

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

July 13, 2018

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

PSF No.: 17MD-089

MAUI

Amend Prior Board Action of August 25, 2017, Item D-10, Grant of Term, Non-Exclusive Easement to Kahanu Family Limited Partnership for Seawall Purposes, Kuau, Hamakuapoko, Maui, Tax Map Key: (2) 2-6-010: Seaward of 017.

The purpose of the amendment is to 1) add a third encroachment area to the Easement, 2) reduce the previously approved 1600 square feet (estimated Easement Area) to 1390 square feet (surveyed Easement Area), and 3) approve an After-the-Fact Right of Entry for the Easement Area.

BACKGROUND:

At its meeting on August 25, 2017, item D-10, the Board approved a grant of a 55 year term, non-exclusive easement for the use, maintenance, repair, replacement and removal of an existing seawall, portions of which are located seaward of the subject property located at 569 Hana Highway, identified as TMK (2) 2-6-010:017. A copy of the approved submittal is attached as Exhibit 1. The applicant landowner was identified as the Kahanu Family Limited Partnership. The property has since been sold, and the current landowner, Sea & Believe LLC, now comes before the Board as the Applicant seeking amendment of the Board's approval.

At the time of the approval, the exact location of the seaward record boundary of the property was not confirmed. In order to ensure that the easement area would cover the encroachments in their entirety, the Board was asked to approve an area of 1600 square feet, more or less, covering two encroachment areas. Since the approval, the Applicant's surveyor confirmed the location of the record boundary, resulting in identifying two encroachment areas of 1096 square feet and 114 square feet, more or less, for a total of 1210 square feet, more or less. Additionally, the Applicant has obtained a shoreline location determination from a private consultant. The proposed shoreline is located along the top of the seawall. As a result, additional portions of the seawall, including the footing and concrete steps are now located seaward of the shoreline. Applicant's surveyor has identified these encroachments in a third encroachment area consisting of 180 square feet. Therefore the Board is requested to now approve a total easement area of 1390 square feet, consisting of three encroachment areas. Maps showing the new encroachment area and the total easement area attached as Exhibit 2.

Additionally, portions of the seawall have become damaged and are at risk of collapsing into the shoreline area. As the area is used by members of the public, this poses a public health and safety risk. The Applicant has installed a tieback system utilizing steel cables to stabilize the

seawall. The tieback system is located on the landward side of the seawall, outside of the shoreline area and largely on private land. Applicant has obtained an Emergency SMA approval from the County of Maui. Applicant is also seeking to replace the current tieback system with a more substantial system to provide greater stability to the seawall, with the ultimate goal to repair the seawall. As some of the steel cables are located in the easement area mauka of the seawall, the Applicant is requesting an after the fact right of entry to allow the tieback to remain in the easement area. The right of entry will remain in effect until the execution of the easement. Since this action is conducted to address a public health and safety issue, and is consistent with the purpose of the approved easement (which includes maintenance and repair of the seawall), staff supports the approval of the right of entry.

RECOMMENDATION: That the Board amend its prior action of August 25, 2017, item D-10 by:

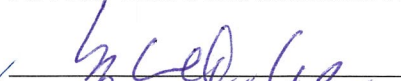
1. Approving the inclusion of the additional encroachment in the easement;
2. Revising the easement area to 1390 square feet, more or less;
3. Approve, after the fact, the issuance of a right-of-entry permit to Sea & Believe LLC covering the amended easement area for purposes consistent with the easement 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; and,
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. All other terms and conditions in the August 25, 2017 approved submittal to remain the same.

Respectfully Submitted,



Ian Hirokawa
Special Project Coordinator

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

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

August 25, 2017

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

PSF No.:17MD-089

Maui

Grant of Term, Non-Exclusive Easement to Kahanu Family Limited Partnership for Seawall Purposes, Kuau, Hamakuapoko, Maui, Tax Map Key: (2) 2-6-010: Seaward of 017.

APPLICANT:

Kahanu Family Limited Partnership, a Domestic Limited Partnership.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of 017 Kuau, Hamakuapoko, Maui, identified by Tax Map Key: (2) 2-6-010, as shown on the attached map labeled Exhibit A.

AREA:

1,600 square feet, more or less.

ZONING:

State Land Use District: CONSERVATION

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

August 25, 2017 *KCF*

EXHIBIT 1

D-10

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:

In accordance with the Exemption List for the Department of Land and Natural
Resources, approved by the Environmental Council on June 15, 2015, the subject request
is exempt from the preparation of an environmental assessment pursuant to Exemption
Class No. 1, "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, "Creation or termination of easement,
covenants, or other rights in structures or land". An exemption notice is attached as
Exhibit D.

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 one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Obtain authorization of the Legislature by concurrent resolution.

REMARKS:

The applicant is in the process of selling property located at 569 Hana Highway in Kuau, Maui further identified as TMK (2) 2-6-010:017. In performance of standard due diligence, in preparation for the sale of the premises, it was realized that the encroachment existed. The applicant then contacted the DLNR Office of Conservation and Coastal to seek resolution. By letter dated July 20, 2017 (Exhibit C), OCCL responded to the applicant with a no objection letter in regards to the disposition of an easement for the subject encroachment.

The encroachment consists of portion of a seawall, approximately 1,600 square feet in size that was built in the 1940's. The concave seawall extends beyond the seaward boundary on each end of the property (Exhibit B). Pursuant its analysis of the area, OCCL concluded that a CDUA was not required because of the age of the seawall and stated that beach resources and/or public access are not negatively impacted. Therefore, OCCL does not object to the encroachment remaining in place.

The 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) 2-6-010: 017, 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 Kahanu Family Limited Partnership 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) 2-6-010: 017, 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:


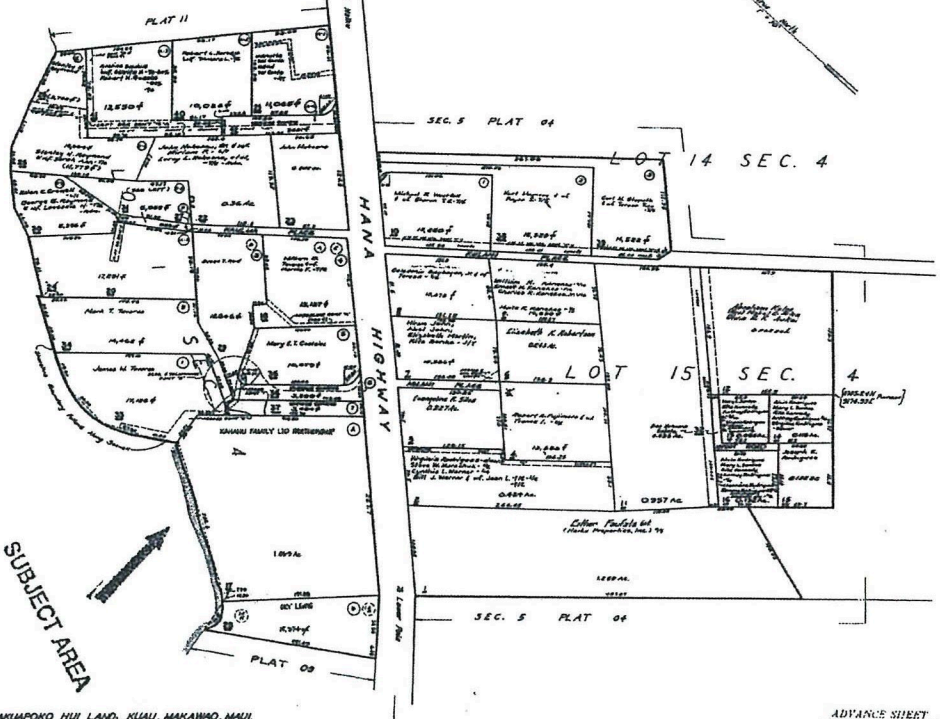

Suzanne D. Case, Chairperson

EXHIBIT A

FOR HANAKUPOKO HUI LAND, KULU, MAKAHANO, MAUI.

SUBJECT AREA



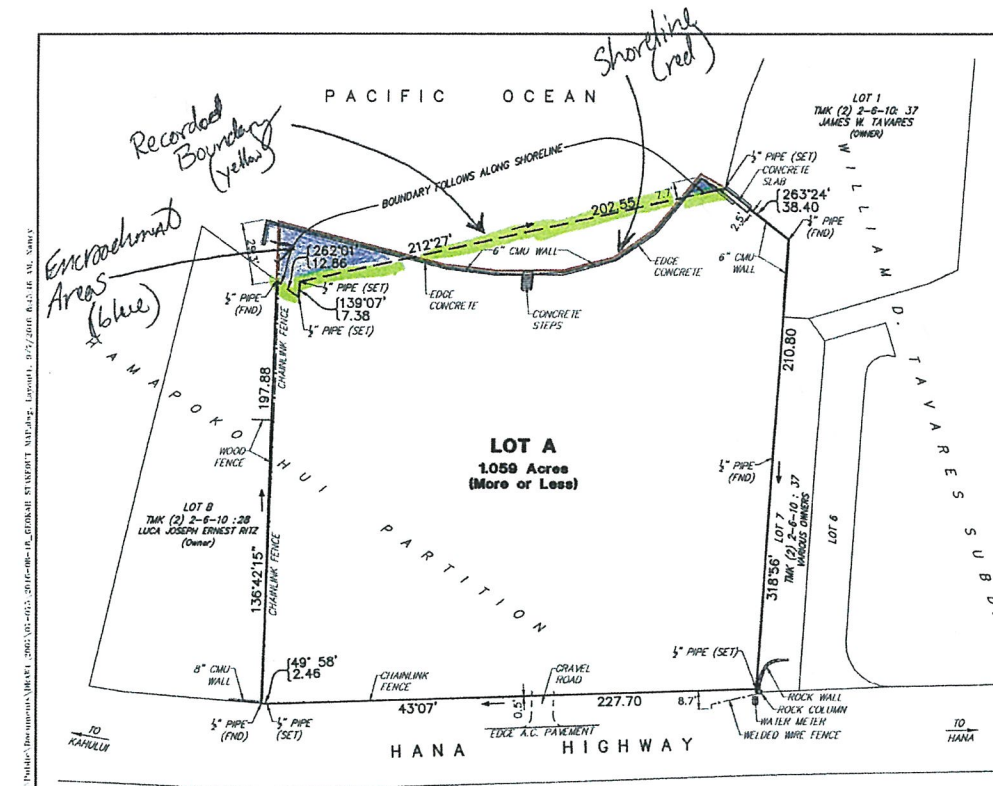
Sheet 10-5

SECTION	REVISION
2	6
10	10

CONTAINING 23 PARCELS
SCALE 60' = 1" (1" = 60')

PRINTED

ADVANCE SHEET
SUBJECT TO CHAMOR



STAKEOUT MAP LOT A, HAMAKUAPOKO HUI PARTITION

AT KUAU, MAKAWAO,
MAUI, HAWAII



Tax Map Key: (2)2-6-10:17

871 KOLU STREET, SUITE 201
WAILUKU, MAUI, HAWAII 96793

R. T. TANAKA ENGINEERS, INC.
LAND SURVEYORS - CIVIL & STRUCTURAL ENGINEERS

AUGUST 19
JOB NO. 0

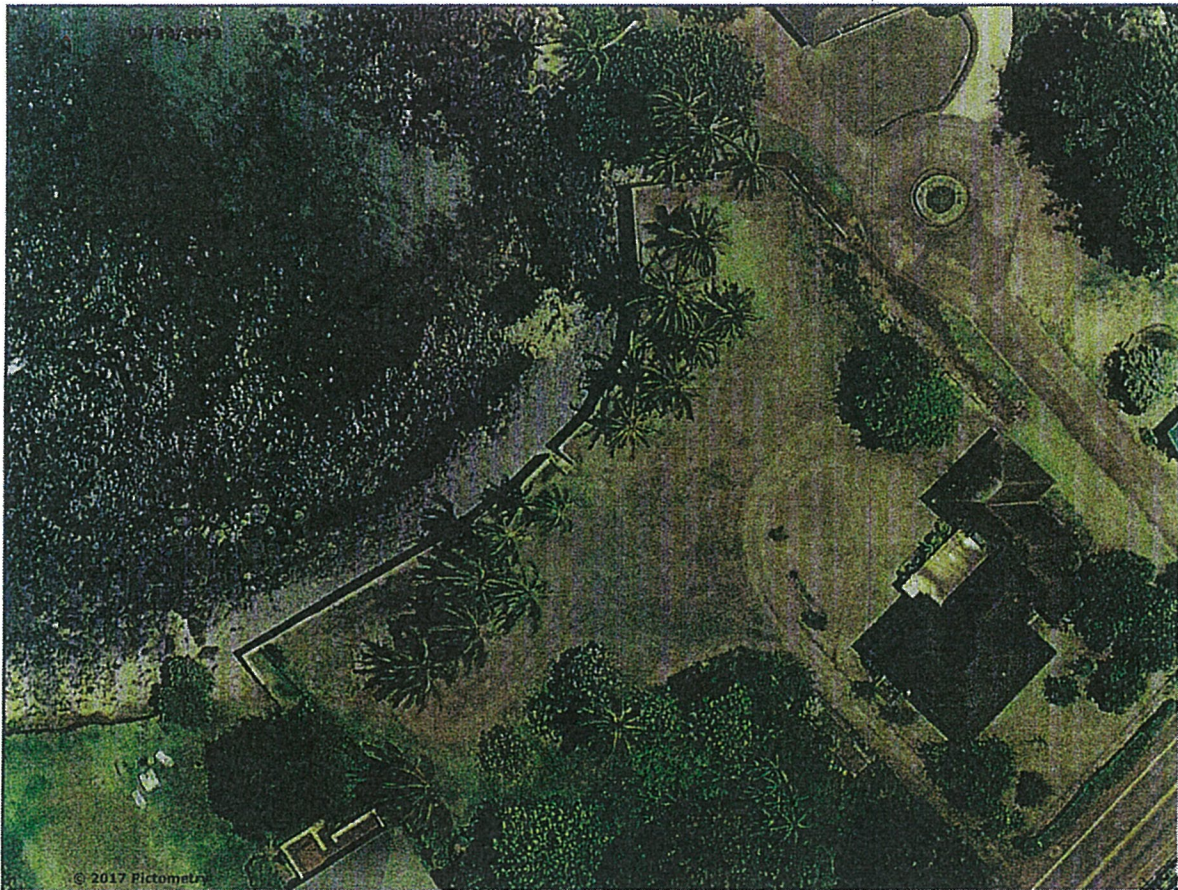


Exhibit B

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-18-01

John B. Guard IV

JUL 20 2017

Paia, HI 96779

SUBJECT: Request to Resolve State Land Encroachment Located Seaward of
Paia, Maui: Tax Map Key: (2) 2-6-010:017

Dear Mr. Guard,

The Department of Land and Natural Resources, Office of Conservation and Coastal Lands (OCCL) is responding to your July 10, 2017 request to resolve the State land encroachment located seaward of Tax Map Key (2) 2-6-010:017. According to the information provided, there is approximately 1,600 square feet of encroachment (east and west corners of a seawall) seaward of the subject property boundary onto State lands. You are working on behalf of the landowner, Ernest Dias, to resolve the encroachment.

You are seeking to resolve the encroachments fronting the subject property to move forward with a shoreline certification. A previous certified shoreline from November 16, 1978 identified the shoreline along the seawall. According to the Shoreline Encroachment Questionnaire, the seawall was built in the 1940s during World War II by the United States Army Corps of Engineers and the east and west corners, approximately 1,600 square feet, of the seawall appear to have been built seaward of the metes and bounds of the subject property. You note the existing single-family dwelling was built on the subject property in the 30s or 40s. Included with your letter was an aerial image of the subject property from R.M. Towill dated January 28, 1964 which appears to show the existing seawall. You also included affidavits from three separate individuals that claim the existence of the seawall prior to October 1964. Thus, the seawall appears to be a Non-Conforming land use pursuant to Hawaii Revised Statutes (HRS), Chapter 183C.

The Board of Land and Natural Resources 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;

EXHIBIT "C"

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 single-family dwelling on the subject property is set back more than 100 feet from the seawall. The surrounding land uses are primarily residential. The adjacent neighbors are mostly fronted by natural boulders and do not appear to have shoreline structures fronting their properties. Hana Highway borders the property to the south.

Beach Resources:

The subject property is located in Tavares Bay between two rocky headlands with a sandy bottom area directly offshore. A narrow, pocket cobble beach exists seaward of the subject seawall. According to your letter, a small sandy beach fronted the property until the 1980s.

Public Access:

Access to a sandy beach in Kuau Bay exists less than a quarter mile to the west of the subject property. Alongshore access fronting the subject property is limited due to the rocky nature of the shoreline.

Effect of Removing the Encroachment on:

Beach Resources: The encroaching areas of the seawall fronting the subject property were built on State land on the public beach. The shoreline fronting the subject property has experienced moderate erosion with an annual erosion rate of -0.4 feet per year¹. Removal of the encroaching areas of the seawall would not result in a significant improvement to the beach resources fronting the subject property.

Public Access: The alongshore access is limited along Tavares Bay due to the beach loss fronting the subject property and the rocky nature of the shoreline. Removal of the encroaching areas of the seawall would not result in an improvement to lateral beach access fronting the subject property.

Effect on Adjacent Properties: The adjacent property to the west appears to be experiencing some flanking erosion effects from the seawall on the subject property. It also appears the subject seawall was partially built on or seaward of the adjacent property to the west.

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.

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

John B. Guard IV

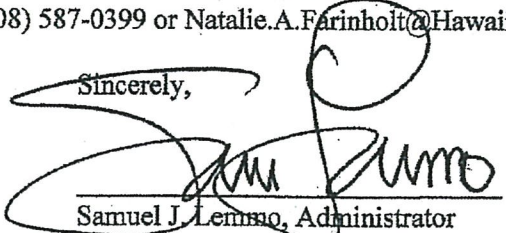
Encroachment: MA-18-01

There are little or no carbonate beach resources fronting the subject seawall. It is unlikely that removal of the encroachments would improve lateral shoreline access. A minor improvement of beach resources could be achieved if the seawall was removed in its entirety, the area was left unarmored and there is adequate sand in the backshore. However, the majority of the seawall is located on private property and there does not appear to be any benefit to removing the smaller encroaching seawall segments. 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.

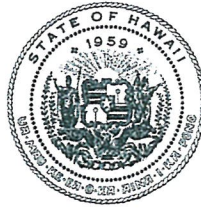
Sincerely,



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

Cc: MDLO
County of Maui

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 11, 2017

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

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

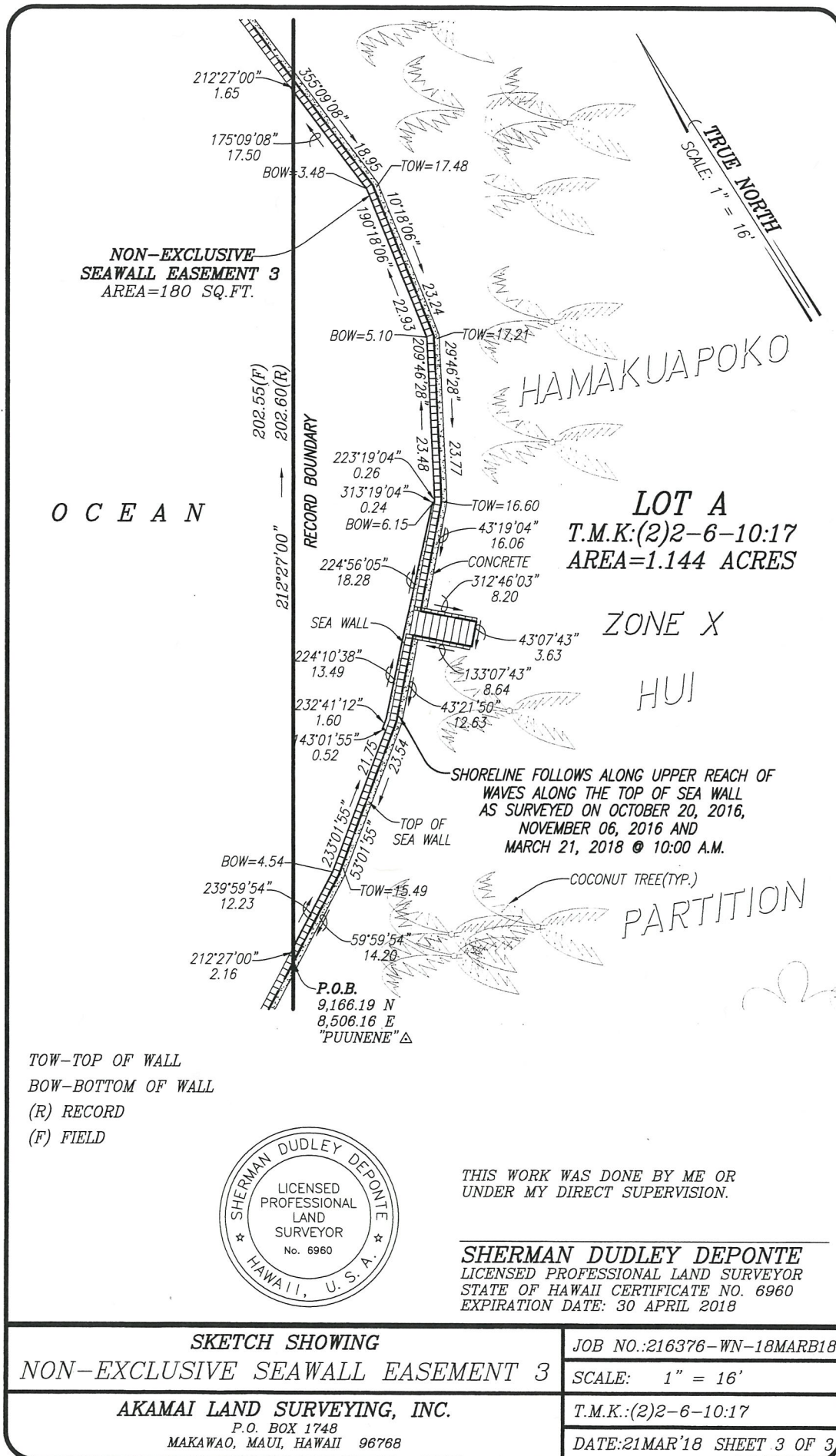
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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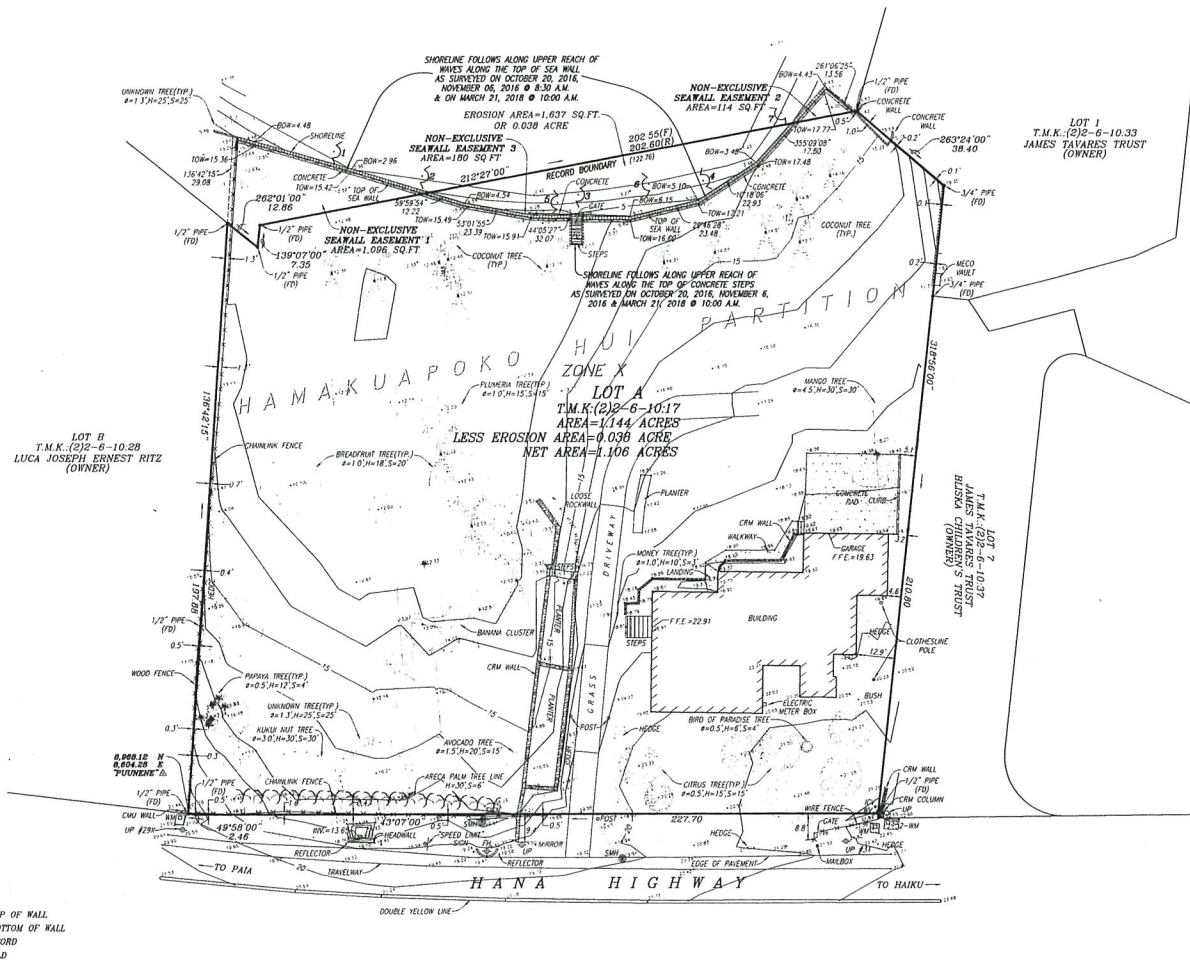
EXEMPTION NOTIFICATION

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

Project Title:	Grant of Term, Non-Exclusive Easement to Kahanu Family Limited Partnership for Seawall Purposes
Project / Reference No.:	PSF 17MD-089
Project Location:	Kuau, Hamakuapoko, Maui; TMK: (2) 2-6-010: seaward of 017
Project Description:	Resolution of Seawall Encroachment
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 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 the "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.

EXHIBIT D





SHORELINE CERTIFICATION MAP OF LOT A OF THE HAMAKUAPOKO HUI PARTITION (SUBDIVISION FILE NUMBER 2.2328)

SITUATE AT
KUAU, PAIA, MAUI, HAWAII

DATE: NOVEMBER 08, 2017 SCALE: 1" = 20'

REVISED: JANUARY 22, 2018

REVISED: FEBRUARY 26, 2018

REVISED: MARCH 21, 2018

AKAMAI LAND SURVEYING, INC.

P.O. BOX 1748
MAKAWAO, MAUI, HAWAII 96768
(808) 876-0177

- NOTES:
- OWNERS OF ADJOINING LAND PARCELS TAKEN FROM TAX MAP RECORDS
 - AZIMUTHS AND COORDINATES ARE BASED ON RECORD INFORMATION AND REFER TO GOVERNMENT SURVEY TRIANGULATION STATION "PUUNENE" Δ.
 - TOPOGRAPHIC & SHORELINE INFORMATION SHOWN HEREON IS BASED ON AN ACTUAL FIELD SURVEY PERFORMED ON OCTOBER 20, 2016, NOVEMBER 6, 2017 AND ON AND ON MARCH 21, 2018 @ 10:00 A.M.
 - FLOOD ZONE SHOWN HEREON ARE BASED ON FIRM MAP 150003-0408, DATED SEPTEMBER 25, 2009 AND INDEX MAP DATED NOVEMBER 4, 2015
 - ELEVATIONS SHOWN HEREON ARE BASED ON U.S.C. & G.S. BENCH MARK NO. 17, PER THE STATE OF HAWAII, D.O.T. ELEVATION TAKEN AS 16.04 FEET ABOVE MEAN SEA LEVEL - LOCAL TIDAL DATUM.

T.M.K. (2)2-6-10-17

OWNERS:
KAHANU FAMILY LIMITED PARTNERSHIP
ERNEST DIAS - GENERAL PARTNER
569 HANA HIGHWAY
PAIA, MAUI, HAWAII 96779



THIS WORK WAS DONE BY ME OR UNDER MY DIRECT SUPERVISION.

SHERMAN DUDLEY DEPONTE
LICENSED PROFESSIONAL LAND SURVEYOR
STATE OF HAWAII CERTIFICATE NO. 6960
EXPIRATION DATE: APRIL 30, 2018