

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

December 13, 2024

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

PSF No.: 17MD-152

MAUI

Amend Prior Board Approval of Item D-8, January 12, 2018: “*Grant of Term, Non-Exclusive Easement to the Association of Apartment Owners of Hololani for Steel Sheet Pile Seawall and Rock Revetment Purposes; Issuance of Management Right of Entry; Kahana, Lahaina, Maui, Tax Map Key: (2) 4-3-010: Seaward of 009.*”

The purpose of the amendment is to approve a construction and management right of entry and revocable permit to the Association of Apartment Owners of Hololani for revetment purposes.

BACKGROUND:

Summary Timeline:

October 8, 2013	Final Environmental Assessment (FEA) with Finding of No Significant Impact (FONSI) published
May 9, 2014	Item K-2 BLNR approved Conservation District Use Permit (CDUP) for revetment on State submerged lands (w/BLNR disposition to follow)
Jan 12, 2018	Item D-8 BLNR approved 55-year term easement for revetment on State submerged lands, and Management Right of Entry (ROE) (instead of construction ROE)
March 23, 2018	No Decision (Item D-3) on Staff recommendation to Amend January 12, 2018 approval to include a construction type ROE. The Board was split 3-3 on whether to add the construction ROE to the already approved CDUP and easement for the revetment to be built on State submerged lands. Item deferred until such time that the Chair decides to place the item on the agenda.

Since 2007 the condominium property owned by the Association of Apartment Owners of Hololani (“Applicant”) has had an emergency sandbag revetment in

place, authorized by an Emergency Erosion Control permit issued by the Office of Conservation and Coastal Lands (“OCCL”) and a Special Management Area (“SMA”) Emergency Permit issued by the County of Maui (“County”). Seeking a more permanent solution, the Applicant filed a Conservation District Use Application to construct a “hybrid sheet pile/rock rubble mound revetment” (“Revetment”) partially located within the Conservation District on submerged lands seaward of the shoreline.¹

The Applicant completed a Final Environmental Assessment (“FEA”) with a Finding of No Significant Impact (“FONSI”), published in the Environmental Notice on October 8, 2013. On May 9, 2014, under agenda item K-2, the Board approved the Conservation District Use Permit (“CDUP”) for the Revetment. The CDUP initially required that construction of the Revetment start within two years and be completed within three years, but the Board has subsequently approved multiple extensions for the project. The Applicant also received a SMA permit and a Shoreline Setback Variance (“SSV”) from the County for the revetment. As part of the SMA permit, the Applicant was required to participate in a regional beach nourishment project and remove the revetment upon completion of the beach nourishment project.

Since the proposed structure was going to be constructed seaward of the shoreline, the Applicant also needed to obtain a disposition of submerged lands from the Board. Applicant then requested a disposition of submerged lands for the Revetment. At its meeting on January 12, 2018, under agenda item D-8, the Board approved the issuance of a 55-year term, non-exclusive easement for seawall and revetment purposes and a **management right of entry (ROE)**² for the structure to the Applicant. However, due to staff oversight and inadvertence, staff did not specifically include a recommendation for a construction type of ROE. Due to the timing of the high surf season, Applicant had planned and wanted to start construction of the revetment no later than May 10, 2018, well before any easement could be executed. Staff respectfully apologizes to the Applicant and this Board for this oversight, which has resulted in an undue 10-year or so delay in the project.

At its meeting on March 23, 2018, under agenda item D-3, the Board heard a request by the Applicant to amend the January 12, 2018, approval to include a construction right of entry to allow for the construction of the proposed structure prior to the execution of the easement. As part of the request, the Applicant understood that the it would be responsible for submitting a concurrent resolution to the Legislature for approval of the easement, as well as provide a removal bond equal to 150% of the removal cost of the seawall and revetment to be justified by written estimate subject

¹ Applicant notes that the Revetment was designed to comply with OCCL’s request that the encroachment into the Conservation District be minimal.

² For all intents and purposes staff meant to include a **construction ROE** to allow the revetment to be built in conjunction with the Board approving the term easement. It is now **10 years after** the FONSI and Board approval of the CDUP for the revetment on State submerged lands, and **8 years after** the Board approved the 55-year term easement on State submerged lands.

to Department review and acceptance, and restoration of the shoreline area to the satisfaction of the Department in the event that the easement is not executed. At that same meeting, under agenda item K-1, the Applicant sought a further extension of the CDUP construction deadlines to May 2020 to start construction with completion by May 2021.

At least in part due to testimony in opposition by members of the public (and requests for contested cases that were all denied at that same Board meeting), the Board could not come to any “majority decision” (yes or no)³ on the construction ROE so the Board ultimately deferred decision-making on the matter until further moved back on the Agenda for the Board to consider, but approved the request for time extension to commence and complete the project. The Applicant has been unable to obtain legislative approval for the easement. At least one of the comments from a member of the Water and Land committee overseeing the legislative approval of submerged lands dispositions was that they had wanted the Land Board’s approval of the construction ROE and easement before the legislature decided on whether to approve or disapprove the easement request. A copy of the deferred March 23, 2018 construction ROE submittal, which includes the original January 12, 2018 submittal approving the easement, are attached together as **Exhibit A**. An excerpt of the minutes from the March 23, 2018 Board meeting is attached as **Exhibit B**.

Subsequently, the Applicant sought and received authorization from the County, through a determination of “substantial compliance” and concurrence from OCCL to modify the project to allow the installation of the sheet pile portion of the Revetment behind the sandbag revetment and landward of the shoreline on private property. This was to provide greater protection for the property while approval was sought for the easement to construct the remainder of the Revetment on State submerged lands.

The parties that requested and were denied a contested case hearing (“Appellants”) filed their Notice of Appeal in the Circuit Court of the Second Circuit from the Board’s denial of contested case requests for items D-3 and K-1 at its March 23, 2018 meeting, together with requests for declaratory relief on numerous alleged procedural violations. The Appellants also sued the County and the Applicant regarding the approval and installation the sheet pile, along with seeking an injunction seeking to enjoin the installation of the sheet pile. The Court denied the Preliminary Injunction on July 31, 2018. The Appellants then amended their complaint to add the Department as a defendant.

Ultimately, the Court affirmed the Board’s denial of the contested case requests and ruled against Appellants on all claims in the Appeal and ruled in favor of the Department. The Court ruled against Applicant and the County on the claim in the

³ Some of the Board members commented that they had wanted to see the legislature’s approval of the easement even before deciding whether to approve a construction ROE for the shoreline protection project.

Complaint that the County should have required a new or supplemental Environmental Assessment before determining “substantial compliance.” After the Court denied the Preliminary Injunction, Applicant commenced the installation of the sheet pile in August 2018; the installation was completed in early 2019. The Applicant filed its Motion for Reconsideration of the Court’s ruling on the need for new or supplemental environmental review on December 26, 2018. At the February 1, 2019 hearing, without announcing his decision, the Court urged the parties to consider mediation, which the parties agreed.

The mediation took place on February 25, 2019 and resulted in an agreement to end the litigation which required in part the Applicant to defer for five years before seeking to replace the existing sandbag revetment with a rock revetment and reaffirm its commitment to the conditions of the SMA permit, including support for the regional beach nourishment project and public access. Applicant was permitted to continue maintaining the sandbag revetment which stabilizes the sheet pile. At its meeting on May 8, 2020, under agenda item K-3, the Board approved Applicant’s request for an additional 5-year extension for the CDUP.

The Applicant’s five-year deferment period for the Revetment expired in February 2024, without significant progress made on the beach nourishment project. According to the Applicant, there is disagreement between the State, County and private condominiums regarding who will be responsible for the ownership and maintenance of the T-groin structures that will serve to hold the sand in place. Applicant is requesting approval of a construction and management right-of-entry and revocable permit to allow them to start construction of the Revetment before May 2025 in order to complete construction before the winter swells arrive.

REMARKS:

Applicant understands that in addition to the CDUP and easement already approved by the Board, it is responsible for obtaining legislative approval for the easement. Applicant intends to work with area legislators to request that a concurrent resolution be introduced to approve the easement. Staff is recommending that the Applicant be required to provide a bond or other appropriate security in an amount deemed satisfactory by the Department, to completely remove the Revetment or any portion constructed and restore the shoreline area, in the event the Applicant fails to obtain legislative approval of the easement. Applicant shall be required to provide a written estimate for the removal cost of the Revetment and restoration of the shoreline area.

While Staff understands that there may be significant concerns regarding the construction of the Revetment, Staff also acknowledges that the Applicant has a valid CDUP for its construction and an easement already approved by the Board.⁴

⁴ Staff consulted with OCCL, who confirmed that the CDUP remains valid, notwithstanding the enactment of Act 16, Session Laws of Hawaii 2020. The CDUP and current extension were authorized prior to the passage of the legislation.

Also, Applicant contends that the completed Revetment will occupy a smaller footprint of submerged lands than the current sandbag revetment. Applicant also assures that the construction of the Revetment will result in the complete removal of the existing sandbag revetment, which has been in place since 2007. The sandbag revetment was authorized on a temporary, emergency basis and was never intended to serve as a long-term solution to address chronic erosion. Furthermore, because of the impact on the surrounding coastal environment caused by the continued presence of the sandbag revetment, staff believes that it is appropriate for the Applicant to pursue an alternative that 1) has obtained regulatory approvals and 2) would ensure removal of the sandbag revetment.⁵ Images comparing the proposed Revetment with the existing sandbag revetment are attached as **Exhibit C**. Photos of the sandbag revetment dated November 20, 2024 are attached as **Exhibit D**.

Staff also emphasizes that, if the ROE and RP are approved, Applicant may proceed with construction of the Revetment at its own risk, and the Board may require removal the Revetment if the Applicant does not obtain legislative approval of the easement. The RP will be month to month, subject to annual review and renewal by the Board, providing the Board with the authority to cancel the RP.

Staff believes that the approval of the revocable permit is justified since the Applicant has a valid CDUP for the Revetment and the Board has already approved the easement. Although the RP would allow construction of the revetment prior to legislative approval, the temporary nature of the RP and the requirement of a bond to remove the Revetment and restore the shoreline area provides the Board with sufficient oversight and the means to compel removal of the Revetment if circumstances dictate. Additionally, Staff notes that the ROE and RP will require the Applicant to pay rent for the use of submerged lands. If the Board approves the ROE and RP, staff will determine whether the ROE and RP rent amount should be determined in-house by staff or independent appraisal, either of which is subject to acceptance by the Chairperson. The Applicant will be responsible for paying for an appraisal contracted by the Department. Finally, Staff believes that removal and replacement of the existing sandbag revetment with an alternative structure that has received regulatory approval is appropriate to mitigate the impacts to the coastal environment cause by the sandbag revetment.

RECOMMENDATION: That the Board:

1. Subject to the terms and conditions cited above, amend its approval of item D-8 from its meeting on January 12, 2018, by amending recommendation 3 and adding recommendations 4, 5 and 6, as stated below:

“3. Authorize the issuance of a construction and management right-of-entry to the Association of Apartment Owners of Hololani covering

⁵ The Applicant has resolved fines previously incurred from both the State Department of Health and the County regarding maintenance of the sandbag revetment.

the subject area for ~~steel-sheet seawall~~ and revetment 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 document form, as may be amended from time to time; and
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

4. Based on the testimony and facts presented, find that approving the revocable permit, under the conditions and rent set forth herein, would serve the best interests of the State.

5. Authorize the issuance to Association of Apartment Owners of Hololani of a revocable permit covering the subject area for revetment 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. Review and approval by the Department of the Attorney General; and
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

6. Require the Association of Apartment Owners of Hololani to provide a bond or other security in an amount satisfactory to the Department to provide for the removal of the subject revetment and restoration of the shoreline area.”

2. All terms and conditions listed in its January 12, 2018 approval to remain the same.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson

RT

DEFERRED

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

March 23, 2018

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

PSF No.: 17MD-152

MAUI

Amend Prior Board Approval of Item D-8 from January 12, 2018: "*Grant of Term, Non-Exclusive Easement to the Association of Apartment Owners of Hololani for Steel Sheet Pile Seawall and Rock Revetment Purposes; Issuance of Management Right-of-Entry; Kahana, Lahaina, Maui, Tax Map Key: (2) 4-3-010: Seaward of 009.*"

The purpose of the amendment is to approve a construction Right-of-Entry permit to the Hololani Association of Apartment Owners for steel sheet seawall and revetment purposes.

Deferred
 APPROVED BY THE BOARD OF
 LAND AND NATURAL RESOURCES
 AT ITS MEETING HELD ON
 March 23, 2018

BACKGROUND:

On January 12, 2018, under agenda item D-8, the Board authorized the issuance of a 55-year term, non-exclusive easement for seawall and revetment purposes and a management Right-of-Entry (ROE) for that structure to the Association of Apartment Owners of Hololani (Hololani AOA). (See **Exhibit A**).

REMARKS:

Subsequent to the January 12, 2018 Board meeting, representatives acting on behalf of the Hololani AOA expressed concerns regarding the approximate length of time needed to complete the execution of the easement (about 1-1.5 years); citing rising material and maintenance cost of the current OCCL approved erosion control sandbags (see **Exhibit B**), rising interest rates, and rising shipping and material cost for the seawall and revetment. The Hololani AOA representatives requested an ROE be approved so that construction of the seawall and revetment could commence no later than May 10, 2018 (the latest date given by the construction consultant with the completion done before the winter wave swells arrive). The Hololani AOA realized only after the prior Board meeting that the Board had approved a management ROE for the seawall and revetment structure, which did not allow for an early construction of the new structure. The Hololani AOA now comes before the Board to clarify their ROE request.

The Hololani AOA will also simultaneously move forward with the easement process. The Hololani AOA has submitted a concurrent resolution for approval of the easement to the Legislature. The Hololani AOA committed that construction of the seawall and revetment would not commence unless concurrent resolution is approved during the 2018 legislative session. Also, that Hololani AOA will provide to the Department of Land

EXHIBIT A

and Natural Resources (DLNR) a performance bond equal to 150% of the removal cost of the seawall and revetment to be justified by a written estimate, and restoration of the shoreline area to the satisfaction of the Department, should the easement fail to be executed.

The Hololani AOA has secured County of Maui, Special Management Area permits for portions of the seawall and revetment being constructed on private property. As noted in the prior Board approval, the Board has already approved a Conservation District Permit for the new structure. The Hololani AOA has confirmed that there are no further regulatory requirements for the construction of the new structure, only the completion of the easement process is outstanding.

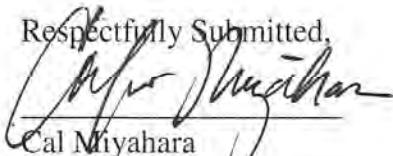
Based on the review of the above information, staff recommends that the Board authorize granting a ROE for the construction of the seawall and revetment to commence on or after May 10, 2018, provided that: (1) concurrent resolution for the seawall and revetment is approved during the 2018 legislative session; and, (2) Hololani AOA provides to DLNR a performance bond equal to 150 % of the cost of the removal of the seawall and revetment to be justified by a written estimate, and the restoration of the shoreline area to the satisfaction of the Department.

RECOMMENDATION: Subject to the terms and conditions cited above, that the Board amend its approval of Item D-8 from its meeting on January 12, 2018, by adding the additional recommendation below:

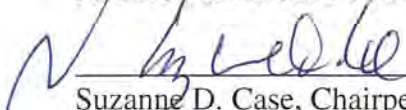
“4. Authorize the issuance of a construction right-of-entry (to commence on or after May 10, 2018) to the Association of Apartment Owners of Hololani covering the subject area for steel sheet seawall and revetment purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current right-of-entry permit document form, as may be amended from time to time; and
- B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.”

Respectfully Submitted,


Cal Miyahara
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson

Land Board Meeting: March 23, 2018; D-3:
Deferred.

Deferred. See attached page.

Land Board Meeting: March 23, 2018; D-3: Deferred.

Deferred. The Board deferred the item until such time as the Chair, in her discretion, decides to place it on the agenda again.

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

January 12, 2018

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

PSF No.: 17MD-152

MAUI

Grant of Term, Non-Exclusive Easement to the Association of Apartment Owners of Hololani for Steel Sheet Pile Seawall and Rock Revetment Purposes; Issuance of Management Right-of-Entry; Kahana, Lahaina, Maui, Tax Map Key: (2) 4-3-010:Seaward of 009.

APPLICANT:

Association of Apartment Owners of Hololani, a domestic nonprofit corporation.

LEGAL REFERENCE:

Sections 171-6, 13, 17, 53(c), and 55 Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government land located seaward of Kahana, Lahaina, Maui, identified by Tax Map Key: (2) 4-3-010:Seaward of 009, as shown on the attached maps labeled **Exhibit A-1, A-2, and A-3.**

AREA:

6,128 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
County of Maui CZO:	H-2 [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

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON
January 12, 2018 *wa*

EXHIBIT "A"

CURRENT USE STATUS:

Vacant with encroachments.

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace and remove the steel sheet pile seawall and rock revetment 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 rent, subject to review and approval by the Chairperson.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's The Environmental Notice on October 8, 2013, with a finding of no significant impact (FONSI).

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; and
3. Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

REMARKS:

The applicant is an association of apartment owners who own the abutting property identified as tax map key (2) 4-3-010:009. The applicant is planning to construct a permanent shoreline armoring structure to prevent further coastal erosion that is threatening 2 condominium buildings. One of the corners of the north building is now approximately 20 feet from the shoreline.

In 2007, the Office of Conservation and Coastal Lands (OCCL) issued the applicant a 3-year emergency erosion control authorization for the installation of geotextile sandbags and Tensar (rock filled wire-mesh mattress) structures to address the ongoing shoreline erosion problem (see **Exhibit B**). The initial emergency permit has since been extended four times and remains valid until May 1, 2018. Also, the authorization issued by DLNR required the applicant to develop a more long-term solution.

At its meeting on May 9, 2014, Item K-2, the Board approved Conservation District Use Application (CDUA) MA-3663 (see **Exhibit C**), for the proposed permanent shoreline protection structure. The approved structure will combine a seawall (steel sheet pile wall) and rock revetment. Condition number 4 of the CDUP requires a land disposition for any portion of the permanent structure that will be built on State lands. The applicant now comes before the Board for approval of an easement for the seawall and revetment area. Originally, Condition number 1 of the CDUP required that the shoreline protection structure be located substantially landward of the May 2, 2013 certified shoreline (see **Exhibit D**). However, after lengthy discussions with Sea Engineering, Inc. (consultants for the applicant), OCCL concurred that from an engineering standpoint, the protection structure could only be constructed just a little landward of the 2013 certified shoreline because of the close proximity of the swimming pool and the north building to the shoreline.

Based on the review of the above information, staff recommends the disposition of the shoreline encroachment abutting the Applicant's property through an easement. Staff requests that the Board authorize granting a term, non-exclusive easement for the seawall and revetment.

Comments from other government agencies were sought during the application stage for the conservation district use permit mentioned above which included an environmental assessment. Therefore, staff did not solicit another round of requesting for comment on the proposed easement.

Upon approval of today's request, Applicants will be reminded of the requirement for concurrent resolution from both houses of the legislature under Sect.171-53(c), HRS prior to the issuance of the requested easement.

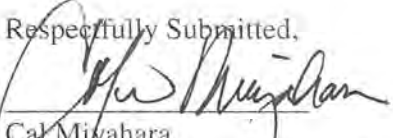
Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and

conditions.

RECOMMENDATION: That the Board:

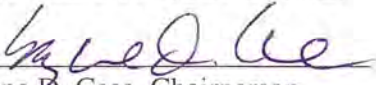
1. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 4-3-010:009, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
2. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to the Association of Apartment Owners of Hololani, covering the subject area for steel sheet seawall and revetment 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. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
 - C. Review and approval by the Department of the Attorney General;
 - D. Terms and conditions of CDUP MA-3663 as shown on Exhibit C;
 - 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.
3. Authorize the issuance of management right-of-entry to the Association of Apartment Owners of Hololani covering the subject area for steel sheet seawall and revetment 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 document form, as may be amended from time to time; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Cal Miyahara
Shoreline Disposition Specialist

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



EXHIBIT A-1

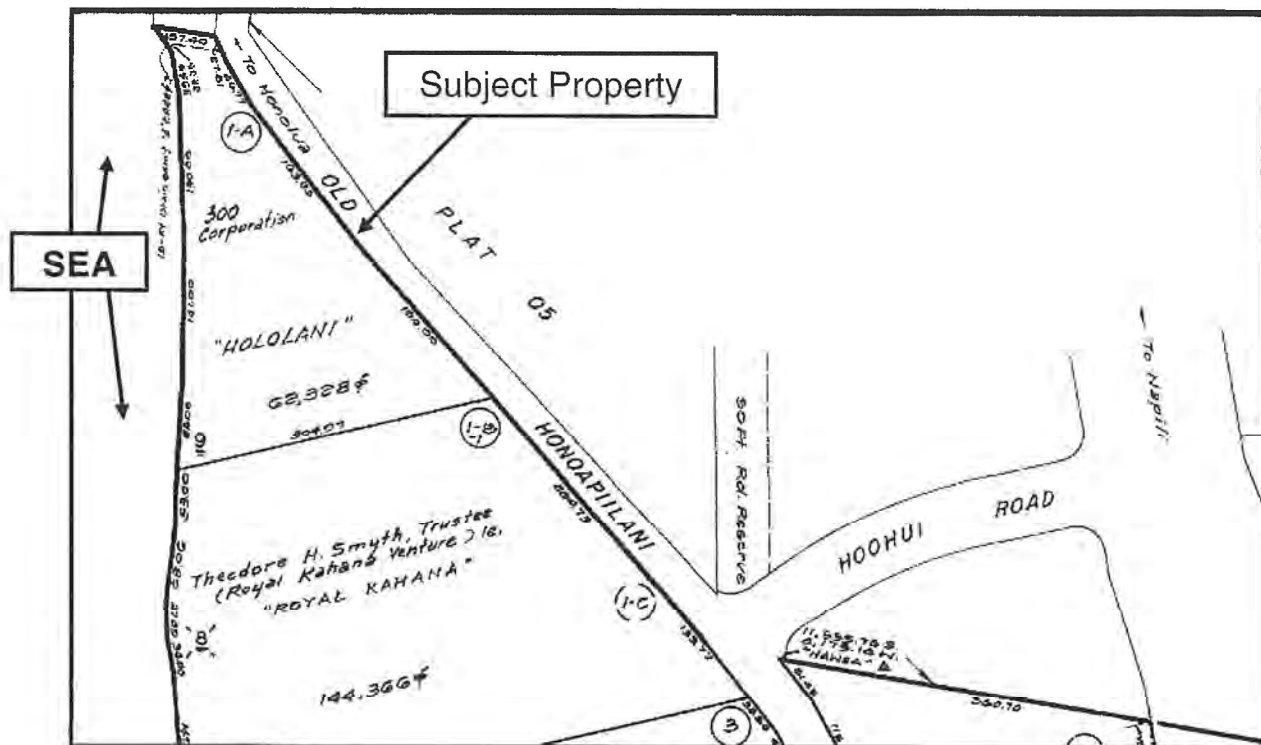
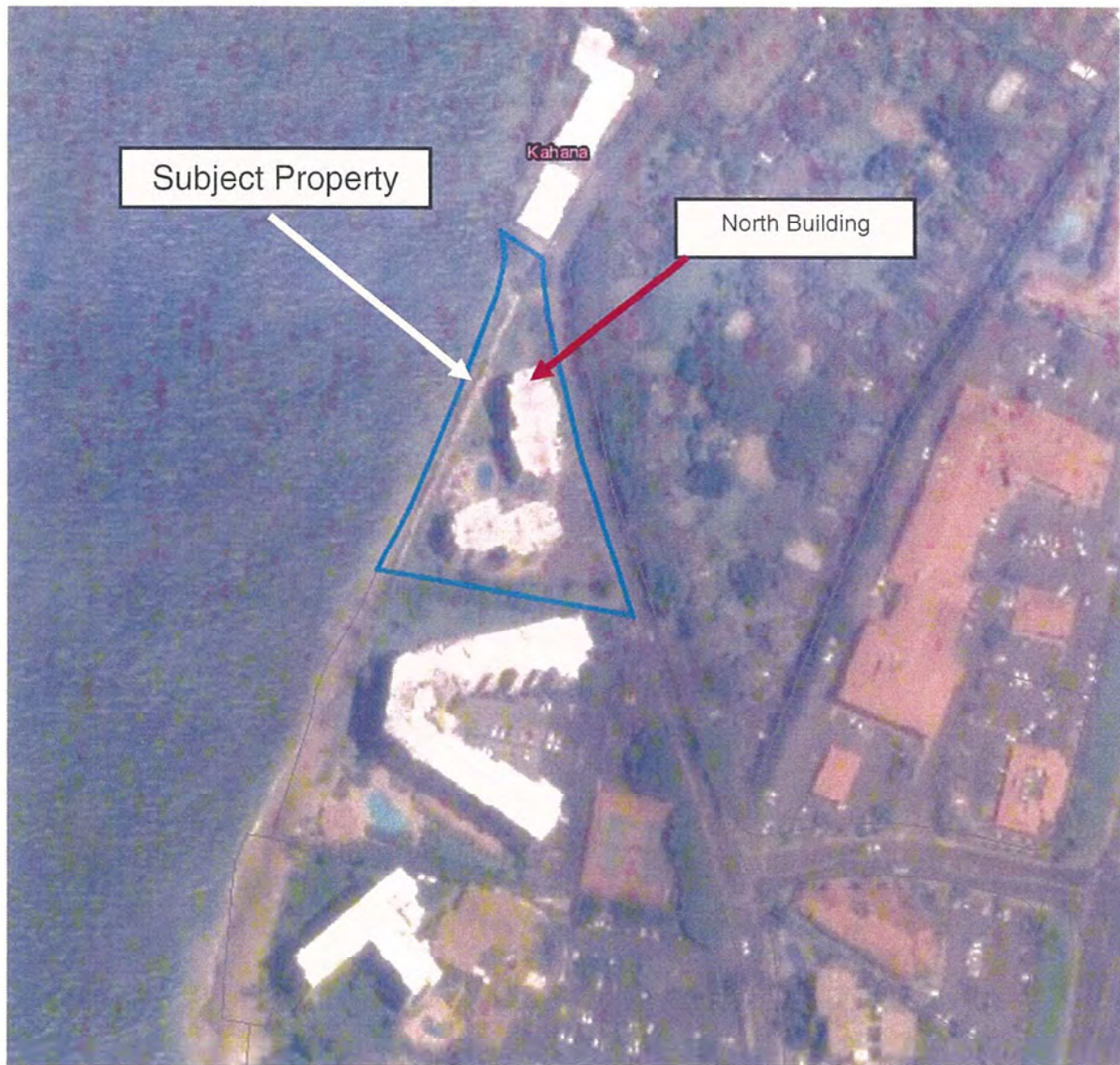


EXHIBIT A-2



TMK (2) 4-3-010:seaward of 009

EXHIBIT A-3

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENUNTERIA
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DLNR.OCCL.DE

File No.: Emergency-OA-07-08

February 6, 2007

John C. Henry
Hololani Resident Manager
4401 L. Honoapiilani Rd
Lahaina, HI 96761

Mr. Henry:

SUBJECT: Emergency Erosion Control (Sandbags), Hololani Condominiums
4401 L. Honoapiilani Rd Lahaina, HI. TMK (2) 4-3-010:09.

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) has received your letter dated January 24, 2007 regarding an emergency request for a sand bag revetment fronting the property. Based on the information presented and a site visit by our staff on January 11, 2007 the large multi-story structure is in danger of collapse without immediate shore protection and justifies a temporary emergency response (Figure 1).

On February 2, 2007, the Department approved an emergency request of behalf of the Hololani Condominium landowners to place additional boulders and fabric on the shoreline in order to prevent a portion of the facility from being undermined by erosion. This authorization allowed Hololani to place boulders in the shoreline area for thirty (30) days. After this period, the boulders must be removed to the satisfaction of the Department.

As an interim measure (subsequent to the boulder removal), the landowner(s) would like to install a temporary engineered structure. The proposed sandbag and Tensar structure consists of approximately 380 linear feet of shoreline fronting the subject property. The revetment will be installed at elevation +2.5 ft to +10.0 (ft sl) and will consist of a combination of 144 Tensar units (0.75' X 5' X 10') (160 cubic yards of rock filled in a plastic mattress) as scour pad and splash apron and approximately 144 (5' X 10' X 1.5') Bulkift S.E.ABAG sandbags (360 cubic yards of sand). These will be installed in a sloping formation and built primarily seaward of the shoreline defined by the active erosional scarp. This authorization is for the referenced design presented in Figure 2 of the January 24, 2007 request letter (Figure 2).

EXHIBIT "B"

The DLNR understands that during time the temporary sandbag/Tensar structure is in place, the landowner(s) intend to apply for a shoreline setback variance for an engineered rock revetment placed landward of and to replace the proposed sandbag structure, the installation of the bags is intended to be temporary until the required permits are obtained for a more permanent rock revetment.

Mitigation Measures (Best Management Practices)

Typical Best Management Practices shall be implemented to ensure that water quality and marine resources are protected and preserved. Mitigation measures involve the use of sand that is free of contaminants and low in silt content (to be determined). The applicant proposes to place the sandbags seaward of the shoreline at and will ensure silt is contained during construction activities. Excessive silt and turbidity shall be contained or otherwise minimized through the use of silt containment devices and barriers. Silt containment should be practiced for the duration of construction activities. The sandbag installation should occur during low tide to ensure activities do not discharge silt into state waters. Visual monitoring of the nearshore water quality condition should be practiced during sand placement; and if excessive turbidity occurs, sand placement shall stop and more effective silt containment measures utilized.

Sand Quality

Due to the contained use of the proposed sand, Best Management Practices, low silt content, limited duration of exposure and the high rate of flushing and circulation at the site, potential turbidity impacts from the proposed activities are estimated to be negligible. Near-shore turbidity associated with the use of this sand is not expected to impact marine life and will be quite short-lived in the nearshore waters and is not expected to exceed existing background levels.

Based on the information provided, the Department has made the following determinations:

1. There is an imminent threat to the existing dwelling with active erosion threatening the structure.
2. This berm is approximately defined by the active scarping and fallen vegetation. Erosion appears to have accelerated landward recently.
3. The proposed structure will provide temporary protection to the threatened structures until a more permanent solution is designed and approved.
4. There is no known beach-quality sand source stored behind the berm, it appears the area is composed a clay and weathered basalt that would not provide a useful source of sediment to the littoral system if were allowed to erode.
5. The area is largely armored with a large number of shoreline structures to the north and south of the property, specifically immediately to the north.
6. The applicant is developing a long-term plan for erosion control that may include stabilizing structures. This plan will be implemented before the 3 year expiration date of the emergency permit.

DEPARTMENT ACTION

Terms and Conditions

The Chairperson of the Department of Land and Natural Resources hereby authorizes your emergency request for temporary sandbag and Tensar mattress structure fronting the subject property. This authorization includes, but is not limited to the following terms and conditions:

1. This authorization will become valid upon the approval by the DLNR of:
 - a. A sand source for the installation of the sand bags.
 - b. A Best Management Practices (BMP's) Plan
 - c. Installation sequence and work plan for the proposed structure.
2. The project includes the installation and replacement of approximately 144 (5' X 10' X 1.5') Bulklift S.E.ABAG sandbags (360 cubic yards of sand) in conjunction with 114 Tensar rock-filled units (160 cubic yards of rock).
3. This authorization is valid for three (3) years from the date of acceptance, at which time, the authorization shall expire.
4. The applicant shall ensure that excessive siltation and turbidity is contained or otherwise minimized to the satisfaction of the DLNR, DOH or other agency, through silt containment devices or barriers, high sand quality and selective sand placement;
5. Any work or construction authorized by this letter shall be initiated within six (6) months of the approval of such use, and, unless otherwise authorized, shall be completed within twelve (12) months of the approval of such use. The applicant shall notify the Department before construction activity is initiated and when it is completed.
6. Sand utilized for the project will be from an approved commercial sand source. No sand shall be extracted from the beach fronting the property for any purpose.
7. Authorization of the sand used for the bags is contingent upon review and approval of the sand by the Department. **Please submit sediment grain size analysis report and specify the source to the DLNR for review to ensure the proposed sand meets minimum standards. The sand shall meet the following State quality standards:**
 - a) The proposed fill sand shall not contain more than six (6) percent fines, defined as the #200 sieve (0.074 mm).
 - b) The proposed beach fill sand shall not contain more than ten (10) percent coarse sediment, defined as the #4 sieve (4.76 mm) and shall be screened to remove any non-beach compatible material and rubble.

- c) No more than 50 (fifty) percent of the fill sand shall have a grain diameter less than 0.125 mm as measured by #120 Standard Sieve Mesh.
 - d) Beach fill shall be dominantly composed of naturally occurring carbonate beach or dune sand. Crushed limestone or other man made or non carbonate sands are unacceptable.
8. Transfer of ownership of the subject property includes the responsibility of the new owner to adhere to the terms and conditions of this authorization.
 9. This action is temporary to alleviate the emergency until long-term measures can be implemented. The DLNR reserves the right to terminate this authorization if it is determined the structure is having an adverse impact on the environment or if other shore protection alternatives are available.
 10. At the conclusion of work, the area shall be clean of all construction material, and the site shall be restored to a condition acceptable to the Chairperson.
 11. The activity shall not adversely affect a federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat.
 12. The activity shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area.
 13. When the Chairperson is notified by the applicant or the public that an individual activity deviates from the scope of an application approved by this letter, or activities are adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect.
 14. When the Chairperson is notified by the U.S. Fish and Wildlife Service, the National Marine Fisheries Service or the State DLNR that an individual activity or activities authorized by this letter is adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the applicant to undertake corrective measures to address the condition affecting these resources. The applicant must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect.

15. To avoid encroachments upon the area, the applicant shall not use artificially accreted areas due to nourishment or hardening as indicators of the shoreline.
16. Where any interference, nuisance, or harm may be caused, or hazard established by the activities authorized under this authorization, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm or hazard.
17. No contamination of the marine or coastal environment (trash or debris) shall result from project-related activities authorized under this authorization.
18. No motorized construction equipment is to be operated in the water at any time.
19. In the event there is any petroleum spill on the sand, the operator shall promptly remove the contaminated sand from the beach and immediately contact the DLNR/OCCL staff at 587-0377, to conduct a visual inspection and to provide appropriate guidance.
20. For projects authorized by this letter, the applicant, 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, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under projects authorized under this permit.
21. The DLNR reserves the right to impose additional terms and conditions on projects authorized under this letter, if it deems them necessary.
22. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments for projects authorized under this letter.
23. In the event that historic sites, including human burials are uncovered during construction activities, all work in the vicinity must stop immediately and contact the State Historic Preservation Division at 692-8015.
24. The applicant shall obtain a right-of-entry permit or other land disposition approval from the State of Hawaii, Land Division prior to the inception of project work.
25. Failure on the part of the applicant to comply with any conditions imposed under this authorization shall render the authorization null and void.
26. The applicant shall take measures to ensure that the public is adequately informed of the project work once it is initiated and the need to avoid the project area during the operation and shall notify all abutting property owners and community organizations that may be affected by the proposed action.

February 6, 2007

27. The applicant shall implement standard Best Management Practices (BMPs), including the ability to contain and minimize silt in nearshore waters and clean up fuel, fluid or oil spills immediately for projects authorized by this letter. Equipment must not be refueled in the shoreline area. If visible petroleum, persistent turbidity or other unusual substances are observed in the water as a result of the proposed operation, all work must cease immediately to ascertain the source of the substance. The DLNR/OCCL staff shall be contacted immediately at 587-0377, to conduct a visual inspection and to provide appropriate guidance.

Additional Monitoring:

28. The applicant must submit a written completion report to the OCCL within two months of completion of the project. The completion report must include, as appropriate, descriptions of the construction activities, discussion(s) of any deviations from the proposed project design and the cause of these deviations, results of any environmental monitoring (primarily sand movement observations and turbidity observations), discussion(s) of any necessary corrective action(s), and photographs documenting the progress of the permitted work before, during and after sand placement.
29. As a temporary emergency project, the applicant shall provide an initial completion report and follow-up summary reports *annually* to the Department for three (3) years from the date of acceptance or until a permitted permanent structure is completed describing the condition of the sandbags and any impacts to the local nearshore processes.

Authorization Expiration:

30. This authorization shall expire three (3) years from the date of this letter. At that time, all activities authorized by the authorization shall be removed and the shoreline shall be returned to its original condition, unless a long-term plan has been approved. Failure to comply with these terms and conditions shall constitute a violation of Chapter 183C, Hawaii Revised Statutes and fines of \$2,000 per day shall accrue for each day that the landowner fails to comply with the terms and conditions of this authorization.

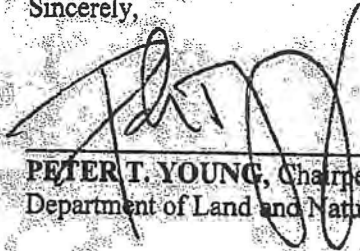
Please acknowledge receipt of this authorization, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within fifteen (15) days. Please notify the OCCL in advance of the anticipated construction dates and notify the OCCL immediately if any changes to the scope or schedule are anticipated.

Hololani Emergency Erosion Control

February 6, 2007

Should you have any questions on any of these conditions, please contact the Office of Conservation and Coastal Lands (OCCL) at (808) 587-0377.

Sincerely,



PETER T. YOUNG, Chairperson
Department of Land and Natural Resources

Attachments (Figures 1, 2)

Maui Board Member

DAR/HPD

Maui County Planning Dept

OHA/DOH, Clean Water

USFWS/NMFS/USACE

Jim Barry Sea Engineering Makai Research Pier Waimanalo, Hawaii 96795-1820

I concur with the conditions of this letter:

Hololani AAO
by Stuart Allen, its President

Applicant's Signature

Date 12.14.07

Note: transfer of ownership (Title) conveys all terms and conditions of this authorization to the new owner.

Figure 1. Site Conditions
January 31, 2007

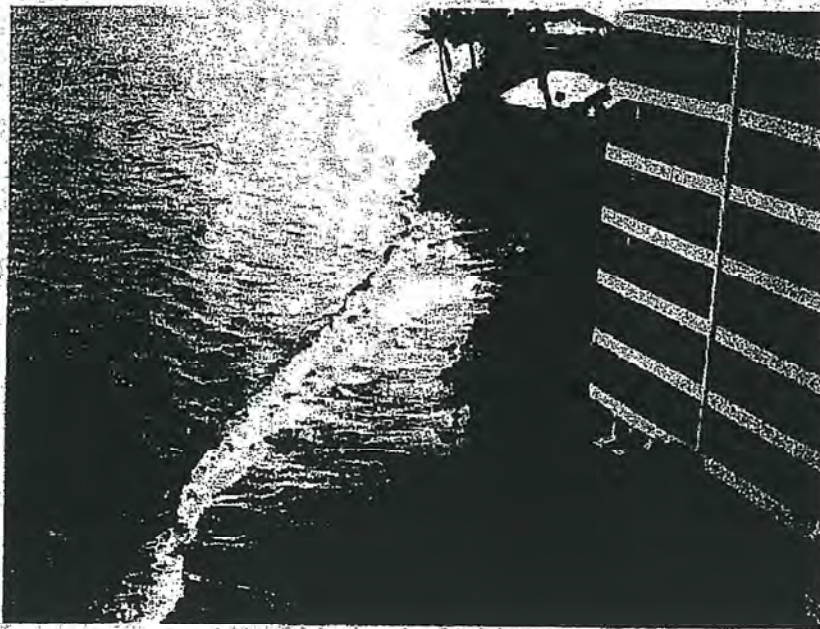


Figure 2. Proposed Plan

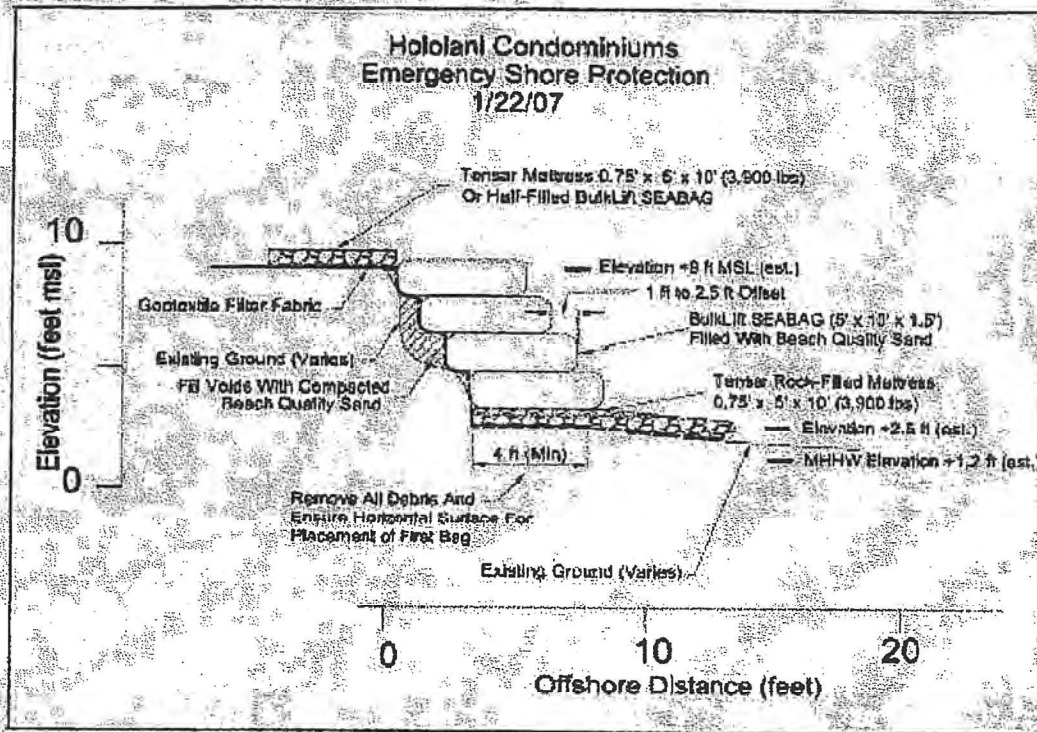


Figure 2. Cross-section of proposed temporary emergency shore protection.

NEEL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

Office of Conservation and Coastal Lands
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCES MANAGEMENT

JESSE K. SOUKI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONSERVATION
COMMISSION ON WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CORRECTION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAOIOLAWA ISLAND RESERVE COMMISSION
LAND
STATE PARKS

CDUP: MA-3663
MAY 13 2014

Jim Barry
Sea Engineering Inc.
Makai Research Pier
Waimanalo, HI 96795

Dear Mr. Barry:

This letter is to inform you that on May 9 2014, the Board of Land and Natural Resources (BLNR) approved Conservation District Use Application (CDUA) MA-3663 for the Hololani Resort Condominiums shore protection project, located at Kahana, Lahaina, Island of Maui - TMK: (2) 4-3-010:009, subject to the following conditions:

1. The permittee shall redesign a shoreline protection structure that is located substantially landward of the May 2, 2013 certified shoreline;
2. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of this chapter;
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, and 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 obtain a land disposition from the department for any remaining portion of the shoreline protection structure on state lands;
5. The permittee shall comply with all applicable department of health administrative rules;
6. Before proceeding with any work authorized by the department or the board, the permittee shall submit four copies of the construction plans and specifications to the chairperson or an authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three of the copies will be returned to the permittee. Plan approval by the chairperson does not constitute approval required from other agencies;

EXHIBIT "C"

CDUP MA-3663

7. Unless otherwise authorized, any work or construction to be done on the land shall be initiated within two years of the approval of such use, in accordance with construction plans that have been signed by the chairperson, and shall be completed within three years of the approval of such use. The permittee shall notify the department in writing when construction activity is initiated and when it is completed;
8. All representations relative to mitigation set forth in the accepted environmental assessment for the proposed use are incorporated as conditions of the permit;
9. The permittee understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;
10. In issuing the permit, the department and board have relied on the information and data that the permittee has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
11. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
12. 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;
13. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;
14. The permittee shall obtain a county building or grading permit or both for the use prior to final construction plan approval by the department;
15. 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;
16. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The Historic Preservation Division shall be contacted (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
17. Monitoring of the nearshore water quality shall be conducted in accordance with best management practices;

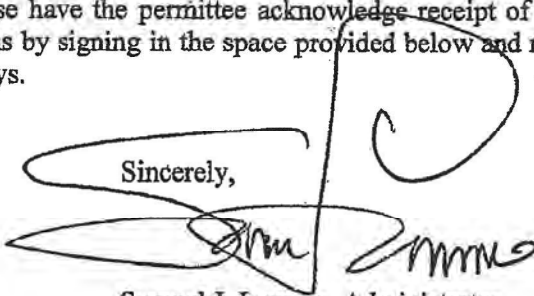
18. Work shall be conducted during calm weather periods to the most practical extent possible and no work shall occur if there is high surf or ocean conditions that will create unsafe work or beach conditions;
19. The permittee shall implement the proposed Best Management Practices (BMPs) and monitoring and assessment plan to maintain BMPs to minimize dirt and silt from entering the ocean and the ability to contain and clean up fuel, fluid, or oil spills immediately under this authorization and immediately report any spills or other contamination(s) that occurs at the project site to the Department of Health and other appropriate agencies;
20. The permittee shall ensure that excessive siltation and turbidity is contained or otherwise minimized to the satisfaction of all appropriate agencies, through silt containment devices or barriers, or other requirements as necessary;
21. Appropriate safety and notification procedures shall be implemented. This shall include high visibility safety fencing, tape or barriers to keep people away from the active construction site and a notification to the public informing them of the project;
22. The activity shall not adversely affect a federally listed threatened or endangered species or a species proposed for such designation, or destroy or adversely modify its designated critical habitat;
23. The activities shall not substantially disrupt the movement of those species of aquatic life indigenous to the area, including those species, which normally migrate through the area;
24. When the Department is notified that an individual activity deviates from the scope of work approved by this authorization or activities are adversely affecting fish or wildlife resources or their harvest, the Chairperson will direct the permittee to undertake corrective measures to address the condition affecting these resources. The permittee must suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect;
25. No contamination of the marine or coastal environment (trash or debris) shall result from project-related activities authorized under this permit;
26. The Office of Conservation and Coastal Lands shall be notified (587-0377) in advance of the anticipated construction dates and shall be notified immediately if any changes to the scope or schedule are anticipated;
27. The permittee shall maintain safe lateral beach access for the life time of the structure;
28. If flanking or end effects are detected on the Royal Kahana property and can be attributed to the Hololani shoreline protection structure, the permittee shall place beach grade sand in the area to mitigate such effects;
29. The permittee shall provide, maintain, and properly add signage for a public access through the property to the shoreline;

30. Other terms and conditions as may be prescribed by the Chairperson; and
31. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Finally, we ask that you comply with the recommendation of our State Historic Preservation Division (SHPD) in regards to the need to prepare an archaeological monitoring plan, and that a draft archaeological monitoring plan be provided to SHPD for approval prior to project initiation (letter attached).

Should you have any questions, please contact Sam Lemmo of the Office of Conservation and Coastal Lands at 587-0377. Please have the permittee acknowledge receipt of this permit and acceptance of the above conditions by signing in the space provided below and returning a copy to the OCCL within thirty (30) days.

Sincerely,


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

Hololani ADO

by Stuart Allen, its President

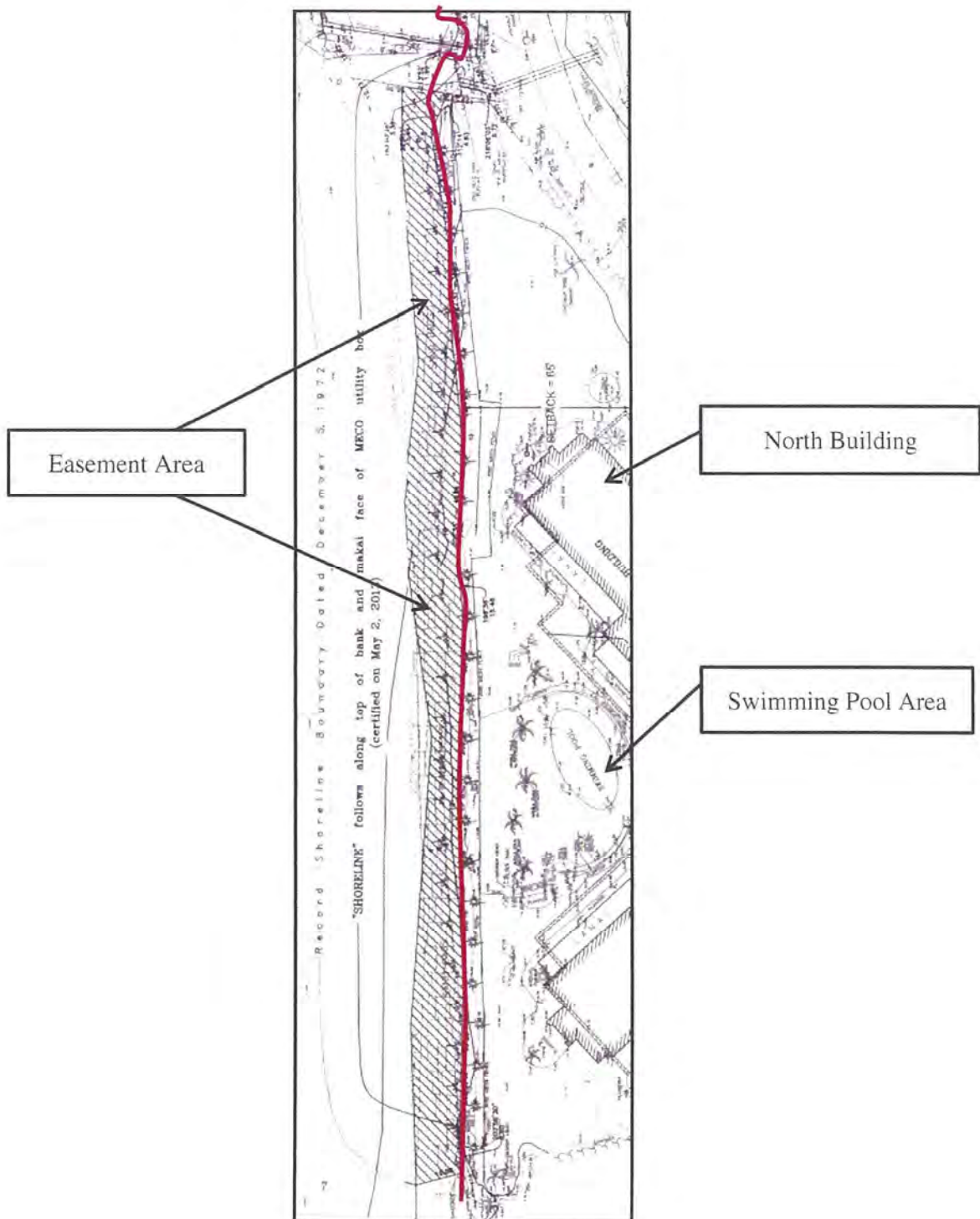
Receipt acknowledged:

12-13-17

Date:

Attachment

c: Chairperson
MDLO
County of Maui Planning Department, Public Works



Note: **Red** line indicates May 2, 2013 certified shoreline.

EXHIBIT D



Looking northeast – drainage easement area at north end of the property.

Exhibit B



Looking southwest – north building area.



Looking southwest – sandbags adjacent to the pool area. Between north and south building.



Looking southwest – sandbags at south end of the property.

Downing asked with the 50% formula, how much would we have been making? Tsuji said we roughly made around \$49,000.

The Board amended the title of the item to read as follows (new language underscored):

Approve Mediated Settlement of Rent Reopening Dispute and Amendment of Lease Pursuant to Settlement in General Lease No. S-4223, InSite Towers Development, LLC; Mt. Kaala, Mokuleia, Waialua, Oahu, Hawaii; Tax Map Key: (1) 6-7-003: Portions.

Similarly, the Board amended the Recommendation section to read:

That the Board approve the mediated settlement for the rent reopening and amendment of lease pursuant to settlement in General Lease No. S-4223 for the period of March 1, 2016 through February 28, 2026, and March 1, 2026 through, to the end of the term, February 28, 2031 at \$39,000 per year together with an advancement of \$39,000 to be paid in a single lump-sum upon the full execution of the agreement.

Approved as amended (Gomes, Gon) unanimous.

ITEMS D-3 & K-1

Chair Case said that a contested case has been requested and made a motion to go into Executive Session 92-5(a) (4) HRS in order to consult with our Attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities. Member Gon made the motion and Member Gomes second the motion. Member Yuen for the record asked if it came it in writing. Case replied, yes, it was submitted this morning. It is not in the regular form. Yuen conveyed that the written or oral request should be made before the meeting. Tsuji asked it was for both Items D-3 and K-1. Case said yes.

Oral request for contested case made by Bianca Isakii, for Na Papai Wawae Ula, Felimon Sadang, and West Maui Preservation Association

10:00 am: Executive Session

10:00 am: Reconvene

ITEM D-3 Amend Prior Board Approval of Item D-8 from January 12, 2018: "Grant of Term, Non-Exclusive Easement to the Association of Apartment Owners of Hololani for Steel Sheet Pile Seawall and Rock Retention Purposes; Issuance of Management Right-of-Entry; Kahana, Lāhainā, Maui, Tax Map Key: (2) 4-3-010: Seaward of 009."

EXHIBIT B

The purpose of the amendment is to approve a construction Right-of-Entry permit to the Hololani Association of Apartment Owners for steel sheet seawall and revetment purposes.

Chair Case said based on our discussions with Counsel, I want to ask for a motion to deny the request for a contested case request under D-3, under *SHARMA*, believe there is no right for a contested case for a Construction Right-of-Entry, this is a matter of an internal working of the Board. We believe there is no right for a contested case on a time extension for a CDUP. The time for a contested case would have been on the initial CDUP. Member Oi made the motion to deny, Member Oi made the motion, and Member Gon second the motion.

Motion – Denied for Contested Case. 4 Ayes, 2 No (Gomes, Downing)

Yuen clarified that we are not making a decision on the merits, just denying the contested case on legal advice. We will now here the pros and cons.

Russell Tsuji, Land Division, the Board recently approved the Grant of Easement to Hololani and that was in connection with a Conservation Use Permit that had been granted several years ago, that required a land disposition. We are asking to amend that to include a Construction Management Right-of-Entry, subject to Legislative approval. That resolution for the Easement is up before the Senate Water and Land Committee today.

Tsuji amended the title within the text of the recommendation on the commencement date of May 10th, to upon approval of the Easement by the Legislature.

Board Discussion

Gon said my question of the Right-of-Entry stipulation was first obtained, it was not the proper type? Tsuji replied, it was a Management Right-of-Entry, typically used to manage the area, not to start any type of construction of a new wall. It was to manage the land, (to take care of the building and the land) we are doing this because the documentation of the easement itself takes time. The Applicant came in because the ocean is really close to the building, and is trying to get in during the season that would allow them to build, there is a timeframe that they can explain. They have asked to start before the documents are executed on the easement side as long as they get Legislative approval.

Downing asked how long before the final documentation is completed. Tsuji, said may take up to six-months. Although they want to start before final execution of the Easement, they cannot start until they get Legislative approval. Downing asked should this not have been done when they got the initial CDUP? Tsuji said yes, it would have been better, but it is not unusual.

Yuen asked about the performance bond. Tsuji said, we want to make sure the wall is completed and they want to start before the Easement documents are executed. The bond would be

released after construction, I am not sure if the Board would like to hold on to the bond for removal. There was further discussion by the Board members regarding the Bond.

Pam Bunn, Hololani Association, reviewed the Hololani chronology, stating that the project has been reviewed and approved by State, Federal, and County levels with public comment and oral testimony at each level of review. Addressed the delay, there was back and forth about trying to move the structure more mauka so as not to take up less conservation land, then go through the SMA and Shoreline set-back process.

Sharon Wright, Construction Manager, Jim Barry, Project Engineer, Michelle Stafford, Board Member, Robert Luce, Owner, were present to answer questions.

Bunn stated that we have a weather window that is closing rapidly, Contractor needs to start by May 10th, that is the last day construction can start to complete before the winter wave season. If they cannot start on May 10th, we have to wait another year and rely on the temporary emergency protection and hope it continues to hold up, incur increases in interest for material cost, etc. The users of lower Honoapi'ilani Road will be impacted for another year of flooding in that area of the roadway can be rectified. Part of the agreement with DPW, Hololani owners, at its own expense would put in drainage improvements. We will know by May 3rd, whether we have Legislative approval.

Hololani's understanding of the Bond requirement is that once the Easement document gets executed that the Bond amount is applied to the 55-year lease payment. We would like the ability to begin before May 10th if we receive Legislature approve providing all the conditions are in place.

Gon commented that it also needed Governor's approval, have you got that? Bunn said no, that would be one of the contingencies that the Bond would secure.

Yuen asked from Bunn's point of view, what would be wrong with relying on the emergency sand bags situation for another year? Bunn replied, primarily it is fear that the owners have lived with for so long about protecting their property, the sandbags do not always hold, they have to be on top of it week to week maintaining the sandbags, mattress, it is a stressful way to live and they have been living like that for a long time. There is also the additional cost, we have had materials and equipment shipped here already. There are 64-owners funding this, any increase in cost is going to affect them greatly.

Yuen suggested OCCL present their submittal before hearing public testimony.

ITEM K-1 Time Extension Request for Conservation District Use Permit (CDUP) MA-3663 for Shoreline Erosion Control by Hololani Resort Condominiums Located at 4401

Lower Honoapi'ilani Road, Lāhainā, Maui, Tax Map Key:(2) 4-3-010:009 and adjacent submerged land.

Sam Lemmo, Office of Coastal and Conservation Lands, this is the second extension requested.

Yuen, mentioned that there is a great deal of written testimony opposing this project that did not come forward in 2014. I know that you and your staff are vigilant about protecting the preservation of beaches and generally skeptical of the construction of seawalls can you provide the thought process at that time in 2014. I understand the reasons for the time extensions,

Lemmo, said the history of Hololani goes back to 1996 or 1997, there was a severe erosion event, they installed boulders along the shoreline, we opened a violation, there was no authorization to do that. We came to an agreement that if they removed the boulders, we would grant them an emergency authorization for sandbags. They did comply, we gave the authorization for sandbags and have maintained a sandbag revetment, Tensar mattress for something like 10-years. We tell everyone we give an emergency authorization, they need to come in with a permanent solution. A permanent solution could mean a lot of things, it could mean you vacate the premises and allow the erosion to advance, seeking a seawall, doing a beach restoration project, they chose to do the revetment alternative. They engaged in a Conservation Use process in 2013 through OCCL, they provided an Environmental Assessment and we processed the EA, we held a Public Hearing at Hololani, there were 25-35 people there. This was a very tough case. Our office essentially does not support the construction of seawalls in the Hawaiian Islands 95% of the time. Reason for that, State Law 205 (a) prohibits the construction of private shoreline structures seaward of the shoreline, except under certain conditions, he said he did not know the exact language for that Statue property under prohibitions. We looked at the situation at Hololani, our concern #1, beach conservation, so people building shoreline structures need to be cognizant of the problem that seawalls cause on beaches. They tend to exasperate erosion on sandy beaches.

Noted the study by Fletcher, regarding the beach losses in the Hawaiian Islands, Maui, Oahu, Kauai, tremendous loss of beaches due to shoreline structures. We also look at it from the prospective of the homeowner, they have a condominium that is being undermined and the last thing you want to see is a condominium coming out on to the beach.

We looked at a lot of things, basically our determination at the end of the day was because Kahana Bay has unique geology, he explained the type of material out in the bay, the concern, is when you build shoreline structures where you have dune systems or any kind of sand resource, the structure will now prevent the shoreline from recessing landward and reaching those sand deposits which would then re-nourish the beach. We are totally against seawalls and structures in those kind of environments.

Coring was done in the back-shore area, its consistent with it being not typical Hawaii beach sand. This answered the question, does it starve the beach of landward sand deposits. No, it does not.

Another question was does the shoreline structure result in flanking? Noted that the problem at Kahana Bay, is really a sand supply issue, the back-shore area is filled with non-beach type material, clay, gravel, some sand material, limited amount of sand in the bay. Due to sea-level rise, that sand resource will become diminished over time. It will not re-nourish itself overtime. The problem exists on all islands., not just in places with seawalls.

The only way to have a beach at Kahana Bay whether or not there is a seawall or not, is to go out and do a beach restoration project. The beach is not going to nourish itself naturally. You have to import sand, stabilize it with sand retention structures, groin fields.

There was an effort to move the structure more mauka, we went through that process, Maui County approved the permit with condition, if the wall gets built and are successful in getting the beach restoration project, the structure would be removed at Hololani's expense.

Yuen asked how many new seawalls have been approved in the last 12-years. Lemmo replied, they are all on Maui, nothing in the last 15-years.

Downing asked since the sandbag wall has been up how have the neighboring beaches been affected? Lemmo said everything is eroding terribly. The sandbag structure is there. Downing asked north and south of it, whatever beaches were there, are they diminishing at the same rate or has it sped up? I am looking at a picture with a drain pipe coming out on the north side, it seems like a beach is building. Lemmo said now, Pohilani to the west has a giant revetment, no beach there. The Royal Kahana to the other side now has a sand bag revetment everyone and the Kahana Sunset has a sandbag revetment. Everyone at Kahana Bay has armoring.

Jim Barry, Sea Engineering, conveyed that the CZM requirement allows a private entity to build on State land if there is a public benefit. We have the benefit of protecting the road and the drainage easement. We have carried that through the process. They have been observing Kahana Bay for a long time and the last few years it has really been hammered.

Downing asked Barry, is this an indication that the ocean bubble is receding & on your dates of start and finish, you are saying a May 10th fixed date, what is your finish date? Barry replied, in November. Downing said you are 2-months into the winter season. Barry said November would be the end of the "in-water" work.

Downing commented he understands that it is hard to live with sandbags, have you seen any more land erosion because of this? Barry said yes, there has been some. The sandbags degrade after 2-years you have to repair. Downing asked to clarify the pipe coming out, is this for drainage from the road? It is going to be dumping into the only sand spot that you have. Barry said there will be a revetment there and a headwall structure for the drain line. The public access will be by stairs next to the drain-line.

Gomes, said, doesn't the drain-line gets plugged with sand? Barry said yes, we are installing a 30-inch line, there is a man-hole that we will be connecting to and extend it out further with a tide-flex valve. Gomes said if it is draining from the road into the man-hole you are going to get a brown water advisory.

Sharon Wright, clarified that the drain-line does not only serve Hololani, but gives the public back their access. On top of the revetment is a concrete walkway which gives the public lateral beach access that is along the whole front of Hololani which is missing right now. This is the preferred area when working with the County of Maui.

Barry noted, that they did not want to build a vertical seawall. The reason for the rock revetment is to absorb wave energy, reduce reflection, and that helps the beach accrete in front of it.

Gomes asked during the design and research period did you take in consideration your neighbors on both sides and what would be the negative impacts or adverse situations they would encounter? Barry said, absolutely.

Public Testimony

Opposed, *Tiare Lawrence, Kai Nishiki, Glen Kamaka, Tamara Paltin, Mark Deakos, Tami Hart, Stacy Gray, Lucy Brown, Bianca Isakii*

Downing made a the motion to defer, Gomes second

Discussion: Downing, reason for deferral, allow the Legislature to make the call first. There is not enough understanding of the complexity of this piece, you have a group looking at sand replenishment verses seawalls. If there is a choice in the interim, I do not think anything needs to be done right now, whatever we do, it will have an effect for all of Hawaii. Somewhere along the line we need some guidance, not one rule will fit everyone. Gomes agrees with Downing, we need more time, if the others living along the shoreline have these sand bag revetments and have been living with it for a while, I think they can too. Until we get a better focus on the operation itself.

Further discussion among the Board members regarding the pros and cons of the seawall and it was decided to split the motion between D-3 and K-1.

Motion for Item D-3

Defer. Ayes 3 (Gomes, Downing, Oi), No 3 (Case, Yuen, Gon) Does not pass.

Yuen made the Motion to defer to April 27, 2018 meeting with the performance bond to stay in place until the Board releases it. Gon seconded the motion.

Ayes: 3, (Case, Yuen, Gon) No: 3, (Gomes, Downing, Oi) Does not pass.

Yuen made a motion to defer to April 27, 2018. Gon seconded the motion.
No vote.

Yuen made a motion to defer the item until such a time as the Chair, in her discretion decides to place on the agenda again. Gon second.

Motion

Defer Item D-3 to the Chairs discretion (Yuen, Gon) unanimous.

Motion for Item K-1

Approved as submitted (Oi, Gon) unanimous.

Break: 2:10 pm

Return: 2:30 pm

ITEM C-2 Request approval of amendment to the Habitat Conservation Plan for the Daniel K. Inouye Solar Telescope (DKIST); formerly known as the Advanced Technology Solar Telescope (ATST) and associated Incidental Take License (ITL-13).

Scott Fretz-DOFAW, presented the amendment.

Board Discussion

Gon want to clarify that this item came before the ESRC after I left, I will not have to recuse myself.

Public Testimony- None

Motion

Approve as submitted (Gomes, Gon) unanimous.

ITEM D-6 Grant of Term Non-Exclusive Easement to Shirley Patricia Gulmon, Trustee for Access Purposes, Kailua, Ko'olaupoko, O'ahu, Tax Map Key: (1) 4-3-017: adjacent to 061.

Kevin Moore, Land Division. This is really a mapping issue. We defer to DAGS survey

Public Testimony

Rosemary Fazio, representing Gulmon Trust, and Agent for Buyer, provided testimony regarding the history of the property and the reason they would like to have a perpetual easement in lieu of the 55-year lease. They would like the easement to run with the land.

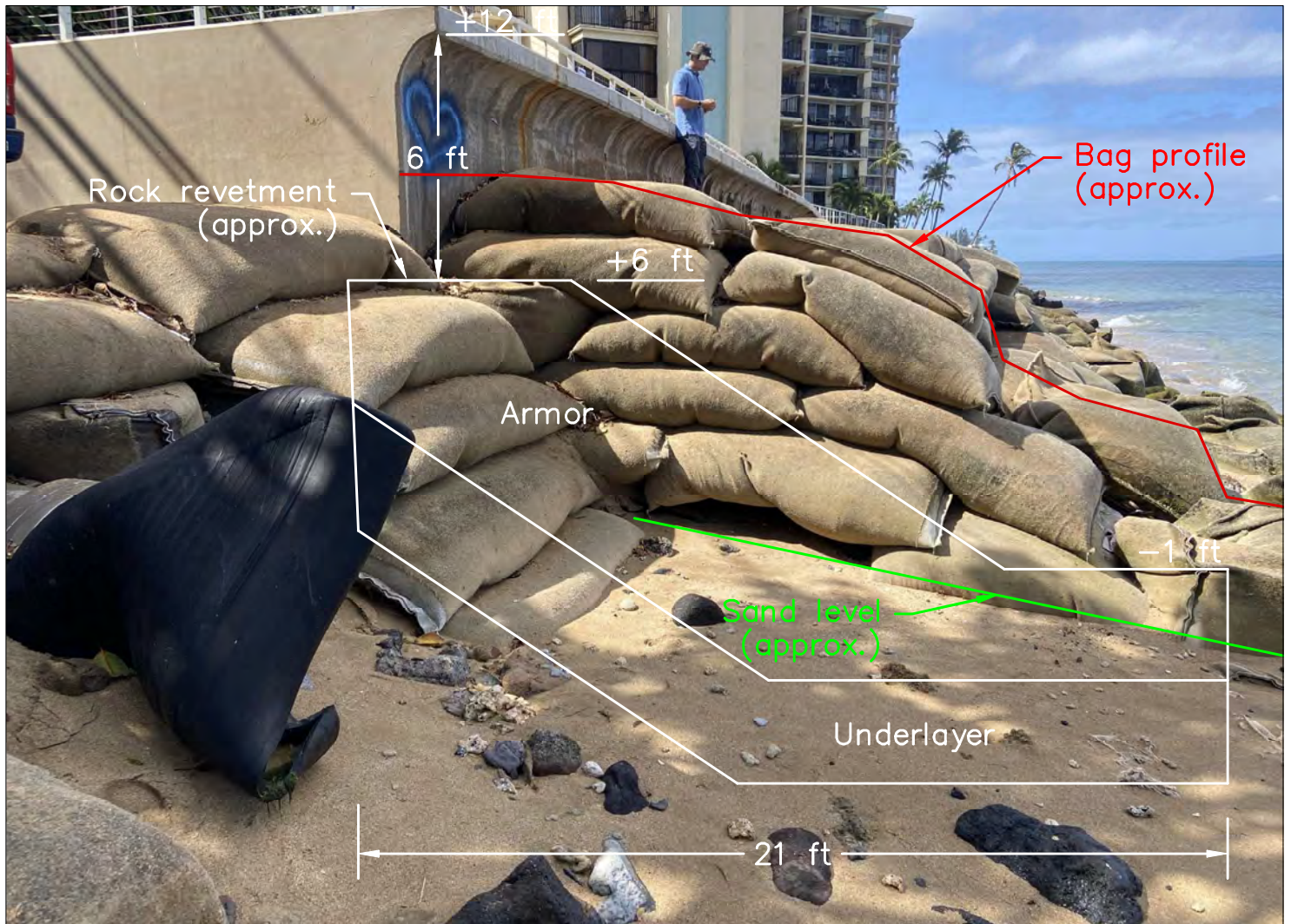


EXHIBIT C



ARTIST'S RENDITION OF COMPLETED PROJECT



May 3, 2024



EXHIBIT D







