

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

June 9, 2022

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

PSF No.: 20MD-093

Maui

Cancellation of Revocable Permit No. S-7935, Association of Apartment Owners of Kulakane, Permittee, Request for Waiver of Phase I Environmental Site Assessment Requirement and Release of Removal Bond, Mahinahina, Lahaina, Maui, Tax Map Key: (2) 4-3-006: Seaward of 011.

REQUESTS:

Cancellation of Revocable Permit No. S-7935 effective May 23, 2022; Waiver of Phase I Environmental Site Assessment Requirement; and Release of Removal Bond.

REMARKS:

Permit holder, Association of Apartment Owners (AOAO) of Kulakane received Board approval for a revocable permit at the Board's February 12, 2021 meeting, as item D-4, copy attached as Exhibit 1. Permittee was authorized to have sheet pile temporarily installed seaward of their seawall so that grout could be safely injected underneath the seawall from the landward side without risking contamination of the shoreline and ocean.

Revocable Permit No. S-7935, attached as Exhibit 2, was effective from June 23, 2021 at a monthly rental of \$101.00. The sheet pile was removed in April 2022 and Permittee's consultant notified Land Division staff on April 28, 2022 that the sheet pile had been removed and Permittee wanted to cancel the RP. Staff performed a site inspection on May 5, 2022 and confirmed that the area was restored to its prior condition. Staff photos and photos provided by Permittee's consultant are attached as Exhibit 3.

Condition 13 of the RP required Permittee to conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary. Staff is recommending that the Board waive this requirement because there does not appear to be any matter to be disposed of. The sheet pile prevented foreign matter such as grout from entering the shoreline or the water. Staff visually inspected the site both before and after the repair work and did not identify any debris or grout in the shoreline area.

Condition 19 of the RP required Permittee to post a removal bond in case they did not

remove it after the project was complete. Permittee obtained a removal bond in the amount of \$350,000.00, attached as Exhibit 4, which they are now requesting to be released. Staff recommends that the bond be released because Permittee removed the sheet pile without incident. The permit needs to be cancelled before DLNR can release the bond.

RECOMMENDATION: That the Board

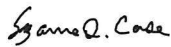
1. Authorize the cancellation of Revocable Permit No. S-7935 to AOA O Kulakane effective May 23, 2022.
2. Waive the Phase I Environmental Site Assessment requirement as detailed on Section B, Page 7, Condition 13, upon cancellation of Revocable Permit No. S-7935.
3. Authorize the release of the removal bond.

Respectfully Submitted,



Seiko Machida
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



EXHIBIT 1

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

February 12, 2021

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

PSF No.: 20MD-093

Maui

Issuance of Revocable Permit to the Association of Apartment Owners of
Kulakane to Repair a Seawall, Mahinahina, Lahaina, Maui, Tax Map Key: (2) 4-
3-006: Seaward of 011.

APPLICANT:

Association of Apartment Owners of Kulakane (AOAO Kulakane)

LEGAL REFERENCE:

Section 171-55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of the State of Hawaii situated at Mahinahina, Lahaina,
Maui, identified by Tax Map Key: (2) 4-3-006: Seaward of 011, as shown on the attached
map labeled Exhibit A.

AREA:

300 square feet, more or less.

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.

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
February 12, 2021 Go.

D-4

CHARACTER OF USE:

For purposes of repairing a seawall located on private land (some repair work will require entry onto State submerged land).

COMMENCEMENT DATE:

Commencement date to be determined by the Chairperson.

MONTHLY RENTAL:

Monthly rental amount is to be determined by staff, subject to review and approval by the Chairperson.

REMOVAL BOND

A removal bond is required, in an amount to be determined by DLNR's Land and Engineering Divisions, and approved by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with HAR § 11-200.1-16 (a)(2) and the Exemption List for the Department of Land and Natural Resources (DLNR) 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, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing." The exemption notification 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 the DLNR Office of Conservation and Coastal Lands (OCCL) Site Plan Approval (SPA) number MA 20-68 dated August 7, 2020, copy attached as Exhibit C.

- 2) Remove sheet pile immediately upon completion of the construction activity. Proof of removal including a signed statement that the sheet piles have been removed, and photographs, shall be provided to the Department immediately after project completion.
- 3) 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 removing the sheet pile fronting the seawall in the event that applicant fails to do so upon completion of the seawall repair project.
- 4) Pay an appropriate monthly rental amount, to be determined by the Chair, for the duration of the Revocable Permit.
- 5) Receive a County of Maui building permit for the repair work prior to commencing work.

REMARKS:

The Kulakane is a 42-unit oceanfront condominium built in the 1970's. The rear yard is retained by a 240-foot long legal non-conforming concrete block seawall that is located within the parcel boundary. The wall is made of concrete block reinforced with rebar and has a poured concrete face and an overwash lip to prevent splashover. The vertical wall rests upon a horizontal slab foundation that extends 1 to 2 feet from the face and rear of the seawall.

Sinkholes have formed in the yard area behind the seawall due to large seasonal waves scouring the footing. This has compromised the seawall's structural integrity.

To fix the wall, the footing must rest on firm aggregate. The proposed repair would inject grout directly beneath the seawall's foundation from in front and in back of the seawall. The grout would fill voids underneath the wall's footing that are not visible because they are below the wall's foundation and the water level. The grout would agglomerate the material directly underneath the wall thereby supporting the horizontal footing that the vertical wall rests upon and restoring its structural integrity and function.

Sheet pile would be installed along the front edge or toe of the seawall's foundation as an additional best management practice. The front edge of the seawall where the sheet pile would be installed appears to be makai of the shoreline and in the State conservation district. The sheet pile would form a shallow underground dam for the injectate to press against and become denser. It would also help prevent seaward migration of the grout and would protect the footing of the wall from further scouring. The sheet pile would be removed upon completion of the project. Staff has included an applicant requirement above that Applicant post a bond in an appropriate amount to secure the removal of the sheet pile at the end of the project should Applicant fail to do so. The amount of the bond

will be approved by the Chairperson after consultation with Land Division and Engineering Division.

The repairs would be staged entirely from the rear yard landward of the seawall and all work would be within the parcel's boundary. Applicant states that immediate repairs are necessary to prevent the seawall's failure and to avoid damaging marine resources. Winter storms and swells can further destabilize the seawall. Copies of maps and photos provided by Applicant are attached as Exhibit D.

According to OCCL SPA number MA 20-68, condition fourteen (14), applicant must provide proof of removal of the sheet pile, including a signed statement that the sheet piles have been removed and photographic evidence of such, and this documentation shall be provided to the Department immediately after project completion. Failure to comply with this condition shall result in an enforcement action pursuant to HRS Chapter 183C-7. Applicant shall be required to post a removal bond for the sheet pile in the event that Applicant does not remove it after the project is complete. The amount of the bond shall be approved by the Chairperson after consultation with DLNR Land Division and Engineering Division staff. The bond should cover the cost of removing the sheet pile fronting the seawall. In addition, applicant shall pay an appropriate monthly rental amount, to be determined by the Chair, for the duration of the Revocable Permit.

Applicant received Site Plan Approval (SPA) number MA 20-68 from OCCL on August 7, 2020, copy attached as Exhibit C. The County of Maui Department of Planning Department's Special Management Area (SMA) exemption, Shoreline Setback Approval (SSA), and Environmental Assessment Exemption (EAE) dated June 9, 2020 is attached as Exhibit E.

Applicant states that in 2014 they checked with the United States Army Corps of Engineers regarding whether a permit from them is required, and they said the seawall is not their jurisdiction.

The project is estimated to take six months to complete.

Applicant requested an ROE permit for this project, but staff is recommending a revocable permit for better tracking purposes, and to encourage applicant to complete the project in a timely manner.

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 <u>Exhibit F</u> .
DLNR--OCCL	Comments attached as <u>Exhibit G</u> .

County of Maui Planning Dept.	Comments attached as <u>Exhibit H.</u>
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DAR's comments included a suggestion that the type of grout, which is a chemical hydrophobic compound, be vetted by the State Department of Health (DOH), Clean Water Branch. Applicant then wrote to the Clean Water Branch requesting their opinion on the use of Uretek for the subject seawall repair. The Clean Water Branch responded that they have no objections to the use of Uretek polymer. A copy of the email correspondence regarding the seawall grout is attached as Exhibit I.

OCCL's comments emphasized the importance of removing the sheet pile from the makai side of the seawall upon completion of the repair project. The County of Maui Planning Department approves a Land Division disposition for seawall repair.

RECOMMENDATION: That the Board

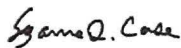
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the issuance of a revocable permit to AOA Kulakane 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 revocable permit form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



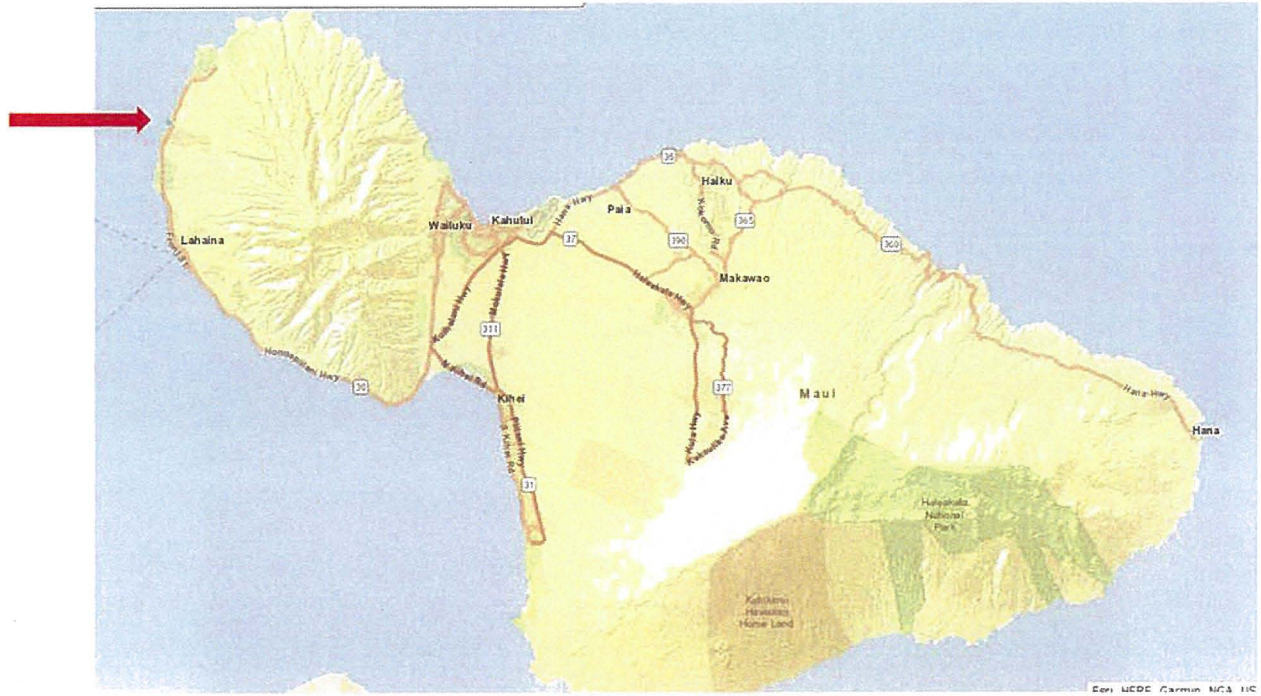
Seiko Machida
Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson





DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

ROBERT K. MASUDA
FIRST DEPUTY

KALEO L. 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, Hawaii Revised Statutes (HRS) and Section 11-200.1-16 (a)(2) of the Hawaii Administrative Rules (HAR)

Project Title: Issuance of Revocable Permit to the Association of Apartment Owners of Kulakane to Repair a Seawall, Mahinahina, Lahaina, Maui, Tax Map Key: (2) 4-3-006: Seaward of 011

Project / Reference No.: PSF 20MD-093

Project Location: Mahinahina, Lahaina, Maui, Tax Map Key: (2) 4-3-006: Seaward of 011

Project Description: The Association of Apartment Owners of Kulakane ("Applicant") is hiring a contractor to repair a failing seawall. Applicant needs a revocable permit at the subject location because a portion of the seawall is submerged at times, and sheet metal approximately three feet in vertical height will be inserted on the outer (makai) edge of the seawall down to a depth of up to three feet to mitigate and contain the injected grout under the seawall. The total area makai of the seawall that will be used for the removal activity is estimated at 300 square feet, more or less. All equipment will operate inland of the seawall and on private property.

The 240-feet long legal non-conforming concrete block seawall is reinforced with rebar and has a poured concrete face and an overwash lip to prevent splashover. The vertical wall rests upon a horizontal slab foundation that extends 1 to 2 feet from the face and rear of the seawall. The proposed repair would inject a grout called Uretek directly beneath the seawall's foundation from in front and in back of the seawall. The grout would fill voids underneath the wall's footing that are not visible because they are below the wall's foundation and the water level. The grout would agglomerate the material directly underneath the wall thereby

EXHIBIT B

supporting the horizontal footing that the vertical wall rests upon and restoring its structural integrity and function. Sheet pile would be installed along the front edge or toe of the seawall's foundation as an additional best management practice. The sheet pile would form a shallow underground dam for the injectate to press against and become denser. It would also help prevent seaward migration of the grout and would protect the footing of the wall from further scouring. The sheet pile would be removed upon completion of the project.

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

Exemption Class No.: In accordance with Hawaii Administrative Rules (HAR) Section 11-200.1-16 (a)(2) and the Exemption List for the Department of Land and Natural Resources reviewed and concurred 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, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing", Part 1, Item No. 44 that states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."

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

No, the request is a short-term revocable permit to repair an existing concrete block seawall fronting the yard of a condominium building.

The impact of this project will be to stabilize a compromised seawall and prevent it from creating hazardous conditions and debris on the beach while preventing possible property loss upland of the seawall. The proposed seawall repair is considered a long-term solution to the problem of the compromised seawall.

Action May Have
Significant Impact on
Particularly Sensitive

Environment?:	No, staff believes there would be no significant impact to sensitive environmental or ecological receptors. The project has been reviewed and approved by subject matter experts in the DLNR Office of Conservation and Coastal Lands and the County of Maui Department of Planning. MDLO staff cites general exemption Type 1, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing", Part 1, Item No. 44 that states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing."
Consulted Parties	Consulted with the DLNR Division of Aquatic Resources, OCCL, and the County of Maui Planning Department, who have responded with comments. DAR had no objections to the seawall repair project, but requested more information regarding the grout (Uretek) and requested comment from the State Department of Health Clean Water Branch. The Clean Water Branch had no objection to the use of Uretek polymer as long as it's used according to manufacturer's instructions. OCCL emphasized the importance of removing the sheet pile fronting the seawall upon completion of the repair project. The County of Maui Planning Department approves a Land Division disposition for the seawall repair project.
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.

RECEIVED AUG 11 2020

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

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

REF:OCCL:SS

Site Plan Approval: MA 20-68

AOAO Kulakane President
c/o Ernie Dankas
3741 Lower Honoapiilani Road
Lahaina, HI 96761

AUG - 7 2020

SUBJECT: Site Plan Approval (SPA) for the Kulakane Seawall Toe Protection Project at
3741 Lower Honoapiilani Road, Lahaina, Maui 96761;
Makai of TMK: (2) 4-3-006:011

Dear Mr. Dankas:

The Office of Conservation and Coastal Lands (OCCL) has reviewed your submitted Site Plan Approval (SPA) application for the proposed project. The area of the proposed work is the seawall fronting the Kulakane Condominiums in Lahaina, Maui, a 50-year old oceanfront condominium complex. The existing seawall is approximately 240 feet long and 11 feet high, with 18-foot (north) and 25-foot (south) return walls at each end. The information provided to our office states that the subject seawall rests upon a 2-tiered horizontal slab foundation that extends 27- to 33-inches seaward of the wall's face and extends inland behind the wall underground by 18-inches.

According to your information, the proposed work is intended to fill the sinkholes and gaps that have formed within the seawall's foundation in order to stabilize the structure. You are proposing to inject chemical grouting into these voided areas through a pressured injection system; it is stated in your packet that the injection equipment would remain mauka of the wall and thus on the Kulakane's private property throughout the duration of this work. Injection holes would be drilled at 2-foot intervals both directly mauka of the wall as well as within the ledge fronting the wall in order to adequately fill the sinkholes in the wall's foundation. It is also stated that screened, one-directional weep holes would be installed along the seawall's face to reduce hydrostatic pressure from building up mauka of the wall itself. The grout would be pumped through the injection holes and fill the gaps and voids that have formed within the seawall's foundation.

Within the packet submitted to our office, there were two available options to ensure that the grouting, a chemical hydrophobic material that does not mix with water to avoid pollution, remains within the seawall's foundation. The first option is to hand stack rocks along the toe of the seawall and along/under the bottom of its makai ledge in order to contain any potential grout that may attempt to escape the seawall's foundation. The second option is to install a shallow sheet pile along roughly 169 feet of the front ledge of the seawall's 240-foot long frontage prior to grouting to act as a type of dam against any grout attempting to escape. Your information

provided states that the sheet pile would extend 3 feet below grade, to prevent scour of the toe from seasonal wave action, and extend 1 foot above grade to connect, be capped, and blend with the existing ledge along the front of the seawall. Site and construction plans, as well as BMPs, for both of these options were included in the packet received by our office.

You indicate that the proposed repair would allow for the continued use and function of the seawall but would not increase the linear footprint of the seawall and its size, height, and density would remain relatively the same.

ANALYSIS:

The subject area appears to be partially located in the State Land Use Conservation District, Resource subzone. The proposed repair of the voids within the existing seawall at the Kulakane Condominium is an identified land use pursuant to the Hawaii Administrative Rules (HAR) §13-5-22, P-8, STRUCTURES AND LAND USES, EXISTING (B-1): Demolition, removal, or minor alteration of existing structures, facilities, land, and equipment. Any historic property shall be evaluated by the department for historical significance. The department or board reserves the right to require departmental or board approval if it is determined that the proposed action may cause significant negative secondary impacts on natural or cultural resources, or the surrounding community.

The proposed work appears to consist of the filling of voids and sinkholes in the existing seawall's foundation with a chemical grout through a pressure injection system, as well as installing a sheet pile on the makai face of the ledge fronting the wall to prevent the grout from escaping. This proposed work may be considered an exempt action under HAR, §11-200.1-15(c), (1): *Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing.*

In conformance with the above-referenced Hawai'i Revised Statutes (HRS) Chapter 343, as amended, and HAR, Chapter 11-200.1-15, the proposed project is exempt from the preparation of an Environmental Assessment. Staff consulted with the DLNR, Land Division, who concurred with this exemption.

There were two provided options to contain the injected material within the footprint of the existing seawall: either by hand placing rocks along the toe of the seawall, or by installing a steel sheet pile on the seawall toe's face. As the intention of both options is to ensure that the injected material remains contained within the seawall's foundation, OCCL would prefer the sheet pile as its presence along the face of the seawall's toe during the construction period would likely provide the most effective means of containing the injected material within the existing footprint of the seawall. **It is imperative that the sheet pile is removed upon the completion of the construction process.**

Staff notes that the proposed work consists of filling the sinkholes and gaps that have formed within the seawall's foundation in order to stabilize the structure by injecting a chemical hydrophobic material into the gaps via a pressured injection system, as well as the placement of a control measure to retain any of the material within the footprint of the wall. After careful review, authorization is hereby **granted** to perform the proposed work as described and

illustrated in this document in the subject area located at the seawall fronting the Kulakane Condominiums in Lahaina, Maui, subject to the following terms and conditions:

- 1) The permittee shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments, and applicable parts of Chapter 13-5, HAR;
- 2) The permittee shall comply with all applicable Department of Health administrative rules;
- 3) The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 4) The permittee understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 5) In issuing this permit, the Department has relied on the information and data that the permittee has provided in connection with this permit application. If, subsequent to the issuance of this 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/or the Department may, in addition, institute appropriate legal proceedings;
- 6) Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;
- 7) During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
- 8) 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;
- 9) 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;
- 10) 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 SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;

- 11) Unless otherwise authorized, any work done or construction to be done on the land shall be initiated within a year in accordance with this Site Plan Approval and unless otherwise authorized, shall be completed within three years of the approval. The permittee shall notify the Department in writing when construction activity is initiated and when it is completed;
- 12) At the termination of the use, all associated materials and components of the project shall be removed, and the project area shall be restored;
- 13) The permittee shall obtain appropriate authorization from the Department for the occupancy of state lands, such as a Right-of-Entry Permit;
- 14) **That the sheet pile option is used to contain the materials within the seawall as opposed to the rock-stacking option, and that the sheet pile is removed immediately upon completion of the construction period. Proof of removal (signed statement that the sheet piles have been removed, and photographs) shall be provided to the Department immediately after project completion. Failure to comply with this condition shall result in an enforcement action pursuant to Chapter 183C-7, HRS;**
- 15) Other terms and conditions as may be prescribed by the Chairperson and/or OCCL; and
- 16) Failure to comply with any of these conditions shall render this approval null and void as determined by the Department.

Please acknowledge receipt of this approval, with the above noted conditions in the space provided below. Please sign two copies. Retain one and return the other to our Office within thirty (30) days. Should you have any questions regarding this Site Plan Approval, contact Salvatore Saluga of our Office at 798-6147.

Sincerely,
Sam Lemmo

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

Receipt acknowledged:

Signature

Date

Type Name

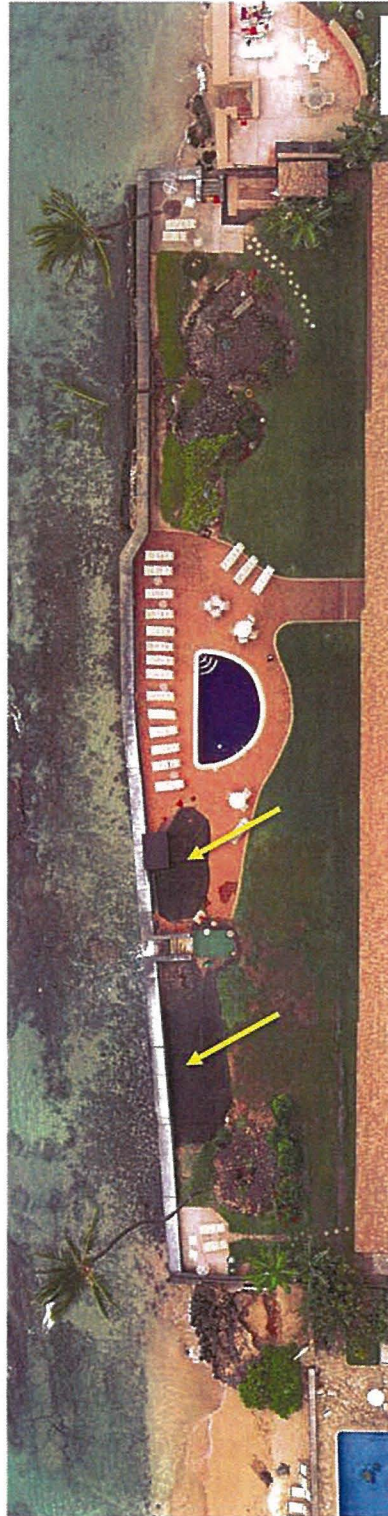
CC: County of Maui
- Dept. of Planning
MDLO
Chairperson
Coastal Planners, LLC c/o Thorne Abbott



Figure 1 – Project location in West Maui, Hawaii.



Figure 2 – Location along the heavily armored Honokowai coastline.



North

Condominium Building is 55 feet inland of the seawall

Figure 3 - Aerial view of sinkholes (black) behind the seawall, May 25, 2018.

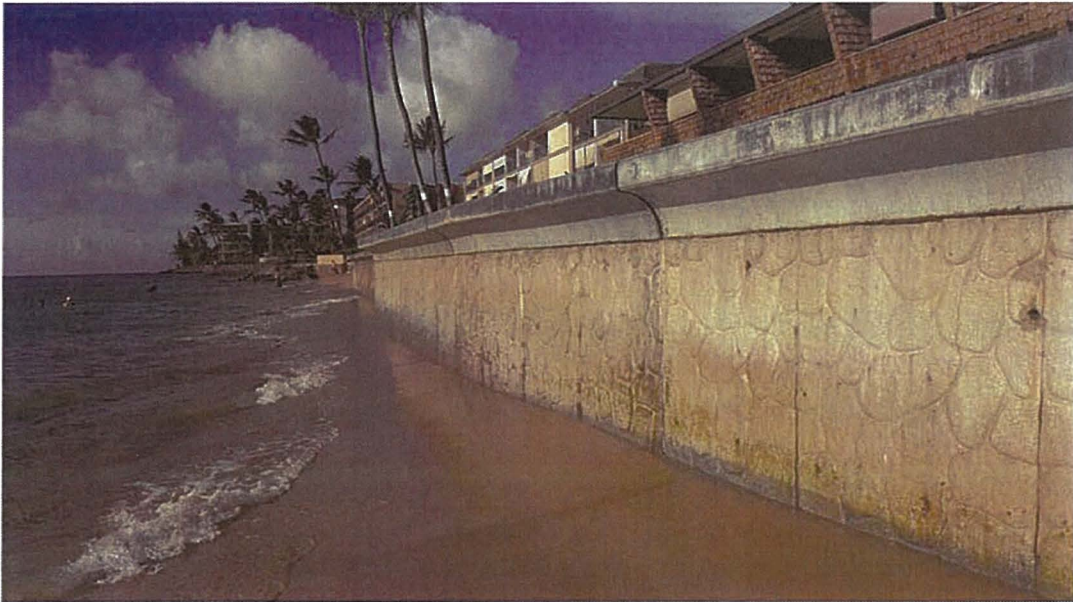


Figure 4 - Central portion of the seawall, August, 2017.

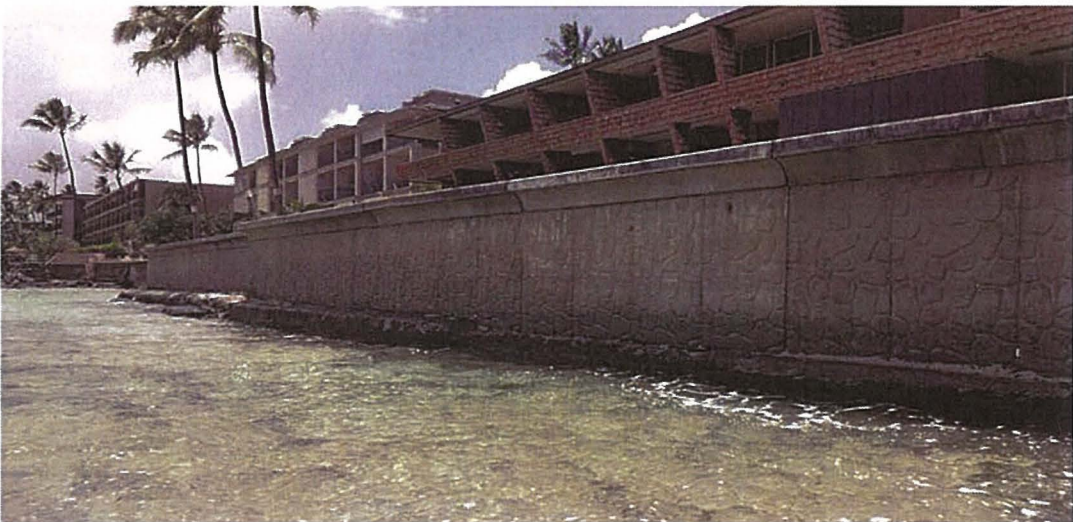


Figure 5 - Central portion of the seawall with exposed footing, May, 2020.



Figure 6 – Mauka view of the coastal property.

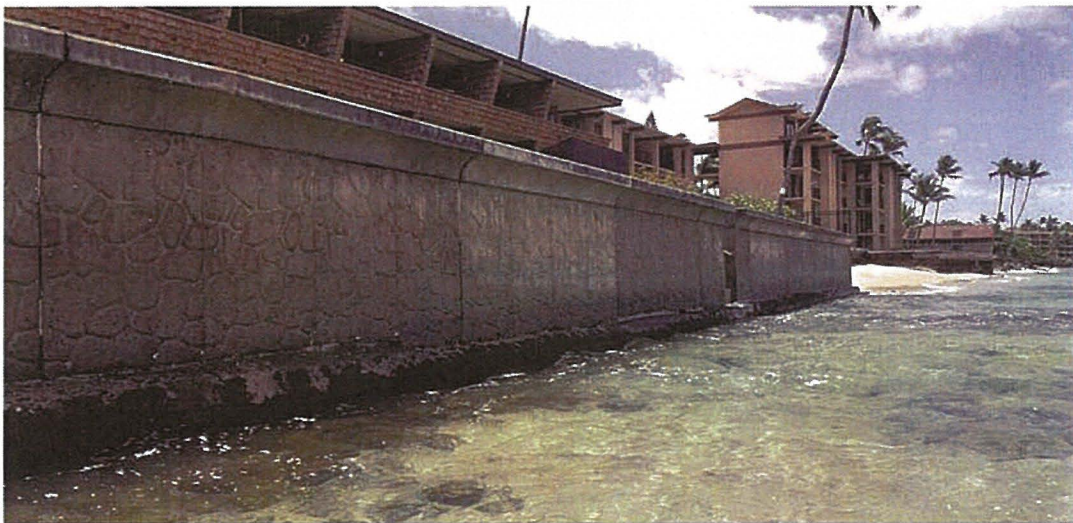


Figure 7 – Southern portion of the seawall with footing exposed, May, 2020.

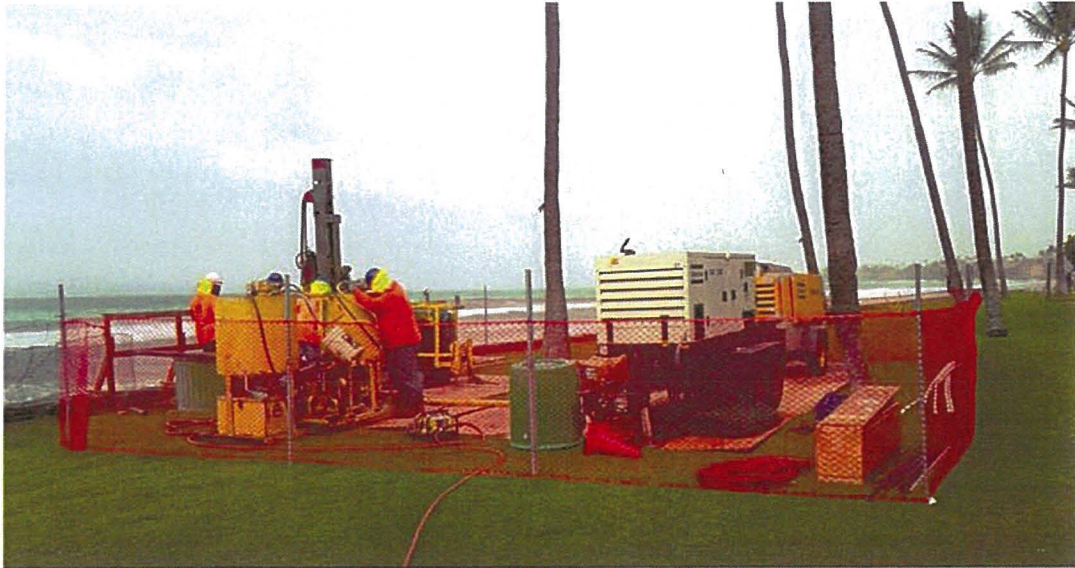
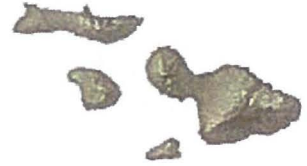


Figure 8 - County approved injection grouting to repair the seawall at the nearby Papakaea Condominium in 2015.

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

June 9, 2020

Ernie Dankas, President
Kulakane Condominium AOAO
[REDACTED]
Steilacoom, Washington 98388

Dear Mr. Dankas:

SUBJECT: SPECIAL MANAGEMENT AREA (SMA) EXEMPTION, SHORELINE SETBACK APPROVAL (SSA) AND ENVIRONMENTAL ASSESSMENT EXEMPTION (EAE) FOR SEAWALL REPAIRS AT THE KULAKANE CONDOMINIUM LOCATED AT 3741 LOWER HONOAPIILANI ROAD, LAHAINA, ISLAND OF MAUI, HAWAII. TMK (2) 4-3-006:011 (SMX 2020/0125) (SM5 2020/0130) (SSA 2020/0018) (EAE 2020/0035)

The Department received your Special Management Area (SMA) Assessment application and Shoreline Setback Approval (SSA) Application on March 17, 2020. Additionally, the Department has completed a site visit with you and the consultants and is very familiar with the environmental setting and the past undermining of the existing seawall. On May 21, 2020, the Department received your submittal of a Site Plan Approval and communications with the State of Hawaii, Department of Land and Natural Resources Office of Conservation and Coastal Lands (DLNR-SHPD-OCCL). The Department understands that you are the Authorized Representative for Kulakane Condominium AOAO.

On October 23, 2019, the Department conducted a pre-consultation meeting with you to and consultants to discuss and review professional engineering options for seawall repair. Thank you for your full coordination with the Planning Department to explore repair options for your seawall that considers cost and environmental impacts.

In response to your application and in accordance with the *SMA Rules for the Maui Planning Commission* (SMA Rules), Section 12-202-12, a determination has been made relative to the above project that:

1. The seawall has been undermined in several locations but remains competent and intact, with evidence of past major sinkholes forming in 2017, located mauka of the seawall and close to your condominium structures. This evidence necessitates seawall repair for structural protection of the condominium building as well as to further ensure life safety.
2. The project would repair an existing legal, non-conforming seawall by installing sheet pile to underpin and reinforce the existing wall, and inject grout into gaps or voids in the seawall's footing and reinforce the seawall's foundation. All work would proceed from the landward side of the seawall. The scope of this project does include a short, sheet pile structure (approximately three feet in vertical height and length, however, varying lengths are authorized in order to provide adequate mitigation), designed to be installed on the makai side of the existing seawall, mostly below sea level, with the purpose to mitigate and contain the injected grout under the seawall. Installation would use machinery located on the land, not in the ocean. Additionally, the northern stairway will be repaired, located where the neighboring Makani Sands and Kulakane seawall's come together, as described in the plans.
3. Approval of the sheet pile structure installation, located directly Makai of the existing seawall, will be coordinated with the DLNR-OCCL.
4. The project has a valuation not in excess of \$500,000.00 (Valuation: \$475,000.00).
5. The project is consistent with each property's land use entitlements, including State Land Use Urban, Community Plan Multi-family, and County Zoning Business designations as noted by zoning confirmation forms signed by the Planning Department that are provided in the application.
6. A State Certified Shoreline Survey for this project is waived by the Director, who has determined that the shoreline is fixed according to the State Certified Shoreline dated February 20, 2009 by DLNR, and is thus not required.
7. The project is not a development, pursuant to Section 205-A-22 "Not Development" category:

(6) Repair, maintenance, or interior alterations to existing structures.
8. The project occurs within the VE flood hazard zone but complies with MCC 19.62 since it is not new construction or a substantial improvement and the proposed repair costs less than 50% of the seawall's replacement cost. However, a Flood Development Permit shall be obtained prior to construction, if required;

9. With the implementation of best management practices (BMPS), the proposed action would not have significant adverse environmental or ecological effect, taking into account its potential cumulative effects; and
10. The action is consistent with the objectives, policies, and SMA guidelines set forth in HRS, Chapter 205-A, and is consistent with the County General Plan, Island Plan, Community Plan and Zoning.

In consideration of the above determination, you are hereby granted a SMA Exemption). (SM5 2020/0130).

Furthermore, in accordance with the *Shoreline Rules for the Maui Planning Commission* (Shoreline Rules) Sections 12-203-3, 12-203-6, 12-203-10, 12-203-11, and 12-203-12, a determination has been made relative to the subject project that:

1. The project location is a shoreline property and subject to the Shoreline Rules;
2. All work would be conducted landward of the shoreline and behind a lawfully existing seawall;
3. The shoreline was certified by the State of Hawaii on February 20, 2009 and located at the bottom face of the seawall;
4. The shoreline setback area extends 54.5 feet inland from certified shoreline and mauka of the face of the seawall. The project is located entirely within the shoreline setback area;
5. The proposed action is a permissible activity inside the shoreline setback area, pursuant to Section 12-203(a)(5) or (6) which allow repairs to an existing structure that do not enlarge or expand the structure, or intensify its use;
6. The proposed action would not adversely affect beach processes or interfere with public access or views to or along the shoreline; and
7. The proposed action is consistent with the County flood zone requirements and each the sites land use entitlements, including County zoning.

Accordingly, you are hereby granted a Shoreline Setback Approval (SSA 2020/0013), subject to the following conditions:

1. That the work be completed in substantial compliance with representations made to the Department in the SMA application and the DLNR Site Plan approval, including compliance with all conditions stated in the DLNR Site Plan Approval.

2. That deviations from the submitted plans are allowed only with written or verbal approval by the State and County.
3. That BMPs shall be implemented to ensure that water quality and marine resources are protected. No construction materials shall be stockpiled in the shoreline setback area. No debris, petroleum products or deleterious materials or wastes shall be allowed to fall, flow, leach, or otherwise enter near shore waters. Construction during adverse weather conditions shall be curtailed to minimize the potential for adverse water quality impacts. Appropriate measures to minimize dirt and water runoff, noise, and dust must be used. All demolition debris shall be removed from the site and disposed of in a manner consistent with the State Department of Health Hawaii Administrative Rules, Chapter 11-58.1, related to Solid Waste Management.
4. That, at any time during construction, construction near foraging sea turtles shall cease until the turtles voluntarily leave the area.
5. That the project shall be initiated by June 30, 2021, and shall be completed within two years of said initiation.
6. That the term of this permit may be extended at the discretion of the Department, upon submission of an Amendment to Planning Permit Terms application, which must be filed within 60 days prior to permit expiration.
7. That, in the event historic resources, including human skeletal remains, structural remains, cultural deposits, or lava tubes, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the DLNR-SHPD's Maui Section, shall be contacted immediately at (808) 243-1285. Work shall not continue until cleared by DLNR-SHPD.
8. That signage, listing all permits, shall be displayed at the entrance to the property for the public viewing during the construction phase of the project.
9. That a copy of the permits and permit conditions shall be in the possession of the lead contracting project manager at all times, for disclosure to concerned public and other interested parties. All contractors on site shall be briefed on these permit conditions prior to the initiation of work.
10. That no heavy equipment shall enter the ocean at any time as part of this project.
11. That full compliance with all other applicable governmental requirements shall be rendered.

12. That within one year of construction completion, a Final Compliance Report shall be submitted to the Department. Said report shall include a) a summary of compliance of above conditions, and include b) a site plan showing a conceptual relocation and redesign of its existing buildings to the mauka portion of the parcel, with possible first and second floor as parking, in order to accommodate the expected impacts of sea level rise to this area of shoreline. You may consult with the Department to understand more information regarding this request. Please note that your consultant, Thorne Abbott, has provided the Department with the required site plan under item #b, above, for another recent project. Thank you for your cooperation in considering the long-term planning aspects for your parcel with respect to anticipated sea level rise.

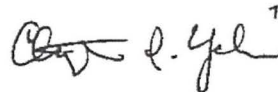
The proposed action triggers environmental review (HRS 343) because it involves the use of the shoreline area. However, the action adheres to one or more of the exempt classes of action provided at HAR 11-200-8(a), including:

- (1) *Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing"*

Accordingly, the proposed action is granted an Environmental Assessment Exemption (EAE 2020/0035).

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

Sincerely,



CLAYTON I. YOSHIDA, AICP
Planning Program Administrator

for MICHELE MCLEAN, AICP
Planning Director

xc: John S. Rapacz, Planning Program Administrator (PDF)
Thorne Abbott, Coastal Planners LLC (PDF)
Earnest Dankos, Applicant, (PDF)
Tara Owens, University of Hawaii Sea Grant Program Maui (PDF)
Sam Lemmo, Administrator, Department of Land and Natural Resources Office of Conservation and Coastal Lands (PDF)
Project File
MCM:CIY:JAB:rma
K:\WP_DOCS\Planning\SM5\2020\0130_KulakaneSeawall\SMA_SSA_EAE_Approval_Kulekane, vFINAL, 05.24.20.docx

EXHIBIT E



COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
DEVELOPMENT SERVICES ADMINISTRATION
250 SOUTH HIGH STREET
WAILUKU, HAWAII 96793
Ph: (808) 270-7242 Fax: (808) 270-7972 Inspector: (808) 270-7366

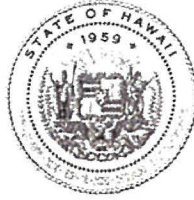
GRADING AND GRUBBING PERMIT APPLICATION

PROJECT/PROPERTY INFORMATION	
PROJECT NAME	Kulakane Condo Seawall Repair (B T2020 0848)
TAX MAP KEY	(2) 4-3-006:011
ADDRESS	3741 Lower Honoapiilani Rd, Lahaina, HI 96761
OWNER / PERMITTEE INFORMATION	DECLARATION: The undersigned accepts the permit subject to conditions described in the General Provisions, construction plans, County Code Section 20.08, and any other document associated with the permit.
OWNER NAME	Kulakane AOA, Ernie Dankas, President
ADDRESS	3741 Lower Honoapiilani Rd, Lahaina, HI 96761
PHONE	(253) 380-5256
EMAIL	wdankasco@yahoo.com
SIGNATURE	<i>Ernie Dankas</i>
PRINT NAME	Ernie Dankas
If Permittee different from owner:	
PERMITTEE NAME	K2N Crest P.C., Don Kimball, Engineer
ADDRESS	220 Lalo Street, Suite 4, Kahului, HI 96732
PHONE	(808) 866-8381
EMAIL	donkimball@k2n.com
SIGNATURE	<i>Don Kimball</i>
PRINT NAME	Don Kimball
PERMIT INFORMATION	
<input checked="" type="checkbox"/> GRADING PERMIT	Fill: 49.00 (cubic yards)
	Excavate: 52.00 (cubic yards)
	Graded Area: 382.0 (<input type="checkbox"/> acres <input checked="" type="checkbox"/> sq. ft.)
	Maximum height/depth of excavation or fill: 8 (feet)
<input checked="" type="checkbox"/> GRUBBING PERMIT	Grubbed Area: 68.49 (<input type="checkbox"/> acres <input checked="" type="checkbox"/> sq. ft.)
IDENTIFY CRITICAL AREAS LOCATED ON OR AFFECTING THE PROPERTY	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Is any portion of the property located in the Special Management Area? SM5 2020/0130
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Are there Special Flood Hazard Areas or drainageways on the property? SSA 2020/0018
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Is the property located along the shoreline? EAE 2020/0035
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Are there wetlands located on the property? FDP 2020/0081
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Are there known burials, cemeteries, or other historic sites on the property?
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Will grading affect an existing slope with a height greater than 15 feet and with a grade steeper than 35% (10H:3.5V)?
Estimated Dates:	Start: Completion:
PERMIT APPROVAL (For county use only)	
Fee \$ 60.00	Bond \$ 10/1A
APPLICATION NUMBER: T2020/163	
SPECIAL CONDITIONS	
APPROVED BY:	<i>[Signature]</i> 10/13/20
For: Department of Public Works	
PERMIT NUMBER:	92020/188
DATE OF ISSUANCE:	10/23/2020
GENERAL PROVISIONS are considered a part of this permit and are included herein by reference. Hard copy is available at Development Services Administration or can be viewed/downloaded online at County website: www.co.maui.hi.us	

(Rev. 1/12)

EXHIBIT E

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: 12/15/2020

DAR # AR0041

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

MEMORANDUM

TO: Brian J. Neilson
DAR Administrator

FROM: Russell Sparks *Russell Sparks*, Aquatic Biologist

SUBJECT: Request for Comments: Issuance of Right-of-Entry Permit to the Association
of Apartment Owners of Kulakane to Repair a Seawall.

Request Submitted by: Seiko Machida, Land Agent, Maui District Office
Mahinahina, Lahaina, Maui; TMK# (2) 4-3-006: Seaward of 011

Location of Project: _____

Brief Description of Project:

Request for a Right-of Entry to place temporary steel plates seaward of the wall foundation in order to retain injected agglomerate grout which will be installed from within the Kulakane property. this work will be conducted along the 240' long concrete block seawall. The steel plates will be placed at least 3' below the ground and should serve to maintain the injected grout in place preventing it from migrating seaward. No information is provided regarding the specific chemical grout that will be used and what possible environmental impacts may results from use of this substance.

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 17, 2020
Brian J. Neilson
DAR Administrator

DAR# AR0041

Comments

The Maui Office of the Division of Aquatic Resources (DAR) has no concerns with the ultimate goal of repairing this existing seawall structure. The majority of properties in this location have similar shoreline wall structures, and therefore, maintaining this existing seawall should not result in any additional adverse impacts to the areas nearshore waters. However, the plans to inject a chemical hydrophobic compound at the shoreline likely below sea level, does raise some concerns. We strongly suggest these plans be vetted by the Department of Health (DOH), Clean Water Branch. This work should be allowed to move forward only after the specific chemical compound and its application is approved by water quality experts within the DOH. If a DOH review determines any possible deleterious impacts from this substance to nearshore marine ecosystems, DAR would like to see additional mitigations used, and would like to review these mitigation plans.

From: Saluga, Salvatore J <salvatore.j.saluga@hawaii.gov>
Sent: Tuesday, December 15, 2020 8:30 AM
To: Lemmo, Sam J <sam.j.lemmo@hawaii.gov>; Machida, Seiko J <seiko.j.machida@hawaii.gov>
Subject: RE: Request for Comments -- 20MD-093 Kulakane

Thanks, Sam. The most recent thing I have done for this property is the permit that is the subject of this request for comments.

Seiko – In addition to what is stated in the permit, the biggest concern for OCCL is the sheet pile that is going to be placed on the makai face of the seawall and used to prevent materials from leaking out of the seawall and into the ocean. OCCL's most integral comment is that it is imperative that the sheet pile is removed upon completion of the project.

Thank you for providing us the opportunity to comment, and feel free to give me a call with any questions or concerns at 798-6147

Salvatore Saluga
Coastal Lands Program Specialist
Office of Conservation and Coastal Lands

From: James Buika <James.Buika@co.maui.hi.us>
Sent: Wednesday, December 23, 2020 12:04 PM
To: Linda Kim <Linda.Kim@co.maui.hi.us>; Machida, Seiko J <seiko.j.machida@hawaii.gov>
Cc: Clayton Yoshida <Clayton.Yoshida@co.maui.hi.us>; Jeffrey Dack <jeffrey.dack@co.maui.hi.us>
Subject: [EXTERNAL] Re: Fwd: Request for comments 20MD-093 Kulakane

12.23.20

Dear Seiko,

Thank you for the opportunity to comment. Also, thank you for our continued strong working relationship on all shoreline matters.

This email responds to your December 14, 2020 REQUEST FOR COMMENT and serves as a formal comment for the ROE permit to authorize seawall repair at Kulekane. I have attached the County authorization to repair the seawall -- this scope of work is minimally impactful that does involve minor work on the immediate seaward side of the existing seawall, with no significant environmental impacts. I am the planner on the project, have been to the site several times and understand the environmental setting very well.

As such, I strongly approve of the ROE for Kulekane and the limited scope of work in the state jurisdiction to further improve the seawall repair. This approval and understanding of the project follows a long period of discussion of options for this seawall as well as for best management practices with consultation with experienced shoreline planners.

I am available for any questions at 808-283-8636.

Approved,
Jim Buika

Jim Buika
Coastal Resource Planner
Maui County Department of Planning
808-270-6271

From: [thorne abbott](#)
To: [Sparks, Russell T](#); [Machida, Seiko J](#)
Subject: [EXTERNAL] ROE for Kulakane Seawall Repair
Date: Thursday, January 7, 2021 12:31:26 PM
Attachments: [HDOH Response from Darryl.pdf](#)

Aloha Russell and Seiko and Hau'oli Makahiki Ho!

Attached is an email from Darryl Lum at HDOH indicating they have no objection to the use of Uretek in the repair. We will use the product in conformance with the manufacturers directions and we have BMPs on the grading plan set to prevent pollution and ensure water quality protection consistent with Darryl's recommendations. Thanks for your input and help.

Mahalo!
Thorne Abbott
Coastal Planners, LLC
(808) 344-1595
For additional information visit <http://www.CoastalZone.com>



Uretek for seawall repairs RFC for DLNR ROE

Lum, Darryl C <darryl.lum@doh.hawaii.gov>
To: Thorne Abbott <coastalplanners@gmail.com>

Thu, Jan 7, 2021 at 6:58 AM

Hi Thorne,

Thank you for the information. The State of Hawaii, Department of Health, Clean Water Branch has no objections to the use of the Uretek polymer for your project. We recommend the proper application of the polymer 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.

Thanks,

Darryl

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: Thorne Abbott <coastalplanners@gmail.com>
Sent: Tuesday, January 5, 2021 9:39 PM
To: Lum, Darryl C <darryl.lum@doh.hawaii.gov>
Subject: [EXTERNAL] Uretek for seawall repairs RFC for DLNR ROE

Aloha Darryl!

Russell Sparks at DLNR DAR suggested I seek your input on using Uretek polymer for in-situ repairs of a seawall at the Kulakane Condominium, Honokowai, West Maui. Would you mind taking a few minutes to review the enclosed transmittal letter briefly explaining the proposal? I have also enclosed several case studies, an agency comments on the NSF-61 product, and MSDS.

Your thoughts are appreciated! Feel free to ring me if you would like to discuss further.

Mahalo!

Thorne Abbott

Coastal Planners, LLC

(808) 344-1595

www.CoastalZone.com

EXHIBIT 2

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

REVOCABLE PERMIT NO. S-7935

KNOW ALL MEN BY THESE PRESENTS:

This Agreement (hereinafter referred to as the "Permit") is executed this 23rd day of JUNE, 20 21, by and between the STATE OF HAWAII, hereinafter referred to as the "State," by its Board of Land and Natural Resources, hereinafter called the "Board," and the ASSOCIATION OF APARTMENT OWNERS OF KULAKANE, a Hawaii nonprofit corporation, hereinafter called the "Permittee," whose mailing address is 3741 Lower Honoapiilani Road, Lahaina, Hawaii 96761, and whose billing address is c/o Quam Properties Hawaii, Inc., 5095 Napilihaui Street, #202, Lahaina, Hawaii 96761. The parties agree that commencing on the 23rd day of JUNE, 20 21, ("commencement date"), Permittee is permitted to enter and occupy, on a month-to-month basis only, pursuant to section 171-55, Hawaii Revised Statutes, that certain parcel of public land (and any improvements located thereupon) situate at Mahinahina, Lahaina, Maui, Hawaii, tax map key no. (2) 4-3-006:seaward of 011, as indicated on the maps attached hereto, if any, and made a part hereof, containing an approximate area of 300 square feet, more or less, which parcel is hereinafter referred to as the "Premises."

THIS PERMIT IS GRANTED UNDER THE FOLLOWING CONDITIONS:

A. The Permittee shall:

1. Occupy and use the Premises for the following specified purposes only: for purposes of repairing a seawall located on private land (some repair work will require entry onto State submerged land). Temporary sheet pile installation on State submerged lands to prevent grout from entering ocean waters during seawall repair project.
2. Pay, at the Department of Land and Natural Resources Fiscal Office, P.O. Box 621, Honolulu, Hawai'i 96809, monthly rent in the sum of ONE HUNDRED ONE AND NO/100 DOLLARS (\$101.00) payable in advance by the first of each and every month.

The interest rate on any unpaid or delinquent rentals shall be at one per cent (1%) per month.

If monthly rent is not received at the above address on or before the first day of the month for which it is due, then a service charge of FIFTY AND



NO/100 DOLLARS (\$50.00) a month for each delinquent payment shall be assessed and payable. The service charge is in addition to interest on unpaid or delinquent rentals. Interest shall not accrue on the service charge.

Payment of such service charge shall not excuse or cure any default by Permittee under this Permit.

3. Upon execution of this Permit, deposit with the Board an amount equal to two times the monthly rental stated above in paragraph 2, as security for the faithful performance of all of these terms and conditions. The deposit will be returned to the Permittee upon termination or revocation of this Permit, if and only if all of the terms and conditions of this Permit have been observed and performed to the satisfaction of an authorized representative of the Department of Land and Natural Resources ("DLNR"). Otherwise, the deposit may, at the option of an authorized representative of the DLNR be applied toward payment of any amounts owed hereunder, without waiving any of the Board's other rights hereunder.
4. At the Permittee's own cost and expense, keep any government-owned improvements located on the Premises insured against loss by fire and other hazards, casualties, and contingencies, for the full insurable value of those improvements. The policies shall name the State of Hawaii as an additional insured and loss payee and shall be filed with the DLNR. In the event of loss, damage, or destruction of those improvements, the DLNR shall retain from the proceeds of the policies those amounts it deems necessary to cover the loss, damage, or destruction of the government-owned improvements and the balance of those proceeds, if any, shall be delivered to the Permittee.
5. Give the Board twenty-five (25) calendar days notice, in writing, before vacating the Premises.
6. Pay all real property taxes assessed against the Premises from the commencement date of this Permit.
7. At its own cost and expense, observe, perform and comply with all laws, ordinances, rules and regulations of all governmental authorities now or at any future time during the term of this Permit applicable to the Premises, including, without limiting the generality of the foregoing, the Americans with Disabilities Act of 1990 and all regulations promulgated with respect thereto, as well as any other laws, ordinances, rules and regulations imposing any requirements that the Premises be made accessible to persons with disabilities; and, release and indemnify the State of Hawaii against all actions, suits, damages and claims by whomsoever brought or

made by reason of the nonobservance or nonperformance of any of said laws, ordinances, rules and regulations or of this covenant.

8. Repair and maintain all buildings or other improvements now or hereafter on the Premises.
9. Obtain the prior written consent of the Board before making any major improvements.
10. Keep the Premises and improvements in a clean, sanitary, and orderly condition.
11. Pay all charges, assessments, or payments for water, other utilities, and the collection of garbage as may be levied, charged, or be payable with respect to the Premises.
12. Not make, permit, or suffer, any waste, strip, spoil, nuisance or unlawful, improper, or offensive use of the Premises.
13. At all times with respect to the Premises, use due care for public safety.
14. Procure and maintain, at its own cost and expense, in full force and effect throughout the term of this Permit, general liability insurance, or its equivalent, with an insurance company or companies licensed or authorized to do business in the State of Hawaii with an AM Best rating of not less than "A- VIII" or other comparable and equivalent industry rating, in an amount of at least \$1,000,000.00 for each occurrence and \$2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy of the policy or other documentation required by the State shall be filed with the DLNR. The insurance shall cover the entire Premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the Premises in the use or control of the Permittee.

Prior to entry and use of the Premises or within fifteen (15) days after the commencement date of this Permit, whichever is sooner, furnish the State with a policy(s) or other documentation required by the State showing the policy(s) to be initially in force, keep the policy(s) or other documentation required by the State on deposit during the entire Permit term, and furnish a like policy(s) or other documentation required by the State upon each renewal of the policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the State. The State may at any time require the Permittee to provide the State with copies of the insurance policy(s) that are or were in effect during the permit period.



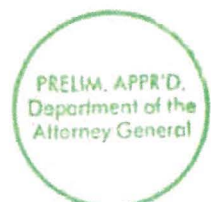
The State shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Permit. If, in the opinion of the State, the insurance provisions in this Permit do not provide adequate protection for the State, the State may require Permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The State's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The State shall notify Permittee in writing of changes in the insurance requirements and Permittee shall deposit copies of acceptable insurance policy(s) or other documentation required by the State thereof, with the State incorporating the changes within thirty (30) days after receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Permittee's liability under this Permit nor to release or relieve the Permittee of the indemnification provisions and requirements of this Permit. Notwithstanding the policy(s) of insurance, Permittee shall be obligated for the full and total amount of any damage, injury, or loss caused by Permittee's or the Permittee's employees, agents, officers, or invitees' negligence or neglect connected with this Permit. It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance provided by Permittee's policy.

The insurance policy(s) or other documentation required by the State shall be mailed to:

State of Hawaii
Department of Land and Natural Resources
Land Division
Box 621
Honolulu, Hawaii 96809

15. In case the State shall, without any fault on its part, be made a party to any litigation commenced by or against the Permittee (other than condemnation proceedings), the Permittee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the State.
16. The Permittee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the State in enforcing the covenants and agreements of this Permit, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges.



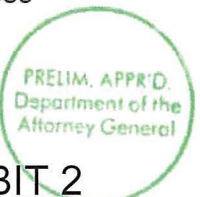
B. Additional Conditions:

1. This Permit is issued and effective on a month-to-month basis. The Permit shall automatically terminate one year from the commencement date, unless earlier revoked as provided below, provided further that the Board may allow the Permit to continue on a month-to-month basis for additional one year periods. Any such extension shall have the same terms and conditions as this Permit, except for the commencement date and any amendments to the terms, as reflected in the Board minutes of the meeting at which the Board acts. Permittee agrees to be bound by the terms and conditions of this Permit and any amendments to this Permit so long as Permittee continues to hold a permit for the Premises or continues to occupy or use the Premises.
2. The Board may revoke this Permit for any reason whatsoever, upon written notice to the Permittee at least thirty (30) calendar days prior to the revocation; provided, however, that in the event payment of rental is delinquent for a period of ten (10) calendar days or more, this Permit may be revoked upon written notice to the Permittee at least five (5) calendar days prior to the revocation.
3. If the Permittee fails to vacate the Premises upon revocation or termination of the Permit, the Permittee shall be liable for and shall pay the previously applicable monthly rent, computed and prorated on a daily basis, for each day the Permittee remains in possession.
4. If the Permittee fails to vacate the Premises upon revocation or termination of the Permit, the Board, by its agents, or representatives, may enter upon the Premises, without notice, and at Permittee's cost and expense remove and dispose of all vehicles, equipment, materials, or any personal property remaining on the Premises, and the Permittee agrees to pay for all costs and expenses of removal, disposition, or storage.
5. The Board may at any time increase or decrease the monthly rental by written notice at least thirty (30) business days prior to the date of change of rent. Upon such notice, the Permittee shall deposit with the Board any additional monies required to maintain an amount equal to two times the new monthly rental as security for the faithful performance of all of these terms and conditions.
6. Any major improvements, including but not limited to buildings and fences, erected on or moved onto the Premises by the Permittee shall remain the property of the Permittee and the Permittee shall have the right, prior to the termination or revocation of this Permit, or within an additional period the Board in its discretion may allow, to remove the improvements from the Premises; provided, however, that in the event the Permittee

shall fail to remove the improvements prior to the termination or revocation of this Permit or within an additional period the Board in its discretion may allow, the Board may, in its sole discretion, elect to retain the improvements or may remove the same and charge the cost of removal and storage, if any, to the Permittee.

7. The Board reserves the right for its agents or representatives to enter or cross any portion of the Premises at any time.
8. This Permit or any rights hereunder shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of.
9. Permittee has inspected the Premises and knows the conditions thereof and fully assumes all risks incident to its use.
10. The acceptance of rent by the Board shall not be deemed a waiver of any breach by the Permittee of any term, covenant, or condition of this Permit nor of the Board's right to declare and enforce a forfeiture for any breach, and the failure of the Board to insist upon strict performance of any term, covenant, or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option of this Permit.
11. The use and enjoyment of the Premises shall not be in support of any policy which discriminates upon any basis or in any manner that is prohibited by any applicable federal, state, or county law.
12. Permittee shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. Permittee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of Permittee's business, and then only after written notice is given to the Board of the identity of such materials and upon the Board's consent, which consent may be withheld at the Board's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Permittee, then the Permittee shall be responsible for the costs thereof. In addition, Permittee shall execute affidavits, representations and the like from time to time at the Board's request concerning the Permittee's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by Permittee.

Permittee agrees to release, indemnify, defend, and hold the State of Hawaii, the Board, and their officers, employees, and agents harmless



from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the use or release of hazardous materials on the Premises occurring while Permittee is in possession, or elsewhere if caused by Permittee or persons acting under Permittee. These covenants shall survive the expiration, revocation, or termination of the Permit.

For the purpose of this Permit "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or bylaw, whether existing as of the date hereof, previously enforced, or subsequently enacted.

13. Prior to termination or revocation of the subject Permit, Permittee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the DLNR. Failure to comply with the provisions of this paragraph shall not extend the term of this Permit or automatically prevent termination or revocation of the Permit. The Board, at its sole option, may refuse to approve termination or revocation unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Permittee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Permittee.
14. Permittee shall release, indemnify, defend, and hold harmless the State of Hawaii, its officers, agents, and employees from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of the Permittee or the Permittee's employees, agents, officers, or invitees under this Permit. The provisions of this paragraph shall remain in full force and effect notwithstanding the revocation, expiration, or termination of this Permit. The purchase of liability insurance shall not relieve Permittee of the obligations described herein.
15. Unless otherwise agreed by the Board in its sole discretion, payments received will be applied first to attorneys' fees, costs, assessments, real property taxes, or other costs incurred or paid by the Board with respect to the Premises, next to service charges or interest, next to any other charges due or owing under the Permit, next to delinquent monthly rent, and next to current rent.



16. Any notice required or permitted to be given hereunder shall be in writing, given by personal delivery or by first class mail, postage prepaid. Notice to Permittee shall be delivered or addressed to the address stated above.


Notice to State of Hawai'i shall be delivered or addressed to the Chairperson of the Board at 1151 Punchbowl Street, Room 130, Honolulu, Hawai'i 96813. Mailed notices shall be deemed given upon actual receipt, or two business days following deposit in the mail, postage prepaid, whichever occurs first. Either party may by notice to the other specify a different address for notice purposes, provided that Permittee's mailing address shall at all times be the same for both billing and notice. In the event there are multiple Permittees hereunder, notice to one Permittee shall be deemed notice to all Permittees.

17. The Permittee shall adhere to the terms and conditions set forth in the State of Hawaii, Department of Land and Natural Resources, Office of Conservation and Coastal Lands Site Plan Approval Number MA 20-68 dated August 7, 2020.
18. The Permittee shall remove sheet pile immediately upon completion of the construction activity. Proof of removal, including a signed statement that the sheet piles have been removed, and photographs, shall be provided to the State of Hawaii, Department of Land and Natural Resources immediately after project completion.
19. The Permittee shall post a removal bond in an amount to be approved by the Chairperson of the Board after consultation with the State of Hawaii, Department of Land and Natural Resources, Land Division and State of Hawaii, Department of Land and Natural Resources, Engineering Division, to cover the cost of removing the sheet pile fronting the seawall in the event that the Permittee fails to do so upon completion of the seawall repair project.
20. The Permittee shall receive a County of Maui building permit for the repair work prior to commencing work.
21. Unless the text indicates otherwise, the use of any gender shall include all genders and, if the Permittee includes more than one person, the singular shall signify the plural and this Permit shall bind the persons, and each of them jointly and severally.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

Approved by the Board of
Land and Natural Resources
at its meeting held on
February 12, 2021.

By 
SUZANNE D. CASE
Chairperson of the Board of Land and
Natural Resources


APPROVED AS TO FORM:

STATE


COLIN J. LAU
Deputy Attorney General

Dated: 4/15/21

ASSOCIATION OF APARTMENT OWNERS
OF KULAKANE, a Hawaii nonprofit corporation

By 
Its President

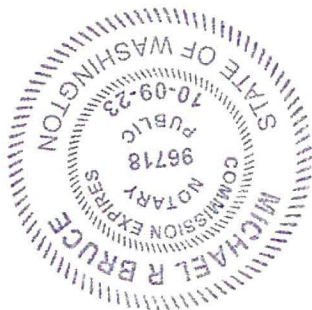
By _____
Its _____

PERMITTEE



WASHINGTON
STATE OF HAWAII)
COUNTY OF Pierce) SS.

On this 3RD day of MAY, 2021, before me personally appeared ERNEST A. DANIKAS, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Michael R. Bruce
Notary Public, State of ~~Hawaii~~ WASHINGTON
Michael R. BRUCE

My commission expires: 10/09/23



STATE OF HAWAII)
) SS.
COUNTY OF)

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii

My commission expires: _____



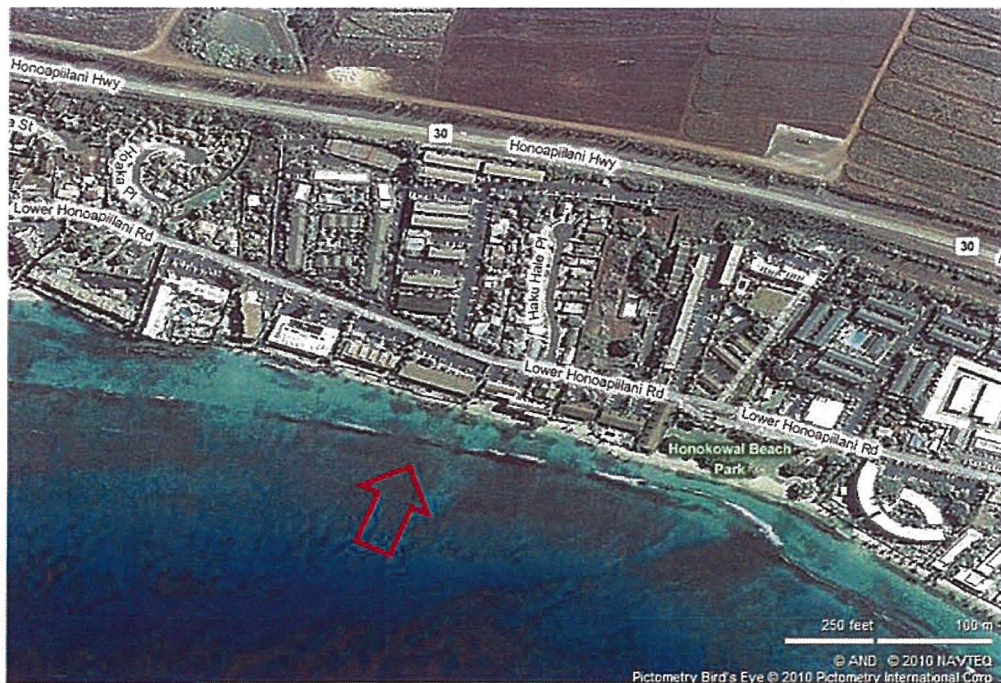


Figure 1 - Project location in West Maui, Hawaii.

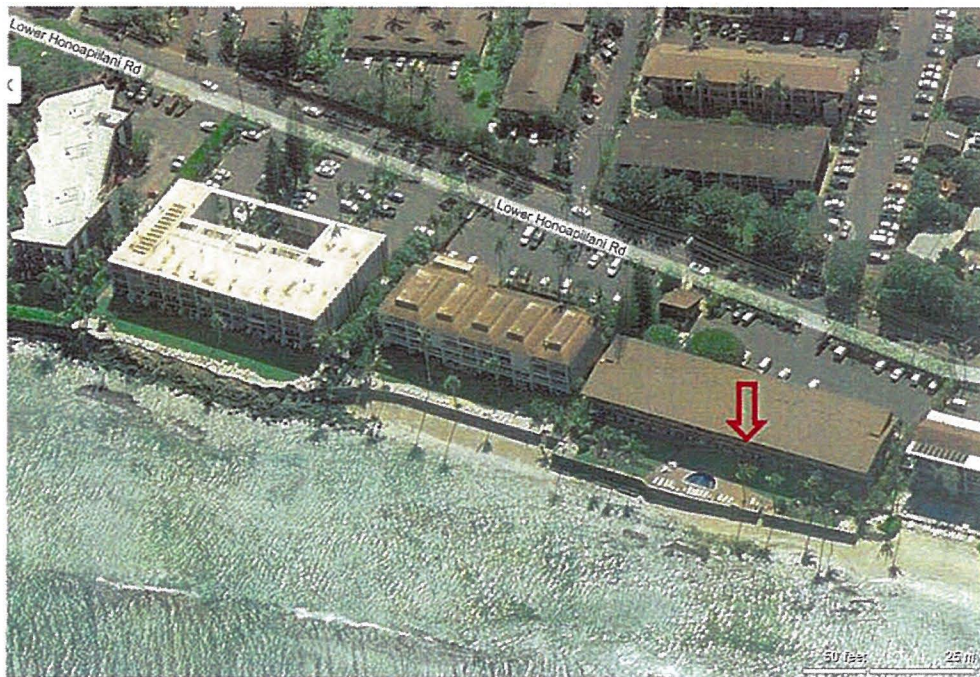


Figure 2 - Location along the heavily armored Honokowai coastline.

PRELIM. APPR'D.
Department of the
Attorney General

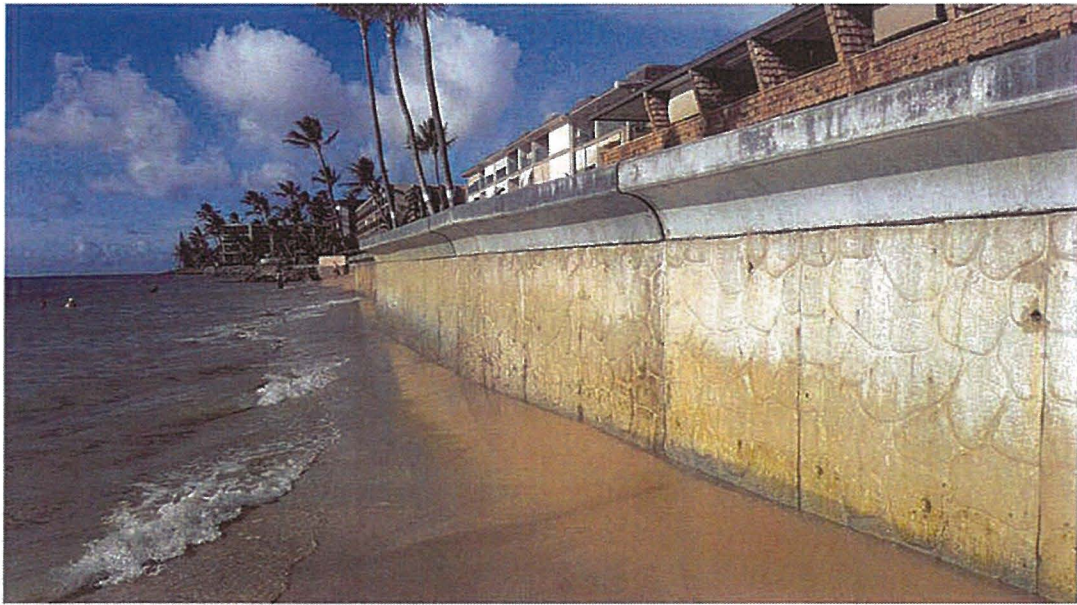


Figure 4 - Central portion of the seawall, August, 2017.

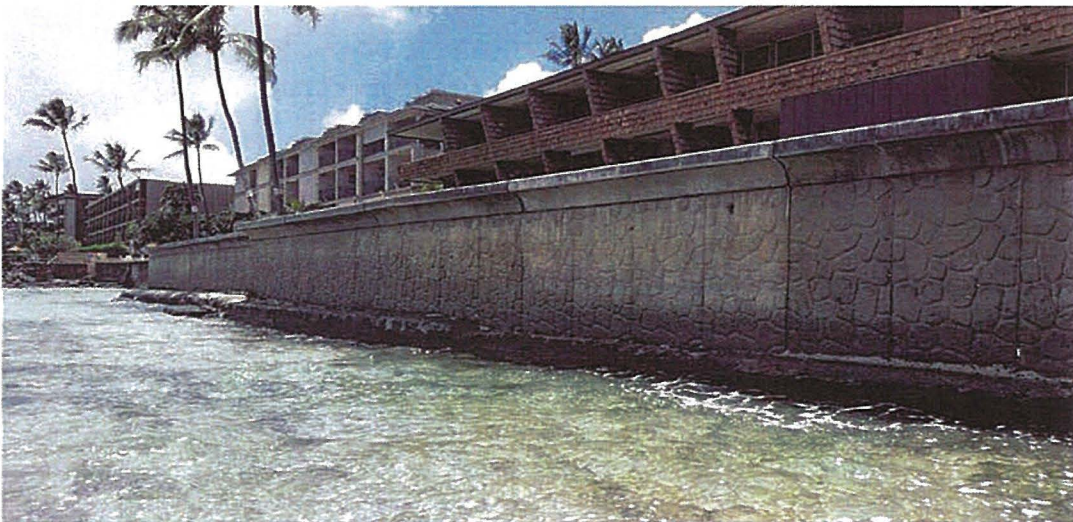


Figure 5 - Central portion of the seawall with exposed footing, May, 2020.

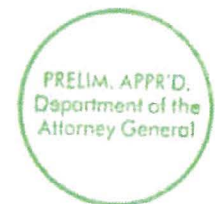




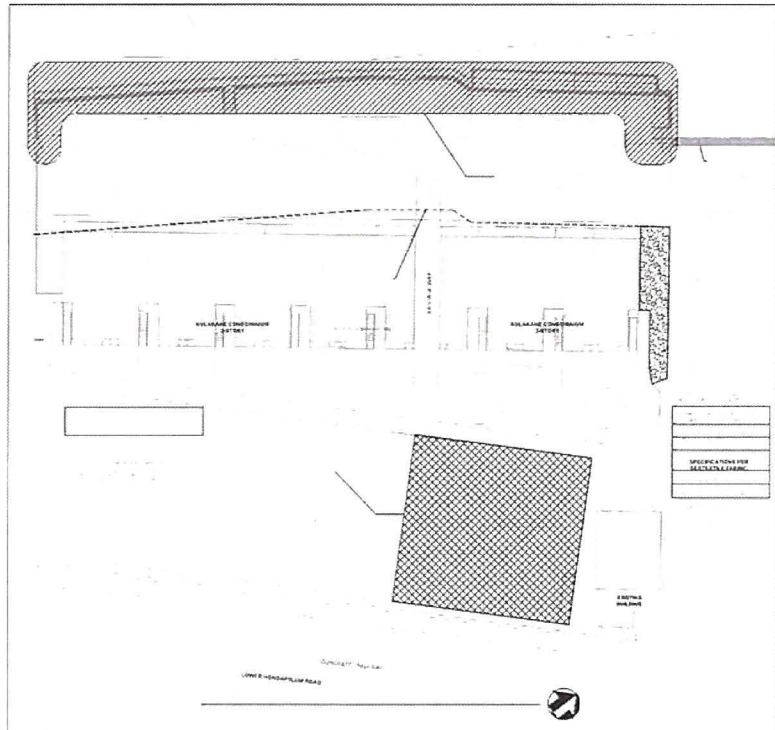
Figure 6 - Mauka view of the coastal property.



Figure 7 - Southern portion of the seawall with footing exposed, May, 2020.



seawall →



PROJECT STAGING AND AREA OF WORK (BMP)
SCALE 1/8" = 1'-0"

EXHIBIT A pg 5

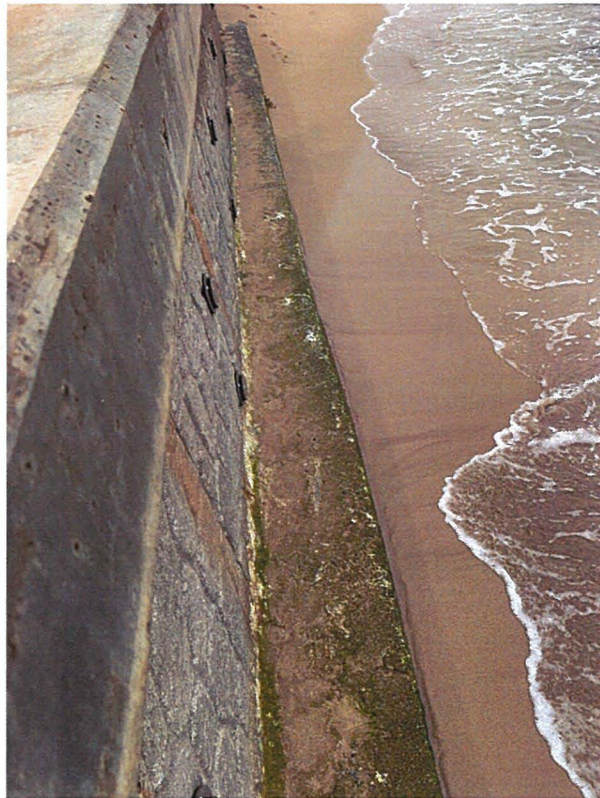


EXHIBIT 2

EXHIBIT 3



May 5, 2022. Facing north.



May 5, 2022. Facing south.

Photos provided by Permittee -- Page 2 of 5

Sheet Pile Installed & Removed per RP S-7935
Removal Dates: April 20 & 22, 2022



Facing south with southern and northern portions of sheet pile present (04/20/22).



Facing south with removal of sheet pile in progress (04/20/22).



Southern section of sheet pile completely removed (04/20/22).



Southern section of seawall with sheet pile absent (04/20/22).



Northern portions of sheet pile present (04/20/22).



Northern portion of sheet pile removal in process (04/22/22).



Northern portion of sheet pile removal in process (04/22/22).



Northern portion of sheet pile removed (04/22/22).



Sheet pile removal completed (04/22/22).

EXHIBIT 4



Bond No. 4444542

LICENSE AND PERMIT BOND

KNOW ALL BY THESE PRESENTS, That we Association of Apartment Owners of Kulakane (hereinafter called the Principal), as Principal, and SureTec Insurance Company a corporation duly organized under the laws of the state of Texas, (hereinafter called the Surety) as Surety, are held and firmly bound unto The State of Hawaii – Department of Land and Natural Resources in the just and full sum of Three Hundred Fifty Thousand and no cents Dollars (\$ 350,000), for which sum, well and truly to be paid, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITON OF THE OBLIGATION IS SUCH, that WHEREAS, the above bounden Principal has applied to Department of Land and Natural Resources to repair a seawall under Revocable Permit No S-7935 and any amendments thereto, and is required by the terms of said Revocable Permit to furnish a bond conditioned as in said Revocable Permit to remove all sheet pile fronting the seawall upon completion of repairs.

NOW, THEREFORE, if the said Principal Association of Apartment Owners of Kulakane shall fully comply with the removal of sheet pile fronting the sea wall as defined in Revocable Permit No. S-7935 then this obligation to be void; otherwise, to remain in full force and effect.

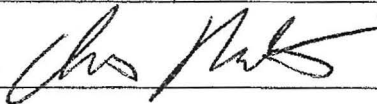
PROVIDED, HOWEVER, that the aggregate liability of the Surety on this bond shall be limited to the amount specified in the bond.

This bond shall be continuous until released.

Signed and sealed this 29th day of June , 2021


Association of Apartment Owners of Kulakane
Principal

By



SureTec Insurance Company.

By


Yvette Ocampo Attorney-in-Fact

JOINT LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That SureTec Insurance Company, a Corporation duly organized and existing under the laws of the State of Texas and having its principal office in the County of Harris, Texas and Markel Insurance Company (the "Company"), a corporation duly organized and existing under the laws of the state of Illinois, and having its principal administrative office in Glen Allen, Virginia, does by these presents make, constitute and appoint:

John Y. Shigenaga, Leilani Santos, Ruth Matsuyoshi, Marcia Matsumoto, Shari Yamamoto, Yvette Ocampo, Micah Furtado, Shaunalyn Heu

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on their own behalf, individually as a surety or jointly, as co-sureties, and as their act and deed any and all bonds and other undertaking in suretyship provided; however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

Fifty Million and 00/100 Dollars (\$50,000,000.00)

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolutions adopted by the Board of Directors of SureTec Insurance Company and Markel Insurance Company:

"RESOLVED, That the President, Senior Vice President, Vice President, Assistant Vice President, Secretary, Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the SureTec Insurance Company and Markel Insurance Company, as the case may be, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

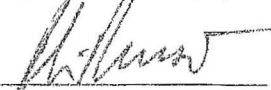
IN WITNESS WHEREOF, Markel Insurance Company and SureTec Insurance Company have caused their official seal to be hereunto affixed and these presents to be signed by their duly authorized officers on the 16th day of September, 2020.

SureTec Insurance Company

By: 
Michael C. Keimig, President



Markel Insurance Company


By: 
Robin Russo, Senior Vice President

Commonwealth of Virginia
County of Henrico SS:

On this 16th day of September, 2020 A. D., before me, a Notary Public of the Commonwealth of Virginia, in and for the County of Henrico, duly commissioned and qualified, came THE ABOVE OFFICERS OF THE COMPANIES, to me personally known to be the individuals and officers described in, who executed the preceding instrument, and they acknowledged the execution of same, and being by me duly sworn, disposed and said that they are the officers of the said companies aforesaid, and that the seals affixed to the proceeding instrument are the Corporate Seals of said Companies, and the said Corporate Seals and their signatures as officers were duly affixed and subscribed to the said instrument by the authority and direction of the said companies, and that Resolutions adopted by the Board of Directors of said Companies referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal to the County of Henrico, the day and year first above written.



By: 
Donna Donavant, Notary Public
My commission expires 1/31/2023

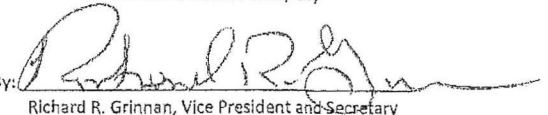
We, the undersigned Officers of SureTec Insurance Company and Markel Insurance Company do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, we have hereunto set our hands, and affixed the Seals of said Companies, on the 29th day of June, 2021.

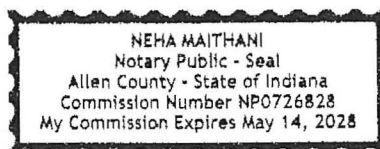
SureTec Insurance Company

By: 
M. Brent Beaty, Assistant Secretary

Markel Insurance Company

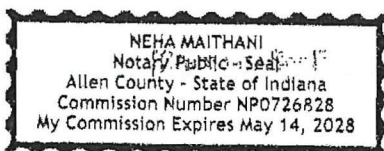
By: 
Richard R. Grinnan, Vice President and Secretary

STATE OF Indiana)
County: Allen) SS.



On this 13th day of July, 2021, before me personally appeared Chris Nichter, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

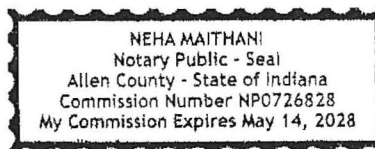


Neha Maithani
Notary Public, State of Indiana

Print Name: Neha Maithani

My commission expires: May 14, 2028

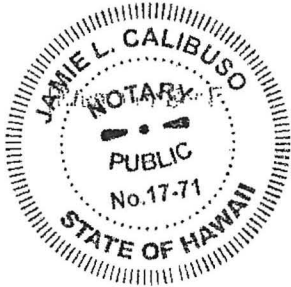
NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>07/13/21</u>	# Pages: <u>4</u>
Notary Name: <u>Neha Maithani</u>	Judicial Circuit:
Doc. Description: <u>License and Permit Bond</u>	
<u>Bond # 444542</u>	
Notary Signature: <u>Neha Maithani</u>	
Date: <u>07/13/2021</u>	



STATE OF Hawaii)
County of Maui) SS.

On this 29th day of June, 2021, before me personally appeared Wette Ocampo, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Jamie L. Calibuso
Notary Public, State of Hawaii

Print Name: Jamie L. Calibuso

My commission expires: 03/19/2025

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>06/29/2021</u>	# Pages: <u>4</u>
Notary Name: <u>Jamie L. Calibuso</u>	Judicial Circuit: <u>2nd</u>
Doc. Description: <u>License and Permit Bond.</u>	
<u>Bond # 4444542</u>	
Notary Signature: <u>Jamie L. Calibuso</u>	
Date: <u>06/29/2021</u>	

