

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

April 26, 2019

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

PSF No.: 14MD-065

MAUI

Amend Prior Board Action of June 9, 2017, Item D-9, Rescind Board Action of April 8, 1983, Item F-3, Direct Sale of Perpetual, Non-Exclusive Easement for Revetment Purposes Covering Portion of Government Beach Reserve, and Grant of 55-Year Term, Non-Exclusive Easement to New Owners: Robin M. Kean and Jennifer Downs Kean, Trustees of the Robin M. Kean Revocable Living Trust dated October 1, 2015 and Jennifer Downs Kean and Robin M. Kean, Trustees of the Jennifer Downs Kean Revocable Living Trust dated October 1, 2015; for Resolution of Seawall and Rock Revetment Encroachment Purposes; Issuance of Immediate Management Right-of-Entry Pending Issuance of Easement, Waiohuli-Keokea Homesteads, Kihei, Maui, Tax Map Key: (2) 3-9-012: seaward of 003.

The purpose of the amendment is to change the easement area from 650 square feet, more or less, to 668 square feet, more or less, and expand the easement character of use to include concrete steps.

BACKGROUND:

On June 9, 2017, Item D-9, the Board approved the issuance of a 55-year term, non-exclusive easement for seawall and rock revetment purposes to Robin M. Kean and Jennifer Downs Kean, Trustees of the Robin M. Kean Revocable Living Trust dated October 1, 2015 and Jennifer Downs Kean and Robin M. Kean, Trustees of the Jennifer Downs Kean Revocable Living Trust dated October 1, 2015. The estimated easement area was stated as 650 square feet, more or less. See **Exhibit 1**.

REMARKS:

Subsequent to the Board's 2017 approval, an easement survey conducted on December 12, 2018 showed additional areas of encroachment being a portion of concrete steps. See **Exhibit 2**. The same map shows a portion of the steps being makai of the shoreline and encroaching on state lands. The survey map specifies the total easement area as 668 square feet.

Therefore, the easement area needs to be changed from 650 square feet, more or less, to 668 square feet, more or less, and the easement's character of use needs to be revised to include the concrete steps described above. Subsequent to the December 12, 2018 survey, the applicants were informed that portions of the concrete steps were also encroaching on State lands, and applicants want to continue to pursue the easement.

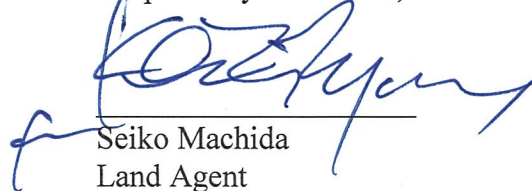
Furthermore, staff found it necessary to advise the County of Maui of a portion of seawall that extends out in front of an existing shoreline right-of-way referred to as Waimahaihai Beach access No. 112. State and County staff completed a site inspection on October 16, 2018. The purpose of the site inspection was to better understand the encroachment of the existing seawall structure onto County owned land. Pursuant to analysis by the County of Maui, the County will not require the removal of the portion of seawall or rock revetment fronting along County property and the shoreline (Exhibit 3).

Staff recommends the Board authorize amending the prior approval to change the easement area and include "concrete steps" in the character of use. Applicants will need to request authorization of the Legislature by concurrent resolution during the 2020 legislative session for an easement for the seawall, rock revetment, and concrete steps.

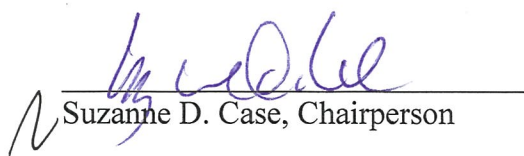
RECOMMENDATION: That the Board amend its prior action of June 9, 2017, item D-9 by:

1. Changing the area of the easement from 650 square feet, more or less, to 668 square feet, more or less.
2. Adding "concrete steps" to the Character of Use of the requested easement; and
3. Except as amended hereby, all terms and conditions in the June 9, 2017 approved submittal to remain the same.

Respectfully Submitted,


Seiko Machida
Land Agent

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

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

June 9, 2017

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

PSF No.: 14MD-065

Maui

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

APPLICANT:

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

LEGAL REFERENCE:

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

LOCATION:

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

AREA:

650 square feet, more or less.

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

June 9, 2017 Up

EXHIBIT 1

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

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

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

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

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8(a)(1) & (4) and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated December 4, 1991, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," Item No. 46, that states "Creation or termination of easement, covenants, or other rights in structures or land."

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial rent/one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost. The survey should contain all encroachments seaward of both parcel 003 and the public right-of-way off of Waimahaihai Street identified as parcel (2) 3-9-012:999 por.; and
- 3) Obtain authorization of the State Legislature by concurrent resolution for the proposed easement disposition pursuant to HRS 171-53(c).

REMARKS:

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

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

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

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

Staff recommends no fine as the subject encroachment was put in place by the previous land owner more than thirty (30) years before the current owners purchased the property. Applicant shall comply with all requirements stipulated above. Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five

years due to non-compliance with such terms and conditions.

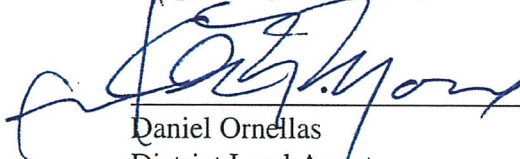
Staff is including a recommendation below for the issuance of a right-of-entry permit to the Applicant to maintain the encroachment in place pending issuance of the easement. There will be no separate consideration paid for the right-of-entry, but Applicant will be required to provide liability insurance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

RECOMMENDATION: That the Board:

1. Rescind the prior Board action of April 8, 1983, under agenda item F-3.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 3-9-012:003, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Robin M. Kean and Jennifer Downs Kean, Trustees of the Robin M. Kean Revocable Living Trust dated October 1, 2015, and Jennifer Downs Kean and Robin M. Kean, Trustees of the Jennifer Downs Kean Revocable Living Trust dated October 1, 2015 covering the subject area for seawall and rock revetment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 3-9-012:003, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

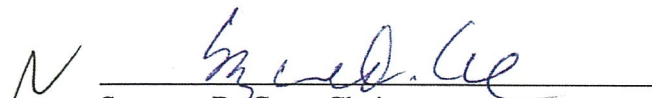
4. Grant a right-of-entry to Robin M. Kean and Jennifer Downs Kean, Trustees of the Robin M. Kean Revocable Living Trust dated October 1, 2015, and Jennifer Downs Kean and Robin M. Kean, Trustees of the Jennifer Downs Kean Revocable Living Trust dated October 1, 2015 covering the subject area for seawall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

Respectfully Submitted,



Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:

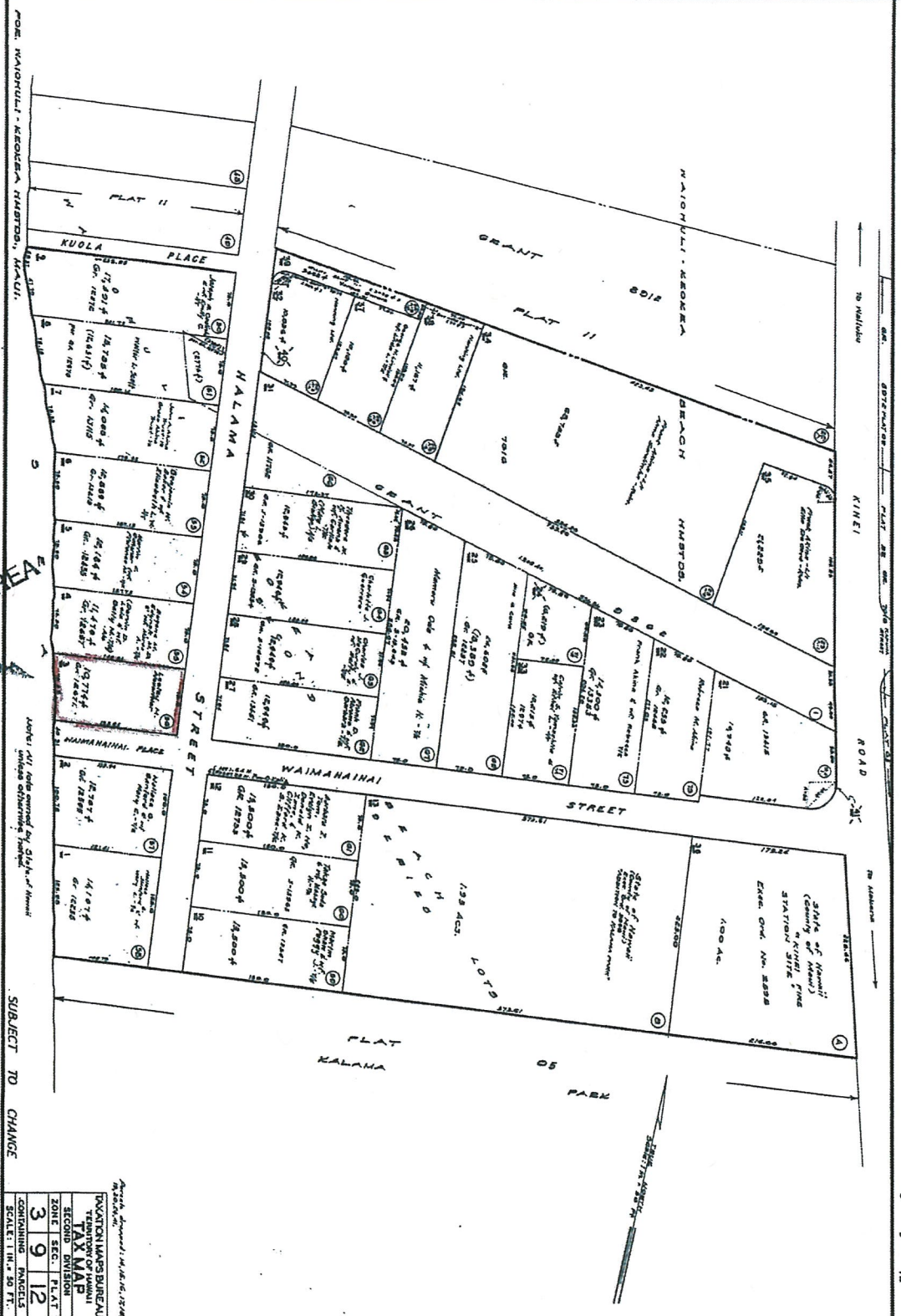


Suzanne D. Case, Chairperson

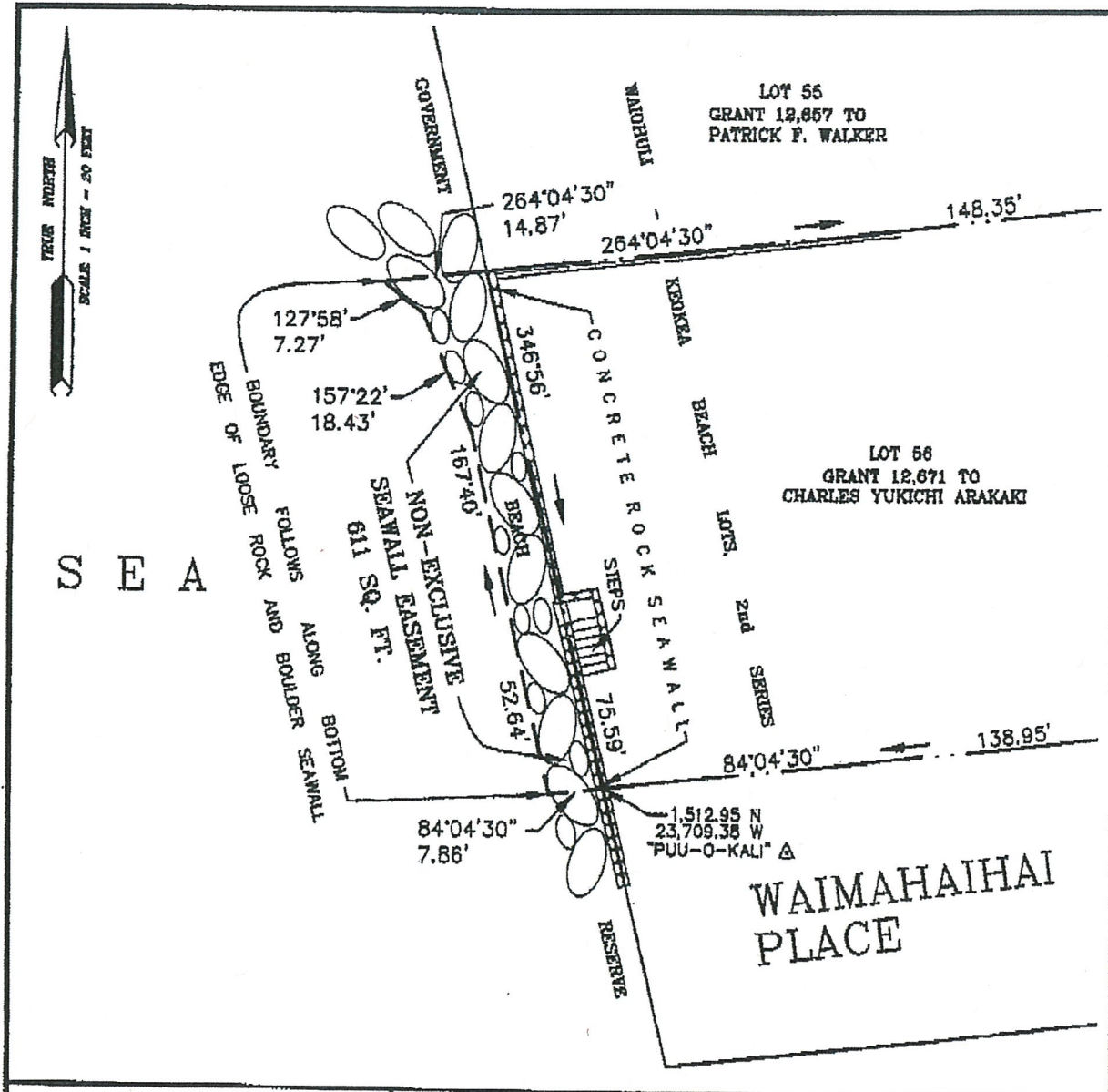
EXHIBIT 1

DWG. No. 1228
 Source: Taxation Maps Bureau
 By: J.H.H. & S.L. Date: November, 1928.

SUBJECT AREA



Scale: Horizontal 1" = 100' Vertical 1" = 50'
 TAXATION MAPS BUREAU
 TERRITORY OF HAWAII
 TAX MAP
 SECOND DIVISION
 ZONE SEC. PLAT
 3 9 12
 CONTINUING PANELS
 SCALE 1" = 50 FT.



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

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

EASEMENT PLAT

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

PREPARED FOR:

MR. ROBIN M. KEAN

KIHU, MAUI, HAWAII 96763

PREPARED BY:

CARL R. MUSTO
LAND SURVEYING, LLC
190 SOUTH MAKALEHA PLACE
MAKAWAO, MAUI, HAWAII 96768

SCALE: 1 INCH = 20 FEET

DATE: JANUARY 23, 2015

8.5"x11"

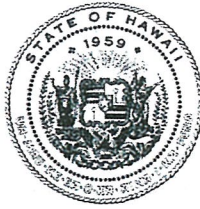
DRAWING: 15-2031D

Exhibit B
EXHIBIT 1



EXHIBIT " C "
EXHIBIT 1

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 9, 2017

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

KEKOA KALUHIWA
FIRST DEPUTY

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

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

EXEMPTION NOTIFICATION

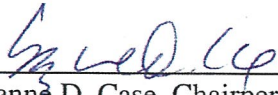
regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title:	Grant of 55-Year Term, Non-Exclusive Easement to New Owners: Robin M. Kean and Jennifer Downs Kean, Trustees of the Robin M. Kean Revocable Living Trust dated October 1, 2015 and Jennifer Downs Kean and Robin M. Kean, Trustees of the Jennifer Downs Kean Revocable Living Trust dated October 1, 2015
Project / Reference No.:	PSF 14MD-065
Project Location:	Government Beach Reserve, Waiohuli, Kihei, Maui TMK: (2) 3-9-012: seaward of 003
Project Description:	Issuance of Shoreline Easement for Encroaching Seawall
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No. and Description:	In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing" and Item No. 46, that states "Creation or termination of easement, covenants, or other rights in structures or land."
Consulted Parties:	DLNR Office of Conservation and Coastal Lands, MA-16-08

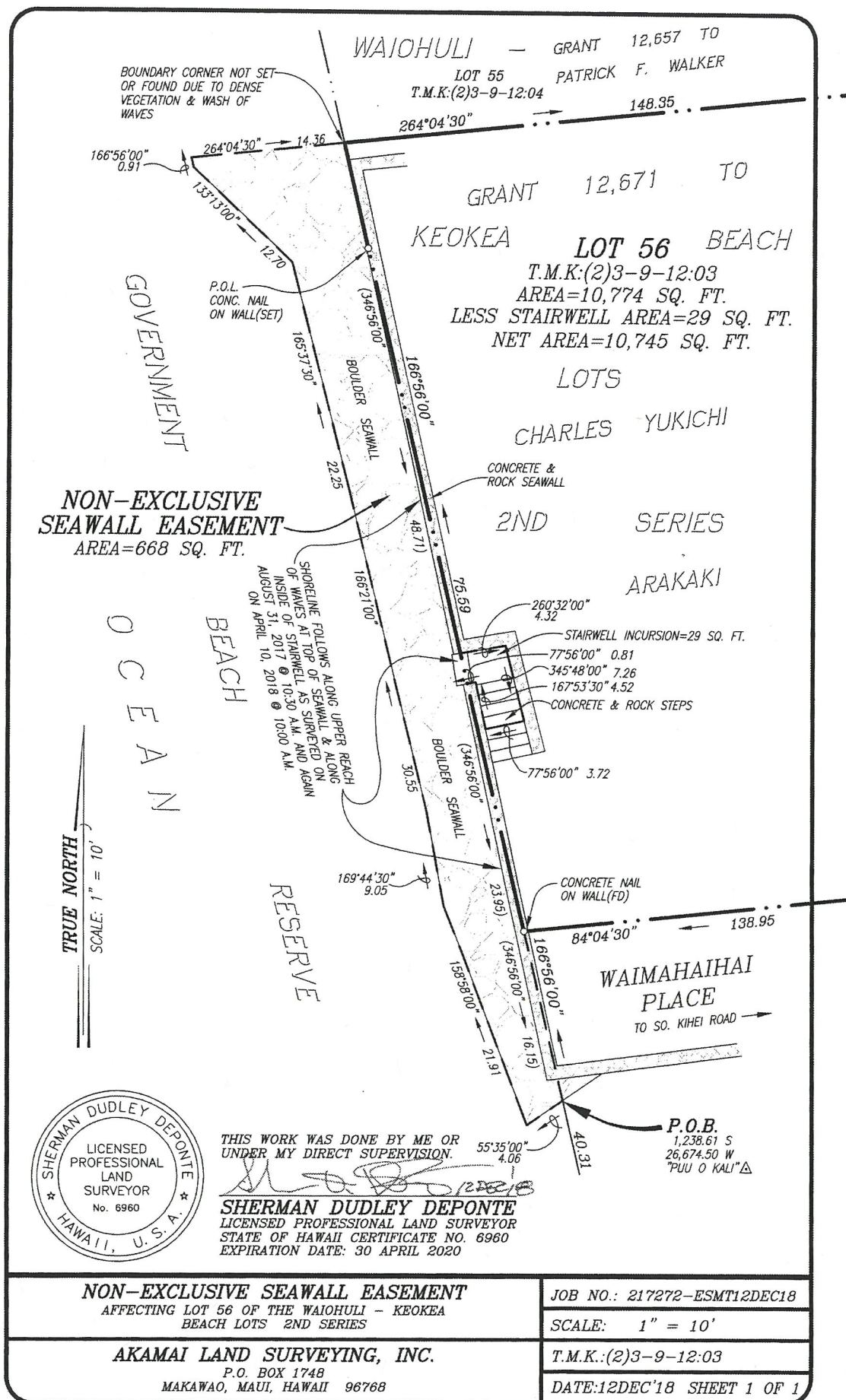
EXHIBIT 1

Recommendation:

It is anticipated that this easement will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.


Suzanne D. Case, Chairperson

 5/23/17
Date



LAND DESCRIPTION
NON EXCLUSIVE
SEAWALL EASEMENT

All that certain easement, known as a Non-Exclusive Seawall Easement over, under and across a portion of Government Beach Reserve, also being In favor of Lot 56 of the Waiohuli-Keokea Beach Lots Second Series, Fronting Grant 12,671 to Charles Yukichi Arakaki.

Situate at
Waiohuli, Keokea, Kula, Makawao, Maui, Hawaii
Tax Map Key: (2) 3-9-12: 03

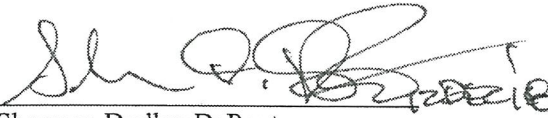
Beginning at the Southeasterly corner of this easement , the coordinates of said point of beginning are based on record information and referred to Government Survey Triangulation Station "PUU O KALI" being 1,238.61 feet North and 26,674.50 feet West and running by azimuths measured clockwise from True South; thence,

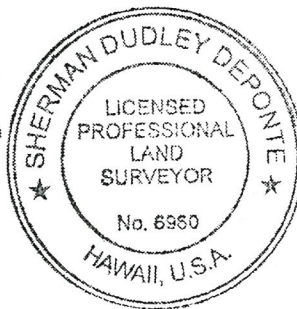
- | | | | |
|-----|--------------|-------|--|
| 1. | 55° 35' 00" | 4.06 | feet along the remainder of Government Beach Reserve, to the makai bottom edge of loose rock and boulder seawall to a point; thence, |
| 2. | 158° 58' 00" | 21.91 | feet along the same, to a point; thence, |
| 3. | 169° 44' 30" | 9.05 | feet along the same, to a point; thence, |
| 4. | 166° 21' 00" | 30.55 | feet along the same, to a point; thence, |
| 5. | 165° 37' 30" | 22.25 | feet along the same, to a point; thence, |
| 6. | 133° 13' 00" | 12.70 | feet along the same, to a point; thence, |
| 7. | 166° 56' 00" | 0.91 | feet along the same, to a point; thence, |
| 8. | 264° 04' 30" | 14.36 | feet along the remainder of Government Beach Reserve, to a point; thence, |
| 9. | 346° 56' 00" | 48.71 | feet along the Southwesterly property boundary line of Lot 56 of the Waiohuli-Keokea Beach Lots Second Series, to a point; thence, |
| 10. | 260° 32' 00" | 4.32 | feet along the shoreline as it follows along the upper reaches at the top of concrete rock and boulder seawall and inside face of stairwell as surveyed on April 10, 2018 at 10:00 am and the remainder or Lot 56 of the Waiohuli-Keokea Beach Lots Second Series, to a point; thence, |
| 11. | 345° 48' 00" | 7.26 | feet along the same, to a point; thence, |

- | | | | |
|-----|--------------|-------|--|
| 12. | 77° 56' 00" | 3.72 | feet along the same, to a point; thence, |
| 13. | 167° 53' 30" | 4.52 | feet along the shoreline as it follows along the upper reaches of waves and the easterly and northerly face of the concrete and rock seawall and inside face of stairwell as surveyed on April 10, 2018 at 10:00 am and the remainder of Lot 56 of the Waiohuli-Keokea Beach Lots Second Series, to a point; thence, |
| 14. | 77° 56' 00" | 0.81 | feet along the same, to a point; thence, |
| 15. | 346° 56' 00" | 23.95 | feet along the Southwesterly property boundary line of Lot 56 of the Waiohuli-Keokea Beach Lots Second Series, to a concrete nail on wall (found); thence, |
| 16. | 346° 56' 00" | 16.15 | feet along the Southwesterly right-of-way line of Waimahaihai Place to the point of beginning, containing an area of 668 square feet. |

This work was done by me or
under my direct supervision.

AKAMAI LAND SURVEYING, INC.


Sherman Dudley DePonte
Licensed Professional Land Surveyor
State of Hawaii Certificate No. 6960
Expires: April 30, 2020
217272 (12/12/18-WN)

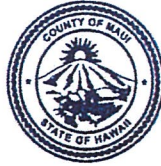


14MD-065

ALAN M. ARAKAWA
Mayor

MICHELE CHOUTEAU MCLEAN
Director

JOSEPH W. ALUETA
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

November 14, 2018

Mr. Daniel Ornellas, District Land Agent
State of Hawaii
Department of Land and Natural Resources - Land Division
54 High Street, Room 101
Wailuku, Hawaii 96793

Dear Mr. Ornellas:

SUBJECT: COMMENTS ON THE PSF 14MD-065 REQUEST FOR ISSUANCE OF EASEMENT FOR SEAWALL PURPOSES, WAIHOLI-KEOKEO HOMESTEADS, MAUI AND SPECIFICALLY REGARDING LANDS FRONTING THE COUNTY OF MAUI BEACH ACCESS NO. 112 ALONG HALAMA STREET AT WAIMAHAIHAI, LOCATED AT 1794 HALAMA STREET KIHEI, ISLAND OF MAUI, HAWAII; TMK (2) 3-9-012:003 (RFC 2018/0127)

Thank you for allowing the County of Maui Department of Planning (Department) to comment on the subject application for a State easement. The Department understands that the Applicant, Robin M Kean Revocable Trust and Jennifer Downs Kean Revocable Trust, P.O. Box 1306, Kihei, Hawaii 96753 are in the application process of obtaining a State of Hawaii easement for the encroaching portion on identified State lands.

On October 16, 2018, the Department met with Mr. and Mrs. Kean at the subject property, TMK (2) 3-9-012-003. Ms. Seiko Machida, Department of Land and Natural Resources (DLNR), also attended the site visit along with Ms. Tara Owens, University of Hawaii Sea Grant Extension Agent. The purpose of the site inspection was to understand the encroachment of the existing seawall structures onto County-owned land and right-of-way for purposes of gaining a State easement for encroachments onto State lands. In addition, the Department has reviewed maps and materials forwarded from the DLNR-Land Division, Maui, to review and assess.

At the time of the site visit, there was no sandy beach fronting the shoreline access, restricting lateral access along the shoreline, due to the seawall structure encroaching on State as well as County land. Large, mature Ironwood trees and lawn are planted on the subject county right-of-way land. The strip of County land that has been privatized by the land owners is approximately ten (10) feet wide from front to back along the shoreline access. A wall and fence serve to privatize the County strip of land. This situation has persisted for many years as demonstrated by the mature trees, including palm trees on the County strip of land.

EXHIBIT "3"

Mr. Daniel Ornellas, District Land Agent
November 14, 2018
Page 2

From the Department's analysis and the site inspection of the portion of the structures that are encroaching onto the County right-of-way known as the Waimahaihai Beach Access No. 112, the County of Maui will not require the sea wall or rock revetment to be removed from the portion of the County land, subject to the following conditions under an agreement understood and agreed to by the Applicant with the County of Maui, as stated below in this letter:

1. That as part of any future Special Management Area (SMA) Permit application, including a demolition permit, the subject County land shall be cleared of all encroachments including structures, perimeter walls, and fences, subject to the satisfaction of the Department. The shoreline access area shall be returned to its natural state. The grassed land area behind the seawall is allowed to remain for the enjoyment and use of the public.
2. That as part of any future SMA Permit application, the invasive Ironwood trees on the County parcel at the seawall, shall be removed and replaced by a native shade tree, such as Heliotrope, to create a park-like setting, to the satisfaction of the Department.

Should you require further clarification, please contact Staff Planner James Buika by email at james.buika@mauicounty.gov or by phone at 808-270-6271.

Sincerely,


for CLAYTON I. YOSHIDA

Planning Program Administrator

for MICHELE MCLEAN
Planning Director

xc: James A. Buika, Staff Planner (PDF)
Daniel Ornellas, Department of Land and Natural Resources-Land Division (PDF)
Project File

MCM:CIY:JAB:lak

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EXHIBIT " 3 "