

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

January 26, 2024

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

PSF No.: 23MD-120

Maui

Grant of Term, Non-Exclusive Easement, Immediate Right-of-Entry and Revocable Permit to Sandra Fadi Antonios, Trustee of that certain unrecorded Mana Trust, dated December 17, 2020, for Concrete Stairs and Walkway, Kihei, Maui, Tax Map Keys: (2) 3-6-001:023 and (2) 3-6-001:seaward of 023.

APPLICANT:

Sandra Fadi Antonios, Trustee of that certain unrecorded Mana Trust, dated December 17, 2020.

LEGAL REFERENCE:

Sections 171-53 and 55, Hawaii Revised Statutes (“HRS”), as amended.

LOCATION:

Portion of State land located in Kihei, Maui, identified by Tax Map Keys: (2) 3-6-001:023 and (2) 3-6-001:seaward of 023, as shown on **Exhibits A-1** through **A-3**.

AREA:

653 square feet, more or less, to be reviewed and approved by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District:	Urban Conservation
Maui Zoning District:	R-2 Residential (for 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 with encroachments.

TERM, NON-EXCLUSIVE EASEMENT:

CHARACTER OF USE:

Right, privilege and authority to use, maintain, and repair existing concrete-stabilized hillside, concrete steps, and walkway 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.

MONTHLY RENTAL FOR RIGHT-OF-ENTRY AND REVOCABLE PERMIT:

Monthly rental amount \$135.00 for right-of-entry and revocable permit has been calculated by staff and has been reviewed and approved by the Chairperson. **(Exhibit B)**

REMOVAL BOND:

Applicant shall be required to post a removal bond in an amount to be determined by Land Division in consultation with Engineering Division, subject to approval by the Chairperson.

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 minor expansion or minor change of use beyond that previously existing." Specifically, the subject request is exempt under Part 1, Item 39, which exempts the "[c]reation or termination of easement, covenants, or other rights in structures or land." The subject request is a de minimus action that is expected to have minimal or no significant effect on the environment and should be declared exempt from the preparation of an environmental assessment.

DCCA VERIFICATION:

Not applicable. Applicant is an individual trustee of a trust that is not required to register with the Department of Commerce and Consumer Affairs.

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards 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 through a Concurrent Resolution pursuant to §171-53(c), HRS.

JUSTIFICATION FOR REVOCABLE PERMIT:

The land disposition presented to the Board as one of the recommended options in this matter is an orderly process that uses a series of permits structured to allow for immediate use and occupancy and proceed on a direct course to a to a long-term lease, subject to conditions that benefit the State. The land disposition requested in the present submittal is a three-stage process encompassing:

1. Issuance of a right-of-entry permit for a period of up to six months. This allows the Applicant to immediately legitimize occupancy of the public land in question, begin repair and maintenance of the shoreline protection structure without undue delay and without cost to the State, and begin preparations for the Applicant's

obligations under future land dispositions.¹ The right-of-entry permit includes requirements for payment of monthly rent, provision to the Department of a removal bond or equivalent securitized funds, indemnification of the State, and provision of liability insurance by the Applicant. The purpose of the removal bond is to ensure that there are funds available to remove the encroachment from State land in the event that the Legislature or Governor does not approve the easement authorized by the Board.

2. Issuance of a revocable permit for no longer than one year. This allows Land Division time to complete the administrative processes that underlie the grant of easement including approval of the easement contract by the Department of the Attorney General, completion of the appraisal (at the Applicant's cost) to determine the lump-sum payment for value of the easement, and approval of the Legislature and Governor of the easement while the Applicant maintains the same obligations for rent payments, removal costs, indemnification, and provision of liability insurance.
3. Issuance of an easement. This final step cannot be executed without prior completion of the prerequisites stated above. Therefore, the interim disposition through revocable permit is necessary.

The interim revocable permit step is limited in its duration and essential in its utility. While the revocable permit is in effect, the Applicant assumes the costs of maintaining the subject parcel of State land and the liability for any damages caused on or by the Applicant's use of the land during the often-lengthy process of consummating the easement.

REMARKS:

The Applicant is the owner of the private, residential property identified as Tax Map Key: (2) 3-6-001:028. Around May 2023, the Applicant, through her architectural contractor, submitted a Shoreline Encroachment Information Sheet to the Office of Conservation and Coastal Lands (OCCL), seeking an easement for an encroaching structure located on State land abutting the Applicant's private property. On September 7, 2023, OCCL responded with a letter finding that the encroaching structure is nonconforming and stating that OCCL would support a disposition request. **(Exhibit C)**

The encroachment at issue in the present submittal is a concrete hillside reinforcement, concrete stairs, and a concrete walkway connecting the makai boundary of the Applicant's private property to the ocean. The encroachment has a total surface area of approximately 653 square feet and is located on State land, identified as Tax Map Keys: (2) 3-6-001:023 and (2) 3-6-001:seaward of 023, that is situated between the Applicant's private property and the ocean. OCCL found that approximately 37 square feet of the

¹ The Applicant's obligations under a right-of-entry and revocable permit include obtaining a survey to confirm the size of the disposition area, obtaining a cost estimate for removing the shoreline protection structure which determines the amount of the removal bond, and procurement through Land Division of an appraisal to determine the lump-sum value of the easement.

encroachment are located within the shoreline Conservation District Resource Subzone and the remaining approximately 616 square feet are located within the Urban District on the State parcel.

OCCL found that the shoreline is rocky with no sandy beach in the immediate area, other than a small sandy shoreline about 400 feet to the south, and there is a public access point approximately 100 feet from the small sandy shoreline. OCCL further found that removal of the encroachment would likely have a negative effect on beach resources, would not improve public access, and would likely compromise the structural integrity of the hillside and eventually destabilize and collapse the Applicant's property as well as cause flanking erosion that would destabilize and collapse neighboring structures. Because of these findings that the subject encroachment does not have detrimental effects on beach resources or shoreline access and that removal would have a detrimental effect on the shoreline and adjacent properties, OCCL supports a land disposition for the Conservation District portion of the encroachment area. **(Exhibit C)**

The subject encroachment was constructed around 1960 by the former owner of the residential parcel and his next-door neighbor to provide their respective families access to the ocean for recreational purposes. According to letters submitted by the now-adult sons of the original owners of the next-door property, located at 3985 Maalaea Place, the reinforcements, stairs, and walkway were built around 1960 and have been in place in the same condition since that time. One of those adult sons, Paul Gammie, is the current owner of [REDACTED]. Mr. Gammie stated in his letter that he was born in 1965 and the stairs have been in place, "[b]efore I can even remember" and "have remained in active use to this very day." **(Exhibit C)**

The County of Maui Department of Planning determined that "sufficient evidence has been provided to the Department to support the construction date of the stairway to be circa 1960, before SMA and Shoreline permitting requirements were in place for the County" and meets the County's "criteria of a legal nonconforming structure/ activity per the County Shoreline Rules." **(Exhibit C)**

Pursuant to the findings by OCCL and the County of Maui Department of Planning described above, the structure was put in place prior to the enactment of either State or County shoreline permitting requirements. Although the encroachment is non-conforming, it was installed without authorization. Pursuant to the Board's action of June 28, 2002, under agenda item D-17, which established criteria for imposing fines for encroachments, a fine of \$500 is to be imposed if the encroachment is over 100 square feet. The subject encroachment area is approximately 653 square feet. Therefore, staff recommends that the Board impose a fine of \$500 for the unauthorized encroachment.

Comments on this proposed land disposition were requested from the following agencies: DLNR Division of Aquatic Resources, DLNR State Historic Preservation Division, City & County of Honolulu Department of Planning and Permitting, and the Office of Hawaiian Affairs. Comments were not received from any agency before the submittal deadline but will be forwarded to the Board if they are received prior to the January 12, 2024, Board

meeting.

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

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and §§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 as a de minimis activity.
2. Assess a fine of \$500 for the unauthorized encroachment pursuant to the criteria adopted by the Board at its meeting of June 28, 2002, under agenda item D-17.
3. Authorize the continued applicability of the subject requests in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 3-6-001:028, provided that the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
4. Authorize the issuance of a right-of-entry permit to Sandra Fadi Antonios, Trustee of that certain unrecorded Mana Trust, dated December 17, 2020, 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 right-of-entry permit form, as may be amended from time to time;
 - B. Posting of a removal bond during the effective period of the right-of-entry permit;
 - C. Removal of the subject encroachment, if required, within the period determined by the Chairperson;
 - D. Commencement of the right-of-entry on the Board date, for a term of one year or until the issuance of the revocable permit described in recommendation 4 below, whichever is sooner; provided that the Chairperson may extend the right-of-entry for additional one-year periods for good cause shown; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

5. Authorize the issuance to Sandra Fadi Antonios, Trustee of that certain unrecorded Mana Trust, dated December 17, 2020, of a revocable permit 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 revocable permit form, as may be amended from time to time;
 - B. Posting of a removal bond during the effective period of the revocable permit;
 - C. Removal of the subject encroachment, if required, within the period determined by the Chairperson;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

6. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance to Sandra Fadi Antonios, Trustee of that certain unrecorded Mana Trust, dated December 17, 2020, of a 25-year term, non-exclusive easement 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 easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 3-6-001:028, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the State, as Grantor, of such transaction in writing, and shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
 - 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,



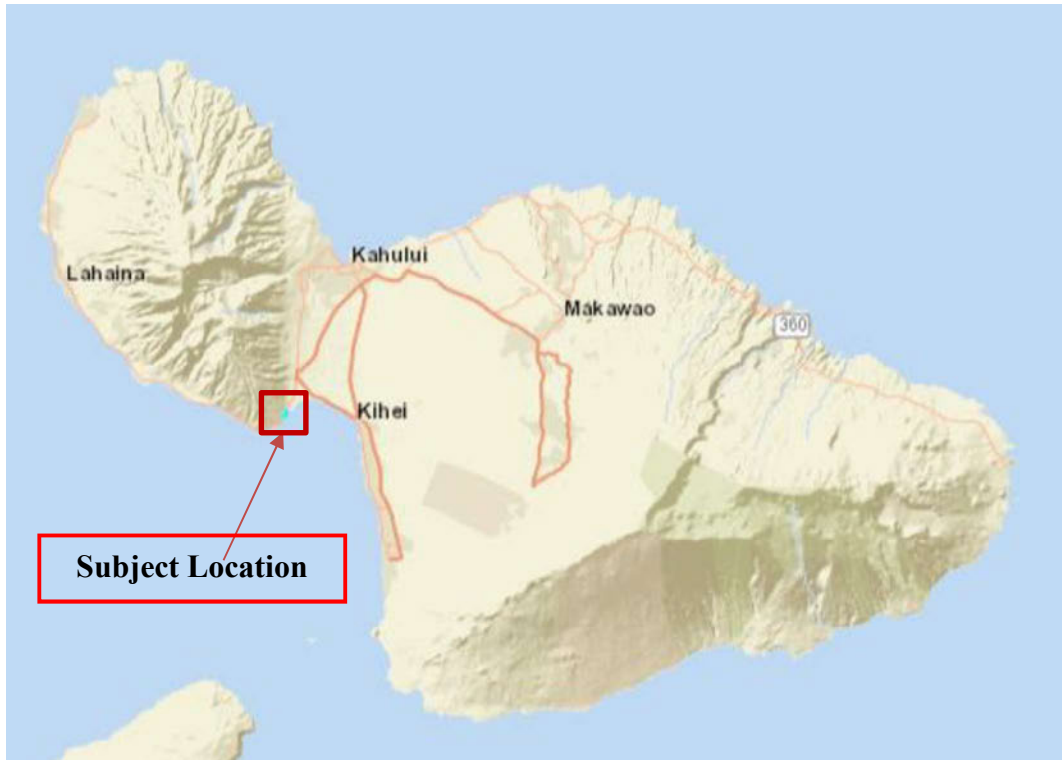
Rebecca L. Anderson
Shoreline Specialist

APPROVED FOR SUBMITTAL:



Dawn S. N. Chang, Chairperson

TMK (2) 3-6-001:023; TMK (2) 3-6-001:028; and TMK (2) 3-6-001:seaward of 023



TMK (2) 3-6-001:028 Private Property

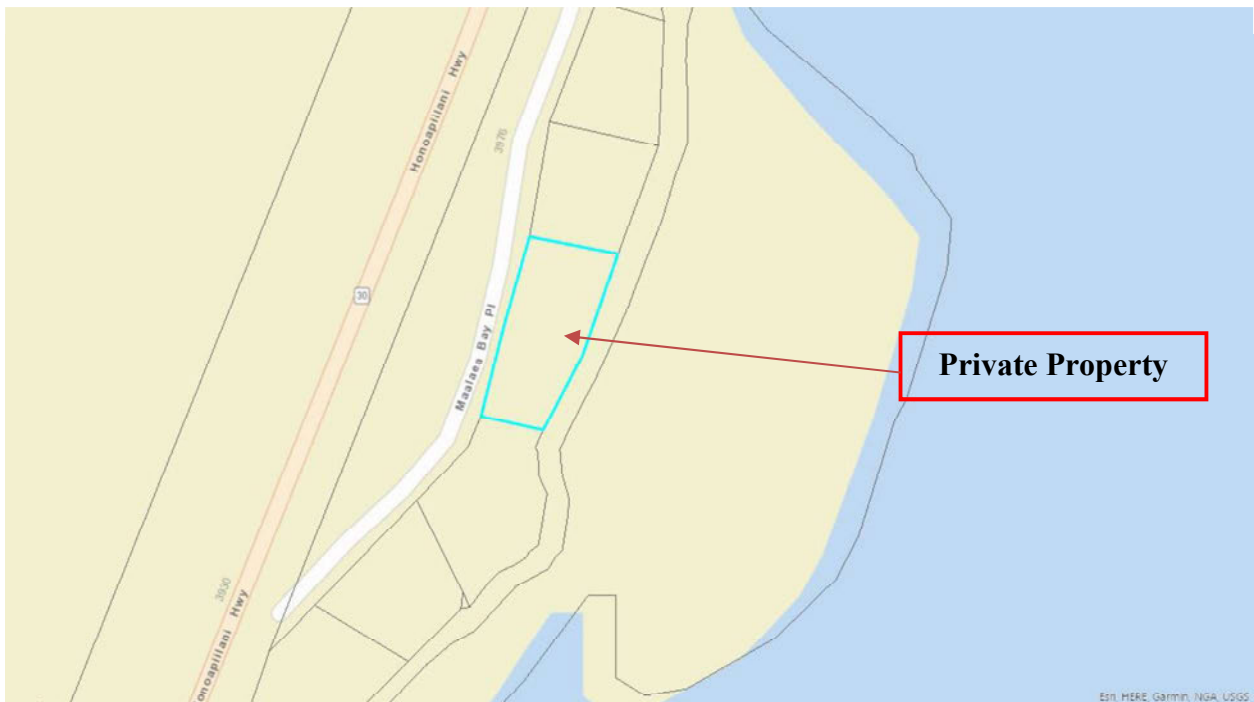
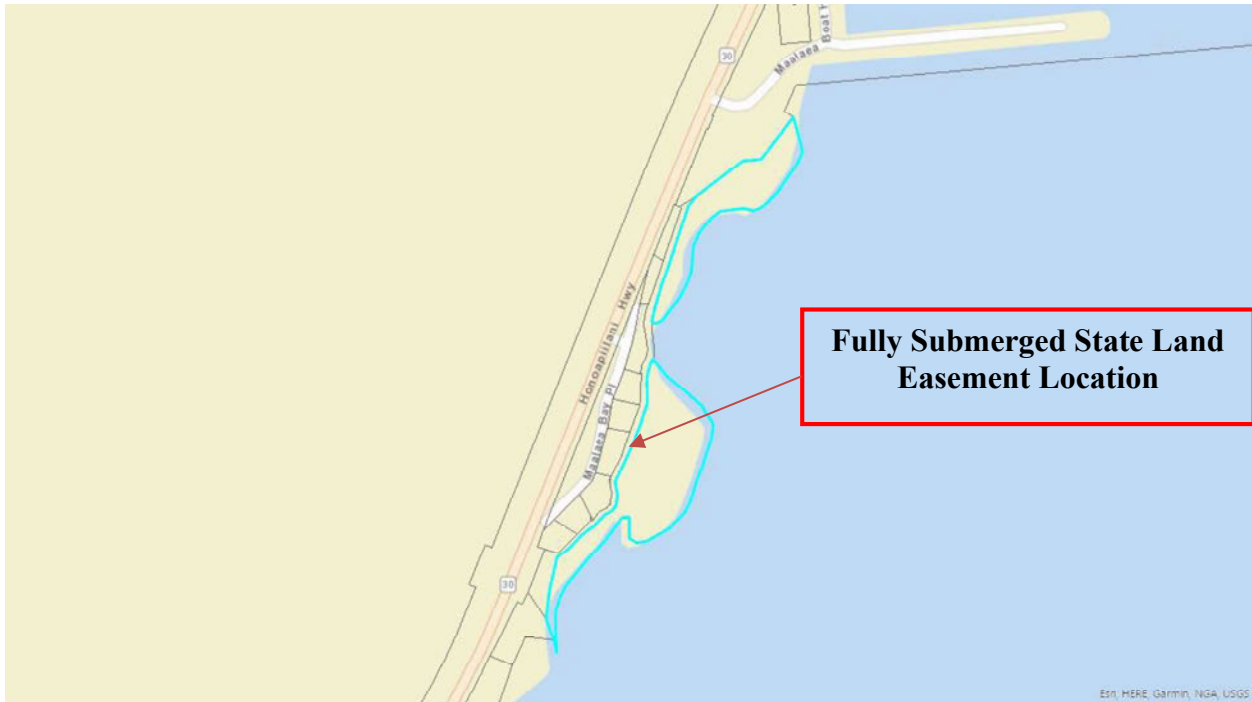


EXHIBIT A-1

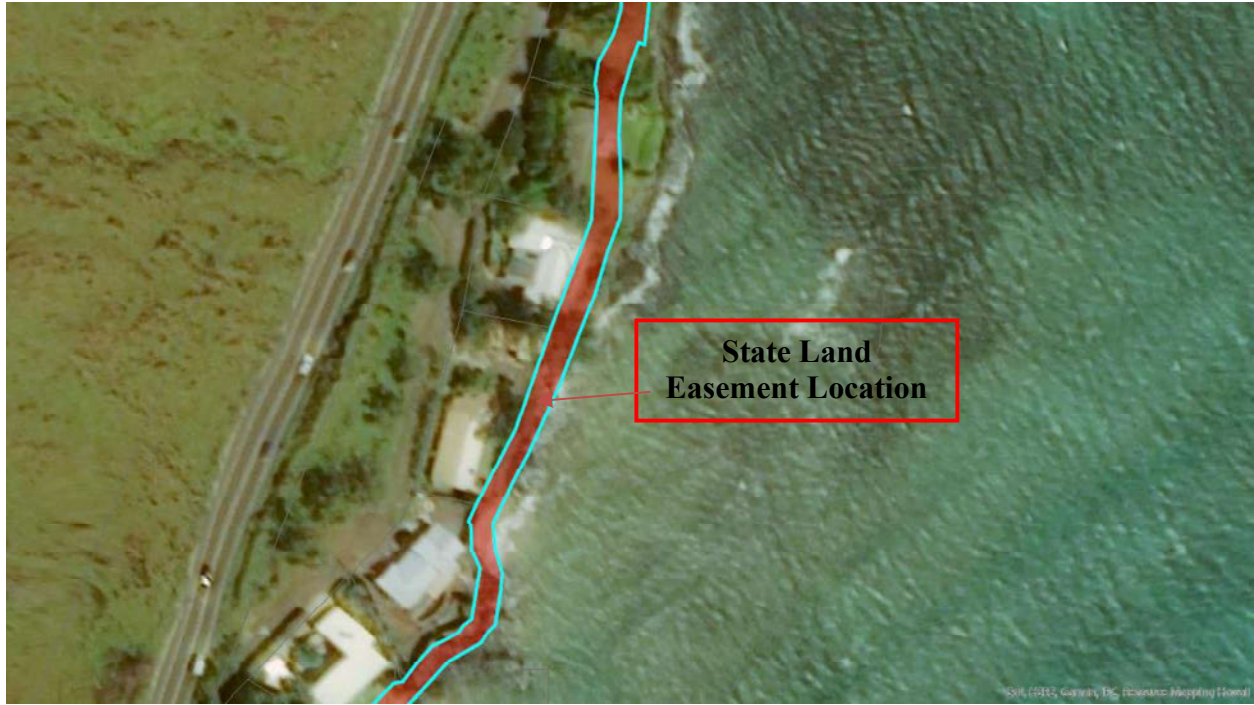
TMK (2) 3-6-001:023 State Land



TMK (2) 3-6-001:seaward of 023 State Land



TMK (2) 3-6-001:023 State Land



TMK (2) 3-6-001:seaward of 023 State Land



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



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

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

To: Dawn N. S. Chang, Chairperson
Through: Russell Y. Tsuji, Administrator
From: Land Division, Appraisal Section
Date: November 28, 2023
Subject: Mana Trust Shoreline Revocable Permit

A shoreline revocable permit valuation was prepared for the property below and is summarized as follows:

Reference: PSF No. 23MD-120
Applicant: Sandra Fadi Antonios, Trustee of that certain unrecorded Mana Trust,
dated December 17, 2020
TMKs: (2) 3-6-001:023 and (2) 3-6-001-777
Area: 653 square feet, more or less
Effective Date: Upon Board Approval
Recommended Value: **\$135 per month**

The undersigned finds that the valuation was completed in accordance with the assignment.



Dawn N. S. Chang, Chairperson

Nov 28, 2023

Date

TMKs	(2) 3-6-001:023 and 077		
Assessed Land Value (\$)	\$	1,454,800	
Land Area (sf)		11,735	
Unit Rate Land Value (\$/sf)	\$	123.97	
50% Off For Submerged Lands	\$	61.99	
Encroachment Area (sf)		653	
Encroachment Land Value (\$)	\$	40,477	
Annual Rent @ 4 to 8%	\$	1,619.06	0.04
Recommended Annual Value			
Monthly rent	\$	134.92	

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

REF:OCCL:CM

Shoreline Encroachment MA 23-11

Mana Trust
c/o Luigi Manera
Architectural Drafting Services
P.O. Box 1718
Kaunakakai, HI 96748

Sep 7, 2023

SUBJECT: Shoreline Encroachment MA 23-11
Request to Resolve State Land Encroachments at [REDACTED]
[REDACTED] Kihei, Maui; Tax Map Keys: (2) 3-6-001:seaward of 028.

Dear Applicant,

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL), is in receipt of your Shoreline Encroachment Information Sheet seeking to resolve an encroachment on State Lands seaward of the subject property. Your letter included a Shoreline Encroachment Information Sheet; an easement map (by Action Survey) identifying the encroaching area; a shoreline map (by Action Survey); a letter from the Maui County Planning Department; a notarized letter from a neighbor; and historic aerial and current photos of the stairs and walkway.

You are working to resolve an encroachment consisting of concrete stairs and walkway seaward of the subject property (see **Exhibit 1**). The encroachment issue arose because of the property owner's desire for a certified shoreline.

The easement map (with the proposed shoreline overlay) you submitted shows the concrete stairs, walkway, and concrete reinforced hillside makai of the property boundary (see **Exhibit 2**). The total encroaching area is approximately 653 square feet. The photos show the makai portion of the property is very steep going down to the ocean (see **Exhibit 3**). The stairs, walkway, and reinforced hillside formed a cohesive structure which allows access to the shoreline.

Also noted from the easement map is that only a portion of the total encroaching area appears to be located makai of the proposed shoreline within the State Land Use Conservation District Resource Subzone (approximately 37 square feet based on your surveyor's calculations). The OCCL regulates land use within the Conservation District

Mana Trust
Stairs and walkway encroachments

Shoreline encroachment MA 23-11

pursuant to Hawaii Administrative Rules, Chapter 13-5. The remainder of the encroachment appears to be mauka of the shoreline, and not in the Conservation District. In this vicinity, land mauka of the shoreline and makai of the property boundary is under the jurisdiction of the DLNR but are located within the State Urban District Land Use. This area would be under the jurisdiction of the DLNR-Land Division.

Based on the letter from the County of Maui, it appears the encroaching structures are non-conforming as the letter states no permit exists for the structures, but evidence submitted suggests the stairs were built circa 1960 (prior to the promulgation of the County shoreline rules) -see **Exhibit 4**. This is further supported by the notarized letter from the neighbor stating the stairs were built around circa 1960 (see **Exhibit 5**).

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

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

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

Surrounding Land Uses: The subject property is flanked by residential homes to the north and south. To the west is Honoapiilani Highway, beyond the highway is undeveloped land. Maalaea Harbor is located east of the property. About 0.5 miles north is the Maalaea boat harbor. Land directly makai of the encroachment is submerged with a very rocky shoreline.

Beach Resources and Environment: The encroachments are concrete stairs, walkway, and reinforce hillside abutting Maalaea Harbor. It is noted that the area fronting the subject property, as well as the area fronting the adjacent properties to both the north and the south have no walkable lateral access with a very rocky shoreline. An exception being an exposed pocket of sandy shoreline area about 400 feet to the south. Any sandy beach that may have been present in the past has been eroded away and is no longer present.

Public Access: Public shoreline access is not available in the subject property's vicinity. Shoreline access points are located about 900 feet to the north and about 500 feet to the south. There is no alongshore access makai of the encroachment due to a very rocky shoreline.

Mana Trust
Stairs and walkway encroachments

Shoreline encroachment MA 23-11

Effect of Removing the Encroachment on:

Beach Resources: There is no sandy beach in the immediate area (except for a small sandy shoreline area about 400 feet to the south). The subject property and adjacent properties have rocky shorelines with no sandy area, so removal of the encroachment would likely have a negative effect and not improve the beach resources.

Public Access: Removal of the encroachment makai of the subject property will not improve public access as the property is privately owned. Public access points are approximately 900 feet to the north and 500 feet to the south. There is no alongshore access makai of the encroachment as there is no sandy beach. Removal of the encroachment would not improve public access in the alongshore area.

Adjacent Properties: The stairs and walkway serve as a primary access to the shoreline for the subject property. Removing the encroachments would have a detrimental effect on the property owner's ability to access the shoreline. Also, the lack of the cohesive encroaching structure would compromise the structural integrity of the hillside and eventually destabilize and collapse the property's structure. Further, flanking erosion to the neighboring properties would likely occur. This would eventually lead to destabilization and collapse of neighboring structures.

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

Summary

The subject encroachment consists of non-conforming stairs, walkway, and reinforced hillside fronting the subject property. The total encroaching area within the Conservation District is approximately 37 square feet located makai of the shoreline. The subject encroachment does not have detrimental effects on public access nor beach and recreational resources in the area, and the encroachment serves as primary shoreline access for the subject property. Removal of the encroachment could lead to erosion of the abutting property and flanking erosion to the neighboring properties.

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 Conservation District portion of the encroachment area. The subject encroachment seems to have been in place at least since 1960, based on the County's research and was deemed to be non-conforming. Should the OCCL find that the structure has been significantly altered since it was originally constructed, the OCCL may reconsider this finding.

Mana Trust
Stairs and walkway encroachments

Shoreline encroachment MA 23-11

Should you have any questions regarding this correspondence, contact Cal Miyahara of our Office at (808) 798-6147 or calen.miyahara@hawaii.gov.

Sincerely,

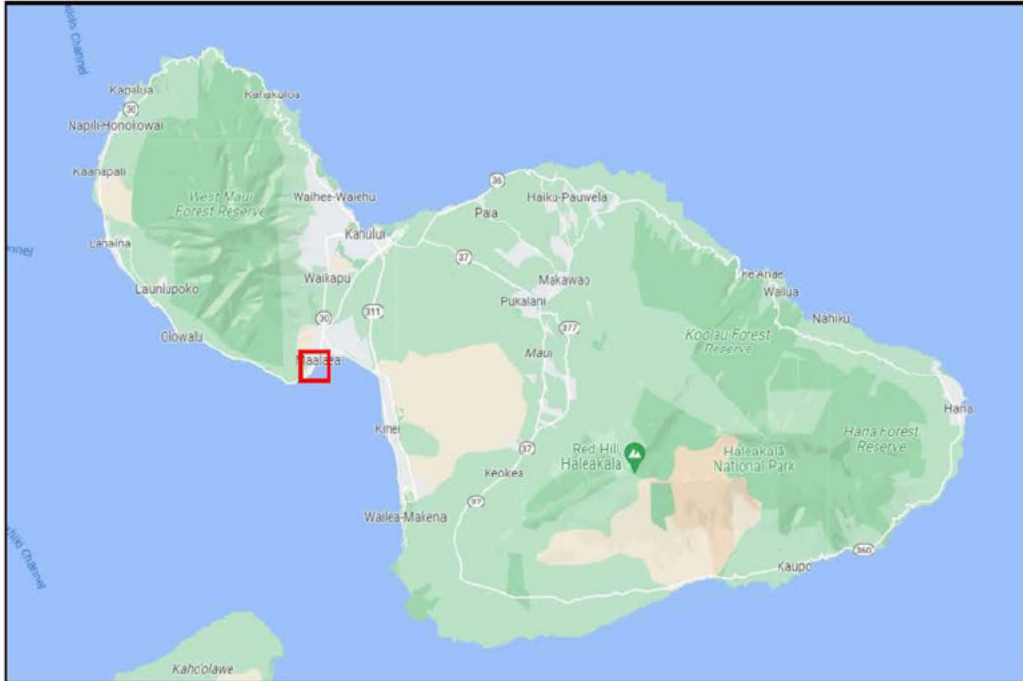
S Michael Cain

Michael Cain, Administrator
Office of Conservation and Coastal Lands

CC: Land Division
County of Maui, Planning Department

Mana Trust
Stairs and walkway encroachments

Shoreline encroachment MA 23-11

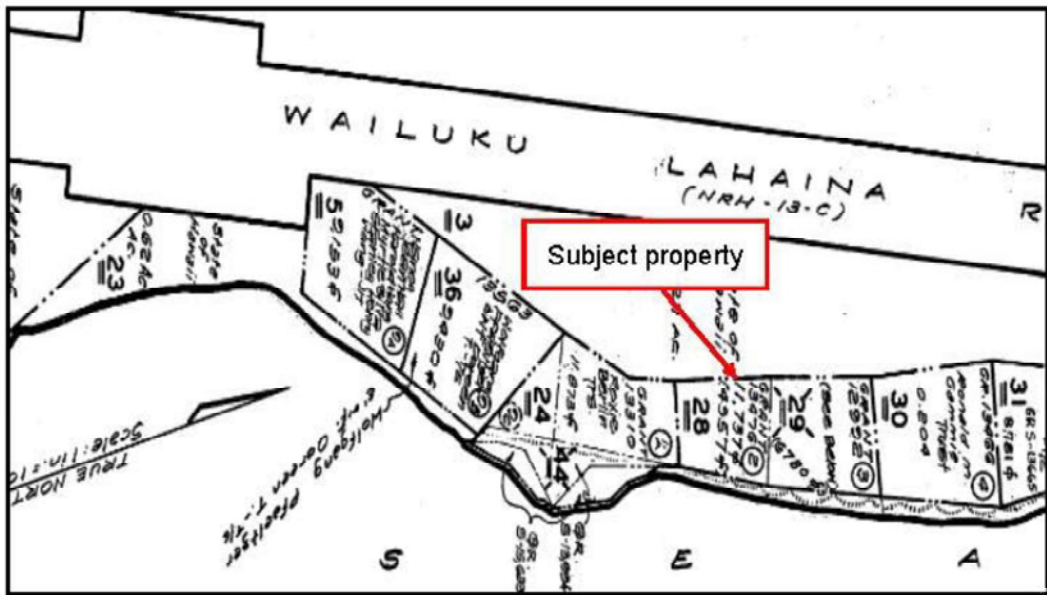


Note: [redacted] stairs and walkway. TMK: (2) 3-6-001:128

Exhibit 1

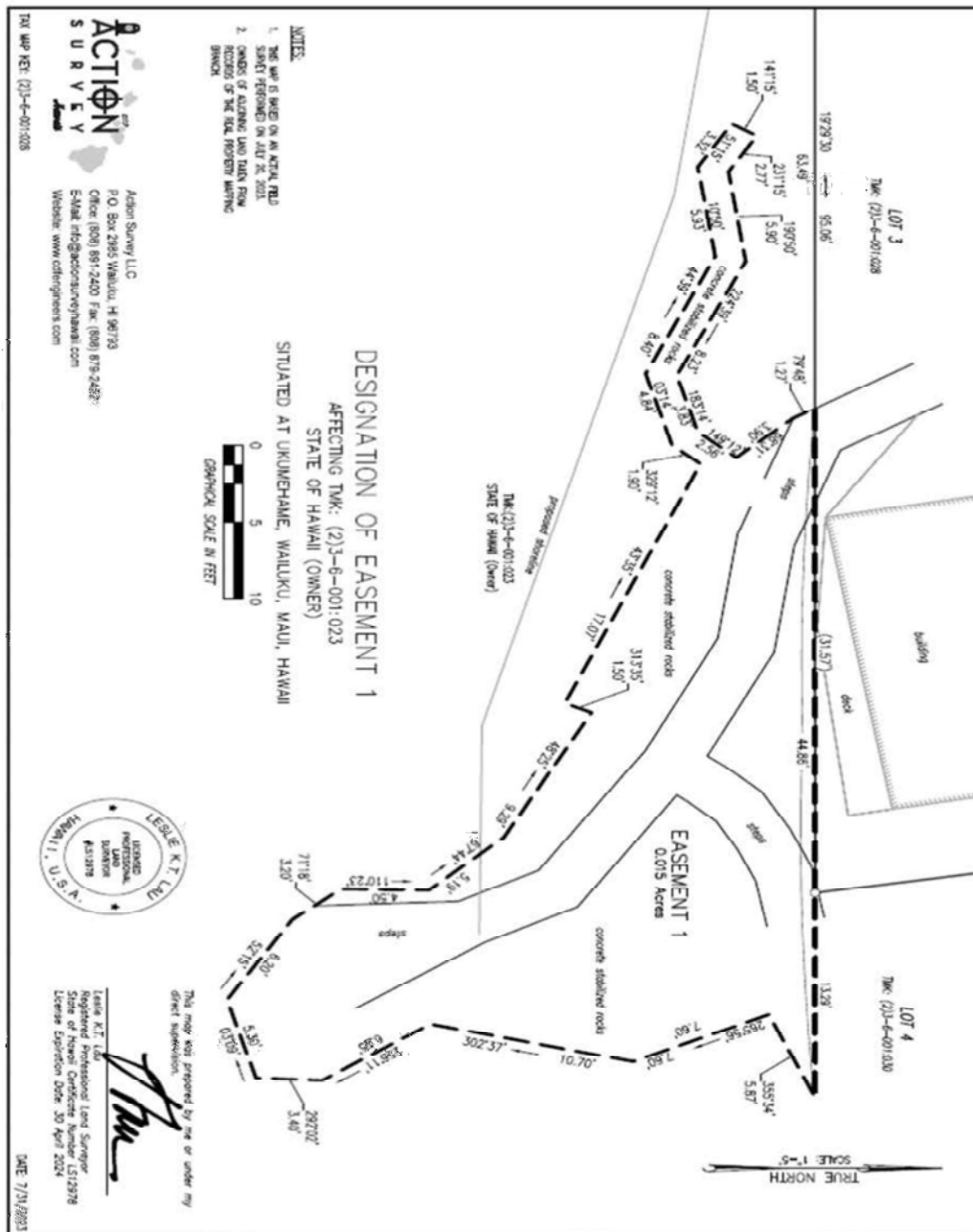
Mana Trust
Stairs and walkway encroachments

Shoreline encroachment MA 23-11



Mana Trust
Stairs and walkway encroachments

Shoreline encroachment MA 23-11



Note: Easement map showing proposed shoreline.

Exhibit 2

Mana Trust
Stairs and walkway encroachments

Shoreline encroachment MA 23-11

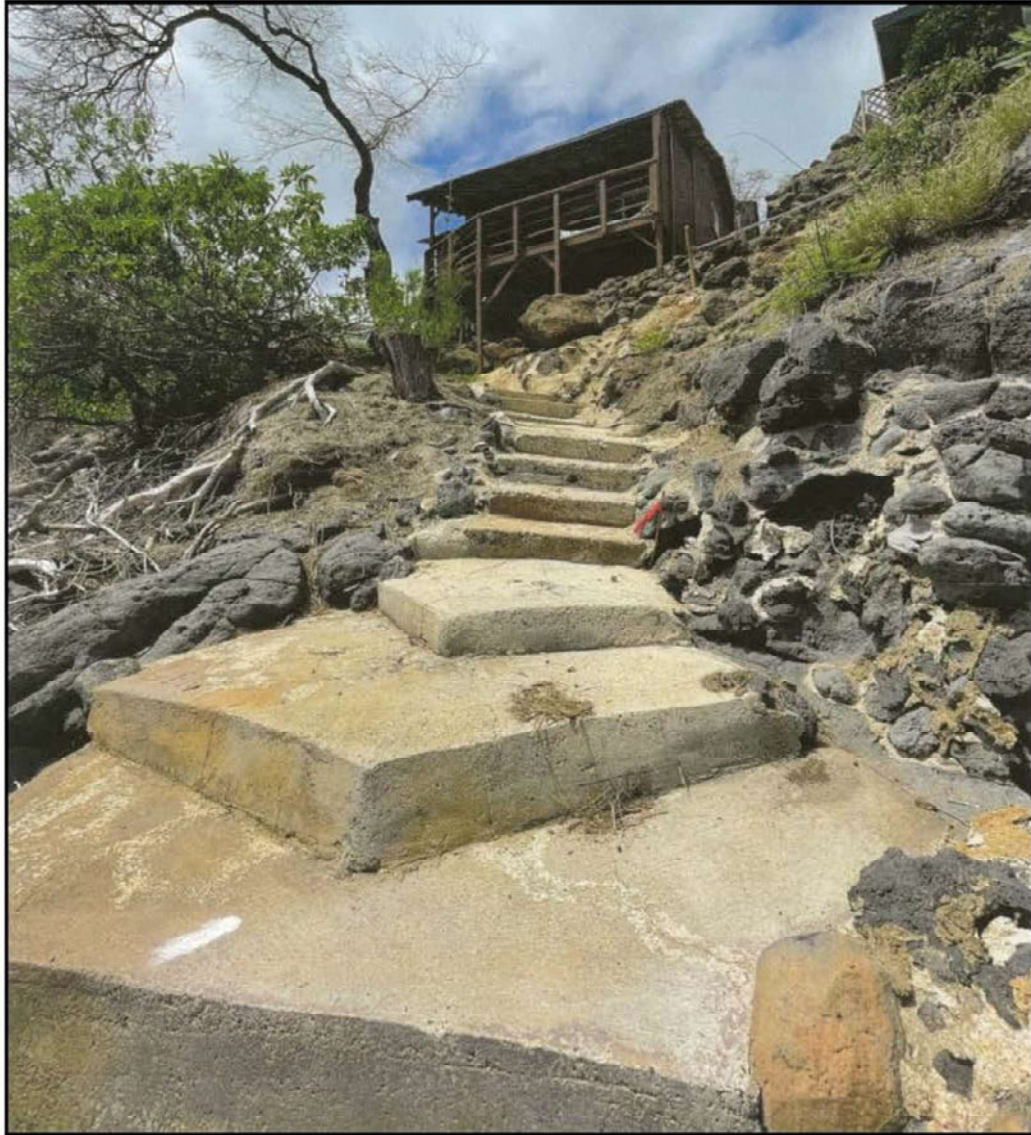


Exhibit 3

Mana Trust
Stairs and walkway encroachments

Shoreline encroachment MA 23-11





Mana Trust
Stairs and walkway encroachments

Shoreline encroachment MA 23-11

RICHARD T. BISSEN JR.
Mayor

KATHLEEN ROSS AOKI
Planning Director

GARRETT E. SMITH
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793
August 16, 2023

Mr. Luigi Manera
Architectural Drafting Service,
Post Office Box 1718
Kaunakakai, Hawaii 96748

Dear Mr. Manera:

SUBJECT: ~~REQUEST FOR COUNTY OF MAUI NON-CONFORMING DETERMINATION~~ FOR THE SHORELINE ENCROACHMENT OF A CONCRETE STAIRWAY, LOCATED AT [REDACTED] WAILUKU, MAUI, HAWAII; (TMK): (2) 3-6-001: SEAWARD OF 028 (RFC 2023-00089).

We are in receipt of your request dated July 27, 2023 for the County of Maui (County) to determine whether the subject concrete stairway located in the shoreline area fronting [REDACTED] is a legal non-conforming structure in the County Shoreline Setback Area, the Planning Department (Department) has reviewed the matter and determined that the subject concrete stairway qualifies as a legal non-conforming structure.

Title MC-12 Subtitle 02 Chapter 203 *Shoreline Rules for The Maui Planning Commission* Subchapter 1 *General Provisions*: §12-203-4 *Definitions* provides the following definition:

"Nonconforming structure/activity" means a structure or activity which was lawfully existing within the shoreline area and which:

- (1) *Was completely built prior to June 22, 1970; or*
- (2) *Received either a building permit, board approval, or shoreline area variance prior to June 16, 1989; or*
- (3) *Was outside the shoreline area when it received either a building permit or board approval.*

The subject concrete stairway did not receive permits at the time it was constructed, but sufficient evidence has been provided to the Department to support the construction date of the stairway to be circa 1960, before SMA and Shoreline permitting requirements were in place for the County. At the time the concrete stairway was completely built, no County permits were required for its construction. Since the structure was completely built prior to June 22, 1970, it meets the criteria of a legal nonconforming structure/activity per the County Shoreline Rules.

MAIN LINK (808) 270-7735 / CURRENT DIVISION (808) 270-8205 / LONG RANGE DIVISION (808) 270-7214 / ZONING DIVISION (808) 270-7253

Note: Maui County non-conforming determination letter.

Exhibit 4

Mana Trust
Stairs and walkway encroachments

Shoreline encroachment MA 23-11

Mr. Luigi Manera
August 16, 2023
Page 2

If additional clarification is required, please contact Staff Planner Wesley Bradshaw at wesley.bradshaw@mauicounty.gov or at (808) 463-3867.

Sincerely,



For: ANN T. CUA
Planning Program Administrator

for KATHLEEN ROSS AOKI
Planning Director

xc: Wesley Bradshaw, Staff Planner (PDF)
Luigi Manera, Requestor (PDF)
MCM:CIY:WCB:rma
K:\WP_DOCS\Planning\RFC\2023\00089_NonConformingDetermination\Responsc.docx

Mana Trust
Stairs and walkway encroachments

Shoreline encroachment MA 23-11

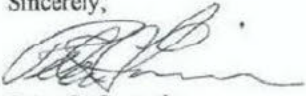
Peter Gammie
[REDACTED]
[REDACTED] CO 80123
[REDACTED]

July 19, 2023

To Whom it may concern:

My parents, Ronald and Gail Gammie, purchased the Maalaea property, currently known as [REDACTED] in 1956 and built a small home there. The majority of properties in this area are situated on a bluff above the ocean and my father and the next door neighbor, Andy Lewis, jointly built steps to the beach circa 1960.

My brother, Paul, and I learned to surf and spear fish in front of the house, accessing the water via these steps since we were young boys, as did the four Lewis children living next door. The attached pictures from an album my mother gave me with a page date of 1969, show pictures of our family, the shoreline and the steps. I graduated from St. Anthony High School in 1972 and the steps had been in place for well over a decade by then. We have multiple family and friends that can attest to the steps being in place prior to 1974.

Sincerely,

Peter C. Gammie

State of Colorado
County of Jefferson
The foregoing instrument was acknowledged before
me on this 19th day of July 2023
by Peter Gammie
who is personally known to me or has produced
Colorado Drivers License as identification


Notary's Signature

ELIJAH JANELLO
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20224040726
MY COMMISSION EXPIRES 10/20/2026

Note: Notarized affidavit stairs being built circa 1960.

Exhibit 5

Mana Trust
Stairs and walkway encroachments

Shoreline encroachment MA 23-11

4/19/23

Paul Gammie

Wailuku HI 96793

To Whom It May Concern

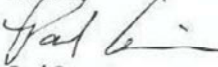
I am the current owner of [REDACTED] Wailuku. My parents bought this lot in 1956, and soon thereafter built a small house on the property. When I was about 11 years old, in approximately 1967, our family (my parents, my brother (Pete) and I) moved into the house on a full-time basis. I was born in 1956, so have been interacting with this area of Maui all my life.

My father was a mechanical engineer. He and my mother bought the property with the intention of fully enjoying the experience of living near the ocean. My brother and I grew up here learning to surf and fish at a very young age. Before I can even remember, there have been stairs leading down to a very small beach directly in front of our house. The stairs were built by our father who was joined in this effort by our neighbor Andy Lewis (an accountant at Maui Electric and an avid taco and lobster diver), who's family were our next-door neighbors for many years and also desired access to the same little beach. It was a "no brainer" for these two men to want to have easy ocean access. The stairs were appropriately built in the late 1950's to the safety standards of the day and have remained in active use to this very day. A "Y" shape configuration was made to allow access to this small beach by both properties, as can be seen in the attached pictures.

As my new, current, neighbor desires to rebuild the house originally built by the Lewis family, it has come to my attention that current permitting requires recognition of these stairs. I have been told that these types of stairs are allowed to remain in place if it can be proven they have existed since 1964, or before. As a living witness to the fact that the stairs described in this letter have been in place since the late 1950's, I now give this testimony and request that the stairs be allowed to remain as they currently exist.

Thank you for your time on this matter, and I'm willing to continue this discussion should you so desire.

Sincerely



Paul Gammie

Mana Trust
Stairs and walkway encroachments

Shoreline encroachment MA 23-11

HAWAII ALL-PURPOSE ACKNOWLEDGMENT H.R.S. 502-41

State of Hawaii

County of Maui } ss.
Second Judicial Circuit }

Document Description: Letter

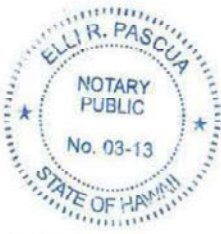
Document Date: 4/19/23 No. Pages: 1

On this 20th day of July, 2023
before me personally appeared
(1) Paul Gammie
Name of Signer
and
(2) _____
Name of Signer

to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Ellie R. Pascua 7/20/23
Notary's Signature Date
Ellie R. Pascua
Notary's Printed Name

My commission expires: Jan. 5, 2027



Printed Name of Notary Public Above
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