

**STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES OFFICE OF
CONSERVATION AND COASTAL LANDS
Honolulu, Hawai'i**

May 8, 2020

Time Extension CDUP: MA-3663

**Board of Land and
Natural Resources
State of Hawai'i
Honolulu, Hawai'i**

REGARDING: Time Extension Request for Conservation District Use Permit (CDUP) MA-3663 for Shoreline Erosion Control

APPLICANT: Hololani Resort Condominiums

LANDOWNER: Hololani Resort Condominiums /State of Hawai'i

LOCATION: 4401 Lower Honoapi'ilani Road, Lahaina, Maui

Tax Map Key: (2) 4-3-010:009 and adjacent submerged land

SUBZONE: Resource

BACKGROUND

CDUP MA-3663 was approved by the Board of Land and Natural Resources on May 9, 2014 for the Hololani Resort Condominiums (HRC) Shore Protection Project subject to thirty-one (31) terms and conditions (**Exhibit 1**). Since approval of CDUP MA-3663 was granted, two consecutive two-year time extensions to initiate and complete the subject Shoreline Erosion Control structure have been approved.

The first extension was approved by the Board of Land and Natural Resources (BLNR) in April 2016, extending the deadlines to initiate and complete construction to May 2018 and May 2019, respectively (**Exhibit 2**). This first extension was requested to allow implementation of project design modifications requested by the Office of Conservation and Coastal Lands (OCCL) and the Maui Planning Department (MPD).

On January 12, 2018, the BLNR approved the grant of an easement and a management right-of-entry to Hololani pursuant to Land Division submittal D-8 (**Exhibit 3**).

On March 23, 2018, two agenda items concerning the Hololani Project were brought before the Board. The first, Land Division submittal D-3, sought to grant Hololani a

construction right-of-entry in addition to the management right-of-entry (**Exhibit 4**). The second, submittal K-1, was for an additional two-year time extension of the CDUP, for the initiation of construction by May 9, 2020, and the completion of construction by May 9, 2021. This second extension was requested in response to requests by MPD to include additional components in the proposed structure and due to delays involved in obtaining approvals for the easement/lease for the use of State lands by the Maui District Office of the DLNR Land Division.

At that meeting, for the first time, two entities and an individual— Nā Papa‘i o Wawae ‘Ula‘ula, West Maui Preservation Association, and Felimon Sadang (collectively, the “Contestants”)—filed a joint petition and an oral request for a contested-case hearing regarding the two agenda items. The BLNR denied the Motion at the meeting. The BLNR deferred on D-3, but unanimously approved K-1—the CDUP time-extension—as submitted (**Exhibit 5**).

On April 5, 2018, the Contestants filed a joint notice of appeal and complaint in the Second Circuit Court in the matter of *Nā Papa‘i o Wawae ‘Ula‘ula, et al. v. BLNR & AOA Hololani*, Civil No. 18-1-0155(3), which is referred to herein as *Hololani I*. Asserting claims that, among other things, the BLNR erred in denying the petition for a contested-case hearing, that the BLNR lacked authority to issue the CDUP time extension, and that the BLNR violated Chapter 343 (**Exhibit 6**).

The legislature ultimately did not concur to the grant of the easement in the 2018 legislative session.

In the summer of 2019, due to continuing coastal erosion and the lack of legislative approval for the easement over state land, Hololani decided to construct a sheetpile bulkhead landward of the shoreline (outside of State jurisdiction). They were successful in completing the bulkhead. However, two of the Contestants— Nā Papa‘i o Wawae ‘Ula‘ula and West Maui Preservation Association—filed a second lawsuit in Second Circuit Court entitled *Nā Papa‘i o Wawae ‘Ula‘ula, et al. v. AOA Hololani, Director of the Department of Planning for the County of Maui, & DLNR*, Civil No. 18-1-0303(3), which is referred to herein as *Hololani II*. This lawsuit largely focused on the installation of the sheetpile bulkhead and County of Maui permitting relating to the special management area (“SMA”). Among other things, the plaintiffs claimed that Hololani failed to obtain an SMA permit from the County and that the parties violated Chapter 343 (**Exhibit 7**).

According to the assessment of litigation counsel for the BLNR/DLNR Deputy Attorney General Dave Day, counsel for Hololani, Pamela W. Bunn and Timothy H. Irons of Dentons, vigorously defended Hololani in the two lawsuits.

The two cases had a consolidated hearing and were decided simultaneously. In *Hololani I*, the Circuit Court held that the BLNR and Hololani prevailed on all claims, affirming the BLNR’s denial of a contested-case hearing and granting BLNR and Hololani summary judgment on all other claims. In *Hololani II*, DLNR prevailed on all claims

asserted against it. However, the Court granted summary judgment in favor of the plaintiffs and against the County of Maui and Hololani with respect to the plaintiffs' Chapter 343 claims.

Prior to the entry of final judgment in both cases, the Circuit Court ordered the parties to attend a mediation in an attempt to resolve the issues between the parties without the need for further litigation or appeals. The result was that Nā Papa'i o Wawae 'Ula'ula and West Maui Preservation Association entered into a settlement agreement with Hololani according to which Hololani agreed to a five-year stay of the construction of the rock revetment portion of the project in order to allow time for the environmental review and potential permitting of an alternative regional beach nourishment project (**Exhibit 8**, See **Transcript of Civil No. 18-1-0115(3)**, and **Civil No. 18-1-0303(3)**).

Neither BLNR nor DLNR is a party to this settlement agreement.

Following this settlement, both lawsuits were dismissed with prejudice.

TIME EXTENSION REQUEST (Exhibit)

The OCCL received a request from HRC via their legal counsel, Dentons US LLP, for an additional 5 year time extension of deadlines for subject construction initiation and completion. The request was also made to accommodate the settlement agreement that no construction would be initiated on the shoreline structure for five years (**Exhibit 9**).

Note: As part of the settlement it was agreed that during the five-year period, Plaintiffs would support any extensions, renewals, or other actions required to keep all government approvals and permits in force during the five years so that the beach restoration project can be completed.

AUTHORITY FOR GRANTING TIME EXTENSIONS:

The authority for the granting of time extensions is provided in the Hawai'i Administrative Rules (HAR), §13-5-43, that allows for permittees to request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

Additionally, HAR, §13-5-43(c), states: "Time extensions may be granted by the board upon the second or subsequent request for a time extension on a board permit, based on supportive documentation from the applicant."

BASIS FOR TIME EXTENSIONS:

A time extension may be sought when a Permittee is unable to initiate or complete a project within the stipulated time frame. The Board grants time extensions when a Permittee demonstrates some sort of hardship or delay in initiating work on a particular project. Moreover, the Permittee should be able to demonstrate that the hardship or delay has not been self-imposed and that some good faith effort has been made to undertake the project.

DISCUSSION:

This request for a time extension comes before the BLNR in a highly unusual posture. The primary question before the Board is whether an additional time extension is warranted.

In the normal case, staff would not see a strong basis for another extension. The project was originally approved in 2014. A five year extension would give them until 2025 to initiate project work or construction, which is an unprecedented amount of time. In addition, if the beach restoration project is successful, it could potentially negate the need for the original structure. The operative word is “could” because beach restoration projects are not always successful, and their performance is difficult to predict. Another issue is that the County of Maui included a condition in its County SMA permit that requires HCR to remove the structure when a beach restoration project is completed. Furthermore, HCR has already constructed a well-engineered sheet pile bulkhead on their property which is buffered by an ELCOROCK sandbag structure.

However, there is no question that HRC has been diligently trying to initiate project construction. HRC’s time-extension request outlines the steps they have taken to initiate construction. HRC obtained an EA/FONSI in 2013, the CDUP in 2014, BLNR approval for the easement and a management right-of-entry in January 2018, and a time extension in March 2018. It was only in March 2018, for the first time, that the project was actively opposed with a contested-case hearing petition, which was followed by a lawsuit. HRC actively sought to acquire the required concurrence of the State Legislature for the easement during the 2018 legislative session. The resolution passed through several legislative Senate committees but never received a hearing in the House of Representatives. HRC attempted to further the project along without the easement with the installation of the bulkhead on its own property, but this was then challenged with a second lawsuit. HRC vigorously defended both lawsuits and ultimately prevailed on all claims asserted against it in *Hololani I*, which related to the 2018 CDUP time extension, but did not prevail on the Chapter 343 claim relating to the bulkhead. The two lawsuits ultimately constituted a plain hardship or delay in instituting the project that was not self-imposed, and the decision to enter into a settlement agreement to resolve the lawsuits was a reasonable attempt by Hololani to remove this obstacle. Further, staff has no doubt that Hololani has endeavored to implement this project but has been unable to obtain the necessary full consent of the Legislature, an outcome that was ostensibly based in part upon the then-pending litigation. Hololani’s failure to perform on the condition of the permit that requires project work to begin is plainly not of its own making.

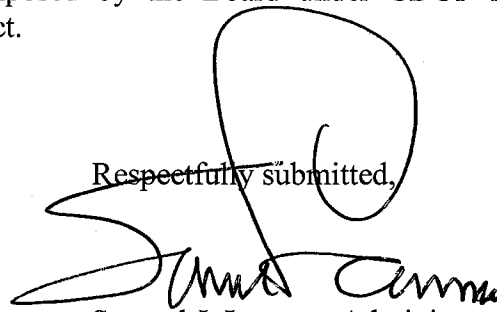
In summation, this is an unusual case. Although granting an extension to construct a project like this, and which may never really come to fruition, may appear counterintuitive, staff is strictly focused upon the merits of the request and is basing its decision on the facts and the unique procedural history that brought us to this point. Staff will therefore recommend that the Board allow Hololani the additional time to work out these issues.

RECOMENDATION:

That the Board of Land and Natural Resources APPROVE this request for a five year time extension to initiate and complete the Shoreline Erosion Control structure located at 4401 Honoapi'ilani Road, Lahaina, Maui, Tax May Key: (2) 4-3-010:009 and adjacent submerged land as follows:

1. That condition #7 of CDUP MA-3663 is amended to provide that the Permittee has until May 9, 2025 to initiate construction and until May 9, 2026 to complete construction; and
2. That all other conditions imposed by the Board under CDUP MA-3663, as amended, shall remain in effect.

Respectfully submitted,



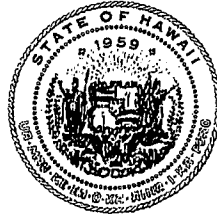
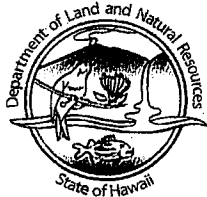
Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Approved for submittal:

Suzanne D. Case

Suzanne D. Case, Chairperson
Board of Land and Natural Resources

NEIL ABERCROMBIE
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

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
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

CDUP: MA-3663
MAY 13 2014

Jim Barry
Sea Engineering Inc.
Makai Research Pier
Waimanalo, HI 96795

Dear Mr. Barry:

This letter is to inform you that on May 9 2014, the Board of Land and Natural Resources (BLNR) approved Conservation District Use Application (CDUA) MA-3663 for the Hololani Resort Condominiums shore protection project, located at Kahana, Lahaina. Island of Maui – TMK: (2) 4-3-010:009, subject to the following conditions:

1. The permittee shall redesign a shoreline protection structure that is located substantially landward of the May 2, 2013 certified shoreline;
2. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
3. The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
4. The permittee shall obtain a land disposition from the department for any remaining portion of the shoreline protection structure on state lands;
5. The permittee shall comply with all applicable department of health administrative rules;
6. Before proceeding with any work authorized by the department or the board, the permittee shall submit four copies of the construction plans and specifications to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;

EXHIBIT 1

7. Unless otherwise authorized, any work or construction to be done on the land shall be initiated within two years of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and shall be completed within three years of the approval of such use. The permittee shall notify the department in writing when construction activity is initiated and when it is completed;
8. All representations relative to mitigation set forth in the accepted environmental assessment for the proposed use are incorporated as conditions of the permit;
9. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
10. In issuing the permit, the department and board have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
11. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
12. Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;
13. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
14. The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;
15. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
16. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The Historic Preservation Division shall be contacted (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
17. Monitoring of the nearshore water quality shall be conducted in accordance with best management practices;

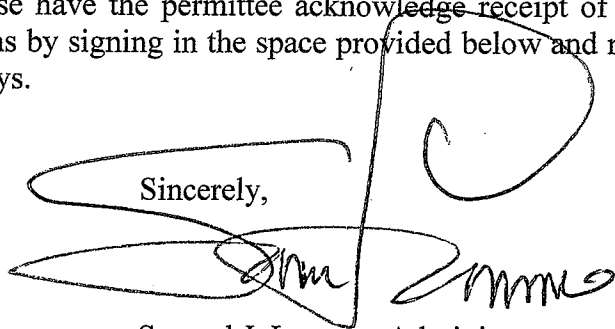
18. Work shall be conducted during calm weather periods to the most practical extent possible and no work shall occur if there is high surf or ocean conditions that will create unsafe work or beach conditions;
19. The permittee shall implement the proposed Best Management Practices (BMPs) and monitoring and assessment plan to maintain BMPs to minimize dirt and silt from entering the ocean and the ability to contain and clean up fuel, fluid, or oil spills immediately under this authorization and immediately report any spills or other contamination(s) that occurs at the project site to the Department of Health and other appropriate agencies;
20. The permittee shall ensure that excessive siltation and turbidity is contained or otherwise minimized to the satisfaction of all appropriate agencies, through silt containment devices or barriers, or other requirements as necessary;
21. Appropriate safety and notification procedures shall be implemented. This shall include high visibility safety fencing, tape or barriers to keep people away from the active construction site and a notification to the public informing them of the project;
22. The activity shall not adversely affect a federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat;
23. The activities shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area;
24. When the Department is notified that an individual activity deviates from the scope of work approved by this authorization or activities are adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the permittee to undertake corrective measures to address the condition affecting these resources. The permittee must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect;
25. No contamination of the marine or coastal environment (trash or debris) shall result from project-related activities authorized under this permit;
26. The Office of Conservation and Coastal Lands shall be notified (587-0377) in advance of the anticipated construction dates and shall be notified immediately if any changes to the scope or schedule are anticipated;
27. The permittee shall maintain safe lateral beach access for the life time of the structure;
28. If flanking or end effects are detected on the Royal Kahana property and can be attributed to the Hololani shoreline protection structure, the permittee shall place beach grade sand in the area to mitigate such effects;
29. The permittee shall provide, maintain, and properly add signage for a public access through the property to the shoreline;

- 30. Other terms and conditions as may be prescribed by the Chairperson; and
- 31. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Finally, we ask that you comply with the recommendation of our State Historic Preservation Division (SHPD) in regards to the need to prepare an archaeological monitoring plan, and that a draft archaeological monitoring plan be provided to SHPD for approval prior to project initiation (letter attached).

Should you have any questions, please contact Sam Lemmo of the Office of Conservation and Coastal Lands at 587-0377. Please have the permittee acknowledge receipt of this permit and acceptance of the above conditions by signing in the space provided below and returning a copy to the OCCL within thirty (30) days.

Sincerely,



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

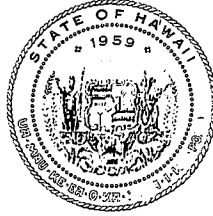
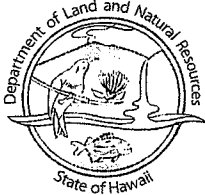
Receipt acknowledged:

Date:

Attachment

c: Chairperson
MDLO
County of Maui Planning Department, Public Works

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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
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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:TM

T-ext. Req. MA 16-12
CDUP MA-3663

James H. Barry, P.E.
Sea Engineering, Inc.
Makai Research Pier
Waimanalo, HI 96795-1820

MAY 25 2016

SUBJECT: Time Extension Request for Conservation District Use Permit (CDUP) MA-3663
Regarding Initiation and Completion of Construction for Shoreline Erosion
Control Located Seaward of 4401 Honoapi'ilani Road, Lahaina, Maui, TMK: (2)
4-3-010:009 (Submerged Land)

Dear Mr. Barry:

The Department is in receipt of your letter regarding the subject request. According to your information, your client, the Hololani Resort Condominiums (HRC) is requesting a 2-year time extension to initiate and complete construction. The project has been in review for about two-years with the County of Maui Planning Department and has recently (April 26, 2016) been brought before the Maui Planning Commission for the Special Management Area review. However the decision was deferred (**Exhibit 1**).

According to your information the project still has significant work to complete [additional permit acquisitions, finalizing construction drawings, hiring a contractor] prior to construction initiation. You believe project initiation would be by Spring 2017.

CDUP MA-3663 was approved by the Board of Land and Natural Resources on May 9, 2014 for the Hololani Resort Condominiums Shore Protection Project subject to thirty-one (31) terms and conditions. Condition # 7 states,

“Unless otherwise authorized, any work or construction to be done on the land shall be initiated within two year of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and shall be completed within three years of the approval of such use. The permittee shall notify the department in writing when construction activity is initiated and when it is completed.”

EXHIBIT 2

James H. Barry, P.E.
Sea Engineering, Inc.

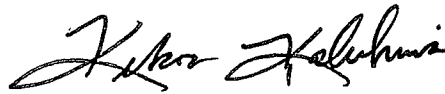
T-ext. Req. MA 16-12
CDUP MA-3663

Pursuant to the Hawaii Administrative Rules (HAR), §13-5-43, TIME EXTENSIONS (b), "time extension may be granted as determined by the Chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant."

Therefore, the Department is granting a 2-year time extension to CDUP MA-3663. **Construction shall be initiated prior to May 9, 2018 and shall be completed by May 9, 2019.** All other conditions imposed by the Board under CDUP MA-3663 shall remain in effect.

Should you have any questions regarding this matter, contact Tiger Mills of our Office of Conservation and Coastal Lands staff at (808) 587-0382.

Sincerely,



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

c: MDLO
County of Maui, Department of Planning



Sea Engineering, Inc.

Makai Research Pier • Waimanalo, Hawaii 96795-1820 • E-mail: sei@seaengineering.com
Phone: (808) 259-7966 / FAX (808) 259-8143 • Website: www.seaengineering.com

extension

MA-16-12

201

April 27, 2016

Mr. Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands,
State of Hawaii, Department of Land and Natural Resources
Post Office Box 621
Honolulu, HI, 96809

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS
2016 MAY -2 A 9:44
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Dear Mr. Lemmo,

Subject: Permanent Shore Protection of the Hololani Resort Condominiums: Extension for CDUP MA3663

The Hololani Resort Condominiums (the Hololani) are located at 4401 Lower Honoapiilani Road in the Kahana area of Maui (TMK (2) 4-3-010:009), and have had an on-going coastal erosion problem since approximately 1988. The Hololani Shore Protection Project (the Project) has been working to acquire the necessary permits to proceed with construction of shore protection since 2011. On May 13, 2014, the Department of Land and Natural Resources, Office of Conservation and Coastal Lands (DLNR-OCCL), approved a conditional Conservation District Use Permit (CDUP MA3663) for the project. The approval specified that construction should be initiated within two years of approval, and that it be completed within three years.

Since the approval date the Project has been in negotiations with DLNR-OCCL and the Maui Planning Department (MPD) to finalize an acceptable alignment for the project, and to acquire a Special Management Area (SMA) permit.

After almost two years of interaction with MPD, the SMA application was brought to the Maui Planning Commission for a public hearing yesterday, April 26th. The unofficial results of the hearing are as follows:

- A decision has been deferred for thirty days.
- MPD recommendations will be amended to include a new alternative.
- The new alternative will allow approval of the SMA permit with the following two conditions included:
 1. The Hololani AOA will support the Kahana Bay Project (a regional beach nourishment project with "T"-head groin retention structures).
 2. The Hololani AOA will remove the permanent shore protection structures when the Kahana Bay Project is completed.

EXHIBIT 1



April 27, 2016

Page 2

A five-year timeline was given for implementation of the Kahana Bay Project. However, based on our experience with similar projects, we believe significant delays are may be incurred and recommend that the Hololani would be wise to proceed with the Project as soon as possible.

The Project still has significant work to complete before initiation of construction, include additional permit acquisitions, finalization of construction drawings, and placing the project out to bid. At this time I estimate this work will be wrapped up and bidding will commence in late Summer or Fall of this year. Start of work will depend on the Contractor, but should be no later than Spring of 2017.

Given the present state of the Project, as noted above, the Project requests an extension for CDUP MA-3663. A one-year extension should suffice, however we request a two-year extension in case there are additional unforeseen delays.

Thank you for your assistance with this project.

James H. Barry, P.E.
Coastal Engineer
Sea Engineering, Inc.

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

January 12, 2018

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

PSF No.: 17MD-152

MAUI

Grant of Term, Non-Exclusive Easement to the Association of Apartment Owners of Hololani for Steel Sheet Pile Seawall and Rock Revetment Purposes; Issuance of Management Right-of-Entry; Kahana, Lahaina, Maui, Tax Map Key: (2) 4-3-010:Seaward of 009.

APPLICANT:

Association of Apartment Owners of Hololani, a domestic nonprofit corporation.

LEGAL REFERENCE:

Sections 171-6, 13, 17, 53(c), and 55 Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Kahana, Lahaina, Maui, identified by Tax Map Key: (2) 4-3-010:Seaward of 009, as shown on the attached maps labeled **Exhibit A-1, A-2, and A-3.**

AREA:

6,128 square feet, more or less, subject to review and approval by the Department of Accounting and General Services, Survey Division

ZONING:

State Land Use District: Conservation
County of Maui CZO: H-2 [for the abutting private property]

TRUST LAND STATUS:

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

EXHIBIT 3

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
January 12, 2018 *co.*

CURRENT USE STATUS:

Vacant with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove the steel sheet pile 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:

The Final Environmental Assessment for the subject project was published in the OEQC's The Environmental Notice on October 8, 2013, with a finding of no significant impact (FONSI).

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: 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 one-time payment; and
3. Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

REMARKS:

The applicant is an association of apartment owners who own the abutting property identified as tax map key (2) 4-3-010:009. The applicant is planning to construct a permanent shoreline armoring structure to prevent further coastal erosion that is threatening 2 condominium buildings. One of the corners of the north building is now approximately 20 feet from the shoreline.

In 2007, the Office of Conservation and Coastal Lands (OCCL) issued the applicant a 3-year emergency erosion control authorization for the installation of geotextile sandbags and Tensar (rock filled wire-mesh mattress) structures to address the ongoing shoreline erosion problem (see **Exhibit B**). The initial emergency permit has since been extended four times and remains valid until May 1, 2018. Also, the authorization issued by DLNR required the applicant to develop a more long-term solution.

At its meeting on May 9, 2014, Item K-2, the Board approved Conservation District Use Application (CDUA) MA-3663 (see **Exhibit C**), for the proposed permanent shoreline protection structure. The approved structure will combine a seawall (steel sheet pile wall) and rock revetment. Condition number 4 of the CDUP requires a land disposition for any portion of the permanent structure that will be built on State lands. The applicant now comes before the Board for approval of an easement for the seawall and revetment area. Originally, Condition number 1 of the CDUP required that the shoreline protection structure be located substantially landward of the May 2, 2013 certified shoreline (see **Exhibit D**). However, after lengthy discussions with Sea Engineering, Inc. (consultants for the applicant), OCCL concurred that from an engineering standpoint, the protection structure could only be constructed just a little landward of the 2013 certified shoreline because of the close proximity of the swimming pool and the north building to the shoreline.

Based on the review of the above information, staff recommends the disposition of the shoreline encroachment abutting the Applicant's property through an easement. Staff requests that the Board authorize granting a term, non-exclusive easement for the seawall and revetment.

Comments from other government agencies were sought during the application stage for the conservation district use permit mentioned above which included an environmental assessment. Therefore, staff did not solicit another round of requesting for comment on the proposed easement.

Upon approval of today's request, Applicants will be reminded of the requirement for concurrent resolution from both houses of the legislature under Sect.171-53(c), HRS prior to the issuance of the requested easement.

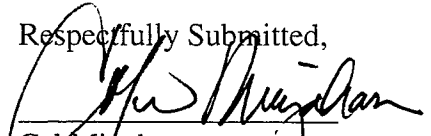
Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and

conditions.

RECOMMENDATION: That the Board:

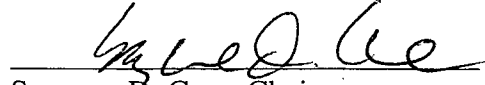
1. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 4-3-010:009, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
2. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to the Association of Apartment Owners of Hololani, covering the subject area for steel sheet seawall and 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. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
 - C. Review and approval by the Department of the Attorney General;
 - D. Terms and conditions of CDUP MA-3663 as shown on Exhibit C;
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
 - F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.
3. Authorize the issuance of management right-of-entry to the Association of Apartment Owners of Hololani covering the subject area for steel sheet seawall and 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 permit document 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,



Cal Miyahara
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



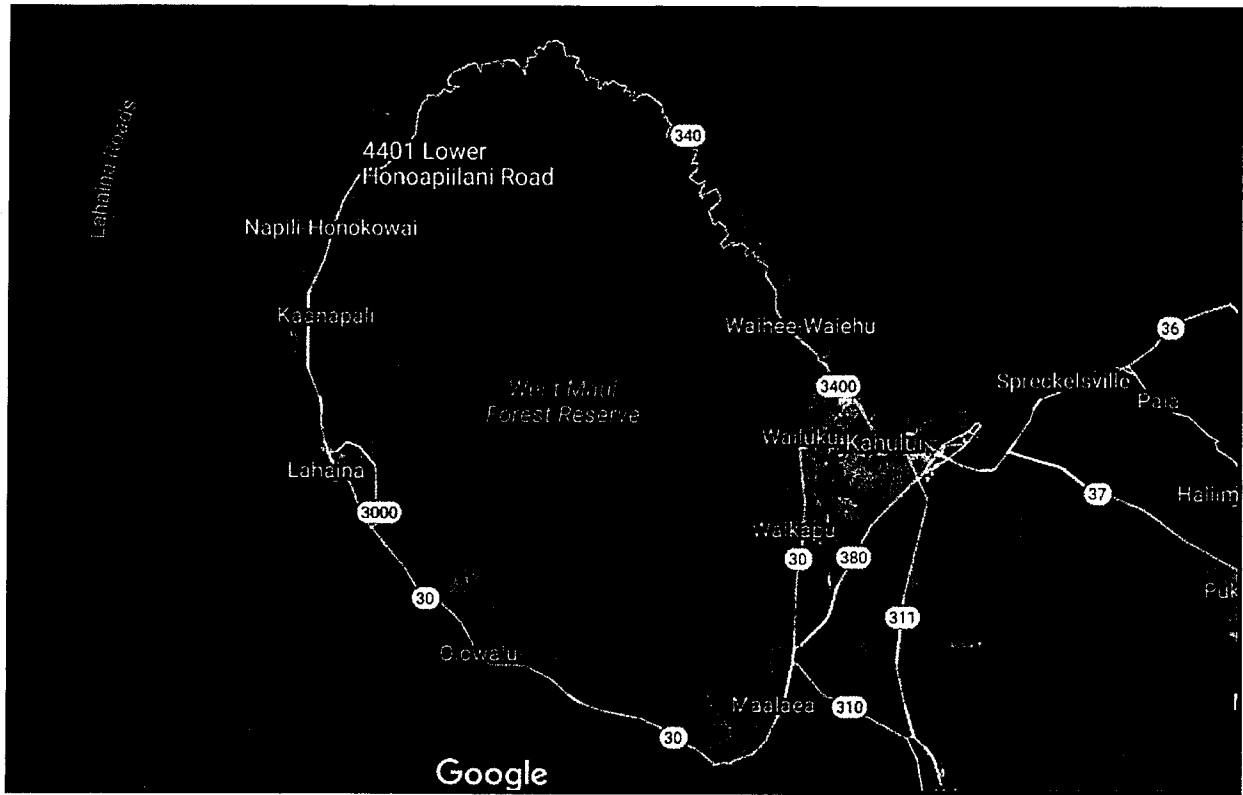


EXHIBIT A-1

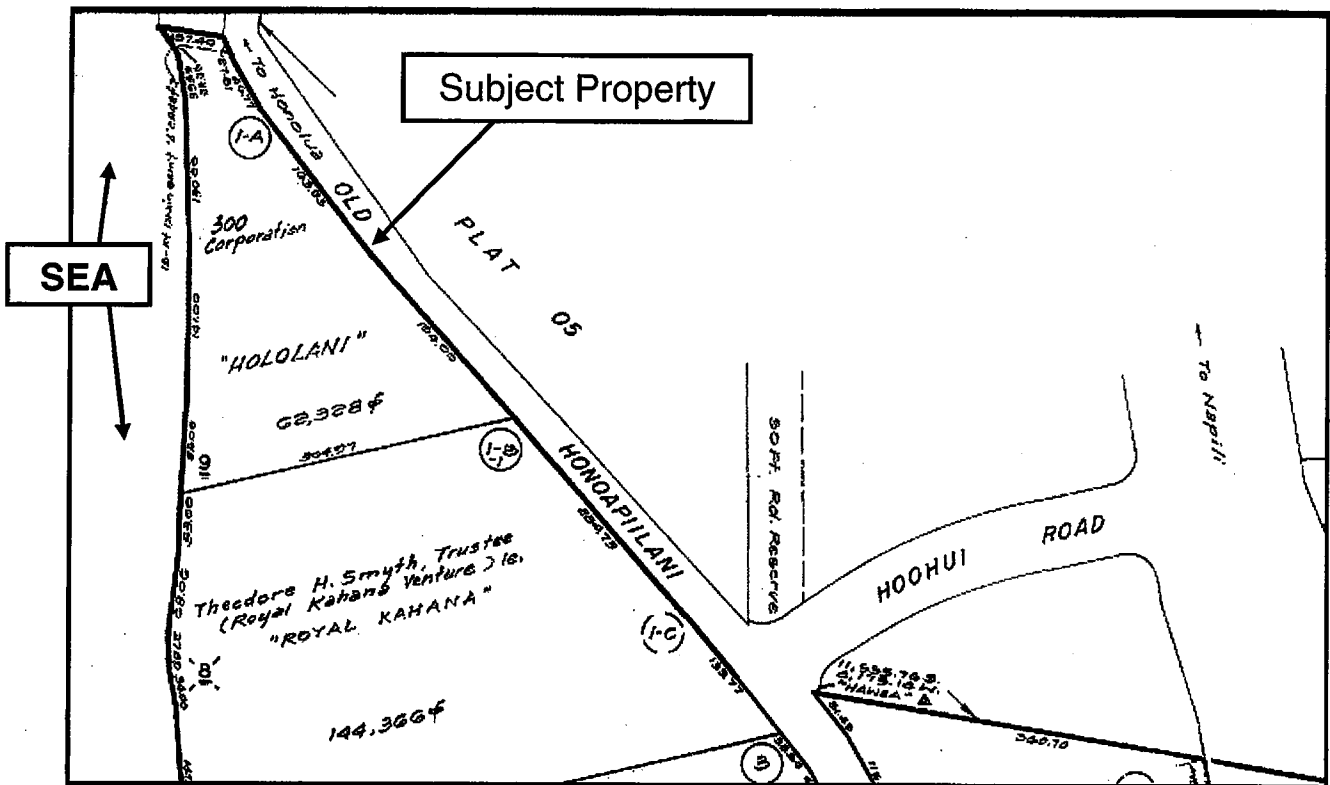
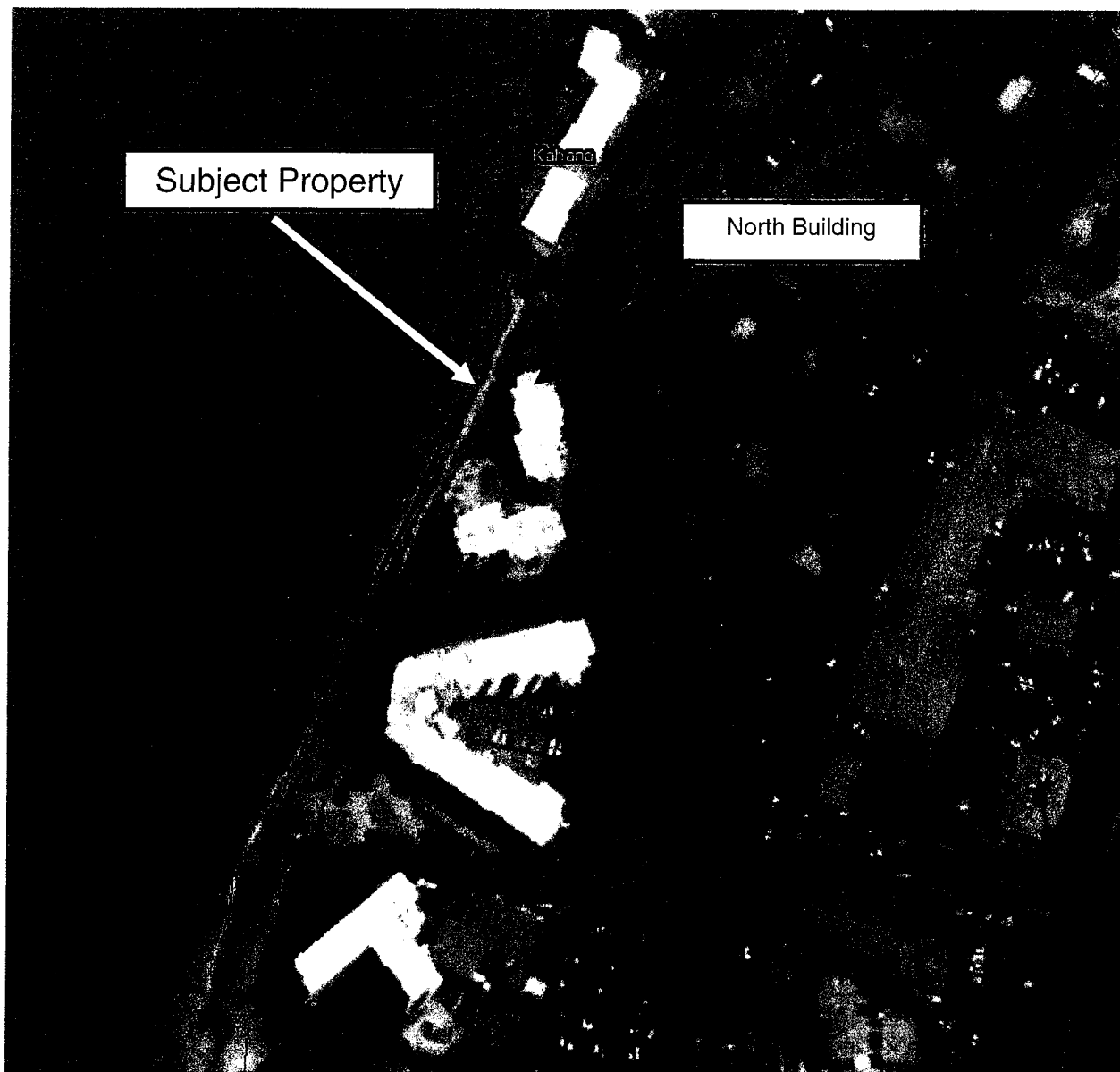


EXHIBIT A-2



TMK (2) 4-3-010:seaward of 009

EXHIBIT A-3

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
ROBERT K. MASUDA
DEPUTY DIRECTOR
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

DLNR:OCCL:DE

File No.: Emergency-OA-07-08

February 6, 2007

John C. Henry
Hololani Resident Manager
4401 L. Honoapiilani Rd
Lahaina, HI 96761

Mr. Henry:

SUBJECT: Emergency Erosion Control (Sandbags), Hololani Condominiums
4401 L. Honoapiilani Rd Lahaina, HI. TMK (2) 4-3-010-09

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) has received your letter dated January 24, 2007 regarding an emergency request for a sand bag revetment fronting the property. Based on the information presented and a site visit by our staff on January 11, 2007 the large multi-story structure is in danger of collapse without immediate shore protection and justifies a temporary emergency response (Figure 1).

On February 2, 2007, the Department approved an emergency request of behalf of the Hololani Condominium landowners to place additional boulders and fabric on the shoreline in order to prevent a portion of the facility from being undermined by erosion. This authorization allowed Hololani to place boulders in the shoreline area for thirty (30) days. After this period, the boulders must be removed to the satisfaction of the Department.

As an interim measure (subsequent to the boulder removal), the landowner(s) would like to install a temporary engineered structure. The proposed sandbag and Tensar structure consists of approximately 380 linear feet of shoreline fronting the subject property. The revetment will be installed at elevation +2.5 ft to +10.0 (ft sl) and will consist of a combination of 144 Tensar units (0.75' X 5' X 10') (160 cubic yards of rock filled in a plastic mattress) as scour pad and splash apron and approximately 144 (5' X 10' X 1.5') Bulkift S.E.ABAG sandbags (360 cubic yards of sand). These will be installed in a sloping formation and built primarily seaward of the shoreline defined by the active erosional scarp. This authorization is for the referenced design presented in Figure 2 of the January 24, 2007 request letter (Figure 2).

EXHIBIT " B "

The DLNR understands that during time the temporary sandbag/Tensar structure is in place, the landowner(s) intend to apply for a shoreline setback variance for an engineered rock revetment placed landward of and to replace the proposed sandbag structure, the installation of the bags is intended to be temporary until the required permits are obtained for a more permanent rock revetment.

Mitigation Measures (Best Management Practices)

Typical Best Management Practices shall be implemented to ensure that water quality and marine resources are protected and preserved. Mitigation measures involve the use of sand that is free of contaminants and low in silt content (to be determined). The applicant proposes to place the sandbags seaward of the shoreline and will ensure silt is contained during construction activities. Excessive silt and turbidity shall be contained or otherwise minimized through the use of silt containment devices and barriers. Silt containment should be practiced for the duration of construction activities. The sandbag installation should occur during low tide to ensure activities do not discharge silt into state waters. Visual monitoring of the nearshore water quality condition should be practiced during sand placement; and if excessive turbidity occurs, sand placement shall stop and more effective silt containment measures utilized.

Sand Quality

Due to the contained use of the proposed sand, Best Management Practices, low silt content, limited duration of exposure and the high rate of flushing and circulation at the site, potential turbidity impacts from the proposed activities are estimated to be negligible. Near-shore turbidity associated with the use of this sand is not expected to impact marine life and will be quite short-lived in the nearshore waters and is not expected to exceed existing background levels.

Based on the information provided, the Department has made the following determinations:

1. There is an imminent threat to the existing dwelling with active erosion threatening the structure.
2. This berm is approximately defined by the active scarping and fallen vegetation. Erosion appears to have accelerated landward recently.
3. The proposed structure will provide temporary protection to the threatened structures until a more permanent solution is designed and approved.
4. There is no known beach-quality sand source stored behind the berm, it appears the area is composed a clay and weathered basalt that would not provide a useful source of sediment to the littoral system if were allowed to erode.
5. The area is largely armored with a large number of shoreline structures to the north and south of the property, specifically immediately to the north.
6. The applicant is developing a long-term plan for erosion control that may include stabilizing structures. This plan will be implemented before the 3 year expiration date of the emergency permit.

DEPARTMENT ACTION

Terms and Conditions

The Chairperson of the Department of Land and Natural Resources hereby authorizes your emergency request for temporary sandbag and Tensar mattress structure fronting the subject property. This authorization includes, but is not limited to the following terms and conditions:

1. This authorization will become valid upon the approval by the DLNR of:
 - a. A sand source for the installation of the sand bags.
 - b. A Best Management Practices (BMP's) Plan
 - c. Installation sequence and work plan for the proposed structure
2. The project includes the installation and replacement of approximately 144 (5' X 10' X 1.5') Bulklift S.E.ABAG sandbags (360 cubic yards of sand) in conjunction with 114 Tensar rock-filled units (160 cubic yards of rock).
3. This authorization is valid for three (3) years from the date of acceptance, at which time, the authorization shall expire.
4. The applicant shall ensure that excessive siltation and turbidity is contained or otherwise minimized to the satisfaction of the DLNR, DOH or other agency, through silt containment devices or barriers, high sand quality and selective sand placement.
5. Any work or construction authorized by this letter shall be initiated within six (6) months of the approval of such use, and, unless otherwise authorized, shall be completed within twelve (12) months of the approval of such use. The applicant shall notify the Department before construction activity is initiated and when it is completed.
6. Sand utilized for the project will be from an approved commercial sand source. No sand shall be extracted from the beach fronting the property for any purpose.
7. Authorization of the sand used for the bags is contingent upon review and approval of the sand by the Department. Please submit sediment grain size analysis report and specify the source to the DLNR for review to ensure the proposed sand meets minimum standards. The sand shall meet the following State quality standards:
 - a) The proposed fill sand shall not contain more than six (6) percent fines, defined as the #200 sieve (0.074 mm).
 - b) The proposed beach fill sand shall not contain more than ten (10) percent coarse sediment, defined as the #4 sieve (4.76 mm) and shall be screened to remove any non-beach-compatible material and rubble.

- c) No more than 50 (fifty) percent of the fill sand shall have a grain diameter less than 0.125 mm as measured by #120 Standard Sieve Mesh.
 - d) Beach fill shall be dominantly composed of naturally occurring carbonate beach or dune sand. Crushed limestone or other man made or non carbonate sands are unacceptable.
8. Transfer of ownership of the subject property includes the responsibility of the new owner to adhere to the terms and conditions of this authorization.
 9. This action is temporary to alleviate the emergency until long-term measures can be implemented. The DLNR reserves the right to terminate this authorization if it is determined the structure is having an adverse impact on the environment or if other shore protection alternatives are available.
 10. At the conclusion of work, the area shall be clean of all construction material, and the site shall be restored to a condition acceptable to the Chairperson.
 11. The activity shall not adversely affect a federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat.
 12. The activity shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area.
 13. When the Chairperson is notified by the applicant or the public that an individual activity deviates from the scope of an application approved by this letter, or activities are adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect.
 14. When the Chairperson is notified by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service or the State DLNR that an individual activity or activities authorized by this letter is adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect.

15. To avoid encroachments upon the area, the applicant shall not use artificially accreted areas due to nourishment or hardening as indicators of the shoreline.
16. Where any interference, nuisance, or harm may be caused, or hazard established by the activities authorized under this authorization, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm or hazard.
17. No contamination of the marine or coastal environment (trash or debris) shall result from project-related activities authorized under this authorization.
18. No motorized construction equipment is to be operated in the water at any time.
19. In the event there is any petroleum spill on the sand, the operator shall promptly remove the contaminated sand from the beach and immediately contact the DLNR/OCCL staff at 587-0377, to conduct a visual inspection and to provide appropriate guidance.
20. For projects authorized by this letter, the applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under projects authorized under this permit.
21. The DLNR reserves the right to impose additional terms and conditions on projects authorized under this letter, if it deems them necessary.
22. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments for projects authorized under this letter.
23. In the event that historic sites, including human burials are uncovered during construction activities, all work in the vicinity must stop immediately and contact the State Historic Preservation Division at 692-8015.
24. The applicant shall obtain a right-of-entry permit or other land disposition approval from the State of Hawaii, Land Division prior to the inception of project work.
25. Failure on the part of the applicant to comply with any conditions imposed under this authorization shall render the authorization null and void.
26. The applicant shall take measures to ensure that the public is adequately informed of the project work once it is initiated and the need to avoid the project area during the operation and shall notify all abutting property owners and community organizations that may be affected by the proposed action.

27. The applicant shall implement standard Best Management Practices (BMPs), including the ability to contain and minimize silt in nearshore waters and clean up fuel, fluid or oil spills immediately for projects authorized by this letter. Equipment must not be refueled in the shoreline area. If visible petroleum, persistent turbidity or other unusual substances are observed in the water as a result of the proposed operation, all work must cease immediately to ascertain the source of the substance. The DLNR/OCCL staff shall be contacted immediately at 587-0377, to conduct a visual inspection and to provide appropriate guidance.

Additional Monitoring:

28. The applicant must submit a written completion report to the OCCL within two months of completion of the project. The completion report must include, as appropriate, descriptions of the construction activities, discussion(s) of any deviations from the proposed project design and the cause of these deviations, results of any environmental monitoring (primarily sand movement observations and turbidity observations), discussion(s) of any necessary corrective action(s), and photographs documenting the progress of the permitted work before, during and after sand placement.
29. As a temporary emergency project, the applicant shall provide an initial completion report and follow-up summary reports *annually* to the Department for three (3) years from the date of acceptance or until a permitted permanent structure is completed describing the condition of the sandbags and any impacts to the local nearshore processes.

Authorization Expiration:

30. This authorization shall expire three (3) years from the date of this letter. At that time, all activities authorized by the authorization shall be removed and the shoreline shall be returned to its original condition, unless a long-term plan has been approved. Failure to comply with these terms and conditions shall constitute a violation of Chapter 183C, Hawaii Revised Statutes and fines of \$2,000 per day shall accrue for each day that the landowner fails to comply with the terms and conditions of this authorization.

Please acknowledge receipt of this authorization, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within fifteen (15) days. Please notify the OCCL in advance of the anticipated construction dates and notify the OCCL immediately if any changes to the scope or schedule are anticipated.

Hololani Emergency Erosion Control

February 6, 2007

Should you have any questions on any of these conditions, please contact the Office of Conservation and Coastal Lands (OCCL) at (808) 587-0377.

Sincerely,



PETER T. YOUNG, Chairperson
Department of Land and Natural Resources

Attachments (Figures 1, 2)

Maui Board Member

DAR/HPD

Maui County Planning Dept

OHA/DOH Clean Water

USFWS/NMFS/USACE

Jim Barry Sea Engineering, Makai Research Pier, Waimanalo, Hawaii 96795-1820

I concur with the conditions of this letter:

Holo Lau AAO

by Stuart Allen, its President

Applicant's Signature

Date 12.14.07

Note: transfer of ownership (Title) conveys all terms and conditions of this authorization to the new owner.

Figure 1. Site Conditions
January 31, 2007



Figure 2. Proposed Plan

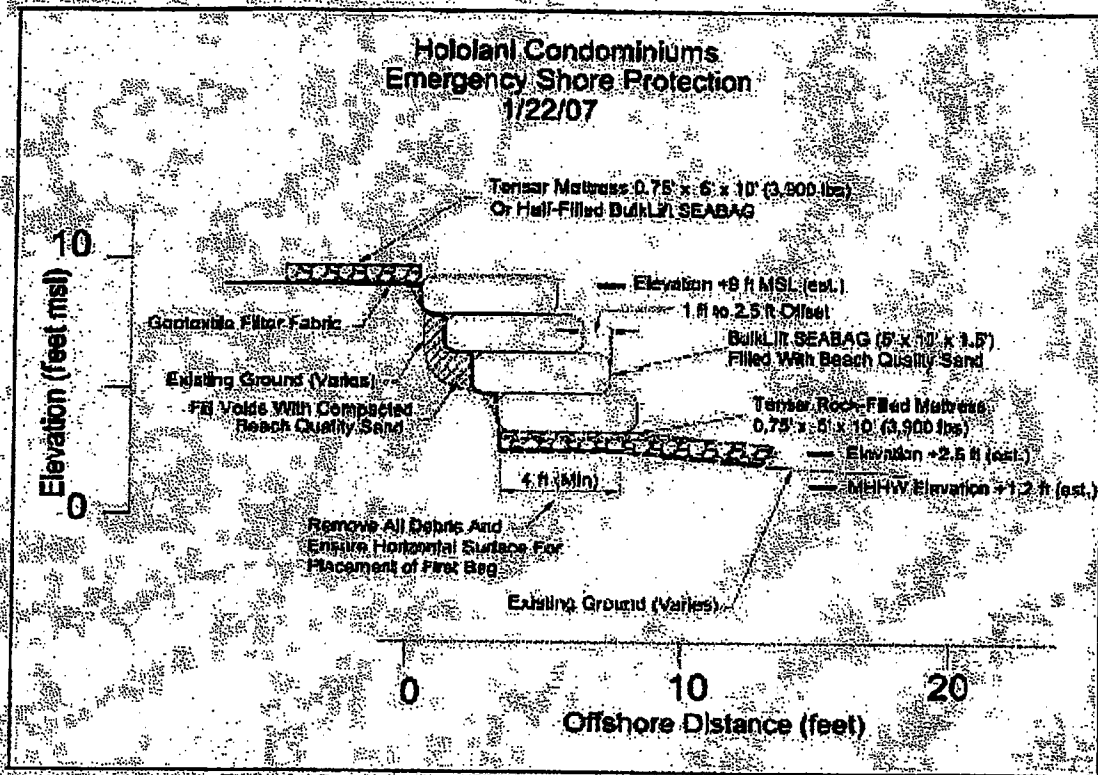


Figure 2. Cross-section of proposed temporary emergency shore protection

DEFERRED

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

March 23, 2018

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

PSF No.: 17MD-152

MAUI

Amend Prior Board Approval of Item D-8 from January 12, 2018: *“Grant of Term, Non-Exclusive Easement to the Association of Apartment Owners of Hololani for Steel Sheet Pile Seawall and Rock Revetment Purposes; Issuance of Management Right-of-Entry; Kahana, Lahaina, Maui, Tax Map Key: (2) 4-3-010: Seaward of 009.”*

The purpose of the amendment is to approve a construction Right-of-Entry permit to the Hololani Association of Apartment Owners for steel sheet seawall and revetment purposes.

Deferred
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
March 23, 2018

BACKGROUND:

On January 12, 2018, under agenda item D-8, the Board authorized the issuance of a 55-year term, non-exclusive easement for seawall and revetment purposes and a management Right-of-Entry (ROE) for that structure to the Association of Apartment Owners of Hololani (Hololani AOAO). (See **Exhibit A**).

REMARKS:

Subsequent to the January 12, 2018 Board meeting, representatives acting on behalf of the Hololani AOAO expressed concerns regarding the approximate length of time needed to complete the execution of the easement (about 1-1.5 years); citing rising material and maintenance cost of the current OCCL approved erosion control sandbags (see **Exhibit B**), rising interest rates, and rising shipping and material cost for the seawall and revetment. The Hololani AOAO representatives requested an ROE be approved so that construction of the seawall and revetment could commence no later than May 10, 2018 (the latest date given by the construction consultant with the completion done before the winter wave swells arrive). The Hololani AOAO realized only after the prior Board meeting that the Board had approved a management ROE for the seawall and revetment structure, which did not allow for an early construction of the new structure. The Hololani AOAO now comes before the Board to clarify their ROE request.

The Hololani AOAO will also simultaneously move forward with the easement process. The Hololani AOAO has submitted a concurrent resolution for approval of the easement to the Legislature. The Hololani AOAO committed that construction of the seawall and revetment would not commence unless concurrent resolution is approved during the 2018 legislative session. Also, that Hololani AOAO will provide to the Department of Land

and Natural Resources (DLNR) a performance bond equal to 150% of the removal cost of the seawall and revetment to be justified by a written estimate, and restoration of the shoreline area to the satisfaction of the Department, should the easement fail to be executed.

The Hololani AOA has secured County of Maui, Special Management Area permits for portions of the seawall and revetment being constructed on private property. As noted in the prior Board approval, the Board has already approved a Conservation District Permit for the new structure. The Hololani AOA has confirmed that there are no further regulatory requirements for the construction of the new structure, only the completion of the easement process is outstanding.

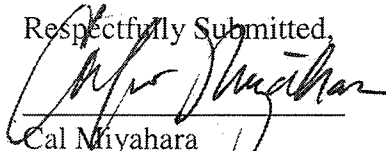
Based on the review of the above information, staff recommends that the Board authorize granting a ROE for the construction of the seawall and revetment to commence on or after May 10, 2018, provided that: (1) concurrent resolution for the seawall and revetment is approved during the 2018 legislative session; and, (2) Hololani AOA provides to DLNR a performance bond equal to 150 % of the cost of the removal of the seawall and revetment to be justified by a written estimate, and the restoration of the shoreline area to the satisfaction of the Department.

RECOMMENDATION: Subject to the terms and conditions cited above, that the Board amend its approval of Item D-8 from its meeting on January 12, 2018, by adding the additional recommendation below:

“4. Authorize the issuance of a construction right-of-entry (to commence on or after May 10, 2018) to the Association of Apartment Owners of Hololani covering the subject area for steel sheet seawall and revetment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

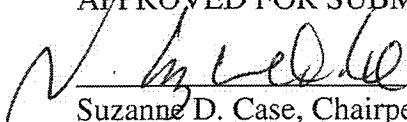
- A. The standard terms and conditions of the most current right-of-entry permit document form, as may be amended from time to time; and
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.”

Respectfully Submitted,



Cal Miyahara
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

Land Board Meeting: March 23, 2018; D-3:
Deferred.

Deferred. See attached page.

Land Board Meeting: March 23, 2018; D-3: Deferred.

Deferred. The Board deferred the item until such time as the Chair, in her discretion, decides to place it on the agenda again.

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

January 12, 2018

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

PSF No.: 17MD-152

MAUI

Grant of Term, Non-Exclusive Easement to the Association of Apartment Owners of Hololani for Steel Sheet Pile Seawall and Rock Revetment Purposes; Issuance of Management Right-of-Entry; Kahana, Lahaina, Maui, Tax Map Key: (2) 4-3-010:Seaward of 009.

APPLICANT:

Association of Apartment Owners of Hololani, a domestic nonprofit corporation.

LEGAL REFERENCE:

Sections 171-6, 13, 17, 53(c), and 55 Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Kahana, Lahaina, Maui, identified by Tax Map Key: (2) 4-3-010:Seaward of 009, as shown on the attached maps labeled **Exhibit A-1, A-2, and A-3.**

AREA:

6,128 square feet, more or less, subject to review and approval by the Department of Accounting and General Services, Survey Division

ZONING:

State Land Use District: Conservation
County of Maui CZO: H-2 [for the abutting private property]

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
January 12, 2018 *co.*

CURRENT USE STATUS:

Vacant with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove the steel sheet pile 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:

The Final Environmental Assessment for the subject project was published in the OEQC's The Environmental Notice on October 8, 2013, with a finding of no significant impact (FONSI).

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: 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 one-time payment; and
3. Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

REMARKS:

The applicant is an association of apartment owners who own the abutting property identified as tax map key (2) 4-3-010:009. The applicant is planning to construct a permanent shoreline armoring structure to prevent further coastal erosion that is threatening 2 condominium buildings. One of the corners of the north building is now approximately 20 feet from the shoreline.

In 2007, the Office of Conservation and Coastal Lands (OCCL) issued the applicant a 3-year emergency erosion control authorization for the installation of geotextile sandbags and Tensar (rock filled wire-mesh mattress) structures to address the ongoing shoreline erosion problem (see **Exhibit B**). The initial emergency permit has since been extended four times and remains valid until May 1, 2018. Also, the authorization issued by DLNR required the applicant to develop a more long-term solution.

At its meeting on May 9, 2014, Item K-2, the Board approved Conservation District Use Application (CDUA) MA-3663 (see **Exhibit C**), for the proposed permanent shoreline protection structure. The approved structure will combine a seawall (steel sheet pile wall) and rock revetment. Condition number 4 of the CDUP requires a land disposition for any portion of the permanent structure that will be built on State lands. The applicant now comes before the Board for approval of an easement for the seawall and revetment area. Originally, Condition number 1 of the CDUP required that the shoreline protection structure be located substantially landward of the May 2, 2013 certified shoreline (see **Exhibit D**). However, after lengthy discussions with Sea Engineering, Inc. (consultants for the applicant), OCCL concurred that from an engineering standpoint, the protection structure could only be constructed just a little landward of the 2013 certified shoreline because of the close proximity of the swimming pool and the north building to the shoreline.

Based on the review of the above information, staff recommends the disposition of the shoreline encroachment abutting the Applicant's property through an easement. Staff requests that the Board authorize granting a term, non-exclusive easement for the seawall and revetment.

Comments from other government agencies were sought during the application stage for the conservation district use permit mentioned above which included an environmental assessment. Therefore, staff did not solicit another round of requesting for comment on the proposed easement.

Upon approval of today's request, Applicants will be reminded of the requirement for concurrent resolution from both houses of the legislature under Sect.171-53(c), HRS prior to the issuance of the requested easement.

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.

RECOMMENDATION: That the Board:


1. 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) 4-3-010:009, 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.
2. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to the Association of Apartment Owners of Hololani, covering the subject area for steel sheet seawall and 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. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
 - C. Review and approval by the Department of the Attorney General;
 - D. Terms and conditions of CDUP MA-3663 as shown on Exhibit C;
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
 - F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.
3. Authorize the issuance of management right-of-entry to the Association of Apartment Owners of Hololani covering the subject area for steel sheet seawall and 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 permit document 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,



Cal Miyahara
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

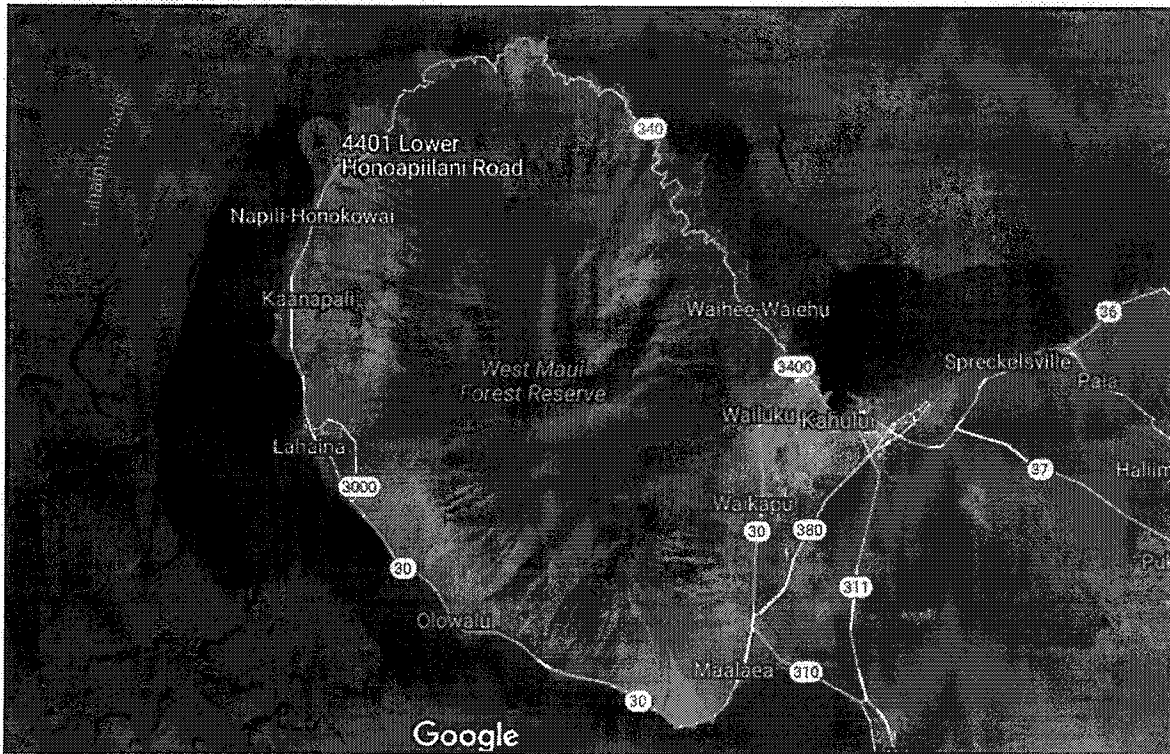


EXHIBIT A-1

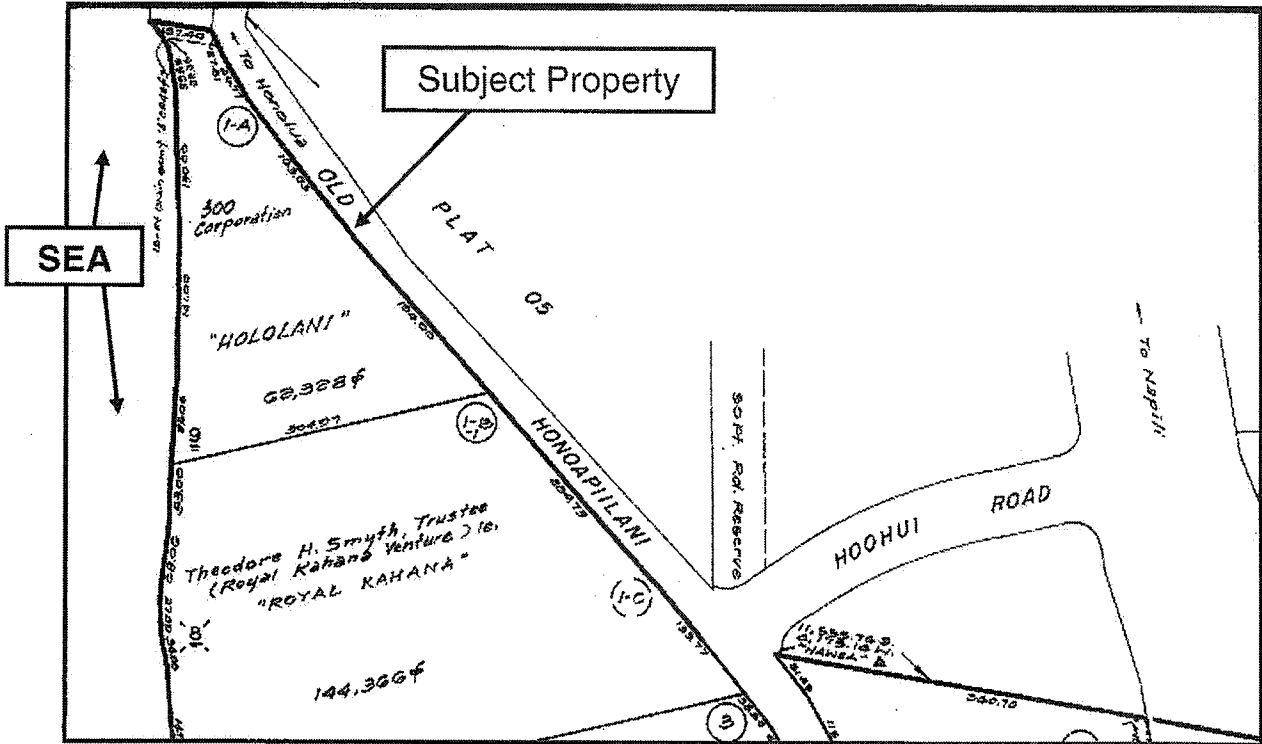
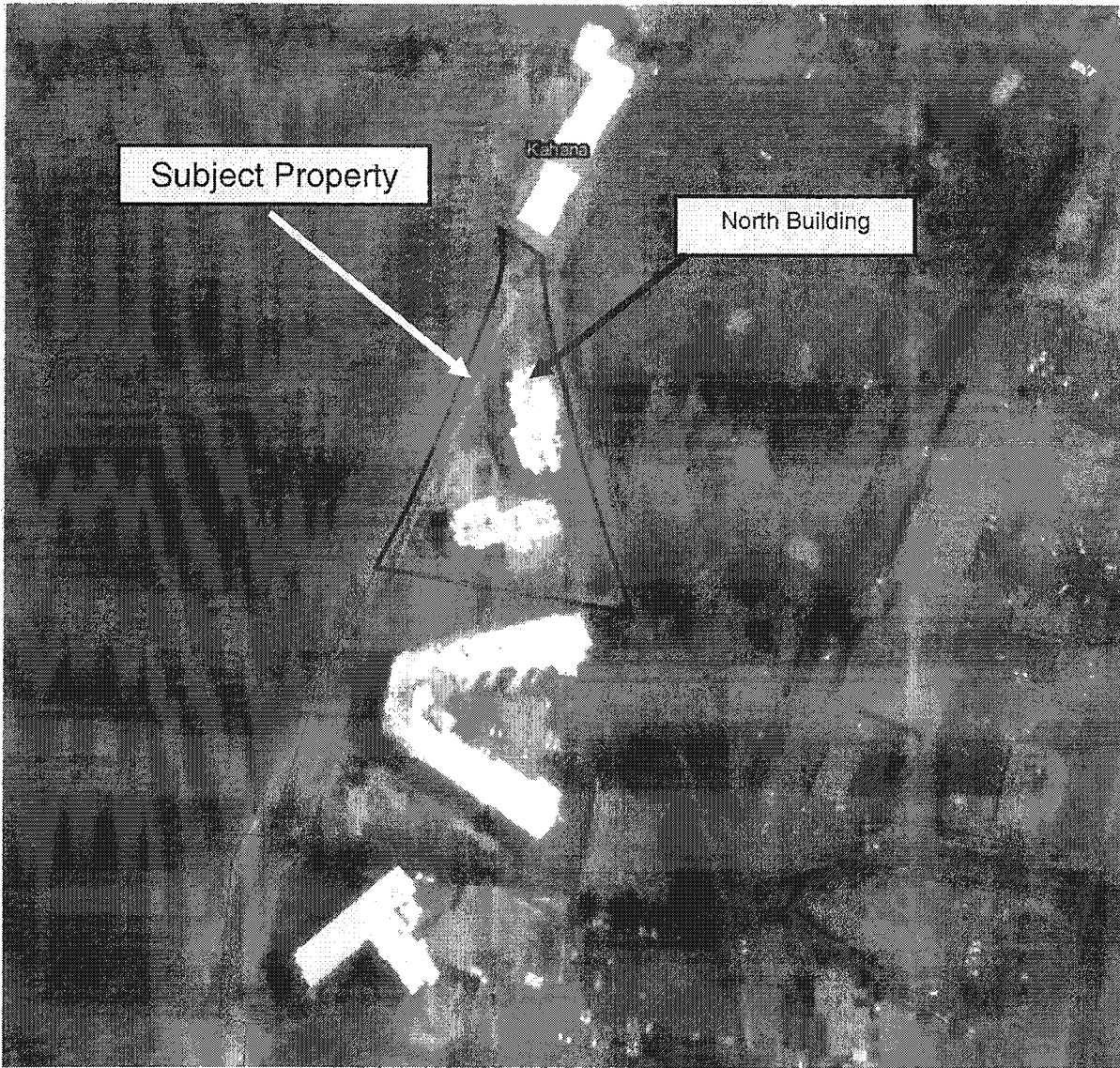


EXHIBIT A-2



TMK (2) 4-3-010:seaward of 009

EXHIBIT A-3

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

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

DLNR:OCCL:DE

File No.: Emergency-OA-07-08

February 6, 2007

John C. Henry
Hololani Resident Manager
4401 L. Honoapiilani Rd
Lahaina, HI 96761

Mr. Henry:

SUBJECT: Emergency Erosion Control (Sandbags), Hololani Condominiums
4401 L. Honoapiilani Rd Lahaina, HI. TMK (2) 4-3-010:09

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) has received your letter dated January 24, 2007 regarding an emergency request for a sand bag revetment fronting the property. Based on the information presented and a site visit by our staff on January 11, 2007 the large multi-story structure is in danger of collapse without immediate shore protection and justifies a temporary emergency response (Figure 1).

On February 2, 2007, the Department approved an emergency request of behalf of the Hololani Condominium landowners to place additional boulders and fabric on the shoreline in order to prevent a portion of the facility from being undermined by erosion. This authorization allowed Hololani to place boulders in the shoreline area for thirty (30) days. After this period, the boulders must be removed to the satisfaction of the Department.

As an interim measure (subsequent to the boulder removal), the landowner(s) would like to install a temporary engineered structure. The proposed sandbag and Tensar structure consists of approximately 380 linear feet of shoreline fronting the subject property. The revetment will be installed at elevation +2.5 ft to +10.0 (ft sl) and will consist of a combination of 144 Tensar units (0.75' X 5' X 10') (160 cubic yards of rock filled in a plastic mattress) as scour pad and splash apron and approximately 144 (5' X 10' X 1.5') Bulklift S.E.ABAG sandbags (360 cubic yards of sand). These will be installed in a sloping formation and built primarily seaward of the shoreline defined by the active erosional scarp. This authorization is for the referenced design presented in Figure 2 of the January 24, 2007 request letter (Figure 2).

EXHIBIT " B "

The DLNR understands that during time the temporary sandbag/Tensar structure is in place, the landowner(s) intend to apply for a shoreline setback variance for an engineered rock revetment placed landward of and to replace the proposed sandbag structure, the installation of the bags is intended to be temporary until the required permits are obtained for a more permanent rock revetment.

Mitigation Measures (Best Management Practices)

Typical Best Management Practices shall be implemented to ensure that water quality and marine resources are protected and preserved. Mitigation measures involve the use of sand that is free of contaminants and low in silt content (to be determined). The applicant proposes to place the sandbags seaward of the shoreline and will ensure silt is contained during construction activities. Excessive silt and turbidity shall be contained or otherwise minimized through the use of silt containment devices and barriers. Silt containment should be practiced for the duration of construction activities. The sandbag installation should occur during low tide to ensure activities do not discharge silt into state waters. Visual monitoring of the nearshore water quality condition should be practiced during sand placement, and if excessive turbidity occurs, sand placement shall stop and more effective silt containment measures utilized.

Sand Quality

Due to the contained use of the proposed sand, Best Management Practices, low silt content, limited duration of exposure and the high rate of flushing and circulation at the site, potential turbidity impacts from the proposed activities are estimated to be negligible. Near-shore turbidity associated with the use of this sand is not expected to impact marine life and will be quite short-lived in the nearshore waters and is not expected to exceed existing background levels.

Based on the information provided, the Department has made the following determinations:

1. There is an imminent threat to the existing dwelling with active erosion threatening the structure.
2. This berm is approximately defined by the active scarping and fallen vegetation. Erosion appears to have accelerated landward recently.
3. The proposed structure will provide temporary protection to the threatened structures until a more permanent solution is designed and approved.
4. There is no known beach-quality sand source stored behind the berm, it appears the area is composed a clay and weathered basalt that would not provide a useful source of sediment to the littoral system if were allowed to erode.
5. The area is largely armored with a large number of shoreline structures to the north and south of the property, specifically immediately to the north.
6. The applicant is developing a long-term plan for erosion control that may include stabilizing structures. This plan will be implemented before the 3 year expiration date of the emergency permit.

DEPARTMENT ACTION

Terms and Conditions

The Chairperson of the Department of Land and Natural Resources hereby authorizes your emergency request for temporary sandbag and Tensar mattress structure fronting the subject property. This authorization includes, but is not limited to the following terms and conditions:

1. This authorization will become valid upon the approval by the DLNR of:
 - a. A sand source for the installation of the sand bags.
 - b. A Best Management Practices (BMP's) Plan
 - c. Installation sequence and work plan for the proposed structure.
2. The project includes the installation and replacement of approximately 144 (5' X 10' X 1.5') Bulklift S.E. ABAG sandbags (360 cubic yards of sand) in conjunction with 114 Tensar rock-filled units (160 cubic yards of rock).
3. This authorization is valid for three (3) years from the date of acceptance, at which time, the authorization shall expire.
4. The applicant shall ensure that excessive siltation and turbidity is contained or otherwise minimized to the satisfaction of the DLNR, DOH or other agency, through silt containment devices or barriers, high sand quality and selective sand placement.
5. Any work or construction authorized by this letter shall be initiated within six (6) months of the approval of such use, and, unless otherwise authorized, shall be completed within twelve (12) months of the approval of such use. The applicant shall notify the Department before construction activity is initiated and when it is completed.
6. Sand utilized for the project will be from an approved commercial sand source. No sand shall be extracted from the beach fronting the property for any purpose.
7. Authorization of the sand used for the bags is contingent upon review and approval of the sand by the Department. Please submit sediment grain size analysis report and specify the source to the DLNR for review to ensure the proposed sand meets minimum standards. The sand shall meet the following State quality standards:
 - a) The proposed fill sand shall not contain more than six (6) percent fines, defined as the #200 sieve (0.074 mm).
 - b) The proposed beach fill sand shall not contain more than ten (10) percent coarse sediment, defined as the #4 sieve (4.76 mm) and shall be screened to remove any non-beach-compatible material and rubble.

- c) No more than 50 (fifty) percent of the fill sand shall have a grain diameter less than 0.125 mm as measured by #120 Standard Sieve Mesh.
 - d) Beach fill shall be dominantly composed of naturally occurring carbonate beach or dune sand. Crushed limestone or other man made or non-carbonate sands are unacceptable.
8. Transfer of ownership of the subject property includes the responsibility of the new owner to adhere to the terms and conditions of this authorization.
 9. This action is temporary to alleviate the emergency until long-term measures can be implemented. The DLNR reserves the right to terminate this authorization if it is determined the structure is having an adverse impact on the environment or if other shore protection alternatives are available.
 10. At the conclusion of work, the area shall be clean of all construction material, and the site shall be restored to a condition acceptable to the Chairperson.
 11. The activity shall not adversely affect a federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat.
 12. The activity shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area.
 13. When the Chairperson is notified by the applicant or the public that an individual activity deviates from the scope of an application approved by this letter, or activities are adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect.
 14. When the Chairperson is notified by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service or the State DLNR that an individual activity or activities authorized by this letter is adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect.

15. To avoid encroachments upon the area, the applicant shall not use artificially accreted areas due to nourishment or hardening as indicators of the shoreline.
16. Where any interference, nuisance, or harm may be caused, or hazard established by the activities authorized under this authorization, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm or hazard.
17. No contamination of the marine or coastal environment (trash or debris) shall result from project-related activities authorized under this authorization.
18. No motorized construction equipment is to be operated in the water at any time.
19. In the event there is any petroleum spill on the sand, the operator shall promptly remove the contaminated sand from the beach and immediately contact the DLNR/OCCL staff at 587-0377, to conduct a visual inspection and to provide appropriate guidance.
20. For projects authorized by this letter, the applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under projects authorized under this permit.
21. The DLNR reserves the right to impose additional terms and conditions on projects authorized under this letter, if it deems them necessary.
22. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments for projects authorized under this letter.
23. In the event that historic sites, including human burials are uncovered during construction activities, all work in the vicinity must stop immediately and contact the State Historic Preservation Division at 692-8015.
24. The applicant shall obtain a right-of-entry permit or other land disposition approval from the State of Hawaii Land Division prior to the inception of project work.
25. Failure on the part of the applicant to comply with any conditions imposed under this authorization shall render the authorization null and void.
26. The applicant shall take measures to ensure that the public is adequately informed of the project work once it is initiated and the need to avoid the project area during the operation and shall notify all abutting property owners and community organizations that may be affected by the proposed action.

27. The applicant shall implement standard Best Management Practices (BMPs), including the ability to contain and minimize silt in nearshore waters and clean up fuel, fluid or oil spills immediately for projects authorized by this letter. Equipment must not be refueled in the shoreline area. If visible petroleum, persistent turbidity or other unusual substances are observed in the water as a result of the proposed operation, all work must cease immediately to ascertain the source of the substance. The DLNR/OCCL staff shall be contacted immediately at 587-0377, to conduct a visual inspection and to provide appropriate guidance.

Additional Monitoring:

28. The applicant must submit a written completion report to the OCCL within two months of completion of the project. The completion report must include, as appropriate, descriptions of the construction activities, discussion(s) of any deviations from the proposed project design and the cause of these deviations, results of any environmental monitoring (primarily sand movement observations and turbidity observations), discussion(s) of any necessary corrective action(s), and photographs documenting the progress of the permitted work before, during and after sand placement.
29. As a temporary emergency project, the applicant shall provide an initial completion report and follow-up summary reports *annually* to the Department for three (3) years from the date of acceptance or until a permitted permanent structure is completed describing the condition of the sandbags and any impacts to the local nearshore processes.

Authorization Expiration:

30. This authorization shall expire three (3) years from the date of this letter. At that time, all activities authorized by the authorization shall be removed and the shoreline shall be returned to its original condition, unless a long-term plan has been approved. Failure to comply with these terms and conditions shall constitute a violation of Chapter 183C, Hawaii Revised Statutes and fines of \$2,000 per day shall accrue for each day that the landowner fails to comply with the terms and conditions of this authorization.

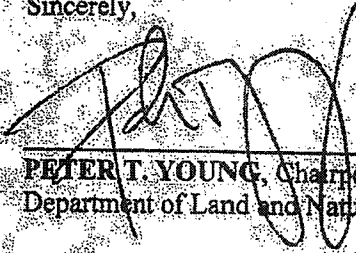
Please acknowledge receipt of this authorization, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within fifteen (15) days. Please notify the OCCL in advance of the anticipated construction dates and notify the OCCL immediately if any changes to the scope or schedule are anticipated.

Hololani Emergency Erosion Control

February 6, 2007

Should you have any questions on any of these conditions, please contact the Office of Conservation and Coastal Lands (OCCL) at (808) 587-0377.

Sincerely,



PETER T. YOUNG, Chairperson
Department of Land and Natural Resources

Attachments (Figures 1, 2)

Maui Board Member
DAR/HPD
Maui County Planning Dept
OHA/DOH, Clean Water
USFWS/NMFS/USACE
Jim Barry Sea Engineering, Makai Research Pier, Waimanalo, Hawaii 96795-1820

I concur with the conditions of this letter:

Holo Lawi AAO
by Stuart Allen, its President

Applicant's Signature

Date 12.14.07

Note: transfer of ownership (Title) conveys all terms and conditions of this authorization to the new owner.

Figure 1. Site Conditions
January 31, 2007

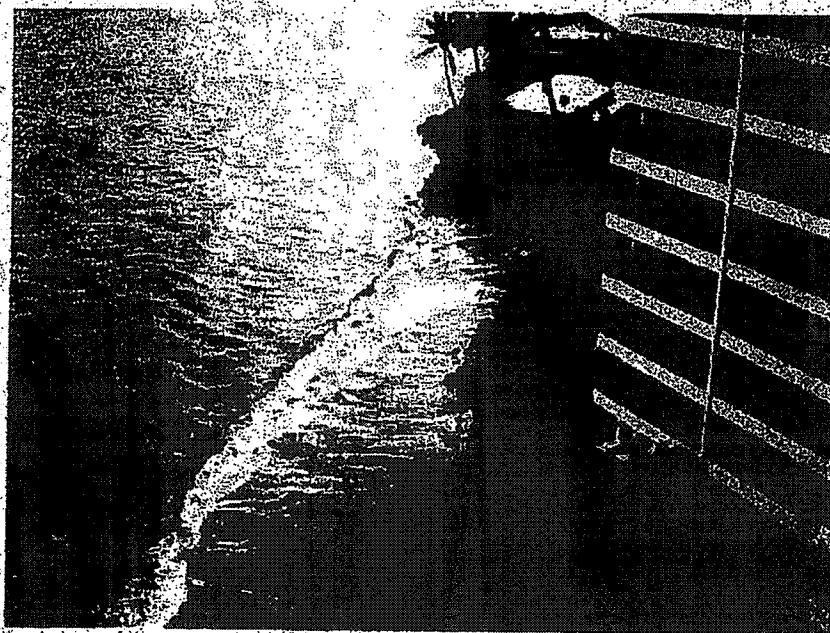


Figure 2. Proposed Plan

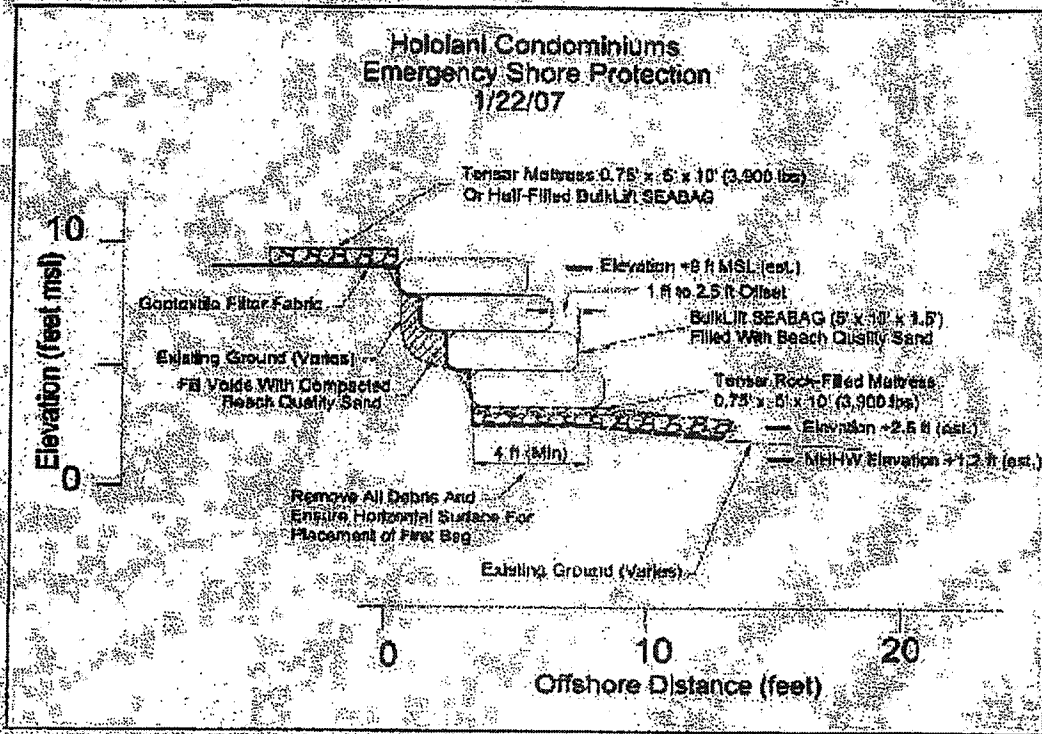
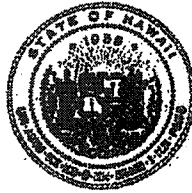


Figure 2. Cross-section of proposed temporary emergency shore protection

NEEL ABERCROMBIE
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

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT

JESSE K. SOUKY
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOARDING AND OCEAN RECREATION
BUREAU OF CONVEYANCE
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAREKOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

CDUP: MA-3663
MAY 13 2014

Jim Barry
Sea Engineering Inc.
Makai Research Pier
Waimanalo, HI 96795

Dear Mr. Barry:

This letter is to inform you that on May 9 2014, the Board of Land and Natural Resources (BLNR) approved Conservation District Use Application (CDUA) MA-3663 for the Hololani Resort Condominiums shore protection project, located at Kahana, Lahaina, Island of Maui - TMK: (2) 4-3-010:009, subject to the following conditions:

1. The permittee shall redesign a shoreline protection structure that is located substantially landward of the May 2, 2013 certified shoreline;
2. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
3. The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
4. The permittee shall obtain a land disposition from the department for any remaining portion of the shoreline protection structure on state lands;
5. The permittee shall comply with all applicable department of health administrative rules;
6. Before proceeding with any work authorized by the department or the board, the permittee shall submit four copies of the construction plans and specifications to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;

EXHIBIT "C"

CDUP MA-3663

7. Unless otherwise authorized, any work or construction to be done on the land shall be initiated within two years of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and shall be completed within three years of the approval of such use. The permittee shall notify the department in writing when construction activity is initiated and when it is completed;
8. All representations relative to mitigation set forth in the accepted environmental assessment for the proposed use are incorporated as conditions of the permit;
9. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
10. In issuing the permit, the department and board have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
11. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
12. Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;
13. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
14. The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;
15. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary, or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
16. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The Historic Preservation Division shall be contacted (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
17. Monitoring of the nearshore water quality shall be conducted in accordance with best management practices;

CDUP MA-3663

18. Work shall be conducted during calm weather periods to the most practical extent possible and no work shall occur if there is high surf or ocean conditions that will create unsafe work or beach conditions;
19. The permittee shall implement the proposed Best Management Practices (BMPs) and monitoring and assessment plan to maintain BMPs to minimize dirt and silt from entering the ocean and the ability to contain and clean up fuel, fluid, or oil spills immediately under this authorization and immediately report any spills or other contamination(s) that occurs at the project site to the Department of Health and other appropriate agencies;
20. The permittee shall ensure that excessive siltation and turbidity is contained or otherwise minimized to the satisfaction of all appropriate agencies, through silt containment devices or barriers, or other requirements as necessary;
21. Appropriate safety and notification procedures shall be implemented. This shall include high visibility safety fencing, tape or barriers to keep people away from the active construction site and a notification to the public informing them of the project;
22. The activity shall not adversely affect a federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat;
23. The activities shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area;
24. When the Department is notified that an individual activity deviates from the scope of work approved by this authorization or activities are adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the permittee to undertake corrective measures to address the condition affecting these resources. The permittee must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect;
25. No contamination of the marine or coastal environment (trash or debris) shall result from project-related activities authorized under this permit;
26. The Office of Conservation and Coastal Lands shall be notified (587-0377) in advance of the anticipated construction dates and shall be notified immediately if any changes to the scope or schedule are anticipated;
27. The permittee shall maintain safe lateral beach access for the life time of the structure;
28. If flanking or end effects are detected on the Royal Kahana property and can be attributed to the Hololani shoreline protection structure, the permittee shall place beach grade sand in the area to mitigate such effects;
29. The permittee shall provide, maintain, and properly add signage for a public access through the property to the shoreline;

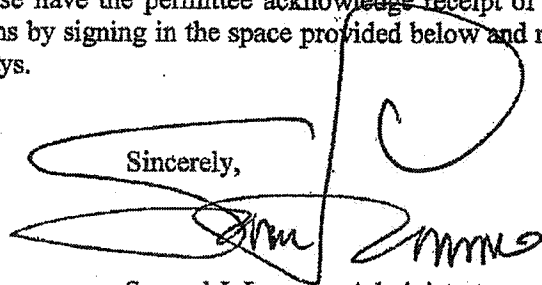
CDUP MA-3663

30. Other terms and conditions as may be prescribed by the Chairperson; and
31. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Finally, we ask that you comply with the recommendation of our State Historic Preservation Division (SHPD) in regards to the need to prepare an archaeological monitoring plan, and that a draft archaeological monitoring plan be provided to SHPD for approval prior to project initiation (letter attached).

Should you have any questions, please contact Sam Lemmo of the Office of Conservation and Coastal Lands at 587-0377. Please have the permittee acknowledge receipt of this permit and acceptance of the above conditions by signing in the space provided below and returning a copy to the OCCL within thirty (30) days.

Sincerely,



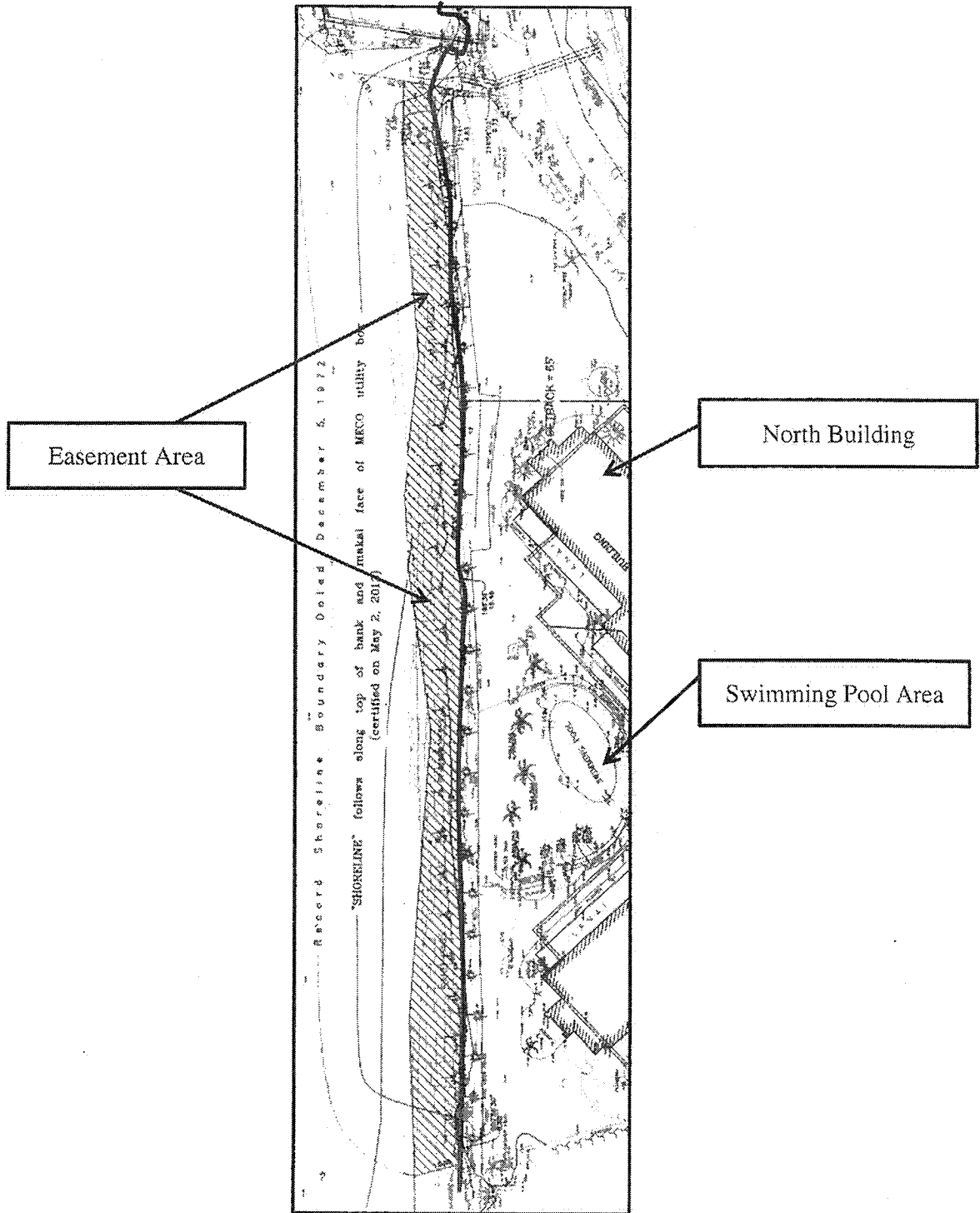
Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Hololani AOA
by Stuart Allen, its President
Receipt acknowledged:

12-13-17
Date:

Attachment

c: Chairperson
MDLO
County of Maui Planning Department, Public Works



Note: Red line indicates May 2, 2013 certified shoreline.

EXHIBIT D



Looking northeast – drainage easement area at north end of the property.

Exhibit B



Looking southwest – north building area.

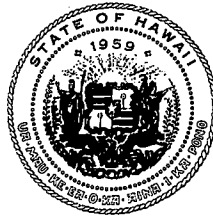
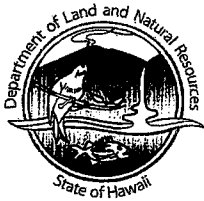


Looking southwest – sandbags adjacent to the pool area. Between north and south building.



Looking southwest – sandbags at south end of the property.

DAVID Y. IGE
GOVERNOR OF
HAWAII



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.
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AQUATIC RESOURCES
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

OFFICE OF CONSERVATION AND COSTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:TM

T-ext CDUP MA-3663

James H. Barry, P.E.
Sea Engineering
Makai Research Pier
Waimanalo, HI 96795-1820

MAR 27 2018

SUBJECT: Time Extension Request for Conservation District Use Permit (CDUP) MA-3663 for Shoreline Erosion Control Located at 4401 HonoaPi'ilani Road, Lahaina, Maui, Tax May Key: (2) 4-3-010:009 and Adjacent Submerged Land

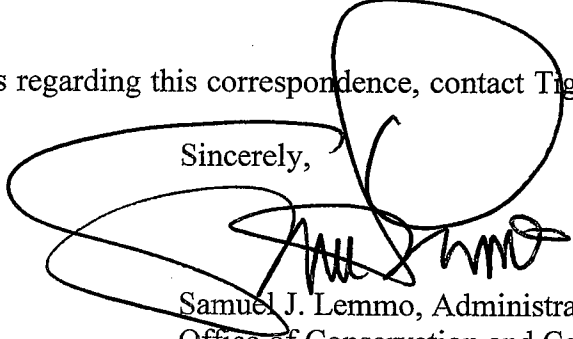
Dear Mr. Barry:

On March 23, 2018, the Board of Land and Natural Resources approved a two year time extension to initiate and complete the Shoreline Erosion Control structure located at 4401 HonoaPi'ilani Road, Lahaina, Maui, Tax May Key: (2) 4-3-010:009 and adjacent submerged land subject to the following conditions:

1. That condition #7 of CDUP MA-3663 is amended to provide that the Permittee has until May 9, 2020 to initiate construction and until May 9, 2021 to complete construction; and
2. That all other conditions imposed by the Board under CDUP MA-3663, as amended, shall remain in effect.

Should you have any questions regarding this correspondence, contact Tiger Mills of our Office at 587-0382.

Sincerely,


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

C: County of Maui
-Planning

EXHIBIT 5

Law Office of Lance D. Collins
Lance D. Collins 8246
Post Office Box 179336
Honolulu HI 96817
808.243.9292

FILED

2018 APR -5 AM 11:39

D. PELLAZAR, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

Attorney for Plaintiffs/Appellants

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

NĀ PAPA'I WAWAE 'ULA'ULA, an
unincorporated association, FELIMON
SADANG, individual, and WEST MAUI
PRESERVATION ASSOCIATION, a Hawai'i
nonprofit organization,

Plaintiffs/Appellants
vs.

BOARD OF LAND AND NATURAL
RESOURCES, STATE OF HAWAII and
ASSOCIATION OF APARTMENT OWNERS
OF HOLOLANI, a domestic nonprofit
corporation,

Defendants/Appellee.

) Civil No. 18-1-0155 (3)
) (Environmental Court)
)
) NOTICE OF APPEAL; STATEMENT OF
) THE CASE; DESIGNATION OF RECORD
) ON APPEAL; ORDER TO CERTIFY AND
) TRANSMIT THE RECORD ON APPEAL

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiffs/Appellants NĀ PAPA'I WAWAE 'ULA'ULA, an unincorporated association, FELIMON SADANG, individual, and WEST MAUI PRESERVATION ASSOCIATION, a Hawai'i nonprofit organization, pursuant to Haw. Rev. Stats. § 91-14, appeal to the Circuit Court of the Second Circuit from the preliminary and final decisions of Defendant-Appellee BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII on March 23, 2018 regarding Plaintiffs-Appellants Petition and Actions on Items D-3 and K-1 of the March 23, 2018 meeting Defendant-Appellee BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII.

I hereby certify that this is a full, true and correct copy of the Original

EXHIBIT 6

Defendants-Appellees BOARD OF LAND AND NATURAL RESOURCES,
STATE OF HAWAII prejudiced the substantial rights of the Plaintiffs-Appellants for all the
reasons given in Haw. Rev. Stat. §§ 91-14(g)(1)-(6). This appeal is also made upon the grounds set
forth more fully in the Statement of the Case, filed on this date and attached hereto.

This Court has jurisdiction to hear and decide this Appeal pursuant to the bases set
forth above. This Appeal is filed pursuant to Rules 2 and 72 of the Hawai'i Rules of Civil Procedure.

DATED: Wailuku, Maui, Hawai'i

April 5, 2018



LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
Attorney for Plaintiffs/Appellants

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

NĀ PAPA'I WAWAE 'ULA'ULA, an unincorporated association, et al	)	Civil No. _____
	)	(Environmental Court)
Plaintiffs/Appellants)	
vs.	)	STATEMENT OF THE CASE
)	
BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII et al)	
)	
Defendants/Appellee.)	

STATEMENT OF THE CASE

Plaintiffs/Appellants NĀ PAPA'I WAWAE 'ULA'ULA, an unincorporated association, FELIMON SADANG, individual (Sadang), and the WEST MAUI PRESERVATION ASSOCIATION, a Hawai'i nonprofit organization (WMPA) (collectively, "Plaintiffs") by and through their undersigned counsel, respectfully seeks relief for cause of action against Defendants/Appellees the BOARD OF LAND AND NATURAL RESOURCES, State of Hawai'i (BLNR), ASSOCIATION OF APARMENT OWNERS OF HOLOLANI, a nonprofit corporation (AOAO), and DOES 1-27, (collectively, "Defendants") for acting in excess of their authority and in violation of Hawaii Revised Statutes (HRS) chapters 91, 92, 171, 183C, 205A, and 343, articles I, §5, XI, §1 and 9, XII §7 of the Hawai'i State Constitution.

I. INTRODUCTION

1. On March 23, 2018, Plaintiffs filed their Petition for a Contested Case (Petition) pursuant to HRS §91-1, Hawaii Administrative Rules (HAR) §§ 13-1-12, -29, and -31 with BLNR.
2. Plaintiffs' Petition alleged they held protected interests in nearby beachfront property, native Hawaiian traditional and customary practices, and environmental rights that would be aggrieved by a decision to grant a Conservation District Use Permit (CDUP) permit extension and a construction Right of Entry (ROE) to Hololani AOAO.
3. BLNR improperly denied the Petition upon procedural and substantive grounds.
4. BLNR proceeded to grant the CDUP extension and deferred decisionmaking on the construction ROE.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction over the claims for relief in this action pursuant to HRS §§ 91-14, 92-12, 603-21.5, 603-21.9, and 632-1; and articles I, § 5, XI, §§ 1 and 9, XII §7 of the Hawai'i State Constitution.

6. Venue properly lies in the Circuit Court of the Second Circuit pursuant to HRS §§ 604A-2, 603-36(5), and 632-1 because claims for relief are based on events arising in this circuit and Defendant's actions take place in this circuit and invoke the jurisdiction of the environmental court.

7. If necessary, this Statement of the Case may be construed as an original Complaint. *See* HRS §632-6, and *In re Eric G.*, 65 Haw. 219, 224, 649 P.2d 1140, 1144 (1982) (misdesignation of an action as a special proceeding and of the complaint as a "notice of appeal" did not vitiate the clear statement entitling complainant to relief under the applicable statute).

III. PARTIES

8. Plaintiff NĀ PAPA'I WAWAE 'ULA'ULA ("Nā Papa'i") is an unincorporated association of West Maui residents and other beach users who are concerned about protecting and preserving the quality of life and environment for West Maui communities particularly as it relates to the public's use and access of the shoreline. Na Papa'i members include: recreational users of shoreline and coastal areas fronting and nearby AOA property; longtime beach users who have used accesses for more than twenty years continuously and/or more than ten years prior to 1969; members of the public who access the shoreline for noncommercial and cultural uses; and residents of neighborhoods adjacent to Defendants' condominiums and resorts.

9. Plaintiff WEST MAUI PRESERVATION ASSOCIATION is a 501(c)(3) nonprofit organization incorporated in the State of Hawai'i with its primary place of business located in Lahaina, Maui. WMPA is dedicated to preserving, protecting, and restoring the natural and cultural environment of West Maui, its coasts, and its nearshore waters. WMPA conducts conservation actions and educational activities related thereto, as well as improvement projects, including land acquisition, for betterment, preservation, maintenance, and protection of ocean, reef, marine life, shoreline, dunes, parks, open spaces, roadways, parking facilities, and other areas of West Maui, thereby enhancing the natural beauty and public enjoyment of the West Maui region.

10. Plaintiff FELIMON SADANG, individual, is a native Hawaiian traditional and customary cultural practitioner of lands and waters including Kahana Bay. Sadang and his family have been living in West Maui for generations. Sadang owns beachfront property located at 4495 Honoapiilani Road, Lahaina, Hawai'i 96761, approximately 720 feet away from the proposed

Hololani seawall. Sadang's native Hawaiian traditional and customary practices include fishing, limu gathering, and other ocean-going practices.

11. Sadang has observed changing patterns of ocean sand deposits over the decades after the installation of the first seawalls in Kahana bay. Sadang and his family are concerned that the Hololani seawall will exacerbate erosion and sedimentation that would impact marine water quality, reef ecosystems, and fisheries. As property owners, Sadang and his family are concerned about flanking erosion impacts on their beachfront property. Over the years, their property shoreline has eroded, causing them to move their house several times, and they have lost pig pens, chicken coops and other structures.

12. Defendant BOARD OF LAND AND NATURAL RESOURCES, State of Hawai'i (BLNR) is the governing body of the Department of Land and Natural Resources (DLNR), pursuant to HRS §26-15. DLNR's mission is to "Enhance, protect, conserve and manage Hawaii's unique and limited natural, cultural and historic resources held in public trust for current and future generations of the people of Hawaii nei, and its visitors, in partnership with others from the public and private sectors." BLNR convenes twice monthly to review and take action on DLNR submittals, including easements, leases, Conservation District Use Applications (CDUAs), and amendments to the same.

13. Defendant ASSOCIATION OF APARTMENT OWNERS OF HOLOLANI (AOAO) is a Hawaii non-profit corporation representing all of the members of a condominium association for a Horizontal Property Regime known as Hololani, established under HRS Chapter 514A, in accordance with the Declaration of Protective Covenants, dated July 3, 1973, and the Bylaws of the Association of Apartment Owners of Hololani, filed concurrently with the Declaration and subsequently amended in 1990. The Hololani condominium project, consisting in two eight story reinforced concrete buildings with four (4) units per floor, an adjacent commercial building and swimming pool, in the early 1970s and is located at 4401 Lower Honoapi'ilani Road, Lahaina, Maui at Tax Map Key (2) 4-3-010:009.

14. Additional Defendants Does 1-27 (Doe Defendants) are persons or entities who may be liable to Plaintiff or may have an interest in the matter or issues pending, whose identities and capacities are presently unknown to Plaintiffs. Plaintiffs has reviewed the permits, records, state and federal statutes, and other documents, but are unable to ascertain whether or not all parties liable to Plaintiffs are named therein. Plaintiffs will identify such Doe 1-27 Defendants when their names and capacities are ascertained, Plaintiffs is informed and believe and thereon allege that some of these

Doe Defendants and at all times relevant herein, were, in some manner presently unknown to Plaintiffs engaged in and/or responsible for the intentional and/or negligent acts, breaches and/or omissions alleged herein, and/or were in some manner responsible for the damages to Plaintiffs and the public, as alleged herein.

IV. GENERAL FACTUAL BACKGROUND

15. For generations, Plaintiffs and their members have accessed the shorelines and coastal areas fronting and nearby the AOAOL Hololani condominium on Kahana Bay to conduct native Hawaiian traditional and customary practices, recreational purposes, having family gatherings, paddling, canoeing, fishing, surfing, diving, gathering cultural resource items, catching tako, throwing fishnets, and to teach new generations to do the same.

16. Plaintiff Sadang and his family are native Hawaiian traditional and customary practitioners and own beachfront property approximately 720 feet away from the proposed Hololani seawall.

17. Plaintiffs and County officials have observed "end effect" or "flanking erosion" impacts to the south of Hololani at the shoreline fronting the Royal Kahana condominium, an adjacent beachfront property, due to the presence of Hololani's temporary shoreline protection structures.

18. Erosion and flanking effects threaten to impact their enjoyment of snorkeling, paddling, swimming, and other ocean-going activities in nearshore waters, appreciation of the aesthetic value of the shoreline, marine and nearshore wildlife, and access points to the coastline around Kahana bay.

19. Shoreline erosion has caused Sadang to move his house several times, and he has lost chicken coops, pig pens, and other outdoor structures.

20. AOAOL consultants report that erosion on this portion of Kahana bay shorelines has been ongoing since at least 1949.

21. The Hololani condominium structures were built in 1974 or thereafter.

22. In or about 1974, Plaintiffs' members observed that a large pile of sand was dug out during the excavation of the AOAOL Hololani condominium pool structure.

23. In 1981, the legislature amended HRS chapter 171 to help preserve and protect the environment by requiring prior legislative authorization for the leasing and development of submerged lands and lands beneath tidal waters via concurrent resolution, in addition to the requirement of prior authorization from the governor.

24. In 1988, AOA installed a sand bag wall along the shoreline.
25. During the winter of 2006-2007, AOA installed boulders, geotextile bags, and other materials along the shoreline without authorization from DLNR. DLNR required AOA to remove the materials.
26. On February 6, 2007, DLNR issued AOA emergency authorization to install geotextile sand bags and erosion blankets (also called "Tensar Mattresses") for three years. The County of Maui also issued AOA an emergency permit for this purpose.
27. DLNR has reissued the emergency permit to AOA three times as of May 2014.
28. On August 31, 2010, Sea Engineering, Inc. (SEI), consultant to AOA, prepared a Report on its soil investigation, consisting in description of the contents of five boring holes. All five substrate cores show 20 feet of sand before they hit rock and only two cores had a thin layer of clay, which clay was located at 15 and 20 feet in those two samples.
29. Data from the U.S. Geological Service and the U.S. Department of Agriculture used to model substrate layers of the AOA Hololani parcel were published on or about December 22, 2017. This data disclosed sand dunes underlie the AOA Hololani parcel and areas mauka of this parcel.
30. On May 2, 2013, the shoreline fronting the Hololani condominium was certified.
31. On October 8, 2013, DLNR accepted a Final Environmental Assessment (FEA) prepared by SEI for AOA Hololani's hybrid seawall/ revetment (seawall), which would extend approximately 400 feet in length across the shoreline and 20 feet into the ocean.
32. Also on October 8, 2013, DLNR issued a Finding of No Significant Impact (FONSI).
33. The FEA's lack of finding of significant impacts was based in part on comparison with three case studies of beach accretion in front of engineered coastal structures that included Mahana Condominiums at North Beach Kaanapali in 1985. Today, Mahana and adjoining properties exhibit signs of significant erosion and beach narrowing and loss.
34. The second sentence of the FEA reads, "The shoreline is dominated by a tall erosion scarp within the native volcanic clay substrate," but further clarified that the term "clay" was defined to include silt, silty sand, silty gravels as well as clay.
35. The FEA rationale for the preferred alternative of the seawall revetment was based on the finding of a lack of inland sand mauka of the structure, and rather "clay" substrate that could increase turbidity associated with bank erosion.

36. DLNR's 2013 FONSI issuance was qualified by three major concerns: (1) the structure footprint would encroach onto the beach and result in loss of the public beach area; (2) coastal armoring has been shown to contribute to beach loss through erosion of the fronting shoreline; and (3) the Hololani seawall could contribute to flanking erosion.

37. On May 9, 2014, BLNR considered the Hololani seawall Conservation District Use Permit Application (CDUA), on which the County of Maui submitted extensive comments and concerns.

38. BLNR approved the CDUA including the requirement that the Hololani seawall be shifted mauka to be "substantially landward" of the May 2, 2013 certified shoreline.

39. The 2014 OCCL staff submittal on the Hololani seawall CDUA relied on SEI's 2010 soil survey report in determining no upland sand sources existed on the property. OCCL noted "[without] massive sand nourishment projects, it appears that the beaches along this stretch of coastline are in danger of continued narrowing and loss[.]"

40. On July 12, 2016, the County of Maui Department of Planning issued a Special Management Area (SMA) permit to AOA Hololani requiring: (a) participation on a pro-rata basis with all nine (9) condominium projects on Kahana Bay in funding a regional beach nourishment project, including the completion of an Environmental Impact Statement (EIS) and implementation; and (2) upon the completion of the regional beach nourishment project, the Hololani seawall is to be dismantled and removed by AOA Hololani within 180 days.

41. AOA Hololani counsel later represented to BLNR that they anticipated a change in County of Maui administration may allow them to amend the SMA condition requiring the dismantling of the Hololani seawall.

42. In September 2016, the County of Maui published their Beach Nourishment Feasibility Study for Kahana Beach, which included findings of four offshore sand sources that could be feasibly used for beach nourishment that could add 50-110 feet of initial beach width.

43. At its January 12, 2018 regular meeting, BLNR approved an easement and management Right of Entry (ROE) for the Hololani seawall after DLNR staff stated that no beach sand resources existed for this particular stretch of shoreline and therefore erosion would eat into a "clay bank" and disseminate sediment into the ocean.

44. BLNR did not identify native Hawaiian traditional and customary practices on the parcel, the impacts of the Hololani seawall on those practices, nor any feasible protections during its decisionmaking on either the easement or CDUA for the Hololani seawall.

45. At its March 23, 2018 meeting, BLNR considered Item D-3, AOA O Hololani's request for a construction ROE that would permit them to initiate construction on later than May 10, 2018 provided that a concurrent resolution for the seawall is approved during the 2018 legislative session and AOA O Hololani provides a performance bond equal to 150 percent of the cost of the removal of the seawall.

46. During its March 28, 2018 hearing on Senate Concurrent Resolution (SCR) No. 63, concerning a grant of easement to Hololani AOA O for the seawall, several amendments were approved, including conditions on the easement. The senate committee announced their expectation that the applicant would bring the easement back to BLNR for incorporation of further conditions included in the amended SCR No. 63, S.D.1.

47. Also at its March 23, 2018 meeting, BLNR considered, and granted, Hololani AOA O's further request for a second extension of time to comply with Condition No. 7 of the CDUP, requiring construction to be initiated within two years of the issuance of the CDUP.

48. Just prior to its March 23, 2018 meeting, BLNR received Plaintiffs' written petition for a contested case on Items D-3 and K-1.

49. At its March 23, 2018 meeting, BLNR announced that it had received the written petition and went into executive session to consider the petition, after which it summarily denied the petition. The March 23, 2018 BLNR meeting agenda did not include a decisionmaking item on the contested case petition.

50. Also at its March 23, 2018 meeting, BLNR received public testimony and presentations from AOA O Hololani and its consultants on Items D-3 and K-1.

51. Also at its March 23, 2018 meeting, BLNR members stated that they had not been aware of the ongoing regional beach nourishment project, to which DLNR staff informed them that a contractor had been selected to prepare the EIS.

52. After several motions, including a motion to approve Item D-3, failed to obtain a majority of votes, BLNR voted by a majority of 4 to 2 in favor of deferring Item D-3 pending the Chair's determination to put the item back onto the agenda.

53. Plaintiffs were aggrieved by BLNR's refusal to grant the contested case petition or otherwise comply with laws protecting their interests as nearby beachfront property owners, native Hawaiian traditional and customary cultural practitioners, and users of recreational and environmental resources in and near the property.

V. CAUSES OF ACTION

COUNT I – DENIAL OF CONTESTED CASE

54. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Statement of the Case.

55. A contested case is a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.

56. Construction of the Hololani seawall would impact Plaintiffs' native Hawaiian traditional and customary practitioner rights, rights to a clean and healthful environment, and other recreational and cultural interests in Kahana bay and coastal areas.

57. Plaintiffs' sought a contested case hearing on proposals to extend the CDUP for the Hololani seawall for another two years and to grant a construction right of entry to allow construction of the seawall no later than May 10, 2018.

58. A contested case hearing was required by laws and constitutional provisions protecting Plaintiffs' traditional and customary practitioner rights, rights to a clean and healthful environment, and other recreational and cultural interests in Kahana bay and coastal areas.

59. A contested case hearing would have determined the rights, duties, and privileges of specific parties.

60. BLNR received Plaintiffs' timely submitted written petition for a contested case at its March 23, 2018 meeting.

61. After meeting in executive session, BLNR summarily denied Plaintiffs' contested case petition.

62. Denial of Plaintiffs' contested case petition request was a final agency decision.

63. Plaintiffs were aggrieved by BLNR's final decision to deny their request for a contested case.

64. Plaintiffs are entitled to judicial review of BLNR's denial of their contested case petition. HRS § 91-14.

65. Plaintiffs' seek an order reversing BLNR's oral denial of their request for a contested case hearing.

COUNT II – OPEN MEETINGS VIOLATION

66. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Statement of the Case.

67. A board has a duty to hold its meetings open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the Hawai'i Constitution or as closed pursuant to HRS §§ 92-4 and 92-5.

68. A board has a duty to afford all interested persons a meaningful opportunity to present written and oral testimony.

69. A board shall give written public notice of every regular, special or rescheduled meeting or any executive meeting when anticipated in advance and such notice shall include an agenda which lists all of the items to be considered at the forthcoming meeting, the date, time and place of the meeting, and in the case of an executive meeting, the purpose shall be stated and shall be filed with the Lieutenant Governor not less than six days before each meeting.

70. BLNR is a board within the meaning of HRS § 92-2.

71. Decisions rendered pursuant to Hawaii Administrative Rules (HAR) § 13-1-29.1 are not adjudicatory functions of the BLNR and are therefore not exempted from HRS Chapter 92.

72. BLNR breached its duty of conducting its meetings openly by calling an executive session to confer with the Board's attorney without listing that action on its agenda.

73. BLNR breached its duty to conduct its meeting openly by voting on a matter that was not noticed on an agenda.

74. Plaintiffs seek a determination regarding the applicability of Chapter 92, HRS and a judicial declaration voiding the final action of the BLNR in granting the time extension to comply with Condition No. 7 of the CDUP.

COUNT III – ULTRA VIRES ACTS (EASEMENTS OVER PUBLIC LANDS)

75. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Statement of the Case.

76. The BLNR has only been given authority to grant leases or easements over submerged lands when said proposed easement has first been granted legislative and gubernatorial approval.

77. The limitation on the grant of authority was intended to preserve and protect the environment.

78. Neither the legislature nor the governor given prior approval of any easements or leases fronting Hololani..

79. On January 12, 2018, BLNR purported to approve an easement and management ROE for the Hololani seawall.

80. On March 23, 2018, BLNR purported to confirm the easement and to further considered granting a construction right of entry to permit AOA Hololani to engage in construction.

81. The BLNR acted in excess of its statutory authority in approving said easements and rights of entry.

82. Plaintiffs have been suffered an injury in fact due to BLNR's action including denying their right to a contested case proceeding.

COUNT IV – VIOLATION OF RULEMAKING PROCEDURES

83. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Statement of the Case.

84. DLNR Land Division administrator represented that “as a practical matter” leases and easements for state shoreline and submerged lands are presented to BLNR before they are sent to the legislators for prior approval.

85. BLNR members articulated their belief that they may consider and approve easements before obtaining prior authorization from the legislature via a fully approved concurrent resolution and from the governor.

86. DLNR has no administrative rules for issuance of easements or leases, and only rules for a schedule of fees and notices of public auction.

87. DLNR’s practice of submitting easements and leases for state shoreline and submerged lands without obtaining prior authorization from the legislature and governor is a statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of the DLNR.

88. DLNR’s practice of submitting easements and leases for state shoreline and submerged lands without obtaining prior authorization from the legislature and governor does not concern only the internal management of an agency and does affect the private rights of or procedures available to the public.

89. DLNR’s practice of submitting easements and leases for state shoreline and submerged lands without obtaining prior authorization from the legislature and governor was not properly promulgated pursuant to HRS 91-3.

90. Plaintiffs seek a declaration invalidating BLNR's approval of the easement to AOA Hololani for the seawall because it was issued in violation of rulemaking procedures required under HRS chapter 91.

91. Plaintiffs seek an injunction against DLNR's processing of the easement to AOA Hololani for the seawall because the easement was issued in violation of rulemaking procedures required under HRS chapter 91.

COUNT IV – VIOLATION OF CONSERVATION DISTRICT

92. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Statement of the Case.

93. The Hololani seawall is proposed to be constructed in the State Conservation District.

94. Permittees may request time extensions for the purpose of extending the period of time to comply with the conditions of a CDUP. HAR § 13-5-43(a).

95. AOA Hololani requested that BLNR grant a time extension to comply with CDUP requirements that construction be initiated within two years.

96. The request for an extension of time is based upon construction plans that contravene the conditions of the CDUP.

97. The BLNR was without authority to grant the time extension and should have treated the request as a new CDUP.

98. Plaintiffs would be prejudiced and otherwise suffer an injury in fact by the seawall's encroachment into the shoreline and seasonal beach areas.

99. Plaintiffs seek a declaration that BLNR lacked authority to issue the time extension to AOA Hololani for construction of a project that does not seek to comply with CDUP conditions and to void such action.

COUNT V – VIOLATION OF HRS CHAPTER 343

100. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Statement of the Case.

101. The Hololani seawall triggered HRS chapter 343 environmental document preparation requirements because it proposes to use State lands and is an "action" because it is a project initiated by AOA Hololani.

102. Since the preparation of the FEA in 2013, new information and circumstances have arisen concerning the identity of significant sand substrate underlying the Hololani property, degradation of hardened shorelines deemed comparable to Hololani (e.g., Mahana Condominium), identification of sources of beach quality sand offshore of Kahana bay, and a viable regional beach nourishment project.

103. HRS chapter 343 environmental disclosure documents are intended to inform decisionmaking such as BLNR's decision to extend the Hololani seawall CDUP and the construction ROE.

104. Where an action has "changed substantively in size, scope, intensity, use, location, or timing, among other things," the initial environmental statement, "shall no longer be valid because an essentially different action would be under consideration and a supplemental statement shall be prepared and reviewed as provided by this chapter." HAR §11-200-26.

105. "A supplemental statement shall be warranted when the scope of an action has been substantially increased, when the intensity of environmental impacts will be increased, when the mitigating measures originally planned are not to be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with." HAR §11-200-27.

106. Plaintiffs' seek a declaration that BLNR was required to prepare supplemental environmental impact disclosure documentation prior to decisionmaking on the Hololani seawall CDUP.

WHEREFORE, Plaintiffs/ Appellants respectfully request that the Court:

1. Enter a declaratory judgment:
 - a) Declaring that Defendants violated HRS chapter 91 by denying Plaintiffs' request for a contested case;
 - b) Declaring that Defendants violated HRS chapter 92 by making decisions on an item that was not properly agendaized, and voiding said action or otherwise determining the applicability of HRS chapter 92;
 - c) Declaring that Defendants acted in excess of their authority by approving the easement for the Hololani seawall and considering a management right of entry for the same without prior authorization from the legislature and the governor;
 - d) Declaring that Defendants operated under an invalid rule by approving the

easement for the Hololani seawall and considering a management right of entry for the same without prior authorization from the legislature and the governor;

e) Declaring that Defendants violated HRS chapter 183C and lacked authority to issue the time extension to AOA Hololani for construction of a project that does not seek to comply with CDUP conditions;

f) Declaring Defendants violated HRS chapter 343 and were required to prepare supplemental environmental impact disclosure documentation prior to decisionmaking on the Hololani seawall CDUP;

g) Declaring the Board's actions otherwise in violation of constitutional or statutory provisions, in excess of the statutory authority or jurisdiction of the Board, made upon unlawful procedure, affected by other errors of law, or arbitrary or capricious or characterized by abuse of discretion or a clearly unwarranted exercise of discretion;

2. For a temporary, preliminary and/or permanent injunction enjoining Defendants, and their employees, agents, and representatives, and any other persons acting in concert with them, under their authority, or with their approval, from constructing the Hololani seawall until compliance with all applicable laws is achieved;

3. For the Court to retain continuing jurisdiction to review Defendants' compliance with all judgments and orders entered herein.

4. For such additional judicial determinations and orders as may be necessary to effectuate the foregoing.

5. For the costs of suit herein, including reasonable attorneys' fees; and

6. For such other and further relief as the Court may deem just and proper to effectuate a complete resolution of the legal disputes between Plaintiffs and Defendants.

DATED: Wailuku, Maui, Hawai'i

April 5, 2018



LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
Attorney for Plaintiffs/Appellants

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

NĀ PAPA'I WAWAE 'ULA'ULA, an	)	Civil No. _____
unincorporated association, FELIMON	)	(Environmental Court)
SADANG, individual, and WEST MAUI)	
PRESERVATION ASSOCIATION, a Hawai'i	)	DESIGNATION OF RECORD ON APPEAL
nonprofit organization,)	
Plaintiffs/Appellants)	
vs.)	
)	
BOARD OF LAND AND NATURAL)	
RESOURCES, STATE OF HAWAII and)	
ASSOCIATION OF APARTMENT OWNERS)	
OF HOLOLANI RESORT AND)	
CONDOMINIUMS, a domestic nonprofit)	
corporation,)	
Defendants/Appellee.)	

DESIGNATION OF RECORD ON APPEAL

TO THE CLERK OF THE SECOND CIRCUIT COURT OF THE STATE OF HAWAII

Pursuant to Rule 72(d)(1) of the Hawai'i Rules of Civil Procedure, Plaintiff-Appellant designate as the Record on Appeal the entire file of the Defendant-Appellee BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII with respect to the matters of the Petition for a Contested Case filed March 23, 2018 regarding items D-3 and K-1, including the petition, the order denying the petition, any letters, correspondence or other documents considered or relied upon by Defendant and the minutes or transcripts, staff submittals, public testimony or otherwise of any meeting where the members of the Board met to deliberate or decide the order denying the petition.

DATED: Wailuku, Maui, Hawai'i

April 5, 2018



LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
Attorney for Plaintiffs/Appellants

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

MĀLAMA CHUN,

Plaintiff/Appellant

vs.

BOARD OF LAND AND NATURAL
RESOURCES, STATE OF HAWAII,

Defendant/Appellee.

) Civil No. _____

) (Environmental Court)

) ORDER TO CERTIFY AND TRANSMIT

) THE RECORD ON APPEAL

)

)

)

)

ORDER TO CERTIFY AND TRANSMIT THE RECORD ON APPEAL

TO THE BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII

In accordance with section 91-14(d), Hawai'i Revised Statutes, and Rule 72(d) of the Hawai'i Rules of Civil Procedure, you are hereby ordered to certify and transmit to the Circuit Court of the First Circuit, within twenty (20) calendar days of the date of this Order, or within such further time as may be allowed by this Court, the entire record as defined by section 91-9(e), Hawai'i Revised Statutes, and as set forth in the foregoing Designation of Record on Appeal. Any request to enlarge time shall be submitted to the Court prior to the expiration of the above 20-day period.

APR - 5 2018

DATED: Wailuku, Maui, Hawai'i

/sgd/ D. PELLAZAR (seal)

CLERK OF THE ABOVE-ENTITLED COURT

FILED

Law Office of Lance D Collins
Lance D. Collins 8246
Post Office Box 179336
Honolulu, Hawai'i 96817
808.243.9292

2018 SEP -5 PM 12:29

V. ISHIHARA, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

NĀ PAPA'I WAWAE 'ULA'ULA, an unincorporated association, and WEST MAUI PRESERVATION ASSOCIATION, a domestic nonprofit corporation,	) Civil No. 18-1-0303(3)) (Environmental Court))) AMENDED COMPLAINT; SUMMONS))
Plaintiffs)
vs.)
)
ASSOCIATION OF APARTMENT OWNERS OF HOLOLANI, a domestic nonprofit corporation, DIRECTOR OF THE DEPARTMENT OF PLANNING, COUNTY OF MAUI, DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII and DOES 1-27,)))))))))))
Defendants.)

AMENDED COMPLAINT


Plaintiffs NĀ PAPA'I WAWAE 'ULA'ULA, an unincorporated association and the WEST MAUI PRESERVATION ASSOCIATION, a Hawai'i nonprofit organization (WMPA) (collectively, "Plaintiffs") complain against the ASSOCIATION OF APARTMENT OWNERS OF HOLOLANI, a domestic nonprofit corporation (Hololani AOA), DIRECTOR OF DEPARTMENT OF PLANNING (Director), COUNTY OF MAUI, DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII and DOES 1-27, (collectively, "Defendants") for violations of Hawaii Revised Statutes (HRS) chapters 91, 92, 171, 183C, 205A, and 343, articles I, §5, XI, §1 and 9, XII §7 of the Hawai'i State Constitution among others.

I. Jurisdiction and Venue.

1. This Court has jurisdiction over the claims for relief in this action pursuant to HRS

I hereby certify that this is a full, true and correct copy of the Original.

EXHIBIT 7


Clerk, Second Circuit Court

§§ 91-14, 92-12, 205A-42, 343-7, 603-21.5, 603-21.9, and 632-1; and articles I, § 5, XI, §§ 1 and 9, XII §7 of the Hawai'i State Constitution.

2. Venue properly lies in Circuit Court of the Second Circuit pursuant to HRS §§ 604A-2, 603-36(5), and 632-1 because claims for relief are based on events arising in this circuit and Defendant's actions take place in this circuit and invoke the jurisdiction of the environmental court.

II. Parties

3. Plaintiff NĀ PAPA'I WAWAE 'ULA'ULA ("Nā Papa'i") is an unincorporated association of West Maui residents and other beach users who are concerned about protecting and preserving the quality of life and environment for West Maui communities particularly as it relates to the public's use and access of the shoreline. Nā Papa'i members include: recreational users of shoreline and coastal areas fronting and nearby AOA property; longtime beach users who have used accesses for more than twenty years continuously and/or more than ten years prior to 1969; members of the public who access the shoreline for noncommercial and cultural uses; and residents of neighborhoods adjacent to Defendants' condominiums and resorts.

4. Plaintiff WEST MAUI PRESERVATION ASSOCIATION is a 501(c)(3) nonprofit organization incorporated in the State of Hawai'i with its primary place of business located in Lahaina, Maui. WMPA is dedicated to preserving, protecting, and restoring the natural and cultural environment of West Maui, its coasts, and its nearshore waters. WMPA conducts conservation actions and educational activities related thereto, as well as improvement projects, including land acquisition, for betterment, preservation, maintenance, and protection of ocean, reef, marine life, shoreline, dunes, parks, open spaces, roadways, parking facilities, and other areas of West Maui, thereby enhancing the natural beauty and public enjoyment of the West Maui region.

5. Defendant DIRECTOR OF DEPARTMENT OF PLANNING, County of Maui (Director) is responsible for the Maui County Planning Department, which offers technical advice to the Mayor, County Council and commissions; proposes zoning legislation; drafts updates to the General Plan, Maui Island Plan and Community Plans; presents reports and recommendations on development proposals; and oversees programs on cultural resources, census and geographic information, flood plain permits and other special projects and permits.

6. Defendant COUNTY OF MAUI, is a political subdivision and municipal corporation of the State of Hawai'i.

7. Defendant ASSOCIATION OF APARMENT OWNERS OF HOLOLANI

(AOAO) is a Hawaii non-profit corporation composed of all of the members of a condominium association for a Horizontal Property Regime known as Hololani, established under HRS Chapter 514A, in accordance with the Declaration of Protective Covenants, dated July 3, 1973, and the Bylaws of the Association of Apartment Owners of Hololani, filed concurrently with the Declaration and subsequently amended in 1990. The Hololani condominium project, consisting in two eight story reinforced concrete buildings with four (4) units per floor, an adjacent commercial building and swimming pool, in the early 1970s and is located at 4401 Lower Honoapiʻilani Road, Lahaina, Maui at Tax Map Key (2) 4-3-010:009.

8. Defendant DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII (DLNR) is a State agency tasked with administering public lands, conservation and coastal lands, and appeals from proposed shoreline certifications, amongst other obligations pursuant to HRS chapters 171, 183C, and 205A.

9. Additional Defendants Does 1-27 (Doe Defendants) are persons or entities who may be liable to Plaintiff or may have an interest in the matter or issues pending, whose identities and capacities are presently unknown to Plaintiffs. Plaintiffs has reviewed the permits, records, state and federal statutes, and other documents, but are unable to ascertain whether or not all parties liable to Plaintiffs are named therein. Plaintiffs will identify such Doe 1-27 Defendants when their names and capacities are ascertained, Plaintiffs is informed and believe and thereon allege that some of these Doe Defendants and at all times relevant herein, were, in some manner presently unknown to Plaintiffs engaged in and/or responsible for the intentional and/or negligent acts, breaches and/or omissions alleged herein, and/or were in some manner responsible for the damages to Plaintiffs and the public, as alleged herein.

III. Background Facts

10. For generations, Plaintiffs and their members have accessed the shorelines and coastal areas fronting and nearby the Hololani condominium and resort on Kahana Bay to conduct native Hawaiian traditional and customary practices, for aesthetic and recreational purposes, to have family gatherings, and for paddling, canoeing, fishing, surfing, diving, gathering cultural resource items, catching tako, throwing fishnets, and to teach new generations to do the same.

11. Nā Papaʻi holds in-person community meetings with West Maui community members, advocates for community interests in nearshore areas and the environment, and

administers a social media page on facebook.com for a group called, "Access Denied!," which group has over 4,700 members.

12. Plaintiffs and their members and supporters include spearfishers, fishers, surfers, paddlers, swimmers, native Hawaiian traditional and customary practitioners, and others concerned about the environment created by commercial operations at Kahana coastal areas.

13. Erosion and flanking effects threaten to impact Plaintiffs' enjoyment of snorkeling, paddling, swimming, and other ocean-going activities in nearshore waters, appreciation of the aesthetic value of the shoreline, marine and nearshore wildlife, and access points to the coastline around Kahana Bay.

14. Installation of further shoreline hardening measures along Kahana Bay, including at locations fronting the Hololani Condominium and Resort would set a precedent with the potential for irreparable cultural, community, and environmental destruction.

15. The Hololani condominium structures were installed in the 1970s.

16. In the over 40 years that the Hololani condominium has existed, Hololani AOAO has not produced a long term plan for its coastal retreat.

17. In 1981, the legislature amended HRS chapter 171 to help preserve and protect the environment by requiring prior legislative authorization for the leasing and development of submerged lands and lands beneath tidal waters via concurrent resolution, in addition to the requirement of prior authorization from the governor.

18. During the winter of 2006-2007, Hololani AOAO installed boulders, geotextile bags, and other materials along the shoreline without authorization from the State Department of Land and Natural Resources (DLNR), who then required Hololani AOAO to remove the materials.

19. On February 6, 2007, DLNR issued Hololani AOAO emergency authorization to install geotextile sand bags and erosion blankets (also called "Tensar Mattresses") for three years. The County of Maui also issued an emergency permit for this purpose.

20. DLNR has reissued the emergency permit to Hololani AOAO three times as of May 2014.

21. On May 2, 2013, the shoreline fronting the Hololani condominium was certified.

22. On October 8, 2013, DLNR's Office of Conservation and Coastal Lands accepted a Final Environmental Assessment (FEA) prepared by SEI, and issued a Finding of No Significant Impact (FONSI) for Hololani AOAO's hybrid seawall/ revetment (seawall), which would extend approximately 400 feet in length across the shoreline and 20 feet into the ocean.

23. DLNR's 2013 FONSI issuance was qualified by three major concerns: (1) the structure footprint would encroach onto the beach and result in loss of the public beach area; (2) coastal armoring has been shown to contribute to beach loss through erosion of the fronting shoreline; and (3) the Hololani seawall could contribute to flanking erosion.

24. The FONSI and acceptance of the FEA were based in part on: (1) comparison with three case studies of beach accretion in front of engineered coastal structures that included Mahana Condominiums at North Beach Kaanapali in 1985; (2) predicted sedimentation and water quality issues consequent to the erosion of clay substrates underlying the Hololani parcel; and (3) the absence of suitable offshore sand sources to make feasible a regional beach nourishment alternative.

25. Plaintiffs have observed that Mahana Condominiums and adjoining properties exhibit signs of significant erosion and beach narrowing and loss.

26. Data from the U.S. Department of Agriculture and Natural Resource Conservation Service utilized in the Pacific Islands Ocean Observing System Sea Level Rise Viewer disclosed "Dunes and marine sands" underlie the Hololani parcel.

27. On May 9, 2014, BLNR considered the Hololani seawall Conservation District Use Permit Application (CDUA), on which the County of Maui Planning Department submitted extensive comments and concerns.

28. BLNR approved the CDUA including the requirement that the Hololani seawall be redesigned to be "substantially landward" of the May 2, 2013 certified shoreline.

29. The 2014 DLNR staff submittal on the Hololani seawall CDUA relied on SEI's 2010 soil survey report in determining no upland sand sources existed on the property. OCCL noted "[without] massive sand nourishment projects, it appears that the beaches along this stretch of coastline are in danger of continued narrowing and loss[.]"

30. At its June 14, 2016 meeting, the Maui Planning Commission approved a Special Management Area (SMA) and Shoreline Setback Variance (SSV) permit for the Hololani seawall.

31. At the June 14, 2016 meeting, Planning Department staff stated a sand source of 50,000 to 100,000 cubic yards had been found and that this information had not been available at the time of BLNR's approval of the Hololani seawall CDUA.

32. On July 12, 2016, the Planning Department issued the SMA and SSV permit to Hololani AOAO, which permit required: (a) participation on a pro-rata basis with all nine (9) condominium projects on Kahana Bay in funding a regional beach nourishment project, including the completion of an Environmental Impact Statement (EIS) and implementation; and (2) upon the

completion of the regional beach nourishment project, the Hololani seawall is to be dismantled and removed by Hololani AOA within 180 days.

33. Hololani AOA counsel later represented to BLNR that they anticipated a change in County of Maui administration may allow them to amend the SMA condition requiring the dismantling of the Hololani seawall after the installation of the regional beach nourishment project.

34. In September 2016, the County of Maui published its final Kahana Beach Regional Nourishment Feasibility Study, which included findings of four offshore sand sources that could be feasibly used for beach nourishment that could add 50-110 feet of initial beach width.

35. At its January 12, 2018 regular meeting, BLNR approved an easement and management Right of Entry (ROE) for the Hololani seawall after DLNR staff stated that no beach sand resources existed for this particular stretch of shoreline and therefore erosion would eat into a "clay bank" and disseminate sediment into the ocean.

36. On February 23, 2018, Hololani AOA's application to certify its shoreline was published in the Environmental Notice.

37. On March 21, 2018, the State Surveyor conducted a site visit at Hololani for purposes of surveying the shoreline. Plaintiffs were present. At its March 23, 2018 meeting, BLNR considered Hololani AOA's request for a construction ROE.

38. At the March 23, 2018 BLNR meeting, Hololani's legal counsel represented that the "weather window" would close if construction was not initiated by May 10, 2018.

39. Neither the construction ROE nor the easement for use of state lands would be granted with prior approval of the legislature via concurrent resolution and prior approval by the Governor as of March 23, 2018.

40. Also at its March 23, 2018 meeting, BLNR considered, and granted, Hololani AOA's further request for a second extension of time to comply with Condition No. 7 of the CDUP, which required construction to be initiated within two years of the issuance of the CDUP.

41. Just prior to its March 23, 2018 meeting, BLNR received Plaintiffs' written petition for a contested case on Hololani AOA's request for a construction ROE and an extension of time to comply with their CDUP.

42. The Hawai'i legislature did not pass a concurrent resolution ~~or take any other action~~ approving an easement for the Hololani seawall during the 2018 session.

43. On May 23, 2018, the Hololani AOA O proposed shoreline certification of their property was officially noticed in the Office of Environmental Quality Control's "The Environmental Notice."

44. Pursuant to DLNR procedures, Plaintiffs timely filed an appeal of the proposed shoreline certification for the Hololani condominium parcel with the Chairperson of the DLNR on June 8, 2018.

45. On June 19, 2018, Hololani AOA O wrote a letter to DLNR and the State Land Surveyor stating their intention to withdraw their shoreline certification application upon their understanding a surveyor drawing of the shoreline is "all that is required for purposes of determining the easement area, and that the 2013 certified shoreline does not need to be recertified following the issuance of CDUP MA-3663 to Hololani in 2014."

46. By letter dated June 27, 2018, Stuart Allen, President of Hololani AOA O requested Planning Department approval for a "small mauka realignment" for the sheet metal piling project that Allen represented would "actually reduce[] the need for use of State lands[.]"

47. The June 27, 2018 letter from Hololani AOA O relied on a shoreline survey drawing dated June 6, 2018, which purported to depict the "new" shoreline location.

48. By letter dated June 29, 2018, the Planning Department concurred with Hololani AOA O's analysis and determined its minor realignment is in substantial compliance with the approved project plans and representations made to the Planning Commission.

49. On information and belief, Hololani AOA O began construction on August 1, 2018.

50. On July 8, 2018, notice of Hololani AOA O's withdrawal of their shoreline certification application was published in the Environmental Notice.

51. By letter dated July 17, 2018 and sent to the DLNR chairperson, Plaintiffs objected to Hololani AOA O's simultaneous reliance on a DLNR "determination" of the new shoreline and withdrawal of its shoreline certification application.

52. By letter dated July 24, 2018, DLNR's attorney general responded to Plaintiffs' letter regarding their appeal of the Hololani AOA O shoreline certification withdrawal, and stated in part, "a certified shoreline is not required for DLNR to grant an easement or for other DLNR functions, except where a certified shoreline is required by law or regulation."

53. On July 26, 2018, DLNR filed an order dismissing Plaintiffs' appeal from the Hololani AOA O proposed shoreline certification.

54. On or about July 30, 2018, Plaintiffs filed a motion for reconsideration of DLNR's order dismissing their appeal from the Hololani AOA proposed shoreline certification.

55. On or about August 8, 2018, DLNR denied Plaintiffs' motion for reconsideration of its order dismissing their appeal from the Hololani AOA proposed shoreline certification.

56. Plaintiffs utilize the shoreline and nearshore areas fronting Hololani condominium and Kahana Bay for native Hawaiian traditional and customary practices, recreation, aesthetic enjoyment, and other uses that may be significantly impacted by further armoring of the Kahana Bay coastline.

57. In 1981, the legislature amended HRS § 171-53(c) to require authorization for leases or easements over submerged lands from the legislature via concurrent resolution, in addition to authorization from the governor for the same, prior to BLNR issuance of such leases or easements. HRS §171-53(c) provides in relevant part:

[BLNR], with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution, may lease state submerged lands and lands beneath tidal waters under the terms, conditions, and restrictions provided in this chapter; . . .

58. The legislative history of HRS § 171-53(c) discloses that the additional requirement of prior authorization from the legislature via a concurrent resolution for leasing and easements over submerged lands was intended to help preserve and protect the environment.

59. No legislative authorization in the form of a concurrent resolution approving the Hololani seawall or otherwise exists of the filing of this complaint.

60. No authorization from the governor approving the Hololani seawall exists as of the filing of this complaint.

IV. Claims for Relief.

COUNT I – DEVELOPMENT IN SPECIAL MANAGEMENT AREA WITHOUT A PERMIT

61. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

62. No structures are allowed in the special management area without obtaining a permit from the respective county officials under HRS chapter 205A.

63. No structures are allowed in the shoreline setback area without obtaining a shoreline setback variance permit in compliance with HRS chapter 205A.

64. Hololani AOAO's proposed sheet metal piling project is proposed to be located within the special management area.

65. Hololani AOAO did not obtain a SMA or SSV for the proposed sheet metal piling project.

66. The SMA and SSV permits granted by the Director in July 2016 concerned a 370-foot long combined steel sheet pile and rock revetment and not the currently proposed sheet metal piling project.

67. Hololani AOAO's sheet metal piling project is not permitted under the SMA and SSV permits issued in July 2016 and have no other SMA/ SSV permit approvals.

68. Plaintiffs' rights and interests in Kahana Bay shoreline and nearshore areas are compromised by Hololani AOAO's unpermitted installation of structures in the shoreline area.

69. Plaintiffs seek a declaration from the Court that said actions violate the requirement of Chapter 205A, HRS.

70. To the extent that a declaration will not prevent unlawful activity to occur within the shoreline, Plaintiffs also seek injunctive relief against Hololani AOAO.

COUNT II – VIOLATION OF SMA PROCEDURES

71. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

72. Maui Planning Commission Rule 12-202-17 governs amendments to and determinations of permit terms, conditions and time stipulations.

73. Hololani AOAO sought to amend or determine a permit condition but did not file an application with the Planning Department nor include any of the requirements stated in the rule.

74. Additionally under this specific procedures, the application for SMA permit amendment or determination of permit terms, conditions and term stipulations must be submitted for review and final comment by appropriate agencies, then determined to be complete by the Director, and then referred to the Planning Commission, who must set a date for hearing and provide notice.

75. Finally, findings of fact, conclusions of law, and a decision and order must be issued for applications seeking to amend or determine permit terms or conditions.

76. Hololani AOAO did not file an application on a form provided to the Planning Department, nor comply with other provisions of the special procedure for amending or determining terms or conditions of a permit.

77. The Director did not adhere to provisions of the specific procedure for amending or determining the applicability of an existing SMA permit, including referral of the application to the Planning Commission.

78. The Director purported to approve Hololani AOAO's request for amendment or determination of the terms and conditions of its existing SMA permit.

79. No public hearing on the matter has been noticed or held.

80. Hololani AOAO did not submit, nor did the Director otherwise forward to the Maui Planning Commission, any petition for declaratory orders concerning the applicability of the existing SMA/ SSV permit to the proposed sheet metal piling project.

81. Defendants are out of compliance with the objectives, policies, and guidelines of HRS chapter 205A, have failed to perform acts and duties required under the same, and have otherwise not complied with provisions of this chapter.

82. Plaintiffs' rights and interests in protecting Kahana Bay shorelines and nearshore areas for traditional and customary, recreational, aesthetic, environmental, and cultural uses were harmed by Defendants' violations of procedures required under HRS chapter 205A.

83. The Director's purported approval letter has created confusion and uncertainty regarding the illegality and illegitimacy of Hololani's imminent construction within the shoreline area without complying with SMA procedures.

84. Plaintiffs seek a declaration from the Court that said actions violate the requirement of Chapter 205A, HRS.

85. To the extent that a declaration will not prevent unlawful activity to occur within the shoreline, Plaintiffs also seek injunctive relief against Hololani AOAO.

COUNT III – CONSTRUCTION ON STATE LAND WITHOUT AUTHORIZATION

86. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

87. Installation of structures and construction on state submerged and shoreline lands is prohibited unless specifically authorized under a lease or easement.

88. Easements and leases over submerged public land cannot be issued by BLNR without prior authorization of the governor and the prior authorization of the legislature by concurrent resolution. HRS § 171-53(c).

89. The easement for the Hololani seawall approved by BLNR was conditioned on Hololani AOAO obtaining authorization via a legislative concurrent resolution and the approval by the Governor.

90. The legislature did not pass a concurrent resolution approving the easement, nor did the Governor approve the easement sought by Hololani AOAO.

91. Hololani AOAO represented that its sheet metal piling project lies mauka of the shoreline as determined by DLNR in June 2018 and is therefore not on state lands.

92. Hololani AOAO filed a shoreline certification application with DLNR that was noticed in May 2018, but subsequently withdrew that application.

93. The only procedure under which DLNR issues a determination of the location of the shoreline is governed by rules promulgated under authority of HRS chapter 205A.

94. Plaintiffs appealed the Hololani AOAO proposed certified shoreline on the basis that the shoreline is located mauka of the proposed shoreline.

95. Hololani AOAO represented to the Planning Department that its proposed sheet metal piling project is “mauka away from the shoreline (as determined by DLNR)” despite the absence of a shoreline certification for the shoreline location and Plaintiffs’ appeal of the same.

96. Plaintiffs objected to Hololani AOAO withdrawal of the shoreline certification application and raised Hololani AOAO’s representations to the Planning Department as to DLNR’s determination of the shoreline outside of the shoreline certification process.

97. Plaintiffs include members of the public who utilize the shoreline and nearshore areas and whose interests are harmed by Defendants’ unauthorized use of state lands in violation of HRS chapters 171 and 205A.

98. Plaintiffs seek a declaration from the Court that said actions violate the requirement of Chapter 171, HRS.

99. To the extent that a declaration will not prevent unlawful activity to occur within the shoreline, Plaintiffs also seek injunctive relief against Hololani AOAO.

COUNT IV – VIOLATION OF CHAPTER 343, HRS (FAILURE TO PREPARE)

100. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

101. Uses of state land and uses of the shoreline area, which includes all of the land area between the shoreline and the shoreline setback line and may include the area between mean sea level and the shoreline, trigger application of HRS chapter 343 obligations to prepare an FEA.

102. The Hololani AOA sheet metal piling project purports to take place on private property outside of the shoreline area, but no shoreline certification has been issued to establish the location of the shoreline.

103. The Hololani AOA sheet metal piling project is located in the shoreline and/or the shoreline area and therefore triggers HRS chapter 343 environmental disclosure document preparation.

104. The FEA prepared for the Hololani seawall did not consider a sheet metal piling project alternative.

105. The memorandum prepared by the Hololani AOA consultant in support of its request for amendment to the SMA/ SSV permit did not comply with the procedures of HRS chapter 343.

106. No FEA or FONSI determination exists to support decision-making on the installation of Hololani AOA's sheet metal piling project, nor the SMA or SSV permits that require preparation of HRS chapter 343 documents.

107. The absence of an assessment of environmental impacts of Hololani AOA's proposed sheet metal piling project informing decision-making in violation of HRS chapter 343 prejudices the rights of Plaintiff and the general public who use nearshore areas of Kahana Bay.

108. Plaintiffs seek a declaration from the Court that said actions violate the requirement of Chapter 343, HRS.

109. To the extent that a declaration will not prevent unlawful activity to occur within the shoreline, Plaintiffs also seek injunctive relief against Hololani AOA.

COUNT V – VIOLATION OF HRS CHAPTER 343 (FAILURE TO SUPPLEMENT)

110. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

111. The Hololani seawall triggered HRS chapter 343 environmental document preparation requirements because it proposes to use State lands and is an "action" because it is a project initiated by AOA Hololani.

112. Since the preparation of the FEA in 2013, new information and circumstances have arisen concerning the identity of significant sand substrate underlying the Hololani property, degradation of hardened shorelines deemed comparable to Hololani (e.g., Mahana Condominium), identification of sources of beach quality sand offshore of Kahana Bay, and a viable regional beach nourishment project.

113. HRS chapter 343 environmental disclosure documents are intended to inform decision-making such as the Director and Planning Commission's determination on the changes to Hololani AOA's SMA/SSV permits.

114. Where an action has "changed substantively in size, scope, intensity, use, location, or timing, among other things," the initial environmental statement, "shall no longer be valid because an essentially different action would be under consideration and a supplemental statement shall be prepared and reviewed as provided by this chapter." HAR §11-200-26.

115. "A supplemental statement shall be warranted when the scope of an action has been substantially increased, when the intensity of environmental impacts will be increased, when the mitigating measures originally planned are not to be implemented, or where new circumstances or evidence have brought to light different or likely increased environmental impacts not previously dealt with." HAR §11-200-27.

116. The 2013 FEA for the Hololani seawall was based on outdated information including a lack of offshore sand sources that would render regional beach nourishment feasible, that the underlying substrate of the Hololani parcel is clay and not sand, and that comparable hardened properties such as Mahana condominium seawall led to sand accretion.

117. A supplemental environmental assessment or environmental impact statement was required because the 2013 FEA did not address new circumstances or evidence that have brought to light different or likely increased environmental impacts of the proposed sheet metal piling project, especially as compared with feasible alternatives.

118. Plaintiffs' seek a declaration that Hololani AOA was required to prepare supplemental environmental impact disclosure documentation prior to agency decision-making on the Hololani sheet metal piling project.

119. To the extent that a declaration will not prevent unlawful activity to occur within the shoreline, Plaintiffs also seek injunctive relief against Hololani AOA.

COUNT VI – VIOLATION OF RULEMAKING PROCEDURES

120. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in preceding paragraphs of this Complaint.

121. DLNR determined surveyed shoreline fronting the Hololani parcel and demarcating the state's shoreline lands, which effectively determined a seaward boundary between private and public properties.

122. The determination of the seaward boundary of private property and public property is an agency statement of general or particular applicability and future effect that implements or interprets law and policy and affects the private rights of and procedures available to the public as well as members and supporters of Plaintiffs.

123. Neither the process nor the method by which determinations of the seaward boundary between private property and the state's land have been adopted by the rule-making procedure set forth at HRS § 91-3.

124. Plaintiffs seek a declaration invalidating BLNR's approval of the easement to AOA Hololani for the seawall because it was issued in violation of rulemaking procedures required under HRS chapter 91.

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Enter a declaratory judgment:
 - (a) Declaring that Defendants violated HRS chapter 205A by failing to obtain a Special Management Area permit and Shoreline Setback Variance for the sheet metal piling project;
 - (b) Declaring that Defendants violated HRS chapter 205A by failing to comply with procedures for amendment or determination of terms and conditions of an existing Special Management Area permit for the seawall project;
 - (c) Declaring that Defendants violated HRS chapters 171-53 and 205A by seeking to install a structure on state lands without authorization;
 - (d) Declaring that Defendants violated HRS chapter 343 by failing to prepare environmental review documents for the proposed sheet metal piling project;
 - (e) Declaring Defendants violated HRS chapter 343 and were required to prepare supplemental environmental impact disclosure documentation prior to decision-making on the proposed sheet metal piling project;
 - (f) Declaring Defendants violated HRS chapter 91 by failing to properly

promulgate rules for the method and procedures by which DLNR determines the seaward boundary between private property and the state's shoreline land;

2. For temporary, preliminary and permanent injunctions enjoining Defendants, and their employees, agents, and representatives, and any other persons acting in concert with them, under their authority, or with their approval, from constructing the proposed sheet metal piling project until compliance with all applicable laws occurs;

3. For the Court to retain continuing jurisdiction to review Defendants' compliance with all judgments and orders entered herein.

5. For the costs of suit herein, including reasonable attorneys' fees; and

6. For such other and further relief as the Court may deem just and proper to effectuate a complete resolution of the legal disputes between Plaintiffs and Defendants.

DATED: Wailuku, Maui

September 5, 2018



LAW OFFICE OF LANCE D COLLINS
LANCE D. COLLINS
Attorney for Plaintiffs

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Lance D. Collins 8246
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Honolulu, Hawai'i 96817
808.243.9292

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

NĀ PAPA'I WAWAE 'ULA'ULA, an	)	Civil No. 18-1-0303(3)
unincorporated association, and WEST MAUI	)	(Environmental Court)
PRESERVATION ASSOCIATION, a domestic)	
nonprofit corporation,	)	SUMMONS
Plaintiffs)	
vs.)	
)	
ASSOCIATION OF APARTMENT OWNERS)	
OF HOLOLANI, a domestic nonprofit)	
corporation, DIRECTOR OF THE)	
DEPARTMENT OF PLANNING, COUNTY)	
OF MAUI, DEPARTMENT OF LAND AND)	
NATURAL RESOURCES, STATE OF)	
HAWAI'I and DOES 1-27,)	
Defendants.)	

SUMMONS

TO THE DEFENDANTS:

You are hereby summoned and required to file with the court an serve upon plaintiffs' attorney, whose address is PO Box 179336, Honolulu, HI 96817, an answer to the amended complaint which is attached. This action must be taken within twenty days after service of this summons upon you, exclusive of the day of service.

If you fail to make your answer within the twenty day time lime, judgment by default will be taken against you for the relief demanded in the amended complaint.

If you fail to obey this summons this may result in an entry of default and default judgment.

Pursuant to Rule 4(b) of the Hawai'i Rulse of Civil Procedure, this summons shall not be delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the District or Circuit courts permits, in writing on the summons, personal delivery during those hours.

DATED: Wailuku, Maui, Hawai'i

SEP - 5 2018

/sgd/ V. ISHIHARA (seal)

CLERK OF THE ABOVE-ENTITLED COURT

1 IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

2 STATE OF HAWAII

3 _____)

4 NA PAPA`I WAWAE `ULA`ULA,)
et al.,)

5 Plaintiffs,)

6 Vs.)

Civil No. 18-1-0155(3)

7 BOARD OF LAND AND NATURAL)
8 RESOURCES, et al.,)

9 Defendants.)

10 _____)

11 NA PAPA`I WAWAE `ULA`ULA,)
12 et al.,)

13 Plaintiffs,)

14 Vs.)

Civil No. 18-1-0303(3)

15 ASSOCIATION OF APARTMENT)
OWNERS OF HOLOLANI, et al.,)

16 Defendants.)

17 _____)

18

19 TRANSCRIPT OF ELECTRONICALLY RECORDED PROCEEDINGS

20 had before the Honorable Joseph E. Cardoza, Circuit Court

21 Judge presiding, on Monday, February 25, 2019, in the

22 above-entitled matter: Settlement conference.

23

24

25 Transcribed by:

EXHIBIT "4"

Angie Weaver, RPR, CRR, CSR 520

State of Hawaii

Official Court Reporter

EXHIBIT 8

1 APPEARANCES:

2

3 Lance D. Collins, Esq. Attorney for Plaintiffs
4 Law Office of Lance D. Collins
5 P. O. Box 179336
Honolulu, Hawaii 96817

6 Pamela W. Bunn, Esq. Attorneys for Defendant
7 Timothy H. Irons, Esq. (via TCC) Association of Apartment
8 Dentons US LLP Owners of Hololani
1001 Bishop Street, Suite 1800
Honolulu, Hawaii 96813

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10 John K. Holiona, Esq. Attorney for Defendant
11 Deputy Corporation Counsel Director of the Department
200 South High Street of Planning, County of Maui
Wailuku, Hawaii 96793

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1 inquiring about Mr. Day, who said he would be available by
2 phone if needed. Apparently he's not needed. Okay.

3 MS. BUNN: (Inaudible) not asked to do
4 anything.

5 MR. COLLINS: Yes.

6 THE COURT: All right. Well, the parties
7 have been meeting in a settlement conference today, with
8 the able assistance of our mediator, Mr. Antonio Piazza.
9 And I believe the parties are on record at this time to
10 document for the record an agreement.

11 And so are you -- you're taking the lead,
12 Ms. -- Ms. Bunn?

13 MS. BUNN: That's correct, your Honor.
14 I'll (inaudible) --

15 THE COURT: You may proceed.

16 MS. BUNN: -- on the record, and Lance may
17 correct me if he disagrees.

18 I want to first thank the Court for giving
19 us this opportunity and thank Mr. Piazza for his able
20 assistance, without which we may not have gotten this
21 done.

22 This is the agreement we would like to put
23 on the record. Subject to the approval of their
24 respective boards of directors, which approval shall be
25 recommended by counsel and the representatives who

1 attended the mediation, and shall be obtained by
2 March 15th, 2019, the parties agree as follows: Hololani
3 shall make a settlement payment in the amount of \$100,000
4 to Plaintiffs, care of their attorney, within 30 days of
5 board approval. Within ten days of the receipt of the
6 settlement payment, Plaintiffs will file a dismissal with
7 prejudice of all claims that were or could have been
8 brought in both -- both actions.

9 Unless and to the extent emergency action
10 is required, Hololani AOA will forbear from seeking to
11 replace the existing sandbag revetment with a rock
12 revetment for a period of five years. During the
13 five-year period, Plaintiffs will support any extensions,
14 renewals, or other actions required to keep all government
15 approvals and permits in force.

16 The parties will reserve their positions
17 regarding legislative approval of the easement. And
18 Hololani AOA reaffirms its commitment to the conditions
19 of the SMA permit, including support for the regional
20 beach nourishment project and public access.

21 THE COURT: Mr. Collins?

22 MR. COLLINS: Your Honor, that reflects our
23 understanding of the agreement, the terms of the
24 agreement.

25 THE COURT: Okay.

1 MR. HOLIONA: Same for the County, your
2 Honor. That reflects our agreement.

3 THE COURT: All right. And as it relates
4 to Mr. Day's -- I can see why he would not be needed in
5 terms of being on record today.

6 So -- all right. Then the Court will -- in
7 light of the agreement reached, I will -- I'm just
8 wondering if I -- I guess what I'll do is I'll strike any
9 remaining court dates because this will result in the
10 conclusion of the -- of the actions before the Court.

11 MS. BUNN: That's correct, your Honor.

12 THE COURT: And so I'll just await written
13 confirmation of -- of that from the parties.

14 And I'd like to take this opportunity to
15 thank Mr. Piazza very much for his services as -- as a
16 pro bono mediator in this matter. On behalf of the Court
17 and the community as well, thank you so much for
18 volunteering your services. Thank you.

19 All right. And to the parties, thank you
20 all very much for your hard work.

21 MR. COLLINS: Thank you. Your Honor, I
22 just have a question.

23 THE COURT: Yes.

24 MR. COLLINS: So do you -- do you want us
25 to file notices of withdrawals of our motions?

1 THE COURT: You know, that would be
2 helpful. I think that would be a good way of concluding
3 the record. Thank you for that suggestion. I appreciate
4 that.

5 All right. Thank you all very much.

6 MS. BUNN: Thank you.

7 THE COURT: Could you let Mr. Day know that
8 as well.

9 MS. BUNN: Yes.

10 MR. COLLINS: Sure.

11 THE COURT: Yeah.

12 MR. COLLINS: I guess he'll call in at
13 3:30.

14 THE COURT: Okay. All right. Okay. Real
15 good. Thank you.

16 MS. BUNN: Thank you.

17 THE COURT: Have a good day, everyone.
18 Thank you very much.

19 (End of Proceedings.)

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C E R T I F I C A T E

I, Angie Weaver, a Court Reporter of the Circuit Court of the Second Circuit, State of Hawaii, do hereby certify that the foregoing pages, 1 through 7 inclusive, comprise a full, true and correct transcript of the proceedings had in connection with the above-entitled cause.

Dated this 9th day of April, 2019.



ANGIE WEAVER, RPR, CSR #520

December 6, 2019

BY U.S. MAIL and EMAIL

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands,
State of Hawai'i, Dept. of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809
E-Mail: sam.j.lemmo@hawaii.gov

**Re: Permanent Shore Protection of the Hololani Resort Condominiums:
Extension for CDUP MA-3663**

Dear Mr. Lemmo:

The Hololani Resort Condominiums ("Hololani"), located at 4401 Lower Honoapiilani Road in Kahana, Maui, TMK (2) 4-3-010:009, seeks a five-year extension of the deadlines for both initiating and completing construction of the portion of the Hololani Shore Protection Project that is in the Conservation District. See CDUP MA-3663, Condition 6. Hololani recognizes the duration of the requested extension is longer than what is typically considered. As described below, Hololani has acted with diligence to complete the Project, but events largely beyond its control have made completion within the current CDUP deadlines a practical impossibility. The five-year extension is sought in order to accommodate the settlement of two different actions brought against Hololani and others by Nā Papa'i Wawae 'Ula 'Ula and West Maui Preservation Association (collectively, "Nā Papa'i/WMPA"). In order to allow time for the environmental review and potential permitting of the alternative preferred by the Maui Planning Department ("MPD")--a regional beach nourishment project--Nā Papa'i/WMPA insisted on a five-year stay of construction of the rock revetment portion of Hololani's project (which is the portion in the Conservation District), and have agreed to support any action by Hololani that is necessary to keep Hololani's permits in force for the duration of the stay. If the extension is approved, the new deadlines would be May, 2025 to initiate, and May, 2026 to complete, the construction.

History of CDUP MA-3663 and the Two Prior Extensions

Emergency Sandbag Revetment

Hololani has experienced chronic and episodic coastal erosion since approximately 1988. After a catastrophic erosion event in the winter of 2006-2007, Hololani received State and County approval for an emergency sandbag revetment. See Emergency Erosion Control permit issued by the Department of Land and Natural Resources' ("DLNR") Office of Conservation and Coastal Lands ("OCCL") dated February 6, 2007; Special Management Area ("SMA") Emergency Permit issued by the MPD dated June 22, 2007. That sandbag revetment was installed in 2007 and, with periodic repairs, it remains in place.

CDUP MA-3663

Hololani spent considerable time in design and consultation with OCCL and MPD regarding the long-term solution required by both the State and County emergency sandbag permits. In 2011, Hololani began seeking the necessary permits to proceed with construction of its Permanent Shore Protection Project--a hybrid sheet pile/rock rubble mound revetment (the "Project"). On May 9, 2014, the Board of Land and Natural Resources ("BLNR") unanimously approved a Conservation District Use Permit ("CDUP") for the Project (Item K-2). CDUP MA-3663 required construction to be initiated within two years and completed within three.

The First Extension

During the initial two-year period, Hololani's engineer, James Barry of Sea Engineering, Inc. ("SEI") made modifications requested by OCCL and MPD, and sought an SMA Permit and Shoreline Setback Variance ("SSV") from the MPD. Hololani requested its first two-year extension of the CDUP deadlines in April 2016; the request was administratively granted in May 2016, extending the deadlines to initiate and complete construction to May, 2018 and May 2019, respectively. Hololani received its SMA Permit/SSV from the County of Maui Planning Commission ("MPC") in July, 2016. See Ex. "1."

The Second Extension

The final plans for the Project were substantially completed in August 2017. As part of the final design, Hololani agreed, at the request of the County of Maui Department of Public Works, to design and construct a new storm drain outlet and to extend the rock revetment across the County easement at the north end of the Hololani property. The modification was designed to protect Lower Honoapiilani Road from coastal erosion and to alleviate the recurrent severe flooding of that road in the vicinity of Hololani. The final design also incorporates a permanent vertical shoreline access stairway.

On September 18, 2017, Hololani submitted its application for a Right-of-Entry ("ROE") and an easement/lease ("Easement") for the use of State lands to the Maui District Office of the DLNR's Land Division. In November, 2017, the Project went out to bid and, in December, 2017, Hololani selected Kiewit Infrastructure West Co. ("Kiewit") as the contractor for the Project. The start of work was scheduled for April 2, 2018 to ensure the "wet" work--the rock revetment Makai of the sheet pile--would be completed well before winter swells arrived.

Unbeknownst to Hololani or SEI, the ROE and Easement went before the BLNR for decision on January 12, 2018 (Item D-8). Hololani did not learn until several weeks later that the BLNR had approved the Easement and a management ROE. The management ROE would not permit entry for construction and was conditioned on first finalizing the Easement, a process which would require surveys and appraisals, legislative approval and the governor's approval, and was expected by the Land Division to take six months to a year. Kiewit could push the commencement of construction only until May 10, 2018, which was the latest it believed it could start and still be finished with the wet work in time to avoid the winter swells.

Hololani asked the BLNR to amend its January 12, 2018 action by approving a construction ROE conditioned on first obtaining legislative and gubernatorial approval for the Easement, which it was simultaneously seeking. That request was considered at the BLNR's March 23, 2018 meeting (Item D-3), along with a second request to extend the deadlines in Condition 6 (Item K-1). Numerous representatives of Nā Papa'i/WMPA testified and requested a contested case hearing. Following an executive session, the BLNR voted to deny the requests for contested case hearing, defer action on the request for a conditional ROA, and approve the request for extension. With the second extension, the deadlines to initiate and complete construction were extended to May, 2020 and May, 2021, respectively.

Events Leading to the Current Extension Request

Unsuccessful Attempt to Obtain Legislative Approval of the Easement

A concurrent resolution authorizing the Easement, SCR63, was introduced in the Senate on March 8, 2018. See Ex. "2." Immediately following the BLNR meeting on March 23, 2018, SCR63 was heard by the Senate Committee on Water and Land, which deferred the measure until March 28, 2019 and then passed it out of committee, as did the Senate Ways and Means Committee on April 4, 2018. *Id.* On April 5, 2018, the Senate passed SCR63 by a vote of 24-1. *Id.* On April 10, 2018, the resolution was noticed for an April 13, 2018 hearing in the House Committees on Water and Land and Ocean Marine and Hawaiian Affairs, but the following day, the Chair of the Ocean Marine and Hawaiian Affairs Committee cancelled the hearing noticed by his co-Chair and refused to re-notice it. *Id.*¹ The resolution never got a hearing in the House.

The Realignment and Resequencing

When it became apparent that Hololani would not receive legislative approval for the Easement in the 2018 session, and a new survey to determine the boundaries of the Easement indicated coastal erosion was continuing despite the sandbag revetment, Kiewit suggested changing the sequence of the construction to install the sheet pile first. Because the sheet pile would be on Hololani's property, Mauka of the 2013 certified shoreline and within the County's jurisdiction, it would not require an easement or ROE from the State. SEI designed a minor realignment of the sheet pile to pull it further Mauka into Hololani's property in response to the new survey, and Hololani sought approval to install the sheet pile behind the existing sandbags so its buildings would be protected until the Easement could be obtained to build the rock revetment.

After confirming that OCCL, Land Division and DLNR's deputy Attorney Generals had no concerns with the proposal, and that OCCL would be supportive of future repairs to the sandbags, Hololani representatives met with the Maui Planning Director and other members of the MPD to request that the Planning Director make a determination that the realignment was in "substantial compliance" with the representations made to the MPC. See Ex. "1," Condition 4.

¹ A representative of Nā Papa'i/WMPA used social media to thank, among others, Representative Kaniela Ing, Chair of the House Ocean Marine and Hawaiian Affairs Committee, for helping to defeat the Project. Ex. "3."

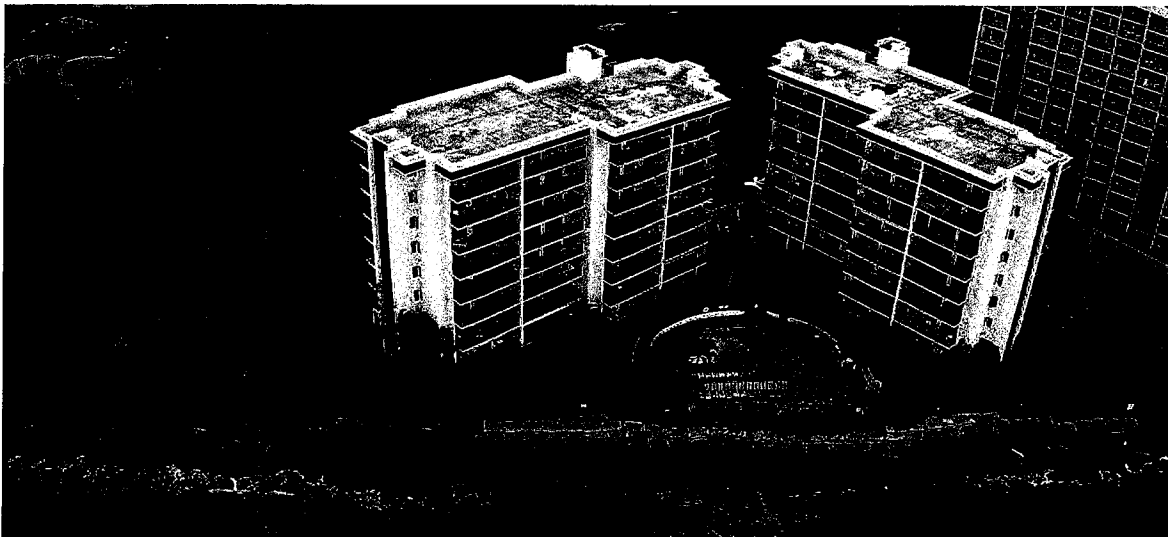
After requesting and reviewing additional information from Hololani, including additional engineering and environmental analysis from SEI, the Planning Director made the “substantial compliance” determination on June 29, 2018.

The Litigation

In the meantime, on April 5, 2018, Nā Papa‘i/WMPA filed its Notice of Appeal in the Circuit Court of the Second Circuit from the BLNR’s denial of contested case requests on Item Nos. D-3 and K-1, together with requests for declaratory relief on numerous alleged procedural violations. That case was designated as 2CC18-1-0155(3).

After learning of the Planning Director’s substantial compliance determination, Nā Papa‘i/WMPA filed a Complaint in the Second Circuit against Hololani and the Maui Planning Director on July 19, 2018, designated as 2CC18-1-0303(3). They simultaneously filed a Motion for Preliminary Injunction seeking to enjoin the installation of the sheet pile. After two days of hearings, the Court orally denied the Motion for Preliminary Injunction on July 31, 2018.

After losing its preliminary injunction motion, Nā Papa‘i/WMPA amended its Complaint in 2CC18-1-0303(3) to add DLNR as a defendant, and for months the parties were actively involved in contentious, and expensive, motions practice in the two Circuit Court actions. Ultimately, the Court affirmed BLNR’s denial of the contested case requests and ruled against Nā Papa‘i/WMPA on all claims in 2CC18-1-0155(3), and ruled in favor of DLNR in 2CC18-1-0303(3). The Court ruled against Hololani and MPD on Nā Papa‘i/WMPA’s claim in 2CC18-1-0303(3) that the Planning Director should have required a new or supplemental Environmental Assessment before determining “substantial compliance.” The Court apparently failed to recognize such a review had been done, and had concluded that moving the sheet pile further mauka and installing it behind the existing sandbag revetment until the Easement could be obtained would not change the existing conditions at all; the existing sandbag revetment had been in place for over a decade with no environmental impacts.



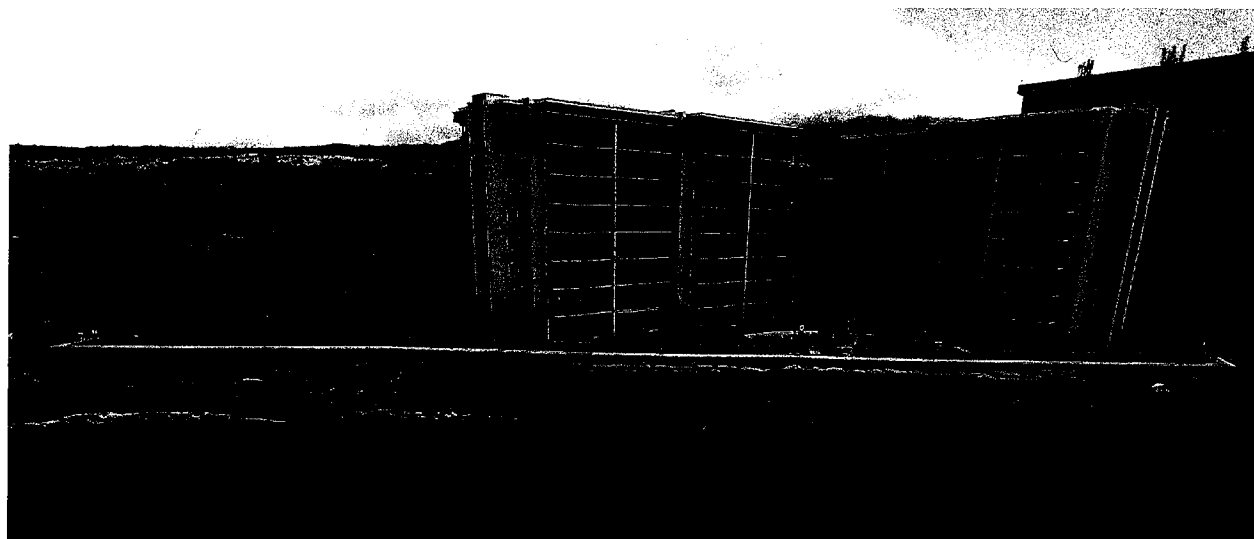
October 18, 2017

Installation of the Sheet Pile

After the Court denied Nā Papa'i/WMPA's Motion for Preliminary Injunction, Hololani commenced the installation of the sheet pile in August 2018; the installation was completed in early 2019. See 2/7/19 and 4/12/19 photos, below.



February 7, 2019



April 12, 2019

The Settlement

Hololani filed its Motion for Reconsideration of the Court's ruling on the need for new or supplemental environmental review on December 26, 2018. It was not scheduled for a hearing until February 1, 2019, which meant that, even if Hololani prevailed, it would likely not have enough time to introduce a concurrent resolution for consideration of the Easement in the 2019 legislative session. At the February 1, 2019 hearing, without announcing his decision, the Court urged the parties to consider mediation, and arranged for the services of Antonio Piazza, a renowned mediator.

The Parties agreed, and the mediation took place on February 25, 2019. In order to reach an agreement and put an end to the litigation, Hololani acceded to Nā Papa'i/WMPA's demands for a substantial monetary payment and a five-year delay before constructing the rock revetment. See Ex. "4." Hololani had little choice; if it had not reached a settlement, it would likely spend at least five years in litigation because Nā Papa'i/WMPA threatened to appeal from the decisions adverse to it in both cases. During the pendency of that litigation, Hololani would likely not be able to obtain the Easement for political reasons. As long as Hololani is permitted to continue maintaining the sandbag revetment which stabilizes the sheet pile,² it can be assured that the foundations of its buildings will not be undermined in the next storm. That maintenance is expensive, however, and Hololani could not afford to continue litigating **and** keep the sandbag revetment in good condition.

As to why Nā Papa'i/WMPA would prefer to leave the unsightly sandbag revetment in place for five more years, rather than replace it with the rock revetment that has a smaller footprint in the Conservation District, Hololani believes it is tied to the regional beach nourishment project championed by the MPD, in which Hololani is one of nine participating condominiums along Kahana Bay. Some members of Nā Papa'i/WMPA have made clear that regional beach restoration is their preferred long-term solution to the chronic erosion of the Kahana shoreline (others are vocal supporters of what they understand to be "managed retreat"). Nā Papa'i/WMPA believe, despite all evidence to the contrary, that the rock revetment is incompatible with beach restoration. Nā Papa'i/WMPA's demand that Hololani maintain the status quo--i.e., the sandbags--for five years suggests that Nā Papa'i/WMPA believes it will take

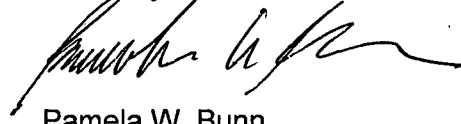
² Hololani received approval from OCCL dated July 30, 2019 for Repair and Maintenance of the Temporary Emergency Shoreline Erosion Control Structure under Emergency Permit MA-07-08, and is awaiting only a right of entry. The County of Maui's Approval for Temporary Sand Bag Repairs and Additional Maintenance was received October 16, 2019. Hololani has selected a contractor for the repair work, which will cost an estimated \$400,000.

that long to complete the environmental review for the beach restoration project, determine the preferred alternative,³ and obtain all necessary permits.⁴

Based on the foregoing facts and circumstances, Hololani respectfully requests a five-year extension for CDUP MA-3663, so that the CDUP will still be in force after the five-year stay demanded by Nā Papa'i/WMPA expires in February 2024.

Please let me know if you wish to discuss this request, or if there is further information you need from Hololani.

Sincerely,



Pamela W. Bunn

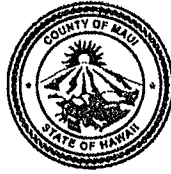
³ If the preferred alternative is the "Regional Project" as defined in Hololani's SMA Permit/SSV, the negotiated conditions in the permit require that, upon implementation of the "Regional Project," Hololani remove its hybrid sheet-pile/rock revetment structure (or seek a modification of the permit condition from the Maui Planning Commission). Ex. "1," Conditions 8 and 9.

⁴ The MPD is considerably more optimistic regarding the timing for regional beach nourishment. During the April 2016 hearing on Hololani's SMA Permit/SSV, MPD's consultant testified that such a project, with the sand retained by T-head groins (without which he would not recommend this scale of beach nourishment), could be permitted and constructed within five years. That was more than three years ago, and the draft EIS has not yet been published.

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI

DEPARTMENT OF PLANNING

July 12, 2016

CERTIFIED MAIL - # 7015 0640 0002 6769 4311

Mr. James Barry
Sea Engineering, Inc.
Makai Research Pier
41-305 Kalanianaʻole Highway
Waimanalo, Hawaii 96795-1820

Dear Mr. Barry:

SUBJECT: APPROVAL OF THE SPECIAL MANAGEMENT AREA (SMA) USE PERMIT AND SHORELINE SETBACK VARIANCE (SSV) FOR CONSTRUCTION OF A 370-FOOT LONG COMBINED STEEL SHEET PILE SEAWALL AND ROCK REVETMENT FRONTING THE SHORELINE AT 4401 LOWER HONOAPIILANI ROAD, LAHAINA, ISLAND OF MAUI, HAWAII; TMK: (2) 4-3-010:009 (SM1 2014/0001) (SSV 2014/0001)

At its regular meetings on April 26, 2016, and on June 14, 2016, the Maui Planning Commission (Commission) reviewed the subject requests and after due deliberation and receipt of testimony and exhibits, and by a 5-2 vote on June 14, 2016, approved the SMA Use Permit (SM1 2014/0001), and the Shoreline Setback Variance (SSV 2014/0001) subject to the following six (6) standard conditions, one (1) required Shoreline Setback Variance condition and five (5) project specific conditions, as follows. The Department understands that you are the Authorized Representative for the Hololani AOA.

CONDITIONS FOR PROJECT APPROVAL

STANDARD CONDITIONS:

1. That to the satisfaction of the Department of Planning (Department), construction of the proposed project shall be initiated by **June 30, 2019**. Initiation of construction shall be determined as construction of onsite and/or offsite improvements, issuance of a foundation permit and initiation of construction of the foundation, or issuance of a building permit and initiation of building construction, whichever occurs first. Evidence of the initiation of construction shall be submitted to the Department prior to the date listed immediately above. Failure to comply by that date will automatically terminate this SMA Use Permit unless a time extension is requested, which should be no later than ninety (90) days prior to said date. A time extension shall be processed in accordance with the provisions of Section 12-202-17 of the Special Management Area Rules for the Maui Planning Commission (SMA Rules).

EXHIBIT "1"

2. That to the satisfaction of the Department, the construction of the Hololani project shall be completed within two (2) years after the completion of the regional beach nourishment or at an earlier time should the Department and the Applicant agree that the regional beach nourishment project will not be completed. Evidence of the date of the completion of construction shall be submitted to the Department. Any request for a time extension should be submitted no later than ninety (90) days prior to the completion deadline. A time extension shall be processed in accordance with the provisions of Section 12-202-17 of the SMA Rules. Failure to complete construction of this project within this time period will require unfinished portions of the project to obtain a new SMA Use Permit.

3. That the Applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by the subject permit and shall obtain, pay for, and keep in force throughout the term of the permit, comprehensive liability insurance issued (1) by an insurance company authorized to do business in the State of Hawaii ("admitted carrier"), or (2) through a general insurance agent or broker licensed in the State of Hawaii, if the company is not authorized to do business in the State of Hawaii ("non-admitted carrier"). The insurance carrier shall be rated no less than "A-" as established by "AM Best" or "Standard & Poor" ratings. The insurance policy, as evidenced by issuance of a policy endorsement, shall name the County, its officers, employees, and agents, as an additional insured. The insurance policy shall contain the following minimum requirements:
 - a. No less than a combined single limit ("CSL") of liability coverage of \$1,000,000.00;
 - b. No erosion of limit by payment of defense costs;
 - c. Annual aggregate limit of not less than \$1,000,000.00;
 - d. A duty to defend, indemnify and hold harmless the County, its officers, employees, and agents, against any loss, liability, claims, and demands for injury or damage, including, but not limited to, claims for property damage, personal injury, or wrongful death, arising out of, or in connection with, in whole or in part, the permitted uses, the County's permit review and approval process, or any act or nuisance made or suffered in connection with the permitted use in the exercise by the Applicant of said rights;
 - e. Name the County, its officers, employees, and agents, as additional insureds; and

- f. Written or endorsed to state that the coverage to the additional insureds is primary and non-contributing with respect to any other insurance available to the County.

The Applicant shall furnish the Department with a copy of the insurance policy certificate and the required endorsements verifying such insurance coverage within ninety (90) days of the issuance of the subject permit. Thereafter, the Applicant shall instruct the insurance company to directly provide the Department with a copy of the insurance policy certificate and required endorsements as it is renewed on an annual basis. The proof of insurance and all subsequent certifications of insurance coverage shall include the applicable Tax Map Key and permit numbers. If the scheduled expiration date of a current insurance policy is earlier than the expiration of the subject permit, the Applicant shall, upon renewal of the insurance policy, provide the Department with a copy of the renewed insurance policy certificate and required endorsements. The insurance policy shall expressly state that the coverage provided under such policy shall not be canceled or terminated, unless the carrier has first given the Department at least thirty (30) calendar days prior written notice of the intended cancellation or termination.

The insurance policy shall remain in full force and effect until the permitted work has been completed and accepted by the County.

4. That to the satisfaction of the Commission or the Department, the Applicant shall develop the property in substantial compliance with the representations made to the Commission in obtaining the SMA Use Permit. Failure to so develop the property may result in the revocation of the permit and/or other enforcement.
5. That the Applicant shall submit to the Department a detailed report addressing its compliance with the conditions established with the subject SMA Use Permit. Two (2) hard copies and one digital copy by a compact disk or similar means shall be submitted. A preliminary compliance report shall be reviewed and approved by the Department prior to issuance of the Grading and Grubbing Permit. Plans regarding the location of any construction related structures such as, but not limited to trailers, sheds, equipment and storage areas and fencing to be used during the construction phase shall be submitted to the Department for review and approval prior to or along with the preliminary compliance report. The preliminary compliance report shall also include evidence that final construction plans are in substantial compliance with the plans dated 06/04/15 and labeled as Sheets C-2, C-3, C-4, C-5 and G1 and G2 contained in the SMA Use Permit application and Shoreline Setback Variance application. A final compliance report shall be submitted to the Department within thirty (30) days after completion of the work.

6. That to the satisfaction of the Department, appropriate filtration measures to separate petroleum products and other potential contaminants shall be incorporated into the project's final drainage plan and shall be regularly maintained per manufacturer's specifications or other Best Management Practices (BMPs), with the contaminant residuals from storm-water treatment to be disposed of properly. Records of the inspection, maintenance and disposal shall be kept by the Applicant and made available for inspection by county and state agencies upon request. Plans for the filtration measures and a program and record keeping for inspection, maintenance and disposal of contaminated residuals shall be submitted to the Department prior to or along with the preliminary compliance report.

REQUIRED SHORELINE SETBACK VARIANCE CONDITION:

7. That to the satisfaction of the Department, the applicant will comply with the mandatory Shoreline Setback Variance conditions, as set forth in section 12-203-15, (e) Criteria for Approval of a Variance, that state that no variance shall be granted unless appropriate conditions are imposed:
 - a. That to the satisfaction of the Department, the Applicant shall provide and maintain lateral public access to and along the shoreline or adequately compensate for its loss;
 - b. To minimize risk of adverse impacts on beach processes;
 - c. To minimize risk of structures failing and becoming loose rocks or rubble on public property;
 - d. To minimize adverse impacts on public views to, from, and along the shoreline. For purposes of this section only, "adversely impacts public views" means the adverse impact on public views and open space resources caused by new building structures exceeding a one-story (1-story) or thirty-foot (30') height limitation; and
 - e. To comply with chapters 19.62 and 20.08, Maui County Code, relating to flood hazard districts and erosion and sedimentation control respectively.

Evidence of the fulfillment of this condition shall be submitted with the preliminary and final compliance reports.

PROJECT SPECIFIC CONDITIONS:

8. That to the satisfaction of the Department, the Hololani AOAO shall actively participate, on a pro-rata basis with all nine (9) condominium projects on Kahana Bay, in funding a beach nourishment project in which 50,000 cubic yards to 100,000 cubic yards (or more) of sand would be dredged from Kahana Bay in an environmentally friendly manner and distributed over ten (10) contiguous parcels from S-Turns Park, at the South, to Kahana Stream, at the North, and contained within a configuration of multiple parallel rock groins, most likely in a T-head configuration ("Regional Project"). The Regional Project would include, but not be limited to, completion of an Environmental Impact Statement (EIS) document and all needed studies and engineering drawings, as well as project management and physical construction. Evidence of progress on fulfillment of this condition shall be submitted with or prior to the Preliminary Compliance Report, annually thereafter, and with the Final Compliance Report.
9. That to the satisfaction of the Department, at the time when the Regional Project is approved and implemented for the area fronting the Hololani AOAO shoreline, the hybrid seawall revetment authorized under this variance as described in Condition No. 5 above, shall be dismantled and removed by the Hololani AOAO, in its entirety, and entirely at the expense of the Hololani AOAO. The Hololani AOAO will special assess the Hololani owners for the cost of removal of the hybrid seawall revetment once it is finally determined that the structure will be removed. Removal of the hybrid seawall revetment installed under this permit shall be completed within 180 days after the regional beach nourishment project is complete. This dismantling action is authorized under this SMA Use Permit and Shoreline Setback Variance. The Applicant may request modification of this condition from the Commission.
10. That to further protect the Hololani AOAO structures until the Regional Beach Nourishment preferred alternative is fully permitted to construct, the Department will cooperate with the Hololani AOAO to expedite permits for additional temporary protection, based on engineering drawings, best management practices, and with the concurrence from the State Department of Land and Natural Resources-Office of Conservation and Coastal Lands.
11. That as a supplement to Standard Condition No. 3 regarding insurance, the insurance policy shall remain in full force and effect until the permitted work has been completed and accepted by the County, for the time period to meet all of the project conditions, to include dismantling the hybrid seawall revetment authorized under this variance as described by the construction plans as referenced in Condition No. 5.

Mr. James Barry
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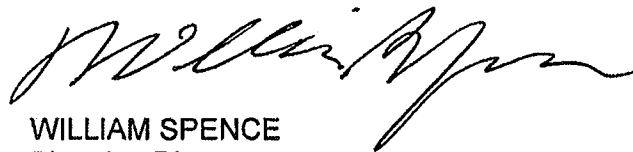
12. That to the satisfaction of the Department, the Applicant shall provide and maintain vertical public access to the shoreline and the public beach transit corridor along the shoreline shall be kept passable, with visible signage from Lower Honoapiilani Road, indicating Public Beach Access. Additionally, clear signage, with language approved by the Department, shall be posted along the public beach transit corridor abutting the Hololani shoreline hybrid seawall revetment, at the north end and the south end. In order to protect health and safety of all persons accessing the public beach transit corridor, access will be permitted across the lawn in the location fronting the rock revetment during high tides and seasons of no beach. During all times, individuals who cannot safely laterally traverse the rock revetment will be permitted to traverse the shoreline across the Hololani lawn in the same area. Evidence of this condition shall be submitted in final construction plans and site plans as part of the Preliminary Compliance Report.

The conditions of this SMA Use Permit shall be enforced pursuant to Sections 12-202-23 and 12-202-25 of the SMA Rules for the Maui Planning Commission.

Further, the Commission adopted the Report prepared by the Department for the April 26, 2016 meeting and the Recommendation prepared for the June 14, 2016 meeting as its Findings of Fact, Conclusions of Law, and Decision and Order. Parties to proceedings before the Commission may obtain judicial review of decision and orders issued by the Commission in the manner set forth in Chapter 91-14, Hawaii Revised Statutes (HRS).

Thank you for your cooperation. If additional clarification is required, please contact Coastal Resources Planner James Buika at james.buika@mauicounty.gov or at (808) 270-6271.

Sincerely,



WILLIAM SPENCE
Planning Director

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xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
John S. Rapacz, Planning Program Administrator (PDF)
Pam Eaton, Planning Program Administrator (PDF)
James A. Buika, Coastal Resources Planner (PDF)
Patrick Wong, Deputy Corporation Counsel (PDF)
Department of Public Works
Maui Police Department
Department of Environmental Management
State Department of Health, Clean Water Branch
State Department of Health, Wastewater Branch
State Department of Health, Maui District Health Office
State Department of Land and Natural Resources-Office of Conservation and Coastal Land
State Department of Land and Natural Resources-Maui Land Division
State Department of Land and Natural Resources-State Historic Preservation Division
U.S. Army Corps of Engineers, Honolulu District
U. S. National Fish and Wildlife Service, Honolulu
CZM File (SM1/SSV)
Project File
General File

WRS:JAB:lk

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SCR63 SD1

Measure Title: AUTHORIZING THE ISSUANCE OF A TERM, NON-EXCLUSIVE EASEMENT COVERING A PORTION OF STATE SUBMERGED LANDS SEAWARD OF TAX MAP KEY: (2) 4-3-010:009 AT KAHANA, LAHAINA, MAUI, FOR SEAWALL AND ROCK REVETMENT PURPOSES.

Report Title: DLNR; Term, Non-Exclusive Easement; Holalani Resort Condominiums; Seawall and Rock Revetment

Description:

Companion: [HCR64](#)

Package: None

Current Referral: WAL/OMH, FIN

Introducer(s): BAKER, ENGLISH, KEITH-AGARAN

Sort by Date	Status Text
3/8/2018	S Offered.
3/14/2018	S Referred to WTL, WAM.
3/20/2018	S The committee(s) on WTL has scheduled a public hearing on 03-23-18 2:55PM in conference room 224.
3/23/2018	S The committee(s) on WTL deferred the measure until 03-28-18 2:50PM in conference room 224.
3/28/2018	S The committee(s) on WTL recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in WTL were as follows: 3 Aye(s): Senator(s) K. Rhoads; Aye(s) with reservations: Senator(s) Gabbard, L. Thielen ; 2 No(es): Senator(s) Inouye, Riviere; and 0 Excused: none.
3/28/2018	S Reported from WTL (Stand. Com. Rep. No. 3338), as amended (SD 1), with recommendation of referral to WAM.
3/28/2018	S Report adopted, as amended (SD 1) and referred to WAM.
4/2/2018	S The committee(s) on WAM will hold a public decision making on 04-04-18 4:00PM in conference room 211.
4/4/2018	S The committee(s) on WAM recommend(s) that the measure be PASSED, UNAMENDED. The votes in WAM were as follows: 6 Aye(s): Senator(s) Dela Cruz, Keith-Agaran, English, Galuteria, Kidani, Wakai; Aye(s) with reservations: none ; 1 No(es): Senator(s) Riviere; and 4 Excused: Senator(s) Harimoto, Inouye, K. Kahele, Shimabukuro.
4/5/2018	S Reported from WAM (Stand. Com. Rep. No. 3485) with recommendation of adoption.
4/5/2018	S Report and Resolution Adopted. Aye(s) with reservations: Senator(s) Espero, Ihara, L. Thielen. Noes, 1 (Senator(s) Riviere). Transmitted to House.
4/5/2018	H Received from Senate (Sen. Com. No. 509) in amended form (SD 1).
4/10/2018	H Referred to WAL/OMH, FIN, referral sheet 53
4/10/2018	H Resolution scheduled to be heard by WAL/OMH on Friday, 04-13-18 11:00AM in conference room 325.
4/11/2018	H This measure has been deleted from the meeting scheduled on Friday 04-13-18 11:00AM in conference room 325.

S = Senate | H = House | D = Data Systems | \$ = Appropriation measure | ConAm = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

SCR63 SD1



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Kahana, Hawaii

#ForOurKeiki

Hololani Resort was set to begin construction today on a massive 400 ft football field length seawall with 20 ft of bouldering out into the ocean. It was to be built 100 % on our public beach, destroying fishing grounds, surf spots and beach access while causing severe erosion and dangerous conditions for neighbors. Thanks to lifelong West Maui fishermen Uncle Felimon Sadang, Glenn Kamaka and Larry Tanaka that won't be happening! Mahalo to all of you for supporting the Kahana community by writing letters, signing petitions, waving signs and working tirelessly to protect our beaches. WE DID IT!

Special thanks to Maui Representatives Angus McKeelvey, Kaniela Saito Ing, Justin



98 likes
MAY 8

Log in to like or comment.