

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

October 14, 2016

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

PSF No.: 14MD-161

MAUI

Grant of Term, Non-Exclusive Easement to Steven Robert Campbell and Deana Darlene Campbell, Trustees, Campbell Family Trust dated April 15, 1993, for Concrete Seawall Purposes; Issuance of Management Right-of-Entry; Assess Administrative Cost of \$500, Halakaa, Lahaina, Maui, Tax Map Key: (2) 4-6-003:Seaward of 007.

APPLICANT:

Steven Robert Campbell and Deana Darlene Campbell, Trustees, Campbell Family Trust dated April 15, 1993.

LEGAL REFERENCE:

Sections 171-6, 13, 17, 53(c), and 55 Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Halakaa, Lahaina, Maui, identified by Tax Map Key: (2) 4-6-003:Seaward of 007, as shown on the attached map labeled **Exhibit A**.

AREA:

71 square feet, more or less, subject to review and approval by the Department of Accounting and General Services, Survey Division

ZONING:

State Land Use District: Conservation  
County of Maui CZO: R-3 [for the abutting private property]

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Vacant with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing concrete 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 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 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 "Creation or termination of easement, covenants, or other rights in structures or land" See **Exhibit B**.

DCCA VERIFICATION:

Not applicable. Applicants, as landowners, are not required to register with DCCA.

APPLICANT REQUIREMENTS: Applicants shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards and at Applicants' own cost;
2. Pay for an appraisal to determine one-time payment; and
3. Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

REMARKS:

Applicants, who are the owners of the abutting property identified as tax map key (2) 4-6-003:007, are planning to improve their property. During the due diligence period, the subject encroachment was noted on the survey map attached as **Exhibit C-1** and **C-2**. The encroachment is described as a concrete wall determined to be seaward of the shoreline.

Sea Engineering, Inc. (SEI) was retained to assess the potential ramifications of removing the seawall structure. By report dated January 28, 2015, SEI concluded that aside from exposing the Applicant's property to littoral processes (including erosion), the north side of the adjacent neighboring property (southeast of the Applicant) could be subject to flanking erosion that could potentially destabilize the neighbor's seawall, erode the neighbor's fast land mauka of neighbor's seawall, destabilize the neighbor's home (located 15 from neighbor's seawall), and not decrease the timeline of the chronic shoreline erosion (see **Exhibit D**).

By letter dated February 8, 2016, Munekiyo & Hiraga, Inc. (consultants representing the Applicants) provided to OCCL a stamped survey map dated January 21, 1960 showing the seawall in its current location, an invoice for the concrete used for the seawall dated January 3, 1960, and affidavits from the current and previous owners stating that the seawall is in its original location and has not been improved (see **Exhibit E**).

By letter dated April 18, 2016, OCCL indicated that after reviewing the informational materials provided by the Applicants, OCCL determined that the subject encroachment is a non-conforming shoreline structure. The evidence indicates that the encroachment has been in existence since 1960. In view of this situation, OCCL will not require an after-the-fact Conservation District Use Application be submitted (see **Exhibit F**).

By email, Maui District staff noted that a State engineer evaluated the seawall and did not think it was constructed around 1960 and requested further supportive evidence.

Applicants provided additional information supporting the construction of the seawall around the beginning of 1960. Arnold T. Okubo and Associates, Inc. (AOAI), a consulting structural engineering company, was retained by the Applicants. In a report dated June 3, 2016, based on the information provided by the Applicants, which included the affidavits, survey map and photos, and conducting a site inspection and engineering evaluation, AOAI concluded that the seawall was built in December 1959 (see **Exhibit G**).

The County of Maui, Department of Planning (MDP) submitted comments regarding the encroaching structure (see **Exhibit H**). Of the six comments from MDP, three comments were either directed to the Applicant or statements. Staff provides the following responses to address Comments 2, 3, and 6. In response to Comments 2 and 3, the easement document has standard language prohibiting the grantee from rebuilding/altering the subject

encroachment structure without prior approval from OCCL. It also stipulates the automatic termination of the easement if the encroachment structure is substantially (greater than 50%) or completely destroyed as determined by the Grantor. Staff believes the above mentioned language will address MDP's concerns. In response to Comment 6, staff has no objections with providing a copy of the fully executed easement document to MDP for their records.<sup>1</sup> The County of Maui, Department of Water Supply and OCCL have no comments or objections. The Office of Hawaiian Affairs and the Maui County Public Works Department did not respond.

Based on the review of the above information, staff recommends the disposition of the shoreline encroachment abutting the Applicant's property through an easement. Staff request that the Board authorize granting a term, non-exclusive easement for the seawall.

Upon approval of today's request, Applicants will be reminded of the requirement for concurrent resolution from both houses of the legislature under Sect.171-53(c), HRS prior to the issuance of the requested easement.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, a fine of \$500 is to be imposed if the encroachment area is over 100 square feet. Since the subject encroachment area is less than 100 square feet, staff does not recommend the imposition of a fine.

Staff also recommends the issuance of an immediate management right-of-entry at gratis rent with the standard liability insurance provision. The right-of-entry, which will expire upon the issuance of the requested easement, will address our concern of any possible liability issues.

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. Assess a non-refundable administrative cost of \$500, under Section 171-6, HRS.
3. 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) 4-6-003:007, 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.

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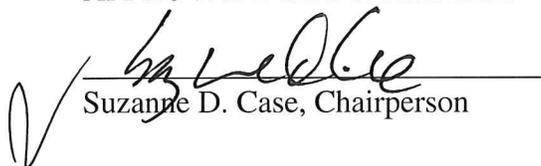
1. MDP commented that the seawall is a non-continuous structure. Staff would like to note that the seawall is a continuous structure below grade based on observations during a September 16, 2016 site inspection.

4. Subject to the Applicants fulfilling all of the Applicants Requirements listed above, authorize the issuance of a term, non-exclusive easement to Steven Robert Campbell and Deana Darlene Campbell, Trustees, Campbell Family Trust dated April 15, 1993, covering the subject area for concrete 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. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
  - C. Review and approval by the Department of the Attorney General;
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
  - E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.
  
5. Issuance of a management right-of-entry permit to Steven Robert Campbell and Deana Darlene Campbell, Trustees, Campbell Family Trust dated April 15, 1993, covering the subject area for concrete 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 management right-of-entry permit document form, as may be amended from time to time;
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
\_\_\_\_\_  
Cal Miyahara  
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
Suzanne D. Case, Chairperson

# EXHIBIT A



# EXHIBIT B

**EXEMPTION NOTIFICATION**

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

Project Title: Issuance of Term, Non-Exclusive Easement for Concrete Seawall and Issuance of Right-of-Entry for Seawall Maintenance Purposes

Project / Reference No.: PSF 14MD-161

Project Location: Halakaa, Lahaina, Maui, TMK:(2) 4-6-003: seaward of 007.

Project Description: Issuance of term, non-exclusive easement for seawall and issuance of right-of-entry for seawall maintenance purposes.

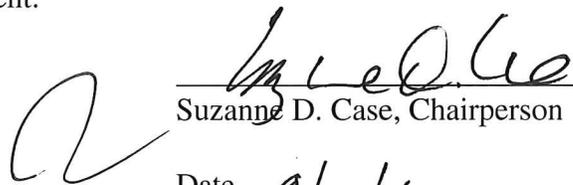
Chap. 343 Trigger(s): Use of State Land

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 "Creation or termination of easement, covenants, or other rights in structures or land".

The applicants are not planning to alter the encroachment, which has existed since 1960. As such, staff believes that the request would involve negligible or no change in use of the subject area beyond that previously existing.

Consulted Parties: Agencies noted in the submittal.

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 9/26/16

**Exhibit B**

# EXHIBIT C-1



# EXHIBIT C-2

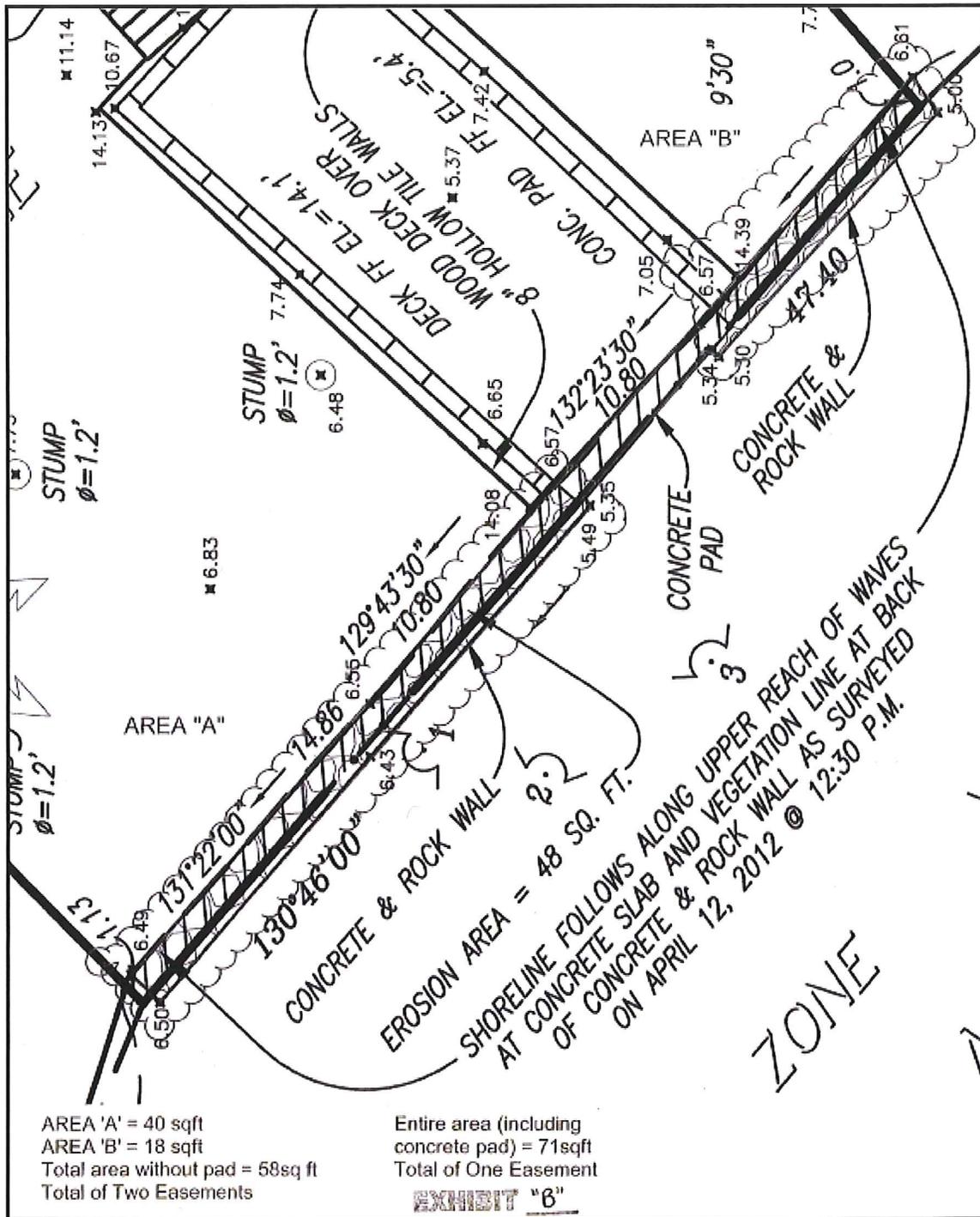


Exhibit C-2

# EXHIBIT D



## *Sea Engineering, Inc.*

Makai Research Pier • 41-305 Kalanianaʻole Hwy • Waimanalo, Hawaii 96795-1820  
Phone: [808] 259-7966 • FAX [808] 259-8143 • E-mail: sei@seaengineering.com • Website: www.seaengineering.com

January 28, 2015

Mr. Sam Lemmo, Administrator  
Office of Conservation and Coastal Lands  
Department of Land and Natural Resources  
1151 Punchbowl Street, Room 131  
Honolulu, Hawaii 96813

Dear Mr. Lemmo,

SUBJECT: Encroachment MA-15-5, Lahaina, Maui, Hawaii, Tax Map Key  
(2) 4-6-003:007

Thank you for your prompt and comprehensive review of the Shoreline Encroachment Questionnaire submitted by Munekiyo & Hiraga, Inc., on behalf of Campbell family for the shoreline property located at Tax Map Key (2) 4-6-003:007, in Lahaina, Maui, Hawaii. Sea Engineering, Inc. (SEI) was contracted to assist with the coastal analysis and technical portions of the questionnaire.

Currently, there is discussion about requiring removal of the shoreline structure (seawall) at the subject property. Prior to removal of the existing seawall, it is critically important to review the current condition of the coastline and possible impacts to the southern neighbor that might result from removal of the seawall.

### **Request:**

SEI respectfully requests that the Office of Conservation and Coastal Lands (OCCL) review the data presented in Encroachment MA-15-5 and the additional data and discussion presented in this letter. This letter is focused on the existing conditions and the potential impacts to southern neighbor's property following removal of the subject property's seawall. This letter also expands the discussion of site conditions that was presented in the Encroachment Questionnaire. Ideally, OCCL would be able to provide a summary statement on the potential impacts to the southern neighbor's seawall and residence, resulting from the removal of the subject property's seawall.

### **Existing Conditions:**

The coastline in this region has a long history of erosion, with erosion rates greater than 3 feet per year in some locations. The abutting properties on both sides of the subject property have artificial coastal protection structures on the landward side of the cobble beach, in line with and abutting the subject property's seawall.

From the subject property to Paumana, heading southeast, there is a continuous string of

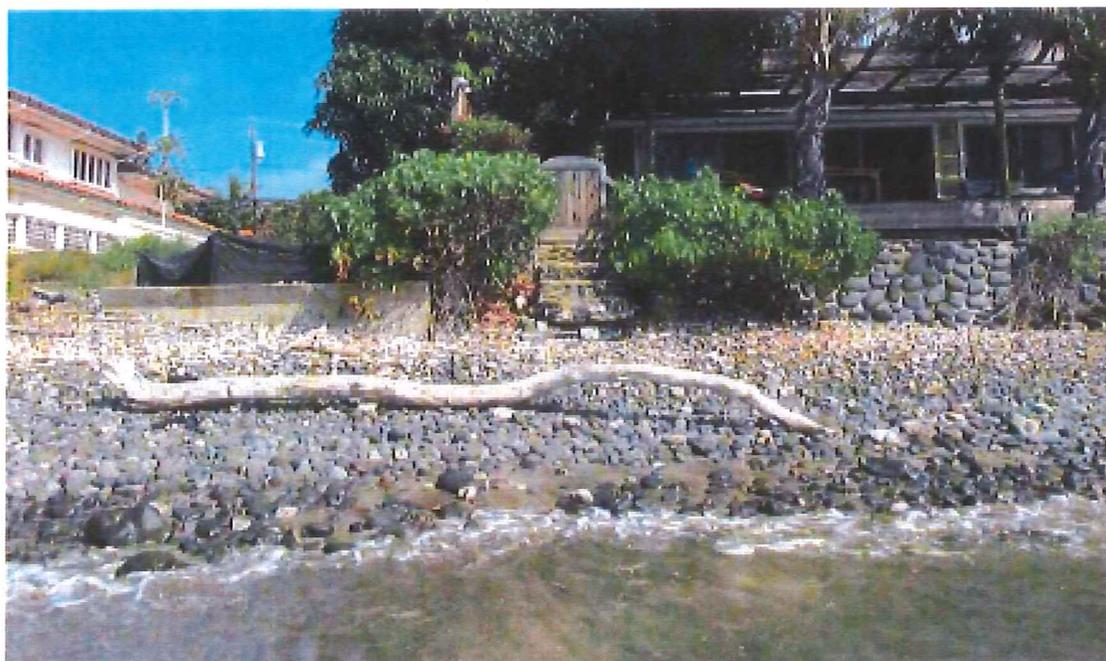
**Exhibit D**



interconnected coastal structures that stretch almost 1,000 feet in length (Figure 1). The subject property seawall is buried within the coastal plain on the northwest end and exposed in the beach face at the southeast end, where it abuts the neighbor's structure (Figure 2).



**Figure 1. Looking south along the coastline from the subject property.**



**Figure 2. Subject property and southern neighbor. Both shoreline structures abut, and the faces of each are exposed above the deflated beach face.**



The southern neighbor's shoreline structure appears to be non-conforming, based on review of historic aerial photographs. There is a linear feature on the shoreline in 1949 on the seaward side of the southern neighbor's parcel (Figure 3). The linear feature in the shadow of the trees is located along the seaward neighbor's property. The 1960 aerial image (Figure 4) also shows an extension of the linear features from the south and possibly as far north as the subject property, as shown on the photograph below. The linear feature identified in both of these images is in line with the neighboring structure to the south. The southern neighbor's wall, itself, appears to be built out of native stones (Figure 5), in similar fashion to the walls farther south (Figure 6). The southern neighbor's wall appears to be non-conforming to the Conservation District rules based on these observations. Based on the aerial photographs, it is unclear if the subject property's seawall is also non-conforming, due to foliage cover in the images.



**Figure 3. 1949 aerial photograph. Linear feature fronting the southern neighbor's property identified by the red oval. There are linear features within the shadows that are in-line with the walls to the south, and in similar location to the current structure.**



**Figure 4.** 1960 aerial photograph. Linear feature fronting the southern neighbor's property, and possibly the subject property, identified by the red oval.



**Figure 5.** Southern neighbor's wall built out of native rocks.



**Figure 7. The walls abutting the southern neighbor are built of similar materials.**

### **Potential Impacts of Removal:**

The request in this letter, and the data within the letter, are focused on potential impacts to the southern neighbor's seawall and residence, which may result from a requirement to remove the existing seawall along the subject property's shoreline. The southern neighbor's wall is likely non-conforming, and is abutting the subject property's seawall (Figure 8). The subject property's seawall protects the neighbor's wall from flanking. The wall on the common boundary between the two parcels is a landscaping feature with a shallow footing, not an engineered return wall.

The southern neighbor's home is less than 15 feet from the seawall (Figure 9). There is an active debris line at the face of the wall, and a wet/dry line from quiescent conditions (January 16, 2015) that is nearly at the wall's face. Both the subject property and the southern neighbor seawalls are regularly impacted by littoral processes.

There is a vertical offset between the backshore lawn area and the beach on the seaward face of the subject property's and southern neighbor's seawalls (Figure 10). This vertical offset, or discontinuous slope, will likely result in erosion during normal wave conditions. This is a common outcome when over-steepened slopes equilibrate to active beach conditions. Initial erosion could expose the north end of the neighbor's seawall and the north side of the neighbor's lawn to littoral processes, including erosion.

The stairs on the southern neighbor's wall are already undermined due to beach deflation and other ongoing littoral processes (Figure 11), signifying active and continuous erosion on the coastline. This is also detailed in the Coastal Geology Group erosion data for the properties.



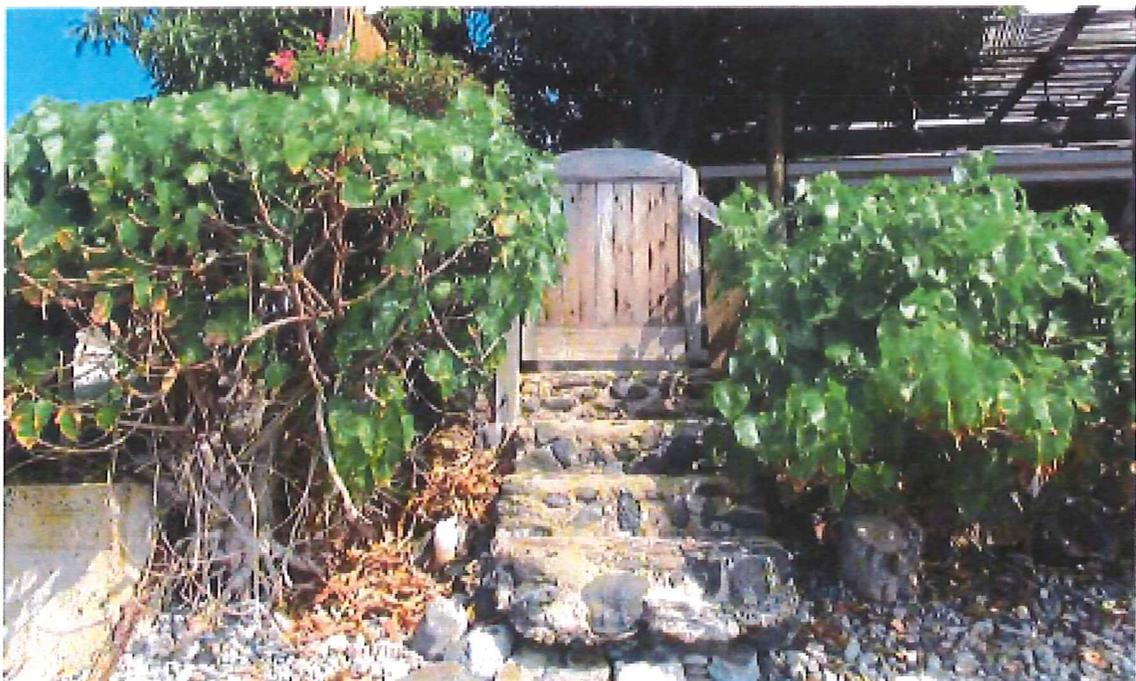
**Figure 8. The subject property wall and southern neighbor wall are abutting.**



**Figure 9. The southern neighbor's residence is less than 15 feet from the seawall.**



**Figure 10. The deflated cobble beach and backshore elevations have a vertical offset at the south end of the seawall and at the neighbor's seawall. The side wall is a landscaping feature, not an engineered return wall.**



**Figure 11. The subject property stairs are currently undermined, and are exposed to ongoing littoral processes.**



It is possible that removal of the seawall would have the following impacts on the southern neighbor:

1. The north end of southern neighbor's shoreline structure may be flanked and destabilized by erosion if the subject property's seawall is removed.
2. The southern neighbor may also experience erosion of fast land on the north side of their parcel as the shoreline erodes mauka of their seawall.
3. The southern neighbor's home is within 15 feet of the seawall. There is a possibility of structural impact as a result of flanking erosion.
4. Ongoing littoral processes, including the active, chronic erosion along the shoreline will not be slowed by the removal of the seawall.
5. The vertical offset between the backshore grade, on the mauka side of the wall, and the beach face grade on the makai side of the wall, will likely result in near-term erosion while the discontinuous slope equilibrates immediately following removal of the structure.

Below is a short comparison between the existing condition and the likely condition post-removal.

	<b>Existing Condition</b>	<b>Post-Removal Condition</b>
<b>Southern Neighbor Seawall</b>	Protected on the northern flank	Exposed to flank erosion on the north side
<b>Southern Neighbor Lawn</b>	Protected on the northern boundary	Exposed to erosion and other littoral processes on the mauka side of the existing seawall
<b>Southern Neighbor's Home</b>	Foundation is protected by the subject property's seawall, the southern neighbor's seawall, and the line of continuous seawalls extending south.	The foundation is within 15 feet of the existing seawalls, and will likely be exposed to erosion and other littoral processes.
<b>Subject Property Backshore</b>	Vertical offset between the backshore and the beach face is supported by the seawall.	The discontinuous slope will likely equilibrate in the near-term, following structure removal, resulting in erosion.
<b>Water Quality</b>	No erosion of the backshore, so no release of terrigenous material in the near-shore waters.	Erosion of the backshore will release terrigenous material into the nearshore waters during high tides and wave events.
<b>Beach Condition</b>	The degraded and deflated beach is dominantly gravel and cobble size grains, representing the lag deposits from the previous sand beach.	The beach condition would be unchanged. The backshore material is predominantly terrigenous material and would not supply the beach with a significant sand supply.
<b>Public Access</b>	Limited access at this parcel, usually at low tide. This parcel is approximately 960 feet south of the nearest public beach access.	There will be no significant improvement to shoreline access.



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This letter is a request to the OCCL to provide comments on the potential impacts to the southern neighbor following removal of the seawall at the subject property. Though the previous Encroachment Questionnaire touched on the subject, SEI and our clients felt that an expanded discussion would assist the OCCL in a thorough review of this aspect of seawall removal.

Please feel free to contact me, should you have any questions or wish to discuss the letter. I can be reached at [cconger@seaengineering.com](mailto:cconger@seaengineering.com) or 808.722.1335 (cell).

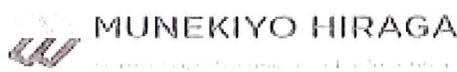
With sincere appreciation,

A handwritten signature in blue ink, appearing to read 'Chris Conger', written over a horizontal line.

Chris Conger  
Coastal Scientist

CC: Daniel Ornellas, Maui District Land Agent  
Department of Land and Natural Resources  
Maui Land Division Office  
54 High Street, Room 101  
Wailuku, Hawaii 96793

# EXHIBIT E



Michael T. Munekiyo  
PRESIDENT  
Karilyn R. Fukuda  
EXECUTIVE VICE PRESIDENT  
Mark Alexander Hoy  
VICE PRESIDENT  
Tessa Munekiyo Ng  
VICE PRESIDENT  
February 8, 2016

Sam Lemmo, Administrator  
Office of Conservation and Coastal Lands  
**Attention: Bradley Romine**  
Department of Land and Natural Resources  
Post Office Box 621  
Honolulu, Hawai'i 96809

**SUBJECT: Non-Conforming Shoreline Structure Determination at  
Lahaina, Maui, Hawai'i, Further Identified as Tax Map Key  
(2) 4-6-003: Seaward of 007 (Encroachment MA-15-5)**

Dear Mr. Lemmo:

We are writing in response to the Office of Conservation and Coastal Lands' (OCCL) letter, dated June 17, 2015, regarding our request to establish non-conforming status for an encroaching seawall fronting TMK (2) 4-6-003:007.

In November 2014, the owners of the subject property submitted a Department of Land and Natural Resources (DLNR) Shoreline Encroachment Information Sheet to OCCL. At the time, previous shoreline maps were not available and the owners indicated that the approximate date of establishment of the seawall was "unknown". Subsequently, the previous owner, Bonnie Penniman, located a stamped survey map dated January 21, 1960, showing a seawall at the subject property. Ms. Penniman's family owned the subject property from the 1950s until 2010, when it was purchased by the current owners, Steven and Deana Campbell. A copy of the survey was provided to OCCL with a request for an official determination to establish non-conforming status for the seawall, in accordance with Hawai'i Revised Statutes 13-222-19. In your letter dated June 17, 2015, it was noted that OCCL, "...cannot determine from the evidence provided if alterations or improvements have been made to the structure since it was established in 1960,..." and referred us to DLNR, Land Division regarding disposition or pursuance of an easement for the encroachment.

On September 28, 2015, Daniel Ornellas in the DLNR, Land Division, Maui office was contacted regarding the request for non-conformance and pursuit of an easement for the encroaching seawall, given the recent documentation provided supporting non-conforming status for the encroachment. Mr. Ornellas advised that non-conformance should be determined by OCCL prior to pursuance of an easement.

Sam Lemmo, Administrator  
February 8, 2016  
Page 2

Since then, the previous owner, Ms. Penniman, has provided a legal affidavit stating that to her knowledge, the seawall was constructed in or around 1960 and was not altered or improved during the time her family owned the property. See **Attachment "1"**. Her affidavit includes an invoice for the concrete for the seawall addressed to her father, Harlow D. Wright, with her handwritten notes on the invoice envelope describing the seawall. The notes were taken during a conversation she had with her father about the seawall. The current owners, Steven and Deanna Campbell have also signed a legal affidavit stating that the seawall was existing at the time they purchased the subject property in 2010 and that the seawall has not been altered since that time. See **Attachment "2"**.

The affidavit from Ms. Penniman, together with the survey map dated January 21, 1960, confirms that the seawall was built in or around 1960 and that the seawall was not altered between the time of construction and when her family sold the property in 2010. The affidavit from the current owners affirms that the seawall has not been altered since 2010. This documentation supports that the structure has existed in the same form and location since prior to October 1964.

Based on this additional information and documentation and pursuant to guidance received from Mr. Ornellas, we are respectfully requesting an official determination from your office to establish legal non-conforming status for the seawall. Following a determination from OCCL regarding the status of the structure, the owners will continue to coordinate with the DLNR Land Division regarding appropriate disposition of the seawall.

Thank you for your consideration of this matter. Please contact me at (808) 244-2015 with any questions or for additional information.

Very truly yours,



Marisa Fujimoto  
Senior Associate

MF:yp

Attachments

cc: Daniel Ornellas, Department of Land and Natural Resources (w/attachments)  
Steven and Deana Campbell (w/attachments)  
David Merchant, Merchant Horovitz LLC (w/attachments)

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**ATTACHMENT 1.**

**Bonnie Penniman Affidavit**

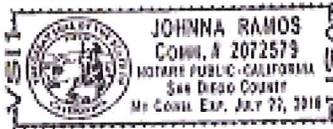


STATE OF California )  
COUNTY OF San Diego ) ss.

On this 1<sup>ST</sup> day of February, <sup>2014</sup> 2015, before me personally appeared Bonnie Penniman, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person.

Johnna Ramos  
Johnna Ramos  
Notary Public, State of California

My commission expires: July 22, 2018



Doc. Date: 2/1/2014 # Pages: 1

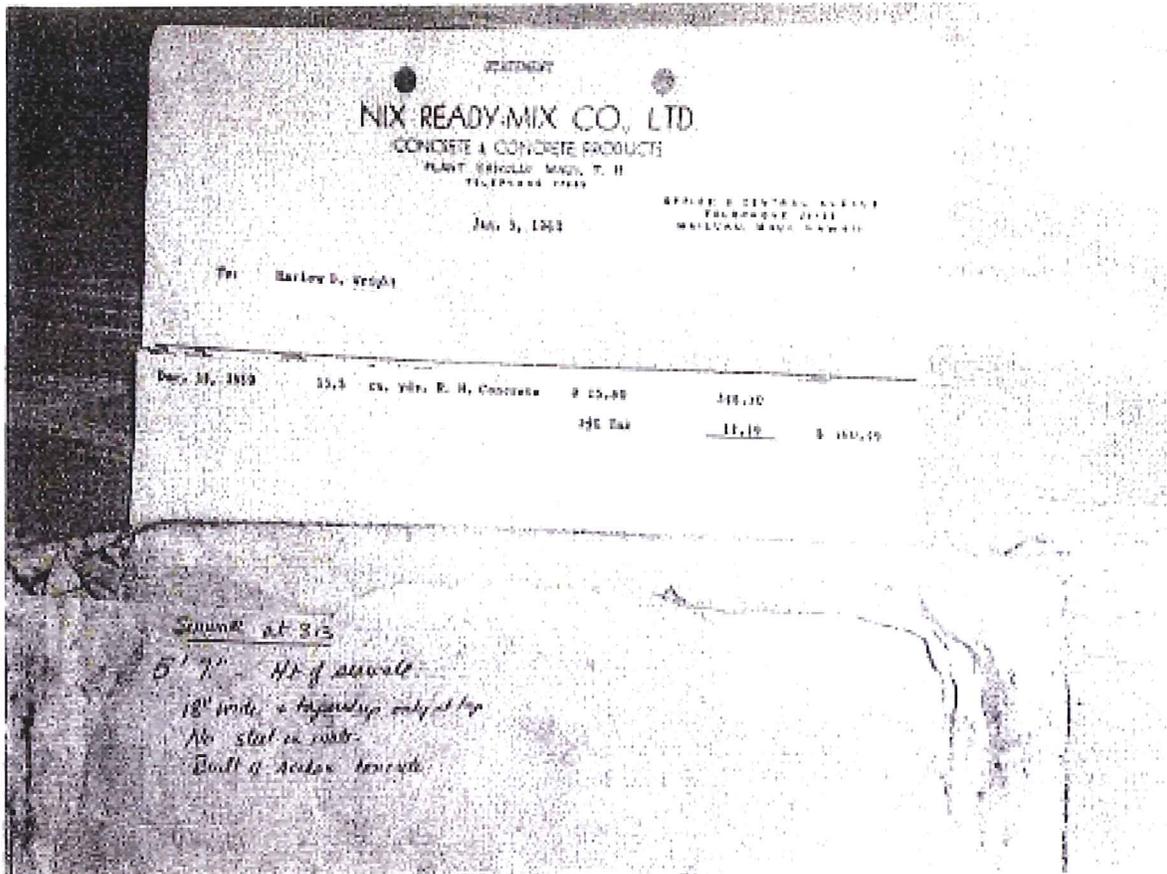
Notary Name: Johnna Ramos

CALIFORNIA Circuit

Doc. Description: affidavit of Bonnie Penniman



(Stamp or Seal)



**EXHIBIT "A"**

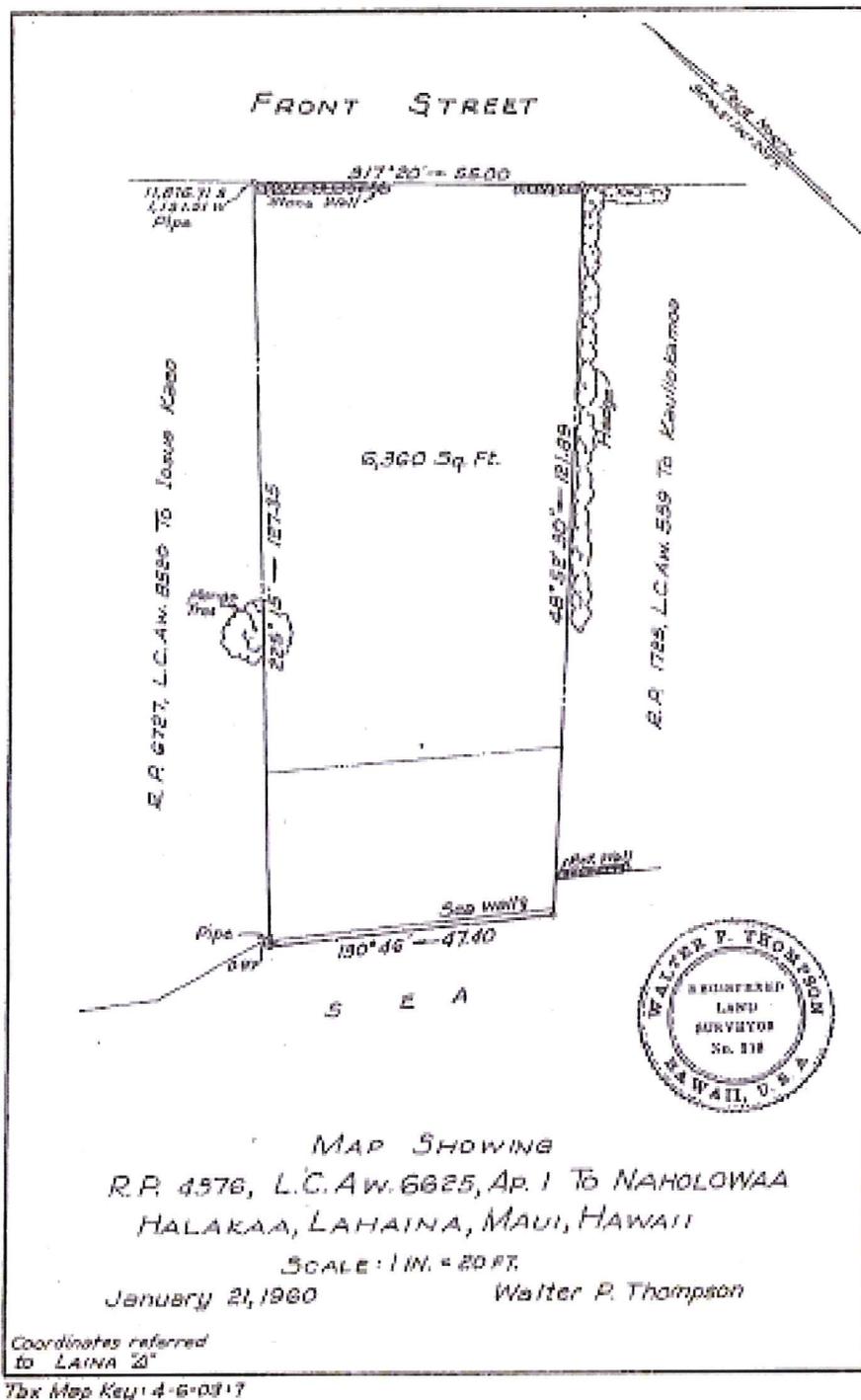


EXHIBIT "B"

## **ATTACHMENT 2.**

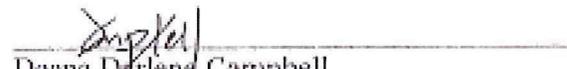
### **Steven and Deanna Campbell Affidavit**

### Affidavit of Steven and Deana Campbell

We, Steven Robert Campbell and Deana Darlene Campbell, own property at Lāhainā, Maui, Hawai'i 96761 (TMK (2)4-6-003:007). We purchased the property in 2010. The seawall structure fronting the property was existing at the time of purchase.

We declare that, to the best of our knowledge and belief, the existing seawall structure at Lāhainā, Maui, Hawai'i 96761 was not altered or improved since we purchased the property in 2010.

  
Steven Robert Campbell

  
Deana Darlene Campbell

Las Vegas, NV 89134

Las Vegas, NV 89134

STATE OF Hawaii )  
 ) SS.  
COUNTY OF MAUI )

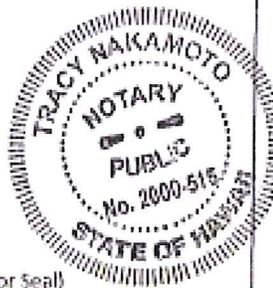
On this 27th day of September, 2015, before me personally appeared Steven Robert Campbell, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person.



Tracy Nakamoto  
Tracy Nakamoto  
Notary Public, State of Hawaii

My commission expires: 10/15/16

Doc. Date: <u>9/22/15</u>	# Pages: <u>3</u>
Notary Name: <u>Tracy Nakamoto</u>	
<u>Second</u> Circuit	
Doc. Description:	
<u>Affidavit of Steven and Deana Campbell</u>	
<u>Tracy Nakamoto</u>	(Stamp or Seal)



STATE OF Hawaii )  
 ) 55.  
COUNTY OF MAUI )

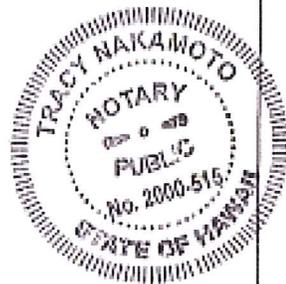
On this 27th day of September, 2015, before me personally appeared Deana Darlene Campbell, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person.

Tracy Nakamoto  
Tracy Nakamoto  
Notary Public, State of Hawaii

My commission expires: 10/15/16



Doc. Date: <u>9/22/15</u>	# Pages: <u>3</u>
Notary Name: <u>Tracy Nakamoto</u>	
<u>Second</u> Circuit	
Doc. Description: <u>Affidavit of Steven and Deana Campbell</u>	
<u>Tracy Nakamoto</u> (Stamp or Seal)	



# EXHIBIT F

DAVID Y. IGE  
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

SUZANNE B. CASE  
COMMISSIONER  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCES MANAGEMENT  
  
KERRI KALUHIWA  
FIRST DEPUTY  
  
JEFFREY T. HEARSON  
DEPUTY DIRECTOR - WATER  
  
AQUATIC RESOURCES  
HEALTH AND OCEAN RECREATION  
BUREAU OF CONSERVATION  
COMMISSION ON WATER RESOURCES MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:DLNR:SL

Re: Encroachment: MA-15-5

APR 18 2016

Ms. Marisa Fujimoto, Senior Associate  
Munekiyō Hiraga  
735 Bishop Street, Suite 238  
Honolulu, HI 96813

Dear Ms. Munekiyo,

SUBJECT: Re: Request for Determination Regarding Non-Conforming Status for an Encroaching  
Seawall at Lahaina, Maui, Hawaii; Seaward of Tax Map Key (2) 4-6-  
003:007; Owners: Steven and Deana Campbell

This is in response to your February 8, 2016 letter providing the Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) with additional information and requesting an official determination from OCCL to establish legal non-conforming status for an encroaching seawall fronting TMK (2) 4-6-003:007.

Your letter included a copy of a signed affidavit of a former owner, Ms. Bonnie Penniman, stating that the existing seawall fronting the subject property was not altered or improved since its original construction in 1960. In addition, your May 21, 2015 letter included a stamped survey map dated January 21, 1960 that shows a seawall in the general location of the subject encroachment. OCCL has determined that you have provided reasonable evidence that the seawall on the subject property is a Non-Conforming Shoreline Structure. OCCL provided an analysis of the effects of the subject encroachment on beach and recreational resources and public access in our December 2, 2014 letter (DLNR Ref: Encroachment MA-15-5). We refer you to DLNR Land Division, Maui, at (808) 984-8103 should you wish to pursue an easement for the subject shoreline encroachment.

Please feel free to contact Brad Romine, Hawai'i Sea Grant Extension Agent and Coastal Lands Program Coordinator at OCCL, at (808) 587-0049 or [Bradley.M.Romine@hawaii.gov](mailto:Bradley.M.Romine@hawaii.gov) should you have further questions pertaining to this letter.

Sincerely,

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

cc: Daniel Ornellas, MLDO  
Steven and Deana Campbell (owners)

Exhibit F

# EXHIBIT G



**Arnold T. Okubo and Associates, Inc.**  
CONSULTING STRUCTURAL ENGINEERS

Date: June 3, 2016

Doc.: 2016-400

**STRUCTURAL EVALUATION OF THE CONSTRUCTION TIMELINE FOR AN EXISTING CONCRETE SEAWALL**

**Lahaina Seawall:**

Owner - Steven and Deana Campbell

Lahaina, Maui, Hawaii

TMK: (2)4-6-003:007

**SUMMARY:**

As a professional structural engineer, it is in my opinion, from the information received including affidavits, survey map, photos, visual site inspection, and engineering evaluation that the concrete seawall was built in December 1959.

**EVALUATION:**

1. Survey map dated January 21, 1960 by Walter Thompson a Registered Land Surveyor shows an existing concrete seawall on the survey map at the seaward (makai) side of the property line (See attached survey map, Figure No. 1). I believe the survey map was taken to show the new concrete seawall that was built in December 1959 (See attached, Figure No. 2 showing receipt and billing for 13.5 cubic yards of concrete poured for seawall on December 18, 1959).
2. The concrete ready mix billing statement from NIX Ready-Mix Co., Ltd., dated January 5, 1960, showed that 13.5 cubic yards of concrete was delivered on December 18, 1959 for the seawall construction to the residence of Mr. Harlow D. Wright (See attached, Figure No. 2).

The total volume of ready mix concrete of 13.5 cubic yards delivered on December 18, 1959 matches the amount of concrete of approximately 13.57 cubic yards with a waste factor included that would be required to construct the seawall. The concrete seawall measured dimensions required approximately 13.57 cubic yards of concrete for the construction of the seawall and it concurs with the volume of concrete delivered.

See attached, Figure No. 3 for the approximately seawall volume of concrete required.

3. It is impossible to determine the exact age of the concrete accurately by laboratory testing, chemical analysis and carbon dating.

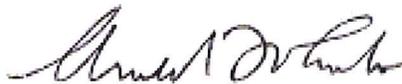
Page 2

4. The seaward (makai) face of the wall shows visual deterioration due to ocean wave actions that carries the hard abrasive materials such as coral and basaltic rocks toward the seawall. These hard materials are impacting and battering against the exposed seaward facing wall surfaces. The fast moving ocean waves during high surf seasons carrying the rocks are still impacting and battering the concrete face and causing chips and abrasion on the concrete surfaces thru out (See attached photos, Figures 4, 5, 6, & 7 ). Also, note that the many coral and basaltic rocks fronting the seaward (makai) face were brought to the shore by severe seasonal high ocean wave conditions.

These concrete chips and abrasion were cause from years of exposure to the seasonal high ocean wave conditions and the seawall has been battered and impacted by the rocks. This deteriorations is similar to having a mechanical chipping gun hammer chipping and trying to penetrate and remove the concrete. The impacting and battering from the abrasive ocean wave actions together with the hard rocks have been occurring for a long period of time during the seasonal high surf. See photos, Figures No. 4, 5, 6, & 7.

5. The rear (mauka side) surface of the concrete seawall shows no signs of impact or deterioration due to protection from the earth backfill. The mauka side of the wall is not impacted by the severe ocean wave carrying rocks. See photo, Figure No. 8. The rear surface is in good conditions.
6. As a professional structural engineer, it is in my opinion, from the above information received including affidavits, survey map, photos, visual site inspection, and engineering evaluation that the concrete seawall was built in December 1959.

The above engineering evaluation and conclusion are based on a site field visit, visual evaluation, the information received including survey map, affidavits, photographs, and from the author's professional structural engineering experienced on concrete seawall structures.



Arnold T. Okubo, P.E.  
Arnold T. Okubo & Associates, Inc.  
Consulting Structural Engineer  
94-529 Ukee Street, Suite 107  
Waipahu, Hawaii 96797  
Telephone: (808) 671-5184



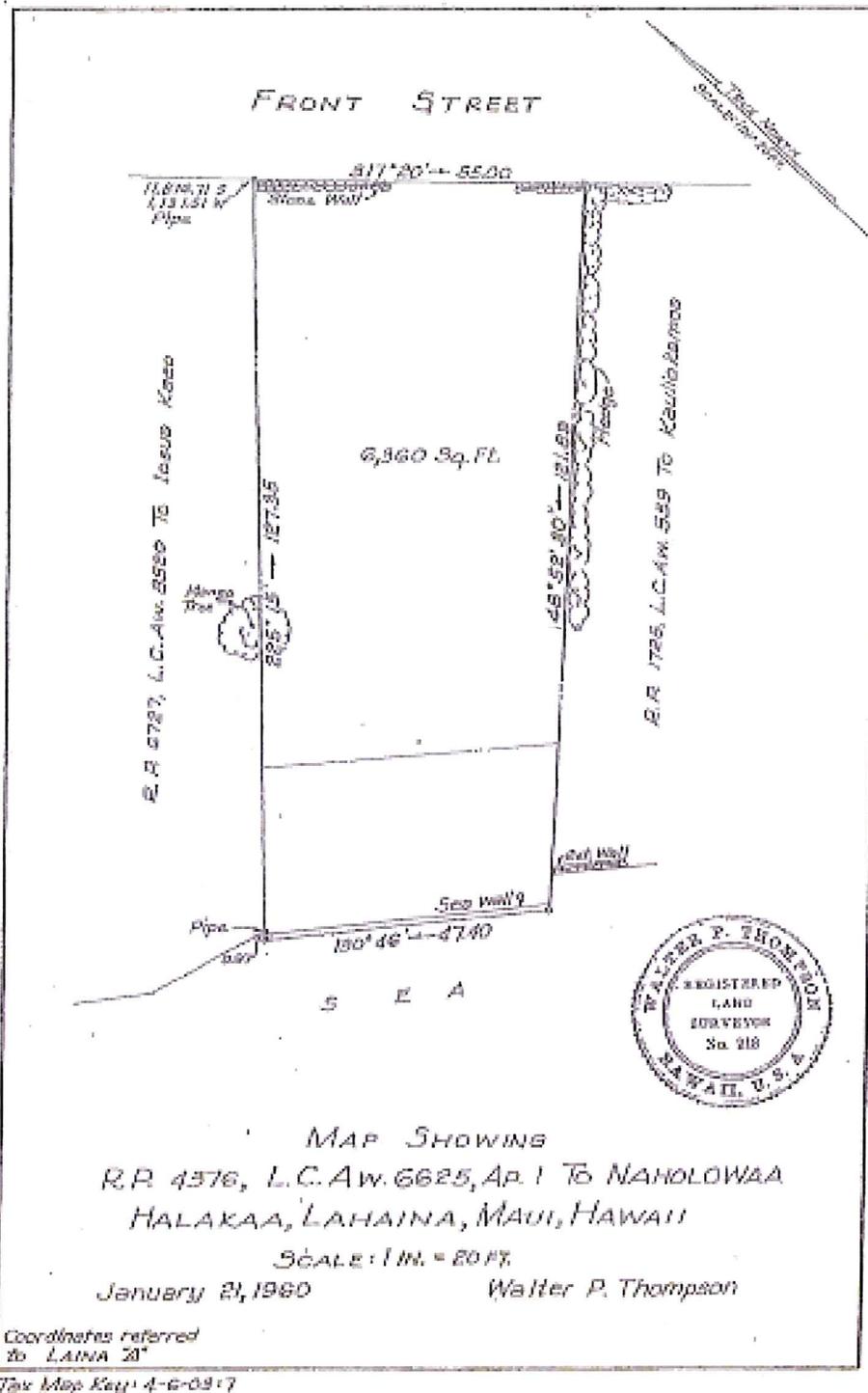


FIGURE NO. 1 - EXHIBIT "B"

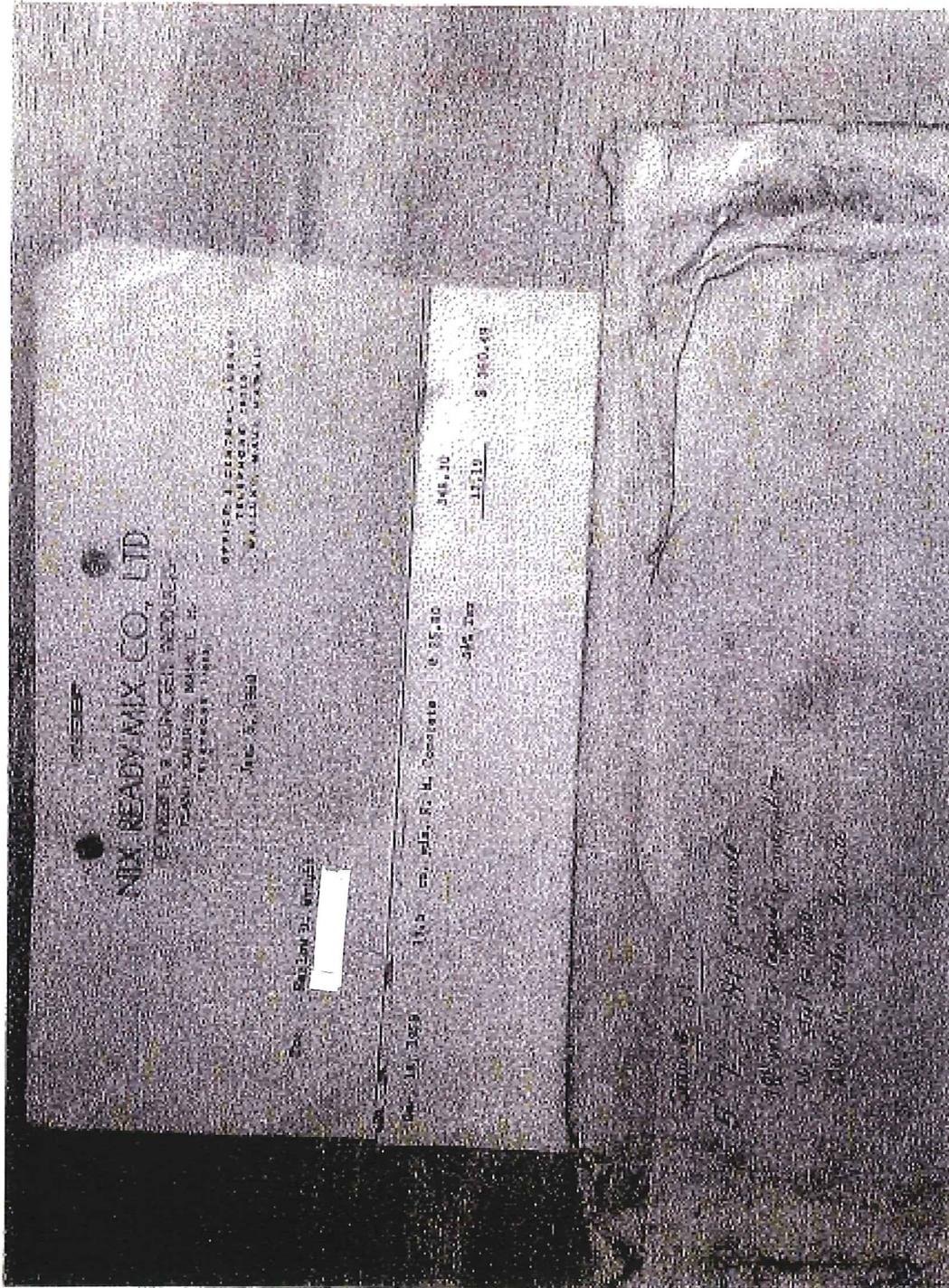
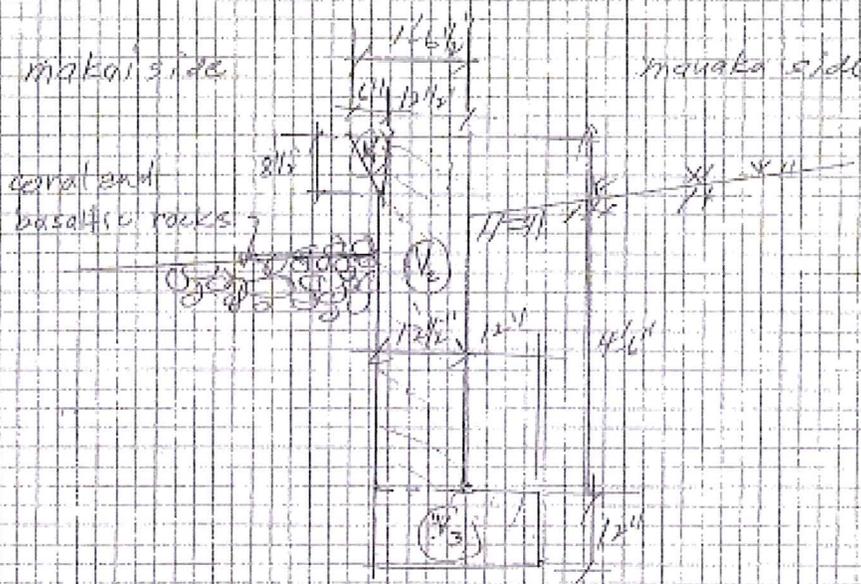


FIGURE NO. 2 - EXHIBIT "A"

DESCRIPTION	<b>Arnold T. Okubo and Associates</b> CONSULTING STRUCTURAL ENGINEERS		BY	CHECKED
	PROJECT:		JOB NO.	SHEET OF
			DATE	

Cementitious seawall located @  
Lahaina, Maui, Hawaii

TMK (2) 4-6-003; 007



SEAWALL SECTION

Soil 1/2" = 11.0"

Volume of concrete required for seawall

$$\begin{aligned}
 V_1 &= \frac{1}{2} (8' + 10') \times 25.5' / 12' = 20.577 \text{ cu yd} \times 1.474 = 30.31 \text{ cu yd} \\
 V_2 &= \frac{4.5' \times 12.5'}{2} = 28.125 \text{ cu yd} \\
 V_3 &= 140.15 \text{ cu yd}
 \end{aligned}$$

5% waste factor

$$\begin{aligned}
 &12.32 \text{ cu yd} \\
 &0.65 \text{ cu yd}
 \end{aligned}$$

FIGURE NO. 3

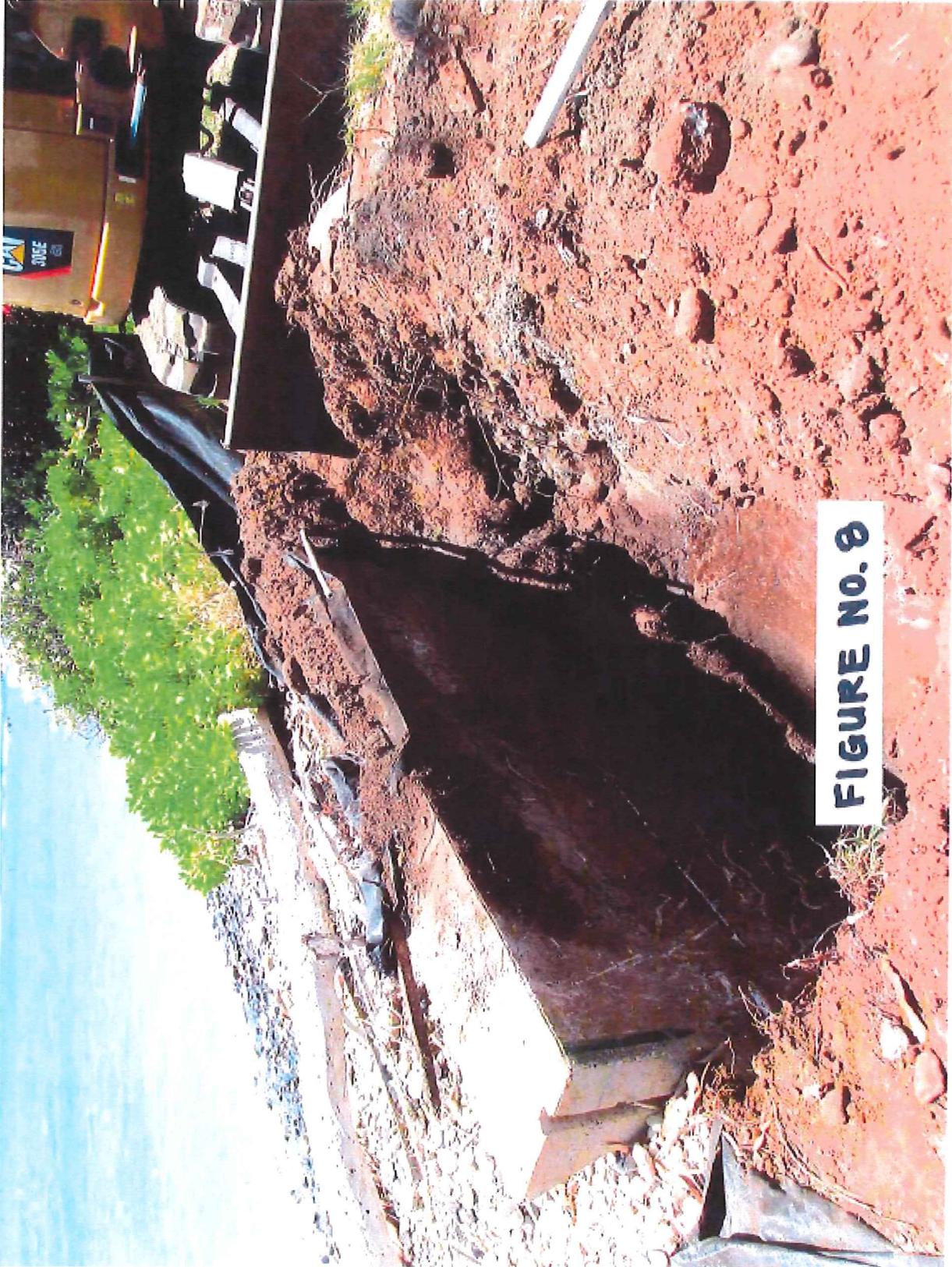
Approx. height 12.57' + 4'  
order  
DEC 18  
OKA 11











# EXHIBIT H

September 8, 2016

Mr. Carl Miyahara, Shoreline Disposition Specialist  
Department of Land and Natural Resources  
P. O. Box 621  
Honolulu, Hawaii 96809

*Comments coming  
signed on  
County letterhead  
—  
Jim Burke*

Dear Steven and Deana Campbell:

**SUBJECT: COMMENTS ON EASEMENT FOR SEAWALL PURPOSES FOR  
STEVEN ROBERT CAMPBELL AND DEANA DARLENE CAMPBELL,  
TRUSTEES FOR CAMPBELL FAMILY TRUST DATED APRIL 15, 1993,  
LOCATED AT LAHAINA, MAUI, HAWAII, TMK:  
(2) 4-6-003:SEAWARD OF 007, REF. NO.: 14MD-161**

The County of Maui Department of Planning (Department) has reviewed your request for comments dated August 10, 2016. The Department is familiar with this parcel and has previously authorized demolition of the existing single family residence and the construction of a new 3,868 square foot single family residence, referenced in Maui County permits SM5 2015/0307 and SSA 2015/0028. Thank you for this opportunity to comment on this subject matter.

These comments are with respect to the small retaining wall located at the shoreline, referenced by DLNR as a "seawall". The Department characterizes the parcel as a shoreline parcel with a cobble beach and a small retaining wall remaining at the shoreline and is located in the County of Maui Special Management Area.

The Department also has reviewed the January 28, 2015 letter from Sea Engineering Inc. to the Office of Conservation and Coastal Lands and notes that the coastal engineer acknowledges that if this structure is removed that the adjoining seawall structure to the south on the adjoining property would create flanking effects. Unfortunately, the engineering report only shows photos of the southern portion of this small retaining wall and does not show photos of the entire wall. The date of construction is not established. The Department offers you the following comments regarding disposition of this structure at the shoreline, including one recommended condition to add to the easement:

- 1) The Department does not consider this structure to be a seawall that is structural in nature and that has any value in protecting any structures. Rather, the structure appears to be a non-engineered retaining wall only. In addition, this minor structure is not continuous.
- 2) The Department is agreeable to allowing this minor structure to remain in place, through the easement process, only if the Department of Land and Natural Resources requires

**Exhibit H**

September 8, 2016  
Page 2

the Applicant to restrict this minor structure to "no additional repairs or configuration beyond its original footprint, and depth and height, in the future" as conditional language in the easement documents.

- 3) The Department recommends against the applicant repairing the minor retaining wall following future coastal erosion damage, which would fortify the minor structure as a more robust seawall to protect the development on the property. Rather the Department recommends that the DLNR, if they choose to approve this easement, require "that the applicant not be allowed any future repairs to the structure with a preferred course of action to remove the structure once it becomes damaged over time." Bottom line, the Department recommends that this minor retaining wall not become a fortified seawall in the future through a repair process. This condition is recommended to be recorded as part of the easement.
- 4) The Department notes that it has verbally discussed the coastal hazards regime at this location with the applicant through the applicant's representative and had asked that the applicant elevate its structure via post and pier construction to add protection from large wave events and coastal erosion. However, due to architectural features associated with this planned single family residence development, the applicant chose not to elevate the structure, as recommended. The applicant has been approved to develop the structure as presented to the Department under the referenced permits.
- 5) The Department recommends that the applicant establish its final shoreline setback area following the issuance of a State Certified Shoreline Map, shared with the Department.
- 6) The Department requests that we be copied on any final documents related to the disposition of this matter for our records.

Thank you for your cooperation. If additional clarification is required, please contact Coastal Resource Planner James Buika at [james.buika@mauicounty.gov](mailto:james.buika@mauicounty.gov) or at (808) 270-6271.

Sincerely,

CLAYTON I. YOSHIDA, AICP  
Planning Program Administrator

for WILLIAM SPENCE  
Planning Director

xc: John S. Rapacz, Planning Program Administrator (PDF)  
James A. Buika, Coastal Resource Planner (PDF)  
David Goode, Director, Department of Public Works (PDF)  
Department of Water Supply (PDF)  
Development Services Administration (PDF)

September 8, 2016  
Page 3

Mr. Samuel Lemmo, DLNR-OCCL  
Project File  
General File

WRS:CIY:JAB:

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