

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

April 12, 2019

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

PSF No: 17MD-148

Maui

Amend Prior Board Action of February 23, 2018 Item D-7, *Set Aside to County of Maui for Public Park Purposes, Waiohuli - Keokea Beach Homesteads, Maui, Tax Map Keys: (2) 3-9-007:004 & Portion of 005; and*

Amend Prior Board Action of November 22, 2010, Item D-7, *Authorize the Chairperson of the Department of Land and Natural Resources to Negotiate the Terms and Conditions, and Sign a Memorandum of Agreement between the Department, Tri-Isle Resource Conservation & Development Council, Inc., and Uluniu Beach Reserve Association regarding Maintenance of the Uluniu Kihei Beach Reserve; Grant of Term, Non-Exclusive Easement to Tri-Isle Resource Conservation & Development Council, Inc. for Land Management Purposes; Cancellation of Revocable Permit S-6710 to Myron Higashi and Revocable Permit S-5377 to Douglas M. Sherman; and Issuance of Management Right-of-Entry, Waiohuli-Keokea Beach Homesteads, Kihei, Maui, Tax Map Key Numbers: (2)3-9-007: portion of 005, (2)3-9-007:065, (2)3-9-008:001, (2)3-9-009:011, (2)3-9-009:031, (2)3-9-009:032, (2)3-9-009:033, (2)3-9-009:034 and (2)3-9-010:777.*

The purpose of amending the Board's February 23, 2018 action is to: (A) increase the area of the set-aside from 2.788 acres, more or less, to 24.917 acres, more or less; and (B) specify that the seaward boundary of parcels (2) 3-9-008:777, 3-9-009:777, and 3-9-010:777 included in the set-aside shall be the mean lower low water line. The purpose of amending the Board's action of November 22, 2010 is to delete portions of the approved action relating to the: (1) negotiation and execution of a Memorandum of Agreement between the Department, Tri-Isle Resource Conservation & Development Council, Inc., and Uluniu Beach Reserve Association regarding Maintenance of the Uluniu Kihei Beach Reserve; (2) grant of term, non-exclusive easement to Tri-Isle Resource Conservation & Development Council, Inc. for land management purposes; and (3) issuance of management right-of-entry permit to Tri-Isle

Resource Conservation & Development Council, Inc. for land management purposes.

BACKGROUND:

At the Board of Land and Natural Resources ("Board") meeting of February 23, 2018, Board members approved the set-aside of 2.788 acres, more or less, of government land to the County of Maui for public park purposes. The area of the set-aside is adjacent to and south of Waipuili Park, which is a County oceanfront beach park. The set-aside will cure an encroachment issue with the County's comfort station, and will make the County responsible for maintaining the vegetation in the area. A copy of the February 23, 2018 stamped submittal is attached as Exhibit 1.

ORIGINAL AREA REQUESTED:

0.628 acres, more or less: TMK (2) 3-9-007:004
2.160 acres, more or less: TMK (2) 3-9-007:005
2.788 acres total, more or less

REVISED AREA:

0.628 acres, more or less: TMK (2) 3-9-007:004
2.160 acres, more or less: TMK (2) 3-9-007:005
0.155 acres, more or less: TMK (2) 3-9-007:065
1.770 acres, more or less: TMK (2) 3-9-008:001
11.400 acres, more or less: TMK (2) 3-9-008:777
1.878 acres, more or less: TMK (2) 3-9-009:011
0.347 acres, more or less: TMK (2) 3-9-009:012
0.095 acres, more or less: TMK (2) 3-9-009:031
0.541 acres, more or less: TMK (2) 3-9-009:032
0.103 acres, more or less: TMK (2) 3-9-009:033
0.413 acres, more or less: TMK (2) 3-9-009:034
2.700 acres, more or less: TMK (2) 3-9-009:777
2.727 acres, more or less: TMK (2) 3-9-010:777
24.917 acres total, more or less

A map of the revised area is attached as Exhibit 2.

CURRENT USE STATUS:

- (2) 3-9-007:004 - Unencumbered
- (2) 3-9-007:005 - 1.880 acres encumbered by EO 4342 for set-aside to County of Maui for Veterans Center and Community Support activities. Exhibit 3.
- (2) 3-9-007:065 - Unencumbered
- (2) 3-9-008:001 - Encumbered by Non-Exclusive Term Easement

S-6079

- (2) 3-9-008:777 - Unencumbered beach reserve
- (2) 3-9-009:777 - Unencumbered beach reserve
- (2) 3-9-009:011 - Unencumbered
- (2) 3-9-009:012 - Unencumbered
- (2) 3-9-009:031 - Unencumbered
- (2) 3-9-009:032 - Unencumbered
- (2) 3-9-009:033 - Unencumbered
- (2) 3-9-009:034 - Unencumbered
- (2) 3-9-010:777 - Unencumbered beach reserve

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended. See Exhibit 4.

APPLICANT REQUIREMENTS:

Applicant shall be required to provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost, where applicable.

REMARKS:

Amendment is being requested of the February 23, 2018 Board approval of Item D-7 which is attached as Exhibit 1. This item requested the set-aside of government lands to the County of Maui for public park purposes. After the Board approved the set-aside and after a survey of the area was underway, it was agreed, between staff of the Maui District Land Office (MDLO) and the County of Maui Department of Parks and Recreation (DPR), that it would be more beneficial to the public to also include the State lands immediately south of the approved area. The State has no plans for this area and it would be ideal if the County take responsibility for maintaining the area as a public park.

After the Board approval on February 23, 2018, the County of Maui hired a surveyor to map the set-aside area, and the surveyor had questions regarding property boundaries. Staff from the County DPR discussed the boundaries with MDLO staff, and it was agreed that DPR would take responsibility for the adjacent beach reserve and the other adjacent oceanfront parcels so that the entire swath of sandy beach in that area, as well as the coastal strip of land mauka of the beach,

would be transferred to the County via executive order. The additional area we are requesting to be set aside in the current amendment was the subject of a prior Board approval as explained in the next paragraphs.

On November 22, 2010, the Board approved agenda Item D-7, which authorized the Chairperson of the Department of Land and Natural Resources (Department) to negotiate the terms and conditions and sign a Memorandum of Agreement (MOA) between the Department, Tri-Isle Resource Conservation & Development Council, Inc. (Tri-Isle), and Uluniu Beach Reserve Association (UBRA) regarding maintenance of the Uluniu Kihei Beach Reserve. The submittal also requested to grant a term, non-exclusive easement to Tri-Isle for land management purposes, cancel revocable permit S-6710 to Myron Higashi and revocable permit S-5377 to Douglas M. Sherman, and issue a management right-of-entry. A copy of the approved submittal is attached as Exhibit 5. The MOA referred to in the submittal was not consummated, the term, non-exclusive easement was not executed, and the management right-of-entry was not issued. However, the two revocable permits were cancelled on January 6, 2011 pursuant to the Board approval.

MDLO staff contacted the president of UBRA on June 18, 2018 and were informed that Tri-Isle is no longer participating in Uluniu Beach Reserve activities. Tri-Isle was one of the applicants for the beach reserve maintenance easement because UBRA did not have non-profit status at that time and Tri-Isle was participating in name only. UBRA subsequently obtained non-profit status and therefore Tri-Isle is no longer involved in this matter.

Because the MOA between Tri-Isle/UBRA and the State was not done and there are no plans to execute an agreement, a request to amend the November 22, 2010 Board approval under agenda Item D-7 by deleting the approvals relating to the MOU, the grant of easement, and the issuance of a right-of-entry permit is presented to the Board today.

The reason why the MOA between Tri-Isle/UBRA and the State was not executed was because Tri-Isle/UBRA did not want to pay fair market value for the easement. There is no provision in HRS Chapter 171 that would allow the Board to issue an easement to UBRA at nominal rent, and UBRA's status as an Internal Revenue Code Section 501(c)(4) entity does not change that.¹

UBRA was provided with a draft copy of the current submittal and responded with written comments. They prefer not to have the State set-aside the subject parcels to the County of Maui. A copy of UBRA's

¹ HRS Section 171-43.1 only allows direct leasing at nominal rent for eleemosynary organizations that have been certified as tax exempt under Sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended.

comments is attached as Exhibit 6. The exhibits for their comments are not included here due to the large volume, but UBRA is invited to submit testimony directly to the Board.

By setting aside the entire area referenced above to the County of Maui, MDLO believes the area will receive more attention and care than it does now. There are three coastal parcels to be included in the set-aside designated as TMKs (2) 3-9-008:777, 3-9-009:777, and 3-9-010:777. To avoid creating a situation where the County has jurisdiction of the fast lands of the area but not the adjacent beach, staff is including a recommendation below that the set-aside of these parcels be to the mean lower low water line. Department staff, including representatives from Land Division, Division of Boating and Ocean Recreation and Division of Conservation and Resources Enforcement, met with County Parks Department staff on Friday February 22, 2019 to discuss the purpose and intent of the set aside and the benefits it will bring to the south Maui community via coordinated coastal land management along a contiguous shoreline.

A draft of this submittal was disseminated to the agencies listed below, with the results indicated:

Agency	Comment
DLNR - Historic Preservation	Response attached as Exhibit 7
DLNR - State Parks	Responded with no comments
DLNR - Conservation and Coastal Lands	No response
DLNR - Engineering, Maui District	Responded with no objections and no comments
County of Maui - Planning	Comment received: The County Parks Department should manage the dunes along the shoreline in consultation with Tara Owens, UH Sea Grant Coastal Hazards Specialist and the County Department of Planning
County of Maui - Parks & Rec	Electronic mail response dated 3/5/19 in support of transfer attached as Exhibit 8
County of Maui - Public Works	Responded with no comments
Office of Hawaiian Affairs	No response

RECOMMENDATION: That the Board:

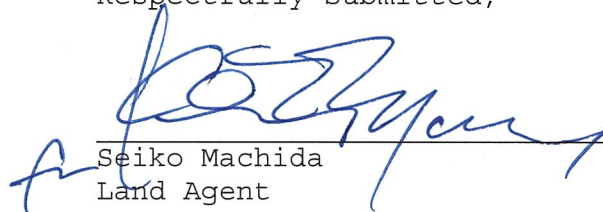
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have

April 12, 2019

minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Amend its prior Board action of February 23, 2018, under agenda item D-7, by changing the area requested for the set-aside from the original area of 2.788 acres total, more or less, to 24.917 acres total, more or less. The seaward boundary of TMK parcels (2) 3-9-008:777, 3-9-009:777, and 3-9-010:777 included in the set-aside shall be the mean lower low water line;
3. Amend its prior Board action of February 23, 2018, under agenda item D-7 to delete the portions of the prior Board action of November 22, 2010, under agenda item D-7, relating to the MOU, the grant of easement, and the issuance of a right-of-entry permit to Tri-Isle Resource Conservation & Development Council, Inc.; and
4. Except as amended hereby, all terms and conditions listed in its February 23, 2018 and November 22, 2010 approvals to remain the same.

Respectfully Submitted,


Seiko Machida
Land Agent

APPROVED FOR SUBMITTAL:

✓ 
Suzanne D. Case, Chairperson

EXHIBIT 1

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

February 23, 2018

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

PSF No.: 17MD-148

Maui

Set Aside to County of Maui for Public Park Purposes, Waiohuli – Keokea Beach Homesteads, Maui, Tax Map Keys: (2) 3-9-007:004 & Portion of 005.

APPLICANT:

County of Maui

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended

LOCATION:

Portion of Government lands of Waiohuli – Keokea Beach Homesteads, situated at Waiohuli – Keokea Beach Homesteads, Maui, identified by Tax Map Keys: (2) 3-9-007:004 & Portion of 005, as shown on the attached tax map labeled Exhibit A.

AREA:

0.628 acres, more or less: TMK (2) 3-9-007:004
2.160 acres, more or less: TMK (2) 3-9-007:005
2.788 acres total, more or less

ZONING:

State Land Use District: Urban
County of Maui CZO: Park

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

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

February 23, 2018 Co.

D-7

EXHIBIT 1

CURRENT USE STATUS:

- (2) 3-9-007:004 – Unencumbered
- (2) 3-9-007:005 – 1.880 acres encumbered by EO 4342 for set-aside to County of Maui for Veterans Center and Community Support activities.

PURPOSE:

Public park

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended. See Exhibit B.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost

REMARKS:

TMK (2) 3-9-007:004 is a rectangular parcel on Uluniu Road nested within TMK (2) 3-9-007:005. TMK (2) 3-9-007:005 is irregularly shaped, and runs makai of Uluniu Road adjacent to TMK (2) 3-9-001:001 which is owned by the County of Maui and used as Waipuilani Park.

The subject TMKs, (2) 3-9-007:004 and portion of :005, would be used as an extension of Waipuilani Park, which is the existing County park. The subject TMKs are immediately south of Waipuilani Park. All three parcels, the two subjects and the existing County park, have State zoning 'Urban' and County zoning 'Park', and are all in the Special Management Area. See Exhibit C.

On October 25, 2017 the County of Maui Department of Parks and Recreation, Planning and Development, contacted the Maui District Land Office (MDLO) to inquire about

existing encroachments that include a portion of a comfort station and a parking lot located at the subject parcel's northern end as shown on Exhibit D. Because the County of Maui already has jurisdiction of a portion of parcel 005 and TMK (2) 3-9-007:003 under Executive Order 4342 for the Veterans of Foreign War (VFW) Hall and owns TMK (2) 3-9-001:001 (Waipuilani Park) immediately north of State-owned TMK (2) 3-9-007:005, staff recommends that it is in the best interest of the State to transfer subject TMKs to the County of Maui via Executive Order. The State has no plans for the subject parcels, and public park uses are consistent with the overall character and use of the area.

On November 7, 2017 Maui County Parks and Recreation emailed the Maui District Land Office (MDLO) a draft of a Request for State lands application requesting the transfer of TMK (2) 3-9-007: Portion of 005 to the County of Maui. MDLO staff advised the County of Maui that the Disabled American Veterans (DAV) have contacted the Governor's liaison on Maui asking for the use of parcels 004 and portion of 005. Staff recommends that pursuant to a transfer of land to the County of Maui via EO, that the DAV contact the County of Maui to request a lease with the County similar to the VFW. See Exhibit E for location of existing set-aside of portion of parcel 005 to County of Maui.

On November 7, 2017 the County of Maui indicated that it has no objection to the transfer of subject TMKs to the County of Maui (Exhibit F). The set-aside of the remaining portion of parcel 005 to the County of Maui will cure the encroachment of the existing comfort station and parking lot. It will also allow the County of Maui to maintain the vegetation on subject parcels as well as to move forward with planned improvements to the existing comfort station.

Photos of subject properties are attached as Exhibit G.

A draft of this submittal was disseminated to agencies listed below, with the results indicated:

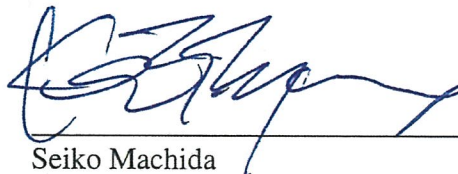
Agency	Comment
DLNR – Historic Preservation	No objections. See <u>Exhibit H</u> .
DLNR – State Parks	Received response with 'no comments'
DLNR – Conservation and Coastal Lands	No response by suspense date.
DLNR – Engineering, Maui District	Received response with 'no comments'
County of Maui – Planning	No response by suspense date.
County of Maui – Parks & Rec	No response by suspense date.
County of Maui – Public Works	Received response with 'no comments'
Office of Hawaiian Affairs	No response by suspense date.

RECOMMENDATION:

That the Board, subject to Applicant fulfilling the Applicant Requirements above:

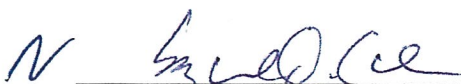
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to County of Maui under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - 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,



Seiko Machida
Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

54 High Street, Room 101
Wailuku, Hawaii 96793
PHONE: (808) 984-8103
FAX: (808) 984-8111

EXEMPTION NOTIFICATION

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

Project Title:	Set-Aside to County of Maui for Public Park Purposes
Project / Reference No.:	PSF No.: 17MD-148
Project Location:	Waiohuli—Keokea Beach Homesteads, Maui, Tax Map Keys: (2) 3-9-007:004 & Portion of :005
Project Description:	Set-aside to County of Maui of coastal land adjacent to existing County beach park for public park purposes.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No. and Description:	This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Item No. 43, that states "Transfer of management authority over state-owned land, such as setting aside of state lands to or from other government agencies through a Governor's executive order."

EXHIBIT B
EXHIBIT 1

Consulted Parties:

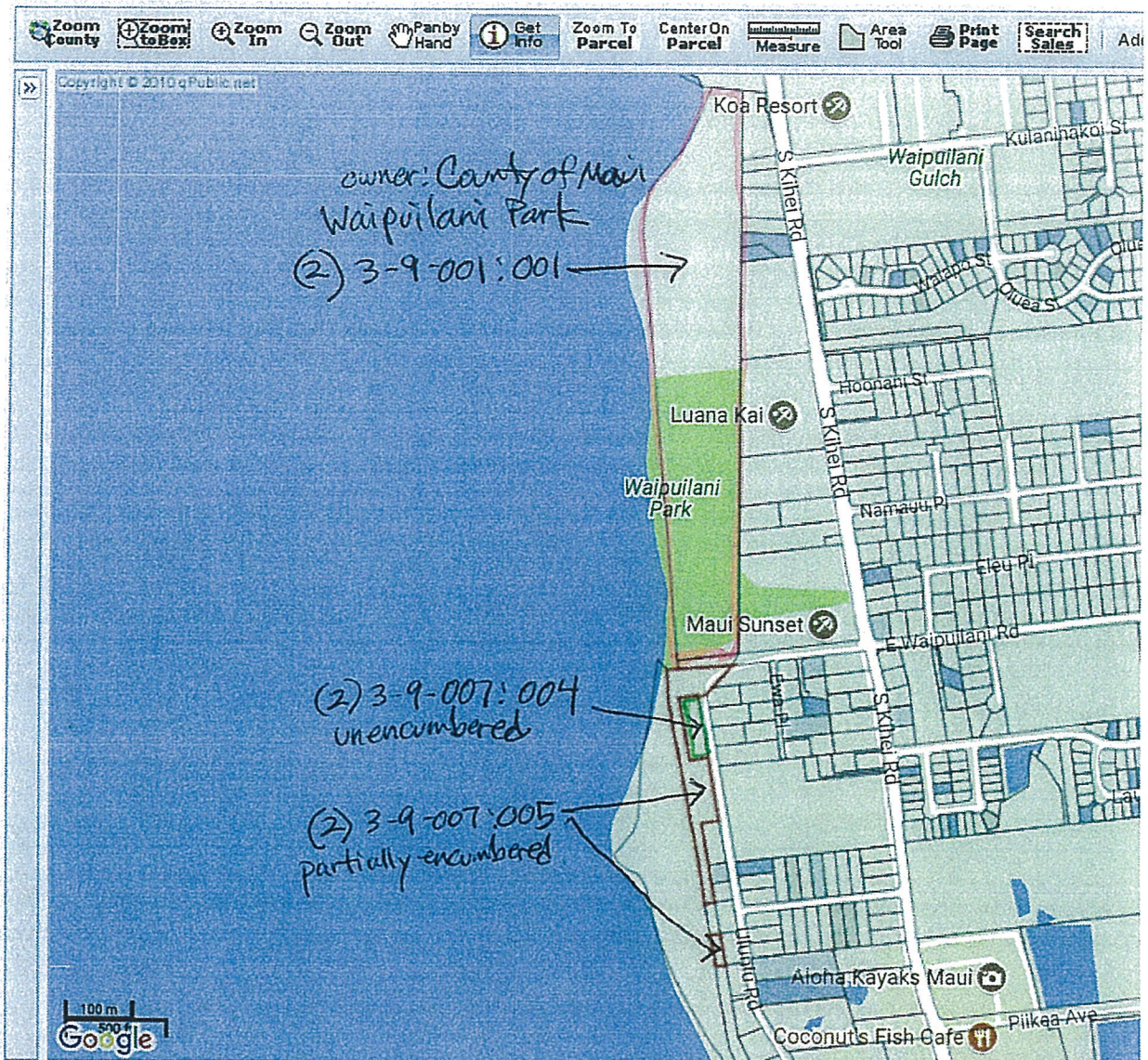
The DLNR Historic Preservation, State Parks, Conservation and Coastal Lands, Engineering, Maui District; Office of Hawaiian Affairs; and County of Maui Planning, Parks and Recreation, and Public Works Departments were consulted as source authorities having jurisdiction or expertise in this matter, and they concur that the exemption identified above is applicable to and appropriate for the proposed project.

Recommendation:

That the Board find this project to have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

EXHIBIT B

EXHIBIT 1



Maui County makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data change before the next certified taxroll.

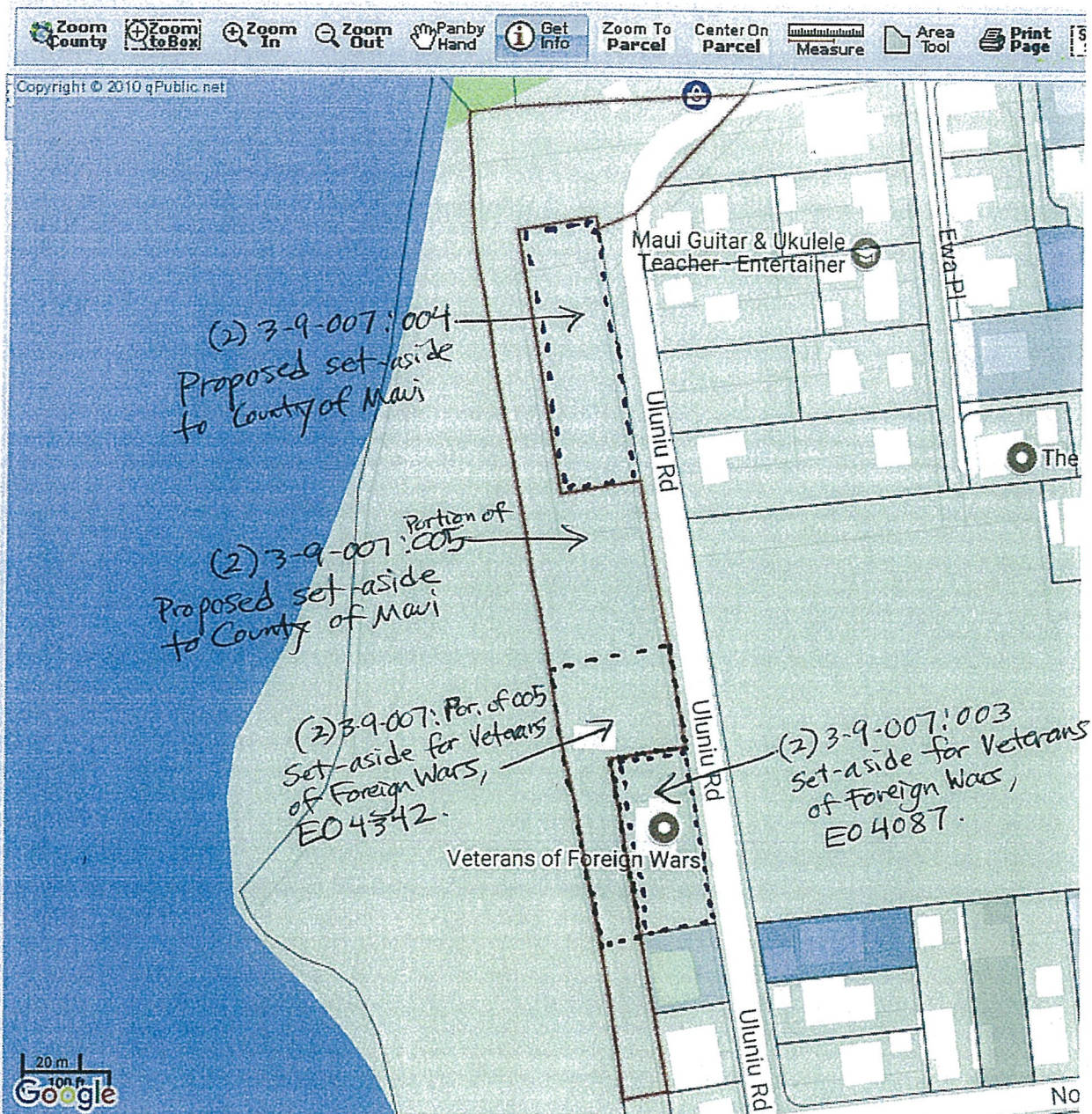
Exhibit C



Portion of comfort station and parking lot
encroaching on Government land.

EXHIBIT "D"

EXHIBIT 1

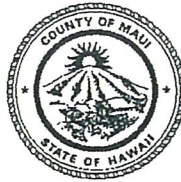


Maui County makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided. This information is subject to change before the next certified taxroll.

EXHIBIT "E"

EXHIBIT 1

ALAN M. ARAKAWA
Mayor



KA'ALA BUENCONSEJO
Director

BRIANNE L. SAVAGE
Deputy Director

DEPARTMENT OF PARKS & RECREATION

700 Hali'a Nakoa Street, Unit 2, Wailuku, Hawaii 96793

(808) 270-7230
FAX (808) 270-7934

November 7, 2017

Suzanne Case, Chairperson
State of Hawaii
Board of Land and Natural Resources
1151 Punchbowl Street, Room 130
Honolulu, HI 96813

Dear Ms. Case:

**SUBJECT: REQUEST FOR STATE LANDS, LOCATED AT TMK: (2) 3-9-007:005,
WAIPUILANI, KIHEI, MAUI, HAWAII**

The Department of Parks & Recreation (DPR) is requesting a set aside of the subject parcel by the State Board of Land and Natural Resources to the County of Maui. The purpose and intent of the set aside is for park purposes and related ancillary purposes.

The DPR currently owns (via State of Hawaii Land Patent No. S-15,787) and maintains adjacent parcel TMK: (2) 3-9-001:001 as Waipuilani Park. The set aside of parcel 005 will allow expansion of the park, and correct the jurisdiction of the existing comfort station and parking lot to the County of Maui.

We appreciate your assistance with this matter. Should you have any questions, please call me or Robert Halvorson, Chief of Planning & Development, at (808) 270-7931.

Sincerely,

A handwritten signature in black ink, appearing to read "Ka'ala Buenconsejo".

KA'ALA BUENCONSEJO
Director of Parks & Recreation

c: Robert Halvorson, Chief of Planning and Development

KB:RH:csa

2017 NOV 27 PM 4:04

NOV 27 2017
COUNTY OF MAUI
DEPARTMENT OF PARKS & RECREATION

EXHIBIT "F"

2017 NOV 17 AM 10:31

EXHIBIT 1

Exhibit E



County comfort station and parking lot encroaching on TMK 3-9-007:005

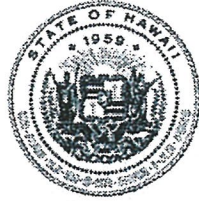


Portion of TMK 3-9-007:005



Trees near roadway on TMKs 3-9-007:004 and 005

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD, STE 555
KAPOLEI, HAWAII 96707

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
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

February 1, 2018

Russell Y. Tsuji, Administrator
Land Division, Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

IN REPLY REFER TO:
Log No. 2017.00008
Doc No. 1802GC01
Archaeology

Dear Mr. Tsuji:

SUBJECT: Chapter 6E-8 Historic Preservation Review –
Request for Set Aside to County of Maui for Public Park Purposes
Waiohuli – Keokea Beach Homesteads – Ref No. 17MD-148
Waiohuli Ahupua'a, Kula District, Island of Maui
TMK: (2) 3-9-007-004 and 005

This letter provides the State Historic Preservation Division's (SHPD's) review comments regarding the subject submitted, *Request to Set Aside to County of Maui for Public Park Purposes*, TMK: (2) 3-9-007:004 & 005. SHPD received this submittal on January 8, 2018.

The submittal indicates that the Department of Land and Natural Resources Land Division recommends that the Governor issue an Executive Order setting aside to the County of Maui for public park purposes a 0.628-acre parcel identified as TMK: (2) 3-9-007:004 and a 4.04-acre parcel identified as TMK: (2) 3-9-007:005. The subject parcels would be used as an extension of the existing County park.

A review of SHPD records indicates no archaeological inventory survey has been conducted for the subject parcels which are proximate to an ancient Hawaiian fishpond (Site 50-50-09-1738) and previously documented subsurface cultural deposits (Sites 50-50-09-5300 and 50-50-09-5060) which include displaced and in situ human burials. The subject parcels are located in dune land and sand deposits, which are known to contain human burial features.

Based on the available information, SHPD has no objections to the Set Aside of State Lands to the County of Maui for public park purposes. SHPD requests the opportunity to review and comment on any future permit applications involving ground disturbing activities. The permit process may continue.

Please contact me at Susan.A.Lebo@hawaii.gov or at (808) 692-8019 for any questions regarding this letter.

Aloha,

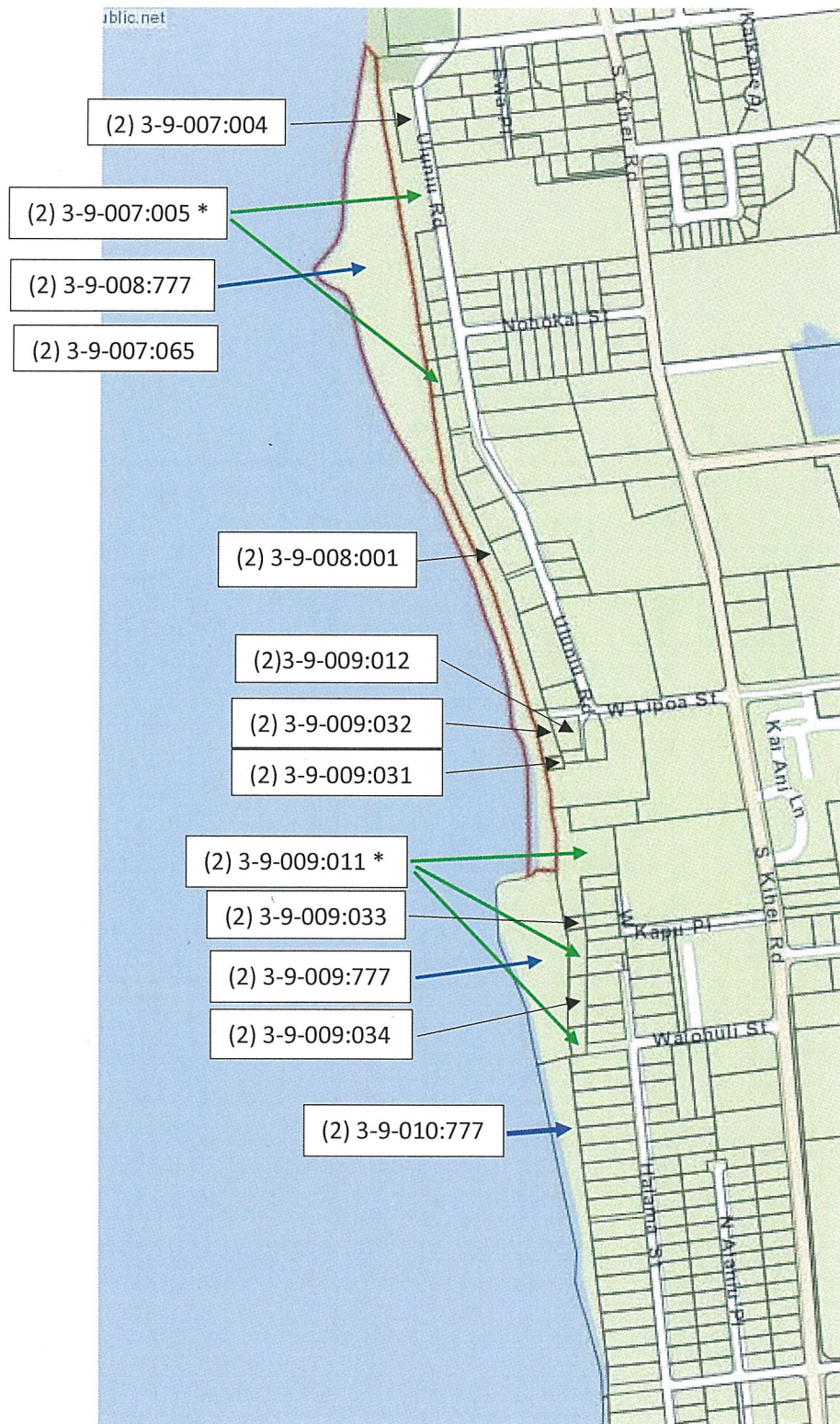
A handwritten signature in black ink that reads "Susan A. Lebo".

Susan A. Lebo, PhD
Archaeology Branch Chief

cc: Seiko Machida, DLNR Land Division (Seiko.J.Machida@hawaii.gov)

EXHIBIT H
EXHIBIT 1

EXHIBIT 2



*TMKs (2) 3-9-007:005 and (2) 3-9-009:011 are not contiguous. 3-9-007:005 is in two pieces, and 3-9-009:011 is in three pieces.

EXHIBIT 2



Google Earth image of the larger area with parcels for set-aside outlined in white.

EXHIBIT 3

Government Beach Reserve, situate at Waiohuli, Wailuku, Maui, Hawaii, and identified as "Addition to Veterans Center and Community Support Activities Site," containing an area of 1.880 acres, more particularly described in Exhibit "A" and delineated on Exhibit "B," both of which are attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, both being designated C.S.F. No. 25,001 and dated October 20, 2010.

SUBJECT, HOWEVER, to the condition that upon cancellation of this executive order or in the event of non-use or abandonment of the premises or any portion thereof for a continuous period of one (1) year, or for any reason whatsoever, the County of Maui shall, within a reasonable time, restore the premises to a condition satisfactory and acceptable to the Department of Land and Natural Resources, State of Hawaii.

SUBJECT, FURTHER, to disapproval by the Legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of this Executive Order.

This executive order does not authorize the recipient of the set aside to sell or exchange or otherwise relinquish the State of Hawaii's title to the subject public land.

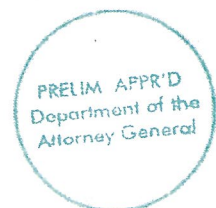
IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Hawaii to be affixed. Done at the Capitol at Honolulu this 22nd day of NOVEMBER, 2010.


Governor of the State of Hawaii

APPROVED AS TO FORM:


Deputy Attorney General

Dated: November 12, 2010

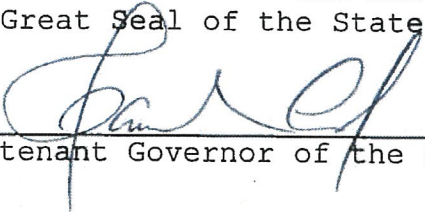


STATE OF HAWAII

Office of the Lieutenant Governor

THIS IS TO CERTIFY That the within is a true copy of
Executive Order No. 4342 setting aside land for public
purposes, the original of which is on file in this office.

IN TESTIMONY WHEREOF, the Lieutenant
Governor of the State of Hawaii, has
hereunto subscribed his name and caused
the Great Seal of the State to be affixed.



Lieutenant Governor of the State of Hawaii

DONE in Honolulu, this 22nd day of
November, A.D. 2010



STATE OF HAWAII
SURVEY DIVISION
DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

C.S.F. No. 25,001

October 20, 2010

ADDITION TO
VETERANS CENTER AND COMMUNITY SUPPORT ACTIVITIES SITE

Waiohuli, Wailuku, Maui, Hawaii

Being a portion of Government (Crown) Land of Waiohuli.

Being also a portion of the Government Beach Reserve.

Beginning at the east corner of this parcel of land, at the northeast corner of Veterans Center and Community Support Activities Site, Governor's Executive Order 4087 and on the west side of Uluniu Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU-O-KALP" being 8058.15 feet North and 24,701.59 feet West, thence running by azimuths measured clockwise from True South:-

1. 79° 59' 86.60 feet along Veterans Center and Community Support Activities Site, Governor's Executive Order 4087;
2. 349° 59' 200.00 feet along Veterans Center and Community Support Activities Site, Governor's Executive Order 4087;
3. 79° 59' 233.40 feet along the remainder of the Government Beach Reserve;

PRELIM. APPR'D.
Department of the
Attorney General

C.S.F. No. 25,001

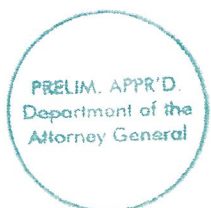
October 20, 2010

4. 169° 59' 310.00 feet along the remainder of the Government Beach Reserve;
5. 259° 59' 320.00 feet along the remainder of the Government Beach Reserve;
6. 349° 59' 110.00 feet along the west side of Uluniu Road to the point of beginning and containing an AREA OF 1.880 ACRES.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

By: *Gerald Z. Yonashiro*
Gerald Z. Yonashiro
Land Surveyor ry

Compiled from map and desc. furn. by
Newcomer-Lee Land Surveyors, Inc.
Said map and desc. have been examined
and checked as to form and mathematical
correctness but not on the ground by the
Survey Division.





WAIOHULI

KEOKEA

BEACH
FIRST

HOMESTEADS
SERIES

9-A

8-A

Grant 11071 to George Tim Leong

Grant 10043 to
Antone Pereira, Jr.

8058.15 N
24,701.59 W
"PUU-O-KALI" Δ

ULUNI

ROAD

349°59' — 110.00

Government

(Crown)

Land

VETERANS CENTER AND
COMMUNITY SUPPORT ACTIVITIES SITE
Governor's Executive Order 4087
(C.S.F. 23,877)

Lot A

WAIOHULI - KEOKEA BEACH LOTS

Grant 13285
to Yil Boc Chur
and Uhn Hoy Chur
H

349°59' — 200.00

320.00

259°59'

Government

Beach

Reserve

1.880 ACRES

169°59' — 310.00

233.40

78°59'

REDUCED NOT TO SCALE

PRELIM. APPR'D
Department of the
Attorney General

ADDITION TO
VETERANS CENTER AND COMMUNITY SUPPORT ACTIVITIES SITE

Waiohuli, Wailuku, Maui, Hawaii

JOB Ma-339(10)

C. BK.

Scale: 1 inch = 60 feet

EXHIBIT "B"

TAX MAP: 3-9-07 : Por. 5

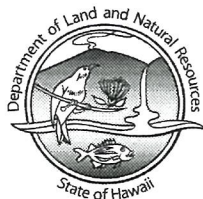
SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

C.S.F. NO. 25,001

GZY October 20, 2010

EXHIBIT 3

EXHIBIT 4



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

54 High Street, Room 101
Wailuku, Hawaii 96793
PHONE: (808) 984-8103
FAX: (808) 984-8111

EXEMPTION NOTIFICATION

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

Project Title: Set-Aside to County of Maui for Public Park Purposes

Project / Reference No.: PSF No.: 17MD-148

Project Location: Waiohuli—Keokea Beach Homesteads, Maui, Tax Map Keys: (2) 3-9-007:004 & Portion of :005

Project Description: Amend Prior Board Action of February 23, 2018 Item D-7, *Set Aside to County of Maui for Public Park Purposes, Waiohuli – Keokea Beach Homesteads, Maui, Tax Map Keys: (2) 3-9-007:004 & Portion of 005; and*

Amend Prior Board Action of November 22, 2010, Item D-7, *Authorize the Chairperson of the Department of Land and Natural Resources to Negotiate the Terms and Conditions, and Sign a Memorandum of Agreement between the Department, Tri-Isle Resource Conservation & Development Council, Inc., and Uluniu Beach Reserve Association regarding Maintenance of the Uluniu Kihei Beach Reserve; Grant of Term, Non-Exclusive Easement to Tri-Isle Resource Conservation & Development Council, Inc. for Land Management Purposes; Cancellation of Revocable Permit S-6710 to Myron Higashi and Revocable Permit S-5377 to Douglas M. Sherman; and Issuance of Management Right-of-Entry, Waiohuli-Keokea Beach Homesteads, Kihei, Maui, Tax Map Key Numbers: (2)3-9-007: portion of 005, (2)3-9-007:065, (2)3-9-008:001, (2)3-9-009:011, (2)3-9-009:031, (2)3-9-009:032, (2)3-9-009:033, (2)3-9-009:034 and (2)3-9-010:777.*

The purpose of amending the Board's February 23, 2018 action is to: (A) increase the area of the set-aside from 2.788 acres, more or less, to 24.917 acres, more or less; and (B) specify that the seaward boundary of parcels (2) 3-9-008:777, 3-9-009:777, and 3-9-010:777 included in the set-aside shall be the mean lower low water line. The purpose of amending the Board's action of November 22, 2010

is to delete portions of the approved action relating to the: (1) negotiation and execution of a Memorandum of Agreement between the Department, Tri-Isle Resource Conservation & Development Council, Inc., and Uluniu Beach Reserve Association regarding Maintenance of the Uluniu Kihei Beach Reserve; (2) grant of term, non-exclusive easement to Tri-Isle Resource Conservation & Development Council, Inc. for land management purposes; and (3) and issuance of management right-of-entry permit to Tri-Isle Resource Conservation & Development Council, Inc. for land management purposes.

Chap. 343 Trigger(s):

Use of State Land

Exemption Class No.
and Description:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Item No. 43, that states "Transfer of management authority over state-owned land, such as setting aside of state lands to or from other government agencies through a Governor's executive order."

Cumulative Impact of
Planned Successive
Actions in Same Place
Significant:

There are no planned actions in the subject parcels. The proposed Board action is for a change of management jurisdiction from State to County.

Action May Have
Significant Impact on
Particularly Sensitive
Environment:

The requested area for set-aside is a change in jurisdiction only. There is no anticipated change in usage of the area and therefore no significant impact to the environment is anticipated.

- Agencies Consulted: The DLNR Divisions of Historic Preservation, State Parks, Conservation and Coastal Lands, Engineering, Maui District; Office of Hawaiian Affairs; County of Maui Planning, Parks and Recreation, and Public Works Departments; and the Uluniu Beach Reserve Association were consulted as source authorities having jurisdiction or expertise in this matter, and they had no objections to the exemption identified above.
- Analysis: The subject parcels are for public use and are being recommended for transfer of jurisdiction from State to County via Executive Order. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.
- Recommendation: That the Board find this project to have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

EXHIBIT 5

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

November 22, 2010

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

PSF No.: 10MD-018

Maui

Authorize the Chairperson of the Department of Land and Natural Resources to Negotiate the Terms and Conditions, and Sign a Memorandum of Agreement between the Department, Tri-Isle Resource Conservation & Development Council, Inc., and Uluniu Beach Reserve Association regarding Maintenance of the Uluniu Kihei Beach Reserve; Grant of Term, Non-Exclusive Easement to Tri-Isle Resource Conservation & Development Council, Inc. for Land Management Purposes; Cancellation of Revocable Permit S-6710 to Myron Higashi and Revocable Permit S-5377 to Douglas M. Sherman; and Issuance of Management Right-of-Entry, Waiohuli-Keokea Beach Homesteads, Kihei, Maui, Tax Map Key Numbers: (2) 3-9-007: portion of 005, (2) 3-9-007: 065, (2) 3-9-008:001, (2) 3-9-009:011, (2) 3-9-009:031, (2) 3-9-009:032, (2) 3-9-009:033, (2) 3-9-009:034 and (2) 3-9-010:777.

APPLICANT:

The Department of Land and Natural Resources, Land Division (DLNR), Tri-Isle Resource Conservation and Development Council Inc. (Tri-Isle), a 501(c)(3) non-profit corporation authorized under the USDA Natural Resources Conservation Service, and Uluniu Beach Reserve Association (UBRA), an unincorporated association.

LEGAL REFERENCE:

Sections 171-6, 171-13, 171-43.1, and 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Waiohuli, Keokea Beach Homesteads, Kihei, Maui, identified by Tax Map Key Numbers: (2) 3-9-007: portion of 005 (south of VFW's parcel 003), (2) 3-9-007:065, (2) 3-9-008:001, (2) 3-9-009:011, (2) 3-9-009:031, (2) 3-9-009:032, (2) 3-9-009:033, (2) 3-9-009:034 and (2) 3-9-010:777, as shown on the attached maps labeled Exhibits A, B, C and D.

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

November 22, 2010

DA

Exhibit 5
Page 1 of 22

D-7

AREA:

15.2 acres, more or less.

ZONING:

State Land Use District: Rural

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:

Encumbrances – Staff has verified that the following encumbrances exist on the property:

TMK: (2) 3-9-007:005 – Previously encumbered by Revocable Permit No. S-6749 to Norman Hill for Landscape & Maintenance Purposes until 10/8/2004. Request has been made by the County of Maui to utilize the portion of this parcel, fronting the Veterans of Foreign Wars facility) resulting in an addition to the existing Executive Order 4087.

TMK: (2) 3-9-007:065 – Unencumbered

TMK: (2) 3-9-008:001 – Unencumbered

TMK: (2) 3-9-009:011 – Unencumbered

TMK: (2) 3-9-009:031 – Currently encumbered by Revocable Permit No. S-5377 to Douglas Sherman for Landscape & Maintenance Purposes. Permit to be cancelled as of the date of board approval for new disposition to Tri-Isle Resource Conservation and Development Council, Inc.

TMK: (2) 3-9-009:032 – Unencumbered

TMK: (2) 3-9-009:033 - Formerly encumbered by Revocable Permit No. S-6733 to E.F. Bello for Landscape & Maintenance Purposes. Permit was cancelled effective as of August 31, 2002. Current status is unencumbered.

TMK: (2) 3-9-009:034 - Currently encumbered by Revocable Permit No. S-6710 to Myron Higashi for Landscape & Maintenance Purposes. Permit to be cancelled as of the date of board approval for new disposition to Tri-Isle Resource Conservation and

Development Council, Inc.

TMK: (2) 3-9-010:777 – Unencumbered, shoreline area.

EXHIBITS:

Exhibit (A): GIS Overview photo with a TMK overlay of the subject area from the north end at Waipuilani Park, through the south end off of Waiohuli Street.

Exhibit (B): GIS Overview photo with a TMK overlay of the northern portion of the subject area (2) 3-9-007: to the mid section of the project area (2) 3-9-008:.

Exhibit (C): GIS Overview photo with a TMK overlay of the southern end of the subject area (2) 3-9-009:.

Exhibit (D): Four (4) DAGS-Survey Division worksheet maps with subject area highlighted from the north end at Waipuilani Park, through the south end off of Waiohuli Street.

Exhibit (E): EXEMPTION NOTIFICATION regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

CHARACTER OF USE:

Nonexclusive right, privilege and authority to use and maintain State-owned land for purposes of restoring and maintaining the natural shoreline habitat and coastal dune ecosystem, maintaining the area mauka of the dunes in a manner appropriate for public access and use, including without limitation, the accommodation and support of the proposed South Maui Coastal Heritage Corridor.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

\$480.00 per annum (Minimum Rent Policy for New Dispositions, May 13, 2005).

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

Every ten (10) years during the lease term, by staff pursuant to changes in Minimum Rent Policy, if any, from time to time.

EASEMENT TERM:

Twenty (20) years

PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities – None within the subject Beach Reserve area.

Slope - 12% slope

Rainfall -10 to 12 inches annually

SCS Soil Series - Jaucas Saline (Sand Soils)

Land Study Bureau – Beach Land

Legal access to property – Staff has verified that there is legal access to the property from Uluniu Road and Halama Street.

Subdivision – Staff has verified that the subject properties are legally subdivided lots.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item Numbers. 1, 2, 3 and 5 that state "(1) Routine maintenance of state lands to remove weeds, brushes, grass and other unwanted overgrowths, (2) Routine and emergency removal of boulders, rocks, fallen trees and other debris necessary to maintain state lands in a safe condition, (3) Trimming and removal of overhanging tree branches or roots encroaching into abutting private properties, and (5) Routine and emergency repair and restoration of existing structures and facilities on state lands involving negligible or no expansion or change of use beyond that previously existing." See Exhibit E.

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>

SPECIAL CONDITIONS:

Applicants shall be subject to and be required to comply with the following special conditions:

1. The subject area shall remain open and accessible to the general public at all times.
2. A greenway will be allowed to exist in the following areas between the makai property lines of privately owned parcels abutting the reserve area and: a) up to 15 feet inland of the mauka footing of the existing or forming dunes where sand dunes exist or are forming on eroded banks; and b) up to 15 feet inland of the shoreline where there are no existing or forming sand dunes.
3. Landscaping, irrigation and maintenance of non-native grasses will be allowed in the greenway.
4. Non-irrigated native vegetation may be installed and may be and is encouraged to be maintained in any location in the reserve area that is inland of the shoreline.
5. The parties recognize that the existence and location of dunes, and the location of the shoreline vary naturally throughout the seasons and over time. Especially following storms or unusual conditions, reasonable time will be allowed for natural or active processes to reach equilibrium, and for the existence and location of dunes, and the location of the shoreline to be re-established naturally.
6. No threatened or endangered species or their respective habitats shall be disturbed or otherwise adversely impacted by any activity conducted by Applicant pursuant to the easement, except as allowed by law.
7. The Levin Plan (more specifically described below) will serve generally as the framework for use and maintenance of the area, and deviations from that plan that are not specifically agreed to in the MOA will be subject to concurrence by DLNR staff members from the Office of Conservation and Coastal Lands (OCCL), Division of Aquatic Resources (DAR), and Division of Forestry and Wildlife (DOFAW) who are responsible for the regulation of coastal, wildlife or other environmental issues in the area, as may be appropriate. The agreement shall recognize that deviations from the Levin Plan may be appropriate in specific locations and circumstances.
8. Irrigation shall be allowed in greenway, subject to limitations set forth in the MOA regarding delivery systems, amount, duration, location and allowable time periods, provided that before installing such irrigation, Tri-Isle or UBRA shall provide to DLNR a scaled site plan showing the proposed installation, and that no irrigation shall be permitted during the daylight hours between sunrise and sunset. No survey shall be required.
9. Low impact signage designed to inform that the area is for public use and to keep area users away from and off of shoreline habitat and dune systems, to the maximum extent possible.
10. Restoration and maintenance of the natural shoreline habitat and dune systems by, among other things, reintroducing only native vegetation indicative of and appropriate to the area, and to the extent practicable, control of feral animal populations that may pose a

threat to nesting protected bird and turtle species.

11. Any major improvements or alterations to the area that are not specified in the MOA shall require consent from the DLNR. Tri-isle shall inform DLNR of and provide information regarding all new improvements or alterations prior to installation or implementation of the same.
12. Ensure that all trees in the area maintained in a safe condition, e.g., periodic trimming and coconut removal, as appropriate.
13. DLNR, Tri-Isle and UBRA will work collaboratively towards the goal of replacing County water use with private well water for irrigation in the reserve area, as may be appropriate and practicable.
14. No fertilizer use.
15. No dirt, topsoil or similar material shall be placed on the subject area without prior written consent of the Chairperson.
16. All tools, equipment, improvements and other property brought or placed upon the subject property by Tri-Isle or UBRA shall remain the property of the same and shall be removed at the termination of the Easement unless permitted to remain by DLNR.
17. No commercial activities shall be allowed unless permitted by the Board of Land and Natural Resources (Board).
18. Notwithstanding anything to the contrary, the parties shall take all necessary and appropriate actions to protect the public's health, safety and welfare in the course of carrying out its obligations under the MOA, easement and right-of-entry.
19. Easement may be assigned with prior written consent of Chairperson.
20. Tri-Isle may terminate the Easement at any time with 30 days prior written notice, provided Applicant removes all improvements placed or made in the subject area to the satisfaction of DLNR.
21. DLNR may terminate the Easement for cause at any time with 30 days prior written notice, including without limitation, Tri-Isle's failure to perform its restoration or maintenance responsibilities to the satisfaction of DLNR, provided Tri-Isle is given a 30-day opportunity to cure the default or deficiency and fails to do so.
22. DLNR may close or withdrawal the subject area or any portion thereof at any time, provided such closure or withdrawal is necessary or appropriate for a public purpose, such as, without limitation, ensuring the public's health, safety and welfare.
23. DLNR shall cite any owner of land adjacent to the reserve area for any encroachments by that landowner into the reserve area. Tri-Isle and UBRA shall not be liable for the actions of any individual landowner that have not been approved by Tri-Isle and UBRA.
24. DLNR and the Chairperson reserve the right to impose additional terms and conditions, if deemed necessary and appropriate.

DISCUSSION:

The Uluniu Kihei Beach Reserve Area is noted for sea turtle nesting and its shoreline habitats and dune systems should remain in its natural state in order to minimize adverse impacts to potential turtle and seabird nesting sites. Recent studies presented by the Division of Aquatic

Resources have documented higher than normal nutrient levels along the South Maui coastline, which have been claimed to be contributing to the increased spread of invasive algae that results in continued adverse impacts to healthy coral reef systems in the area. Excessive fertilization and irrigation of near shore properties have been claimed to be contributing significantly to high nutrient levels along the shoreline.

Existing documents establish that DLNR and Maui County have in the past, formally allowed or required some of the adjacent landowners to maintain and irrigate the beach reserve area to create an inviting, park-like setting for public use. Over the ensuing years, however, some landowners appear to have overstepped the maintenance authority that they thought they had and installed or created improvements in the area that may have created the impression that the public reserve area is private property. Such actions resulted in the apparent need for DLNR to initiate enforcement action to remove those unauthorized improvements and restore the public character of the area.

Since 2008, the Maui District Land Office has been working with the adjacent private property owners along the subject beach reserve, in an attempt to remove all unauthorized improvements and encroachments from within the beach reserve. These efforts have tremendously changed the area in a very positive way. Lateral public access through the beach reserve is now unobstructed, view plains have been opened up and previous encroachments which may have created the impression that portions of the beach reserve was privately owned have been removed.

The Maui Department of Water Supply has requested voluntary cutbacks in use of the Central Maui water system due to water shortages throughout Maui County. The subject area is a user of this system and minimization of irrigation activities on these lands would be consistent with the County's request for cutbacks of water use.

In an attempt to create a win-win solution to the challenges posed in the subject area, some of the landowners in the area formed the Uluniu Beach Reserve Association (UBRA) and requested a long-term disposition from the Maui District Land Office to assist with management and protection of the subject beach reserve and dune system that form this unique and invaluable coastal resource. UBRA hired conservation planner Penny Levin to prepare a shoreline restoration plan to provide guidance regarding the future management strategies for the area. The Kihei Shoreline Reserve; Uluniu Section: Shoreline Habitat Restoration and Trail Corridor Plan dated August 20, 2008 (Levin Plan) provided numerous management recommendations that were generally acceptable to UBRA members and OCCL, DAR and DOFAW staff, with some exceptions.

The Maui District Land Office staff consulted with various State and County agencies regarding this request and its appropriateness, and was informed of the sensitivity of the Kihei Beach Reserve area, and special considerations required with regards to the surrounding natural habitat. After a series of discussions with UBRA members, DLNR feels that such disposition would be an acceptable use of the beach reserve area, as it would be managed in a consistent and uniform

manner in conformance with the ultimate goal of promoting resource protection and conservation. Appropriate measures with regards to environmental and resource protection will be taken while implementing a greenway or trail through the area for the South Maui Coastal Heritage Corridor. This greenway providing public access through the entire beach reserve area would also enhance it for public use and meet the long-term goals of the DLNR and the Kihei Community.

Staff believes that the most effective means for implementing this mutually beneficial arrangement under terms that would be acceptable to all parties is to have the parties enter into a Memorandum of Agreement (MOA) establishing the terms and guidelines of the arrangement and the rights and responsibilities of the parties, coupled with a term, non-exclusive easement and a management right-of-entry (to provide immediate access to the subject area until the easement is issued). While the major terms and conditions of the proposed MOA are set forth in this submittal, some outstanding minor issues and logistics of implementation need to be resolved and finalized. Staff is requesting that the Board delegate to the Chairperson, the authority and responsibility for negotiating, finalizing and executing the MOA on its behalf, based upon and subject to the terms and special conditions identified herein.

The applicant for the easement must be a legally recognized entity to ensure that the terms of the disposition are enforceable. UBRA intends to eventually formalize its status as a legally recognized nonprofit entity to assume the ultimate responsibility for implementing the terms under the MOA. Until that time, UBRA has obtained the cooperation of Tri-Isle Resource Conservation and Development Council Inc. (Tri-Isle), acting on its behalf, to be the applicant for the easement.

Tri-Isle, a 501(c)(3) non-profit corporation authorized under the USDA Natural Resources Conservation Service, is one of approximately 375 such entities nationwide which assist with grass-roots community based economic development and natural resource conservation projects. Tri-Isle pursues federal, state, local and private funding sources for approved projects and assists local project sponsors with management and financial administration. Tri-Isle is run by a 16 member Board of Directors, including representatives of Soil and Water Conservation Districts, County of Maui Departments, and at-large members from the community. Tri-Isle has experienced many successes over the years, which have included a broad range of project types and sizes. Major categories with notable examples include: (1) Recreation: County Bicycle Map and Recreation Map, Mokuleia Stairway (for beach access), Lahaina Pali and Ohai Trails, Kealia Pond Boardwalk and fence-line, and South Maui Coastal Heritage Corridor; (2) Agriculture and Natural Resources Conservation: Maui Invasive Species Committee, Watersheds, Farmers' Markets on Moloka'i & Lana'i, Puu-O-Kali Native Dryland Forest Protection, Maui Nui Botanical Gardens; (3) Economic Development: Moloka'i Telecommunications Center, Moloka'i and Maui Agricultural Development Programs; and (4) Infrastructure: Ulumalu-Peahi Community Waterline Replacement. These projects have already provided many quality-of-life benefits to Maui County's citizens.

In accepting this role, Tri-Isle indicated that no commercial activities of any kind would occur within the subject area. Tri-Isle's proposed actions would include restoration of the shoreline berm, planting of native plants, removal of invasive plants, care of the trees, and maintenance of an inland "greenway" which will serve as a north to south public pathway (part of the South Maui Heritage Corridor).

It is the intent of UBRA and Tri-Isle that upon or soon after the establishment of UBRA's status as a legally recognized nonprofit entity, all responsibilities assumed by Tri-Isle under this arrangement would be transferred to and assumed by UBRA. The easement must be assigned to UBRA at that point to facilitate the transfer of management responsibilities effectively. To that end, staff is recommending that the easement expressly allow assignment of the easement with prior written consent of the Chairperson.

By entering into this management arrangement, the parties seek to enter into a collaborative relationship to keep the subject beach reserve area open, accessible, safe and maintained for the mutually beneficial use of the public and the adjacent homeowners. The issuance of an easement to Tri-Isle will formalize the stewardship role of the Tri-Isle and UBRA (in restoring and maintaining the area for public use), and recognize a long-standing and ongoing improvement and maintenance effort by some landowners and community groups in the area.

Consideration and Bonding

As background, the Board typically grants easements to private individuals and entities at fair market value as established by an appraisal, either by a single lump sum payment or periodic payments over time. If the grantee or prospective grantee is an eleemosynary (charitable) organization, the Board may grant the easement, at a nominal value or rent, by direct negotiation. It is noted that the 501(c)(1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while the 501(c)(3) organization is a privately organized charitable organization.

Therefore, when considering dispositions to eleemosynary (charitable) organizations or religious organizations, the Board may grant an easement at an amount below fair market value or rental (i.e., nominal rent). On May 13, 2005, the Land Board established a Minimum Rent Policy for New Dispositions that stated, among other things, that the minimum rent for new dispositions be no less than \$480 per year. Staff believes "nominal rent" ought to be anywhere between fair market rent, or lower, but not lower than the minimum rent of \$480 per year. Annual rent for all of Land Divisions' non-profit tenants and grantees should be fair, reasonable and consistent. Therefore, staff is recommending the current annual rent be the \$480 minimum allowed by the Land Board's policy, subject to adjustment as the policy may be reviewed and modified from time to time.

Tri-Isle and UBRA are requesting that the annual payment for the easement be waived. UBRA has indicated that the owners abutting the reserve area have been spending approximately \$60,000 per year to care for portions of the reserve, and expects that with the activities allowed by the MOA, it will spend substantially more than that. Given that UBRA has requested waiver of annual rent above; given the amount of UBRA's anticipated annual expenditures; and given

that UBRA's activities and contributions will be voluntary, UBRA also requests waiver of the performance bond.

Cancellation of Revocable Permits

Proper implementation of the proposed management arrangement requires the elimination of prior dispositions that could result in conflicting management responsibilities and use of the subject area. As noted above, Revocable Permits S-6710 and S-5377, currently encumber the subject area. Staff has notified Myron Higashi and Douglas M. Sherman, permittees under those permits, of the proposed plan to allow Tri-Isle to manage the beach reserve area and simultaneously cancel their existing permits. The permittees are agreeable to the cancellation of their permits to facilitate the proposed purposes of the management arrangement contemplated by this board submittal.

Other Matters:

Tri-Isle and UBRA have 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.

Agency Comments:

Comments were solicited from:

OCCL	Pending
DAR	Pending
DOFAW	Pending
Historic Preservation	Pending
CWRM	Pending
County Planning	Pending
County Water	Pending
OHA	Pending

HRS Chapter 343 Compliance:

There will be no change in the existing use of the area. The subject beach reserve area has always been used and will continue to be used as a public recreation area and public right-of-way. The actions contemplated by this request merely provide the vehicle by which the area's shoreline habitats and sand dune system can be restored to their natural conditions and will facilitate and maintain existing public access along the coast. No new structures or major physical improvements are contemplated within the beach reserve. Staff believes the activities contemplated by this request are exempted pursuant to "Division of Land Management's Environmental Impact Statement Exemption List" approved by the Environmental Council and dated April 28, 1986, Exemption Class No. 1, Item Numbers. 1, 2, 3 and 5, that state "(1) Routine maintenance of state lands to remove weeds, brushes, grass and other unwanted overgrowths, (2) Routine and emergency removal of boulders, rocks, fallen trees and other debris necessary to maintain state lands in a safe condition, (3) Trimming and removal of overhanging tree branches or roots encroaching into abutting private properties, and (5) Routine and emergency repair and restoration of existing structures and facilities on state lands involving

negligible or no expansion or change of use beyond that previously existing." Consequently, Staff is recommending that the Board find that the subject request is exempt from the preparation of an environmental assessment under HRS Chapter 343.

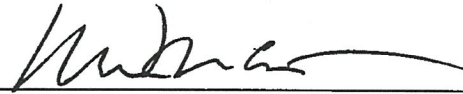
There are no other pertinent issues or concerns. Further, staff recommends the Board authorize the issuance of a management right-of-entry pending the issuance of the easement document.

RECOMMENDATION: That the Board:

1. Authorize the Chairperson to negotiate the terms and conditions and sign on behalf of the Department and the Board, a Memorandum of Agreement between the Board, Tri-Isle and UBRA, subject to the general terms and special conditions above and to the review and approval as to form by the Department of the Attorney General.
2. 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.
3. Cancel Revocable Permits S-6710 to Myron Higashi and S-5377 to Douglas Sherman.
4. Subject to the Applicants fulfilling all of the Special Conditions listed above, authorize the issuance of a term, non-exclusive easement to Tri-Isle covering the subject area for the purposes and 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 non-exclusive easement document form, as may be amended from time to time;
 - B. The easement may be assigned with the prior written consent of the Chairperson;
 - 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. Authorize the issuance of an immediate management right-of-entry to the Tri-Isle prior to the issuance of the easement document, covering the subject area for the purposes and 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 document form, as may be amended from time to time;

- B Termination of the right-of-entry upon the issuance of the easement; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Morris M. Atta
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

Waipuilani Road

VFW Facility

Hale Kai O Kihei

Waiohuli Street

Exhibit 5
Page 13 of 22

Exhibit (A)



Waipuilani Road

VFW Facility

George Rixey

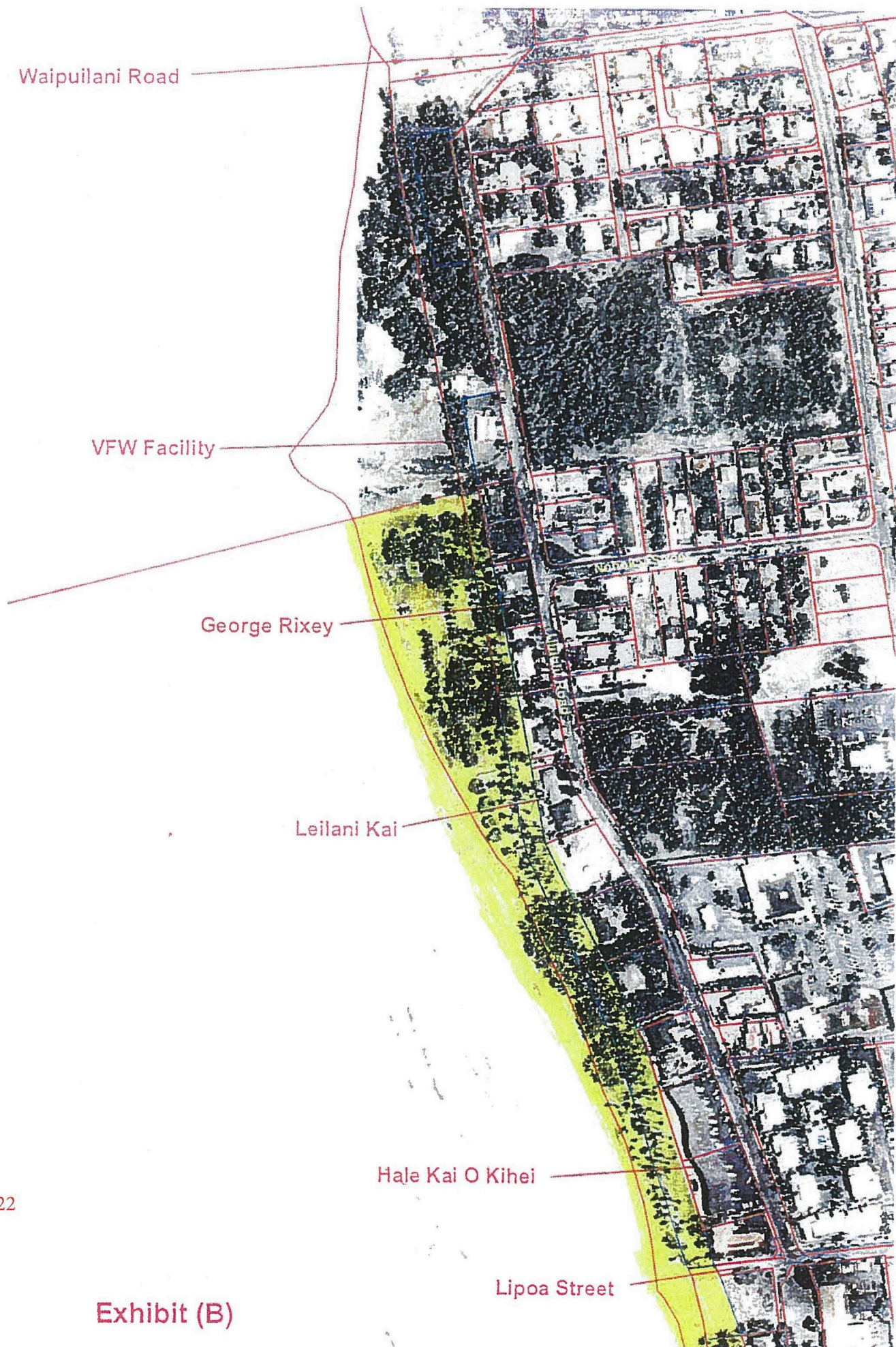
Leilani Kai

Hale Kai O Kihei

Lipoa Street

Exhibit 5
Page 14 of 22

Exhibit (B)



Hale Kai O Kihei

Lipoa Street

Waiohule Beach Hale

Richard Hoehn

Kapulanikai Apartments

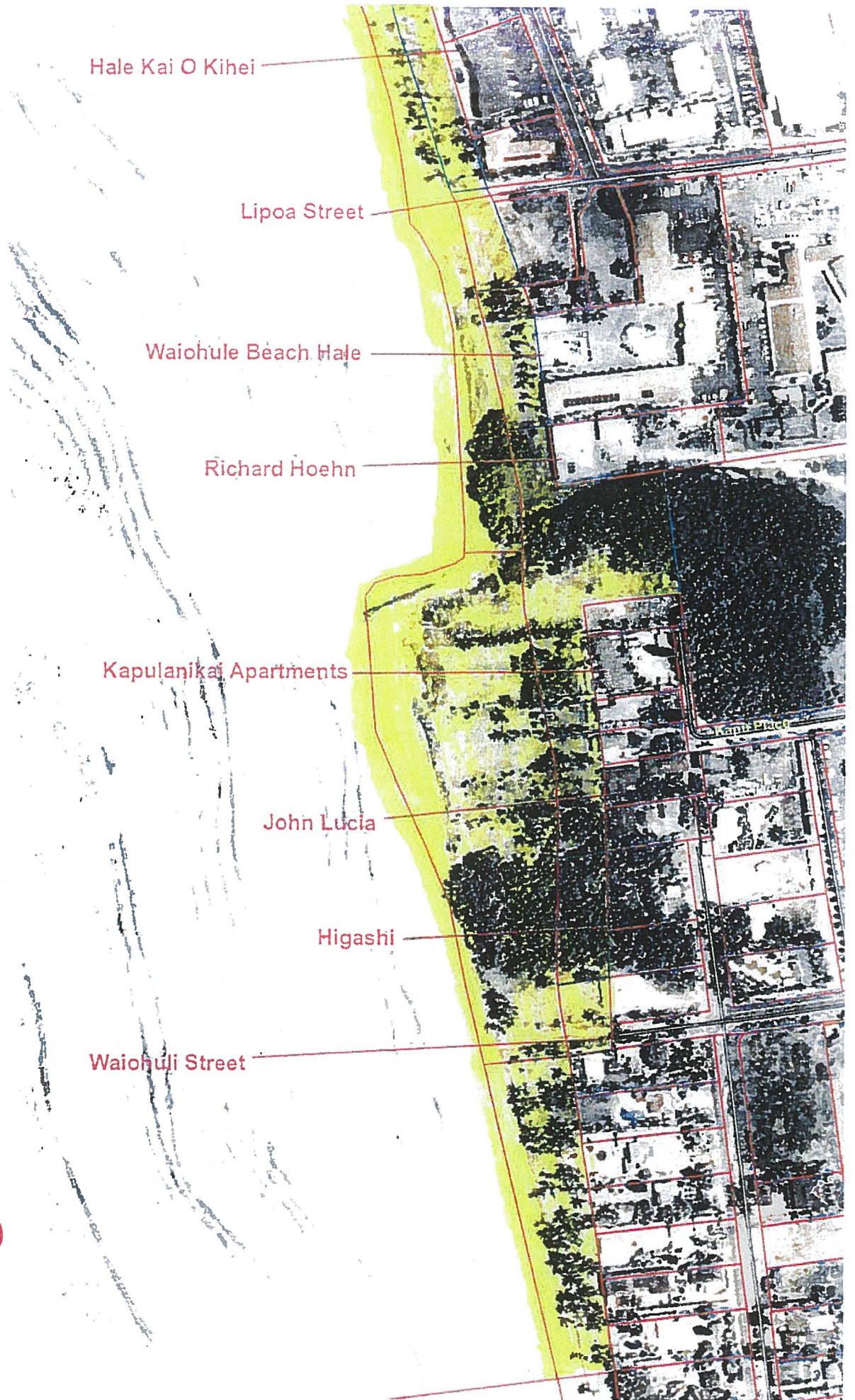
John Lucia

Higashi

Waiohuli Street

Exhibit 5
Page 15 of 22

Exhibit (C)



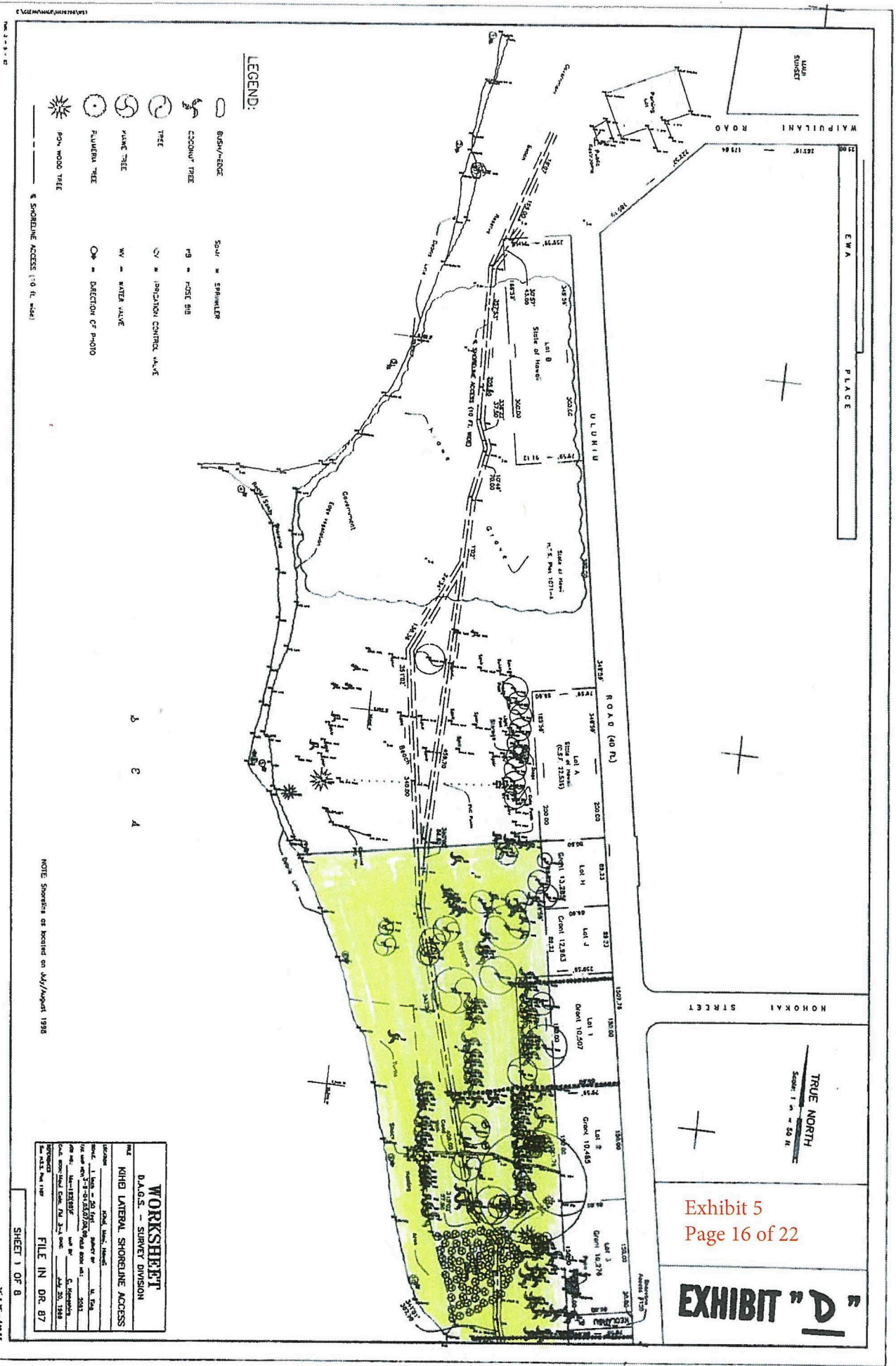


Exhibit 5
Page 16 of 22

EXHIBIT "D"

- LEGEND:**
- BUSH/EDGE
 - COCONUT TREE
 - TREE
 - KAHU TREE
 - PLANTED TREE
 - NON WOOD TREE
 - SPREADER
 - COSE BIR
 - SPREADER CONTROL VALVE
 - WATER VALVE
 - DIRECTION OF FLOW

6 SPREADER ACCESS 1/2 H. MILE



NOTE: Shoring at located on July/August 1988

WORKSHEET	
D.A.G.S. - SURVEY DIVISION	
KIHU LATERAL SHORELINE ACCESS	
DATE	10/10/2013
BY	10/10/2013
FOR	10/10/2013
FILE IN	DR. 87

EXHIBIT "D"



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

November 22, 2010

EXEMPTION NOTIFICATION

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

Project Title: Authorize the Chairperson of the Department of Land and Natural Resources to Negotiate the Terms and Conditions, and Sign a Memorandum of Agreement between the Department, Tri-Isle Resource Conservation & Development Council, Inc., and Uluniu Beach Reserve Association regarding Maintenance of the Uluniu Kihei Beach Reserve; Grant of Term, Non-Exclusive Easement to Tri-Isle Resource Conservation & Development Council, Inc. for Land Management Purposes; Cancellation of Revocable Permit S-6710 to Myron Higashi and Revocable Permit S-5377 to Douglas M. Sherman; and Issuance of Management Right-of-Entry, Waiohuli-Keokea Beach Homesteads, Kihei, Maui, Tax Map Key Numbers:(2) 3-9-007: portion of 005, (2) 3-9-007: 065, (2) 3-9-008:001, (2) 3-9-009:011, (2) 3-9-009:031, (2) 3-9-009:032, (2) 3-9-009:033, (2) 3-9-009:034 and (2) 3-9-010:777.

Project / Reference No.: 10MD-018

Project Location: Waiohuli-Keokea Beach Homesteads, Kihei, Island of Maui

Project Description: Authorize Negotiation of Memorandum of Agreement; Grant of Term, Non-Exclusive Easement for Land Management Purposes; Cancellation of Revocable Permits; and Issuance of Management Right-of-Entry

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

Exemption Class No.: In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment under the following:

EXHIBIT "E"

Exemption Class No. 1, which states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that existing" and Class No. 4, that states "Minor alteration in the conditions of land, water, or vegetation".

Exemption List Item(s): (1) Routine maintenance of state lands to remove weeds, brushes, grass and other unwanted overgrowths.
(2) Routine and emergency removal of boulders, rocks, fallen trees and other debris necessary to maintain state lands in a safe condition.
(3) Trimming and removal of overhanging tree branches or roots encroaching into abutting private properties.
(5) Routine and emergency repair and restoration of existing structures and facilities on state lands involving negligible or no expansion or change of use beyond that previously existing.

Consulted Parties: Not applicable

Discussion: The proposed action will facilitate the use and maintenance of State-owned lands for the purpose of restoring and maintaining the natural shoreline habitat and coastal dune ecosystem, maintaining the area mauka of the dunes in a manner appropriate for public access and use, including without limitation, the accommodation and support of the proposed South Maui Coastal Heritage Corridor. Portions of the subject area have been actively maintained as an open public access area at least since 1986. While all of the subject lands were designated as public beach reserves for protection of the coastal resources and use by the general public, the area has been cleared and maintained for such purposes inconsistently and only in a patchwork manner. The purpose of this project is to facilitate a collaborative maintenance relationship with a community organization to ensure that all of the subject state lands will be properly maintained in a uniform manner. While the proposed activities may result in minor alterations to the overgrown conditions within certain areas of the reserve, there will be no change in the pre-existing authorized uses other than some minor allowances for limited irrigation to support the maintenance obligations under set forth by the submittal and anticipated memorandum of agreement. The set aside is not part of a multi-phased project and no significant adverse cumulative impacts are expected.

Recommendation: It is anticipated this project will probably have minimal or no significant effect on the environment and the Board is

recommended to declare this set aside to be exempt from the
preparation of an environmental assessment pursuant to the above.

Laura H. Thielen, Chairperson

Date

EXHIBIT 6

Mahalo for the outreach to the Uluniu Beachfront Reserve Association (UBRA - a 501c4) about possible changes in the State's operation some of the Reserve Greenway area in Kihei. UBRA's members and its Board understand that management of the proposed area is to be turned over to Maui County Parks and Recreation Department (MCP&R). These are our requests and comments.

Request: We kindly ask and prefer that the management of the stretch known as the Uluniu residential portion of the Reserve not be turned over to MCP&R. This is a sub-area located with approximately 44 out of the 47 TMKs to be affected; approximately 163 property owners (incl. condos). These start just south of Kihei's VFW and extend north to mid-Halama St. This portion of the Uluniu Reserve is currently being efficiently maintained and effectively managed by UBRA (a community organization). For almost a decade UBRA has been informally recognized as the stewards of this specific area by providing the lion share of its care, needs, and costs. Hereafter only the word "Reserve" will be used to describe the area of the Uluniu Reserve that include homes and condos that are immediately adjacent to and makai of the Reserve.

Only three of the TMK's of the Reserve being considered (and that are pre-approved) in this action are not cared for by UBRA. These are forested areas that do not directly or adversely affect the UBRA property owners. Over 90% of the remaining area have property owners that will be directly affected by this change. We do believe it would be helpful to have these 3-forested lots managed better as there is not a clear, safe path through those areas without trimmed trees and this provides homeless to camp on those lots without much recourse. We implore you to please limit your scope to just those 3-forested TMK's and allow UBRA to continue its ongoing 'Adopt a Reserve' project along the remaining area.

UBRA is a well-organized working group of property owners, stakeholders, and is a 501c4 that has 'standing' of more than ten years of informal-but-substantial commitment, robust care, financial support, and 5+ years of (homeless) security patrol, for the Reserve. In recognition of these efforts UBRA would like to continue to have a say in any future changes to the Reserve's operations.

If the Reserve's management is to be turned over to MCP&R, then UBRA would like to be a partner with the State and County regarding its operations and maintenance. This may include the La'ie Wetlands, (some of which exists within the boundaries being discussed). This type of wetland is vibrant and alive with indigenous birds and plants, fauna, fish and is a designated flood management zone. It is a natural Muliwai with sensitive habitat with special needs (more on the wetland later).

We would also like to have any agreement between the State and the County reflect that the County will adhere to the principals that UBRA have been following which are outlined in the "KIHEI SHORELINE RESERVE; ULUNIUI SECTION: SHORELINE HABITAT RESTORATION AND TRAIL CORRIDOR PLAN" (SRCP), prepared by Penny Levin in 2008. (Attachment A - SRCP). The SRCP assessment is a community funded, best practices use and management plan for this unique stretch of Reserve.

In addition, we would like any agreement to reflect the needed implementation of the recommendations and best practices outlined in the "HAWAII REGIONAL SEDIMENT MANAGEMENT FINAL REPORT (RSM) – (Kihei region) that includes Geomorphology, Coastal Processes, Shoreline Change and Potential RSM Projects" that was completed in 2011 for the US Army Corps of Engineers (USACE) and the State DLNR Office of Conservation and Coastal Lands as prepared by Moffatt & Nichol and the EA/HHF. (Attachment B - RSM). The objectives of the report specifically highlight Inter-Agency coordination to provide economies of scale for things such as beach nourishment and identifying erosion projects at hotspots and watch-spots for Shore Protection Measures. This report includes Dune Preservation and Restoration projects for erosion mitigation on a multi-scale proposition and they recognize that some "neighborhood boards (for example UBRA) already act as de facto Beach Management Districts" (BMD's).

UBRA has made efforts to implement some of the recommendations, goals, and principals outlined in the two reports. UBRA can confidently say it is already been acting as a BMD *and* an economic resource for the Reserve. (aka Kawilipoa beach area in the RSM, further north is known as Waiohuli Keokea beach). UBRA is already existing as a "mechanism for implementing proposed erosion mitigation at multi-property scales", as described in the RSM. (Attachment B – RSM - Kihei Region). It is estimated that critical dune areas exist within this Reserve that could be targeted for continued rates of fluctuation observation and studies. Pilot Beach Nourishment projects are of interest, especially TMK's along Halama St.

Section A - Background:

There is wide reaching cooperation and collaboration between a variety of organizations in this Uluniu/Mid-Kihei neighborhood that extend beyond UBRA having participated in some form of caring (either directly or indirectly) for the Reserve. As a result, there are a multitude of secondary issues that exist so please indulge our explanation to help give a perspective as to the scope of the community's involvement and investment in the Reserve.

In 2008 the DNLR reviewed and observed several encroachments and impediments to free access and use of the Reserve area. The community came together and determined to address those concerns that several actions were necessary. These included removing encumbrances to lateral foot traffic, removal of certain unapproved structures, adjustments to the corridor pathways, some dune restoration activities, and removal of some trees. The community though UBRA funded the SRCP study to provide a consistent approach, and to assure the community that the work was being done to a set of best-use criteria and with best-practices. This plan was shared with the community and the DNLR. UBRA then requested to work out a management agreement with the DNLR and to begin its implementation of aspects of the plan.

In 2010 UBRA, Tri-Isle, and the DNLR proposed for UBRA (and Tri-Isle) to have a right-of-entry and area management agreement through a Memorandum of Agreement (MOA). The BNLNLR unanimously approved it "in principal" the primary terms of the MOA (Attachment C – BNLNLR submission 11-2010). The final approval of an agreement was never signed as the State never provided an executable document. In 2013 Tri-Isle (501c3) became an unnecessary partner as UBRA became a legal 501c4 entity. The approval of the terms of the MOA is proposed to be removed from the DNLR Board approved actions.

UBRA has operated within the spirit and intent of the November 2010 understanding and the Draft Management Agreement (DMA) derived thereafter (Attachment D – DMA). Key to that agreement is that the Reserve should be managed consistent with the SRCP. The land use and character of the Reserve in this area is unique, special, and very different from typical MCP&R park areas. It is an eco-system unto itself. Besides the wetland habitat mentioned, this Reserve is deliberately rustic and is friendly to the nesting activities of the honu and many indigenous birds. The DMA focuses on restoration and accessibility of the Reserve consistent with the SRCP, not the hardening or the building up a man-made developed green expanse open park-like environment like many other Maui parks. We feel it important to maintain the character, approachability, and protective habitat nature of the Reserve.

Section B - Meeting with the DLNR:

Mr. Gary Passon, the Chairperson of UBRA and initial organizer of the security arrangements for the Reserve and his wife, Charlene Schulenburg, are community leaders and have specifically taken on caring for the La'ie Wetlands. Char is also Chair of an active volunteer group focused on homelessness issues that works directly with UBRA called the "Kihei Delta Project" (KDP).

In July 2018 Gary and Char met with Mr. Daniel Ornellas, head of Maui's Land Management Division office to discuss the Reserve and possible changes. Mr. Ornellas is very familiar with the continuing relationship between these two groups, the State and the County, and has been very collaborative and supportive of UBRA's, KDP's, and other private citizenry efforts over the years to manage the Reserve and La'ie wetland areas. We shared information regarding the various community action groups that has led to unprecedented cooperation and intertwined activism to meet common goals in this area. (Attachment E – Multi-group Diagram).

Section C - Who / What is UBRA:

1. UBRA is a volunteer community organization of members who live along a approximately 1-mile stretch parallel to the Reserve. UBRA was formed in '08 to respond to the State's concerns about the area's access and use being artificially restricted by actions of some property owners along the Reserve. UBRA willingly solved and rid itself of many boundary line extensions that had been obstructing lateral foot traffic. UBRA funded the development of the SRCP and used it to bring the community together with a common vision for working in unison with the DLNR. This has been the guiding light for the UBRA efforts ever since.
2. With no answers in sight regarding the growing homeless/unsheltered, vagrants, crimes, and encampments problems the community was experiencing along the Reserve, UBRA members decided to also contribute to a nightly patrol of the Reserve/beach, accesses and some street areas (Attachment F - Map of security route). Soto's Crime Control and Security Solutions patrol starts at sunset and continues until after midnight. UBRA members have contributed, semi-annually, to cover the cost of this patrol for the last 5+ years.
3. It cannot be stated strongly or often enough what a positive difference UBRA's implementing the patrol has made. The consistency and regularity of the patrol enforcing the 'no camping' law (and other State and County ordinances) has helped

large areas that were previously overtaken by homeless groups to be enjoyed by the public again. UBRA members pitched in to clean up the areas and a sense of safety has been restored and maintained in the neighborhood. The local fishermen have returned and are comfortable fishing again daily. Local beachgoers and tourists can now enjoy the beach free of homeless 'packs' who often behaved dangerously due to various degrees/combinations of mental illness, drug and alcohol use. Local families are grateful to be able to bring their keiki outdoors to picnic and play on the Reserve and beach again thanks to UBRA.

4. It is noteworthy that the UBRA community is spending over \$100,000 per year to maintain and support the Reserve, beach, and access-ways to keep them safe and clear from falling coconuts, palm fronds and other tree branches. Since UBRA was formed, well over \$500,000 has been spent providing the operation of general green-way maintenance. This includes scheduled weeding, mowing, path clearance, tree trimming, signage, beautification, and dune restoration activities.
5. UBRA property owners nearest the La'ie Wetlands have incurred additional material expenses in dealing with its specific care. Constant and frequent removal of invasive species is extremely expensive. This muliwai's vibrant habitat requires quick thinking and crisis management during fish and duck die-offs, major clean-ups after floods and spills, caving embankments, replanting of fallen trees and the reopening of the La'ie wetlands waterway after the March 2011 tsunami. UBRA has often provided additional funds to cover emergencies (average of 2 major incidents per year in the last 8 years).

Section D - Who / What is KDP and how it works with UBRA:

1. The Kihei Delta Project (KDP) is a volunteer group of concerned Kihei citizens and businesses that focuses on vagrants and other bad actors performing illegal and negative behaviors in the Reserve area. It is celebrating its 1-year anniversary that culminated from 16-prior months of regular meetings. These meetings were attended by Maui's Housing and Human Services Dept, Kihei's Council Representatives, Community MPD officers and other concerned groups and citizens.
2. The "Delta" was identified as the term the homeless/unsheltered use to define the Reserve area within easy walking distance for the homeless to return to Hale Kau Kau (HKK), St. Theresa Church's free nightly feeding program. KDP was created as a partnership with HKK, volunteers, community activists, homeless advocates, and UBRA.
3. KDP produced an agreement for St. Theresa's and HKK to add hours to UBRA's existing nightly safety patrol. Gary personally manages UBRA's Security agreement and helped extend the "UBRA partnership" with Bob Soto for discounted patrol services. In turn, the patrol has been able to minimize the homeless/unsheltered from hanging in packs, and from doing other unseemly, threatening, harassing and illegal behaviors that had been ruining the experience of the Reserve for locals and visitors.
4. Soto attends KDP meetings and works directly with the Kihei's Community Officers and Maui's DLNR Patrol Officers. Soto documents the types and number of problem incidents on the Reserve nightly over the last 5 years. Data collection supports that

complaint calls have decreased by at least 35-40% since the patrols began, and we have a much happier community as a result. Per the community's request bike and ATV police patrols have been implemented and it has inspired Kihei Community Police Officers to launch project HOPE, (a more compassionate, gentler method when police approach the homeless, wearing more informal clothing, etc.).

5. KPD, Share Your Mana (Local Kihei Homeless support organization and 501c3) and the Aloha Aku Inn (adjacent property to the Reserve and the wetland) hosted an educational series whereby UBRA members and others were made aware of larger homeless/unsheltered issues (i.e. how and why homeless are attracted to the Reserve and beach area, etc.). In addition, Ka Hale A Ke Ola's (KHAKO) Shelter Executive Director participated and revealed that \$1.5M was available and set aside specifically for Kihei to build a shelter with social services.
6. The KDP efforts and the availability of the KHAKO funds prompted Kelly King (South Maui's Rep.) to conduct several organized discussions to get the community's "buy-in" to define what kind of shelter would be welcomed and where it should be located. From that, the Pu'uohonua Working Group was formed to search for a suitable place accepted by the community to be a permanent Kihei shelter. While the search continues, Maui County awarded to KHAKO funds needed to provide some immediate resources for Kihei. For the first time in Kihei a Mobile Resource Trailer is being created to offer stops throughout Kihei and administer services to the homeless/unsheltered in Kihei. All this was sparked by UBRA's care for the Reserve and efforts to address homelessness in the Reserve.

Section E – Kihei Community, Native Hawaiian, and UBRA Collaboration

1. The Kula Kai Aha Moku and others of Hawaiian descent offered their kuliana in the most recent emergency cleanups in the wetland. UBRA, the Kula Kai Moku and others have independently participated in restoration of the wetland to do replanting of indigenous plants and fauna so to bolster the reclamation of cultural enjoyment and gathering practices. They would like to expand their cultural practices to the Reserve. (Possible Maui County grant funds avail for cultural use -- re: inquiry as to UBRA's ability to do a grant request (as a 501c4) and work with the Aha Moku on various Wetlands restoration projects is in progress).
2. There is a coral reef that spans the entire length of the reserve. The RSM report recommends that for coral reef restoration to be most effective, advanced planning and monitoring of upland activities must occur. Inherent in the Kula Kai Aha Moku name is the desire for the Moku to care for the uplands (mauka of Pi'ilani Hwy). Discharge and sediment management of streams is also one of the specific areas of concerns. Brown water often comes through La'ie wetland during floods and onto the reef. Aloha Aku has been providing information to the Moku as well as working with the US Fish and Wildlife Dept. when issues have arisen.
3. One of the goals mentioned by the USACE in the RSM is the overlapping and implementing of a streamlined process for coordination and tie-in of workshops and

education. Lokelani School, The Kula Kai Moku, and Aloha Aku have already partnered for a 'cultural - kids community work day' at the Reserve and wetland.

4. Aloha Aku has maintained the cluster of large ancient Kiawe trees on the Conservation land next to the muliwai. They have worked with arborist (Retired Maui County) Earnie Rezens, who would like to see those trees try to be preserved despite their not being indigenous because of their beauty, shade, age, and shape. Additional effort and expenses have included trimming and maintenance of the Mangrove trees along the La'ie Wetland to prevent further invasiveness of the mangrove into the waterway. This is one of the tallest mangrove forests in the state for almost 100 years with a very intricate eco system. Consultations with cultural experts, Kimokeo Kapahulehua and Scott Fisher have advised that to completely remove the mangrove in this wetland would be a shock and cause devastating effects to the current balance of the indigenous and endangered species that live among it and upset any restoration that has begun.
5. Aloha Aku and UBRA would like to continue the stewardship and the expense of the garbage cans maintenance located at the parking area adjacent to the wetlands at S. Kihei Rd. They have been emptying and supplying garbage bags and the waste removal /dumping fees weekly, at their own expense, for several years.
6. Kihei Community Association Board (KCA) discussed the possibility of the proposed change in Reserve management at the September Board meeting and are informally and "in principal, in favor of UBRA and in concept supports their efforts" as stated in KCA's Sept. minutes.

Section F – General Community Concerns:

1. There is widespread concern that new management of the Reserve would not be consistent with the SRCP, RSM and UBRA. KDP, the Kula Kai Aha Moku, and many other Kihei community groups generally share the impression that MCP&R is already overloaded and underfunded with the number of parks and land for which they are currently responsible to maintain. It is also the community's sense that MCP&R is in the business of creating large green zones with concrete, lights, and other hardscaping and sports facilities that would conflict with our local community's sense of the best practices and best use for the sensitive Reserve, dunes, honu nesting areas, and beach.
2. There is further alarm about the stewardship of one of Kihei's last remaining natural waterways - the La'ie Wetland. Care for the several known turtle nesting areas around the south end of Uluniu St. and near the VFW must continue. Significantly more turtle activity has been observed near the dune at the mouth La'ie Wetlands in the last year. This area needs added protections. There are regular sightings of significant indigenous and endangered species and their activities including the Ae'o, the Auku'u, and the Nene! (flocks have been documented visiting as recently as 10/7/18 and more often than before). We seek to protect this Reserve, the Wetlands and their wildlife.

Section G - Specific concerns about MCP&R managing the Reserve and Wetlands area include:

1. It is our understanding that the County had expressed not wanting to take control or management of these lands last time this was suggested stating additional burden, costs and lack of man-power. There is concern and unsettledness that a new administration in Jan. 2019 may or may not be interested or able to fund the expenses necessary to maintain the Reserve and wetland as they are now being managed. Has the Maui County Council agreed to add this to the budget going forward? Will the monies or focus be an issue and the lands go into an “unmanaged” state?
2. The Kihei community sees this Reserve as not being consistent with the general nature of the “Parks and Recreation” (P&R) areas under P&R’s control. With the recent addition of the Kihei Central Park, the community of Kihei is not asking for more “Parks”. The SRCP describes a very different model for the management of the Reserve. Will the P&R try to force this Reserve into their standard P&R model of wide expanses of green space, developed walkways and bikeways, sports facilities, cooking facilities, lighting, public bathroom(s), etc. at the expense of the rustic walkable space with indigenous plant and wildlife-friendly areas as it is today to save money and manpower?
3. P&R recently took over the irrigation of an area at Waiohuli Beach Park just north of the Reserve and 3-preapproved TMK’s. They implemented its own irrigation system using R1 water. The Maui Sunset had unofficially (informally) provided the irrigation for this area for over 40-years. Some KCA board members, UBRA, and the community at large feels that the communication, the level of community involvement, and the results of the changes were undesirable. What assurances will the community have that there will be better community engagement in any changes proposed to this area by P&R?
4. The tree trimming equipment and general attitude toward trees that the P&R uses is not perceived as conducive to proper care of this Reserve; instead for efficiency purposes the P&R uses trimming devices that sometimes rip the branches from the trees. There doesn’t seem to be consideration of the types of trees, indigenous or invasive, when trimming, often making their efforts appear destructive rather than beneficial. Shade trees are often removed to prevent the homeless/ unsheltered from having a comfortable place to sit, but in doing so it also takes away the shade from locals and visitors. Trees are often also removed because the roots are messing up the park’s concrete walkways. P&R in general seems to have a different approach than what’s proper for this Reserve. Will significant budget constraints and approach issues be addressed, and will the community be advised and consulted on any tree removal or trimming?
5. The P&R has not, in our opinion, demonstrated an adequate awareness of the sensitive nature of La’ie Wetlands or its value as one of Kihei’s last and most important natural water resources. Most owners, renters and vacationers don’t know how important these untouched lands/waters are either. It is not just a flood management overflow zone. This is a wetland-nexus that needs special attention and care for the habitat to thrive. It should be further restored to its traditional and natural state to support the indigenous plants, water life and fowl, as well as support of its use by Hawaiians for cultural practices. Will the County accept some responsibility toward restoration of this wetland?

6. The RSM points out that the State DOE, Historic Preservation, Hawaiian Affairs, U.S. Fish and Wildlife Services, and NOAA Marine Fisheries are the experts who usually protect and advise regulating work near water relating to plants, wetlands, wildlife and/or advise and protect cultural best practices. Does the County even have anyone like the DNLR has who typically regulate and advise best practices for work in and near this wetland?
7. Maui County is currently responsible for management of the La'ie Wetlands under a Flood Management Agreement with the State. The community has been unable to determine which department in the County that is responsible for the several emergencies in the La'ie Wetlands, as no action was taken to address those situations. These include emergency cleanups when die-off situations cause significant potential health and safety issues. We thank the DNLR Fish and Wildlife Department for their concern, direct actions, advice, and support in accessing these situations and making recommendations to mitigate the damage over the years. This has motivated private citizens to install air injector aerators into the water at various points to improve the oxygen levels, clearing water access ways, and several emergency removals of dead/dying fish and ducks (nearly 500 lbs. each time). All these instances have been privately funded or funded with the help of extra UBRA assessments. Again, does the County even have anyone like the DNLR has to protect and advise on these areas and on the plants, wetlands and wildlife and/or cultural best practices?
8. It is unclear which department in the County came into the La'ie Wetland (prior to 2010) with heavy equipment to remove trees and mulched tons and tons of shavings right into the muliwai itself. This saturated a section of the stream with 4-5 ft. mounds of mulch that forever changed the shape of the wetland and extinguished a material portion of the natural waterway. All of this was at the expense of the much-needed natural plant and water fowl habitats. Some restoration has been done to reverse this damage as organized by UBRA, Aloha Aku, KDP, Community Workday, Malama Maui Nui, Kula Kai Moku and other community volunteers. Restoration of the La'ie Wetlands is paramount and expensive. Again, would the County commit time, money and attention to that restoration?
9. It has been brought to our attention that the Reserve needs to stay in State control to honor the agreement that the State has with the Aha Moku Council for ongoing cultural input. That agreement is not with the County. Will the County accept and adhere to this agreement with the Moku Council?

Section H - Proposal and Summary - In order of preference:

- a) That the State limit its scope to only the 3-forested TMK-lots to the County for management.
- b) In lieu of transferring management control of the remaining 90% of the Reserve to MCP&R, UBRA is asking for the BLNR to continue to allow that operation to be consistent with the informal understanding between it and UBRA which covers approximately 40 TMKs.

- c) In lieu of transferring management control of the Reserve to the MCP&R, UBRA is asking that the BLNR have the local Maui DNLR office review and complete the MOA agreement with UBRA for the management of the Reserve pursuant to the terms of the draft agreement (Attachment E) and the SRCP (Attachment A) and the RSM (Attachment B). Of course, the final agreement may be rescinded at any time and for any reason by the DNLR.
- d) That if the DNLR determines to modify its current operational responsibility over the Reserve and wants MCP&R to have more direct management control over the Reserve and La'ie Wetland then UBRA asks the local Maui DNLR office to support UBRA by making agreement with Maui County that includes an express understanding that the County would manage the Reserve and Wetlands consistent with the SRCP and RSM, as well as, enter into a 3rd party agreement with UBRA for UBRA to operate and maintain its part of any stewardship of the Reserve & Wetlands (pursuant to the terms in the SRCP and RSM). This UBRA agreement would be recognized by Maui County and that for the County to cancel or modify such an agreement would require prior BNLN approval.

Summary:

UBRA's concern is without a 3-way partnership, the communities 10-year education and investment in making the area accessible, safe, maintained, and clean, but especially appealing and enjoyed by locals and residents again, could be inadvertently lost.

UBRA believes the options above would be a prudent, safe, practical way to make the County not feel burdened by this and continue giving the community a stake in keeping the Reserve natural and healthy.

A core principle is the community would push very strongly AGAINST these Reserve lands being turned into a "Park". If done, the character of the area, the wildlife, flora and wetlands as well as the 'aina and the local community will suffer! Please help us not to have that happen.

Kihei faces serious (coastal/flooding) issues in the coming years. Who better to take help care for the Reserve and La'ie wetlands than those who already live with the conditions and are familiar with the situations daily? UBRA is already signed up and has already been coordinating public input, privately financing, and acting as a Beach Managed District (BDM).

Mahalo for your time and consideration,



UBRA Board of Directors (read and approved)

Gary Passon - UBRA President

Charlene Schulenburg - Kihei Delta Project Chairperson

Cc: The Mayor, Kelly King, Daniel Ornellas, UBRA Board, Kula Kai Aha Moku

EXHIBIT 7

DAVID Y. IGE
GOVERNOR OF HAWAII



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

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD, STE 555
KAPOLEI, HAWAII 96707

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
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

October 26, 2018

Seiko Machida, Land Agent
Maui District Land Office
Land Division, Department of Land and Natural Resource
54 South High Street, Room 101
Wailuku, HI 96793
Email: Seiko.J.Machida@hawaii.gov

IN REPLY REFER TO:
Log No. 2018.02287
Doc No. 1810GC19
Archaeology

Dear Ms. Machida:

**SUBJECT: Chapter 6E-8 Historic Preservation Review –
Amend Prior Board Action of February 23, 2018, Item D-7, Ref No. 17MD-148
Set Aside to County of Maui for Public Park Purposes, Waiohuli-Keokea Beach Homesteads
Waiohuli Ahupua'a, Kula District, Island of Maui, TMK: (2) 3-9-007:004 and 005 por.**

Amend Prior Board action of November 22, 2010, Item D-7, Authorize the Chairperson of the Department of Land and Natural Resources to Negotiate the Terms and Conditions, and Sign a Memorandum of Agreement between the Department, Tri-Isle Resource Conservation & Development Council, Inc., and Uluniu Beach Reserve Association regarding Maintenance of the Uluniu Kihei Beach Reserve; Grant of Term, Non-Exclusive Easement to Tri-Isle Resource Conservation & Development Council, Inc. for Land Management Purposes; Cancellation of Revocable Permit S-6710 to Myron Higashi and Revocable Permit S-5377 to Douglas M. Sherman; Issuance of Management Right-of-Entry, Waiohuli-Keokea Beach Homesteads, Kihei, Island of Maui, TMK: (2) 3-9-007:005 por.; (2) 3-9-007:065; (2) 3-9-008:001; (2) 3-9-009:011; (2) 3-9-009:031; (2) 3-9-009:032; (2) 3-9-009:033; (2) 3-9-009:034 and (2) 3-9-010:777

**Waiohuli Ahupua'a, Kula District, Island of Maui,
TMK: (2) 3-9-007:004, 005, 065; (2) 3-9-008:001, 777; (2) 3-9-009:011, 012, 031, 032, 033, 034, 777; and (2) 3-9- 010:777**

This letter provides the State Historic Preservation Division's (SHPD's) comments regarding the subject request. The SHPD received this submittal on September 28, 2018. Previously on February 1, 2018, SHPD commented on a submittal titled *Request for Set Aside to County of Maui for Public Park Purposes, Waiohuli-Keokea Beach Homesteads, Ref No. 17MD-148*, which indicated that SHPD has no objections to the set-aside and requested that SHPD have the opportunity to review and comment on any future permit applications involving ground disturbing activities (Log No. 2017.00008, Doc 1802GC01).

The submittal indicates that the purpose of amending the Board of Land and Natural Resources (BLNR's) February 23, 2018 action is to: (a) increase the area of the set-aside from 2.788 acres, more or less, to 24.917 acres, more or less; and (B) specify that the seaward boundary of parcels (2) 3-9-008:777, (2) 3-9-009:777, and (2) 3-9-010:777 included in the set-aside shall be the mean lower low water line.

EXHIBIT "I"

The purpose of amending the Board's action of November 22, 2010, Item D-7, is to delete portions of the approved action relating to the: (1) negotiation and execution of a Memorandum Agreement between the Department, Tri-Isle Resource Conservation and Development Council, Inc., and Uluniu Beach Reserve Association regarding Maintenance of the Uluniu Kihei Beach Reserve; and (2) grant of term non-exclusive easement to Tri-Isle Resource and Conservation and Development Council, Inc., for land management purposes; and (3) issuance of management right-of-entry permit to Tri-Isle Resource and Conservation and Development Council, Inc., for land management purposes.

In addition, the submittal declares that after considering the potential effects of the proposed disposition, as provided by Chapter 343, HRS and Chapter 11-200, HAR, this project will have minimal or no significant effect on the environment and therefore is exempt from the preparation of an environmental assessment (EA).

A review of SHPD records indicates no archaeological inventory survey has been conducted for the subject parcels which are located near an ancient Hawaiian fishpond (Site 50-50-09-1738) and previously documented subsurface cultural deposits (Sites 50-50-09-5300 and 50-50-09-5060), including displaced and *in situ* human burials. The subject parcels are located in dune land and sand deposits, which are known to contain human burial features.

Based on the available information, **SHPD has no objections** to the following proposed BLNR amendments:

1. February 23, 2018 action to 1) increase of the set-aside from 2.788 acres, more or less, to 24.917 acres, and 2) specifying that the seaward boundary of parcels (2) 3-9-008:777, (2) 3-9-009:777, and (2) 3-9-010:777 included in the set-aside shall be the mean lower low water line; and
2. November 22, 2010, Item D-7, to delete portions of the approved action relating to the 1) negotiation and execution of a Memorandum Agreement between the Department, Tri-Isle Resource Conservation and Development Council, Inc., and Uluniu Beach Reserve Association regarding Maintenance of the Uluniu Kihei Beach Reserve.

SHPD requests the opportunity to review and comment on any future permit applications involving ground disturbing activities. The permit process may continue.

Please contact Susan A. Lebo, Archaeology Branch Chief, at Susan.A.Lebo@hawaii.gov or at (808) 692-8019 for any questions regarding archaeological resources or this letter.

Aloha,

Alan Downer

Alan S. Downer, PhD
Administrator, State Historic Preservation Division
Deputy State Historic Preservation Officer

EXHIBIT "7"

EXHIBIT 8

EMAIL FROM DIRECTOR OF MAUI COUNTY PARKS & REC DEPARTMENT

From: Karla Peters [<mailto:Karla.Peters@co.maui.hi.us>]
Sent: Tuesday, March 05, 2019 6:11 PM
To: Ornellas, Daniel L
Cc: John Buck; Lisa Almeida
Subject: RE: Meeting of February 22, 2019

Hi Daniel,

Thank you for the response. We met with Mayor and he is in support of the plans for the Lahaina Historic District. We will be sending communication from Mayor to formalize the request to cancel the EO's. We will also assess structures within the properties and start working on the removal of these old facilities.

Regarding Ukumehame Firing Range, we will work on revising our Administrative Rules so that we can continue the agreement with the current vendor. Administration wants to ensure that there is a range that allows public use.

Yes, we agree to taking over the expansion area of Waipuilani. Please let me know how to proceed.

Thanks again for all your information and assistance. We look forward to meeting with you and OHA in the near future.

Thanks!
Karla

Karla H. Peters

Director
Parks & Recreation
County of Maui
700 Hali'a Nakoia St., Unit 2
Wailuku, Maui, Hawaii 96793
Office: [\(808\) 270-7230](tel:(808)270-7230)
Fax: [\(808\) 270-7934](tel:(808)270-7934)
karla.peters@co.maui.hi.us

Our Mission: "Provide safe, satisfying and cost effective recreational opportunities for the residents of and visitors to Maui County."