

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

January 27, 2017

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

PSF No.:16MD-180

MAUI

Grant of Term, Non-Exclusive Easement and Issuance of Immediate Right of Entry to HMC Maui LP for Beach Walk, Trench Drain, Sign and Public Beach Shower Purposes, Hanakaoo, Lahaina, Maui, Tax Map Keys (2) 4-4-013:seaward of 006 & 008.

APPLICANT:

HMC Maui LP, a foreign limited partnership.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of the Hyatt Regency Maui, Hanakaoo, Lahaina, Maui, identified by Tax Map Key (2) 4-4-013:008, as shown on the attached map labeled Exhibit 1.

AREA:

1776 square feet, more or less. Draft easement maps are attached as Exhibit 2.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

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

CURRENT USE STATUS:

TMK (2) 4-4-013: seaward of 008 is set aside to the Division of Boating and Ocean Recreation (DOBOR) for ocean and ocean related recreational and commercial purposes via Executive Order 4230.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing beach walk, trench drain, sign and public beach shower over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

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

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing", Item 46, that states "Creation or termination of easement, covenants or other rights in structures or land". An Exemption Notice is attached as Exhibit 3.

DCCA VERIFICATION:

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

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.

REMARKS:

The subject encroachments were discovered during a site inspection conducted by the State Surveyor and Department staff on July 29, 2015 conducted pursuant to a shoreline certification application submitted on behalf of the applicant. The following encroachments that were located seaward of the shoreline were identified: portions of a decorative brick header, lights mounted on coconut trees, portions of a rope fence, portions of a beach walkway, submerged shore perpendicular pipes, infrastructure for utilities, fill material, landscaping debris, portion of a concrete slab, portion of a wood deck and geotextile sandbags. By letter dated August 7, 2015, the State Surveyor informed the applicant that the encroachments must be resolved prior to the certification of the shoreline. As the applicant was unable to resolve the encroachments within the processing period, the shoreline certification application was ultimately rejected.

Applicant proceeded to consult with the Office of Conservation and Coastal Lands (OCCL) to determine which encroachments would qualify for easements and which would require removal. OCCL determined that all encroachments must be removed except those that are absolutely essential for safe, lateral public access. The Applicant proceeded to remove all encroachments except for the beach walkway, trench drain, ocean hazards sign and public shower. By letter dated August 24, 2016, OCCL determined that the remaining encroachments met the criteria of being absolutely essential for safe, lateral public access and supported the request for disposition of the easement. A copy of the OCCL letter is attached as Exhibit 4.

Pursuant to HRS Section 171-53(c), the Applicant will be responsible for obtaining authorization of the easement from the Legislature via concurrent resolution. Accordingly, as an interim measure, the Board is also requested to approve the issuance of an immediate management right-of-entry permit to the Applicant containing indemnification and liability insurance provisions in favor of the State. The right-of-entry will remain in place until the issuance of the easement, which cannot be finalized until the concurrent resolution from the Legislature is secured at the end of the 2017 legislative session, at the earliest.

The other remaining encroachment is a temporary emergency shoreline erosion control structure comprised of a geotextile blanket system. The Applicant received authorization for the structure from OCCL and DOBOR. As this structure is of a temporary nature, it is not included in this easement request. DOBOR has also been apprised of the easement disposition request. Additionally the Maui District Land Office requested that the Applicant take appropriate action to increase awareness that the shower area included in



the easement is available for public use. 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. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 4-4-016:008, 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.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to HMC Maui LP covering the subject area for beach walk, trench drain, sign and public beach shower 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) 4-4-016:008, 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 Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the 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.
4. Authorizing the issuance of a right-of-entry permit to the Applicant covering the subject area for beach walk, trench drain, sign and public beach shower purposes under the terms and conditions cited above, which are by this reference

incorporated herein and further subject to the following:

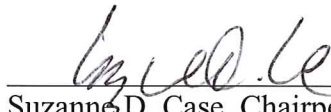
- A. The standard terms and conditions of the most current right-of-entry permit document form, as may be amended from time to time; and
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Ian Hirokawa  
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



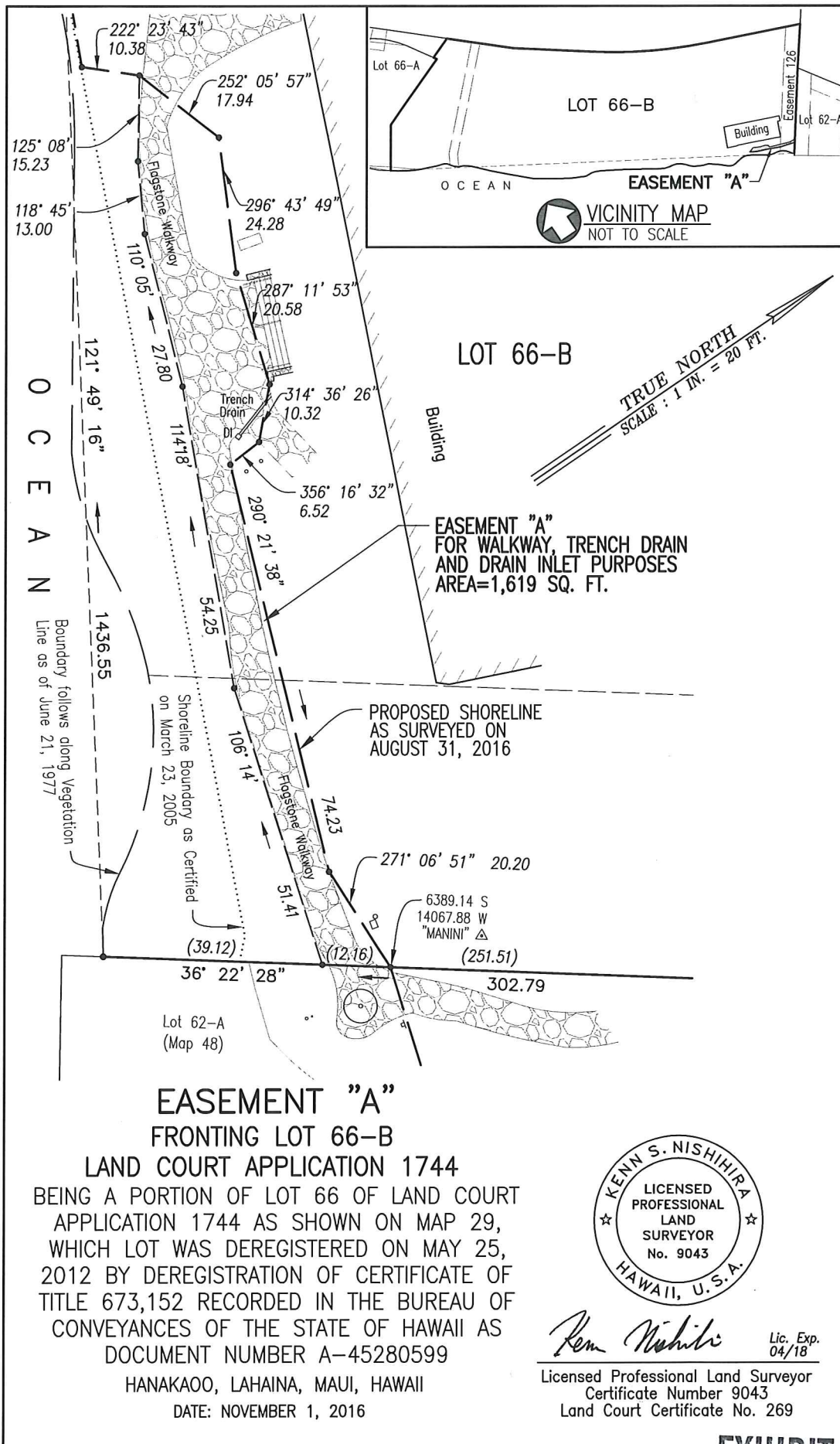
Suzanne D. Case, Chairperson



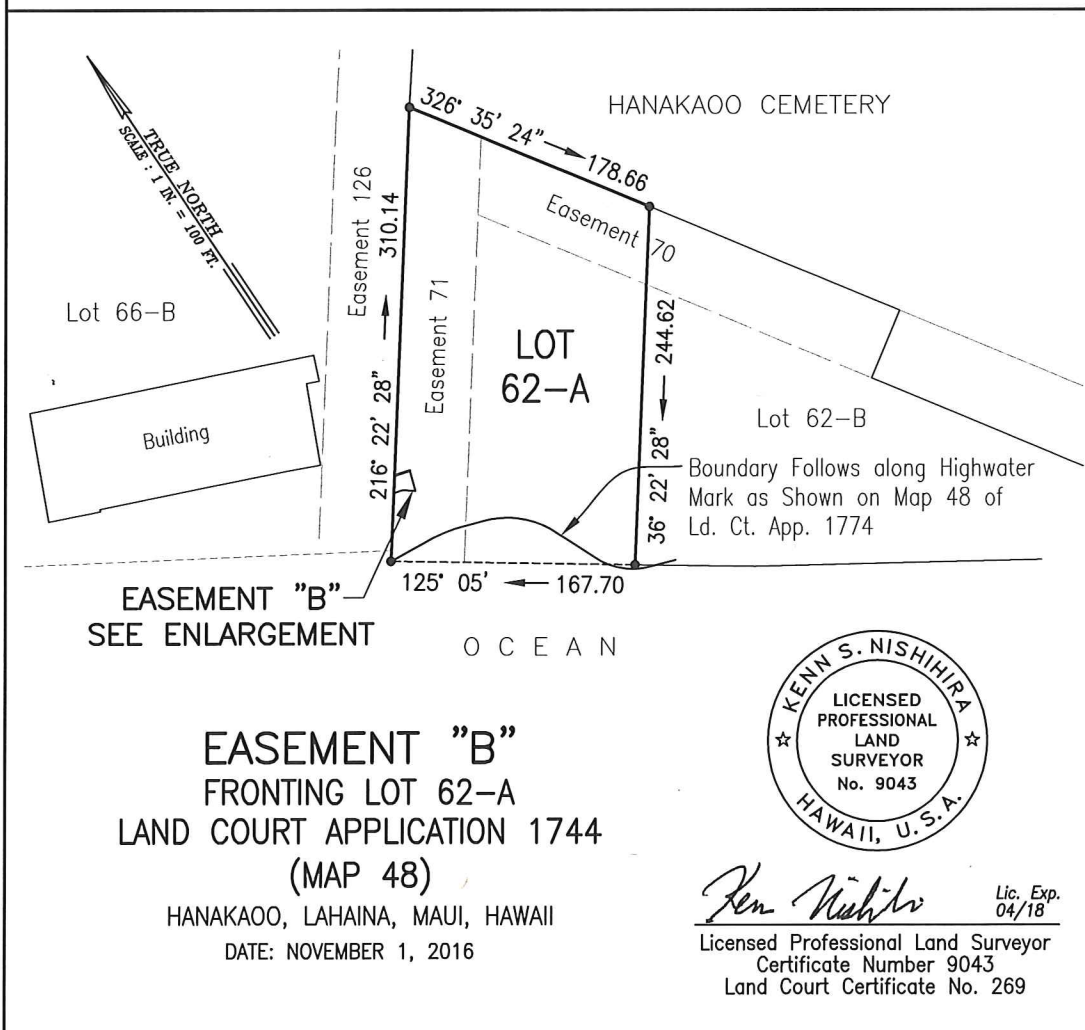
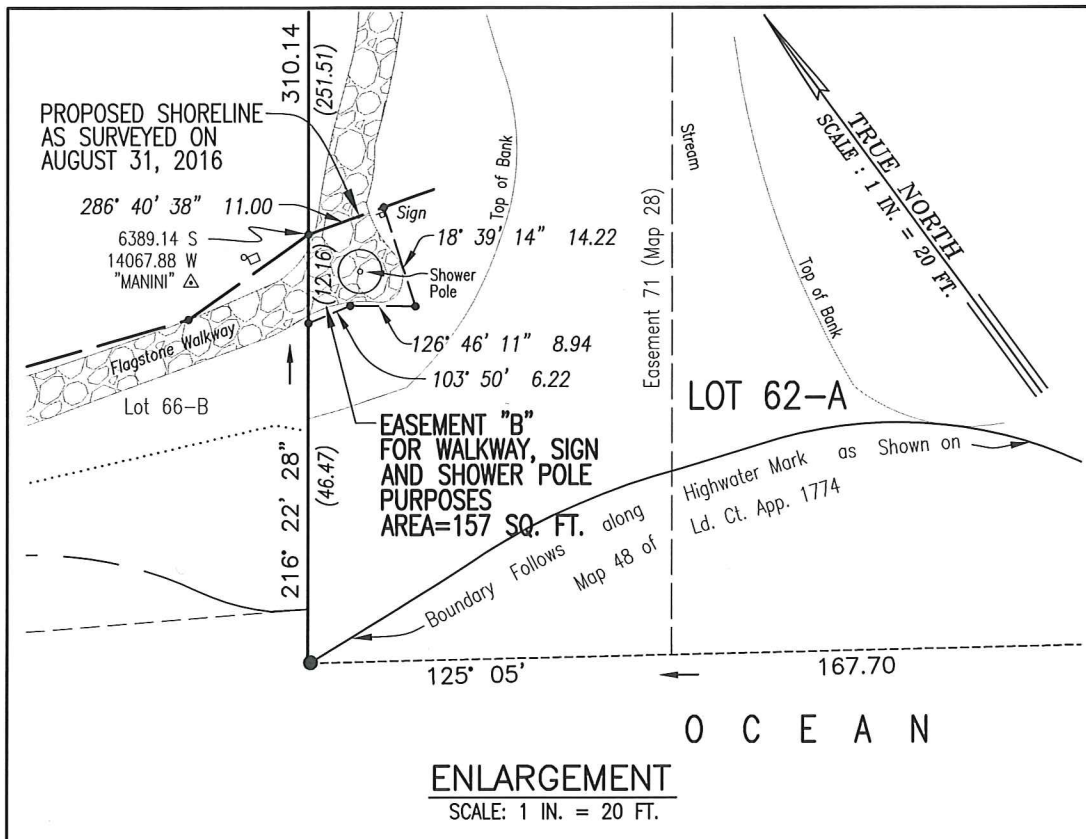


EXHIBIT "1"





*Kenn Nishihara* Lic. Exp. 04/18  
 Licensed Professional Land Surveyor  
 Certificate Number 9043  
 Land Court Certificate No. 269





### 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 Beach Walk, Trench Drain, Sign and Public Beach Shower Purposes

Project / Reference No.: PSF 16MD-180

Project Location: Hanakao, Lahaina, Maui, TMK (2) 4-4-013:seaward of 006 & 008

Project Description: Issuance of term, non-exclusive easement.


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

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1) and (4), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing", Item 46, that states "Creation or termination of easement, covenants or other rights in structures or land".

Encroachments were originally constructed landward of the shoreline on private property. The encroachments subject to this requested easement have been determined to be essential for safe, lateral public access along the shoreline.

Consulted Parties: Office of Conservation and Coastal Lands

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

  
Suzanne D. Case, Chairperson

1/12/17  
Date

EXHIBIT "3"

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 D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA  
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT

ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

DLNR:OCCL:NF

Encroachment MA-16-7

Jordan Hart  
Chris Hart & Partners, Inc.  
115 North Market Street  
Wailuku, HI 96793

AUG 24 2016

**SUBJECT:** Request to Resolve State Land Encroachment Located at Hyatt Regency Maui at 200 Nohea Kai Drive, Kaanapali, Maui; Tax Map Keys (2) 4-4-013:013, 008

Dear Mr. Hart,

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) is in receipt of your letter dated August 3, 2016 regarding the State land encroachments located at Hyatt Regency Maui, Tax Map Keys (2) 4-4-013:013 and 008. Previous correspondence from our office dated June 13, 2016 recommended removal of all shoreline encroachments that are not absolutely essential for safe, lateral public access.

According to the information provided, the applicant has removed all shoreline encroachments that are not essential for safe, lateral public access. You included photo documentation and a list of all encroachments removed. You noted that the hardscape pad at survey course #78 is scheduled to be removed the week of August 14, 2016 and you will submit photo documentation following the completion of removal. The remaining encroachments determined to be essential for safe, lateral public access include a rope barrier, brick header, ocean hazards sign, portions of the beachwalk, and trench drain.

The Board of Land and Natural Resources (BLNR) established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, OCCL established criteria to guide decision-making over specific cases. The criteria are as follows:

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

**EXHIBIT "4"**



In addition, OCCL developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide OCCL's recommendations on the disposition of shoreline encroachments.

Surrounding Land Uses:

*The surrounding land uses are primarily commercial. The backshore area consists of resort infrastructure, including a pool and pool deck. There is a 6,000 foot long beachwalk that extends north from the subject property to the Sheraton Maui Resort. The Maui Ocean Club neighbors the subject property to the northwest and Hanakao Beach Park neighbors the subject property to the southeast. Nohea Kai Drive borders the property to the north. A public beach access borders the subject property to the southeast and connects with the beachwalk.*

Beach Resources:

*There is approximately 8,000 feet of narrow, white sand beach extending north from Hanakao Beach Park to Kekaa Point. A shallow fringing reef extends offshore of the subject property.*

Public Access:

*The public access beachwalk runs along the shoreline at the subject property and extends north to the Sheraton Maui Resort. Public access is available at Hanakao Beach Park and connects with the beachwalk. The beach and beachwalk provide alongshore access fronting the subject property.*

Effect of Removing the Encroachment on:

**Beach Resources:** *The remaining encroachments are fronted by a narrow, sandy shoreline. Removal of the subject encroachments could result in minor improvements to beach resources fronting the property. In addition, the Hyatt Regency Maui is a member of Kaanapali Operations Association (KOA), who is partnering with the DLNR to develop a beach nourishment project for this area of Kaanapali Beach.*

**Public Access:** *The beach and beachwalk provide alongshore access in this area. Removal of the encroaching area of the beachwalk and other remaining encroachments would have a negative impact on public access because they provide safe, lateral shoreline access.*

**Effect on Adjacent Properties:** *Removal of the subject encroachments would not have a negative impact on adjacent properties.*

It has been a general policy and practice of OCCL to support disposition requests that have no discernable effect on beach and recreational resources, and do not act as a detriment to public access. Though removal of the subject encroachments along with the proposed beach nourishment could improve the beach resources fronting the subject property, the beachwalk and other remaining encroachments provide important lateral shoreline access to visitors of Kaanapali Beach. An easement is being sought by the applicant to preserve the public lateral access in this area and to ensure safe access to the shoreline. In addition, KOA and DLNR are partnering to develop a beach nourishment project for this section of Kaanapali Beach.



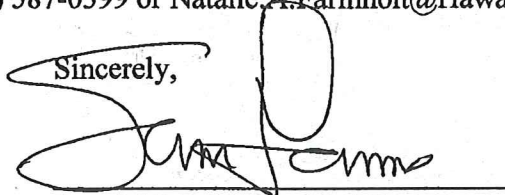
Jordan E. Hart

Encroachment MA-16-7

Upon review and careful consideration of the information gathered on this case, OCCL has determined that the requirements stated in HRS § 205A, HRS § 183C, and in OCCL's evaluation criteria would support a disposition request being processed for the subject shoreline encroachments.

If you have any questions, please feel free to contact Natalie Farinholt in the Office of Conservation and Coastal Lands at (808) 587-0399 or [Natalie.A.Farinholt@Hawaii.gov](mailto:Natalie.A.Farinholt@Hawaii.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Sam J. Lemmo', written over a horizontal line.

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

Cc: Chairperson  
Maui Cty, Current Division  
MDLO  
LAND, Cal Miyahara  
Ian Hirokawa