

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

February 28, 2020

PSF No.: 19KD-154

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

KAUAI

Grant of Term, Non-Exclusive Easement to Matine A. Borges, Jeffrey D. Borges, Michelle M. Borges, Monique M. Borges, Jennifer A. Lindell, and Troy M. Lindell, as Joint Tenants, for Shoreline Revetment Encroachment Purposes; Issuance of Immediate Management Right-of-Entry Permit for Shoreline Revetment Purposes, Waipouli, Kawaihau, Kauai, Tax Map Key: (4) 4-3-009: Seaward of 049.

APPLICANT:

Matine A. Borges, Jeffrey D. Borges, Michelle M. Borges, Monique M. Borges, Jennifer A. Lindell, and Troy M. Lindell, as Joint Tenants (collectively, Applicants).

LEGAL REFERENCE:

Sections 171-13, and 53, Hawaii Revised Statutes (HRS), as amended.
A disposition under Section 171-53(c), HRS, requires prior approval of the Governor and the prior authorization of the Legislature by concurrent resolution.

LOCATION:

Portion of Government lands located at Waipouli, Kawaihau, Kauai, identified by Tax Map Key: (4) 4-3-009: seaward of 049 as shown on the attached maps. (Exhibit A-1 to A-6)

AREA:

1,201 square feet, more or less.

ZONING:

State Land Use District:	Urban/Conservation
County of Kauai CZO:	Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:

YES ____ NO X

CURRENT USE STATUS:

Unencumbered with encroachment.

RIGHT-OF-ENTRY AND EASEMENT CHARACTER OF USE:

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

COMMENCEMENT DATE:

Right-of-entry permit commencement date: Upon Applicants' submission of a fully executed copy of the right-of-entry permit and proof of liability insurance.

Easement commencement date: To be determined by the Chairperson.

CONSIDERATION:

Right-of-entry permit consideration: no charge apart from easement consideration required below.

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

EASEMENT TERM:

Twenty-five (25) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on 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 46 that states, "Creation or termination of easement, covenants, or other rights in structures or land."

See Exhibit C

DCCA VERIFICATION:

Not applicable. The Applicants are natural persons and are not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicants shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
2. Pay for an appraisal to determine initial one-time payment;
3. Pay a fine in the amount of \$500.00 for the encroachment onto State lands;
4. Obtain Site Plan Approval from OCCL; and
5. Pay for the publication of notice required under HRS Section 171-16(d), if applicable.

REMARKS:

Applicants, while in the process of applying for a building permit to construct a single-family dwelling upon their private property, learned that the County of Kauai, Department of Planning, requires a shoreline certificate to determine the legal setbacks from the shoreline. They paid for a survey that indicated that the existing rock/boulder revetment constructed by the previous landowner upon the private property boundary was now on State lands due to erosion of the shoreline. As a result, the revetment is now determined to be encroaching roughly 1,200 square feet, more or less, onto State submerged lands.

Applicants contacted the Office of Conservation and Coastal Lands (OCCL) to resolve the encroachment. The subject encroachment does not appear to have detrimental effects on public access or beach and recreational resources in the area and serves as primary erosion control for the subject property along with the neighboring erosion control structures on adjacent lots. It is thought that the revetment might have been constructed in the early to mid-1970's.

Upon review and careful consideration of the information gathered on this case, OCCL's evaluation criteria supports a disposition request being processed for the encroachment area. Exhibit B.

The Land Division is reducing the term in which shoreline easements are granted from 55 to 25 years in response to sea level rise projections disclosed in the Hawaii Sea Level Rise Vulnerability and Adaptation Report adopted by the State Climate Change Mitigation and Adaptation Commission, and as suggested by the OCCL. Landward migration of the shoreline is occurring as a direct result of sea level rise, which will progressively expose immobile shoreline structures to an evolving combination of coastal hazards (i.e., erosion,

chronic flooding, and wave inundation). The intention of the term reduction is to: 1) lessen the potential for accidents and liabilities that may result from the presence of dysfunctional shoreline structures by increasing the periodicity in which shoreline encroachments are reviewed and managed, and 2) facilitate a process of managed retreat from the shoreline.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff is recommending a fine of \$500 as the subject encroachment is over 100 square feet. Payment of the fine will allow the Applicants to process the shoreline certification needed for the Applicants to pursue a building permit through the County of Kauai, Department of Planning.

Additionally, staff is recommending that the Board approve an immediate management right-of-entry permit to Applicants covering the encroachment so that the State will have liability insurance coverage and an indemnity from Applicants pending issuance of the easement.

Applicants 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.

Various governmental agencies and interest groups were solicited for comments. Upon receipt of those responses, the final recommendation will be updated with the comments received.

AGENCIES	COMMENTS
County of Hawaii:	
Planning Department	No comments/ no objections
Public Works	No comments
State of Hawaii:	
DLNR-Aquatic Resources	No objections
DLNR - Historic Preservation	No response by suspense date
DLNR - OCCL	See Exhibit B
Other Agencies/ Interest Groups:	
Office of Hawaiian Affairs	No response by suspense date

The County Planning Department, County Public Works, DLNR Aquatic Resources, and Office of Conservation and Coastal Lands had no comments or objections to the request.

RECOMMENDATION: That the Board:

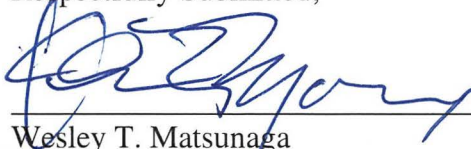
1. Impose a fine in the amount of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) for illegal encroachment, under Section 171-6(12).
2. Declare that, after considering the potential effects of the proposed disposition as

provided by Chapter 343, HRS, and Chapter 11-200.1, 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. 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: (4) 4-3-009:049, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
4. Subject to the Applicants fulfilling all of the Applicant requirements listed above, authorize the issuance of a term, non-exclusive easement to Matine A. Borges, Jeffrey D. Borges, Michelle M. Borges, Monique M. Borges, Jennifer A. Lindell, and Troy M. Lindell, as Joint Tenants, covering the subject area for rock and boulder revetment/seawall encroachment 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: (4) 4-3-009:049, 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.
 - E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.
5. Authorize the issuance of an immediate management right-of-entry permit to Applicants 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;

- B. The right-of-entry permit shall be effective upon staff's receipt of: (i) a copy of the right-of-entry permit duly executed by all Applicants and (ii) proof of liability insurance as required by the permit. The permit shall remain in effect until 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,



Wesley T. Matsunaga
District Land Agent

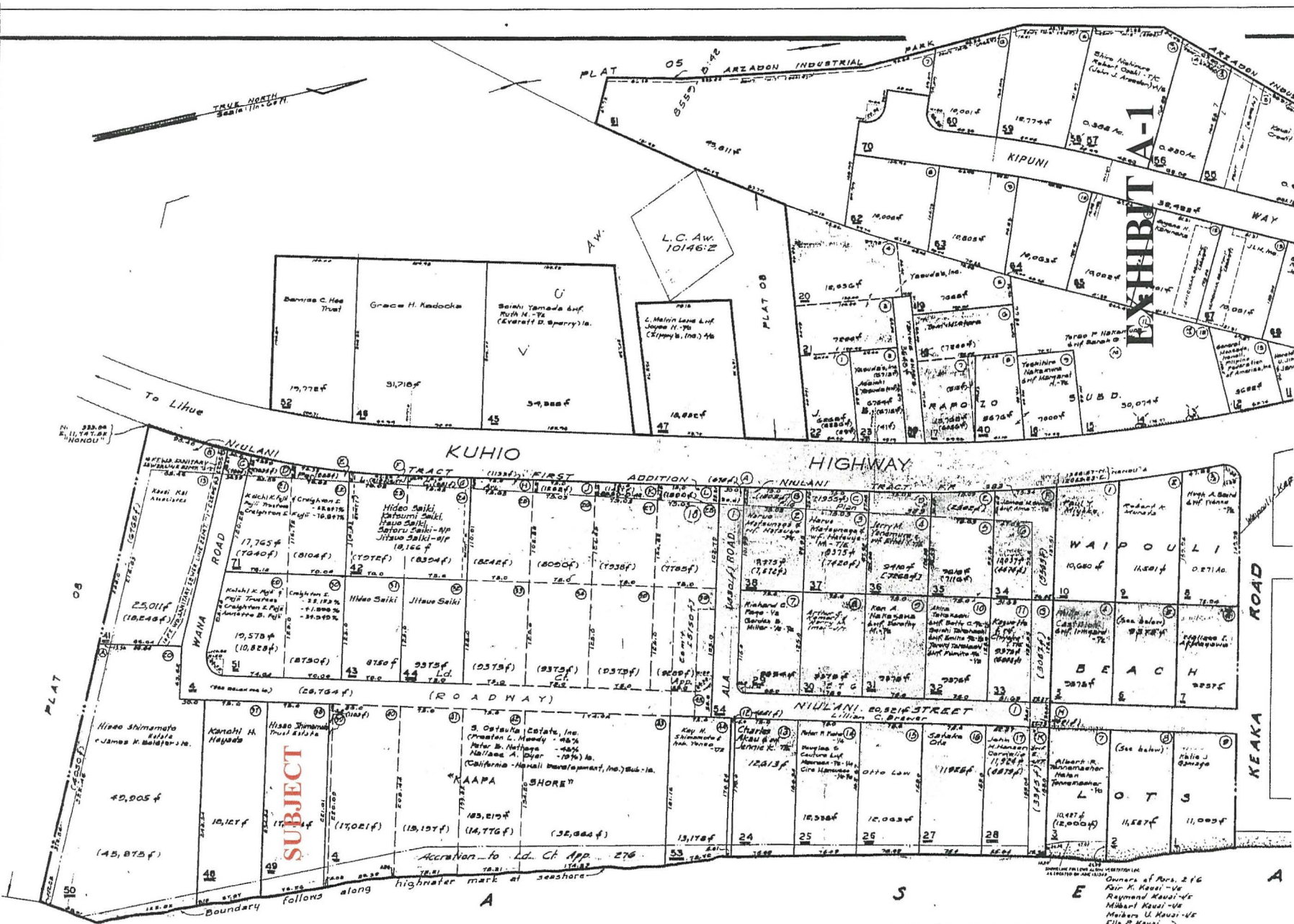
APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

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I. K. H. & R. S. G. September, 1936.



NOTE: All lots 88 thru 70 owned by
 Shiro Higashimura, Robert Otsu &
 John J. Higashimura unless
 otherwise noted.

Owners of Lots 2 & 6
 Shin K. Kawai &
 Raymond Kawai &
 Midland Kawai &
 Midland Kawai &
 Ella A. Kawai
 Ella M. Kawai
 Pamela Kawai
 David Kawai
 Charles M. Kawai - Curt.

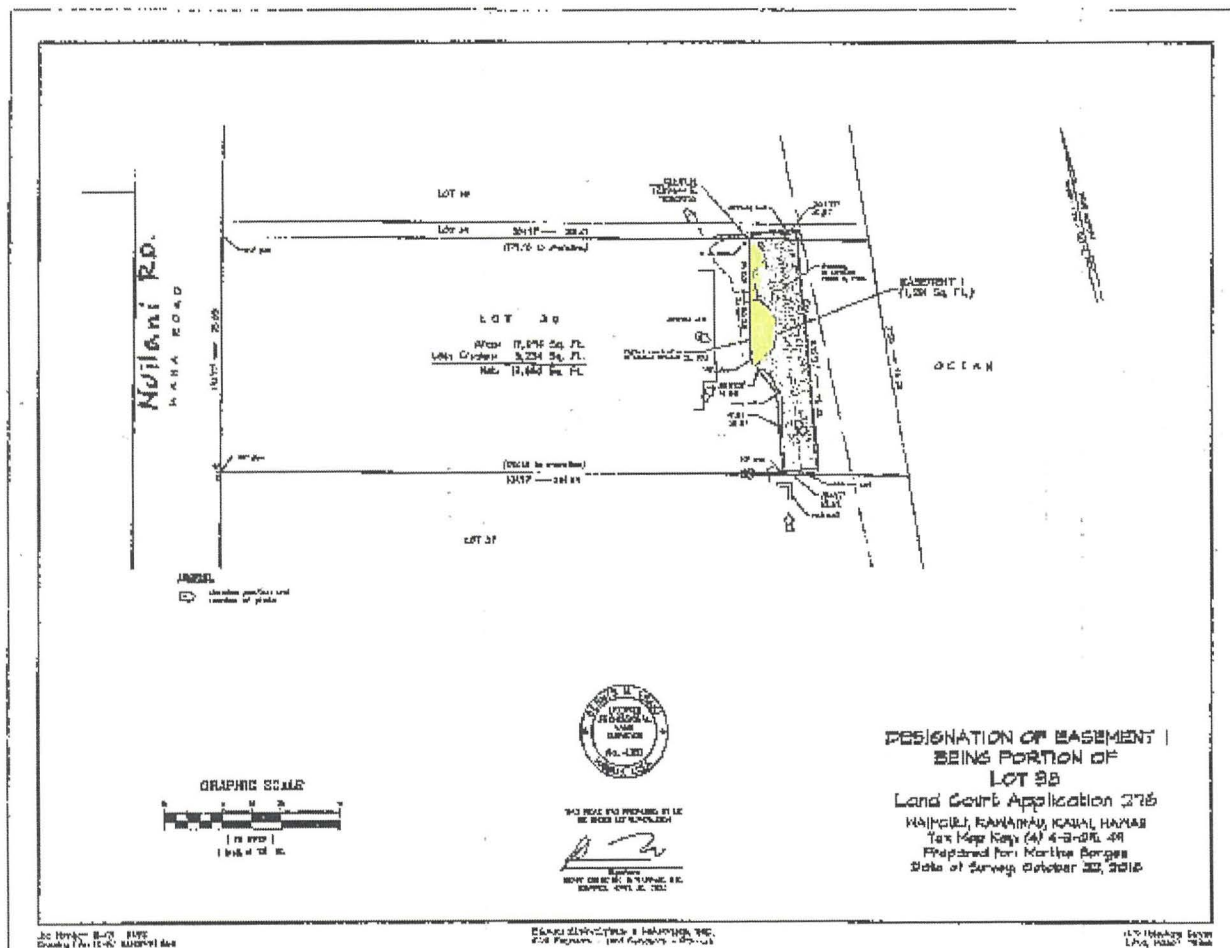


EXHIBIT A-2



EXHIBIT A-3



EXHIBIT A-4

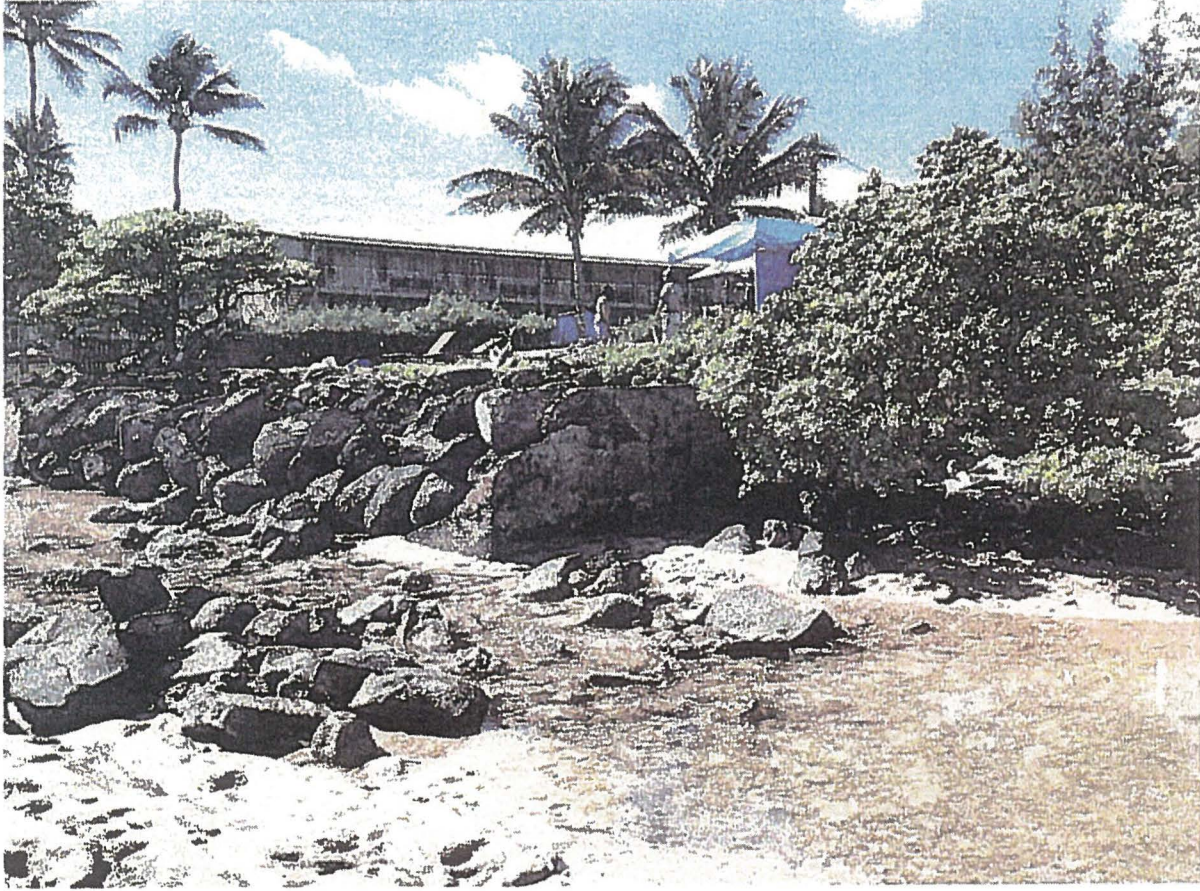


EXHIBIT A-5



Borges property
TMK: (4) 4-3-009:049

EXHIBIT A-6

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

M. KALEO MANUEL
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

REF:OCCL:SS

Shoreline Encroachment: KA 20-06

DEC 13 2019

Jeffrey & Martine Borges
5804 E. Brown Avenue
Fresno, CA 93727

SUBJECT: RE: Request to Resolve State Land Encroachments at 874 Niulani Road, Kapaa, Kauai; Seaward of Tax Map Key (4) 4-3-009:049

Dear Borges Family,

The Department of Land and Natural Resources, Office of Conservation and Coastal Lands (OCCL), is in receipt of your re-submitted documentation seeking to resolve encroachments on State Lands fronting property located at 874 Niulani Road, Kapaa, Kauai. Your mailing included a letter describing the property and situation, multiple color photographs of the encroachment, and a survey map showing the lot boundaries. These documents are supplemental to the previously submitted letter that included a Shoreline Encroachment Information Sheet, a copy of the Shoreline Certification Maps from 2008, a map of the lot, and black and white photographs of the encroachment.

You are working to resolve a shoreline encroachment consisting of boulders placed seaward of your property with a total area of roughly 1,100 square feet. The subject lot has previously had a shoreline certification done in 2008, after the removal of a concrete slab in the shoreline area.

The Board of Land and Natural Resources has established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, OCCL has established criteria to guide decision-making over specific cases. The criteria are as follows: PM12:13:23

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

DEC 19 '19

DLNR KDLO RCVI

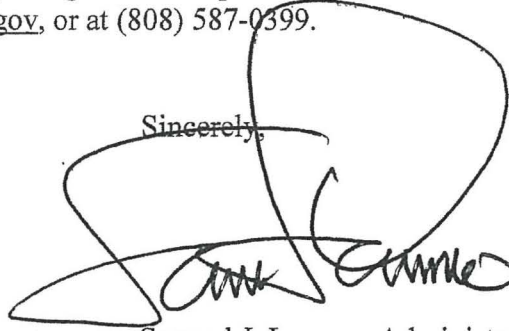
In addition, OCCL developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide OCCL's recommendations on the disposition of shoreline encroachments.

EXHIBIT B

The subject encroachment does not appear to have detrimental effects on public access nor beach and recreational resources in the area and serves as primary erosion control for the subject property along with the neighboring erosion control structures on adjacent lots.

Upon review and careful consideration of the information gathered on this case, OCCL's evaluation criteria would support a disposition request being processed for the encroachment area. Should you have any questions regarding this correspondence, contact Salvatore Saluga of our Office at salvatore.j.saluga@hawaii.gov, or at (808) 587-0399.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Samuel J. Lemmo'.

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

CC: Chairperson
KDLO
County of Kauai
-Planning Department



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

3060 Eiwa Street, Room 208
Lihue, Hawaii 96766
PHONE: (808) 274-3491
FAX: (808) 241-3535

February 14, 2020

Ref. No.: 19KD-154

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes (HRS), and Chapter 11-200.1, Hawaii Administrative Rules (HAR):

Project Title: Grant of Term, Non-Exclusive Easement to Matine A. Borges, Jeffrey D. Borges, Michelle M. Borges, Monique M. Borges, Jennifer A. Lindell, and Troy M. Lindell, as Joint Tenants, for Shoreline Revetment Encroachment Purposes; Issuance of Immediate Management Right-of-Entry Permit for Shoreline Revetment Purposes

Project / Reference No.: 19KD-154

Project Location: Waipouli, Kawaihau, Kauai, Tax Map Key: (4) 4-3-009: Seaward of 049.

Project Description: Grant of Term, Non-Exclusive Easement
Chap. 343 Trigger(s): Use of State Land

Exemption Class No. and Description: In accordance with HAR § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on 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 51 that states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

EXHIBIT C

**Cumulative Impact of
Planned Successive
Actions in Same Place
Significant?:**

No. There will be no successive actions in same place or no significant cumulative impact.

**Action May Have
Significant Impact on
Particularly Sensitive
Environment?:**

No. There are no particularly sensitive environmental issues involved with the proposed use of the property.

Analysis:

The proposed use may have been in place since the 1970s and is anticipated to continue. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. The proposed action will involve negligible or no expansion or change of use beyond that previously existing.

Consulted Parties:

County Planning Department, Office of Conservation and Coastal Lands.

Recommendation:

That the Board find this project will probably have minimal or no significant effect on the environment, serves as primary erosion control for the subject and adjacent properties and is presumed to be exempt from the preparation of an environmental assessment.