STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii

April 27, 2007

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

REGARDING: Conservation District Enforcement File OA-07-31 Regarding Alleged Unauthorized Repair/Reconstruction of a Boulder Revetment Within the Conservation District Located at Mokuleia, Island of Oahu, TMK (1) 6-8-003:018

BY: Michael Dailey

LANDOWNER: Michael Dailey
Elizabeth M. Dailey Trust

AREA OF USE: Approximately 3600 ft²

LOCATION: 68-611 Farrington Hwy.
Mokuleia, Wailua, Island of Oahu

SUBZONE: Resource

DESCRIPTION OF AREA:

The subject property is located on the shores of Mokuleia, island of Oahu, TMK:(1) 6-8-003:018 with the majority of the property located within the Agricultural State Land Use District. To the west of the subject area, residential lots with seawalls are present, to the to the north is the pacific ocean, to the east is undeveloped land (Polo Field) and to the south is Farrington Hwy with the Dillingham Air Field beyond. The shoreline to the east has high recreational value and the subject property represents the transition from the natural sandy beach to the armored areas to the west. The U.S. Geological Survey's Atlas of Natural Hazards in the Hawaiian Coastal Zone publication notes the subject area has an overall high hazard assessment rating of 6 on a scale of 1 to 7. Erosion, tsunami and high wave potential are within the highest hazard assessment rating (**EXHIBIT 1, 2, 3 & 4**).

ALLEGED UNAUTHORIZED LAND USES:

Chronology

December 2004-The Office of Conservation and Coastal Lands (OCCL) received various complaints regarding unstable rocks along the shoreline posing a hazard to pedestrians and blocking access.

December 29, 2004-OCCL Staff conducted a site inspection of the subject area and noted that large portions of a revetment structure were scoured by the wave energy and the structural integrity of the revetment was compromised. Rocks had dislodged from the revetment and rolled down the structure and onto the beach. The large boulders appeared to be a safety hazard to the public. **(Exhibit 5)**.

February 7, 2005-Notice and Order received by a Ms. Dailey, informing the landowner on record, Mr. Michael Dailey, of the presence of an unauthorized shoreline structure on the beach at Mokuleia. The letter recommended removal of the shoreline structure.

March 4, 2005-A second Notice and Order issued to Mr. Dailey as the condition of the revetment had worsened since the previous site inspection with continued scouring and failure of the revetment. The alleged was also informed that a report would be generated and forwarded to the Board of Land and Natural Resources.

March 15, 2005-Correspondence was received from Mr. Dailey's counsel Bays, Deaver, Lung, Rose & Baba, stating that the partial failure of the rock revetment appears to be endangering the home on the property and no action was taken because the landowner was not sure of what action could be taken. The correspondence also stated that, "Mr. Dailey will work as quickly as possible **to obtain the necessary permits to repair the rock revetment."**

March 17, 2005-Mr. Dailey's counsel met with OCCL Staff. A survey of the property and evidence of when the revetment was constructed was requested by OCCL at this meeting.

June 20, 2005-OCCL was in receipt of a survey of the subject property that illustrated the proposed location of the current shoreline with respect to the revetment **(Exhibit 6)**. It appeared a portion of the revetment encroached onto State land. Correspondence dated June 27, 2005, from OCCL to the landowner's counsel encouraged them to take action to reduce or eliminate the hazard of the loose rocks from the failed revetment prior to the onset of the winter surf.

August 22, 2005-An Emergency Conservation District Use Application (CDUA) was received by OCCL. The purpose of the emergency CDUA was to repair the failed structure and to remove the encroaching portions of the structure from State land. Processing of this CDUA was hindered by the fact that the structure was unauthorized. The Department was not able to accommodate an application to repair the wall because

the Department had no evidence that the wall was legal or non-conforming. In fact, it was believed that the structure was not authorized by any government agency[1].

Staff notes the City and County of Honolulu (City) also had no record of approvals for the rock revetment. It was further noted that in 1992, the owner of the property was cited by the City's Department of Planning and Permitting for the unauthorized placement of boulders in the shoreline setback area. The 1992 violation was referred to the City's Division of Land Utilization, but for unknown reasons was never pursued.

On December 21, 2005, OCCL responded in writing to the applicant **(Exhibit 7)**. The OCCL informed the applicant that it could not process the emergency request.

OCCL eventually closed the case. Although OCCL believed that the structure was unauthorized, Staff could not determine exactly when or where (in relation to the shoreline), the structure had been built. It was believed that the structure was built sometime between 1967 and 1986 (based on aerial photos) **(Exhibit 8)**.

Violation Case Re-opened

December 23, 2006- NOTICE and ORDER hand delivered to Michael Dailey by a Conservation Enforcement Officer. Photographs taken illustrate the active construction and placement of rocks as part of a repair/replacement effort. Staff notes the use of sandbags and soil for backfill and the pouring of what appears to be cement over boulders and rocks for what appears to be a seawall on top of the unstable unauthorized revetment **(Exhibit 9, 10 & 11)**.

December 2006-OCCL received numerous complaints that construction on the shoreline structure continued.

December 28, 2006- Site inspection by a Conservation Enforcement Officer noted active work being conducted within the shoreline on top of the previously existing shoreline structure. Conversation with the workers indicated that the Notice and Order to cease construction was known as an individual stated that the owner told them that he was being fined anyway, so to go ahead with construction. **(Exhibit 12)**

December 29, 2006- Site inspection by OCCL Staff noted active work being conducted within the shoreline on the unauthorized shoreline structures. Conversation with the workers indicated that it was known that the continued work was subject to daily fines **(Exhibit 13)**.

February 16, 2007-OCCL and the Department of Accounting and General Services (DAGS) Survey Staff conduct a site inspection to investigate improvements relative to what was previously submitted to OCCL by the landowner's surveyor. Measurements indicate improvements fall along or slightly seaward of what was mapped as the former

[1] Pursuant to the Hawaii Administrative Rules (HAR), §13-5-6 (c) No permit shall be processed by the Department until any violations pending against the subject parcel are resolved.

shoreline*. Staff notes that there were unauthorized sand bags littering the beach, sunken areas were developing within the fill material mauka of the unauthorized structure, and large sections of the newly built wall were failing due to scouring and wave overtopping **(Exhibit 14, 15 & 16)**.

February 21, 2007-Site inspection by a Conservation Enforcement Officer noted work being conducted to stabilize palms along the wall and the retrieval of boulders that had rolled off the wall towards the sea **(Exhibit 17)**.

Staff notes the Department is in receipt of several letters from the public expressing concern regarding blocked lateral access across the shoreline at the subject site.

Resolution of Unauthorized Land Uses

The Department and Board of Land and Natural Resources has jurisdiction over land lying makai of the shoreline as evidenced by the upper reaches of the wash of the waves other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limits of debris left by the wash of the waves, pursuant to §205A-1, Hawaii Revised Statutes (HRS).

Staff believes that the majority of the unauthorized land uses occurred within the Conservation District based upon the wave run up at the adjacent property to the east; the sunken and compromised areas of fill mauka of the unauthorized revetment/seawall, and large sections of the wall failing due to scour and wave overtopping. The OCCL believes there is sufficient cause to bring this matter to the Board since it is evident that portions[2] of the structure are within the Conservation District pursuant to the Hawaii Administrative Rules (HAR), §15-15-20 Standards for determining "C" conservation district boundaries:

> It shall include lands having an elevation below the shoreline as stated by §205A-1, HRS, marine waters, fishponds, and tidepools of the State, and accreted portions of lands pursuant to §501-33, HRS, unless otherwise designated on the district maps. All offshore and outlying islands of the State are classified conservation unless otherwise designated on the land use district maps.

Conservation District

Chapter 13-5, Hawaii Administrative Rules (HAR) and Chapter 183C, Hawaii Revised Statutes (HRS), regulate land uses in the Conservation District by identifying a list of uses that may be allowed by a Conservation District Use Permit. The chapters also

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* **Staff notes**: This shoreline has never been certified as the presence of the unauthorized revetment prohibits certification.

[2] The unauthorized structure has inhibited the landward movement of the shoreline. The February 16, 2007 site inspection by DLNR/DAGS made it clear that the natural shoreline is landward of the wall. "Staff notes unauthorized sand bags littering the beach, sunken areas of fill mauka of the unauthorized structure, large sections of the newly built wall failing due to scouring and wave overtopping."

provide for penalties, collection of administrative costs and damages to state land for uses that are not allowed or for which no permit has been obtained. Chapter 13-5, HAR defines "land use" in part as: the placement or erection of any solid material on land or the grading, removing or dredging of any material or natural resource on land.

Hawaii Coastal Erosion Management Plan

On August 27, 1999, the Board adopted the Hawaii Coastal Erosion Management Plan (COEMAP) and approved specific criteria to guide Staff to resolve cases involving unauthorized shoreline structures. When assessing cases involving unauthorized shoreline structures, the specific criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures form erosion damages; and
5. Implement a "no tolerance" policy for recent or new unauthorized shoreline structures.

The Department considers each case based on the specific circumstances/history:

- the age of the structure;
- the quality of the surrounding beach resources;
- the nature of the surrounding development; and
- the risk to life and limb are all evaluated to help formulate a position with respect to the disposition of the matter.

For unauthorized structures built after the 1999 "no tolerance" policy, the customary policy is to remove the structure before other actions are considered.

Staff believes that the work that ensued on the shoreline structure was unlawful and is within the jurisdiction of the Department and Board of Land and Natural Resources. Staff recommended conditions and this report seeks to resolve this conservation district violation. Pursuant to Chapter 183C, HRS, the maximum fine for a conservation district violation is $2,000.00 per violation, and $2,000.00 per day for failure to stop work.

Discussion

Staff notes the shoreline along the Mokuleia coast has an overall high hazard assessment rating of 6 on a scale of 1 to 7. Erosion, tsunami and high wave potential are within the highest hazard assessment rating. These types of events along this particular coastline should be expected and planned for as ocean energy and wave action shall take its course.

Staff notes direct evidence (scour, debris and sandbag failure) observed on the February 16, 2007 site inspection clearly illustrate the highest wash of the waves mauka of the structure(s) in question. Because the Department has a "no tolerance" policy in regards to shoreline structures constructed after 1999, the subject actions to substantially repair and rebuild the shoreline structure without authorization fall under this policy.

In addition, the OCCL believes that appropriate engineering considerations were not made during the unauthorized construction/reconstruction of the boulder revetment. Even if repair work to the revetment could be considered, this proposal would still require complete removal of the rocks to build an appropriate filter layer and foundation underneath the top layer of rocks.

Removal of the unauthorized structures would result in a landward shift of the shoreline, widening the beach and enhancing public access. However the existing dwelling may soon become threatened and may require alternative erosion control measures. Another alternative that allows for the preservation of the beach as well as the dwelling is to consider relocation/reconstruction of the existing home more landward as part of the revetment removal.

Future applications may include a request for temporary, emergency shore protection. To qualify, the applicant is required to demonstrate a clear "imminent threat" to an inhabited dwelling. Typically "imminent" is defined by the OCCL as less than 20 feet from an actively eroding bank. In this case, the existence of the unauthorized shoreline structures and land use prohibits consideration of temporary emergency protection.

Enforcement of Chapter 205A, Hawaii Revised Statutes (HRS) Related to Coastal Zone Management

Chapter 205A, HRS embodies polices, objectives and directives to protect and conserve natural resources including, beaches, and public access. One element of this law provides for the integration of enforcement efforts between the State and County authorities. For unauthorized shoreline structures, the "shoreline area" is loosely defined and may extend seaward of the shoreline to include the entire structure. Thus, the County authority may enforce the matter despite the fact the structure is seaward of their normal jurisdiction (HRS, §205A-41, Definitions).

Hawaii Revised Statutes, Chapter 205A, Coastal Zone Management §205A-43.6 states:

(a) The department or an agency designated by department rules shall enforce this part and rules adopted pursuant to this part. Any structure or activity prohibited by section 205A-44, that has not received a variance pursuant to this part or complied with conditions on a variance, shall be removed or corrected. No other state or county permit or approval shall be construed as a variance pursuant to this part.

(b) Where the shoreline is affected by an artificial structure that has not been authorized with government agency permits required by law, if any part of

the structure is on private property, then for purposes of enforcement of this part, the structure shall be construed to be entirely within the shoreline area.

(c) The authority of the board of land and natural resources to determine the shoreline and enforce rules established under chapter 183C shall not be diminished by an artificial structure in violation of this part.

Staff believes that the Board may also undertake enforcement actions on unauthorized artificial shoreline structures even without the benefit of a shoreline delineation in order to uphold the directives of Chapter 205A, HRS. §205A-43.6(a) requires the landowner in violation of this part to either remove the structure or correct the problem. Therefore the Board, under part (c), may assert its authority to compel the removal of the structure or correct the problem in order to protect the coastal resources and uphold the directives of Chapter 205A, HRS.

Conclusion

The OCCL understands the need to balance the concerns of the landowner with those of public resource conservation. However, the DLNR cannot ignore blatant displays of disregard for our laws. Staff believes the natural and cultural resources; shoreline lateral access; the public's safety and the public good shall be compromised further should this situation not be resolved expeditiously.

The unauthorized shoreline structure is already failing and is now scouring and damaging the shoreline resource. Fill material is leaching and soiling the beach and ocean. The disintegrating plastic of the sandbags may be eaten by avifauna and endangered turtles. The unstable boulders pose a hazard to the public as they topple and roll in the surf. Staff believes that the landowner should be fined one time for the unauthorized repair/reconstruction of the revetment, and three times for continuing to work despite being served with a cease and desist order[3]. In addition, Staff will recommend administrative penalties and removal of the offending structure. This submittal and notice of the Board's meeting shall be sent to Mr. Dailey's counsel by certified mail to the address on record in Hawaii.

Findings

1. That the landowner did in fact, authorize and cause the unauthorized repair/reconstruction of a boulder revetment/seawall within the Conservation District;

2. That the unauthorized land uses are within the State Land Use Conservation District, Resource subzone, as evidenced by the wash of the waves;

[3] December 28th, 29th, and February 21st documented on-going work.

AS SUCH, STAFF RECOMMENDS AS FOLLOWS:

That, pursuant to Chapter 183C, Hawaii Revised Statutes (HRS), the Board finds the landowner in violation of Chapter 183C and Chapter 13-5, Hawaii Administrative Rules (HAR), and is subject to the following:

1. The landowner violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in four instances by allowing the unauthorized repair/reconstruction of a revetment/seawall, and failing to cease and desist after written notification on at least three occasions. The alleged is fined a total of $8,000.00 for four Conservation District violations;

2. The landowner is fined an additional $2000.00 for administrative costs associated with the subject violations;

3. The landowner shall pay all fines (total $10,000.00) within sixty (60) days of the date of the Board's action;

4. The landowner shall remove the unauthorized improvements within sixty (60) days of the date of the Board's action;

5. That in the event of failure of the landowner to comply with any order herein, the landowner shall be fined an additional $2,000.00 per day until the order is complied with; and

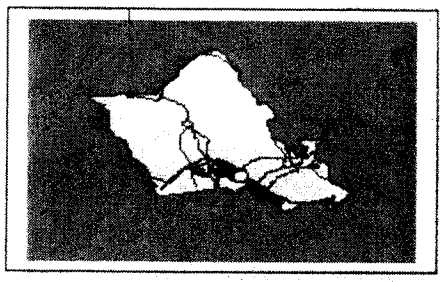
6. That in the event of failure of the landowner to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

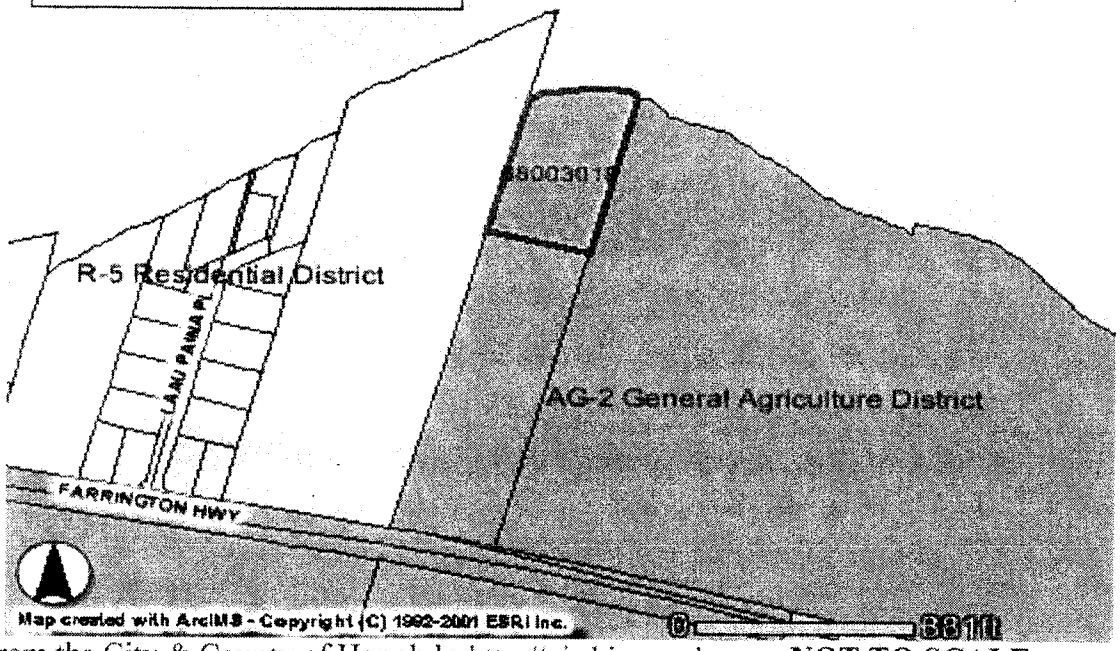
Respectfully submitted,

K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:

PETER T. YOUNG, Chairperson
Board of Land and Natural Resources





From the City & County of Honolulu http://gis.hicentral.com **NOT TO SCALE**

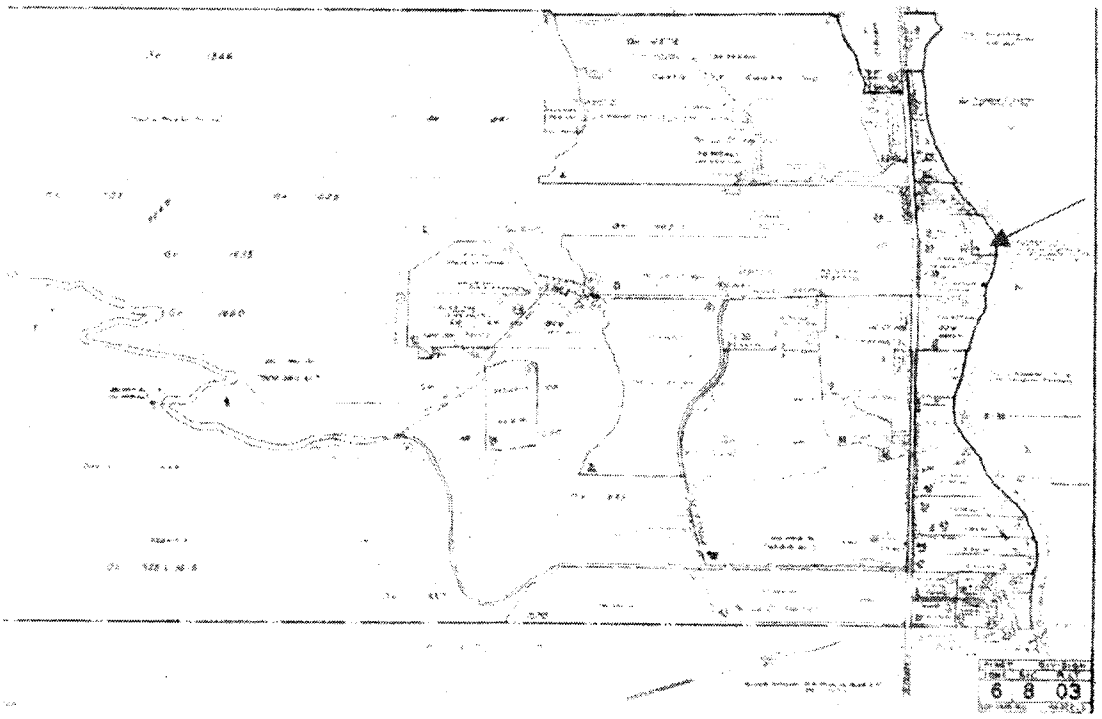
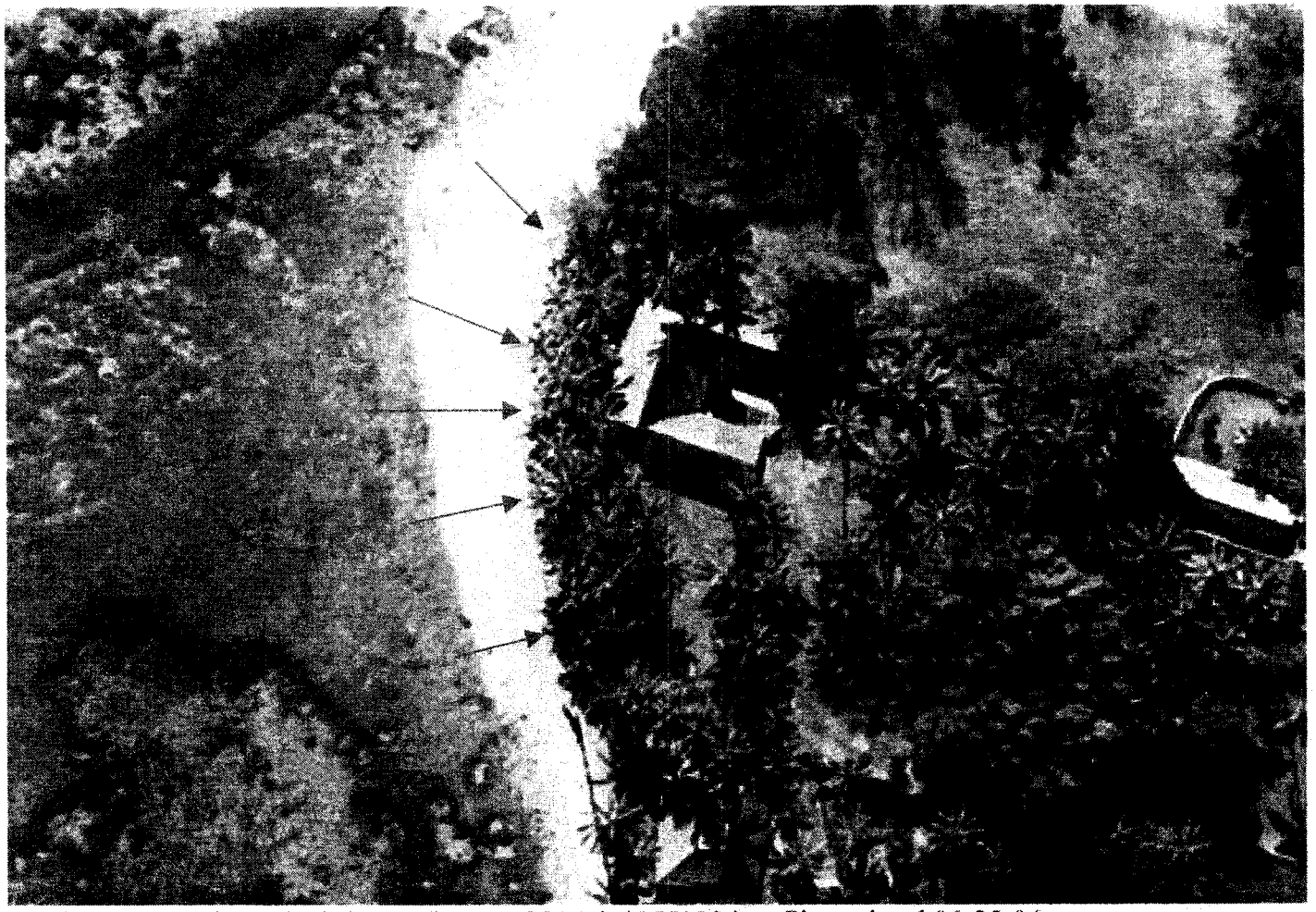


EXHIBIT 1

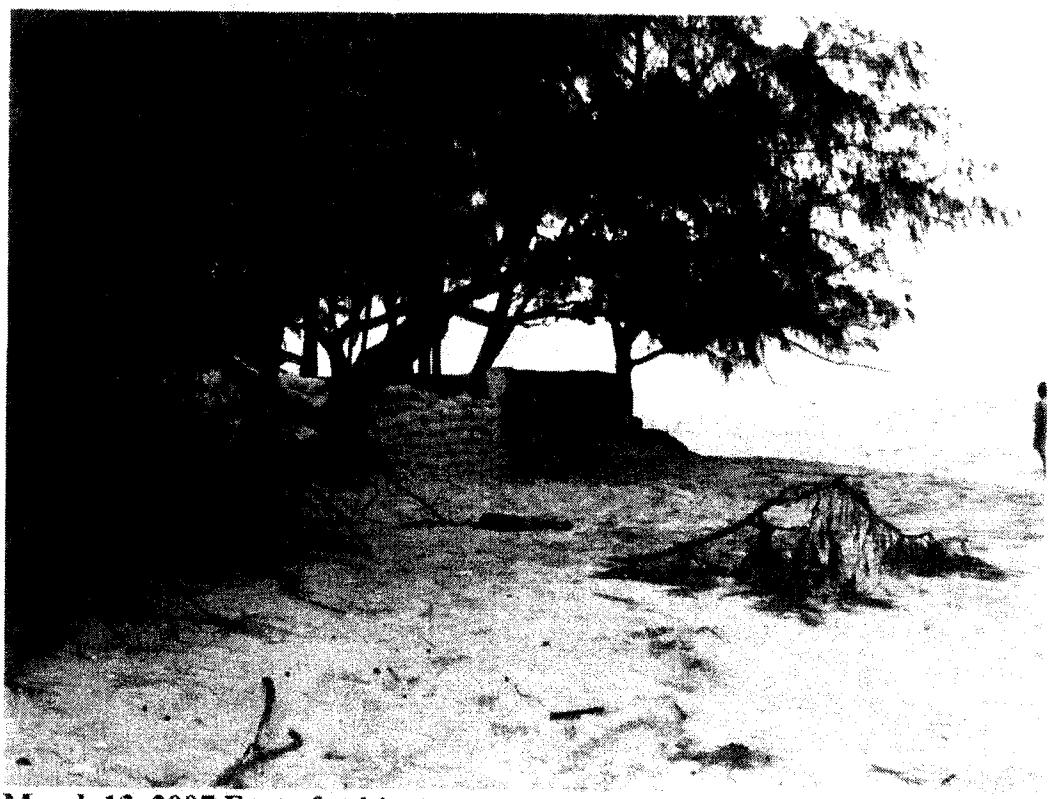
EXHIBIT 2



http://www.soest.hawaii.edu/coasts/images/2006_lg/C75323.jpg Photo dated 06-25-06

Orange arrows denote the boulder revetment.

Mokuleia, Oahu vicinity of (1) 6-8-003:018

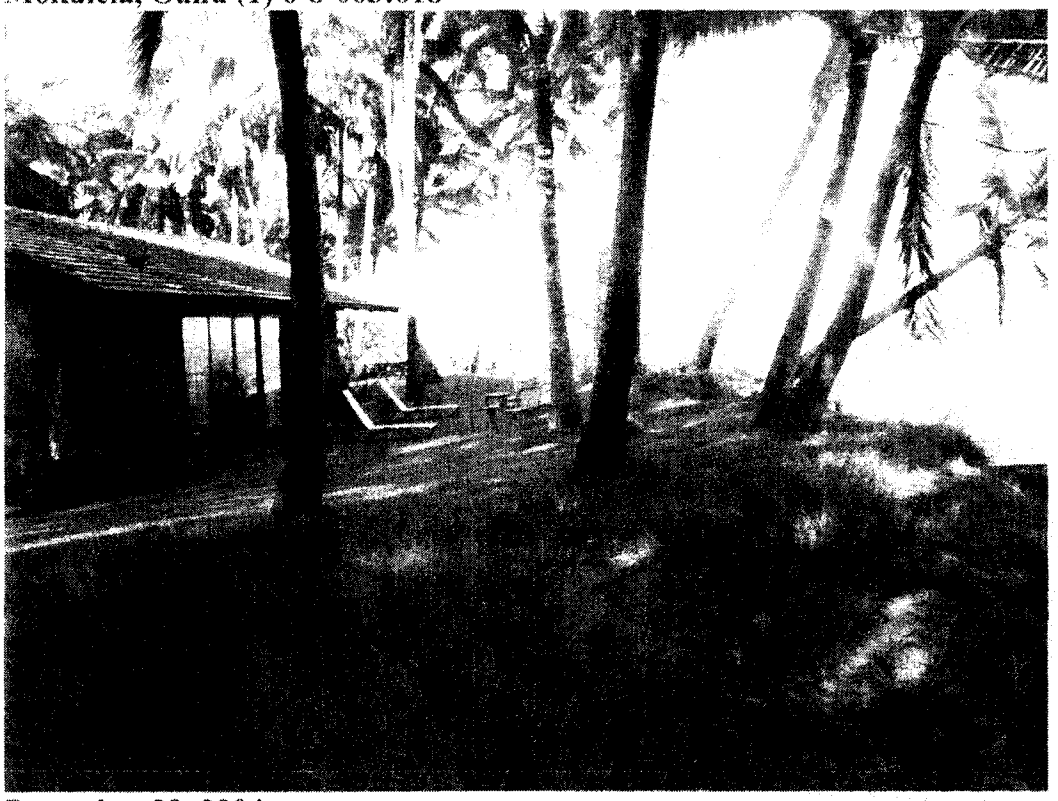


March 13, 2007 East of subject area

December 29, 2004 East of the subject area

EXHIBIT 3.

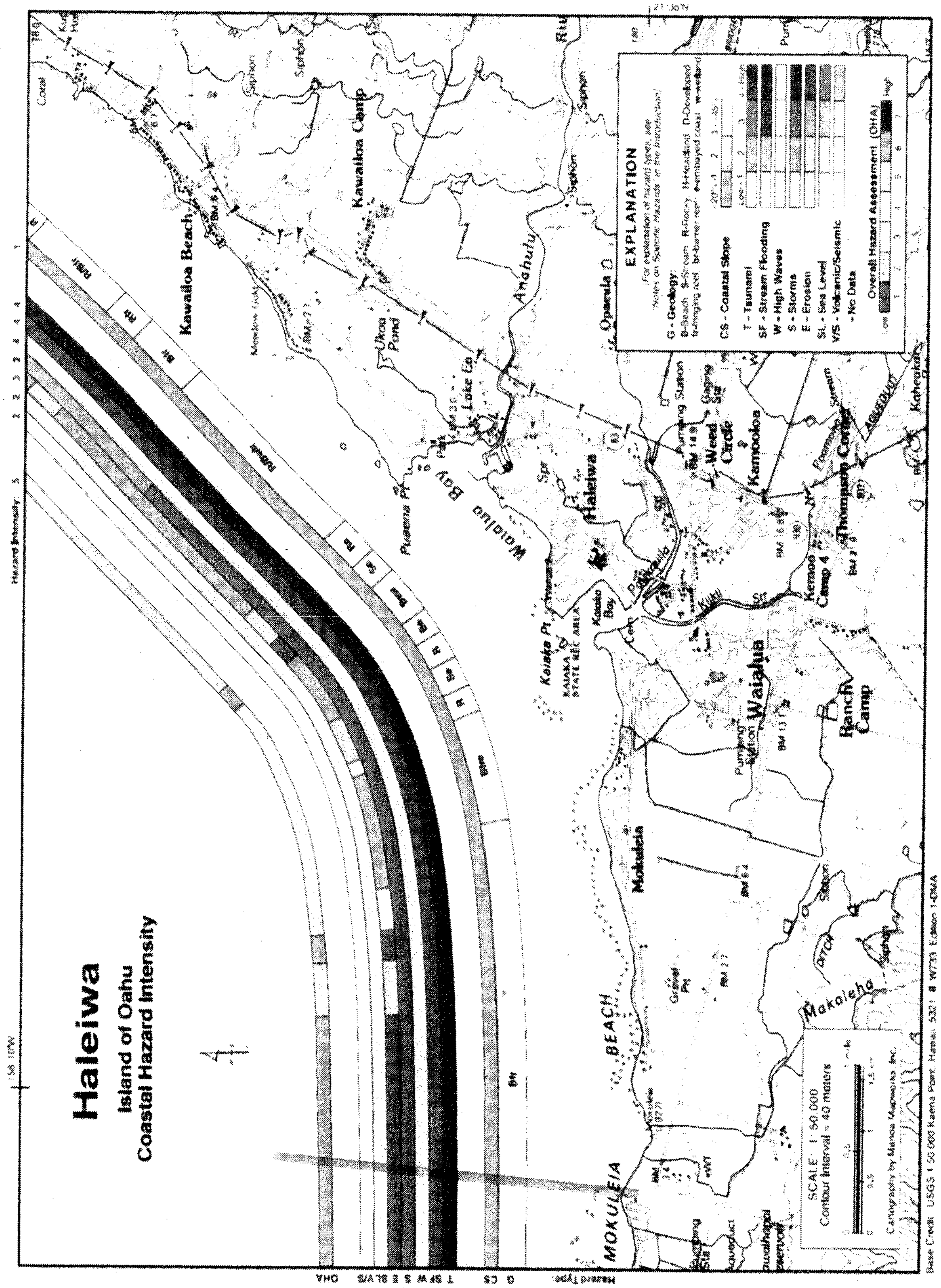
Mokuleia, Oahu (1) 6-8-003:018



December 29, 2004

December 29, 2006. Adjacent neighboring parcel to the West.
Wall is authorized via County BP 275154 dated September 20, 1989.

EXHIBIT 3

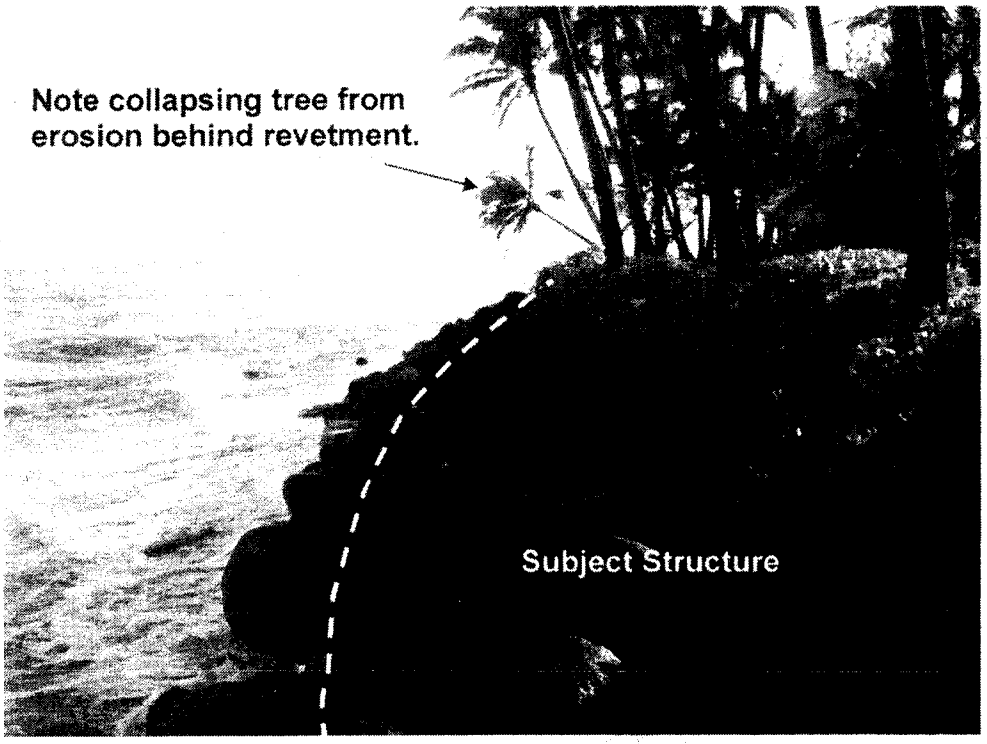


Haleiwa
Island of Oahu
Coastal Hazard Intensity
EXPLANATION
G - Geology
CS - Coastal Slope
T - Tsunami
SF - Stream Flooding
W - High Waves
S - Storms
E - Erosion
SL - Sea Level
V/S - Volcanic/Seismic
- No Data
Overall Hazard Assessment (OHA)
Hazard Type:
Hazard Intensity
Kawailoa Beach
Kawailoa Camp
Waialua Bay
Haleiwa
Waialua
Mokuleia
MOKULEIA
BEACH
Ranch Camp
Thompson Corner
Kamooloa
Makaleha
Ukoa Pond
Opaeula
Anahulu

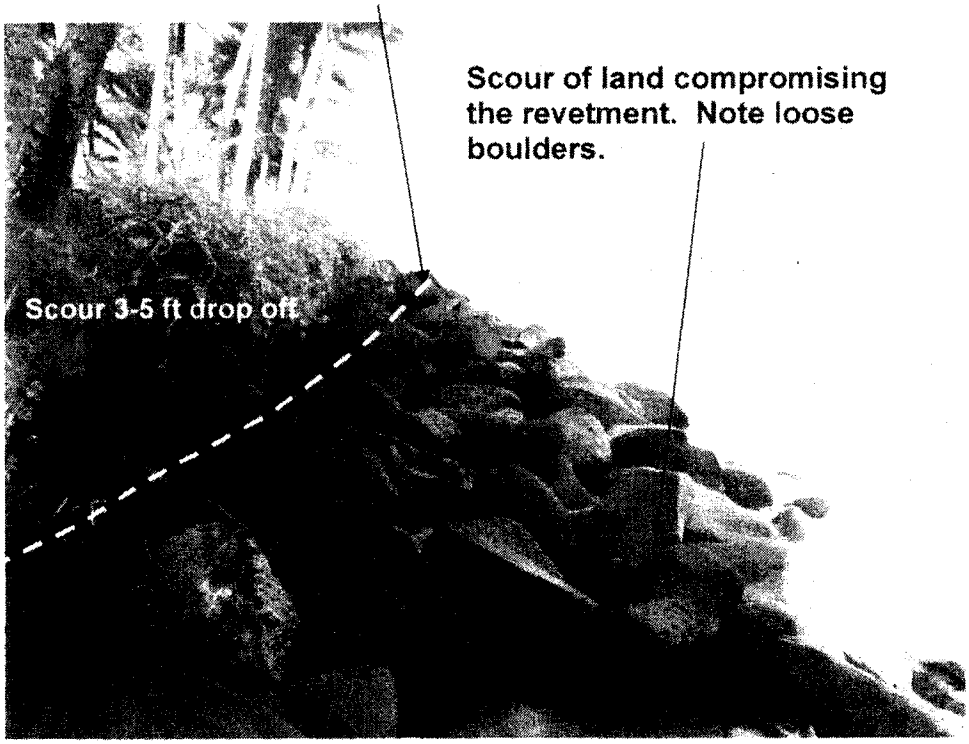
EXHIBIT 4

Unauthorized Shoreline Structure
Mokuleia, Oahu TMK: (1) 6-8-003:018

Rock Revetment December 2004.



Approximate 1975 boundary line



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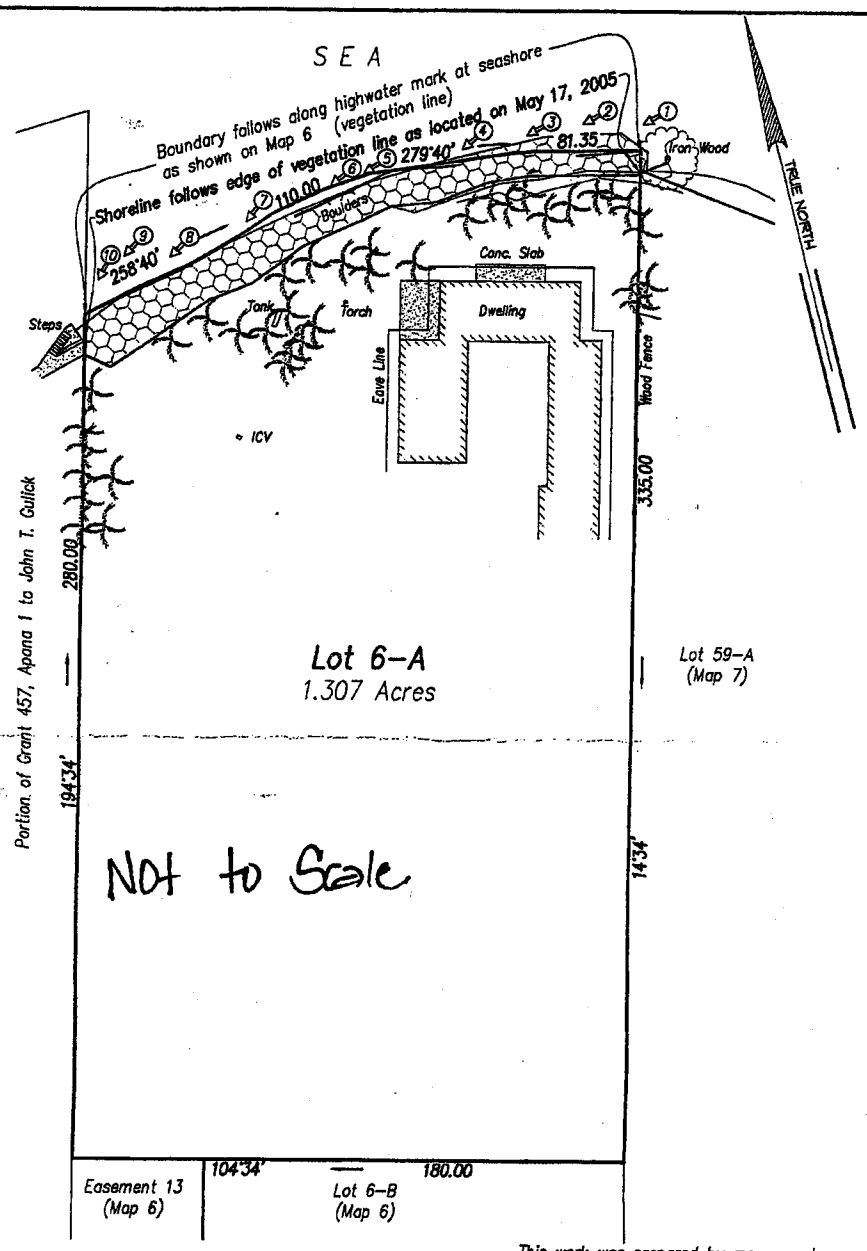


This work was prepared by me or under my direct supervision

Notes:
Azimuths are referred to Government Survey Triangulation Station "Dillingham" △.

Photo Number and Direction

Owner: Michael K. Dailey
68-411 Farrington Highway
Waialua, Hawaii 96791

Coconut Tree

ICV Irrigation Control Valve

Ryan M. Suzuki Exp: 4/30/06
Licensed Professional Land Surveyor
Certificate Number 10059

Shoreline Survey
Lot 6-B (Map 6)
of Land Court Application 1810
at Mokuleia, Waialua, Oahu, Hawaii
Tax Map Key: 6-8-03: 18 (1st Division)

EXHIBIT 6

GRAPHIC SCALE
40 0 20 40 80
1 INCH = 40 FEET

10" x 15" = 1 Sq. Ft.
Job #1-20-0-S

R. M. TOWILL CORPORATION
SINCE 1930

420 Waiakamilo Road Suite 411
Honolulu, Hawaii 96817

LINDA LINGLE
GOVERNOR OF HAWAII

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REGISTERED MAIL

OCCL:.DE

Emergency File No.: OA-06-03

December 20, 2005

DEC 21 2005

Michael Carroll
Bays, Deaver, Lung, Rose and Baba
Representing Mr. Michael Dailey
PO BOX 1760
Honolulu, Hawaii 96813

SUBJECT: Repair of Shoreline Structure Dailey Residence, Mokuleia, Oahu (TMK: (1) 6-8-003:018).

Mr. Carroll:

The Department of Land and Natural Resources (DLNR) has received your November 4 and December 15, 2005 correspondence regarding the subject shoreline structure. We apologize for the delay in responding to your original request. We understand the owner is concerned about the continued damage to the revetment from high surf and that there is concern by the owner it could threaten the foundation of the existing home soon. Processing of the emergency request for repair of the revetment has been hindered by the fact the structure is unauthorized by any agency and thus illegal. The legality of the structure needs to be resolved before any requests for land use are processed by the DLNR.

Regarding the pending Conservation District violation case (OA-05-38), the DLNR is withdrawing the previously deferred item before the Board of Land and Natural Resources (Board) for an unauthorized shoreline structure located along the shoreline fronting parcel TMK: (1) 6-8-003:018. A Notice and Order dated March 2, 2005 previously scheduled the matter to be heard by the Board on April 1, 2005. This case is being withdrawn and will be closed upon removal of the portions of the structure that are encroaching onto state lands as mapped in the May, 2005 survey map included in the August, 2005 CDUA submittal. The pending violation case is being withdrawn due to complications in determining if the structure was built in the Conservation District when it was placed. It is clear the structure was built sometime between 1969 and 1988 and thus NOT eligible for state non-conforming status, however it is unclear if the structure was placed within the Conservation District at the time of construction. This determination is in no way approval for the subject structure and does not negate the illegal

EXHIBIT 7

status (City and County violation) of the structure nor change the fact that a portion of the structure is encroaching on state lands.

Based on the information presented and research conducted the DLNR has the following determinations:

1. Since the DLNR has a mandate to protect and conserve the coastal area for the public the Office of Conservation and Coastal Lands (OCCL) **cannot support the granting of an after the fact permit for the subject structure.** This is based on the fact that the revetment clearly has had and will continue to have a negative impact on the shoreline through the loss of beach area and accelerated erosion fronting the structure.

2. There is no clear demonstrated "emergency" present for the land owner. Existing erosion data (up to 1988) suggests and annual erosion rate for the area of roughly 0.3 feet/year. This erosion rate is based on the rate of erosion BEFORE the construction of the revetment and presumably has been zero since the construction of the revetment. This does not pose a significant immediate erosion threat to the dwelling. The unstable nature of the structure is perceived by the OCCL to be a significant safety issue to the general public traversing the area and could be considered "emergency" in nature.

3. The shoreline to the east has high recreational value and the subject property represents the transition from the natural sandy beach to the armored areas to west. As such, it presents a unique opportunity to provide for the protection of the beach resource and preserve the beach that terminates immediately to the west (Figure 1).

4. The fact that the area to the west is heavily armored with continuous shore protection is not a justification for repairing a structure that is failing. The area immediately to the east is unarmored and exhibits a wider and more recreationally valuable beach that serves as an obvious example of the impact of the structure and illustrates the need to allow accommodation space for the beach to migrate with the natural forces of the ocean. The loss of land through erosion is a secondary concern to the DLNR who has a primary function to protect and preserve the public beach area for future generations.

Based on these findings we offer the following recommendations for the resolution of the request to repair the revetment:

1. Remove the encroaching portions of the revetment. Once the encroaching status of the structure is resolved, the DLNR can consider other requests for activities within the Conservation District but has significant concerns regarding the placement of permanent shoreline hardening.

2. Removal of the entire (failed) revetment. This would result in a landward shift of the shoreline, widening the beach and enhancing public access. However the existing dwelling may soon become threatened and may require alternative erosion control measures. Another alternative that allows for the preservation of the beach as well as the

dwelling is to consider relocation of the existing home more landward as part of the revetment removal.

3. Future applications might include a request for temporary, emergency shore protection. To qualify, the applicant is required to demonstrate a clear "immanent threat" to an inhabited dwelling. Typically "immanent" is defined by the OCCL as less than 20 feet from an actively eroding bank. In this case, the existence of the revetment prohibits consideration of temporary emergency protection.

4. The OCCL finds that the revetment may be beyond repair based on the fact that the revetment is completely failing and does not appear that appropriate engineering considerations were made during the construction. Long-term repair work to the revetment should be considered *reconstruction* and would involve complete removal of the rocks to build an appropriate filter layer and foundation underneath the top layer of rocks.

5. Based on this, it is more appropriate to evaluate the proposed activities as construction of a new structure along with a variety of alternative measures such as relocation, beach nourishment, sandbags and various shore protection designs. This option would fall under the State Environmental Impact Statement (EIS) regulations of Chapter 343 Hawaii Revised Statues (HRS).

6. The OCCL understands the need to balance the concerns of the landowner with those of public resource conservation. The suggestions above to remove the structure may appear draconian to some, therefore, we offer the following compromise as an alternative.
   a. Replace the existing structure with a new engineered revetment located as far mauka as possible (entirely landward of the shoreline) and designed to enhance public access along the structure with a public easement along a clear walkway. Ideally this would be conducted in conjunction with relocation of the dwelling landward to allow for more accommodation space for the beach. Moving the dwelling landward provides for more design alternatives for new structures as well.
   b. As part of the permits for a new revetment, provide compensatory mitigation for the loss of beach due to the placement of the structure. This may be in the form of financial consideration to the state or a requirement to carry out beach nourishment fronting the property.
   c. In order for beach nourishment to be viable at the subject site any new structure would have to be located more landward than the existing structure to allow sufficient accommodation space for a beach to form and remain in place.

Please call Dolan Eversole of the Office of Conservation and Coastal Lands at 587-0321, should you have any questions on this matter.

Sincerely,

Sam Lemmo

Sam Lemmo, Administrator
Office of Conservation and Coastal Lands

cc: Chairperson's Office
Oahu Board Member
Oahu Land Agent
ACOE
CZM
Henry Eng, Director,
City and County of Honolulu Department of Planning and Permitting

Historic Photographs.

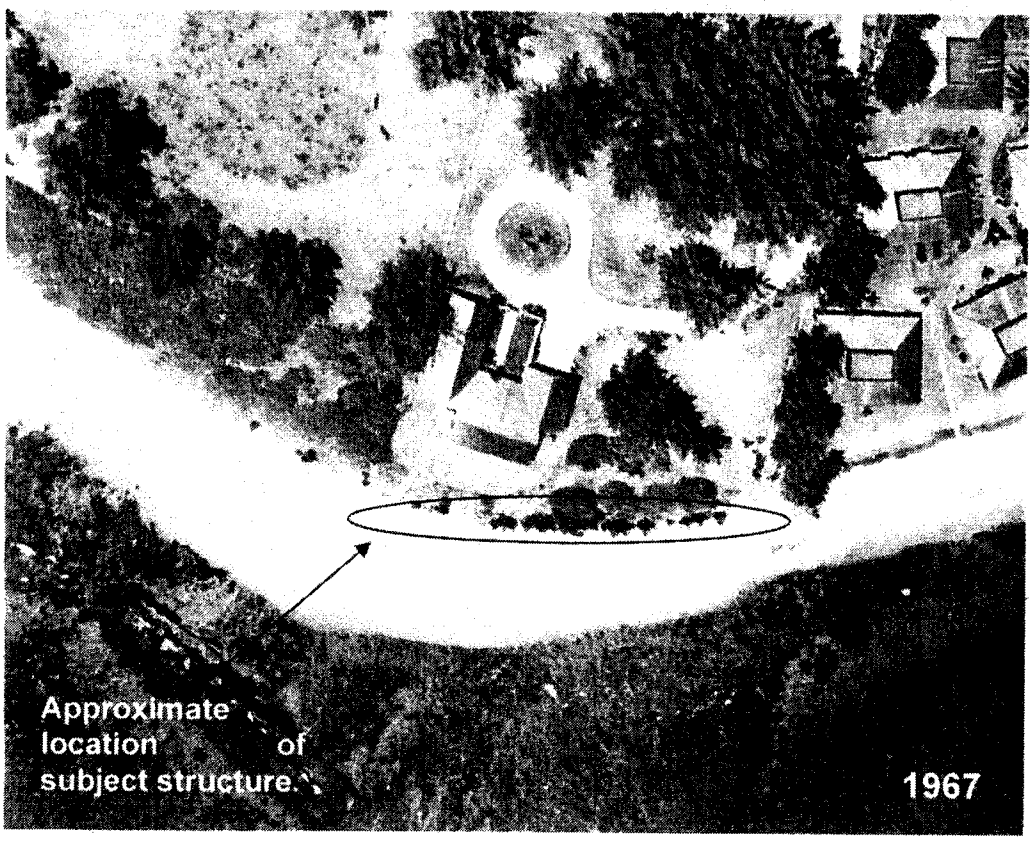
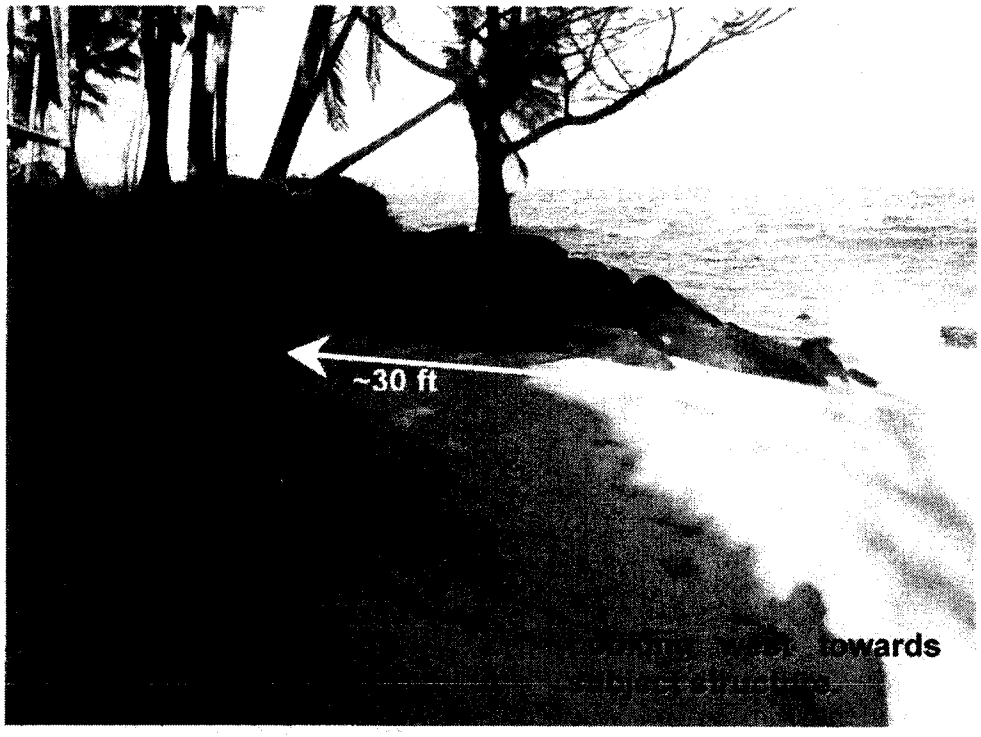
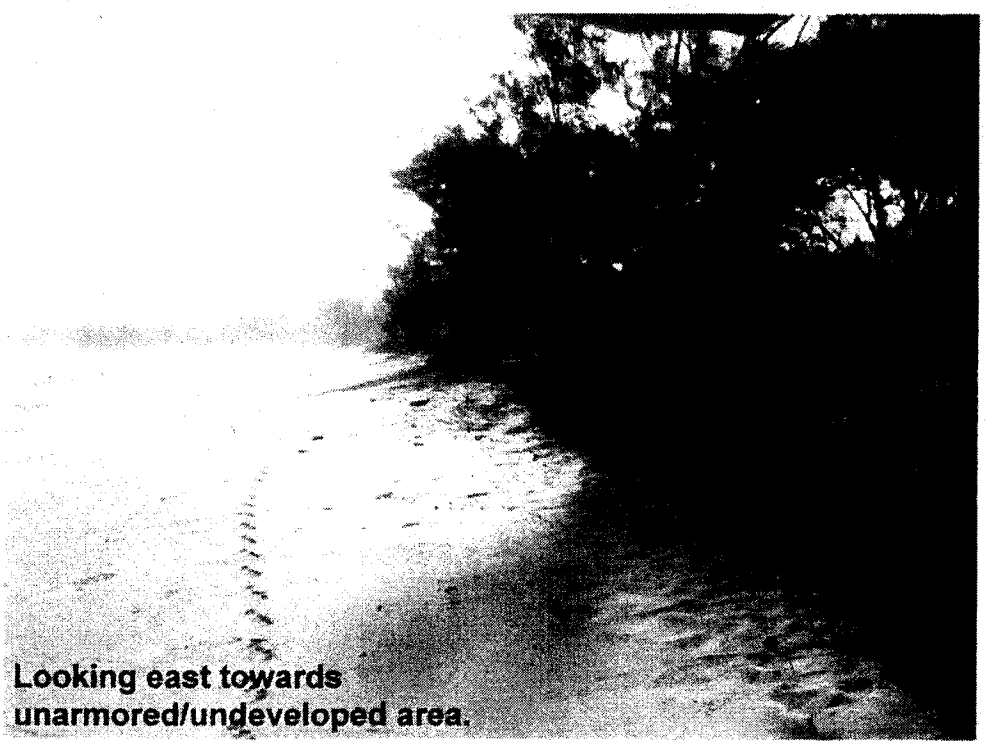


EXHIBIT 8

Figure 1. Eastern portion of subject structure.
Note the landward shift on the beach profile at the end of the structure.





LINDA LINGLE
GOVERNOR OF HAWAII

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

DEAN A. NAKANO
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

NOTICE AND ORDER

December 21, 2006

File No.: Violation OA-07-31

Mr. Michael Dailey
68-611 Farrington Hwy
Waialua, Hi 96791

DEC 20 2006

Dear Mr. Dailey:

SUBJECT: Alleged Unauthorized Placement of a Shoreline Structure (Rocks) on Shoreline Mokuleia, Oahu (TMK: (1) 6-8-003:018).

NOTICE IS HEREBY GIVEN that you are in violation of Hawaii Administrative Rules (HAR) Title 13, Chapter 5, entitled "Conservation District" providing for land use within the Conservation District, enacted pursuant to Chapter 183C, Hawaii Revised Statutes (HRS).

The Department of Land and Natural Resources (DLNR) has become aware of an alleged unauthorized placement of rocks as part of a repair effort to an existing unauthorized revetment. The Department has determined that:

1) The subject activities, identified as seaward of Tax Map Key: (1) 6-8-003:018) are in the Conservation District and is classified as *Resource* Subzone (seaward of the shoreline);
2) The following uses were conducted on the subject premises: realignment and placement of additional rocks;
3) These uses were not authorized by the DLNR under Chapter 13-5, HAR.

EXHIBIT 9

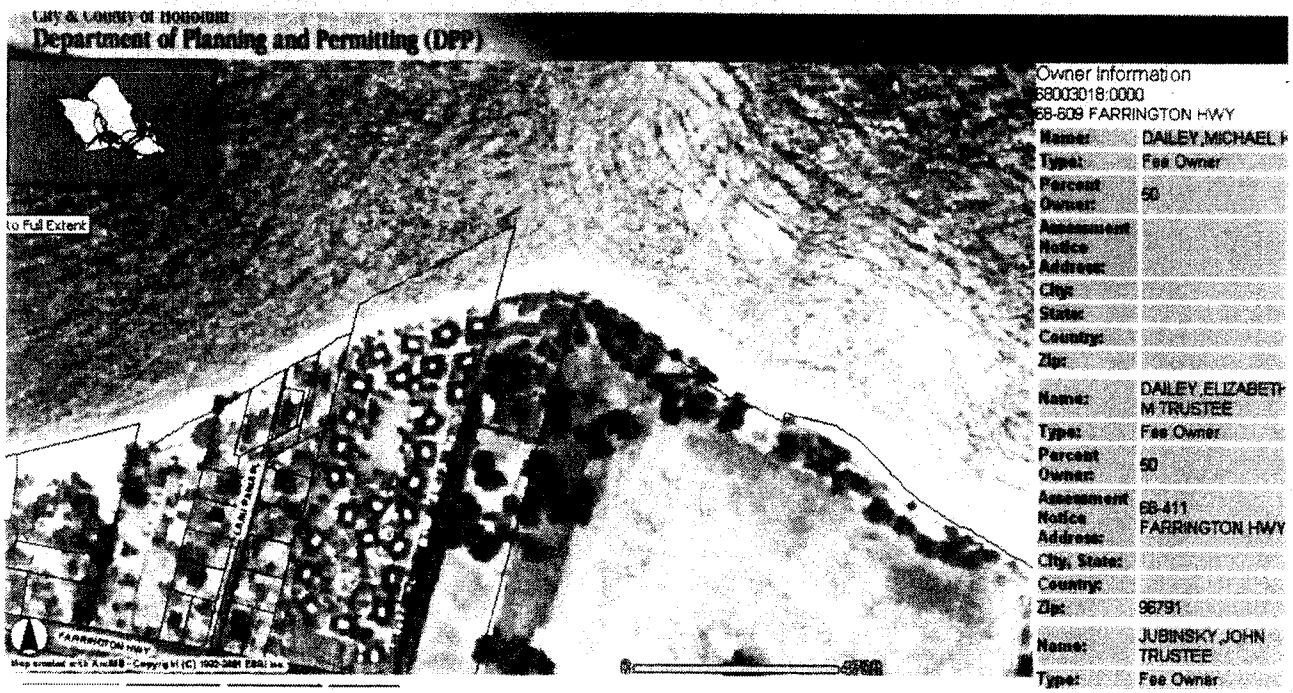
YOU ARE HEREBY ORDERED TO CEASE any further activity on the subject premises. Should you fail to cease such illegal activity immediately, you will be subject to fines up to $2,000 per day pursuant to Chapter 13-5, HAR, in addition to administrative costs incurred by the Department.

Please contact Sam Lemmo of the Office of Conservation and Coastal Lands at (808) 587-0381 to clear this matter.

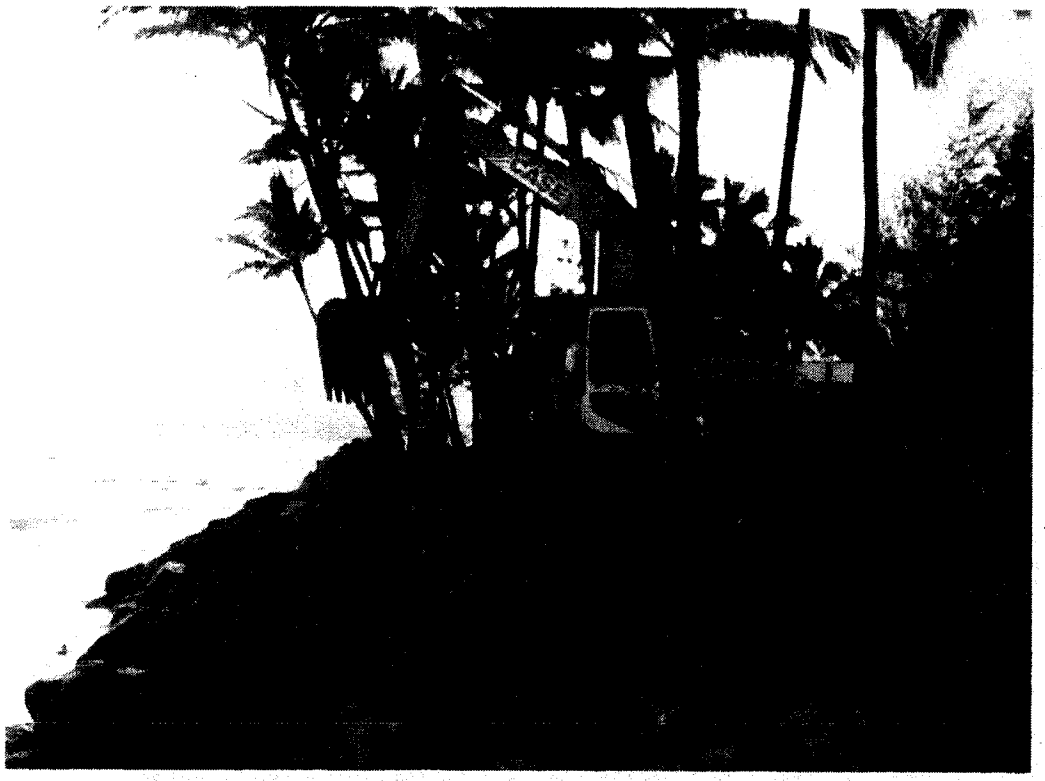
By: _____
PETER T. YOUNG, Chairperson
Board of Land and Natural Resources

cc: Chairperson's Office
Oahu Board Member
Oahu Land Agent
DOCARE
ACOE/ DOH
City and County of Honolulu Department of Planning and Permitting –Art Challacombe
Elizabeth Dailey 68-411 Farrington Hwy Waialua Hi 96791

Location Maps



Site Photos



December 23, 2006
Unauthorized Shoreline Structure-Mokuleia, Oahu TMK: (1) 6-8-003:018

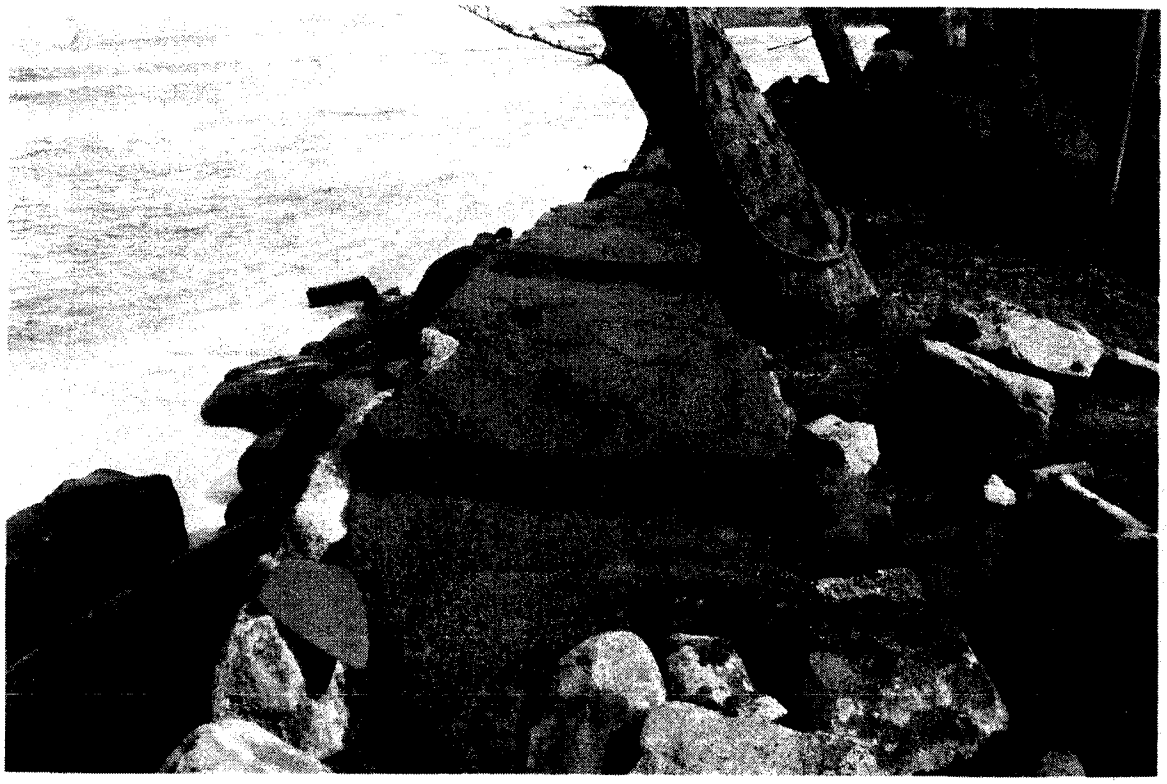
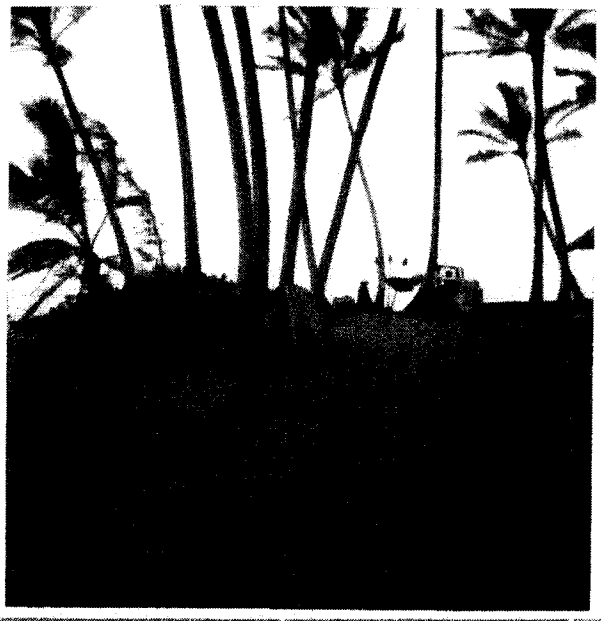


EXHIBIT 10

December 23, 2006
Unauthorized Shoreline Structure-Mokuleia, Oahu TMK: (1) 6-8-003:018

EXHIBIT 11

Depicts Bobcat used in construction of wall

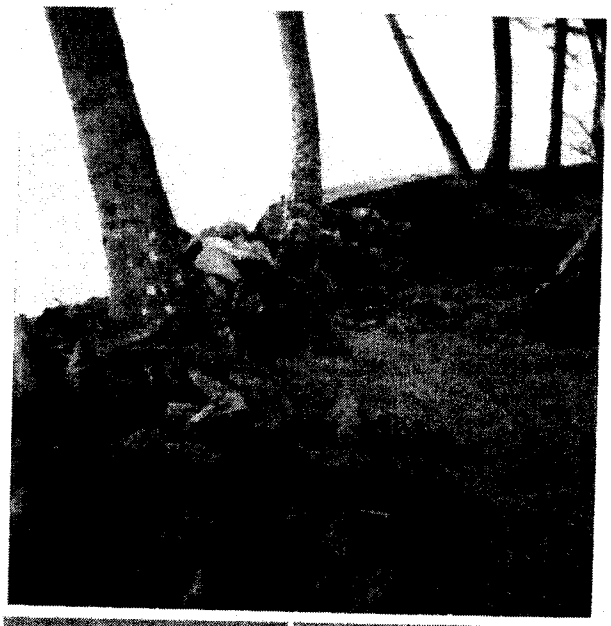


Depicts workers unloading cement onto wall

December 28, 2006

Unauthorized Shoreline Structure-Mokuleia, Oahu TMK: (1) 6-8-003:018

Depicts tools used for construction on wall



Depicts rocks used in contruction on wall

EXHIBIT 12

December 29, 2006 Unauthorized Shoreline Structure-
Mokuleia, Oahu TMK: (1) 6-8-003:018

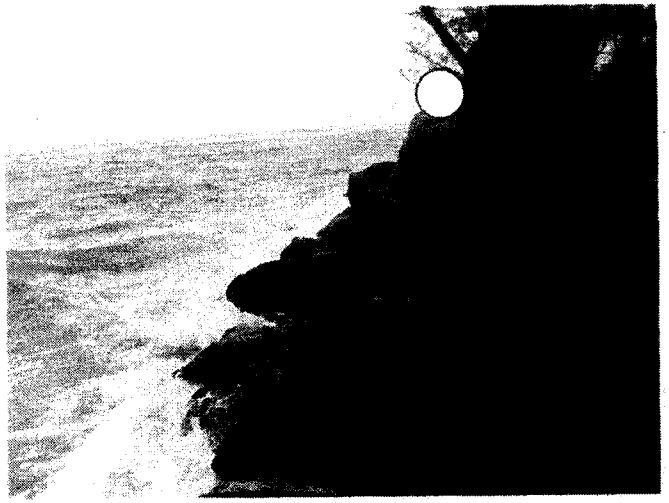
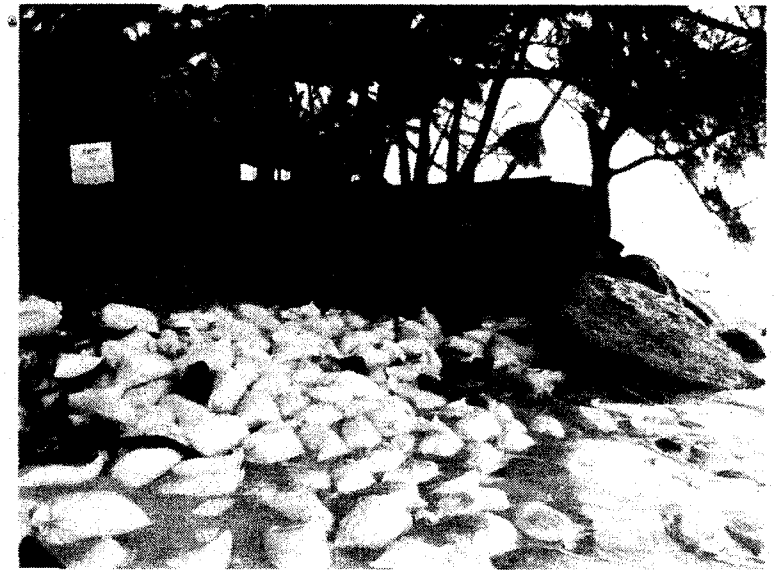


EXHIBIT 13

Unauthorized Shoreline Structure

Mokuleia, Oahu TMK: (1) 6-8-003:018



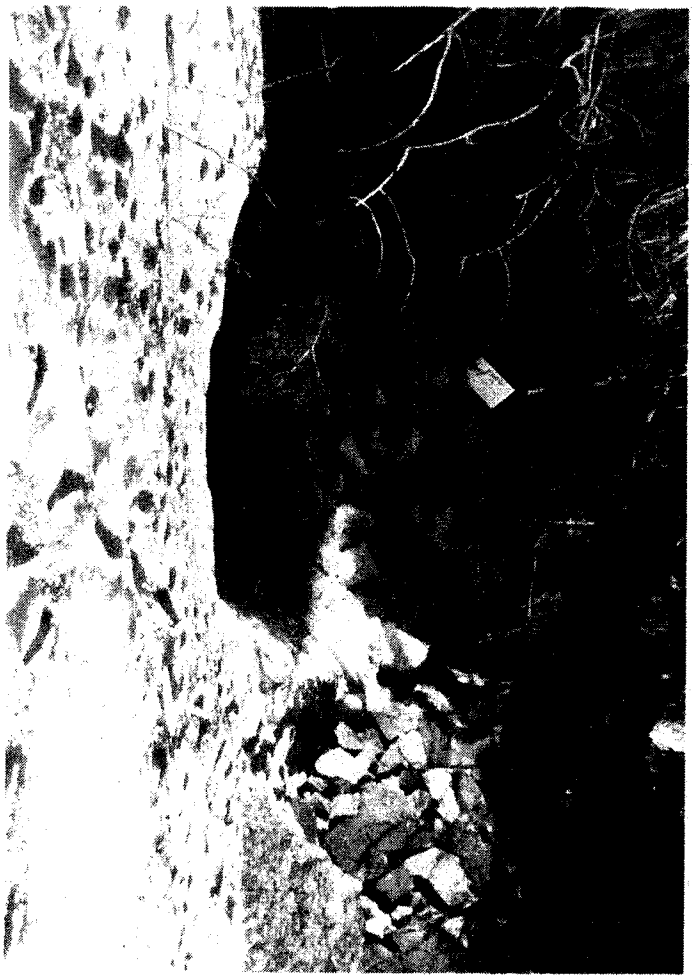
January 31, 2007

February 16, 2007

February 16, 2007

February 16, 2007

EXHIBIT 14

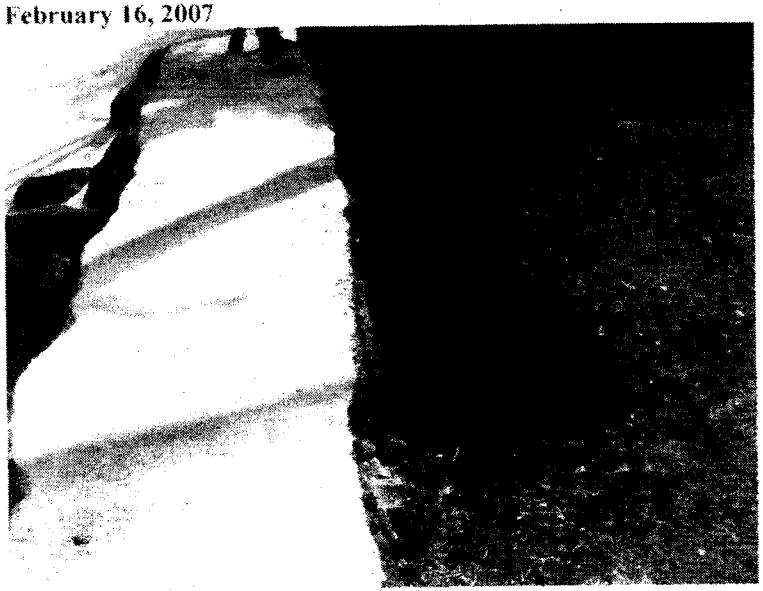


Feb 16 87

EXHIBIT 15

Unauthorized Shoreline Structure

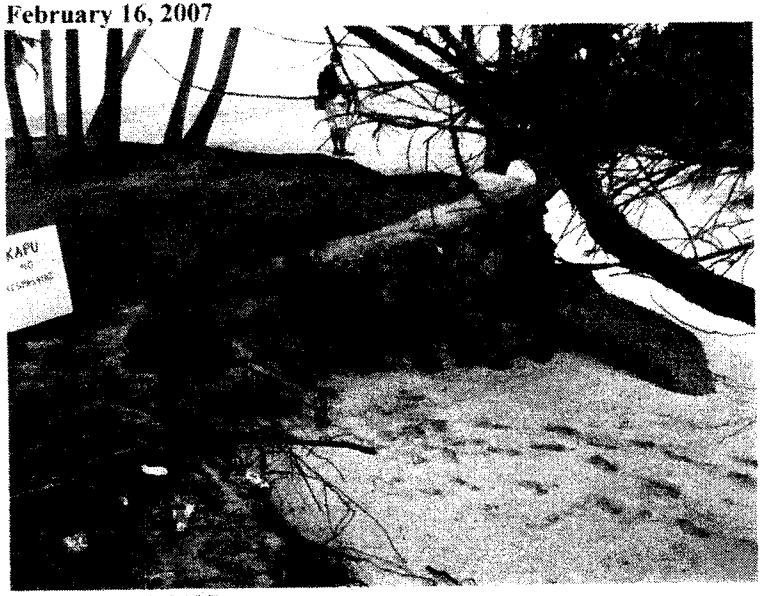
February 16, 2007



February 16, 2007

Mokuleia, Oahu TMK: (1) 6-8-003:018

February 16, 2007



February 16, 2007

EXHIBIT 15

2-21-07 1100 68-611
Farmington Hwy

2-21-07 1100
68-611
Farmington Hwy

2-21-07 1100 68-611
Farmington Hwy

EXHIBIT 17

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 523-4432 • FAX: (808) 527-6743
DEPT. INTERNET: www.honoluludpp.org • INTERNET: www.honolulu.gov

MUFI HANNEMANN
MAYOR

HENRY ENG, FAICP
DIRECTOR

DAVID K. TANOUE
DEPUTY DIRECTOR

2005/ELOG-2469(ST)

November 4, 2005

Mr. Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

2005 NOV -7 A 9: 31
RECEIVED

Dear Mr. Lemmo:

Re: Emergency Authorization to Repair a Revetment (OA-05-38)
68-611 Farrington Highway - Mokuleia
Tax Map Key 6-8-3: 18

This is in response to your October 6, 2005 request for comments on the application for emergency repairs at the above-referenced site.

We confirm that the Department of Planning and Permitting (DPP) has no record of the lawful establishment of the existing boulder revetment at this site. The photographic records from 1967 and 1969 in our files indicate the existence of an unarmored beach at this location. In 1988, the City determined that the boulder revetment at this site was unauthorized (i.e., illegal) and, as noted in your correspondence with the applicant, issued a citation (No. BV-92-06-004) in June 1992 for installing boulders within the shoreline setback area.

We have concerns about categorizing the erosion situation at this site as an emergency. We note that the pattern of moderate erosion along this beach was described in the 1988 Oahu Shoreline Study. That study documented that the beach in this area had receded from eight (8) to 15 feet, during the 40-year period of the study (1949 to 1988).

We also have concerns on whether the proposed action (the repair of the portion of the illegal structure in the shoreline setback) can be exempt from the environmental assessment requirements of the State Environmental Impact Statement (EIS) regulations of Chapter 343, Hawaii Revised Statutes (HRS), as indicated in the application.

Finally, the statement regarding the "County Special Management Area Determination" (p. 5) should be clarified. The reason a Special Management Area (SMA) Use Permit is

EXHIBIT 18

not required is because the rock revetment is considered accessory to the single-family dwelling use of this site. Therefore, the rock revetment is not considered "development" pursuant to Chapter 25, Revised Ordinances of Honolulu (ROH) and will not require an SMA approval.

Should you have any questions, please contact Steve Tagawa of our staff at 523-4817.

Very truly yours,

Barbara A Moon
for Henry Eng, FAICP, Director
Department of Planning and Permitting

HE:st

G:landuse\posseworkingdirectory\SVDailyEmrg3.inq