

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

October 13, 2023

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

PSF No.: 22OD-083

OAHU

Grant of Term, Non-Exclusive Easement to HTH DH Ventures, LLC for Steps at
Waikiki, Honolulu, Oahu, Tax Map Key: (1) 3-1-039: seaward of 065.

APPLICANTS:

HTH DH Ventures, LLC, a Hawaii limited liability company (“Applicant”).

LEGAL REFERENCE:

Sections 171-13 and 171-53(c), Hawaii Revised Statutes (“HRS”), as amended.

LOCATION:

Portion of Government submerged land located in Waikiki, Honolulu, Oahu, Tax
Map Key: (1) 3-1-039: seaward of 065, as shown on **Exhibits A-1** and **A-2**.

AREA:

26.5 square feet, more or less, subject to review and approval by the Department of
Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Conservation
City & County of Honolulu LUO: R-7.5 Residential [for the abutting private property]

TRUST LAND STATUS:

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

CURRENT USE STATUS:

Unencumbered as relates to the State submerged land portion.

TERM, NON-EXCLUSIVE EASEMENT:CHARACTER OF USE:

Right, privilege and authority to construct, use, repair, and maintain new concrete steps over, under, and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson

CONSIDERATION:

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

TERM:

Twenty-five (25) years.

The Land Division has reduced the term for which shoreline easements are granted from 55 to 25 years in response to sea level rise projections disclosed in the Hawaii Sea Level Rise Vulnerability and Adaptation Report adopted by the State Climate Change Mitigation and Adaptation Commission and pursuant to the recommendation of the Office of Conservation and Coastal Lands. Landward migration of the shoreline is currently occurring as a direct result of sea level rise. This will progressively expose immobile shoreline structures to an evolving combination of destructive effects from erosion, chronic flooding, and wave inundation. The intention of the term reduction is two-fold: (1) to reduce the potential for accidents and liabilities resulting from dysfunctional shoreline structures by more frequently reviewing and managing shoreline structures and (2) to facilitate a general process of managed retreat from the shoreline.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules ("HAR") §§11-200.1-15 and -16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, which applies to “[o]perations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing.” Specifically, the subject request is exempt under Part

I, Item 39, which exempts the “[c]reation or termination of easement, covenants, or other rights in structure or land.” The subject request is expected to have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment. **(Exhibit B)**

The Department of Facilities Management of the City & County of Honolulu had no objections or comments and concurred to the proposed Environmental Assessment exemption.

DCCA VERIFICATION:

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

APPLICANT REQUIREMENTS: Applicants shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards and at Applicant’s own cost;
2. Pay for an appraisal to determine one-time payment in consideration of the easement; and
3. Obtain the prior concurrence of the Legislature and approval of the Governor pursuant to §171-53(c), HRS.

REMARKS:

The purpose of the present submittal is to request an easement on a portion of State submerged land located at TMK: (1) 3-1-039: seaward of 065 so that the Applicant can construct concrete steps on an existing seawall located on that parcel. The Applicant has requested approval only of an easement and not of any interim land dispositions such as a Right of Entry permit or Revocable Permit that would grant the Applicant the right to immediate entry and use of the State land at issue.

The State land at issue in the present submittal is a portion that abuts the parcel identified as TMK: (1) 3-1-039:065 (Parcel 65). The title holders of this parcel are Michael Fergus and Janice Lau, who also own the abutting residential property identified as TMK: (1) 3-1-039:044 (Parcel 44).¹ Parcel 65 is a lot seaward of Parcel 44 that consists of a portion of the Old Diamond Head Road with a seawall that runs parallel to the shoreline and bisects the parcel to contain approximately one-third of its surface area within the wall’s boundary.

¹ Pursuant to the Declaratory Judgment in Civil No. 97-2900-07 dated January 7, 1998, recorded at the Bureau of Conveyances as document no. 98-123744 on August 20, 1998, the court ordered, adjudged and decreed final judgment in favor of Plaintiff Michael Fergus and Janice Lau against Defendant State of Hawaii. The State of Hawaii has no interest, right, or title to Parcel 65, other than the inherent State ownership of shoreline submerged lands up to the highest wash of the wave.

The remaining two-thirds of the parcel's surface area is State submerged land, with a shoreline boundary estimated at approximately the makai face of the wall.² (**Exhibit C**)

Parcel 44 is encumbered by an access easement, identified as Easement J, which runs in perpetuity across Parcel 44 for footpath purposes for the benefit of the parcel identified as TMK: (1) 3-1-039:005 (Parcel 5) owned by the Applicant and located mauka of Parcel 44. Easement J was originally established by order of the Territorial Land Court, pursuant to Land Court Application 664, on April 17, 1957, and was recorded on the Land Court's Certificate of Title 58089.

The privately held portion of Parcel 65 is encumbered by another non-exclusive easement in favor of the Applicant (Access Easement), which applies to a five-foot wide area along the western boundary of Parcel 65 from the makai end of Easement J to and over the seawall. (**Exhibit C**) The Access Easement (Document Number T-11746017 recorded February 28, 2022) grants the Applicant access across the privately held portion of Parcel 65 including across the seawall, and the right to reconstruct stairs against the makai side of the seawall to replace the stairs that the Applicant removed without authorization in 2021, as discussed below. The right to construct stairs is limited to the same location, alignment, configuration, and footprint as the stairs that were removed in 2021.

The Applicant is the fee owner of two separate parcels that neighbor Parcels 65 and 44. The Applicant owns the residential properties identified as Parcel 5 and TMK: (1) 1-3-039:042 (Parcel 42). Parcel 5 abuts the mauka boundary of Parcel 65. Parcel 42 is one lot away from the western end of the makai boundary of Parcel 5. Parcel 42 is separated from Parcel 44 by a separate residential parcel that is unrelated to the present action. Seaward of Parcel 42 is a separate parcel of State-owned land identified as TMK: (1) 1-3-039:066 (Parcel 66), which contains a continuation of the seawall located on Parcel 65 and the public beach.³ (**Exhibit D**)

Although neither Parcel 5 nor Parcel 42 fronts the beach, continuous beach access is available on the west side of the property from Parcel 5 through Parcel 42, which both belong to the Applicant, and through Parcel 66, which is State land containing a portion of the public beach and connected without barriers other than the existing seawall to the rest of the public beach. (**Exhibit D**)

The Applicant is requesting the subject easement in order to replace a portion of the previously existing set of steps that extended from the seaward face of the seawall onto the beach area which is State submerged lands. On November 1, 2019, at the DLNR's

2 Please note: The only currently certified shoreline for Parcel 65 at the time of this writing encompasses only the portion that is subject to the Access Easement. It is not possible to certify the entire Parcel 65 shoreline at this time due to the presence of an unresolved encroachment.

3 Please note: The seawall at issue in the present submittal runs continuously east from Parcel 42, across the unrelated parcel, and Parcel 44, then continues to run east across several more beachfront parcels that are also unrelated to the present submittal.

recommendation, the Applicant submitted a Shoreline Encroachment Information Sheet to the Office of Coastal and Conservation Lands (OCCL) for the original set of steps. The application was approved by the OCCL by letter dated December 9, 2019, stating, “Upon review and careful consideration of the information gathered on this case, OCCL’s evaluation criteria would support a disposition request being processed for the encroachment area.” Subsequently, the Applicant was directed to the DLNR Land Division to process the easement request.

However, a lawsuit filed on August 4, 2020, by the owners of Parcels 44 and 65 (Plaintiffs) concerning access across Parcels 44 and 54 (ICCV-200001099, Fergus v. HTH DH Ventures) led DLNR to suspend the processing of the easement, pending a court order.

On February 24, 2021, the court issued a Temporary Restraining Order (TRO) in favor of the Applicant, which directed Plaintiffs to immediately (1) cease all efforts to impede the Applicant’s right to repair the stairs, (2) remove all obstructions impeding access to and enjoyment of the easement and the stairs, and (3) otherwise allow the Applicant necessary access to the stairs. In accordance with the court’s order, the Applicant engaged Sea Engineering, Inc. (SEI) to initiate the repair work on the stairs, which commenced on February 25, 2021, starting with the removal of the stairs.

Responding to a complaint, DLNR staff inspected the site on February 27, 2021, and on March 4, 2021, issued a notice instructing the Applicant to remove improvements from the State land and restore the area. The Applicant completed the removal and restoration of the subject land on March 11, 2021.

The Applicant, along with Corine Hayashi in her personal capacity and Sea Engineering, Inc., was the subject of an enforcement action before the Board under agenda item D-3 at its April 23, 2021 meeting. The Board found that the Applicant had removed the existing, damaged concrete steps from the seawall located on Parcel 65 and attempted to replace them with new concrete steps without permission from the seawall’s owner and without the required permits. The Board assessed a fine and administrative costs totaling \$4,465.34 against Corine Hayashi, in her capacity as President and CEO of HTH DH Ventures, LLC’s parent company, and as the individual who initiated and contracted for the construction work. Ms. Hayashi fully paid the penalty on May 5, 2021.

Staff understands that the lawsuit between the Applicant and the Plaintiffs was settled in 2022 with the owners of Parcels 44 and 65 rescinding all objections to the easement and the repair of the stairs.

On September 14, 2022, the Applicant submitted a request to the OCCL for a Site Plan Approval (SPA) to reconstruct the concrete steps located makai of the seawall on Parcel 65, in the same location of the previously existing concrete steps that were removed in 2021. This SPA application was rejected by OCCL due to the lack of a certified shoreline for the property at the time.

The owners of Parcel 65 received a shoreline certification for the portion of Parcel 65 that is subject to the Access Easement, effective January 18, 2023 (Land Division File No. OA2017). Subsequently, the Applicant submitted a new SPA application, which described the proposed design of the stairs as follows:

“The stairs would be in the same arrangement as they previously existed, consisting of six steps leading from the top of the seawall down to the beach. Under the steps would be beach sand from the vicinity. The [mauka] edge of the stairs would be supported by a minimum 6-inch concrete wall that would tie in to the existing seawall. A 2-inch galvanized railing, 36 inches tall, would be along the west side of the stairway.

...

The proposed land use area, the footprint of the stairs, is approximately 26.5 square feet.”

The proposed location for the stairs on Parcel 65 is the same as the area covered by the Access Easement. The proposed location for the stairs abutting the face of the seawall encroaches onto State shoreline submerged lands makai of the seawall.

OCCL granted the Applicant’s SPA authorization on May 4, 2023, finding, among other things, that the proposed reconstruction of the concrete steps was minor in scope and would not interfere with public access or beach resources. (**Exhibit E**) As part of its approval, OCCL noted that according to information provided by the Applicant, the previously existing stairs were County authorized and that the stairs approved by the SPA are proposed to be built in the same location as the demolished stairs.

The Applicant has requested approval only of an easement and not of any interim land disposition such as a Right of Entry permit or Revocable Permit that would grant the Applicant the right to immediate entry and use of the State land at issue. The Applicant does not intend to construct the replacement steps until after all approvals are in place (i.e., approvals from the Legislature and Governor) and the easement is fully documented. Therefore, the present submittal does not require the approval of a Right of Entry permit, Revocable Permit, or removal bond pending approvals from the Legislature and Governor as is the usual practice in such matters. The Applicant, through her attorney, has confirmed to staff that the Applicant understands that no right to enter or use the State land at issue will be conferred until consummation of the easement and that the Applicant understands and agrees that she may not commence any construction activity upon the State land until the easement is consummated. Nevertheless, the Applicant is free to traverse the State submerged land to enter the ocean.

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

There are no other pertinent issues or concerns and staff has no objection to the request.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Sections 11-200.1-15 and -16, HAR, this project is expected to have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the continued applicability of the subject request in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (1) 3-1-039:065 or in the holder of the Access Easement (Document Number T-11746017 recorded February 28, 2022) when such change in ownership of the parcel or holder of the Access Easement occurs prior to the execution of the requested easement, provided that:
 - A. The succeeding owner of the parcel or holder of the Access Easement has not had a lease, permit, easement, or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions; and
 - B. The change in ownership of the parcel or holder of the Access Easement does not terminate the Access Easement.
3. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to HTH DH Ventures, LLC, covering the subject area for encroachment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The requested easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 3-1-039:005 and to the holder of the Access Easement (Document Number T-11746017 recorded February 28, 2022), provided however:
 - i. It is specifically understood and agreed that the requested easement shall immediately cease to run with the land and to inure to the benefit of the real property and to the benefit of the holder of the Access Easement upon the expiration or other termination or abandonment of the requested easement;
 - ii. If and when the requested easement is sold, assigned, conveyed, or

otherwise transferred, the Grantee shall notify the State, as Grantor, of such transaction in writing, and shall notify Grantee's successors or assigns of the requirements in writing, separate and apart from the requested easement document; and

iii. The requested easement shall terminate upon termination of the Access Easement (Document Number T-11746017 recorded February 28, 2022) or upon termination of Easement J;

- C. Prior concurrence of the Legislature and approval of the Governor through a Concurrent Resolution pursuant to §171-53(c), HRS;
- D. Review and approval by the Department of the Attorney General;
- E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
- F. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

Respectfully Submitted,



Rebecca L. Anderson
Shoreline Specialist

APPROVED FOR SUBMITTAL:



Dawn S. N. Chang, Chairperson



TMK (1) 3-1-039:065

EXHIBIT A1



Overview



Legend

- Roads
- Parcels

TMK (1) 3-1-039:065

EXHIBIT A2

EXEMPTION NOTIFICATION

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

Project Title: Grant of Term, Non-Exclusive Easement, Immediate Right-of-Entry and Revocable Permit to HTH DH Ventures, LLC.

Reference No.: PSF 22OD-083

Project Location: Waikiki, Honolulu, Oahu TMK: (1) 3-1-039:065 por.

Project Description: Issuance of term, non-exclusive easement for stairs.

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

Exemption Class No.: In accordance with HAR §§11-200.1-15 and -16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 which applies to “[o]perations, repairs or maintenance of existing structures, facilities, equipment, or topographical features , involving negligible or no expansion or change of use beyond that previously existing.” Specifically, the subject request is exempt under Part I, Item 39, which exempts the “[c]reation or termination of easement, covenants, or other rights in structure or land.”

The Applicant is not planning on conducting any major change to the existing topographical condition of the subject location. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Cumulative Impact of Planned Successive Actions in Same Place Significant?

No, this request is for a 25-year term easement to allow the replacement of steps that were unlawfully removed from a non-conforming seawall. No successive actions are planned by the applicant in the same location. As such, staff believes that there would be no significant cumulative impact.

EXHIBIT B

Action May Have
Significant Impact on
Particularly Sensitive
Environment?

No, the requested area is a portion of State shoreline land that contains improvements which, by visual analysis, seem to have been in existence for many years and are not likely to have any significant environmental impact. In addition, based on the analysis below, staff believes there would be no significant impact to sensitive environmental or ecological receptors.

Consulted Parties:

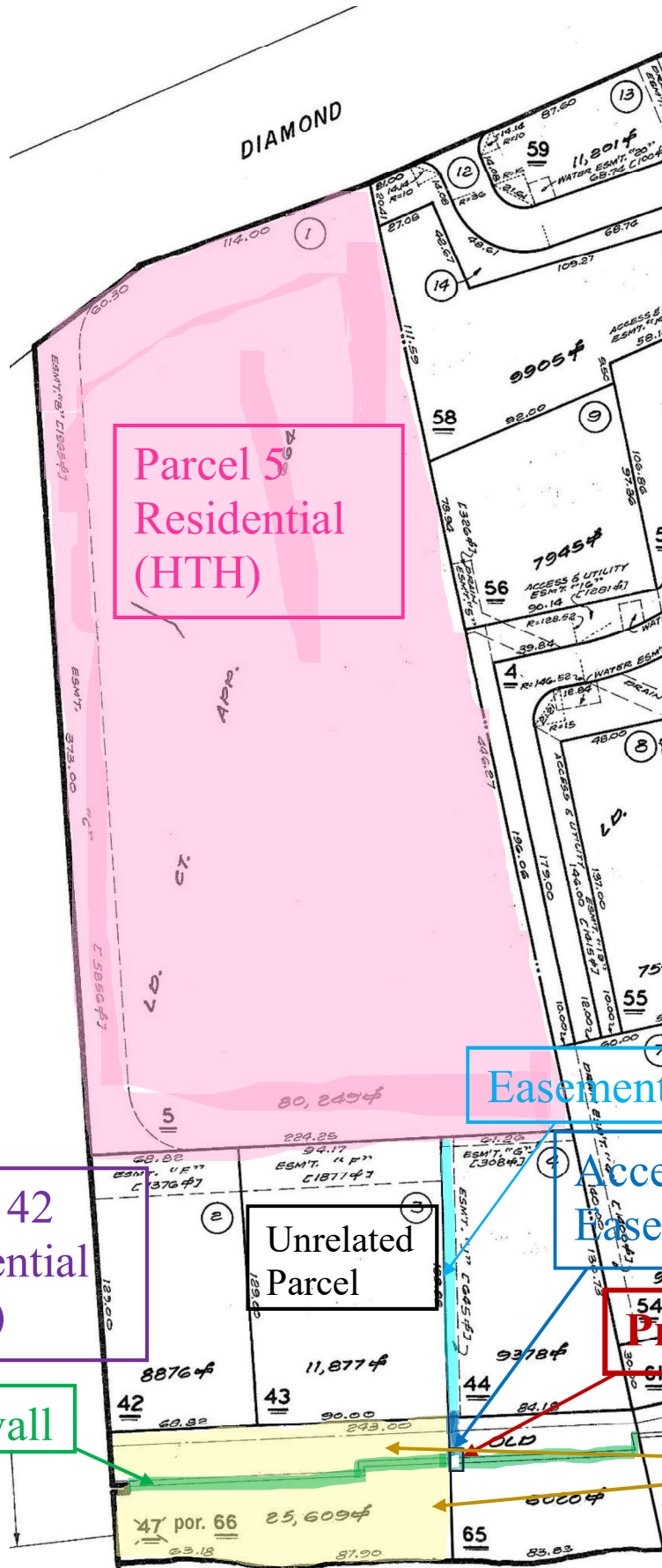
Agencies as noted in the submittal.

Analysis:

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

Recommendation:

That the Board 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.



TMK (1) 3-1-039:005
TMK (1) 3-1-039:042
TMK (1) 3-1-039-066

**Parcel 5
Residential
(HTH)**

Easement J

**Parcel 42
Residential
(HTH)**

**Access
Easement**

Proposed Stairs

Seawall

**Parcel 66
State Land**

EXHIBIT D

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA
SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA
OFFICE OF CONSERVATION AND COASTAL LANDS
P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
LAURA H.E. KAAKUA
FIRST DEPUTY
M. KALEO MANUEL
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:CM

Site Plan Approval: OA 23-53

Christina Ohira
Starn O'Toole Marcus & Fisher
733 Bishop Street, Suite 1900
Honolulu, HI 96813

May 4, 2023

SUBJECT: Site Plan Approval (SPA) OA 23-53 for the Stairs Construction Project
Located at 3735C Diamond Head Road; Kaalawai, Oahu; Tax Map Key: (1)
3-1-039:seaward of 065

Dear Ms. Ohira:

The Office of Conservation and Coastal Lands (OCCL) has reviewed the SPA you submitted on behalf of HTH DH Ventures, LLC, property owners, regarding the subject project. The objective of the proposed project is to build a new set of stairs abutting an existing seawall on Diamond Head Beach for the purpose of beach access fronting a neighbor's private property (see **Exhibit 1**).

According to the information you provided, a County authorized previously existing deteriorated stairs was removed from the State submerged land area makai of the shoreline. The original stairs were built to provide access from the old Diamond Head Road to the sandy beach area. A new set of stairs, consisting of six steps leading from the top of the seawall down to the beach, is proposed to be built in the same location as the demolished stairs with an approximately 26.5 square feet area (see **Exhibit 2**). The landward edge of the stairs will be supported by a minimum 6-inch concrete wall that will tie into the existing seawall. Additions to the new stairs will be a set of 2-inch galvanized handrails, 36-inches tall, on each side.

Construction equipment consists of a concrete mixer and hand tools that will be staged on a nearby property mauka of the shoreline. No heavy equipment will be placed on State submerged lands.

Currently, there exists a sandy beach area fronting the parcel for public lateral access. As such, the relatively small footprint of the new stairs would not interfere with public access. In addition, you note there are no known historic resources at the site or in the

EXHIBIT E

Starn O'Toole Marcus & Fisher
HTH stairs construction

SPA OA 23-53

immediate vicinity and all work will be performed with no additional ground disturbance makai of the shoreline.

The proposed project is considered an identified land use in the Conservation District Resource Subzone pursuant to Section 13-5-22, Hawaii Administrative Rules (HAR), (P-9) STRUCTURES, ACCESSORY (B-1), *Construction or placement of structures accessory to existing facilities or use*. This use requires a SPA approved by OCCL.

The proposed project is minor in scope and in accordance with Section 11-200.1-15, HAR, and the Exemption List for the Department of Land and Natural Resources (DLNR) 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 3, *Construction and location of single new, small facilities or structures and the alteration and modification of the facilities or structures and installation of new, small, equipment and facilities and the alteration and modification of the equipment or facilities*.

Authorization is hereby granted for an accessory structure consisting of an access stairway of approximately 26.5-square feet as illustrated in **Exhibits 1 and 2** located at 3735C Diamond Head Road; Kaalawai, Oahu; Tax Map Key: (1) 3-1-039; seaward of 065 subject to the following terms and conditions:

1. That in issuing this authorization, the Department has relied on the information and data that the applicant has provided in connection with this SPA application. If, subsequent to this authorization, such information and data prove to be false, incomplete or inaccurate, this authorization may be modified, suspended, or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
2. 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;
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 shall comply with all applicable Department of Health administrative rules;
5. The permittee understands and agrees that this permit does not convey any vested rights or exclusive privilege;

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HTH stairs construction

SPA OA 23-53

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. The permittee shall contact the Land Division for a land disposition (that may be required;
9. The terms and conditions of this authorization may be modified by the DLNR prior to and during construction, if beach conditions change;
10. The permittee shall perform the work in a manner that minimizes environmental pollution and damage resulting from the project operations. The environmental resources within the project boundaries and those affected outside the limits of permanent work shall be protected during the entire duration of the project period;
11. At the conclusion of work, the area shall be cleaned of all construction material and the site shall be restored to a condition acceptable to the Chairperson, including smoothing the beach to remove any tracks or indentions from the work;
12. Where any interference, nuisance, or harm may be caused, or hazard established by the authorized activities/uses, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
13. 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;
14. No contamination of the environment (trash or debris) shall result from project related activities/uses;
15. In the event that historic sites, including human burials are uncovered during construction activities, all work in the vicinity must stop and the State Historic Preservation Division contacted at (808) 692-8015;
16. 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 two years of the approval. The permittee shall notify the Department in writing when construction activity is initiated and when it is completed;

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HTH stairs construction

SPA OA 23-53

- 17. The applicant shall take measures to ensure that the public, special interest groups, and neighboring property owners are adequately informed of the project activities/work and the need to avoid the project area during the operations;
- 18. Public access in the vicinity during construction shall be maintained as far as practicable and within the limitations necessary to ensure safety;
- 19. The applicant shall implement standard Best Management Practices (BMPs) to ensure potential environmental concerns are addressed;
- 20. Other terms and conditions as may be prescribed by the Chairperson and/or OCCL; and
- 21. 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. Return a signed copy to our Office. Should you have any questions, please feel free to contact Cal Miyahara of the Office of Conservation and Coastal Lands at (808) 798-6147 or calen.miyahara@hawaii.gov.

Sincerely,

S Michael Cain

S. Michael Cain, Administrator
Office of Conservation and Coastal Lands

I concur with the conditions of this letter:

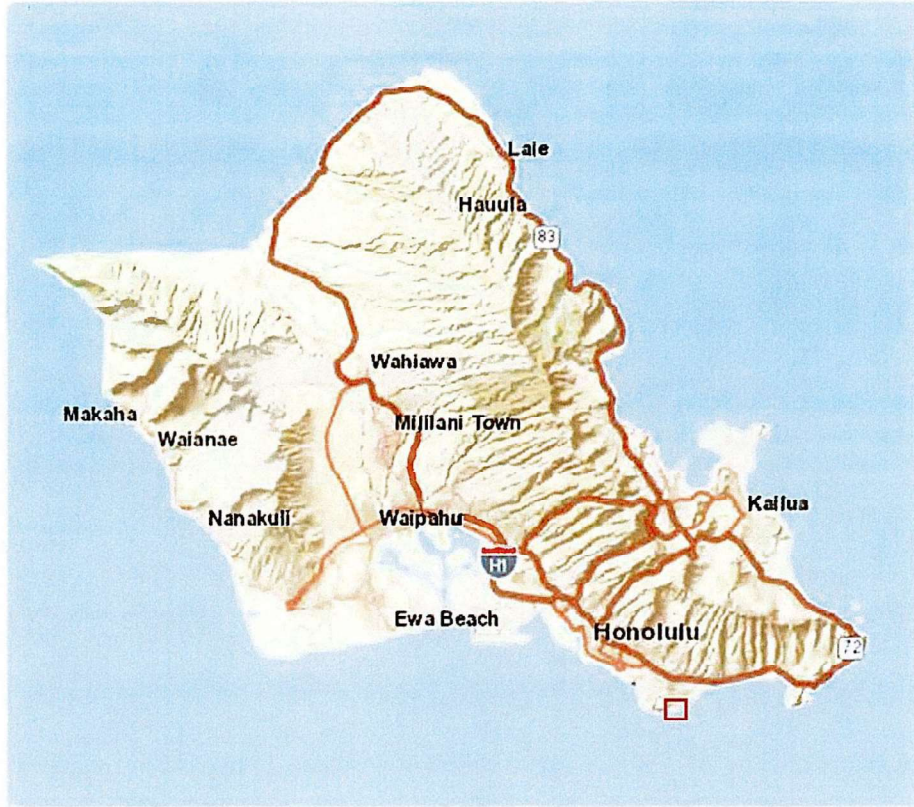
Carin Hayes
Applicant's signature

5/16/23
Date

CC: ODLO
Department of Planning and Permitting

Starn O'Toole Marcus & Fisher
HTH stairs construction

SPA OA 23-53



Note: Diamond Head beach. TMK: (1) 3-1-039:seaward of 065

Exhibit 1

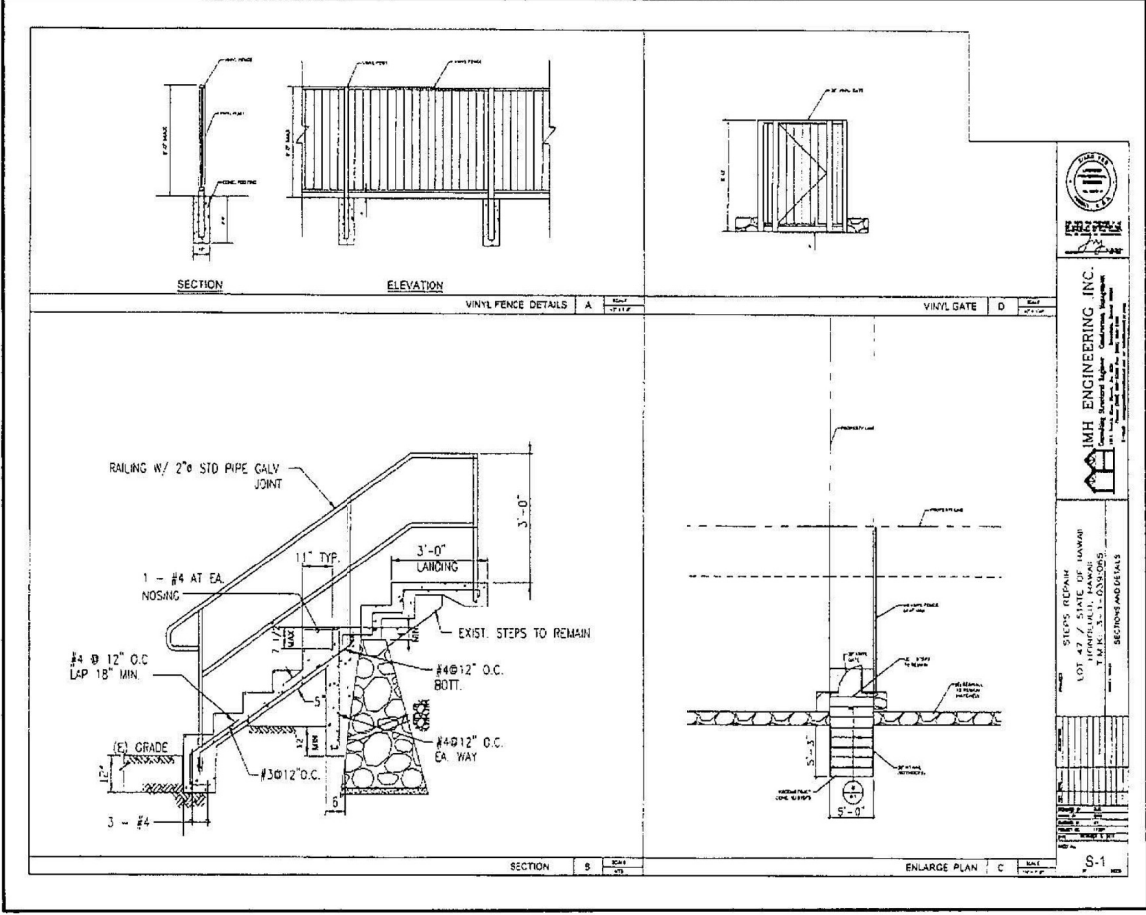
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HTH stairs construction

SPA OA 23-53



Stam O'Toole Marcus & Fisher
HTH stairs construction

SPA OA 23-53



Note: Design drawing of new stairs.

Exhibit 2