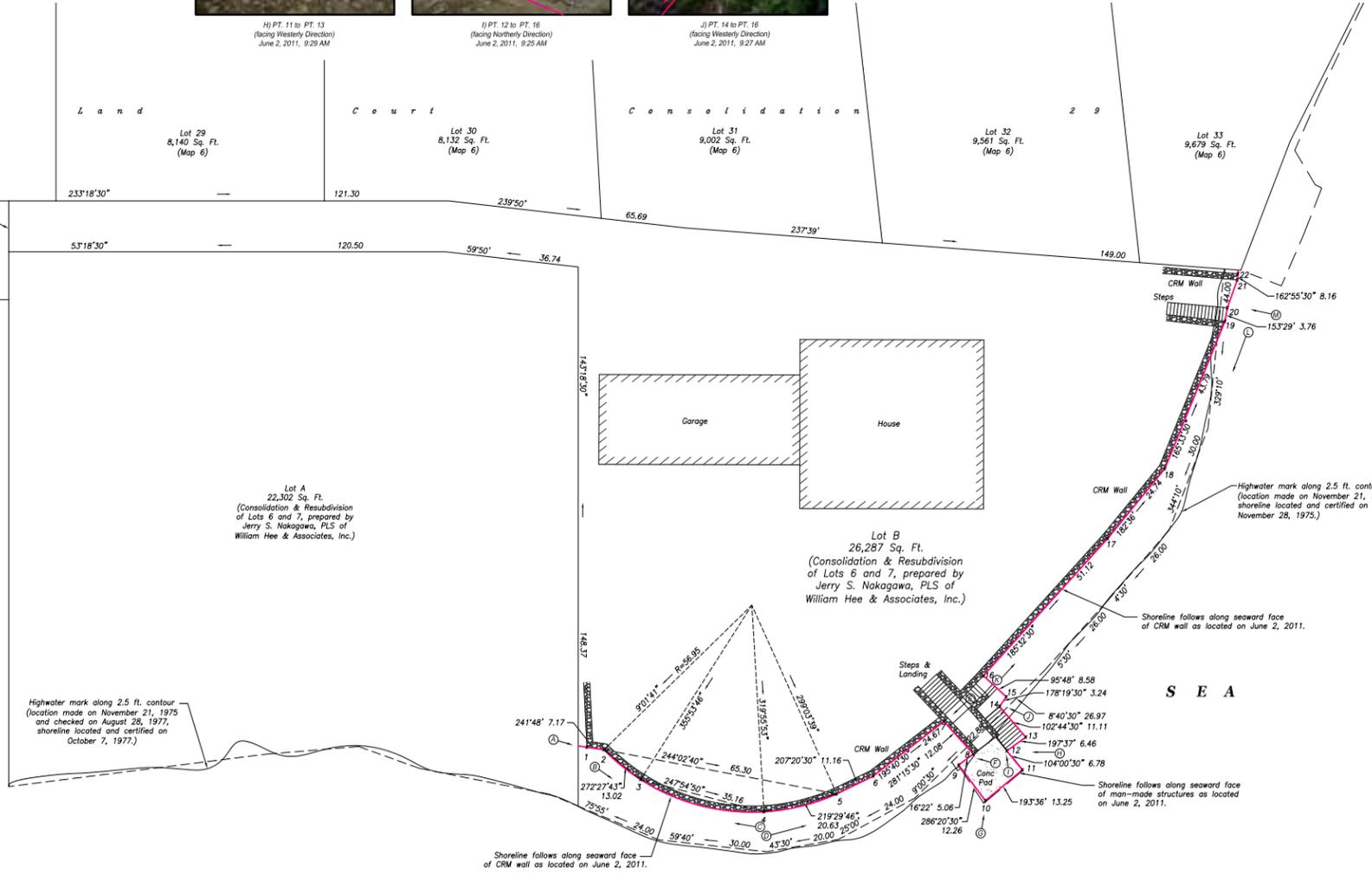
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## **APPENDIX C – DRAFT SHORELINE PLAN & DLNR REVIEW**

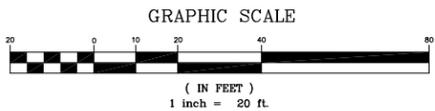


Owners: Valentine and Barbara Peroff  
 Owner's/Property Address: 45-010 Springer Place  
 Kaneohe, HI 96744

Date: June 9, 2011



Notes:  
 1. Origin of azimuths referred to Government Survey Triangulation Station "Puu Pahu".  
 2. Photographs and their directions.



This work was prepared by me or under my direct supervision  
 Kevin K. Kea Exp-4/12  
 Licensed Professional Land Surveyor  
 Certificate No. 10928  
 Land Court Surveyor No. 286



**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**LAND DIVISION**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

June 30, 2011

Mr. Kevin Kea  
Ace Land Surveying, LLC  
1221 Kapiolani Boulevard, Suite 1008  
Honolulu, Hawaii 96814

Dear Mr. Kea,

Subject: Shoreline Application, TMK (1) 4-5-047:117

Your application for shoreline certification of the subject property received by us on June 20, 2011 has been found to be incomplete for the following reasons:

1. The Chairperson shall not certify the shoreline in cases where unauthorized improvements encroach upon state land or where unauthorized improvements interfere with the natural shoreline process. The CRM wall, steps, landing and concrete pad as shown on the map encroach into State land makai of the subject parcel. The property owner shall first resolve the encroachment or violation problems with the applicable department prior to the Chairperson certifying the shoreline. (§13-222-19, HAR).

We retained one copy of the map and photos for our records and return the rest of the application, including the check, to you. Please resubmit a completed application upon resolution of the encroachment. We encourage you to use our Shoreline Certification Application Form and refer to Chapter 13-222, HAR, which can both be found at our website: <http://www.hawaii.gov/dlnr/lmd/rulesindex.html>. If you have any questions, please feel free to contact us at (808) 587-0420. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Ian Hirokawa".

Ian Hirokawa  
Project Development Specialist

Enclosures



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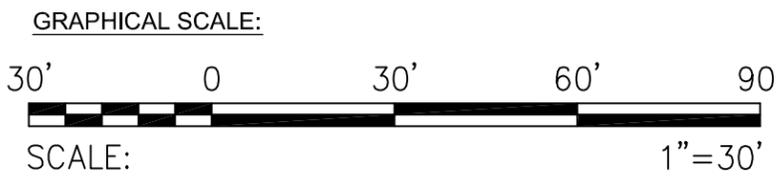
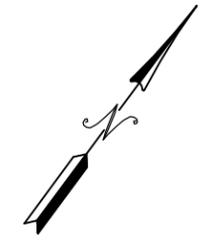
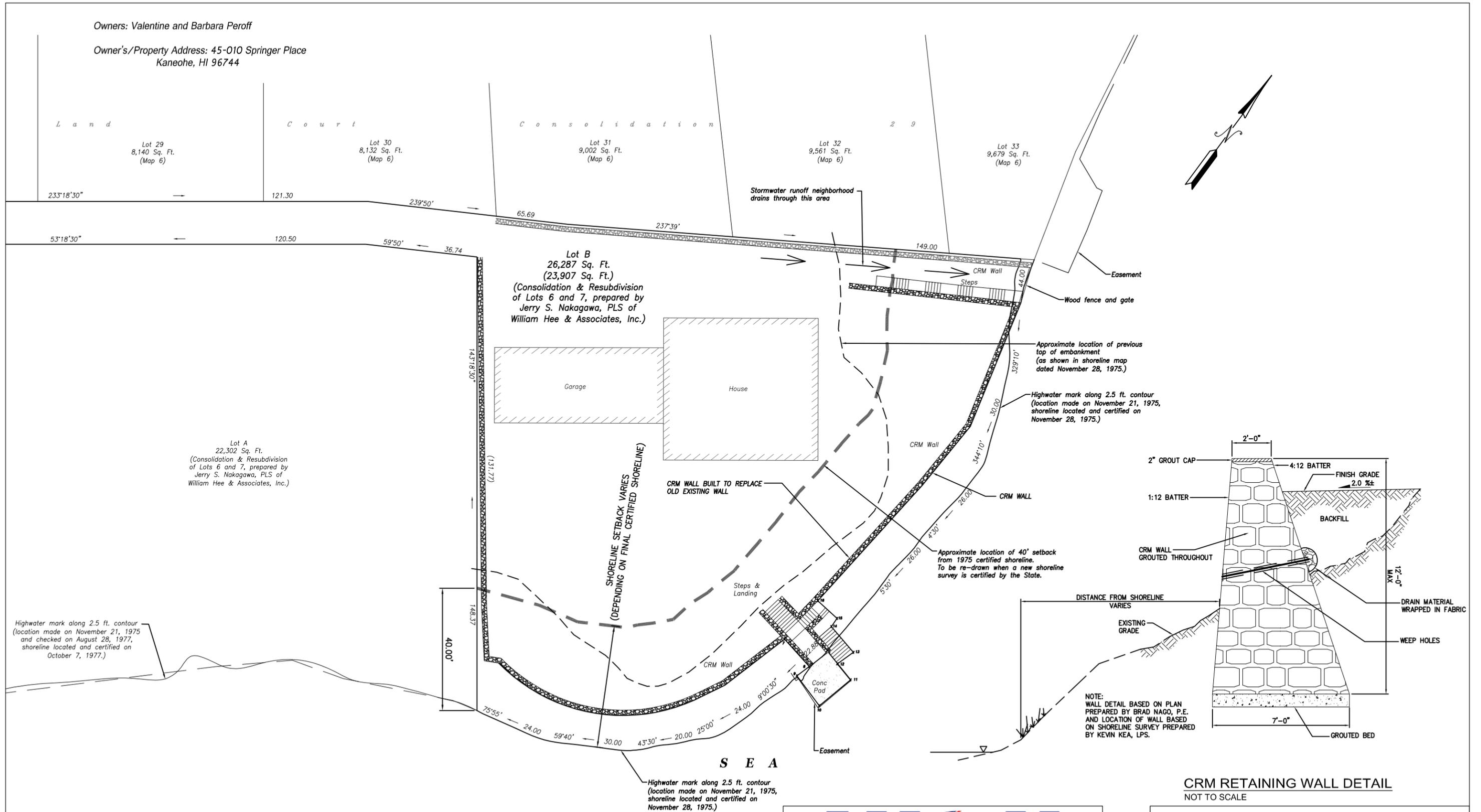
CIVIL ENGINEERING / CONSTRUCTION MANAGEMENT

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## **APPENDIX D – SITE PLAN AND CRM WALL DETAILS**

Owners: Valentine and Barbara Peroff

Owner's/Property Address: 45-010 Springer Place  
Kaneohe, HI 96744



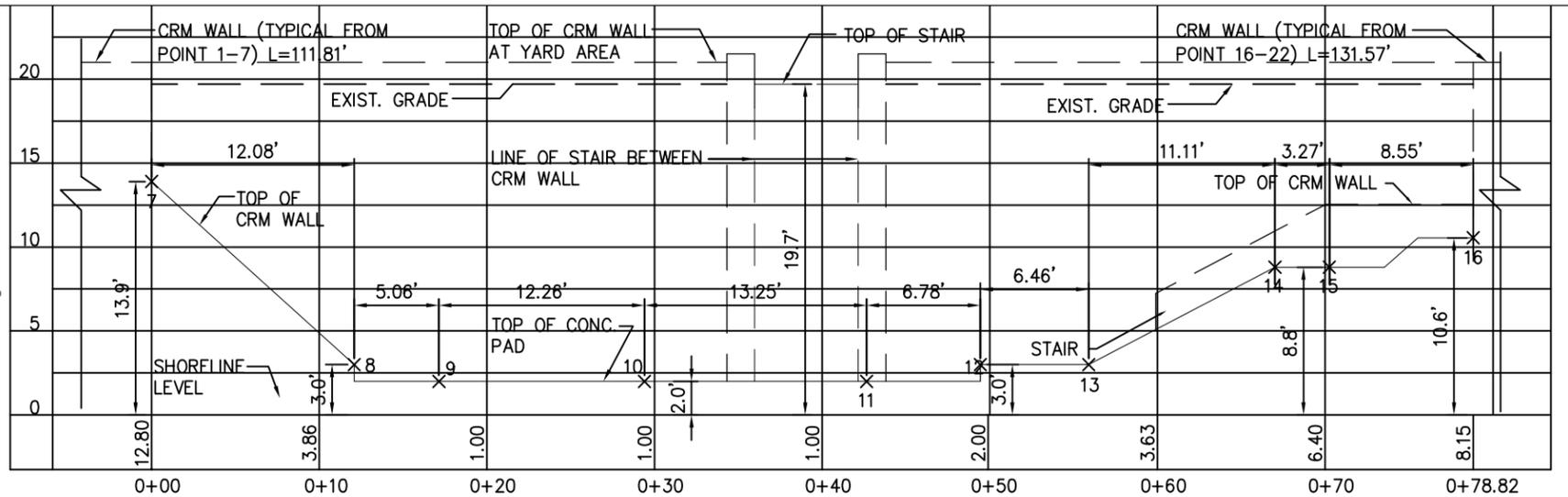
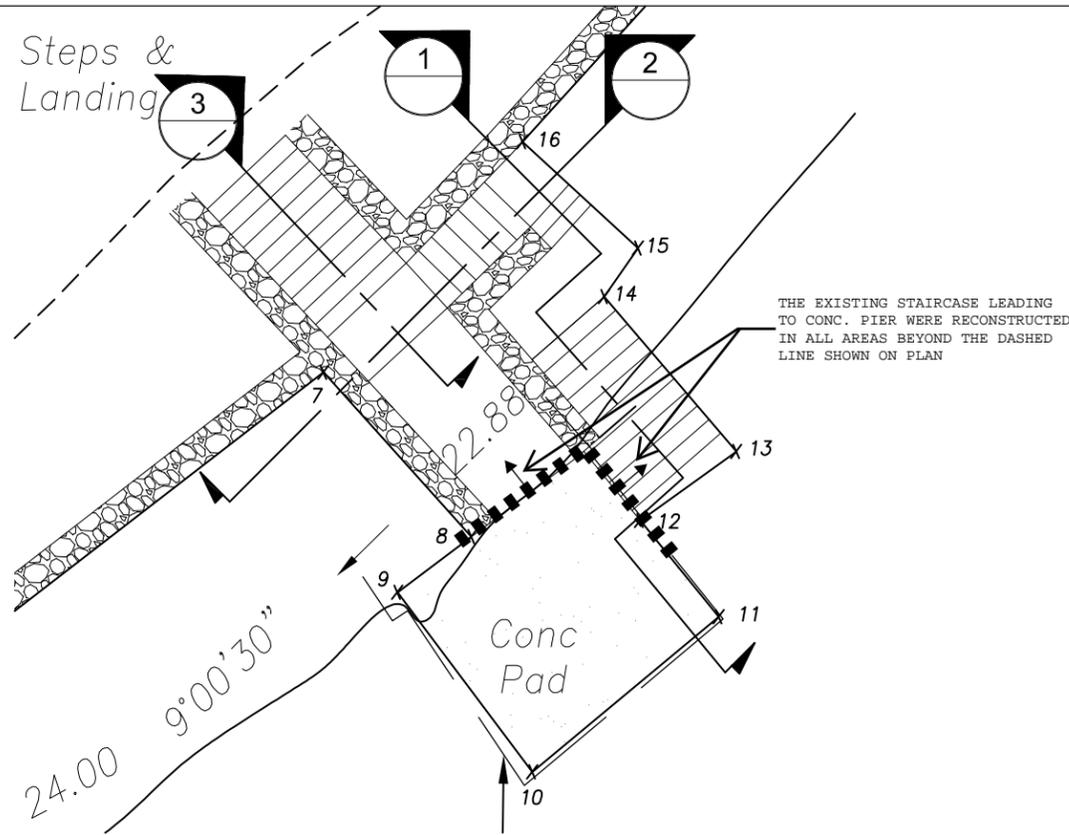
K A N E O H E  
B A Y



45 N. King Street, Suite 501 Voice: (808) 536-6621  
Honolulu, HI 96817 USA Fax: (808) 523-1738  
E-mail: adminhi@LYON.us.com www.LYON.us.com

CRM RETAINING WALL DETAIL  
NOT TO SCALE

PROJECT NAME: Peroff Retaining Wall  
Site Plan & Detail  
CLARIFICATION SKETCH: 1  
JN #: 11.043 DATE: 4/28/14

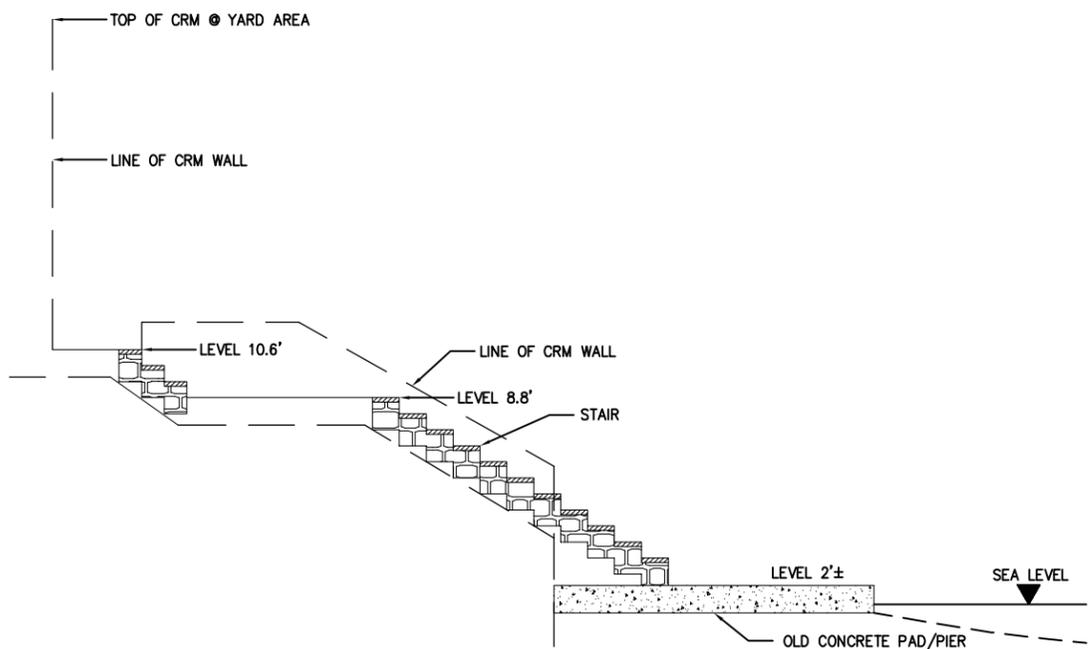


### PARTIAL CRM PROFILE (FROM POINT 7-16)

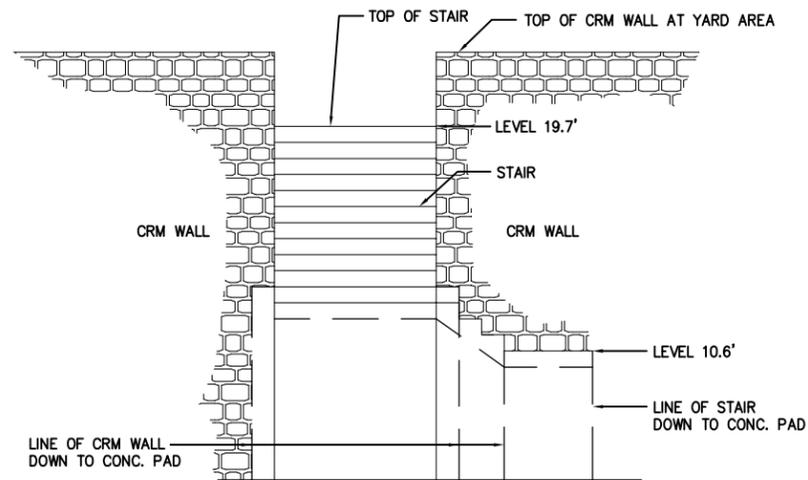
SHOWING STAIR FROM TOP OF YARD  
DOWN TO OLD CONCRETE PAD/PIER

L = 78.82'

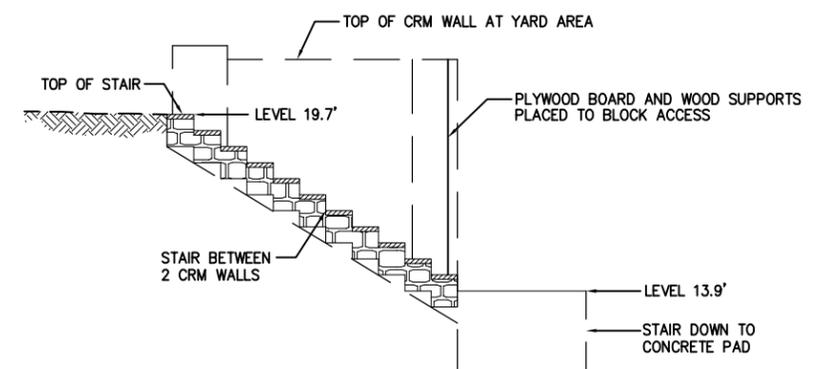
TOTAL LENGTH OF PROFILE FROM 1-22 = 322.20'



SECTION 1



SECTION 2



SECTION 3

ASSUMPTIONS ON STAIR CONSTRUCTION:  
7" HIGH STEPS OF STAIR  
12" THK. CRM FOR STAIR  
2% SLOPE OF STAIR LANDING  
TOP ELEVATION OLD CONC. PAD = 2±



45 N. King Street, Suite 501 Voice: (808) 536-6621  
Honolulu, HI 96817 USA Fax: (808) 523-1738  
E-mail: adminhi@LYON.us.com www.LYON.us.com

PROJECT NAME: Peroff Retaining Wall  
Site Plan & Detail

CLARIFICATION SKETCH: 2

JN #: 11.043

DATE: 09/19/12



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CIVIL ENGINEERING / CONSTRUCTION MANAGEMENT

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## **APPENDIX E – NOAA TIDAL STATION INFORMATION**

Sep 26 2012 20:23 GMT      ELEVATIONS ON STATION DATUM  
National Ocean Service (NOAA)

Station: 1612480  
Name: Mokuoloe, HI  
Status: Accepted (Apr 17 2003)

T.M.: 0 W  
Units: Feet  
Epoch: 1983-2001  
Datum: STND

Datum	Value	Description
<a href="#">MHHW</a>	5.04	Mean Higher-High Water
<a href="#">MHW</a>	4.72	Mean High Water
<a href="#">DTL</a>	3.98	Mean Diurnal Tide Level
<a href="#">MSL</a>	3.97	Mean Sea Level
<a href="#">MTL</a>	3.97	Mean Tide Level
<a href="#">MLW</a>	3.23	Mean Low Water
<a href="#">MLLW</a>	2.92	Mean Lower-Low Water
<a href="#">STND</a>	0.00	Station Datum
<a href="#">GT</a>	2.12	Great Diurnal Range
<a href="#">MN</a>	1.48	Mean Range of Tide
<a href="#">DHQ</a>	0.32	Mean Diurnal High Water Inequality
<a href="#">DLQ</a>	0.31	Mean Diurnal Low Water Inequality
<a href="#">HWI</a>	12.36	Greenwich High Water Interval (in Hours)
<a href="#">LWI</a>	6.84	Greenwich Low Water Interval (in Hours)
Maximum	6.50	Highest Observed Water Level
Max Date	19740108	Highest Observed Water Level Date
Max Time	03:36	Highest Observed Water Level Time
Minimum	1.50	Lowest Observed Water Level
Min Date	19680610	Lowest Observed Water Level Date
Min Time	07:24	Lowest Observed Water Level Time
<a href="#">HAT</a>	5.83	Highest Astronomical Tide
HAT Date	19861231	Highest Astronomical Tide Date
HAT Time	13:42	Highest Astronomical Tide Time
<a href="#">LAT</a>	2.12	Lowest Astronomical Tide
LAT Date	19861231	Lowest Astronomical Tide Date
LAT Time	05:48	Lowest Astronomical Tide Time

Tidal Datum Analysis Period: 01/01/1983 - 12/31/2001

Click [HERE](#) for further station information including New Epoch products.

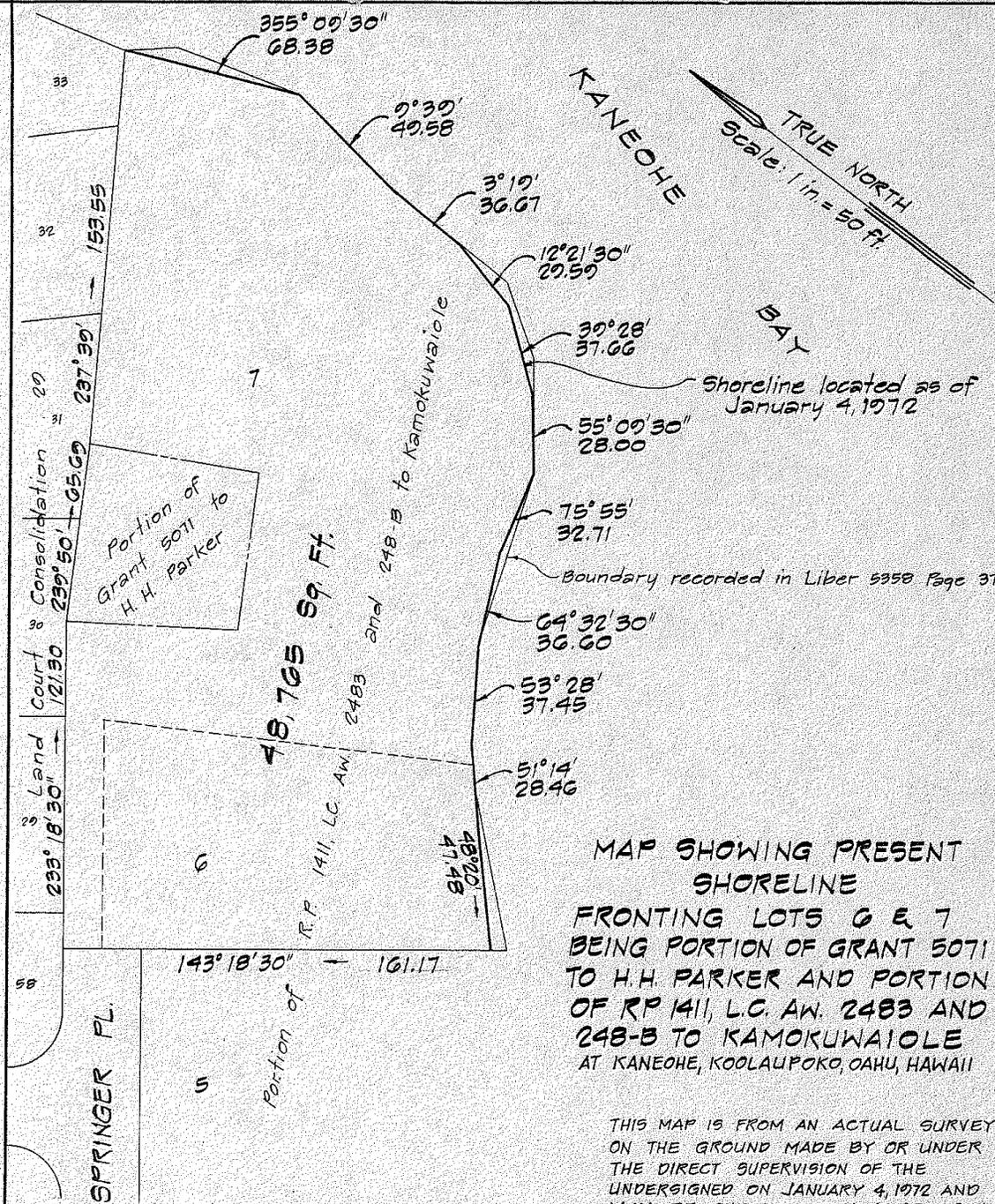


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CIVIL ENGINEERING / CONSTRUCTION MANAGEMENT

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## **APPENDIX F – 1972 CERTIFIED SHORELINE MAP**



MAP SHOWING PRESENT SHORELINE FRONTING LOTS 6 & 7 BEING PORTION OF GRANT 5071 TO H.H. PARKER AND PORTION OF RP 1411, L.C. AW. 2483 AND 248-B TO KAMOKUWAIOLE AT KANEOHE, KOOLAUPOKO, OAHU, HAWAII

THIS MAP IS FROM AN ACTUAL SURVEY ON THE GROUND MADE BY OR UNDER THE DIRECT SUPERVISION OF THE UNDERSIGNED ON JANUARY 4, 1972 AND MAY BE CHECKED WITH MY FIELD BOOK #111

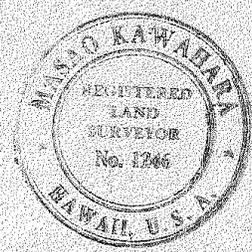
THE SHORELINE AS LOCATED AND CERTIFIED IS HEREBY CONFIRMED AS BEING THE ACTUAL SHORELINE AS OF MAY 15, 1972

*Kazutaka Baihi*  
STATE LAND SURVEYOR

April 20, 1972

TAX MAP KEY: 4-5-47:117 & 118

SURVEY OFFICE COPY

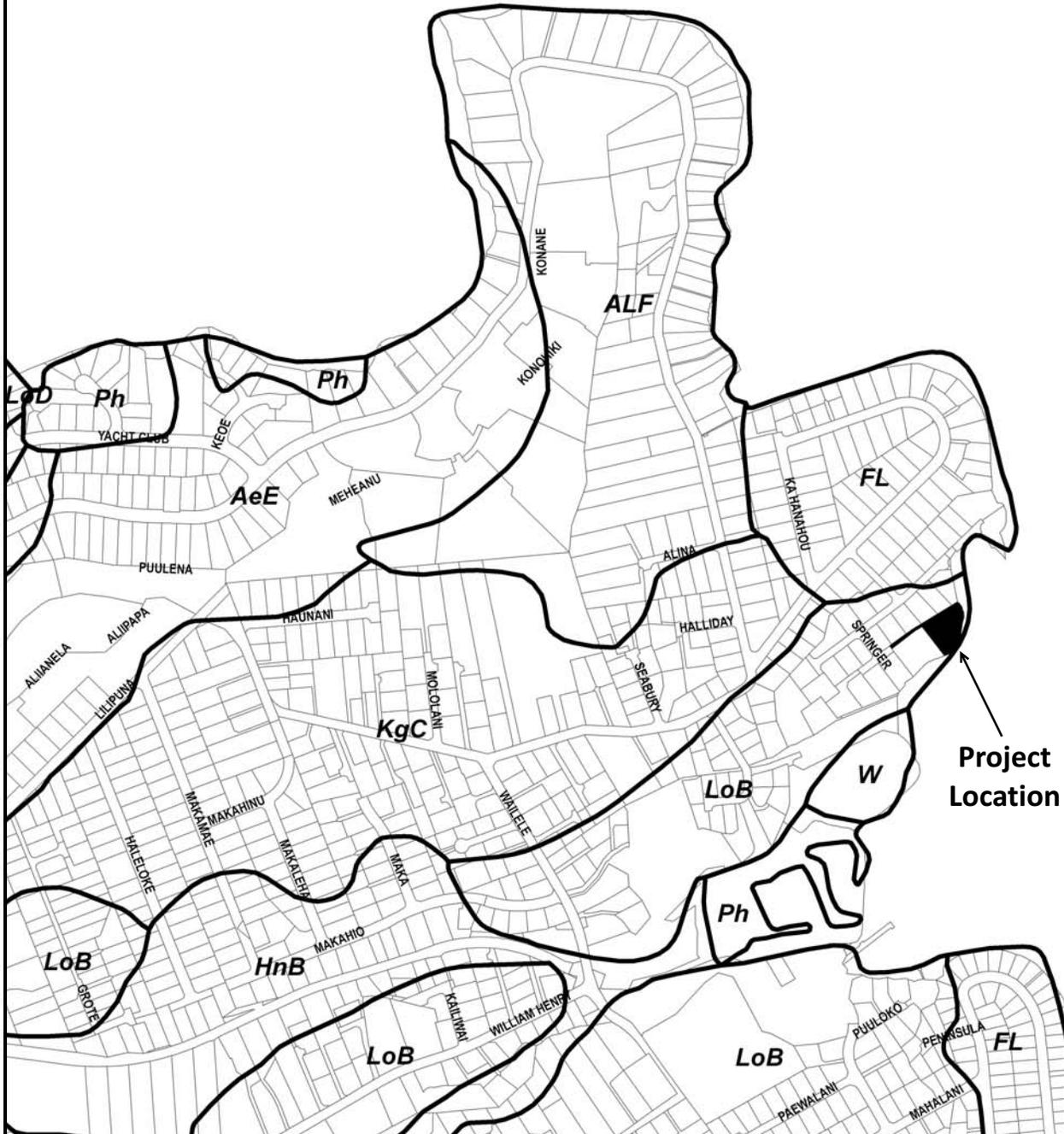
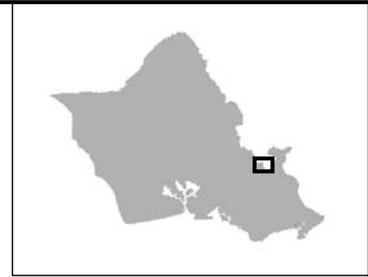
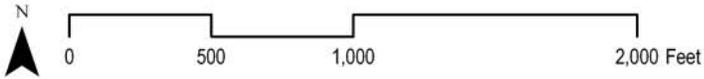


*Masao Kawahara*  
Registered Professional Surveyor  
Certificate Number 1246-5

LARRY K. MATSUO  
CIVIL ENGINEER & SURVEYOR

PARK ENGINEERING INC.  
ENGINEERS & SURVEYORS  
1149 BETHEL ST. PH. 5911676

**EXHIBIT 6**  
**Soil Survey**



**Soils Map**

45-010 Springer Place Residential Wall



## **EXHIBIT 7**

### **Flood Insurance Rate Map and Tsunami Zone**



# FLOOD HAZARD ASSESSMENT REPORT



## NATIONAL FLOOD INSURANCE PROGRAM

### FLOOD ZONE DEFINITIONS

**SPECIAL FLOOD HAZARD AREAS SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD** – The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zone A, AE, AH, AO, V, and VE. The Base Flood Elevation (BFE) is the water-surface elevation of the 1% annual chance flood. Mandatory flood insurance purchase applies in these zones:

- Zone A:** No BFE determined.
- Zone AE:** BFE determined.
- Zone AH:** Flood depths of 1 to 3 feet (usually areas of ponding); BFE determined.
- Zone AO:** Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined.
- Zone V:** Coastal flood zone with velocity hazard (wave action); no BFE determined.
- Zone VE:** Coastal flood zone with velocity hazard (wave action); BFE determined.
- Zone AEF:** Floodway areas in Zone AE. The floodway is the channel of stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without increasing the BFE.

**NON-SPECIAL FLOOD HAZARD AREA** – An area in a low-to-moderate risk flood zone. No mandatory flood insurance purchase requirements apply, but coverage is available in participating communities.

- Zone XS (X shaded):** Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.
- Zone X:** Areas determined to be outside the 0.2% annual chance floodplain.

### OTHER FLOOD AREAS

- Zone D:** Unstudied areas where flood hazards are undetermined, but flooding is possible. No mandatory flood insurance purchase requirements apply, but coverage is available in participating communities.

### PROPERTY INFORMATION

**COUNTY:** HONOLULU  
**TMK NO:** (1) 4-5-047-117  
**PARCEL ADDRESS:** 45-10 SPRINGER PL  
 KANEHOE, HI 96744  
**FIRM INDEX DATE:** JANUARY 19, 2011  
**LETTER OF MAP CHANGE(S):** NONE  
**FEMA FIRM PANEL(S):** 15003C0270H  
**PANEL EFFECTIVE DATE:** JANUARY 19, 2011

**PARCEL DATA FROM:** JULY 2011  
**IMAGERY DATA FROM:** MAY 2006

### IMPORTANT PHONE NUMBERS

County NFIP Coordinator  
 City and County of Honolulu  
 Mario Siu-Li, CFM (808) 768-8098  
State NFIP Coordinator  
 Carol Tyau-Beam, P.E., CFM (808) 587-0267

*Disclaimer: The Department of Land and Natural Resources assumes no responsibility arising from the use of the information contained in this report. Viewers/Users are responsible for verifying the accuracy of the information and agree to indemnify the Department of Land and Natural Resources from any liability, which may arise from its use.*

*Preliminary DFIRM Disclaimer: If this map has been identified as "PRELIMINARY", please note that it is being provided for commenting purposes only and is not to be used for official/legal decisions or regulatory compliance.*



Source: HoLIS



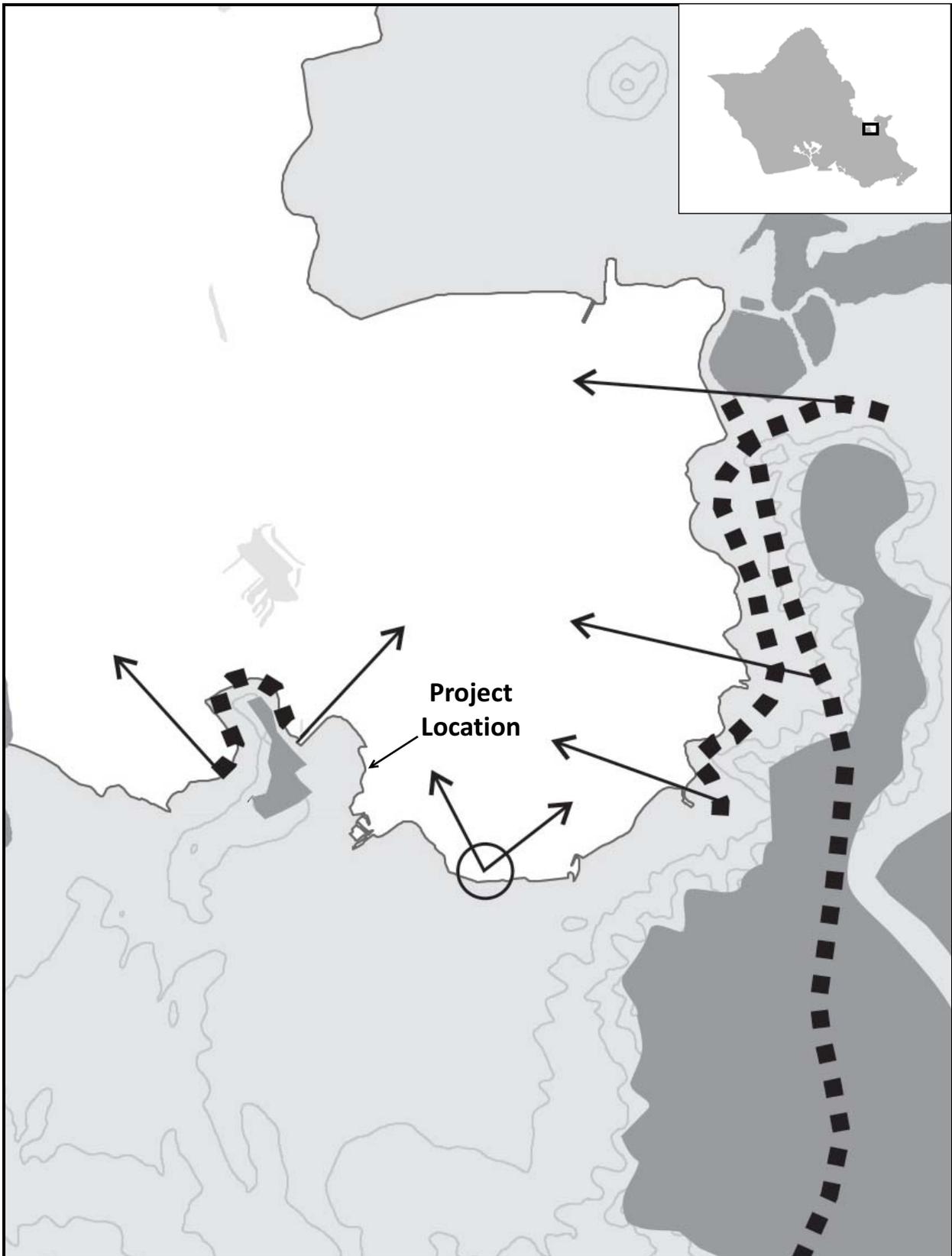
### Tsunami Zone

45-010 Springer Place Residential Wall

**EXHIBIT 8**  
**Public Shoreline Access**



**EXHIBIT 9**  
**Significant Views**



### Koolau Poko Sustainable Communities Plan, Significant Views

45-010 Springer Place Residential Wall

## **EXHIBIT 10**

# **U.S. Army Corps of Engineers Correspondence**



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, HONOLULU DISTRICT  
FORT SHAFTER, HAWAII 96858-5440

March 8, 2011

REPLY TO  
ATTENTION OF:

Regulatory Branch

File No. POH-2011-00069

Mr. Valentine Peroff, Jr.  
Ms. Barbara Peroff  
45-010 Springer Place  
Kaneohe, Hawaii 96744

Dear Mr. and Ms. Peroff:

We have received information regarding the alleged unauthorized discharge of fill material on the waterward side of a new concrete rubble mound (CRM) wall on your property located at 45-010 Springer Place, Kaneohe, Hawaii (TMK: (1) 4-5-047:117). This letter has been sent to officially inform you that a Department of the Army (DA) permit from the U.S. Army Corps of Engineers (Corps) is required for any work in, including the discharge of dredged and/or fill material into, waters of the United States (U.S.), including their adjacent wetlands.

In general, the Corps asserts geographic jurisdiction over certain water bodies pursuant to Section 10 of the Rivers and Harbors Act of 1899 (Section 10) and Section 404 of the Clean Water Act (Section 404). Under Section 10, the Corps' jurisdiction includes all navigable waters of the U.S. The shoreward limit of jurisdiction over structures or work occurring within, over, or under or affecting tidally influenced Section 10 waters is the *mean high water mark*. Under Section 10, a Corps permit is required before commencing construction activities in, over, or under navigable waters of the U.S.

Under Section 404, a DA permit is required prior to commencing activities or projects that result in the discharge (placement) of dredged or fill material in waters of the U.S.. For purposes of Section 404, the lateral limits of jurisdiction in tidally influenced waters extend to the *high tide line* in the absence of adjacent wetlands. The Corps' Honolulu District will generally accept the use of the *mean higher high water mark* (MHHWM), as measured by the National Oceanic and Atmospheric Administration (NOAA) and which is available on their website at: <http://tidesandcurrents.noaa.gov>, to approximate the high tide line. Elevation data from the nearest tide station should be utilized and the elevations then surveyed at the subject parcel.

Please be advised that the placement of fill material on the waterward side of the new CRM wall as observed in recently obtained site photographs appears to involve the discharge or fill material under the Corps' regulatory authority. Anyone who knowingly violates the above cited Federal statutes may be subject to the maximum penalties prescribed under the law.

→ We request you submit within 30 days of the date of this letter a narrative of work performed on this parcel, as well as plan and cross-section view drawings of your completed work in 8 1/2 x 11 inch format. Your drawings should be to scale or include dimensions and must include the

origin and amount of material placed waterward of the MHHWM, expressed in cubic yards. We caution you that no additional work should be accomplished without a DA permit. Should the result of the determination be negative, a DA permit will not be required. Should a DA permit be required, we will inform you of the need to submit an application for an After-The-Fact DA permit.

You are encouraged to apply for a DA Section 10 and Section 404 permit for any shoreline erosion protection measure you may require and propose. You are reminded that a DA permit is required **prior** to commencement of the proposed work.

This letter contains an approved jurisdictional determination for the property in question. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 Code of Federal Regulations (CFR) Part 331. We have enclosed a Notification of Administrative Appeal Options Process and Request For Appeal form.

Should you have any questions, please contact Mr. Robert Deroche, of my staff, at the above address or telephone 808-438-2039 or by email at [robert.d.deroche2@usace.army.mil](mailto:robert.d.deroche2@usace.army.mil). Please refer to File No. POH-2011-00069 in all future communications regarding this project location.

Sincerely,



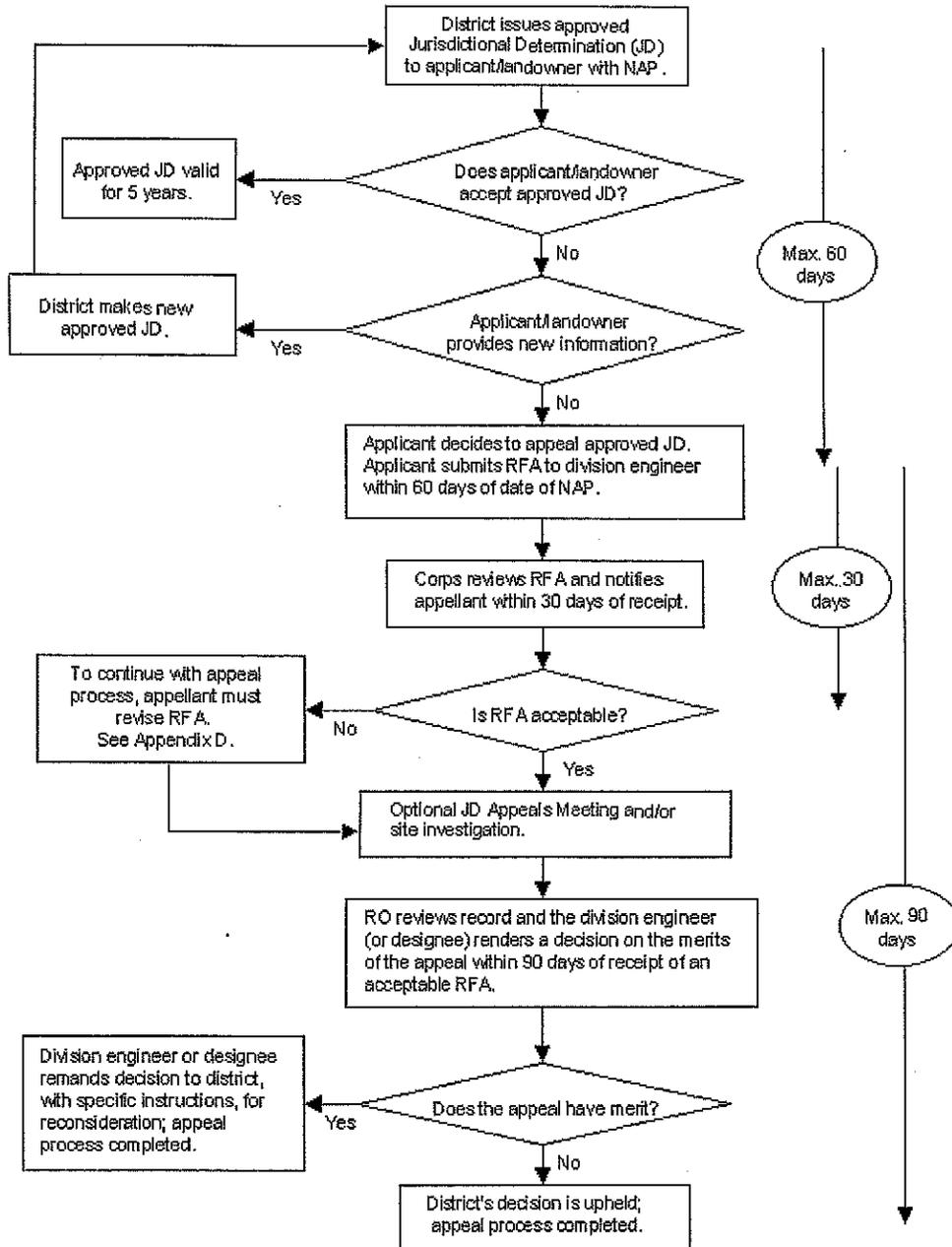
George P. Young, P.E.  
Chief, Regulatory Branch

Enclosures

Copy Furnished

Joanna L. Seto, Clean Water Branch, State of Hawaii Department of Health, P.O. Box 3378,  
Honolulu, Hawaii 96801-3378

### Administrative Appeal Process for Approved Jurisdictional Determinations



Appendix C

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL**

Applicant: Barbara Peroff and Valentine Peroff, Jr.		File Number: POH-2011-00069	Date: March 8, 2011
Attached is:		See Section below	
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
XX	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

**SECTION I** - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at [http://www.usace.army.mil/CECW/Pages/reg\\_materials.aspx](http://www.usace.army.mil/CECW/Pages/reg_materials.aspx) or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II: REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

Robert D. Deroche  
U.S. Army Corps of Engineers  
Honolulu District, Attn: CEPOH-EC-R  
Building 230  
Fort Shafter, HI 96858-5440  
  
Tel. (808) 438-2039

If you only have questions regarding the appeal process you may also contact:

Thom Lichte, Appeal Review Officer  
Pacific Ocean Division  
ATTN: CEPOD-PDC  
Building 525  
Fort Shafter, HI 96858-5440  
  
Tel. (808) 438-0397

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

\_\_\_\_\_  
Signature of appellant or agent.

Date:

Telephone number:

**APPROVED JURISDICTIONAL DETERMINATION FORM**  
**U.S. Army Corps of Engineers**

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): March 4, 2011**

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER: CEPOH-EC-R Peroff UA Discharge for Retaining Wall POH-2011-00069**

**C. PROJECT LOCATION AND BACKGROUND INFORMATION: 45-010 Springer Place (TMK: (1) 4-5-047:117)**

State: Hawaii County/parish/borough: Honolulu City: Kaneohe  
Center coordinates of site (lat/long in degree decimal format): Lat. 21.4217° **N**, Long. 157.7888° **W**  
Universal Transverse Mercator: 4

Name of nearest waterbody: Kaneohe Bay

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Kaneohe Bay (Pacific Ocean)

Name of watershed or Hydrologic Unit Code (HUC): 20060000

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

**D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

Office (Desk) Determination. Date: March 4, 2011

Field Determination. Date(s):

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION.**

There **Are** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.  
Explain: The project is located in Kaneohe Bay, an arm of the Pacific Ocean which has been documented, since prehistoric times as being used for subsistence, recreational, and commercial navigation.

**B. CWA SECTION 404 DETERMINATION OF JURISDICTION.**

There **Are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

**1. Waters of the U.S.**

**a. Indicate presence of waters of U.S. in review area (check all that apply):<sup>1</sup>**

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters<sup>2</sup> (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

**b. Identify (estimate) size of waters of the U.S. in the review area:**

Non-wetland waters: linear feet: width (ft) and/or acres.  
Wetlands: acres.

**c. Limits (boundaries) of jurisdiction based on: Established by mean (average) high waters:**

Elevation of established OHWM (if known):

**2. Non-regulated waters/wetlands (check if applicable):<sup>3</sup>**

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.  
Explain:

<sup>1</sup> Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup> For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

<sup>3</sup> Supporting documentation is presented in Section III.F.

**SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

- 1. **TNW**  
Identify TNW: Pacific Ocean.

Summarize rationale supporting determination: The project is located in Kaneohe Bay, an arm of the Pacific Ocean which has been documented, since prehistoric times, as being used for subsistence, recreational, and commercial navigation.

- 2. **Wetland adjacent to TNW**  
Summarize rationale supporting conclusion that wetland is "adjacent":

**B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody<sup>4</sup> is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

**1. Characteristics of non-TNWs that flow directly or indirectly into TNW**

**(i) General Area Conditions:**

- Watershed size: **Pick List**
- Drainage area: **Pick List**
- Average annual rainfall: inches
- Average annual snowfall: inches

**(ii) Physical Characteristics:**

**(a) Relationship with TNW:**

- Tributary flows directly into TNW.
- Tributary flows through **Pick List** tributaries before entering TNW.

- Project waters are **Pick List** river miles from TNW.
- Project waters are **Pick List** river miles from RPW.
- Project waters are **Pick List** aerial (straight) miles from TNW.
- Project waters are **Pick List** aerial (straight) miles from RPW.
- Project waters cross or serve as state boundaries. Explain:

Identify flow route to TNW<sup>5</sup>:

<sup>4</sup> Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup> Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):

Tributary is:  Natural  
 Artificial (man-made). Explain:  
 Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

Average width: feet  
Average depth: feet  
Average side slopes: Pick List.

Primary tributary substrate composition (check all that apply):

Silts  Sands  Concrete  
 Cobbles  Gravel  Muck  
 Bedrock  Vegetation. Type/% cover:  
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: Pick List

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: Pick List

Estimate average number of flow events in review area/year: Pick List

Describe flow regime:

Other information on duration and volume:

Surface flow is: Pick List. Characteristics:

Subsurface flow: Pick List. Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks  
 OHWM<sup>6</sup> (check all indicators that apply):  
 clear, natural line impressed on the bank  the presence of litter and debris  
 changes in the character of soil  destruction of terrestrial vegetation  
 shelving  the presence of wrack line  
 vegetation matted down, bent, or absent  sediment sorting  
 leaf litter disturbed or washed away  scour  
 sediment deposition  multiple observed or predicted flow events  
 water staining  abrupt change in plant community  
 other (list):  
 Discontinuous OHWM.<sup>7</sup> Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

High Tide Line indicated by:  Mean High Water Mark indicated by:  
 oil or scum line along shore objects  survey to available datum;  
 fine shell or debris deposits (foreshore)  physical markings;  
 physical markings/characteristics  vegetation lines/changes in vegetation types.  
 tidal gauges  
 other (list):

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain:

Identify specific pollutants, if known:

<sup>6</sup>A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

<sup>7</sup>Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: \_\_\_\_\_ acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: **Pick List**. Explain:

Surface flow is: **Pick List**

Characteristics:

Subsurface flow: **Pick List**. Explain findings:

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are **Pick List** river miles from TNW.

Project waters are **Pick List** aerial (straight) miles from TNW.

Flow is from: **Pick List**.

Estimate approximate location of wetland as within the **Pick List** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known:

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain:
- Habitat for:
  - Federally Listed species. Explain findings:
  - Fish/spawn areas. Explain findings:
  - Other environmentally-sensitive species. Explain findings:
  - Aquatic/wildlife diversity. Explain findings:

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: **Pick List**

Approximately ( ) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

### C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

**Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:**

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

### D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

TNWs: linear feet width (ft), Or, acres.

Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**

Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:

Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).  
 Other non-wetland waters: acres.  
Identify type(s) of waters: .

**3. Non-RPWs<sup>8</sup> that flow directly or indirectly into TNWs.**

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet width (ft).  
 Other non-wetland waters: acres.  
Identify type(s) of waters: .

**4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.  
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .  
 Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

**5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

**6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

**7. Impoundments of jurisdictional waters.<sup>9</sup>**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from "waters of the U.S.," or  
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or  
 Demonstrate that water is isolated with a nexus to commerce (see E below).

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):<sup>10</sup>**

- which are or could be used by interstate or foreign travelers for recreational or other purposes.  
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.  
 which are or could be used for industrial purposes by industries in interstate commerce.  
 Interstate isolated waters. Explain: .  
 Other factors. Explain: .

**Identify water body and summarize rationale supporting determination:** .

<sup>8</sup>See Footnote # 3.

<sup>9</sup>To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup>Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
- Other non-wetland waters: acres.
- Identify type(s) of waters: .
- Wetlands: acres.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
  - Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .
- Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
- Lakes/ponds: acres.
- Other non-wetland waters: acres. List type of aquatic resource: .
- Wetlands: acres.

**SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):**

- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps: .
- Corps navigable waters' study: .
- U.S. Geological Survey Hydrologic Atlas: .
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: .
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: .
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): GOOGLE 2011.
  - or  Other (Name & Date): DOCARE site photographs dated 2 December 2010.
- Previous determination(s). File no. and date of response letter: .
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, HONOLULU DISTRICT  
FORT SHAFTER, HAWAII 96858-5440

REPLY TO  
ATTENTION OF:

August 2, 2011

Regulatory Branch

File No. POH-2011-00069

Mr. Valentine Peroff, Jr.  
Ms. Barbara Peroff  
45-010 Springer Place  
Kaneohe, Hawaii 96744

Dear Mr. and Ms. Peroff:

Reference our March 8, 2011 letter regarding possible unauthorized discharges of fill material on the waterward side of a new concrete rubble mound (CRM) wall on your property located at 45-010 Springer Place, Kaneohe, Hawaii (TMK: (1) 4-5-047:117). Based on information submitted on your behalf by your consultant, Ty Dempsey, of Lyon Associates, Inc., we have determined that the wall itself is not constructed in a water of the United States (U.S.) and that there was minimal discharge of construction material into a water of the U.S., which has since been removed. Therefore, no further enforcement action will be taken by our office. To reiterate, a Department of the Army (DA) permit from the U.S. Army Corps of Engineers (Corps) is required for any work in, including the discharge of dredged and/or fill material into, waters of the U.S., including their adjacent wetlands.

Should you anticipate future activities waterward of the existing CRM wall, including replacement of the cement access steps or concrete platform, a DA permit will be required from our office under Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act **prior** to commencement of the proposed work. Anyone who knowingly violates these Federal statutes may be subject to the maximum penalties prescribed under the law. You are encouraged to apply for a DA Section 10 and Section 404 permit for any shoreline erosion protection measure you may require and propose.

Should you have any questions, please contact Mr. Robert Deroche, of my staff, at the above address or telephone 808-438-2039 or by email at [robert.d.deroche2@usace.army.mil](mailto:robert.d.deroche2@usace.army.mil). Please refer to File No. POH-2011-00069 in all future communications regarding this project location.

Sincerely,

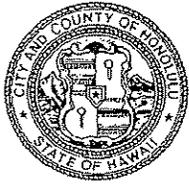
A handwritten signature in black ink, appearing to read "George P. Young", with a stylized flourish at the end.

George P. Young, P.E.  
Chief, Regulatory Branch

Copy Furnished

Ty Dempsey, Lyon Associates, Inc. (via email)  
Joanna L. Seto, Clean Water Branch, State of Hawaii Department of Health, P.O. Box 3378,  
Honolulu, Hawaii 96801-3378

**EXHIBIT 11**  
**Notice of Violation**



DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET \* HONOLULU, HAWAII 96813  
 Fax: (808) 768-4400

# Notice of Violation

Violation No.: 2011/NOV-03-261 (SV)

Date: March 30, 2011

Owner(s)

Peroff, Barbara J & Valentine Jr  
 45-010 Springer Place  
 Kaneohe, HI 96744

Contractor(s)

Tenant/Violator

Architect/Plan Maker

Lessee

Agent

Engineer

TMK: 4-5-047-117 45-010 SPRINGER PL

Specific Address of Violation: 45-010 Springer Place

I have inspected the above-described premises and have found the following violations of City and County of Honolulu's laws and regulations governing same:

Codes and/or Ordinance(s)  
 and Section(s)

Violation(s)

ROH 1990, as amended, Chapter 23  
 Section 23-1.5(b)

CRM retaining wall constructed in the Shoreline Setback area  
 without a variance.

Please correct the violation within the time specified below.

You are hereby ordered to obtain permit(s) and/or correct violation by May 2, 2011.

Restore the area immediately and complete all work within 30 days from the date of this notice.

Please call the undersigned after the corrections have been made.

You are reminded that if no action is taken within the specified time:

1. A Notice of Order will be issued by the Department of Planning and Permitting imposing CIVIL FINES for the specified violations; and/or
2. This matter may be referred to the Prosecuting Attorney and/or Corporation Counsel for appropriate action.

Special Instructions: If you obtain a variance, you are still required to apply for building permit to correct the above violation.

Inspector:

*Steve Cheung*

Steve Cheung

Phone: 768-8114

for the Director Department of Planning and Permitting

## **EXHIBIT 12**

### **Notice of Resource Violation**



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
NOTICE OF CIVIL RESOURCE VIOLATION**



Notice No. CRVS – OA – 4 – 11-22

Date: June 14, 2011

**TO RESPONDENT:** Any administrative proceedings instituted pursuant to this Notice shall not preclude the State from pursuing separate criminal prosecution against you for an offense committed in the same course of conduct.

**COMPLAINT:** The undersigned official/officer of the Department of Land & Natural Resources (DLNR) states that the named respondent did commit the civil resource violation(s) noted below.

A. RESPONDENT INFORMATION				
Last Name / Company Name Peroff		First Name, M.I. Valentine Jr.		Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F
Street Address 45-010 Springer Place		City Kaneohe		Date of Birth [REDACTED]
ID Type Driver License	Issued By Hawaii	ID No. [REDACTED]	Juvenile <input type="checkbox"/>	Phone [REDACTED]

B. VEHICLE / VESSEL INFORMATION (if applicable)			
<input type="checkbox"/> Vehicle	License Plate No., VIN / Vessel Type, ID, Name	License State	Year / Make / Model / Color
<input type="checkbox"/> Vessel			

C. STATEMENT OF FACTS			
Date February 19,	Time 11:00am	<input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.	Violation Site: Island / Location / TMK Submerged land of Kaneohe Bay, Oahu makai of TMK:(1) 4-5-047:117
DESCRIPTION: (Specify any witness, evidence, damage, injury and seizure. Attach additional sheet if needed.) Unidentified land use in the Conservation District.			
The respondent, Valentine Peroff Jr. related that he was operating his back hoe and dumped fresh red soot to dress up the Kaneohe Bay coastline after his contractor, S & V Contracting LLC laborers finished constructing a rockwall on his property (Exhibit A).			

D. CITATION(S)			E. FINES ASSESSED	
No.	Authority	Civil Resource Violation	Comply in 21 days	After 21 days
1	§183C-7	Non-Identified Land Use	\$2000	\$
2	§		\$	\$
3	§		\$	\$
<b>TOTAL ADMINISTRATIVE FINE ASSESSED &gt;&gt;&gt;</b>			<b>\$2000</b>	<b>\$</b>

F. OTHER SANCTIONS AND REQUIREMENTS
<b>TO RESPONDENT:</b> In addition to any fines assessed in Section E, you must comply with the following sanctions and/or requirements within 21 days of the service of this Notice, unless a different period is provided in this section below: Remove any additional existing soot and debris from the shoreline. Should heavy equipment need to be operated in the shoreline, obtain a Right of Entry from the Department prior to conducting work.
This matter shall be referred to the Board of Land and Natural Resources should the respondent choose not to respond to this notice. Under Chapter 183C-7, HRS, any person may be fined not more than \$15,000 per violation in addition to administrative costs.

G. ISSUANCE AND SERVICE	
F.I. & Last Name S. Lemmo	Office OCCL
Service: <input type="checkbox"/> Unoccupied vehicle/vessel <input type="checkbox"/> Personal	Signature <i>[Signature]</i>
<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> First-Class Mail	Issued by APO <i>[Signature]</i>

H. ACKNOWLEDGEMENT
I acknowledge the receipt of this Notice. This is not an admission of responsibility.
<i>Valentine Peroff Jr.</i> Respondent Signature



## **EXHIBIT 13**

### **Comments to the Draft EA**

The following agencies reviewed the Draft EA and provided comments:

City & County of Honolulu

Department of Planning and Permitting

State of Hawai'i

Department of Business, Economic Development, and Tourism, Office of Planning

Department of Health, Environmental Planning Office

Department of Land and Natural Resources, Land Division

Department of Land and Natural Resources, Aquatic Resources

Department of Land and Natural Resources, Office of Conservation and Coastal Lands

Department of Land and Natural Resources, Engineering Division

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
PHONE: (808) 768-8000 • FAX: (808) 768-6041  
DEPT. WEB SITE: [www.honolulu.dpp.org](http://www.honolulu.dpp.org) • CITY WEB SITE: [www.honolulu.gov](http://www.honolulu.gov)

PETER B. CARLISLE  
MAYOR



JIRO A. SUMADA  
ACTING DIRECTOR

2012/ED-10(AA)

November 23, 2012

Ms. Lisa L. Imata  
PlanPacific, Inc.  
1001 Bishop Street, Suite 2755  
Honolulu, Hawaii 96813



Dear Ms. Imata:

Subject: Environmental Document No. 2012/ED-10  
Chapter 343, Hawaii Revised Statutes (HRS)  
Valentine Peroff  
45-010 Springer Place - Kaneohe Bay  
Tax Map Key 4-5-47: 117

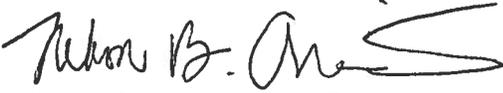
On October 23, 2012, notice of the availability of a Draft Environmental Assessment (EA) for the project was published by the Office of Environmental Quality Control in The Environmental Notice. In accordance with the procedural requirements of Chapter 343, Hawaii Revised Statutes, all comment letters received during the 30-day public comment period, which began with the initial publication, require a response addressed directly to the commentator. The Final EA must also include all comment letters received and responses to those letters, as well as appropriately revised text. The Department of Planning and Permitting's (DPP's) comments are as follows:

1. Project Summary. We confirm that approval of a Shoreline Setback Variance (SSV) will be required to retain the Concrete Rubble Masonry (CRM) retaining wall system located within the presumed 40-foot shoreline setback area of the above-referenced property. It appears that the wooden fence and gate at the north end of the property does not qualify as a Minor Shoreline Structure under Section 15-1(b)(1) of the DPP's Part 2 Rules Relating to Shoreline Setbacks and the Special Management Area, since it is a solid fence.
2. Section 2.3, Project Description. The Draft EA mentions that construction of the CRM wall involved demolition of a pre-existing wall and walkway, excavation to prepare the wall foundation, grubbing to remove some vegetation along the shoreline, grading, and filling. The Final EA should include an estimate of the amount of backfill (in cubic yards) that is being retained behind the existing 12-foot CRM retaining wall. Please provide additional information (i.e., height, length, function etc.) for the pre-existing wall. We note that Building Permit No. 663900 showed the "grandfathered" Concrete Masonry Unit and CRM wall spanning along the entire seaward edge of the subject property. However, the survey conducted by Controlpoint Surveying, Inc. and dated April 30, 2007, shows a CRM wall spanning only a portion (near the center) of the property. Please clarify any discrepancies between the two drawings.

3. Section 2.4, Permits and Approvals Required. The Draft EA mentions that the pre-project stairs and pier on the subject property was accepted as part of the State Department of Land and Natural Resources' (DLNR's) Kaneohe Piers Amnesty Program, and that the pier is located makai of the shoreline and falls under the jurisdiction of the State. Based on a recent shoreline survey of the property (dated June 9, 2011), however, the pier is located landward of the presumed regulatory shoreline. Please explain this discrepancy, and if possible, obtain concurrence from the State DLNR that the presumed shoreline shown in the June 9, 2011 survey is likely to be certified as such. In addition, please indicate in the Site Plan & Detail (Sketch 2) drawing dated September 19, 2012, how the existing staircase leading to the concrete pier has been expanded and altered (i.e., highlight the nonconforming portion of the staircase).
4. Exhibit 5. The report prepared by LYON mentions a previous certified shoreline in 1975. Please include this survey in the Final EA. The survey dated June 9, 2011 suggests that the regulatory shoreline follows along the 12-foot CRM retaining wall, and the pier and stairs. Please explain why the presumed regulatory shoreline would follow along the CRM retaining wall since the majority of the CRM wall is built four feet above mean sea level (MSL), and the shoreline "appears" to be below four feet MSL. In this context, can it conclusively be determined that the existing CRM retaining wall does not function as a seawall?
5. Appendix D. Please note that in the Site Plan & Detail, Sketch 1 drawing that the 40-foot shoreline setback line should be based on the current, presumed regulatory shoreline, and not on the November 28, 1975, certified shoreline. All structures located in the presumed 40-foot shoreline setback area are subject to review for purposes of the SSV application process.
6. Conformance with County Plans. A section should be added to the Final EA that addresses how the request is consistent with the vision, land use policies, principles and guidelines of the Koolaupoko Sustainable Communities Plan, including guidelines pertaining to lateral public access along shoreline areas, and the open space and natural environment.

If you have any questions, please contact Ann Asaumi of our staff at 768-8020.

Very truly yours,

  
Jiro A. Sumada, Acting Director  
Department of Planning and Permitting



April 25, 2014

Mr. George Atta, FAICP, Director  
City and County of Honolulu  
Department of Planning and Permitting  
650 South King Street, 7<sup>th</sup> Floor  
Honolulu, HI 96813

Dear Mr. Atta,

**Subject: Chapter 343, Hawai'i Revised Statutes, Draft Environmental Assessment for 45-010 Springer Place, Kāne'ohe, Shoreline Setback Variance, TMK: 4-5-47:117**

Thank you for your comment letter, dated November 23, 2012 (reference 2012/ED-10 AA), on the subject environmental assessment. After we received all comments to the Draft EA, additional work and research was conducted in order to address all major concerns.

Our responses to your comments are as follows (in order of your letter):

1. Thank you for clarifying that the wooden fence and gate at the north end would not be considered a minor shoreline structure as defined by Section 15-1(b)(1) of the DPP's Part 2 Rules Relating to Shoreline Setbacks and the Special Management Area. We understand that the wooden fence and gate should then be included in the application for a Shoreline Setback Variance for the new CRM retaining wall. This information will be reflected in the Final EA.
2. According to the project engineers, the estimated amount of backfill retained by the new CRM wall is 850 cubic yards. The pre-existing wall appears to have been as described by the 2007 survey prepared by Control Point Surveying, Inc. It was approximately 115 feet long and varied in height up to 5 feet tall. It included stairs down to the shoreline. This wall only spanned a portion of the property edge. The conflicting description of the wall parallel to the shoreline in the drawing associated with Building Permit No. 663900 appears inaccurate. The engineering report in Exhibit 5 of the Draft EA will be updated for the Final EA. The Final EA will also have the updated information in the appropriate sections.
3. Upon further review, the project engineers anticipate that the certified shoreline will not follow what is shown in the June 9, 2011 draft shoreline survey. The certified shoreline is anticipated to be further seaward instead of along the new CRM wall and further

1001 Bishop Street  
Suite 2755  
Honolulu  
Hawaii 96813

Tel (808) 521-9418  
Fax (808) 521-9468  
www.planpacific.com

landward instead of outlining the pier. Exhibit 5 will be updated. Concurrence with the State will be sought in the form of a new certified shoreline survey.

Sketch 2 has been updated to show that only the pier/concrete pad is original (nonconforming) and that the stairs has been reconstructed.

4. Exhibit 5 has been updated and will be included in the Final EA.

5. A note that states, "Shoreline setback varies (depending on final certified shoreline)" has been added to Sketch 1 prepared by the project engineers.

6. References to the Ko'olau Poko SCP were made under the section on Project Location and Site Description. The Final EA will contain a separate section for discussion on the project's consistency with the Ko'olau Poko SCP.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa L. Imata".

Lisa L. Imata  
President



# DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

NEIL ABERCROMBIE  
GOVERNOR  
RICHARD C. LIM  
DIRECTOR  
MARY ALICE EVANS  
DEPUTY DIRECTOR  
JESSE K. SOUKI  
DIRECTOR  
OFFICE OF PLANNING

## OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846  
Fax: (808) 587-2824

Ref. No. P-13782

November 15, 2012



Ms. Lisa L. Imata  
PlanPacific, Inc.  
1001 Bishop Street, Suite 2755  
Honolulu, Hawaii 96813

Dear Ms. Imata:

**Subject:** Chapter 343, Hawaii Revised Statutes, Draft Environment Assessment for a Concrete Rubble Masonry Retaining Wall and Unauthorized Fill within the 40-foot Shoreline Setback Area, Tax Map Key (1) 4-5-047:117, Kaneohe, O'ahu

Thank you for the opportunity to provide comments on the Draft Environmental Assessment (EA) for the after-the-fact concrete rubble masonry (CRM) retaining wall and unauthorized fill within the 40-foot shoreline setback area.

The Office of Planning has reviewed the subject Draft EA, and has the following comments to offer:

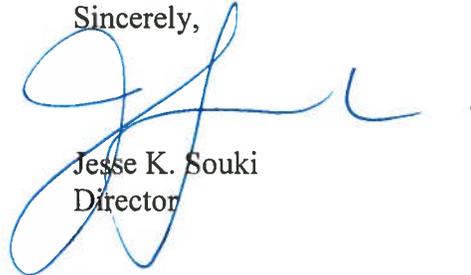
1. The trigger for this EA, pursuant to Hawaii Revised Statutes (HRS) Chapter 343, is the after-the-fact rock retaining wall, stairs, and gates built within the shoreline area. On page 7, the Draft EA states that in March 2011, the applicant was issued a Notice of Violation (2011/NOV-03-261) by the Department of Planning and Permitting, City and County of Honolulu, for a "CRM retaining wall constructed in the Shoreline Setback area without a variance." The Final EA should attach the Notice of Violation (2011/NOV-03-261) for public information.
2. The Final EA should disclose that pursuant to HRS §205A-32, any person who violates any provision of part II or part III of HRS Chapter 205A shall be liable as follows: (1) for a civil fine not to exceed \$100,000; or (2) for the cost of returning the affected environment or ecology within the coastal zone management area to the condition existing before the violation.
3. On page 4 of the Draft EA, the subject project is a rock or CRM retaining wall on the perimeter of the property. The wall portion within the 40-foot shoreline setback area is approximately 260 feet long. On page 18, the Draft EA states that "As discussed in

Ms. Lisa L. Imata  
Page 2  
November 15, 2012

section 2.3, the new wall is not a seawall or shoreline hardening wall and therefore, does not affect the existing littoral processes, nor does it change the patterns of accretion and erosion of beaches on the windward side of O‘ahu.” The Final EA should address and clarify the difference between the CRM retaining wall that has been constructed and a typical seawall or shoreline revetment structure as stated in Section 2.3 on page 5.

If you have any questions regarding this comment letter, please contact Leo Asuncion, Coastal Zone Management Program Manager, at 587-2875.

Sincerely,



Jesse K. Souki  
Director

c: Mr. Jiro A. Sumada,  
Department of Planning and Permitting, City and County of Honolulu



April 25, 2014

Mr. Leo Asuncion, AICP, Coastal Zone Management Program Manager  
Hawai'i Department of Business, Economic Development & Tourism  
Office of Planning  
P.O. Box 2359  
Honolulu, HI 96804

Dear Mr. Asuncion,

**Subject: Chapter 343, Hawai'i Revised Statutes, Draft Environmental Assessment for 45-010 Springer Place, Kāne'ohe, Shoreline Setback Variance, TMK: 4-5-47:117**

Thank you for your comment letter on the subject project, dated November 15, 2012 (reference P-13782). After we received all comments to the Draft EA, additional work and research was conducted in order to address all major concerns.

We have the following responses to your comments (in order of your letter):

1. The Final EA will include a copy of the Notice of Violation (2011/NOV-03-261) that was issued by the City Department of Planning and Permitting.
2. The Final EA will include the information regarding violations and penalties from Section 205A-32 of the Hawai'i Revised Statutes as requested.
3. Section 2.3 of the Final EA will further clarify the difference between a typical retaining wall and a typical seawall.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Leonillo Imata".

Lisa Leonillo Imata  
President

1001 Bishop Street  
Suite 2755  
Honolulu  
Hawaii 96813

Tel (808) 521-9418  
Fax (808) 521-9468  
www.planpacific.com

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809



November 21, 2012

PlanPacific, Inc.  
Attention: Ms. Lisa L. Imata  
1001 Bishop Street, Suite 2755  
Honolulu, Hawaii 96813

via email: [limata@planpacific.com](mailto:limata@planpacific.com)

Dear Ms. Imata,

**SUBJECT:** Chapter 343 HRS, Draft Environmental Assessment to Allow (retain) a CRM Retaining Wall and Unauthorized Fill within the 40-foot Shoreline Setback Area, Applicant Valentine Peroff, Jr., 45-010 Springer Place – Kaneohe

Thank you for the opportunity to review and comment on the subject matter. The Department of Land and Natural Resources' (DLNR) Land Division distributed or made available a copy of your report pertaining to the subject matter to DLNR Divisions for their review and comments.

At this time, enclosed are comments from (1) Land Division – Oahu District; (2) Division of Aquatic Resources; (3) Office of Conservation and Coastal Lands; and (4) Engineering Division on the subject matter. No other comments were received as of our suspense date. Should you have any questions, please feel free to call Supervising Land Agent Steve Molmen at 587-0439. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell Y. Tsuji".

Russell Y. Tsuji  
Land Administrator

Enclosure(s)



LORETTA J. FUDDY, A.C.S.W., M.P.H.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. BOX 3378  
HONOLULU, HI 96801-3378

In reply, please refer to:  
File:

12-202  
V. Peroff

November 7, 2012

Ms. Lisa L. Imata  
PlanPacific, Inc.  
1001 Bishop Street, Suite 2755  
Honolulu, Hawaii 96813

Dear Ms. Imata:

**SUBJECT: Chapter 343, Hawaii Revised Statutes, Draft Environmental Assessment for Valentine Peroff, Jr., Shoreline Setback Variance, TMK: 4-5-47: 117**

The Department of Health (DOH), Environmental Planning Office (EPO), acknowledges receipt of your letter, dated October 19, 2012. Thank you for allowing us to review and comment on the subject document. We strongly recommend that you review all of the Standard Comments on our website: [www.hawaii.gov/health/environmental/env-planning/landuse/landuse.html](http://www.hawaii.gov/health/environmental/env-planning/landuse/landuse.html). Any comments specifically applicable to this application should be adhered to. Please note that you may need a permit from the U.S. Army Corps of Engineers regarding any fill within the 40-foot shoreline setback area. We recommend you add this potential permit to Section 2.4 of your environmental assessment.

The United States Environmental Protection Agency (EPA) provides a wealth of information on their website including strategies to help protect our natural environment and build sustainable communities at: <http://water.epa.gov/infrastructure/sustain/>. The DOH encourages State and county planning departments, developers, planners, engineers and other interested parties to apply these strategies and environment principles whenever they plan or review new developments or redevelopments projects. We also ask you to share this information with others to increase community awareness on healthy, sustainable community design. If there are any questions about these comments please contact me.

Sincerely,

Laura Leialoha Phillips McIntyre, AICP  
Environmental Planning Office Manager  
Environmental Health Administration  
Department of Health  
919 Ala Moana Blvd., Ste. 312  
Honolulu, Hawaii 96814  
Phone: 586-4337  
[laura.mcintyre@doh.hawaii.gov](mailto:laura.mcintyre@doh.hawaii.gov)

c: Clean Water Branch  
U.S. Army Corps of Engineers



April 25, 2014

Laura McIntyre, AICP, Program Manager  
Hawai'i Department of Health  
Environmental Planning Office  
P.O. Box 3378  
Honolulu, HI 96801-3378

Dear Ms. McIntyre,

**Subject: Chapter 343, Hawai'i Revised Statutes, Draft Environmental Assessment for 45-010 Springer Place, Kāne'ohe, Shoreline Setback Variance, TMK: 4-5-47:117**

Thank you for your comment letter on the subject project, dated November 7, 2012 (reference 12-202 V. Peroff). After we received all comments to the Draft EA, additional work and research was conducted in order to address all major concerns.

We have reviewed the Standard Comments on the Department of Health's website per your recommendation. We also acknowledge your comment that a permit from the U.S. Army Corps of Engineers may be needed regarding fill within the 40-foot shoreline setback. We will add this potential permit to the Final EA as recommended.

We will forward a copy of all standard comments, particularly those from the Clean Water Branch and Clean Air Branch, to the applicant for their future reference.

Thank you also for sharing the information from the U.S. Environmental Protection Agency.

Sincerely,

Lisa L. Imata  
President

1001 Bishop Street  
Suite 2755  
Honolulu  
Hawaii 96813

Tel (808) 521-9418  
Fax (808) 521-9468  
www.planpacific.com



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

October 29, 2012

MEMORANDUM

TO: *MC*

**DLNR Agencies:**

- Div. of Aquatic Resources
- Div. of Boating & Ocean Recreation
- Engineering Division
- Div. of Forestry & Wildlife
- Div. of State Parks
- Commission on Water Resource Management
- Office of Conservation & Coastal Lands
- Land Division Oahu District
- Historic Preservation

FROM: *510*

SUBJECT:

*[Signature]* Russell Y. Tsuji, Land Administrator  
 Chapter 343, IIRS, Draft Environmental Assessment for Shoreline Setback Variance to allow (retain) a concrete rubble masonry (CRM) retaining wall and unauthorized fill within the 40-foot shoreline setback area  
 LOCATION: Peroff Residence, 45-010 Springer Place, Kānohe; TMK 4-5-47: 117  
 APPLICANT: PlanPacific, Inc. for Valentine Peroff, Jr.

LOCATION:  
APPLICANT:

Transmitted for your review and comment on the above-referenced document. We would appreciate your comments on this document. Please submit any comments by November 21, 2012.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Supervising Land Agent Steve Molmen at (808) 587-0439. Thank you.

Attachments

- We have no objections.
- We have no comments.
- Comments are attached.

Any improvement makai of the the shoreline requires land disposition, e.g. easement from the Land Board.

Signed: *[Signature]*  
 Print Name: *[Signature]*  
 Date: *10/31/2012*

cc: Central Files



Alex  
PM ✓



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

DAR 4525

October 29, 2012

MEMORANDUM

2012 OCT 31 PM 2:58

TO: **DLNR Agencies:**  
 Div. of Aquatic Resources  
 Div. of Boating & Ocean Recreation  
 Engineering Division  
 Div. of Forestry & Wildlife  
 Div. of State Parks  
 Commission on Water Resource Management  
 Office of Conservation & Coastal Lands  
 Land Division - Oahu District  
 Historic Preservation

FROM: Russell Y. Tsuji, Land Administrator

SUBJECT: Chapter 343, HRS, Draft Environmental Assessment for Shoreline Setback Variance to allow (retain) a concrete rubble masonry (CRM) retaining wall and unauthorized fill within the 40-foot shoreline setback area

LOCATION: Peroff Residence, 45-010 Springer Place, Kaneohe; TMK 4-5-47: 117

APPLICANT: PlanPacific, Inc. for Valentine Peroff, Jr.

Transmitted for your review and comment on the above-referenced document. We would appreciate your comments on this document. Please submit any comments by November 21, 2012.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Supervising Land Agent Steve Molmen at (808) 587-0439. Thank you.

Attachments

- ( ) We have no objections.
- ( ) We have no comments.
- (✓) Comments are attached.

Signed:   
 Print Name: Robert T. Nishimoto  
 Date: 14 Nov 2012

DEPT. OF LAND & NATURAL RESOURCES  
 STATE OF HAWAII  
 2012 NOV 15 P 2:29

RECEIVED  
LAND DIVISION

cc: Central Files

State of Hawaii  
Department of Land and Natural Resources  
DIVISION OF AQUATIC RESOURCES

Date: 11/13/2012

MEMORANDUM

TO: Bob Nishimoto, Program Manager  
FROM: Paul Murakawa, Aquatic Biologist  
THRU: Alton Miyasaka, Aquatic Biologist ~~AM~~  
SUBJECT: Draft Environmental Assessment for Shoreline Setback Variance to allow (retain) a concrete rubble masonry (CRM) retaining wall and unauthorized fill within the 40-foot shoreline setback area, DAR 4525

Comment	Date	Request	Receipt	Referral
		10/29/2012	10/31/2012	11/2/2012

Requested by: Russell Y. Tsuji, Land Administrator  
Department of Land and Natural Resources, Land Division

Summary of Proposed Project

Title: Draft Environmental Assessment for Shoreline Setback Variance to allow (retain) a concrete rubble masonry (CRM) retaining wall and unauthorized fill within the 40-foot shoreline setback area

Project by: PlanPacific, Inc. for Valentine Peroff, Jr.

Location: Peroff Residence, 45-010 Springer Place, Kane'ohe; TMK: (1) 4-5-47:117

**Brief Description:**

The applicant is submitting an after-the-fact draft environmental assessment (dEA) for a concrete rubble masonry wall that was built in 2010. Not all the proper permits were obtained by the homeowner and/or the contractor building the wall. For the permit that was obtained, part of the wall (along the shoreline) was not approved by the city and county of Honolulu's department of planning and permitting. Only the walls running perpendicular to the shoreline at the north and south property lines were approved. Prior to the construction of the current wall, there was a smaller wall with chain link fencing that was there. The current wall is also built within the 40 foot shoreline setback area.

**Comments:**

We have the following comments on the dEA. Since the wall is already built, we have no comment on impacts to aquatic life. We would suggest that the wall be allowed to remain, however, we would have some concerns if the alternative of removing the current wall in the dEA is chosen. During the construction of the current wall, large amounts of soil were exposed

(as seen in photos). If the wall is to be removed, there will again be large amounts of soil exposed, thus potentially leading to a large sediment plume into Kaneohe Bay if there is a significant rain event. If the removal of the current wall alternative is chosen, then we recommend that the work be done during the drier (summer) months and that sediment catchments are used to minimize the sediments entering Kaneohe Bay. After the wall is removed, we suggest planting native ground cover to reduce the exposed soil and thus reducing the potential of sediment going into Kaneohe Bay.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



*FYI*

WILLIAM J. AKA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

2012 OCT 31 A 11: 29

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

October 29, 2012

MEMORANDUM

TO:

**DLNR Agencies:**

- Div. of Aquatic Resources
- Div. of Boating & Ocean Recreation
- Engineering Division
- Div. of Forestry & Wildlife
- Div. of State Parks
- Commission on Water Resource Management
- Office of Conservation & Coastal Lands
- Land Division Oahu District
- Historic Preservation

FROM:

*Russell Y. Tsuji*  
Russell Y. Tsuji, Land Administrator

SUBJECT:

Chapter 343, HRS, Draft Environmental Assessment for Shoreline Setback Variance to allow (retain) a concrete rubble masonry (CRM) retaining wall and unauthorized fill within the 40-foot shoreline setback area

LOCATION:

Peroff Residence, 45-010 Springer Place, Kaneohe; TMK 4-5-47: 117

APPLICANT:

PlanPacific, Inc. for Valentine Peroff, Jr.

RECEIVED  
LAND DIVISION  
2012 NOV 16 A 9: 29  
DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII

Transmitted for your review and comment on the above-referenced document. We would appreciate your comments on this document. Please submit any comments by November 21, 2012.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Supervising Land Agent Steve Molmen at (808) 587-0439. Thank you.

Attachments

- We have no objections.
- We have no comments.
- Comments are attached.

Signed: *K. Tiger Mills*  
Print Name: K. Tiger Mills  
Date: 11-15-2012

cc: Central Files

*Appears to be shoreline encroachments. Shoreline Encroachment information sheet should be filed. (Attached)*





## **Shoreline Encroachment Information Sheet**

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Office of Conservation and Coastal Lands  
P O Box 621  
HONOLULU, HAWAII 96809



Please answer questions as completely as possible.

(fax: 587-0455), should you have any questions on this matter.

### **INFORMATION CHECKLIST**

To ensure timely processing, please check the following are complete before submitting.

- Correct Mailing address and contact phone number.**
- Tax Map Key (TMK) Map.**
- Current Survey map showing property boundaries and encroaching area  
(Survey map should provide calculation of encroaching area in sq ft).**
- Recent photos showing the encroachment and beach resources from various angles.  
(Include photographs of adjacent beach accessways and neighboring seawalls if applicable.)**
- Previous shoreline maps (if applicable)**
- Documentation of non-conforming status of encroachment (if applicable- Required if no other permits or documentation). (Stamped aerial photographs, Building permits, authorization letters from Federal, State or County agency.)**
- Attach additional sheets as necessary.**



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

October 29, 2012

**MEMORANDUM**

TO: **DLNR Agencies:**  
 Div. of Aquatic Resources  
 Div. of Boating & Ocean Recreation  
 Engineering Division  
 Div. of Forestry & Wildlife  
 Div. of State Parks  
 Commission on Water Resource Management  
 Office of Conservation & Coastal Lands  
 Land Division - Oahu District  
 Historic Preservation

FROM: Russell Y. Tsuji, Land Administrator

SUBJECT: Chapter 343, HRS, Draft Environmental Assessment for Shoreline Setback Variance to allow (retain) a concrete rubble masonry (CRM) retaining wall and unauthorized fill within the 40-foot shoreline setback area

LOCATION: Peroff Residence, 45-010 Springer Place, Kanohe; TMK 4-5-47: 117

APPLICANT: PlanPacific, Inc. for Valentine Peroff, Jr.

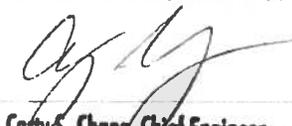
RECEIVED  
LAND DIVISION  
2012 NOV 16 P 12:53  
DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII

Transmitted for your review and comment on the above-referenced document. We would appreciate your comments on this document. Please submit any comments by November 21, 2012.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Supervising Land Agent Steve Molmen at (808) 587-0439. Thank you.

Attachments

- We have no objections.
- We have no comments.
- Comments are attached.

Signed:   
 Print Name: Cathy S. Chang, Chief Engineer  
 Date: 11/15/12

cc: Central Files

**DEPARTMENT OF LAND AND NATURAL RESOURCES  
ENGINEERING DIVISION**

**LD/SteveMolmen  
REF.:DEAShorelineSetbackVarianceRetainingWall  
Oahu908**

**COMMENTS**

- ( X ) We confirm that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Zone X. The National Flood Insurance Program does not have any regulations for developments within Zone X.
- ( ) Please take note that the project site, according to the Flood Insurance Rate Map (FIRM), is located in Zone \_\_\_\_.
- ( ) Please note that the correct Flood Zone Designation for the project site according to the Flood Insurance Rate Map (FIRM) is \_\_\_\_.
- ( ) Please note that the project must comply with the rules and regulations of the National Flood Insurance Program (NFIP) presented in Title 44 of the Code of Federal Regulations (44CFR), whenever development within a Special Flood Hazard Area is undertaken. If there are any questions, please contact the State NFIP Coordinator, Ms. Carol Tyau-Beam, of the Department of Land and Natural Resources, Engineering Division at (808) 587-0267.

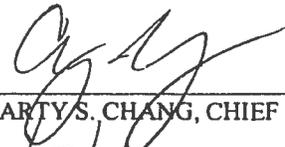
Please be advised that 44CFR indicates the minimum standards set forth by the NFIP. Your Community's local flood ordinance may prove to be more restrictive and thus take precedence over the minimum NFIP standards. If there are questions regarding the local flood ordinances, please contact the applicable County NFIP Coordinators below:

- ( ) Mr. Mario Siu Li at (808) 768-8098 or Ms. Ardis Shaw-Kim at (808) 768-8296 of the City and County of Honolulu, Department of Planning and Permitting..
  - ( ) Mr. Frank DeMarco at (808) 961-8042 of the County of Hawaii, Department of Public Works.
  - ( ) Mr. Francis Cerizo at (808) 270-7771 of the County of Maui, Department of Planning.
  - ( ) Ms. Wynne Ushigome at (808) 241-4890 of the County of Kauai, Department of Public Works.
- ( ) The applicant should include water demands and infrastructure required to meet project needs. Please note that projects within State lands requiring water service from the Honolulu Board of Water Supply system will be required to pay a resource development charge, in addition to Water Facilities Charges for transmission and daily storage.
  - ( ) he applicant should provide the water demands and calculations to the Engineering Division so it can be included in the State Water Projects Plan Update

( ) Additional Comments: \_\_\_\_\_  
\_\_\_\_\_

( ) Other: \_\_\_\_\_  
\_\_\_\_\_

Should you have any questions, please call Ms. Suzie S. Agraan of the Planning Branch at 587-0258.

Signed:   
CARTY S. CHANG, CHIEF ENGINEER

Date: 11/15/12



PLANPACIFIC

April 25, 2014

Mr. Russell Tsuji, Land Administrator  
Hawai'i Department of Land and Natural Resources  
Land Division  
P.O. Box 621  
Honolulu, HI 96809

Dear Mr. Tsuji,

**Subject: Chapter 343, Hawai'i Revised Statutes, Draft Environmental Assessment for 45-010 Springer Place, Kāne'ohe, Shoreline Setback Variance, TMK: 4-5-47:117**

Thank you for your comment letter, dated October 29, 2012, on the subject environmental assessment. After we received all comments to the Draft EA, additional work and research was conducted in order to address all major concerns.

The Final EA will include the information that any improvement makai of the shoreline requires land disposition, e.g. easement from the Land Board. The section describing required permits will also include this information.

Thank you.

Sincerely,

Lisa L. Imata  
President

1001 Bishop Street  
Suite 2755  
Honolulu  
Hawaii 96813

Tel (808) 521-9418  
Fax (808) 521-9468  
[www.planpacific.com](http://www.planpacific.com)



PLANPACIFIC

April 25, 2014

Mr. Robert Nishimoto, Program Manager  
Hawai'i Department of Land and Natural Resources  
Division of Aquatic Resources  
P.O. Box 621  
Honolulu, HI 96809

Dear Mr. Nishimoto,

**Subject: Chapter 343, Hawai'i Revised Statutes, Draft Environmental Assessment for 45-010 Springer Place, Kāne'ohe, Shoreline Setback Variance, TMK: 4-5-47:117**

Thank you for your comment letter, dated November 13, 2012, on the subject environmental assessment. After we received all comments to the Draft EA, additional work and research was conducted in order to address all major concerns.

We understand that your division would not object to allowing the new wall to remain for the purpose of avoiding further sedimentation of Kaneohe Bay. However, if the new wall must be removed, you recommend that measures be taken to reduce sedimentation of the bay during removal and restoration. You also suggest planting ground cover to lessen erosion and sedimentation of the bay for the long-term. We will include this information in the Final EA.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Imata".

Lisa L. Imata  
President

1001 Bishop Street  
Suite 2755  
Honolulu  
Hawaii 96813

Tel (808) 521-9418  
Fax (808) 521-9468  
www.planpacific.com



PLANPACIFIC

April 25, 2014

Mr. Sam Lemmo, Administrator  
Hawai'i Department of Land and Natural Resources  
Office of Conservation and Coastal Lands  
P.O. Box 621  
Honolulu, HI 96809

Dear Mr. Lemmo,

**Subject: Chapter 343, Hawai'i Revised Statutes, Draft Environmental Assessment for 45-010 Springer Place, Kāne'ohe, Shoreline Setback Variance, TMK: 4-5-47:117**

Thank you for your comment letter, dated November 15, 2012, on the subject environmental assessment. After we received all comments to the Draft EA, additional work and research was conducted in order to address all major concerns.

In the event that the wall remains as is, a shoreline encroachment information sheet will be filed with your office. We will include this information in the Final EA under the section that describes the permits and approvals required.

Thank you.

Sincerely,

Lisa L. Imata  
President

1001 Bishop Street  
Suite 2755  
Honolulu  
Hawaii 96813

Tel (808) 521-9418  
Fax (808) 521-9468  
[www.planpacific.com](http://www.planpacific.com)



April 25, 2014

Mr. Carty Chang, Chief Engineer  
Hawai'i Department of Land and Natural Resources  
Engineering Division  
P.O. Box 621  
Honolulu, HI 96809

Dear Mr. Chang,

**Subject: Chapter 343, Hawai'i Revised Statutes, Draft Environmental Assessment for 45-010 Springer Place, Kāne'ohe, Shoreline Setback Variance, TMK: 4-5-47:117**

Thank you for your comment letter, dated November 15, 2012, on the subject environmental assessment. After we received all comments to the Draft EA, additional work and research was conducted in order to address all major concerns.

Your letter confirms that the subject property is within flood zone X, as defined by the National Flood Insurance Program, and that there are no regulations for developments within this flood zone. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa L. Imata".

Lisa L. Imata  
President

1001 Bishop Street  
Suite 2755  
Honolulu  
Hawaii 96813

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