

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

January 10, 2025

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

PSF No.:24KD-130

KAUAI

Grant of Term, Non-Exclusive Easement and Revocable Permit for Seawall Purposes;  
Immediate Right-of-Entry for Seawall Purposes, to John Murray, Koloa, Kauai, Tax Map  
Key: (4) 2-6-003: seaward of 015.

APPLICANT:

John Murray, a single man.

LEGAL REFERENCE:

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

LOCATION:

Portion of Government land located at Koloa, Kauai identified by Tax Map Key (TMK): (4)  
2-6-003: seaward of 015 as shown on the attached map labeled **Exhibit A**.

AREA:

Total Easement Area: 0.1864 acre, more or less.  
Estimated Permit/Easement Area: 75 sq ft, more or less.

ZONING:

State Land Use District:	Urban
County of Kauai CZO:	Residential

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 unauthorized encroachments.

TERM, NON-EXCLUSIVE EASEMENT:

CHARACTER OF USE:

Right, privilege and authority to use, maintain, repair, replace, and remove existing seawall 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.

REMOVAL BOND:

Applicant shall be required to post a removal bond for an amount of \$40,000.00 as determined by Land Division in consultation with Engineering Division, subject to approval by the Chairperson.

RIGHT-OF-ENTRY AND REVOCABLE PERMIT:

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Monthly rental amount to be determined by independent appraisal establishing fair market rent, subject to review and 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 will probably have minimal or no significant effect on the environment and should be declared exempt from the requirements of section 1-200.1-17, HAR. See attached **Exhibit D**.

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine the consideration due;
- 2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;
- 3) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department;
- 4) Post a removal bond in the amount of \$40,000.00 as determined by Land Division in consultation with the Engineering Division; and
- 5) Applicant must maintain a fifteen-foot-wide access right-of-way on their fee simple property for future removal of encroaching seawall.

JUSTIFICATION FOR REVOCABLE PERMIT:

The land disposition recommended to the Board 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 presented in the present submittal as one of the two options recommended to the Board is a three-stage process encompassing:

- 1) Issuance of a right-of-entry permit for a period of up to six months for the encroaching structure on State submerged lands. This allows the Applicant to immediately legitimize occupancy of the public land in question, begin repair and maintenance of the encroaching seawall and filled land without undue delay and without cost to the State, and begin preparations for the Applicant's obligations under future land dispositions.<sup>1</sup> 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 statewide publication of notice of the land disposition 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.

REMARKS:

Applicant John Murray purchased parcel TMK No. (4) 2-6-003:015 (Parcel 15) in 2023 and has been attempting to secure a shoreline certification of the property in order to build a home on the site.

A July 14, 2023, survey map identified encroachments extending from the applicant's parcel, designated as Parcel 15 seaward of the shoreline, consisting of a concrete stairwell, approximately 10 sq. ft. of which is located in the shoreline area, and a section of seawall extending approximately twelve inches beyond the property boundary, totaling not more than 5 sq. ft.

At the recommendation of the Office of Conservation and Coastal Lands (OCCL), applicant requested and received a right of entry permit (ROE), dated February 13, 2024, for the area of shoreline abutting his Parcel 15 to remove the encroachments. The applicant removed the

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<sup>1</sup> The Applicant's obligations under a revocable permit and easement 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 monthly rent payment value of the permits and lump-sum value of the easement.

encroachments using a backhoe and dump truck that was staged on his parcel. Kauai District Land Office (KDLO) staff visited the site March 8, 2024 (See attached **Exhibit B**), to confirm removal of the encroaching staircase.

After confirming that the initial encroachment was removed, staff then revisited the site again on August 1, 2024, in order to complete the shoreline certification map. As a result of continued shoreline erosion, it was determined that there was now approximately seventy-five square feet of the existing seawall encroaching on State unencumbered submerged lands, and that the applicant must first obtain Land Board approval for an easement for the encroaching seawall in order to complete a new shoreline certification.

The seawall was apparently built in or around 1991 mauka of the shoreline and on private property. The shoreline has since moved inland and today, a portion of seawall (about 75 feet or so) now is within the shoreline and therefore is considered an encroachment on State submerged lands. Further consultation with OCCL has determined that, at the time of construction in 1991, the entire seawall was built mauka of the shoreline and outside of the State's conservation district and therefore, the portion of the seawall that today encroaches within the shoreline and inside the conservation district is considered a non-conforming structure (See OCCL letter and County SMA Permit attached as **Exhibit C**).

KDLO staff consulted with the Engineering Division who recommended adding a removal bond in the amount of \$40,000.00 in addition to a requirement of maintaining a 15-foot-wide access right-of-way on their fee simple property in order to allow for any future removal of the encroaching seawall.

The following State and County of Kauai (COK) agencies were consulted on this action with the results indicated:

Agency:	Comment:
<b>State Agencies:</b>	
Division of Forestry and Wildlife	No response by suspense date
Office of Hawaiian Affairs	No response by suspense date
Division of Aquatic Resources	No response by suspense date
State Historic Preservation Division	No response by suspense date
<b>County Agencies:</b>	
COK Planning	No response by suspense date
COK Public Works	No Objections

**RECOMMENDATION:** That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Based on the testimony and facts presented, find that approving the revocable permit, under the conditions and rent forth herein, would serve the best interest of the State.
3. Authorize the subject request to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 2-6-003:015, 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.
4. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a twenty-five-year term non-exclusive easement to John Murray, covering the subject area for access 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 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: (4) 2-6-003:015, 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 Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
  - C. Posting a removal bond in the amount of \$40,000.00 during the effective period of the non-exclusive easement;
  - D. Grantee shall maintain a fifteen-foot-wide access right-of-way on their fee simple property for future removal of seawall;
  - E. Review and approval by the Department of the Attorney General; and
  - F. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a right-of-entry permit to John Murray, covering the subject area for the encroaching portion of the seawall pending completion of the revocable permit 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 document form, as may be amended from time to time;
  - B. Removal of the subject encroachment, if required, within the period determined by the Chairperson;
  - C. 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 five below, whichever is sooner; provided that the Chairperson may extend the right-of-entry for additional one-year periods for good cause shown; and
  - D. 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 of a revocable permit to John Murray, 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 document form, as may be amended from time to time;
  - B. Posting 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.

Respectfully Submitted,



James C. Turner  
Land Agent

APPROVED FOR SUBMITTAL:



Dawn N. S. Chang, Chairperson 





Exhibit A



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

**INSPECTION REPORT FOR VACANT PROPERTY**

TAX MAP KEY: (4) 2-6-003: seaward of 015

Inspection date: 3/8/2024 Inspection time: 1100

1. Explain the physical condition including any improvements (ie grass overgrown, wiliwili trees, abandon vehicles, clogged concrete lined ditch, broken chain link fence, etc.): \_\_\_\_\_  
Landowner, John Murray requested a Right-of-Entry permit from KDLO in order to remove shoreline encroachments and complete a shoreline certification of his property at TMK No.; (4) 2-6-003:015. ROE permit was issued February 14, 2024 and all work was to be completed within 45 days. Mr. Murray informed KDLO staff that work was completed on 3/1/2024. KDLO staff inspected the property and took the attached photos of the removal of a rock and concrete stairwell and approximately one square foot of seawall encroaching along the state shoreline (see attached photographs).

2. Is maintenance is required? (ie cut grass, tree removal, install government signs, etc.) \_\_\_\_\_  
No

3. Completed by: JCT

Date: 3/10/24

Reviewed by: \_\_\_\_\_

**EXHIBIT B**



2



**EXHIBIT B**



JOSH GREEN, M.D.  
GOVERNOR | KE KIA'AINA

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'AINA



STATE OF HAWAII | 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  
RYAN K.P. KANAKA'OLE  
FIRST DEPUTY  
DEAN D. UYENO  
ACTING DEPUTY DIRECTOR - WATER  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES  
ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:OCCL:CM

Shoreline Encroachment KA 25-04

John Murray  
[REDACTED]

Sep 30, 2024

Koloa, HI 96756

SUBJECT: Request to Resolve State Land Encroachments at [REDACTED], Koloa, Kauai; Tax Map Key: (4) 2-6-003:seaward of 015.

Dear Mr. Murray,

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 shoreline. Your letter included a Shoreline Encroachment Information Sheet; a 2024 easement map (by CLS Hawaii Land Surveying and Mapping) identifying the encroaching area; a 1990 certified shoreline map; a 1991 Special Management Area (SMA) Minor Permit from the County of Kauai Planning Department; and current photos of the seawall.

SMA permit no. SMA(M) 91-8, authorized the construction of the seawall within the private property (see **Exhibit 1**). This is further supported by the 2024 easement map that shows the seawall located mauka of the 1990 certified shoreline and property boundary (see **Exhibit 2**).

Based on staff review of the information you provided it appears that at the time of construction in 1991, the seawall was built mauka of the shoreline, and not in the Conservation District. The OCCL has determined that since the seawall was not built in the Conservation District, the seawall is considered a non-conforming structure.

It is OCCL's understanding that after the seawall's construction, the shoreline eroded and migrated landward to the seawall such that the sloping seaward face of the seawall is now located within the proposed shoreline and encroaching on State unencumbered submerged lands. You are working to resolve this shoreline encroachment of about 75 square feet to obtain a certified shoreline as part of the due diligence process to re-build your house. Currently, there is no residential structure on the subject property.

Exhibit C

John Murray  
Seawall encroachment

Encroachment KA 25-04

Since the seawall is determined to be a non-conforming structure, it does not require a Conservation District Use Permit (CDUP) from our office, but please be advised that any future proposed work and/or repair to the structure may require a review and possibly authorization from the Department or the Board of Land and Natural Resources. If you have any questions about the rules and regulations of the Conservation District, please read the Hawaii Administrative Rules, Chapter 13-5, which can be found on our website at <https://dlnr.hawaii.gov/occl/files/2013/08/HAR-13-5-2021.pdf>.

Although a CDUP is not required for the seawall, please contact the DLNR-Land Division to determine whether a disposition may be needed to resolve the encroachment.

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

Sincerely,

*S Michael Cain*

Michael Cain, Administrator  
Office of Conservation and Coastal Lands

CC: Kauai District Land Office  
County of Kauai Planning Department

JOANN A. YUKIMURA  
MAYOR



COUNTY OF KAUAI  
PLANNING DEPARTMENT  
4280 RICE STREET  
LIHUE, KAUAI, HAWAII 96786

PETER A. NAKAMURA  
PLANNING DIRECTOR

ROLAND D. SAGUM, III  
DEPUTY PLANNING DIRECTOR

TELEPHONE (808) 245-3919

February 25, 1991

Mr. Ron Agor  
Agor-Latham Architecture  
4635 Kukul Grove, Suite 105  
Lihue, Hawaii 96766

Subject: Ternary Seawall  
SMA(M)91-8  
TMK: 2-6-03:15  
Kukuiula, Kauai

Based on the information submitted, we have completed our review and assessment of the subject proposal and hereby issue a Special Management Area Minor Permit.

Attached is the approved County of Kauai Special Management Area Minor Permit authorizing construction of rock seawall and stairs.

Please note the conditions attached and issued with the SMA Minor Permit.

Also be informed that other permits or conditions from other agencies may be required prior to construction. The applicant is responsible for resolving these conditions with the other respective agency(ies).

A handwritten signature in black ink, appearing to read "Peter A. Nakamura".

PETER A. NAKAMURA  
Planning Director

Attachment

Exhibit 1



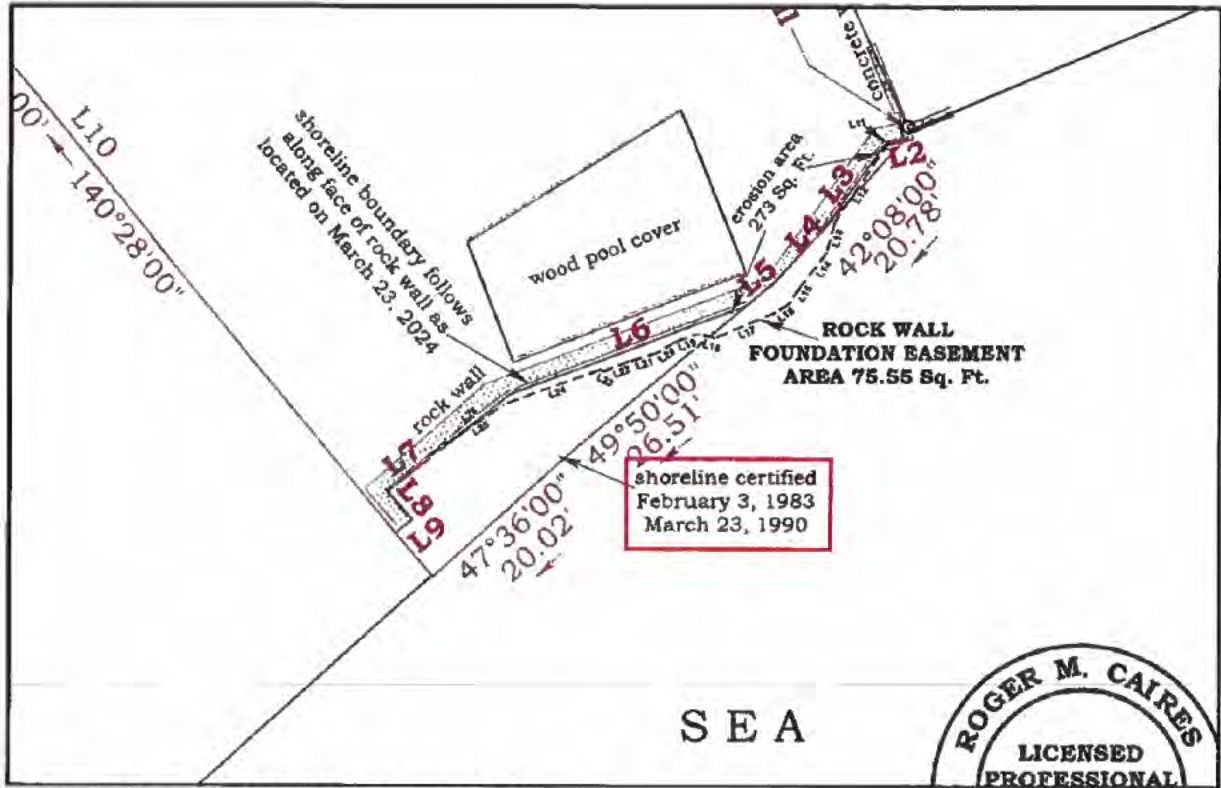
**CONDITIONS OF APPROVAL**

Trenary Seawall  
SMA(M) 91-8

1. The applicant shall stake-out the certified shoreline prior to and during construction and shall notify the Planning Department for inspection prior to construction.
2. Approval of the County SMA and SSV permits are restricted to construction and related activities situated inland of the certified shoreline. The applicant is advised that any activity seaward of the certified shoreline is subject to the review of the State Department of Land and Natural Resources.
3. Pursuant to Chapter 6E of the Hawaii Revised Statutes, the State Historic Sites Section shall be contacted immediately should any burial or historic remains be discovered during site preparation or construction of the seawall.
4. Both ends of the proposed seawall shall be designed and constructed to minimize impacts to the adjoining properties.
5. Backfill shall consist of sand, clean crushed basaltic rock, or crushed limestone (sand stone) or nonterrestrial material. Soil shall not be used as backfill or filter material.
6. The applicant shall obtain a building permit for the seawall and stairway.
7. The seawall shall be designed by a qualified engineer/architect who shall indemnify the County from any liability and certify that the seawall meets the structural requirements of HRS 205 (Items 2 & 3).
8. No rocks, coral, or sand shall be removed from the shoreline for use in the construction of the seawall.
9. The seawall shall be faced with lava rock to be in keeping with the adjoining seawall.
10. The top of the seawall should be at or below the existing ground rather than the two feet above, as shown on the plans submitted. The applicant shall resolve these requirements with the Department of Public Works.
11. Should the applicant obtain approval from FEMA for a wall height above the existing ground level, the finished elevation of the seawall shall be no higher than the abutting seawall on TMK:2-6-03:14.







Note: Close up of shoreline and seawall.

JOSH GREEN, M.D.  
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



DAWN N. S. CHANG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

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

3060 Eiwa Street, Room 208  
Lihue, Hawaii 96766  
PHONE: (808) 274-3491  
FAX: (808) 241-3535

January 10, 2025

## EXEMPTION NOTIFICATION

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

**Project Title:** Grant of Term, Non-Exclusive Easement and Revocable Permit for Seawall Purposes; Immediate Right-of-Entry for Access Purposes, to John Murray, Koloa, Kauai, Tax Map Key: (4) 2-6-003: seaward of 015.

**Project / Reference No.:** 24KD-130

**Project Location:** Koloa, Kauai, Tax Map Keys: (4) 2-6-003: seaward of 015

**Project Description:** Issuance of Revocable Permit for Seawall Purposes

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

**Exemption Class No. and Description:** In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 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, that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," and Part 1, Item 44 that states, "Creation or termination of easement, covenants, or other rights in structures or land.."

**EXHIBIT D**

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

No. Staff believes there are no cumulative impacts involved with the proposed seawall use of the land under a revocable permit.

**Action May Have Significant Impact on Particularly Sensitive Environment?:**

No. There are no sensitive environmental issues involved with the proposed seawall use as it involves no alteration or modification of the existing seawall.

**Analysis:**

The proposed action is an issuance of a revocable permit for seawall purposes. The seawall has been in its existing form for a least three decades, and the applicant has no intention of conducting any modifications to the structure. As such, staff believes that the proposed disposition would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

**Consulted Parties:**

Division of Forestry and Wildlife, Office of Hawaiian Affairs, Division of Aquatic Resources, County of Kauai Planning Department, County of Kauai Public Works, State Historic Preservation Division.

**Recommendation:**

That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.