

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii

February 10, 2023

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

REGARDING: Proposed Memorandum of Understanding between the State of Hawaii, Department of Land and Natural Resources and the Kā'anapali Operators Association, Inc., to help fund the Kā'anapali Beach Restoration Project at Kā'anapali, Lāhainā, Maui.

EXHIBITS: A. Kā'anapali Beach Restoration Project Executive Summary
B. 2014 Memorandum of Understanding
C. Proposed Memorandum of Understanding

ONLINE LIBRARY: dlnr.hawaii.gov/occl/kaanapali

Kā'anapali Beach has experienced chronic erosion and extreme seasonal erosion over the previous four decades. The rate and severity of damage has accelerated in recent years, likely due to sea level rise and recent record high water levels. Sand loss from the natural beach systems, or littoral cells, is expected to continue and likely accelerate with sea-level rise.

The Department of Land and Natural Resources (DLNR) and the Kā'anapali Operators Association (KOA) have entered into a public-private partnership for a beach restoration project in the area, modeled after the successful 2012 Waikiki Beach Restoration Project.

The beach restoration project proposes the extraction and placement of approximately 75,000 cubic yards of compatible calcium carbonate marine sand from offshore sources with approximately 50,000 cubic yards to be placed between Hanakao'o Beach Park and Black Rock, Kā'anapali Beach, to restore the beach to its former beach width as it existed in March, 1988, and enhancing the dry beach volume from Hanakao'o Beach Park to Black Rock, Kā'anapali Beach, with approximately 25,000 cubic yards of sand.

Maps, and a more detailed summary of the project, can be found in the Executive Summary (Exhibit A). The Office of Conservation and Coastal Lands (OCCL) also maintains an online library of environmental documents and fact sheets on the project at dlnr.hawaii.gov/occl/kaanapali.

DLNR and KOA entered into a Memorandum of Understanding (MOU) in April 2014 to jointly fund the costs for the planning and permitting for a beach restoration project, for a total cost of \$800,000 (Exhibit B). DLNR engaged the services of a coastal engineering company to produce an Environmental Impact Statement (EIS) and a comprehensive final engineering design. The Final EIS for the Project was published on the Office of Environmental Quality Control website on December 8, 2022. DLNR has also engaged the services of a coastal engineering company to complete the final permitting and design for the project.

The State has estimated the remaining cost of construction, construction monitoring, environmental monitoring, and after-action report to be \$10,100,000. The purpose of the MOU is to provide the mechanism by which KOA will jointly fund the project by depositing up to \$5.05 million with DLNR.

State funds for this work have been authorized by Act 40, SLH 2019, as amended by Act 6, SLH 2020. The funds were blanket encumbered on June 30, 2022.

DLNR will manage the construction, construction monitoring, environmental monitoring, and after-action reports for the project

The Board of Land and Natural Resources will need to approve a State Conservation District Use Permit (CDUP) for the project before construction begins.

The proposed Memorandum of Understanding (MOU) for \$10,100,00 is attached (Exhibit C). The Department of the Attorney General has reviewed the MOU. The proposed donor, KOA, is in agreement with the proposed language of the MOU.

RECOMMENDATION

That the Board of Land and Natural Resources (BLNR) approve the Department entering into an MOU for the project, and authorize the Chairperson to finalize and sign the MOU, subject to approval as to form the Department of the Attorney General.

Respectfully submitted,

S Michael Cain

Michael Cain, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



Dawn N. S. Chang, Chairperson
Board of Land and Natural Resources

Kā'anapali Beach Restoration Project Executive Summary

Kā'anapali Beach has been negatively impacted by chronic erosion and extreme seasonal erosion over the previous four decades. The rate and severity of damage has accelerated likely due to sea level rise and recent record high water levels. Sand loss from the natural beach systems, or littoral cells, is expected to continue and likely accelerate with sea-level rise. The beach may be conserved with sand nourishment or managed retreat or a combination of approaches, but managed retreat is a long-term action that does not address chronic beach loss happening now. Managed retreat is a multidecadal process, requiring years of planning, funding, and implementation. As a synergistic mid-term step in a much longer adaptation process, the beach can be restored through sand nourishment utilizing sound engineering design and best practices to ensure protection of the nearshore marine environment.

Beach restoration is a specific type of environmental restoration, focused on restoring coastal sandy habitat that extends across the terrestrial/marine boundary. In broad terms, environmental restoration is focused on the renewal of a damaged resource, typically after the resource has been damaged due to human interactions. Modern sea level rise is a result of human-induced global atmospheric and ocean warming. Changes in storm severity have also been attributed to climate change. Moreover, these phenomena are identified as key drivers in accelerating erosion rates in Hawai'i and globally. As such, beach restoration is an important and viable environmental restoration technique to be deployed as part of the suite options needed to adapt to long-term changes in climate, the ocean, and our shorelines.

The State of Hawai'i and the Kā'anapali Operations Association, Inc. have developed a plan to ensure the viability of this sandy coastal resource, which includes both beach restoration and berm enhancement. Beach restoration is proposed for the section of beach between Hanaka'ō'ō Beach Park and Hanaka'ō'ō Point ("Hanaka'ō'ō Littoral Cell"), and beach berm enhancement is proposed for the section of beach between Hanaka'ō'ō Point and Pu'u Keka'a ("Kā'anapali Littoral Cell") (Figure 1). The proposed project is intended to mitigate the impacts of rising water levels and coastal erosion, which are increasing with global sea level rise.

The project provides a nature-based adaptation solution that restores natural habitat and recreational resources while increasing coastal hazard mitigation and protection for the Kā'anapali Resort community as an interim, mid-term approach while long-term adaptation options are

developed. Adding beach quality sand to the north and south littoral cells is a key action for restoring the beach back to its former width and volume to make Kā'anapali Beach more resilient to the impacts of coastal erosion and high wave overwash.

The Hanaka'ō'ō Littoral Cell is suffering from a combination of chronic and episodic erosion, which has resulted in beach narrowing, shoreline recession, reductions in beach access, and damage to backshore infrastructure including the Kā'anapali Beachwalk. The beach in this littoral cell is less seasonally dynamic than the beach in the Kā'anapali Littoral Cell to the north; however, the long-term changes in beach location and width are more persistent along this length of shoreline than in the Kā'anapali Littoral Cell. The presently narrow beach, chronic erosion, and limited seasonal sand transport make this section of shoreline suitable for beach restoration. Beach restoration would include the addition of beach quality sand from the current beach face out to the former extent of the beach in the 1980s. This part of the proposed project would use approximately 50,000 cubic yards of highly compatible marine carbonate sand to restore the beach to the approximate position shown in the 1988 aerial photograph. This would widen the dry beach by between 41 and 78 feet (Figure 2).

The Kā'anapali Littoral Cell, between Hanaka'ō'ō Point and Pu'u Keka'a, experiences significant seasonal erosion with alternating predominant wave directions in summer and winter. Berm enhancement, or raising the elevation of the beach berm, would create a new reservoir of sand along the backshore (the upper, usually dry area of the beach) to augment the current sediment system with additional volume. This additional volume of highly compatible sand will help offset temporary beach loss during the natural seasonal erosion cycles. Sand placed at the north end of the beach would be seasonally eroded during the winter months, while sand placed at the south end of the littoral cell, at Hanaka'ō'ō Point, would be released during summer months. Both berm enhancement areas would provide a buffer during extreme erosion events by increasing total beach sand volume within the broader littoral cell. This part of the proposed project would use approximately 25,000 cubic yards of sand to raise the beach berm elevation by 3.5 feet along most of the Kā'anapali Littoral Cell (Figure 2). The berm enhancement area would extend from the vegetation in the backshore to the berm crest, at the mauka edge of the beach face.

A total of approximately 75,000 cubic yards of sand is needed for the proposed beach restoration and berm enhancement project, with 50,000 cubic yards and 25,000 cubic yards allocated to the Hanaka'ō'ō and Kā'anapali littoral cells, respectively. The beach quality sand proposed for recovery from an 8.5-acre sand deposit is located from approximately 150 feet to nearly 800 feet

seaward of Kaanapali Beach. This sand area, in 28 to 56 feet water depth (Figure 2), is part of a much larger regional sand field fronting Kā'anapali.

Sand compatibility between the recovery site and the active beach is one of the most important aspects of beach restoration. High compatibility helps to minimize the potential for negative water quality impacts from fine sediments associated with beach restoration, while maximizing the stability or equilibrium of the beach with typical wave conditions. Moreover, the offshore sand's similarity to the adjacent beach sand is likely a result of transport and loss from the active beach system, meaning this project is likely returning beach sand back to its beach of origin.

The proposed sand recovery method consists of a moored crane barge equipped with an environmental clamshell bucket, two sand transport barges, several tugboats, and two landing areas at opposite ends of the project area. The crane barge would lift sand from the seafloor with the environmental clamshell bucket and place it onto two approximately 1,500 cubic yard capacity barges. Environmental clamshell buckets are designed to minimize water volume and maximize precision with each sand recovery scoop, which minimizes potential impacts to the surrounding environment. The sand transport barges would rotate between the sand recovery site and the off-loading sites. Once a sand transport barge is filled at the sand recovery site, it would be towed to the off-loading site by a tugboat, where the barge would be moored adjacent to an elevated trestle or floating bridge (Figure 3). The elevated trestle or floating bridge would extend from approximately 15 feet of water depth to shore. Sand would be transferred from the barge to shore along the bridge/trestle system using a methodology selected by the contractor. Land-based equipment would then transfer the sand from the shoreline, at the end of the elevated trestle or bridge, to the placement area. At the sand placement area, which would move each day as the project advances, bulldozers and crews would spread sand along the shore to meet the lines and grades of the design beach restoration plan and section and the berm enhancement plan and section. Sand would be placed over the existing beach and no excavation of the beach is planned with the proposed project.

During placement activities there would be heavy equipment operated on the beach at the sand transfer site and at the sand placement site. These areas would be treated as active construction sites and public access would be limited near the heavy machinery and sand loading and grading areas. The sand placement site would move progressively through the berm enhancement and beach restoration areas as sand is added to the beach. Sand would be mechanically hauled by dump trucks between the two transfer sites on the beach and the restoration areas on the berm and



Kā'anapali Beach Restoration – EXECUTIVE SUMMARY

beach. During hauling operations, the transit corridor for the trucks would be cordoned off and assistants would be available along the full length of the haul route to facilitate public access to and from the shoreline. While sand transport barges are transiting from the sand recovery barge to the off-loading sites, marine traffic and public access along the navigation route would be restricted. There would be approximately four rotations of barges between the recovery site and off-loading sites each day. There would also be restricted public access around the sand recovery barge and the offloading sites, to protect the public from potentially dangerous contact with the equipment and support materials.

Beach restoration is expected to last approximately two months, including sand recovery, transfer, and placement activities, which are expected to take place at least 12 hours per day, seven days per week. The goal is to complete the project in the most efficient manner possible, thereby limiting the inconvenience to the general public and construction related impacts to the environment. The work is projected to take place during October, November, and part of December, minimizing overlap, as much as possible, with southern summer swell and northern winter swell environments.

Other forms of beach nourishment are also effective, have been utilized within the United States and on international coastlines, and may work at this location. Use of other means and methods for beach nourishment at Kā'anapali would be contingent on the feasibility of given site conditions and on receiving permits from the applicable Federal, State, and County agencies. An alternate sand recovery and transport technique is hydraulic dredging, where sand entrained in seawater as a slurry is delivered via a pipeline to the beach or the inshore waters directly adjacent to the beach. Additional methods include, but are not limited to, sand transfer in submerged pipelines to create submerged sand bars, mechanical placement on the beach through conveyor belts, and dune creation or restoration. Sand placed in nearshore and connected features are spread throughout the beach and inshore sand field by natural wave and current processes.

The State has developed extensive best management practices through the environmental review process and consultation with natural resource management agencies to ensure that coral and other marine organisms and resources are protected throughout project construction. Identification of a beach compatible and suitable sand source is a critical element of the marine protection program. The sand selected for this project is a nearly ideal match to the native beach. The compatibility, in terms of the sand's physical characteristics and quality, between the proposed sand source and the beach exceeded all other sand sources investigated during this project. Moreover, high

compatibility between restoration sand and native beach sand has been shown to result in faster equilibration and more natural response of the restored beach, as well as minimization of potential long-term negative impacts that may occur with beach restoration projects. In addition, the sand recovery site is nearby, which limits travel and sand transfer requirements.

The proposed project represents an effective and beneficial step in coastal adaptation to sea level rise. Beach restoration is a nature-based ecosystem restoration project that is designed to improve mid-term ecologic function, cultural and recreational resources, and coastal hazard mitigation. The beach may be restored in the mid-term with sand nourishment, while managed retreat is investigated as a long-term response and adaptation practice. Likely, the future of coastal management in Kā'anapali, and Hawai'i as a whole, will require a combination of approaches including both of these and more. For now, managed retreat is a long-term action to be developed and implemented in the future, and beach restoration is an achievable target for early success in adaptive coastal management.

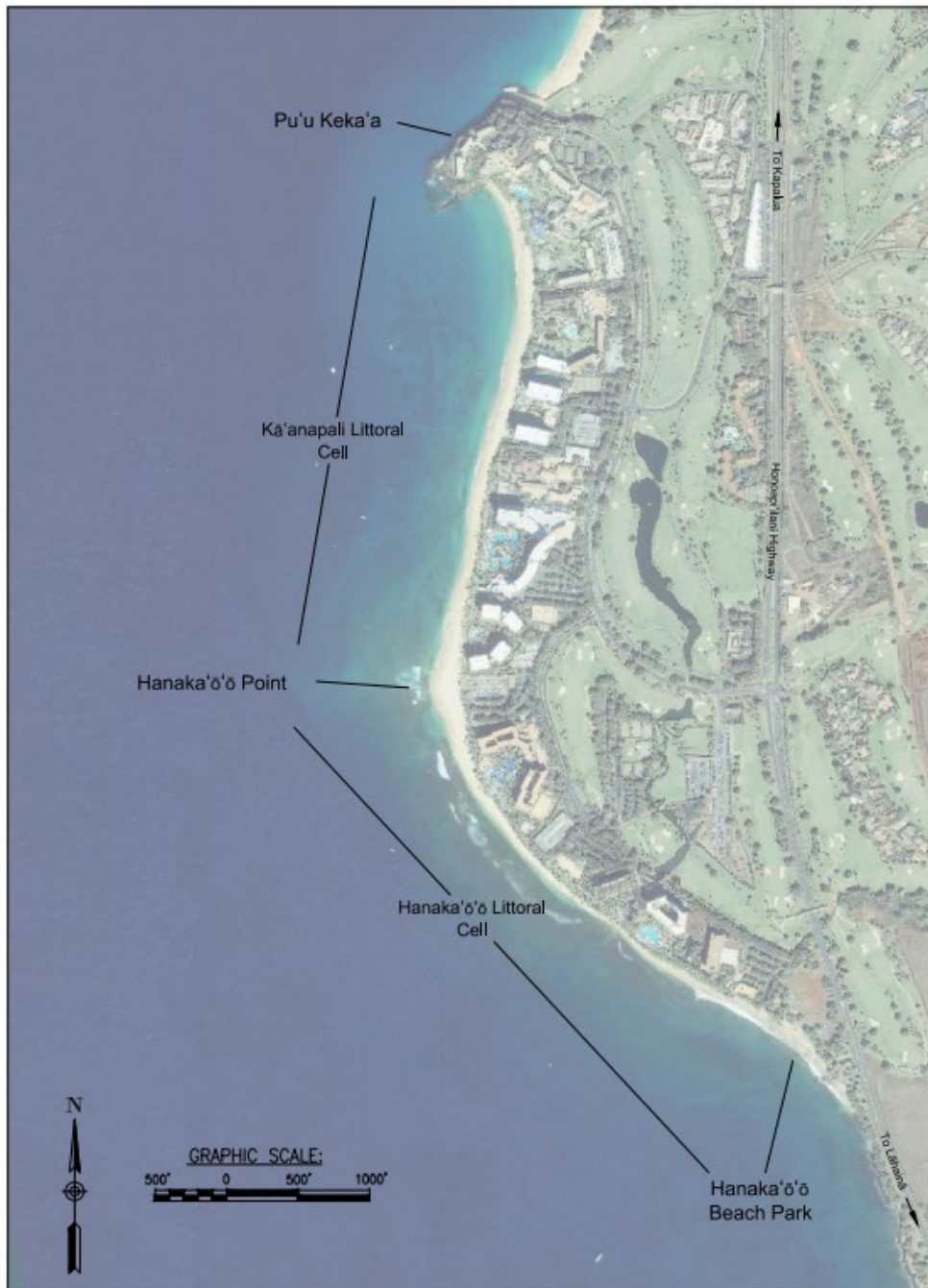


Figure 1. Kā'anapali Beach overview.

Kā'anapali Beach Restoration – EXECUTIVE SUMMARY

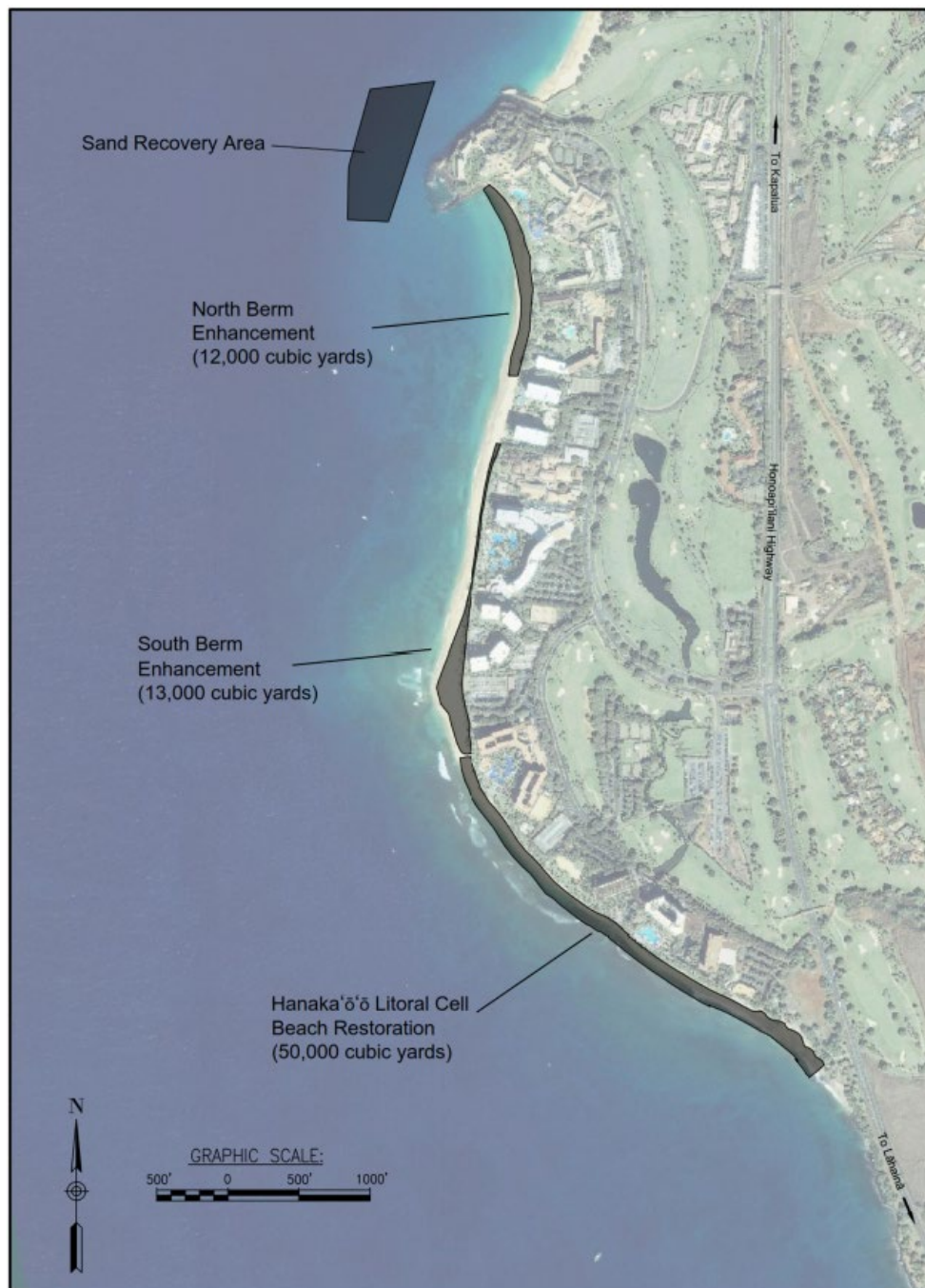


Figure 2. Kā'anapali Beach restoration and sand recovery areas overview.

Kā'anapali Beach Restoration – EXECUTIVE SUMMARY

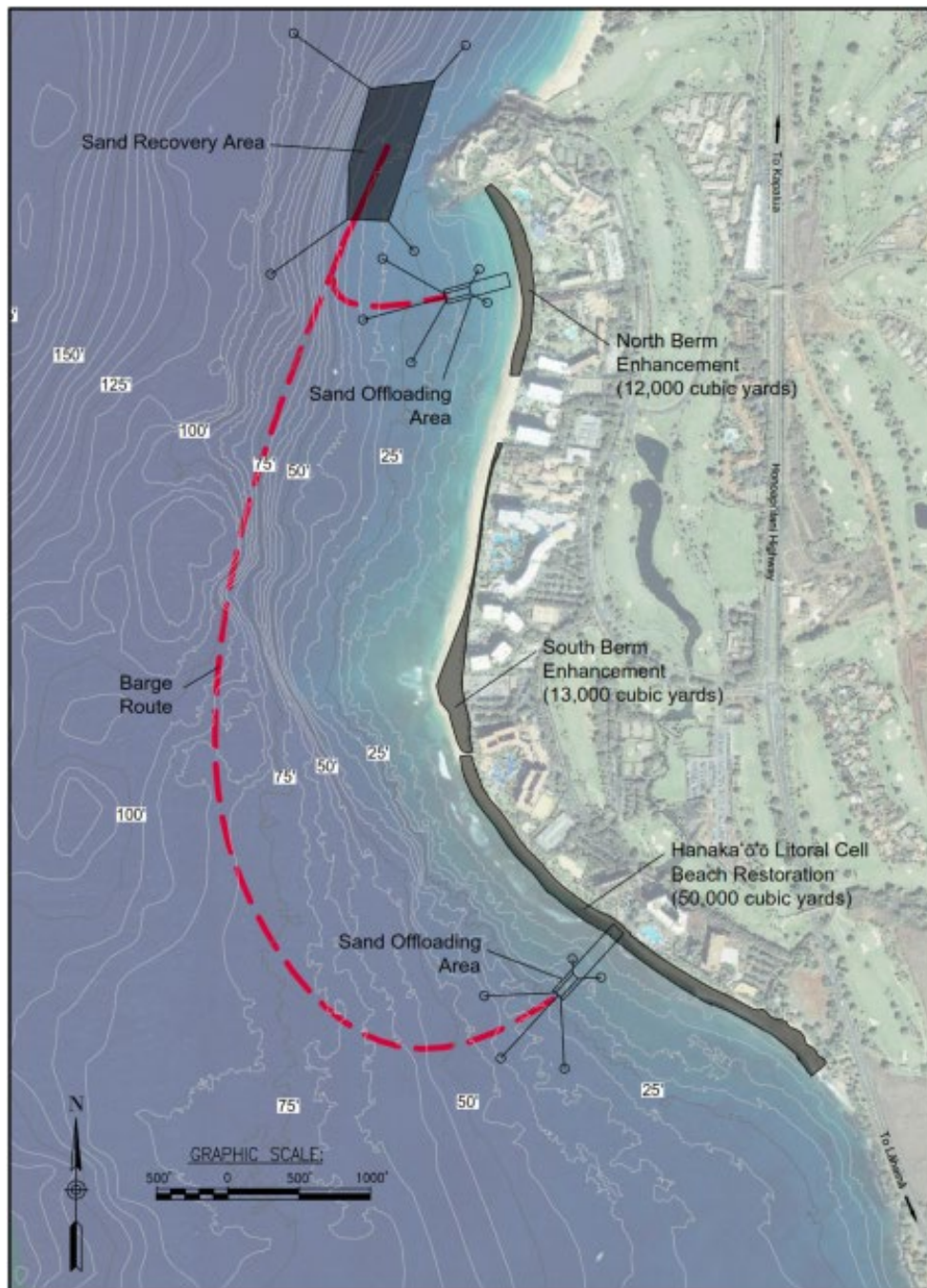


Figure 3. Kā'anapali Beach restoration sand delivery plan.

MEMORANDUM OF UNDERSTANDING
(KAANAPALI BEACH RESTORATION, ENVIRONMENTAL IMPACT
STATEMENT, DESIGN AND SPECIFICATIONS, PERMITS, MONITORING)

This memorandum of understanding (MOU), dated APR 30 2014, outlines the agreement between the State of Hawaii, Department of Land and Natural Resources (DLNR) and the Ka'anapali Operations Association, Inc. (KOA) regarding beach restoration at Ka'anapali, Maui.

RECITALS

- A. Ka'anapali Operations Association, Inc., in concert with DLNR, through its Board of Land and Natural Resources (BLNR) and Office of Conservation and Coastal Lands (OCCL), enter into this agreement to fund an Environmental Impact Statement (EIS), obtain all necessary permits, and develop detailed project plans at Ka'anapali Beach, to restore the beach to its former width fronting the Hyatt and Marriott Hotels and Hanakao Beach Park and berm enhancement to Black Rock (hereafter collectively referred to as "planning and permitting").
- B. The work will primarily entail the design and development of a State and Federal EIS and project plan for the extraction and placement of approximately 75,000 cubic yards of compatible calcium carbonate marine sand from offshore sources with approximately 50,000 cubic yards to be placed between Hanakao Beach Park and Black Rock, Ka'anapali Beach, to restore the beach to its former beach width as it existed in March, 1988, and enhancing the dry beach volume from Hanakao Beach Park to Black Rock, Ka'anapali Beach, with approximately 25,000 cubic yards of sand.
- C. This MOU covers the acquisition of all necessary permits, and detailed plans and specifications. This MOU does not include project construction, which will be managed under a separate and subsequent agreement and funding mechanism.
- D. The intent of this work is to protect, preserve, and restore the natural beach resource at Ka'anapali for the benefit of the public at large; to alleviate hazards to upland development from chronic (long-term) and seasonal beach erosion utilizing beach restoration as an alternative to hardened shoreline protection; and to plan for and design the optimal delivery method for beach restoration and berm enhancement in full compliance with environmentally sound planning and design principles as determined through the establishment of an acceptable project design and EIS; and to gain all permitting necessary to initiate the project, and to provide for construction monitoring and an after action report.
- E. KOA previously engaged the services of a coastal engineering company to conduct a feasibility analysis and scope of work for a beach restoration project at Ka'anapali. It has been determined that a project is feasible. The planning and permitting portion of the project cost is estimated to be up to approximately \$800,000. Thus, the DLNR wishes to enter into an MOU with KOA for up to \$800,000 to cover the cost of planning and permitting for the beach restoration project. The source of public

funds for this project is the State's Special Beach Restoration Fund which is supported by revenues from the Tourism Accommodations Tax (TAT) and by mutual agreement between the Hawaii Tourism Authority and the Board of Land and Natural Resources.

- F. The DLNR will engage a third-party consultant to complete the environmental, planning, permitting, and project design and management elements.
- G. KOA and DLNR will jointly manage planning and permitting. The DLNR and KOA desire to memorialize their understanding of the terms and conditions upon which DLNR and KOA will provide said funds.

AGREEMENT

Now, THEREFORE, DLNR and KOA hereby agree as follows:

1. Contribution. KOA agrees to contribute to the DLNR, FOUR HUNDRED THOUSAND DOLLARS (the "KOA Contribution") toward the cost of planning and permitting, upon and subject to the terms and conditions set forth in this MOU. The DLNR agrees to fund FIFTY PERCENT (FOUR HUNDRED THOUSAND DOLLARS) of the planning and permitting costs under this MOU with funds from the Beach Restoration Special Fund, subject to Legislative approval.
2. Use of Funds. The DLNR agrees that the funding provided by KOA shall be used solely as set forth in this MOU to support a beach restoration project extending from Hanakao Beach Park to Black Rock, Ka'anapali Beach.
3. Restoration of the beach at Kaanapali. Once the project design is completed and an acceptable EIS approved, KOA and DLNR will proceed to implement a beach restoration project for the placement of approximately 75,000 cubic yards of sand on the beach at Kaanapali as described above in accordance with State approvals.
4. Cost of Restoration. The current estimated cost of the construction component of the restoration of the beach as described above is approximately SIX MILLION EIGHT HUNDRED TEN THOUSAND TWO HUNDRED DOLLARS (\$6,810,200).
5. Joint Funding of Beach Restoration. KOA and DLNR agree to pursue joint funding of the construction portion of the beach restoration (Restoration) once the EIS and design are completed, currently forecast to be in 2016. KOA will accrue one-half of the estimated cost of the Restoration and the DLNR shall accrue one-half of the cost of the Restoration to be paid through its Beach Restoration Special Fund subject to Legislative approval.
6. Conditions of Funding. KOA's obligation to deposit the KOA Contribution shall be conditioned upon the satisfaction in all material respects of each of the following provisions.

7. Disbursement: The DLNR requires that all money to be used for the consultant contract be available for use when it executes the consultant contract. The DLNR shall provide KOA with not less than three weeks' written notice of the estimated consultant contract execution date. KOA shall ensure that the funding is transferred to the DLNR no less than one day before the execution of the consultant contract in the form of a check made payable to the State of Hawaii, Department of Land and Natural Resources. KOA may periodically contact the DLNR prior to receiving aforesaid written notice to find out the current month being targeted for advertising. The funds deposited by KOA pursuant to this agreement shall be held in a separate account and shall not be commingled with other funds of the State.
8. DLNR's Disbursement of Money to the Contractor: The DLNR shall fund each progress payment by drawing down on the accounts of KOA and DLNR who are funding the total cost of the work under this MOU, in direct proportion to their original contributions.
9. Return of Funds: Any funds comprising the KOA Contribution shall be returned to KOA as set forth hereinbelow:
 - a. If for any reason the DLNR is unable to award a contract for a consultant as provided in paragraph F above, the DLNR shall provide written notification to KOA and shall promptly return the entire KOA Contribution to KOA.
 - b. If for any reason a contract for the purposes of this MOU is awarded but there are circumstances which arise which prevent or otherwise make impracticable its completion, the DLNR shall promptly return any unused portion of the KOA Contribution to KOA.
 - c. If, after the DLNR's final acceptance of work covered by this MOU and DLNR's final payment to the consultant is made, there are any unused funds, the DLNR shall promptly return any unused portion of the KOA Contribution to KOA.
10. Beach Restoration Subject to Further Legislative Approvals. KOA and DLNR agree that further approval by the State of Hawaii Legislature may be required to fund the beach restoration project once the EIS is completed and accepted and permits obtained.
11. Miscellaneous Provisions.
 - a. Partial Invalidity. If any provision of this MOU or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remaining provisions of this MOU, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected.
 - b. Governing Law. This MOU shall be construed, interpreted and applied in accordance with the laws of the State of Hawaii.

- c. No Third Party Beneficiaries. No term or provision of this MOU is intended to be, or shall it be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.
- d. No Partnership. Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed.
- e. Modifications. This MOU may not be modified except by a written agreement signed by both parties.
- f. Binding on and Inuring to Benefit of Successors and Assigns. This MOU shall be binding upon, and shall inure to the benefit of the parties, and their respective successors and assigns.
- g. Notices. All notices and other communications in connection with this MOU shall be in writing and shall be deemed to have been received by a party when actually received in the case of hand delivery, facsimile transmission, e-mail, or internationally recognized courier service, or three (3) days after being sent by United States mail, as the case may be, using the information of the DLNR and KOA as shown below. Any refusal to accept delivery of a written notice delivered or mailed to the addresses set forth below, or the non-receipt of any facsimile transmission sent to the facsimile number set forth below resulting from the non-operation of the receiving party's facsimile equipment, shall be deemed to be receipt of such notice for the purposes of this MOU.

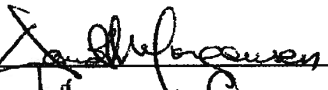
DLNR: Department of Land and Natural Resources
Office of Conservation and Coastal Lands
1151 Punchbowl Street
Honolulu, Hawaii
Facsimile No.: (808) 587-0377
Email address: sam.j.lemmo@hawaii.gov

KOA: Kaanapali Operations Association, Inc.
P.O. Box 11135
Lahaina, Hawaii
Facsimile No.: (808) 661-7371
Email address: whedani@aol.com

Counterparts: Facsimile Execution. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding upon all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document. An executed counterpart of this instrument transmitted and received by facsimile or email shall be deemed for all purposes to be an original, executed counterpart thereof.

IN WITNESS WHEREOF, the DLNR and KOA have executed this Memorandum of Understanding as of the date first above written.


Approved as to form:

By 
Title: Attorney for
Kaanapali Operations
Association, Inc.


Approved as to form:

By 
Deputy Attorney General

Kaanapali Operations Association, Inc.

By 
Print name: Wayne N. Hedani
Title: President & General Manager

State of Hawaii, Department of Land and
Natural Resources

By 
William J. Aila, Jr., Chairperson
Board of Land and Natural Resources

Approved by the Board of Land and Natural
Resources at its meeting held on

March 28, 2014

MEMORANDUM OF UNDERSTANDING
KĀ'ANAPALI BEACH RESTORATION PROJECT

This memorandum of understanding ("MOU"), dated _____, outlines the agreement between the State of Hawai'i, Department of Land and Natural Resources ("DLNR") and the Kā'anapali Operators Association ("KOA") regarding the Kā'anapali Beach Restoration Project at Kā'anapali, Maui.

RECITALS

- A. KOA and DLNR enter into this MOU regarding the joint funding of the construction, construction monitoring, environmental monitoring, and after-action report of the Kā'anapali Beach Restoration Project (the "Project").
- B. The work will primarily entail the design and development of a State and Federal Environmental Impact Statement (EIS) and project plan for the extraction and placement of approximately 75,000 cubic yards of compatible calcium carbonate marine sand from offshore sources with approximately 50,000 cubic yards to be placed between Hanakao'o Beach Park and Black Rock, Kā'anapali Beach, to restore the beach to its former beach width as it existed in March, 1988, and enhancing the dry beach volume from Hanakao'o Beach Park to Black Rock, Kā'anapali Beach, with approximately 25,000 cubic yards of sand.
- C. The intent of this work is to protect, preserve, and restore the natural beach resource at Kā'anapali for the benefit of the public at large; to alleviate hazards to upland development from chronic (long-term) and seasonal beach erosion utilizing beach restoration as an alternative to hardened shoreline protection; and to plan for and design the optimal delivery method for beach restoration and berm enhancement in full compliance with environmentally sound planning and design principles as determined through the establishment of an acceptable project design and EIS; and to gain all permitting necessary to initiate the project, and to provide for construction monitoring and an after action report.
- D. The DLNR engaged the services of a coastal engineering company, to produce the EIS and a comprehensive final engineering design. The final EIS for the Project was published on the Office of Environmental Quality Control website on December 8, 2022. The Board of Land and Natural Resources will need to approve a State Conservation District Use Application for the Project. DLNR has also engaged the services of a coastal engineering company to complete the final permitting and design for the Project.
- E. DLNR and KOA had previously entered into an MOU, signed on April 14, 2014, to split the costs for the planning and permitting for the project, totaling of \$800,000.

- F. The State has estimated the cost of construction, construction monitoring, environmental monitoring, and after-action report to be \$10,100,000.
- G. The purpose of the MOU is to provide the mechanism by which KOA will jointly fund the Project by depositing up to \$5.05 million with DLNR.
- H. DLNR will manage the construction, construction monitoring, environmental monitoring, and after-action reports for the Project.
- I. DLNR and KOA desire to memorialize their understanding of the terms and conditions upon which DLNR and KOA will fund a portion of the construction for the Project in this MOU.
- J. This MOU was approved by the Board of Land and Natural

Now, THEREFORE, the terms of the MOU are as follows:

- 1. Estimated Cost of Project: The current estimated total cost for the construction and monitoring for the Project ("MOU Work") is \$10.1 million.
- 2. Joint Funding of the Project: DLNR and KOA agree to jointly fund the MOU Work, with KOA and DLNR each, contributing half of the total cost.
- 3. Contribution: KOA agrees to contribute to DLNR, FIVE MILLION FIFTY THOUSAND DOLLARS (\$5,050,000.00) (the "KOA Contribution"), upon and subject to the terms and conditions set forth in this MOU.
- 4. Use of KOA Contribution: The KOA Contribution shall be used solely as set forth in the MOU to fund the MOU Work for the Project. It is explicitly understood that the moneys covered by this MOU are trust funds and are not subject to appropriation by the Legislature.
- 5. Deposit of the KOA Contribution: The KOA Contribution shall be held in a separate account and shall not be commingled with other funds of the State. KOA shall deposit the KOA Contribution upon written request from DLNR to KOA.
- 6. Payment of Money for MOU Work: DLNR shall make each progress payment for the MOU Work by making payments by or on behalf of DLNR and from the KOA separate account in equal amounts.
- 7. Cost overrun. If for any reason the project cost exceeds the appropriated and deposited amounts, then the State and KOA will meet to discuss potential project scope adjustments or cost sharing for any cost overruns.

8. Return of Funds: The KOA Contribution or any portion thereof remaining, as the situation may be, shall be returned to KOA as set forth herein below:

- a. If for any reason DLNR is unable to award a contract for the MOU Work by June 30, 2024, DLNR shall provide written notification to KOA and shall promptly return any unused portion of the KOA Contribution to KOA. If, however, DLNR is unable to award a contract because the bid opening reveals that the total cost of the MOU Work is expected to exceed the funds available and the agreed KOA contribution of \$5,050,000.00, the parties shall, in good faith, discuss potential options for moving forward with the MOU Work prior to the return of any unused portion of the KOA Contribution to KOA.
- b. If for any reason a contract for the MOU Work is awarded but there are circumstances that arise by June 30, 2026, that prevent or otherwise make impracticable the contract's completion, then upon termination or cancellation of the contract, DLNR shall promptly return any unused portion of the KOA Contribution to KOA.
- c. If, after the DLNR's final acceptance of the MOU Work and DLNR's final payment is made, there is an unused portion of the KOA Contribution, DLNR shall promptly return any unused portion of the KOA Contribution to KOA.

9. Miscellaneous Provisions:

- a. Partial Invalidity: If any provision of the MOU or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remaining provisions of this MOU, or the application of such provision to person or circumstances other than those as to which it is invalid or unenforceable, shall not be affected.
- b. Governing Law: This MOU shall be construed, interpreted and applied in accordance with the laws of the State of Hawai'i.
- c. No Warranty: Nothing in this MOU shall be construed as a warranty or guaranty of the successful or full completion of the Project or the MOU Work, or of the quality of the Project or the MOU Work.
- d. No Third-Party Beneficiaries: No term or provision of the MOU is intended to be, or shall it be, for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
- e. No Partnership: Any intention to create a joint venture or partnership relation between the parties hereto is hereby expressly disclaimed.

- f. Modifications: This MOU may not be modified except by a written agreement signed by both parties.
- g. Binding on and Inuring to Benefit of Successors and Assigns: This MOU shall be binding upon, and shall insure to the benefit of the parties, and their respective successors and assigns.
- h. Notices: All notices and other communications in connection with this MOU shall be in writing and shall be deemed to have been received by a party when actually received in the case of hand delivery, facsimile transmission, e-mail, or internationally recognized courier services, or three (3) days after being sent by United States mail, as the case may be, using the information of the DLNR and KOA as shown below. Any refusal to accept delivery of a written notice delivered or mailed to the addresses set forth below resulting in non-operation of the receiving party's facsimile equipment, shall be deemed to be receipt of such notice for the purpose of this MOU.

DLNR:

Department of Land and Natural Resources
Office of Conservation and Coastal Lands
1151 Punchbowl Street
Honolulu, Hawai'i 96822
Facsimile No.: (808) 587-0377
Email michael.cain@hawaii.gov

KOA:

Kā'anapali Operators Association, Inc.
P.O. Box 11135
Lāhainā, Hawai'i 96815
Facsimile No.: (808) 923-2622

- i. Counterparts; Facsimile Execution: The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding upon all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document. An executed counterpart of this instrument transmitted and received by facsimile or email shall be deemed for all purposes to be an original, executed counterpart thereof.

IN WITNESS WHEREOF, DLNR and KOA have executed this Memorandum of Understanding as of the date stated above.

Kā'anapali Operators Association, Inc.

By: _____

Wayne N. Hedani

President and General Manager

By: _____

David Jorgensen, Counsel

Approved as to form:

**State of Hawai'i, Department of Land and
Natural Resources**

By: _____

Julie China

Deputy Attorney General

By: _____

Dawn N. S. Chang, Chairperson

Board of Land and Natural Resources

Approved by the Board of Land and Natural
Resources at its meeting held on:
