

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.:14MD-065

Maui

Rescind Board Action of April 8, 1983, Item F-3, *Direct Sale of Perpetual, Non-Exclusive Easement for Revetment Purposes Covering Portion of Government Beach Reserve*, and Grant of 55-Year Term, Non-Exclusive Easement to New Owners: Robin M. Kean and Jennifer Downs Kean, Trustees of the Robin M. Kean Revocable Living Trust dated October 1, 2015, and Jennifer Downs Kean and Robin M. Kean, Trustees of the Jennifer Downs Kean Revocable Living Trust dated October 1, 2015; for Resolution of Seawall and Rock Revetment Encroachment Purposes; Issuance of Immediate Management Right-of-Entry Pending Issuance of Easement, Waiohuli-Keokea Homesteads, Kihei, Maui, Tax Map Key: (2) 3-9-012: seaward of 003.

APPLICANT:

Robin M. Kean and Jennifer Downs Kean, Trustees of the Robin M. Kean Revocable Living Trust dated October 1, 2015, in trust as to a 50% undivided interest; and Jennifer Downs Kean and Robin M. Kean, Trustees of the Jennifer Downs Kean Revocable Living Trust dated October 1, 2015, in trust as to a 50% undivided interest, the whole being held as Tenants in Common.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of Waiohuli-Keokea Homesteads, Kihei, Maui, identified by Tax Map Key: (2) 3-9-012: Seaward of 003, as shown on the attached map labeled Exhibit A.

AREA:

650 square feet, more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove existing seawall and rock revetment 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 Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, 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 No. 46, that states "Creation or termination of easement, covenants, or other rights in structures or land."

DCCA VERIFICATION:

Not applicable. The Applicants as trusts are not required to register with DCCA.

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. The survey should contain all encroachments seaward of both parcel 003 and the public right-of-way off of Waimahaihai Street identified as parcel (2) 3-9-012:999 por.; and
- 3) Obtain authorization of the State Legislature by concurrent resolution for the proposed easement disposition pursuant to HRS 171-53(c).

REMARKS:

The DLNR Maui District Land Office received an application for use of government lands dated July 21, 2016 along with a copy of a letter from DLNR's Office of Conservation and Coastal Lands (OCCL) dated July 13, 2016 recommending disposition of the proposed shoreline easement in order to resolve an existing seawall encroachment, identified as MA-16-08, seaward of the subject property located at Tax Map Key (TMK) (2) 3-9-012:003.

The encroachment consists of a rock scour apron with an area of approximately 611 to 650 square feet (more or less). The subject property is located three parcels to the north of Kalama Beach Park, which is fronted by a 3,000 sq. ft. boulder revetment that was built in the 1970s. The revetment is likely a contributing factor to ongoing beach erosion which led to seawall construction to protect residential properties north of Kalama Beach Park. The two adjacent properties both to the north and south of parcel 003 have similar seawalls, revetments and rock aprons, all of which have been authorized by term, non-exclusive easements from the State.

On December 28, 1982, Conservation District Use Application for repairing an existing seawall seaward of the subject property was approved.

On April 8, 1983 under agenda item F-3 the sale of a perpetual, non-exclusive easement for the revetment (seawall) fronting the subject property was approved by BLNR, however, the disposition was never completed. Since then parcel 003 has changed hands several times. As a result, staff recommends rescission of the 4/8/83 approval by the Board.

Staff recommends no fine as the subject encroachment was put in place by the previous land owner more than thirty (30) years before the current owners purchased the property. Applicant shall comply with all requirements stipulated above. 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.

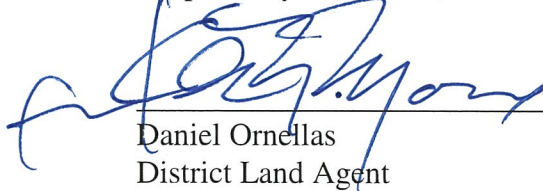
Staff is including a recommendation below for the issuance of a right-of-entry permit to the Applicant to maintain the encroachment in place pending issuance of the easement. There will be no separate consideration paid for the right-of-entry, but Applicant will be required to provide liability insurance and indemnify the State for its use of the land in the interim.

RECOMMENDATION: That the Board:

1. Rescind the prior Board action of April 8, 1983, under agenda item F-3.
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) 3-9-012:003, 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 Robin M. Kean and Jennifer Downs Kean, Trustees of the Robin M. Kean Revocable Living Trust dated October 1, 2015, and Jennifer Downs Kean and Robin M. Kean, Trustees of the Jennifer Downs Kean Revocable Living Trust dated October 1, 2015 covering the subject area for seawall and rock revetment 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) 3-9-012:003, 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.

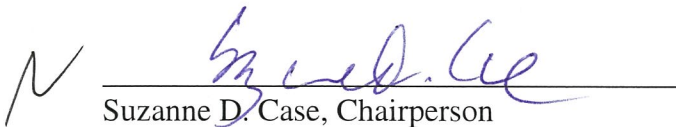
4. Grant a right-of-entry to Robin M. Kean and Jennifer Downs Kean, Trustees of the Robin M. Kean Revocable Living Trust dated October 1, 2015, and Jennifer Downs Kean and Robin M. Kean, Trustees of the Jennifer Downs Kean Revocable Living Trust dated October 1, 2015 covering the subject area for seawall and rock revetment 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 form, as may be amended from time to time;
 - B. The right-of-entry will be effective upon the Applicant's execution of the right-of-entry permit and submission of the required proof of insurance and shall continue until the remnant is conveyed to the Raymonds; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

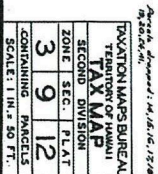


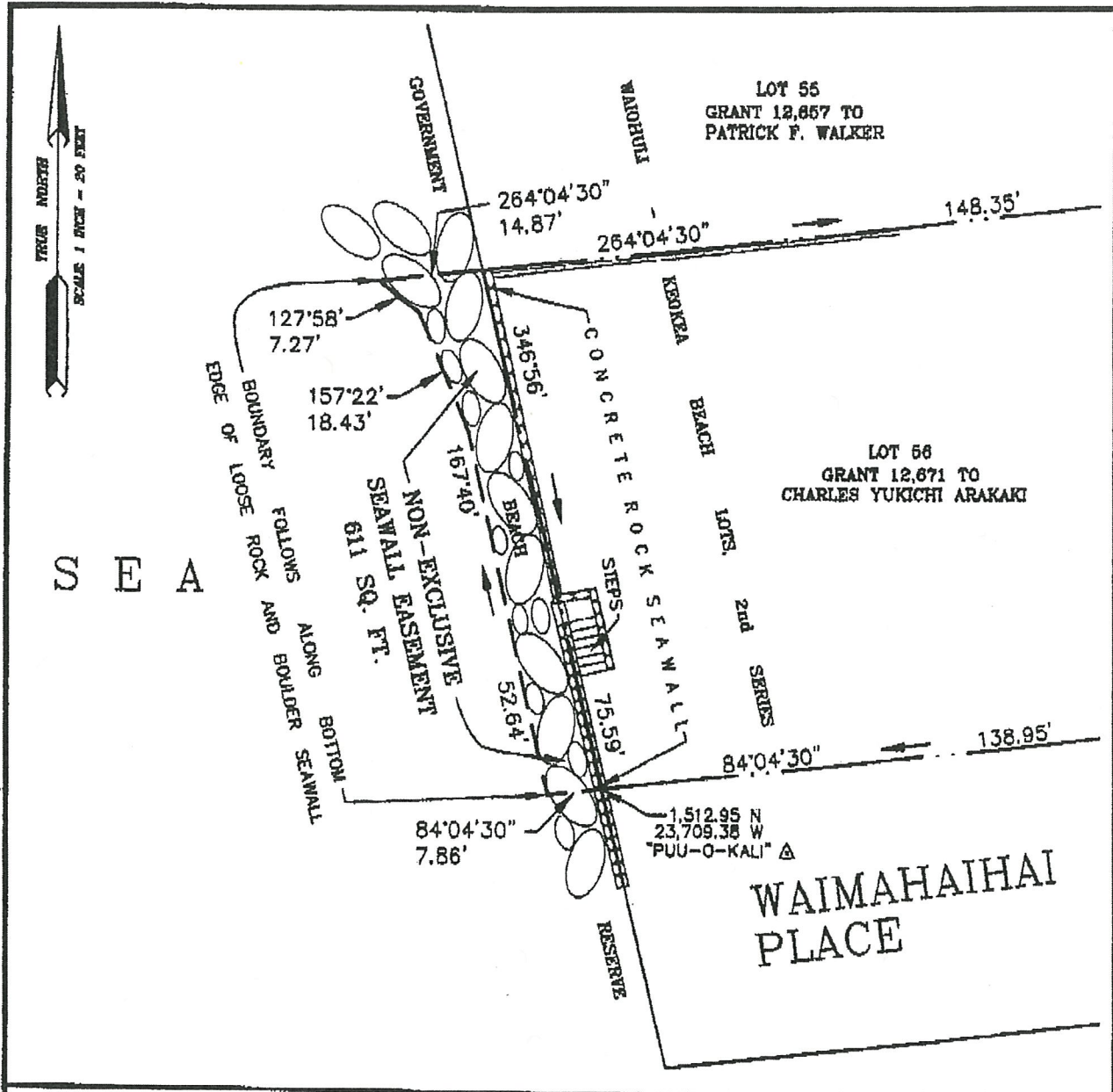
Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson





Carl R. Musto
THIS PLAT WAS PREPARED BY ME
OR UNDER MY SUPERVISION.

T.M.K.: (2) 3-9-012: 003

EASEMENT PLAT

NON-EXCLUSIVE SEAWALL EASEMENT
Fronting Grant 12,671 to Charles Yukichi Arakaki
SITUATED AT KAMAOLE, MAKAWAO, MAUI, HAWAII

PREPARED FOR:

MR. ROBIN M. KEAN

KIHEI, MAUI, HAWAII 96753

PREPARED BY:

CARL R. MUSTO
LAND SURVEYING, LLC
190 SOUTH MAKALEHA PLACE
MAKAWAO, MAUI, HAWAII 96788

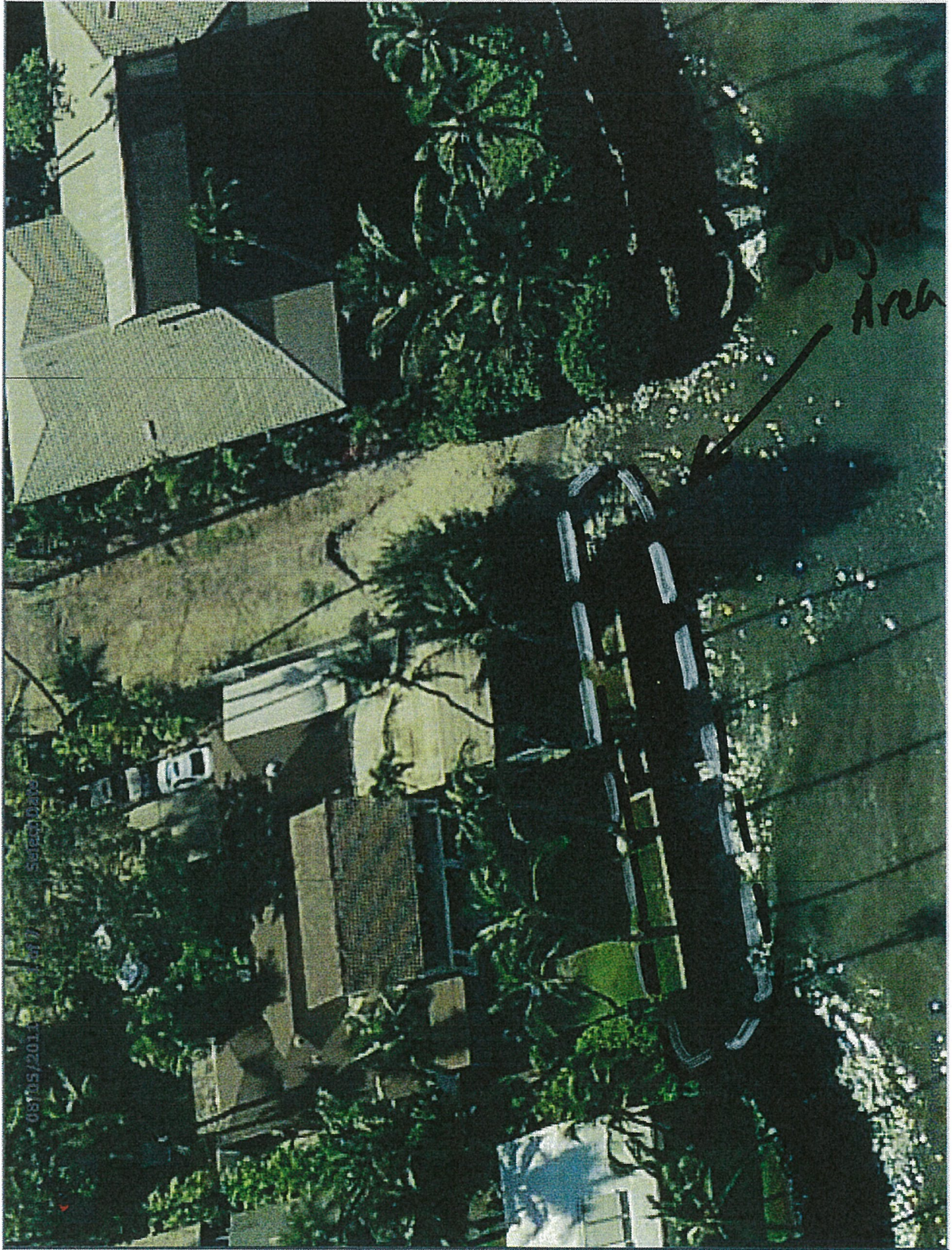
SCALE: 1 INCH = 20 FEET

DATE: JANUARY 23, 2015

8.5"X11"

DRAWING: 15-2031D

Exhibit B



DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 9, 2017

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

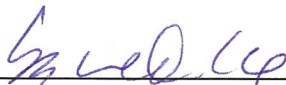
EXEMPTION NOTIFICATION

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


Project Title:	Grant of 55-Year Term, Non-Exclusive Easement to New Owners: Robin M. Kean and Jennifer Downs Kean, Trustees of the Robin M. Kean Revocable Living Trust dated October 1, 2015 and Jennifer Downs Kean and Robin M. Kean, Trustees of the Jennifer Downs Kean Revocable Living Trust dated October 1, 2015
Project / Reference No.:	PSF 14MD-065
Project Location:	Government Beach Reserve, Waiohuli, Kihei, Maui TMK: (2) 3-9-012: seaward of 003
Project Description:	Issuance of Shoreline Easement for Encroaching Seawall
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. 46, that states "Creation or termination of easement, covenants, or other rights in structures or land."
Consulted Parties:	DLNR Office of Conservation and Coastal Lands, MA-16-08

Recommendation:

It is anticipated that this easement 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

 5/23/17
Date