

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

October 12, 2018

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

PSF No.: 03MD-359A

MAUI

Amend Two Prior Board of Land and Natural Resources Actions of 1) August 25, 2017, under Agenda Item D-9, as amended, and 2) May 8, 2015, under Agenda Item D-8, Both Affecting TMK (2) 3-9-011:008: CPR 0001 and an Area Seaward of TMK (2) 3-9-011:008 CPR 0001, Located in Waiohuli-Keokea Homesteads and Beach Lots, Waiohuli-Keokea (Kihei), Wailuku, Maui.

The purposes of these amendments are 1) to approve an additional term, non-exclusive easement seaward of TMK (2) 3-9-011:008 CPR 0001 for seawall purposes, and 2) to change the applicant requesting the previously approved easements affecting TMK (2) 3-9-011:008 CPR 0001 and the area seaward of TMK (2) 3-9-011:008 from “Association of Owners of 1688 Halama Street Condominium” to “Rand 2013 Living Trust, Dated November 25, 2013.”

APPLICANT:

Rand 2013 Living Trust, Dated November 25, 2013

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of the parcel identified by Tax Map Key: (2) 3-9-011:008 CPR 0001, as shown on the attached map labeled Exhibit A.

AREA:

507 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: 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:

Sixty-five (65) 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, 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, "Creation or termination of easement, covenants, or other rights in structures or land". An exemption notice is attached as Exhibit B.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is 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; and
- 3) Obtain concurrent resolution from the Legislature pursuant to Section 171-53(c), HRS.

REMARKS:

At its meeting on August 25, 2017, under agenda item D-9 (“2017 Board Action”), the Board approved as amended its prior action of its May 8, 2015 approval of agenda item D-8 (“2015 Board Action”). The 2015 Board Action was itself an amendment of a prior Board action of August 10, 1990, under agenda item F-7 (“1990 Board Action”). The 1990 Board Action was the sale of a perpetual, non-exclusive easement for repair and maintenance of existing seawall seaward of Tax Map Key: (2) 3-9-011:007 and 008; Waiohuli-Keokea Homesteads and Beach Lots; Waiohuli-Keokea (Kihei), Wailuku, Maui, Hawaii. The 2015 Board Action amended the 1990 Board Action to change the applicant requesting the easement as to parcel 008 to the Association of Owners of 1688 Halama Street Condominium (Association), include an exemption notification under Hawaii Revised Statutes Chapter 343, amend the term of the easement from perpetual to 65 years, include requirements that the Association obtain a concurrent resolution from the Legislature for the issuance of the easement and provide an updated survey map, and authorize the issuance of an immediate right of entry to the Association.

The 2017 Board Action amended the 2015 Board Action to approve the division of the seawall easement benefitting TMK (2) 3-9-011:008 to two separate easements seaward of TMK (2) 3-9-011:008 CPR 0001 and CPR 0002, respectively. Additionally, the Board approved a change in the applicant for the easement seaward of CPR 0002 from the Association to the owner of CPR 0002 individually. The Board also approved an additional easement covering additional seawall encroachments seaward of TMK (2) 3-9-011:008 CPR 0002. It was noted in the 2017 Board Action that the owner of CPR 0001 would come before the Board in a separate action to also replace the owners association as the applicant for the easement fronting CPR 0001 and seek approval for another easement to resolve the additional encroachments.

The 2017 Board Action further amended the staff recommendations to 1) obtain the written concurrence of the association representing the two unit owners to the grant of easement and 2) exclude landscaped areas that were located mauka of the seawall and makai of the shoreline. A copy of the approved 2017 Board Action, which also includes the 2015 and 1990 Board Actions, is attached as Exhibit D.

Since then the two unit owners have executed a written agreement to assign responsibility of the divided easements to the respective unit owners rather than the owners association. A copy of the agreement is attached as Exhibit C. The owner of CPR 0001 now comes before the Board seeking approval to replace the owners association as the applicant and for an additional easement to resolve the outstanding seawall encroachments as CPR 0002 had done previously.

Similar to the CPR 0002 easement, the proposed easement covers portions of the seawall located both mauka and makai of the original easement originally approved in 1990. In order to be consistent with the Board's previous approval, the landscaped area between the seawall and the shoreline has been excluded from this easement as well. The key distinction between the present proposed easement and the CPR 0002 easement is the presence of a sidewall located along the northern lateral boundary of the CPR 0001. As only CPR 0002 applied for and ultimately received a certified shoreline, it is not known the extent to which the sidewall is encroaching seaward of the shoreline.

As a precaution, the applicant's surveyor has included the entire sidewall in the easement area, totaling 88 square feet. Staff will work with the applicant and the State Surveyor to attempt to determine an estimated shoreline location for CPR 0001 based on observations from the site visit conducted for the CPR 0002 certified shoreline application. The applicant may then decide whether to amend the easement area to conform to the estimated shoreline location. As such it is noted that the portion of the easement area covering the sidewall may be subject to change.

To clarify the easement areas, the map included as Exhibit A is highlighted in green to show the new easement areas requested from the Board in the present action. Staff notes that the new easement areas will be a separate easement from the original easement approved in 1990, which is highlighted in purple on the map. For reference, CPR 0001 is designated as Unit 1688-A on the map, and CPR 0002 is designated as Unit 1688-B. The original easement was previously appraised and paid for, and thus will be retroactive to the 1990 Board Action. At the expiration of the 1990 Board Action easement, the owners will need to work with the State to further consolidate the easement areas.

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. Change the Applicant as to TMK (2) 3-9-011:008 CPR 0001 from the Association of Owners of 1688 Halama Street Condominium to Rand 2013 Living Trust, Dated November 25, 2013;
3. 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) 3-9-011:008 CPR 0002, 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.
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of an additional term, non-exclusive easement to Rand

2013 Living Trust, Dated November 25, 2013 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:

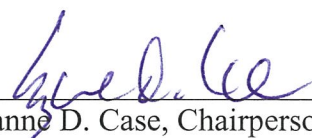
- A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 3-9-011:008 CPR 0001, provided 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.
5. Except as amended previously and hereby, all terms and conditions listed in the May 8, 2015 and August 25, 2017 approvals to remain the same.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

N



1" = 16'
GRAPHIC SCALE
0 8 16

PACIFIC OCEAN

EXHIBIT "A"

POB-Non-Exclusive Easement 5
2,637.97 ft North
23,961.15 ft West

263° 51' 00"
0.86'
200° 45' 05"
6.35'

Makai edge of concrete

Non-Exclusive Easement 4 for Existing Seawall Purposes in favor of Unit 1688-A. (130 sq.ft)

Non-Exclusive Easement 5 for Existing Seawall Purposes in favor of Unit 1688-A. (225 sq.ft)

POB-Non-Exclusive Easement 4
2,600.22 ft North
23,961.61 ft West

Non-Exclusive Easement 3 for Existing Seawall Purposes in favor of Unit 1688-B. (225 sq.ft)

Non-Exclusive Easement 1 for Existing Seawall Purposes in favor of Unit 1688-B. (169 sq.ft)

POB-Non-Exclusive Easement 1
2,563.40 ft North
23,953.11 ft West

POB-Non-Exclusive Easement 6 & 7
2,639.38 ft North
23,947.54 ft West

KEOLAIKI PLACE

264° 04' 30" 267.27'

Non-Exclusive Easement 7 for Existing Seawall Purposes in favor of Unit 1688-A. (88 sq.ft)

Non-Exclusive Easement 6 for Existing Seawall Purposes in favor of Unit 1688-A. (289 sq.ft)

SHORELINE AS SURVEYED ON AUGUST 13, 1997

EXISTING SEAWALL

UNIT 1688-A

CPR 0001

CPR 0002

LOT 42

Non-Exclusive Easement 2 for Existing Seawall Purposes in favor of Unit 1688-B. (289 sq.ft)

UNIT 1688-B

SHORELINE FOLLOWS ALONG THE DEBRIS LINE - MARCH 31, 2017.

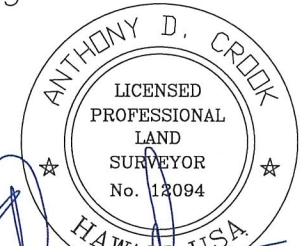
84° 04' 30" 266.97'

LOT 43

DESIGNATION OF NON-EXCLUSIVE EASEMENTS 1, 2, & 3 IN FAVOR OF UNIT 1688-B "1688 HALAMA STREET" CONDOMINIUM MAP #2959 FOR EXISTING SEAWALL PURPOSES

BEING A PORTION OF LOT 42 "WAIHOLI KEOKEA BEACHLOTS, 2ND SERIES"

AT WAIHOLI-KEOKEA, KIHAI, ISLAND AND COUNTY OF MAUI, STATE OF HAWAII



THIS MAP WAS PREPARED BY ME OR UNDER MY SUPERVISION. MY LICENSE EXPIRES APRIL 30, 2020

ANTHONY D. CROOK
LICENSED PROFESSIONAL LAND SURVEYOR
CERTIFICATE No. 12094

AILANA SURVEYING & GEOMATICS LLC
PHONE (808)346-1818
FAX 1-800-655-6297
INFO@AILANASURVEYING.COM

G:\Projects\AILANA SURVEYING\14-0014.dwg

MAP DATED: September 14, 2018

TMK(2) 3-9-011-008

EXEMPTION NOTIFICATION

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

Project Title: Amend Prior Board Actions of August 25, 2017, Agenda Item D-9 and May 8, 2015, Agenda Item D-8.

Project / Reference No.: PSF 03MD-359A

Project Location: Waiohuli-Keokea (Kihei), Wailuku, Maui, seaward of TMK (2) 3-9-011:008 CPR 0001

Project Description: Additional Easement Area of Encroachment on State Submerged Lands

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

Exemption Class No.: 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".

Cumulative Impact of Planned Successive Actions in Same Place Significant: None, the seawall is pre-existing and no new construction will occur as part of this easement.

Action May Have Significant Impact on Particularly Sensitive Environment: None, the shoreline area has been armored since 1982-83.

Consulted Parties: Office of Conservation and Coastal Lands

Analysis: In the past, amended easements were issued for similar situations where additional areas of encroachments have been identified during the process of obtaining a new shoreline survey. Since no new structures have been constructed in the added encroachment areas, staff anticipates that this should result in no significant impacts to the natural and environmental resources in the area. As such, staff believes that the proposed request would involve

negligible or no expansion or change in use of the subject area beyond that previously existing.

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.

/s/ LESLIE T. KOBATA, Registrar
ICL 7

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL PICK-UP :

Tom Pierce, Esq.
P.O. Box 798
Makawao, HI 96768
808-573-2428

Tax Map Key No. (2)-3-9-11-8

Total Pages: 7

**AMENDMENT TO THE DECLARATION OF CONDOMINIUM PROPERTY REGIME
1688 HALAMA STREET CONDOMINIUM**

This AMENDMENT TO THE CONDOMINIUM PROPERTY REGIME 1688 HALAMA STREET CONDOMINIUM (this "Amendment") is made by the ASSOCIATION OF APARTMENT OWNERS OF 1688 HALAMA STREET CONDOMINIUM, INC. (the "Association"), a Hawaii non-profit corporation.

RECITALS:

WHEREAS, by that certain *Declaration of Condominium Property Regime 1688 Halama Street Condominium* recorded in the Bureau of Conveyances of the State of Hawaii ("Bureau") as Document No. 99-144523 on September 8, 1999, as amended by *Amendment of Declaration of Condominium Property Regime of 1688 Halama Street Condominium*, recorded in the Bureau as Document No. 99-163736 on October 13, 1999 (collectively, the "Declaration"), the property described therein being previously submitted to a Horizontal Property Regime (now known as a "Condominium Property Regime") established pursuant to the Horizontal Property Act, Chapter 170-A, Revised Statutes of Hawaii 1955, as amended (now known as the "Condominium Property Act", Chapter 514B, Hawaii Revised Statutes, as amended);

EXHIBIT "C"

WHEREAS, Section 18 of the Declaration requires the affirmative vote of seventy-five percent (75%) of all apartment owners to amend the Declaration; and

WHEREAS, on the dates identified by the signatures below, one hundred percent (100%) of the apartment owners affirmatively agreed to amend the Declaration, as set forth below.

NOW, THEREFORE, Section 4.4(e) of the Declaration (which stated, "The concrete seawall and three-foot in width concrete walk.") shall be deleted in its entirety.

NOW, THEREFORE, Section 4.5 of the Declaration shall be amended as follows (strikethrough represents deleted language; underlining represents added language):

4.5 LIMITED COMMON ELEMENTS. The limited common elements are the land area reserved for the exclusive use of the particular apartment as shown on the Condominium Map by dashed lines, the swimming pool within the respective ~~its~~ limited common area, the mailbox assigned to the respective ~~that particular~~ apartment, and the following ~~garage apartments to the respective units~~:

- a. Garage Apartment No. 1688-C1 shall be appurtenant to Apartment 1688-A; and
- b. Garage Apartment No. 1688-C2 shall be appurtenant to Apartment 1688-B;
- c. That portion of the concrete and rock seawall and concrete walkway fronting the respective apartment shall be appurtenant thereto.

The limited common area reserved for the exclusive use of Apartment No. 1688-A is SUBJECT, HOWEVER, to an access to Apartment No. 1688-B from Keolaiki Place (*i.e.*, the garage breezeway) for emergency purposes, ~~and~~ minor maintenance and/or repair to Apartment No. 1688-B or its limited common elements, for access to the water outlet assigned to Apartment No. 1688-B, for access to, and use of rubbish and/or recycling containers, and for general access to the rear of the garage building.

The concrete walkway fronting Apartment No. 1688-B is SUBJECT, HOWEVER, to an access to Apartment No. 1688-A to gain access to stairs to the ocean located on the adjacent property, with street address 1690 Halama Street.

In all other respects, the Declaration remains in full force and effect.

This amendment shall become effective upon its recordation in the Bureau.

The undersigned, representing all of the apartment owners of the 1688 Halama Street Condominium, certify that the foregoing amendment is hereby duly adopted.

IN WITNESS WHEREOF, the undersigned have executed this Amendment this ____ day
of _____, 2018.

**ASSOCIATION OF APARTMENT OWNERS
OF THE 1688 HALAMA STREET
CONDOMINIUM, INC.**

By 
MATTHEW MORTON
President

OWNER OF APARTMENT UNIT 1688-B

By 
MATTHEW MORTON
President of Reconstruct Holdings USA, Inc.

OWNERS OF APARTMENT UNIT 1688-A

By _____
DAVID L. RAND, Trustee of the Rand 2013
Living Trust Dated November 25, 2013

By _____
GLENA J. RAND, Trustee of the Rand 2013
Living Trust Dated November 25, 2013

IN WITNESS WHEREOF, the undersigned have executed this Amendment this ____ day
of _____, 2018.


**ASSOCIATION OF APARTMENT OWNERS
OF THE 1688 HALAMA STREET
CONDOMINIUM, INC.**

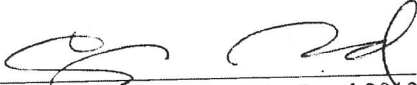
By _____
MATTHEW MORTON
President

OWNER OF APARTMENT UNIT 1688-B

By _____
MATTHEW MORTON
President of Reconstruct Holdings USA, Inc.

OWNERS OF APARTMENT UNIT 1688-A

By 
DAVID L. RAND, Trustee of the Rand 2013
Living Trust Dated November 25, 2013

Glenna
By 
GLENA J. RAND, Trustee of the Rand 2013
Living Trust Dated November 25, 2013

STATE OF Hawaii)
) ss.
COUNTY OF Maui)

On this 23rd day of February, 2018, before me personally appeared MATTHEW MORTON, who, being by me duly sworn or affirmed, did say that he is the President of the Association of Apartment Owners of 1688 Halama Street Condominium, Inc., and also the representative for the owner of Unit B of the 1688 Halama Street Condominium, and the foregoing instrument was executed as the free act and deed of said association, and owner, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity. Said association has no seal.



Tamara Y. Cabanilla-Aricayos
Signature:

TAMARA Y. CABANILLA-ARICAYOS
Expiration Date: February 22, 2021

Print Name:
Notary Public, State of Hawaii
My commission expires: _____

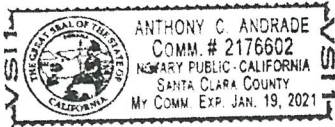
Doc. Date: <u>Undated</u>	# Pages: <u>6</u>
Notary Name: <u>Tamara Y. Cabanilla-Aricayos</u> <u>2nd</u> Circuit	
Doc. Description: AMENDMENT TO THE DECLARATION OF CONDOMINIUM PROPERTY REGIME 1688 HALAMA STREET CONDOMINIUM	
<u>Tamara Y. Cabanilla-Aricayos</u> Notary Signature	<u>Feb 20 2018</u> Date
NOTARY CERTIFICATION	(Stamp or Seal)

STATE OF CA)
COUNTY OF Santa Clara) ss.

On this 13th day of February, 2018, before me personally appeared GLENNA J. RAND, Trustee of the Rand 2013 Living Trust, dated November 25, 2013, who, being by me duly sworn or affirmed, did say that she is one of the owners of Unit A of the 1688 Halama Street Condominium, and the foregoing instrument was executed as the free act and deed of said owner, and if applicable in the capacity shown.

Anthony C. Andrade
Signature:

Anthony C. Andrade
Print Name:
Notary Public, State of CA
My commission expires: 01/19/2021

Doc. Date: <u>02/13/2018</u>	# Pages: <u>10</u>
Notary Name: <u>Anthony C. Andrade</u> Circuit	
Doc. Description: AMENDMENT TO THE DECLARATION OF CONDOMINIUM PROPERTY REGIME 1688 HALAMA STREET CONDOMINIUM	
<u><i>Anthony C. Andrade</i></u> Notary Signature	<u>2/13/18</u> Date
	
NOTARY CERTIFICATION	(Stamp or Seal)

STATE OF CA)
COUNTY OF Santa Clara) ss.

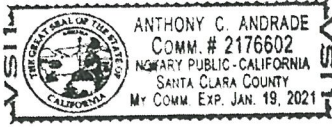
On this 13th day of February, 2018, before me personally appeared DAVID L. RAND, Trustee of the Rand 2013 Living Trust, dated November 25, 2013, who, being by me duly sworn or affirmed, did say that he is one of the owners of Unit A of the 1688 Halama Street Condominium, and the foregoing instrument was executed as the free act and deed of said owner.

Anthony C. Andrade
Signature:

Anthony C. Andrade
Print Name:

Notary Public, State of CA

My commission expires: 01/19/2021

Doc. Date: <u>2/13/2018</u>	# Pages: <u>6</u>
Notary Name: <u>Anthony C. Andrade</u> Circuit	
Doc. Description: AMENDMENT TO THE DECLARATION OF CONDOMINIUM PROPERTY REGIME 1688 HALAMA STREET CONDOMINIUM	
<u><i>Anthony C. Andrade</i></u> Notary Signature	<u>2/13/18</u> Date
	
NOTARY CERTIFICATION	(Stamp or Seal)

AMENDED

D-9

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.: 03MD-359A

MAUI

Amend Prior Board of Land and Natural Resources action of May 8, 2015, under Agenda Item D-8: "Amend prior Board of Land and Natural Resources action of August 10, 1990, under agenda item F-7, as amended: *Direct Sale of a Perpetual, Non-Exclusive Easement for Repair and Maintenance of Existing Seawall Seaward of and Fronting Tax Map Key: (2) 3-9-11:7 and 8; Waiohuli-Keokea Homesteads and Beach Lots; Waiohuli-Keokea (Kihei), Wailuku, Maui, Hawaii.* The purpose of the amendment is to change the applicant requesting the easement as to Parcel 8 to the Association of Owners of 1688 Halama Street Condominium (Association), include an exemption notification under Hawaii Revised Statutes Chapter 343, amend the term of the easement from perpetual to 65 years, include requirements that the Association obtain a concurrent resolution from the Legislature for the issuance of the easement and provide an updated survey map, and authorize the issuance of an immediate right of entry to the Association."

The purposes of this amendment are to 1) divide the approved easement area from one easement seaward of TMK (2) 3-9-011:008 into two separate easements seaward of TMK (2) 3-9-011:008 CPR 0001 and CPR 0002, respectively, 2) approve an additional term, non-exclusive easement seaward of TMK (2) 3-9-011:008 CPR 0002 for seawall and landscaping purposes, and 3) change the applicant requesting the easements for TMK (2) 3-9-011:008 CPR 0002 to Reconstruct Holdings USA, Inc.

APPLICANT:

Reconstruct Holdings USA, Inc., a foreign profit corporation

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of the parcel identified by Tax Map Key: (2) 3-9-011:008 CPR 0002, as shown on the attached map labeled Exhibit 1.

AREA:

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
August 25, 2017 *dkc*

EXHIBIT "D"

D-9

782 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: 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 and landscaping 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:

Sixty-five (65) 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 2.

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 concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

BACKGROUND:

At its meeting on August 10, 1990, under Agenda Item F-7, the Board approved a 900 square foot, more or less, perpetual, non-exclusive easement for seawall purposes seaward of TMK (2) 3-9-011:007 and 008, to the Charles E. Hickman Trust and Virginia S. Hickman Trust, the owner of both parcels. An appraisal conducted in 1990 determined the fair market value of the easement to be \$4000.00. The prior applicant tendered payment for that amount but for reasons unknown, the easement document was never executed.

Over the years, ownership in both parcels was conveyed to separate owners. Parcel 008 was developed into a two unit residential condominium project identified as 1688 Halama Street Condominium. CPR 0001 is owned by the Rand 2013 Trust. CPR 0002, which is the subject of this action, is owned by Reconstruct Holdings USA, Inc. The condominium is governed by the Association of Owners of 1688 Halama Street Condominium (Association).

At its meeting on May 8, 2015, under Agenda Item D-8, the Board amended the August 10, 1990 approval with respect to Parcel 008 by 1) changing the applicant to the Association, 2) including an exemption notice pursuant to Chapter 343, Hawaii Revised Statutes for the easement, 3) amending the easement term from perpetual to a 65 year term, 4) issuance of an immediate right of entry to the Association and 5) additional requirements in order to conform to the current easement disposition process. The approval submittal, which includes the original August 10, 1990 approval, is included as **Exhibit 3**.

In February 2017, Applicant submitted an application for certified shoreline for CPR 0002. On March 31, 2017, the State Surveyor and Department staff conducted a site inspection of the shoreline. The shoreline was located further mauka of the seawall, into the yard of the property. This resulted in the portion of the seawall mauka of the approved easement area that was located originally on private property now makai of the shoreline, as well as a portion of the landscaped yard. Furthermore, in working with the

Applicant to resolve the encroachment, it was discovered that there were additional portions of the seawall located makai of the existing approved easement area.

REMARKS:

In order to resolve the outstanding encroachments, Applicant has identified three separate easement areas seaward of CPR 0002 for approval to be treated as a separate disposition from the original seawall easement. The reason is that the original easement, although not yet executed, will retroactively commence on August 10, 1990. Since a portion of the present encroachments is a result of the shoreline migrating further inland, there is no way to verify the present location of the shoreline was the same in 1990. Additionally, the original easement has already been appraised and paid for. Therefore, staff believes it is appropriate to value the proposed easement areas at present day value and commence the easement term accordingly. A map with the proposed easement areas is attached as Exhibit 1.

Proposed Non-Exclusive Easement 1 is approximately 169 square feet and covers the portion of the seawall makai of the original easement area fronting CPR 0002 only. Proposed Non-Exclusive Easement 2 is approximately 288 square feet and covers the portion of the seawall from the record seaward boundary to the mauka edge of the seawall, which is now located seaward of the shoreline. Proposed Non-Exclusive Easement 3 is approximately 325 square feet and covers the portion of landscaped filled land located mauka of the seawall but makai of the shoreline. There is no improvement located within Proposed Non-Exclusive Easement 3. The total easement area is approximately 782 square feet, more or less.

When the easement was first approved in 1990, the policy for shoreline encroachment used the recorded private property boundary to determine the mauka boundary of the encroachment easement, regardless if any portion of the shoreline were mauka of the recorded boundary (assuming the shoreline was determined to be mauka of the recorded boundary). At that time staff was concerned about assuming State ownership over previously private lands and the possibility of a "takings" claim. Subsequently, after much analysis and discussion with the Department of the Attorney General, Land Division took the position that every structure built by the private land owner (or predecessors) that is situated seaward of the shoreline is an encroachment on State land and needs to be resolved by either removal or applying for an easement.

Applicant contends that they should not be required to obtain an easement for the area covered by Easement 3, since there is no improvement on that portion of the property. Staff's position is that the area should be included in the easement, as it is consistent with past Board actions since the area being utilized by the landowner for their use (i.e. landscaped and maintained). Furthermore, the presence of the seawall essentially serves to privatize the area. As the Applicant is seeking the easement in order to resolve the encroachment to obtain a certified shoreline, Applicant will work with staff to finalize the easement to consist of an area the Board deems appropriate.

Furthermore, as CPR 0001 and CPR 0002 (which is the subject of this request) are owned by different entities, Applicant is also requesting that the easement that was approved to the Association on May 8, 2015 be divided into two separate easements, with each easement located seaward of and benefitting the respective landward CPR unit. Consequently, the owners of the CPR units will be individually responsible for the easements seaward of their unit. The portion of the original easement seaward of CPR 0002 is approximately 450 square feet, more or less. Only CPR 0002 is seeking to resolve their encroachments in order to obtain a certified shoreline. In the event that the owner of CPR 0001 seeks to resolve their encroachments, staff will work with them separately to obtain easements in conformance with the Board's decision for this request. Additionally, staff will bring a separate request on behalf of CPR 0001 to the Board for a similar approval for a change in applicant and amendment of the easement area¹.

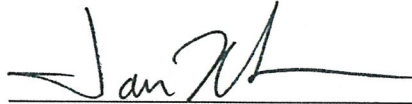
RECOMMENDATION: That the Board amend its prior action of May 8, 2015 under Agenda Item D-8 by approval of the following:

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. Divide the previously approved easement area seaward of TMK (2) 3-9-011:008 into two separate easements seaward of TMK (2) 3-9-011:008 CPR 0001 and CPR 0002 respectively;
3. Change the Applicant as to TMK (2) 3-9-011:008 CPR 0002 from the Association of Owners of 1688 Halama Street Condominium to Reconstruct Holdings USA, Inc.;
4. 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) 3-9-011:008 CPR 0002, 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.
5. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of an additional term, non-exclusive easement to Reconstruct Holdings USA, Inc. covering the subject area for seawall and landscaping 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;

¹ The owners of CPR 0001 will be provided a copy of the submittal prior to the Board meeting for their information, as well as to provide them an opportunity to submit testimony.

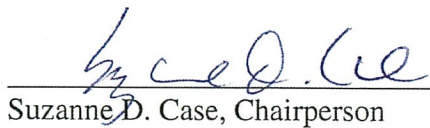
- B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 3-9-011:008 CPR 0002, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other 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.
6. Except as amended hereby, all terms and conditions listed in the May 8, 2015 approval to remain the same.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

Land Board Meeting: August 25, 2017; D-9: Approved as amended.

Approved as amended. See attached page.

Land Board Meeting: August 25, 2017; D-9: Approved as amended.

Approved as amended. The Board amended the staff submittal to include a new Applicant Requirement no. 4 on page 3 to read: "Obtain the written concurrence of the Association of Owners of 1688 Halama Street Condominium to the grant of easement." Additionally, the Board amended recommendation no. 5 of the submittal to exclude easement 3 from the grant. Easement 3 covers the area between the certified shoreline and the mauka edge of the walkway. By excluding easement 3 from its approved action, however, the Board clarified that it is not disclaiming any interest the State may have in such land.⁴

⁴ Board Member Roehrig stated that the Department needs to make clear to the Legislature the scope of the problem caused by sea level rise on ocean front private properties. He suggested there needs to be a better approach to the problem than requiring easements be issued to such private landowners at fair market value as a result of shoreline movement. He suggested a letter from the Chair or the Board members to the Legislature explaining the situation and the urgent need for a solution. He also asked that a copy of the Department's shoreline encroachment bill be sent to all Board members.

AREA OF EASEMENTS			
EXISTING EASEMENT	PROPOSED EASEMENT 1	PROPOSED EASEMENT 2	PROPOSED EASEMENT 3
APT 1688-B	225 SQ. FT.	169 SQ. FT.	288 SQ. FT.
			325 SQ. FT.

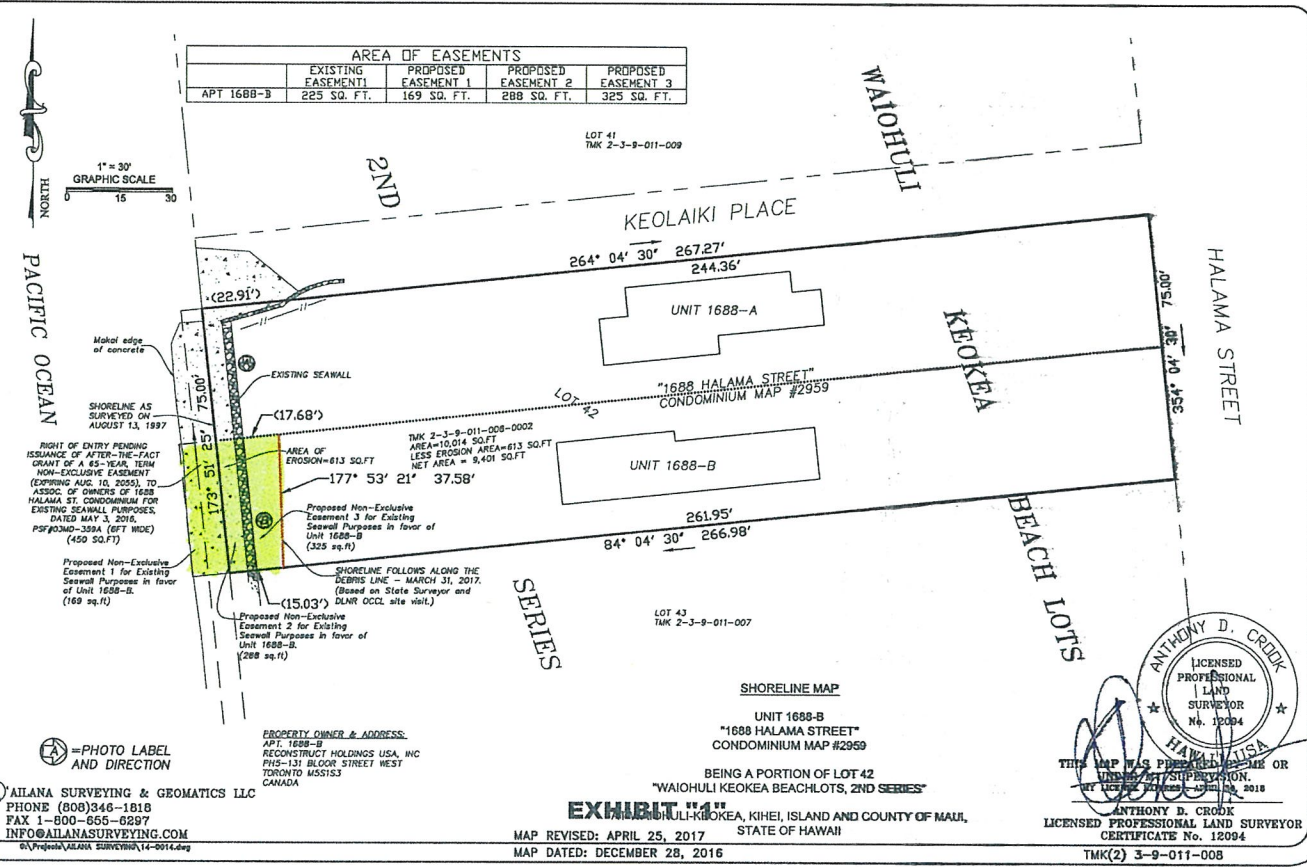


EXHIBIT "1"

ANTHONY D. CROOK
 LICENSED PROFESSIONAL LAND SURVEYOR
 No. 12094
 HAWAII
 THIS MAP WAS PREPARED FOR ME OR UNDER MY SUPERVISION
 BY LIC. NO. 14-0014-008
 ANTHONY D. CROOK
 LICENSED PROFESSIONAL LAND SURVEYOR
 CERTIFICATE No. 12094
 TMK(2) 3-9-011-008

EXEMPTION NOTIFICATION

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

Project Title: Amend Prior Board Action of May 8, 2015, Agenda Item D-8

Project / Reference No.: PSF 03MD-359A

Project Location: Waiohuli-Keokea (Kihei), Wailuku, Maui, seaward of TMK (2) 3-9-011:008 CPR 0002

Project Description: Additional Easement Area of Encroachment on State Submerged Lands

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

Exemption Class No.: 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".

In the past, amended easements were issued for similar situations where additional areas of encroachments have been identified during the process of obtaining a new shoreline survey. Since no new structures have been constructed in the added encroachment areas, staff anticipates that this should result in no significant impacts to the natural and environmental resources in the area. As such, staff believes that the proposed request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

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.

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

May 8, 2015

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

PSF No.:03MD-359A

Maui

Amend prior Board of Land and Natural Resources action of August 10, 1990, under agenda item F-7, as amended: *Direct Sale of a Perpetual, Non-Exclusive Easement for Repair and Maintenance of Existing Seawall Seaward of and Fronting Tax Map Key: (2) 3-9-11:7 and 8; Waiohuli-Keokea Homesteads and Beach Lots, Waiohuli-Keokea (Kihei), Wailuku, Maui, Hawaii.* The purpose of the amendment is to change the applicant requesting the easement as to Parcel 8 to the Association of Owners of 1688 Halama Street Condominium (Association), include an exemption notification under Hawaii Revised Statutes Chapter 343, amend the term of the easement from perpetual to 65 years, include requirements that the Association obtain a concurrent resolution from the Legislature for the issuance of the easement and provide an updated survey map, and authorize the issuance of an immediate management right-of-entry to the Association.

APPLICANT:

Association of Owners of 1688 Halama Street Condominium

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Section 11-200-8(a)(1)(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" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation." See **Exhibit A**.

DCCA VERIFICATION:

Not applicable. The Applicant is an association of apartment owners for the 1688 Halama Street Condominium. Whereas 1688 Halama Street Condominium or the Applicant does not consist of more than five apartments, the Applicant is not required to register annually with the Department of Commerce and Consumer Affairs.

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

May 8, 2015 *l.o.*

EXHIBIT "3"

BACKGROUND:

In or around May 1990, staff of the Department of Land and Natural Resources investigated and found that portions of a seawall were built on government beach reserve lands in Wailuku, Maui without proper State authorization.

At its meeting of August 10, 1990, under agenda item F-7, a copy of which is attached as **Exhibit B**, the Board of Land and Natural Resources approved the assessment of a \$500 fine and a direct sale of a perpetual, non-exclusive easement to Charles E. Hickman Trust and Virginia S. Hickman Trust (“Hickman Trust”), for the repair and maintenance of existing seawall seaward of and fronting Tax Map Key: (2) 3-9-11:7 and 8 (hereinafter the “1990 Land Board Approval”).¹

In August 1990 and pursuant to the terms of the 1990 Land Board Approval, the Hickman Trust submitted payments for the assessed fine and for the cost of an independent appraisal report contracted for by the Department (the “1990 Appraisal”). The 1990 Appraisal determined that the one-time payment for the above described perpetual non-exclusive easement was \$4,000.00, effective as of September 1, 1990. On June 23, 1992, a check from Hickman Trust in the amount of \$4,055.00 was received by the Department to cover the consideration for the perpetual easement as well as document and mapping fees assessed by Land Division. A copy of the map is attached as **Exhibit C**.

Notwithstanding the above, and for reasons that are unknown, the formal easement document was not finalized despite administrative approval and payment for the same.

Hickman Trust has since conveyed its interest in TMKs (2) 3-9-11:7 and 8. Public records indicate that the current owner of TMK (2) 3-9-11:7 (“Parcel 7”) is Garry A. Webber, while TMK (2) 3-9-11:8 (“Parcel 8”) was developed into a two-unit residential condominium project identified as 1688 Halama Street Condominium. Public records indicate the individual owners of the condominium units are as follows:

TMK:	(2) 3-9-11:08 CPR 1	(2) 3-9-11:08 CPR 2
Apartment:	1688-A	1688-B
Owner of Record:	RAND 2013 Living Trust	RECONSTRUCT HOLDINGS USA INC.

Together the condominium owners comprise the Association of Owners of 1688 Halama Street Condominium (“Association”). By letter dated January 22, 2015, the Association

¹ The original request to the Board of Land and Natural Resources (“Land Board”) was for the direct sale of a 65-year non-exclusive easement. Meeting minutes, however, indicate Land Division staff requested that the proposed easement be amended from a 65-year term to a perpetual easement. Meeting minutes do not indicate any further discussion and pursuant to staff’s request, Land Board approved item F-7 as amended.

requested that pursuant to the 1990 Land Board Approval, an easement seaward of Parcel 8 be granted to the Association.

REQUESTED AMENDMENTS/REMARKS:

In order to both comply with the 1990 Land Board Approval while remaining consistent with current Land Board actions, Land Division is recommending the 1990 Land Board Approval to be amended as follows:

1. Change the applicant from Charles E. Hickman Trust and Virginia S. Hickman Trust to the Association of Owners of 1688 Halama Street Condominium, subject however to the Association obtaining and providing Land Division with appropriate state and county tax clearances.

Since the 1990 Land Board Approval, Parcel 8 has been legally partitioned into a 2-unit residential condominium. The condominium public report for the project specifically identifies the “concrete seawall” as a common element of 1688 Halama Street Condominium, which is under the management and responsibility of the Association. Moreover, neither the Association, nor the individual condominium owners of 1688 Halama Street Condominium have 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.

2. Include an exemption notification under Chapter 343, Hawaii Revised Statutes (HRS). The 1990 Land Board Approval did not address HRS Chapter 343, which is inconsistent with the Board’s current practice. The exemption notification as attached as Exhibit A.
3. Amending the subject easement from a perpetual easement to a 65-year term easement, commencing retroactively on August 10, 1990.

Notwithstanding the 1990 Land Board approval, the Land Board no longer issues perpetual easements for encroachments in the shoreline area. Rather, in response to requests of non-exclusive easements for seawall related purposes, the Land Board issues term easements to allow periodic reviews to determine if an easement is still needed, or if any special conditions are required to address changes in shoreline conditions over time. The Association is agreeable to forgoing a perpetual easement and accepting a 65-year easement.

Moreover, in lieu of reopening the appraisal process for the proposed term easement, the Association is agreeable to proceed with acquiring the 65-year easement based on the 1990 Appraisal of the previously approved perpetual easement. The 1990 Appraisal would logically have a greater value than the same easement having a 65-year term, which is being recommended as an amendment. Whereas compensation based on the 1990 Appraisal was received by Land

Division in 1992, no further compensation or refund shall be required by the State or the Association.

4. Including requirements that the Association: (a) provide an amended survey map covering the easement area seaward of Parcel 8, and (b) obtain a concurrent resolution from the Legislature pursuant to Section 171-53(c), HRS. The 1990 Land Board Approval did not require compliance with HRS Section 171-53(c). However, the Department of the Attorney General will not process the easement without a resolution from the Legislature.
5. Include the issuance of an immediate management right-of-entry permit to the Association 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 2016 legislative session.

Although the 1990 Land Board Approval authorized issuing an easement for portions of the seawall fronting Parcel 7 and Parcel 8, the amended terms being recommended for approval are exclusive to Parcel 8. Land Division has not discussed the pending easement or any proposed amendments with the current owner of Parcel 7. Prior to the documentation of any easement for Parcel 7, Land Division will discuss proposed amendments with the current owner of Parcel 7 and bring a recommendation to the Land Board for consideration.

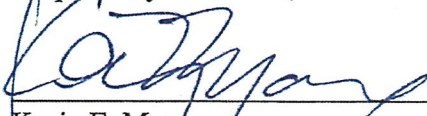
RECOMMENDATION: That the Land Board amend its prior action of August 10, 1990, under agenda item F-7, with respect to the easement area seaward of Parcel 8, by:

1. Declaring 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. Changing the Applicant as to Parcel 8 from Charles E. Hickman Trust and Virginia S. Hickman Trust to the Association of Owners of 1688 Halama Street Condominium;
3. Changing the term of the easement from perpetual to 65-years, commencing August 10, 1990, 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) 3-9-11:08, including its CPR

units 0001 and 0002, 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 any interest in 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;

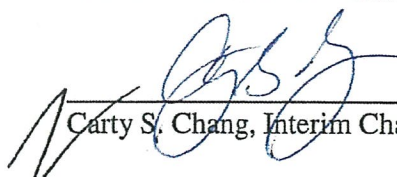
- C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions cited above, which are by this reference incorporated herein, or as may be prescribed by the Chairperson to best serve the interests of the State;
- 4. Including requirements that the Association: (a) provide an amended survey map covering the easement area seaward of Parcel 8, and (b) obtain a concurrent resolution from the Legislature pursuant to Section 171-53(c), HRS;
 - 5. Authorizing the issuance of a right-of-entry permit to Association of Owners of 1688 Halama Street Condominium 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 right-of-entry permit document 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; and
 - 6. Except as amended hereby, all terms and conditions listed in its August 10, 1990 approval to remain the same.

Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:



Carty S. Chang, Interim Chairperson

EXEMPTION NOTIFICATION

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

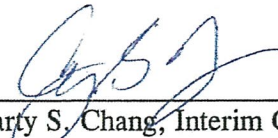
Project Title: Issuance of Term, Non-Exclusive Easement for Seawall Purposes
Project / Reference No.: PSF 03MD-359A
Project Location: Waiohuli-Keokea (Kihei), Wailuku, Maui, TMK (2) 3-9-11:08 seaward.
Project Description: Issuance of term, non-exclusive easement to resolve encroachment.
Chap. 343 Trigger(s): 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" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation."

The Board initially approved the issuance of the easement in 1990. However, the easement was not finalized. Staff is amending the prior Board approval, and including this exemption notification as part of the Board action. Staff believes that the request involves negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties: Not applicable (amendment of prior Board action).

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.



Cary S. Chang, Interim Chairperson

2
Date 4/10/15

EXHIBIT A

JOHN WAIHEE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF LAND MANAGEMENT
P. O. BOX 621
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
CONSERVATION AND
ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

August 10, 1990

Allowed - Per 2000

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

MAUI

Subject: Direct Sale of a Term, Non-Exclusive
Easement for Repair and Maintenance of
Existing Seawall Seaward of and Fronting Tax
Map Key: (2) 3-9-11:7 and 8; Waiohuli-Keokea
Homesteads and Beach Lots, Waiohuli-Keokea
(Kihei), Wailuku, Maui, Hawaii

STATUTE: Section 171-13 and other applicable sections,
Hawaii Revised Statutes, as amended.

APPLICANT: CHARLES E. HICKMAN TRUST and VIRGINIA S.
HICKMAN TRUST, as Tenants in Common
Tecumseh, MI 49286

FOR: Term, non-exclusive easement for repair and
maintenance of existing seawall, over and
across Government Beach Reserve seaward of and
fronting applicants' property identified by
Tax Map Key: 2nd Division, 3-9-11:7 and 8
situate at Waiohuli-Keokea Homesteads and
Beach Lots, Waiohuli-Keokea (Kihei), Wailuku,
Maui, Hawaii, as shown delineated in red on
maps labeled Land Board Exhibits "A" and "B,"
appended to the basic file.

AREA: 900 sq. ft., more or less; exact area and its
configuration to be determined by applicants,
same subject to review and confirmation by
Survey Division, Department of Accounting and
General Services.

STATUS OF
LAND TITLE: Subsection 5(b) lands of the Statehood
Admission Act.

STATUS: Unencumbered; however, applicants' seawall
encroaches onto subject area (Government Beach
Reserve).

EXHIBIT B

ITEM F-7

ZONING: State Land Use Commission: Urban District
County of Maui: Urban-R3

PURPOSE: To repair and maintain existing seawall.

TERM: Sixty-five (65) years, commencing as of date
of Board approval.

CONSIDERATION: To be determined by an independent appraisal
based on one (1) lump sum payment covering the
full fair market rental value of the easement,
same subject to review and approval by the
Chairperson.

REMARKS: Waiohuli-Keokea Homesteads and Beach Lots were
developed and subdivided by the Territory of
Hawaii in 1950. The development of this
subdivision consisted of beach lots and a
strip of Government Beach Reserve lands
between the shoreline and the described
seaward boundaries of these lots.

The applicants are the owners of Parcels 7 and
8 of Tax Map Key No. (2) 3-9-11 and portion of
the entire existing seawall is within their
property and the remaining portion is within
Government Beach Reserve lands.

Mr. and Mrs. Hickman purchased their beach
lots on March 1, 1977 (second owners since the
subdivision was developed in 1950) and only
recently became aware that a portion of their
seawall was encroaching upon the State-owned
beach reserve lands. This encroachment
problem was brought to light in connection
with a shoreline certification request
submitted by the applicants on May 2, 1990.

Land Management staff has investigated this
matter and have ascertained that the seawall
was constructed after 1982/1983 storms caused
extensive wave erosion of the State-owned
beach reserve lands and the applicants'
seaward lands. As a permanent solution to
continuing wave erosion and to prevent further
damage to their beach lot, Mr. and Mrs.
Hickman had the seawall constructed without
proper State authorization.

Further, Survey Division, Department of
Accounting and General Services, has advised
the Division of Land Management that there are
probably a number of similar seawalls
constructed in the same manner in order to
protect abutting shoreline properties.

A subsequent investigation by Land Management staff confirms that similar seawalls were constructed and are encroaching onto the extensively eroded Government Beach Reserve in the Waiohuli-Keokea area without proper State authorization.

Further requests for direct sale of term, non-exclusive easements are anticipated after the extent of all seawall encroachments are ascertained.

RECOMMENDATION: That the Board:

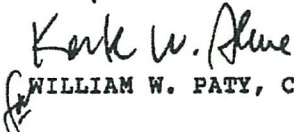
- Perpetual*
- A. Authorize the assessment of a \$500.00 fine against the applicants for constructing/placing a portion of their seawall within the State-owned beach reserve without proper State authorization.
 - B. Authorize the direct sale of a sixty-five (65)-year term, non-exclusive easement to the applicants covering the subject State land, subject to the terms and conditions previously-listed, which are by reference incorporated herein, including the following additional terms and conditions:
 - 1. Lump sum payment of \$500.00 fine assessed against the applicants described above in Item "A";
 - 2. The applicants shall at all times keep the existing seawall in good repair and maintained in a safe condition without any cost or expense to the State;
 - 3. Repairs to the existing seawall shall not extend seaward of the exterior face of same;
 - 4. No other structures, except the existing wall, shall be placed upon or within the easement area;
 - 5. No expansion of the existing seawall shall be permitted;
 - 6. The applicants shall comply with all applicable laws, ordinances, rules and regulations of the Federal, State and County governments relative to the use, maintenance and repair of the easement area;

7. The applicants shall obtain a public liability insurance policy covering the easement area and naming the State of Hawaii as an additional insured. Insurance amount to be determined by the Chairperson;
8. The applicants, their successors and assigns shall defend, indemnify and hold the State of Hawaii harmless against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicants, their successors, assigns, officers, employees, contractors and agents under this grant of easement;
9. Other standard terms and conditions covering easements of this nature; and
10. Such other terms and conditions as maybe prescribed by the Chairperson.

Respectfully submitted,


W. MASON YOUNG
Land Management Administrator

APPROVED FOR SUBMITTAL:


WILLIAM W. PATY, Chairperson

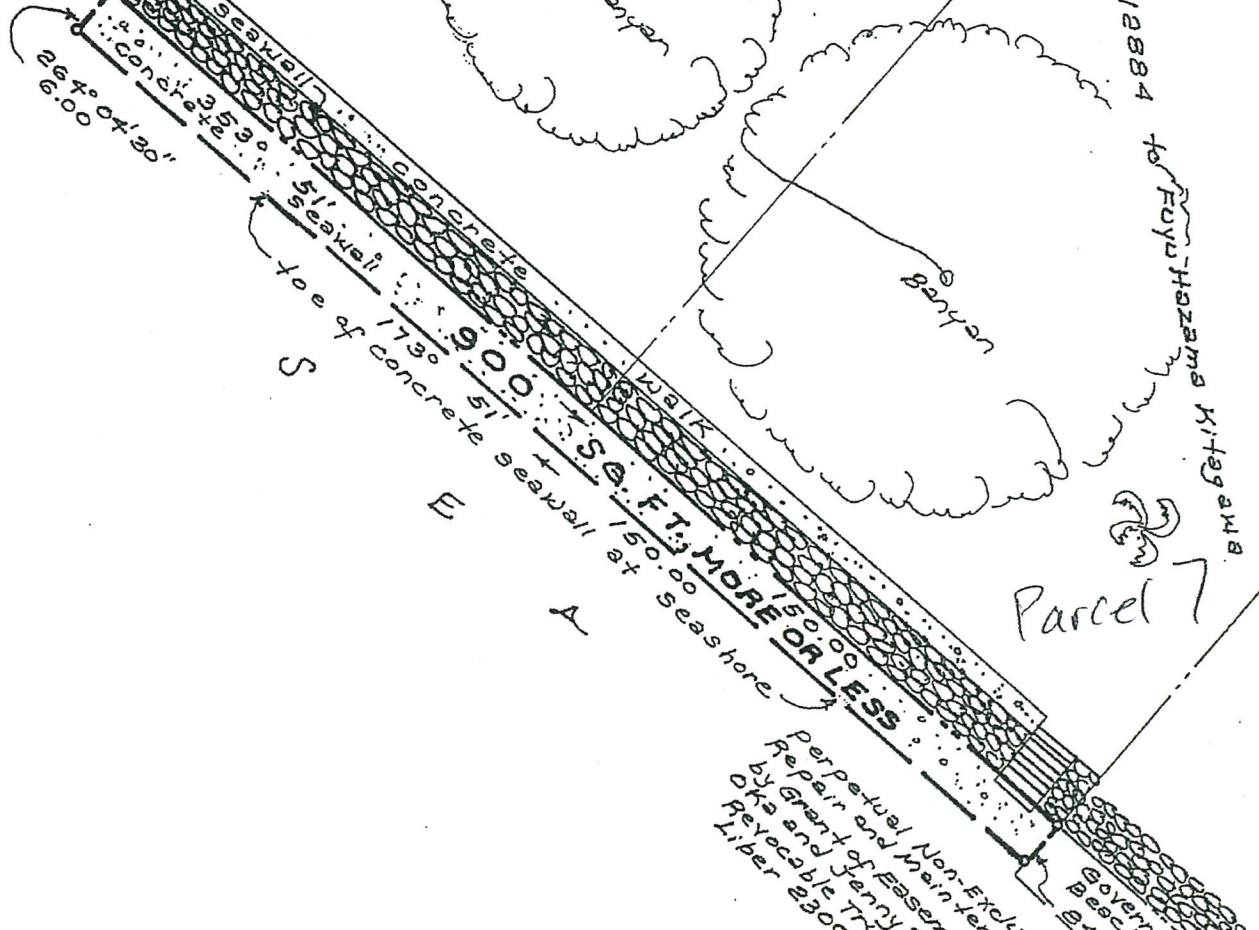
KEOLAIKI PLACE
Government Beach Reserve
26688, 59 N
23955, 20 W
"PUU O KALINA"

TRUE NORTH
Scale: 1 in. = 20 ft.

Grant 12883 to Fuyu Hazama Kitagawa
Grant 12884 to Fuyu Hazama Kitagawa
Grant 12860 to Heiichi Oka and Satsuye Otake Oka

Parcel 8

Parcel 7



Perpetual Non-Exclusive Easement for
Repair and Maintenance of Concrete Seawall covered
by Grant of Easement: State of Hawaii to Clarence H.
Oka and Jerry S. Oka, Trustees under Declaration of
Revecah Trust dated July 22, 1991 and recorded in
Liber 22006, page 541.
Government Beach Reserve
26688, 59 N (CSF 20,859)
23955, 20 W

**PERPETUAL NON-EXCLUSIVE EASEMENT
FOR SEAWALL PURPOSES**
Keokea, Wailuku, Maui, Hawaii

Scale: 1 inch = 20 feet

EXHIBIT C