

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

October 14, 2016

Ref No.: 11MD-089

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

MAUI

Amendment of Prior Board Actions of November 14, 2014, Item D-18, June 27, 2014, Item D-11 and August 12, 2011, Item D-2, Grant of Term, Non-Exclusive Easement to the Association of Unit Owners (AOUO) of the Hale Kai Condominium for Seawall/Revetment Purposes, Honokowai, Lahaina, Maui, Tax Map key (2) 4-4-001:seaward of 042.

The purpose of the amendment is to increase the easement area from 2,771 square feet, more or less, by an additional 149 square feet to a total area of 2,920 square feet, more or less.

BACKGROUND:

The Board initially approved the issuance of the grant of non-exclusive easement for seawall and revetment purposes to the Association of Unit Owners (AOUO) of the Hale Kai Condominium, at its meeting on August 12, 2011, under agenda item D-2. Prior Board approvals are attached as Exhibit A. The easement area was determined to be 1,484 square feet, more or less. Subsequent to that approval, the easement was valued by independent appraisal, dated August 12, 2011, in the amount of \$119,000.00, which was paid in full by the AOOU. In 2012, a shoreline certification application was submitted on behalf of the AOOU. A site inspection conducted by the State Surveyor and Department staff for the application discovered additional encroachments, requiring an expansion of the easement area by an additional 1,287 square feet for a total easement area of 2,771 square feet, more or less.

At its meeting on June 27, 2014, under agenda item D-11, the Board approved the additional easement area. As part of the Board approval, staff requested that the Board approve a value of the additional easement area in the amount of \$103,205.00, for a total easement value of \$222,205.00. The amount was based on a value of \$80.19 per square foot for the original easement area ($\$119,000.00 \div 1,484$ square feet), applied to the additional area of 1,287 square feet. However, the Attorney General then opined that a new independent appraisal would be required to value the increased easement area.

At its meeting on November 14, 2014, under agenda item D-14, the Board amended its approval to require a new appraisal for the additional easement area. Additional applicant requirements are a new publication under HRS Section 171-16, governor's prior approval pursuant to HRS Section 171-53(c), and authorization of the legislature by concurrent resolution. By independent appraisal dated March 23, 2015, the additional easement area of 1,287 square feet was valued at \$103,700.00, or \$80.58 per square foot. Consideration for the additional easement area was paid by the AOUO.

On March 30, 2016, the Department received another certified shoreline application on behalf of the AOUO. At a site inspection conducted on April 13, 2016, the shoreline was determined to be further mauka than delineated by the private surveyor. As a result, a greater portion of the rock revetment is now located on State owned, submerged land, and an amendment of the easement area to include the additional encroachment is required. The additional encroachment area is 149 square feet, more or less, resulting in an increase in the total easement area from 2,771 square feet, more or less to 2,920 square feet, more or less.

REMARKS:

Staff recommends the Board approve increasing the easement area as discussed above and to approve the one-time payment for the additional area based on the most recent per square foot rate as valued in the March 23, 2015 appraisal. The additional consideration payable is presented below:

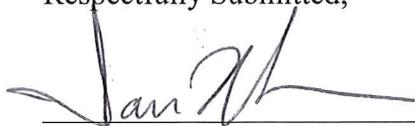
$$(\$103,700.00 \div 1,287 \text{ sq. ft.}) \times 149 \text{ sq. ft.} = \$12,006.00$$

Although the Attorney General previously opined that a new appraisal was required for the prior approval, staff believes it is appropriate in this instance to use the existing value to determine the amount of the additional area. In the previous approval, the valuation was three years old at that time, and the increase in the easement area was significant. In this instance, the most recent appraisal was conducted last year and the increase in the easement area is minimal. Furthermore, the difference between the 2015 appraised value of the additional easement area and fair market value as determined by the original 2011 appraisal is minimal.

RECOMMENDATION: That the Board:

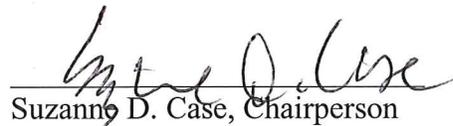
1. Amend its prior Board actions of November 14, 2014, Item D-18, June 27, 2014, Item D-11 and August 12, 2011, Item D-2 by increasing the easement area from 2,771 square feet, more or less, by an additional 149 square feet to a total area of 2,920 square feet, more or less, under the terms and conditions discussed herein.
2. All terms and conditions listed in the prior approvals to remain the same.

Respectfully Submitted,

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

Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:

A handwritten signature in black 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

November 14, 2014

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

PSF No: 11MD-089
Maui

Amending Prior Board Actions of June 27, 2014, Item D-11, and August 12, 2011, Item D-2, Grant of Term, Non-Exclusive Easement to the Association of Unit Owners (AOUO) of Hale Kai Condominium for Seawall/Revetment Purposes and Inclusion of Additional 1,287 Square Foot Encroachment Area; The Purpose of the Amendment is to Include Requirement for a New Appraisal Process to Determine Valuation of the Added Easement Area at Honokowai, Lahaina, Maui, Tax Map Key: (2) 4-4-001:Seaward of 042

BACKGROUND:

By Land Board action of August 12, 2011, under agenda item D-2 (copy attached), the Board authorized the direct sale of a 55-year term, non-exclusive easement for seawall and revetment purposes to the Association of Unit Owners (AOUO) of Hale Kai Condominium over a portion of reclaimed (filled) and submerged land.

Additional encroachments were discovered during a shoreline certification process in 2012. The Land Board, at its meeting of June 27, 2014, under amend item D-11 approved the 1,287 square foot easement area increase. Included in this approval was the calculated consideration of \$103,205.00. Staff had been with the understanding that the method for determination of the valuation was both appropriate and acceptable, as it was based upon the original \$80.19 per square foot valuation used for the first (originally discovered) 1,484 square feet encroachment area.

REMARKS:

In light of the Land Board approval of June 27, 2014, the AOOU of Hale Kai Condominium has made an additional payment in the amount of \$103,205.00.

The office of the Attorney General, however, has more recently advised that an independent appraisal is required for the additional 1,287 square feet encroachment area. Also, they have informed staff that further requirements will include a new publication pursuant to HRS Section

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

November 14, 2014 30.

D-18

EXHIBIT " "

171-16, governor's prior approval pursuant to HRS Section 171-53(c), and authorization of the legislature by concurrent resolution.

The AOOU Hale Kai Condominium has been informed of these applicant requirements and is agreeable to working with the Land Division to comply.

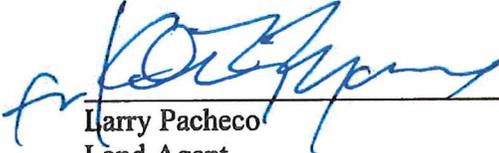
EXHIBIT:

Exhibit #1: Approved board submittal dated June 27, 2014, Item D-11.

RECOMMENDATION: That the Board:

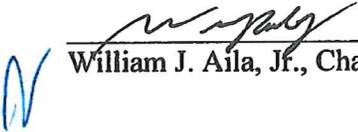
1. Amend its prior Board actions of June 27, 2014, under Item D-11, and August 12, 2011, under Item D-2, to reflect the following changes for the additional 1,287 square foot encroachment area:
 - a. Replace calculated \$103,500.00 consideration with a valuation determined by independent appraisal.
 - b. Include the following applicant requirements:
 - i. Public Notice pursuant to HRS Section 171-16.
 - ii. Governor's approval pursuant to HRS Section 171-53(c).
 - iii. Authorization of legislature by means of concurrent resolution.
2. All terms and conditions listed in its June 27, 2014 and August 12, 2011 approvals to remain the same.

Respectfully Submitted,



Larry Pacheco
Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

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

June 27, 2014

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

PSF No: 11MD-089

Maui

Amend Prior Board Action of August 12, 2011, Item D-2, Grant of Term, Non-Exclusive Easement to Association Of Unit Owners (AOUO) of Hale Kai Condominium for Seawall / Revetment Purposes; Amendment is for the Inclusion of an Additional 1,287 Square Foot Encroachment Area, Honokowai, Lahaina, Maui, Tax Map Key: (2) 4-4-001: Seaward of 042.

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

June 27, 2014 90

BACKGROUND:

By Land Board action of August 12, 2011, under agenda Item D-2, (copy attached), the Board authorized the direct sale of a 55-year term, non-exclusive easement for seawall and revetment purposes to the AOUO of the Hale Kai Condominium over a portion of reclaimed (filled) and submerged State land.

On May 5, 2011, an initial survey of the encroaching seawall and rock revetment areas was conducted. During this survey, the total encroachment was determined to be 1,484 square feet. Later an inspection was conducted on November 20, 2012, in an attempt to obtain a new updated shoreline certification. During the certification process, additional encroachments were discovered. Staff is therefore requesting an amendment of the Board's previous approval of a 1,484 square foot easement to include an additional encroachment area of 1,287 square feet for a new total easement area of 2,771 square feet.

COST OF EASEMENT:

Original easement area:	1,484 sq. ft. x \$80.19 per sq. ft. = \$119,000.00 (paid in full).
Additional easement area:	1,287 sq. ft. x \$80.19 per sq. ft. = \$103,205.00 (amount due).
Total cost for easement:	2,771 sq. ft. x \$80.19 per sq. ft. = \$222,205.00

EXHIBITS:

Exhibit 1- Previously approved Land Board submittal dated August 12, 2011, Item D-2.

Exhibit 2- CSF map No. 25369, Revised non-exclusive seawall / revetment easement map dated May 30, 2014.

Exhibit 3- Revised Metes and bounds description for easement area (ref: CSF No. 25369).

REMARKS:

Due to newly discovered encroachments, staff is recommending that the Board's initial approval of the easement be amended to reflect the correct square footage for the entire encroachment area. The applicant has indicated that no additions were made to the wall or revetment and the new footing area existed at the time the Board approved the easement. Staff agrees that the additional area should have been included in the initial Board approval and is a continuation of the same structure. Its omission from the prior Board approval was apparently a result of shoreline conditions at the time.

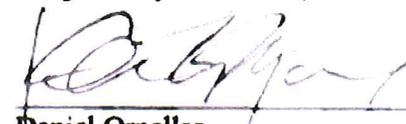
Consideration due for the additional easement area can be determined from the June 6, 2012 appraisal prepared by ACM Consultants for the prior easement area. The original valuation for the easement area of 1,484 square feet was \$119,000.00, which has been paid in full by the applicant. This equates to a value of \$80.19 per square foot. The newly discovered encroachment area of 1,287 sq. ft., at the same cost, is valued at \$103,205.00. Therefore, the cost for the entire easement of 2,771 square feet is now calculated to be \$222,205.00.

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

RECOMMENDATION: That the Board:

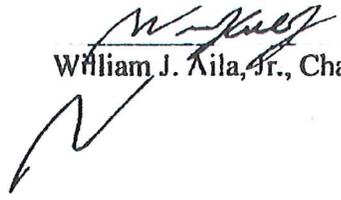
1. Amend its prior Board action of August 12, 2011, under agenda item D-2 to include an additional 1,287 square feet to the previously approved easement area. The new total easement area will be 2,771 square feet.
2. The applicant shall make a one-time payment to cover the additional area of 1,287 square feet in amount of \$103,205.00, plus processing fees.
3. All terms and conditions listed in its August 12, 2011 approval to remain the same.

Respectfully Submitted,



Daniel Omellas
District Land Agent

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

b-7

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

August 12, 2011

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

PSF No.:11MD-089

Maui

Grant of Term, Non-Exclusive Easement to Association Of Unit Owners (AOUO) of Hale Kai Condominium for a Term, Non-Exclusive Easement for Seawall / Revetment Purposes, Honokowai, Lahaina, Maui, Tax Map Key: (2) 4-4-001: Seaward of 042.

APPLICANT:

AOUO of Hale Kai Condominium, a Hawaii Non-Profit Corporation.

LEGAL REFERENCE:

Section 171-13 (2), and 171-53 (c), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Honokowai, Lahaina, Maui, identified by Tax Map Key: (2) 4-4-001: seaward of 042, as shown on the attached map labeled Exhibit A.

Survey Map of easement area labeled Exhibit B.

AREA:

1,484 square feet, more or less.

ZONING:

State Land Use District:
County of Maui CZO:

Conservation
None

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
August 12, 2011

DK

EXHIBIT " 1 "

D-2

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.

CHARACTER OF USE:

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

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent 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:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on June 8, 2010 with a finding of no significant impact (FONSI).

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO ___
Registered business name confirmed:	YES <u>X</u>	NO ___
Applicant in good standing confirmed:	YES <u>X</u>	NO ___

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial rent/one-time payment;

- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Remove any barriers (fences, overgrown vegetation, railings, signs, etc.) established beyond the Applicant's property that may prevent lateral access by the public over state lands.
- 4) Comply with all County of Maui Special Management Area and Shoreline rules and requirements.
- 5) Conduct an Archaeological Inventory Survey and submit to the State Historic Preservation Division for review. If pursuant to Archaeological Inventory Survey the seawall is determined to be over 50 years old, it shall be documented and issued a number for the State's Inventory of Historical Places list.

REMARKS:

The subject encroachment was discovered when an anonymous complaint was reported to Maui DOCARE relative to work being done to the existing seawall fronting the Hale Kai Condominium complex. During the investigation it was determined a portion of the seawall was encroaching beyond their private property onto portions of the shoreline and submerged lands.

A survey map of the encroaching portions of the seawall has been prepared by R. T. Tanaka Engineering, Inc. and submitted to the Maui District Land Office via the consulting firm of Munekiyo & Hiraga, Inc. Per the survey map and descriptions provided, the actual encroachment was determined to encumber a total of 1,484 square feet of state land, with submerged portions.

A Final Environmental Assessment (FEA) for the existing seawall/revetment was completed in the fourth quarter of 2010. The Finding of No Significant Impact (FONSI) was issued by the Office of Conservation and Coastal Lands on September 10, 2010. The FONSI notice was then published in the OEQC's September 23, 2010, Environmental Notice. Refer to letter from OCCL Administrator Sam Lemmo, labeled Exhibit C.

AGENCY COMMENTS:

Refer to the attached approved board submittal dated October 28, 2010, Item K-2, which was prepared by Senior Staff Planner Dawn Hegger of the Office of Conservation and Coastal Lands (OCCL) labeled Exhibit D. This submittal identifies the agencies that were solicited for comments and provides their responses.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff is recommending no additional fines as the applicant has already been assessed a \$5,000.00 fine by the OCCL for this conservation district use violation. Refer to OCCL letter, titled Enforcement File No. MA-08-30, labeled Exhibit E.

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

Pursuant to Section 171-53, HRS, "the board, with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution, may lease state submerged lands and lands beneath tidal waters under the terms, conditions, and restrictions provided in this chapter." Staff will have to work with the Applicant in obtaining the legislative concurrent resolution.

RECOMMENDATION: That the Board:

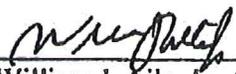
1. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 4-4-001:042, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to AOOU of Hale Kai Condominium covering the subject area for seawall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 4-4-001:042, 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,



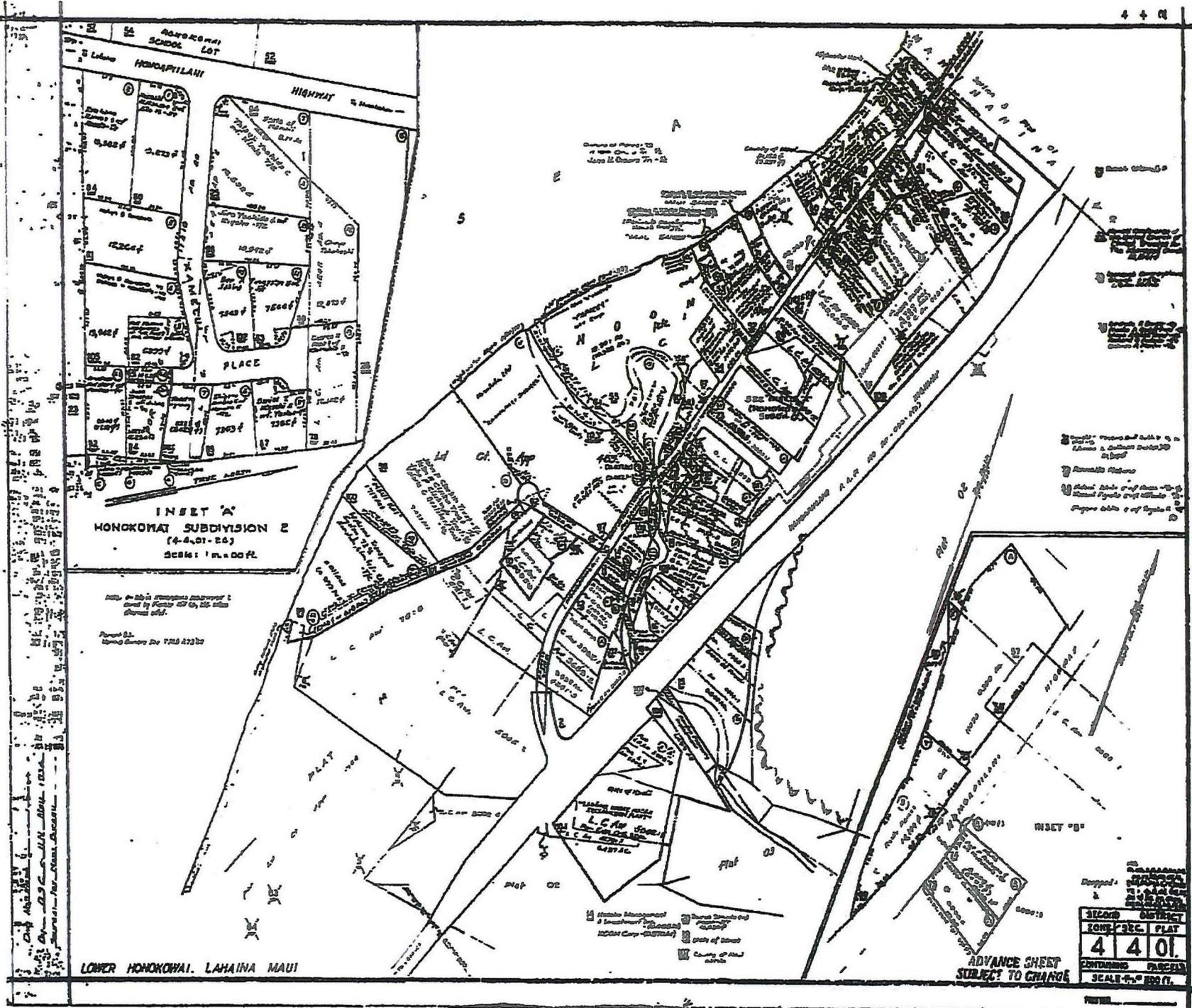
Larry Pacheco, Land Agent

APPROVED FOR SUBMITTAL:

WJ 

William J. Aila, Jr., Chairperson

EXHIBIT A



1. All lots shown on this plat are subject to the provisions of the Honokohai Subdivision Ordinance, Chapter 21, Section 21-10, of the Maui County Code.

2. All lots shown on this plat are subject to the provisions of the Honokohai Subdivision Ordinance, Chapter 21, Section 21-11, of the Maui County Code.

3. All lots shown on this plat are subject to the provisions of the Honokohai Subdivision Ordinance, Chapter 21, Section 21-12, of the Maui County Code.

4. All lots shown on this plat are subject to the provisions of the Honokohai Subdivision Ordinance, Chapter 21, Section 21-13, of the Maui County Code.

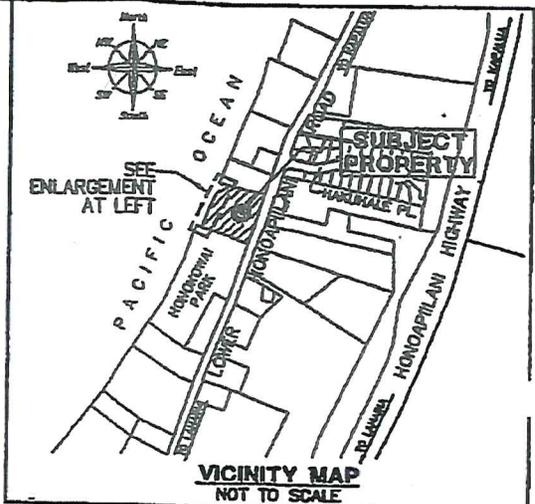
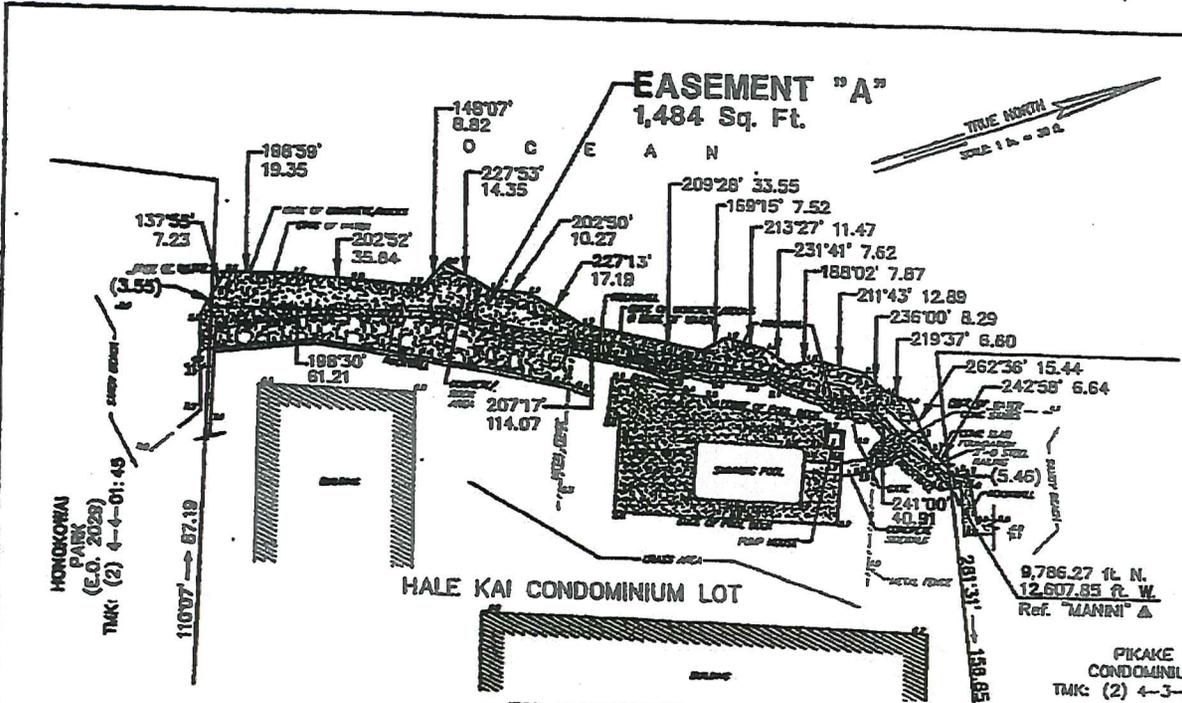
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2. All lots shown on this plat are subject to the provisions of the Honokohai Subdivision Ordinance, Chapter 21, Section 21-11, of the Maui County Code.

3. All lots shown on this plat are subject to the provisions of the Honokohai Subdivision Ordinance, Chapter 21, Section 21-12, of the Maui County Code.

4. All lots shown on this plat are subject to the provisions of the Honokohai Subdivision Ordinance, Chapter 21, Section 21-13, of the Maui County Code.

SECTION	COUNTY
4	4
01	26
CONTAINING PLATS	
SCALE 1" = 40.0 FT.	



**DESIGNATION OF EASEMENT "A"
FOR SEA WALL IMPROVEMENTS
AFFECTING THE SEASHORE
IN FAVOR OF HALE KAI CONDOMINIUM LOT.
AT HONOKOWAI, LAHAINA, MAÛI, HAWAII**

ENLARGEMENT
SCALE: 1 in. = 30 ft.



9,786.27 ft. N.
12,607.85 ft. W.
Ref. "MANNA" Δ

PIKAKE
CONDOMINIUM
TMK: (2) 4-3-06:63



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION

Kirk T. Tanaka
KIRK T. TANAKA
Licensed Professional Land Surveyor
Certificate No. 7223
License Expires: APRIL 30, 2012

05/03/11
DATE

Tax Map Key: (2) 4-4-01: 042
871 KOLE STREET, SUITE 201
WAILUKU, MAÛI, HAWAII 96763

R. T. TANAKA ENGINEERS, INC.
LAND SURVEYING - CIVIL & STRUCTURAL ENGINEERING

MAY 03, 2011
JOB NO. 08-065

EXHIBIT I

Exhibit B

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

REF:OCCL-DH

CDUA: MA-3543

Acceptance Date: May 19, 2010
180-Day Exp. Date: November 15, 2010

October 28, 2010

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

REGARDING: After the Fact (ATF) Conservation District Use Application (CDUA) MA-3543 for Hale Kai AOA Seawall

APPLICANT: Mark Alexander Roy, Munekiyo and Hiraga, Inc., 305 High Street, Wailuku, Hawaii 96793 for Hale Kai AOA Condominiums, Lahaina, Hawaii, 96753

LANDOWNER: State of Hawaii, Department of Land and Natural Resources (DLNR)

TMK: Located Makai of Subject Parcel TMK: (2) 4-4-001:042,

ISLAND: Honokowai, Island of Maui

AREA OF USE: 1,480 Square Feet

SUBZONE: Resource

ENFORCEMENT CASE MA-08-03

Through Enforcement Case MA-08-30, Hale Kai AOA was instructed to remove the unauthorized improvements (boulders, cement) and restore the area back to its original condition or receive permission to keep the improvements from the Board of Land and Natural Resources (BLNR)(Exhibit 1). Hale Kai AOA was instructed to apply for a ATF CDUA.

DESCRIPTION OF AREA AND CURRENT USE

The subject property TMK: (2) 4-4-001:042 is located adjacent to the shores of Honokowai Beach Park, Lahaina, Island of Maui, and is located in the State Land Use

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
OCT 28 2010

EXHIBIT "D"

(SLU) Urban District. The condominium development is within the Urban District however areas makai of the shoreline are located in the SLU Conservation District, Resource subzone. A white sandy beach defines the subject area. According to the Atlas of Natural Hazards in the Hawaiian Coastal Zone, the subject area is in a moderate to high Overall Hazard Assessment area. Access to the subject parcel is from Lower Honoapiilani Road in Lahaina (Exhibits 2, 3 & 4).

According to the applicant, there are no rare, threatened, or endangered species of flora or fauna on or in the vicinity of the property. There are no previously identified archeological or cultural resources located within the confines of the property or along the immediate shoreline.

PROPOSED USE

Hale Kai AOA is requesting ATF CDUA approval for the 1,480 square foot seawall located on state-owned lands. Hale Kai AOA will then apply for a non-exclusive easement for the seawall from the Maui District Land Office (MDLO)(Exhibit 5).

SUMMARY OF COMMENTS

The application was referred to the following agencies for their review and comment: DLNR - MDLO, Division of Aquatic Resources (DAR), Division of Forestry and Wildlife (DOFAW), Historic Preservation Division (HPD), Division of Conservation and Resource Enforcement (DOCARE), State Parks Division, Engineering Division, Division of Boating and Ocean Recreation (DOBOR), Maui County Planning Department, Maui County Department of Public Works, Lahaina Public Library, and Department of Health (DOH), Office of Hawaiian Affairs (OHA). Comments were received and summarized from the following agencies:

Maui District Land Office

Any encroachments onto State lands requires the issuance of an easement from the State of Hawaii; the MDLO does not object to the processing of the CDUA.

Staff Note: The applicants are aware a lease for state lands needs to be obtained and will contact the MDLO.

Engineering Division

We confirm that the project site, according to the Flood Insurance Rate map (FIRM) is located in Zone VE. The National Flood Insurance Program regulates developments within Zone VE as indicated in bold letters. 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 (Carol Tyau-Beam) of the DLNR, Engineering Division (808) 587-0267. Please be advised that 44CFR indicates the minimum standards set forth by the NFIP. Your community's local flood ordinances 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 coordinator (Francis Cerizo) at the County of Maui, Department of Planning (808) 270-7771.

Applicant Response: We acknowledge the subject improvements are located in Flood Zone VE as depicted on the FIRM for the area, and note the developments within a Special Flood Hazard Area is subject to compliance with applicable NFIP rules and regulations.

State Parks

No comments.

Division of Forestry and Wildlife

No comments.

Division of Conservation and Resources Enforcement

DOCARE conducted a site inspection at Hale Kai AOA. At the visit concern was voiced regarding the BLNR's Enforcement Case MA-08-30 terms and conditions. Fines were imposed on Hale Kai for placing boulders and cement makai of the shoreline. Hale Kai President (John Male) was asked to explain the fines. He noted the fines were paid and that the repairs were not going to exceed the property pin. No further concerns on enforcement issued.

Staff Note: DOCARE comment came in late therefore the applicant did not respond.

County of Maui, Department of Public Works

There are two open building permits (B2006/1517 and B2006/1518); please contact the Building Inspection Section to arrange final inspections.

Applicant Response: The final building inspections have been passed for the permits noted in your comment letter.

Donald Newton

Please see attached Exhibit 6.

Staff Note: Mr. Newton's concerns and Hale Kai AOA consultant's responses are included as an attachment. Staff notes the State's concerns were addressed in the violation proceedings and the CDUA application. OCCL's focus is the ATF permitting of the structure. Staff notes the County has addressed the part of the structure located mauka of the certified shoreline and relevant permits were obtained prior to the staff report being presented to the BLNR.

ANALYSIS

After reviewing the application, the department found on June 1, 2010 that:

1. The proposed use is an identified land use in the Limited subzone pursuant to Hawaii Administrative Rules (HAR) Section 13-5-23, L-6, SEAWALLS AND SHORBLINE PROTECTION, D-1, "Seawalls, shoreline protection devices, and shoreline structures," please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to Section 13-5-40(a), HAR, a public hearing will not be required; and
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, the Draft Environmental Assessment (DEA) will be published in OEQC's Environmental Notice on June 8, 2010.

The DEA was published in the June 8, 2010 Environmental Notice. The Final Environmental Assessment (FEA) was published in the September 23, 2010 Environmental Notice.

CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, HAR.

1. *The proposed land use is consistent with the purpose of the Conservation District.*

The purpose of the Conservation district is to regulate land uses for the purpose of conserving, protecting, and preserving the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare. The purpose of this CDUA is to conform to the State's land use laws and legalize the revetment and fill area that encroaches upon state land.

The small beach fronting the subject parcel is characterized by parallel bands of emergent beach rock (a formation composed of weakly cemented calcium carbonate beach sand grains. Lateral access is available; the nonexclusive easement will ensure lateral access is permanent. Retaining the existing revetment will not change the use of the land nor result in any adverse impacts to the Conservation District.

2. *The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.*

The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of the area. The area is a rocky shoreline with very little or no sandy beach. The revetment has not impeded individuals from collecting limu or fishing off of the revetment.

The proposed use is an identified land use pursuant to Hawaii Administrative Rules (HAR), Section 13-5-23, L-6, SEAWALLS AND SHORELINE PROTECTION, D-1, "Seawalls, shoreline protection devices, and shoreline structures, within the Limited Subzone of the Conservation District." The removal of the completed work on the rock revetment seawall could cause loosening of sediments to enter the near shore waters during storms.

3. *The proposed land use complies with provisions and guidelines contained in Chapter 205, HRS, entitled "Coastal Zone Management," where applicable.*

Improvements have taken place makai of the certified shoreline. Therefore, the completed action is outside of the Special Management Area. The completed action did not adversely impact coastal recreational opportunities or lateral access along the coast as the wet beach fronting the structure is submerged for much of the tidal cycle. The completed action did not adversely impact historic or cultural resources. The completed action was carried out to protect the subject upland property from coastal erosion, waves, and other coastal hazards. The completed action did not significantly degrade the already impacted beach processes.

Staff notes that the County of Maui approved a Special Management Area (SMA) Minor approval SM2 2010/0024 (pursuant to Sections 12-202-12 and 12-202-14), and Shoreline Setback Approval 2009/0024 (pursuant to Sections 12-203-6, 12-203-11, 12-203-12, and 12-203-12(a)(5) for the seawall and its improvements.

4. *The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region.*

Staff notes the proposed seawall will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region. Staff notes the ATF CDUA is being submitted to address the lack of an OCCL permit and issuance of an easement from the MDLO. No new action is proposed within the subject area. However, should work be proposed staff notes the Hale Kai AOA will need to consult with the OCCL.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The subject property is located in a residential neighborhood of Honokowai along the shoreline. The coastline in the vicinity of the condominium consists mostly of hardened shoreline; approximately 2,000 feet to the north of the Hale kai and 1,500 feet to the south of Honokowai Beach Park. Staff is of the opinion that the rock revetment seawall is compatible with the locality and surrounding area.

6. *The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, which ever is applicable.*

Any impacts to the environment has already occurred as this is an ATF CDUA.

7. *Subdivision of the land will not be utilized to increase the intensity of land uses in the Conservation District.*

Not applicable.

8. *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

It is staff's opinion that the proposed project will not be detrimental to the public health, safety and welfare. No significant impacts of the after the fact action have been identified.

DISCUSSION

The action undertaken on State owned lands and within the Conservation District was completed without the appropriate approval. Removal of the encroaching portion of the seawall would result in destabilizing the remaining coastal armoring structure and threatening the southern habitable building. Removal of the structure would not significantly improve beach processes or beach access.

RECOMMENDATION:

Based on the preceding analysis, staff recommends that the Board of Land and Natural Resources APPROVE After the Fact (ATF) Conservation District Use Application (CDUA) MA-3543 for Hale Kai AOA Seawall, subject to the following terms and conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii

Administrative Rules (HAR) Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control;"

- 4) Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
- 5) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
- 6) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 7) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 8) Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;
- 9) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
- 10) During construction, appropriate mitigation measures shall be implemented to minimize impacts to the marine environment, off-site roadways, utilities, and public facilities;
- 11) The applicant shall notified and receive prior approval from the OCCL, if additional work is to be conducted;
- 12) The applicant shall contact the Maui District Land Office to obtain an easement for the use of State-owned lands;

- 13) Other terms and conditions as may be prescribed by the Chairperson; and
- 14) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,

Dawn T. Hegger
Dawn T. Hegger,
Senior Staff Planner

Approved for Submittal



LAURA H. THIEL, Chairperson
BOARD OF LAND NATURAL RESOURCES

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Laura L. Tjelle
Chairperson
Board of Land and Natural Resources
Department of Land and Natural Resources

Russell Y. Tsui
Director

Ken C. Kawahara
Deputy Director

Admiral and Officer
Honorable and Captain
Bureau of Conservation
Department of Land and Natural Resources
Conservation and Coastal Lands
Division of Conservation and Coastal Lands
Honolulu, Hawaii 96809
Telephone: (808) 586-1100
Fax: (808) 586-1101

REF:OCCI:DH

ENF: MA-08-30

CERTIFIED/RETURN RECEIPT

MAY 27 2008

RECEIVED

John Male

MAY 28 2008

Lahaina, Hawaii 96761

David Merchant,

Wailuku, Hawaii 96793

Dear Mr. Male and Mr. Merchant,

**SUBJECT: Enforcement File No. MA-08-30
Regarding Unauthorized Seawall Improvements Located Makai of Shoreline in
the Vicinity of Subject Parcel (2) 4-4-001:042**

This is to inform you that on Friday May 23, 2008, the Board of Land and Natural Resources (BLNR) found the Hale Kai AOA to be in violation of Title 13-5 Hawaii Administrative Rules, and Chapter 183C, Hawaii Revised Statutes (HRS), regarding the failure to obtain the appropriate approval for the unauthorized seawall improvements located makai of shoreline in the vicinity of Subject Parcel (2) 4-4-001:042, subject to the following terms and conditions:

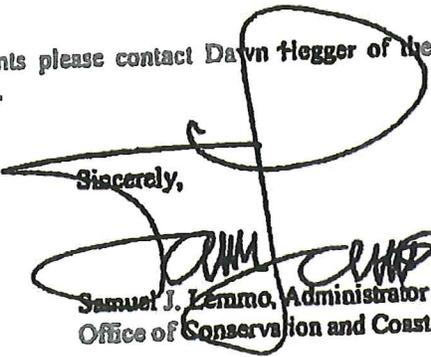
1. The Hale Kai AOA violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), two instances by placing boulders and cement material makai of shoreline in the vicinity of Subject Parcel (2) 4-4-001:042 in the Conservation District to occur. The landowner is fined a total of \$4,000.00 for two Conservation District violations;
2. That Hale Kai AOA will remove the subject boulders and cement and restore the area back to its original condition as it existed prior to the construction of these improvements, within 365 days from the date of the BLNR's action, unless otherwise permitted by the BLNR;
3. That Hale Kai AOA will stake the metes and bounds of their subject parcel as not to infringe upon state-owned beach lands after the removal of the boulders and cement;

EXHIBIT "E"

4. That Hale Kai AOA is fined an additional \$1,000.00 for administrative costs associated with the subject violations (\$500.00 OCCL staff/\$250.00 MDLO staff/\$250 DOCARE staff);
5. That Hale Kai AOA shall pay all fines (total \$5,000.00) within thirty (30) days of the date of the Board of Land and Natural Resources' action;
6. That OCCL will transmit a copy of this report to the County of Maui to enable Maui County to investigate all other unauthorized improvements made on the seawall structure;
7. That either the OCCL and/or the MDLO staff will conduct a site visit of the area within 180 days from the date of the removal of the boulders and cement;
8. That no further work shall occur in the area within the Conservation District, without the Board of Land and Natural Resources' approval; Chairman's approval and/or OCCL approval. If further work occurs in the Conservation District without approval; the alleged will be fined an additional \$2,000 a day;
9. That in the event of failure of Hale Kai AOA to comply with any order herein, they shall be fined an additional \$2,000 per day until the order is complied with; and
10. That in the event of failure of Hale Kai AOA to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Should you have any questions or comments please contact Dawn Heggler of the Office of Conservation and Coastal Lands at 587-0380.

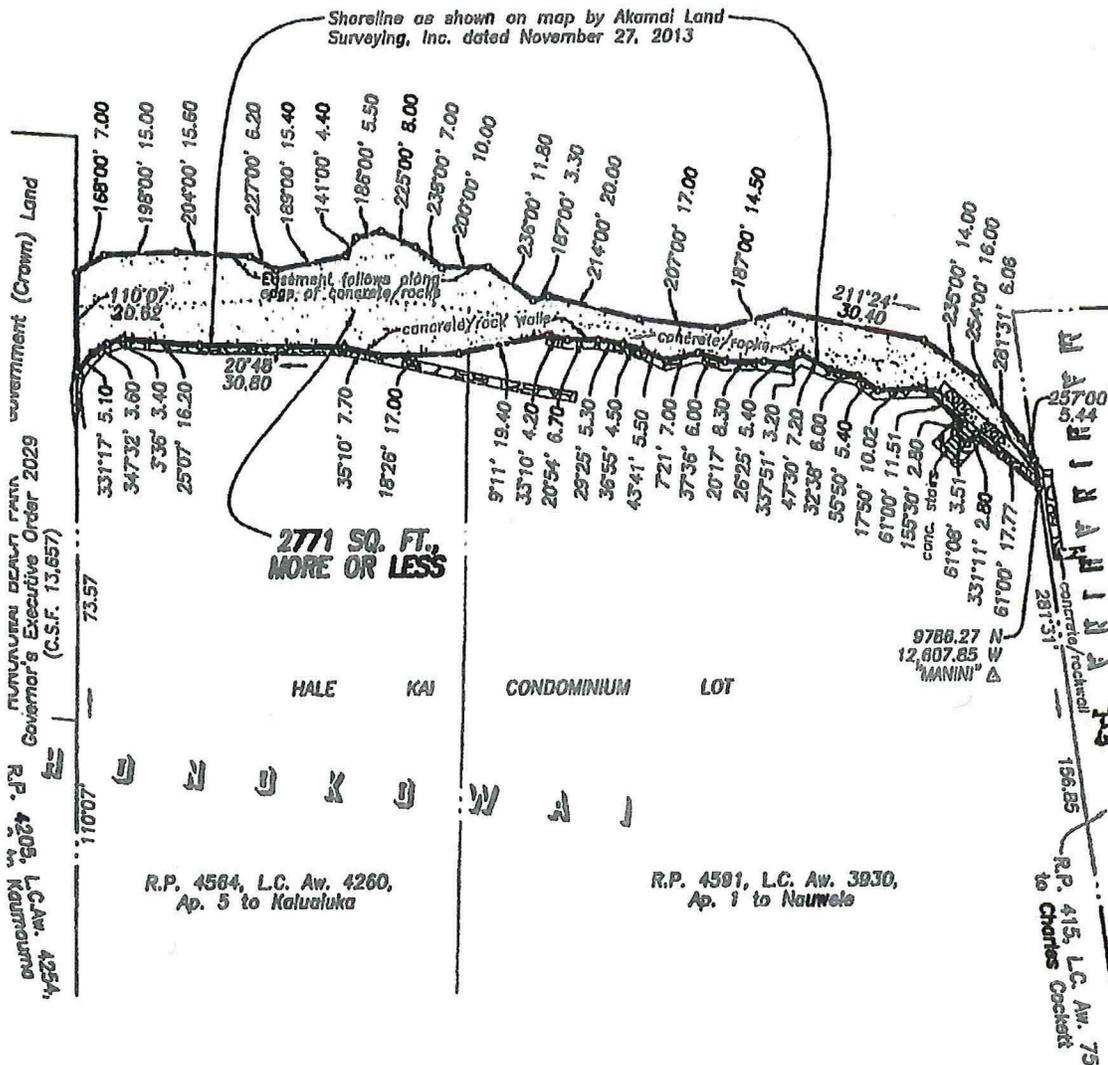
Sincerely,


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

c: Chairperson
Maui District Land Agent
Maui County Planning Department - T. Abbot
DOCARE - Maui Branch

TRUE NORTH
SCALE: 1 in. = 30 ft.

O C E A N



(REVISED-MAY 2014)
NON-EXCLUSIVE SEAWALL/REVETMENT EASEMENT
 Fronting Hale Kai Condominium Lot
 Honokowai, Lahaina, Maui, Hawaii
 Scale: 1 inch = 30 feet

Job Ma-247(13)
 C. Bl.

BY MAP: 4-4-01: seaward of 42
 SURVEY DIVISION
 DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
 STATE OF HAWAII

C.S.F. NO. 25,369

GZY May 30, 2014

EXHIBIT " 2 "



STATE OF HAWAII
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 25,369

May 30, 2014

(REVISED-MAY 2014)
NON-EXCLUSIVE SEAWALL/REVTMENT EASEMENT
Fronting Hale Kai Condominium Lot

Honokowai, Lahaina, Maui, Hawaii

Being a portion of the submerged land fronting Royal Patent 4564, Land Commission Award 4260, Apana 5 to Kaluainuka and Royal Patent 4591, Land Commission Award 3930, Apana 1 to Nauwele.

Beginning at the northeast corner of this easement and at the northwest corner of Hale Kai Condominium Lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "MANINI" being 9786.27 feet North and 12,607.85 feet West, thence running by azimuths measured clockwise from True South:-

- | | | |
|----|----------|---|
| 1. | 61° 00' | 17.77 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele; |
| 2. | 331° 11' | 2.80 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele; |
| 3. | 61° 08' | 3.51 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele; |
| 4. | 155° 30' | 2.80 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele; |
| 5. | 61° 00' | 11.51 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele; |

6.	17° 50'	10.02 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele;
7.	55° 50'	5.40 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele;
8.	32° 38'	6.00 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele;
9.	47° 30'	7.20 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele;
10.	337° 51'	3.20 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele;
11.	26° 25'	5.40 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele;
12.	20° 17'	8.30 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele;
13.	37° 36'	6.00 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele;
14.	7° 21'	7.00 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele;
15.	43° 41'	5.50 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele;
16.	36° 55'	4.50 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele;
17.	29° 25'	5.30 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele;
18.	20° 54'	6.70 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele;
19.	33° 10'	4.20 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele;
20.	9° 11'	19.40 feet along R.P. 4591, L.C.Aw. 3930, Ap. 1 to Nauwele and R.P. 4564, L.C.Aw. 4260, Ap. 5 to Kaluainuka;
21.	18° 26'	17.00 feet along R.P. 4564, L.C.Aw. 4260, Ap. 5 to Kaluainuka;
22.	35° 10'	7.70 feet along R.P. 4564, L.C.Aw. 4260, Ap. 5 to Kaluainuka;
23.	20° 48'	30.80 feet along R.P. 4564, L.C.Aw. 4260, Ap. 5 to Kaluainuka;
24.	25° 07'	16.20 feet along R.P. 4564, L.C.Aw. 4260, Ap. 5 to Kaluainuka;
25.	3° 36'	3.40 feet along R.P. 4564, L.C.Aw. 4260, Ap. 5 to Kaluainuka;
26.	347° 32'	3.60 feet along R.P. 4564, L.C.Aw. 4260, Ap. 5 to Kaluainuka;
27.	331° 17'	5.10 feet along R.P. 4564, L.C.Aw. 4260, Ap. 5 to Kaluainuka;

28. 110° 07'	20.62 feet along Honokowai Beach Park, Governor's Executive Order 2029;
29. 168° 00'	7.00 feet;
30. 198° 00'	15.00 feet;
31. 204° 00'	15.60 feet;
32. 227° 00'	6.20 feet;
33. 189° 00'	15.40 feet;
34. 141° 00'	4.40 feet;
35. 186° 00'	5.50 feet;
36. 225° 00'	8.00 feet;
37. 238° 00'	7.00 feet;
38. 200° 00'	10.00 feet;
39. 236° 00'	11.80 feet;
40. 187° 00'	3.30 feet;
41. 214° 00'	20.00 feet;
42. 207° 00'	17.00 feet;
43. 187° 00'	14.50 feet;
44. 211° 24'	30.40 feet;
45. 235° 00'	14.00 feet;
46. 254° 00'	16.00 feet;
47. 257° 00'	5.44 feet;

C.S.F. No. 25,369

May 30, 2014

48. 281° 31'

6.06 feet along R.P. 415, L.C.Aw. 75 to Charles Cockett to the point of beginning and containing an AREA OF 2771 SQUARE FEET, MORE OR LESS.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: *Gerald Z. Yonashiro*
Gerald Z. Yonashiro
Land Surveyor tkf

Compiled from map and desc. furn. by Akamai Land Surveying, Inc. Said map and desc. have been examined and checked as to form and mathematical correctness but not on the ground by the Survey Division.