

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

September 22, 2017

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

PSF No. 17MD-118

Maui

Grant of Term, Non-Exclusive Easement to Seaview 2004, Inc. for Resolution of Encroaching Seawall Purposes, Spreckelsville, Wailuku, Maui, Tax Map Key: (2) 3-8-002: seaward of 001.

APPLICANT:

Seaview 2004, Inc., a Hawaii profit corporation.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of Spreckelsville, Wailuku, Maui, identified by Tax Map Key: (2) 3-8-002: seaward of 001, as shown on the attached map labeled Exhibit A.

AREA:

1,128 square feet, more or less.

ZONING:

State Land Use District:	Conservation
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:

Unencumbered with encroachments.

CHARACTER OF USE:

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

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

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

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

During a recent site visit, Office of Conservation and Coastal Lands (OCCL), staff observed the subject seawall and determined it appeared to be built before 1974, prior to the enactment of the EIS law and this action is therefore exempt from Ch. 343.

Furthermore, in accordance with the Exemption List for the Department of Land and Natural Resources, reviewed and concurred 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" and item 46, which states, "Creation or termination of easement, covenants, or other rights in structures or land."

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial rent/one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Obtain prior approval of the Governor and the prior authorization of the Legislature by concurrent resolution.

REMARKS:

The DLNR OCCL is in receipt of an engineering evaluation of the boulder revetment seaward of the subject property located at Tax Map Key (TMK) (2) 3-8-002:001. Previous correspondence from our office (DLNR Ref. Encroachment MA-17-01) dated December 12, 2016 requested an engineering analysis regarding the necessity of the boulder revetment to support the CRM wall fronting the subject property. Oceanit was contracted by the landowner, Seaview 2004, Inc., to conduct the engineering evaluation.

According to a Shoreline Encroachment Information Sheet and maps provided by the applicant dated October 26, 2016, the encroachment consists of a boulder revetment, a CRM wall, and CRM steps with an area of approximately 1,128 square feet. The CRM wall is believed to have been built in 1924. An aerial photograph dated January 28, 1964 appears to show the existence of the CRM wall and boulder revetment. Thus, the CRM wall and boulder revetment appear to be Non-Conforming land uses pursuant to Hawaii Revised Statutes, Chapter 183C. A letter dated June 23, 2016 from State Land Surveyor Reid Siarot notes that portions of the CRM wall, CRM steps, and the entire boulder revetment were identified seaward of the record property boundary for the subject property.

An approximately 15-foot tall portion of the sloping revetment structure extends about 30 feet seaward beyond the CRM wall. The toe of the structure extends seaward approximately 15 to 25 feet. The full extent of the structure is not known since it is partially covered by sand and water. A preliminary survey map (Exhibit B) calculates the encroachment to be 1,128 sf in size; however, the aerial photo attached as Exhibit C clearly shows that the extent of the rock revetment exceeds the outline of the revetment as illustrated on the survey map attached as Exhibit B. Therefore, the applicant will be required to adjust the encroachment map to recognize the full extent of the encroachment area.

The revetment does not appear to be an engineered revetment because smooth, possibly natural, basalt boulders were used rather than rough, angular quarry stone. Additionally, the smooth boulders were placed randomly rather than keyed and fitted.

The applicant notes that randomly placed smooth boulder stones are less stable and more likely to be displaced by waves than a properly constructed and maintained revetment; and that if the existing revetment does not include an engineered filter core, erosion of the material landward of the revetment slope may occur.

Applicant states that the seawalls fronting the properties to the east are undermined at the base of the structures. The CRM wall on the property may have a similar issue as portions of the exposed base of the CRM wall appear to have been repaired in the past. Applicant notes that if the base of the existing wall is damaged, the wall could be unstable and the mass of the existing boulder revetment may prevent the wall from toppling forward. According to an evaluation, the boulder revetment partially absorbs wave energy before it impacts the face of the CRM wall and removal of the revetment may put the CRM wall at a greater risk of failure due to increased wave impact forces. Applicant notes that the boulder revetment influences the coastal dynamics of Sugar Cove and may partially stabilize Sugar Cove Beach by reducing wave reflection off the CRM wall, absorbing incoming wave energy and impacting current circulation.

Upon review and careful consideration of the information gathered on this case, OCCL has determined that OCCL's evaluation criteria would support a disposition request being processed for the subject shoreline encroachments.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff is recommending a fine of \$500 as the subject encroachment is over 100 square feet.

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. Impose a \$500 fine for illegal encroachment, under Section 171-6(12).
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) 3-8-002: seaward of 001, 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 Seaview 2004, Inc. covering the subject area for seawall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

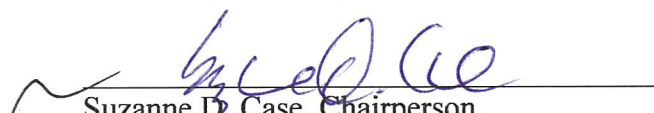
- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 3-8-002:001, provided however: (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.

Respectfully Submitted,

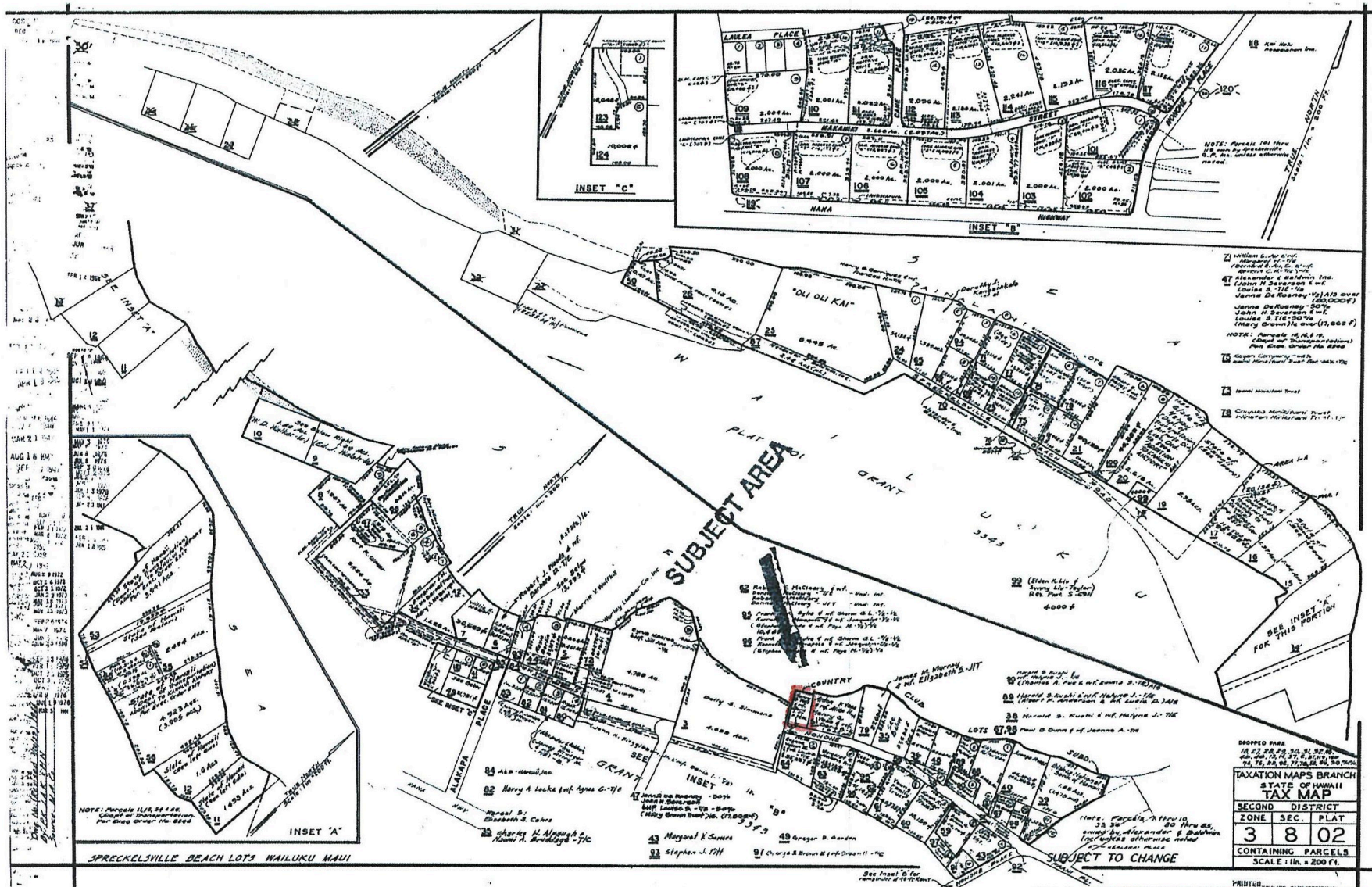


Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



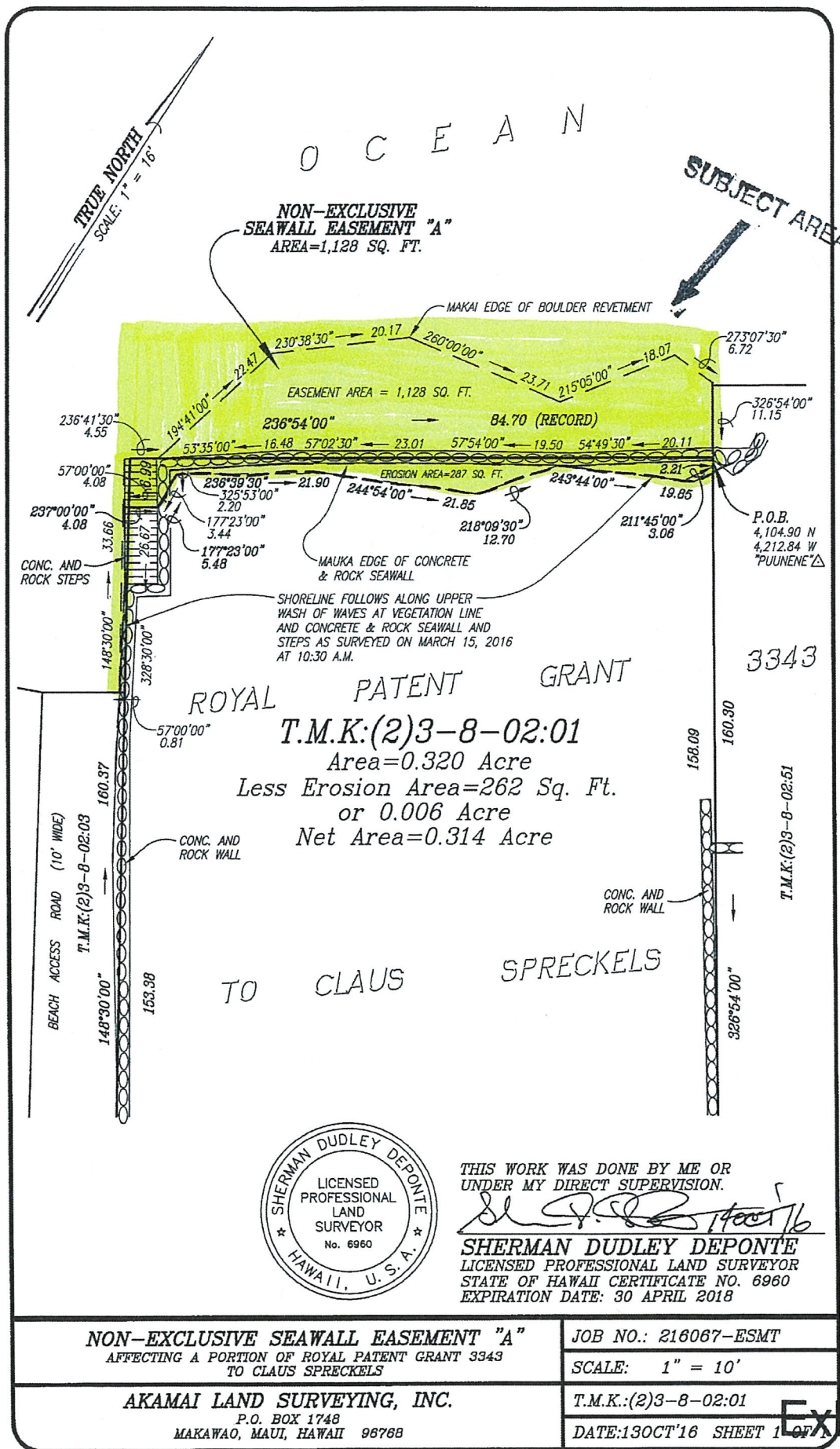


Exhibit B



EXHIBIT "C"

9/5/2017

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
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AQUATIC RESOURCES
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HISTORIC PRESERVATION
KAHOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DLNR:OCCL:NF

Encroachment MA-17-01

APR - 5 2017

Lance Holter
P.O. Box 790656
Paia, HI 96779

SUBJECT: Request to Resolve State Land Encroachment Seaward of
Cove, Paia, Maui; Tax Map Key: (2) 3-8-002:001

, Sugar

Dear Mr. Holter,

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) is in receipt of the engineering evaluation of the boulder revetment seaward of the subject property located at Tax Map Key (TMK) (2) 3-8-002:001. Previous correspondence from our office (DLNR Ref. Encroachment MA-17-01) dated December 12, 2016 requested an engineering analysis regarding the necessity of the boulder revetment to support the CRM wall fronting the subject property. Oceanit was contracted by the landowner, Seaview 2004, Inc., to conduct the engineering evaluation.

According to the Shoreline Encroachment Information Sheet and maps included with your letter dated October 26, 2016, the encroachment consists of a boulder revetment, a CRM wall, and CRM steps with an area of approximately 1,128 square feet. On the Shoreline Encroachment Information Sheet included with your letter, you note that the CRM wall was built in 1924. An aerial photograph included with your letter dated January 28, 1964 appears to show the existence of the CRM wall and boulder revetment. Thus, the CRM wall and boulder revetment appear to be Non-Conforming land uses pursuant to Hawaii Revised Statutes, Chapter 183C. A letter dated June 23, 2016 from State Land Surveyor Reid Siarot notes that portions of the CRM wall, CRM steps, and the entire boulder revetment were identified seaward of the record property boundary for the subject property.

According to the evaluation, the approximately 15 feet tall portion of the sloping revetment structure extends about 30 feet seaward beyond the CRM wall. The toe of the structure extends seaward approximately 15 to 25 feet. The full extent of the structure is not known since it is partially covered by sand and water. According to the evaluation, the revetment does not appear to be an engineered revetment as smooth, possibly natural, basalt boulders were used rather than rough, angular quarry stone and the smooth boulders were placed randomly rather than keyed and fitted. You note that randomly placed smooth boulder stones are less stable and more likely to be displaced by waves than a properly constructed and maintained revetment. You also note that if

EXHIBIT "D"

the existing revetment does not include an engineered filter core, erosion of the material landward of the revetment slope may occur.

In the evaluation, you note that the seawalls fronting the properties to the east are undermined at the base of the structures. The CRM wall on the property may have a similar issue as portions of the exposed base of the CRM wall appear to been repaired in the past. You note that if the base of the existing wall is damaged, the wall could be unstable and the mass of the existing boulder revetment may prevent the wall from toppling forward. According to the evaluation, the boulder revetment partially absorbs wave energy before it impacts the face of the CRM wall and removal of the revetment may put the CRM wall at a greater risk of failure due to increased wave impact forces. You note that the boulder revetment influences the coastal dynamics of Sugar Cove and may partially stabilize Sugar Cove Beach by reducing wave reflection off the CRM wall, absorbing incoming wave energy and impacting current circulation.

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

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 residential. The subject property is located adjacent to the Sugar Cove Condominium Complex. The shoreline is characterized by seawalls and revetments to the east and west of the subject property, with a restored sandy beach to the west. A public beach access runs along the western property boundary of the subject property. Paani Place borders the property to the south.

Beach Resources:

The subject property is located within Sugar Cove with rocky headlands on the eastern and western sides of the cove. There are little or no carbonate beach resources fronting the subject revetment and along the seawalls fronting the adjacent properties to the east. A restored sandy beach consisting of beach quality fill sand fronts the Sugar Cove Condominium Complex to the west. A shallow fringing reef extends offshore.

Public Access:

A public access path runs along the western property boundary of the subject property. Alongshore access is limited along the shoreline due to the lack of beach resources fronting the property. Alongshore access exists along the sandy beach to the west.

Effect of Removing the Encroachment on:

Beach Resources: The encroaching CRM wall, CRM stairs, and boulder revetment on the subject property and the revetments on the adjacent properties to the east are fronted by little to no carbonate beach resources with a shallow fringing reef extending offshore. Sugar Cove Beach, a restored sandy beach, fronts the adjacent property to the west. Studies by the University of Hawaii for the County of Maui estimate the historical erosion rate for Sugar Cove to be -1.8 feet per year¹. A geological map from the U.S. Geological Survey indicates that the backshore area behind the encroachments likely contains substantial deposits of beach sand². If the encroaching structures were removed in their entirety, the area was left unarmored, and it is confirmed that there is relic sand in the backshore, there could be a minor improvement to beach resources fronting the subject property. Removal of the encroachments could affect the stability of Sugar Cove Beach.

Public Access: The alongshore access is limited along the eastern portion of Sugar Cove due to extensive beach loss and shoreline armoring. It is possible but unlikely that removal of the encroaching structures would result in a minor improvement to lateral beach access fronting the subject property.

Effect on Adjacent Properties: Removal of the subject encroachments may destabilize seawalls and revetments on the adjacent properties, potentially affecting upland structures.

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. In cases where the encroachment serves as primary erosion control for potentially threatened structures, impacts to the adjacent and upland developments must also be considered. There are little or no carbonate beach resources fronting the subject revetment and along the seawalls fronting the adjacent properties to the east. It is possible but unlikely that removal of the encroachments would improve lateral shoreline access. A minor improvement of beach resources could be achieved if the encroaching structures were removed in their entirety, the area was left unarmored, and it was confirmed that there is relic sand in the backshore. However, removal of the subject encroachments could potentially affect upland development by destabilizing seawalls and revetments on the adjacent properties or affect the stability of Sugar Cove Beach. Furthermore, the structure has been in place for over 50 years.

Upon review and careful consideration of the information gathered on this case, OCCL has determined that 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.

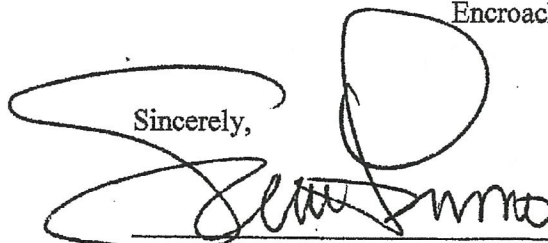
¹ Maui Shoreline Study Erosion Maps, Coastal Geology Group, School of Ocean and Earth Science and Technology, University of Hawaii at Manoa. <http://www.soest.hawaii.edu/coasts/erosion/maui/>

² Geologic Map of the State of Hawaii, Sheet 7 – Island of Maui, U.S. Geological Survey, Open-File Report 2007-1089: <http://pubs.usgs.gov/of/2007/1089/>

Lance Holter

Encroachment MA-17-01

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Samuel J. Lemmo', is written over a horizontal line.

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

Cc: MDLO
County of Maui, Planning Department-Current Division

DAVID Y. IGE
GOVERNOR



DOUGLAS MURDOCK
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 118, HONOLULU, HAWAII 96810-0118

June 23, 2016

Response refer to:
Ma-113(16)
MA-644

Mr. Sherman Dudley DePonte
Akamai Land Surveying, Inc.
P.O. Box 1748
Makawao, Maui, Hawai'i 96768

Dear Mr. DePonte:

Subject: Shoreline Certification Application
TMK 3-8-02: 01
Owner: Seaview 2004, Inc.
Spreckelsville, Pa'ia, Maui, Hawai'i

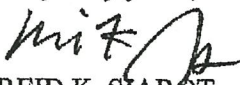
The subject property was inspected on June 22, 2016 to identify physical evidence of the shoreline on the ground at which time, a portion of the shoreline was determined to be further makai than delineated on the map. Also, a CRM seawall, portion of CRM steps, and a boulder revetment were identified on the makai side of the shoreline. Portions of the CRM wall, CRM steps and the entire boulder revetment were also identified on the makai side of the record property boundary. Before we can proceed, DLNR's Hawai'i Administrative Rules require the following:

1. §13-222-10(b): Revise the shoreline on the map and photos as delineated in red on the enclosed map.
2. §13-222-9(e)(2): Correct the tax map key number at the bottom left corner of the map.
3. §13-222-19: Resolve the shoreline encroachments of the CRM seawall, CRM steps, and boulder revetment. Contact the Maui District Branch Land Office (MDLO) of the Department of Land and Natural Resources at 984-8103 to resolve the encroachments.

After completion of the above, please submit a minimum of seven (7) copies of the revised map (including a minimum of two (2) photo index maps) and three (3) copies of the revised photos so that the certification process can be completed.

Should you have any questions on this application, please call me at 586-0390.

Very truly yours,


REID K. SIAROT
State Land Surveyor

Enclosure
cc: Ian Hirokawa
MDLO

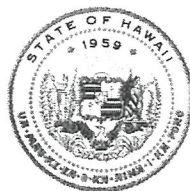
EXHIBIT "E"

SHORELINE ENCROACHMENT INFORMATION SHEET

1. Owner- Seaview 2004, Inc.
Contact – David Spee, Esq (Lance Holter-Agent)
P.O. Box 790478
Paia, HI 96779
Tele 808-579-8244 (office of David Spee), (Lance Holter)
2. Location- Spreckelsville, Pa'ia, Maui, Hawaii
TMK 3-8-02:01 (subject property)
Survey maps from 11/10/2003 and current April 13, 2016 are provided for reference
3. Approximate SF of the Encroachment is 1000 SF
4. The Sea Wall was built in 1924, see Affidavit by Doris Voss April 25, 2000. Aerial Photos by Towhill Corp. dated 01-03-1959 and 01-28-1964 show wall and boulders existing prior to October 1964. Voss Family photo of existing wall and beach area 1935 (provided from Sugar Cove Photo Archive, Paani Place-Spreckelsville Pa'a). Enclosed with this letter.
5. No known previous Shoreline Certifications exist for TMK 3-8-02:01. On June 23, 2016 the State Land Surveyor viewed and inspected the current Shoreline Certification Application on file.
6. The adjacent area is designated in the Maui Community Plan as Single Family. County Zoning is R-3 (Residential) see Zoning Confirmation Form.
7. Shoreline Verification Maps for 320 Paani, TMK 3-8-02:03 (adjacent and west of the subject property dated Jan 30, 1992) and 316 Paani, TMK 3-8-02:51 (adjacent and east of the subject property dated Sept 13, 2012) are on file with the State Survey Office. See Maps enclosed.
8. Existing Beach Resources are good to excellent. The beach West of the subject property is a very popular community recreation area for wind surfing, kite boarding, surfing, fishing, swimming,, children's' birthday parties, and citizen relaxation. The Sugar Cove Condominium fronts the Beach Area and residents there enjoy the resources continually.
9. A Public Beach Access 10' wide is available immediately west of the Subject Property from Paani Place. It provides good to excellent Beach Access. The community of Spreckelsville accesses this Beach from Paani Place through the 10' wide sandy pathway. It is a popular destination for the Residents of Spreckelsville, Maui Citizens and for visitors to the County of Maui.
10. Removing the encroachment would effectively be impossible and unnecessary as the encroachment has been in place for over 90 years, it has not impeded any public access throughout this time period.
11. Removing the encroachment would not improve beach access nor beach processes as the existing encroachment does not affect present conditions. In fact it improves these conditions in that it provides for safe public access, protection from storms and high water and surf. The beach conditions were originally impacted by years of sand mining from the Alexander & Baldwin sugar operations from the 1880's and onwards to the present for the old lime kiln at Baldwin park-Paia and the HCS sugar field roadways there.

EXHIBIT "F"

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809
September 22, 2017

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

ROBERT K. MASUDA
FIRST DEPUTY

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

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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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:	Issuance of Right-of-Entry Permit to Seaview 2004, Inc. for Seawall purposes
Project / Reference No.:	PSF 17MD-118
Project Location:	Spreckelsville, Wailuku, Maui; TMK: (2) 3-8-002: seaward of 001
Project Description:	Resolution of Encroaching Seawall onto Public Lands
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No. and Description:	In accordance with the Exemption List for the Department of Land and Natural Resources, reviewed and concurred 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" and item 46, which states, "Creation or termination of easement, covenants, or other rights in structures or land."
Consulted Parties:	State DLNR Office of Conservation and Coastal Lands
Recommendation:	It is anticipated 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.