

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

January 22, 2021

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

PSF No.: 20MD-107

MAUI

Grant of Term, Non-Exclusive Easement to Association of Apartment Owners of Wailea Elua for Beach Access Stairway Purposes; Issuance of Immediate Management Right-of-Entry Permit, Wailea, Maui, Tax Map Key: (2) 2-1-008: Seaward of 069.

APPLICANT:

Association of Apartment Owners of Wailea Elua, a Hawaii nonprofit corporation

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Wailea, Maui, identified by Tax Map Key: (2) 2-1-008: Seaward of 069, as shown on the attached map labeled **Exhibit A**.

AREA:

Easement: 22 square feet, more or less (see **Exhibit I**)

ZONING:

State Land Use District: 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 with encroachments.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, repair, replace and remove a beach access stairway over, under and across State-owned land for access purposes.

TERM:

25 years.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

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

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," and Part 1, Item 39 that states, "Creation or termination of easement, covenants, or other rights in structures or land." See **Exhibit E**.

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:

The Association of Apartment Owners of Wailea Elua has requested a non-exclusive easement for a portion of a stairway located on unencumbered State lands. The purpose of the easement is to resolve a shoreline encroachment that consists of a beach access stairway fronting the Wailea Elua Village that descends from the Wailea Coastal Walk to Ulua Beach (see **Exhibit B, C and D**).

The total area of the structure is 120 square feet, with 22 square feet of the structure encroaching into the shoreline (see **Exhibit I**). It is believed that the original stairway was constructed sometime in the 1970's, with a replacement stairway being constructed in 2009.

The replacement stairway was approved by the County of Maui only, as it was assumed the stairway was mauka of the shoreline based on both a certified shoreline survey done in 1983 and a subsequent shoreline survey in 2006 that was not certified. The building permit for the stairway reconstruction was issued on September 30, 2009 and completed on January 12, 2010 (see **Exhibit F and G**).

The applicant would like to obtain an easement for the stairway in order to keep the stairway in place to provide extra access to the central part of Ulua Beach for both members of the public and Wailea Resort guests who utilize Ulua Beach for common recreational and marine activities such as snorkeling, sunbathing, and swimming among others. The applicant requested a perpetual easement, however, under current Board policy all easements in the shoreline area are limited to a term of 25 years.

Because it will take time to issue applicant an easement, staff is including a recommendation for the issuance of an immediate management right-of-entry permit (ROE) to applicant pending the finalization of the easement. The ROE will include indemnity and insurance requirements that will help protect the State in the event any claims arise from the use of the stairway. The ROE permit shall be valid for one year or until the easement issues, whichever is sooner. The Chairperson may extend the ROE for up to one additional year for good cause shown.

A draft of this submittal was disseminated to agencies listed below with the results indicated:

Agency	Comment
DLNR - Forestry and Wildlife	No Objections
DLNR - Conservation and Coastal Lands	See Exhibit H
County of Maui – Department of Planning	No response by suspense date.

Office of Hawaiian Affairs	No response by suspense date.
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Staff believes that the granting of an easement and immediate management right-of-entry permit for the encroaching portion of the beach access stairway would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Subject to the Applicant fulfilling the Applicant requirements listed above, authorize the issuance of a 25-year term, non-exclusive easement to the Association of Apartment Owners of Wailea Elua covering the subject area for beach access stairway 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 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) 2-1-008:069, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the 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.
3. Authorize the issuance of an immediate management right-of-entry permit to Association of Apartment Owners of Wailea Elua 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. Authorize the Chairperson to extend the right-of-entry permit for up to one additional year for good cause shown;
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

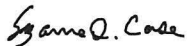
Respectfully Submitted,



Edward T. Paa
Land Agent

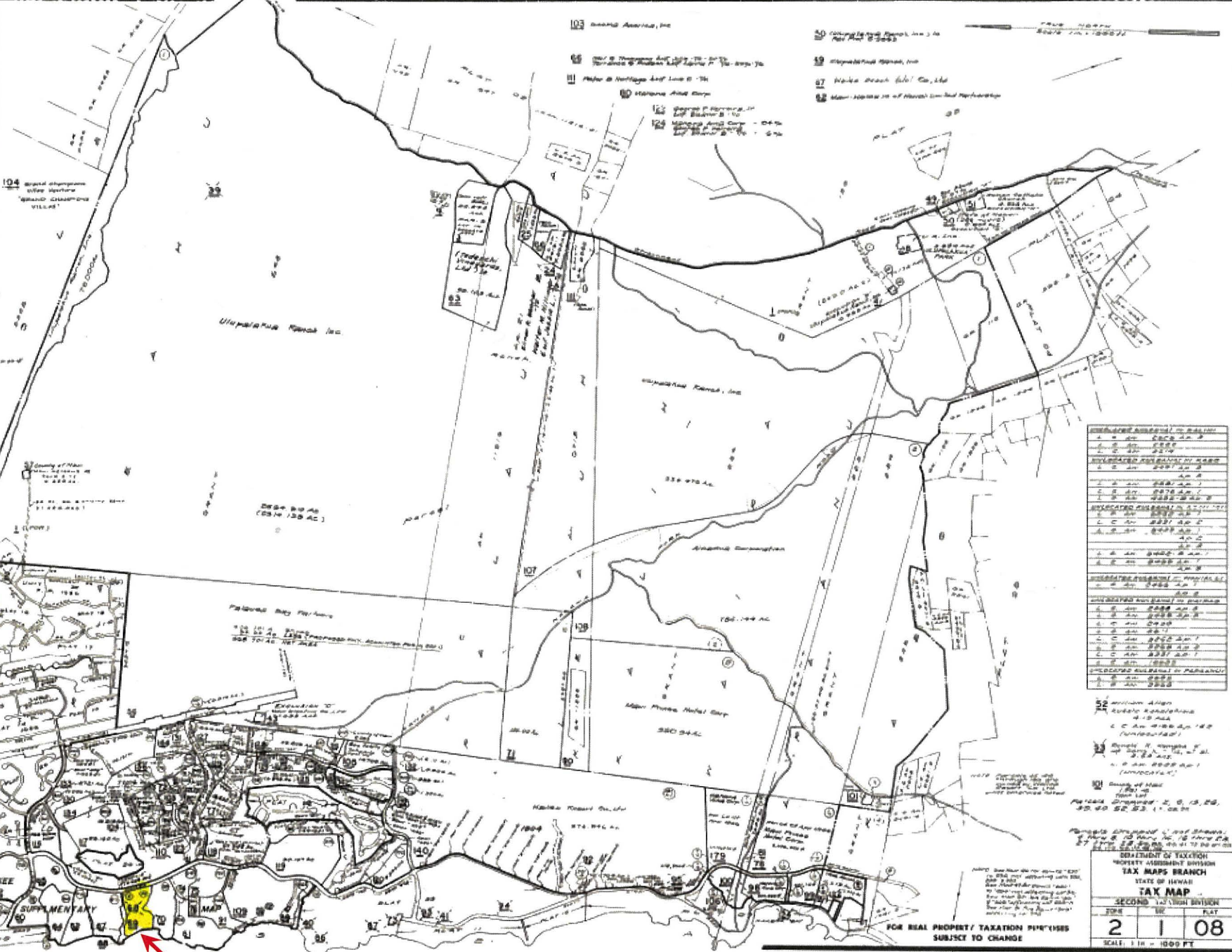
APPROVED FOR SUBMITTAL:

RT



Suzanne D. Case, Chairperson

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EXHIBIT A

**SUBJECT AREA
TMK: (2) 2-1-008:
Seaward 069**

DEPARTMENT OF TAXATION
PROPERTY ASSESSMENT DIVISION
TAX MAPS BRANCH
STATE OF HAWAII
TAX MAP
SECOND LIGHT DIVISION
2 1 08
SCALE: 1 IN = 1000 FT

FOR REAL PROPERTY TAXATION 1/1/1988
SUBJECT TO CHANGE



Location and TMK Map
Wailea Elua Village



EXHIBIT B

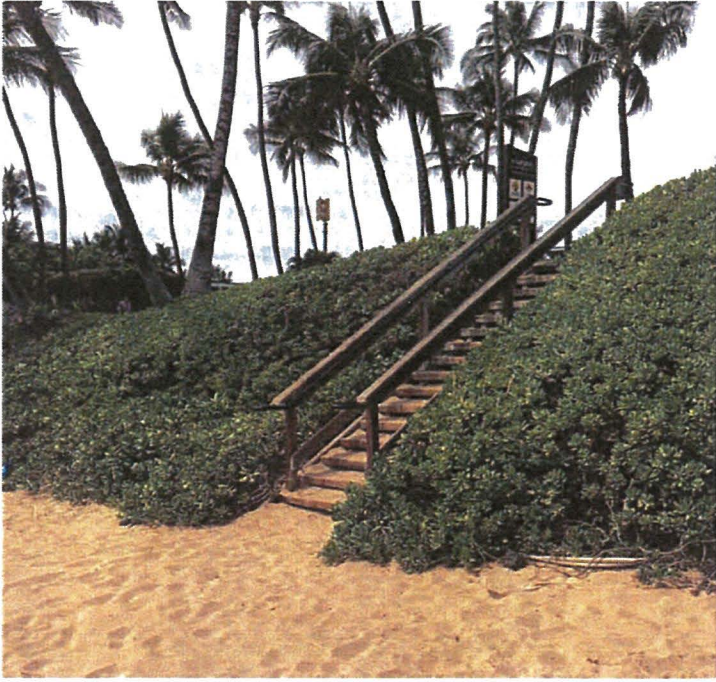


Photo 1 - Stairway

Photo 2 - Stairway



EXHIBIT C



Photo 3 – Wailea Coastal Walk
Looking north from top of stairway

Photo 4 – Wailea Coastal Walk
Looking south towards top of stairway

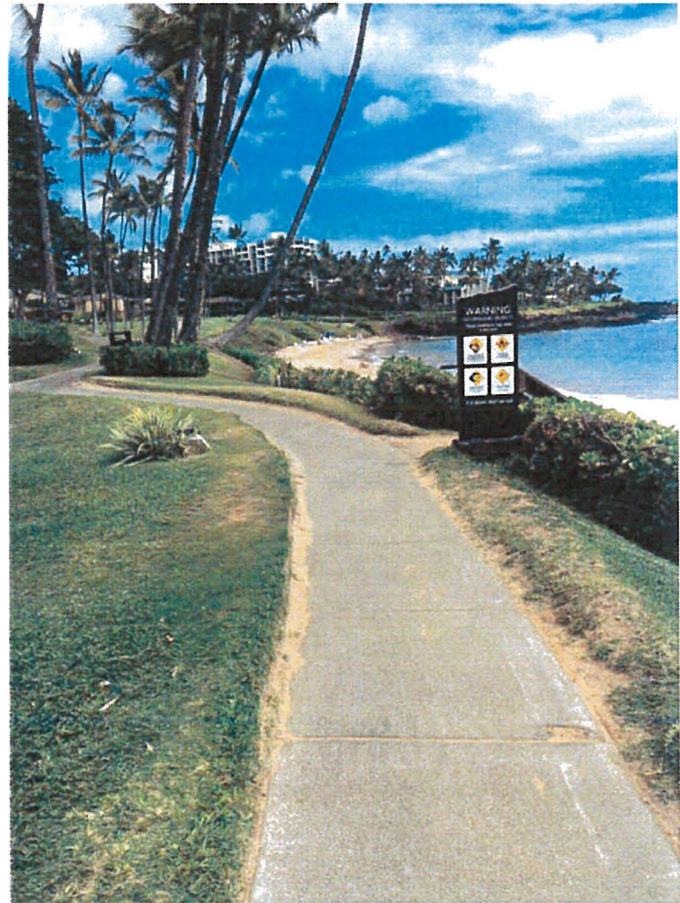


EXHIBIT D

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 22, 2021

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

EXEMPTION NOTIFICATION

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

Project Title: Grant of Term, Non-Exclusive Easement to Association of Apartment Owners of Wailea Elua for Beach Access Stairway Purposes; Issuance of Immediate Management Right-of-Entry Permit, Wailea, Maui, Tax Map Key: (2) 2-1-008: Seaward of 069.

Reference No.: PSF 20MD-107

Project Location: Wailea, Maui, Tax Map Key: (2) 2-1-008: Seaward of 069.

Project Description: Grant of Term, Non-Exclusive Easement to Association of Apartment Owners of Wailea Elua for Beach Access Stairway Purposes; Issuance of Immediate Management Right-of-Entry Permit.

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

Exemption Class No.: In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," and Part 1, Item 39 that states, "Creation or termination of easement, covenants, or other rights in structures or land."

Cumulative Impact of Planned Successive: No. This request is pertaining to the issuance of a term, non-exclusive easement in a developed area for an existing

EXHIBIT E

Actions in Same Place Significant?

stairway, and staff believes that the request would involve negligible change in use of the subject area beyond previously existing.

Action May Have Significant Impact on Particularly Sensitive Environment?

No, the area is a portion of shoreline State lands that is accessible to the public for the purpose of beach and offshore recreational activities and is impacted by human activity daily. In addition, based on the analysis below, staff believes there would be no significant impact to sensitive environmental or ecological receptors.

Consulted Parties:

MDLO staff consulted with Office of Conservation and Coastal Lands (OCCL), Division of Forestry and Wildlife (DOFAW), the County of Maui Planning Department and Office of Hawaiian Affairs (OHA) regarding subject term, non-exclusive easement.

Analysis:

The requested easement would involve negligible or no expansion or change of use beyond that previously existing.

Recommendation:

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

EXHIBIT E

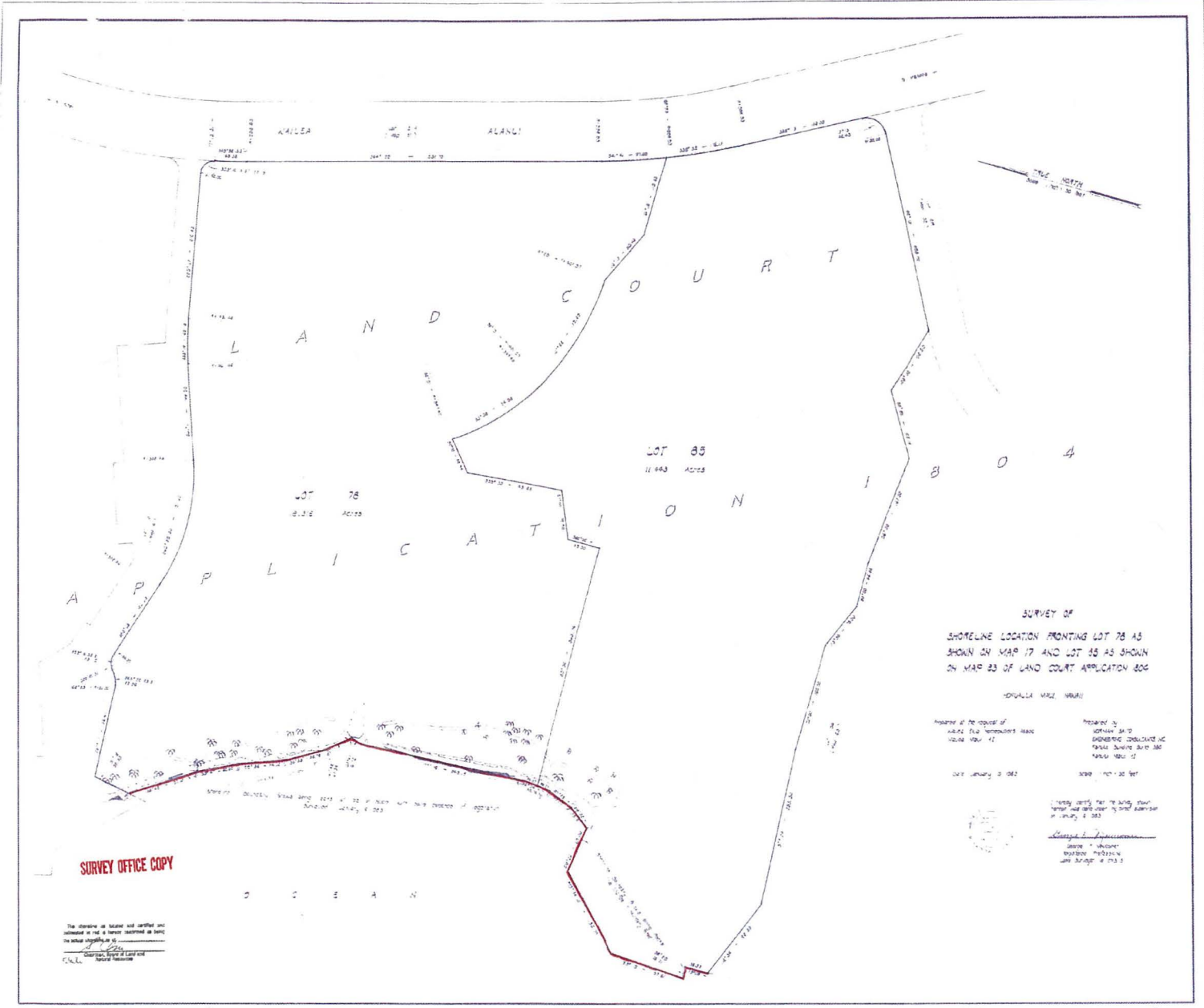


EXHIBIT F

BUILDING PERMIT

DEPARTMENT OF PUBLIC WORKS
DEVELOPMENT SERVICES ADMINISTRATION, COUNTY OF MAUI

BUILDING PERMIT NO.: B 2009-1157 DATE ISSUED: SEPTEMBER 30, 2009
 OWNER: WAILEA ELUA I - CONDO MASTER LESSEE/TENANT:
 ADDRESS: 3600 WAILEA ALANUI DR, KIHEI HI 96753 TMK: (2) 2-1-008:069
 BUILDER: DOBROVICH GENERAL CONTRACTING, LLC
 FOR: REMOVE & REPLACE BEACH ACCESS STAIRS
 CONSTRUCTION TYPE: V-N OCCUPANCY GROUP: U-2

THIS PERMIT SHALL EXPIRE AND BECOME NULL AND VOID IF WORK AUTHORIZED UNDER THIS PERMIT IS NOT STARTED WITHIN 180 DAYS FROM DATE OF ISSUANCE OR IF WORK AUTHORIZED UNDER THIS PERMIT IS SUSPENDED OR ABANDONED AT ANY TIME AFTER WORK IS COMMENCED FOR A PERIOD OF 180 DAYS.


THIS PERMIT SHALL BE POSTED IN A CONSPICUOUS PLACE ON THE JOB SITE DURING THE PROGRESS OF WORK AS REQUIRED BY LAW. THE STAMPED JOB SITE PLANS MUST BE AVAILABLE DURING INSPECTIONS.


FOR BUILDING OFFICIAL

BUILDING OFFICIAL USE ONLY

Certificate of Occupancy or Release Letter required upon completion of construction work authorized by this permit:

Select one:	<input checked="" type="checkbox"/> NO	or	<input type="checkbox"/> YES refer to CO Application #
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REQUIRED BUILDING INSPECTIONS (270-7381):			
1.	Foundation/concrete slab or under-floor	Approved by:	Date:
2.	Framing	Approved by:	Date:
3.	Lath or gypsum board	Approved by:	Date:
4.	Final	Approved by: 	Date: 1-12-10

ELECTRICAL PERMIT NO.		ELECTRICAL CONTRACTOR:	
REQUIRED ELECTRICAL INSPECTIONS (270-7255):			
1.	Rough-in Partly/slab or trench	Approved by:	Date:
2.	Rough-in Partly/ceilings and walls	Approved by:	Date:
3.	Rough-in Complete/service	Approved by:	Date:
4.	Final	Approved by:	Date:

PLUMBING PERMIT NO:		PLUMBING CONTRACTOR:	
REQUIRED PLUMBING INSPECTIONS (270-7368):			
1.	Rough-in Partly/waste, drain, piping, stub up	Approved by:	Date:
2.	Rough-in Complete/vent through roof	Approved by:	Date:
3.	Final	Approved by:	Date:

EXHIBIT G

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
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ROBERT K. MASUDA
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ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:SS

Shoreline Encroachment MA 20-2

JUL 26 2019

Rory Frampton Consulting, Inc.
c/o Rory Frampton
340 Napòko Place
Kula, HI 96790

SUBJECT: Request to Resolve State Land Encroachments at 3600 Wailea Alanui Drive, Kihei, Maui, Hawaii; Tax Map Key (2) 2-1-008:069

Dear Mr. Frampton:

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL), is in receipt of your Shoreline Encroachment Information Sheet seeking to resolve encroachments on State Lands fronting property located at 3600 Wailea Alanui Drive, Kihei, Maui, Hawaii. In addition to the completed Shoreline Encroachment Information Sheet, your letter included a cover letter, a TMK map highlighting the subject property, a copy of the 1983 certified shoreline map, three pages relating to building permits from the County of Maui, and six pages of photos of the subject encroachment and surrounding area.

You are working to resolve a shoreline encroachment that consists of a beach access stairway fronting the Walea Elua Village that descends from the Wailea Coastal Walk to Ulua Beach. The total area of the encroaching structure is roughly 120 square feet. It is believed that the original stairway was constructed sometime in the 1970's, with a replacement stairway being constructed in 2009. The replacement stairway was approved by the County of Maui only, as it was assumed the stairway was mauka of the shoreline based on both a certified shoreline survey done in 1983 and a subsequent shoreline survey in 2006 that was not certified. The building permit approvals for the stairway reconstruction were included in the applicant's package. The applicant would like to obtain an easement for the staircase in order to keep the staircase in place to provide extra access to the central part of Ulua Beach.

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

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and

EXHIBIT H

5. Apply “no tolerance” policy for recent or new unauthorized shoreline structures

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

Surrounding Land Uses: The encroaching staircase is within the Wailea Resort Area, with resorts sitting immediately east, north, and south of the subject area. The Wailea Coastal Walk runs parallel to the shoreline and provides lateral public access throughout the entire Wailea Resort area. The subject staircase connects the Wailea Coastal Walk to the central part of Ulua Beach. Both members of the public and Wailea Resort guests utilize Ulua Beach Park for common recreational and marine activities such as snorkeling, sunbathing, and swimming, among others.

Beach Resources and Environment: The subject encroachment connects the Wailea Coastal Walk to the middle section of Ulua Beach, a sandy pocket beach fronting the Wailea Elua Village Resort. North of Ulua Beach Park sits the parking lot and restroom area as well as Mokapu Beach Park, another pocket beach, and south of Ulua Beach Park is a rocky shoreline fronting more resorts. The Shoreline Erosion Rate Maps developed by the University of Hawaii’s Coastal Geology Group show that the Ulua Beach area, as well as the majority of the entire Wailea-Makena coastline, has experienced consistent erosion over the last century, decreasing the width of Ulua Beach Park by roughly 35%.

Public Access: The encroaching staircase provides access to the middle part of Ulua Beach Park from the Wailea Coastal Walk, which itself provides continuous lateral public access for the majority of the Wailea Resort Area. Ulua Beach Park has concrete access ramps at both the north and south ends of the park, and there is a small pathway from the Wailea Coastal Walk to Ulua Beach Park through the vegetation roughly 220 feet south of the subject stairway. The encroaching staircase is the only other access to Ulua Beach Park.

Effect of Removing the Encroachment on:

Beach Resources: Removal of the encroaching stairway would have minimal effects on the shoreline and beach environment. There are no apparent negative impacts on the beach environment from the stairway, and removal of the encroachment would not improve lateral access.

Public Access: The subject stairway provides direct public access from the Wailea Coastal Walk and adjacent resort areas to Ulua Beach Park. Removal of the stairway would not have negative effects to access, rather it would provide one less location to access the beach from the Coastal Walk.

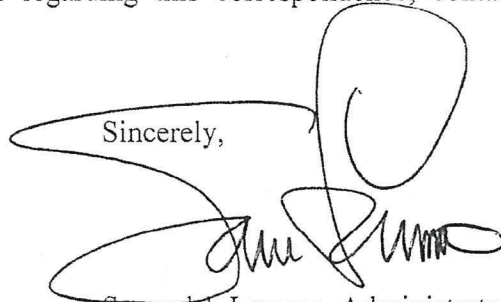
Adjacent Properties: Removal of the encroaching staircase would have no direct impact on adjacent or nearby properties. The stairway provides an extra access point to Ulua Beach Park for those guests staying in the adjacent resorts.

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

The subject encroachment consists of a stairway connecting the Wailea Coastal Walk to the middle part of Ulua Beach Park. The staircase has a footprint of roughly 120 square feet and is one of four access points to Ulua Beach from the resort areas and the Coastal Walk. The staircase was rebuilt in 2009 with only approval from the County of Maui, as it was believed that it was located mauka of the certified shoreline based on surveys done in 1983 (certified) and 2006 (not certified). We find that removal of the encroaching staircase would not impact lateral access or interfere with natural coastal processes. Rather, the staircase provides another public access point for Ulua Beach Park.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Samuel J. Lemmo', written over a large, stylized, abstract scribble that also contains the word 'Sincerely,'.

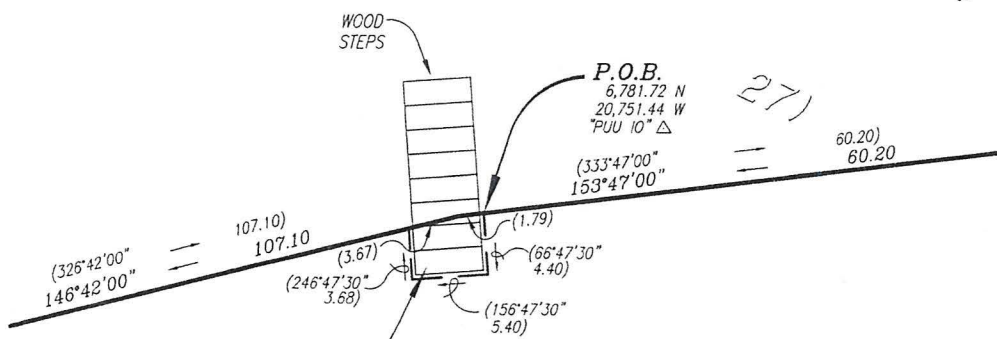
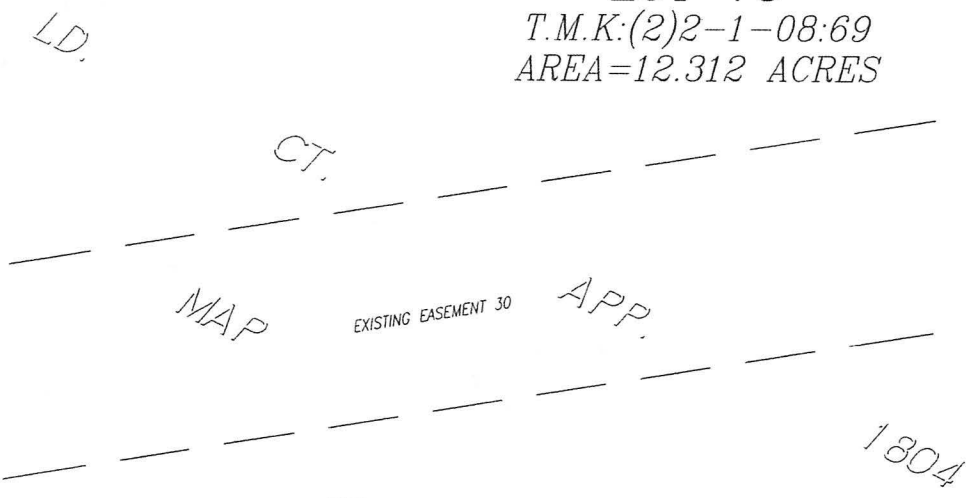
Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

CC: Chairperson
MDLO
County of Maui
-Planning Department

EXHIBIT H

TRUE NORTH
SCALE: 1" = 10'

LOT 78
T.M.K.:(2)2-1-08:69
AREA=12.312 ACRES



NON-EXCLUSIVE EASEMENT "A"
(FOR STAIR ENCROACHMENT PURPOSES)
AREA=22 SQ. FT.

O C E A N



THIS WORK WAS DONE BY ME OR UNDER MY DIRECT SUPERVISION.
[Signature]
SHERMAN DUDLEY DEPONTE
LICENSED PROFESSIONAL LAND SURVEYOR
STATE OF HAWAII CERTIFICATE NO. 6960
EXPIRATION DATE: 30 APRIL 2020

NON-EXCLUSIVE EASEMENT "A" AFFECTING LOT 78 OF LAND COURT APPLICATION 1804 (MAP 27)	JOB NO.: 219368-SHORE-ESMT
	SCALE: 1" = 10'
AKAMAI LAND SURVEYING, INC. P.O. BOX 1748 MAKAWAO, MAUI, HAWAII 96768	T.M.K.:(2)2-1-08:69
	DATE:16DEC'19 SHEET 1 OF 1

EXHIBIT I

TERM NON-EXCLUSIVE EASEMENT
FOR STAIR PURPOSES

Honuaula, Maui, Hawaii

Being a portion of Government Land fronting Lot 78 of
Land Court Application 1804 (Map 27).

Beginning at the Southeasterly corner of this easement, being a point on the Westerly boundary line of Lot 78 of Land Court Application 1804 (Map 27), the coordinates of said point of beginning are based on record information and refer to Government Survey Triangulation Station "PUU IO" being 6,781.72 feet North and 20,751.44 feet West and running by azimuths measured clockwise from True South; thence,

1. 66° 47' 30" 4.40 feet along the remainder of Government Land to a point; thence,
2. 156° 47' 30" 5.40 feet along the same to a point; thence,
3. 246° 47' 30" 3.68 feet along the same, to a point; thence,
4. 326° 42' 00" 3.67 feet along the Westerly property boundary line of Lot 78 of Land Court Application 1804 (Map 27) being the upper reaches of waves as surveyed on May 8, 2015 at 11:30am to a point; thence,
5. 333° 47' 00" 1.79 feet along the same, to the point of beginning and containing an area of 22 square feet.

This work was done by me or
under my direct supervision.

AKAMAI LAND SURVEYING, INC.



Sherman Dudley DePonte
Licensed Professional Land Surveyor
State of Hawaii Certificate No. 6960
Expires: April 30, 2020
219368 (12-17-19 TK)



EXHIBIT I