

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

June 28, 2019

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

PSF No.: 19MD-018

MAUI

Issuance of Right-of-Entry Permit to Nellie's on Maui, Ltd. for Purposes of
Demolishing Existing Seawall, Waikapu, Wailuku, Maui, Tax Map Key: (2) 3-8-
014: seaward of 008.

APPLICANT:

Nellie's on Maui, Ltd., a Texas limited partnership.

LEGAL REFERENCE:

Section 171-55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of Maalaea Beach Lots situated at Waikapu, Wailuku,
Maui, identified by Tax Map Key: (2) 3-8-014: seaward of 008, as shown on the attached
map labeled Exhibit A.

AREA:

0.9165 acre, more or less.

ZONING:

State Land Use District:	Urban
County of Maui CZO:	Apartment, A-2

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:

Demolish existing seawall over and across State-owned submerged lands.

TERM OF RIGHT-OF-ENTRY:

Two months

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

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." Exemption Class No. 1, Item #3 exempts "removal of boulders, rocks, hazardous trees, marine debris, and other similar hazards necessary to maintain state lands and waters in a safe condition." In addition, Exemption Class No. 8 states "Demolition of structures, except those structures located on any historic site as designated in the National Register or Hawaii Register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, or Chapter 6E, Hawaii Revised Statutes." Exemption Class No. 8, Item #2 exempts "Demolition and removal of existing structures, facilities, utilities, and other improvements on state lands, except those structures located on any historic site as designated in the National Register or Hawaii Register as provided for in the National Historic Preservation Act of 1966, 16 U.S.C §§470 et. seq., as amended, or Haw. Rev. Stat. Chapter 6E. The exemption notification is attached as Exhibit B.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Comply with conditions of Office of Conservation and Coastal Lands (OCCL) approval MA-18-177, attached as Exhibit C.

REMARKS:

Applicant is requesting a right-of-entry (ROE) permit to remove a failed seawall that is now posing a hazard to the shoreline area fronting the subject parcel, located on Maalaea Bay. The seawall is encroaching on State submerged lands. The ROE is needed for a period of two months, for a contractor to remove the failed seawall.

Applicant has no immediate plans to improve, expand, reconstruct, or build a new seawall structure at the site. The area will be cleaned of all deleterious construction material once the demolition is completed. After the seawall is removed, the shoreline area will be left in a natural condition.

The subject parcel is currently undeveloped. Applicant states that removal of the failed seawall will facilitate a shoreline certification in support of future upland site development. Shoreline certification will be pursued by applicant after the failed seawall is removed.

Applicant received conditional approval to remove the seawall from the OCCL, approval number MA-18-177 dated March 16, 2018, attached as Exhibit C.

A scope of work from contractor G. Ibara Heavy Equipment, which describes the process of removing the seawall, is attached as Exhibit D. Because it may be necessary for a workman and/or small utility machine to enter the shoreline area to access the junction of the seawall with the neighboring sea boundary structures, the Applicant is requesting an ROE permit from the DLNR.

Maui district staff from both Land and Aquatics Resources divisions did a site inspection on February 19, 2019 and confirmed the dilapidated condition of the seawall. Photos of the parcel and seawall are attached as Exhibit E.

The following agencies have been solicited for comments:

Agency	Comment
Office of Hawaiian Affairs	No response received.
DLNR – Aquatic Resources	Comments attached as <u>Exhibit F</u>
DLNR – Conservation and Coastal Lands	No objection to proposed project. It is imperative that all Best Management Practices are followed strictly and properly.
DLNR – Engineering	Comment below.
County of Maui – Planning Dept.	The Maui County Planning Department fully supports the State's action to remove hazardous structure. Recommend State to encourage small-scale beach nourishment in future.
County of Maui – Dept. of Public Works	Responded with no comments.
U.S. Army Corps of Engineers	No response received.

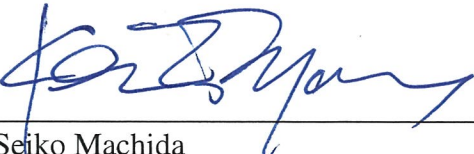
Staff of the Division of Aquatic Resources (DAR) had a question regarding whether Applicant will be doing re-vegetation or placement of geotextile bags filled with sand. Applicant states that OCCL advised them to leave the area as-is immediately after the demolition because Applicant wants to do a shoreline survey. After the shoreline survey Applicant will seek guidance from a shoreline consultant on how to best protect the shoreline from erosion and will implement the consultant's recommendations. DAR also had a question regarding Best Management Practices that the contractor will use during the seawall removal. Applicant's agent has confirmed that the contractor will follow BMPs, including but not limited to those mentioned in DAR's comments.

Staff of the DLNR Engineering office, Maui District, had a concern regarding inspection of the seawall demolition. A Maui District land agent will do an inspection after the seawall demolition and send an inspection report with photos to OCCL.

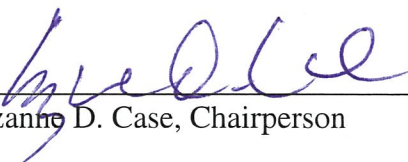
RECOMMENDATION: That the Board

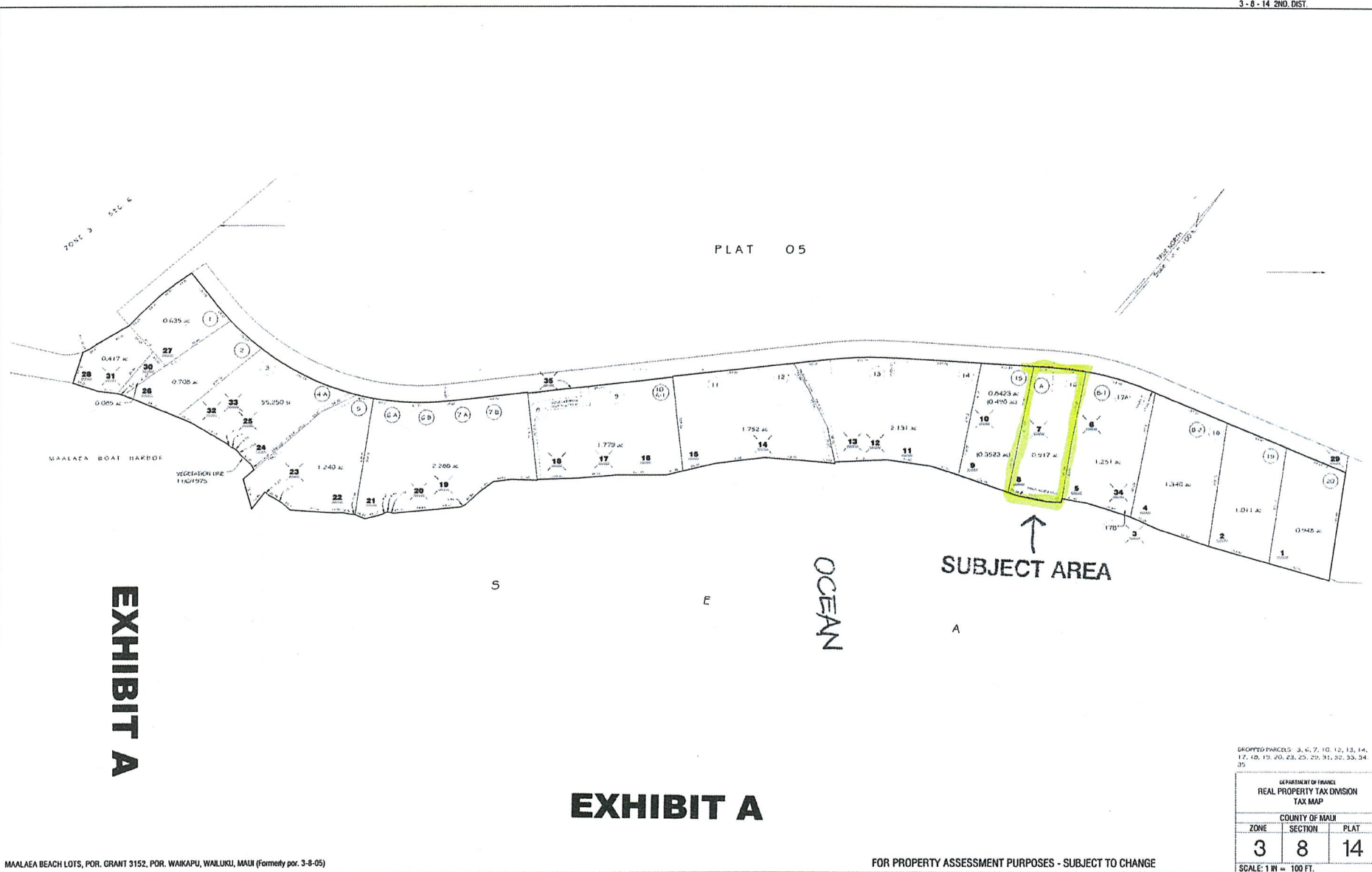
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, Hawaii Administrative Rules, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a right-of-entry permit to Nellie's on Maui, Ltd. covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


fr _____
Seiko Machida
Land Agent

APPROVED FOR SUBMITTAL:


N/ _____
Suzanne D. Case, Chairperson



EXEMPTION NOTIFICATION

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

Project Title: Issuance of Right-of-Entry Permit to Nellie's on Maui, Ltd. for Purposes of Demolishing Existing Seawall, Waikapu, Wailuku, Maui, Tax Map Key: (2) 3-8-014: seaward of 008.

Project / Ref. No.: PSF No. 19MD-018

Project Location: Portion of Government lands of Maalaea Beach Lots situated at Waikapu, Wailuku, Maui, identified by Tax Map Key: (2) 3-8-014: seaward of 008

Project Description: Applicant, Nellie's on Maui, Ltd., requests right-of-entry (ROE) over submerged State lands for a period of two months for demolition of a failing seawall fronting subject parcel. After demolition of the seawall, applicant can request a shoreline certification as a prelude to obtaining permits for future upland development. Subject parcel is currently undeveloped. Applicant has no immediate plans to improve, expand, reconstruct, or build a new seawall structure at the site.

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

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources 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." Exemption Class No. 1, Item #3 exempts "removal of boulders, rocks, hazardous trees, marine debris, and other similar hazards necessary to maintain state lands and waters in a safe condition." In addition, Exemption Class No. 8 states "Demolition of structures, except those structures located on any historic site as designated in the National Register or Hawaii Register as provided for in the National Historic Preservation Act of 1966, Public Law 89-665, or Chapter 6E, Hawaii Revised Statutes." Exemption Class No. 8, Item #2 exempts "Demolition and removal of existing structures, facilities, utilities, and other improvements on state lands, except those structures located on any historic site as designated in the National Register or Hawaii Register as provided for in the National Historic Preservation Act of 1966, 16 U.S.C §§470 et. seq., as amended, or Haw. Rev. Stat. Chapter 6E.

EXHIBIT B

The existing seawall was in place prior to the applicant's purchase of the property in October, 2000. It is now breaking apart and falling into the ocean in large chunks. Applicant received a conditional approval to remove the failed/dilapidated seawall structure from OCCL, as approval number MA-18-177 dated March 18, 2018. Applicant does not propose to do anything other than what was stated in MA-18-177. OCCL staff had determined that because the proposed demolition of the failed seawall includes the removal of a hazardous shoreline structure and will improve the lateral shoreline access and condition of the existing beach, that this project may be considered exempt from the preparation of an Environmental Assessment pursuant to the exemptions cited above.

Applicant needs an ROE permit from the Land Division because applicant's contractor indicated in his scope of work that some of the demolition activity requires construction access from the beach. Applicant does not plan to conduct any major change to the submerged lands and will strive to not disturb the submerged lands. 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.

Cumulative Impact
of Planned
Successive Actions
in Same Place
Significant?

No, this request is for a one-time demolition of an existing, failed seawall. Applicant has no immediate plans to improve, expand, reconstruct, or build a new seawall structure at the site. Therefore, no successive actions will occur in the same location. As such, staff believes that there would be no significant cumulative impact.

Action May Have
Significant Impact
on Particularly
Sensitive
Environment?

No, the requested area is a portion of submerged State lands that has not been identified as environmentally sensitive. The contractor will conduct minimal activity in the shoreline area, only as much as necessary to ensure that any submerged portions of the seawall have been removed and to make a clean cut of sea boundary materials at the subject property boundaries to the two neighboring parcels. The neighboring property to the north has a boulder revetment, and the neighboring property to the south has a concrete seawall. The contractor's heavy equipment will be located upland of the seawall, on the subject parcel which is private property. If it is necessary for contractor to enter the shoreline area to access the junction of the seawall with the neighboring sea boundary structures to ensure that all buried debris is removed, they will use a small utility machine.

Consulted Parties:

Agencies as noted in 'remarks' section of submittal.

EXHIBIT B

Analysis: 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 will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

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
KAIKOOLOAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF: OCCL: AJR

COR: MA-18-177

MAR 16 2018

Netra Halperin
c/o Opulent Designs, LLC
536 Kaiwahine St.
Kihei, HI 96753

**SUBJECT: CONDITIONAL APPROVAL TO REMOVE A FAILED/DILAPIDATED SEAWALL
 STRUCTURE ENCREACHING ON STATE SUBMERGED LANDS**
Wailuku District, Island of Maui
TMK: Submerged lands seaward of (2) 3-8-014:008

Dear Ms. Halperin,

The Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Lands (OCCL) is in receipt of your letter requesting a determination by this office on the proposed removal of a failed seawall structure that is now posing a hazard to the shoreline area fronting the subject parcel (**Exhibit 1**). For reference, the seawall has been sited within the State Land Use (SLU) Conservation District *Resource* Subzone (i.e., submerged lands of the state).

OCCL staff conducted a site visit on *January 30, 2018* to the aforementioned seawall and observed a failing, hazardous structure made of rock and concrete (**Exhibit 2, 2a**). Portions of the wall have failed completely and OCCL staff observed water penetrating and overtopping the seawall creating erosion of the land landward (mauka) of the failing structure. On *October 7, 2015* a shoreline inspection was conducted which showed that the "shoreline" was located landward of the seawall, indicating the entire structure is located on the States submerged lands, and therefore completely within the SLU Conservation District *Resource* Subzone (**Exhibit 3, 3a**).

At this time the OCCL supports the complete removal of the dilapidated and failing seawall structure from the States submerged lands. You have stated that the removal of the structure will facilitate a shoreline certification in support of future upland site development. You have stated that there are no immediate plans to improve, expand, reconstruct, or build a new seawall structure at the site, and that the area will be cleaned of all deleterious construction material once completed. All material will be stored away from the shoreline area, or removed from the site to an approved upland disposal area. Once the seawall is removed, the shoreline area will be left in a natural condition, and the shoreline certification will be pursued.

EXHIBIT C

Based on the necessity of removing a delapidated and failing seawall structure from the shoreline and lateral beach transit corridor, OCCL staff believes this proposed delapidated seawall removal project can be considered an identified land use in the SLU Conservation District *Resource Subzone* pursuant to Hawaii Administrative Rules (HAR) §13-5-22, P-13 **LAND AND RESOURCE MANAGEMENT (A-1)** *Basic land management, including routine weed control, clearing of understory, and tree pruning, utilizing chemical and mechanical control methods, which involves no grubbing or grading, in accordance with state and federal laws and regulations, in an area less than one acre.* OCCL staff notes that this particular land use is being utilized in order to facilitate proper land management of a shoreline parcel that abuts public lands. The proposed clean-up of the rock and other construction material is considered a hazard removal within public beach transit corridor; and

As this proposed land use includes the removal of a hazardous shoreline structure, and will improve the lateral shoreline access and condition of the existing beach, OCCL staff has determined this project may be considered exempt from the preparation of an Environmental Assessment pursuant to HAR §11-200-8, **DLNR Exemption Class 1 (3):** *Removal of boulders, rocks, hazardous trees, marine debris, and other similar hazards necessary to maintain state lands and waters in a safe condition;* and **DLNR Exemption Class 8 (2):** *Demolition and removal of existing structures, facilities, utilities, and other improvements on state lands, except those structures located on any historic site as designated in the National Register of Hawaii Register as provided for in the National Historic Preservation Act of 1966, 16 U.S.C. 470 et. seq., as amended, or Haw. Rev. Stat. Chapter 6E.*

Additionally, OCCL staff notes that if this activity requires construction access from the beach (i.e., work conducted from the beach vs. from the upland area) then the landowner may need to obtain a Right-of-Entry (ROE) authorization from the *DLNR – Land Division*.

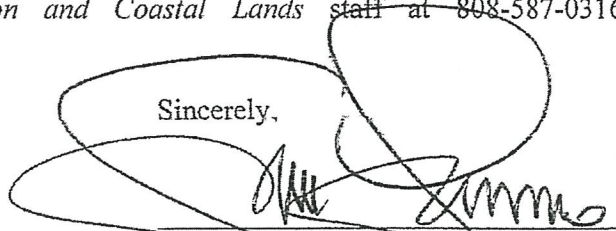
Based on the identified land use, and the necessity of entirely removing a failing seawall structure from the shoreline area, the Office of Conservation and Coastal Lands has no objections to your request to completely remove a dilapidated and failing seawall structure located on submerged lands of the state, seaward (*makai*) of TMK: (2) 3-8-014:008. Pursuant to Hawaii Administrative Rules (HAR) §13-5, these actions are uses for which no permit is required, however the OCCL requests that the correspondent adhere to the following general conditions:

1. That in issuing this letter, the Department and Board has relied on the information and data that the correspondent has provided in connection with the letter. If, subsequent to this letter, such information and data prove to be false, incomplete or inaccurate, this letter may be modified, suspended or revoked;
2. The correspondent shall implement typical Best Management Practices (BMP) while conducting any land use in the conservation district;
3. All construction material, rock, debris, and other materials generated during this activity will be stored away from the shoreline area or removed from the site to an approved upland disposal area;

4. If the scope of the project changes or the cumulative natural resource impacts is perceived to be moderate or major, the department may require additional authorizations or approvals for the proposed land use.

If you have any questions regarding this correspondence please contact Alex J. Roy, M.Sc. of our Office of Conservation and Coastal Lands staff at 808-587-0316 or via email at alex.j.roy@hawaii.gov

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel J. Lemmo', is written over a horizontal line. The signature is stylized with a large, looping 'S' and a distinct 'L'.

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

CC: DAR
 MDLO
 County of Maui – Planning Department
 Nellie's on Maui, PO Box 1503, Kihei, HI 96753

Attachments: Exhibits 1 – 3 (5 pgs.)

G. IBARA HEAVY EQUIPMENT

1867 E Vineyard St.
Wailuku, Hawaii 96793
Phone No. (808) 870-0950
[REDACTED]

Date: November 28, 2018

[REDACTED]

Proposal for Maalea Sea Wall Removal

Scope of Work:

1. Break concrete and rock with first excavator to boulder size. To be manageable for large excavator. Excavator to be positioned in property, but not in water line area.
2. Reach over seawall with larger excavator positioned in owner's property pulling back concrete rock without machinery getting into waterline.
3. Move boulders out of shoreline setback area.
4. It may also be necessary for a workman and/or small utility machine to enter the shoreline area to access the junction of the seawall with the neighboring sea boundary structures (boulders—North neighbor) or concrete seawall (condo to South) to make clean cuts and to ensure that all buried debris is removed.

Please contact me if you have any questions.

Gregory Y. Ibara

EXHIBIT D

Two views of seawall, facing West. Danger sign is at border of subject parcel.



EXHIBIT E

View of seawall from adjacent parcel to the east of subject



Standing atop seawall, facing West. Adjacent parcel with green fence has rock revetment.



Two views of seawall facing East.



DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF AQUATIC RESOURCES
1151 PUNCHBOWL STREET, ROOM 330
HONOLULU, HAWAII 96813

Date: 5/29/2019

DAR # 5937

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MEMORANDUM

TO: Brian J. Neilson
DAR Administrator

FROM: Kendall Tucker, Aquatic Biologist

SUBJECT: Request for Comments

Request Submitted by: Seiko Machido, District Land Agent, Maui DLNR

Location of Project: Waikapu, Wailuku, Maui, TMK (2) 3-8-014:seaward of 008

Brief Description of Project:

Permit to remove crumbling sea wall.

Comments:

☐ No Comments ☒ Comments Attached

Thank you for providing DAR the opportunity to review and comment on the proposed project. Should there be any changes to the project plan, DAR requests the opportunity to review and comment on those changes.

Comments Approved: Brian J. Neilson

Brian J. Neilson
DAR Administrator

Date: 5/30/19

EXHIBIT F

DAR# 5937

Comments

DAR has some concerns with this project but for the safety of the public the Division is in agreement that the crumbling seawall should be removed. Some of our concerns are as follows: the permit is for the removal of the crumbling seawall, but will there be any re-vegetation or placement of geotextile bags filled with sand? Are there any Best Management Practices (BMPs) in place for the actual removal? DAR at minimum recommends the use of but not limited too some of the following BMP's for utilization of multiple layers of sediment fences, silt screens, multiple layers of environmental socks, and float silt booms in near shore waters during the removal of the seawall to keep any sediment contained.

A DAR Biologist visited the site in August of 2018 and found the property with the seawall is a private property so the inspection was from outside the perimeter of the property, but the seawall was clearly in a state of disrepair. In conclusion, the Division supports the removal of the seawall for public safety and shoreline access for the public to be able to walk or fish along the shoreline as long as BMP's are employed. DAR is providing recommendations to the applicant that are supplemental to any recommendations or permitting requirements that any other department like City and County Department of Planning or OCCL may have. These recommendations from DAR do not authorize the applicant to proceed without first consulting with other Departments or Agencies.