

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

January 8, 2021

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

PSF No.: 15MD-123

Maui

Amend Prior Board Action of October 9, 2015, Item D-6, Grant of a 55-Year Term, Non-Exclusive Easement to the Association of Apartment Owners of (AOAO) Milowai-Maalaea for Seawall Purposes, Maalaea Beach Lots, Waikapu, Wailuku, Maui, Tax Map Key: (2) 3-8-014: Seaward 022.

The purpose of the amendment is to shorten the term of the easement from 55 to 25 years and to note that the easement area will likely be larger than the 2,512 square feet referenced in the prior approval, though the exact area is subject to survey.

Issuance of Right-of-Entry Permit to the Association of Apartment Owners of Milowai-Maalaea (AOAO Milowai-Maalaea) for Installation of Temporary Sandbags Fronting Seawall and for Seawall Repair; Assess \$500 Fine Against AOAO Milowai-Maalaea Pursuant to Hawaii Administrative Rules Chapter 13-221 For Not Obtaining Right-of-Entry Prior to Performing Sandbags Placement, Maalaea Beach Lots, Waikapu, Wailuku, Maui; Tax Map Key (TMK): (2) 3-8-014: Seaward of 022

APPLICANT:

Association of Apartment Owners of Milowai-Maalaea (AOAO Milowai-Maalaea or Applicant).

LEGAL REFERENCE:

Section 171-55, Hawaii Revised Statutes, as amended, Hawaii Administrative Rules (HAR) Sections 13-221-3 and -26.

LOCATION:

Portion of Government lands located seaward of Maalaea Beach Lots, Waikapu, Wailuku, Maui, identified by Tax Map Key: (2) 3-8-014: seaward of 022, as shown on

the attached map labeled Exhibit A.

AREA:

1,000 square feet, more or less.

ZONING:

State Land Use District: Conservation
County of Maui CZO: Conservation

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Unencumbered oceanfront land

CHARACTER OF USE:

Shoreline

TERM OF RIGHT-OF-ENTRY:

January 8, 2021 through January 7, 2022

CONSIDERATION FOR RIGHT-OF-ENTRY:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the Office of Environmental Quality Control's The Environmental Notice on July 23, 2014 with a finding of no significant impact (FONSI). The FONSI is attached as Exhibit B.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Adhere to the Terms and Conditions set forth in Office of Conservation and Coastal Lands (OCCL) Emergency Conservation District Use Permit (CDUP) MA 21-01 dated September 14, 2020, attached as Exhibit C;
- 2) Provide an updated survey map and metes and bounds description of the area of the existing seawall encroaching on State submerged lands according to State DAGS standards and at Applicant's own cost;
- 3) Pay for an appraisal of the easement area as determined by the updated survey and pay the consideration for the easement as determined by the appraisal;
- 4) Upon determination of the area of encroachment of the seawall on State submerged lands, provide a demolition estimate of such portions of the seawall in the event Applicant does not secure Governor's and legislative concurrence for an easement covering the portions of the seawall located on State land as required by law. The demolition estimate shall be subject to review and approval by the Department's Land Division and Engineering Division;
- 5) Post a removal bond in an amount to be approved by the Chairperson after consultation with Land Division and Engineering Division to cover the cost of the demolition and removal of the portions of the seawall located on State submerged lands in the event the easement for the seawall does not receive Governor's or legislative concurrence; and
- 6) Prior to the issuance of the right-of-entry for seawall repair, indemnify the State for any liability or claims arising from the repair of the seawall prior to receiving Governor's and legislative concurrence and post a removal bond in the amount of \$10,000 for the sandbags deposited on State submerged lands makai of the seawall.

REMARKS:

BOARD APPROVAL OF EASEMENT

On October 9, 2015, under item D-6, attached as Exhibit D, the Board approved a 55-year term, non-exclusive easement to the Association of Apartment Owners of Milowai-Maalaea for seawall purposes. The history of the subject seawall and the adjacent Maalaea break wall is discussed in the remarks section of the 2015 submittal. The easement that was approved by the Board was not completed due to problems with the survey map and other delays. The easement area identified in the 2015 Board approval was based on the shoreline as located pursuant to a certified shoreline application

submitted and processed in 2012. The shoreline certification application was ultimately rejected in part due to the unresolved encroachment.

Subsequent to Board approval of Applicant's easement request, staff sent a survey request to the State DAGS Survey office. DAGS Survey asked the private surveyor to make revisions to the map to correct discrepancies, but the surveyor did not complete the revisions and has since unfortunately passed away. After that the Applicant did not follow-through by hiring a new surveyor, and the Maui District Land Office's (MDLO) ability to follow up on the matter was diminished due to staff shortages. Applicant plans to have the easement re-surveyed after the seawall repair. Then MDLO staff will again request DAGS Survey to prepare the map and description, and after the DAGS Survey map and description is complete, staff will request the appraisal.

Due to undermining of the seawall in the intervening years, staff believes the area of encroachment of the seawall onto State submerged lands will likely increase from the 2,512 square feet mentioned in the October 9, 2015 Board action. Additionally, the prior Board action approved a 55-year term easement for the encroachment in 2015, but Department now limits shoreline easements to 25 years due to coastal dynamics and especially concerns about sea level rise. Accordingly, staff is including recommendations below to increase the easement area and shorten the term to 25 years.

In order to determine the correct easement area, Applicant shall be required to contract with a new private surveyor to first consult with the State Surveyor to identify the current location of the shoreline. Photos taken by MDLO staff during a site inspection will serve as evidence of the current shoreline location. The private surveyor shall then be required to produce an updated easement map with the revised easement area based on the current shoreline. Additionally, the surveyor shall also be required to provide photos that confirm the location is consistent with the shoreline identified by the State Surveyor. The revised map shall be subject to review and approval by the State Surveyor.

SANDBAGS PLACEMENT

On September 14, 2020, the Office of Conservation and Coastal Lands (OCCL) issued emergency authorization number Emer CDUP MA-21-01 for placement of sandbags fronting the Milowai Condominium at TMK (2) 3-8-014: seaward of 022.

On September 22, 2020, Maui District Land Office (MDLO) received an application for an emergency right-of-entry (ROE) from the Association of Apartment Owners of Milowai-Maalaea ("Applicant"). On that same day, MDLO staff received a complaint from a member of the public that a tractor was on the shoreline fronting the Milowai condominium seawall, dropping large sandbags in front of the seawall. When asked why work was proceeding without a ROE permit, Applicant's consultant stated that the seawall was literally falling into the ocean. Staff took photos of the sandbags placement (Exhibit E) the following day.

The sandbags project entailed bringing equipment onto the shoreline to install eighty-eight (88) 1.25 cubic yard sandbags to fortify the seawall due to deterioration and undermining by wave action and tidal surge. The sandbags will be removed once repairs to the seawall are completed. It is estimated that the repair project will take six (6) months depending on surf and weather conditions. Staff is requesting twelve (12) months for the ROE to cover unforeseen circumstances.

Had the sandbags installation not already been done on the day the application for ROE was received, staff would have requested approval for an emergency ROE permit for Applicant to place sandbags seaward of subject seawall. Staff recommends a fine of \$500.00 to Applicant for bringing heavy equipment onto the shoreline without a ROE permit in violation of HAR Section 13-221-26(a), which provides:

No person shall drive a motor vehicle on the premises except on roads, trails, or tracks designated or provided for vehicular use.

HAR Section 13-221-3 provides the following penalty for violations:

Penalties. Any person violating this chapter for which a penalty is not otherwise provided shall be fined not more than \$500 per day and shall be liable for administrative costs and damages incurred by the department.

On November 4, 2020 Applicant notified OCCL that eight of the sandbags had been damaged during a large swell. OCCL approved the immediate removal and replacement of the damaged sandbags.

SEAWALL REPAIR

The seawall for the Milowai condominium is an approximately 180-foot-long rock wall with an average height of seven feet. Approximately 125 feet of the wall is a typical gravity rock retaining wall with approximately 50 feet of the wall closest to the harbor as a soil slope with rock cladding. Soil directly behind the wall and to depths of 13 feet is soft to very stiff silty clay with very hard saprolite below.

The seawall is being actively undermined and eroded by waves and the purpose of the project is to protect the wall from future degradation. To achieve this the voids in the soil below the seawall are to be injected and filled to create a continuous grouted curtain wall. Above the grouted curtain wall, the existing seawall is to receive a shotcrete coating that will be connected to grade beams that are anchored with soil anchors. Since many sections of the seawall will be under constant wave action and due to the type of wall near the harbor, the repairs will need to be phased. Also, a previous repair was attempted with a concrete grade beam measuring approximately 30"x36" placed below grade for 50 linear feet. This grade beam will need to be removed to accomplish the current repairs.

Project diagrams and photos provided by Applicant are attached as Exhibit F.

The Contractor is to repair damaged existing rock wall as shown on page 4 of Exhibit E. The wall is to be repaired to match the existing material, with the base set on solid soil, rocks a minimum of 12" in diameter, and grout to be a minimum 5,000psi. Rocks shall be used from the existing wall, or obtained from a private source as opposed to rocks taken from the shoreline or other public lands. All rocks are to be clean prior to setting and are to be fully set in grout. All voids around rocks are to be filled with grout.

As stated in the FONSI (Exhibit B), the proposed seawall repair project entails excavating the soil out from behind the existing wall down to sea level and opening a trench wide enough to safely access the bottom of the wall and filling the voids beneath the wall with pressure injected urethane foam (later changed to a low viscosity acrylate as discussed in the next paragraph). The trench is to be lined with a filter fabric capable of containing fine soil particles while allowing free movement of water through the soil. All loose and cracked mortar and displaced stones are to be removed and new mortar is to be applied to replace removed mortar, followed by application of a 6 to 8 inch thick layer of gunite with reinforcing steel over the land side surface of the seawall, from the base of the stone structure to the top with weep holes. This repair project is designed to reinforce the existing stone seawall against future deterioration.

On February 24, 2015 the County of Maui Department of Planning issued SMA permit SM1 2012/0008 to Applicant for seawall repair. On October 20, 2020 a non-substantive amendment to the SMA permit was issued to change the authorized material for filling the voids in the seawall from hydrophobic foam, which is too thick to permeate the soil, to a low viscosity acrylate called Aquafin PM3811. On November 5, 2020, the State Department of Health Clean Water Branch wrote that they have no objection to the use of Aquafin PM3811, however, they highly recommend the proper application of the product according to the manufacturer's directions as well as adequate contingency procedures to prevent any uncured product from coming into contact with the nearshore waters. The SMA permits are attached as Exhibit G and the letter from the Clean Water Branch is attached as Exhibit H. In response to comments by the Clean Water Branch, Applicant contacted the U.S. Army Corps of Engineers and was informed that Corps authorization is not required for the seawall repair project (Exhibit I).

On November 20, 2020, the County of Maui issued building permit B20201134 for repair of existing seawall.

OTHER REMARKS

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

Gratis is recommended for this ROE because it is a repair project, not a revenue-generating endeavor or public event.

Staff sent a copy of this submittal to OCCL, DLNR Division of Aquatics Resources (DAR), and the County Planning Department for their review and comment, and they responded as follows:

Agency	Comment
DLNR--DAR	Comments attached as Exhibit J
DLNR--OCCL	Comments attached as Exhibit K
County of Maui Planning Dept.	Approves of project using new injection material

On December 10, 2020, staff informed applicant that the ROE request would go to the Board on January 8, 2020, rather than a Chair's submittal, largely due to the sandbags placement without an ROE permit violation and the proposed fine. Applicant objected to a delay in issuance of the ROE permit due to rapid deterioration of the seawall. On December 11, 2020, Applicant provided photos and a letter from their engineering firm documenting the rapid deterioration of the seawall even with the sandbags' placement in September 2020. Copy of Applicant's email and engineer's letter are attached as Exhibit L.

On December 16, 2020, Applicant was asked to explain why they proceeded with the sandbags installation even though they knew about the requirement for ROE permit. On December 17, 2020, Applicant sent a message regarding their error in installing the sandbags without a ROE permit and explained that they will be removing the sandbags after the seawall repair is complete. The message is attached as Exhibit M.

RECOMMENDATION: That the Board:

1. Amend the Board's prior action of October 9, 2015, under agenda Item D-6, by:
 - A. Changing the estimated area of the encroachment from "2152 square feet, more or less" to "At least 2,152 square feet, with the exact area to be determined by survey; and
 - B. Shortening the term of the easement from 55 years to 25 years.
2. Affirm that, except as amended hereby, all terms and conditions set forth in the Board's prior action of October 9, 2015, Item D-6, shall remain the same;
3. Impose a fine against Milowai AOA in the amount of \$500 pursuant to HAR Sections 13-221-3 and 13-221-26(a) for operating a tractor on State unencumbered lands without authorization on September 22, 2020;
4. Authorize the issuance of a right-of-entry permit to AOA Milowai-Maalaea covering the subject area under the terms and conditions cited above, which are

by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
- B. Applicant shall indemnify the State for any liability or claims arising from the repair of the seawall prior to receiving Governor's and legislative concurrence and require the posting of a removal bond in the amount of \$10,000 for the sandbags deposited on State submerged lands makai of the seawall;
- C. Upon determination of the area of encroachment of the seawall on State submerged lands, Applicant shall provide a demolition estimate of such portions of the seawall in the event Applicant does not secure Governor's and legislative concurrence for an easement covering the portions of the seawall located on State land as required by law. The demolition estimate shall be subject to review and approval by the Department's Land Division and Engineering Division;
- D. Applicant shall post a removal bond in an amount to be approved by the Chairperson after consultation with Land Division and Engineering Division to cover the cost of the demolition and removal of the portions of the seawall located on State submerged lands in the event the easement for the seawall does not receive Governor's or legislative concurrence; and
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Seiko Machida
Land Agent

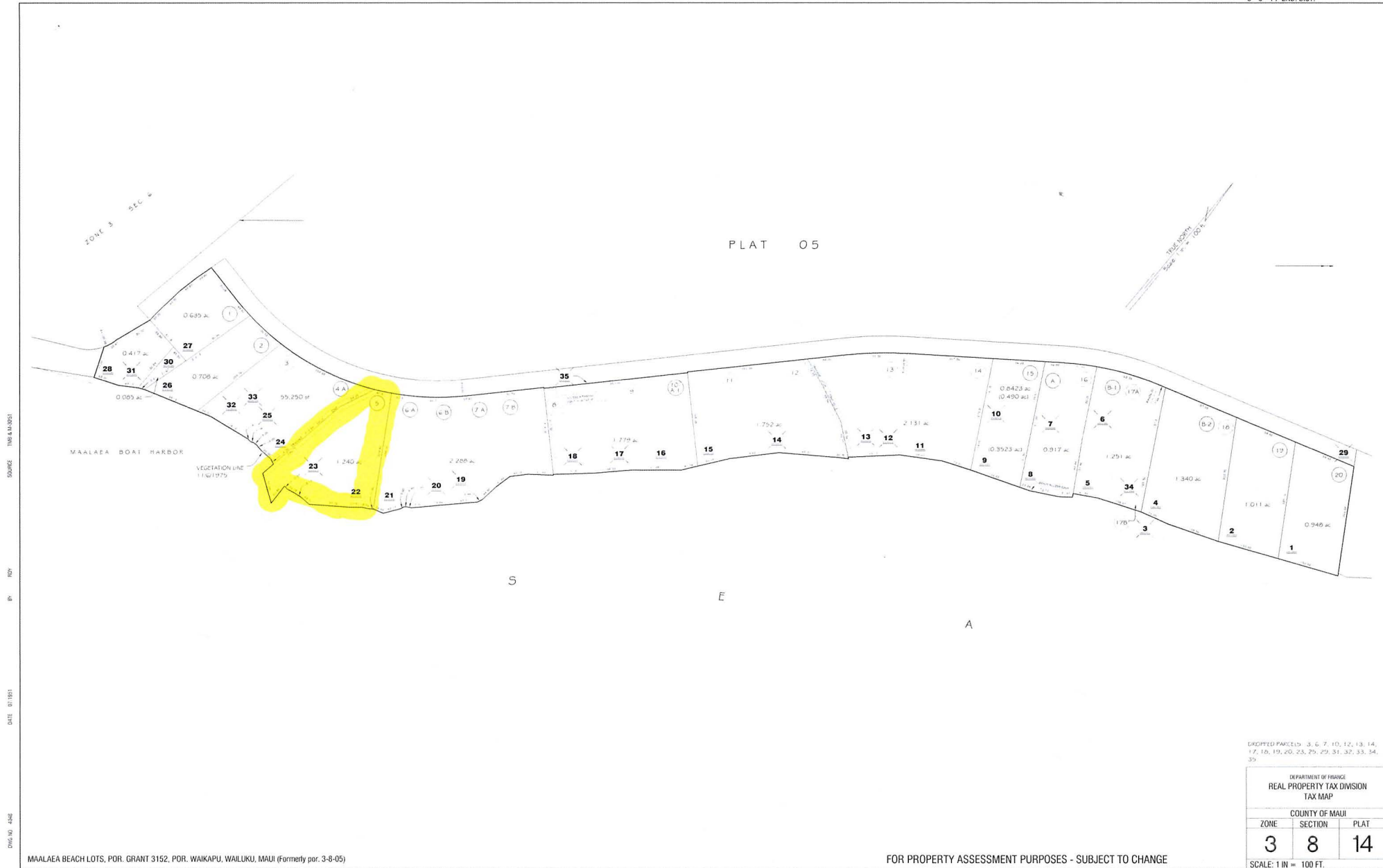
APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



EXHIBIT A



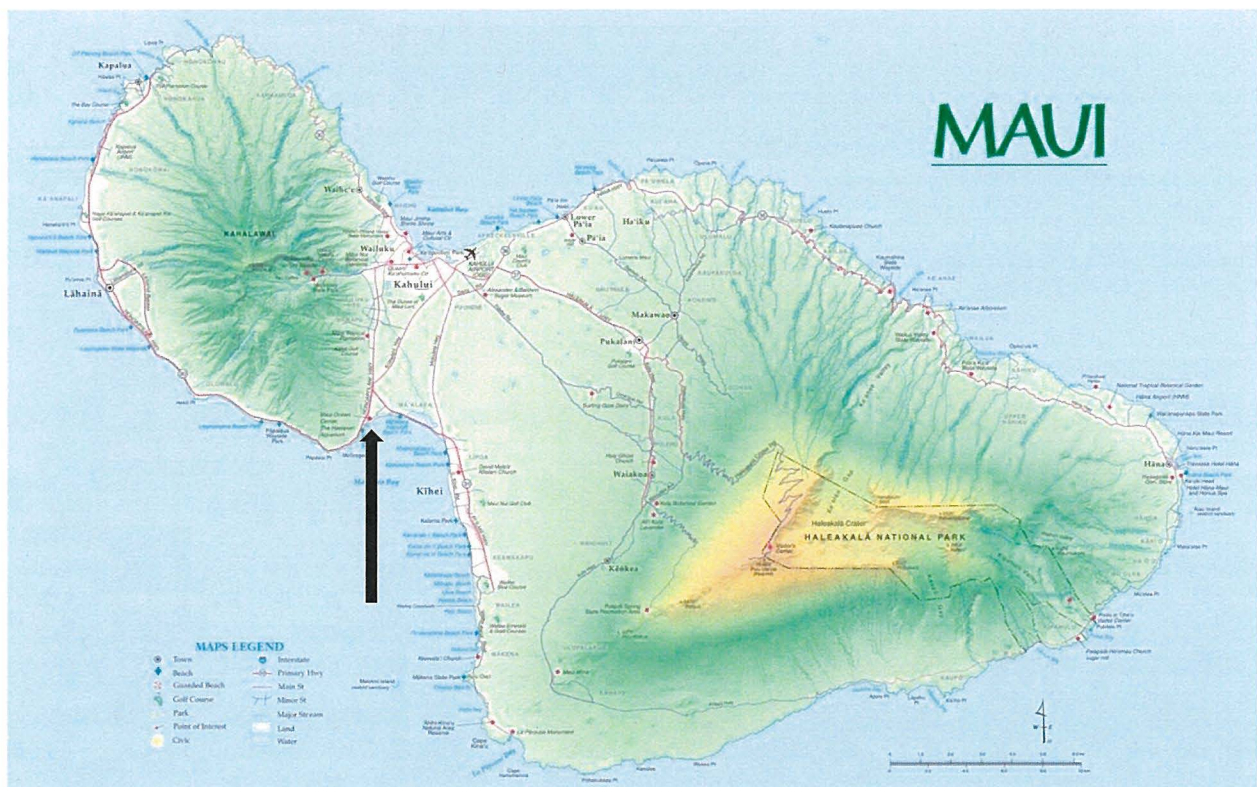




Figure 4

Aerial Photograph

Milowai Ma'alaea

EXHIBIT A pg 3

EXHIBIT B

6. Milowai Ma'alaewa Seawall Repair FEA (FONSI)

Island: Maui
District: Lahaina
TMK: (2) 3-8-014:022
Permits: Special Management Area Permit, Shoreline Setback Variance
Applicant: Milowai Ma'alaewa AOA, 50 Hauoli Street, Suite 310, Wailuku, HI 96793.
Contact: Christine Conlon-Kemp, 415-845-7669.
Approving Agency: County of Maui, Maui Planning Commission, 250 South High Street, Suite 200, Wailuku, HI 96793.
Contact: Keith Scott, 808-270-7735.
Consultant: Chris Hart and Partners, Inc., 115 North Market Street, Wailuku, HI 96793.
Contact: Brett Davis, 808-242-1955.
Status: Finding of No Significant Impact Determination.



The proposed seawall repair project will include:

- Excavating the soil out from behind the 180- foot wall down to sea level, opening a trench wide enough to safely access the bottom of the wall and filling the voids beneath the wall with pressure injected urethane foam.
- The trench will be lined with a "filter fabric" capable of containing fine soil particles while allowing free movement of water through the soil. The "filter fabric" extends from the bottom of the excavation up both sides, be filled with appropriate granular soil or sand before being covered by lawn.
- Removing all loose and cracked mortar and displaced stones and applying new mortar to replace material removed.
- During the excavation discussed above, applying a 6"-8"inch thick layer of "gunite" with reinforcing steel over the land side surface of the wall from the base of the stone structure to the top with weepholes. Properly design and installed, this can reinforce the existing stone wall against future deterioration.

O'AHU (HRS 343)

7. Fuller Residence Construction in Kāne'ohe Bay DEA (AFNSI)

Island: O'ahu
District: Ko'olaupoko
TMK: (1) 4-5-47: 116
Permits: Building Permits (building, plumbing and electrical).
Applicant: Herb Fuller, 45-038 Ka Hanahou Place, Kāne'ohe, HI 96744.
Approving Agency: City and County of Honolulu, Department of Planning and Permitting, 650 South King Street, 7th Floor, Honolulu, HI 96813. Contact: 808-768-8000.
Consultant: R. M. Towill Corporation, 2024 North King Street, Honolulu, HI 96819. Contact: Chester Koga, 808-842-1133.
Status: Statutory 30-day public review and comment period starts; comments are due by August 22, 2014. Please send comments to the applicant, approving agency and consultant.



Herb Fuller, the Applicant proposes to complete the construction of an existing, half-constructed, two-story, one-family dwelling and attached garage, and pool, a permitted use in the R-10 zoning district. The subject parcel is 9,679 square feet (sf.) or 0.222 acres in size. The parcel is triangular in

EXHIBIT C

DAVID Y. IGE
GOVERNOR OF HAWAII



RECEIVED
MAUI DISTRICT
LAND DIVISION

2020 SEP 28 PM 4:20



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

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT

FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:MC

Emer CDUP MA-21-01

Tanci Mintz
AOAO President
50 Hauloli Street
Wailuku, Maui 96793
[REDACTED]

SEP 14 2020

SUBJECT: Emergency authorization for placement of sandbags
Milowai-Maalaea, Maalaea Beach Lots, Waikapu, Wailuku, Maui
Seaward of TMK (2) 3-8-014:022

Dear Ms. Tanci,

The Office of Conservation and Coastal Lands (OCCL) has reviewed the information you provided on behalf of the Milowai Condominium Resort for authorization to place temporary sandbags seaward of an existing seawall fronting tax map key parcel (2) 3-8-014:022. The project area is on state-owned submerged lands, which are in the Resource Subzone of the Conservation District.

The goal of the sandbag placement is to protect the seawall while repairs are conducted to it. The Condominium wishes to place the sandbags immediately. Repairs to the seawall are predicted to commence December 1, 2020, and to be completed by April 30, 2021.

According to the information you provided, the project will involve

- The placement of a total of eighty-eight (88) 1.25 cubic yard coated propylene sandbags, each measuring 40" x 35" x 35", at two locations fronting the subject property;
- One section, labeled "A" on the enclosed map, is approximately forty-eight feet long; the second section, labeled "B" on the enclosed map, is approximately forty-feet long;
- The bags will be filled with sand provided by Chris Hayes Excavation yard with sand taken from Mala Wharf;
- A rubber track loader will transport bags to inland staging area;
- The excavator will place the bags from landward of the seawall, and will not transit submerged lands;
- The excavator will level and remove loose rocks as needed to provide a level base for the bags, and will remove loose debris when present;

- Filter fabric wrap will be placed on existing makai frontage of the seawall and on beach/shoreline and secured per plan by JBP Engineering.
- Excavator to place and stack bags over the seawall onto the filter fabric in front of and adjacent to the seawall, at two (2) staggered levels per plan by JBP Engineering.
- The bags will be secured together laterally with plastic zip ties at each flap on both levels.
- Sandbags will be removed after final completion of Milowai's seawall repair project. The repair project is estimated to commence December 1, 2020 and be completed by April 30, 2021.

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

1. The existing seawall is at risk of failure;
2. ^{Milowai ACO} The landowner has a plan to repair the seawall;
3. The proposed sandbags will help mitigate further damage to the seawall while repairs are made;
4. The area is largely armored with a large number of existing shoreline structures;
5. Failure of the seawall will result in increased levels of sedimentation running into nearshore waters, and present a potential threat to public safety; and
6. There are no other reasonable short-term alternatives.

DEPARTMENT ACTION

The Chairperson of the Department of Land and Natural Resources has the authority to authorize the temporary emergency placement of pursuant to Hawaii Administrative Rules (HAR) §13-5-35 EMERGENCY PERMITS (a) *Notwithstanding any provision of this chapter, the chairperson or deputy director of the department in the absence of the chairperson may authorize through an emergency permit any land use deemed to be essential to alleviate any emergency that is a threat to public health, safety, and welfare, including natural resources, and for any land use that is imminently threatened by natural hazards. These actions shall be temporary in nature to the extent that the threat to public health, safety, and welfare, including natural resources, is alleviated (e.g., erosion control, rockfall mitigation). The emergency action shall include contingencies for removal methods, estimates for duration of the activity, and future response plans if required by the department.*

In addition, the temporary structure may be considered an exempt action under State environmental laws under HAR §11-200-8 and as provided in the approved Exemption List for the DLNR, Exemption Class 1, *Mitigation of any hazardous conditions that present imminent danger as determined by the Department Director and that are necessary to protect public health, safety, welfare, or public trust resources; and 2, Upon determination by the Department Director that an emergency exists, emergency mitigation and restoration work to prevent damage from continuing to occur and to restore the topographical features and biological resources.*

The Chairperson of the Department of Land and Natural Resources hereby authorizes the temporary emergency placement of sandbags at the two locations as described above seaward of Tax Map Key parcel (2) 3-8-014:022 pursuant to the following terms and conditions:

1. It is understood that the placement of the sandbags is temporary in nature, and decided to respond to a current safety hazard;
2. The sandbags shall be removed once repairs to the seawall have been completed, and no later than May 30, 2021. Any sand that escapes the sand bags shall be promptly removed from the shoreline area;
3. The permittee will submit a completion report for the project to OCCL within thirty days of the placement of the bags. It will summarize the construction and detail any deviation from the proposed plans and provide a summary of shoreline conditions since installation. The report will include a photo summary of the temporary structure;
4. 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;
5. 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;
6. The permittee shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable;
7. The permittee shall comply with all applicable department of health administrative rules;
8. All representations relative to mitigation set forth in the accepted environmental assessment or impact statement 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. 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;
13. The permittee shall implement standard Best Management Practices, including the ability to contain and minimize silt in nearshore waters. If 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;

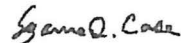
14. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact HPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
15. Other terms and conditions as prescribed by the chairperson.
16. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.

Please note that failure to follow these conditions, or failure to remove the sandbags once the authorization has expired, may constitute a violation of Chapter 183C, Hawaii Revised Statutes, and fines of up to \$15,000 per day can be assessed for each day that the landowner fails to comply with the terms and conditions of this authorization.

Should you have any questions, please feel free to contact Michael Cain of OCCL at 587-0048, or at michael.cain@hawaii.gov.

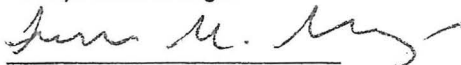
Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies, retain one and return one to OCCL within fifteen days.

Sincerely,



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

Receipt acknowledged:



Applicant's Signature MILOWAI ADAC BOARD PRESIDENT

9.11.20

Date

Admin Review: Sam Lemmo SAM LEMMO

Copy: Land Division; County Planning

Attachment: BMPs and Site Plan

Milowai Maalaea
Emergency Sandbag Seawall Protection
50 Hauoli Street, Maalaea, Wailuku
August 31, 2020

Description & Best Management Practices:

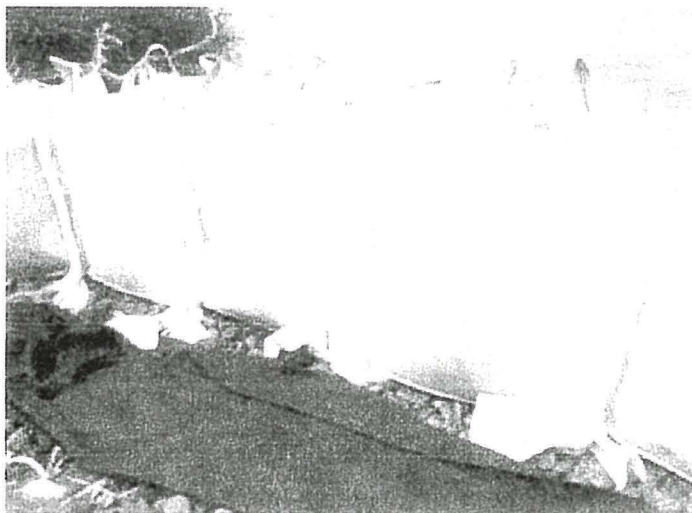
Inland of seawall:

- Provide a construction entrance for heavy equipment at the north east corner of the property.
- Install a silt fence on the entire length of & parallel to the existing seawall
- Install a biosock for material stockpile & waste management purposes at the northwest corner of the property,

Seawall shoreline frontage:

- 88 bulk bags (40x35x35), 1.25 cubic yard each, made of coated polypropylene (see attached picture for example), weighted at 3,400 lbs. of sand material per bag to be placed seaward of the wall as referenced on attached drawing by JPB Engineering, Inc., #S1.0, dated August 26, 2020.
- Bags will be doubled up for additional thickness.
- Sand provided by Chris Hayes Excavation yard (from Mala Wharf, Lahaina previously submitted to OCCCL) or HRC (to be provided if required).
- Bags to be filled off site and off loaded at construction entrance at site.
- Rubber track loader will transport bags to inland staging area.
- Excavator to remain inland of the seawall at all times.
- Excavator to level & move loose rocks seaward at areas as needed and remove loose concrete debris as necessary prior to installation.
- Filter fabric wrap will be placed on existing makai frontage of the seawall and on beach/shoreline and secured per plan by JBP Engineering.
- Excavator to place and stack bags over the seawall onto the filter fabric in front of and adjacent to the seawall, at two (2) staggered levels per plan by JBP Engineering.
- The bags will be secured together laterally with plastic zip ties at each flap on both levels.
- Sandbags to be removed after final completion of Milowai's seawall repair project. The repair project is estimated to commence December 1, 2020 and be completed by April 30, 2021.

Photograph of sandbags for reference only.



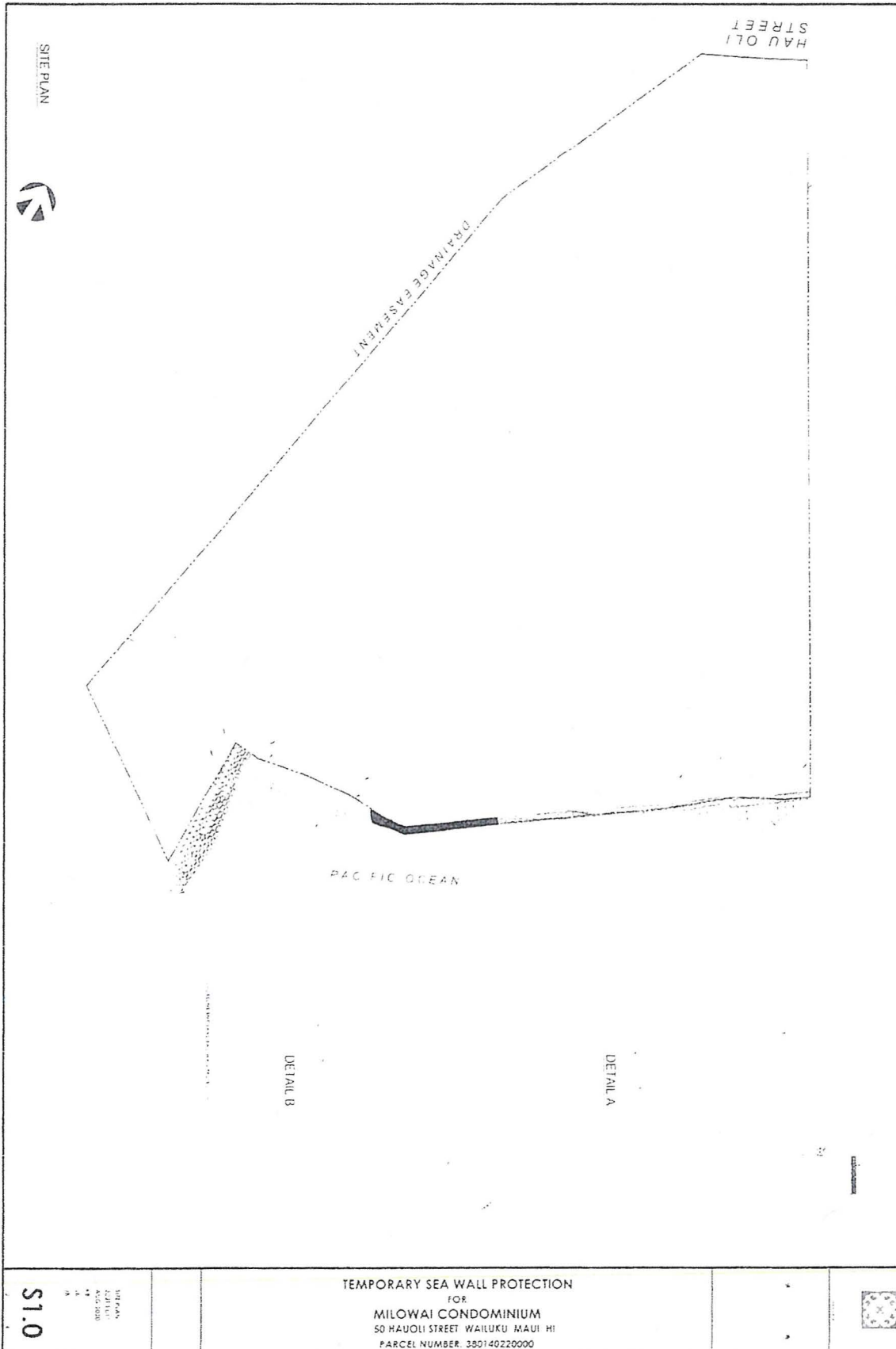


EXHIBIT D

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

October 9, 2015

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

PSF No.:15MD-123

Maui

Grant of a 55-Year Term, Non-Exclusive Easement to the Association of Apartment Owners of (AOAO) Milowai-Maalaea for Seawall Purposes, Maalaea Beach Lots, Waikapu, Wailuku, Maui, Tax Map Key: (2) 3-8-014: Seaward 022.

APPLICANT:

Association of Apartment Owners of Milowai-Maalaea, a Domestic Nonprofit Corporation.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located seaward of Maalaea Beach Lots, Waikapu, Wailuku, Maui, identified by Tax Map Key: (2) 3-8-014: seaward of 022, as shown on the attached map labeled Exhibit A.

AREA:

2152 square feet, more or less.

ZONING:

State Land Use District:
County of Maui CZO:

Conservation
SMA – A-2 Apartment & M-1 Light Industrial

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

October 9, 2015

D-6

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Unencumbered with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove an 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:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on July 1, 2014 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:

Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;

REMARKS:

Recently, management of the Milowai-Maalaea initiated the process of obtaining a certified shoreline for their private property at 50 Hauoli Street, Maalaea, which is further identified by Tax Map Key number (2) 3-8-014:022. Upon having the seaward side of the property surveyed, it was discovered that portions of their existing seawall were located within the shoreline, on public land. The estimated area of the encroachment has been determined to be 2,152 square feet.

The Milowai-Maalaea seawall runs parallel along the shoreline for approximately 180 feet and ranges in height from 4 to 6 feet. The surface of the seawall is mostly covered by concrete with very little rock being exposed. The west end of the wall ties into the Maalaea Small Boat Harbor's break wall. The opposite northeast end connects to the adjacent property's seawall which is part of approximately 1,800 feet of continuous shoreline hardening consisting of a series of seawalls and rock revetments.

The subject property was originally purchased by Wendell and Myrtle Crockett in the 1940's. At the time, the property had no seawall and a sand beach existed where the Small Boat Harbor facility is now located. In 1952 the Small Boat Harbor facility was built by officials of the Territory of Hawaii. In 1955 and 1959, improvements to the harbor facility were made which included the construction of break walls. Through the Environmental Assessment process, it was determined that the Milowai-Maalaea seawall was built in the early 1950's around the same time as the harbor break wall therefore, classifying the seawall a non-conforming shoreline structure.

The makai area fronting the Milowai-Maalaea property is devoid of beach material. There is no significant sandy beach present in the immediate area. The majority of the shoreline appears to be hardened over by a continuous series of seawalls and rock revetments. Based on the previous stated findings, beach resources in the area are considered poor.

The effect of removing the encroachment will cause erosion of the lawn that could ultimately threaten the Milowai-Maalaea Condominium building and underground parking garage. The Average Erosion Hazard Rate along the property varies from 0.5 feet to 1 foot and it is anticipated that removal of the encroachment at the Milowai-Maalaea could cause (flank) erosion problems to the adjacent properties causing instability and possible failure of neighboring seawall. Additionally, the erosion of clay soil sediments will negatively affect water quality of the ocean.

According to the Final Environmental Assessment, it states that due to the adjacent Small Boat Harbor facility and the neighboring properties' seawalls and revetments, it is believed that the removal of this encroachment would not improve the natural beach processes in the area. The issuance of an easement for the existing seawall would allow for the repair plans to be implemented and in turn will improve the structural integrity of the wall so that it can continue to protect the structures on the Milowai-Maalaea property as well as those on the neighboring properties.

EXHIBITS:

- Exhibit – 1: Tax Map of the Milowai-Maalaea.
- Exhibit – 2: Topographical photo of the subject area.
- Exhibit – 3: Survey Map of the subject encroachment area.
- Exhibit – 4: Photos of the subject seawall and shoreline.

AGENCY COMMENTS:

Comments have been solicited from the following agencies.

Agency	Comments
Office of Conservation & Coastal Lands	No objections.
County of Maui – Planning Dept.	No comment.
Office of Hawaiian Affairs	No comment or objections.
DOBOR - Maalaea	No comment.

Pursuant to the Board's action of June 28, 2002, under agenda item D-17 which established criteria for imposing fines for encroachments, staff is recommending that no fine be assessed for the subject seawall. This wall was constructed prior to the establishment of conservation district and special management area rules.

The 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) 3-8-014:022,

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 AOA Milowai-Maalaea covering the subject area for seawall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 3-8-014:022, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
 - E. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement

Respectfully Submitted,

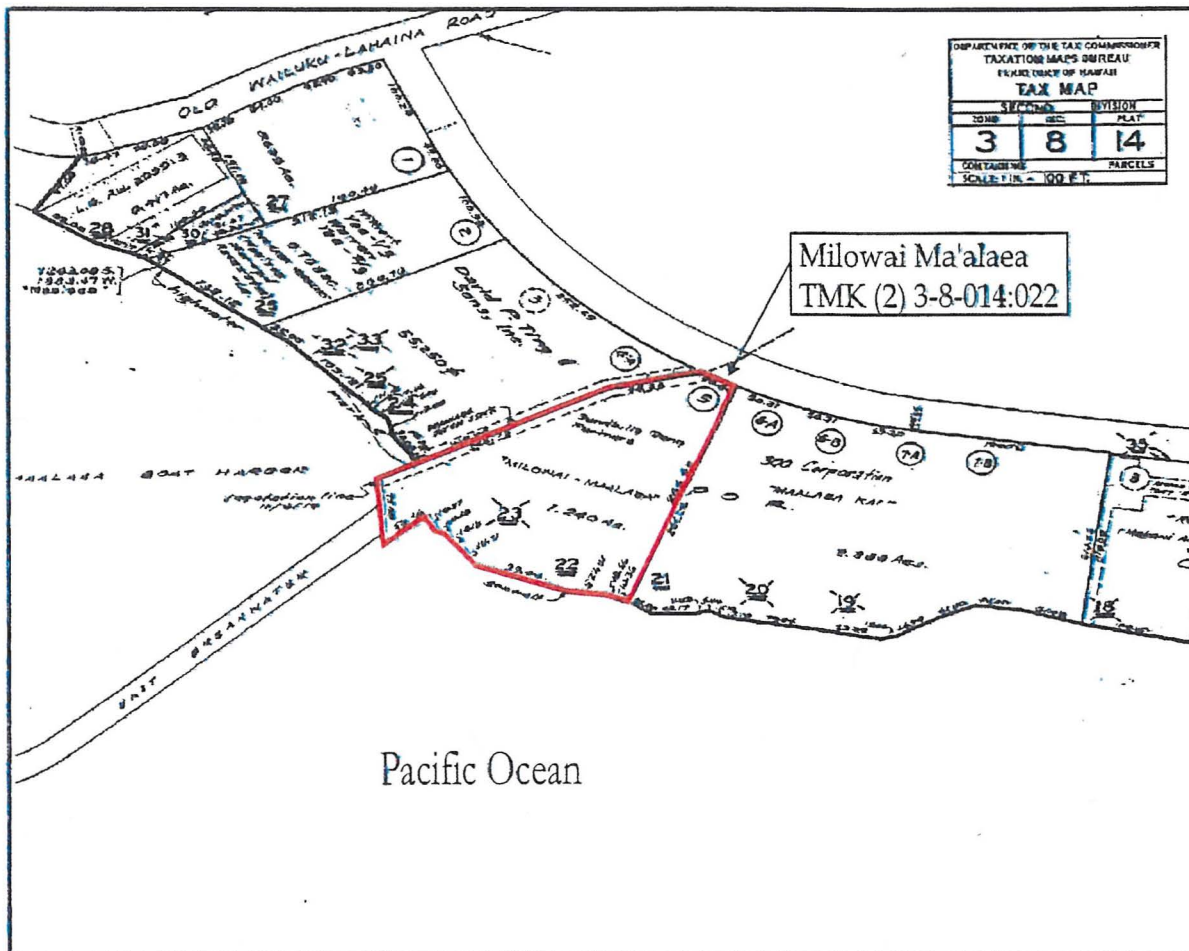


Daniel Ornellas, District Land Agent

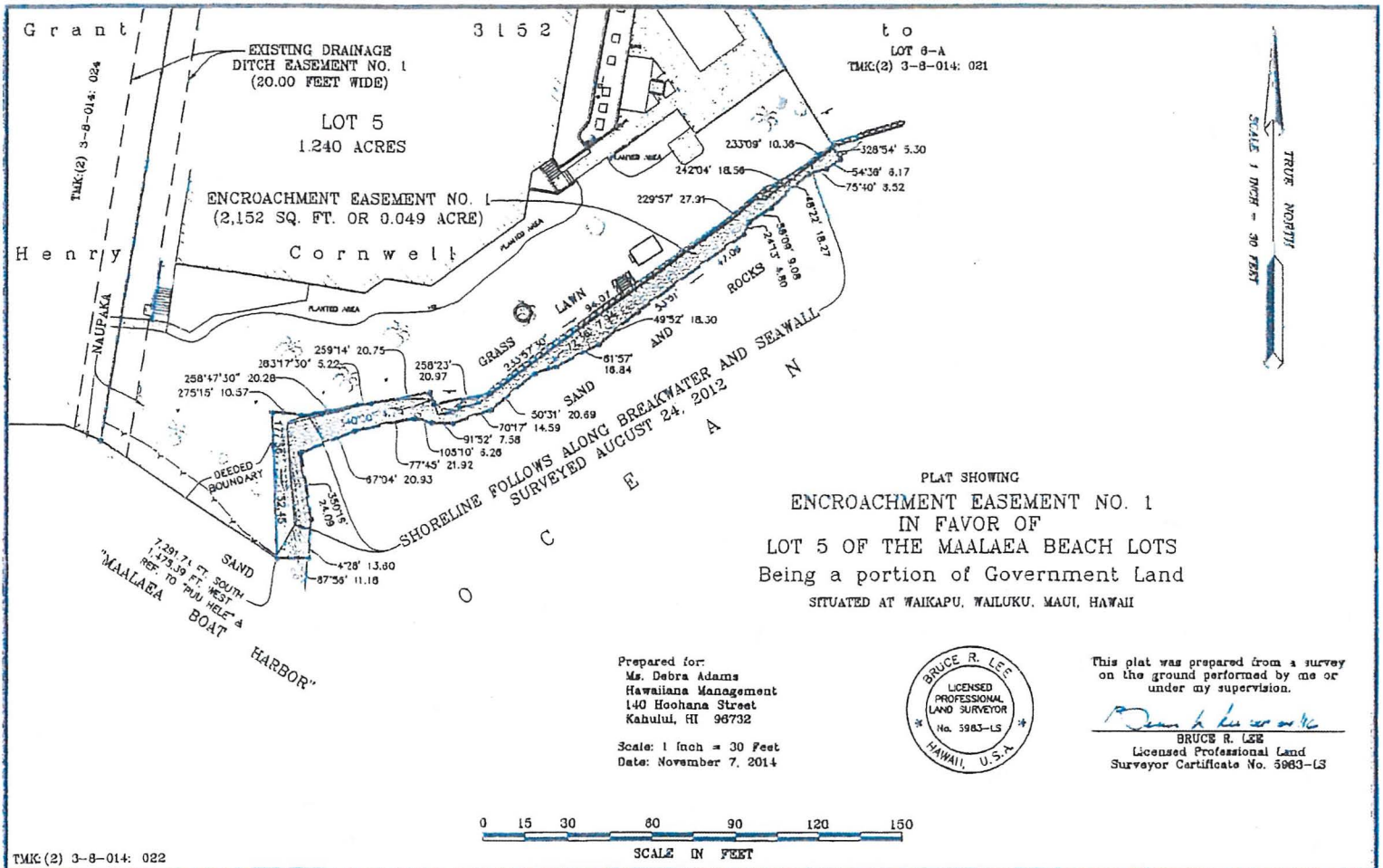
APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

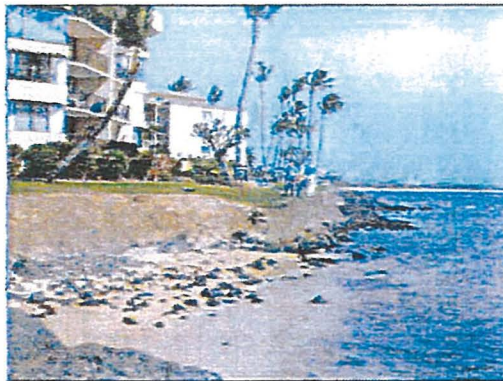








View of the Milowai and the existing seawall. Photo taken from the Ma'alaea breakwall.



View of the sink hole behind the top of the existing seawall. Note small sand beach and base of Ma'alaea breakwall in the background.



View of the Milowai rear lawn and sandy beach on the west side of Ma'alaea breakwall, with Ma'alaea small boat harbor in the background.



View of the Milowai seawall and rear lawn.



View of the Milowai rear lawn facing west with the Ma'alaea breakwall and small boat harbor in the background.



Photo of Ma'alaea breakwall.

EXHIBIT E

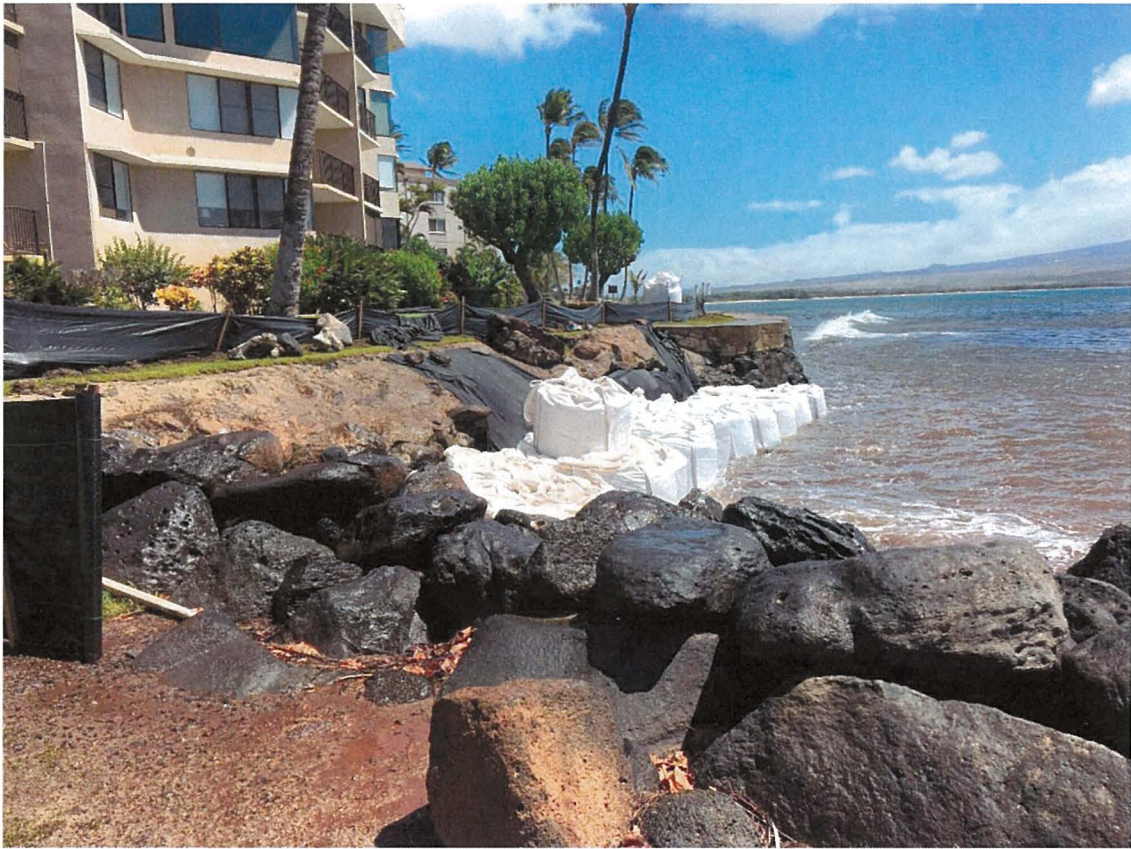
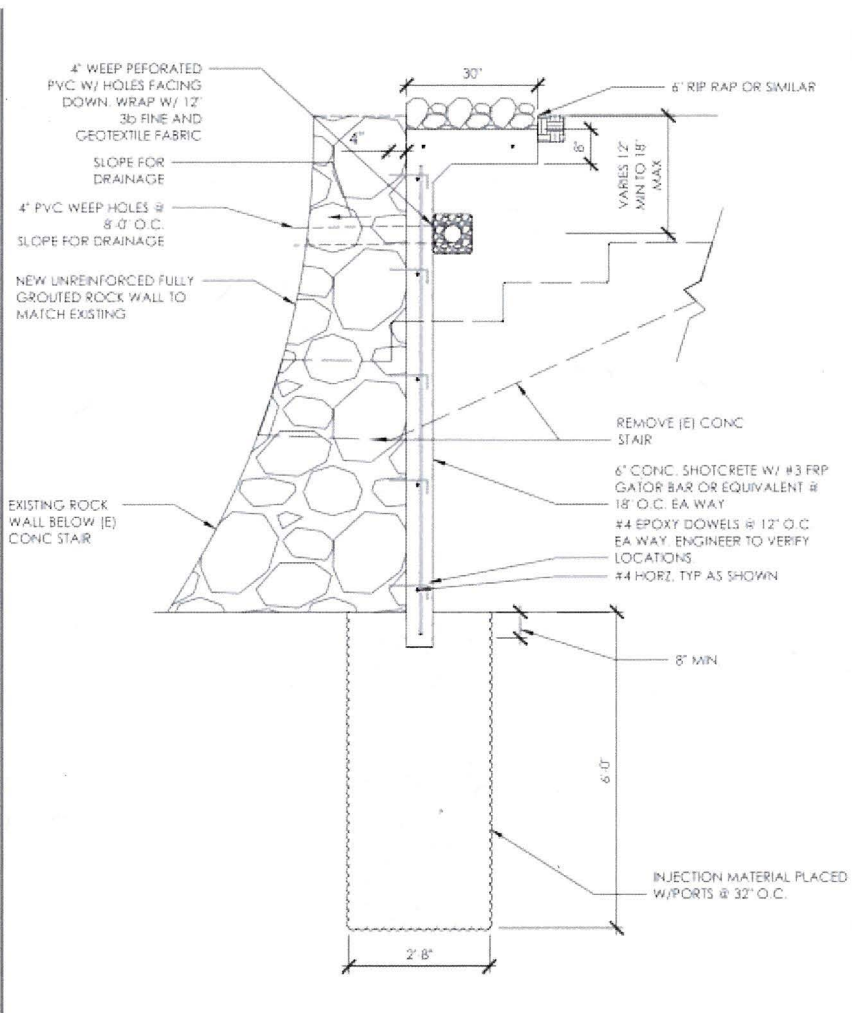
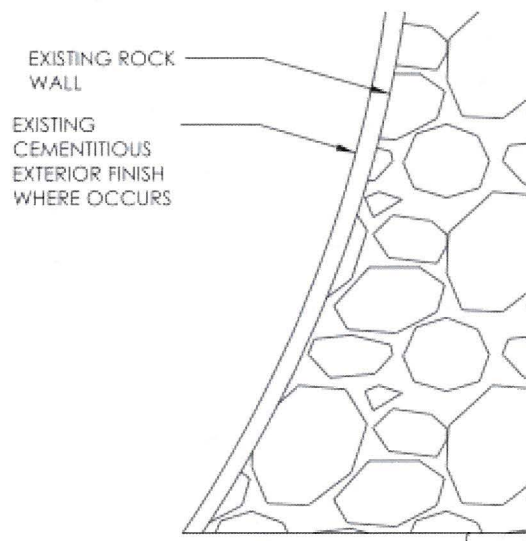


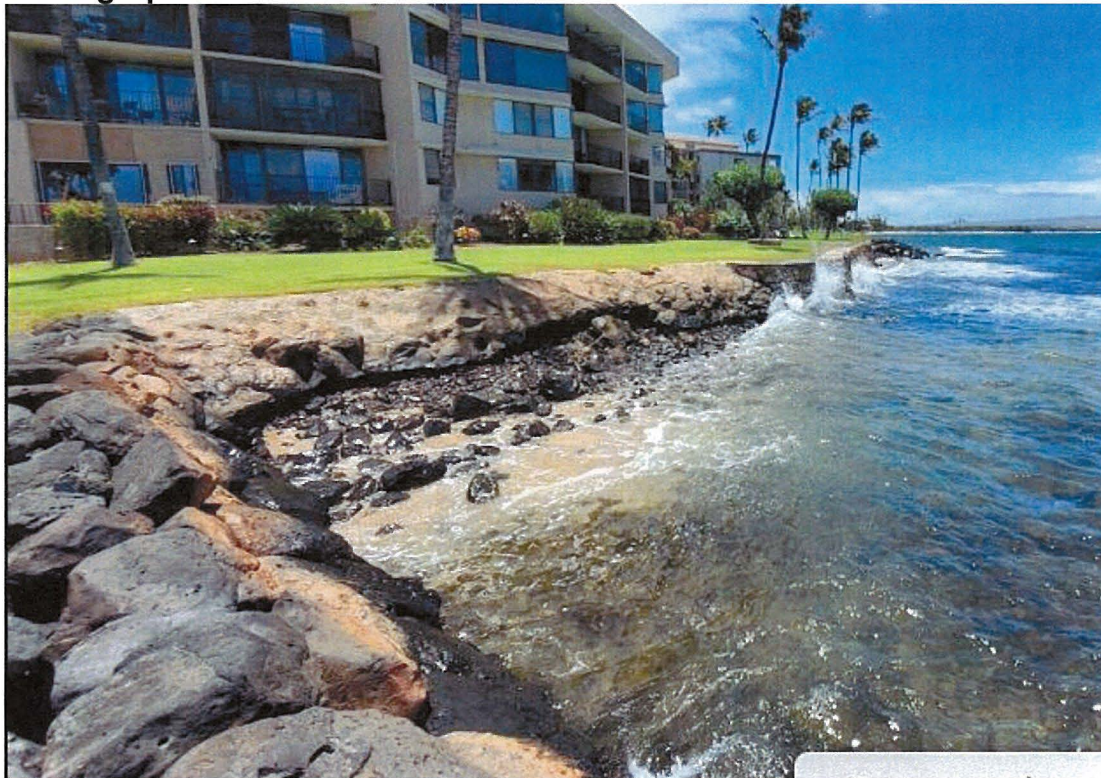


EXHIBIT F

Project Diagrams & Typical Detail:



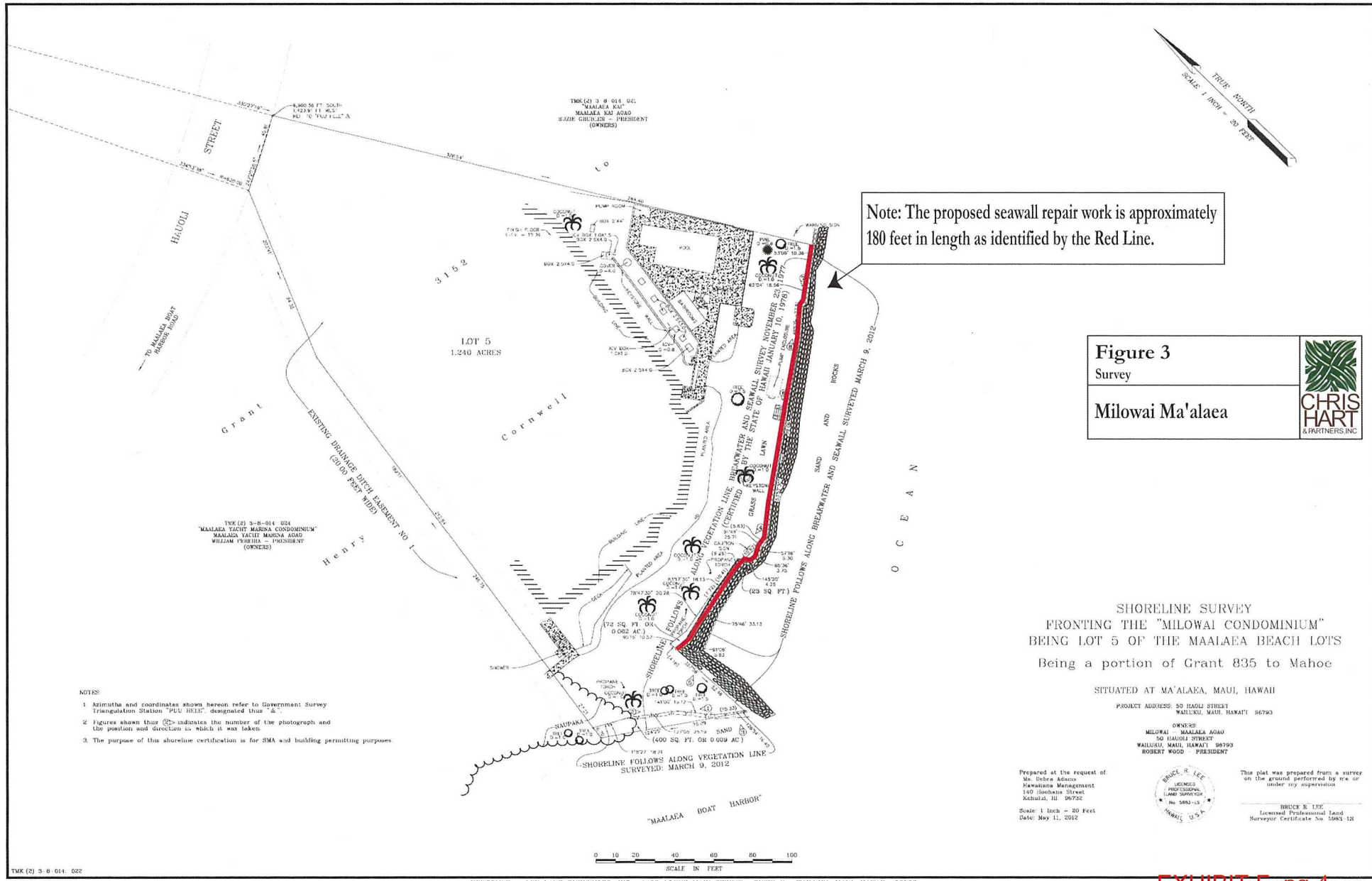
Photographs:

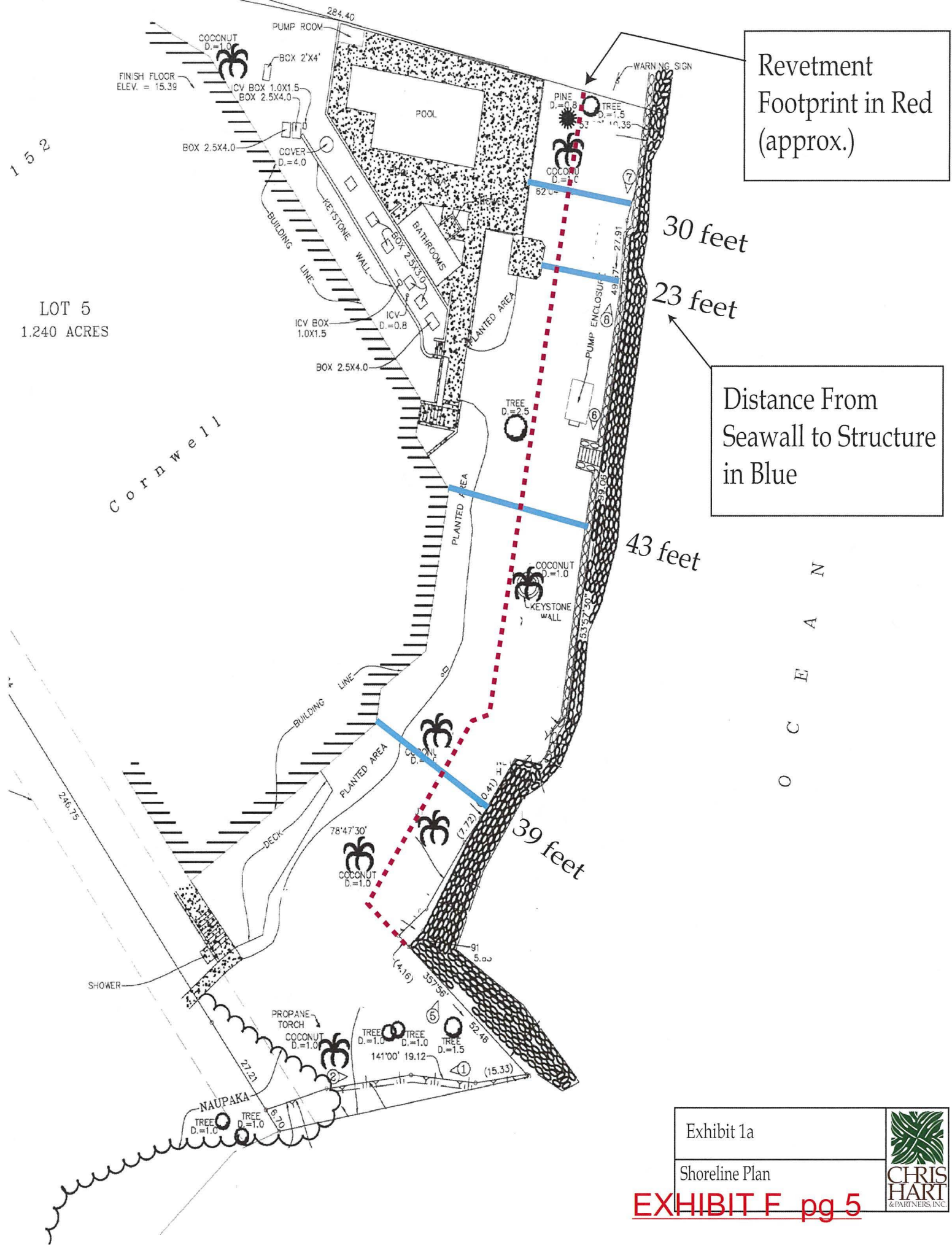


Emergency Sandbag Installation:

The Milowai seawall failed at several locations and is continuing to degrade. The failure of the wall results in additional damages to the site and for this reason sandbags were installed at those identified locations. The sandbags mitigate the damage until the final repair is complete. A total of (88) bulk bags measuring (40x35x35), 1.25 cubic yard each, made of coated polypropylene, weighted at 3,400 lbs. of sand material per bag were placed seaward of the wall as referenced on the following drawing by JPB Engineering, Inc., #S1.0, dated August 26, 2020. Bags were doubled up for additional thickness.







Revetment
Footprint in Red
(approx.)

Distance From
Seawall to Structure
in Blue

Exhibit 1a

Shoreline Plan

EXHIBIT F pg 5



EXHIBIT G

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

February 24, 2015

CERTIFIED MAIL - # 7013 1710 0002 3790 9770

Ms. Christine Conlon-Kemp, Director
Milowai Ma'alaea AOA
C/O Hawaiian Management
140 Ho'ohana Street, Suite 208
Kahului, Hawaii 96732

CERTIFIED MAIL - # 7013 1710 0002 3790 9763

Mr. Jordan E. Hart, President
Chris Hart & Partners, Inc.
115 North Market Street
Wailuku, Hawaii 96793

Dear Ms. Conlon-Kemp and Mr. Hart:

SUBJECT: SHORELINE SETBACK VARIANCE AND SPECIAL MANAGEMENT AREA (SMA) USE PERMIT FOR REPAIR OF THE SEAWALL AT MILOWAI MA'ALAEA, LOCATED AT 50 HAUOLI STREET, WAILUKU, ISLAND OF MAUI, HAWAII; TMK: (2) 3-8-014:022 (SSV 2012/0004) (SM1 2012/0008)

At its regular meeting on February 10, 2015, the Maui Planning Commission (Commission) reviewed the above request and after due deliberation and receipt of testimony and exhibits, hereby orders approval of the Shoreline Setback Variance, subject to the following conditions:

REQUIRED CONDITIONS:

1. That the Applicant maintains and requires safe lateral access to and along the shoreline for public use;
2. That the Applicant minimizes risk of adverse impacts on beach processes;
3. That the Applicant minimizes risk of structures failing and becoming loose, and rocks or rubble on public property;
4. That the Applicant minimizes 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 (1) story or thirty-foot height limitation;

5. That the project shall comply with Chapters 19.62 and 20.08, Maui County Code (MCC), relating to flood hazard districts and erosion and sedimentation control respectively;
6. That full compliance with all applicable governmental requirements shall be rendered;
7. That the conditions of this Shoreline Setback Variance shall be self-enforcing and, accordingly, upon due notice by the Department of Planning (Department) to the permit holder and the Commission that there is prima facie evidence that a breach has occurred, the permit shall be automatically suspended pending a hearing on the continuity of such Shoreline Setback Variance, provided that written request for such a hearing is filed with the Department within ten (10) days of the date of receipt of such notice of alleged breach. If no request for hearing is filed within the said ten (10) day period, the Commission may revoke said Shoreline Setback Variance;
8. That appropriate measures shall be taken during construction to mitigate the short-term impacts of the project relative to soil erosion from wind and water, ambient noise levels and traffic disruptions. Precautions shall be taken to prevent eroded soils, construction debris, and other contaminants from excessively entering the coastal waters; and
9. That no construction, operation of equipment, storage of materials, excavation or deposition of soil or other materials shall occur seaward of the shoreline verification map dated September 10, 2012.

The conditions of this Shoreline Setback Variance shall be enforced pursuant to Sections 12-203-16 and 12-203-17 of the Shoreline Rules for the Commission.

STANDARD CONDITIONS:

1. That to the satisfaction of the Department, construction of the proposed project shall be initiated by **February 28, 2018**. 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 above-referenced date. Failure to comply by that date will automatically terminate this SMA Use Permit unless a time extension is requested 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).

2. That to the satisfaction of the Department, the construction of the project shall be completed within five (5) years after the date of its initiation. Evidence of the date of the completion of construction shall be submitted to the Department. Any request for a time extension shall 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;
 - b. No erosion of limit by payment of defense costs;
 - c. Annual aggregate limit of not less than \$1,000,000;
 - 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 (TMK) 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 two (2) copies of a detailed report addressing its compliance with the conditions established with the subject SMA Use Permit and Shoreline Setback Variance. A Preliminary Compliance Report (Report) shall be reviewed and approved by the Department prior to issuance of the Building 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 Report. The Report shall also include evidence that final construction plans are in substantial compliance with recommendations contained in the Structural Engineering Report prepared by Walter Vorfield & Associates, dated July 23, 2012, and representations made to the Commission in obtaining the SMA Use Permit and Shoreline Setback Variance.
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 the manufacturer's specifications or other Best Management Practices (BMPs), with the contaminant residuals from stormwater 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 program and recordkeeping for inspection, maintenance, and disposal of contaminated residuals shall be submitted to the Department prior to or along with the Preliminary Compliance Report.

PROJECT SPECIFIC CONDITIONS:

7. That to the satisfaction of the Department or the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD), all ground-disturbing activities shall be monitored in accordance with the Archaeological Monitoring Plan prepared in May 2012 by Archaeological Services Hawaii, LLC, and approved by SHPD letter dated July 6, 2012 (LOG NO: 2012.0825, LOG NO: 2012.1890, DOC NO: 1207JP01). As noted in the plan, full-time monitoring will be the protocol for this project and the DLNR-SHPD shall be notified of the onset and completion of the project. In the event that historic resources, including human skeletal remains, are identified during construction activities, work shall be halted, the site shall be secured, and procedures outlined in the Archaeological Monitoring Plan shall be followed. Evidence of the fulfillment of this condition shall be submitted with the Final Compliance Report.
8. That to the satisfaction of the Department, BMPs shall be implemented to ensure water quality and marine resources are protected. No construction materials shall be stockpiled in the aquatic environment. All construction-related materials shall be free of pollutants and placed or stored in ways to avoid or minimize disturbance. No debris, petroleum products, or deleterious materials or wastes shall be allowed to fall, flow, leach, or otherwise enter near shore waters. Any turbidity and siltation generated from activities proposed at the site shall be minimized and contained in the immediate vicinity of construction through the use of effective silt containment devices. Construction during adverse weather conditions shall be curtailed to minimize the potential for adverse water quality impacts. Evidence of the fulfillment of this condition shall be submitted with both the Preliminary and Final Compliance Reports.
9. That a National Pollutant Discharge Elimination System (NPDES) permit will be obtained by the contractor, if required. Evidence of the fulfillment of this condition shall be submitted with the Preliminary Compliance Report.
10. That to the satisfaction of the Department, the seawall repair shall be conducted during the season when tides and waves are at their lowest in this vicinity, which is generally during the spring and summer months. Evidence of the fulfillment of

Ms. Christine Conlon-Kemp, Director
Mr. Jordan Hart, President
February 24, 2015
Page 6

this condition shall be submitted with both the Preliminary and Final Compliance Reports.

11. That to the satisfaction of the Department, public shoreline access path signage shall be installed along Milowai Ma'alaea's shoreline area, as represented by the Applicant, for public use along the shoreline.
12. That to the satisfaction of the Department, the Applicant shall be responsible for any shoreline and/or ocean area restoration and associated permitting which may become necessary as a result of structures or debris from the Applicant's property, which may enter the shoreline setback area and/or ocean as a result of failure or any other cause. This condition shall be set forth in a unilateral agreement recorded by the Applicant with the Bureau of Conveyances or land court. A copy of the recorded agreement shall be filed with the Director prior to or with the Final 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.

Further, the Commission adopted the Report and Recommendation, prepared by the Department, for the February 10, 2015 meeting as the Findings of Fact, Conclusions of Law, and Decision and Order. Parties to proceed 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 Staff Planner Keith Scott at keith.scott@mauicounty.gov or at (808) 463-3867.

Sincerely,



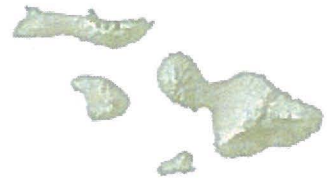
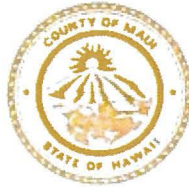
 WILLIAM SPENCE
Planning Director

xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
John S. Rapacz, Planning Program Administrator (PDF)
Keith C. Scott, Staff Planner (PDF)
David Taylor, Director, Department of Water Supply (PDF)
David Goode, Director, Department of Public Works (PDF)
Development Services Administration
Department of Health-Oahu
Project File
General File

WRS:KCS:ls

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MICHAEL P. VICTORINO
Mayor
MICHELE CHOUTEAU MCLEAN, AICP
Director
JORDAN E. HART
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

October 20, 2020

Ms. Tanci Mintz, President
Milowai Maalaea AOA
50 Hauoli Street
Wailuku, Hawaii 96793

Dear Ms. Mintz:

**SUBJECT: NON-SUBSTANTIVE AMENDMENT TO SHORELINE
SETBACK VARIANCE AND SPECIAL MANAGEMENT
AREA (SMA) USE PERMIT FOR PROJECT
MODIFICATIONS IN ORDER TO REPAIR THE SEAWALL
AT MILOWAI MAALAEA, LOCATED AT 50 HAUOLI
STREET, WAILUKU, ISLAND OF MAUI, HAWAII;
TMK: (2) 3-8-014:022 (SM1 2012/0008) (SSV 2012/0004)**

The Department of Planning (Department) is in receipt of your request and plans received by the Department on May 19, 2020, to amend the original SM1 and SSV approvals to address structural concerns of the approved design. This modification of the project is due to unexpected soil and wall conditions that were discovered during site surveys and from a soil analysis.

The Department recognizes that JPB Engineering Inc. (JPBE) has taken over as the engineer of record for the seawall repair work. The original design approved in the SM1 consisted of removing the soil from behind the wall, injecting a hydrophobic foam into voids under the wall, applying shotcrete to the back of the wall, installing a drain at the base of the wall, and back filling behind the wall. JPBE's design follows the original design but with the following modifications:

1. Based upon the soil investigation the material behind and under the wall is not sand but a silty clay material. This means the size of voids occurring under the wall are smaller than anticipated and the hydrophobic foam is too thick to permeate through the soil. Additionally, the injection depth below the wall was too shallow and would have been eroded quickly. For this reason, JPBE modified the injection material to a very low viscosity acrylate and increased the depth of the injection.
2. The original design had the injection material occurring under the full width of the wall. This would require injecting material from both sides of the wall. It is not possible to obtain the necessary approval to inject material from the ocean side of the wall so JPBE limited the injections to the back side of the wall.
3. JPBE also found that the site drainage was causing erosion on the back side of the wall. Waves crest the wall and since the water does not disperse through the silt clay material it collects at the back side of the wall. As voids developed under the wall the water flowed along the back of the wall and out the base. This has led to significant erosion

at the backside of the wall. To correct this JPBE moved the drain from the base of the wall to near the top of the wall. This will allow the water to be collected before it creates the back side erosion.

4. At the sloping section of the seawall near the harbor, JPBE found that the wall construction does not match the original detail. Instead of an actual wall it is a rock covered slope. Due to this there is no rock wall base to support the shotcrete. For this reason, JPBE added six tie back beams with soil anchors to provide the necessary lateral support.
5. The seawall has failed at several locations and is continuing to degrade. The failure of the wall results in additional damages to the site and for this reason sandbags are to be installed at those locations. The sandbags mitigate the damage until the final repair is complete. Once the repair is complete the sandbags will be removed.

In addition, the Department of Land and Natural Resources, Office of Conservation and Coastal Lands (DLNR-OCCL) has provided approval for the placement of the emergency sandbags, and can be referenced by the attached letter, **Emer CDUP MA-21-01 Milowai**. This approval requires adherence to their listed conditions in order to place these temporary sandbags during the Milowai repair process. Thus you are required to follow best management practices (BMPs) during the placement of the sandbags, in addition to the BMPs already required during the seawall repair. The letter from the DLNR-OCCL and the BMPs for the sandbag placement are both attached.

Based on the information provided, the Department has determined that the amendments proposed are only modifications to the techniques required to achieve the same project scope previously approved in SM1 2012/0008 and SSV 2012/0004. Pursuant to the aforementioned, the Department hereby finds that the proposed five modifications listed above to be non-substantive changes and in keeping with the overall plans approved by the Maui Planning Commission at its February 10, 2015, meeting for the SMA permit. As such, the Department administratively **approves** the amendment dated September 2019, last revised on October 9, 2020.

Thank you for your cooperation. If additional clarification is required, please contact Staff Planner Jared Burkett at jared.burkett@mauicounty.gov or at (808) 270-7378.

Sincerely,



MICHELE MCLEAN, AICP
Planning Director

xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
Jared L. Burkett, Staff Planner (PDF)
Tanci Mintz, Applicant (PDF) mintztanci@gmail.com
Michelle Cockett, Consultant (PDF) michelle.visions@gmail.com
Project File

MCM:JLB:th

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DAVID Y. IGE
GOVERNOR OF HAWAII



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

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

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

REF:OCCL:MC

Emer CDUP MA-21-01

Tanci Mintz
AOAO President
50 Hauloli Street
Wailuku, Maui 96793
[REDACTED]

SUBJECT: Emergency authorization for placement of sandbags
Milowai-Maalaea, Maalaea Beach Lots, Waikapu, Wailuku, Maui
Seaward of TMK (2) 3-8-014:022

Dear Ms. Tanci,

The Office of Conservation and Coastal Lands (OCCL) has reviewed the information you provided on behalf of the Milowai Condominium Resort for authorization to place temporary sandbags seaward of an existing seawall fronting tax map key parcel (2) 3-8-014:022. The project area is on state-owned submerged lands, which are in the Resource Subzone of the Conservation District.

The goal of the sandbag placement is to protect the seawall while repairs are conducted to it. The Condominium wishes to place the sandbags immediately. Repairs to the seawall are predicted to commence December 1, 2020, and to be completed by April 30, 2021.

According to the information you provided, the project will involve

- The placement of a total of eighty-eight (88) 1.25 cubic yard coated propylene sandbags, each measuring 40" x 35" x 35", at two locations fronting the subject property;
- One section, labeled "A" on the enclosed map, is approximately forty-eight feet long; the second section, labeled "B" on the enclosed map, is approximately forty-feet long;
- The bags will be filled with sand provided by Chris Hayes Excavation yard with sand taken from Mala Wharf;
- A rubber track loader will transport bags to inland staging area;
- The excavator will place the bags from landward of the seawall, and will not transit submerged lands;
- The excavator will level and remove loose rocks as needed to provide a level base for the bags, and will remove loose debris when present;

- Filter fabric wrap will be placed on existing makai frontage of the seawall and on beach/shoreline and secured per plan by JBP Engineering.
- Excavator to place and stack bags over the seawall onto the filter fabric in front of and adjacent to the seawall, at two (2) staggered levels per plan by JBP Engineering.
- The bags will be secured together laterally with plastic zip ties at each flap on both levels.
- Sandbags will be removed after final completion of Milowai's seawall repair project. The repair project is estimated to commence December 1, 2020 and be completed by April 30, 2021.

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

1. The existing seawall is at risk of failure;
- tw 2. The ^{Milowai AAO} landowner has a plan to repair the seawall;
3. The proposed sandbags will help mitigate further damage to the seawall while repairs are made;
4. The area is largely armored with a large number of existing shoreline structures;
5. Failure of the seawall will result in increased levels of sedimentation running into nearshore waters, and present a potential threat to public safety; and
6. There are no other reasonable short-term alternatives.

DEPARTMENT ACTION

The Chairperson of the Department of Land and Natural Resources has the authority to authorize the temporary emergency placement of pursuant to Hawaii Administrative Rules (HAR) §13-5-35 EMERGENCY PERMITS (a) *Notwithstanding any provision of this chapter, the chairperson or deputy director of the department in the absence of the chairperson may authorize through an emergency permit any land use deemed to be essential to alleviate any emergency that is a threat to public health, safety, and welfare, including natural resources, and for any land use that is imminently threatened by natural hazards. These actions shall be temporary in nature to the extent that the threat to public health, safety, and welfare, including natural resources, is alleviated (e.g., erosion control, rockfall mitigation). The emergency action shall include contingencies for removal methods, estimates for duration of the activity, and future response plans if required by the department.*

In addition, the temporary structure may be considered an exempt action under State environmental laws under HAR §11-200-8 and as provided in the approved Exemption List for the DLNR, Exemption Class 1, *Mitigation of any hazardous conditions that present imminent danger as determined by the Department Director and that are necessary to protect public health, safety, welfare, or public trust resources; and 2, Upon determination by the Department Director that an emergency exists, emergency mitigation and restoration work to prevent damage from continuing to occur and to restore the topographical features and biological resources.*

The Chairperson of the Department of Land and Natural Resources hereby authorizes the temporary emergency placement of sandbags at the two locations as described above seaward of Tax Map Key parcel (2) 3-8-014:022 pursuant to the following terms and conditions:

1. It is understood that the placement of the sandbags is temporary in nature, and decided to respond to a current safety hazard;
2. The sandbags shall be removed once repairs to the seawall have been completed, and no later than May 30, 2021. Any sand that escapes the sand bags shall be promptly removed from the shoreline area;
3. The permittee will submit a completion report for the project to OCCL within thirty days of the placement of the bags. It will summarize the construction and detail any deviation from the proposed plans and provide a summary of shoreline conditions since installation. The report will include a photo summary of the temporary structure;
4. 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;
5. 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;
6. The permittee shall obtain appropriate authorization from the department for the occupancy of state lands, if applicable;
7. The permittee shall comply with all applicable department of health administrative rules;
8. All representations relative to mitigation set forth in the accepted environmental assessment or impact statement 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. 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;
13. The permittee shall implement standard Best Management Practices, including the ability to contain and minimize silt in nearshore waters. If 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;

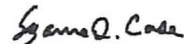
14. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact HPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
15. Other terms and conditions as prescribed by the chairperson.
16. Failure to comply with any of these conditions shall render a permit void under the chapter, as determined by the chairperson or board.

Please note that failure to follow these conditions, or failure to remove the sandbags once the authorization has expired, may constitute a violation of Chapter 183C, Hawaii Revised Statutes, and fines of up to \$15,000 per day can be assessed for each day that the landowner fails to comply with the terms and conditions of this authorization.

Should you have any questions, please feel free to contact Michael Cain of OCCL at 587-0048, or at michael.cain@hawaii.gov.

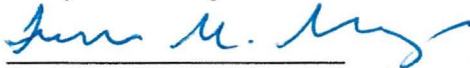
Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies, retain one and return one to OCCL within fifteen days.

Sincerely,



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

Receipt acknowledged:



Applicant's Signature MILOWAI AAOB BOARD PRESIDENT

9.11.20

Date

Admin Review: Sam Lemmo SAM LEMMO

Copy: Land Division; County Planning

Attachment: BMPs and Site Plan

Milowai Maalaea
Emergency Sandbag Seawall Protection
50 Hauoli Street, Maalaea, Wailuku
August 31, 2020

Description & Best Management Practices:

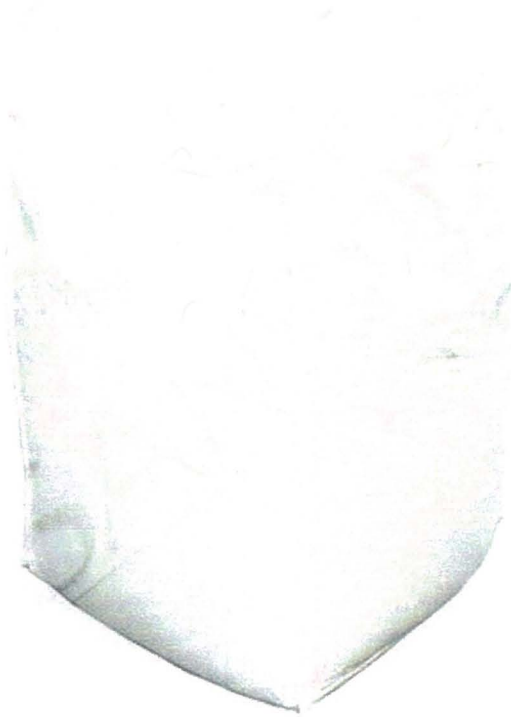
Inland of seawall:

- Provide a construction entrance for heavy equipment at the north east corner of the property.
- Install a silt fence on the entire length of & parallel to the existing seawall
- Install a biosock for material stockpile & waste management purposes at the northwest corner of the property,

Seawall shoreline frontage:

- 88 bulk bags (40x35x35), 1.25 cubic yard each, made of coated polypropylene (see attached picture for example), weighted at 3,400 lbs. of sand material per bag to be placed seaward of the wall as referenced on attached drawing by JPB Engineering, Inc., #S1.0, dated August 26, 2020.
- Bags will be doubled up for additional thickness.
- Sand provided by Chris Hayes Excavation yard (from Mala Wharf, Lahaina previously submitted to OCCCL) or HRC (to be provided if required).
- Bags to be filled off site and off loaded at construction entrance at site.
- Rubber track loader will transport bags to inland staging area.
- Excavator to remain inland of the seawall at all times.
- Excavator to level & move loose rocks seaward at areas as needed and remove loose concrete debris as necessary prior to installation.
- Filter fabric wrap will be placed on existing makai frontage of the seawall and on beach/shoreline and secured per plan by JBP Engineering.
- Excavator to place and stack bags over the seawall onto the filter fabric in front of and adjacent to the seawall, at two (2) staggered levels per plan by JBP Engineering.
- The bags will be secured together laterally with plastic zip ties at each flap on both levels.
- Sandbags to be removed after final completion of Milowai's seawall repair project. The repair project is estimated to commence December 1, 2020 and be completed by April 30, 2021.

Photograph of sandbags for reference only.



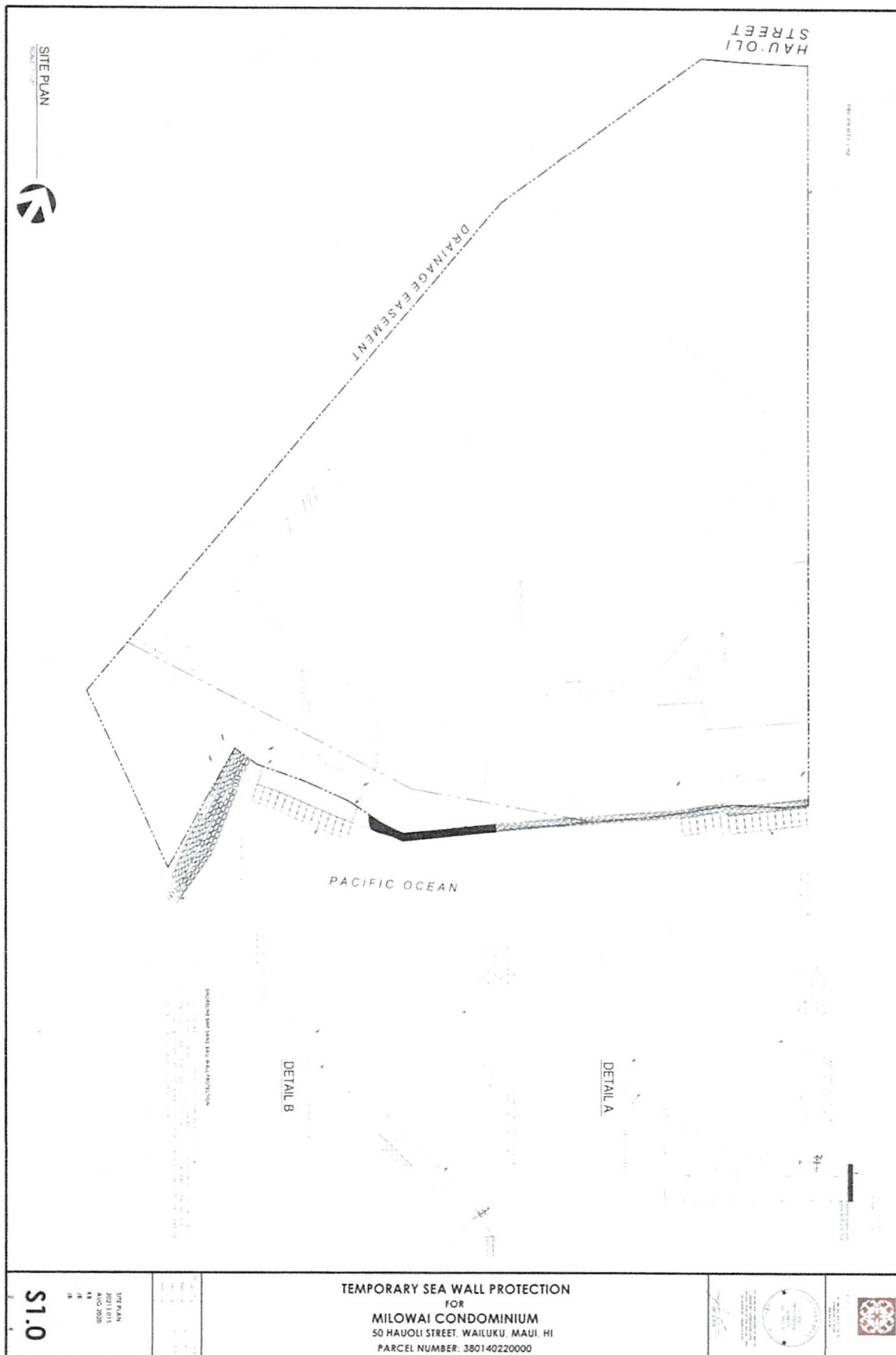


EXHIBIT H

From: [Lum, Darryl C](#)
To: [Tanci Mintz](#)
Cc: [Machida, Seiko J](#); [Dailer, Meghan](#); [James Buika](#); [Tara Miller](#); [REDACTED] [Sparks, Russell T](#)
Subject: RE: Milowai Maalaea seawall repair, injection material
Date: Thursday, November 5, 2020 9:24:04 AM

Dear Ms. Mintz,

The State of Hawaii, Department of Health (DOH), Clean Water Branch (CWB) received your email with the Aquafin PM3811 product information. The DOH-CWB has no objections to the use of this product. However, we highly recommend the proper application of the PM3811 according to the manufacturer's directions as well as adequate contingency procedures to prevent any uncured product from coming into contact with the nearshore waters.

At this time, it is not known if the Milowai Maalaea AOA has sought a permitting determination from the United States Army Corps of Engineers. If you haven't already done so, please contact the Army Corps of Engineers, Regulatory Branch (Telephone Number: 808-835-4303) to see if a Department of the Army (DA) Permit is required for your seawall repair project. A DA permit may trigger a Section 401 Water Quality Certification from the DOH-CWB.

Please contact the DOH-CWB should you have any questions.

Sincerely,

Darryl Lum
Clean Water Branch
State of Hawaii Department of Health
Phone: (808) 586-4309

Notice: This information and attachments are intended only for the use of the individual(s) or entity to which it is addressed, and may contain information that is privileged and/or confidential. If the reader of this message is not the intended recipient, any dissemination, distribution, or copying of this communication is strictly prohibited and may be punishable under state and federal law. If you have received this communication and/or attachments in error, please notify the sender via e-mail immediately and destroy all electronic and paper copies.

From: Tanci Mintz [REDACTED]
Sent: Wednesday, November 4, 2020 12:31 PM
To: Machida, Seiko J [REDACTED]; Lum, Darryl C [REDACTED];
Dailer, Meghan [REDACTED]
Cc: James Buika [REDACTED]; Tara Miller [REDACTED]; Michelle Cockett
[REDACTED]
Subject: [EXTERNAL] Milowai Maalaea seawall repair, injection material

Good Afternoon Seiko, Meghan and Darryl:

Through receipt of separate requests from the State of Hawaii Land Division and the Clean Water Branch Section please accept this as a response to your inquires regarding the injection material, Aquafin PM3811 as specified for the Milowai Maalaea seawall repair project.

EXHIBIT H

Attached, you'll find a complete packet of information for the new injection material, to include:

- Brief review of the project background
- Substitution justification
- County non-substantive amendment
- JPB Engineering comparison letter
- Water Quality Association technical information
- (2) projects on Maui who used a similar chemical injection materials and technical data
- Aquafin PM3811 technical information to include the engineers letter and statement of fact, *"when the components are mixed, they neutralize each other together with water and become harmless to the environment"*.

To be proactive, we also reached out to Jim Buika with the County of Maui and provided him with this same information for the substitution. Today he shared with Michelle Cockett our permit consultant, *"I read through your letter regarding safety of injection product and I have no objections. Seems this is enviro friendly and a good solution."*

The building permit from the County of Maui should be processed very soon and we will forward a copy to Seiko as requested. Please let us know if you require any additional information. Receipt of the ROE is the last item we need to commence with our repairs.

In advance, thank you for your due diligence and assistance.

Tanci Mintz
Milowai AOA Board President

EXHIBIT I

From: "Koskelo, Vera B CIV (USA)" <[REDACTED]>

Subject: 2012-00090 - No Permit Required for Seawall in-kind and upland repairs, review of sandbags ongoing

Date: November 23, 2020 at 5:52:29 PM AKST

To: Tanci Mintz <[REDACTED]>

Cc: Michelle Cockett <[REDACTED]>, Robert Vafaie <[REDACTED]>

Dear Ms. Mintz,

In a phone call on 6 November 2020 and an email dated 09 November 2020, you stated that the existing 180-foot-long seawall at Milolani Condominium in Maui requires maintenance. Repair activities would include the in-kind repair of two sections of grouted rock by hand and the installation of additional support beneath and behind the seawall by excavating in uplands behind the seawall, injecting grout or other cementitious material, backfilling the excavated area, and topping the area with riprap in accordance with the plans you provided in your 09 November 2020 email (attached).

Repair activities conducted by hand, including the use of hand-tools (e.g. pick, spade, cargo net), are not considered to be a type of work regulated by the Corps under Section 10 of the RHA. The repair of rock walls or other structural components to match the original character, scope, and size of the structure/fill is exempt as maintenance under Section 404(f) (323.4 (2)), therefore a Corps permit is not required for the by-hand repair of two sections of the wall.

Based on information and plans you provided, the injection of grout and placement of riprap for additional support in uplands behind the seawall would occur landward of the limits of the Corps geographic jurisdiction; **therefore Corps authorization is not required for the installation of additional support.**

While a DA permit is not required for your proposed project, you are responsible for obtaining all other applicable Federal, state, or local authorizations required by law. Be advised, a DA permit may be required if you alter the method, scope, or location of your proposed work. You should contact our office if you are considering modifying your project.

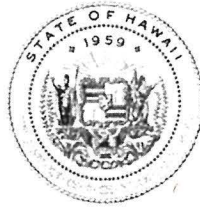
Additionally, in the 06 and 09 November 2020 communications with our office, you stated that sandbags were placed front of the wall without Corps authorization: 88 bags double stacked with a 30 foot section on one end of the wall (60 square feet) and a 40 foot section on the other end (80 square feet). The sandbags are scheduled to be removed April 30, 2021. The Corps is currently conducting after-the-fact permit review on the temporary placement of the sandbags.

Thank you,
Vera Koskelo
Biologist
Project Manager
Honolulu District
U.S. Army Corps of Engineers
Building 230
Fort Shafter, Hawaii 96858-5440
[REDACTED]
[REDACTED]

EXHIBIT I

EXHIBIT J

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

Date: December 1, 2020
DAR # AR0038

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MEMORANDUM

TO: Brian J. Neilson
DAR Administrator

FROM: Russell Sparks *Russell Sparks*, Aquatic Biologist

SUBJECT: Request for comments for seawall repair work at teh Milowai Condominium.

Request Submitted by: Seiko Machida, Maui Land Agent
Maalaea Beach Lots, Waikapu, Wailuku, Maui : TMK (2)3-8-014: Seaward of 022

Location of Project: _____

Brief Description of Project:

A seawall repair project fronting the Milowai Condominium in Maalaea Bay, Maui. Project involves excavating soil from behind the seawall (on Milowai property). Excavation will be along the entire 180 foot long seawall and down to sea level. Voids beneath the existing wall will be filled with an injected epoxy (Aquafin PM3811). The land side of the wall will be reinforced with 6"-8" of gunite concrete and steel. Once wall repair is complete, the excavated trench will be lined with filter fabric and filled with soil and sand. Once complete, this project should reinforce the existing stone wall against any further deterioration.

Comments:

☐ No Comments ☒ Comments Attached

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

Comments Approved: *Brian J. Neilson* Date: Dec 2, 2020
Brian J. Neilson
DAR Administrator

DAR# AR0038

Comments

Given that this area is already extensively hardened with rocks along the harbor jetty and with old rock and concrete walls fronting the Milowai and several other neighboring properties, we have no significant objection to the seawall repair project. We would like to highlight that all heavy equipment needs to stay land side of the existing seawall, and that appropriate erosion control practices are followed to prevent any sediments or other debris from entering into the ocean. Work should only be done during periods of low to moderate tides to further avoid erosion and sedimentation during active construction. There has been concern raised about possible adverse impacts from the injection compound (Aquafin PM3811) used to fill in and repair voids beneath the wall. We appreciate the further review conducted by the Hawaii, DOH, Clean Water Branch and concur with their recommendations that adequate procedures be taken to avoid any uncured product from coming in to contact and/or entering the nearshore waters. We would further suggest that this product is only used during periods of low tide to further reduce the likelihood that any uncured product enters the ground water.

EXHIBIT K

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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

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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

ref:OCCL:MC

MEMORANDUM

TO: Seiko Machida, Land Agent,
DLNR Maui District Land Office

FROM: Samuel J. Lemmo, Administrator *Sam Lemmo*
Office of Conservation and Coastal Lands

SUBJECT: REQUEST FOR COMMENTS – Issuance of Right-of-Entry Permit to the Association of Apartment Owners of Milowai-Maalaea for sandbag placement

LOCATION: Maalaea Beach Lots, Waikapu, Wailuku, Maui

TMK: (2) 3-8-014: Seaward of 022

The Office of Conservation and Coastal Lands has no objections to the issuance of the right-of-entry.

The Chair of the Board of Land and Natural Resources approved the temporary emergency placement of sandbags fronting the above subject parcel on September 14, 2020 (ref. Emergency Conservation District Use Permit MA-21-01). The stated purpose of the sandbags was to protect the existing seawall while repairs are conducted.

The repairs to the seawall are predicted to be finished by April 30, 2021. The emergency authorization requires that the sandbags be removed by May 30, 2021.

The repairs to the seawall do not appear to involve Conservation District lands, and therefore lie outside the jurisdiction of the Office of Conservation and Coastal Lands (OCCL).

The permittee notified OCCL on October 25, 2020 that they had finished placing the sandbags. This Completion Report is attached.

On November 4, 2020 the permittee notified OCCL that eight of the sandbags had been damaged during a large swell. OCCL approved the immediate removal and replacement of the damaged bags.

Please contact Michael Cain at michael.cain@hawaii.gov should you have any questions.

Milowai Maalaea
Emergency Sandbag Seawall Protection
Completion Report
October 25, 2020

Authorization:

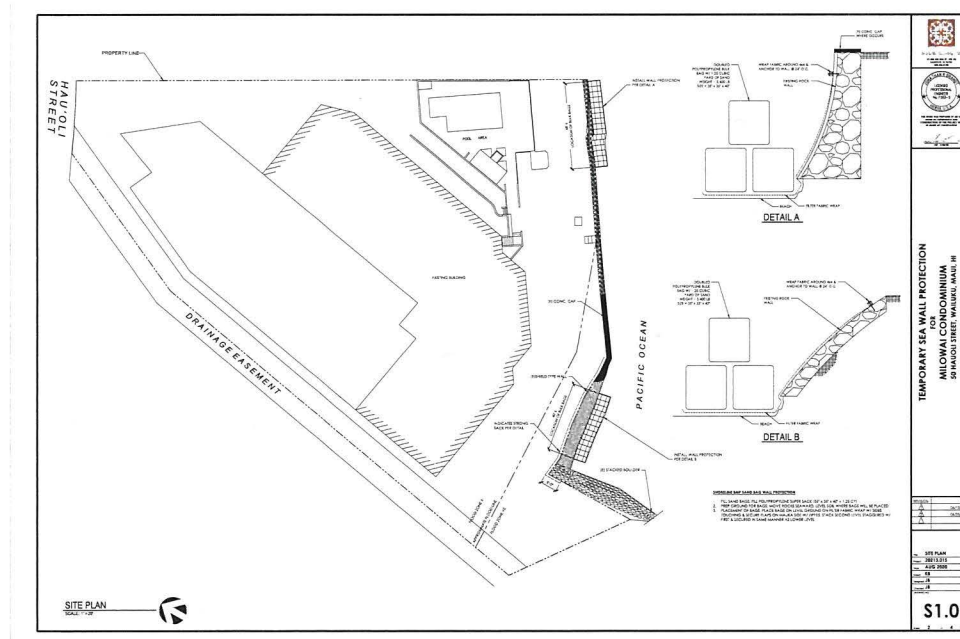
On September 11, 2020 Milowai AOA received authorization from the State of Hawaii, Department of Land and Natural Resources, Office of Conservation and Coastal Land Management, Chairperson, Suzanne D. Case for the temporary emergency placement of sandbags pursuant to (HAR) 13-5-35, Emergency Permits.

Completion Report Requirement:

Pursuant to Item #3 of the State's authorization, the permittee, Milowai AOA "will submit a completion report for the project to OCCL within thirty days of the placement of the bags. It will summarize the construction and detail any deviation from the proposed plans and provide a summary of shoreline conditions since installation. The report will include a photo summary of the temporary structure".

Project Description:

The Milowai seawall failed at several locations and is continuing to degrade. The failure of the wall results in additional damages to the site and for this reason sandbags were installed at those identified locations. The sandbags mitigate the damage until the final repair is complete. A total of (88) bulk bags measuring (40x35x35), 1.25 cubic yard each, made of coated polypropylene, weighted at 3,400 lbs. of sand material per bag were placed seaward of the wall as referenced on the following drawing by JPB Engineering, Inc., #S1.0, dated August 26, 2020. Bags were doubled up for additional thickness.



On September 20, 2020, CHE arrived on site to commence with the project and it was completed on October 1, 2020.

Phone: (808) 870-6987
License AC-30699

Interest to be charged on invoices over 30 days at 1.5% per month
Thank you for your Business.

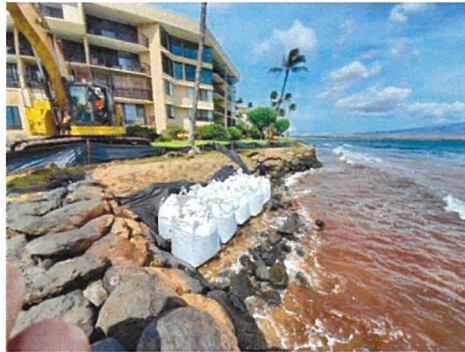
Statement from Chris Hayes Excavation: Work was completed per plans, work was completed 10/1/20, and no deviations were made from the plans.

Project Photographs:

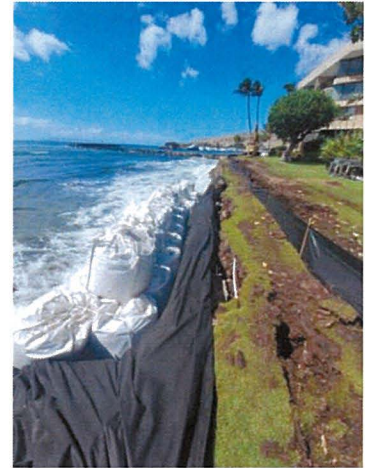
9.20.20



09.21.20



09.28.20



10.1.20



Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Tanci Mintz".

Tanci Mintz
Milowai AOA Board President

EXHIBIT L

From: [Tanci Mintz](#)
To: [Ornellas, Daniel L](#); [Machida, Seiko J](#)
Subject: [EXTERNAL] Right of Entry Permit - Milowai Seawall Repair
Date: Friday, December 11, 2020 8:23:49 AM
Attachments: [20201220 Milowai.pdf](#)

Good Morning Seiko and Daniel,

Please accept this message as a response to the State of Hawaii's request to explain why waiting until January 8, 2021 for the issuance of the Right of Entry Permit is detrimental to our seawall repair project.

Item #1 -

We have received all of the required permits as listed below, the only one outstanding is our ROE permit. Upon receipt, we are ready to commence with the project.

County of Maui -

Flood Development Permit #20200060, Issued June 16, 2020

Non Substantive Amendment to SMA #2012/0008 & SSV #2012/0004, Issued October 20, 2020

Building Permit #B 2020-1134, Issued November 20, 2020

State of Hawaii -

Emergency Authorization for Sandbags #CDUPM-21-01, Issued September 11, 2020

Noise Permit #M-20 037, Issued December 1, 2020

Right of Entry Permit, Pending

Item #2 -

Maui is experiencing a "combination of higher than predicted ocean water levels and high astronomical tides" per the National Weather Service. The increase in high tides are exacerbating the deterioration of the wall.

Item #3 -

Please review the JPB Structural Engineering's letter, providing further evidence of our need to commence with repairs.

Item #4 -

Photographs of the wall increased decline are provided below. To include new areas where sandbags are not installed.

Respectfully Submitted,

Tanci Mintz

Milowai AOA Board of Directors, President









JPB ENGINEERING, INC.
Structural & Geotechnical Engineering

December 10, 2020

Project No. 20213.01S

To: State of Hawaii
Department of Land and Natural Resources
Land Division
130 Mahalani Street
Wailuku, HI 96793

Subject: Seawall Repair at the Milowai Condominium Resort

JPB Engineering Inc (JPBE) has been observing the degradation of the seawall at the Milowai Condominium Resort since late 2017. Around April of 2020 the degradation at the seawall started to accelerate. Since the degradation of this sea wall is due to erosion under and behind the wall, which cannot be observed, the severity of the degradation was difficult to determine. However, with the sudden movement of the wall around April of this year it became apparent that the wall was nearing failure. For this reason, the ownership moved forward with the repair, but due to the rapid degradation of the wall temporary protection was required. Sandbags have been added and has slowed the degradation; however, the wall continues to move towards complete failure. JPBE submits the following as evidence to the continued degradation since the sandbags have been installed.

- An approximately 15 foot long, 2"-6" wide gap has developed behind the wall on the east end where the sandbags occur
- An approximately 20 foot long, 2"-4" wide gap has developed behind the wall on the east side of the stair where no sandbags occur
- An approximately 6ft-8ft square section of rock at the sloped wall section on the harbor side behind the sandbags has rotated and slid downwards.

Respectfully submitted

Jonathan Brandt, P.E.
Senior Structural Engineer



EXHIBIT M

Machida, Seiko J

From: Tanci Mintz <[REDACTED]>
Sent: Thursday, December 17, 2020 10:39 AM
To: Machida, Seiko J
Subject: [EXTERNAL] Milowai Right of Entry Permit
Attachments: 11.06.20. NOI Prometheus Const Milowai Seawall Repair .pdf; Right of Entry Permit - Milowai Seawall Repair.eml

Good Morning,

The Milowai AOA appreciates the due diligence the State of Hawaii and other Regulatory Agency's follow as part of the process to review and approve request such as ours. Having retired from the State of Alaska, I understand the many various groups you work with from constituents, legislators, media, unions, the list is long and the need to ensure procedures are followed.

Our seawall repair project has been long in the making and has been through multiple board of directors. The current board understood the necessity to complete the repairs and agreed to take on the endeavor. We held a zoom meeting with all the owners, our structural engineer, reviewed the project, completing the project correctly and in a manner that would last. A special assessment was approved by the Board, totaling \$2,300,000.00. Approximately half the owners have paid their prorata share in a lump sum and the remainder will be paid by owners through a loan the AOA is securing with the Bank of Hawaii over an eight year period.

I'm sharing the details to let you know the AOA is committed.

As we navigated through the permit process we erred in not receiving a Right of Entry permit for our emergency sandbag request. We take full responsibility for this mistake and understand an appropriate fine may be assessed. We would like to solve this mistake and move forward, please let us know what we can do to address this issue.

We remain very thankful to OCCL for the sandbag approval. The bags provided the much needed structural integrity at two spots that were quickly degrading. But, as the tides continue to be extremely high other areas without sandbags are being undermined (please reference attached evidence email) and the existing wall is failing.

The OCCL emergency authorization stated, "the sandbags shall be removed once repairs to the seawall have been completed, and no later than May 30 2021"..., "failure to follow these conditions, or failure to remove the sandbags once the authorization has expired may constitute a violation...and fines up to \$15,000 per day...".

The AOA has full intentions to comply with the State's directive to remove the temporary sand bags. We've provided a Notice of Intent to Award (attached) to Prometheus Construction for the seawall repair and will execute the Construction Agreement upon receipt of ROE permit. In addition, a change order will be executed for the proposal (see email below) they submitted on November 16, 2020 for the sandbag removal in the amount of \$26,400.00.

From: Cliff Tillotson <[REDACTED]>

Subject: Re: Sandbag Removal

Date: November 16, 2020 at 10:45:26 AM AKST

To: Milowai Tanci Mintz <[REDACTED]>

Cc: Peter Gooding <[REDACTED]>, Govi Tillotson <[REDACTED]>, Robert Vafaie <[REDACTED]>

Aloha Tanci,

I talked to Govi about the sandbags.

We calculate that there are roughly 88 super sack sandbags to remove and dispose of.

We could do the removal for \$300 per bag; which comes to a lump sum for the work of \$26,400.00.

Let me know if you have any questions.

Thanks,

Cliff

Cliff Tillotson

Vice President

Prometheus Construction

Cell: [REDACTED]

[REDACTED]

Sent Via Electronic Email to:

November 6, 2020

Prometheus Construction
651 Komohana St.
Kapolei, HI 96707

Re: Milowai Ma'alaia Seawall Repair
5o Hauoli Street, Wailuku HI
Notice of Intent to Award Contract

Mr. Peter Gooding:

Following the analysis and review of your proposal package, we are pleased to advise that Prometheus Construction is provided a Notice of Intent (NOI) to Award for the above referenced project. Subject to the conditions noted, the Association is prepared to move this project forward.

In accordance with this determination, Prometheus agrees to submit the following within (48) hours of receipt of a Notice of Award:

1. Performance and Payment Bond in the bid amount of \$2,360,000.00
2. Executed Construction Agreement as provided by AOA

The award and a fully executed Construction Agreement are conditional upon: (1) the AOA a bank loan to provide additional funds for this project and (2) Issuance of Permits from the County of Maui and the State of Hawaii. We anticipate proceeding with the project within 30-45 days.

The Construction Agreement will reference the following documents as exhibits:

- | | |
|----------|---|
| 02.24.15 | County of Maui SMA & SSV Use Permit |
| 05.03.18 | JPB Engineering Geotechnical Report |
| 06.12.20 | JPB Engineering Structural Plans and Specifications |
| 06.16.20 | Milowai Seawall Repair Request for Proposal |
| 06.16.20 | Milowai Seawall Repair draft template, Construction Agreement |

06.26.20 Milowai Seawall Repair Addendum One
07.14.20 Milowai Seawall Repair Addendum Two
10.09.20 JPB Engineering Revised Structural Plans and Specifications
10.20.20 County of Maui, SMA & SSV Use Permit Non-Substantive Amendment
10.28.20 Prometheus Proposal (note: document does not list all contractual documents, the Construction Agreement will take precedence).
11.02.20 Prometheus, RFP IV. Bid Page & Signed Proposal
11.02.20 Prometheus: Schedule of Values, COI, Licensing, Project Schedule
*regarding your COI, please provide verification that the multi-family exclusion (if in your policy) has been exempted out

This Notice of Intent is an acceptance of your proposal but should not be considered a binding commitment for Prometheus Construction or the Milowai Ma'alaea AOA until the terms are reduced to a fully executed contract.

We congratulate you and look forward to working with you to complete this undertaking cooperatively and successfully. If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,



Tanci M. Mintz
Milowai Ma'alaea AOA Board President

cc: Robert Vafaie
JPB Structural Engineering
Hawaiiana Management Company
Milowai AOA Board Members
Vision Consultation Services