

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

September 23, 2016

Ref No.: 08MD-125

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

MAUI

Amendment of Grant of Non-Exclusive Easement, General Lease (GL) No. S-6008, for Seawall Purposes, to Stanley Gerald Dunn, Trustee of the Stanley Gerald Dunn Revocable Living Trust dated February 27, 2003; Waivee, Lahaina, Maui, Tax Map Key: (2) 4-5-003:seaward of 025.

BACKGROUND:

The Board initially approved the issuance of the Grant of Non-Exclusive Easement, GL No. S-6008 for seawall purposes to Stanley Gerald Dunn, Trustee of the Stanley Gerald Dunn Revocable Living Trust dated February 27, 2003, at its meeting on June 10, 2010, under agenda item D-11. At its meeting on February 25, 2011, under agenda item D-8, the Board amended its approval to correct the legal reference citation. The February 25, 2011 submittal (which includes the initial June 10, 2010 approval) is included as Exhibit A. The subject seawall easement was executed on June 3, 2011 for a term of 55 years.

By way of a warranty deed recorded on May 26, 2016 as document number A-59900413, Stanley Gerald Dunn, Trustee of the Stanley Gerald Dunn Revocable Living Trust dated February 27, 2003 (Assignor), conveyed the abutting private property and the easement interest to Stanley A. Deal and Dilara O. Deal, Trustees of the Stanley and Dilara Deal Living Trust dated January 24, 2016 (Assignee). As the easement document contains the assignment language approved by the Board, no consent to assignment is requested.

In March 2016, the Assignor submitted an application to obtain a new certified shoreline pertaining to the sale of the property. A site inspection was conducted on May 18, 2016 by the State Surveyor and Department staff. As a result of the inspection, additional encroachments of approximately 134 square feet were identified outside of the easement area. See latest survey map attached as Exhibit B. Accordingly, it is necessary to revise the easement area from the original 124 square feet to the new area of 258 square feet, more or less, in GL No. S-6008. As a result of the expanded area, additional consideration is also required.

REMARKS:

Staff recommends the Board authorize the amendment of GL No. S-6008 by: (1) replacing the original easement area of 124 square feet with the new area of 258 square feet, subject to confirmation by the Department of Accounting and General Services, Survey Division; and (2) authorizing the Chairperson to approve the one-time payment for the additional area based on the unit rate paid by the Assignor under GL No. S-6008<sup>1</sup>. The additional consideration payable is presented below:

$$(\$11,320.00 \div 124 \text{ sq. ft.}) \times 134 \text{ sq. ft.} = \$12,233.00$$

Staff has discussed the easement amendment with the Assignee as current owner of the abutting property. The Assignee has agreed to tender the consideration and to work with staff to complete the easement amendment.

The Office of Conservation and Coastal Lands (OCCL) has no objection to the proposed amendment of GL No. S-6008 by increasing the easement area. However, OCCL indicated that any new repair or improvement to for shoreline protection purposes will have to go through a totally separate review/permit process undertaken by OCCL.

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council and dated June 5, 2015, the Board is requested to declare the subject request exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 46. Exemption Notification is attached as Exhibit C.

RECOMMENDATION: That the Board:

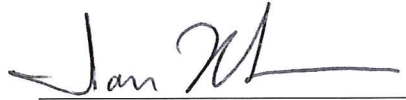
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the amendment of Grant of Non-Exclusive Easement GL No. S-6008 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following, by:
  1. The standard terms and conditions of the amendment of easement form, as may be amended from time to time;
  2. Replacing the original easement area of 124 square feet with the new area of 258 square feet, more or less;

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<sup>1</sup> Staff believes using the 2011 rate is prudent since the same encroachments existed at the time.

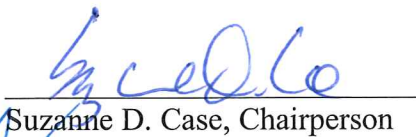
3. Payment of \$12,233.00 for the additional area;
4. Review and approval by the Department of the Attorney General; and
5. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ian M.", written over a horizontal line.

Ian Hirokawa  
Special Projects Coordinator

APPROVED FOR SUBMITTAL:

A handwritten signature in blue ink, appearing to read "Suzanne D. Case", written over a horizontal line.  
Suzanne D. Case, Chairperson

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

February 25, 2011

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

PSF No:08MD-125  
MAUI

Amend Prior Board Action of June 10, 2010 (D-11), Grant of Term, Non-Exclusive Easement to Stanley Gerald Dunn, Trustee of the Stanley Gerald Dunn Revocable Living Trust Dated February 27, 2003 for Seawall Purposes, Lahaina, Maui, Tax Map Key: (2) 4-5-003:025 Seaward

BACKGROUND:

The Land Board at its meeting of June 10, 2010 (D-11) authorized the issuance of a 55 year, term, non-exclusive easement to Stanley Gerald Dunn, Trustee of the Stanley Gerald Dunn Revocable Living Trust Dated February 27, 2003 for seawall purposes. The encroachment (seawall footing) was discovered in 2008 and is approximately 124 square feet.

REMARKS:

Recently, staff requested the Attorney General's office to prepare the new easement document on behalf of Mr. Dunn and was informed the encroachment area is reclaimed (filled) land and a public notice is required pursuant to Section 171-53(b), Hawaii Revised Statutes.

The June 10, 2010 approval did not correctly cite the Legal Reference of Section 171-53(b), Hawaii Revised Statutes. Only Section 171-13, Hawaii Revised Statutes was cited. Neither Mr. Dunn's private land surveyors or we were aware that the area was reclaimed (filled) land. DAGS Survey Division conducts their review after Land Board approval is obtained.

This submittal is to add the correct legal reference.

RECOMMENDATION: That the Board:

1. Amend its prior Board action of June 10, 2010, under agenda item D-11 by adding to Legal Reference, Section 171-53(b), Hawaii Revised Statutes.

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES *BN*  
AT ITS MEETING HELD ON

February 25, 2011

EXHIBIT "A"



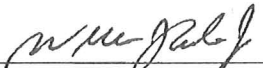
2. All terms and conditions listed in its June 10, 2010 approval to remain the same.

Respectfully Submitted,



Larry Pacheco  
Land Agent

APPROVED FOR SUBMITTAL:

  
William J. Aila, Jr., Interim Chairperson

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

June 10, 2010

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

PSF No.: 08MD-125

Maui

Grant of Term, Non-Exclusive Easement to Stanley Gerald Dunn,  
Trustee of the Stanley Gerald Dunn Revocable Living Trust  
Dated February 27, 2003 for Seawall Purposes, Lahaina, Maui,  
Tax Map Key: (2) 4-5-003:025 Seaward.

APPLICANT:

Stanley Gerald Dunn, Trustee of the Stanley Gerald Dunn Revocable  
Living Trust, dated February 27, 2003.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land situated at Lahaina, Maui, identified  
by Tax Map Key: (2) 4-5-003:025 Seaward, as shown on the attached  
map labeled Exhibit A and the topographic overview labeled  
Exhibit (B). Refer to easement description labeled Exhibit (C)  
and the attached shoreline verification survey map submitted by  
Valley Isle Surveyors, Inc. labeled Exhibit (D).

AREA:

124 square feet, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State  
Constitution: YES \_\_\_\_\_ NO X

CURRENT USE STATUS:

Unencumbered with encroachments.

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
June 10, 2010

D-11

**EXHIBIT A**

CHARACTER OF USE:

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

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

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

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules, Section 11-200-8A, the project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class 4, which states "Minor alterations in the conditions of land, water, or vegetation". Please refer to Exemption Notice attached as Exhibit "E".

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

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

REMARKS:

In June, 2008, the Office of Conservation and Coastal Lands (OCCL) received a written request from property owner Mr. Stanley Dunn for assistance in resolving an encroachment on State lands seaward of his private property. This encroachment is situated at 1045 Front Street Lahaina, Maui, Hawaii and further identified by Tax Map Key Number (2) 4-5-003:025. The subject area was surveyed and the encroachment (seawall footing) was determined to encumber 124 square feet of State land seaward of Mr. Dunn's property.

Per OCCL response letter dated July 7, 2008, to Mr. Stanley Dunn, OCCL staff was unable to locate any construction permit or other land use authorization permits for the subject improvements and none were provided by Mr. Dunn. However, aerial photographs provided evidence that the encroachment was in existence prior to 1963 and had not been altered. Therefore, because the structure had been in place before the inception of the Conservation District rules, DLNR did not consider the encroachment a Conservation District violation and did not ask for an after-the-fact Conservation District Use Application to resolve this matter.

The OCCL is not requesting that any fines be imposed with regards to the subject encroachment. OCCL findings also indicate that there is no beach resource seaward of or near the subject parcel.

With regards to Public Access, OCCL staff determined that public access is unlikely to be enhanced by the removal of the encroaching seawall footing due to the fact that shoreline is armored fronting the subject property and also along the coastline fronting the adjacent properties to the north and south. OCCL supports an easement request for the seawall footing, pursuant to chapter 171 of the Hawaii Revised Statutes.

Agency comments have been requested from the following agencies:

Agency	Comments
Dept of Hawaiian Home Lands	No comment received
DLNR - Historic Preservation	No comment received
County of Maui - Planning	No comment received
County of Maui - Public Works	No comment received
Office of Hawaiian Affairs	No comment received

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff recommends no fine as the subject encroachment has been determined to have been constructed prior to 1963 and the inception of Conservation District rules.

Mr. Dunn has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

1. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2)4-5-003:025, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
2. Subject to the Applicant fulfilling all of the Applicant



June 10, 2010

requirements listed above, authorize the issuance of a term, non-exclusive easement to the Stanley Gerald Dunn Revocable Living Trust covering the subject area for use, maintenance and repair of a seawall, and its footing under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key (2) 4-5-003:025, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,

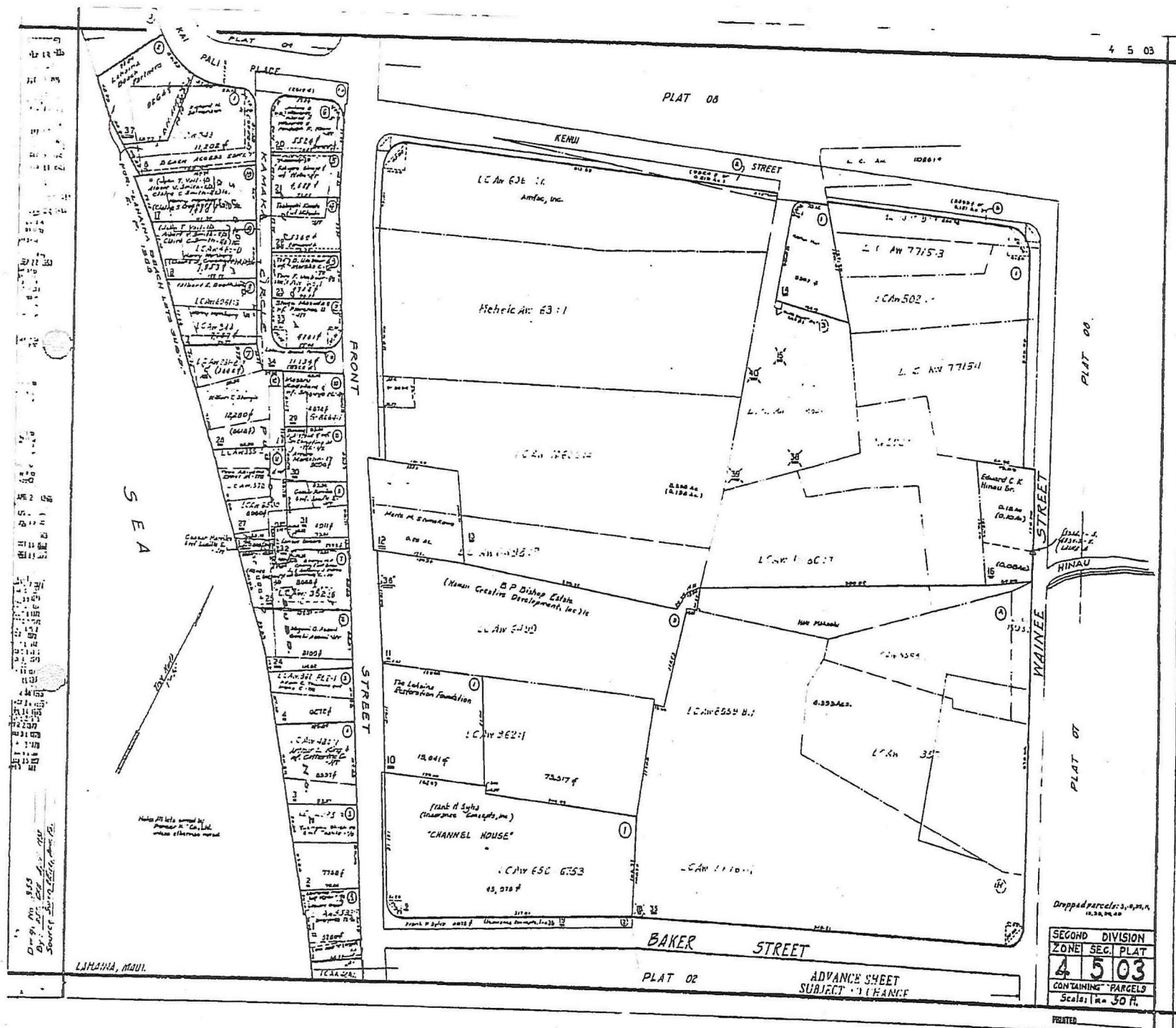
*Charlene E. Urthli*

*[Signature]*  
Larry Pacheco  
Land Agent


APPROVED FOR SUBMITTAL:

*[Signature]*  
\_\_\_\_\_  
Laura H. Thielen, Chairperson

*[Signature]*





An aerial photograph showing a residential development. A road, labeled "Hwy 101" on the right side, runs diagonally from the top right towards the bottom right. To the left of the road, there are several rectangular plots of land, some of which appear to be cleared or under construction. A line points from the text label to one of these plots.

Stanley Gerald Dunn  
(2) 4-6-003:025  
PSF#08MD-126

**Exhibit (B)**



## EASEMENT DESCRIPTION

Being Easement "A" for seawall footing purposes affecting Lot 7 of the Puunoa Subdivision No. 2 in favor of the State of Hawaii.

Situated at Kainehe, Lahaina, Maui, Hawaii  
TMK: (2) 4-5-03:025

Beginning at a point at the northeasterly corner of this easement, being the southerly corner of Lot 7 of the Puunoa Subdivision No. 2 (TMK: (2) 4-5-03:025), and being also the westerly corner of Lot 6 of the Puunoa Subdivision (TMK: (2) 4-5-03:024), the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAINA" being 5,999.62 feet south and 5,392.64 feet west and running by azimuths measured clockwise from true south; thence,

1.  $57^{\circ} 42'$  2.12 feet under, over & across State Land (ocean); thence,
2.  $128^{\circ} 28'$  61.68 feet under, over & across the same; thence,
3.  $231^{\circ} 01'$  2.05 feet under, over & across the same; thence,
4.  $308^{\circ} 28'$  61.93 feet along Lot 7 of the Puunoa Subdivision No. 2 (TMK: (2) 4-5-03:025) to the point of beginning and containing an area of 124 square feet.

This description is based on an actual field survey and was prepared by me or under my direct supervision.



Randall Sherman  
Licensed Professional Land Surveyor  
State of Hawaii Certificate Number LS4187  
Licensed Expiration Date April, 30, 2010  
Land Court Certificate Number 189

10 JUN 09  
Date



**EXHIBIT "C"**





LINDA LINGLE  
GOVERNOR OF HAWAII



LAURIE EHELEN  
DIRECTOR  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF WATER RESOURCES MANAGEMENT

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

June 10, 2010

**EXEMPTION NOTIFICATION**

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

Project Title: Grant of Term, Non-Exclusive Easement to Stanley Gerald Dunn, Trustee of the Stanley Gerald Dunn Revocable Living Trust Dated February 27, 2003 for Seawall Purposes, Lahaina, Maui, Tax Map Key:(2) 4-5-003:025 Seaward.

Project / Reference No.: 08MD-125

Project Location: Lahaina, Maui

Project Description: Grant of easement to resolve encroachment.

Chap. 343 Trigger(s): Use of state land via grant of easement, location in the Conservation District

Exemption Class No.: In accordance with Hawaii Administrative Rules, Section 11-200-8(A), the subject project is considered to be exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 4, that states: "Minor alterations in the conditions of land, water, or vegetation".

Consulted Parties: The Office of Conservation and Coastal Lands was consulted as a source authority having jurisdiction or expertise in this matter.

Exemption Item Description  
from Agency Exemption List: N/A

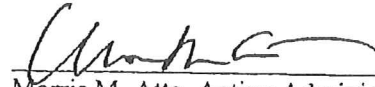
This exemption applies since issuing an easement to allow the structure to remain in place will result in no change to the conditions of land, water and vegetation. As evidenced by aerial

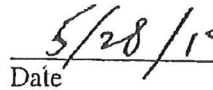
**EXHIBIT "E"**

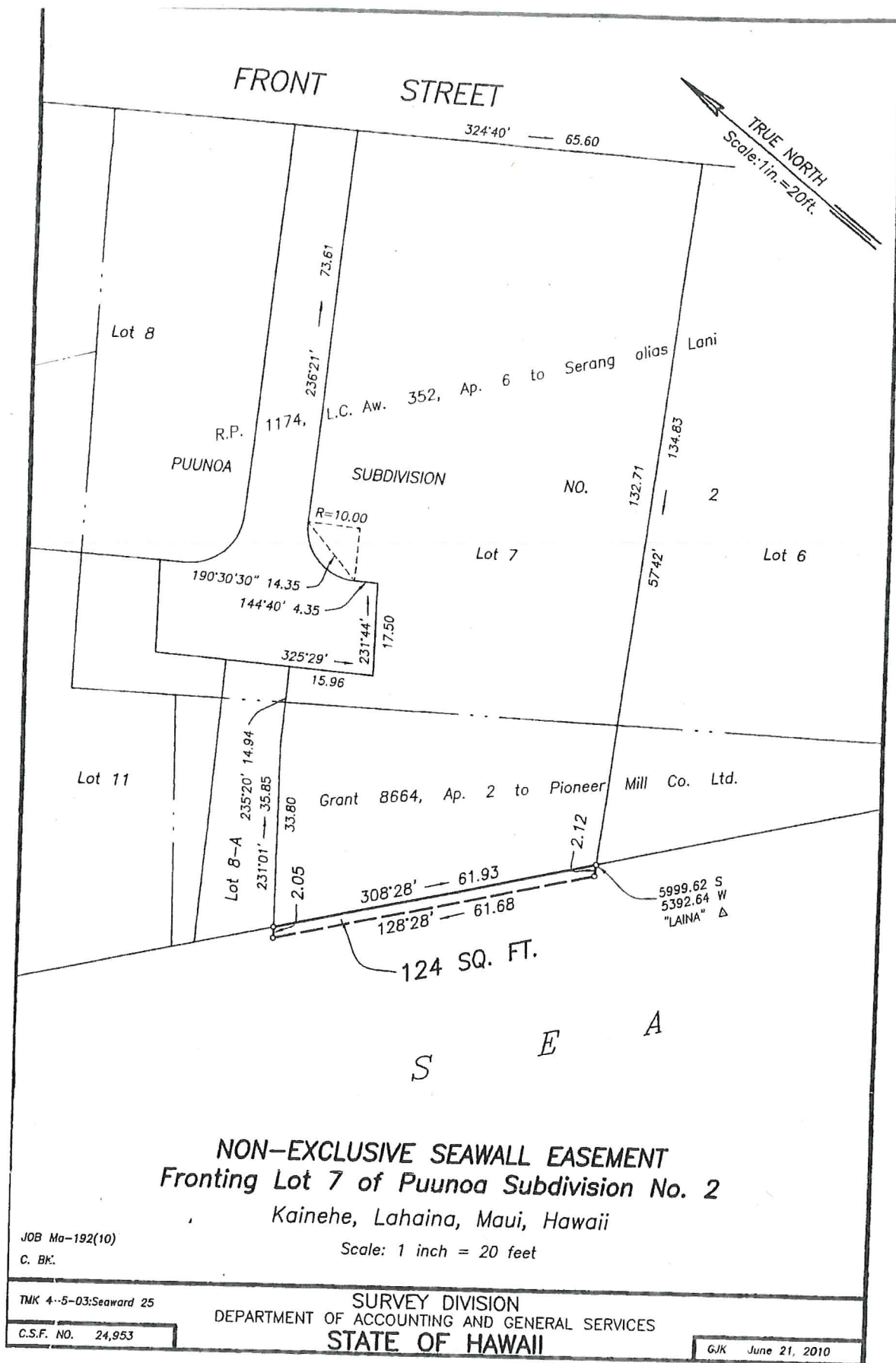
photographs, the structure has been in existence prior to 1963 and has not been altered. As the structure has been in place for a significant period of time, its continued existence through the issuance of an easement should not have any further cumulative impact on the surrounding environment.

Recommendation:

It is anticipated this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

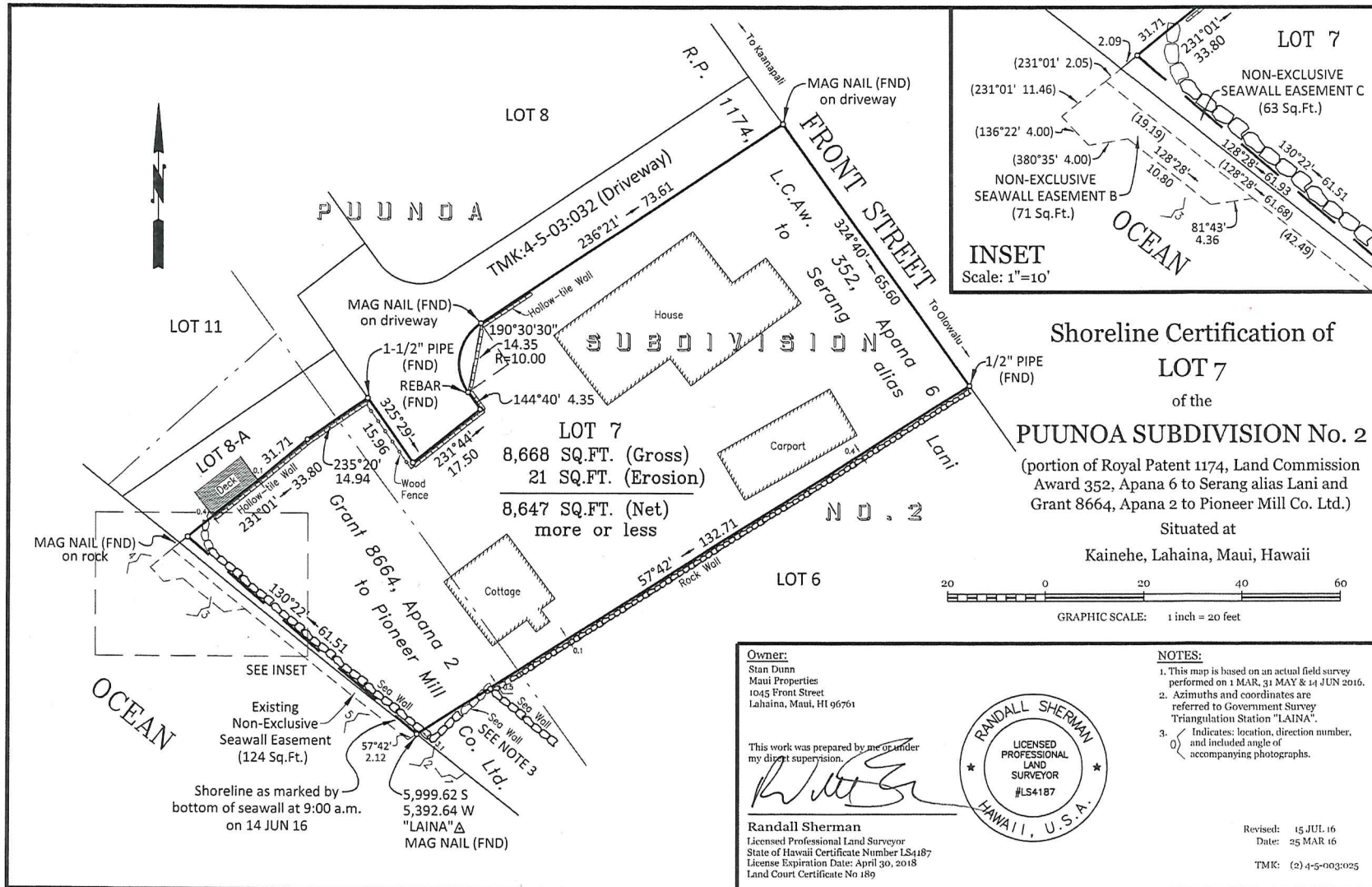
  
\_\_\_\_\_  
Morris M. Atta, Acting Administrator

  
\_\_\_\_\_  
Date



**Exhibit B**





### EXEMPTION NOTIFICATION

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

Project Title: Amendment of Easement S-6008

Project / Reference No.: PSF 08MD-125

Project Location: Wainee, Lahaina, Maui, TMK (2) 4-5-003:seaward of 025

Project Description: Amendment of Easement for Additional Area of Encroachment on State Lands

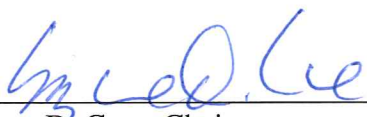
Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources concurred with by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 46, which states the "Creation or termination of easement, covenants, or other rights in structures or land".

In the past, amended easements were issued for similar situations where additional areas of encroachments have been identified during the process of obtaining a new shoreline survey. Since no new structures have been constructed in the added encroachment areas, staff anticipates that this should result in no significant impacts to the natural and environmental resources in the area. As such, staff believes that the proposed request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties: Office of Conservation and Coastal Lands.

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

  
Suzanne D. Case, Chairperson

 Date: 9/6/16

**EXHIBIT "C"**