

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

June 9, 2017

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

PSF No.: 17MD-057

Maui

Issuance of a Right-of-Entry Permit to Neal B. Schneider for Landscape and Maintenance on Portion of Government Beach Reserve for Clean-up, Sand Dune Restoration and Native Plant Propagation Purposes, Waiohuli, Kihei, Maui, Tax Map Key: (2) 3-9-009: 011 and 034 por.

APPLICANT:

Neal B. Schneider, landowner of parcel 025. Parcel 25 is situate landward of the subject premises.

LEGAL REFERENCE:

Sections 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waiohuli, Kihei, Maui, identified by Tax Map Key: (2) 3-9-009: 011 and 034 por. as shown on the attached map labeled Exhibit A.

AREA:

0.7 acres, more or less.

ZONING:

State Land Use District:	Urban
County of Maui CZO:	Special Management Area

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:

Vacant and Unencumbered

CHARACTER OF USE:

Landscaping and Temporary Maintenance of Government Beach Reserve for Sand Dune Restoration and Native Plant Propagation Purposes

TERM OF RIGHT-OF-ENTRY:

Six (6) months to one (1) year depending on success of plant propagation.

CONSIDERATION:

Gratis.

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 approved 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, 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" and Item No. 51, that states "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

DCCA VERIFICATION:

Applicant is an adjacent landowner and not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for all costs associated with the proposed improvements to government beach reserve lands;
 - 2) Work closely with the DLNR Maui District Land Office and County of Maui, Planning Department, Current Division, Coastal Zone Management Program, throughout the right-of-entry term by allowing for periodic site inspections and keeping lines of communication open throughout the disposition term to ensure that conditions are administered;
 - 3) Install only native plants that are conducive to the area and drought tolerant;
 - 4) Engage a licensed and insured contractor with a C-17 specialty license authorized to operate in the State of Hawaii for all excavation purposes;
 - 5) Use only sand situate at the subject location for dune restoration purposes. No sand shall be excavated from areas below the shoreline or imported from other locations;
 - 6) Obtain a certificate of liability insurance naming the State of Hawaii as additional insured subject to the standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time thru out the duration of the project;
 - 7) Remove any and all obstructions to lateral public access on any portion of land within the project area;
 - 8) Maintain a clear distinction between public and private space using one or more of the following elements: signage, fencing, landscaping, theme, or topography in order to prevent the perception that the government beach reserve is an extension of the adjacent private property;
 - 9) Install and maintain signs advising the general public of ongoing dune restoration and native plant propagation purposes as well as access allowed;
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- 10) Encourage the movement of foot traffic over the subject area via a signed pedestrian access corridor no more than 10 feet wide and no less than half the distance from the shoreline and TMK (2) 3-9-009:025 heading north and south from the County right-of-way; and
 - 11) Pursuant to firm establishment of the sand dune and native grown cover, the applicant shall remove any irrigation systems that may have been used to irrigate and stabilize native plantings within the subject area.

REMARKS:

From as early as 2007, the Maui District Land Office (MDLO) has been working with area residents along both Uluniu street and Halama street in Kihei as well as the County of Maui, Mayor's Office, Planning Department, Coastal Zone Management Program and Department of Parks and Recreation, which manages rights-of-ways along the coastline, to both 1) increase public access to government beach reserve lands in the area, and 2) to encourage and expand a more natural landscape on government beach reserve lands that allows for the reformation and stabilization of the natural dune system habitat that existed and still continues to exist along portions of the coastline. Pursuant to habitat restoration we anticipate a resurgence of native flora and fauna that is indicative of the area. This anticipation is based on the finding of the Kihei Shoreline Reserve; Uluniu Section: Shoreline Habitat Restoration and Trail Corridor Plan, dated August 20, 2008, authored by Ms. Penny Levin and commissioned by the Uluniu Beach Reserve Association (UBRA).

Between 2007 and 2009, MDLO systematically reached out to private landowners adjacent to the government beach reserve that maintained encroachments onto government lands which included unauthorized structures, perimeter walls, vegetation, fertilized lawns and/or irrigation systems. These improvements often obstructed lateral public access and always created a sense that public lands are an extension of private properties. During that time, MDLO was able to have encroachments removed and encouraged adjacent landowners to reduce the alteration of the natural landscape and sand dune system by stopping the propagation of non-native landscaping that has adversely affected natural near-shore habitats in the area that supports native flora and fauna.

On November 22, 2010 under agenda item D-7, the Board authorized the Chairperson to negotiate the terms and conditions of a proposed Memorandum-of-Agreement between DLNR, Tri-Isle Resources Conservation and Development Council, Inc., and UBRA regarding the maintenance of the subject beach reserve area that consists of over 15 acres of coastal lands. To date the MOA has not been finalized due to changes in staffing and time constraints. Because of limited administrative capabilities at this time, staff has reached out to the County of Maui to inquire if the Department of Parks and Recreation could take on management of the south Maui beach reserves via Executive Order. The County Mayor's office was receptive to the idea, however disposition is still pending.

Despite pending dispositions, staff recommends that the proposed ROE and restoration plans are consistent with the purpose and intent of the UBRA sponsored plan and would not delay the transfer of lands to the County of Maui via Executive order. In fact, it will serve as a model for future restoration efforts that may be presented to future managers of the beach reserve. The proposed restoration project aims to reverse the trend of altering natural landscapes by exemplifying how a coastal dune system could be restored to provide suitable habitat for native flora and fauna and serve as a model of how unique and beautiful our coastal dune systems are and what a true asset it is to the community.

The project area consists of less than one acre located seaward of TMK (2) 3-9-009:025. Parcel 025 was purchased by Mr. Neal Schneider in June of 2015. At that time, Mr. Schneider reports that pursuant to discussion with his realtor, Mr. Schneider was led to believe that he could landscape government lands without a permit in order to develop a lawn that looks similar to many of the others portions of the government beach reserve stretching along the Kihei coastline.

In September of 2015, DLNR staff received complaints from the community of ongoing excavation of the government beach reserve and the importation of topsoil onto the subject location. Upon inspection, we found that Schneider had grubbed and graded government lands and was in the process of planting lawn grass. A notice and order to cease and desist was issued and Mr. Schneider was directed to remove all unauthorized improvements (Exhibit E). In a few weeks after the notice was issued, Schneider restored the government lands back to their preexisting condition as best he could. Since that time, weeds have taken over and Mr. Schneider has offered to improve government lands to our standards at his sole cost as a means to 1) resolve his unauthorized activity, and 2) provide for general site beautification.

The ROE contemplates a 6 months to 1 year project depending on the rate of plant stabilization and survival. The first step is to thin out and remove overgrown vegetation and dead or hazardous non-native trees in order to improve lateral pedestrian access and view planes along the government beach reserve. This shall include complete removal of approximately 13 medium sized trees (trunk diameter 6"-12" and/or 10'- 15' high), and approximately 8 large trees (trunk diameter 13"-24" diameter and/or 16'- 30' high). Trees and vegetation to be removed include sea grape trees, Kiawe trees, thorny Carissa shrubs, California grass and portions of overgrown naupaka. Areas of dense ground cover to be cleared are approximately 40' wide x 40' long (Exhibit C). The removal will have a significant positive impact in regards to increased access and better site distances along established access points. General clean-up is expected to be completed in a few days then restoration of pre-existing natural dune system using onsite resources will be implemented. The two preexisting sand dunes will be reformed and then planted with native ground cover conducive to the area to help stabilize the primary and secondary dunes (Exhibit D). Oversight will be provided by both County of Maui and State DLNR staff.

Pursuant to sand dune formation and installation of native plants, the adjacent landowner will monitor propagation throughout the ROE term and provide maintenance as needed which includes managing pedestrian traffic via appropriate signage, subject to the review and consent of DLNR staff, and establishment of an appropriate pathway between the primary and secondary dunes in order to better control foot traffic in the interest of dune stabilization and success of plant propagation.

Benefits include improved habitat to further support the proliferation of native flora and fauna, increased access opportunities, increased protection from storm surge along this


portion of coastline, and overall site beautification.

MDLO staff consulted with OCCL, DOFAW and DAR as well as the County Planning Department's Coastal Zone Management Program and Department of Parks and Recreation South Maui District Office. MDLO also conducted a presentation to the Kihei Community Association at one of its monthly community meetings and proposals to remove encroachments and improve shoreline access and dune restoration was well received. All agencies and organizations support the request and staff is hopeful for a successful outcome that can be replicated many times more. Staff is recommending gratis consideration being that the applicant has agreed to pay for all costs associated with the proposed improvements to government beach reserve lands.

RECOMMENDATION: That the Board

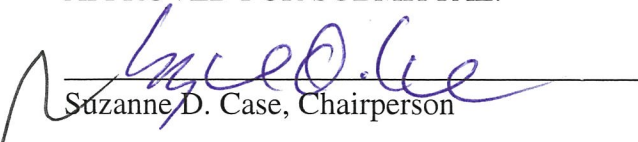
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant adverse effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a right-of-entry permit to Neal B. Schneider covering the subject area 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 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.
 - C. Authorize the Chairperson to issue future right-of-entries to the Applicant in relation to its landscape and temporary maintenance of government beach reserve for sand dune restoration and native plant propagation purposes.

Respectfully Submitted,



Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

FLAT 08

ROAD

WAIHOLE STREET

WAIHOLE STREET

FLAT 08

ROMAN CATHOLIC CHURCH IN HAWAII - and County of Maui - and

MAUI GARRENS

HOMESTEADS

REGULATION RESERVOIR

BEACH

TRUE NORTH

1909

TAXATION MAPS BUREAU TERRITORY OF HAWAII

SECOND DIVISION

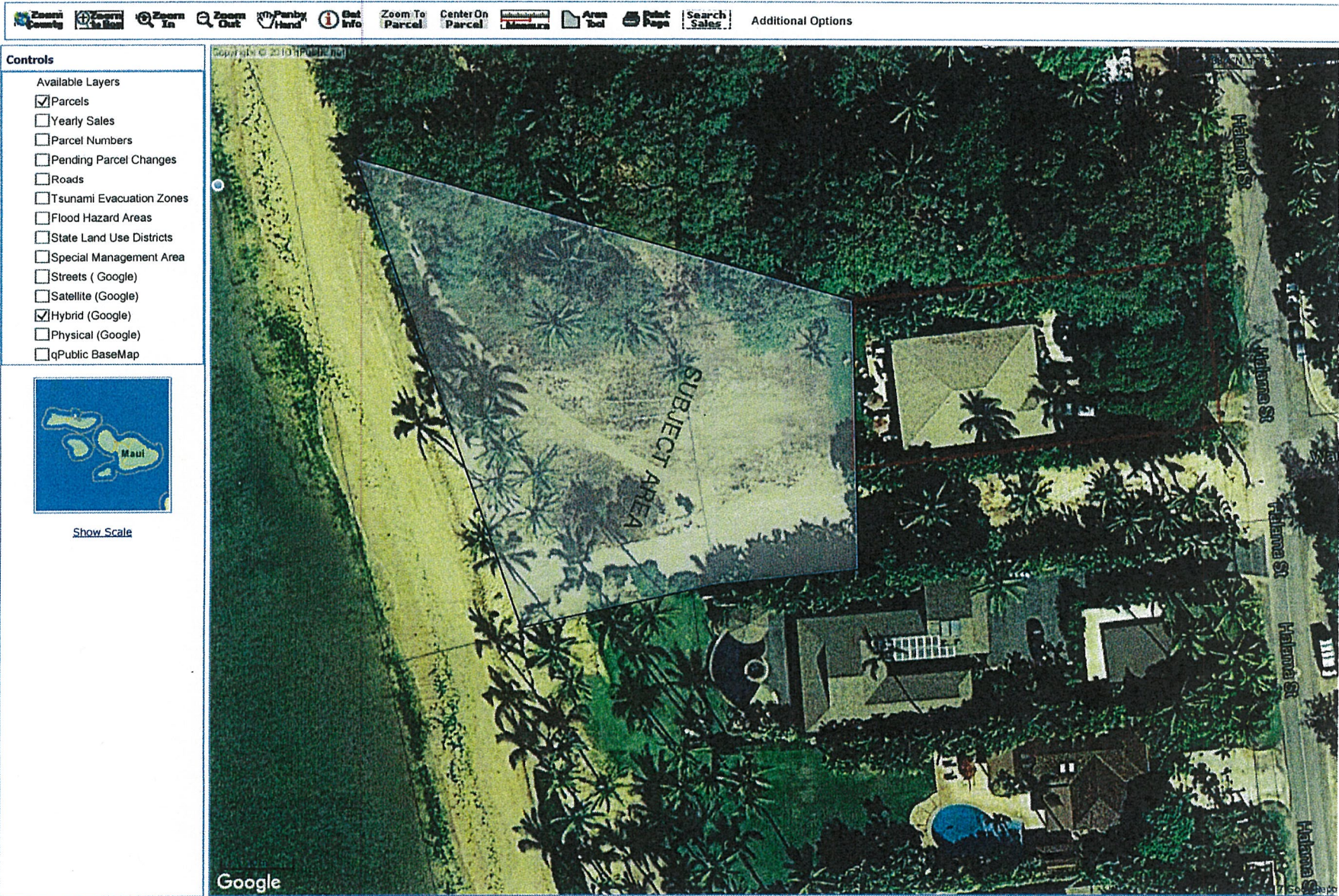
ZONE SEC. PLAT

3 9 09

CONTAINING PARCELS

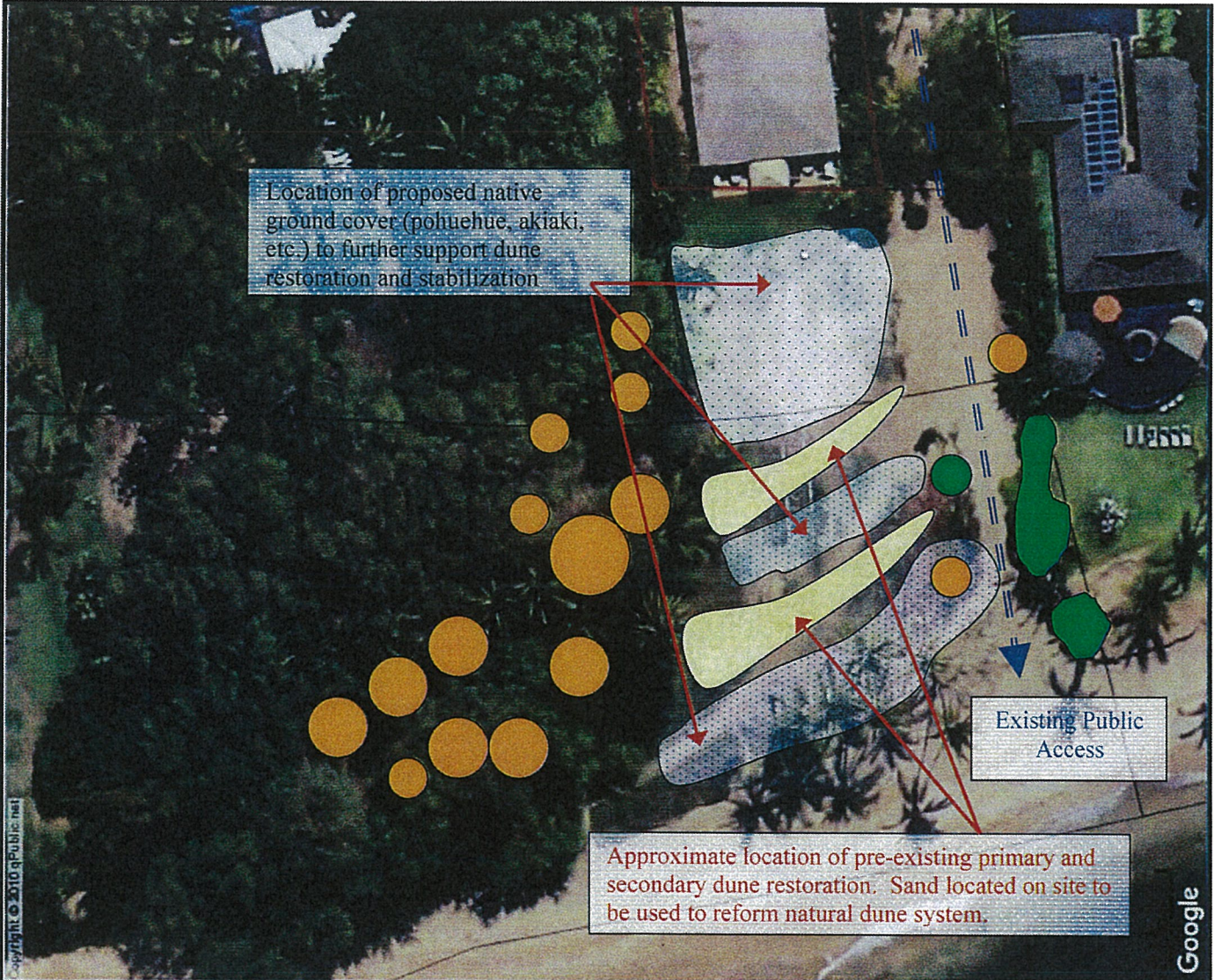
SCALE: 1 IN. = 50 FT.

SUBJECT TO CHANGE



Maui County makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subje-

Overgrown Vegetation Removal & Dune Restoration - Demonstration Project,
Government Beach Reserve, Seaward of 1470 Halama Street, Kihei, Maui






-  = Thin out overgrown and fallen kiawe trees in order to improve lateral pedestrian access and view planes along the government beach reserve. Includes complete removal of approximately 13 medium trees (trunk diameter 6"-12" and/or 10'-15' high), and approximately 8 large trees (trunk diameter 13"-24" diameter and/or 16'-30' high).
-  = Removal of sea grape tree, carissa shrub, and naupaka ground cover shrub approximately 40' wide x 40' long x 8' high to increase opportunities for lateral public beach access along the government beach reserve.
-  = Restoration of pre-existing natural dune system using existing sand from onsite.

EXHIBIT " C "

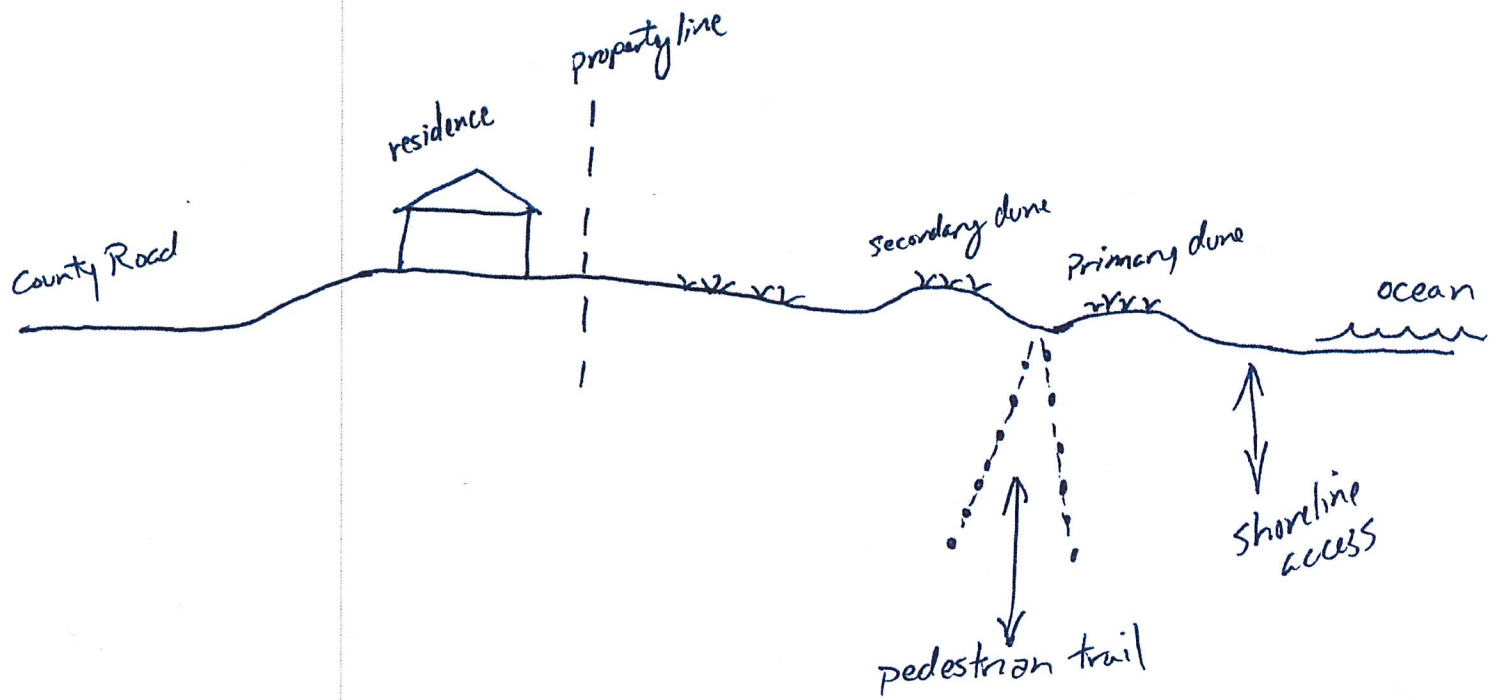


EXHIBIT "D"

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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
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

September 17, 2015

NOTICE AND ORDER

CERTIFIED MAIL

TO: Neal Barney Schneider

Northfield, IL 60093

SUBJECT: Unauthorized Use of Public Land, (State Beach Reserve), Fronting 1470 Halama Street, Kihei, Hawaii (2) 3-9-009:025; State Land Further Identified as Tax Map Key: (2) 3-9-009:011.

NOTICE IS HEREBY GIVEN that you are in violation of Chapter 171, of the Hawaii Revised Statutes (HRS).

Your attention is directed to the following provisions of the Hawaii Revised Statutes, Section 171-6 (12) Powers: Except as otherwise provided by law, the board of land and natural resources shall have the powers and functions granted to the heads of departments and board of land and natural resources under chapter 26. In addition to the foregoing, the board may: (12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall:


- (A) Be fined not more than \$1,000 a day for the first offense;
- (B) Be fined not less than \$1,000 nor more than \$4,000 per day upon the second offense and thereafter;
- (C) If required by the board, restore the land to its original condition if altered and assume the cost thereof;
- (D) Assume the costs as may result from adverse effects from such restoration; and
- (E) Be liable for administrative cost incurred by the department and for payment of damages;

EXHIBIT "E"

Cease and Desist Notice
Neal Barney Schneider
TMK: (2) 3-9-009:025

Pursuant to a complaint received by the Maui District Land Office of topsoil and grass cuttings being placed within the State beach reserve, an inspection of the subject area was conducted on September 16, 2015 at 1:45pm. During this inspection, staff observed the entire beach reserve area seaward of and to include the back yard of 1470 Halama Street, to have been cleared, leveled off and covered with dirt/topsoil and grass clippings. Furthermore, beyond the back southern boundary pin along the adjacent public beach access path, newly planted Carissa plants and other vegetation had been planted in a manner in which to obstruct lateral public access through the beach reserve. The grass cuttings and plants were being watered by three sprinkler heads which were attached to several water hose that extended out from 1470 Halama Street. These uses were not authorized by the Department of Land and Natural Resources.

YOU ARE HEREBY ORDERED TO CEASE any further unauthorized activity on the subject State property. All newly introduced dirt/topsoil, grass cuttings and newly planted vegetation seaward of your property shall be removed immediately. Please contact the Maui District Land Office within ten (10) days from receipt of this letter to advise on your intended actions in order to comply with this notice and order. Should you fail to remove the previously described encroachments, you shall be subject to additional per day fines. If you have any questions please contact me at (808) 984-8103 should you have any questions regarding this matter.

By: 
Daniel Ornellas, District Land Agent

Enclosure: Photo report

Cc: Maui DOCARE
Maui Board Member – Mr. James Gomes
County of Maui, Current Planning Division

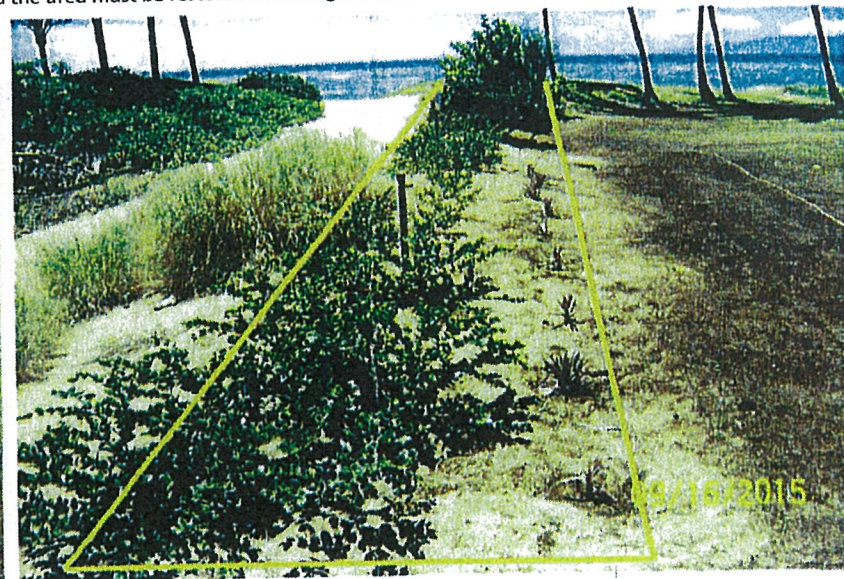
Photos taken: 9/16/2015



Schneider, 1470 Halama Street, Kihei, HI



Photos depict newly introduced dirt/topsoil, grass cuttings and miscellaneous plants to the State Beach Reserve to the rear of 1470 Halama Street. These uses of the State Beach Reserve is not authorized. All introduced dirt/topsoil, grass cuttings shall be removed and the area must be restored to its original condition.



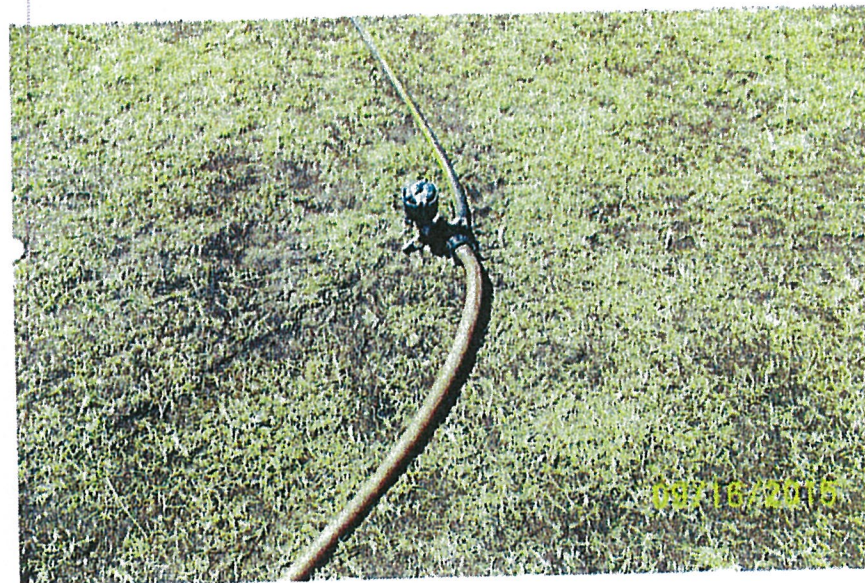
All of the above plants must be removed. They have been planted within the beach reserve and will obstruct lateral public access if allowed to remain in place.

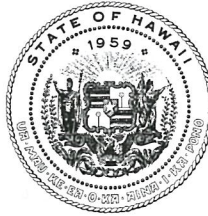


Approximate seaward property
boundary of 1470 Halama Street.
TMK: (2) 3-9-009:025



Water hoses extended into the beach reserve from 1470 Halama Street.





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KAHOOLAWE ISLAND RESERVE COMMISSION
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STATE PARKS

EXEMPTION NOTIFICATION

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

Project Title:	ROE to Schneider for Clean-up, Sand Dune Restoration and Native Plant Propagation
Project / Reference No.:	PSF 17MD-057
Project Location:	Government Beach Reserve, Waiohuli, Kihei, Maui TMK: (2) 3-9-009: seaward of 025
Project Description:	Temporary Landscape and Maintenance
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No. and Description:	In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved 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, 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" and Item No. 51, that states "Permits, licenses, registrations, and right-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."
Consulted Parties:	DLNR Office of Conservation and Coastal Lands, Division of Aquatic Resources, and Division of Forestry and Wildlife; County of Maui, Planning Department, Current Division, Coastal Zone Management Program and Department of Parks and Recreation; Kihei Community Association

Recommendation:

It is anticipated 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

 5/25/17
Date