

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

July 10, 2020

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

PSF No.: 20OD-039

OAHU

Grant of Term, Non-Exclusive Easement to Daisho Company, Ltd. dba Daishohouse for Seawall Purposes; Maunalua, Honolulu, Oahu, Tax Map Key: (1) 3-9-016:Seaward of 036

APPLICANTS:

Daisho Company, Ltd. dba Daishohouse, a foreign profit corporation.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of Maunalua, Honolulu, Oahu, identified by Tax Map Key: (1) 3-9-016:seaward of 036, as shown on the attached maps labeled **Exhibit A-1** and **A-2**.

AREA:

138 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
City & County of Honolulu LUO: R-10 [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

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, repair, and maintain existing seawall 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:

Twenty-five (25) years

The Land Division is reducing the term in which shoreline easements are granted from 55 to 25 years in response to sea level rise projections disclosed in the Hawaii Sea Level Rise Vulnerability and Adaptation Report adopted by the State Climate Change Mitigation and Adaptation Commission, and as suggested by the Office of Conservation and Coastal Lands. Landward migration of the shoreline is occurring as a direct result of sea level rise, which will progressively expose immobile shoreline structures to an evolving combination of coastal hazards (i.e., erosion, chronic flooding, and wave inundation). The intention of the term reduction is to: 1) lessen the potential for accidents and liabilities that may result from the presence of dysfunctional shoreline structures by increasing the periodicity in which shoreline encroachments are reviewed and managed, and 2) facilitate a process of managed retreat from the shoreline.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Section 11-200.1-16 (a)(1), Hawaii Administrative Rules ("HAR") and the Exemption List for the Department of Land and Natural Resources, reviewed and concurred upon by the Environmental Council on March 3, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," and Part 1, Item 40 that states, "Creation or termination of easement, covenants, or other rights in structures or land". See exemption declaration attached as **Exhibit B**.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS: Applicants shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards and at Applicants' 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 requested a certified shoreline to obtain County building permits. However, during the due diligence shoreline process the seawall's overhang and footing were located Makai of the shoreline (see **Exhibits C-1 to C-4**).

Subsequently, the Applicant worked with the Office of Conservation and Coastal Lands (OCCL) to resolve the encroachment by submitting the Shoreline Encroachment Information questionnaire. Upon review of the information provided in the questionnaire, OCCL supported a disposition of the encroachments. A copy of OCCL's letter dated December 2, 2019 is attached as **Exhibit D**.

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

The Department of Facility Maintenance has no comments to the granting of an easement. The Department of Planning and Permitting provided comments (see **Exhibit E**). The OCCL did not provide comments but supported the disposition in their December 2019 letter. The Board of Water Supply, Office of Hawaiian Affairs, and the Department of Accounting and General Services Survey Office did not respond to the request for comments.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, a fine of \$500 is to be imposed if the encroachment is over 100 square feet. Since the encroachment area is 138 square feet (more or less), staff recommends that a fine of \$500 be imposed by the Board.

Upon approval of today's request, Applicant 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.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will

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

2. Assess a fine of \$500, under Section 171-6, HRS.
3. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 3-9-016:036 when such change in ownership occurs prior to the execution of the requested easement, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
4. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to Daisho Company, Ltd. dba Daishohouse covering the subject area for encroachment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 3-9-016:036, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
 - C. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
 - D. Review and approval by the Department of the Attorney General;
 - 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.

Respectfully Submitted,

Cal Miyahara

Cal Miyahara
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:

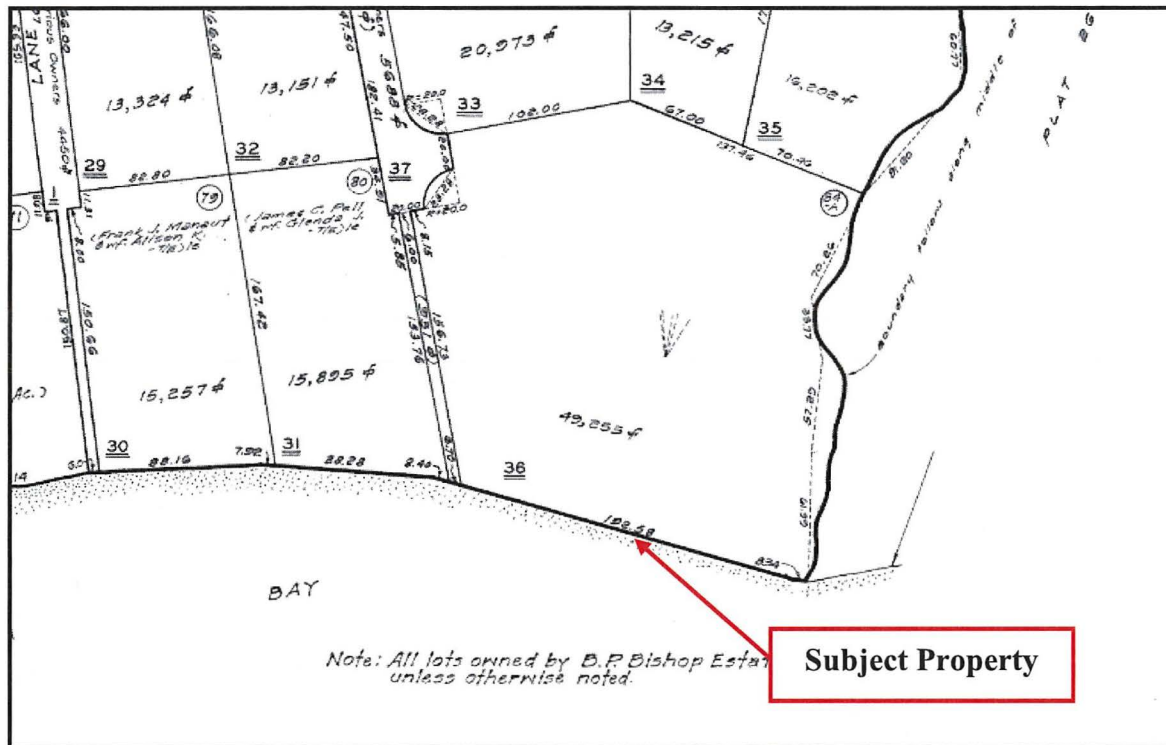
Suzanne D. Case

RT

Suzanne D. Case, Chairperson



Exhibit A-1



TMK: (1) 3-9-016:seaward of 036

Exhibit A-2

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1-15, HAR

Project Title:	Grant of Term, Non-Exclusive Easement to Daisho Company, Ltd. dba Daishohouse for Seawall Purposes; Maunaloa, Honolulu, Oahu, Tax Map Key: (1) 3-9-016:Seaward of 036
Reference No.:	PSF 200D-039
Project Location:	Maunaloa, Honolulu, Oahu, Tax Map Key: (1) 3-9-016:Seaward of 036.
Project Description:	Issuance of term, non-exclusive easement for seawall purposes.
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No.:	<p>In accordance with Section 11-200.1-15, HAR, and the Exemption List for the Department of Land and Natural Resources, reviewed and concurred upon by the Environmental Council on March 3, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," and Part 1, Item 40 that states, "Creation or termination of easement, covenants, or other rights in structures or land".</p> <p>The Applicant is not planning on conducting major change to the existing topographical and vegetation condition of the property. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.</p>
Cumulative Impact of Planned Successive Actions in Same Place Significant?	None, this request is for a 25-year term easement for an existing, permanent shoreline structure (seawall). The seawall was in existence at the location for 50+ years. Therefore, no successive actions will occur in the same location. As such, staff believes that there would be no significant cumulative impact.
Action May Have Significant Impact on Particularly Sensitive Environment?	No, the requested area is a portion of shoreline State land that contains improvements Makai of the abutting private property which, by visual analysis, seem to have been in existence for many years and is not likely to have any significant

Exhibit B

environmental impact. In addition, based on the analysis below, staff believes there would be no significant impact to sensitive environmental or ecological receptors.

Consulted Parties:

Agencies as noted in the submittal.

Analysis:

The Board has authorized 25-year term, non-exclusive easements for existing shoreline structures in the past. The proposed request is of a similar type and scope as other shoreline easement request across the State. Staff also believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Recommendation:

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

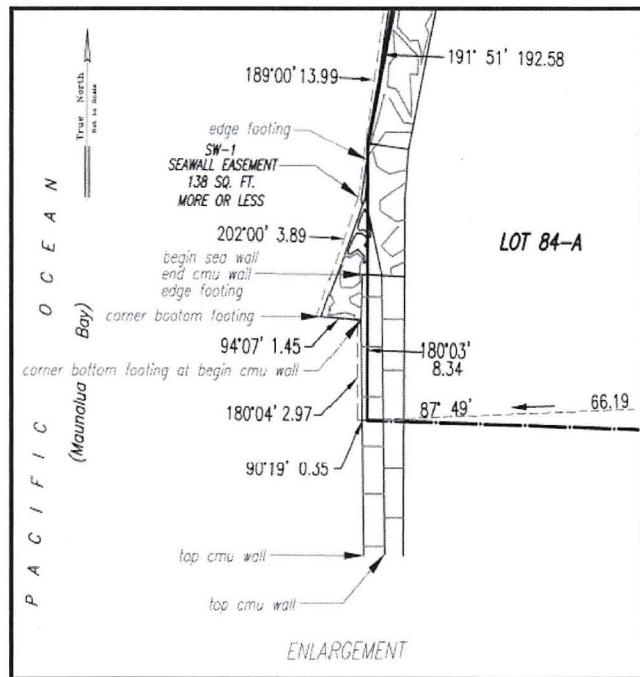
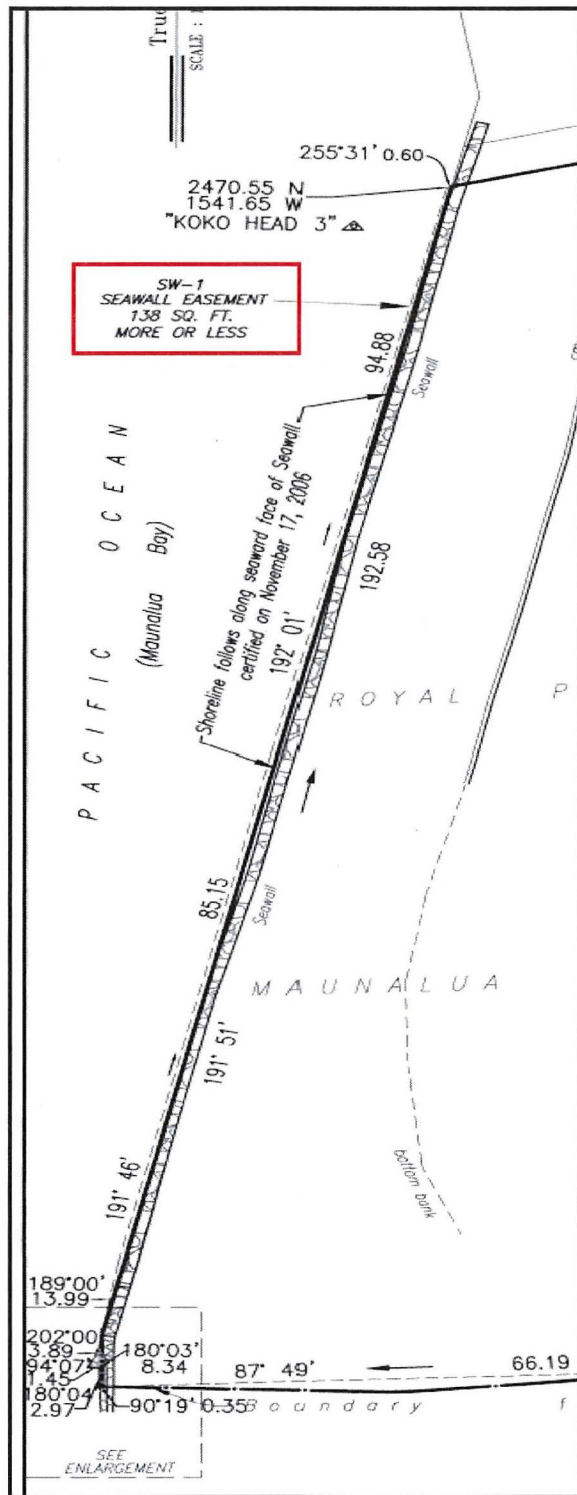


Exhibit C-1



Photo looking north showing footing encroachment extending beyond the seawall face. Note the seawall overhang at the top of the seawall.

Exhibit C-2



Photo showing depth of seawall overhang. Note that the seawall footing can be seen at the water line.

Exhibit C-3



Photo looking at the south corner of the seawall. Photo showing additional concrete footing.

Exhibit C-4

DAVID Y. IGE
GOVERNOR OF HAWAII



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LAND DIVISION



2019 DEC -3 AM 11:11

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
STATE OF HAWAII POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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

REF:OCCL:SS

Shoreline Encroachment OA 20-08

Adam N. Miller, Esq.
Damon Key Leong Kupchak Hastert
1003 Bishop Street, Suite 1600
Honolulu, HI 96813

DEC - 2 2019

SUBJECT: RE: Request to Resolve State Land Encroachments at [REDACTED]
Honolulu, Oahu, 96825; Seaward of Tax Map Key (1) 3-9-016:036

Dear Mr. Miller,

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL), is in receipt of your Shoreline Encroachment Information Sheet seeking to resolve an encroachment on State Lands fronting property located at [REDACTED] Honolulu, Oahu. Your letter included a Shoreline Encroachment Information Sheet, past shoreline certification maps from 2000, 2006, and 2019, old property boundary maps from 1936 and 1969 (the 1969 map is a copy of a map created in 1955), previous correspondence on the encroachment from the years 2000 and 2006 related to the previous shoreline certifications, and multiple pictures of the encroachment.

You are working to resolve a shoreline encroachment consisting of the concrete footing at the base of the seawall fronting the subject property. The encroachment projects approximately six (6) inches seaward of the wall for approximately 100 linear feet, giving it a total encroachment area of roughly 52 square feet.

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

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

Exhibit D

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

Surrounding Land Uses: The surrounding area is heavily residential, with Maunalua Bay itself used for ocean activities such as swimming, fishing, and boating. However, the land directly makai of the encroachment does not have walkable access.

Beach Resources and Environment: The encroachments are part of a seawall abutting Maunalua Bay. It is noted that the area fronting the subject property, as well as the area fronting the adjacent properties to both the north and the south of the subject property, do not have walkable lateral access to the public as there is no sandy shoreline.

Public Access: Public shoreline access is not available in the subject property's vicinity. Shoreline access points are located about a half of a mile north, near the sandy beach area of Portlock, or south of the subject property towards Kokee Beach Park. There is no longshore access makai of the encroachment as there is no sandy beach and the land is consistently submerged.

Effect of Removing the Encroachment on:

Beach Resources: There is no sandy beach in the immediate area. Adjacent properties also have seawalls fronting their shoreline boundaries, so removal of the encroachment would likely have a negative effect.

Public Access: Public shoreline access is not available in the subject property's vicinity. Shoreline access points are located about a half of a mile north, near the sandy beach area of Portlock, or south of the subject property towards Kokee Beach Park. There is no longshore access makai of the encroachment as there is no sandy beach and the land is consistently submerged. Removal of the encroachment would not improve public access in the area.

Adjacent Properties: Removing the encroachments may compromise the structural integrity of the seawall that fronts the shoreline sides of both adjacent properties.

It has been the general policy and practice of the OCCL to support easement requests that have no discernible effect on beach and recreational resources, and do not act as a detriment to public access. In cases where the encroachment serves as a primary erosion control for potentially threatened structures, impacts to the adjacent and upland developments must also be considered.

The subject encroachment consists of the concrete footing at the base of the seawall fronting the subject property. The encroachment projects approximately six (6) inches seaward of the wall for approximately 100 linear feet, giving it a total encroachment area of roughly 52 square feet. These encroachments are negligible, having a small footprint in the subject area, and exists as the footing for the existing seawall that has been in this location for an unknown period of time. Neither of the subject encroachments have detrimental effects on public access nor beach and recreational resources in the area, and both encroachments are attached to the seawall that serves as primary erosion control for the subject property.

Shoreline Encroachment OA 20-08

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

Sincerely,

A large, stylized handwritten signature in black ink, appearing to be 'S. Lemmo', is written over the word 'Sincerely' and extends downwards into the name block.

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

CC: Chairperson
ODLO
City & County of Honolulu
-Planning Department

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

850 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
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KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

May 19, 2020

2020/ELÖG-884(JS)

Ms. Suzanne D. Case, Chairperson
State of Hawaii
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Attention: Cal Miyahara, Shoreline Disposition Specialist

Dear Ms. Case:

SUBJECT: Grant of Term, Non-Exclusive Easement for Seawall
Maintenance of Seawall Purposes
Seaward of Tax Map Key 3-9-016: 036

This is in response to your request, received May 12, 2020, for comments on the above request. We understand the Applicant seeks a grant of term, non-exclusive easement for seawall purposes that is approximately 138 square feet in area. The easement is makai of the seawall and is therefore in the State Land Use (SLU) Conservation District. The area mauka of the certified shoreline is within the SLU Urban District and the County's R-10 Residential District. We have the following comment:

The Applicant should be aware that the seaward portion of the site is within the Coastal High Hazard District (VE Zone) with a nine-foot elevation. The requirements of Chapter 21A, Revised Ordinances of Honolulu (Flood Hazard Areas) apply to this area of the site.

Should you have any questions, please contact Joyce Shoji, of our Urban Design Branch, at 768-8014.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Kathy K. Sokugawa".
Kathy K. Sokugawa
Acting Director

RECEIVED
LAND DIVISION
2020 MAY 22 AM 8:29
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Exhibit E